SCOMM

#50:25

COMMITTEE REPORT

HOUSE

(5) FURTHER: JUDICIARY

2/20/85

Date: 3/14/85

Mr. Speaker:

The Committee on HOUSE SPECIAL COMMITTEE ON STATE LOANS has had HB 217

"An Act relating to interest rates; and providing for an effective date."

under consideration and reports it back as follows:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for HB217 (Lee) [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[X] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

H 60

Introduced: 1/30/85
Referred: House Special Committee
on State Loans, Health,Education &
Social Services and Finance

IN THE HOUSE BY FURNACE AND COLLINS

HOUSE BILL NO.146

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to housing loans for the permanently disabled."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 18.56 is amended by adding a new section to read:

Sec. 18.56.102. LOANS FOR THE PERMANENTLY DISABLED. (a) The corporation shall establish a residencial housing loan program for the **permanently disabled under the special mortgage loan purchase** program (AS 18.56.098). A loan may be made under this section to an individual who is eligible under (e) of this section, or to a parent or guardian of the individual if the parent or guardian is living with the individual.

17,650

(b) A loan made under this section shall be at a fixed annual interest rate of **six percent**. The loan amount may not exceed the maximum loan amount for a single family residence under the special mortgage loan purchase program, and the appraised value of the residence may not exceed the loan amount by more than **25 percent**. The corporation may not require a borrower to make a down payment toward purchase of a residence under this section.

(c) The value of the equity in a residence purchased with a loan under this section may not be **used to deny the borrower state benefits to which the borrower may be otherwise entitled**.

(d) The corporation may require a borrower under this section to prove present and future financial ability to repay the loan. However, a loan may not be denied solely because of circumstances caused

by the disability under which the borrower became eligible for the loan.

(e) For an individual or a parent or guardian of the individual to be eligible for a loan under this section, the individual must

(1) provide a written statement from a physician stating that the nature of the individual's disability is permanent;

(2) establish that the individual has a specialized housing need; and

(3) establish that the individual is severely disabled, through

(A) a statement from the federal Veterans Administration indicating that the individual is at least 70 percent disabled;

(B) proof of eligibility as a blind or disabled person under the federal supplemental security income program (42 U.S.C. 1381 - 1385) or the federal disability insurance benefits program (42 U.S.C. 423);

(C) a statement of eligibility from the Board of Vocational Rehabilitation (AS 23.15.010); or

(D) a statement of disability from the division of public health, family health section.

Bannister
3/13/85

Original sponsors: Duncan, Pearce,
Ringstad and Boucher

IN THE HOUSE

BY THE HOUSE SPECIAL
COMMITTEE ON STATE LOANS

CS FOR HOUSE BILL NO. 217 (Loans)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to interest rates; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 06.20.320(a) is amended to read:

(a) A licensee or lender who, in the making or collection of a loan contract, does any act <u>that</u> [WHICH] violates AS 06.20.230 - 06.20.260 or 06.20.280 - 06.20.310 shall at the option of the commissioner reimburse the portion of the interest and charges in excess of that provided in those sections, or, in the case of repeated violations of those sections by the licensee, the commissioner may, upon a hearing, require the licensee to adjust the loan contract interest or other charges down to <u>10.5 percent a year</u> [THE CONTRACT INTEREST LIMITATION SPECIFIED IN AS 45.45.010(a)].

* Sec. 2. AS 06.40.160(a) is amended to read:

(a) A lender who, in the making of any contract, loan or premium finance agreement or the collection of interest or charges, does any act <u>that</u> [WHICH] violates AS 06.40.010, 06.40.020, 06.40.090, or 06.40.110 - 06.40.130 shall at the option of the commissioner reimburse that portion of the interest and charges in excess of that provided in those sections, or, in the case of repeated violations of those sections by the lender, the lender shall adjust the contract, loan, or premium finance agreement interest and other charges down to <u>10.5 percent a year</u> [THE CONTRACT INTEREST LIMITATION SPECIFIED IN AS 45.45.010(a)].

* Sec. 3. AS 06.45.060(5)(A)(vi) is amended to read:

(vi) the rate of interest may not exceed [THE GREATER OF] 15 percent a year [OR THE RATE SPECIFIED BY AS 45.45.010(b)];

* Sec. 4. AS 45.10.120(c) is repealed and reenacted to read:

(c) A seller or holder of a retail charge agreement, revolving charge agreement or other retail charge agreement may charge, receive and collect a service charge at a rate of 1.5 percent a month computed on the outstanding balance from month to month. If the service charge so computed is less than $1 for any month, then the service charge is $1. The service charge may be computed on a schedule of fixed amounts if as so computed it is applied to all amounts of outstanding balances equal to the fixed amount minus a differential of not more than $5 provided that it is also applied to all amounts of outstanding balances equal to the fixed amount plus at least the same differential.

* Sec. 5. AS 45.45.010(b) is repealed and reenacted to read:

(b) Parties to a contract or loan commitment may charge by express agreement a rate of interest that does not exceed 24 percent a year. A contract or loan commitment in which the principal amount exceeds $25,000 is exempt from the limitation of this subsection.

* Sec. 6. AS 44.33.020(11) is repealed.

* Sec. 7. This Act takes effect July 1, 1985.

