

**S B**

**149**

SENATE COMMITTEE REPORT

FURTHER

2/21/89

DATE TURNED INTO OFFICE

2/27/89

Mr. President:

LABOR & COMMERCE

Committee considered

SB 149

contracts to lend money or grant or extend credit

and recommended

- replace with \_\_\_\_\_ CS \_\_\_\_\_ )  same title
- or adopt \_\_\_\_\_ CS \_\_\_\_\_ )  new title
- attached amendment(s) and  technical title change (HB only)
- \_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

**FISCAL NOTE(S)**  zero  fiscal impact  appropriation no FN  
 new  updated  previous  
 same as previous fiscal note(s) published 2/21/89

MEMBERS SIGNING DO PASS

*[Handwritten signatures]*  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

OTHER RECOMMENDATIONS

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*[Handwritten signature]*  
 \_\_\_\_\_  
 Chairman signature and recommendation

Committee Backup attached

Patrick M. Rodey  
Senator

# Alaska State Legislature



Senate

3111 C. St., Suite 510  
Anchorage, Alaska 99503  
(907) 561-7618

During Session:  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3723

## M E M O R A N D U M

DATE: February 15, 1989

TO : Members of the Senate Special Committee on  
Banking and Economic Development

FROM: Senator Patrick Rodey, Chair

Senate Bill 149 amends AS 09.25.010 (a) to add a requirement that commercial loan commitments more than \$100,000 must be in writing to be enforceable.

This is based on a 1988 California law and would help avoid potential disputes between parties to a commercial loan transaction. The bill was endorsed by the California Bankers Association and represents a compromise between the bankers and the trial lawyers associations.

It is interesting to note that AS 45.02.201 (a) states "Except as otherwise provided in this section a contract for the sale of goods, including the sale or transfer of a boat or vessel, for the price of \$500 or more is not enforceable by action or defense unless there is a writing sufficient to indicate that a contract for sale has been made between the parties...".

Surely if a sale of goods of \$500 or more requires a written agreement to be enforceable, it seems reasonable to extend protection to parties who enter into a commercial loan agreement over \$100,000 by requiring that the agreement be in writing as well.

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: Relating to contracts to lend money or grant or extend credit  
 Sponsor: Rodey  
 Requestor: \_\_\_\_\_

Agency Affected: Commerce & Econ. Dev.  
 BRU: Banking, Securities & Corp.  
 Components: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	0	0	0	0	0

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

**ANALYSIS : (Attach a separate page if necessary)**

Prepared by: Willis F. Kirkpatrick, Director *WFK* Phone: 465-2521  
 Division: Banking, Securities & Corp. Date: 2-5-89

Approved by Commissioner: Larry Mercurieff *W/Smb, lmc* Date: 2/8/89  
 Agency: Department of Commerce & Economic Development

- Distribution (by preparer):
- Legislative Finance
  - Legislative Sponsor
  - Requestor
  - Office of Management and Budget
  - Impacted Agency(ies)



**STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
BILL ANALYSIS**

DEPARTMENT Commerce & Econ. Dev.	DIVISION Banking, Securities and Corporations	BILL NUMBER SB 149	SPONSOR Rodey
SHORT TITLE OF BILL Relating to contracts to lend money or grant or extend credit			
DEPARTMENT POSITION Neutral			
PREPARED BY Willis F. Kirkpatrick <i>WFK</i>	DATE	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 2/8/89

**SUMMARY**

OTHER AGENCIES AFFECTED BY BILL None known	CONSTITUENT GROUPS AFFECTED BY BILL None known
ORGANIZATIONAL SUPPORT FOR BILL None known	ORGANIZATIONAL OPPOSITION TO BILL None known

FISCAL IMPACT:       - NONE       - FISCAL NOTE ATTACHED

**BACKGROUND/RELATIVE INTENT**

Events leading up to this bill are not known.

The intent appears to provide that certain advances of credit are unenforceable unless made in writing.

