ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672
2650 SLC SB 316 - SB 360
2650

MSG 84-00043164 PRTY 1 05/08/84 10:58:51 ORIG: LA18 IN= 0004 OUT= 0049
FROM: MARCIE, ANC INFO TO: POM, JUNEAU INFO
TARGET: LJHK SUBJ: P O M

TO: SENATORS ELIASON, RODEY, MULCAHY, PETTYJOHN, SACKETT

FROM: MATT ZENCEY
3700 OREGON
ANCHORAGE 99503
H 274-0387 W 279-2511

RE: SB 316 INTEREST RATES

PLEASE OPPOSE SB 316 WHICH WOULD INCREASE INTEREST RATES ON CONSUMER LOANS AND DRIVE UP COSTS FOR SMALL BORROWERS.

EOM

MSG 04-00041977 PRTY 1 05/04/84 10:36:16 ORIG: LA34 IN= 0003 OUT= 0047
FROM: FLORENCE IN ANCHORAGE TO: POM - JUNEAU INFO
TARGET: LJHK SUBJ: POM

6

TO: SENATORS ELIASON, MULCAHY, PETTYJOHN, RODEY AND SACKETT

FROM: RUTH SHERIDAN, 4704 KENAI, ANCHORAGE, AK 99508 (H) 333-1190

RE: RAISING INTEREST RATES ON LOANS AND CREDIT CARDS

I OPPOSE SENATOR PAT RODEY'S ATTEMPT TO RAISE INTEREST RATES ON LOANS AND CREDIT CARDS IN A SUBSTITUTE BILL HE RECENTLY SUBMITTED. THIS WOULD CREATE ADDITIONAL COSTS TO CONSUMERS LIKE MYSELF AND WOULD UNFAIRLY INCREASE BANK PROFITS.

**********EOM

5/4/84, SHIRLEE ANC LIO, 42267

TO: SENATORS ELIASON, MULCAHY, PETTYJOHN, SACKETT AND RODEY

FROM: PAT BERKLEY
1861 EAST TUDOR ROAD, UNIT D-201
ANCHORAGE, AK 99507
563-7533

SUBJ: SENATE BILL 316

I OPPOSE THE SUBSTITUTE BILL WHICH WOULD INCREASE CREDIT CARD AND LOAN INTEREST RATES.

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MSG 84-00042 . PRTY 1 05/04/84 17:18:50 ORIG: LF01 IN= 0009 OUT= 0160
FROM: LYNDA/FBX TO: JNO INFO
TARGET: LJHK SUBJ: FOM

TO: SENS ELIASON, MULCAHY, PETTYJOHN, SACKETT, RODEY

FROM: CELIA HUNTER
SR BOX 20972
FBX, AK 99701
#479-2754

RE: SB276 & HB246, DEREG. OF INTEREST RATES

MSG: I STRONGLY OPPOSE SB276 & HB246 WHICH WOULD INCREASE CEILING ON CREDIT CARDS AND LOANS. WE ARE ALREADY SUFFERING FROM INFLATION, AND THIS WOULD AGGRAVATE THIS SITUATION.

MSG 84-00042158 PRTY 1 05/04/94 14:18:26 ORIG: LA18 IN= 0010 OUT= 0103
FROM: DAVE/ANC LIO TO: POM - JNO LIO
TARGET: LJHK SUBJ: POM

TO: SENATORS ELIASON, MULCAHY, PETTYJOHN, RODEY AND SACKETT.

FROM: JOYCE BAUER
2201 LAKE GEORGE DR
ANCHORAGE, AK 99504
333-1790

RE: SB 316

MESSAGE: I OPPOSE SENATOR PAT RODEY'S SUBSTITUTE BILL SB 316 WHICH WOULD RAISE THE CEILING ON BANK LOANS AND CREDIT CARDS FROM 14% TO 19%. PLEASE VOTE AGAINST IT.

EOM/**********

[illegible] ANC [illegible], [illegible] 627

TO: SENATOR [illegible]

FROM: [illegible]
[illegible] [illegible] 137 [illegible] 12TH
P.O. BOX [illegible]
ANCHORAGE, [illegible]
(H) [illegible] (W) [illegible]

SUBJ: SB [illegible]

[illegible] IS OPPOSED TO THE SUBCOMMITTEE SUBSTITUTION FOR SB 3[illegible].
[illegible]THOUGH THE METHOD [illegible] CH[illegible], THE EFFECT WILL BE SIMILAR TO
[illegible]. IN FACT [illegible] SAID IN FEBRUARY, [illegible] THE
[illegible] WILL GIVE THE [illegible] SOMETHING NEW TO [illegible] FOR.

[illegible] HEARING [illegible], WE REQUEST THAT IT BE TELECO[illegible].

SHIRLEE ANC LIO, 5/1/84, 40627

TO: SENATOR ELIASON

FROM: MAUREEN KENNEDY
(RES: 437 W. 12TH)
P.O. BOX 1093
ANCHORAGE, AK 99510
(H) 279-4120 (W) 278-3661

SUBJ: SB 316

A.K.P.I.R.G. IS OPPOSED TO THE SUBCOMMITTEE SUBSTITUTION FOR SB 316. ALTHOUGH THE METHOD HAS CHANGED, THE EFFECT WILL BE SIMILAR TO DEREGULATION. IN FACT, WIN GRUENING SAID IN FEBRUARY, INCREASING THE CEILINGS WILL GIVE THE BANKERS SOMETHING NEW TO SHOOT FOR.

IF THE HEARING IS RESCHEDULED, WE REQUEST THAT IT BE TELECONFERENCED.

ALASKA STATE SENATE

PATRICK RODEY
SENATOR

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3793
(907) 465-3754

Analysis of Proposed CS for Senate Bill No. 316(Labor and Commerce)

"AN ACT RELATING TO INTEREST RATES"

Proposed CS SB 316(L&C) would amend two sections of existing law relating to the maximum allowable interest rates on certain transactions.

Section 1: Amends language in Title 9, Code of Civil Procedure, to correct an inequity in the treatment of landowners whose land is taken for public use. The original language was enacted in 1962, and has never been amended. The inequity relates to the differential treatment accorded landowners whose land is taken by the State under two eminent domain procedures. This change would provide for identical rates of interest on judgements obtained from either a declaration of taking, or a complaint for condemnation. The inequity was noted by the Supreme Court of the State of Alaska in State of Alaska v. Alaska Continental Development Corporation and Alaska General Properties, Inc., No. 2254, December 31, 1980. This specific amendment was recommended by the Supreme Court.

Section 2: Amends language in Title 45, Trade Practices, to increase the general usury ceiling from five points above the Fed discount rate to ten points above the Fed discount rate. Presently, the discount rate is 8.5 percent, so the effect of this change would be to increase the maximum allowable interest rate from 13.5 percent to 18.5 percent, at this time. Because the discount rate fluctuates up and down, this is a floating rate and subject to frequent change.

This change in Section 2 also affects AS 06.45.060(5)(A)(vi), the usury ceiling for credit unions, and AS 45.10.120(c), the usury ceiling for credit card unpaid balances in excess of $1,000. For credit union loans, this change would increase the maximum allowable interest rate from 15 percent to 18.5 percent, at this time. For credit card unpaid balances in excess of $1,000, the maximum allowable interest rate would increase from 13.5 percent to 18.5 percent, at this time. There would be no change in interest rate ceilings for unpaid credit card balances of less than $1,000.

Section 3: Provides for an immediate effective date.

For your information, attached is a comparison of present interest rate ceilings and interest rate ceilings as proposed by this bill.

April 19, 1984 Provided by Sen. Rodey

COMPARISON OF INTEREST RATE CEILINGS

	Present Law	CS SB 316(L&C)
AS 6.20 Small Loan Companies:		
* loans $1 - 850:	36%	NO CHANGE
* loans 851 - 10,000:	24%	NO CHANGE
* loans 10,001 - 25,000:	deregulated	NO CHANGE
* loans greater than $25,000:	prohibited	NO CHANGE
AS 6.40.120 Premium Financing:		
* all agreements:	15%	NO CHANGE
AS 6.45 State Credit Unions:		
* all loans	15%	18.5%
Federal Credit Unions:		
* all loans:	21%	NO CHANGE
AS 9.55 Eminent Domain Judgements:		
* under complaint for condemnation (see AS 9.55.330):	10.5%	NO CHANGE
* under declaration of taking (see AS 9.55.440):	6%	10.5%
AS 45.10.120(b) Retail Installment Contracts:		
* unpaid balances less than $1,000:	10%	NO CHANGE
* unpaid balances greater than $1,000:	8%	NO CHANGE
AS 45.10.120(c) Credit Cards:		
* unpaid balances less than $1,000:	18%	NO CHANGE
* unpaid balances greater than $1,000:	13.5%	18.5%
AS 45.45 General Usury Law:		
* no express agreement:	10.5%	NO CHANGE
* loans less than $25,000:	13.5%	18.5%
* loans greater than $25,000:	deregulated	NO CHANGE

Alaska Law currently specifies interest rate ceilings for the following:

1) Bank loans not exceeding $25,000. - AS 45.45.010(b) This is a floating rate, five percentage points above the annual discount rate charged by the 12th Federal Reserve.

2) Credit Unions - AS 06.45.060(5)(A)(vi). This is 15% a year or the rate specified in AS 45.45.010(b).

3) Consumer Finance Companies, such as Household Finance - AS 06.20.230(a). This is for loans not exceeding $10,000. The interest rate is 3% a month, or 36% a year for amounts not exceeding $850., and 2% a month, or 24% a year for amounts not exceeding $10,000. The law also allows for loans not to exceed $25,000., but such loans are not regulated.

4) Car dealers and furniture stores may enter into installment contracts under AS 45.10.120(b). The interest rate is five-sixths of one percent a month, or 10% a year (5/6 X 12) for amounts not exceeding $1000. For amounts exceeding $1000., the interest rate is two-thirds of one percent a month, or 8% a year PLUS 10% for the amount under $1000. Therefore, car dealers and furniture stores can legally charge 18% a year, or 1.5% a month.

5) Credit cards and consumer charge accounts - AS 45.10.120(c) If the balance does not exceed $1000., the interest rate is 1.5% a month or 18% a year. For a balance over $1000., the interest rate is one-twelfth of the annual rate allowed in AS 45.45.010(b), see 1) above.

6) Premium financing - AS 06.40.120(c). This is for large businesses. The interest rate is 15% a year.

7) Eminent domain - AS 09.55.440(a). This is when the government condems someone's property to widen a road, for example. The interest rate paid the forced seller is 6% a year.

8) Everything else - AS 45.45.010(a). This general, non-specific interest rate is 10.5% a year.

(b) In any other case involving consumer goods or any other collateral, a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of the proposal shall be sent to the debtor if the debtor has not signed after default a statement renouncing or modifying the rights under this subsection. In the case of consumer goods no other notice need be given. In other cases notice shall be sent to any other secured party from whom the secured party has received (before sending notice to the debtor or before the debtor's renunciation of rights) written notice of a claim of an interest in the collateral. If the secured party receives objection in writing from a person entitled to receive notification within 21 days after the notice was sent, the secured party must dispose of the collateral under AS 45.09.504. In the absence of this written objection, the secured party may retain the collateral in satisfaction of the debtor's obligation. (§ 9.505 ch 114 SLA 1962; am § 70 ch 16 SLA 1982)

Effect of amendments. — The 1982 amendment substituted "if he has not signed after default a statement renouncing or modifying his rights under this subsection" for "and, except in the case of consumer goods, to any other secured party who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or is known by the secured party in possession to have a security interest in it" at the end of the second sentence, added the present third and fourth sentences, and substituted the language beginning "If the secured party receives objection" and ending "21 days after the notice was sent" for "If the debtor or other person entitled to receive notification objects in writing within 30 days from the receipt of the notification or if any other secured party objects in writing within 30 days after the secured party obtains possession" at the beginning of the next-to-last sentence.

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Chapter 45. Trade Practices.

Article
1. Interest (§ 45.45.010)

Article 1. Interest.

Section
10. Legal rate of interest

Sec. 45.45.010. Legal rate of interest. (a) The rate of interest in the state is 10.5 percent a year and no more on money after it is due except as provided in (b) of this section.

(b) No interest may be charged by express agreement of the parties in a contract or loan commitment which is more than 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.

(c) Repealed by § 3 ch 84 SLA 1973.

(d) Repealed by § 2 ch 94 SLA 1981.

(e) Repealed by § 4 ch 146 SLA 1974.

(f) No bank, credit union, savings and loan institution, pension fund, insurance company or mortgage company may require or accept any percent of ownership or profits above its interest rate. This subsection does not apply to a loan if the principal amount of the loan is $1,000,000 or more and the term of the loan is five years or more.

(g) Loan contracts and commitments covering one- to four-family dwellings may be prepaid without penalty, except federally insured loans that require a prepayment penalty.

(h) If the limitations on interest rates provided for in this section are inconsistent with the provisions of any other statute covering maximum interest, service charges or discount rates then the provisions of the other statute prevail. (§ 25-1-1 ACLA 1949; am § 20 ch 143 SLA 1968; am § 2 ch 69 SLA 1969; am §§ 1, 2 ch 94 SLA 1969; am §§ 1, 2 ch 239 SLA 1970; am §§ 1 — 3 ch 84 SLA 1973; am §§ 1 — 4 ch 146 SLA 1974; am § 1 ch 110 SLA 1976; am § 1 ch 159 SLA 1976; am § 2 ch [illegible] SLA 1980; am §§ 1, 2 ch 94 SLA 1981; am § 1 ch 56 SLA 1982)

Cross references. — As to alternate technology and power resource loans, see AS 45.88.030(e).

Effect of amendments. — The 1981 amendment, in subsection (b), deleted "dated after June 4, 1976" following "contract or loan commitment" and substituted "on the day on" for "that prevailed on the 25th day of the month preceding the commencement of the calendar quarter during" preceding "which the contract" in the first sentence and substituted "$25,000" for "$100,000" preceding "is exempt" in the second sentence. The amendment also repealed subsection (d) which read "Notice of the annual rate charge member banks for advances by the 12th Federal Reserve District prevailing on the 25th day of the month preceding the commencement of each calendar quarter required for the maximum interest rate computation under (b) of this section shall be provided by the Department of Commerce and Economic Development."

The 1982 amendment, in subsection (f), inserted "credit union" in the first sentence and added the present second sentence.

Editor's notes. — Section 3, ch. 107, SLA 1980, added a subsection (i) to this section but the provisions of that subsection were renumbered as AS 09.30.055 by the revisor of statutes pursuant to AS 01.05.031 (b).

NOTES TO DECISIONS

Application of variable interest rate formula. — Provision in note for "interest after maturity at the highest lawful contract rate" is sufficient to constitute an express interest agreement setting interest at highest rate sanctioned by application of variable interest rate formula. Riley v. Northern Com. Co., Sup. Ct. Op. No. 2534 (File No. 5754), 648 P.2d 961 (1982).

