The meeting was called to order at 9:50 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
Senator Hernstadt
Senator Don Ashworth
Senator Dodge
Senator Ford
Senator Raggio
Senator Sloan

ABSENT: None

SB 26 Increases maximum contractual rate of interest.

George Vargas, General Counsel for the Nevada Bankers Association stated that the Association urges support for this bill. He stated that he had a letter he had written to Senator Wilson which he wished to read to the Committee (see Attachment A). He also had an excerpt from the "Issues in Bank Regulation, Autumn 1977". He had underlined some language in this article which he felt was particularly important. (See Attachment B).

George Acres, President of Nevada National Bank stated that he too is in favor of this bill. He addressed himself to remarks on fund flows (see attachment C), and also on "Analysis of State Usury Statutes" (see attachment D).

Ken Sullivan, President of Valley National Bank stated he is also in favor of this bill. He stated that as a prime example, the Del Webb Corporation had made a loan for One Hundred Thirty Five Million dollars. This was the first substantive loan of any size in this state in 10 years. Out of the first draw of that line of credit our organization got paid 53 million dollars, which went to us and participants that we had arranged for previously. The loan as presently structured, Morgan Guarantee has the note executed by Del Webb Corporation, each of the other 16 banks have their own individual note. The reason for that is because each state wanted to be governed by their own jurisdiction, mainly because of the complications of the Nevada Usury Statute. In order to handle it this way there was no pledge of assets. There is no lien on any of the property. The money was used to free up all of the hotel property in Nevada. The case in point, is that the loan is written at 122 1/2% over prime. Of all of the 16 banks involved, 14 of them are outside of the State and they are collecting the 122 1/2% over prime. There are two Nevada Banks involved, those two Nevada banks are collecting 12%. The 14 banks are getting paid 128 million at one rate and the Nevada Banks are getting a different rate on their 7 million, because of the Statute as it presently exists. So to make a favorable market for Nevada banks we support passage of this bill.

George Folsom, President, Family Savings and Loan Association and a member of the Nevada League of Savings Associations stated that they are in favor of enactment of this bill. They are primarily interested in long term mortgage lending. Interest rates are extraordinarily high because of inflation, and over a long term the loan will be worth less if the present rate of inflation continues. There would have been a tremendous outflow of funds in the Savings industry, if it hadn't been for so called "Money Market Certificates." Savings and Loans can now issue these, which are in effect a quarter of a percent higher than the 6 months treasury bill rate. They are getting in effect over 10% of what that money costs. You have to have a pretty good interest rate on a mortgage to be able to pay that sort of interest charge for your deposit. So basically we have to stay in the market. We would prefer that regulated institutions be exempt from usury laws, but that can't be, so we have to have some room to move and we simply don't have room with the interest rates right now as they are. The 18% would give us a substantial amount of room.

Joe Sevigny, Superintendent of Banks for Nevada stated that the Division of Banks neither opposes or supports the present legislation. He stated they are finding it more and more difficult, time consuming and costly when they go in to an institution for examinations to check out the floating loans, to be sure that they comply with the statute. He stated there are two problems with funds flowing from other states, these are 1) is Nevada suffering? and 2) is there competition? He stated he would like to read a letter into the record that speaks to both of these issues (see attachment E).

Senator Hernstadt stated he had an article on lending he would also like entered into the record (see attachment F).

No action was taken at this time.

Senator Close stated he had a request for an introduction of a bill which permits District Courts to confer powers of Peace Officers on private processors. He stated this bill came from "Smokey" Stover in Las Vegas, who is a private process server who has had significant problems.

It was the consensus of the Committee not to support this measure at this time.

SB 99 Consolidates various provisions relating to wrongful death actions.

After a short discussion the Committee decided to go with Judge Thompson's amendments of his letter and recommendations of February 2, 1979 (see minutes of Feb. 7). They will get the amendments printed up and bring the bill back into the Committee to make sure that is what they want.

There being no further business at this time the meeting was adjourned.