**ANALYSIS OF BILL/PROGRAM EFFECTS**

A new subsection 13 is added to AS 09.25.010. Statute of frauds which provides that a loan over \$100,000 is unenforceable if not personal and made by a person who is engaged in the business of lending.

This bill has no effect on the division's programs.

**AMENDMENTS PROPOSED**

None

3266D-2/020889a      PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

STATE OF ALASKA  
THE LEGISLATURE

POUCHY STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 16, 1989

SUBJECT: Sectional analysis of SB 149  
(Work Order No. 6-0552A)

TO: Senator Pat Rodey

FROM: Theresa L. Bannister <sup>JB</sup>  
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. States that agreements to make certain loans or to grant or extend credit in certain situations are unenforceable unless the agreements or some notes or memoranda of them are written and signed by the party to be charged or by the party's agent. Does not apply if the loan or grant or extension of credit is primarily for personal, family, or household purposes. Applies if the person who agrees to loan or grant or extend the credit is in the business of lending or arranging for the lending of money or the granting or extension of credit. Applies to amounts over \$100,000.

Section 2. Applies the bill to an agreement entered into on or after January 1, 1990.

TB:kb  
wkk2/015



The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

March 18, 1988

Dear Representative:

The Kansas Bankers Association is respectfully requesting that the House Commercial and Financial Institutions Committee reconsider their action of Thursday, March 17, on SB 535 since nearly half the committee was unable to attend the hearing and participate in the vote. This issue is very important to our industry and we believe it deserves the attention and action of the full committee.

The intent of the bill is to eliminate the problem of frivolous and unjustified counter claims being filed by debtors claiming that oral credit commitments existed beyond those stated in the written security agreement. This has become a common practice for debtors in foreclosure and bankruptcy situations and it only serves to delay the legal process and create sizeable legal expenditures for banks (see the attached example). This has the bottom line effect of protecting the bad customer at the expense of the good customer since the bank's operating costs are increased.

The bill requires that credit agreements must contain "a clear, conspicuous and printed notice" to the debtor that such agreements must be in writing to be enforceable by the debtor in court. This should certainly be sufficient notification to the debtor of his or her rights to take legal action on the agreement. This concept of oral agreements not being enforceable by the debtor has applied to real estate transactions in Kansas for many years.

There was some concern by committee members that the bill applies to all creditors rather than just to financial institutions. We have, therefore, drafted an amendment which would restrict the provisions of the act to financial institutions only and we are quite willing to abide by the committee's decision on this matter.

Your reconsideration and support of SB 535 would be greatly appreciated. We believe it is an important step in solving the increasing problems of lender liability.

Sincerely,

James S. Maag  
Director of Research

The intent of SB 535 is to eliminate the problem of frivolous and unjustified counter claims being filed by debtors claiming that oral credit commitments existed beyond those stated in the written security agreement. This has become a common practice for debtor attorneys in foreclosure and bankruptcy situations and it only serves to delay the legal process and create sizeable legal expenditures for banks. This has the bottom line effect of protecting the bad customer at the expense of the good customer since the bank's operating costs are ultimately increased no matter what the outcome of the lawsuit is. Such lawsuits have also made it more and more difficult for rural banks to find people willing to serve as bank directors due to the steadily increasing number of lender liability suits.

The bill is really an extension of the Statute of Frauds (KSA 33-101 et seq) which has existed in Kansas since early statehood and applies to real estate transactions. This would simply expand that concept to apply to other types of credit agreements made by financial institutions. A debtor would still have an enforceable action if they could prove to the court that a financial institution had established a certain lending pattern based on past oral commitments.

The bill requires that credit agreements must contain "a clear, conspicuous and printed notice" to the debtor that such agreements must be in writing to be enforceable by the debtor in court. This should certainly be sufficient notification to the debtor of his or her rights to take legal action on the agreement. A debtor would be aware that if the financial institution was, in fact, making an oral commitment the debtor should request that the credit agreement be altered to include such commitments.