MOST FAVORED LENDERS DOCTRINE

* Sec. . AS 45.45.010(b) is amended to read:

(b) No interest may be charged by express agreement of the parties in a contract or loan commitment which is more than eight [FIVE] percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District on the day on which the contract or loan commitment is made. A contract or loan commitment in which the principal amount exceeds $25,000 is exempt from the limitation of this subsection.

RETAIL

* Sec. 4. AS 36.90.001(b) is amended to read:

(b) If the state fails to make a payment due the contractor under this section within 30 days after receiving a contractor's billing, the state shall pay interest to the contractor [UNDER AS 45.45.010(a)] on the amount due at the following rate of interest: (1) 10.5 percent a year except as provided in (2) and (3) of this subsection; (2) if expressly agreed by the parties to a contract that has a principal amount of $25,000 or less, a rate that is no more than five percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District on the day when the contract is made; (3) if expressly agreed by the parties to a contract that has a principal amount of more than $25,000, any rate.

* Sec. 5 AS 36.90.001 (c) is amended to read:

(c) The state or a political subdivision of the state is liable to a contractor registered under AS 08.18 for interest [AT THE RATE PROVIDED IN AS 45.45.010(a)] on retainage on a contract for public works or public construction. Interest on retainage accrues from the date of approval of a pay estimate until the date of payment to the contractor. A contract provision purporting to waive the interest provisions of this subsection is void as contrary to public policy. The interest rate to be paid on the retainage is (1) 10.5 percent a year except as provided in (2) and (3) of this subsection; (2) if expressly agreed by the parties to a contract that has a principal amount of $25,000 or less, a rate that is no more than five percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District on

the day when the contract is made; (3) if expressly agreed by the parties to a contract that has a principal amount of more than $25,000, any rate.

Bannister

AMENDMENT

Offered in the HOUSE By Duncan

TO: HB 217

Page 2, line 10, following "(2)":

Insert "and (3)"

Page 2, line 11, following "parties,":

Insert "to a contract that has a principal amount of $25,000 or less,"

Page 2, lines 14 and 15, delete the last sentence of the section and following "made":

Insert "; (3) if expressly agreed by the parties to a contract that has a principal amount of more than $25,000, any rate."

Page 2, line 25, following "(2)":

Insert "and (3)"

Page 2, line 26, following "parties,":

Insert "to a contract that has a principal amount of $25,000 or less,"

Page 2, line 28 through page 3, line 1 delete the last sentence of the section and following "made":

Insert "(3) if expressly agreed by the parties to a contract that has a principal amount of more than $25,000, any rate."

Credit Card Rates for Loans over $1,000

Group 1: No Limit
Arizona, Delware, Idaho, Illinois, Montana, Nebraska, Nevada, New Mexico, New York, Oregon, South Carolina, South Dakota, Virginia

Group 2: 30%
New Jersey

Group 3: 36% up to $1,400.
27% $1,400 - $4,000
Louisiana

Group 4: 24%
D.C., Maryland

Group 5: 21%
Colorado, Indiana, Kentucky, Mississippi, Oklahoma, Rhode Island Utah, Wyoming

Group 6: 18%
Alabama, Connecticut, Flordia, Georgia, Hawaii, Iowa, Wisconsin West Virginia, Washington, Vermont, Texas, Tennessee, Pennsylvania, Ohio, Massschusetts, Maine, Michigan, Montana, New Hampshire, North Carolina, North Dakota.

Federal Express employees work "the sort" separating packages coming into the state on the firm's free package promotional deal to businesses that has swamped their Anchorage headquarters.

Bill would hike loan interest to 24%

By JIM ERICKSON
Daily News business reporter

Alaska bankers are seeking changes to state law that would allow lenders to charge more for small loans and consumer credit plans, such as charge cards.

But a state consumers group said this week some banks are already charging far more for certain loans than state law allows though a federal loophole in banking law.

Maureen Kennedy, executive director of the Alaska Public Interest Research Group (AKPIRG), said she found it "appalling" that the Alaska Bankers Association is lobbying for a measure now before a House committee that would allow lenders to charge up to 24 percent interest annually for loans of $25,000 or less.

The current cap for the so-called "consumer loans," such as car or boat loans, is 13.5 percent.

The bill was introduced by Rep. Jim Duncan, D-Juneau, Drue Pearce, R-Anchorage, John Ringstad, R-Fairbanks, and H.A. "Red" Boucher, D-Anchorage. Pearce is a former employee of the Alaska Bank of the North.

At the same time bankers are pushing for the bill, "they are ignoring state law and implementing wholesale increases in interest rates on consumer loans," she said.

For example, she said, First Interstate Bank is now charging 22 percent interest on loans under $2,500.

"The smaller borrower, the one that can least afford it, is being hit hardest by the bank's belligerence," she said. Interest rates on loan amounts of more than $25,000 are not regulated.

Derrell Smith, president of the Alaska Bankers Association, said at least one Alaska bank began exceeding state limits about five years ago. Others are increasingly following suit.

That's because a federal banking law known as the "most favored lenders doctrine" allows federally-chartered banks to charge as much as other Alaska lenders, such as small loan companies, Smith said.

Under the state's Small Loan Act, national banks based in Alaska can charge up to 36 percent annual interest on loans of $850 or less, and 24 percent annual interest on the principle balance of a loan between $850 and $10,000, said Dave Lawer, a local lawyer whose firm recently reviewed how the most favored lenders doctrine applies in in Alaska.