Where promissory note provided for "interest after maturity at the highest lawful contract rate," award of postjudgment interest at highest rate allowable on date of maturity, pursuant to interest rate formula in this section, was proper. Riley v. Northern Com. Co., Sup. Ct. Op. No. 2534 (File No. 5754), 648 P.2d 961 (1982).

Rate set forth in subsection (a) is not the

Statute References

Sec. 06.45.030. Approval of articles of incorporation and issuance of certificate of authority. (a) The articles of incorporation shall be presented to the commissioner for approval. Before the certificate of authority is issued, the commissioner shall determine

(1) whether the articles of incorporation and bylaws conform to the provisions of AS 06.45.010 — 06.45.400 and to regulations of the commissioner;

(2) the general character and fitness of the subscribers; and

(3) the economic advisability of establishing the proposed credit union.

(b) A certificate of authority shall be delivered by the commissioner to the credit union if the required fee has been paid. On issuance of the certificate of authority, the credit union is a body corporate and is subject to the limitations of AS 06.45.010 — 06.45.400, and is vested with all of the powers and charged with all of the liabilities conferred and imposed by AS 06.45.010 — 06.45.400 upon credit unions organized under it. (§ 2 ch 47 SLA 1980)

Sec. 06.45.040. Fees. (a) The commissioner shall assess a credit union a fee for his expenses under AS 06.01.010 in processing an application

(1) for approval of articles of incorporation and bylaws and the issuance of a certificate of authority for a credit union;

(2) for the approval of a branch of a credit union;

(3) for a merger or conversion of a credit union; or

(4) for an examination under AS 06.45.050.

(b) Failure of a credit union to pay a fee required by (a)(2), (3), or (4) of this section within 30 days of receipt of billing from the commissioner is grounds for the revocation of the certificate of authority of the credit union. (§ 2 ch 47 SLA 1980)

Sec. 06.45.050. Reports and examinations. A credit union organized under AS 06.45.010 — 06.45.400 is under the supervision of the commissioner and shall make an annual financial report to the commissioner and shall make other financial reports required by regulations adopted by the commissioner. A credit union is subject to examination by the commissioner. (§ 2 ch 47 SLA 1980)

Sec. 06.45.060. Powers of a credit union. A credit union has succession in its corporate name during its existence and may

(1) enter into a contract;

(2) sue and be sued;

(3) adopt, use, and alter a common seal;

(4) purchase, hold, and dispose of property;

(5) make loans, the maturities of which may not exceed 12 years except as provided in AS 06.45.010 — 06.45.400, and extend lines of credit to its members, to other credit unions, and to credit union organizations and participate with other credit unions, credit union organizations, or financial organizations in making loans to credit union members in accordance with the following:

(A) loans to members shall be made in conformity with regulations adopted by the commissioner, except that

(i) a residential real estate loan which is made to finance the acquisition of a one-to-four-family dwelling for the principal residence of a credit union member which is secured by a first lien on the dwelling may have a maturity not exceeding 30 years;

(ii) a loan to finance the purchase of a mobile home, which is secured by a first lien on the mobile home, to be used as the residence of a credit union member, or for the repair, alteration, or improvement of a residential dwelling which is the residence of a credit union member shall have a maturity not to exceed 15 years unless the loan is insured or guaranteed under (iii) of this subparagraph;

(iii) a loan secured by the insurance or guarantee of the federal government, of a state government, or an agency of either may be made for the maturity and under the terms and conditions specified in the law under which the insurance or guarantee is provided;

(iv) a loan or aggregate of loans to a director or member of the supervisory or credit committee of the credit union making the loan which exceeds $5,000 plus pledged shares shall be approved by the board of directors;

(v) loans to other members for which directors or members of the supervisory or credit committee act as guarantor or endorser shall be approved by the board of directors when the loans standing alone or when added to an outstanding loan or loans of the guarantor or endorser exceed $5,000;

(vi) the rate of interest may not exceed the greater of 15 percent a year or the rate specified as AS 45.45.010(b);

(vii) the taking, receiving, reserving, or charging of a rate of interest greater than is allowed by this subsection, when knowingly done, is considered a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid on the note, bill, or other evidence of debt; if a greater rate of interest has been paid, the person by whom it has been paid or his legal representatives may recover back from the credit union taking or receiving it the entire amount of interest paid, but the action must be commenced within two years from the time the usurious collection was made;

(viii) a borrower may repay a loan before maturity in whole or in part on any business day without penalty;

(ix) loans shall be paid or amortized under regulations adopted by the commissioner which consider the needs or conditions of the borrowers, the amounts and duration of the loans, the interests of the members and the credit union, and other factors established in regulations adopted by the commissioner;

[illegible] business, and sell, lease or otherwise dispose of real property or interest therein;

(8) may exercise the powers of a bank granted under the Alaska Banking Code (AS 06.05.005 — 06.05.545); and

(9) may convert from a mutual bank to a capital stock bank under a plan approved by the department. (§ 15 a ch 132 SLA 1960; am § 3 ch 47 SLA 1980)

Effect of amendments. — The 1980 amendment added paragraphs (8) and (9).

Chapter 20. Alaska Small Loans Act.

Sec. 06.20.010. License required. A person may not engage in the business of making loans of money, credit, goods, or things in action in the amount or of the value of $25,000 or less and charge, contract for, or receive on the loan a greater rate of interest, discount, or consideration than the lender would be permitted by law to charge if he were not a licensee under AS 06.20.010 — 06.20.920, except as authorized by AS 06.20.010 — 06.20.920 and without first obtaining a license from the department. (§ 2 ch 73 SLA 1955; am § 5 ch 94 SLA 1969; am § 23 ch 218 SLA 1976; am § 1 ch 71 SLA 1978; am § 1 ch 63 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "A" for "No" at the beginning of the section and "$25,000" for "$5,000," and inserted "not" following "A person may" near the beginning of the section.

Sec. 06.20.200. Advertising of misleading statements prohibited. (a) A person may not advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner any statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action in the amount or of the value of $25,000 or less, which is false, misleading, or deceptive. The department may order any licensee to desist from any conduct which it finds to be in violation of this section.

(b) The department may require rates of charge stated by a licensee to be stated fully and clearly in the manner considered necessary to prevent misunderstanding by prospective borrowers. (§ 13 ch 73 SLA 1955; am § 5 ch 94 SLA 1969; am § 6 ch 71 SLA 1978; am § 2 ch 63 SLA 1980)

Effect of amendments. — The 1980 amendment, in subsection (a), substituted "A" for "No" at the beginning of the subsection, and "$25,000" for "$5,000" near the end of the first sentence, and inserted "not" following "A person may" near the beginning of the subsection.

Sec. 06.20.230. Maximum interest permitted. (a) A licensee may lend any sum of money not exceeding $25,000 and may charge, contract for, and receive on the loan interest at a rate not exceeding three percent a month on that part of the unpaid principal balance of a loan not in excess of $850; two percent a month on the unpaid principal balance exceeding $850 but not exceeding $10,000; and at a rate agreed by contract on the remainder of any unpaid principal balance exceeding $10,000 but not exceeding $25,000.

(b) Notwithstanding the provisions of (a) of this section, a licensee who makes open-end loans under this chapter may charge, contract for, and receive interest at a rate not exceeding three percent a month on that part of the unpaid principal balance of a loan not in excess of $850; two percent a month on the unpaid principal balance exceeding $850 but not exceeding $10,000; and at a rate agreed by contract on the remainder of any unpaid principal balance exceeding $10,000 but not exceeding $25,000.

(c) Interest on loans under (b) of this section shall be computed according to the actuarial method on the entire unpaid principal balance as determined in AS 06.20.285(b). (§ 16(a) ch 73 SLA 1955; am § 5 ch 94 SLA 1969; am § 7 ch 71 SLA 1978; am § 2 ch 84 SLA 1979; am § 3 ch 63 SLA 1980; am §§ 1, 2 ch 99 SLA 1982)

Effect of amendments. — The 1979 amendment added subsection (b).

The 1980 amendment, in subsection (a), substituted "$25,000" for "$5,000" twice; in subsection (b), inserted "or who makes a loan under this chapter exceeding $5,000 but not exceeding $25,000" and "the greater of", restructured the subsection into the present introductory paragraph and paragraphs (1) and (2), added "or" following "a month" in paragraph (1), added the provisions of paragraph (2); designated the provisions beginning "Interest on loans" as subsection (c), added "Interest on loans under (b) of this section shall be", and inserted "entire" preceding "unpaid principal" in subsection (c).

The 1982 amendment, in subsection (a), substituted "$850" for "$500" and "$10,000" for "$1,000" in two places each and "at a rate agreed by contract" for "one percent a month" and deleted "remainder of any" preceding "unpaid principal balance exceeding $850," and deleted the former second sentence, which read "On loans the principal of which is $50 or less a licensee may charge, contract and receive interest at a rate not exceeding five percent a month." In subsection (b), the amendment substituted the language beginning "may charge, contract for, and receive interest" and ending "at a rate agreed by contract on the remainder of any unpaid principal balance exceeding $10,00" for "or who makes a loan under this chapter exceeding $5,000" and deleted from the end of the subsection "may elect to charge, contract for, and receive interest not to exceed the greater of

(1) one and one-half percent a month; or

(2) Eight percentage points above the Federal Reserve discount rate on 90-day

Sec. 45.10.120. Extent of service charge. (a) The service charge shall include all charges incident to investigating and making the retail installment contract or charge agreement and for the privilege of making the installment payments under the contract or agreement. No other fee, expense, or charge may be taken, received, reserved, or contracted for investigating and making the contract or agreement, or for the privilege of making the payments.

(b) A seller or holder of a retail installment contract may charge, receive and collect a service charge which shall not exceed the following rates multiplied by the number of months, including a fraction of a month in excess of 15 days as one month, elapsing between the date of the contract and the due date of the last installment,

(1) on so much of the unpaid balance as does not exceed $1,000, five-sixths of one per cent;

(2) if the unpaid balance exceeds $1,000, on so much of the unpaid balance as exceeds $1,000, two-thirds of one per cent;

(3) if the total service charge so computed is less than $12, but if the due date of the last installment of the contract is eight months or less after its effective date, $10.

(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 not to exceed the following rates computed on the outstanding balances from month to month,

(1) on so much of the outstanding balance as does not exceed $1,000, one and one-half per cent per month;

(2) if the outstanding balance is more than $1,000, one-twelfth of the annual rate permitted under AS 45.45.010(b) per month on the excess over $1,000 of the outstanding balance;

(3) if the service charge so computed is less than $1 for any month, $1;

(4) 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. (§ 13 ch 141 SLA 1962; am § 1 ch 154 SLA 1966; am § 2 ch 79 SLA 1980)

Cross reference. — As to revolving credit plans, see AS 06.05.208.

Effect of amendment. — The 1980 amendment substituted "one-twelfth of the annual rate permitted under AS 45.45.010(b)" for "one per cent" following "more than $1,000" in paragraph (2) of subsection (c).

Sec. 45.10.130. Insurance. If the cost of insurance is included in the retail installment contract or retail charge agreement and a separate charge is made to the buyer for the insurance,

(1) the contract or agreement must state the nature, purpose, and amount of the insurance, and in connection with the sale of a motor vehicle, the contract must state that the insurance coverage ordered under the terms of this contract does or does not include "bodily injury liability," "public liability," and "property damage liability" coverage, as applicable;

(2) the contract or agreement must state whether the insurance is to be procured by the buyer or the seller;

(3) the amount included for the insurance may not exceed the premiums chargeable in accordance with the rate fixed for the insurance by the insurer except where the amount is less than $1; and if the insurance is cancelled or terminated for any reason, the refund for unearned insurance premiums received by the seller or his assignee, together with the unearned portion of the service charge applicable to the insurance, shall be credited to the final maturing installments of the retail installment contract or retail charge agreement, and the remaining balance of the unearned insurance premiums shall be refunded to the buyer; however, no cash refund is required if the amount is less than $1;

(4) if the insurance is to be procured by the seller or holder, he shall, within 45 days after delivery of the goods or furnishing of the services under the contract, deliver, mail, or cause to be mailed to the buyer at his address as specified in the contract a notice that the insurance is procured, a copy of the policy or policies of insurance, or a certificate of the insurance so procured. (§ 14 ch 141 SLA 1962)

Sec. 45.10.140. Agreement not to assert claim. A provision of a retail installment contract or retail charge agreement by which the buyer agrees not to assert a claim or defense arising out of the sale against the seller or an assignee is invalid. (§ 15 ch 141 SLA 1962)

Sec. 45.10.150. Nonwaiver of chapter. No act or agreement of the retail buyer before or at the time of the making of a retail installment contract, retail charge agreement, or purchases under the contract or agreement constitutes a valid waiver of any of the provisions of this chapter or of any remedies granted to the buyer by law. (§ 16 ch 141 SLA 1962)

Sec. 45.10.160. Contracts and agreements executed before 1963. This chapter does not invalidate or make unlawful a retail installment contract or retail charge agreement executed before January 1, 1963. (§ 22 ch 141 SLA 1962)

Sec. 45.10.170. Action by attorney general. The attorney general may bring an action in the name of the state against a person to restrain and prevent a violation of this chapter. (§ 19 ch 141 SLA 1962)

Sec. 45.10.180. Assurance of discontinuance. (a) In the enforcement of this chapter, the attorney general may accept an

the unearned premium on the policy being financed at that time. No deficiency balance may be established or collected from the borrower. This section does not preclude the licensee from establishing or collecting a deficiency balance to the extent the insurer offsets unearned premiums on the policy financed by premiums earned by reason of endorsements to that same policy not paid for by the insured or financed by the licensee.

(d) The licensee or the insurance agent shall deliver to the borrower, or mail to him at his address shown in the agreement, a complete copy of the agreement. (§ 1 ch 170 SLA 1978)

Sec. 06.40.120. Maximum interest permitted: Prepayment, refund. (a) A premium finance company may not charge, contract for, receive, or collect a service charge other than as permitted by this chapter.

(b) The service charge is to be computed on the balance of the premiums due, after substracting the down payment made by the borrower in accordance with the premium finance agreement, from the effective date of the insurance coverage, for which the premiums are being advanced, to and including the date when the final payment of the premium finance agreement is payable.

(c) The service charge may not exceed interest at the nominal annual rate of 15 per cent plus an additional charge of $10 per premium finance agreement which need not be refunded upon cancellation or prepayment. However, any borrower may prepay his premium finance agreement in full at any time before the due date of the final payment and in that event the unearned service charge shall be refunded. The amount of any refund shall be calculated in accordance with regulations adopted by the commissioner. (§ 1 ch 170 SLA 1978)

Sec. 06.40.130. Delinquency charge. (a) A premium finance agreement may provide for the payment by the borrower of a delinquency charge for any payment that is in default for a period of 10 days or more. The charge may be made for each month or fraction of a month that the payment is in default. The amount of the charge may be a minimum of $1 and as a maximum shall be subject to the following limits:

(1) for delinquent payments of less than $250, five per cent of the payment or $5, whichever is less; or

(2) for delinquent payments of $250 or more, two per cent of the payment.