There was some concern by committee members that the bill applies to all creditors rather than just to financial institutions. The committee decision to restrict the bill to financial institutions only is acceptable to the KBA, the Kansas League of Savings Institutions and the Kansas Credit Union League.

The bill was recommended unanimously by the Senate Judiciary Committee and passed the Senate 39-0.



The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

March 28, 1988

TO: All Kansas Banks  
FROM: Jim Maag  
RE: SB 535 -Lender Liability

On the back of this memo is a copy of the latest version of SB 535 which is one of the most important pieces of lender liability legislation to be considered in recent years. The bill has already passed the Kansas Senate by a vote of 39-0 and has been recommended for passage by the House Committee on Commercial and Financial Institutions after being amended. The full House is expected to debate and vote on SB 535 later this week so banker contact with your state representative as soon as possible is essential.

The bill is basically an extension of the existing Statute of Frauds and would apply to all credit agreements entered into by financial institutions. Under the provisions of the act, a debtor would not have an enforceable action on a credit agreement unless the agreement is in writing and is signed by the party to be charged. The intent is obviously to eliminate the rising problem of frivolous counterclaims by debtors that oral agreements existed on prior credit agreements. As you are painfully aware, this has become a common tactic to create confusion and delay in the legal process and is extremely time-consuming and costly to a bank. Other states are also recognizing this problem and enacting such legislation. This bill, in fact, is based on the current Minnesota law.

It is also important to emphasize to your Representative that the increasing number of lender liability actions is making it more and more difficult to find people who are willing to serve as bank directors. Hopefully, legislation such as SB 535 would restore some balance in the area of lender liability. As you can see, the bill does provide for a "clear, conspicuous and printed notice" to the debtor so there could be no misunderstanding as to their rights.

Attached to this memo are the Statehouse phone numbers for all House members. Please contact your Representative as soon as possible and urge their support of SB 535. Thank you for your help!!

*Handwritten initials*

SENATE BILL No. 535

AN ACT concerning credit agreements of financial institutions; relating to debtor's or creditor's right to action thereon and form thereof; requiring notice to debtor.

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in this act:

(a) "Credit agreement" means an agreement by a financial institution to lend or delay repayment of money, goods or things in action, to otherwise extend credit or to make any other financial accommodation;

(b) "creditor" means a financial institution which extends credit or extends a financial accommodation under a credit agreement with a debtor;

(c) "debtor" means a person who obtains credit or receives a financial accommodation under a credit agreement with a financial institution; and

(d) "financial institution" means a bank, savings and loan association, savings bank or credit union.

Sec. 2. (a) A debtor or a creditor may not maintain an action on a credit agreement unless the agreement is in writing and is signed by the creditor and the debtor.

(b) All credit agreements shall contain a clear, conspicuous and printed notice to the debtor that states that the written agreement is a final expression of the agreement between the creditor and debtor and such written agreement may not be contradicted by evidence of any prior oral agreement or of a contemporaneous oral agreement between the creditor and debtor. A written credit agreement shall contain a sufficient space for the placement of nonstandard terms, including the reduction to writing of a previous oral agreement and an affirmation, signed or initialed by the debtor and the creditor, that no unwritten oral agreement between the parties exists.

Sec. 3. This act shall take effect and be in force from and after January 1, 1989, and its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body.

SENATE adopted Conference Committee report \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

Passed the HOUSE as amended \_\_\_\_\_

HOUSE adopted Conference Committee report \_\_\_\_\_



California Bankers Association

October 19, 1988

TO: All Interested Parties

FROM: L. D. KURMEL *LD*  
Vice President and Director/State Government Relations

SUBJECT: LENDER LIABILITY

In response to your request for information regarding the lender liability legislation enacted in California, I have enclosed copies of the following materials:

1. SB 2789 (Maddy), Chapter 1096, Statutes of 1988.
2. Bill analysis by the Assembly Judiciary Committee.
3. CBA's letter to the Governor requesting his signature on the bill.

