Members present:

Chairman Jeffrey
Vice Chairman Robinson
Assemblyman Bennett
Assemblyman Bremner
Assemblyman Chaney
Assemblyman Horn
Assemblyman Sena
Assemblyman FitzPatrick
Assemblyman Rusk
Assemblyman Tanner
Assemblyman Weise

The meeting was called to order at 2:10 p.m. and Chairman Jeffrey announced that due to a sub-committee meeting being held at 3:00, the committee would first hear testimony on SB 26, then AB 597 and AB 622.

SB 26: George Vargas, general counsel for the Nevada Banking Association, was first to address this issue and his comments are attached and marked as Exhibit "A" (a letter to Senator Wilson). In answer to a question from Mr. Weise, Mr. Vargas stated that he felt the matter of competition between banks and thrift companies will take care of itself. There was a discussion between Mr. Vargas and Mr. Weise regarding the relative risk which is taken by the loan officers of the bank in determining what the prime rate actually is at the time of finalizing the loan to the customer. Mr. Vargas stated that there is currently litigation under way between Valley Bank and the Riverside, wherein Valley Bank is being charged with usurious conduct.

In answer to a question from Mr. FitzPatrick, Mr. Vargas stated that this portion of the law only pertained to commercial loans and not to any of those provided for under the Installment Loan Act which has an 18% ceiling, i.e. automobile loans and credit card charges.

Mr. Weise asked Mr. Vargas if someone wouldn't have to prove intent in order to prevail in a case charging a loan officer with charging a usurious rate of interest. Mr. Vargas stated that they would probably have to, but that there were many aspects to be considered and it would not be a simple thing to prove or disprove.

Mr. George Aker, President of Nevada National Bank, in response to a question from Mr. Weise stated that the reason loans are being made at such a high rate in Nevada currently was because Nevada is extremely capital short. He also pointed out that one of the reasons for that is that other states do not want to work with the banks of Nevada because of current law and also outside investors feel the same way due to the fact they can invest their money elsewhere are receive a higher yield on it. He said by raising the interest rate allowable, as proposed in this bill, you would encourage all types of borrowing within the state because there would be more money available to lend.

Mr. Ken Sullivan, President of Valley Bank, explained to the committee the problem their bank is faced with currently relative to a loan for $135,000,000 to Del Webb due to our existing 12% ceiling. He stated that other state's banks are allowed to charge up to 122% of the prime rate and therefore are making more money than the Nevada banks off this loan. In answer to a question from Mr. Weise, Mr. Sullivan stated that this loan is divided up between several banks, in and out of this state, and that the paper held by each bank is considered a separate loan and therefore it is difficult to determine exactly what is the "final loan document". Mr. Sullivan stated that with a "floating interest rate", a person borrowing money would pay more when the interest rates were high, but they would pay less if the money market were to loosen and interest rates declined.

Mr. Aker pointed out in a normal kind of participation on a very large loan, the Nevada bank would hold the whole loan and resell interests therein to other banks as shares. However, with the current law, the other out of state banks will not work with Nevada banks in this manner.

Mr. Sullivan also pointed out to the committee that it's true on charge card accounts the banks can charge 18% on retail sales; however, they are limited to 12% interest on cash advances.

Mr. Sullivan stated to the committee that with the current tight money market in the state and the loan capabilities of the banks being what they are, many people cannot get loans because the money is being channeled into the larger loans for the simple reason that it is easier to write one large loan than several small ones, plus the fact that the large loan, more often than not, is promptly repaid with few problems for the lender.

In answer to a question from Mr. Tanner, Mr. Sullivan stated that it is the opinion of their attorneys that they cannot make floating interest rate loans.

After a discussion among the committee with Mr. Sullivan regarding the inflationary trend in interest rates, Mr. Sullivan stated that he felt the ceiling on interest rates would be reached when people finally stopped borrowing money and he had no idea where or when that would be.

Mr. Aker pointed out that when this area was discussed in 1975, there was some agreement that 18% ceiling might be workable; however, since interest have risen so much since that time, that figure would no longer provide as much leeway.

In answer to a question from Mr. Rusk, Mr. Sullivan stated that it was his opinion that the Del Webb Corporation felt the current law was not good for them. He also stated that there has been only a .2% increase in banking in Nevada in the recent past because of the limit of the law. He stated further that people are going to invest their money where they can get the highest return

and they are, therefore, taking their money to California banks. He also stated that more money is available in California for lending and so many people in the banking industry are sending their clients to California banks to obtain loans and then the banks are buying back those loans from the California banks. In answer to a question from Dr. Robinson, Mr. Sullivan stated that though Regulation Q is still in effect, the Federal govenment is currently studying it and is, in fact, trying to eliminate it.

In answer to another question from Dr. Robinson, Mr. Sullivan stated that the banks are currently making only short-term loans because of the lack of capital and that though they could make investments outside the state which would result in higher interest income, they prefer to keep what money they do have available active within the state.

George Vargas stated that the association had originally planned to submit a bill of their own patterned after the California statute, which is attached and marked as Exhibit "B". But, that when this bill was introduced, they decided to support it instead.

At this point, Mr. Tanner explained to the committee that he conducts business in many different states, some of which have restrictive usury laws and some of which do not. He stated that it had been his experience that when there was a ceiling and interest rates climbed over that point, all capital for the general public and business effectively dried up; while in other states, which did not have such limitations imposed, at the same time, had ample money for lending to all sectors.

Mr. Weise pointed out that it is very difficult to convince the general public of the advisability of having no restriction on interest rates, and asked Mr. Sullivan if he felt that a 3-1/2% cushion over the prime rate would be enough of a buffer to allow capital to be available. Mr. Sullivan stated that that would be enough of a buffer for the big borrowers; however, he did not feel it would show much relief to the general borrower.

Mr. Aker stated that presently capital for equipment, etc. in the gaming industry is $100,000,000 short of need (and some estimates say that it may be more severe than that)and he felt that encouraging investments of capital from out of state is necessary to keep any kind of growth pattern working for the state.

Mr. Sullivan stated that the small borrowers will be benefitted if the ceiling is raised to 18% because it will result in more competition in that area of lending due to the availabilty of funds which will be generated. Mr. Aker pointed out that passage of this bill would bring additional financing capability to the state's banks.

At this point in the meeting Dr. Robinson, Mr. Horn and Mr. Rusk were excused from the meeting to attend the Mobile Home sub-committee meeting.

Joseph O. Sevigny, Superintendent of Banks for Nevada, was next to address the committee and submitted to the committee for their information a packet of material which is attached and marked as Exhibit "C". He stated that he was not speaking on behalf of or against the bill, but to provide the committee with information in this area. Mr. Sevigny highlighted from the exhibit those areas which are circled and/or underlined. He pointed out to the committee that the letter from Walter E. Heller, Inc. which is included in the packet was not solicited by his office, but was sent to him when that company had contacted his office regarding their problems with the state laws. He pointed out that, according to the news release from the Comptroller of the Currency included in the exhibit, the Federal government is going to take away the state's right to increase or decrease usury ceilings if the states don't do it themselves. He stated that he did not feel it was right for the federal government to take all control away from the state in this area and he admonished the committee to consider this matter very carefully.

He stated that the current law makes it very difficult, under the circumstances, for the banks in Nevada. He stated that as a regulator, it is extremely difficult for his agency to regulate the law as it is now because they have to use so many determiners in checking these loans under present law. That concluded Mr. Sevigny's comments on this bill.

Don Brodeen, Weyerhaeuser Mortgage Company of Nevada, representing the Southern Nevada Mortgage Bankers Association, stated that those organizations do support the bill. He stated that those people who are not going to get a loan from the banks, savings and loans, or the mortgage bankers are going to be going to the thrift companies and get their loans, but that it will be at a higher rate. He stated that the 18% rate which had been discussed in the meeting was really going to mainly help those who were looking for money to use for building projects, business investments, etc.; that it was not really going to help the "little guy". He also stated that there had been an amendment to the bill proposed by the Kissell Co. of Las Vegas and that he had been notified by that company that they no longer wished to have that amendment made to the bill; that their companies liked the bill as originally printed.

Rennie Ashleman, Nevada Mortgage Brokers representative, stated that they had no objection to the bill, but that section three of the bill contained an amendment which they were in favor of; however, he stated the amendment needed to be technically revised because Chapter 645B had been inadvertantly abolished by the wording in the amendment, which had not been the intent of the amendment. The wording in the amendment should have been added to that section of NRS. He stated that the Counsel Bureau

was aware of the error and he thought they were working on the correction.

Lester Goddard, Commissioner of Savings Associations, commented that he was in favor of the bill, and, in fact, there should be no usury bill, but this would be an acceptable compromise. He stated that he felt the law of supply and demand would level out the interest market if allowed to do it on its own. He said that he thought mortgage loans would be at eleven (11) percent by mid-summer and that if the ceiling were not raised to 18% or so, it would be very difficult for the mortgage industry to continue on a sound basis because when the initial loan points (2 points, or 2%) is added to the 11%, the companies are over the 12% and might, therefore, be accused of usury.

Jim Joyce, Savings and Loan League of Nevada, stated that they do find a large problem with the points (referred to by Mr. Goddard) when applied to a 10-1/2% to 11% interest rate. And, that his association would agree with Mr. Vargas and Mr. Aker's comments regarding to the market taking care of controlling the interest rates which would be charged.

In answer to a question from Mr. Weise, Mr. Goddard stated that he felt by opening up the market and allowing people who wanted to invest their money in the market to get a higher return, it would supply more money and, therefore, make it more competitive for the lenders so that they might, eventually, lower the fees involved in obtaining the loans (points).

It was noted by Mr. Weise that the record should reflect that there was no one present at the meeting who opposed this bill.

AB 597: Joseph O. Sevigny, Superintendent of Banks, stated that he was in favor of the bill and had asked for it to be introduced. He stated that the most important part of the bill was on page 2, line 7 through line 18. He stated this would allow the state banks to increase the amount of money they could invest in buildings, fixture, and furnishings, etc. and this change would allow them to be more competitive with national banks. He stated that Nevada banks are currently under-branched. According to information from the conference of state banks supervisors, in 1976 Nevada was 6th worst in the nation in branch banks per capita and that situation has not improved over the past two years. He said that one of the reasons for that lack of growth was the fixed asset ratio limitation. He stated that it was his feeling that there should be more branch offices in the state and that passage of this bill would enable the banks to expand, including more computer and automatic teller facilities. He stated that this would increase the banks' asset base by approximately 50%, comparable with national banks. In answer to a qestion from Mr. Weise, Mr. Sevigny stated that those banks which would be affected by this change would be: Valley Bank; Nevada State Bank; Bank of Nevada, Pioneer Citizens Bank; and Nevada Bank and Trust.