(b) A borrower may at his option separate the financing of the premiums for one insurance policy from a premium finance agreement by requesting in writing that the premium finance company provide that service and by paying a $10 separate charge. (§ 1 ch 170 SLA 1978)

Sec. 06.40.140. Cancellation of policy; requirements. (a) When a premium finance agreement contains a power of attorney enabling the

insurance policy may not be cancelled by the licensee unless the cancellation is effectuated in accordance with this section.

(b) The licensee shall give not less than 10 days written notice to the borrower, by mailing by certified mail or documented by an affidavit of mailing, of the licensee's intent to cancel the insurance policy unless the default is cured within that 10-day period. A copy of the notice shall also be mailed by certified mail or documented by an affidavit of mailing to the insurance agent indicated on the premium finance agreement

(c) After expiration of the 10-day period specified in (b) of this section, the licensee may, in the name of the borrower, cancel the insurance policy by mailing by certified mail or documented by an affidavit of mailing to the insurer a notice of cancellation. The insurance policy shall be cancelled as if the notice of cancellation had been submitted by the borrower himself, but without requiring the return of the insurance policy. The licensee shall also mail by certified mail or documented by an affidavit of mailing a notice of cancellation to the borrower at his last-known address and to the insurance agent indicated on the premium finance agreement.

(d) All statutory, regulatory and contractual restrictions providing that the insurance policy may not be cancelled unless notice is given to a governmental agency, mortgagee, or other third party shall apply where cancellation is effected under the provisions of this section. The insurer shall give the prescribed notice on behalf of itself or the borrower to any governmental agency, mortgagee, or other third party on or before the fifth business day after the day it receives the notice of cancellation from the licensee and shall determine the effective date of cancellation taking into consideration the number of days' notice required to complete the cancellation. (§ 1 ch 170 SLA 1978)

Sec. 06.40.150. Return of unearned premiums. (a) Whenever a financed insurance policy is cancelled and provided the insurer has been notified of the assignment of interest of the insured to the licensee, the insurer within 60 days of the effective date of cancellation shall take such steps as are necessary to have any gross unearned premiums that are due under the insurance policy returned to the licensee for the account of the borrower if the licensee has complied with the notice provisions of § 140(b) of this chapter.

(b) If the crediting of return premiums to the account of the borrower results in a surplus over the amount due from the borrower, the licensee shall refund the excess to the borrower; however, no refund is required if it amounts to less than $1. (§ 1 ch 170 SLA 1978)

Article 3. General Provisions.

recognition and validation of the approach it adopted in Bridges v. Alaska Hous. Auth., Sup. Ct. Op. No. 1 (File No. 16), 349 P.2d 149 (1959), rev'd on other grounds, Sup. Ct. Op. Nos. 8, 46, 352 P.2d 1118 (1960), lead to the conclusion that the court erred in concluding that in a proceeding for condemnation by way of a declaration of taking the court is empowered to require the condemnor to prove the necessity of a given taking. Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

Where it is clear that the use intended is public and statutorily authorized, and petitioners have presented unrebutted evidence to the effect that the design and construction criteria for the pipeline are most feasibly satisfied by the route across the property of respondent, it cannot be said that petitioner is under any duty to initially submit evidence that it has considered such alternate routing; nor can the failure to make such showing under the circumstances justify a finding of arbitrariness or an abuse of discretion. Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

Presumption that taking is reasonably requisite to realization of public use. — Once an authorized public use for the taking is established by the condemnor, and statutory and procedural requirements are otherwise satisfied, that the particular taking is reasonably requisite to the realization of that use shall be presumed. Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

Judicial review of question of necessity only where showing of fraud, etc. — In proceedings in eminent domain by way of a declaration of taking under AS 09.55.420 — 09.55.460, the court is without authority, either by virtue of the express mandate of AS 09.55.460(b) or by implication from the legislative history and policy evidenced in AS 09.55.440, to review the question of the necessity of a particular taking absent a clear showing of fraud, bad faith, arbitrariness or an abuse of discretion in exercise of the power of condemnation by the condemning authority. Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

Notwithstanding such provisions as AS 09.55.270(2), judicial inquiry into such necessity or the condemnor's determinations with respect thereto is not appropriate unless and until the condemnee has presented clear and convincing evidence that the condemnor has acted in bad faith or so capriciously and arbitrarily as to indicate the absence of any reasonable determining principle. Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

State's failure to consider several important, relevant factors made it impossible to rationally determine whether intended taking was compatible with the greatest public good and the least private injury, and rendered its action arbitrary; thus taking of subject land could not be upheld. State, Dep't of Transp. & Pub. Facilities v. 2.072 Acres, More or Less, Sup. Ct. Op. No. 2575 (File No. 6159), 652 P.2d 465 (1982).

For distinction between proceedings in condemnation under a declaration of taking and those under a complaint seeking condemnation and an order for possession, see Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

Quoted in State, Dep't of Transp. & Pub. Facilities v. 0.644 Acres, Sup. Ct. Op. No. 2118 (File No. 4861), 613 P.2d 829 (1980).

Where the state has adequate knowledge of separate interests, amounts should be specified for each. Russian Orthodox Greek Catholic Church of N. Am. v. Alaska State Hous. Auth., Sup. Ct. Op. No. 809 (File No. 1600), 498 P.2d 737 (1972).

Sec. 09.55.440. Vesting of title and compensation. (a) Upon the filing of the declaration of taking and the deposit with the court of the amount of the estimated compensation stated in the declaration, title to the estate as specified in the declaration vests in the plaintiff, and that property is condemned and taken from the use of the plaintiff, and the right to just compensation for it vests in the persons entitled to it. The compensation shall be ascertained and awarded in the proceeding and established by judgment. The judgment shall include interest at the rate of six per cent per year on the amount finally awarded which exceeds the amount paid into court under the declaration of taking. The interest runs from the date title vests to the date of payment of the judgment.

(b) Upon motion of a party in interest and notice to all parties, the court may order that the money deposited or a part of it be paid immediately to the person or persons entitled to it for or on account of the just compensation to be awarded in the proceedings. If the compensation finally awarded exceeds the amount of money deposited, the deposit shall be offset against the award. If the compensation finally awarded is less than the amount of money deposited, the court shall enter judgment in favor of the plaintiff and against the proper parties for the amount of the excess. (§ 13.21 ch 101 SLA 1962)

Opinions of attorney general. — The Alaska declaration of taking statutes are as effective as the federal statutes in effecting the vesting of title in the condemnor of whatever interest in the land it seeks to condemn. If the state undertakes to obtain title to real property in fee simple absolute by the filing of a declaration of taking that is the title which it obtains. 1960 Op. Att'y Gen., No. 15.

NOTES TO DECISIONS

I. General Consideration.
II. Interest.

I. GENERAL CONSIDERATION.

There exists a clear functional distinction between proceedings in condemnation under a declaration of taking and those under a complaint seeking condemnation and an order for possession. Under the former, title passes immediately upon filing and deposit — at which time, under this section, the property is deemed to be "condemned and taken for the use of the plaintiff." Under the latter no such vesting occurs; title does not vest, nor does "condemnation" actually occur until the final award is determined and an order and judgment of condemnation is entered by the court. Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

The difference in the nature of proceedings in condemnation under a declaration of taking and those under a complaint seeking condemnation and an order for possession is not merely procedural; the almost summary quality of the former bespeaks the grant of an additional substantive power of condemnation which considerably reduces the rights of the landowner to contest the taking. Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

Construction with AS 09.55.330. — The provisions of subsection (a) are not irreconcilable with those pertaining to another form of eminent domain proceeding in AS 09.55.330. State v. Alaska Continental Dev. Corp., Sup. Ct. Op. No. 2254 (File Nos. 4121, 4122), 630 P.2d 977 (1980).

Under a declaration of taking, title and right to possession pass to the state immediately upon filing and depositing an amount for just compensation, while under a complaint for condemnation this "taking" does not occur until judgment is entered by the court. State v. Alaska Continental Dev. Corp., Sup. Ct. Op. No. 2254 (File Nos. 4121, 4122), 630 P.2d 977 (1980).

Summary exercise of power intended. — AS 09.55.420 — 09.55.460 were clearly intended to authorize a more summary and less judicially dependent exercise of the power of eminent domain. Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

Vesting subject only to limited right of owner to contest. — The intent of AS 09.55.420 — 09.55.460 was to bring, in summary fashion, statutory finality to the

State banks top U.S. in asset use

By JIM ERICKSON
Daily News business reporter

Four Alaska banks were among the top 10 performers in the nation last year among those surveyed by a national bank analyst firm.

First National Bank of Anchorage ranked first in return on assets out of 368 of the largest U.S. banks and bank holding companies surveyed, according to Keefe, Bruyette, and Woods Inc.

National Bancorp of Alaska ranked third, United Bancorporation Alaska was sixth and Alaska Pacific Bancorporation was seventh.

Return on assets is used by financial analysts to gauge how well a bank is using income-earning investments, loans and property to produce profits.

First National's 2.68 percent return on assets figure was nearly two percentage points higher than the national average of .78 percent.

NBA's return was 1.73 percent, UBA's was 1.64 and Alaska Pacific's was 1.62.

The Keefe, Bruyette ranking was determined from a questionnaire mailed to 400 of the largest U.S. banks; 368 banks responded.

Alaska's strong economy is credited in part with the state's banks dominance of the top 10 list, said Chuck Sexton, a bank analyst with Keefe, Bruyette and Woods, A booming economy usually translates into bank profits.

Sexton called banking here an "interesting business" because the state is in transition from a "last frontier" economy.

"You also have some astute bankers," he said. "The demands of an economy under growth ... requires the ability to judge many things that aren't of a cut-and-dried nature."

The state subsidized home loan program has been a large factor in the growth of bank earnings, said Ben Black, senior vice president for National Bank of Alaska, the largest bank in the state.

"During the recession in Lower 48, we were still able to make commercial loans and residential loans at an extraordinary rate while down below they were pulling in their horns," he said.

Banks get fees for handling loans purchased by the Alaska Housing Finance Corp. the state agency that buys about 85 percent of the home loans made in the state.

The fees contributed less than 7 percent to NBA profits last year, Black said. But banks benefit in other ways, such as a higher demand for construction loans caused by a surging housing market stimulated by low-cost loans.

NBA reports earnings on rise

National Bancorporation of Alaska, reported first-quarter earnings of $4 million, or $1.02 per share, up 24 percent from a year ago.

Donald L. Mellish, chairman of the board of the bank holding company which has National Bank of Alaska as its sole subsidiary, said total deposits as of March 31 were $779.9 million, up 10 percent from a year earlier.

The bancorporation also reported its first-quarter assets climbed from $877 million in 1983 to $951 million this year and that total loans rose from $490 million to $564 million during the same period.

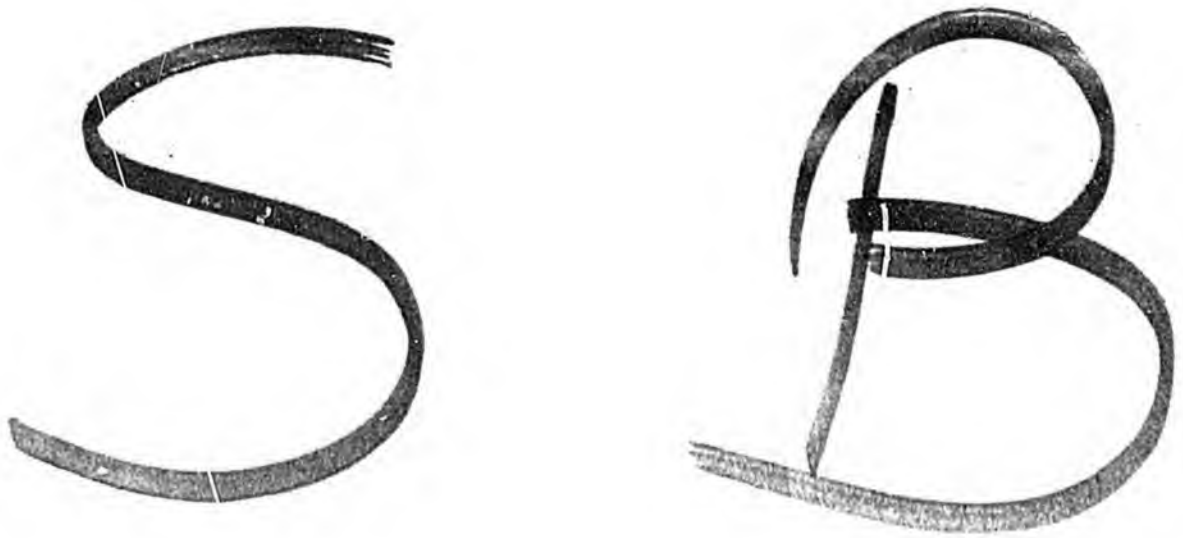
Bank income higher

Gene Erskine, chief executive officer of United Bancorporation Alaska, Inc., reported that the firm had record first quarter net income of $917,000. This represents a $360,000 or 64.7 percent increase over first quarter 1983 net income of $557,000.

In May 1983, UBAI made an initial public offering by issuing 1.1 million shares of common stock. With the public offering, UBAI has 3.1 million shares of stock outstanding.

Earnings per share for the first quarter of 1984 were 29 cents compared with 28 cents per share in the first quarter of 1983. Total assets increased by $89 million or 40.9 percent to $307 million as of March 31, 1983. Total loans at March 31, 1984 were $219 million which represents a $74 million or 50.9 percent increase over total loans of $145 million at March 31, 1983.

Shareholder's equity rose $15 million or 84 percent to $33



STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3801

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM April 25, 1984

SUBJECT: Practice of public accounting
(Draft SSSB 318)

TO: Senator Dick Eliason
Chairman
Senate Labor and Commerce Committee

FROM: Tamara Brandt Cook TBC
Deputy Director
Division of Legal Services

Here is the section by section analysis that you requested for the draft of SSSB 318 dated April 18, 1984.

Section 1 The section requiring regulations adopted and proceedings held under AS 08.01 to be done under the Administrative Procedure Act is modified to indicate that other law may exempt a particular proceeding. AS 08.01 applies to the Board of Public Accountancy and under section 25 of this draft, hearings of that board are not subject to the APA. Consequently, the change to this section is necessary.

Section 2 The termination date for the Board of Public Accountancy is extended to June 30, 1986.

Section 3 Six, rather than five, members of the board must be certified public accountants and four of them must have permits to practice under AS 08.04. The board now has only one public member, rather than two.

Section 4 Minor drafting changes have been made for cosistency.

Section 5 The requirement that a member continues to serve until his successor formally advises the board of acceptance of appointment and appears at the next meeting is delcted.

Section 6 The board is required to elect a chairman, rather than a presiding officer. The requirement that a treasurer

be elected and the provision that one person may serve as secretary and treasurer is deleted.

Section 7 The types of regulations that may be adopted by the board are itemized.

Section 8 The board must submit an annual report to the governor containing specified information that will be made available to any person on request.

Section 9 At least 90 days before adopting a regulation, the board must mail a copy of the proposal to each person certified under AS 08.04 with a request that advisory comments be submitted at least 45 days before the proposed effective date.

Section 10 Requirements for a certificate of "certified public accountant" are set out.