Please note that the language found in Civil Code Section 1624(g), which defines any lending contract secured solely by 1-4 residential property as a consumer loan, will be amended out of the law in 1989. That language is the result of a last minute amendment forced on CBA by the California Association of Realtors. Upon reflection, the Realtors now agree with CBA's initial assertion that non-commercial real estate transactions, residential 1-4, are adequately protected by the exclusion of loans for personal, family, or household purposes.

If you have any questions regarding this legislation, please call either R. Blair Reynolds (CBA General Counsel) at 415/433-1894 or me at 916/441-7377. Minnesota has already enacted similar legislation.

LDK:mb  
Enclosures



California Bankers Association  
Established 1891

June 6, 1988

The Honorable Patrick Johnston  
Chair, Assembly Finance and Insurance  
Committee  
State Capitol, Room 4112  
Sacramento, California 95814

RE: SENATE BILL 2789 (MADDY) -- STATUTE OF FRAUDS

Dear Assemblyman Johnston:

The California Bankers Association respectfully urges your "AYE" vote on SB 2789.

This bill, which passed the Senate without a dissenting vote, simply adds a requirement to the statute of frauds that a commitment to loan more than \$25,000 must be in writing. We estimate that over half of the disputes between commercial lenders and borrowers involve an alleged oral commitment to extend credit. This bill will allow the utterly unfounded claim to be weeded out, without prejudicing bona fide claims.

California law already requires a writing whenever a sale of goods exceeds \$500. We believe that a \$25,000 loan commitment is at least as deserving of protection as a commitment for a \$500 refrigerator.

Please note that the recent amendment deleted the more controversial section of the bill modifying the parol evidence rule.

When SB 2789 is heard before you, we urge your "AYE" vote.

Respectfully,

STANLEY M. WIEG  
Senior Legislative Counsel

SMW:mo

cc: All Members, Assembly Finance and Insurance  
Committee  
Will Brown, Consultant, Assembly Finance and  
Insurance Committee

ASSEMBLY COMMITTEE ON JUDICIARY  
ELIHU M. HARRIS, Chairman

SB 2789 (Maddy) - As Amended: May 11, 1988  
(Analysis reflects amendments  
to be offered in Committee)

PRIOR ACTION

Sen. Com. on JUD. 7-0

Sen. Floor 34-0

SUBJECT: This bill provides that a contract to loan money or extend credit for a commercial purpose in an amount greater than \$100,000 is invalid unless it is in writing if it is made by a person engaged in the business of lending or extending credit.

DIGEST

Existing law:

- 1) Provides that all contracts may be oral, except such as are especially required by statute to be in writing.
- 2) Lists six classes of agreements which are invalid unless they, or some note or memorandum thereof, are in writing and subscribed by the party to be charged or the party's agent. (See Comment 1)

This bill:

- 1) Adds to the list of contracts which are invalid unless they are in writing a contract to loan money or to extend credit, in an amount greater than \$100,000, Not primarily for personal family or household purposes, made by a person engaged in the business of lending or arranging for the lending of money or extending credit.
- 2) States legislative intent that: (a) the bill's provisions shall only apply prospectively to any claim or cause of action arising on or after January 1, 1989, and not otherwise affect any statutory or common law rights in a civil action and (b) all statute of frauds defenses shall be applicable.

FISCAL EFFECT

None

- continued -

COMMENTS

- 1) Under existing statute, the following types of contracts are invalid unless they are in writing:
  - a) An agreement that by its terms is not to be performed within a year from the making thereof.
  - b) A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in Section 2794.
  - c) An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; such an agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged.
  - d) An agreement authorizing or employing an agent, broker, or any other person to purchase or sell real estate, or to lease real estate for a longer period than one year, or to procure, introduce, or find a purchaser or seller of real estate or a lessee or lessor of real estate where the lease is for a longer period than one year, for compensation or a commission.
  - e) An agreement which by its terms is not to be performed during the lifetime of the promisor.
  - f) An agreement by a purchaser of real property to pay an indebtedness secured by a mortgage or deed of trust upon the property purchased, unless assumption of the indebtedness by the purchaser is specifically provided for in the conveyance of the property.
  