Respectfully submitted,

Virginia C. Letts, Secretary

APPROVED:

Senator Melvin D. Close, Chairman

ATTACHMENT "A"

RENO OFFICE
GEORGE L. VARGAS
JOHN C. BARTLETT
LOUIS MEAD DIXON
ROBERT W. MARSHALL
JAMES P. LOGAN
JOHN C. RENSHAW
ALBERT F. PAGNI
FREDERIC R. STARICH
JAMES S. BEASLEY
JOHN P. SANDE, III
PHILIP G. SATRE
JAMES P. LOGAN, JR.
BRENT C. BEGLEY
PHILLIP W. BARTLETT
JOHN P. FOWLER
DAVID R. GRUNDY

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ROBERT L. GIFFORD
H. GREGORY NASKY
CHRIS A. BEECROFT, JR.
DEAN P. VERNON
THOMAS F. KUMMER
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.

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.

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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

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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,

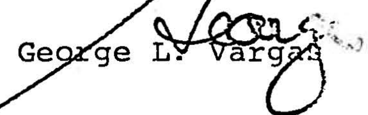
to which the parties may agree.

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

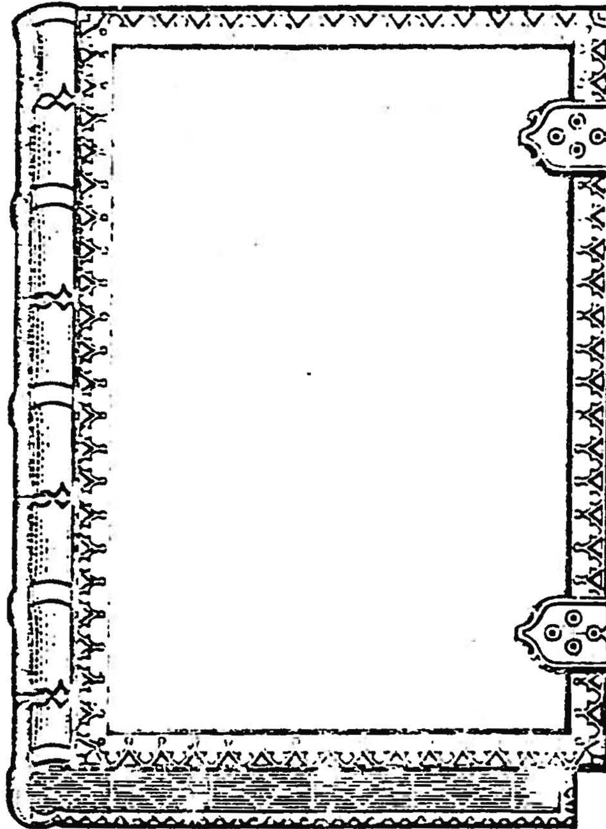
GLV:mn

Enclosures

ATTACHMENT "B"

# [illegible]he Consequences [illegible] Usury Ceilings

By George A. LeMaistre
*Chairman*
Federal Deposit Insurance Corporation



It is particularly timely to discuss the subject of usury ceilings — a form of price control over the rates of interest which financial institutions may charge on loans. Although usury ceilings have not, as a general rule, been terribly restrictive in the past, they did lead to serious difficulties in 1974 when interest rates literally went through the ceiling for both borrowers and lenders, and may have had adverse impacts on the economies of those areas where the ceilings were binding. Even now, though not so binding as then, usury ceilings are causing problems and, in the case of Arkansas and Tennessee, these problems are not insignificant.

Both Arkansas and Tennessee have constitutional 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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ndered on the Bank Instalment Lending Act if 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 convention.

### 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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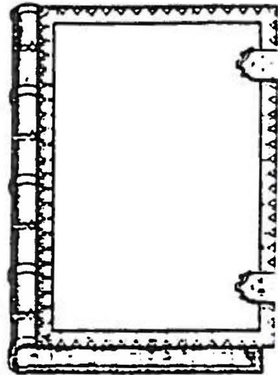
credit card maximum lending rate from 18% to 12% in Washington State in 1968 had just such an effect. At the lower rate, the amount of credit demanded exceeded that which financial institutions were willing to supply and, as a result, those who were least creditworthy were denied credit. Miller stated 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 offices and laid off 107 employees. In addition, banks have severely curtailed direct instalment 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 % increase nationally, and a 20% decrease in 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 ceilings. Institutions may accomplish this either by seeking borrowers in geographic areas 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. □

ATTACHMENT "C"

# INTEREST LIMITATIONS, BACKGROUND PAPER

## NEVADA

NRS 99.050 allows 12% or 3 1/2% over prime rate if there are no prepayment penalties.