Section 11 The board may waive the educational requirement for a certificate if it determines that the educational qualifications of the applicant are acceptable. The reason for and method by which the board may refuse a certificate for lack of good character are clarified.

Section 12 Examinations are to be held at least twice each year. Requirements for eligibility to take the examination are set out.

Section 13 The amount of an application for an evaluation of educational qualifications and to take an examination is set by the board, rather than being $50.

Section 14 Application for certification by a nonresident constitutes the appointment of the lieutenant governor as agent for service of process in an action arising out of the practice of public accounting in this state by the nonresident.

Section 15 Qualifications for a permit to practice public accounting for an individual, a partnership and a corporation are set out.

Section 16 A person with a certificate before the effective date of this Act does not have to obtain a new one. The person shall automatically be issued a permit to practice as well.

Section 17 A partnership or corporation engaged in public accounting must register with the board and must meet itemized requirements.

Section 18 The board must establish the fee for registration or partnerships and corporations and for notification to the board of the admission or withdrawal of a partner or shareholder.

Section 19 Each office for the practice of public accounting must be registered biennially, rather than annually.

Section 20 The board shall establish a fee for the registration of an office.

Section 21 The title "certified public accountant" may not be used in connection with an office registered under AS 08.04 unless it is under the direct supervision of a person with a permit to practice.

Section 22 The board's authority to suspend a certificate, permit, or registration is limited so that the board may do so only for a period not to exceed two years. The grounds for suspensions are altered somewhat.

Section 23 A special hearing requirement is specifically added to the section authorizing the board to revoke the registration or permit to practice of a partnership or corporation that does not meet qualifications for registration. Under existing law a hearing is required under the APA.

Section 24 A special hearing requirement is specifically added to the section authorizing the board to revoke the registration and permit to practice of a partnership or corporation for grounds other than those set out in the previous section. Under existing law a hearing would be held under the APA.

Section 25 A procedure for hearings by the board is established. These hearings are not conducted under the APA, as hearings of other occupational boards are. A person adversely affected by an order of the board after a hearing may petition for court review within 30 days. The review shall be de novo on the record. Upon taking disciplinary action, the board is required to notify the board of

accountancy of any other state the person helds a certificate, registration or permit in.

Section 26 A person may not use the title "certified public accountant" unless he has a certificate, but he need not have a permit to practice.

Section 27 A person offering financial services may not use the title "certified public accountant" even if he is certified unless he has a permit to practice.

Section 28 A partnership or corporation may not use the title "certified public accountant" unless it is registered and has a permit to practice. This is the same as existing law, but deletes a reference to a repealed section.

Section 29 This is the same as existing law, but deletes a reference to a repealed section.

Section 30 This is the same as existing law, but deletes a reference to a repealed section.

Section 31 This is essentially the same as existing law, but deletes a reference to a repealed section.

Section 32 This is essentially the same as existing law, but deletes a reference to a repealed section.

Section 33 This is the same as existing law, but deletes a reference to a repealed section.

Section 34 This is the same as existing law, but minor drafting changes have been made for consistency of word usage.

Section 35 Paragraphs are added to the section itemizing things that are not prohibited under AS 08.04 relating to disclosure of confidential information and the offering of financial services by persons without permits to practice.

Section 36 The section on injunctions is made applicable to violations of the entire chapter, rather than to only certain sections.

Section 37 Violation of the chapter is made a class A misdemeanor.

Section 38 This has been redrafted slightly for clarity.

Section 39 This permits an accountant's working papers to be transferred to the accountant's corporation, or the successor in interest to the partnership or corporation, as well as to the accountant's partner.

Section 40 An accountant is prohibited from disclosing confidential information obtained in the course of performing public accounting, except in certain circumstances.

Section 41 Additional definitions are added to AS 08.04.

Section 42 A member of the board serving on the effective date of this Act continues to serve until the term expires.

Section 43 Certain provisions are repealed.

Section 44 The Act takes effect January 1, 1985.

TBC:ojb
J6/074

University of Alaska, Fairbanks
Fairbanks, Alaska 99701

March 1, 1984

The Honorable Senator Richard Eliason
Chairman, Labor and Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

Please find enclosed a copy of a paper discussing Senate Bill 318. I hope this paper will be helpful in your committee's deliberations on this important piece of legislation. I researched this paper as my academic research project for this year. If I can be of any assistance as this legislation moves through the political process, please call on me.

Sincerely,

Tom Bartlett

Tom Bartlett, Associate Professor
Department of Accounting
School of Management

TB/bcs

Certification Requirements for CPAs: A Look at Senate Bill 318

Tom Bartlett, CPA
Associate Professor of Accounting
School of Management
University of Alaska, Fairbanks

February 29, 1984
Fairbanks, Alaska

The current session of the Alaska Legislature (Jan. 84-?) is debating legislation significantly affecting accountants in Alaska. (Senate Bill No. 318 introduced by Senator Bette Fahrenkamp of Fairbanks). This legislation involves the State's requirements for certification of Certified Public Accountants. Each of the fifty-four states and territories within the United States sets minimum requirements that must be fulfilled before an individual is granted a CPA certificate. Traditionally, the specific requirements of the states have centered on three elements; Education, Examination, and Experience. This paper will discuss how the proposed revision of the Alaskan Public Accountancy Statute will change those elements. Particular emphasis will be placed on the experience requirement, since that is the element most altered by Senate Bill 318.

Before any discussion of certification requirements, the paper will discuss the rationale for any government involvement in the certification process. Since such requirements result from government involvement, it is necessary to understand the objectives of government regulation in order to critically review the current and proposed qualifications requirements of Alaska's statute. Following this rationale discussion, Alaska's present and proposed certification requirements will be contrasted to the current status and historical development of certification requirements in other states. Information will be presented on the requirements of other states. The source of all these references to the various state public accountancy laws and regulations is the Accountancy Law Reporter published by Commerce Clearing House, Inc. in cooperation

with the American Institute of Certified Public Accountants. References are current through December, 1983. Finally, in conclusion, recommendations and opinions concerning Senate Bill 318 will be presented.

The proposed legislation additionally provides for other significant changes in the public accountancy statute; however, a detailed discussion of all the changes is beyond the scope of this paper. This paper has been prepared under the auspices of the University of Alaska-Fairbanks School of Management and such support is gratefully acknowledged. Opinions expressed, however, are solely those of the author.

Rationale for Certification and Regulation

The CPA certificate is not granted by a private organization such as the American Institute of Certified Public Accountants. (AICPA). Rather, the various state governments grant the certificate. Why should state governments spend considerable time, effort, and dollars certifying public accountants? How is certification in the Public Interest? We will examine two differing rationales for government involvement in a certification process; the Public Interest Rationale and the Self-Interest Rationale.

Public accountants provide accounting services to the general public. These services require a knowledge of generally accepted accounting principles (GAAP) and generally accepted auditing standards (GAAS). This extensive and complicated knowledge cannot be expected of the general public. Accordingly, a non-accountant cannot be expected to confidently evaluate a public accountant or his work with respect to technical accounting or auditing knowledge. Some

sanctioned indicator is required so that a non-accountant member ofthe general public can be assured a public accountant does possess that level of technical knowledge and proficiency expected of a professional public accountant. In our society that indicator is the certification as a CPA. The states' certification processes are designed to insure compliance with some minimum level of qualifications before an individual can hold himself out to be a CPA. The general public might thus assume that a sanctioned CPA possesses the required degree of technical knowledge and proficiency. Certification protects the public interest and requires the State to closely administer that minimum level of efficacious qualifications. This argument for government certification and regulation of public accountants is the "Public Interest Rationale."[1]

One might expect that the technically uneducated general public would have clamored for the first public accountancy laws. The public interest rationale for certification and regulation involves general public protection. We might expect the public to lobby and exert political pressure for that protection. However, it was the accounting profession itself which initially fought for certification. Certification limits the number of new entrants into

[1]In economics terminology, a market failure exists, i.e. the consumer of accounting services is unable to judge the quality of those services. One of the necessary conditions for pure market competition (that consumers possess a high degree of knowledge about the product purchased) is violated. Government intervention in the accounting marketplace is necessary to remedy this deficiency.

employment as public accountants and enhances an individual's and a profession's status and prestige.[2] Historically in the United States, government regulation of the professions has resulted from the political activity of the group to be regulated.[3]

At the turn of the twentieth century, public accountancy in the United States was dominated by British Accountants who were distinguished by their designation as Chartered Accountants. (CA). The British accounting journal, The Accountant stated in 1896, "we believe we are understating the case when we say that the bulk of the most desirable accountancy business in the States is transacted by British accountants." American counterparts of these British Accountants had established the American Association of Public Accountants in 1887 in an attempt to respond to this British challenge. Among the initial actions of this group was political

[2] See for example, The Significance of Organization Conflict on the Legislative Evolution of the Accounting Profession in the United States, Myron Samuel Lubell, Arno Press, 1980. On page 22 Lubell states, "Benefits such as higher income, prestige and autonomy accrue to members of an occupational group generally recognized as a profession. Accordingly, many occupational groups seek to publicize the complexity of their craft and the importance of their services, hoping to secure recognition as a profession. Such groups typically seek legitimization of their claim to professional status through licensing, certification, or other forms of legal recognition.

[3] See The Tyranny of the Experts, Jethro K. Liberman, Walker Publishing Company, Inc., 1970. On page 15 Liberman states, "The bulk of existing professional licensing laws was passed at the behest of the professional groups; almost invariably these groups have been given a share of the regulatory power. At a session of the Wisconsin legislature some two decades ago, caterers, canopy and awning installers, cider makers, coal dealers, dancing school instructors, egg breakers, frog dealers, labor organizers, meat cutters, music teachers, and beer coil cleaners tried unsuccessfully to get themselves regulated. This same state in 1939 did enact legislation requiring examination for house painters; on the strength of this law, friendly citizens who helped relatives and neighbors paint their houses were arrested and fined for failure to possess the requisite license." Fortunately, for friendly neighbors, but perhaps not for certified painters, the law was later declared unconstitutional. Accountants have been more successful than painters in proving to the Judiciary the compelling public interest benefit in their being regulated. So have physicians, attorneys, barbers, and realtors.

activity in support of certification and in 1906 the New York legislature enacted the first public accountancy statute in the United States. Other states quickly followed the New York lead with the drive for certification typically spearheaded by the accounting profession within the various states.[4] Through legislation, accountants who were able to qualify, achieved legal, public recognition of a professional title.

These early statutes were of a permissive nature, i.e., the statutes restricted use of the title CPA, but did not reserve any particular accounting service strictly for the CPA. Later, statutes (beginning in the mid-20's) were generally of a restrictive nature, i.e., restricted to CPAs the right to express an opinion on financial statements. This is the so-called attest function of public accounting. These statutes restricted for the CPA a title and exclusive right to perform certain types of services. By limitation of rights of others to engage in such services the CPA reaps the increased rewards due the supplier of a scarce commodity in a restricted economy.[5] This is known as the self-interest rationale

4 See The Rise of the Accounting Profession: From Technician to Professional 1896-1936, vol.1,John L. Carey, AICPA, 1969 for an in-depth discussion of the British influence on accounting in the United States and the early accounting statutes of the various states.

5 "We have seen that the entry of new members into an occupational group will generally have the effect of lowering the average renumeration of all the members of the group. This is no doubt why all professions and trades, at all times, feel themselves to be overcrowded: it is because if more people come into them, those already established will probably be worse off. What is more natural, therefore, than to find that those who already enjoy the benefits of a favored occupation seek to preserve those superior advantages for themselves by making it more difficult for other people to enter the occupation? So trade unions of the craft type seek to prevent the entry of too many people into the craft by imposing arduous and often unnecessary apprenticeship conditions or by demanding high membership fees. Professional associations, under the respectable guise of establishing "standards," frequently impose a long and costly ritual of education and preparation upon the neophyte." Kenneth E. Boulding, Economic Analysis Volume 1 Microeconomics, Harper and Row, 1966.

for regulation.

Certification qualifications result from both rationales of government involvement. Under the public interest rationale qualifications for certification are necessary to insure the professional level of technical knowledge and proficiency. Under the self-interest rationale, qualifications limit access of potential competitors to the accounting marketplace. CPAs accept and even lobby for government's certification regulations and they especially accept regulations coincident to the right to perform a restricted service. Traditionally in the United States, regulations have evolved which require passing a professional examination, completing a designated level of education and attaining a designated level of work experience.

The specific technical knowledge desired of a CPA can only be attained after a period of formal education. Hence, we have an Education requirement.

A potential CPA must prove possession of that level of technical knowledge. Hence, we have an Examination requirement.

Technical proficiency requires a level of professional judgment. That judgment is only acquired after a period of employment in an environment where the restricted public accounting service is performed and only after the potential CPA participates as an apprentice in the actual performance of the restricted service. Hence, we have an Experience Requirement.

In the remainder of the paper, the specific qualifcation requirements will be discussed. These two rationales for government involvement should be considered as the specific requirements are examined. Any discussion of the experience requirement must especially consider these rationales. We shall briefly discuss

present and proposed education and examination requirements before moving to a more extensive discussion of the experience requirement.

Education Requirement

A postbaccalaureate education requirement is the official policy of the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA).[6] This policy position was adopted by the AICPA in 1969 but implementation through legislation has been slow.[7] Only Florida currently requires education beyond the baccalaureate level.[8] Hawaii has an education requirement of thirty semester hours beyond the baccalaureate level, but in 1983 that requirement

[6] In December,1983, the Special Committee on Model Accountancy Bill (a joint AICPA/NASBA committee) issued for comment a proposed Model Accountancy Bill. This draft bill was prepared with a view to merging the AICPA's 1981 Model Bill and NASBA's 1980 Model Bill "into a bill which would offer in a single harmonized form the substantive provisions of both those legislative models on which the sponsoring organizations agree, and set forth in opinional form the substantive provisions on which they differ." (introduction to Model Bill quoted). The joint bill calls for a baccalaureate degree with accounting concentration plus thirty semester hours of additional study. This is generally referred to as the 5 year education requirement.

Although the joint committee agreed (as with education) on most provisions of the joint bill, there was some disagreement. See notes 13 and 20 for discussion of optional provisions of the joint bill which resulted from those disagreements.

[7] The five-year education policy was adopted by the AICPA with the issuance of the "Report of the Committee on Education and Experience Requirements for CPAs". (The Beamer Committee). That 1969 report targeted the year 1975 as the date for adoption of the five-year requirement.

[8] Annecdotal evidence appears to indicate that the additional education requirement has restricted the supply of entry level accountants in Florida. Several students are scheduled to graduate from the University of Alaska-Fairbanks this spring with "MBA-Concentration in Accounting" degrees. During the fall recruiting season, one of these students was not offered a position in the Alaskan office of a particular national CPA firm. Rather, the student was asked if relocation to Florida was a possibility. Florida's postbaccalaureate education requirement became effective in 1983.

was revised to allow an applicant the option of replacing the additional education with an additional thirty months of professional experience in a public accounting practice. Utah has enacted a postbaccalaureate requirement which becomes effective in 1986. Several states reduce the experience requirement for the applicant with education beyond the baccalaureate level.

