

Senate

COMMERCE AND LABOR COMMITTEE

857

May 7, 1975

The meeting was called to order in Room #213 on Wednesday, May 7, 1975 at 1:10 p.m., with Senator Gene Echols in the chair.

PRESENT: Senator Gene Echols
Senator Gary Sheerin
Senator William Raggio
Senator Richard Bryan
Senator Warren Monroe
Senator Richard Blakemore

OTHERS PRESENT: See Exhibit A

S.B. 544 - Permits creation of economic development assistance act companies.

Mr. Frank Daykin advised the committee of the following proposed amendments. That the title be changed to The Nevada Thrift Companies; that Section 18, subparagraph 1 be changed from \$50,000 to \$1,000,000; and that Section 18, subparagraph 3 be changed from \$50,000 to \$100,000. Mr. Daykin advised that the difference between the two bonds is that the bond referred to in subparagraph 1 is for the general performance of the institution, while the bond referred to in subparagraph 3 is for the fidelity of the employee.

Senator Sheerin commented that the amendment relative to the name and higher performance board be included, as well as the other amendments that the committee has discussed prior to this meeting. Mr. Daykin advised that the following language be included also: "The President must have had 10 years' experience in the thrift company business in this state or an analogous business licensed under the laws of another state." Mr. Daykin further stated that the manager should have 5 years' experience in some regulated lending business. In view of the aforementioned amendments, Mr. Daykin advised that Section 9 will have to be deleted. With reference to Sections 19 and 20, Mr. Daykin advised that the wording "development assistance" be deleted. Section 3 of this bill will also be deleted.

Senator Monroe moved to amend and do pass.
Senator Blakemore seconded the motion.
Senator Echols did not vote.
Senator Foote absent.
The vote was carried by the remaining members present.

S.B. 372 - Exempts banks and certain loan associations from usury law.

The secretary was advised that the committee is suggesting an amendment to this bill on the floor of the Senate.

over

Senator Raggio advised that, following the discussion held on this bill last week, he has followed Senator Gojack's suggestion and contacted Dean Weems and advised him of the committee's concern and the various proposals they have received. Also, Senator Raggio mentioned to him that Senator Gojack has suggested Dr. Cargill. He, in turn, consulted with Dr. Cargill, and neither one is opposed to the concept of this bill to relax the usury law. They indicated that they might be somewhat lukewarm about it but that there was a lot of good reasons to consider the free market concept with ceilings off on usury. They doubted that we would reach this crisis during the next two years but that it was not altogether impossible. They recognize that the consumer does not understand the need, and because we have to be responsible to their views, that doing this in the manner that was first suggested might be too vigorous. They saw nothing from an economic viewpoint that was irresponsible about doing this. They suggested some differential be considered along the lines that the committee has been talking about. Another was tied to a crime rate that was definable or to some federal index such as the discount rate. Dean Weems indicated that a cap in the area of 15% would be reasonable in this area. Senator Raggio stated that he has reported this as clearly as it was indicated to him because he felt that there was some obligation on the part of the committee to follow up on suggestions that were given to the committee. Senator Echols thanked Senator Raggio for this input and advised that a letter has been received from Dean Weems which indicates the same. (See Exhibit B for copy of letter).

Senator Foote entered the meeting at 1:25 p.m.

Senator Bryan stated that, in talking to the financial community, they would be agreeable to some kind of a trigger which would be pegged to the prime rate to

COMMERCE AND LABOR COMMITTEE

May 7, 1975

Page Two

859

the lowest of the 3 largest national banks. The trigger would come in when the prime reached 9%, and would provide for a 5-point spread. The main concern is whether that spread is defensible. Senator Bryan feels that, before the committee can accept the 5-point spread, they should have input as to why the 5-point spread is necessary.

Senator Blakemore offered that a 6-point spread would be better. Senator Bryan stated that this would not be defensible on the floor unless the committee can determine why. Senator Blakemore feels they are not capable of dealing at the prime; they must deal far above the prime. Senator Blakemore feels this could be defended on the basis that they don't deal in the prime.

Senator Monroe feels that the determination of the spread must be based on a competitive basis. Many will go to California if we don't have a competitive spread. Senator Monroe advised that Utah has 18% and feels that that figure is defensible.