Exemptions from this limitation are:

1. RETAIL INSTALLMENT CONTRACTS

NRS Chapter 97 allows 1% per month on the initial balance or $25 whichever is greater or 1.8% per month on the deferred balance. Chapter 97 requires no license but only applies to goods and services.

2. THE SMALL LOAN ACT

NRS Chapter 675 allows interest calculated as the greater of:

a. 36% on the first $300
   21% on the $300-$1000 range
   15% on $1000-$10,000 range

or

b. 18% of the unpaid balance per year

3. THE NEVADA THRIFT COMPANIES ACT

NRS Chapter 677 allows:

Loans of $3,500 (gross) to $5,000 (gross) pay interest of $10 per $100 per year or 1.5% per month on the unpaid balance.
Loans of $5,000 to infinity at any rate of interest.

4. CREDIT UNIONS

NRS Chapter 678 allows Credit Unions to charge 1% per month on the unpaid balance or more with the consent of the Commissioner of Credit Unions. This consent has not been given.

5. PAWN BROKERS

NRS Chapter 646 allows pawn brokers to charge 4% a month.

## CALIFORNIA

Whereas Nevada has a general usury prohibition and exemptions in the various acts, California exempts practically every institutional lender from the usury provision that is found in the State Constitution.

California Constitution Article 15, Sec. 1 sets the usury limit at 10% and exempts savings and loans, industrial loan companies (thrifts), credit unions, pawn brokers, banks, and agricultural cooperatives. The Constitution gives the legislature the power to determine the rates for these institutions. No such rates have been set except

for thrifts, pawnbrokers, personal property brokers and small loan offices.

There is also a California civil code provision setting usury at 12% which has not been taken off the books. It was an initiative measure and is preempted by the Constitution provision.

COLORADO

Colorado's usury limitation is set at 45%. There is a criminal stattute which creates a presumption of extortion if interest in excess of 45% is charged. There do not appear to be any limitations on the rates that may be charged by established lenders.

NEW YORK

The rate of usury in New York can be changed up to 6 times a year by the Banking Board. The upper limit that they can set the rate at is 8 1/2% per year.

The usury law in New York does not apply to loans over $250,000 or to federally insured loans and also the usury defense may not be used by a corporation in New York.

New York has a criminal usury law which makes it a crime to charge more than 25% per year interest.

NATIONAL BANKS - 12 USC 85

National Banks are only allowed to charge what their state allows or 1% over the 90 day discount rate at the local Federal Reserve Bank. On agricultural loans over $25,000 they can charge 5% over the 90 day discount rate.

ATTACHMENT "D"

## ANALYSIS OF STATE USURY STATUTES*

### INDIVIDUAL MAXIMUM CONTRACT RATE

| 6% | 7% | 8% | 9% | 10% | 11% | 12% | 18% | N/L | Various** |
|---|---|---|---|---|---|---|---|---|---|
| PA-17 | MI | AL | GA | AR | NB- 9 | AZ | ID-UCCC | MA | AK- 1 |
| | | DC | IO | FL- 4 | | CO-UCCC | IN-UCCC | NH | CA- 2 |
| | | IL | NC-13 | MD | | CT | KS-UCCC | | DE- 3 |
| | | KY- 6 | | MS | | HI- 5 | UT-UCCC | | FL- 4 |
| | | LA | | MO | | ME 12 1/4 UCCC | | | HI- 5 |
| | | MN- 7 | | NM | | SC-UCCC | | | KY- 6 |
| | | OH-15 | | OK-UCCC | | WA | | | MN- 7 |
| | | VT 8 1/2 | | OR-16 | | WI-20 | | | MT- 8 |
| | | VA | | SD | | | | | NB- 9 |
| | | WV | | TE-19 | | | | | NV-10 |
| | | | | TX | | | | | NJ-11 |
| | | | | WY-UCCC | | | | | NY-12 |
| | | | | | | | | | NC-13 |
| | | | | | | | | | ND-14 |
| | | | | | | | | | OH-15 |
| | | | | | | | | | OR-16 |
| | | | | | | | | | PA-17 |
| | | | | | | | | | RI-18 |
| | | | | | | | | | TE-19 |
| | | | | | | | | | WI-20 |

