Research

MINUTES OF THE MEETING OF THE SENATE COMMITTEE ON JUDICIARY

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
February 26, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close at 9:00 a.m, Thursday, February 26, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Melvin D. Close, Chairman
Senator Keith Ashworth, Vice Chairman
Senator Don W. Ashworth
Senator Jean E. Ford
Senator William J. Raggio
Senator William H. Hernstadt
Senator Sue Wagner

STAFF MEMBERS PRESENT:

Iris Parraguirre, Committee Secretary

The following Bill Drafting Requests were presented and received for committee introduction:

BDR NO. 41-1712 (S.B 320)

Revises provisions on computation of gross revenue received by gaming establishments. (Senator K. Ashworth)

BDR NO. 770 (S.C.R. 27)

Requests the Supreme Court to provide a special provision for appealing probate matters.

BDR NO. 12-769 (S.B 321)

Clarifies certain provisions of law relating to estates of decedents.

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BDR NO. 11-185 (S.B 322)

Revises grounds and procedures for termination of parental rights. (Welfare Division)

SENATE BILL NO. 101:

Removes limitations on interest rates for loans.

Senator Hernstadt stated he requested BDR No. 101. He referred to an outline of existing interest rates for different categories of loans, which is attached hereto as Exhibit C; a reproduction of public law 96-161, a Federal preemption statute, which is attached hereto as Exhibit D; a summary of existing interest rate limitation laws in all of the states of the union, which is attached hereto as Exhibit E; and a proposed amendment.

Senator Hernstadt explained that S. B. No. 101 is not a banker's bill. The Federal law has preempted a good portion of the interest rate limitations on banks, savings and loans and Federal credit unions under public law 96-161. Banks and savings and loans now on mortgage loans and on large business loans can charge 21 percent interest regardless of the existing Nevada statute which says 18 percent. That is calculated at five percent in addition to the discount rate, plus any surcharge rate on the discount rate. The Federal discount rate is 13 percent, there is a three percent surcharge for large banks, which makes it 16 percent, you add five more and that totals 21 percent.

Senator Hernstadt referred to a letter received from Mr. Okada of the Department which summarizes all the different interest rate limitations and indicates there is a most-favored lender's clause under NRS 677.730 which provides that if one category of lender has a more advantageous or a higher interest rate limitation then banks, savings and loans and credit unions also can use that. Since thrift companies have no interest rate limitation in excess of $5,000, there is no interest rate limitation whatsoever on banks, savings and loans and credit unions.

Senator Wagner asked whether there had been a legal opinion with regard to Mr. Okada's opinion, if people are using it and relying upon it. Senator Hernstadt replied that he had not sought a legal opinion. He stated he thought people could use it but the problem is public perception. He explained that one of the reasons for S. B. No. 101 is that although a good

deal of the interest rate limitations are, in fact, not in effect, everyone should know what the terms are rather than referring to obscure sections of the law and saying it does not have to be done. He stated S. B. No. 101 as drawn does not remove the limitation on credit cards and he felt the state could benefit if limitations are removed on credit cards, either bank credit cards, mastercharge, Visa and so forth, in addition to retail sales credit cards.

With respect to the amendment to S. B. No. 101, Senator Hernstadt explained that credit cards are referred to on the first page. It takes the limit off credit cards and in terms of necessitous borrowers, it leaves three categories of lender under some interest rate controls. One is private contracts where there is no interest rate over $15,000 but anything less than $15,000 would have a rate not to exceed 30 percent per annum. He stated the second category are the pawn shops and their industry wanted to maintain interest rate controls. The change they requested was raising four percent a month to five percent a month. Finally, there are several pages dealing with small loan companies which, if there is no change in law, may not be able to operate in two years. They are now six percent under what a normal banking institution would be charging.

Senator Hernstadt also suggested increases in brackets and amounts for small loans up to $500, instead of $300, raising the interest rate from 36 percent per annum to 48 percent. From $300 to $1000 it would go from $500 to $2000 at an interest rate of 36 percent. Anything in excess of that up to a new higher limit of $15,000 instead of $10,000 would be 30 percent. He stated these were his recommendations only and not industry recommendations.

Senator Hernstadt stated the other amendment that was recommended by Mr. Blakey does not have his recommendation with it.

Senator Hernstadt felt that in order to keep a flow of funds into the state of Nevada, which is the fastest growing state of all 50 states interest rates would have to be made attractive enough to attract funds to the state rather than having funds going out of state where there are not credit limitations. He stated it is the small loaner that is basically being cut off from credit. He urged the support of S. B. No. 101 in some form or other.

In response to Senator Wagner's question, Senator Hernstadt explained the bill in its entirety would remove all interest rate limitations of every category, except an error was made and credit cards were left in.