The doctrine extends to state-charted banks as well, said Willis Kirkpatrick, director of the state Division of Banking.

The state's largest bank, National Bank of Alaska, last year began charging 15 percent annual interest on auto loans and 17.5 percent on other consumer loans. The rate of small loans from Alaska Statebank increased two weeks ago to 14.5 percent, from 13 percent.

Kennedy said AKPIRG is considering a court test of the legality of the most favored lenders doctrine — and whether Alaska banks can use it to circumvent state law.

AKPIRG this week asked the

See Page D-4, BILL

remarks.

Valdez could not be reached for comment Wednesday.

At issue are statements made by Valdez to the Fairbanks Daily News-Miner, which were published in an Associated Press article that appeared last week in the Anchorage Daily News.

In July 1983, J.H. Moneymaker Construction Inc. and Hub City Construction Inc., owned by Andrews, were contracted by ASHA to build the 40-unit senior citizen housing project in Fairbanks. The project was shut down later that year and again in 1984 because of structural design deficiencies, the lawsuit said.

Moneymaker and Andrews eventually terminated their contract with ASHA because of the prolonged shutdowns and other problems with the design of the structure, Moneymaker officials said recently.

Moneymaker-Hub City's dispute with ASHA over the project is the subject of a separate mulitmillion dollar lawsuit that is pending in Anchorage Superior Court.

Meanwhile, the Fairbanks newspaper began an investi-

See Page D-2, ASHA

Reorganized North Pacific to fly again

By HAL BERNTON
Daily News business reporter

A reorganized North Pacific Airlines plans to resume commuter flight service later this month, according to a spokesman for the carrier's owner, Nondalton Native Corp.

North Pacific suspended all flight service on Feb. 14, 10 days after one of its commuter planes crashed near Soldotna and killed nine people.

Bill Bellows, a public relations officer representing Nondalton, said details of the reorganization plan will be released within

Luxury line fights to stay airborne

The Associated Press

WASHINGTON — Regent Air, the "all-frills airline" that offers everything from an in-flight beauty parlor to private compartments, is struggling to stay airborne — in part because of government concern over alleged links between its founders and organized crime.

The Transportation Department said Wednesday it has told the airline it could fly for

Bill would allow lenders to hike loan interest to 24 percent

Continued from Page D-1

Consumer Protection Section of the state Attorney General's Office to investigate the matter, she said.

According to state and federal officials, the state usuary laws are not enforced by regulators. In most instances, consumers must press action in court if they feel a bank has violated the law.

"We don't step into the shoes of the borrower," said Debra Chong, a senior attorney for the Comptroller of the Currency in San Francisco. "The borrower has to sue on their own."

Smith said the apparent increasing willingness by banks to charge more than state law allows "puts a different complexion on the bill."

Although "we'd feel comfortable using the most favored lenders doctrine" without changes to state law, Smith said, the provision does not go far enough.

"My personal preference is to completely deregulate," he said.

Raising the lending cap to 24 percent is a good compromise, he said.

"Obviously, (bankers) are trying to get the law changed so there is never any hint of them being in violation of state law," said Gary Jenkins, director of governmental relations for the National Federation of Independent Business/Alaska.

The 3,000-member federation opposed the bill, because small businessmen fear banks would begin charging more for small business loans of $25,000 or less.

The measure is backed by the Alaska Bankers Association, the state Chamber of Commerce, and the Alaska Retail Association.

A hearing on the bill was held Tuesday by the House Special Committee on State Loans. Another hearing is scheduled for 3:30 p.m. today in Juneau. The hearing is not going to be teleconferenced.

The buill has been referred on to the House Judiciary Committee.

Bank officials say national deregulation has forced them to pay more for deposits. But Alaska's "usury" law prevents corresponding increases in loan charges and cut profit margins.

"Although banks have been profitable the last few years, the next few years don't look so good unless we try to match revenue to expenses," Smith said.

Alaska retailers and bankers have been lobbying to raise or eliminate interest rate caps since 1980, because of the increasing costs of servicing small loans.

Besides raising the ceiling on small loans, the bill introduced this year also would raise allowable interest rates for credit card account balances above $1,000 from 10.5 percent to 18 percent.

Without the changes, banks are not willing to make small consumer loans, according to lenders.

Alaska's usury laws are among the most restrictive in the nation, bankers said. Almost all states have limits of 18 percent or higher; 13 states have eliminated caps entirely.

The industry argues that consumer credit would be more available if restrictions were eased.

However, Kennedy of AKPIRG said that "has clearly not been the case" in states where deregulation has occured.

Alyeska al

Continued from Page

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refinery.

James H. Boltz, man
the refinery, said the
content was high at o
But Alyeska officials

ALASKA PUBLIC INTEREST RESEARCH GROUP
Post Office Box 1093/Anchorage, Alaska 99510/(907) 278-3661

March 13, 1985

Rep. John Sund
Chair, House Special Committee on Loans
Pouch V
Juneau, AK 99811

Dear Rep. Sund:

I wanted to follow up my earlier letter regarding HB 217. In the last year or so, additional information has become available bolstering our arguments that the Committee should not pass HB 217 out.

Will competition keep rates down?