Responding to the slow implementation of a five year education requirement, an AICPA/NASBA joint "Commission on Professional Accounting Education" reaffirmed the postbaccalaureate position in July 1983. A vigorous political action campaign is being presently mounted to implement this increased education requirement through legislation in additional states.

The Alaskan statute does not require even a baccalaureate degree. Under present law the education requirement is two years of study at a recognized college or university or graduation from a recognized community or junior college. While not required, a baccalaureate degree does reduce Alaska's experience requirement. Senate Bill 318 would require a baccalaureate degree or its equivalent conferred by a college or university acceptable to the State Board of Accountancy.

One might argue that this is a substantial change which seriously restricts entry into the accounting profession. However, the requirement of a four year degree does not appear to be a particularly contentious issue among the concerned parties. As the rules of GAAP and GAAS have expanded in recent years,[9] the

[9] One might examine the proliferation of new authoritative standards to understand the increase in the technical accounting and auditing body of knowledge. Prior to 1970 there were 15 APB Opinions and 41 Statements on Auditing Procedure. Between 1970 and December, 1983, 16 new APB opinions, 76 FASB standards, 13 new Statements on Auditing Procedures, and 47 Statements on Auditing Standards were issued by various authoritative bodies.

accounting profession has generally recognized the need for a baccalaureate education to insure significant exposure to the accounting and auditing body of technical knowledge. Only fourteen accounting jurisdictions do not currently require at least a baccalaureate education.[10] Additionally, it is generally recognized that a baccalaureate education is necessary if an applicant is to have a realistic opportunity of successfully passing the CPA exam. This changed education requirement will bring Alaska more closely into conformity with existing legislation in other states. Perhaps the principal question regarding the education requirement is whether Senate Bill 318 goes far enough in strengthening the requirement.

As discussed, both the AICPA and NASBA favor an education requirement beyond the baccalaureate level. In a few years, Alaska might be considering an education requirement of one year of additional study beyond the traditional four year degree. Such consideration is probably premature presently since no institution of higher education in Alaska currently has a five year Accounting program.

[10] The fourteen jurisdictions are California, Delaware, Iowa, Minnesota, New York, North Carolina, North Dakota, Oklahoma, Oregon, Puerto Rico, Texas, Vermont, Virgin Islands, and Alaska. In some of these jurisdictions a degree is required unless an applicant fulfills an almost prohibitive experience requirement. For example, New York will substitute 15 years of public accountancy experience for the baccalaureate degree. The remaining forty jurisdictions require a baccalaureate degree (except for Illinois and New Hampshire which require four years of college education but no specific degree); however, in some states the Board of Accountancy has the authority to waive the baccalaureate requirement if an educational equivalency can be verified by successful completion of a Board Administered examination.

Examination Requirement

All states require a potential CPA to pass the Uniform Certified Public Accountants Examination administered by the AICPA. The 19 1/2 hour examination includes four sections; (1) Auditing (3 1/2 hours), (2) Business Law (3 1/2 hours), (3) Accounting Theory (3 1/2 hours), and (4) Accounting Practice (9 hours). Alaska currently has such a requirement and no change is proposed in Senate Bill 318. States do not always agree on what constitute a passing grade on the CPA exam. All states require a grade of 75 on each of the four sections of the exam, but states differ on what constitutes a "conditional pass." A conditional pass allows an examinee to carry forward passing grades on certain section(s) to future examinations. Thus, if the examinee passes some sections but not others, the passed section(s) do not have to be subsequently retaken. The states have different rules on how many passed sections are required for a conditional pass and on how the conditional pass is carried forward to future examinations. States also differ on whether an ethics examination must be passed by applicants.

Senate Bill 318 (like the present statute) requires a passing grade of 75 on each section of the Uniform CPA exam. The Alaska conditional pass rule is also not amended by the proposed legislation. Section 08.04.160 of the Alaska Public Accountancy Statute states, "An applicant who receives a passing grade in accounting practice or in at least two of the other subjects has the right to be re-examined in only the remaining subjects at succeeding examinations within five years after the first examination, if the applicant takes an examination in the remaining subjects at least

once each calendar year unless excused by the Board for good cause. An applicant who receives a passing grade in the remaining subjects has passed the entire examination."

There is one minor change in examination requirements in the proposed legislation. Currently, Alaskan applicants are required to pass an ethics examination administered by the AICPA but the requirement is by State Board regulation rather than through legislation. Senate Bill 318 would require the ethics examination through legislation. Section 08.04.100 of the Alaska Public Accountancy Act would be amended to require the applicant to have, "passed in this or another state the ethics examination administered by the AICPA."

Thus, the proposed legislation makes only minor changes to the examination requirement, and though the education requirement change is substantial it does not appear to be particularly controversial. The major change proposed is to th rience requirement. That change is discussed in the next sec of this paper.

Experience Requirement

Accounting work experience has been traditionally required of potential CPAs. Such experience, when combined with technical education, will enable the accountant to develop professional judgment. Such seasoned professional judgment is a necessary ingredient of the expected level of technical knowledge and proficiency which the public assumes of a CPA. Since the only

restricted service of the CPA is the expression of an opinion on financial statements,[11] the necessary experience should be related to the expression of such opinion. Only CPAs in public practice express opinions on financial statements. Accordingly, most accounting jurisdictions historically required a period of employment with a public accounting firm (usually two years) to meet legislated experience requirements.

Challenges to the experience requirement have been numerous throughout the history of public accountancy laws and especially numerous in recent years. Challengers usually believe that a public accounting experience requirement restrains entry into the accounting profession and provides present CPA firms with a captive labor pool, i.e., recent accounting graduates who desire to be certified. Additionally, they have suggested that the most important components of technical proficiency are a thorough knowledge of GAAP and GAAS. They argue that such knowledge is gained through education, not experience. Finally, they argue that the value of a short period of

[11] The restricted service is not quite so easily defined, and is a contentious issue in several states. CPA's express either a Compilation, Review, or Audit Report at the conclusion of an engagement in which there is an association with financial statements. An audit report expresses an opinion on financial statements; a review report disclaims an opinion, but gives some degree of limited assurance; and a compilation report disclaims an opinion with no degree of assurance. The question is whether all three types of report engagements are restricted to CPAs. In several states, unlicensed public accountants have argued that they should be allowed to disclaim an opinion by issuing a review or compilation report. Proposed Senate Bill 318 makes a significant change in Alaska's law in this regard. The current accountancy statute is not specific about the exact types of reports restricted to the CPA. Under the proposed revision, section 08.04.560 is amended to state, "A person may not sign, affix, or associate a name...to a report expressing or disclaiming an opinion on a financial statement based on an audit or examination of the statement, report expressing assurance on a financial statement based on a review of the statement, compilation report on a financial statement based on a compilation of the statement, unless the person holds a permit to practice public accounting under this chapter..."

public accounting experience has been overstated. A new recruit to a CPA firm typically engages in detail audit testing work which might not assist significantly in the development of professional judgment and technical proficiency.

Anecdotal evidence would appear to confirm the captive labor pool argument. Over the past several years, the principal employment consideration of many, if not most, of the accounting graduates of the University of Alaska-Fairbanks has been to meet the experience requirement for certification as a CPA. Although private industry (especially the large Oil Companies) generally offer substantially higher salaries and benefits, most of the the accounting graduates accept employment in public accounting. This phenomenon is not unique to Alaska. The following quotation from Leo Donahue, State Auditor of Connecticut, confirms this development in other states Speaking to the experience requirement in a March 10, 1981 legislative hearing on Connecticut's Accountancy law, Mr. Donahue stated, "Where it's important to us, Mr. Chairman, is in the recruiting of young people who haven't yet established their career goals, coming to our office right out of college looking for employment. One of the first questions they always ask us is how much credit they will receive for work in our office towards being certified."

The argument that experience in public accounting will not add any special qualities to increase a CPA applicant's technical knowledge and proficiency was made by William Bruschi in the March 1969 Journal of Accountancy. At the time this article was written, Mr. Bruschi was a staff employee of the AICPA and presently Mr.

Bruschi is the AICPA Vice-President for Examinations and Regulations. The article was written as a position paper of the AICPA Committee on Education and Experience Reqirements for CPAs (the Beamer Committee). This committee endorsed elimination of any experience requirement. Since 1969, the AICPA has not endorsed required experience as a qualification for certification.

Bruschi isolates professionalism, technical competence, and administrative ability as the most desired qualities of a CPA. The most important elements of professionalism are personal image of professionalism, ethics, and awareness of expected level of competence. Bruschi argues that education with its emphasis on personal development is a more valuable source of professionalism than a beginning accountant's first year or two of public experience. The elements of technical competence include awareness of information flow, applications of GAAP and GAAS, concepts of materiality, preparation of reports, professional judgment, and risk analysis. While Buschi believes that experience is invaluable in developing these skills, he doubts that these skills are likely to be acquired in the first year or two of public accounting employment as a junior staff accountant. Finally, Bruschi feels that exposure to the third quality, administrative ability, including management of personnel and client engagements, is definitely not available to the junior staff accountant.

Most experience requirements initially required a certain number of years of public accounting employment. However, as challenges and especially restraint of trade arguments grew more numerous, State Legislatures and State Boards of Accountancy were forced to review their experience requirements. The political pressure for such

review often came from individuals who had met the Education and Exam requirements, but not the Experience requirement for certification. The courts were also involved as some of these individuals challenged experience requirements in court. The requirement had to be implemented to insure that the experience gained during the apprentice period was relevant to the development of professional skills expected of an accountant who was expressing an opinion on financial statements. In many states the requirement of a certain number of years CPA firm employment began to change.

State Accountancy Boards had to define the characteristics of relevant experience and with each new definition a revised experience requirement resulted and new regulation implementation problems emerged. Some argued that the development of professional judgment required a work experience in which independence was recognized. Only by working in a firm of independent CPAs would a potential CPA encounter such an "independence" atmosphere. However, challengers contended that other accounting employment situations also stressed independence, such as work experience with State Legislative Audit, GAO, IRS, and some private industry internal audit departments.

Other definitions of relevant experience attempted to specify the type of work to be performed. The restricted service a CPA renders to the public is the expression of an opinion on the fair presentation of financial statements in accordance with GAAP. This attesting to financial statements is the particular technical proficiency that the experience requirement is expected to enhance in the potential CPA. Some states began to require that some amount of attest activity be included in any qualifying experience and some

specifically required an amount of time engaged in specific types of attest activity such as audit planning, audit program preparation, and audit report writing. Since only public accountants are allowed to express opinions on financial statements, these regulations have often been interpreted to require public accounting employment. However, internal and especially governmental auditors argue that they are involved in audit activity and that they are sometimes associated with opinions on financial statements.

Implementation problems arose as State Boards attempted to enforce their different experience requirements. Fairness charges were leveled against State Accountancy Boards as its members tried to judge whether particular patterns of experience did or did not meet the stated regulations.[12] Some states began to radically alter or eliminate the experience requirement. Three different approaches have been utilized. A few states have completely eliminated the experience requirement. The other jurisdictions have an experience requirement, but some states have liberalized their definition of experience, thereby eliminating any public accounting employment requirement. Finally, some states have established a two-tier licensing arrangement for CPAs.

Florida currently requires postbaccalaureate education and no

[12]For example, in 1974 the Utah Supreme Court ruled in favor of a plaintiff with 15 years private accounting experience who had been denied a certificate because he lacked the required public accounting experience. The Court found this denial "arbitrary, capricious, and without foundation in fact or law" and ordered the Utah State Board of Accountancy to grant a certificate. An important issue in the case concerned the Board's certification of another private accountant who had worked for two years in the internal audit department of an insurance company. That private accountant had been certified under an equivalent experience decision by the Utah Board of Accountancy. [Merrill vs. McGinn, 30 Utah 2d 421, 518 p.2d 1392 (Utah 1974)]

experience. Maryland, Montana, and West Virginia do not require experience but do require a baccalaureate education. North Dakota, Puerto Rico, and Oklahoma, are among the jurisdictions which do not require a baccalaureate degree. In these jurisdictions, no experience is required for those applicants with an appropriate baccalaureate degree. In Colorado experience is required, but the requirement is waived for those candidates with a postbaccalaureate degree. In eight jurisdictions, it is therefore possible to become certified and practice public accounting without meeting any experience requirement.

It is difficult to determine exactly the number of states which require public accounting experience. All jurisdictions except the eight discussed above require experience, but most accept experience equivalent to public accounting experience. A reading of the statutes and regulations does not always indicate exactly how this "equivalent experience" regulation is administered. For example, Alaska currently does accept equivalent experience, but work in private accounting is generally not considered totally equivalent. It appears that approximately twenty jurisdictions will accept private accounting employment to meet the experience requirement.

Alaska's sister petroleum state, Texas, is one example of a state in which public accounting experience is not specifically required. The Texas law does require experience but the statute reads that the experience "shall be in public practice under the supervision of a CPA or public accountant or in an activity comparable thereto (emphasis added) or in any combination of such types of experience in work of a non-routine accounting nature which continually requires independent thought and judgment on important

accounting matters." (Art 41a-1-Public Accountancy Act of 1979, Section 12, paragraph (5)(A). Regulations of the Texas State Board of Public Accountancy define comparable experience, "Experience in other positions may be approved by the Board as experience comparable to experience gained in the practice of public accountancy under the supervision of a CPA or public accountant upon certification by the person or persons supervising the candidate that the experience was of a nonroutine accounting nature which continually required independent thought and judgment on important accounting matters. Experience for which approval is sought under this section must be described in detail and the applicant must inform the Board of one or more certified public accountants or public accountants having knowledge of the applicant's experience." (Sec. 511.123 of the Rules of the Texas State Board of Public Accountancy).

Under the Texas regulations, an individual without public accounting experience can be certified as a CPA provided that his/her private industry accounting experience is of a non-routine nature which requires independent judgment on important matters. An individual so certified in Texas would be unable to obtain a reciprocal CPA certificate in other states which require public accounting experience.

Under a two-tier licensing system, an applicant can be granted a CPA certificate without meeting any experience requirement. This is tier I. A tier I certificate would be granted when an individual had successfully completed the Exam and Education requirements for certification. This tier I certificate would not qualify an individual to practice public accounting. A tier II license would

only be granted after an experience requirement had been fulfilled and this license would allow an individual to engage in the practice of public accounting. NASBA's Model Accountancy Act favors this approach.[13]

Illinois adopted the first two-tier plan in 1943.[14] Certification was granted without experience, but a permit to practice public accounting required experience. No jurisdiction followed the Illinois lead until Iowa adopted the two-tier system 31 years later in 1974. Seven more states [Arkansas(1975), Wyoming(1975), Nebraska(1977), Missouri(1978), Louisiana(1979), Minnesota(1980) and Utah (1981)] and the District of Columbia(1978) have adopted the Illinois Plan.[15] Connecticut adopted the plan in 1981, but repealed it in 1983. No other state has adopted the two-tier Illinois Plan. Currently ten jurisdictions have adopted the Illinois Plan two-tier system.