Senator Wagner asked Senator Hernstadt to explain in more detail what Public Law 96-161 actually does. Senator Hernstadt explained that savings and loans, banks and credit unions are covered under the law. Credit unions under the Federal Credit Union Act are permitted to charge interest on loans and are subject to the same penalties as provided for insured banks under the Federal Deposit Insurace Act. They took the interest rate limit by a Federal over-ride of all state statutory law or even state constitutional law off the banks covered by FDIC. Then they tracked credit unions and savings and loans into that by saying they are subject to the same terms as institutions insured by FDIC. He said Nevada as well as all other states have until March 1983 to reenact usury, otherwise usury is off forever with respect to these categories of loans.

Senator Don Ashworth asked Senator Hernstadt if his bill fit the description for the preemption. He explained one of the sections Mr. Blakey has recommended is Section 14, which would say that at a future date, usury can be put back on. Apparently S. B. No. 101 as drafted does not do that.

Mr. Joe Midmore, representing the licensees who are regulated under Chapter 675, commonly known as the small loan companies or consumer loan companies, stated he had no opportunity to contact his clients regarding the amendments to S. B. No. 101 to get any indication from them whatsoever as to what if any parts of it they feel are fair or reasonable. He asked the committee to set aside the amendment and have it considered at a later date.

Chairman Close explained that the bill would not be processed and would probably require more testimony at a later date.

Mr. George Folsom, President of Family Savings and Loan Association, and Vice President and a member of the legislative committee of the Nevada League of Savings Associations, stated he spoke on behalf of an 18 percent usury rate during the last session of the legislature. Because of inflation, it has turned out to be inadequate. He stated New York has gone to 25 percent for a usuary rate. The prime rate is 21 percent at the present time, and when they take in some of their deposits, they have to meet that kind of competition. The Federal Government found it necessary to enact a law preempting state usuary rates last year. That included housing and was for insured lenders. He stated the control of interest rates in this country is in the hands of the Federal Government through the Federal Reserve Board. The national interest comes first with them over state usury rates.

They are charged with the duty of keeping the nation's money safe and with the duty of controlling the supply of money. When the Federal Reserve feels the money growth is getting out of hand, they put on certain controls and up the interest rates. He stated he has read where they may go as high as 25 percent for the primary rate, but no one really knows. Money goes where it will get its best return. He felt it would be in the best interests of Nevada if there were not restraints through state usury laws at the present time. The competition controls the market in this area. California for many years has exempted banks and savings and loans from their usury laws permitting the market forces and the national regulations to control in that state. They feel that regulated lenders at least be free from state usury laws and be permitted to lend according to the ups and downs of the market. They are just intermediaries between depositors and those they lend to.

Chairman Close asked Mr. Folsom why the Savings and Loan Associations should be able to charge more than a private individual could charge if making the same loan to the same person. Mr. Folsom replied that he is not saying they should be able to charge more. He is only speaking on behalf of savings and loan associations who are regulated. He stated they have no position with respect to other lenders.

Mr. Kenny Guinn, President of Nevada Savings and Loan, stated he could give a few examples to further understand the situation. He agreed with Chairman Close that the regulations adopted under S. B. No. 101 should affect everybody and not just an individual or a particular company. He stated the complexity in what they are going through in their businesses now makes it difficult in communicating to their clientele or the citizen who wants to borrow money as to what they should be charged or should not be charged, what is legal and what is not because of the discrimination in the various aspects of the law. He stated one law is needed that is simple that sets one law for everybody. Mr. Guinn agreed with S. B. No. 101 the way it is written as far as it relates to savings and loan companies. He stated he has no expertise in the other areas but under S. B. No. 101, it would allow competition to set the rate. He felt the problems they are having today in the savings and loan business is no different from what the banks or anyone else who has the commodity of money to make their business operate is having.

Mr. Guinn stated his basic concern is that when the Federal Government changed their regulations and started interest rate levels and telling savings and loan companies what they had to pay on money market certificates in July 1978, the whole thrust of the savings and loan business changed drastically. It has been in a state of flux ever since and has not been flexible enough to cope with the situations as they arise on a day to day basis. Mr. Guinn stated there is very little competition among the savings and loan companies but their major problem is, if they can only charge up to the 18 percent on a cash loan in this state, they cannot turn around and pay investors 17-3/4 percent. His concern is that once they are paying 17-3/4 percent and sending their money out, there is no money to put back into the building industry so there is not employment for people who are working in the subcontracting areas. They are in the business to loan money at competitive rates and that is what they would like to be able to do under S. B. No. 101.