Senator Raggio referred to Public Law 93-501 of the 93rd Congress and suggested that the following language contained therein could be used to solve the problem: "The rate of 5% in excess of the discount rate on 90 day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the bank is located..." (See Exhibit C, page 2, Sec. 24 for copy of same). Senator Raggio sees nothing wrong in using this because if we are looking for justification for a spread, the experience of the Congress in dealing with this is a good basis for our taking a similar position. Senator Sheerin questioned if this law enacted by Congress could be overwritten with political consideration by the overall economic problems in the United States. Senator Raggio replied that he does not think it is the same situation. Senator Sheerin asked what kind of loans they are talking about. Senator Bryan advised that the 90-day bills go out to bid in the Wall Street Journal in the money rate section and the market controls that. It is free from any kind of manipulation by any of the lending institutions because it is a competitive bid situation. Mr. Fran Breen commented that the financial institutions feel that it is a bad index. Senator Bryan feels there should be input from the financial community as to whether this is a reliable index.

Mr. Donald Wilkerson, Nevada Mortgage Bankers Association, stated that the primary portion of money they lend is bank-borrowed funds. Mr. Wilkerson referred to what is known as the commercial paper rate and, for example, General Motors can borrow at commercial paper rate, and this is a daily fluctuating thing. They have the discount rate which is the rate the reserve bank charges for member banks themselves for their borrowing. Mr. Wilkerson stated that possibly this is what is being referred to, otherwise it is something that is very hard to administer.

Over

860

Senator Bryan queried that since this act was passed last October, has it been effective since that time. Mr. Breen replied that most places are afraid to lend under it; furthermore, he was advised by Bob Sullivan that during the credit pinch, the discount rate never got over 8 1/2%. Senator Raggio asked which would the financial institutions feel would give the greatest relief to the situation -- the federal law of 5% over the discount rate at the Federal Reserve bank or 3% over the prime. Mr. Breen replied that it is his feeling that they would not get help on either; they would prefer 6% over prime. Senator Raggio asked Mr. Breen if they were still using compensating balances. Mr. Breen advised that the Nevada law passed in 1913, and we are now an island sitting at 12% while Arizona and Utah have 18% - either the interest rate is higher or there are exemptions; therefore, we have no effective usury rates.

Senator Bryan asked Mr. Breen why he is saying that the higher the prime, the greater the spread. Mr. Breen replied that as the prime increases, the cost of money will go up and not on a ratio but on an increased ratio. If the prime rate goes up, it costs more to get money because if you get up to 18%, a 6% spread is not to give you the availability of money - so that 6% spread will be 12% because you are competing for money. California has no limits whatsoever, and the other states have exemptions so you are looking at a competitive market.

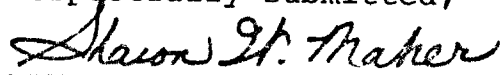
Due to the time element, Senator Echols adjourned the meeting at 2:15 p.m. and advised that the meeting would continue upon p.m. adjournment.

APPROVED BY:



Senator Gene Echols, Chairman

Respectfully submitted,



Sharon W. Maher, Secretary

ROOM # 213
DAY Wed.

DATE 5-7-75

861

NAME	ORGANIZATION	ADDRESS
DONALD WILKERSON	NEV. MORTGAGE BANKERS ASSOC.	Box 2956 RENO
Walter G. ...	NBA FNS	RENO
FRAN BREEN	Nev. Banker	RENO
GIND DEL FARLO	NEV. BANKERS ASSOC.	RENO 322-6996
Keith J. Henriksen	Nat. Employment Assoc.	RENO
Mary Gajack	DEPT OF COMMERCE Senator	CC

Senator Echols - Commerce Committee

Dear Senator -

There would certainly be a problem - a serious one - if the prime rate rose to say 15 to 18% and the usury rate remained at 12%.