*The analysis is intended to provide an overview and not a definitive analysis of the law in each state. Study made 7/78.

**Various:

AK- 1 5 percentage points over the discount rate charged by the 12th F.R. district; N/L over $100,000.
CA- 2 10% non-regulated lenders; N/L regulated lenders.
DE- 3 4 percentage points over the F.R. discount rate; N/L over $100,000.
FL- 4 10%; 15% over $500,000.
HI- 5 12%; N/L over $750,000.
KY- 6 8 1/2%; N/L over $15,000.
MN- 7 8%; N/L over $100,000.
MT- 8 Up to $150,000 greater of 10%, or 4 percentage points over the 9th F.R. district 90 day discount rate. Over $150,000 to $300,000 greater of 10%, or 5 points over the discount rate; N/L over $300,000.
NB- 9 11%; N/L over $100,000.

continued

INDIVIDUAL MAXIMUM CONTRACT RATE - continued

**Various (continued)

NV-10 12% or if lowest daily prime rate at the 3 largest U.S. banking institutions is 9% or more, the lowest rate plus 3.5%.

NJ-11 6 to 8% set up Commissioner (current rate is 8%). N/L $50,000 or more except loan secured by 1 to 3 family property.

NY-12 5 to 8 1/2% set by Banking Board (current rate is 8 1/2%); N/L $250,000 or more except loan secured by 1 to 2 family residential property. Interest at 25% or more is criminal usury.

NC-13 9% to $100,000; 12% over $100,000 to $300,000; N/L over $300,000.

ND-14 Greater of 7% or 3 percentage points over rate paid on 30 month CDs (current rate is 9 1/2%)

OH-15 8%; N/L over $100,000.

OR-16 10%; N/L over $50,000.

PA-17 6%; N/L over $50,000.

RI-18 21%.

TE-19 10%; 1978 constitutional amendment permits legislature to set higher rate.

WI-20 12%; N/L $150,000 or more except loan secured by 1 to 4 family residential property.

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## UNINCORPORATED BUSINESS MAXIMUM CONTRACT RATE

| 6% | 7% | 8% | 9% | 10% | 11% | 12% | 18% | N/L | Various** |
|---|---|---|---|---|---|---|---|---|---|
| PA-46 | MI | AL-21 | GA | AR | NB-36 | AZ | | IL | AL-21 |
| | | DC-26 | IO | FL-27 | | CT | | IN | AK-22 |
| | | KY-30 | | ID-29 | | HI-28 | | ME | CA-23 |
| | | LA | | KS | | WA-50 | | MD-31 | CO-24 |
| | | MN-32 | | MS-33 | | WI-51 | | MA | DE-25 |
| | | OH-43 | | MO-34 | | | | NH | DC-26 |
| | | SC | | NM-39 | | | | UT | FL-27 |
| | | VA-49 | | NC-41 | | | | VT | HI-28 |
| | | WV | | OR-45 | | | | WY | ID-29 |
| | | | | SD | | | | | KY-30 |
| | | | | TE-48 | | | | | MD-31 |
| | | | | TX | | | | | MN-32 |
| | | | | | | | | | MS-33 |
| | | | | | | | | | MO-34 |
| | | | | | | | | | MT-35 |
| | | | | | | | | | NB-36 |
| | | | | | | | | | NV-37 |
| | | | | | | | | | NJ-38 |
| | | | | | | | | | NM-39 |
| | | | | | | | | | NY-40 |
| | | | | | | | | | NC-41 |
| | | | | | | | | | ND-42 |
| | | | | | | | | | OH-43 |
| | | | | | | | | | OK-44 |
| | | | | | | | | | OR-45 |
| | | | | | | | | | PA-46 |
| | | | | | | | | | RI-47 |
| | | | | | | | | | TE-48 |
| | | | | | | | | | VA-49 |
| | | | | | | | | | WA-50 |
| | | | | | | | | | WI-51 |