Senator Raggio stated that over many sessions it has been recognized there has to be some relief given in order to make capital available, make money available to potential lenders, and the legislature is aware of the problem. He stated he would like to know the reason for free control as compared to some floating rate and is concerned about the potential for borrower rip-off. They felt at the time that the floating rate would offer come protection. Senator Raggio also asked Mr. Folsom if it was correct that in California there is no limit on banks.

Mr. Folsom said it was his understanding they had been free from usury laws for some time. Mr. Folsom did not know how many states have no limits on banks. Senator Raggio asked Mr. Folsom to comment on the floating rate vis-a-vis the free control. As to the floating rate, Mr. Folsom stated if 99.050 had stayed with three percent over prime, they probably would not have run into the problems that they have run into in the past year. The problem with tying it to some specific item such as prime rate is that prime rate represents purportedly the best rate that the banks will give to a good borrower. Savings and loans are in the business of long-term lending. They are particularly interested in alternative mortgage instruments that will float up and down with the interest rates as they move up and down, which seems to be the coming type of mortgage instrument for the country. He did not feel prime would always be representative of those rates because there have been times when the prime rate was below the long-term mortgage rates, which could happen again.

Senator Wagner asked how many savings and loans there are in the state. Mr. Guinn replied there are seven state savings and loan associations and one federal.

Senator Wagner requested she would like someone from the Department of Commerce to provide information on which states have no limit and also how many institutions there are in those states.

Chairman Close stated he had concern about eliminating usury rates entirely in the state, but if some interest rate is imposed, regardless how high or at what level in the bill, what level should be suggested. Mr. Guinn replied that he could not give a specific percentage because the market is too volatile and this has been apparent since 1979. He said in the event the cap was not removed, it should be placed into a floating method of some form that would be adjustable and have a process to go through. Mr. Guinn did not feel a particular amount could be set because there are a lot of problems regardless of what the rate is. The savings and loan associations have not been in the business to loan money over the counter. They have been primarily in the business of loaning money to the housing industry. His concern is what the market will stand.

Mr. Guinn stated they now have an inflation killer loan where the rate is 14-3/4. The seller can buy that rate down by paying so many points and getting a buyer in at 10-1/2 percent. If a home is being sold for $67,000 and five percent is paid down, they would owe about $64,000 after all the costs were covered. The buyer could move into the house on the inflation buy-down rate of 10-1/2 percent for the first two years, and their payments would be $617 per month. At the end of two years, that rate if it stayed at 14-3/4 would increase the payments to $937 per month. The buyer must qualify on the original rate of 14-3/4 so their income has to match the payment of $937 not $617. That is the basic problem. If they cannot put that money out at 14-3/4, they have to start putting it into the Federal funds because they are setting the rates. Every week the rate changes.

Regarding credit cards, Mr. Guinn stated that if anyone comes in to them as a customer to sign up for a Visa card, the maximum that can be charged on a cash advance on the card is 18 percent. If something is bought and not paid off at the end of the 30 days, the rate is 21.6 percent in most cases which is what the law allows. He stated this is very confusing to people and there

has to be some consistency.

Chairman Close stated the remainder of the bills would not be discussed until the committee reconvened at 12:00.

Mr. Vernon Bennett, Executive Officer of the Public Employees Retirement System, stated the Retirement System favors S. B. No. 101. The testimony of Mr. Bennett is attached hereto as Exhibit F. Mr. Bennett said the Retirement System would probably have no objection to a floating rate if the law would very clearly define what the rate is and how it is applied. Such things should be determined as to how it is computed, when, whether or not bonuses could be exempt and so forth. He asked whether the floating rate would require adjustments quarterly, or would the rates be set at the time the loan is funded based only on the rate in effect at that time, the prime rate plus three percent or whatever was put into effect. If those things were clarified, they would have no objection to a floating rate.

Mr. Richard Blakey, a practicing attorney in Reno, stated he wanted to propose the addition of three Sections to S. B. No. 101 The proposed amendments and Mr. Blakey's testimony is attached hereto as Exhibit G.

Mr. Robins Cahill representing the Nevada Resort Association in Las Vegas stated the executive committee of their association has gone on record that they are not opposed to the concept of S. B. No. 101 but feel that the amendments offered by Mr. Blakey are vitally necessary for the protection of their interests.

Mr. James Slattery representing the pawn shops stated he personally felt the main ingredients of the bill are very good but the pawn shops want only one percent, leaving it as is but going from four to five percent because they feel some pawn shop owners might get a little greedy. They are limited to five months so it would be 25 percent.