On the other hand I recognize that protection of the small borrower - the consumer - is necessary -

A reasonable compromise

over

and one adopted by very
many states is to distinguish
between consumer type and
commercial type loans. The
former are limited (in Nevada, etc.)
and the latter could be excluded.
(over)

Two types of exclusions are available - One, on the basis of amounts - i.e. all loans under \$50,000 are subject to interest rate limits - all over are excluded or limited to a higher figure - The other is to attempt a definition of consumer loans - i.e. for houses, household goods, personal loans etc - as opposed to loans to business, corporations, etc -

Of the two possible the
distinction by dollar amount is
easiest to administer —

Sincerely

Robert C. Weenus



Public Law 93-501
93rd Congress, S. 3838
October 29, 1974

An Act

To authorize the regulation of interest rates payable on obligations issued by affiliates of certain depository institutions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—REGULATION OF INTEREST RATES ON CERTAIN OBLIGATIONS

Debt obligations.
Issuance and sale, regulation.

SEC. 101. Section 19(a) of the Federal Reserve Act (12 U.S.C. 461) is amended by inserting "and, regardless of the use of the proceeds," immediately before "shall be deemed a deposit".

(b) The amendment made by subsection (a) shall not apply to any bank holding company which has filed prior to the date of enactment of this Act an irrevocable declaration with the Board of Governors of the Federal Reserve System to divest itself of all of its banks under section 4 of the Bank Holding Company Act, or to any debt obligation which is an exempted security under section 3(a)(3) of the Securities Act of 1933.

12 USC 461
note.

12 USC 1843.

15 USC 77c.

SEC. 102. (a) The sixth sentence of section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) is amended by striking out "for the purpose of obtaining funds to be used in the banking business".

88 STAT. 1557
86 STAT. 1558

(b) The amendment made by subsection (a) shall not apply to any bank holding company which has filed prior to the date of enactment of this Act an irrevocable declaration with the Board of Governors of the Federal Reserve System to divest itself of all of its banks under section 4 of the Bank Holding Company Act, or to any debt obligation which is an exempted security under section 3(a)(3) of the Securities Act of 1933.

12 USC 1828
note.

SEC. 103. Section 5B of the Federal Home Loan Bank Act (12 U.S.C. 1425b) is amended as follows:

(1) by adding at the end of subsection (a) thereof the following new sentences: "The provisions of this subsection shall apply, in the discretion of the Board, to an obligation issued by an affiliate of an institution which is an insured institution as defined in section 401(a) of the National Housing Act (12 U.S.C. 1724(a)). The Board is authorized to define by regulation the terms used in this section, except that the Board may not, under the additional authority conferred by this sentence and the preceding sentence, define as a deposit any debt obligation which is an exempted security under section 3(a)(3) of the Securities Act of 1933.";

Insured affiliate of an institution.

(2) by striking out "institution subject to this section" in subsection (b) thereof and inserting in lieu thereof "person or organization"; and

(3) by striking out "nonmember institution" and "institution" in subsection (c) thereof and inserting in lieu thereof "person or organization" in both places.

TITLE II—INTEREST RATE AMENDMENTS REGARDING STATE USURY CEILINGS ON BUSINESS LOANS

SEC. 201. Section 5197 of the Revised Statutes, as amended (12 U.S.C. 85), is amended by inserting in the first and second sentences before the phrase "whichever may be the greater", the following: "or in the case of business or agricultural loans in the amount of \$25,000

or more, at a rate of 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the bank is located,"

Sec. 202. The Federal Deposit Insurance Act (12 U.S.C. 1811-31) is amended by adding at the end thereof the following:

State-chartered insured banks, interest rates, limitation. 12 USC 1831a.

"Sec. 21. (a) In order to prevent discrimination against State-chartered insured banks with respect to interest rates, if the applicable rate prescribed in this subsection exceeds the rate such State bank would be permitted to charge in the absence of this subsection, a State bank may in the case of business or agricultural loans in the amount of \$25,000 or more, notwithstanding any State constitution or statute, which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill or exchange, or other evidence of debt, interest at a rate of not more than 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the bank is located, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run.

Interest overcharge, forfeiture. 88 STAT. 1558 88 STAT. 1559

"(b) If the rate prescribed in subsection (a) exceeds the rate such State bank would be permitted to charge in the absence of this paragraph, and such State fixed rate is thereby preempted by the rate described in subsection (a), the taking, receiving, reserving, or charging a greater rate of interest than is allowed by subsection (a), when knowingly done, shall be deemed 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 thereon. If such greater rate of interest has been paid, the person who paid it may recover in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of the interest paid from the State bank taking or receiving such interest."