In answer to a question from Chairman Jeffrey, Mr. Ken Sullivan,

President of Valley Bank, stated that this had been a problem for them in their expansion program and passage of this bill would help them a great deal. The committee generally discussed various aspects of this bill.

Mr. Bob Sullivan stated that if this bill is not passed, they will not be able to open any more branches. He stated that they had been opening two to three branches per year in the past few years. He said that passage of this bill would also allow them to enlarge other portions of their business, such as computer centers to better service the people of the state.

Ken Sullivan stated that considering the advanced technology in the industry today, banking is not the same as it was when the restrictive laws were originally put on the books. And, the expense relative to those technological advances are tremendous and if they aren't allowed to invest in these areas, they can't keep up and best serve their clients.

Richard A. Carlson, Nevada State Bank, stated that he wished to concur with what had been said by the other bankers and the Superintendent of Banks, and stated that they are ranked as 6th in size in the state and they have experienced the same kinds of growth problems as Valley Bank and would encourage the passage of the bill.

Mr. Sevigny covered for the committee some of the historical background of the banking business and the development of the laws relating thereto. And, how the needs of banking and the public have changed over the past few decades.

AB 622: Assemblyman Paul May stated that this would add to the pawnbroker section of NRS provisions for personal property to be taken from the possession of the pawnbroker only by authorization and presentation of a writ for such property. He stated that many times people would simply show up and claim property, stating that it had been stolen, and walk out with the property (sometimes accompanied by a deputy and sometimes not). He stated that though the value of the property is not always great, they have been taking these losses for quite some time and this would provide relief from people taking advantage of the situation without some sort of judicial mandate. He stated that the Metro Police in Las Vegas had indicated to him that they were not in opposition to the bill. In answer to a point brought out by Chairman Jeffrey, Mr. May stated that this would provide that the person making claim to the property would have to provide a report to the police stating that the property belonged to them or that the property was included in an indictment or information as being stolen property.

Chairman Jeffrey asked if the committee would introduce a bill which had been given to Mr. FitzPatrick by the Director of Commerce which would require the licensing of insurance consultants. There were no objections to the introduction.

Chairman Jeffrey assigned further study of AB 597 to Mr. Tanner and asked him to return to the committee with his suggestions on the matter.

There being no further business to come before the committee, the meeting was adjourned at 4:20 p.m.

Respectfully submitted,

Linda D. Chandler
Linda D. Chandler
Secretary

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CHRISTOPHER L. KAEMPFER

January 3, 1979

The Honorable Thomas R. C. Wilson
State Senator
241 Ridge Street
Reno, Nevada 89501

Re: Nevada Bankers Association Proposed Amendment To Nevada's Usury Statute

Dear Spike:

I enclose herewith a copy of a bill which is proposed by the Nevada Banker's Association.

I became general counsel for the Association as of September 1, 1978, and hence, had nothing to do with previous attempted legislation on this usury subject.

I am advised that a bill of this type, which in essence exempts regulated users from the limitations of the current usury statute, was introduced in the 1975 session, I believe in the Senate, as SB 372. I understand that the proposal was chiefly opposed by Senators Raggio and Dodge and that after hearings before the Senate Commerce Committee, it was finally agreed that loans of $50,000 or more would be exempt from any interest restriction, and in this form the bill passed the Senate and was sent to the Assembly. The Assembly refused to accept this version and amended the bill to provide no restriction on interest rates for regulated lenders, i.e., the identical bill which was agreed to by all groups appearing at the first Senate Commerce Committee hearing. I am further advised that the Senate refused to concur in this amendment and that three conference committees met, the third meeting on the last day of the session, as a result of which agreement was reached among the committee members to the 1975 amendments.

EXHIBIT "A"

I am further advised that although approximately 13 different drafts of the bill were submitted to the two committees, the language which was finally adopted was drafted by the joint committee and that representatives of the financial institutions did not have an opportunity to review the language prior to passage.

Apparently, among other results, a paragraph of the pre-existing law was left out, probably unintentionally. I have re-drafted this paragraph in the proposed legislation enclosed herewith as Paragraph 2, Page 2.

In drafting the enclosed, I did not refer to or use the original version of SB 372 of the 1975 session as the same was not available to me. Rather I took the general wording of the proposal from the California exemption which, as you know, is contained in the California constitution. As the language of the California constitution is fairly verbose, I simply listed the regulated institutions who are seeking exemption by a repetition of their exemption under the Nevada Small Loan Act, NRS 675.040.

I am advised that this exemption of regulated lenders has existed in California for many, many years, and apparently has operated without creating difficulties or problems. On the other hand, there are numerous problems and difficulties with the current Nevada Act, NRS 99.050, particularly in view of the current situation with reference to high interest rates.

In the first place, the current Act requires a certification "under penalty of perjury" of the lowest prime rate on the date of execution "of the final document." A felony is created under this wording without any regard whatsoever as to whether or not any improper certification was willful, inadvertent, occurred as a result of incorrect information, or any other cause or reason. Normally, felonies are not created by statute excepting in the case of intentional or willful acts. Consequently, this very situation places a very onerous, and in my opinion, unjustified burden on every loan officer in Nevada who is currently handling day to day loan transactions where, by reason of the current high interest rate and high cost of money situation, most loans can only be made under the provisions of Subdivision 2 of NRS 99.050.

By the same token, if the loan officer should misdetermine what is meant by "the final loan document" and thereby certifies the lowest prime rate on some other document, again he would be guilty of the "penalty of perjury", a situation which in my opinion makes absolutely no sense at all when one is dealing with daily routine commercial transactions. The statute does not define "the final loan document" and hence, there are no guidelines whatsoever whereby a loan officer can rest assured that he is putting the certificate on the right document, and hence, he is not committing a felony "under the penalty of perjury."

While the three largest United States banking institutions mentioned in Subdivision 2 of this section are generally believed to be Bank of America, First National Citibank, and Chase Manhattan, I suppose that for any loan officer to be assured that he is not unwittingly committing a felony "under penalty of perjury" he should verify each day whether or not this is the case. As you know, there are other large banking institutions and it is unreasonable to suppose that with foreign deposits, etc., some bank other than the three named above might on any given day be properly listed as one of the three largest United States banking institutions.

There is another serious problem which is currently existing by reason of the current interest rate situation, and that is how does one handle, or perhaps is it legally permissible for a lender to handle, loans at a floating rate. The statute in question does not deal with this problem and if a loan is granted at a floating rate, that rate may well become in excess of the lowest daily prime rate on the date of execution of the final loan document. The question immediately arises with such a turn of events rendering the loan usurious although it was not usurious at the outset.

A further very serious problem arises in the event a loan is made pursuant to this Subsection 2 at the lowest daily prime rate plus 3.5% for six months or a year. At the end of that time, i.e., at the maturity date, the borrower comes in and asks that the loan be extended for two or three months. A change in the prime rate in the interim may simply make such extension impossible under sound banking practices unless a new lending is made, and a new interest

rate set, with the proceeds used to actually pay off the then existing loan. In many, many instances, as you know, banks do not go to all this rigmarole and formality when a customer, by reason of some temporary circumstance simply requests an extension of his loan. Hence, again the operation of this statute is very awkward in the day to day market place.

Certain of these problems have come under consideration of the Nevada Banking Division. The Superintendent of Banks has expressed an opinion that an interest rate of up to 3 1/2% over the prime rate would be effective for the entire term of the loan unless the rate is floating. While the statute is not clear, the Superintendent has expressed the opinion that it is permissible to charge a rate of up to 3 1/2% over prime on a floating basis. As to the problem of what to do when dealing with a floating prime, the Superintendent has suggested that possibly an agreement should be reached between the lender and the borrower indicating when, periodically, during the term of the loan the prime will be established and each time prime is established, that should be certified on the loan document or an addendum permanently affixed to the loan document and that the terms of that agreement should be entered on the loan document or an addendum to the loan document.

While I appreciate this suggestion as a possibility of the solution to the dilemma created by the current statute, I am sure you will agree with me that this is very awkward red tape rigmarole which would have to be considered in ordinarly loan transactions between what we usually consider regulated lenders and corporate borrowers. As a matter of fact, one would not necessarily need to restrict this to corporate borrowers. I am sure that even all individual borrowers who deal in floating rates are fairly sophisticated borrowers, yet this extra rigmarole, red tape and paper work is encountered in each instance if one is permitted at all to use floating rates under the current statute.

To demonstrate the totally unsatisfactory uncertainities of the current situation, the Superintendent comments on N.R.S. 99.050-2 "The lender shall not require any compensating balance or use any other device to increase the cost to borrower of borrowing the net amount of the

EXHIBIT A

loan" by stating, "Therefore, a commitment fee consisting of a certain number of points would be included in the interest calculation as thus defined and that points can be spread over the entire term of the loan for interest calculation purposes."

To finally underscore and highlight the uncertainty of the current statute, the Superintendent states "In determining what charges would not be included in the interest calculation, I think it reasonable and prudent to use Reg. Z, Section 226.4 -- Determination of Finance Charge."

So much for trying to carry on a day to day commercial lending business under this maze.

As you know, there is ample competition in the field in Nevada today. Plus the nine banks there are savings and loans, insurance companies, trusts, thrift companies, etc., etc. When it comes to the situation of regulated lenders, it seems that the California exemption has worked very well and without difficulty.

On the other hand, there are many knowledgable authorities who assert that usury laws are harmful when effective, and contend that interest rates in credit markets are relatively efficient when left alone to operate freely. I enclose herewith certain articles covering that subject taken from the Federal Reserve Bank of St. Louis Review, August, 1974; The Consequences of Usury Ceilings, in an article by the Chairman of the Federal Deposit Insurance Corporation, and a letter from the Superintendent of Banks of October 30, 1978 including his entire memorandum of October 25, 1978. These articles, in essence, point out that usury laws in effect place controls on the price which may be paid for funds. This in turn can cause severe dislocations while at the same time harming the very people the ceilings are intended to protect. It is further asserted that the facts demonstrate rather clearly that direct competition among financial institutions through the pricing mechanism and greater reliance on the direct operations of a free market, rather than on a system of controls and mechanisms, is a more efficient and effective way to allocating funds.

Finally I would like to call your attention to the fact that in the Nevada Thrift Company Act, adopted by the legislature in 1975, the following appears:

NRS 677.730 Loans of $5,000 or more; Charges, repayment; collateral security requirements for specified loans or obligations.

1. A licensee may lend $5,000 or more;

(a) At any rate of interest;

(b) Subject to the imposition of any charge in any amount; and

(c) Upon any schedule of repayment,

to which the parties may agree.