Mr. George Vargas, council for the Nevada Banker's Association, stated they had proposed a rather simple bill which still may be somewhere in the drafting process. Their bill was taken after the California law but very much shorter and simplified. The California exemption is contained in the California Constitution and it is quite lengthy. In response to Senator Raggio's previous question, Mr. Vargas stated under the California law the regulated lenders are spelled out in the bill. There is an absolute exemption from usury for the regulated lenders that

are specified, being banks, building and loans, credit unions, industrial loan companies, pawn brokers and banks.

Mr. Vargas stated the bill they proposed is about a page and one-half and takes after the California concept of exempting regulated lenders. Senator Raggio asked whether thrift companies were included. Mr. Vargas replied thrift companies were not in the bill. He stated the term regulated lenders as used in the act means a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control or regulation by an agency of the state of Nevada or of the Federal government, Congress or the legislature of the state of Nevada or any subsidiary thereof. Also, a Nevada state agency or Federal agency which is authorized to lend money and a corporation or other entity established by Congress of the state of Nevada which is owned in whole or in part by the United States or the state of Nevada and which is authorized to lend money. A regulated lender as thus defined is exempt from all limitations on the rate of interest it may charge and further exempt from the operations and effect of all usury statutes.

Mr. Vargas suggested that as it appears now, S. B. No. 101 is rather a lengthy and complicated bill with amendments and if the committee feels there are people that should be out of it then substituting the bill which they have proposed might solve all the problems. He stated they would have no objection at all to a complete elimination, including individuals and everyone else, but only suggest this type of bill because it does have a history in California, it has been workable, and they feel that with the competition existing in Nevada today, it would be a workable proposition in Nevada.

Mr. George Aker of the Nevada Banker's Association agreed with the comments made by Mr. Vargas. He stated the bankers would say nothing about loans by other sources. They are talking about usury only to institutions that are regulated. He said there are many protections for the three populations in regulated lenders, which are the stockholders, the depositors and the employees in that organization. Therefore, there is a body of regulation that can prudently be relied upon for the operation of the institution that may or may not be present in other types of lenders.

Chairman Close asked Mr. Aker what flat level of interest rate would be safe at this point in time. Mr. Aker replied they made a mistake in 1979 but truly felt at that time they had solved the problem and even allowed the inclusion of fee in the calculation of the APR. He felt setting an interest rate would be an untenable

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course for the legislature to undertake. If the highs on the prime rate are plotted over the last cycles, 66, 69, 74 and 80, the number that Mr. Folsom mentioned of 25 percent is entirely a rational number - not a healthy number but a rational number. It was Mr. Akers opinion that if they recommend 30 percent or a rate exceeding 30 they would be asking the legislature to codify essentially an unhealthy practice.

Mr. Aker explained that the segment of our society which has been most injured by regulated rates has been the small saver. Even the national regulatory agencies are now recognizing that all savers deserve a fair shake and that was the reason for the elimination of the Reg. Q ceilings which started at 5-1/4 and went to 7-3/4. The point for the financial intermediaries that accept deposits and make loans is that there has to be a margin. The entire business of banking in the broad generic has changed from 1979 to today. Mr. Aker said most of the testimony previously given did not address directly the maturity of the loans. The prime rate is discussed but that is a short rate, basically 90 days, as opposed to a long rate. A whole new language is used today, talking about gap management, interest rate margin, assessing the interest rate sensitivity on the asset side versus the interest rate sensitivity on the liability side. There is no restriction or constraint for the rates that are paid the depositors on the liability side and there must be freedom to float on the asset side or the bankers are going to lose money. One institution lost $130,000,000 to California in March and April. That money flowed out of the state of Nevada and is not available for investment in the state's economy. The interest rate cycle went to 21-1/2 in mid-December, which is a very high short rate, yet Nevada is a capital short state and has to invest all the money it can get in Nevada but all that can be brought in from outside.

Mr. Aker suggested the committee make the judgment that banks have ample competition. He felt getting information from other states is academic. Right now there is a national move to amend the Douglas amendment to the McFadden Act which will allow interstate banking. The banks' problem is not the rates rising inordinately high due to the absence of competition as it is the inability to get economic rates of return that allow banks to pay interest on deposits to keep what starts in Nevada in Nevada and hopefully to bring substantially more from out of state. The commercial banks in the state have done a good job over the recent past six or eight years of bringing in out-of-state funds. The only way out-of-state funds can come in is if those participations are in a legal loan, but there have been

a number of instances over the past two years where loans have been "closed" outside the state of Nevada to avoid the usury problem. Obtaining statistics on national regulation of interest state by state is not relevant today in Mr. Aker's opinion. Every state that has a usury problem is meeting with their legislatures right now. The states are now in competition to provide an economic regulatory framework within which free enterprise will allow their economy to operate unimpeded.