- 2) The California Bankers association (CBA) is the source of this bill. According to CBA, "over half of the disputes between commercial lenders and borrowers involve an alleged oral commitment to extend credit. This bill (by requiring that a commitment to loan more than \$25,000 must be in writing) will allow the utterly unfounded claim to be weeded out, without prejudicing bona fide claims." CBA points out that existing law already requires a writing whenever a sale of goods exceeds \$500 and states its belief that "a \$25,000 loan commitment is at least as deserving of protection as a commitment for a \$500 refrigerator."

Support

Association for California  
Tort Reform  
Security Pacific Bank  
Wells Fargo Bank  
*SAVINGS LEAGUE*

Opposition

Unknown



California Bankers Association  
Established 1891  
September 6, 1988

The Honorable George Deukmejian  
Governor  
State Capitol  
Sacramento, California 95814

RE: SENATE BILL 2789 (MADDY) -- STATUTE OF FRAUDS

Dear Governor Deukmejian:

The California Bankers Association respectfully urges you to sign SB 2789.

This bill, as amended, adds a requirement to the statute of frauds so that a commitment to loan more than \$100,000 for commercial purposes must be in writing. A significant portion of lender/customer disputes have involved a misunderstanding over alleged oral commitments to make a loan. This bill addresses that problem area.

California law already requires a "writing" whenever a sale of goods exceeds \$500. We believe that a \$100,000 loan commitment is at least as deserving of protection as a commitment to sell a \$600 refrigerator.

SB 2789 was unopposed in the Legislature. During the summer recess we met with the California Trial Lawyers Association and the California Association of Realtors. Amendments to the bill were crafted to meet their concerns. In essence the amendments made three changes. First, the threshold monetary amount of the bill is raised from \$25,000 to \$100,000. This amount, coupled with an exclusion of the standard definition of a consumer loan, will limit the statute's application to substantial commercial loan agreements. Second, the legislative intent section makes it clear that existing exceptions to the statute, such as promissory estoppel or fraud, will be equally applicable to the new material. Finally, the bill makes it clear that ordinary residential property financing is a consumer transaction.

SB 2789 will avoid potential disputes and improve the understanding of all parties to a commercial loan transaction. Again, we respectfully urge your signature.

Sincerely,

A handwritten signature in dark ink, appearing to read 'L. D. KURMEL', written over a circular stamp.

L. D. KURMEL  
Vice President/Director  
State Government Relations

SMW:mo

1127 Eleventh Street, Suite 706, Sacramento, California 95814-3871 (916) 441-7377

MAIN OFFICE: 650 California Street, Suite 100L, San Francisco, California 94108 (415) 433-1894

ASSEMBLY FLOOR SPEECH -- SENATE BILL 2789 (MADDY)

MR. SPEAKER AND MEMBERS --

SB 2789 ADDS A SUBSECTION TO THE STATUTE OF FRAUDS GOVERNING LOAN COMMITMENTS.

THE BILL REPRESENTS A COMPROMISE BETWEEN THE BANKERS AND TRIAL LAWYERS ASSOCIATIONS. ESSENTIALLY, THE BILL SAYS THAT COMMERCIAL LOAN COMMITMENTS OVER \$100,000 MUST BE IN WRITING TO BE ENFORCEABLE.

THE BILL HAS NOT HAD A "NO" VOTE SO FAR. IT WAS RECOMMENDED FOR CONSENT BY THE JUDICIARY COMMITTEE BUT PULLED OFF THE CONSENT CALENDAR FOR DOUBLEJOINING AMENDMENTS AND SOME INTENT LANGUAGE.

THE BILL IS UNOPPOSED, AND SUPPORTED BY THE CALIFORNIA BANKERS ASSOCIATION AND THE CALIFORNIA LEAGUE OF SAVINGS INSTITUTIONS.