This law has been on our books for three years without, apparently, creating problems excepting, I think, it may well render the usury statute and its application as against other regulated lenders in Nevada an unconstitutional discrimination. I have only spoken with Senator McCorkle who favors the enclosed, and who as a member of the Senate Commerce Committee, approves its introduction by that Committee.

I am requesting that you, as Chairman, consider the introduction of this proposal as a committee bill. I would also like the opportunity of visiting with you on this subject at your convenience.

With all best wishes for a Happy New Year,

Sincerely,

George L. Vargas

GLV:mn

Enclosures

Note 29

back and subsequent nonindustrial injury to back should be completely severed and that award should be made only for temporary disability resulting from first injury. Collins v. Workmen's Compensation Appeals Bd. (1970) 87 Cal.Rptr. 601, 8 C.A.3d 618.

30. —— Orders of Commission

Court properly refused to instruct jury in language of general safety order relating to barriers over wall openings where it was plain that requested safety order was not applicable to evidence showing that defendant fell through door opening into open basement. Graves v. William J. Nicolson Co. (1965) 43 Cal.Rptr. 885, 233 C.A.2d 865.

30.5 —— Judicial review, administrative proceedings

Roofing subcontractor's employee, whose claim for future benefits in workmen's compensation appeals board proceeding from employer after recovery from third-party tort-feasor might be affected by determination in civil action that employer was free of concurrent negligence, and who if prohibited from appealing special finding that employer was free of concurrent negligence would suffer inequity of being bound by decision without any right of review, could appeal from such special finding. Short v. State Compensation Ins. Fund (1975) 125 Cal.Rptr. 15, 52 C.A.3d 104.

33. —— Parties liable

Where proceedings pending in superior court and before industrial accident commission cover same subject matter, jurisdiction of commission and superior court are exclusive, not concurrent, in every respect except as to power to determine jurisdiction. Scott v. Industrial Acc. Commission (1956) 293 P.2d 18, 46 C.2d 76.

34. —— Jurisdiction

By entertaining a workman's defense of an employer's concurrent negligence to an employer's claim to recover its workman's compensation outlay from the employee's recovery from the third-party tort-feasor the appeals board violates neither the spirit nor letter of constitutional provisions which speaks of a purpose to compensate workmen irrespective of fault and which expresses an objective to accomplish substantial justice in all cases expeditiously and without incumbrance. Roe v. Workmen's Compensation Appeals Bd. (1974) 117 Cal.Rptr. 683, 528 P.2d 771, 12 C.3d 884.

§ 5. Labor of convicts; benefit of state

Sec. 5. The labor of convicts shall not be let out by contract to any person, copartnership, company or corporation, and the Legislature shall, by law, provide for the working of convicts for the benefit of the state.

(Added June 8, 1976.)

Similar provisions formerly contained in Art. 10, § 1 [now Art. 16, § 5].

1976 addition of this section was identical in text to Art. 20, § 5, prior to its repeal June 8, 1976.

Derivation: Former section 5 of Article 20, added Nov. 7, 1972.

Law Review Commentaries

Prisoner's right of access to the courts. (1968) 4 C.W.L.R. 99.

1. In general

Constitutional provision of this section that labor of convicts shall not be let out proscribed the letting out by state of convict labor by contract to private employers regardless of whether state or convicts or both received attendant consideration, and state's practice of using convict labor for harvesting privately owned crops during periods of alleged labor shortages, for which work convicts were paid wages by growers from which state deducted expenses, all of which was done without individual contracts between growers and prisoners, was violative of this section. Pitts v. Reagan (1970) 92 Cal.Rptr. 27, 14 C.A.3d 112.

In the event of riot or other major disturbance at a state correctional institution the warden or superintendent assumes command of responding mutual aid forces, but overall mutual aid command responsibilities may also be delegated by contractual or other means to a sheriff or chief of police. 55 Ops.Atty.Gen. 169, 4-17-72.

ARTICLE XV. USURY [NEW]

Cal. Const.

Sec.
1. Interest rates.
2. Repealed.
3. Repealed.

Article 15 was added June 8, 1976.

Former Article 15 was repealed June 8, 1976.

§ 1. Interest rates

Section 1. The rate of interest upon the loan or forbearance of any money, goods or things in action, or on accounts after demand or judgment rendered in any court of the State, shall be 7 per cent per annum but it shall be competent for the parties to any loan or forbearance of any money, goods or things in action to contract in writing for a rate of interest not exceeding 10 per cent per annum.

No person, association, copartnership or corporation shall by charging any fee, bonus, commission, discount or other compensation receive from a borrower more than 10 per cent per annum upon any loan or forbearance of any money, goods or things in action.

However, none of the above restrictions shall apply to any building and loan association as defined in and which is operated under that certain act known as the

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"Building and Loan Association Act," approved May 5, 1931, as amended, or to any corporation incorporated in the manner prescribed in and operating under that certain act entitled "An act defining industrial loan companies, providing for their incorporation, powers and supervision," approved May 18, 1917, as amended, or any corporation incorporated in the manner prescribed in and operating under that certain act entitled "An act defining credit unions, providing for their incorporation, powers, management and supervision," approved March 31, 1927, as amended or any duly licensed pawnbroker or personal property broker, or any bank as defined in and operating under that certain act known as the "Bank Act," approved March 1, 1909, as amended, or any bank created and operating under and pursuant to any laws of this State or of the United States of America or any nonprofit cooperative association organized under Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code in loaning or advancing money in connection with any activity mentioned in said title or any corporation, association, syndicate, joint stock company, or partnership engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, live stock, poultry and bee products on a cooperative nonprofit basis in loaning or advancing money to the members thereof or in connection with any such business or any corporation securing money or credit from any Federal intermediate credit bank, organized and existing pursuant to the provisions of an act of Congress entitled "Agricultural Credits Act of 1923," as amended in loaning or advancing credit so secured, nor shall any such charge of any said exempted classes of persons be considered in any action or for any purpose as increasing or affecting or as connected with the rate of interest hereinbefore fixed. The Legislature may from time to time prescribe the maximum rate per annum of, or provide for the supervision, or the filing of a schedule of, or in any manner fix, regulate or limit, the fees, bonus, commissions, discounts or other compensation which all or any of the said exempted classes of persons may charge or receive from a borrower in connection with any loan or forbearance of any money, goods or things in action.

The provisions of this section shall supersede all provisions of this Constitution and laws enacted thereunder in conflict therewith.
(Added June 8, 1976.)

Amendment of this section proposed by Senate Const. Amend. No. 18, 1977–78, see Volume 1 Pocket Part.

Former section 1 was repealed June 8, 1976. See, now, Article 10, § 1.

Proposed amendment of Art. 15, § 1, by Senate Const. Amend. No. 40, 1975–76, was rejected by the voters at the general election held Nov. 2, 1976.

The second resolved clause of A.C.A. No. 40, 1976, providing that the 35th clause of A.C.A. No. 40, 1976 [adding Art. 15] shall not be operative if S.C.A. No. 19, 1976 were adopted, was deleted by A.C.A. No. 90, 1976.

The third, fourth and fifth resolved clauses of Assembly Const. Amend. No. 40, 1976, provide: "That Article XV as added by the thirty-fifth clause of this constitutional amendment shall not become operative if the amendments to Section 22 of Article XX as proposed by Senate Constitutional Amendment No. 19 of the 1975–76 Regular Session (Resolution Chapter 132, Statutes of 1975) [S.C.A. No. 19, 1975–76, Proposition 12, was rejected by the people, June 8, 1976] are adopted by the people at the same election, and this constitutional amendment receives the higher affirmative vote of the two measures; in which case Article XV as added by the thirty-sixth clause of this constitutional amendment shall become operative;

"That neither Article XV as added by the thirty-fifth clause of this constitutional amendment nor Article XV as added by the thirty-sixth clause of this constitutional amendment shall become operative if the amendments to Section 22 of Article XX as proposed by Senate Constitutional Amendment No. 19 of the 1975–76 Regular Session (Resolution Chapter 132, Statutes of 1975) [Proposition 12, rejected June 8, 1976] are adopted by the people at the same election, and this constitutional amendment receives the lower affirmative vote of the two measures;

"That Article XV as added by the thirty-sixth clause of this constitutional amendment shall not become operative if the amendments to Section 22 of Article XX as proposed by Senate Constitutional Amendment No. 19 of the 1975–76 Regular Session (Resolution Chapter 132, Statutes of 1975) are rejected by the people [Proposition 12, rejected June 8, 1976]; in which case Article XV as added by the thirty-fifth clause of this constitutional amendment shall become operative."

Derivation: Former Article 20, § 22, Interest Rates.

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EXHIBIT B

Date of Hearing 4-11-79

ASSEMBLY COMMERCE COMMITTEE

GUEST LIST

NAME (Please print)	REPRESENTING (organization)	WISH TO SPEAK Yes	No.
[illegible] K. Ashkenazi	Nev. Mtge Brokers	✓	
Lou Shulman	" " "		✓
George Vargas	Nev Bankers Assn	✓	
Kenneth Sullivan	Pres Valley Bank	✓	
George Aker	Pres Nev Nat'l Bank	✓	
Wayne Condon	Pres Security Nat'l Bank		✓
Robert Sullivan	Vice Chrman Valley Bank		✓
Jim Joyce	Nevada Savings & Loan League of Nevada	✓	
Jordan Crouch	Nevada Bankers Assn		
Joseph W. Sevigny	State of Nevada Superintendent of Banks		
[illegible]	[illegible]	✓	
[illegible]	[illegible]		

EXHIBIT B

c

ROBERT LIST
GOVERNOR

JAMES L. WADHAMS
DIRECTOR

STATE OF NEVADA
DEPARTMENT OF COMMERCE
BANKING DIVISION
CAPITOL COMPLEX
406 EAST 2ND STREET
CARSON CITY, NEVADA 89710
(702) 885-4260

JOSEPH O. SEVIGNY
SUPERINTENDENT OF BANKS

April 11, 1979

FOR YOUR INFORMATION:

John G. Heimann is the Comptroller of the Currency of the United States. The Comptroller of the Currency of the United States regulates all national banks.

George A. LeMaistre is the recent former chairman of the Federal Deposit Insurance Corporation. The Federal Deposit Insurance Corporation regulates approximately 8400 state non-member (Federal Reserve) banks.

The Federal Reserve is the third and last Federal bank regulator. The Federal Reserve regulates all state banks who are members of the Federal Reserve.

EXHIBIT "C"

Losing Interest

As Money Cost Rises, Usury Laws Cause Lenders to Abandon the Mortgage Market

By JAMES CARBERRY
Staff Reporter of THE WALL STREET JOURNAL

When Richard Inman was transferred to Buffalo, N.Y., last September, he tried hard to sell his home in Saratoga Springs, N.Y. But because prospective buyers couldn't get mortgages, he was unsuccessful. So the 29-year-old insurance agent borrowed money for a down payment on a home in Buffalo.