Mr. Aker felt the wise approach would be to step back and make an independent assessment of competition. If the committee concludes there is adequate competition to provide an opportunity for borrowers to get an economic rate then the safest course for the state of Nevada is to prescribe no usury ceiling and rely on the economic forces that work. If it does not work, the economy in Nevada is impeded in relation to other states. Mr. Aker stated if there is an amendment to the Douglas amendment to the McFadden Act, there will be 20 national banks in the state of Nevada in no time at all. The banks do not fear that and would work with them. Nevada needs all the economic support it can get, therefore, the banks are strongly in support of S. B. No. 101 or their substitute bill as a replacement if it is more comfortable way to go.

Mr. Aker did not feel retroactivity was a problem because the bankers could unanimously agree that they are not out to protect what existed in the past due to retroactivity.

Senator Hernstadt asked Mr. Aker what the attitude of the major money lending centers throughout the country would be about loaning money in Nevada if people can come to the legislature and abridge a part of their contract where they have negotiated a floating rate.

Mr. Aker replied that it would cause apprehension and he felt there had been enough problems getting out-of-state participants just due to the lack of clarity in Nevada's usuary situation. Retroactivity would add to it.

Mr. Aker requested the committee members study the article in the Journal of Bank Research, "Economic Analysis of Usury Laws" which is attached hereto as Exhibit H. The conclusion of the report is that usury ceilings cause misallocation of lendable assets.

Senator Ford asked Mr. Aker whether any states have looked at the potential of an administrative body of some kind in the Executive branch of government that would review a rate, similar to the Federal Reserve Board at the national leval.

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Mr. Aker replied that the only state that has is Arkansas, and it is not precise. They reinstituted essentially that kind of control. He explained that if rates are administered when there is an inverted yield curve, which there is today, either substantially more interest is earned short than long or substantially more interest is paid short than long. No one makes long interest rates today on a fixed-rate basis. In Mr. Aker's opinion, a regulatory review body would have a very difficult task trying to address the short versus the long and the kind of funding that underlies either of those commitments. He felt it would not be feasible and would not work. In all categories of loans, there is adequate competition for the deposit dollars and the lendable dollars and there is not going to be any scalping among regulated lenders. In the absence of artificial intervention in the market through usury constraints, better rates will consistently be available for all classes of borrowers.

Mr. Don Brodeen, Chairman of the Legislative Committee for the Nevada Mortgage Bankers and the Southern Nevada Mortgage Bankers Association, also authorized to speak for the Southern Nevada Home Builders Association, stated he felt usury was an archaic law. The statement of Mr. Brodeen is attached hereto as Exhibit I.

Mr. Pete Kelly representing the Nevada Retail Association stated Mr. John Andrew of J. C. Penney Co. would speak briefly on the bill.

Mr. Andrew stated they support the concept of S. B. No. 101, particularly with the amendment which was discussed. They believe such rates are best left to the market place to competition, rather than to legislative mandates. Evidence of that would point to the rates in Nevada where under the retail installment sales act retailers can at present charge up to 21.6 APR. He stated no one has done for years even though the authorization has been there, and they are all losing money on the credit part of their operations. The highest rate their company has gone to is 21 percent. Mr. Andrew stated many have states have gone to deregulation and legislators throughout the country have seen the wisdom of getting out of this part of the market.

Senator Hernstadt asked Mr. Andrew if he thought people would bring their credit card operations to the state of Nevada if usury is removed. Mr. Andrew stated he did not know but there might be an opportunity in that regard.

Mr. John Kenney testified on S. B. No. 101 representing himself. His statement is attached hereto as Exhibit J.

Mr. Jim Wadhams, Director of the Department of Commerce, stated he had with him Joe Sevigny, the Superintendent of Banks and Norman Okada, the acting commissioner of savings and loans and the commissioner of credit unions. Mr. Wadhams explained that the Department of Commerce regulates all state chartered banks, savings and loans, credit unions, thrift companies, mortgage companies, small loan companies, trust companies, collection agencies and so forth. He stated they were not present to necessarily support or oppose the bill, although they did recommend the elimination of the usury ceilings during the last session of the legislature as opposed to the 18 percent limitation. The problem they have been is that credit is closed off to the borrower of small amounts of money.

Chairman Close asked Mr. Wadems if it was the department's position that S. B. No. 101 should be passed, eliminating all usury limits in Nevada. Mr. Wadhams stated they have definitely seen competition among lenders and there is very little agreement among them as to what should be done in terms of their regulation.

Mr. Joe Sevigny, Superintendent of Banks, reaffirmed Mr. Wadhams' comments. For the benefit of Senator Wagner, he obtained copies of pleadings in Keresey v. Nevada National Bank, which is currently on appeal before the Nevada Supreme Court. Senator Wagner has copies of all pleadings. See Exhibit K attached hereto.