Interest payment recovery.

Sec. 203. Title IV of the National Housing Act (12 U.S.C. 1724-1730(d)) is amended by adding at the end thereof the following:

Savings and loan accounts, interest rate charges, limitation. 12 USC 1730e.

"Sec. 412. (a) If the applicable rate prescribed in this section exceeds the rate an insured institution would be permitted to charge in the absence of this section, such institution may in the case of business or agricultural loans in the amount of \$25,000 or more, notwithstanding any State constitution or statute, which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the institution is located, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run.

Interest overcharge, forfeiture.

"(b) If the rate prescribed in subsection (a) exceeds the rate such institution would be permitted to charge in the absence of this section, and such State fixed rate is thereby preempted by the rate described in subsection (a), the taking, receiving, reserving, or charging a greater rate of interest than that prescribed by subsection (a), when knowingly done, shall be deemed 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 thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount

Interest payment recovery.

of the interest paid from the institution taking or receiving such interest."

Sec. 204. Section 308 of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661), is amended by adding at the end thereof the following:

15 USC 687.

"(h) (1) In order to facilitate the orderly and necessary flow of long-term loans and equity funds to small business concerns, as defined in the Small Business Act, if the maximum interest rate permitted by the Small Business Administration exceeds the rate a small business investment company would be permitted to charge in the absence of this subsection, such small business investment company may in the case of business loans in the amount of \$25,000 or more, notwithstanding any State constitution or statute, which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any such loan, interest at a rate of not more than 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the small business investment company is located.

Small business investment companies, interest charges, limitation. 15 USC 631 note.

"(2) If the rate prescribed in paragraph (1) exceeds the rate such small business investment company would be permitted to charge in the absence of this subsection, and such State fixed rate is thereby preempted by the rate described in paragraph (1), the taking, receiving, reserving or charging a greater rate than is allowed by paragraph (1), when knowingly done, shall be deemed a forfeiture of the entire interest which the loan carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of interest paid from the small business investment company taking or receiving such interest."

Interest overcharge, forfeiture.

88 STAT. 1559
88 STAT. 1560

Interest payment recovery.

Sec. 205. If any provision of this title or the application of such provision to any person or circumstance shall be held invalid, the remainder of the title and the application of such provision to any person or circumstance other than that as to which it is held invalid shall not be affected thereby.

12 USC 1831a note.

Sec. 206. The amendments made by this title shall apply to any loan made in any State after the date of enactment of this title, but prior to the earlier of July 1, 1977, or the date (after the date of enactment of this title) on which the State enacts a provision of law which prohibits the charging of interest at the rates provided in the amendments made by this title.

Effective date. 12 USC 1831a note.

TITLE III—APPLICABILITY OF STATE USURY CEILINGS TO CERTAIN OBLIGATIONS ISSUED BY BANKS AND AFFILIATES

Sec. 301. Section 19 of the Federal Reserve Act is amended by adding at the end thereof the following new subsection:

12 USC 461.

"(k) No member bank or affiliate thereof, or any successor or assignee of such member bank or affiliate or any endorser, guarantor, or surety of such member bank or affiliate may plead, raise, or claim directly or by counterclaim, setoff, or otherwise, with respect to any deposit or obligation of such member bank or affiliate, any defense, right, or benefit under any provision of a statute or constitution of a State or of a territory of the United States, or of any law of the District of Columbia, regulating or limiting the rate of interest which may be charged, taken, received, or reserved, and any such provision is hereby preempted, and no civil or criminal penalty which would otherwise be applicable under such provision shall apply to such member bank or affiliate or to any other person."