**Various:

AL-21 8%; N/L 100,000 or more.
AK-22 5 percentage points over the discount rate charged by the 12th F.R. district; N/L over $100,000.
CA-23 10% non regulated lenders; N/L regulated lenders.
CO-24 45%

continued

UNINCORPORATED BUSINESS MAXIMUM CONTRACT RATE - continued

**Various (continued)

| | |
|---|---|
| DE-25 | 4 percentage points over the F.R. discount rate; N/L over $100,000 |
| DC-26 | 8%; N/L over $5,000 |
| FL-27 | 10%; 15% over $500,000 |
| HI-28 | 12%; N/L over $750,000 |
| ID-29 | 10%; N/L over $25,000 if not secured by a residential mortgage and not subject to UCCC. |
| KY-30 | 8 1/2%; N/L over $15,000; N/L to a limited partnership or business trust. |
| MD-31 | N/L over $5,000 |
| MN-32 | 8%; over $25,000 4 1/2 percentage points over F.R. discount rate. |
| MS-33 | 10%; partnerships 15% over $250,000 |
| MO-34 | 10%; N/L over $5,000 (except agricultural loans) |
| MT-35 | Up to $150,000 greater of 10%, or 4 percentage points over the 9th F.R. district 90 day discount rate. Over $150,000 to $300,000 greater of 10% or 5 points over the discount rate. N/L over $300,000. |
| NB-36 | 11%; N/L over $100,000 |
| NV-37 | 12%, or lowest daily prime rate at the 3 largest U.S. banking institutions is 9% or more, the lowest rate plus 3.5%. |
| NJ-38 | 6 to 8% set by Commissioner (current rate is 8%); N/L $50,000 or more except loan secured by 1 to 3 family property. |
| NM-39 | 10%; N/L $500,000 or more. |
| NY-40 | 5 to 8 1/2% set by Banking Board (current rate is 8 1/2%); 5% over 90 day discount rate set by N.Y. F.R. Bank $25,000 or more; N/L $250,000 or more except loan secured by 1 to 2 family residential property. 5% over 90 day discount rate set by N.Y. Fed. Res. Bank $25,000 or more. |
| NC-41 | 10% to $100,000; 12% over $100,000 to $300,000; N/L over $300,000. |
| ND-42 | Greater of 7% or 3 percentage points over rate paid on 30 month CDs (current rate is 9 1/2%); N/L over $25,000. |
| OH-43 | 8%; N/L over $100,000 |
| OK-44 | 45% |
| OR-45 | 10%; N/L over $50,000 |
| PA-46 | 6%; N/L over $10,000 |
| RI-47 | 21% |
| TE-48 | 10%; 1978 constitutional amendment permits legislature to set higher rate |
| VA-49 | 8%; N/L $5000 or more |
| WA-50 | 12%; N/L over $50,000 |
| WI-51 | 12%; N/L $150,000 or more except loan secured by 1 to 4 family residential property |

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CORPORATION MAXIMUM CONTRACT RATE