Chairman Close stated the meeting would reconvene following adjournment of the Senate and further testimony would be taken.

The meeting of the Senate Committee on Judiciary reconvened at 12:10 p.m. on Thursday, February 26, 1981.

Mr. Sidney Stern, President of Nevada First Thrift, which is the largest licensee with sixteen offices in the state of Nevada, stated they are profoundly in favor of S. B. No. 101 with amendments. He said instead of looking to what other states have done, only the state of Nevada should be considered. The Thrift Company Act was passed at the 1975 session of the Nevada Legislature and under their law, they are exempt from usury. There have been very few problems with borrowers who are seeking funds who have borrowed from thrift companies. By allowing their rates to float and to be free, they have found out that people feel they can charge the highest rate possible. At the present time, their company has about four million dollars available to lend, and they are even having difficulty lending the money. Mr. Stern stated he made an analysis of all the lenders

in the state and what he found shocking was that banks increased in the number of offices in 1970 to 1980 75 percent; savings and loans, 268 percent; credit unions, approximately 15 percent; but small loan companies only went up six percent because they cannot operate under the rate they have now with an 18 percent cap.

Mr. Stern stated the state of Nevada is a money-short state and for that reason, he felt S. B. No. 101 was one of the most vital, significant and important bills that will be presented. This state cannot run without the free flow of money and the availability of funds. He did not feel everyone should be exempt from usury, because that would not be good either.

Mr. Stern explained that the way the law is written now, the interest that a mortgage broker can charge is regulated 3-1/2 points over the prime rate, and in his opinion, they have done a good job and are serving a vital need in the state of Nevada. They have been able to exist with the floating rate. He recommended to the members of the committee to profoundly consider and look with a great deal of seriousness on S. B. No. 101. He strongly recommended on behalf of his company the passage of S. B. No. 101 and felt it is something Nevada vitally needs to have passed this session.

Senator Wagner asked Mr. Stern to explain why they are having problems lending money and what is causing the difficulty. Mr. Stern explained there is a very serious problem that many people are not aware of. People who may have equity in property really do not have the ability to repay and are overloading themselves. He felt they have a fiduciary trust and have to protect their depositors, as well as the borrowers.

Senator Wagner asked Mr. Stern what their current interest rates are, since they are not under the usury law. He stated when they started out, they voluntarily charged 18 percent. Their interest rate now which they charge is 19-1/4 percent but when they first started out, they paid about 6 percent on their passbooks. The spread between 6 percent and 18 percent is big and the loans they make are larger so they didn't need the personnel, their loans are secured so they don't have as much problem with collections, therefore, a 12 point spread was large. The current rate which they are paying on their T-bills, where most of their money is coming in now, has an approximate rate to the investor of about 15 percent so what they were forced to do was keep their rate at 19 percent. Then based upon term, based upon collateral features and the person's ability to repay, they charge points all the way from two points to maybe four points

depending upon the size. That is the way they can effectively take care of their increased interest cost. The significance of the thrift company is that they were able to work along in the market place and not by rules and regulations. He felt the thrift licensees have taken their responsibility seriously. If interest rates get higher, they will just have to increase what they charge the borrower and the market place seems to meet that.

Mr. Don Brodeen stated he felt the main problem with fixing a rate would be trying to figure out what the charges are that are included in those fees that can be charged above a certain rate and so forth. Consideration would have to be given as to what are allowed charges, what charges are included in the percentage above the rate and what charges are not included.

The testimony was concluded on S. B. No. 101.

ASSEMBLY BILL NO. 18:

Clarifies jurisdiction of judges of juvenile courts.

There was no discussion on A. B. No. 18.

SENATE BILL NO. 251:

Revises provisions relating to parentage.

Mr. Ace Martelle, Deputy Administrator for Nevada State Welfare, stated the program has had increased collections since the outset. The number of AFDC collections has increased greatly and the collections for families not on public assistance has grown from $1,575,334 during the fiscal year 1977 to $4,565,274 during the 1980 fiscal year. Total collections have grown approximately 271 percent. The number of paternity determinations has grown from four in 1975 to 191 in 1980 and they anticipate an increase to approximately 300 during the current fiscal year. They feel their successes in the program are directly related to the efforts of the committee in assisting them with legislation presented and passed during prior legislative sessions. Collections made by this program directly relate in reducing welfare payments and cost to the taxpayers of the state of Nevada. The program is operating on a cost effective basis.

Ms. Sharon McDonald, Deputy Attorney General, stated she would give the committee a brief overview of each revision that is proposed in S. B. No. 251. What the bill does is revise the parentage act by changing one presumption, clarifies the statute

of limitations, provides for fee assessment and defines the attorney-client relationship with limitations that arise when the District Attorney prosecutes an action under Chapter 126 of NRS.