For the past few months, he has been digging deep into his pocket to keep up payments on the down-payment loan and both mortgages. "I can't afford to keep making payments on two homes for long," he says.

Mr. Inman's situation points up a problem: Mortgage lenders across the country have tightened their requirements or dropped out of the home-loan market. The reason is simple. Most state usury laws put a ceiling on the interest rate that state-chartered banks can charge mortgagees. As the cost of money to banks rises, that ceiling in many states has fallen below the rate banks must pay for the money thhey lend.

In Rochester, N.Y., First Federal Savings & Loan Association considers mortgage applications only from former borrowers, or from customers with at least $7,500 on deposit for six months. Its mortage-loan volume has fallen to $2 million monthly from $8 million a year ago. In Dallas, Texas Federal Savings & Loan Association's mortgage loan volume fell by a half to two-thirds. And in California, some mortgage bankers have stopped making loans there and stepped up lending in western states with less stringent usury laws, according to the California Mortgage Bankers Association.

Effect on Housing Starts

Housing officials say the slowdown in lending doesn't bode well for housing starts; government officials and economists had hoped that brisk housing starts would help keep the country out of a recession next year.

Every state has some kind of usury law, intended to prevent the lending of money at an interest rate that exceeds a "reasonable" level. Although the laws are riddled with exemptions in some sectors, the states generally have been strict in enforcing limits on home-mortgage interest rates. Eighteen states, including New York, Texas and California, have ceilings of 10% or less; the current national market rate on home loans is 10¼%. These states account for about a third of the building permits issued annually for construction of single-family housing.

James E. McNulty, an economist with the Federal Home Loan Bank of Atlanta, estimates that housing activity—measured by the volume of home-mortgage loans or building permits for single-family homes—falls 11% to 23% for every percentage point by which a state's usury ceiling trails the prevailing market rate for mortgages.

In New York, the recently increased 9½% ceiling falls below the current market rate by one percentage point. Until recently, it was 8½%, which was two percentage points below the market rate. So real-estate agents and lenders say New York housing has been especially hard hit. "Some people haven't even bothered to go house-hunting, because of all the publicity about how hard it is to get a home loan," says Patrick Ryan, a Saratoga Springs Realtor.

Banks that are subject to state usury ceilings say that as the cost of money rises and overtakes the ceilings, they haven't any choice but to scale down mortgage lending and put funds into more lucrative investments. (Federally chartered commercial banks aren't governed by the ceiling; they can charge up to one percentage point above the Federal Reserve discount rate, currently 9½%.)

Buying CDs

One example of the increased cost of money for lending institutions: At the end of 1977, the average interest rate paid on savings deposits at the nation's savings banks was 6.03%, but that figure was "substantially higher" at 1978 year-end, says George Hanc, chief economist for the National Association of Mutual Savings Banks. A major reason is that in order to compete for investment dollars, thrift institutions last summer were authorized to issue six-month savings certificates at yields slightly above the rate on 26-week Treasury bills. That rate has jumped to nearly 10% from 7½% in June. So, bankers say, some savings banks are putting more and more of their funds into certificates of deposit or other money-market investments that yield at least 11%, rather than in mortgages.

"Any bank that took that expensive new money and invested it in a 30-year mortgage at (the former) 8½% had to be stupid or crazy," says Vincent J. Quinn, president of Brooklyn Savings Bank in New York. Adds Paul A. Willax, executive vice president of Erie Savings Bank in Buffalo: "It's a terrible thing for prospective homebuyers. But banks have to be practical."

Many states provide exemptions for usury laws on home loans insured by the Federal Housing Administration and the Veterans Administration, two government agencies that provide home-loan insurance for certain borrowers. But because the 9½% rate permitted by these agencies is below the national home-loan rate of 10¼%, the exemption does little to stimulate lending, bankers say.

A handful of states, such as South Carolina, exempt from usury laws conventional loans sold to concerns, such as the Federal Home Loan Mortgage Corp., that package loans in pools for resale to investors. Such sales provide the original lenders with more cash to make more loans. But banks say cash raised as a result of this exemption isn't enough to meet the demand for mortgages.

Raising Usury Ceilings

So some states are moving to increase usury ceilings on home loans or to tie the ceilings to current money market rates. Under pressure from bankers, builders and real-estate agents, New York raised its ceiling to 9½% from 8½% in mid-December. Beginning May 1, 1979, the new law permits further increases of 0.25 percentage point every three months until rates reach a new but flexible ceiling. That ceiling will be two percentage points above the yield on an index of 10-year Treasury securities; the yield is determined weekly.

Pennsylvania has had a flexible ceiling for four years. The state revises the ceiling monthly; it is determined by adding 2½ percentage points to the yield on long-term government securities. In December it was 10¼%.

In Tennessee and Maryland, legislators are expected to meet this month to consider increases in their ceilings, currently 10% in both states.

Some banks are pushing hard to get usury ceilings eliminated. In California, mortgage bankers, insurance companies and other lenders subject to that state's 10% ceiling filed suit to have the law struck down. The suit contends that the law discriminates, because competing lenders—state commercial banks and savings and loan associations—are exempt from the law.

Last February, a California state court ruled that law unconstitutional because it grants an exemption to certain lenders but not to others. The lenders that are already excluded appealed, because they fear they could become subject to the 10% ceiling. The appeal is pending.

In Florida, savings and loan associations have argued before the state supreme court that they are exempt from Florida's 10% ceiling on home loans. A lower court had ruled in favor of the S&Ls in a suit brought by a borrower who contended the S&Ls are subject to the ceiling. The borrower appealed to the Florida supreme court which has the arguments under consideration.

Lenders that favor excluding home loans from usury ceilings conceded that interest rates on mortgages will rise, probably to levels nearer those of other investments. But they say competition in the home-mortgage market will keep rates from rising to levels they consider beyond consumers' means. In Michigan, which has exempted home loans from its ceiling for the past [illegible] years, rates on mortgages are currently [illegible]. That is in line with the national home-loan rate of about [illegible] and is nearer to rates banks can earn on money-market investments.

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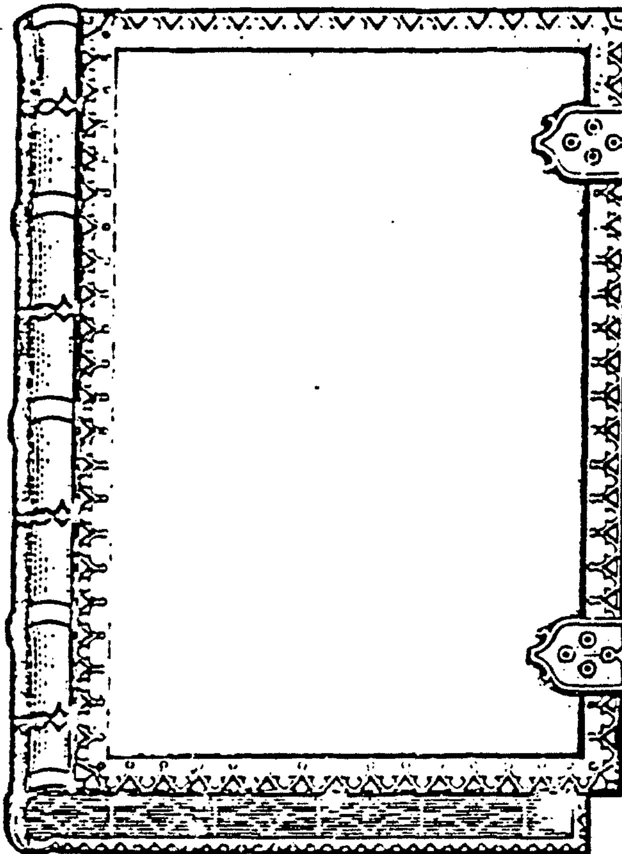
'h Consequences f sury Ceilings

/ George A. LeMaistre
aIrman
:deral Deposit Insurance Corporation



Is particularly timely to discuss the ubject of usury ceilings — a form of price ɔntrol over the rates of interest which nancial institutions may charge on loans. lthough usury ceilings have not, as a eneral rule, been terribly restrictive in the ast, they did lead to serious difficulties in 974 when interest rates literally went ırough the ceiling for both borrowers and :nders, and may have had adverse impacts n the economies of those areas where the eilings were binding. Even now, though ot so binding as then, usury ceilings are ausing problems and, in the case of ɹrkansas and Tennessee, these problems re not insignificant.

Both Arkansas and Tennessee have onstitutional provisions limiting interest rates to a maximum of 10% per annum. However, until a Tennessee Supreme Court decision on August 22, 1977, the usury provision (Article 11, Section 7) in that state's constitution had been interpreted by the state legislature as permitting it to set the "legal rate" of interest at any rate. As a result, the Tennessee state legislature passed the Industrial Loan and Thrift Act and the Bank Instalment Lending Act in the late 1960s which permitted finance companies and banks to charge add-on and discount interest rates on instalment loans producing an annual interest yield in excess of 10%. The Industrial Loan and Thrift Act was declared unconstitutional on August 22, 1977. Many informed observers feel, however, that the same decision would be

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r[illegible]ered on the Bank Instalment Lending A[illegible] f a case were brought before the court. While interest rates are not as high now, the recent events in Tennessee may have harmful consequences. This certainly appears to have been the case in 1974 when the 10% restriction on commercial loans was binding. In response to that situation, some relief was provided at the federal level until July 1, 1977. At the urging of former Senator Brock, Congress passed Public Law 93-501 on October 29, 1974, which permitted financial institutions on a temporary basis to set interest rates on commercial and agricultural loans exceeding $25,000 at five percentage points above the Federal Reserve discount rate. As the recent lapse of this legislation indicates, it was relief that was far from certain. A constitutional convention commenced in Tennessee on August 1, 1977, which, among other matters, is considering the usury provision, The recent lapse of federal legislation and the Tennessee Supreme Court's decision place the entire burden for relief in Tennessee on the constitutional [illegible]vention.

A Historical Perspective

To understand the existence of usury statutes and even constitutional provisions, one must have an awareness of history. From Biblical times usurious lending has been viewed as immoral; it was thought wrong to profit through the lending of money. In the Old Testament (Dueteronomy 23:10) it is stated, "Thou shalt not lend upon usury to thy brother . . ." This admonition was repeated in the Sermon on the Mount in the New Testament (Luke 6:35). ". . . Do good, and lend, hoping for nothing again . . ." With the advent of the renaissance and later the industrial revolution, the harsh views of the past were modified to permit lending at interest but with limitations on the amount of interest. For the most part, these admonitions reflected the ethic that one should not live beyond his or her means and that, given human frailties, individuals should be protected by law from those who would exploit their weaknesses.