[13] This is one area where NASBA and the AICPA were unable to reconcile their differences in the December 1983 exposure draft of a joint model bill. Under one provision (favored by the AICPA) that bill requires no experience. An optional provision to the permit to practice section requires experience in the practice of public accountancy or its equivalent. NASBA favors this alternate provision.

[14] An interesting feature of the two-tier system in Illinois is that the CPA certificate (tier I) is granted by the University of Illinois. The tier II permit to practice is granted by the State of Illinois.

[15] Kansas has adopted a plan similar to the Illinois plan. In that state an individual with an accounting baccalaureate degree who has passed the CPA examination receives a certificate known as the "Kansas certificate." This certificate which does not require an experience requirement is a certificate of having "passed the CPA examination." An experience requirement is required before a permit to practice in Kansas as a certified public accountant is granted.

Seven other jurisdictions have adopted plans sometime referred to as two-tier systems.[16] In these jurisdictions, experience is required for both certification and the permit to practice. The two-tier terminology in these states is in reference to the continuing education requirements. The permit to practice in these seven jurisdictions requires continuing professional education. Such continuing education is not required for CPA's who do not engage in public practice. These states should not be considered two-tier in any discussion of the experience requirement. Only the ten jurisdictions above are true two-tier states which require experience for the permit to practice, but not for certification.

The Experience Requirement in Alaska

The experience requirement in Alaska has evolved in a manner similar to the other accounting jurisdictions. A requirement for public accounting work experience has been replaced by detailed regulations which attempt to define relevant experience. Alaska's Regulations are particularly complicated. An individual with a baccalaureate degree in accounting[17] must accumulate four experience points, including 850 hours performing the attest function. One year of public accounting experience under the direct supervision of a CPA counts for two experience points; one year experience working in private accounting or governmental accounting

16 These seven jurisdictions include Maryland, Mississippi, Montana, North Dakota, Oklahoma, Puerto Rico, and West Virginia.

17 Alaska Board of Accountancy regulations define an accounting major as 24 semester hours of accounting courses, 3 semester hours of business law, 3 semester hours of economics, and 3 semester hours of either statistics, computer science, or algebra. (Sec 12 AAC 04.185)

under the direct supervision of a CPA counts for one and one-third experience points; one year experience working as an accountant not under the direct supervision of a CPA counts as one point.

The 850 hours performing the attest function must include 50 hours experience in planning audit programs and 150 hours experience in the analysis, review, or preparation of audited or unaudited financial statements. These attest function hours have generally been interpreted so that only employment in public accounting and some types of governmental accounting has qualified. Although individuals can accumulate the four experience points with three years of private accounting experience, private accountants have generally not been able to accumulate the required 850 attest function hours.

Opponents to Alaska's current law are principally those individuals who work in private accounting and have accumulated or will accumulate the required four experience points. These individuals are unable, however, to accumulate the attest function hours. Some of these individuals have moved to Alaska from other states where the public accounting experience requirement has been eliminated. Some were licensed as CPA's in their previous locations but they are unable to obtain reciprocal Alaska certification because their experience does not qualify under Alaska regulation.

The proposed legislation in Alaska would establish an Illinois Plan two-tier certification system. The CPA certificate would be granted to an individual who had fulfilled the education requirement

and successfully passed the Uniform CPA Examination and the ethics exam.[18] No experience would be required; however, certification would not license an individual to practice public accounting. Section 08.04.375 of the proposed legislation states that "a biennial permit to practice public accounting in this state shall be issued by the Board to a CPA with public accounting experience that meets requirements established by regulations of the Board or other experience that the Board determines to be substantially equivalent." Presumably, this experience requirement would be substantially similar to the current requirement which includes the 850 attest function hours.

Discussion of Two Tier Systems

The two tier system sidesteps the issue of the value of experience as a qualifying certification criteria. Since the Tier I certificate would not allow an individual to practice public accounting, the question of the value of experience in the development of public accounting proficiency is not relevant. The

[18] The proposed law also requires that the applicant be a person of good character. Some states have eliminated any character requirement because of problems of interpretation. The joint AICPA/NASBA draft model bill retains the good character requirement but defines it precisely to assure that the requirement will be narrowly and precisely construed, avoiding problems of both vagueness and overbreadth." Section 5(b) of the joint model bill reads, "Good character for purposes of this Section means lack of a history of dishonest or felonious acts. The Board may refuse to grant a certificate on the ground of failure to satisfy this requirement only if there is a substantial connection between the lack of good character of the applicant and the professional responsibilities of a licensee, and if the finding by the Board of lack of good character is supported by clear and convincing evidence. When an applicant is found to be unqualified for a certificate because of a lack of good character, the Board shall furnish the applicant a statement containing the findings of the Board, a complete record of the evidence upon which the determination was based, and a notice of the applicant's right of appeal."

value of experience remains a relevant question only with regard to the Tier II license. By establishing an experience requirement for the permit to practice, two-tier legislation accepts the view that experience is a necessary ingredient in the development of public accounting proficiency. This view is in accord with the NASBA position on a Model Public Accountancy Bill. During the past several years the public accounting profession has been repeatedly attacked with allegations of substandard work performance.[19] NASBA's policy is that an experience requirement is a necessary part of a triad of regulations including required continuing education, positive enforcement, and experience to combat substandard performance.[20] However, a Tier I certificate holder does not engage in public accounting services, so the question of substandard public performance is not relevant for the CPA not in public practice.

[19] See for example, The Accounting Establishment by the staff of the Subcommittee on Reports, Accounting and Management of the Committee on Governmental Affairs of the United States Senate, 1976 (commonly referred to as the Metcalf Report) and The Commission on Auditors' Responsibilities: Report, Conclusions and Recommendations, AICPA, 1978 (commonly referred to as the Cohen Commission Report).

[20] Regulators have recognized that the proliferation of technical authoritative standards requires continuing effort by CPAs to stay abreast of current authoritative developments. 44 jurisdictions (including Alaska under both the current and proposed statues) have mandatory continuing professional education requirements. The AICPA as well as NASBA endorses such requirements. NASBA also endorses positive enforcement programs to monitor compliance of practicing CPAs with GAAP and GAAS. Under such a program a Board of Accountancy" may review the publically available professional work of licensees on a general and random basis, without any requirement of a formal complaint or suspicion of impropriety on the part of any particular licensee." (Joint draft model bill quoted) In the joint Model Bill the positive enforcement provision is shown as optional because of a difference in the legislative policies of NASBA (which favors it) and of the AICPA (which has no formal policy). Some practitioners of public accounting are concerned about the excessive intrusiveness of such a program. Such programs currently exist in only a few states, but in Florida and Louisiana such programs are considered very effective in ferreting out substandard work. The Alaska statute does not provide for such a program nor is such a program included in Senate Bill 318.

If, however, the general public is not concerned with the performance and proficiency of a Tier I CPA, one must question how the public interest is benefitted from the certification of such private accountants. The public interest rationale for certification and regulation hinges on the public's ability to assume a level of technical knowledge and proficiency in individual public accountants. Why should government expend any effort in certifying accountants who are not in public practice? What is the rationale for government certification of private accountants?

There is a self interest argument that can be made for the certification of private accountants. The CPA certificate in our society grants to an individual much more than the right to practice public accounting. One might argue that the CPA designates an individual as a professional accountant and not simply as a professional public accountant. Some individuals undoubtedly believe CPA stands for certified professional rather than public accountant. If this is true, the private accountant is being denied the status and prestige of a professional. Certainly private accountants, who must possess a level of technical competence on par with public accountants, are deserving of professional recognition. A tier I CPA certificate for individuals who have qualified under education and examination requirements would grant status and prestige as professional accountants.

Private organizations have attempted to grant such status through adoption of such titles as Certified Management Accountant (CMA) and Certified Internal Auditor (CIA). However, these titles

which are granted only after meeting education and exam requirements arguably as strenuous as for the CPA,[21] may not be perceived as professionally equivalent to CPA by the general public. If one asks a non-accountant what a CMA or CIA designates, the response is likely to be a blank expression or a reference to the Central Intelligence Agency. That same individual would probably say that the CPA designates a professional accountant. Is it fair to deny to individuals in private accounting the title that the public equates with a professional accountant? This question is especially relevant when one realizes that the title CPA was originally granted as a result of the self-interest political pressure of public accountants rather than as a result of a general public pressuring for protection. Isn't the self interest argument of the private accountant just as valid as the self-interest argument of the public accountant?

[21] The CMA exam is sponsored by the National Association of Accountants and was first administered in 1972. The 17 1/2 hour exam includes five 3 1/2 hour sections; (1) Economics and Business Finance, (2) Organization and Behavior Including Ethical Considerations, (3) Public Reporting Standards, Auditing, and Taxes, (4) Periodic Reporting for Internal and External Purposes, and (5) Decision Analysis, Including Modeling and Information Systems. Two years of management accounting work experience must be completed and successful passing of the exam is required to attain the CMA designation.

The CIA exam is sponsored by the Institute of Internal Auditors and was first administered in 1974. The 12 hour exam includes four 3 hour sections; (1) Principles of Internal Auditing, (2) Internal Audit Techniques, (3) Principles of Management, and (4) Disciplines Related to Internal Auditing. Two years of internal audit experience must be completed and successful passing of the exam is required to attain the CIA designation.

In addition to the exam and experience requirements, both the CMA and CIA certificates also require a baccalaureate education.

There are several other professional accounting designations including CBA (Chartered Bank Auditor, CDP (Certificate in Data Processing), Enrolled Agent (one enrolled to practice before the IRS), CFA (Chartered Financial Analyst), and CISA (Certified Information Systems Auditor). See "An Evaluation of Professional Certification Programs in Accouting" by J. Guy and L. Kistler in the September 1975 Journal of Accountancy for additional discussion of these programs.

Though self-interest might have been the original impetus for public accountancy laws, there does currently appear to be a concensus that the public interest is served through such laws. State Accountancy Boards in several states have been subjected to sunset reviews in recent years and no state has eliminated its public accountancy statute. As the body of accounting and auditing knowledge has expanded and as the accounting profession has been attacked for alleged substandard performance, regulation of the public accountancy profession does appear to be a valid public interest. Therefore, the effect of a two-tier certification system on the regulation process protecting that public interest must be considered. Under a two-tier system there exist two different groups of accountants who possess exactly the same title, but who are not eligible to engage in the same accounting services. The result may be the substitution of one regulation implementation problem for another.

Under a two-tier system the problem of fair implementation of the experience requirement would be eliminated insofar as tier I certification is concerned. However, under the two-tier systems, State Boards have a new problem insuring that tier I licensees do not engage in services restricted to tier II licensees. When Connecticut repealed its two-tier system in 1983, this problem was cited as a reason for the repeal movement. In a March 17, 1983 legislative hearing on the repeal bill, George Viely, President of the Connecticut Society of CPA's stated, "the confusion and difficulties of policing the present system have convinced the Board of Accountancy to change back to the single tier system whereby the granting of a certificate and the licensing to practice use the same

criteria." Other two-tier states have suggested similar policing problems. Two-tier certification was briefly discussed at a January 1984 joint AICPA/NASBA meeting and representatives of two-tier states, notably Missouri, voiced this implementation concern.

Another criticism of the two-tier system is the alleged confusion of the general public. Bernard Blum, chairman of the Connecticut State Board of Accountancy, stated in the same March 17, 1983 repeal hearing, "the public is confused when they see a certificate that says Certified Public Accountant and the person is not licensed to practice." This concern, however, might be overstating the public's level of understanding regarding the different types of accountants without a two-tier system. Kevin O'Brien, an attorney in Connecticut, testifed in a March 10, 1981 hearing in which the Connecticut legislature was considering the bill which established its two-tier system, "I understand the problem you raised regarding how does the public know about all this. I submit that I as an attorney who's been in business for six years, have some problem telling what accountants are now. I have a good friend who's a public accountant. Well, I didn't know for years that he wasn't a certified public accountant. And he does my taxes. I don't know what the difference is. And I submit that one more level isn't going to hurt people too much."

Conclusion

This paper has attempted to examine the qualifications criteria for certification of accountants. Good arguments can be made for and against any experience requirement and for and against the two-tier certification system proposed in Senate Bill 318. This section of the paper expresses the opinions of the author. The reader should be

aware that those opinions are clouded by the perspective and self-interest of one who is certified in Alaska, who did work in public accounting to meet the experience requirement, and who has spent the last ten years teaching accounting in Alaska. The reader should also be cautioned that the opinions expressed are solely those of the author and do not represent the position of the University of Alaska-Fairbanks or its Accounting Faculty.

Experience in public accounting is necessary before an individual becomes proficient enough in accounting to individually practice public accounting. Students, upon graduation, generally are well versed in the theory of accounting and auditing. Often the classroom can prepare an individual to pass the CPA exam, but the classroom doesn't develop the professional judgment and proficiency that the public should expect of a CPA. Many students upon graduation have never experienced a real accounting system. While the first years of employment in public accounting may be devoted to fairly routine accounting and auditing work, those years expose the recent hire to live accounting systems. Additionally, while the recent hire may not be exercising any administrative control over client engagements, he is learning about the various factors that must be considered when he is placed in such a control position. I favor retention of an experience requirement before an individual is certified to practice public accounting.

I am persuaded that the CPA certificate does represent the indicator of a professional accountant in our society. Other professional designations (such as CMA) should be equally prestigious but at the present time they are not so regarded. It is unfair to deny the symbol of accounting professionalism to private accountants.

Therefore, I do favor a two-tier system which would allow the private accountant to attain the CPA designation. However, in my opinion, professionalism of the private accountant is as dependent upon experience as it is for the public accountant. No accountant should be designated as a CPA without first completing an experience requirement.

Therefore, I favor a two-tier system, but not the system proposed in Senate Bill 318. The tier I certificate should be granted after an experience qualification has been fulfilled; however, that requirement should be similar to the Texas requirement. (See page 17). This would allow private accountants in Alaska to become certified, but only after two or three years of accounting experience of a non-routine nature which required independent judgment on important matters. The tier II license to practice public accounting should be granted only after two or three years of public accounting experience including some time devoted to audit planning and control. Such a two-tier system would insure that the CPA designation is only granted to individuals who had developed the professional judgment that comes from practical experience and would insure that practicing public accountants would have experience in performing the restricted activities of public accounting.

Additionally, I believe a good case can be made for requiring an applicant without public accounting experience to pass the CMA or CIA exam. (See footnote 21). If the granting of a CPA certificate to private accountants is to certify accounting professionalism, it is reasonable to expect the applicant to possess the technical knowledge of a private accounting professional. The CMA and CIA exams require

Two areas of such conflict are the lack of a five year education requirement advocated by both NASBA and the AICPA and the lack of a positive enforcement program, advocated by NASBA but not by the AICPA. I would personally favor inclusion of a positive enforcement program in any revision to Alaska's Statute.

Senate Bill 318 or some substitute would affect every professional accountant in Alaska. The general public will be affected by any change in existing regulations. This paper has attempted to discuss some of the relevant issues. Interested parties are encouraged to express their opinions and concerns to the legislature.