Mr. Bill Furlong, Chief of the Child Support Enforcement Program of the Welfare Department, stated section 1, line 3 is the first change in S. B. No. 251. See S. B. No. 251, section 1, lines 3 through 9 attached hereto as Exhibit L. Mr. Furlong explained this provision specifically establishes a procedure for giving notice to the parties. Under the existing statute, it is as the court provides but the action has occurred long before it ever gets to court. The guidelines gives direction and assures that the notice complies with Nevada statutes.

Chairman Close asked what NRS 126.091 referred to on line 9 covers. Ms. McDonald explained it is in the paternity act and confers jurisdiction on the court. It provides for personal service or by registered mail. Rule 4(d) is service of summons. In response to Senator Don Ashworth's question regarding the difference between NRS 126.091 and Rule 4(d), Ms. McDonald explained NRS 126 provides for personal service or by registered mail while Rule 4(d) is specifically service of summons. She stated what they wanted was Rule 4(d) of N.R.C.P. and the bill drafter added NRS 126.091.

Mr. Furlong referred to Section 2, lines 10 through 13, and Section 3, lines 14 and 15 on page 1. See Exhibit L attached hereto. Chairman Close asked why, in paragraph 1, for "a possible natural father" Rule 4(d) is used and in paragraph 2 where "a determination is sought that he is not the father" Rule 4(e) of NRCP is used. Ms. McDonald explained the difference was that in subsection 1, it is the natural father and in subsection 2, it is the presumed father and the presumption arises differently. In Rule 4(e) notice is given by publication in Nevada. Mr. Furlong stated the difference probably is to facilitate a legal process of effecting notice when you have no idea where the presumed father is located. Mr. Martelle felt the key issue is if the place of residence is unknown.

Senator Raggio stated in subsection 1, it is the procedure to determine the existence of a parental father relationship and subsection 2 is a proceeding to determine the non-existence of a relationship and it does make a difference.

Senator Ford asked whether subsection 2 precludes sending notice to people when you know where they live. Mr. Furlong explained if they know where they live, they have to send them notice.

Senator Raggio stated Rule 4(e) of NRCP is the general way publication is served and it also requires notice being sent to the person by registered mail at his last known address.

Mr. Furlong proceeded with Section 2, which seeks to amend NRS 126.051. See Exhibit L attached hereto. He stated the part they hope to amend is on page 2, lines 2 and 3.

Chairman Close stated lines 2 and 3 would remove the presumption that if a couple is married, the man is presumed to be the father. The purpose of that presumption was to give legitimacy to children. Adding lines 2 and 3 would give fathers the opportunity to say he and the natural mother were separated without cohabitation during the period of conception which leaves the child without a father and illegitimate.

Mr. Furlong explained that the problem they ran into was a natural father, because of this presumption, actually signing a birth certificate when he was in the Nevada State Prison and unable to have fathered a child. It placed the Welfare Division into the position of having to prove he wasn't the father before they could initiate their action against the real father.

Senator Raggio stated he did not feel adding lines 2 and 3 would improve the law. The way the law presently is written, there is a presumption that if the child is born during that time that the husband is the father. This could be easily overcome by having proof that he is incapable of fathering the child. Adding the language in lines 2 and 3 would not make it automatic. Mr. Furlong and Mr. Martelle agreed that it could be eliminated.

Mr. Furlong stated section 3 of NRS 126.081 really does not change the existing section but does align it differently. Section 1 created some confusion on the part of prosecutors and they wanted to place each one of the four conditions in its own section. They moved part of subsection 3 up to 1 as indicated. See Exhibit L attached hereto, lines 12 through 15. That is the previous language that had been in subsection 3.

Section 4, commencing on line 37 and continuing through 42, refers to subsection 1 and aligns it with the provision for notice of service. See Exhibit L.

In section 5, the change begins on line 49, page 3. See Exhibit L. Under the existing statute, the court is allowed or may order reasonable fees of counsel, experts and the child's guardian ad litem and other costs of the action and pretrial proceedings, including blood tests, to be paid by the parties in proportions and at times determined by the Court. In that language, it is possible for the Nevada Welfare Division to be ordered to pay

part of those costs because in public assistance cases, they become a party to the action.

With reference to section 6, the district attorney or the deputies do not represent the parent or the child in the performance of their duties. See subsection 3, line 18, page 4 of Exhibit L. They were confused as to exactly who they represented when they took public assistance cases or non-public assistance cases before the court. Mr. Furlong stated the amendment is their request to place everyone on notice that they do not represent the child or the mother. They represent the state of Nevada. Subsection 6 on page 33 is merely a change in location of the sentence.