| 6% | 7% | 8% | 9% | 10% | 12% | 15% | 18% | N/L | Various** |
|---|---|---|---|---|---|---|---|---|---|
| | | | GA-58 | AR | AZ-54 | AL-52 | | DE | AL-52 |
| | | | | ID-60 | CT-57 | FL | | DC | AK-53 |
| | | | | MD-61 | HI-59 | | | IL | AZ-54 |
| | | | | MS-62 | OR-66 | | | IN | CA-55 |
| | | | | NC-65 | WA-71 | | | IO | CO-56 |
| | | | | TE-69 | | | | KS | CT-57 |
| | | | | TX-70 | | | | KY | GA-58 |
| | | | | | | | | LA | HI-59 |
| | | | | | | | | ME | ID-60 |
| | | | | | | | | MA | MD-61 |
| | | | | | | | | MI | MS-62 |
| | | | | | | | | MN | MT-63 |
| | | | | | | | | MO | NV-64 |
| | | | | | | | | NB | NC-65 |
| | | | | | | | | NH | OR-66 |
| | | | | | | | | NJ | RI-67 |
| | | | | | | | | NM | SC-68 |
| | | | | | | | | NY | TE-69 |
| | | | | | | | | ND | TX-70 |
| | | | | | | | | OH | WA-71 |
| | | | | | | | | OK | |
| | | | | | | | | PA | |
| | | | | | | | | SC-68 | |
| | | | | | | | | SD | |
| | | | | | | | | UT | |
| | | | | | | | | VT | |
| | | | | | | | | VA | |
| | | | | | | | | WV | |
| | | | | | | | | WI | |
| | | | | | | | | WY | |

**Various:
- AL-52 15% $10,000 to $100,000; N/L $100,000 or more.
- AK-53 5 percentage points over the discount rate charged by the 12th F.R. district; N/L over $100,000
- AZ-54 12%; 18% over $5,000

continued

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CORPORATION MAXIMUM CONTRACT RATE - continued

**Various (continued):

CA-55 10% non-regulated lenders; N/L regulated lenders
CO-56 45%
CT-57 12%; 18% over $10,000
GA-58 9%; N/L over $2,500
HI-59 12%; N/L over $750,000
ID-60 10%; 12% over $10,000; N/L over $25,000 if not secured by a residential mortage and not subject to UCCC
MD-61 10%; N/L over $5,000
MS-62 10%; 15% over $2,500
MT-63 Up to $150,000 greater of 10%, or 4 percentage points over the 9th F.R. district 90 day discount rate; Over $150,000 to $300,000 greater of 10% or 5 points over the discount rate; N/L over $300,000.
NV-64 12%, or if lowest daily prime rate at the 3 largest U.S. banking institutions is 9% or more, the lowest rate plus 3.5%.
NC-65 10% to $100,000; 12% over $100,000 to $300,000; N/L over $300,000.
OR-66 12%; N/L over $50,000
RI-67 21%
SC-68 N/L corporations with $40,000 capital
TE-69 10%; 1978 constitutional amendment permits legislature to set higher rate
TX-70 10%; 18% $5,000 or more
WA-71 12%; N/L over $50,000

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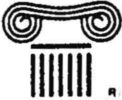
TRADITIONAL AND POST OFFICE DEPARTMENT TWO-LETTER ABBREVIATIONS OF STATES AND OTHER

| | |
|---|---|
| Alabama | AL |
| Alaska | AK |
| Arizona | AZ |
| Arkansas | AR |
| California | CA |
| Canal Zone | CZ |
| Colorado | CO |
| Connecticut | CT |
| Delaware | DE |
| District of Columbia | DC |
| Florida | FL |
| Georgia | GA |
| Hawaii | HI |
| Idaho | ID |
| Illinois | IL |
| Indiana | IN |
| Iowa | IO |
| Kansas | KS |
| Kentucky | KY |
| Louisiana | LA |
| Maine | ME |
| Maryland | MD |
| Massachusetts | MA |
| Michigan | MI |
| Minnesota | MN |
| Mississippi | MS |
| Missouri | MO |
| Montana | MT |
| Nebraska | NB |
| Nevada | NV |
| New Hampshire | NH |
| New Jersey | NJ |
| New Mexico | NM |
| New York | NY |
| North Carolina | NC |
| North Dakota | ND |
| Ohio | OH |
| Oklahoma | OK |
| Oregon | OR |
| Pennsylvania | PA |
| Puerto Rico | PR |
| Rhode Island | RI |
| South Carolina | SC |
| South Dakota | SD |
| Tennessee | TE |
| Texas | TX |
| Utah | UT |
| Vermont | VT |
| Virginia Islands | VI |
| Virginia | VA |
| Washington | WA |
| West Virginia | WV |
| Wisconsin | WI |
| Wyoming | WY |

ATTACHMENT "E"

Walter E. Heller Western
INCORPORATED



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.