12 USC 371b-1.

SEC. 302. Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end thereof the following new subsection:

"(k) No insured nonmember bank or affiliate thereof, or any successor or assignee of such bank or affiliate or any endorser, guarantor, or surety of such bank or affiliate may plead, raise, or claim, directly or by counterclaim, setoff, or otherwise, with respect to any deposit or obligation of such bank or affiliate, any defense, right, or benefit under any provision of a statute or constitution of a State or of a territory of the United States, or of any law of the District of Columbia, regulating or limiting the rate of interest which may be charged, taken, received, or reserved, and any such provision is hereby preempted, and no civil or criminal penalty which would otherwise be applicable under such provision shall apply to such bank or affiliate or to any other person."

SEC. 303. Section 5B of the Federal Home Loan Bank Act (12 U.S.C. 1425b) is amended by adding at the end thereof the following new subsection:

"(e) No member or nonmember association, institution, or bank or affiliate thereof, or any successor or assignee, or any endorser, guarantor, or surety thereof may plead, raise, or claim, directly or by counterclaim, setoff, or otherwise, with respect to any deposit or obligation of such member or nonmember association, institution, bank or affiliate, any defense, right, or benefit under any provision of a statute or constitution of a State or of a territory of the United States, or of any law of the District of Columbia, regulating or limiting the rate of interest which may be charged, taken, received, or reserved, and any such provision is hereby preempted, and no civil or criminal penalty which would otherwise be applicable under such provision shall apply to such member or nonmember association, institution, bank, or affiliate or to any other person."

88 STAT. 1560
88 STAT. 1561

Effective date.
12 USC 371b-1
note.

SEC. 304. The amendments made by this title shall apply to any deposit made or obligation issued in any State after the date of enactment of this title, but prior to the earlier of (1) July 1, 1977 or (2) the date (after such date of enactment) on which the State enacts a provision of law which limits the amount of interest which may be charged in connection with deposits or obligations referred to in the amendments made by this title.

Approved October 29, 1974.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 93-1259 accompanying H.R. 15928 (Comm. on Banking and Currency) and No. 93-1440 (Comm. of Conference).

SENATE REPORT No. 93-1120 (Comm. on Banking, Housing and Urban Affairs).
CONGRESSIONAL RECORD, Vol. 120 (1974):

Sept. 10, considered and passed Senate.

Sept. 11, considered and passed House, amended, in lieu of H.R. 15928.

Oct. 9, Senate agreed to conference report.

Oct. 11, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 10, No. 44:

Oct. 29, Presidential statement.

(REPRINTED WITH ADOPTED AMENDMENTS)
SECOND REPRINT

S. B. 544

SENATE BILL NO. 544—COMMITTEE ON
COMMERCE AND LABOR

APRIL 15, 1975

Referred to Committee on Commerce and Labor

SUMMARY—Permits creation of economic development assistance act
companies. Fiscal Note: No. (BDR 56-1510)

EXPLANATION—Matter in *italics* is new; matter in brackets [] is
material to be omitted.

AN ACT relating to financial institutions; permitting the creation of thrift companies; providing for their supervision by the director of the department of commerce; providing for the issuance, suspension and revocation of licenses; providing minimum standards for financial stability; providing limitations on activities; providing penalties; and providing other matters properly relating thereto.

*The People of the State of Nevada, represented in Senate and Assembly,
do enact as follows:*

1 SECTION 1. Title 56 of NRS is hereby amended by adding thereto
2 a new chapter to consist of the provisions set forth as sections 2 to 83,
3 inclusive, of this act.

4 SEC. 2. This chapter may be cited as the Nevada Thrift Companies
5 Act.

6 SEC. 3. (Deleted by amendment.)

7 SEC. 4. As used in this chapter, unless the context otherwise requires,
8 the words and terms defined in sections 5 to 15, inclusive, of this act
9 have the meanings ascribed to them in those sections.

10 SEC. 5. "Amount of cash advance" means the amount of cash or
11 its equivalent actually received by a borrower or paid out at his direction
12 or on his behalf.

13 SEC. 6. "Amount of loan obligation" means the amount of cash
14 advance plus the aggregate of charges added thereto pursuant to authority
15 of this chapter.

16 SEC. 6.5. "Borrowings" means liability to any thrift investor or finan-
17 cial institution.

18 SEC. 7. "Charges" include:

19 1. The aggregate interest, fees, bonuses, commissions, brokerage, dis-
20 counts, expenses and other forms of costs charged, contracted for or