New York state senator Franz Leichter completed a study in 1983 evaluating the effects of deregulation of the banking industry in New York in 1980. This study follows up the work done by the NY Banking Dept. in 1981. Leichter's study, entitled, Deregulation of Consumer Lending in New York: The Rates Went up but Never Came Back Down, concludes exactly that.

In 1980, at deregulation, the prime rate was 17.7%, and the interest rate on an unsecured loan averaged 13.21%. In January of 1981, the prime was at 20.50% while the average interest rate on an unsecured loan had climbed up to 18.21%. In November of 1982, however, the prime declined by nearly 50% to 12%, but interest rates inched up to 18.35%. By February of 1983, the prime dropped further to 10.5%, yet loan interest rates continued to increase up to 19%. Credit card rates followed roughly the same pattern. The pattern to be drawn is not that interest rates vary with the cost of money, but that regardless of what happens to the prime, interest rates will trend upward in a deregulated market (or effectively deregulated market, as we are proposing here).

Will increased rates increase availability of credit?

I have not seen any additional information addressing the credit availability issue. On the other hand, I have not heard any bankers resorting to that argument in the last year either.

Nevertheless, in 1981, the NY Banking Dept. study concluded that increased rates did not transfer into increased availability. In fact, 93% of banks increased their rates substantially just after deregulation, but did not loosen new-borrower standards.

Are bank profits being squeezed unfairly in today's market?

There has been much discussion recently of record bank profits. In April of 1984, the Daily News reported that 4 Alaskan banks placed among the 10 most profitable in the nation. An article within the last 3 months reemphasized the banks' profitability.

Leichter's study also addresses the cost of money issue:

> ...(I)t is true that money is costing the banks more than it once did, but it is also true that the rates on most of the major sources of borrowed funds has declined considerably during the past several months (this is mid-'83). Commercial paper (60 day) was at an 8.5% rate in early March, several points below the year earlier level, and another major source of funds, "federal funds" was at 8.35% on March 14th as compared with 14.2% one year earlier. Two year Treasury notes yielded 9.66% on March 16th, down from 14.14% a year earlier. Generally, the overall cost of all the long-term and short-term money the banks borrow has been under 10% for several months, and with most consumer lending at 17% and above, the difference between the cost of the money borrowed by the bank and the money lent to the consumer by the bank has been from 7% to 10%. Traditionally, this gap has been around 4% or 5%.

The report also notes that, "(t)he spread between the cost of funds and the prime rate is larger than normal, according to a February 24, 1983 American Banker article, which found that, 'over the past six years that spread has almost doubled.'"

A Newsweek article of a year ago pointed out that banks are bringing in additional revenues through miscellaneous charges and fees. Our own Anchorage Guide to Banking Services bears this out. Security National now charges $25 for a stop payment order, up from $15 a year ago. Alaska Pacific Bank charges up to $50 for overdrafts, up from $15 a year ago. Minimum balances are increasing, monthly fees and per check charges are increasing. Consumers are paying the price and the banks are earning record profits.

Finally, banks are violating the state interest rate ceiling right now. In doing research on HB 217, I found that NBA has been charging more than the specified 13.5% rate on consumer loans for a year and a half, and several other banks in town have just this week begun charging the higher rates. They are relying on the federal "most favored lender" doctrine and a 1981 state AG opinion in doing so. The move is subject to legal challenge, and our attorneys are examining the issue.

I find it particularly offensive that the banking industry is asking the legislature to authorize an increase in the cap at the same moment it is violating the cap previously set by the legislature.

If I can answer any questions, please be sure to give me a call.

Sincerely,

Maureen Kennedy

Maureen Kennedy
Director

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 217

Title: An Act relating to interest rates

Sponsor: Duncan, et al.

Requestor: House Special Committee on Loans

Date of Request:

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.

Program Category Affected: Public Protection

BRU, Program or Subprogram(s) Affected: Banking and Securities

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	+- FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Prepared By: N. T. Lusk Phone: 465-2521

Division: Banking, Securities and Corporations Date:

Approved by Commissioner: Loren H. Lounsbury Date: 3/7/85

Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

1736Wa22285a

ALASKA PUBLIC INTEREST RESEARCH GROUP
Post Office Box 1093/Anchorage, Alaska 99510/(907) 278-3661

March 10, 1985

Rep. John Sund
Chair, Special Committee on Loans
Pouch V
Juneau, AK 99811

Dear Rep. Sund:

I understand that HB 217 will come before your committee on Tuesday. Although the new bill is a vast improvement over last year's deregulation bill, AkPIRG continues to be opposed to the final section.

As I understand it, the first two sections embody housekeeping changes, in that the contract interest limitation specified in AS 45.45.010 IS 10.5% a year.

Sections 4 and 5 seem reasonable. We are not opposed to Section 6, which would increase the interest rate on balances above $1,000 from 10.5% up to 18%. Although passage of such a change will entail additional costs to consumers, we feel that consumers eligible for credit cards carrying a monthly balance over $1,000 should be sophisticated enough to "know what they're getting into." This section is also a vast improvement over last year's bid to increase credit card rates from 18% to 24% across the board.

Section 7, however, is a problem. The current cap on interest rates is so far below the proposed 24% cap that we are, in effect, not raising the cap but deregulating interest rates again. And in that case, the arguments we put forth last year apply to this year's bill as well.