"E"



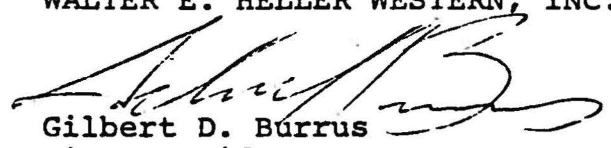
We're sure the people of the state of Nevada would want the same financial opportunities as their neighboring Western States now enjoy.

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

ATTACHMENT "F"

7/1/79

*Atlantic City Fever*

# The Casino Industry Is on a Winning Streak In Lining Up Capital

## More Big Lenders Providing Money for Construction; Gains May Prove Fragile

## The Stigma Hasn't Vanished

By HAL LANCASTER
*Staff Reporter of* THE WALL STREET JOURNAL

*WANTED: $1.5 billion for the construction of hotels and casinos in Nevada and New Jersey. Applicants swear they are of high moral caliber and seek funds from major [illegible] institutions. Of several are willing to part with the money.*

Like a nouveau riche businessman inviting a bunch of old-money families to tea, the gambling industry is trying to break into polite society.

It hasn't been easy. With its lurid history, replete with links to organized crime, the industry has long been a pariah to the nation's financial establishment. Its capital came primarily from a handful of small lenders, notably Valley Bank of Nevada, and one big sugar daddy, the Teamsters' Central States Pension Fund, which provided most of its long-term financing for years.

But the capital needs of gambling operators, fueled by ever-increasing demand for their facilities and by mounting inflation, outgrew the capabilities of small banks. And the trouble-ridden Teamsters fund stopped bankrolling them about two years ago, under fire from the federal government.

### Atlantic City Fever

Meanwhile, Atlantic City fever has infected the industry. At last count, 38 companies had proposed hotel-casino projects for the city since gambling was legalized there last year. Some of those probably won't get built for a variety of reasons, but those that do will cost more than $1 billion, one gambling analyst estimates.

Where will casino operators get this money? Some of it, undoubtedly, will come from public debt and equity offerings, an increasingly popular vehicle as more publicly held firms enter the business. But the industry's leading firms—most of them largely cleansed of unwholesome influences, according to regulatory and law-enforcement sources—insist that much of it will come from those same financial institutions that have snubbed them all these years when they were confined to Nevada.

The barriers certainly haven't crumbled completely, and terms can be stiff, but gambling executives point proudly to several "breakthroughs":

—Aetna Life & Casualty Co., one of the large insurance companies that are primary sources of long-term financing for American business, has made its first loan to the industry, a $30 million commitment to Caesars World Inc., which owns Caesars Palace in Las Vegas.

—Morgan Guaranty Trust Co. heads a 15-bank consortium that established a $135 million revolving-credit and term-loan agreement with Del E. Webb Corp. Webb, which operates several Nevada gambling properties, calls this the biggest credit agreement in the industry's history.

—The Public Employes Retirement System of Nevada, a pension fund with $585 million in assets, has taken its initial step into gambling lending with a $23 million mortgage placement with the Riviera Hotel and Casino in Las Vegas.

### Other Signs

There are other, less dramatic signs:

Bally Manufacturing Corp., the nation's leading slot-machine maker, added Continental Illinois National Bank & Trust Co. and Manufacturers Hanover Trust Co. to its group of lending banks in the past two years. "In previous years," says William T. O'Donnell, Bally's chairman and president, "we had difficulties getting banks like that to even talk to us."

Bally and Ramada Inns Inc., both Atlantic City aspirants, say that 75% of their recent debenture issues, which totaled $150 million, were snapped up by institutional buyers.

Caesars World, another Atlantic City hopeful, attracted 17 bank representatives to its recent financial conference in Las Vegas. At its first, five years ago, it drew three.