In more recent times other arguments have been made. It has been argued that financial institutions are not competitive and therefore usury ceilings are required to prevent these institutions from making excessive profits by charging usurious interest rates. It has also been argued that interest rates must be kept low so that lower-income people will have the means to borrow. This argument is emphasized in particular by those who espouse the principle of home ownership and by those who are interested in promoting housing. Paralleling this line of reasoning is the proposition that low interest rates will encourage investment and consumption and thereby help the economy.

Effects of Usury Ceilings

Most economists and other observers of financial markets discount the validity of these arguments and agree that usury ceilings tend to have highly undesirable effects. There is considerable evidence that potential borrowers, whom the ceilings are aimed at protecting, suffer as much as the lenders who are restricted in their charges. Let us review both the issues and the evidence on the effects of usury ceilings.

First, it should be made clear that usury ceilings harm rather than help the unsophisticated and the poor who are viewed as greater credit risks. When money is tight and interest rates rise above usury ceilings, as they did in 1974, a financial institution may continue to make loans, sometimes even at a loss, to its best customers, but will cease making loans to riskier potential borrowers who would be creditworthy at a higher rate of interest. Thus, in such times, those whom usury ceilings are designed to protect are in effect shut out of the market for bank credit.

Professor Roger L. Miller contends in *Economics Today*, published in 1976 by Canfield Press, that the reduction in the

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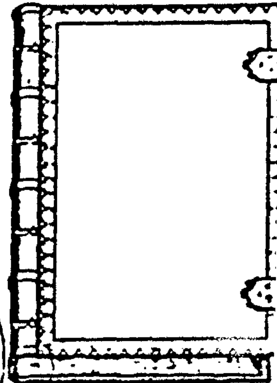
[illegible]it card maximum lending rate from [illegible] to 12% in Washington State in 1968 had just such an effect. At the lower rate, the amount of credit demanded exceeded that which financial institutions were willing to supply and, as a result, those who were least creditworthy were denied credit. Miller stated that those most likely to be denied credit include welfare mothers, people with unstable employment records, students and the elderly. Similarly, in Arkansas, where the usury ceiling is 10% on all types of loans, finance companies, which tend to cater to lower income and more risky borrowers, closed a majority of their offices during 1974. The few remaining offices were used primarily to collect on outstanding balances and not to make new loans.

As a result of the recent Tennessee Supreme Court decision that the Industrial Loan and Thrift Act is unconstitutional, CIT Commercial Corp. closed 26 of its 39 offices and Associates Capital Corp. closed 1 of 53 [illegible]ces and laid off 107 employees. In addi[illegible]n, banks have severely curtailed direct [illegible]talment lending. (Under a curious ruling that treats credit card transactions as purchases of goods and not loans, rates in excess of 10% apparently are legal.) Kenneth L. Roberts, president of First American National Bank, was reported as saying in the September 13, 1977, issue of the *American Banker* that, "Our studies show us that we cannot make a profit, or even break even, on about 75% of our consumer loans if we are limited to 10% interest." Almost overnight consumer credit has become unavailable. Although much business has been relocated just across the state line, many consumers will find it difficult, if not impossible, to borrow.

When people are shut out of the legitimate market, they become the potential prey of unscrupulous loan sharks, who not only charge exorbitant and usurious interest rates but may otherwise place onerous terms and conditions on the extension of credit.

Moreover, even individuals who are not shut out of the legitimate loan market may be compelled to accept more onerous terms, including higher down payments, larger front-end fees and shorter loan maturities. James Ostas, in his article, "Effects of Usury Ceilings in the Mortgage Market," which appeared in the June 1976 issue of the *Journal of Finance*, proved that as down payments relative to the price of the home increase, loan maturities decrease and fees may increase in proportion to the amount by which market rates exceed usury ceilings.

Another group of potential borrowers may also be shut out of the market for similar reasons. Although some new business ventures are so risky as never to be bankable, others are not and financial institutions would be willing to extend credit at high but reasonable rates. Thus, usury ceilings may inhibit entrepreneurs and innovators from starting their own businesses.



In addition to forcing entrepreneurs and innovators to seek credit elsewhere or forego it altogether, usury ceilings may well have deleterious effects upon the economy of a state or locality. In an article in the March 1968 issue of *Tennessee Survey of Business* on Tennessee usury ceilings, Professor Harry Johnson of the University of Tennessee stated that, "Among the more immediate and discernible economic ills which have occurred in the past and which will be aggravated by unrealistic limitations on interest rates are: 1) A decline in residential building, 2) an increase in the level of unemployment in construction, 3) a decline in the sales of building supplies, 4) an outflow of savings, 5) an increase in the rate of interest and yields on bonds issued by the State of Tennessee and its political subdivisions and 6) increased competition for Tennessee's financial resources by out-of-state individuals and businesses.

According to Robert Keleher of First Tennessee National Corp. in "The Economic Impact of the State Usury Law in Tennessee," the unavailability of credit in Tennessee during 1974 may be reflected by a 25%

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increase in business failures compared to a [illegible] increase nationally, and a 20% decrease [illegible] investment expenditures on expanded manufacturing plant facilities compared to a 22% increase in seven other Southeastern states.

In a study of the "Impact of the Tennessee Constitutional Usury Limit on the Tennessee Economy," completed by Richard Gustely and Harry Johnson of the University of Tennessee in June 1977, the authors conclude that usury ceilings caused a loss in output of goods and services averaging $150 million annually between 1974 and 1976. They note: "Over the same period the loss of new jobs averaged 7,000 per year. Loss of retail sales averaged $80 million per year and loss of assets of commercial banks and savings and loan associations averaged $1.25 billion per year." The authors believe that these adverse economic consequences will continue over the 1977-1984 period.

Besides shutting out potential borrowers or forcing them to seek credit elsewhere, usury ceilings force financial institutions to look for borrowers that are not protected by [illegible]ings. Institutions may accomplish this [illegible]er by seeking borrowers in geographic [illegible]as where there are no usury ceilings or by making loans to specific types of borrowers who are not covered by ceilings. For example, a 1976 study, "The Impact of New York's Usury Ceilings on Local Mortgage Lending Activity," prepared by Ernest Kohn, Carmen J. Carlo and Bernard Kaye of the New York State Banking Department, shows that during 1974 commercial banks shifted funds from in-state to out-of-state mortgage loans.

It was further discovered that financial institutions in Minnesota diverted funds from conventional mortgage loans that were covered by a usury ceiling to FHA and VA mortgage loans that were not covered. Moreover, Philip Robins in "The Effects of State Usury Ceilings on Single Family Homebuilding" which appeared in the March 1974 issue of the *Journal of Finance*, demonstrates that in cities where market interest rates were above usury ceilings, new housing starts were 28% below those in cities where market interest rates were below the usury ceiling, if one existed.

Altering lending patterns to avoid the earnings burden of usury ceilings may lead to serious difficulties for the financial institutions affected. This may be caused by a lack of lending experience and knowledge in certain types of loans, or it may be caused by a lack of familiarity with prospective borrowers and conditions in market areas that the institution has not lent in before. The failure of Hamilton National Bank of Chattanooga illustrates graphically what can occur when a bank, unable to earn a return in its own market sufficient to cover its costs, seeks to make up ground in an unfamiliar market. Although the reasons for Hamilton's demise are more complex than this, there are certainly many who believe that the banking effect of Tennessee usury ceilings is one reason why Hamilton Bancshares, Inc. chose to use Hamilton Mortgage Co. based in Atlanta, Ga., as a vehicle to generate increased revenues — a decision which ultimately led to the failure of Hamilton National Bank.

Usury laws in effect place controls on the price which may be paid for funds. This can cause severe dislocations while at the same time harming the very people the ceilings are intended to protect. Moreover, it seems that the facts demonstrate rather clearly that direct competition among financial institutions through the pricing mechanism and greater reliance on the direct operations of a free market, rather than on a system of controls and restrictions, is a more efficient and effective way to allocate funds.

Before concluding, it should be pointed out that many of the same problems that usury ceilings cause also result from interest rate ceilings limiting the amount of interest banks may pay their depositors. However, deposit interest rate ceilings evoke little concern from bankers. The prospects for dealing with usury ceilings would be greatly enhanced if bankers and other community leaders also worked to eliminate deposit interest rate ceilings. ☐

EXHIBIT C

from Federal Reserve Bank of St. Louis Review, Aug. 1974

Usury Laws: Harmful When Effective

NORMAN N. BOWSHER

MOST INTEREST rates have risen to historically high levels in recent months. This development, in view of present law, has caused serious problems to develop in the credit markets because in most jurisdictions usury restrictions on the payment of interest have generally remained at previously established lower levels. The consequence of this has been that borrowers who are willing to pay the competitive rate for funds often find that they are legally unable to obtain financing. As a result, they are faced with the choice of either circumventing the law to obtain the desired funds or losing out to other borrowers who may not be willing to bid as much, but who are legally able to contract because of the nonuniformity of usury laws.

Despite the credit market distortions caused by ceilings on interest rates, usury laws have been retained in most jurisdictions. It is the intent of this article to provide some insight and perspective on the value of such restrictions by reviewing briefly the history and justification of such laws, the role of interest rates, and some of the effects of interest rate restrictions.[1]

History of Usury Laws

Usury laws have been traced back to the dawn of recorded history. Both legal and religious restrictions on interest charges were imposed in ancient times.[2] The early Babylonians permitted credit but limited the rate of interest. One of the earliest writings of the Bible (Deuteronomy 23:19-20) stated, "Thou shalt not lend upon usury to thy brother, . . . Unto a stranger thou mayest lend upon usury; but unto thy brother thou shalt not lend upon usury . . . ." In the New Testament (Luke 6:35) the admonition was broadened ". . . lend freely, hoping nothing thereby."

In Greece, Aristotle considered money to be sterile, and that the breeding of money from money was unnatural and justly hated. During the period of the Roman Republic, interest charges were forbidden, but they were permitted during the time of the Roman Empire.

During the early Middle Ages religious leaders treated the subject more thoroughly, and reached the same conclusion – that interest on loans was unjust. The exploitation of the poverty-stricken by rich and powerful creditors who lent money at interest was considered sinful to the Christians of that period, who stressed humility and charity as among the greatest virtues and played down the value of earthly goods. Secular legislation responded to the Church's influence and, in general, interest charges and usury were regarded as synonymous.[3]

The increase in economic activity and expansion of personal freedom that came with the Renaissance forced modifications in the prevailing views concerning interest rates. Recognizing that man was imperfect, Martin Luther and other 15th century reformers began to concede that creditors could not be prevented from charging interest. In the 16th century John Calvin rejected the scriptural basis for interest prohibition on grounds of conflicting interpretations and changed circumstances, but still advocated some

[1] Previous discussions of interest rate controls were given by Clifton B. Luttrell, "Interest Rate Controls — Perspective, Purpose, and Problems," this *Review* (September 1968), pp. 6-14, and Charlotte E. Ruebling, "The Administration of Regulation Q," this *Review* (February 1970), pp. 29-40.