Rates will go up. Studies in states around the country that have deregulated or increased ceilings indicate that rates increase 3 or 4%. An ABA study published early in 1983 examined installment credit increases in Montana, Mississippi, NJ and Ohio. Just after deregulation, rates increased between 1/2% (Ohio) and 3 3/4% (NJ).

The bankers argue that rates later came down, so its "not the end

of the world for consumers." But by late '82, rates were still between 1/2% and 2 3/4% above their original levels.
The prime averaged 10.81% through '82, down from a high of 20.5% in mid '81. Overall interest rates in NJ increased between 6 and 7% just after ceilings were lifted in 1981--they hadn't come down by mid 1983. In Maryland, interest rates on credit cards went up and stayed up 3% after the ceiling was lifted in '82. In NY, rates on credit cards increased nearly 6% shortly after deregulation. By late '82, rates on other types of loans increased as much a 6 1/2%.

Consumers will suffer. Extrapolating from conservative national figures, Alaskan consumers will pay $6.4 million more to banks for each 1% increase in interest rates on installment credit alone. Assuming rates go up 3%, we're talking about a $19.2 million transfer from Alaskan borrowers to lenders--just on installment credit. As I've already demonstrated, banks will not compete, thereby keeping rates in check. A "pack mentality" is at work, and even bankers say that increased ceilings "give us something to shoot for."

Consumers will not gain greater access to credit under HB 217. The NY State Banking Dept. study found that 93% of commercial banks increased rates substantially, but did not loosen new-borrower standards. Eighty three percent did not increase access to their own customers. The study indicates similar behavior for credit unions, finance companies, S&Ls and retailers.

Bankers will needlessly increase their profits. Business Week reported last August that banking nationwide was the 10th best profitmaking industry with a 34% increase in profits over 1982. In December, the magazine reported a 15.2% increase in earnings per share for banks. Consumer installment credit increased by $1 billion between March of '82 and March of '83. Closer to home, Alaska Business reported that the six largest Alaskan banks had profit to earnings ratios ranging from 4.73 to 12.00. All the state's banks increased earnings through 1982; many posted record earnings. Total assets and deposits increased more than 25% according to the June issue; Security National doubled its assets while it's deposits increased by 137%. The bankers I've spoken with agree that regulatory relief is not necessary now--they want to hedge their bets against a repetition of 1980's economic conditions.

Careful adjustments to interest rate laws are appropriate when economic conditions demand them. For instance, last year, several witnesses at the hearing in Anchorage testified that it might be appropriate to widen the margin between the discount rate and the interest rate limit (i.e., the limit might be equal to 8 percentage points above the discount rate rather than only 5). We feel we have not yet reached that point.

We urge you not to pass HB 217 out of committee at this time. I found out about today's hearing by chance this morning and have not yet had time to look at the bill extensively or in research new developments since last spring.

Sincerely,

Maureen Kennedy

Maureen Kennedy
Director

Monday marketplace

Minneapolis Star and Tribune

Monday
January 28/1985 1M

Dick Youngblood

Credit sales are a cost for retailers

I've been a union man most of my working life, but dagnab it, there are times when I think that no one can ignore economic reality with more contrary, wrongheaded predictability than a labor leader bent on saving us all from corporate greed.

One of those times came a few days ago when Minnesota's major retailers asked the Legislature to raise the interest-rate ceiling on consumer credit from 16 percent, lowest in the nation, to 18 percent a year.

Far from trying to swell their profits on charge accounts, the retailers said, what they'd sort of like to do is cut down a mite on the millions of dollars in losses they post on consumer credit each year.

Their blandishments didn't faze Bernard Brommer, secretary-treasurer of the powerful Minnesota AFL-CIO, whose knees began to jerk almost immediately: "We've opposed (a higher rate ceiling) historically," he grumped. "Increasing interest rates for consumers and working people . . . I just don't think it's very wise."

The way he sees it, apparently, retailers can afford to absorb those credit losses a whole lot easier than us working stiffs. Unfortunately, this is yet another example of Big Labor's enduring effort to rewrite the economics textbooks, which assure us that there is no such thing as a free lunch.

There sure isn't: My exhaustive investigation uncovered no retailing executives who are taking pay cuts to offset their employers' losses on consumer credit. Ditto for shareholder dividends.

Instead, the credit losses are being translated into higher retail prices paid by the very working people the AFL-CIO aims to protect, including the 20 to 30 percent of us who rarely or never use credit cards.

Actually, Brommer isn't the only one jerking his knees. Our resident populist, who manages at times to overcome his rather extensive economics training, began muttering about the avarice of retailers who try to raise interest rates even as a declining prime rate cuts their cost of money.

"What about the poor guy who has to buy on credit?" he demanded.

Let's go through this economics lesson just once more: Just as Social Security isn't designed to lift the elderly out of poverty and commodity programs cannot save the small farmer, retailers shouldn't be expected to solve the problem of the low-income consumer. These are issues best addressed by sharply focused programs that eliminate as many middlemen as possible.

My colleague had a point about timing, however — interest rates have fallen a couple of points in the past year. I sought an explanation from Dayton Hudson Corp., a solid corporate citizen with a reputation for sensitivity to the needs of the consumer. (It has a no-questions-asked policy on merchandise returns, and its Target chain spends $750,000 a year testing toys and other products for safety.)