I ASK FOR YOUR "AYE" VOTE.

## California Banks May Find Haven In a Law Curbing Suits on Lending

By RICHARD B. SCHMITT

Staff Reporter of THE WALL STREET JOURNAL  
For much of the 1980s, the banking industry in California has been the defendant of choice in many lawsuits.

Now, thanks to a major industry lobbying push, that may be about to change.

Beginning Jan. 1, a new, industry-sponsored law will give banks a major defense in fighting lawsuits by unhappy business customers. In a nutshell, the law will prevent customers from suing lenders for cutting off credit or refusing to extend new loans unless there is an actual written promise to keep lending. Many recent judgments against banks have been based on allegations that they broke oral promises or assurances, and so the new law could undercut a recently important theory of liability.

To the banks, the change is welcome relief. They have frequently alleged that many recent verdicts against them have had more to do with sympathetic local juries than a hard reading of the facts. With no written documentation, "it was getting to be a situation where whoever appeared better on the witness stand" would win, says Blair Reynolds, general counsel of the California Bankers Association. In small towns, where many such suits were heard, many big-city bankers found that an uphill climb.

For customers, critics say, it is another reason to be wary of the increasingly aggressive marketing tactics of banks every-

where, especially when such promises aren't reduced to writing.

"These guys are out fighting with each other to sell money, and they are really pitching customers. But by the time the documents come around, they don't necessarily look like the oral agreements," said Barry Cappello, a Santa Barbara, Calif., attorney who has represented many bank borrowers in such cases. Under such circumstances, he says, focusing just on written documents could "give banks another arrow in their quiver to use against borrowers."

Certainly, no one expects such suits to disappear. Indeed, exceptions to the written-contract rule will be made in several cases, including that of alleged fraud. And disgruntled borrowers will still be able to use other legal theories, including breach of fiduciary duty.

Some lawyers said lenders themselves may have to alter some of their practices. So-called term sheets, in which banks outline possible extensions of credit, may have to be modified to include express disclaimers that no formal commitment is intended, said Michael Traynor, a partner with Cooley Godward Castro Huddleson & Tatum, a San Francisco firm that represents several banks.

Mr. Traynor said the new law would add "clarity" and "reliability" to the lending process and thereby aide both customers and their banks. He says he doubts that it would create many problems for

## Tobacco Companies Agree To Warnings in California

By a WALL STREET JOURNAL Staff Reporter

LOS ANGELES—Major tobacco companies have agreed to put consumer-health warnings on cigars, pipe tobacco and certain other non-cigarette tobacco products sold in California in order to settle a recent lawsuit by the state's attorney general, a source close to the lawsuit said.

The settlement, which is expected to be announced this morning, is related to charges filed Sept. 30 by California Attorney General John Van de Kamp, alleging that tobacco manufacturers and retailers had failed to comply with a stiff new state environmental law. The attorney general's office confirmed that a settlement had been reached.

The state-court lawsuit alleged a failure to post adequate warnings about the level of carcinogens in cigars, pipe tobacco and loose tobacco used for roll-your-own cigarettes. The action was the first major enforcement effort under a recent voter initiative that requires "clear and reasonable warning" about products that the state has found to contain carcinogens above certain levels.

larger, more sophisticated borrowers, but added that "different dynamics might be working" in the case of smaller loans. The measure applies to commercial loans in excess of \$100,000 only.

Others indicated that the measure would benefit banks the most.

"It will be of great help to lenders," said William Burke, a partner with Shearman & Sterling in Los Angeles, who has written extensively on so-called lender-liability issues. "The bigger verdicts all around the country have come out of alleged loan commitments," frequently oral ones.

For better or for worse, California has been a leader in such lender-liability litigation in recent years. Some of the most notable judgments, against the likes of BankAmerica Corp. and Wells Fargo & Co., were won by farmers, who found themselves in a credit crunch after the California farm economy collapsed in the late 1970s and early 1980s.