And Travelers Insurance Co., another major insurance lender, formally decided, when confronted with a proposal for a gambling loan late last year, that it hadn't any qualms about lending to the industry. While that loan eventually fell through, two gambling-related real-estate loans are under consideration, says Philip B. Reynolds, a senior vice president.

### Reasons for Improvement

Lending sources and gambling operators attribute this apparent clearing of the lending weather to several factors: the reportedly continuing cleanup of the industry's unsavory characters, the entry of more and more well-capitalized publicly held firms, and the opening up of Atlantic City.

"Gambling is more acceptable," says Philip Hannifin, senior vice president of Summa Corp., the late Howard Hughes's holding company, which is credited by some with starting the industry cleanup when it entered the gambling business in Nevada in 1966. A year later, the state legislature voted to allow publicly held firms to acquire casino properties. So began the transformation of casino owners from "immigrant bookmakers from Cleveland," as one casino executive puts it, to large corporations.

"There's a great amount of money to be made in this industry," Mr. Hannifin says. "Witness the furvor and heat generated by Atlantic City. The puritanical ethic is eroding and will continue to erode." Also, says William McElnea, Caesars World president, Atlantic City made gambling more viable to Eastern-establishment financial institutions

*Please Turn to Page 27, Column 1*

# Atlantic City Fever: More Lenders Accommodate Gambling Industry

*Continued From First Page*

and the media, and suggested the growth potential of the industry.

"I happen to think that gambling is going to be a very important business," says David Liedoner, an analyst for the securities firm of Wertheim & Co. "At some point, there will probably be about a dozen states that will have legalized casino gambling."

"In general," adds Harold L. Vogel, an analyst for Merrill Lynch, Pierce, Fenner & Smith Inc., "there is a greater understanding of the industry among lenders, particularly in stock-market recognition, which leads to debt and equity financing."

The stigma long borne by the industry hasn't totally vanished. Prudential Insurance Co. and Citicorp, among others, still won't make gambling loans. "A lot of people said Aetna was the crack in the dike," an insurance-industry executive says. "I'm convinced it wasn't. I don't think the insurance industry, over all, is too excited about getting into the gambling industry."

But several New Jersey sources indicate that even Prudential may someday weaken. According to them, New Jersey's governor, Brendan Byrne, has been pressuring the Newark-based firm to support the state's fledgling gambling industry. (A spokesman for Gov. Byrne denies that the governor has been pressuring lending sources, but he says the governor has "encouraged lending institutions not to exclude Atlantic City and gambling operations when they think of lending for construction projects in New Jersey.")

### "Undesirable Elements"

In the skeptics' eyes, the industry's image still isn't completely sanitized. "When you get right down to it, that's a big part of our reluctance," a Citicorp spokesman says. An executive with one of the largest insurance lenders adds, "It's a high-cash, fast-turnover business with an attraction for undesirable elements." A few major brokerage houses, notably Kidder Peabody & Co. and Goldman Sachs & Co., have shied away from managing underwriting groups for gambling-related issues, but such reluctance is dwindling.

Unfortunately for gambling concerns, there remains some grist for the critics' mills. For example, four men with purported mob ties are on trial in a federal court in Detroit for allegedly concealing ownership interests in Las Vegas's Aladdin Hotel and Casino. Also, federal investigators allege that Argent Corp., owner of the Stardust and Fremont hotel and casino properties in Las Vegas, is controlled by reputed mob figure Anthony Spilotro, who recently was awarded a spot in Nevada's "black book" of casino undesirables.

More damaging, however, would be the failure of Atlantic City's sole casino operator right now, Resorts International Inc., to obtain a permanent license. While Resorts' casino has piqued the financial community's interest with an impressive net win of $134.1 million in little more than seven months of operation, the company is embroiled in a contentious licensing hearing, thanks to charges by the state attorney general of questionable associations and dealings. As skittish as lenders are, any hint of mob infiltration in New Jersey could send them scurrying, gambling people fear.

### Tight Credit Clouds Picture

In recent months, the lending picture has been clouded a bit by an ever-tightening