What I got from James Diriam, vice president of credit sales at Dayton's, were some impressive numbers: In Minnesota during 1983, the combined credit operation of Dayton's and Target spent $8.3 million for operating expenses (payroll, postage, supplies), $2.7 for bad debts and $17 million for interest on the cash used to finance accounts receivable.

Customer finance charges raised just $18.4 million, however, leaving their Minnesota credit operations $9.6 million in the red!

Even if the interest ceiling had been 18 percent instead of 16, Diriam said, the increased revenue from finance charges would have trimmed the loss only to $7.3 million.

Moreover, the 1983 loss was calculated on the basis of a 12 percent interest rate on the cash used in credit operations, he said. Even if the rate had been 10 percent, one-half point below the current prime rate, the loss still would have been about $4.5 million.

That strikes me as quite a lot to ask a retailer to pay for the privilege of granting us credit.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

RECEIVED
FEB 14 1985

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM February 14, 1985

SUBJECT: Interest rates
(Work Order No. 14-0378)

TO: Representative Jim Duncan

FROM: Theresa L. Bannister TB
Legislative Counsel

You has requested this office to prepare a sectional analysis of Work Order 14-0378, relating to interest rates.

Section 1 of the bill sets 10.5% as the annual interest rate to which the Commissioner of Commerce and Economic Development can reduce the contracts of small loan licenses that violate the interest and charges provisions of the Alaska Small Loans Act. (AS 06.20.010 - .920).

Section 2 of the bill sets 10.5% as the annual interest rate to which the Commissioner of Commerce and Economic Development can reduce the contracts of premium financing lenders that violate the licensing, advertising, disclosure, contents, interest, prepayment and delinquency charge provisions of the Premium Financing Act (AS 06.40.010 - .190). That act covers the financing of loans to purchase insurance policies.

Section 3 sets at 15% per year the maximum interest rate that a state-chartered credit union can charge for loans to members.

Section 4 of the bill amends AS 36.90.001(b) to maintain the present interest rate that the state must pay to a public construction contractor on late payments. The present rate is 10.5% a year or, if expressly agreed to by the parties, up to 5 percentage points above a floating Federal Reserve rate.

Section 5 of the bill amends AS 36.90.001(c) to maintain the present interest rate that the state must pay to a

public construction contractor on the retainage on a public construction contract. (The present rate is the same given in Section 4 of this analysis.)

Section 6 of the bill sets at 18% per year the maximum interest rate that sellers can charge on a charge account.

Section 7 of the bill sets at 24% per year the maximum interest rate that parties to a contract or loan agreement for less than $25,000 can set by express agreement. (Over $25,000, there is no limit.)

Section 8 of the bill deletes the requirement that the Department of Commerce and Economic Development furnish certain organizations such as banks, with the maximum annual interest rate allowed under AS 45.45.010(b) each quarter.

Section 9 of the bill makes the bill effective July 1, 1985.

TLB:ojb
J11/096

MEMORANDUM State of Alaska

TO: Julius Brecht
Banking & Securities
Dept. of Commerce and Economic Development

DATE: January 2, 1981

FILE NO: ~~J-66-052-81~~ J66-946-81

TELEPHONE NO: 465-3675

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Depository Institutions Deregulation and Monetary Act of 1980.

By: Leslie J. Ludtke
Leslie J. Ludtke
Assistant Attorney General

You have requested this department's opinion regarding interest rates applicable to state chartered credit unions under the Depository Institutions Deregulation and Monetary Control Act of 1980. (Public Law 96-221) You have asked whether 12 U.S.C. §1757(5)(A)(vi) (1980 Deregulation and Monetary Control Act §310) applies to state chartered credit unions. We conclude that it does not.

Section 1757 of the federal Credit Union Act applies only to federally chartered credit unions. 12 U.S.C. § 1757 states that "A federal credit union . . . shall have power." The term "federal credit union" is defined under 12 U.S.C. § 1752 as "a cooperative association organized in accordance with the provisions of this chapter . . ." Therefore, the provisions of 12 U.S.C. § 1757 do not apply to state chartered credit unions. 12 U.S.C. § 1757(5)(A)(vi) provides in part:

> (vi) the rate of interest may not exceed 15 per centum per annum on the unpaid balance inclusive of all finance charges, except that the Board may establish
> (I) after consultation with the appropriate committees of the Congress, the Department of Treasury, and the Federal financial institution regulatory agencies, an interest rate ceiling exceeding such 15 per centum per annum rate, for periods not to exceed 18 months, if it determines that money market interest rates have risen over the preceding six-month period and that prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in liquidity, capital, earnings, and growth;

Recently, the National Credit Union Administration (NCUA) Board raised the interest rates under this section to 21 percent. This rate supercedes the otherwise applicable rate established in 12 U.S.C. § 1785(g)(1) (1980 Deregulation and Monetary Control Act § 523). In relevant part, this section states:

> (g)(1) If the applicable rate prescribed in this subsection exceeds the rate an insured credit union would be permitted to charge in the absence of this subsection, such credit union may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this subsection, take, receive, reserve, and charge on any loan, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such insured credit union is located or at the rate allowed by the laws of the State, territory, or district where such credit union is located, whichever may be greater.