[2] See Sidney Homer, *A History of Interest Rates* (New Brunswick, New Jersey: Rutgers University Press, 1963).

[3] Eugene von Böhm-Bawerk, *Capital and Interest*, trans. George Huncke and Hans Sennholz (South Holland, Illinois: Libertarian Press, 1959), pp. 13-24.

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control. Turgot, an 18th century French economist, claimed that money was the equivalent of land, and hence the owner should not be inclined to loan his money unless he could expect a return as great as he would obtain through the purchase of land.[4]

Legal restrictions on the payment of interest were generally relaxed in the 18th century, but the belief continued that the people who needed to borrow funds should be protected against overly high charges. Consequently, most nations maintained legal maximum usury rates at "reasonable" levels.

Usury laws in the United States were inherited, in large part, from the British in colonial days. While these laws generally remain in force in the United States, Great Britain, after intense pressure in the early 19th century, repealed these and other restrictions on commerce and trade in 1854.[5]

One factor complicating attempts to maintain interest rate ceilings arose from the fact that risks and administrative expenses in making very small loans were often so great that legitimate dealers could not handle such advances with prevailing rate ceilings. This situation fostered illegitimate loan "sharks" with exorbitant interest charges. As a result, it was eventually recognized that higher rates should be permitted on small loans, and the small loan laws emerged.

Arguments for Usury Laws

As noted, ethical and religious arguments have been relied on to a great extent to justify either the prohibition or limitation of interest payments. Another factor which has been instrumental in sustaining support for usury laws has been public opinion which generally viewed the small borrower as an underdog at the mercy of large well-financed institutions. As a consequence of this public attitude, legislators have been reluctant to raise or eliminate interest rate ceilings.

Several economic arguments also have been advanced to justify usury laws, and these considerations tend to bolster the moral and political reluctance to raise rate ceilings. The first of these arguments asserts that whereas most lenders are knowledgeable about conditions in the particular credit market in which they operate, it is readily observable that a sizable number of borrowers are unsophisticated and naive. It is contended that these borrowers are concerned only with obtaining credit and do not even know what rate of interest they are paying. Furthermore, relatively few make a serious effort to study conditions or to shop around for better terms or better timing. Finally it is argued that contracts made with such unknowing borrowers at rates above those existing in the market for similar types of loans represent a distortion of competitive forces and provide a windfall to lenders.

A similar argument for the regulation of interest rates is related to the comparative market power of borrowers and lenders. Since lenders are usually fewer in number and larger in resources than borrowers, it is contended that they have market power which can be used to command artificially high rates. Hence, usury laws provide competitive balance between the two groups.

Another argument for interest rate regulation is concerned with the impact of lower interest rates on the economy. It has been contended that low interest rates are desirable to encourage more investment and consumption and promote faster economic growth.

Arguments Against Usury Laws

Those who oppose interest rate restrictions view credit markets as relatively efficient when left alone to operate freely. According to this position free competitive markets lead to an optimum allocation of resources and maximum individual satisfaction. Consequently, interferences with normal credit flows, by use of imposed ceilings on lending or deposit rates, can only create inefficiencies in financial markets which hamper production and exert an adverse influence on the distribution of goods and services.

It has been charged that maximum loan rates are necessary because credit applicants are gullible and would enter into oppressive contracts without such protection. But, are not individuals just as likely to be gullible in their dealings in other markets? Why then is the credit market singled out as an area to promulgate legal restrictions against such oppressive contracts? More importantly, has this special attention had its intended effects? That is, can and do these laws protect the uninformed from exploitation, and can the benefits of this protection be justified in view of the attendant social costs? Existing imperfections in credit markets could probably be reduced to a greater extent and with less cost by fostering greater competition among lenders. Also, education and counseling of borrowers may be a more efficient method to improve their performance than imposing rigid ceilings.

[4] Ibid, pp. 25-60.

[5] Homer, *A History of Interest Rates*, p. 187.

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In most credit markets competiton is very keen. Major lenders include commercial banks, savings and loan associations, insurance companies, mutual savings banks, mortgage companies, sales finance companies, personal finance companies, credit unions, real estate investment trusts, farm credit agencies, retailers, and individuals. It is relatively easy to establish a business for lending funds, except for restrictions imposed by the Government. In most cases where competition is lacking in a given market, it has resulted from legal limitations on entry or activities. In practice, competitive forces have kept most market interest rates below usury ceilings for most of the past forty years.

For a brief period, artificially holding interest rates down probably does stimulate investment and contribute to economic expansion. However, maintaining arbitrarily low rates by imposing ceilings discourages saving at the same time that it stimulates investment demand, placing upward pressure on interest rates. As a result, rates can only be maintained at the lower level by some form of nonprice rationing (which tends to reduce efficiency and offset, in the longer run, the sought-after investment increases) or by the creation of money and credit at progressively faster rates (which contributes to accelerating inflation).

Functions of Interest Rates

Interest rates play a strategic role in the economy. Interest rates are prices, and, as is true of all prices, they serve a rationing function. They are the prices that allocate available funds, and hence command over resources, among competing uses. Normally, the term "interest rate" is used in reference to the return on marketable securities or a loan of funds. However, the concept of "interest rate" can be applied to all goods. The rate of interest reflects the price of the convenience of earlier availability, the preference for more certain rather than less certain consumption rights, and the economy's ability to use resources to increase output.

To the borrower, interest rates represent a cost, and as such, influence investment and consumption decisions. To the saver, they represent a return and affect decisions regarding the amount to be saved. To wealth holders and managers of funds, interest rates or yields are a common denominator for evaluating alternative forms of holding wealth and alternative avenues for placing funds.

At any time, some individuals or businesses find that with their incomes, tastes, and investment prospects it is not desirable to pay the going rate for funds. They are "priced out of the market," just as there are those who find that at current prices it is not expedient to hire a servant, eat steak, or purchase a luxury automobile. Any movement in interest rates (as with other prices) will cause a reevaluation of projects which require the borrowing of funds.

General Impact of Usury Laws

Throughout most of the period since the 1920s, usury laws have been ineffective because the interest ceilings were at levels above prevailing market rates. However, with the rise in inflation, and consequently interest rates, since the mid-1960s, usury laws have had a significant impact on many credit markets. Their effects have been quite arbitrary and have weighed heaviest on those credit seekers generally considered most risky.

Professor Roger Miller contends that usury legislation often adversely affects the ones it is designed to protect.[6] He illustrates this conclusion by citing the Washington state experience, where consumer loans from credit card companies were generally at an annual rate of 18 percent. Consumer advocates felt that this rate was much too high, and that poor people would be aided by a lower charge. In 1968, the maximum rate was lowered by referendum to 12 percent. However, at the lower rate the amount of credit demanded exceeded the amount supplied, and the people with the weakest credit worthiness were the ones denied credit at 12 percent. Welfare mothers, people with records of unstable employment, students, and the elderly fell into this category. Gainers from the reduced rates were the ones who had the most wealth, best jobs, and the highest probability of being able to repay the loan.

Sometimes those higher risk borrowers, who are refused credit from legitimate lenders because of usury laws, seek funds from loan sharks who ignore the legislated ceilings. Costs of operating outside the law are relatively high, and competition among such unscrupulous lenders is severely limited; hence, some interest rates may be several times the level that would have existed in the absence of ceilings.[7]

As market rates approach usury ceilings, venture or developmental credit, which of course contains a higher than average degree of risk, becomes limited.

[6] Roger L. Miller, *Economics Today* (San Francisco: Canfield Press, 1973), pp. 244-250.

[7] John M. Seidl, "Let's Compete with Loan Sharks," *Harvard Business Review* (May-June 1970), pp. 69-77.

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Since such credit can only be extended by lenders at a higher rate of interest to compensate for the additional risk involved, these loans are among the first to be affected as market rates rise relative to usury ceilings. Without such venture capital, the entrepreneur is frustrated, and economic progress and growth is hampered.[8]

By contrast, the volume of credit flowing to wealthy individuals and sound established businesses may be as great or greater under severe usury restrictions as under free market conditions.[9] Since low usury maximums prevent other individuals and firms from effectively competing for funds, a greater share of the available funds tends to flow to lower risk applicants. The anticompetitive effects of these laws are thus spread from credit to product markets.

Usury Laws in the Eighth District

In general, usury laws tend to be more restrictive in the central section of the country than in states on or near either coast. In several Eighth District states usury laws have been a major obstacle in credit markets. In Illinois and Missouri the current general usury ceiling is a very low 8 percent, and in Kentucky the ceiling is 8.5 percent. In each of these states, however, exemptions from the ceiling exist, such as for corporations. Despite the exemptions, many credit flows have been interrupted because of the ceilings, particularly away from potential individual borrowers.

Arkansas, Mississippi, and Tennessee have somewhat higher usury ceilings — 10 percent in each case. However, because of the lack of legal exemptions from the maximums in Arkansas and Tennessee, the ceilings have been causing substantial disruptions to borrowers, lenders, and the general economy of these states. This has been particularly noticeable since April when the prime rate on business loans nationally climbed above 10 percent. During May and June of this year, commercial and industrial loans declined 9.3 percent at weekly reporting banks in Memphis and Little Rock, while they were rising 2.8 percent at all weekly reporting banks in the nation. In the corresponding period last year, when market rates were below the ceilings, these loans changed little in Memphis and Little Rock and rose 2.9 percent nationally.

In an effort to alleviate hardship, the ceiling in Mississippi was raised to 10 percent from the extremely restrictive 8 percent level, effective July 1, 1974. In Illinois, the ceiling for residential loans was raised on July 12, 1974 from 8 percent to 9.5 percent for the period until July 1, 1975. Among Eighth District states, only Indiana has had credit markets relatively free from usury restrictions.

Quantitative measures of the volume of potential loans affected by the rate restrictions are not available, but comments from market participants indicate that it is sizable. The following sketchy, indirect evidence also indicates that the impact has been great.

In the first four months of this year, the average interest rate on FHA 30-year mortgages was 8.78 percent nationally; in the corresponding period last year the rate was 7.62 percent. Two District states had usury laws applicable to home mortgages that were between these rates — Mississippi and Missouri at 8 percent. In these two states residential construction contracts fell 34 percent from the first four months last year to the comparable period this year, according to F. W. Dodge data. In Arkansas, Indiana, and Tennessee, which had 10 percent or higher usury ceilings, and Kentucky and Illinois, which exempted certain residences from the ceilings, residential contracts declined 16 percent. The average decrease for the nation was 21 percent over the same period.