SB 318 TITLE & SPONSOR SUMMARY 14:17 5/22/84 PAGE 1 OF 2

AMENDED TITLE:
AN ACT RELATING TO THE PRACTICE OF PUBLIC ACCOUNTING, AND
PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: FAHRENKAMP.
CO-SPONSORS: ZACKETT.
CURRENT STATUS: 3/26/83 IN (S) LABOR & COM

SB 318 SENATE ACTION 14:27 5/22/84 PAGE 2 OF 2

DATE	SEQ	PAGE	LEGISLATIVE ACTION
03/24/83	01	1537	FIRST READING -- COMMITTEE REPORTS LABOR & COMMERCE RULES
****	**	**	**** **** ****

SENATOR
DON GILMAN

Juneau Ph.
(907) 465-4935
(907) 465-4529

Alaska State Legislature

HOME ADDRESS
P.O. BOX 630
KENAI, ALASKA 99611
(907) 283-4182

DURING SESSION
POUCH V
JUNEAU, ALASKA 99811

State Senate

March 9, 1984

MEMORANDUM

To: Senator Richard Eliason
Chairman, Senate Labor
& Commerce Committee

From: Senator Don Gilman

Would you please enter the attached letter as testimony for the hearing on SB 318, "An Act relating to the practice of public accounting; and providing for an effective date."

Thank you.

National Society of Public Accountants

1010 N. Fairfax Street, Alexandria, Virginia 22314 (703) 549-6400

Office of the Alaska State Director
John E. Baxter
P.O. Box 503
Homer, Alaska 99603
(907) 235-8643

Jan. 23, 1984

Senator Bob Mulcahy
Pouch V
Juneau, Alaska 99811

Dear Bob,

Thank you for your immediate response to our phone conversation of January 9, 1984 regarding SB 318.

To bring you up to date as to why I am opposing portions of SB 318, Following is a breif resume' of my experience and position:

Years of experience in accounting	25+ years
Included in above experience:	
private industry	6 years
self-employed accountant, all within Alaska	17+ years
Director-Alaska Society of Independent Accountants	4 years
Alaska State Director-National Society of Public Accountants	1½ years
Accrediated in accounting by Accreditation Council for Accountants	6+ years
Accredited in taxation by Accreditation Council for Accountants	2+ years
Enrolled to practice before the I.R.S.	19+ years

Now to SB 318 objections:

In Sec. 08.04.560 (pg 17) starting on line 5, line 19 and line 6 on page 18, the phrase ",report expressing assurance on a financial statement based on a review of the statement, compilation report on a financial statement based on a compilation of the report".

Sec. 37 AS 08.04.620 (7) (page 20) starting on line 18 "(B) review a financial statement and issue a report expressing assurance on the statement; or (C) compile a financial statement and issue a compilation report on the statement."

Sec. 08.04.630 (page 20) the phrase on lines 24 and 25 and again on line 28 that states", or is about to engage,".

Sec. 43 AS 08.04.680 (page 23) starting on line 14, (7) (A), (B), (C), (D) - the entire section (7).

National Society of Public Accountants

1010 N. Fairfax Street, Alexandria, Virginia 22314 (703) 549-6400

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The individual, and cumulative, effect of these phrases and sections is to:

1. Immediately create a drastic reduction in income, thus creating economic hardships.

2. Long term effect is to put myself, and many other independent accountants, completely ou of business.

3. Increase the cost of accounting to the small businessman to the extent that many would hire semi-skilled, or even unskilled, persons to try to keep their books, thus creating inaccurate records.

4. Due to the high costs of accounting it would become extremely difficult for small businesses to have financial statements prepared, that would be acceptable to financial institutions, so that these businesses could acquire working capital, and/or capital improvement, loans.

5. Creates, within Alaska, an absolute monopoly for the C.P.A.'s in the accounting industry.

6. In Sec. 08.04.630 I feel that the phrase "or is about to engage" is strictly a tool for harrassment of the unlicensed accountant. To me it says that an unlicensed accountant could be taken to court for a "crime" that has not occured.

7. Sec. 43 AS 08.04.680(7)(a), to me, says that since I am not a licensed C.P.A. or P.A. that I have no knowledge or skill in accounting. I very strongly object to this statement as I have, and continue to, take educational courses to upgrade the quality of the work I do and to stay abreast of the continuing changes within the accounting industry.

8. If the changes in this bill are passed, as submitted, many of the independent unlicensed accountants will be put out of business or have such reduced income that they will no longer be able to meet their financial commitments..

   Most, if not all, unlicensed accountants have made financial commitments for either leasing equipment and offices or purchasing equipment and offices, not to mention personal items such as their home and auto. As you know financial institutions loaned these people money to acquire these items based on the collateral offered and, more importantly, on their ability to repay the loans.

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The ability to repay is based primarily on current financial statements and immediate past years financial statements. Now the State of Alaska is trying to say that these people can no longer maintain, or increase, this level of income thus possibly causing defaults on their loans or leases. If these defaults should occur they, but not the cause, will be on that persons financial record thus effecting that persons financial capabilities for many years to come.

So my question is this, if the State of Alaska passes SB 318 as submitted is it willing to payout the ,possibly, millions of dollars for the damages it has promulgated?

Bob, any help you can give us in deleting these monopolistic sections of SB 318 would be greatly appreciated. If there is anything else I can do to assist you in this task please let me know immediately.

Would you, or your staff, please call me, collect, to keep me up to date on what is occuring with this bill?

Respectfully,

John E. (Jack) Baxter
Alaska State Director N.S.P.A.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M March 30, 1984

SUBJECT: Practice of public accounting
(Draft SSSB 318)

TO: Senator Bettye Fahrenkamp

FROM: Tamara Brandt Cook
Deputy Director
Division of Legal Services

Here is the section by section analysis that you requested for the draft of SSSB 318.

Section 1 The section requiring regulations adopted and proceedings held under AS 08.01 to be done under the Administrative Procedure Act is modified to indicate that other law may exempt a particular proceeding. AS 08.01 applies to the Board of Public Accountancy and under section 26 of this draft, hearings of that board are not subject to the APA. Consequently, the change to this section is necessary.

Section 2 The termination date for the Board of Public Accountancy is extended to June 30, 1986.

Section 3 Six, rather than five, members of the board must be certified public accountants and four of them must have permits to practice under AS 08.04. The board now has only one public member, rather than two.

Section 4 The requirement that no board member that has served two successive complete terms may be reappointed until one year after the expiration of the last term has been deleted.

Section 5 The requirement that vacancies on the board be filled within 60 days is deleted. The requirement that a member continues to serve until his successor formally advises the board of acceptance of appointment and appears at the next meeting is deleted.

Section 6 The board is required to elect a chairman, rather than a presiding officer. The provision that one person could serve as secretary and treasurer is deleted.

Section 7 The types of regulations that may be adopted by the board are itemized.

Section 8 The board must submit an annual report to the governor containing specified information that will be made available to any person on request.

Section 9 At least 90 days before adopting a regulation, the board must mail a copy of the proposal to each person certified under AS 08.04 with a request that advisory comments be submitted at least 45 days before the proposed effective date.

Section 10 Requirements for a certificate of "certified public accountant" are set out.

Section 11 The board may waive the educational requirement for a certificate if it determines that the educational qualifications of the applicant are acceptable. The reason for and method by which the board may refuse a certificate for lack of good character are clarified.

Section 12 Examinations are to be held at least twice each year. Requirements for eligibility to take the examination are set out.

Section 13 The amount of an application to take an examination is set by the board, rather than being $50.

Section 14 Application for certification by a nonresident constitutes the appointment of the lieutenant governor as agent for service of process in an action arising out of the practice of public accounting in this state by the nonresident.

Section 15 Qualifications for a permit to practice public accounting for an individual, a partnership and a corporation are set out.

Section 16 A person with a certificate from this or another state may use the title "certified public accountant", except that a person offering financial services to the public

may not use the title unless the person has a permit to practice, even if he actually has a certificate.

Section 17 A person with a certificate before the effective date of this Act does not have to obtain a new one.

Section 18 A partnership or corporation engaged in public accounting must register with the board and must meet itemized requirements.

Section 19 The board must establish the fee for registration of partnerships and corporations.

Section 20 Each office for the practice of public accounting must be registered biennuially, rather than annually.

Section 21 The board shall establish a fee for the registration of an office.

Section 22 The title "certified public accountant" may not be used in connection with an officer registered under AS 08.04 unless it is under the direct supervision of a person with a permit to practice.

Section 23 The board's authority to suspend a certificate, permit, or registration is limited so that the board may do so only for a period not to exceed two years. The grounds for suspensions are altered somewhat.

Section 24 A hearing requirement is specifically added to the section authorizing the board to revoke the registration or permit to practice of a partnership or corporation that does not meet qualifications for registration. Under existing law a hearing is required under the APA.

Section 25 A hearing requirement is specifically added to the section authorizing the board to revoke the registration and permit to practice of a partnership or corporation for grounds other than those set out in the previous section. Under existing law a hearing would be held under the APA.

Section 26 A procedure for hearings by the board is established. These hearings are not conducted under the APA, as hearings of other occupational boards are. A person adversely affected by an order of the board after a hearing may petition for court review within 30 days. The review shall be de novo on the record. Upon taking disciplinary

action, the board is required to notify the board of accountancy of any other state the person holds a certificate, registration or permit in.

Section 27 A person may not use the title "certified public accountant" unless he has a certificate, but he need not have a permit to practice.

Section 28 A person offering financial services may not use the title "certified public accountant" even if he is certified unless he has a permit to practice.

Section 29 A partnership or corporation may not use the title "certified public accountant" unless it is registered and has a permit to practice. This is the same as existing law, but deletes a reference to a repealed section.

Section 30 This is the same as existing law, but deletes a reference to a repealed section.

Section 31 This is the same as existing law, but deletes a reference to a repealed section.

Section 32 This is the same as existing law, but deletes a reference to a repealed section and adds a cross-reference to the sections prohibiting a certified person from using a title if that person does not have a permit and is offering financial services.

Section 33 This is essentially the same as existing law, but deletes a reference to a repealed section.

Section 34 This is essentially the same as existing law, but deletes a reference to a repealed section.

Section 35 This is the same as existing law, but deletes a reference to a repealed section.

Section 36 This is the same as existing law, but minor drafting changes have been made for consistency of work usage.

Section 37 Paragraphs are added to the section itemizing things that are not prohibited under AS 08.04 relating to disclosure of confidential information, use of a title, and the offering of financial services by persons without permits to practice.

Section 38 The section on injunctions is made applicable to violations of the entire chapter, rather than to only certain sections.

Section 39 Violation of the chapter is made a class A misdemeanor.

Section 40 This has been redrafted slightly for clarity.

Section 41 This permits an accountant's working papers to be transferred to the accountant's corporation, or the successor in interest to the partnership or corporation, as well as to the accountant's partner.

Section 42 An accountant is prohibited from disclosing confidential information obtained in the course of performing public accounting, except in certain circumstances.

Section 43 Additional definitions are added to AS 08.04.

Section 44 A member of the board serving on the effective date of this Act continues to serve until the term expires.

Section 45 Certain provisions are repealed.

Section 46 The Act takes effect January 1, 1985.

TBC:ojh
J5/037

SB

360

ALASKA STATE LEGISLATURE - SENATE

COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811
(907) 465-3844

OFFICIAL BUSINESS

MEMORANDUM

TO: Senator Bill Ray, Chair
Senate Judiciary Committee

FROM: Senator Dick Eliason

RE: SB 360 - "An Act relating to checking accounts"

DATE: April 18, 1984

The Senate Labor and Commerce Committee recently held two hearings on SB 360 - "An Act relating to checking accounts". Two distinct versions of this legislation were considered by the Committee. In both instances the banking community opposed sections of SB 360. However, this does not mean the bankers are against legislation which addresses the problem of "bad check" writers. On the contrary, the Alaska Bankers Association supports the intent and objectives of this legislation.

The original version of SB 360 was based on legislation enacted by the State of Minnesota. This version required the banks to verify an applicant's financial stability before a checking account could be opened. As there is no central data base where an applicant's financial history is recorded, representatives from the banks testified that it would be virtually impossible to accurately and efficiently verify the applicant's information before opening a checking account.

The main objections to a committee substitute drafted by the Senate Labor and Commerce Committee centered on the requirement that a photo ID be a requirement for opening a checking account and the stipulation that each check indicate when the account was opened. Testimony indicated that the absolute requirement for a photo ID may be a potential hardship for bush area customers where some people do not have drivers' licenses.

The stipulation that banks print checks indicating the date in which the account was established would prove unenforceable according to a bank representative. If a customer objects strongly to this requirement, the checks could be printed by any publishing house.

In summary, in recognition of the problem stemming from "bad check" writers, I offer a committee substitute based on legislation recently enacted by California. The major thrust of this version is to increase the civil penalties for writing a NSF check.

The various versions of SB 360 are attached for your consideration.

CSSB 360 (L&C)

SECTIONAL ANALYSIS

Section 1

a) Before opening a checking account, the applicant must provide identifiable information, including a driver's license or another identifying document which includes the applicant's photograph.

b) The applicant who falsifies the information is guilty of a class B misdemeanor.

c) A bank may not authorize the checking account if the applicant cannot provide "photo ID". If the applicant is a minor, the parent/ guardian can provide identification.

The bank can waive this requirement if the applicant has had another type of account with the bank for at least a year.

d) The bank shall print checks indicating the month and year the account was opened. If the applicant had a checking account for 2 years or more within 5 years of the date of the new request, the bank can print the month and year of the earlier account.

e) These requirements, except as provided in (c) of this section, do not limit the bank's discretion whether to grant or deny the application.

Section 06.55.020

a) A person who issues a bad check and who fails to pay the amount of the check within 30 days after receiving a written demand for payment is liable for the amount of the check plus 3 times the check value. The damages, exclusive of the amount of the check, may not be less than $100 or more than $500.

b) The check is prima facie evidence if the payee records identifying information on the check and verifies the information against a photo ID.

Section 06.55.500

This section lists a variety of definitions. "Financial institution" is defined as a "bank, savings and loan association, credit union, or other business association authorized to offer transaction accounts in the state.

Re: SB360

Linda Brink —789-0098 - Credit Bureau
(Check Rite Service - maintain list)

Interior Credit Bureau - Fbxs - parent group

Ms Onlie Wallace — 272-5551 ext 212
NBA - Visa Mastercharge re: check
guarantee program

AN ACT

S. F. No. 230
CHAPTER No.
225

SB 360 is based on the Minnesota law

relating to commerce; establishing standards and procedures for the release of financial information; establishing procedures for opening checking accounts; providing for civil liability for issuance of dishonored checks; clarifying conciliation court jurisdiction for actions on dishonored checks; requiring release of certain account information to check holders and law enforcement authorities; amending Minnesota Statutes 1982, sections 487.30, subdivision 4; 488A.12, subdivision 3; 488A.29, subdivision 3; and 609.535; proposing new law coded in Minnesota Statutes, chapters 48 and 332; proposing new law coded as Minnesota Statutes, chapter 13A; repealing Minnesota Statutes 1982, section 48.511.

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

Section 1. [13A.01] [DEFINITIONS.]