Additionally § 528 of the 1980 Deregulation and Monetary Control Act provides that if one or more provision of the Act, or of any other law, applies to the same loan, the loan may be made at the highest applicable interest rate. The issue raised is therefore whether state chartered credit unions may charge 21 percent interest as authorized by 12 U.S.C. §1757(5)(A)(vi) or whether state chartered credit unions are limited to the rate set by 12 U.S.C. § 1785 when federally chartered credit unions are permitted to charge a higher rate under 12 U.S.C. § 1757(5)(A)(vi). Our conclusion that state chartered credit unions are not permitted to charge the higher rate established by the NCUA Board under 12 U.S.C. § 1757(5)(A)(vi) is based on three factors.

First, 12 U.S.C. § 1757 is not directly applicable to state chartered credit unions. This section sets out the powers which a federal credit union may exercise. The NCUA regulates the activities of federal credit unions by adopting rules to carry out this section. The activities of state chartered credit unions are not regulated by the NCUA and state chartered credit unions are not subject to the limitations nor are they granted the powers of federal credit unions under 12 U.S.C. § 1757. The conference report on the 1980 Deregulation and Monetary Control Act reinforces the conclusion that state chartered credit unions are not subject to 12 U.S.C. §1757.

The report states in part:

> The conferees adopted a provision which would allow federal credit unions to raise their loan rates up to an annual rate of 15 percent subject to rules issued by the National Credit Union Administration. The legislation would also permit the National Credit Union Administration to raise the loan ceiling above 15 percent for periods not to exceed 18 months, after consultation with appropriate Congressional committees, the Department of Treasury, and the other federal financial regulator agencies. 1980 Deregulation and Monetary Control Act. CCH Reports, paragraph 2036, pg. 211.

State chartered credit unions are, however, subject to regulation under 12 U.S.C. § 1785 which sets out the requirements governing federally insured credit unions. State chartered credit unions are federally insured. The Conference Report on 12 U.S.C. § 1785, 1980 Deregulation and Monetary Control Act § 523, states in part:

> State usury ceilings on all loans made by Federally insured depository institutions (except national banks), and small business investment companies will be permanently preempted...

Because state chartered credit unions are federally insured depository institutions, the preemptive interest rate set out in 12 U.S.C. § 1785(g)(1) applies.

Secondly, 12 U.S.C. § 1785(g)(1) permits state chartered credit unions to charge interest at a rate of "not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such insured credit union is located or at the rate allowed by the laws of the State...where such union is located..." The phrase "at the rate allowed by the laws of the State" has been interpreted to mean at the highest rate allowed by the state to be charged by any lender for a particular type of loan.

For example, small loan licensees are permitted to charge a higher rate of interest under AS 06.20 for loans under $25,000 than other financial institutions may charge for these same loans.

Therefore, 12 U.S.C. § 1785(g)(1) would permit a federally insured state chartered credit union to charge the same rate as the small loan licensee for a loan under $25,000. 1/

The phrase "at the rate allowed by the laws of the State" is derived from the National Bank Act, 12 U.S.C. § 85, and is commonly referred to as the "most favored lender" doctrine. This doctrine originally was established to ensure parity between national banks and state chartered financial institutions. It allows a national bank, or in this instance a federally insured, state chartered credit union, to charge the same interest rate as any state chartered or licensed financial institution would be permitted to charge on a particular type of loan. 2/ The national bank, or state chartered credit institution, is granted parity by being permitted to charge the highest rate allowed for the state's most favored lender. The doctrine therefore focuses on the type of loan offered rather than establishing parity with the same type of financial institution. 12 U.S.C. § 1785(g)(i) incorporates this concept of most favored lender. It does not, however, establish a state chartered credit union's right to parity with a federally chartered credit union.

1/ The fact that a credit union is not licensed under AS 06.20 would not alter this result. See n.2, below.

2/ In Marquette Nat'l Bank v. First of Omaha Corp., 439 U.S. 299, 314 (1978) the Court stated that the "most favored lender" doctrine had "been interpreted for over a century to 'give advantages to National banks over their state competitors'." 12 C.F.R. § 7.7310 incorporates the "most favored lender doctrine", as expressed by case law, into the regulations of the Comptroller of the Currency. 12 C.F.R. § 7.7310 reads:

> §7.7310 Charging interest at rates permitted competing institutions . . .
>
> (a) A national bank may charge interest at the maximum rate permitted by State law to any competing State-chartered or licensed lending institution. If State law permits a higher interest rate on a specified class of loans, a national bank making such loans at such higher rate is subject only to the provisions of State law relating to such class of loans that are material to the determination of the interest rate. For example, a national bank may lawfully charge the highest rate permitted to be charged by a State-licensed small loan company or morris plan bank, without being so licensed.

The "most favored lender" doctrine refers to the highest permissible rate under state law. The authority to charge 21 percent on loans, under 12. u.s.c. § 1757(5)(A)(vi) is not a right granted by state law, but a right given by federal law. No law of Alaska specifically allows any financial institution to charge on a lona. Nor does state law incorporate any maximum rates set under federal law in establishing allowable state maximums. Therefore, although the concept of most favored lender is incorporated into 12 U.S.C. § 1785(g)(i), state chartered credit unions are not granted parity with federal credit unions. To construe the phrase "at the rate allowed by the laws of the State" to include the rate permitted by 12 U.S.C. 1757(5)(A)(vi) would constitute a misapplication of the "most favored lender" doctrine.