By contrast, contracts for nonresidential construction, which are frequently exempted from usury ceilings, rose 8 percent in Mississippi and Missouri from the first four months last year to the first four months this year. This was about the same as the 9 percent gain in Arkansas, Illinois, Indiana, Tennessee and Kentucky and greater than the 2 percent nationally in the same period.

Insured savings and loan associations in Missouri had a 74 percent smaller increase in savings "deposits" in April and May this year than they did in the corresponding months last year. Nevertheless, these associations purchased 10 percent more mortgages in the two months this year when the national market rate on mortgages was above the state's usury ceiling than in the like period last year when the market rate was below the ceiling. This seemingly contradictory development can be explained by noting that the bulk of these purchases were from states where the

[8]Studies show that in those states permitting higher rates, lenders tend to expand credit opportunities. Lenders appear more willing to accept higher risk of losses if the rate is sufficient to compensate for bad debt, investigation, and collection expenses. Maurice B. Goudzwaard, "Price Ceilings and Credit Rationing," *Journal of Finance* (March 1968), pp. 183-184.

[9]This may not always be the case, because the total volume of loanable funds is likely to be smaller under severe interest rate ceilings. Saving is discouraged relative to consumption and funds tend to flow out of the jurisdiction or directly from savers into venture capital.

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STATE USURY LAWS[1]

State	Basic Rate	Some Major Exceptions
Alabama	8%	For individuals, firms, partnerships, associations, and non-profit organizations the rate is 8% on loans to $100,000 and 15% on loans above that. These same groups may agree to pay more than 15% on loans greater than $100,000. For corporations the maximum rate is 8% on loans to $10,000, 15% on loans between $10,000 to $100,000 and no ceiling on loans above $100,000.
Alaska	12%[2]	Twelve-and-one-half percent is the rate on real estate contracts.
Arizona	10%	Eighteen percent is the ceiling for loans over $5000 to corporations.
Arkansas	10%	
California	10%	Savings and loan associations, industrial loan companies, banks, credit unions, and agricultural associations are exempt from the usury law.
Colorado	12%	The maximum charge on non-supervised consumer loans is 12%. On supervised loans, except for revolving loans, the maximum rate is the greater of 18% on all unpaid balances; or a total of 36% on unpaid balances of $300 or less, 21% on unpaid balances over $300 and not over $1000; and 15% on unpaid balances over $1000. The maximum rate on consumer related loans is 18%, on revolving loans 12%, and all other loans 45%.
Connecticut	12%	The ceiling rate on loans to corporations in excess of $10,000 is 18%. The 12% ceiling does not apply to any loan made by any national or state bank or savings & loan, to any mortgage on real property in excess of $5,000, or made pursuant to a revolving loan agreement on which the total principal amount owing is more than $10,000.
Delaware	9%	There is no limit on collateral loans larger than $5000. Also the ceiling rate may be exceeded on loans secured by real estate only through written agreement.
District of Columbia	8%	Loans guaranteed under the National Housing Act or by the VA are exempt.
Florida	10%	The ceiling is 15% for corporate loans and all other loans above $500,000.
Georgia	8%	No ceiling applies on loans above $2500 to corporations and on loans above $100,000 to individuals. Loans secured by realty may carry a rate of up to 9%.
Hawaii	12%	
Idaho	10%	The maximum rate on non-supervised consumer loans is 18% and on revolving loans 15%. Supervised loans carry a maximum rate of 18% on all unpaid balances, or a total of 36% on unpaid balances of $390 or less, 21% on unpaid balances between $390 and $1300, and 15% on unpaid balances over $1300. A ceiling of 12% applies to loans of over $10,000 to corporations. Firms engaged in agriculture may be required to pay a maximum of only 10% on loans.
Illinois	8%	All corporate loans and business loans to non-profit organizations; as well as mortgage loans insured by the FHA or guaranteed by the VA may be contracted for at any rate. Also secured loans greater than $5000 may be at any rate. Effective July 12, 1974 the maximum interest rate that may be charged on loans secured by residential real estate and entered into before July 1, 1975 was raised to 9½%.
Indiana	18%	A maximum rate of 18% applies to non-supervised consumer loans, consumer related loans and revolving loans. Supervised loans carry a maximum rate of the greater of 18% on all unpaid balances, or a total of 36% on unpaid balances of $300 or less, 21% on unpaid balances over $300 but under $1000, and 15% on unpaid balances over $1000. There is no maximum charge on other loans.
Iowa	9%	There is no ceiling rate on either corporate loans or real estate investment trusts.
Kansas	10%	Consumer loans other than supervised loans carry a maximum rate of 12%. The maximum charge on supervised loans is 18% on the first $1000 and 14.45% on any additional. There is no ceiling on any other type of loan.
Kentucky	8½%	There is no ceiling on loans over $25,000 which are not on a single unit family residence. No special rate applies on loans to corporations.
Louisiana	8%	Loans secured by real estate carry a maximum rate of 10%. However, loans guaranteed by Federal agencies are exempt from the usury laws. Corporate loans may be any rate.
Maine	16%	No maximum rate applies if the loan is for non-personal or business purposes and the contract is in writing and involves more than $2000.
Maryland	8%	No ceiling applies to business loans in excess of $5000. Residential mortgage loans may be at 10%.
Massachusetts	None	
Michigan	7%	No ceiling rate applies to corporate loans, realty secured loans, or federally or state approved loans.
Minnesota	8%	No ceiling rate is applied to loans in excess of $100,000.
Mississippi	10%	Corporations organized for profit may pay to 15% on loans in excess of $2500.
Missouri	8%	Corporate loans may be at any rate.
Montana	10%	
Nebraska	9%	Corporate loans may be at any rate. The maximum rate is waived on certain loans by building and loan associations, installment loans, industrial loans, and personal loans by bank and trust companies or credit unions.

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STATE USURY LAWS[1] (Cont.)

State	Basic Rate	Some Major Exceptions
Nevada	12%	
New Hampshire	None	
New Jersey	8%	The basic rate applies to loans under $50,000. Loans secured by realty carry a maximum of 8¾%. The rates are not applicable to loan contracts made by savings and loan companies, banks, or any department of Housing and Urban Affairs or FHA approved loans purchased by Federal government.
New Mexico	10%	A 12% ceiling applies to unsecured loans.
New York	8½%	Demand notes of $5000 or over with collateral security may carry a rate of up to 25%.
North Carolina	8%	Ceiling rates on loans are graduated according to the size and purpose of the loans reaching 12% on loans of $100,000 and unlimited on loans of $300,000 and larger. First mortgages on single family dwellings may be contracted for in writing at any rate agreed upon by the parties. Corporations may pay any rate.
North Dakota	9%[3]	Business loans in excess of $25,000 may carry any rate. Corporate loans regardless of size may carry any rate.
Ohio	8%	Loans in excess of $100,000 may be at any rate.
Oklahoma	10%	Oklahoma's Uniform Consumer Credit Code allows 18% to supervised lenders and 10% to others lending to consumers. There is no ceiling rate on other types of loans.
Oregon	10%	Loans in excess of $50,000 may be made at any rate. The maximum rate on loans smaller than $50,000 is 12% for corporations and 10% for individuals and non-profit organizations.
Pennsylvania	6%	The maximum rate does not apply to loans of more than $50,000; loans of $50,000 or less secured by a lien upon real property; loans to business corporations; unsecured, non-collateralized loans in excess of $35,000; and business loans in excess of $10,000. The interest rate on residential mortgages of an original principal of $50,000 or less is a fluctuating administered rate. For July 1974 this rate was set at 9.5%.
Rhode Island	21%	
South Carolina	8%	The maximum rate on loans of from $50,000 to $100,000 is 10% and on loans between $100,000 and $500,000, 12%. Loans larger than $500,000 may be at any rate. First mortgage real estate loans made by savings and loan companies, the Department of Housing & Urban Affairs or FHA approved mortgages are exempt.
South Dakota	10%	Corporate loans may carry any rate. However, the maximum rate on all loans on real estate regardless of borrower is 10%.
Tennessee	10%	The contract rate does not apply to loans extended under the Industrial Loan and Thrift Company Act or to installment loans of banks and trust companies and building and loan associations on which interest is deducted in advance and added to the principal.
Texas	10%	Corporate loans above $5000 have an 18% ceiling.
Utah	18%	Revolving loans and non-supervised consumer loans carry a maximum rate of 18%. Supervised loans carry a maximum rate of 18% on all unpaid balances, or a total of 36% on unpaid balances of $390 or less; 21% on unpaid balances over $390 and not over $1300. All other loans may be made at any rate.
Vermont	8½%	No ceiling rate applies to loans for income producing business or activity. Loans to finance real estate which is to be used as a primary residence or for agriculture is subject to the contract rate. However, loans to finance real estate improvements or a second residence may be at any rate.
Virginia	8%	Any rate may apply to non-agricultural loans secured by a first mortgage or realty.
Washington	12%	
West Virginia	8%	
Wisconsin	12%	Corporate loans may be at any rate.
Wyoming	10%	Revolving loans and consumer loans other than supervised loans may carry a maximum rate of 10%. Supervised loans may be at a rate of the greater of 18% on all unpaid balances of $300 or less, 21% on unpaid balances over $300 and not over $1000, and 15% on unpaid balances over $1000. All other loans may be at any rate.

[1]This table presents a synopsis of the maze of laws concerning usury in effect in the various states and the District of Columbia as of mid-July 1974. Due to the complex nature of this area of the law, the table may not be completely accurate with respect to certain specific technical provisions. It should, however, allow the reader at least an opportunity to gain some conception of the wide range of opinion concerning interest rate regulation by virtue of the great discrepancy it reveals between the states as to both their basic interest rate ceilings and the nature of the exceptions to those rates.

It might also be noted that national banks are permitted to charge 1 percentage point more than their Federal Reserve Bank's discount rate. At present national banks may charge at least 9 percent on loans even in states with lower usury ceilings since the discount rate is 8 percent.

[2]The basic contract rate for loans in this state not involving real estate is 4 percentage points above the Federal Reserve discount rate at the 12th district Reserve Bank prevailing on the first day of the month preceding the commencement of the calendar quarter. The rate for real estate contracts or commitments is 4½% above the Federal Reserve rate. At the time of this writing that rate stands at 8%, consequently the basic ceiling rates are 12% and 12½% respectively.