Despite the law's Jan. 1 effective date, some attorneys and bankers said there is some question about whether existing relationships that sour in the future would be covered. Some lawyers said banks are bound to seek such coverage. Mr. Traynor, however, says, "I think it will take a creative and persuasive argument to convince a court that the rule ought to apply to transactions it does not govern."

## Supreme Of Justices

By Staff Reporter

WASHINGTON

will review the IRS's attempt to prevent the sharing with the nation of information obtained

In addition, the use of subpoenaed information agreed to by the IRS is a question of IRS subpoena privilege.

The question

Department of Justice

est step in the Church's efforts to

its followers. Since October, the Church has been trying to obtain a ruling from the Supreme Court that are part of California's refusal to pay a federal tax

penalty. A federal court has ruled in favor of the IRS to require the recording of such transactions unless they are started.

The judgment on the tax penalty on the taped disc of the attorneys' church. The tax penalty weren't a privilege, but a penalty to pay to the IRS. But the judgment apart from the IRS's actions involv-

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## Overseas Units of U.S. Firms Don't Need To Follow Civil Rights Laws, Court Says

By DIANNA SOLIS

Staff Reporter of THE WALL STREET JOURNAL

A federal appeals court in New Orleans has ruled that U.S. companies, in their overseas operations, don't have to comply with U.S. civil rights laws barring discrimination.

The case was brought by Ali Boureslan, an ex-engineer for the Arabian American Oil Co., the world's largest crude oil-producing company. Mr. Boureslan, a Lebanon native who is a naturalized U.S. citizen, said he was the victim of his supervisor's "campaign of harassment," which allegedly took the form of racial, religious and ethnic slurs and ended with Mr. Boureslan's firing in June 1984 after six years with Aramco.

In a 2-to-1 ruling, the Fifth Circuit Court of Appeals said it couldn't find any indication in the Civil Rights Act of 1964 or in its legislative history that Congress had meant to extend civil rights protections to U.S. citizens employed abroad. The ap-

United States" from the law's protections, implied that U.S. citizens should have those discrimination protections or the alien exemption has no purpose. However, the majority held that they weren't persuaded by Mr. Boureslan's argument and noted that the purpose of the alien exemption was to extend civil rights protections to aliens employed within the U.S.

"The religious and social customs practiced in many countries are wholly at odds with those of this country," wrote federal Judge W. Eugene Davis in the majority ruling. "Requiring American employers to comply with Title VII [of the Civil Rights Act] in such a country could well leave American corporations the difficult choice of either refusing to employ United States citizens in the country or discontinuing business."

Further, the judge wrote that arguments in a friend-of-the-court brief by the U.S. Equal Employment Opportunities Commission fell "far short" of clearly ex-



Testimony presented on Friday, February 17, 1989, regarding Senate Bill No. 149, an Act entitled, "An Act relating to contracts to lend money or grant or extend credit."

Given By:                                 Robert P. Gray  
                                              Legislative Committee Chairman  
                                              Alaska Bankers Association  
                                              and  
                                              President of National Bank  
                                              of Alaska

In Support Of:                             Senate Bill No. 149  
                                              Unanimous position in support of SB 149  
                                              in its present form.

This legislation is modelled after legislation that passed the California Assembly last year and similar legislation has passed in Kansas and Minnesota.

The purpose of the legislation is to minimize misunderstandings between borrowers and lenders. This legislation does that in requiring loan agreements for business purposes, above \$100,000 to be in writing.

The borrower benefits from having a clear understanding with the lender.

Our experience as bankers, leads us to the conclusion that serious misunderstandings concerning business loans, often resulting in mutually destructive litigation, occur by one or other party relying on oral assumptions.

The real estate industry has operated on this basis for many years.

This legislations does not address, nor takes away any rights of consumers under existing regulaticns or laws such as Truth in Lending, Real Estate Settlement Procedure Act, Fair Credit Act, Community Reinvestment Act.

We urge passage of this legislation.

Thank you for allowing us to testify on this proposal and to answer questions.