Subdivision 1. [SCOPE.] For the purpose of this chapter, the following terms have the meanings given them.

Subd. 2. [FINANCIAL INSTITUTION.] "Financial institution" means any office of a bank, savings bank, industrial loan company, trust company, savings and loan, building and loan, credit union, or consumer finance institution, located in the state.

Subd. 3. [FINANCIAL RECORD.] "Financial record" means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution.

Subd. 4. [GOVERNMENT AUTHORITY.] "Government authority" means any agency or department of the state or a local unit of government, or any officer, employee, or agent of it.

Subd. 5. [CUSTOMER.] "Customer" means any natural person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name.

Subd. 6. [LAW ENFORCEMENT INQUIRY.] "Law enforcement inquiry" means a lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute or any rule or order issued pursuant to it.

Sec. 2. [13A.02] [ACCESS TO FINANCIAL RECORDS BY GOVERNMENT AUTHORITIES PROHIBITED.]

Subdivision 1. [ACCESS BY GOVERNMENT.] Except as authorized by this chapter, no government authority may have access to, or obtain copies of, or the information contained in, the financial records of any customer from a financial institution unless the financial records are reasonably described and:

(1) The customer has authorized the disclosure;

(2) The financial records are disclosed in response to a search warrant;

(3) The financial records are disclosed in response to a judicial or administrative subpoena; or

(4) The financial records are disclosed pursuant to section 609.535 or other statute or rule.

Subd. 2. [RELEASE PROHIBITED.] No financial institution, or officer, employee, or agent of a financial institution, may provide to any government authority access to, or copies of, or the information contained in, the financial records of any customer except in accordance with the provisions of this chapter.

Nothing in this chapter shall require a financial institution to inquire or determine that those seeking

disclosure have duly complied with the requirements of this chapter, provided only that the customer authorization, search warrant, subpoena, or written certification pursuant to section 609.535, subdivision 6, or other statute or rule, served on or delivered to a financial institution shows compliance on its face.

Subd. 3. [NOTICE TO CUSTOMER.] Within 180 days after a government authority obtains access to the financial records of a customer pursuant to a search warrant or a judicial or administrative subpoena, it shall notify the customer of its action unless a delay of notice is obtained pursuant to section 3. The notice shall be sufficient to inform the customer of the name of the government authority or government authorities having had access to the records, the financial records to which access was obtained, and the purpose of the law enforcement inquiry, including transfers of financial records made pursuant to subdivision 5. Notice may be given by providing the customer with a copy of the search warrant or subpoena.

Subd. 4. [DUTY OF FINANCIAL INSTITUTIONS.] Upon receipt of a request for financial records made by a government authority, the financial institution shall, unless otherwise provided by law, proceed to assemble the records requested within a reasonable time and be prepared to deliver the records to the government authority upon receipt of the search warrant or subpoena required under this section.

Subd. 5. [USE OF INFORMATION.] Financial records originally obtained pursuant to this chapter may be transferred to another government authority provided the transferred records are pertinent and necessary to the receiving authority in initiating, furthering, or completing a law enforcement inquiry.

When financial records subject to this chapter are transferred to another government authority, the transferring authority shall include the name of the receiving authority and the financial records transferred in the notice required by subdivision 3 of this section or, if the transfer occurs after the notice has been sent to the customer, the transferring

authority shall, upon written request by the customer, inform the customer of the name of the government authority to which the financial records were transferred.

Subd. 6. [STATUS OF RECORDS.] All financial records obtained by a government authority pursuant to this section are subject to the provisions of section 13.82, subdivision 5.

Sec. 3. [13A.03] [DELAYED NOTICE.]

Subdivision 1. [APPLICATION.] Upon application of the government authority, a customer notice pursuant to section 2, subdivision 3, may be delayed by order of an appropriate court if the judge finds that:

(1) The law enforcement inquiry being conducted is within the lawful jurisdiction of the government authority seeking the financial records;

(2) There is reason to believe that the records being sought are relevant to a legitimate law enforcement inquiry; and

(3) There is reason to believe that the notice will result in (i) endangering life or physical safety of any person; (ii) flight from prosecution; (iii) destruction of or tampering with evidence; (iv) intimidation of potential witnesses; or (v) otherwise seriously jeopardizing an investigation or official proceeding or unduly delaying a trial or ongoing official proceeding.

An application for delay must be made with reasonable specificity.

Subd. 2. [ORDER.] If the court makes the findings required in subdivision 1, it shall enter an ex parte order granting the requested delay for a period not to exceed 180 days and an order prohibiting the financial institution from disclosing that records have been obtained. If the court finds that there is reason to believe that the notice may endanger the life or physical safety of any person, the court may specify that the delay be indefinite.

Extensions of the delay of notice of up to 90 days each may be granted by the court upon application.

Subd. 3. [NOTICE.] Upon expiration of the period of delay

of notification under this section, the customer shall be served with a copy of the notice required by section 2, subdivision 3.

Sec. 4. [13A.04] [EXCEPTIONS.]

Subdivision 1. [STATUTORY VIOLATIONS.] Nothing in this chapter precludes any financial institution, or any officer, employee, or agent of a financial institution, from notifying a government authority that the institution, or officer, employee, or agent has information which may be relevant to a possible violation of any statute or rule and providing access to financial records relevant to the possible violation.

Subd. 2. [RELEASE INCIDENT TO ANOTHER PROCEEDING.] Nothing in this chapter precludes a financial institution, as an incident to perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary, from providing copies of any financial record to any court or government authority.

Subd. 3. [GOVERNMENT ASSISTANCE PROGRAMS.] Nothing in this chapter precludes a financial institution, as an incident to processing an application for assistance to a customer in the form of a government loan, loan guaranty, or loan insurance agreement, or as an incident to processing a default on, or administering a government guaranteed or insured loan, from providing access to an appropriate government authority with any financial record necessary to permit the authority to carry out its responsibilities under a loan, loan guaranty, or loan insurance agreement.

Whenever a customer applies for participation in a government loan, loan guaranty, or loan insurance program, the government authority administering the program shall give the customer written notice of the authority's access rights under this subdivision. No further notification shall be required for subsequent access by that authority during the term of the loan, loan guaranty, or loan insurance agreement.

Financial records obtained pursuant to this subdivision may be used only for the purpose for which they were originally

obtained.

Subd. 4. [OTHER EXCEPTIONS.] Nothing in this chapter:

(a) Prohibits the disclosure of any financial records or information which is not identified with or identifiable as being derived from the financial records of a particular customer;

(b) Prohibits examination by or disclosure to the commissioner of banks of financial records or information in the exercise of his supervisory, regulatory, or monetary functions with respect to a financial institution;

(c) Shall apply when financial records are sought by a government authority under the rules of civil or criminal procedure in connection with litigation to which the government authority and the customer are parties;

(d) Shall apply when financial records are sought by a government authority in connection with a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of the records or at a legal entity which is not a customer;

(e) Shall apply to any subpoena or court order issued in connection with proceedings before a grand jury;

(f) Shall apply to subpoenas issued in civil cases pursuant to the rules of civil procedure; or

(g) Shall apply when a government authority is seeking only the name, address, account number, and type of account of any customer or ascertainable group of customers associated with a financial transaction or class of financial transaction.

Sec. 5. [48.512] [PROCEDURES FOR OPENING CHECKING ACCOUNTS.]

Subdivision 1. [DEFINITIONS.] For the purpose of this section the following terms have the meanings given:

(a) "Financial intermediary" means any person doing business in this state who offers transaction accounts to the public.

(b) "Transaction account" means a deposit or account established and maintained by a natural person or persons under

an individual or business name for personal, household, or business purposes, on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instruments, payment orders of withdrawal, or other similar device for the purpose of making payments or transfers to third persons or others, including demand deposits or accounts subject to check, draft, negotiable order of withdrawal, share draft, or other similar item. A transaction account does not include the deposit or account of a partnership having more than three partners, the personal representative of an estate, the trustee of a trust or a limited partnership.

Subd. 2. [REQUIRED INFORMATION.] Before opening or authorizing signat y power over a transaction account, a financial intermediary shall require one applicant to provide the following information on an application document signed by the applicant:

(a) full name;

(b) birth date;

(c) address of residence;

(d) address of current employment, if employed;

(e) telephone numbers of residence and place of employment, if any;

(f) social security number;

(g) driver's license or identification card number issued pursuant to section 171.07. If the applicant does not have a driver's license or identification card, the applicant may provide an identification document number issued for identification purposes by any state, federal, or foreign government if the document includes the applicant's photograph, full name, birth date, and signature;

(h) whether the applicant has had a transaction account at the same or another financial intermediary within 12 months immediately preceding the application, and, if so, the name of the financial intermediary;

(i) whether the applicant has had a transaction account closed by a financial intermediary without the applicant's

consent within 12 months immediately preceding the application, and, if so, the reason the account was closed; and

(j) whether the applicant has been convicted of a criminal offense because of the use of a check or other similar item within 24 months immediately preceding the application.

A financial intermediary may require an applicant to disclose additional information.

An applicant who makes a false material statement that he does not believe to be true in an application document with respect to information required to be provided by this subdivision is guilty of perjury. The financial intermediary shall notify the applicant of the provisions of this paragraph.

Subd. 3. [CONFIRM NO INVOLUNTARY CLOSING.] Before opening or authorizing signatory power over a transaction account, the financial intermediary shall attempt to verify the information disclosed for subdivision 2, clause (i). The financial intermediary may not open or authorize signatory power over a transaction account if (i) the applicant had a transaction account closed by a financial intermediary without his consent because of his issuance of dishonored checks within 12 months immediately preceding the application, or (ii) the applicant has been convicted of a criminal offense because of the use of a check or other similar item within 24 months immediately preceding the application.

If the transaction account is refused, the reasons for the refusal shall be given to the applicant in writing.

Subd. 4. [IDENTIFICATION IS REQUIRED.] A financial intermediary shall not open or authorize signatory power over a transaction account if none of the applicants provides a driver's license, identification card, or identification document as required by subdivision 2. When a minor is the applicant and the minor does not have a driver's license or identification card issued pursuant to section 171.07, the identification requirements of subdivision 2, clause (g), and this subdivision are satisfied if the minor's parent or guardian provides identification of his own that meets the identification

requirement. The financial intermediary may waive the identification requirement if the applicant has had another type of account with the financial intermediary for at least one year immediately preceding the time of application.

Subd. 5. [NO LIABILITY.] The requirements of this section do not impose any liability on financial intermediaries offering transaction accounts or, except as provided in subdivisions 3 and 4, limit a financial intermediary's discretion as to whether to grant or deny an application subject to this section.

[WORTHLESS CHECK COLLECTIONS]

Sec. 6. [332.50] [CIVIL LIABILITY FOR ISSUANCE OF WORTHLESS CHECK.]

Subdivision 1. [DEFINITIONS.] "Check" means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable instrument.

"Credit" means an arrangement or understanding with the drawee for the payment of the check.

Subd. 2. [ACTS CONSTITUTING.] Whoever issues any check that is dishonored and is not paid within 30 days after mailing a notice of dishonor and a copy of sections 6 and 609.535 in compliance with subdivision 3, is liable to the holder for the amount of the check plus a civil penalty of up to $100, interest at the rate payable on judgments pursuant to section 549.09 on the face amount of the check from the date of dishonor, reasonable attorney fees if the amount of the check is over $1,250, and a service charge not exceeding $15 if written notice of the service charge was conspicuously displayed on the premises when the check was issued.

This subdivision prevails over any provision of law limiting, prohibiting, or otherwise regulating service charges authorized by this subdivision.

Subd. 3. [NOTICE OF DISHONOR REQUIRED.] Notice of nonpayment or dishonor and a copy of sections 6 and 609.535 shall be sent by the payee or holder of the check to the drawer by certified mail, return receipt requested, or by regular mail, supported by an affidavit of service by mailing, to the address

printed or written on the check. The issuance of a check with an address printed or written on it is a representation by the drawer that the address is the correct address for receipt of mail concerning the check. Failure of the drawer to receive a regular or certified mail notice sent to that address is not a defense to liability under this section, if the drawer has had actual notice for 30 days that the check has been dishonored.

An affidavit of service by mailing shall be retained by the payee or holder of the check.

Subd. 4. [PROOF OF IDENTITY.] The check is prima facie evidence of the identity of the drawer if the person receiving the check:

(a) records the following information about the drawer on the check, unless it is printed on the face of the check:

(1) name;

(2) home or work address;

(3) home or work telephone number; and

(4) identification number issued pursuant to section 171.07;

(b) compares the drawer's physical appearance, signature, and the personal information recorded on the check with the drawer's identification card issued pursuant to section 171.07; and

(c) initials the check to indicate compliance with these requirements.

Subd. 5. [DEFENSES.] Any defense otherwise available to the drawer also applies to liability under this section.

Sec. 7. Minnesota Statutes 1982, section 487.30, subdivision 4, is amended to read:

Subd. 4. [JURISDICTION; WORTHLESS DISHONORED CHECKS.] The conciliation court has jurisdiction to determine a civil action commenced by a plaintiff, resident of the county, to recover the amount of a worthless dishonored check issued in the county within the meaning of section 609.535, notwithstanding that even though the defendant or defendants are not residents of the county provided that, if the notice of nonpayment or dishonor required by described in section 609.535, subdivision 3, is sent

to the maker or drawer as specified therein and the notice states that the payee or holder of the check ~~or other order of payment of money~~ may commence a conciliation court action in the county where the ~~worthless~~ dishonored check was issued to recover the amount of the check. This subdivision does not apply to a check ~~or other order for payment of money~~ that has been dishonored by a stop payment order. Notwithstanding any law or rule of civil procedure to the contrary, the summons in any action commenced under this subdivision may be served anywhere within the state of Minnesota. The conciliation court clerk shall attach a copy of the dishonored check ~~or other order for payment of money~~ to the summons before it is issued.

Sec. 8. Minnesota Statutes 1982, section 488A.12, subdivision 3, is amended to read:

Subd. 3. [JURISDICTION.] (a) Excepting actions involving title to real estate, the court has jurisdiction to hear, conciliate, try, and determine civil actions at law where the amount in controversy does not exceed the sum of $1,250. The territorial jurisdiction of the court is coextensive with the geographic boundaries of the county of Hennepin.

(b) Notwithstanding the provisions of ~~clause~~ paragraph (a), or any rule of court to the contrary, the conciliation court of Hennepin county has jurisdiction to determine an action brought pursuant to section 504.20 for the recovery of a deposit on rental property located in whole or in part in Hennepin county, and the summons in the action may be served anywhere within the state of Minnesota.

(c) Notwithstanding the provisions of ~~clause~~ paragraph (a), or any rule of court to the contrary, the conciliation court of Hennepin county has jurisdiction to determine a civil action commenced by a plaintiff, a resident of Hennepin county, to recover the amount of a ~~worthless~~ dishonored check issued in the county ~~within the meaning of section 609.535, notwithstanding that~~ even though the defendant or defendants are not residents of Hennepin county ~~provided that~~, if the notice of nonpayment or dishonor required by described in section 609.535, subdivision