[3]Where the parties agree in writing, interest may be charged and collected at a rate of up to 3% above the maximum bank deposit interest rate authorized by the state banking board. However, the sum of the 3% add-on charge and bank board established limit can never fall below 7%. The current bank deposit interest rate limit set by the board is 6%, thus the present 9% ceiling rate on written contracts.

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ceiling was sufficiently high so as not to impinge on market rates. As a result, the amount of new mortgage loans made on *local* properties declined markedly.

A number of District commercial banks and savings and loan associations have found that it has been more expedient to lend a greater share of their available funds in the unrestricted Federal funds market than to lend locally under oppressive ceilings. For example, on the April 24, 1974 call report, member banks in the Eighth District (outside eight large money market institutions) lent a net of $368 million in Federal funds, at a time when the effective Federal funds rate was 10.3 percent. A year earlier, on the March 28, 1973 call date, when the Federal funds rate was 7.3 percent, these same banks advanced $283 million in this market.

Available data also indicate that those who are not covered by usury restrictions are able to attract a larger share of available funds when market interest rates rise relative to effective rate ceilings for others. Eight large banks in the District advance credit to a great extent in national money markets where lending rates are virtually unregulated. Also, during the second quarter of this year, total deposits of the eight large District banks, bolstered by large CD purchases, rose at a 36 percent annual rate, while deposits at other member banks in the District increased at a 11.4 percent rate.

Avoidance of Usury Law

The impact of usury laws on credit markets has been made somewhat more tolerable by legal exceptions and other methods devised to soften the impact of the legislation. Without such exceptions it is conceivable that credit flows could virtually come to a halt in states like Missouri when the national rate on business loans with prime credit risk exceeds the 8 percent ceiling which prevails in this state.

In a number of jurisdictions small loan laws have been enacted which permit higher rates on certain small extensions of credit where operating costs are high and risk is frequently large. Many other legal exceptions have been granted for a variety of reasons. Retail credit charges, time-sales contracts, and loans to out-of-town residents are subject to higher ceilings in some states.

In Missouri, as in a number of other states, corporate businesses that are supposedly capable of protecting their interests in dealing with lenders are free to pay any rate that they desire. As might be expected, these corporations find that they have a tremendous advantage in attracting funds over unincorporated firms and individuals that are "protected" by the state.

In addition, many credit market arrangements have been devised for circumventing usury laws and permitting credit flows which otherwise would be halted. Some of these activities may be an outright violation of the law, such as simply ignoring the ceiling, or by calling the payment something other than interest. However, violation of usury laws frequently carries high financial penalties, such as loss of all interest or even principal; hence, lenders are generally reluctant to knowingly violate the statutes.

Other arrangements, which may or may not be technically legal, but which certainly conflict with the spirit of the law, have been adopted in order to effectively adjust a loan made at the legal rate to the market rate. One method is to lend to those who in some other way help you. Examples include the practice by lenders of favoring customers who maintain compensating deposit balances or whose firm does.

The effective rate on mortgages has traditionally been adjusted upward through the use of "points" charged either to the buyer, the seller, or both. At times, loans have been granted by third parties at the legal rate, after which the real lender then purchases the loan at a discount. Other loans have been "closed" in a more liberal location, such as across a state line. Such techniques, although permitting credit to flow, run risks of illegality, are inefficient, and probably cause effective rates to be slightly higher to the borrower and lower to the saver than they would be in a free market setting.

Lenders in states with low usury ceilings also have an option of moving funds into a state with more liberal laws. Comments from managers of funds indicate that the interstate movement of funds because of usury laws is sizable. Investment funds leave the state to finance mortgages in other states and to buy notes and bonds. Also, banks and savings and loan associations "sell" net sizable amounts of day-to-day Federal funds in the national money markets. This alternative of lending in another state protects large lenders to some extent and makes funds more readily available in states with liberal usury ceilings. However, such movements tend to be inefficient since credit is extended to less urgent projects and the cost of administering the loan is increased. Also, in the low ceiling state borrowers find credit still more difficult to obtain, lenders with small amounts are forced to accept lower yields, and economic activity suffers.

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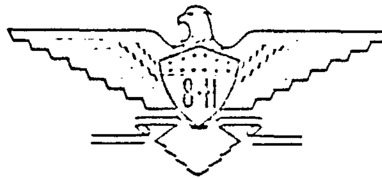
Conclusions

Ceilings on interest rates are relics of ancient and medieval thought, and have survived to the present largely because of a lack of confidence in market forces or because of a presumed benefit to higher credit risks. Actually, supply and demand for funds, rather than rate controls, have been the chief forces holding interest rates at existing levels.

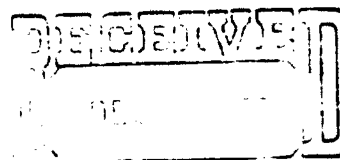
Ceilings on rates may, at times, be of some benefit to borrowers easily deceived by unscrupulous lenders. However, usury laws cause a loss of individual freedom, and in modern economies they are disruptive, especially during periods of inflation when interest rates, like other prices, rise. Usury laws are based on false premises, operate perversely, and are economically inefficient. The cheap money which cannot be obtained is of little usefulness.

Effective usury ceilings, which alter the flow of funds, retard economic growth. The low maximums tend to prevent credit from flowing to higher risk individuals and businesses. Funds available are channelled into well-established, low- risk functions. As a result, innovation is discouraged, economic progress is slowed, and competition is reduced. The recognition that usury laws are burdensome, inequitable, and cause funds to leave the jurisdiction has led some states to relax the law.

Controls also adversely affect the saver, since they deny him the right to a competitive return on his funds. This is especially true of smaller savers. Those with large amounts of savings can more easily by-pass the controlled market by investing in uncontrolled central money and capital markets. Not only is the saver of moderate means injured, but the economy also loses as he becomes discouraged and saves less.



Walter E. Heller Western
INCORPORATED



BANKING DIVISION

December 1, 1978

Mr. Joseph O. Sevigny
406 E. 2nd Street
Carson City, Nevada 89710

Dear Mr. Sevigny:

As a matter of introduction, our company is primarily engaged in the business of providing commercial and industrial loans to companies throughout the United States, Canada, and in nineteen foreign countries on five continents. We are a public company, trading our stock on the New York Stock Exchange. Throughout our network we employ over four thousand people and as of our fiscal year-end, on 12-31-77 we had over four billion in assets!

For many years we've had western regional offices in California, Arizona, New Mexico, Oregon and Washington. More recently we have started to do business in Utah and Texas. In all of these states we have been able to charge our standard rate of interest in compliance with each state's usury law. For quite some time we have been desirous of doing business in the state of Nevada as we do in the other Western States.

According to the Nevada Revised Statutes 99.050, the maximum contract rate of interest is the greater of (a) 12% per annum; or (b) "if the lowest daily prime rate at the three largest United States banking institutions is 9% or more, the maximum rate of interest shall not exceed such lowest daily prime rate plus 3.5%". In these modern times of high cost money, these interest ceilings do not permit companies in our industry to do normal business activity in the state of Nevada. We are all well aware of the great business development dynamics that are going on in these Western States, and of the tremendous need for many types of aggressive financing to satisfy this growth. To this end we would like to do business legally in the state of Nevada to help accelerate their progressive economic growth.

We have had numerous inquiries from various industries in the state of Nevada for our financial services. And, of course, due to the restrictive usury statutes, we have been unable to respond.

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600 South Commonwealth Avenue, Los Angeles, California 90005 213/487-6611

HELLER
Financial Services

We're sure the people of the state of Nevada would want the same financial opportunities as their neighboring Western States now enjoy.

Walter E. Heller Western, Incorporated will be very interested in seeing some new interest rate ceiling legislation introduced in this upcoming legislative meeting. Also, we are undertaking communications with other companies in our industry to take an active interest in seeing some legislative changes made in this regard.

We hope that we may have your help and influence to change these outmoded usury statutes in the state of Nevada.

Our company and others in our industry can play a part in the stimulation of business growth in your state provided that your legislature has the foresight to impliment modern interest rate ceilings.

Very truly yours,
WALTER E. HELLER WESTERN, INC.

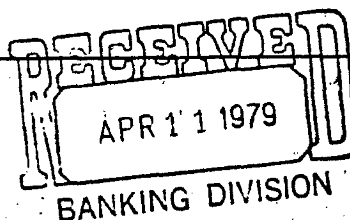
Gilbert D. Burrus
Vice President

GDB:kr

NEWS RELEASE

Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219



For: Immediate release

Date: April 5, 1979

Comptroller of the Currency John G. Heimann today stated that the time has come to reconsider whether usury laws serve a useful purpose in our society.

"A usury ceiling is not supposed to be a form of price control. It should function solely to protect the financially weak or unwary borrower from paying an exorbitant rate of interest; that is, to prevent what amounts to extortion, or cupidity. To use it to control interest rates in free capital markets is only to guarantee that money will not be generally available," said Heimann.

Testifying before the House Subcommittee on Financial Institutions Supervision, Regulation and Insurance, the Comptroller said his agency supports H. R. 2515. The bill would exempt business and agricultural loans of $25,000 or more from state usury ceilings until January 1, 1981, and would establish a ceiling five percentage points above the Federal Reserve discount rate. But the bill, Heimann noted, is "only a partial stop-gap measure" in relieving the burdens of usury ceilings, such as the 10 percent constitutional ceiling in Arkansas.

Experiences with restrictive interest rate limitations show that conventional credit sources are closed off to high-risk and low-income borrowers. Additionally, housing credit needs are not met, and state economies, business firms, individual borrowers and lending institutions in restricted areas are adversely affected, Heimann pointed out. Moreover, he noted, financial institutions in states with restrictive usury ceilings are reluctant to make costly small and short-term loans.

In addition, Heimann said, since usury laws differ from state to state, variations in usury rates can distort the geographic distribution of credit. Funds flow to states that do not have restrictive usury ceilings.

Heimann said the failure of many states to adopt the Uniform Consumer Credit Code, the variance of usury laws from state to state, and the realities of financial and capital markets point up the need to bring about change on a national scale. Usury laws even differ from bank to bank, he observed, since national banks have the competitive advantage, under 12 U.S.C. 85, of charging 1 percent above the Federal Reserve discount rate.

(more)

The solution is not to roll back the competitive advantage of national banks, he said, but to "recognize the urgency of the situation and to work toward the removal of artificial credit constraints," mindful of the "legitimate concern for the small, financially weak borrower who may fall prey to disreputable lending practices."

"If we do not soon release our financial institutions from the grip of antiquated and labyrinthine laws which restrict competition, we are condemning them to a handicapped role in the marketplace," said Heimann.

"We believe that a competitive marketplace in which all providers of a financial service can compete on an equal footing is a desirable goal to pursue, and that we should proceed to phase out in an orderly manner those restrictions that impede attainment of that goal," the Comptroller concluded.

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