Third, Section 528 of the 1980 Deregulation and Monetary Control Act does not authorize state chartered credit unions to charge the rate set by the NCUA Board under 12 U.S.C. § 1757 (5)(A)(vi). This section reads:

> Sec. 528. In any case in which one or more provisions of, or amendments made by, this title, section 529 of the National Housing Act, or any other provision of law, including section 5197 of the Revised Statutes (12 U.S.C. 85) apply with respect to the same loan, mortgage, credit sale, or advance, such loan, mortgage, credit sale, or advance may be made at the highest applicable rate.

This section permits financial institutions to charge interest at the "highest applicable rate". Because we have concluded that 12 U.S.C. §1757(5)(A)(vi) does not apply to state chartered credit unions, Section 528 does not by its terms permit state chartered credit unions to charge a higher rate of interest than what would otherwise be permitted by 12 U.S.C. § 1785(g)(1). Section 528 authorizes the lender to charge the higher rate only when "one or more provisions. . .apply with respect to the same loan". 12 U.S.C. § 1757(5)(A)(vi) does not apply to loans made by state chartered credit unions.

It is our conclusion that state chartered credit unions are limited to charging the maximum interest rate established by 12 U.S.C. § 1785(g)(1). Although this provision incorporates the "most favored lender" doctrine, it does not grant state chartered credit unions most favored lender status with regard to interest rates set by federal law.

Additionally, it should be noted that the reference to state interest ceilings in 12 U.S.C. § 1785(g)(1) incorporates the relevant state law as to how interest may be computed and what charges are considered interest. 3/

LJL:wjp

3/ See First National Bank in Mena v. Nowlin, 509 F.2d 872 (8th Cir. 1975)

Section 1 amends Chapter 20, Alaska Small Loans Act. of the Banks and Financial Institutions Statutes.

AS 06.20.320 Civil and Criminal Penalties is amended by changing the penalty for violations of:

AS 06.20.230. Maximum Interest Permitted
AS 06.20.250. Computation and Payment of Interest
AS 06.20.260. Charges Prohibited
AS 06.20.280. Maximum Charge by Licensee
AS 06.20.285. Open-end Loans
AS 06.20.287. Credit Insurance on Open-ended loans
AS 06.20.290. Purchase of Wages for $25,000 or less
AS 06.20.300. Maximum Charges By nonlicensee on Loans
AS 06.20.310. Illegal Interest Rate

Currently repeat violators of the above sections may be required by the Commissioner to Adjust the loan contract interest or other charges down to the 12th Federal Reserve rate plus five percentage points. The amendment will fix the rate at 10.5 percent a year.

Section 2 amends Chapter 40. Premium Financing Act. of the Banks and Financial Institutions Statutes.

AS 06.40.160. Civil and Criminal Penalties is amended by changing the penalty for violations of:

AS 06.40.010. License Required
AS 06.40.020. Applicability
AS 06.40.090. Advertising of Misleading Statements Prohibited; Disclosure of Interest
AS 06.40.110. Contents of Premium Finance Agreement
AS 06.40.120. Maximum Interest Permitted: Prepayment, Refund
AS 06.40.130. Delinquency Charge

Currently repeat violators of the above sections shall at the option of the Commissioner adjust the contract, loan, or premium finance agreement interest and other charges down to the 12th Federal Reserve rate plus five percentage points. The amendment will fix the rate at 10.5 percent a year.

Section 3 amends Chapter 45. Alaska Credit Union Act. of the Banks and Financial Institution Statutes.

AS 06.45.060. Powers of a Credit Union is amended by changing the maximum rate of interest.

Currently the rate of interest may not exceed the greater of 15 percent a year or the 12th Federal Reserve rate plus five percentage points. The amendment will fix the rate at 15 percent per year.

Sections 4 and 5 amend Chapter 90 Miscellaneous Provisions. of the Public Contracts Statutes.

AS 36.90.001. Public Construction Contract Payments is amended to avoid changing the rate of interest the state currently pays contractors on amounts not paid within 30 days of receiving a contractors billing and the rate paid by the state or a political subdivision on retainage on a contract for public works or public construction.

Section 6 amends Chapter 10. Alaska Retail Installment Sales Act. of the Trade and Commerce Statutes.

AS 45.10.120. Extent of Service Charge is amended by changing the rate of interest that my be charged on retail charge agreements, revolving charge agreements or other retail charge agreements.

Currently the interest that may be charged on outstanding balances of less than $1000. is 1.5 percent per month but on balances exceeding $1000. the rate is one twelfth of the annual 12th Federal Reserve rate plus five percentage points on that portion over $1000. The amendment will fix the rate at 1.5 percent a month on the outstanding balance from month to month.

Section 7 amends Chapter 45 Trade Practices. of the Trade and Commerce Statutes.

AS 45.45.010 Legal Rate of Interest is amended by changing the maximum rate of interest charged by express agreement of the parties in a contract or loan commitment on principal amounts up to $25,000.

Currently the rate is the 12th Federal Reserve rate plus five percentage points. The amendment will make the maximum rate 24 percent a year on principal amounts up to $25,000.

Section 8 Repeals the requirement for the Department of Commerce and Economic Development to notify lending institutions, title insurance companies, mortgage companies and clerks of the respective superior courts of the 12th Federal Reserve District discount rate that is to be used during that calendar quarter for computing the maximum rate of interest. Section 7 will amend the rate to a fixed 24 percent a year.