Senator Raggio explained as the law existed, there was a privilege which existed except if there was a disclosure of criminal activity. The existing language included whether the disclosure of criminal activity emanated from either the child or the parent. He felt line 33, subsection 6, should include disclosures of criminal activity by a parent or child. Ms. McDonald agreed there was no reason to omit the child.

Mr. Furlong stated section 7 amends Chapter 47.250 by adding that presumptions are disputable. Lines 9, 10 and 11 on page 5 adds that a child born in lawful wedlock is legitimate, "unless the spouses were separated without cohabitation during the period of conception." He agreed that the amendment could be deleted, leaving the presumption the way it is.

Senator Wagner stated the only thing left is notice of service and realignment of the statute of limitations. Ms. McDonald stated the other amendment is that the state will not be assessed costs in the determination of the paternity process.

SENATE BILL NO. 252:

Strengthens provisions for assignment of earnings in child support cases and revises provisions for reciprocal enforcement of support.

Ms. McDonald stated S. B. No. 252 revises the URESA chapter 130 by providing for the use of the master system, diligent prosecution by the District Attorney, more liberal evidence rule, and that URESA is to be utilized for the issue of support only. It removes certain restrictions upon who may apply for URESA relief and provides for a stronger wage assignment law.

Chairman Close asked Ms. McDonald whether it was consistent with the uniform act and the modifications thereto. Ms. McDonald stated that it is consistent. She stated almost all the states now are providing for wage assignment. The original uniform act was in 1952 and the revision was in 1969.

Senator Raggio asked what the problem was with diligent prosecution in the matter. Mr. Furlong explained diligent prosecutions were already part of the act and the only thing they have added is a time limit. It was the District Attorney's position that the law does not indicate when they have to prosecute. There are some counties that are not prosecuting within a reasonable time.

Senator Ford asked who would refer to the law and suggest expediting cases. Mr. Furlong stated it was primarily the job of the child support program to monitor the activities and to refer to the Attorney General's Office because of their supervisory authority under the Nevada Revised Statutes, Chapters 130, 425 and 126.

Senator Wagner asked whether S. B. No. 252 includes only reciprocol enforcement of support. Mr. Folsom stated that most of the actions in Nevada are under that particular chapter. Senator Wagner stated she has received numerous calls from people in Washoe County who have been ignored, who feel the District Attorney does not care whether they receive their child support or not and people who have been turned aside. Senator Raggio explained that many of the calls may be from people who think the District Attorney should collect domestic divorce support payments, which is another matter. Mr. Folsom stated the case load in Washoe County is very heavy. The District Attorney's Office has approximately 1000 public assistance cases plus approximately another 2000 non-public assistance cases they handle for the Welfare Department. In addition to those, they have all the actions referred from other states. Their total case load with two attorneys is approximately 5,500 cases, therefore, there may be complaints on regular and routine support. The cases are taken on a priority basis and they cannot pick and choose. The courts are now looking at the utilization of a master system which would really improve the operation in Washoe County. Clark County is using the master system and run approximately 40 cases through the court a day.

Regarding section 4, lines 16 through 20, Mr. Folsom explained the amendment allows for more relaxed rules. Ms. McDonald stated this is what the District Attorneys refer to as the 5000 mile rule. Many cases involve petitioners between 3000 and 5000 miles from Nevada who fill out an affidavit, send it to this jurisdiction and requests an order, which may be considered hearsay.

The amendment would relax those strict rules of evidence. The purpose of URESA to begin with was to enforce orders when the mothers are out of the state.

Mr. Folsom stated lines 39 and 40 of section 5, page 2, removes the power of the court to use its discretion to change the orders from other states. Chairman Close explained that child support cannot be modified unless the child is present in the state and the mother is present in the state. Mr. Folsom stated prosecutors have interpreted subsection 1 as meaning the Nevada court had the power to nullify another court's action and they do not feel the Nevada court should have power to nullify it but should be able to issue a URESA order. The other changes in section 5 were made by the legislative counsel bureau.

Section 6 amends NRS 130.290. Ms. McDonald stated there are problems with judges who say there are problems with visitation under this section and allow withholding the child's right to support for possibly a year while there is a fight over visitation. The amendment would remove the words "or defense" because under the law visitation, custody and property settlement agreements are not a defense to withholding child support. Ms. McDonald stated parents will enter into an agreement whereby the mother or father will agree to terminate rights to be a parent and, therefore, terminate the child's rights to child support. They take the position that a parent cannot terminate the child's right to support. Ms. McDonald recommended deleting the words "or defense" and deleting "effectively" and adding "be asserted to", lines 1 and 2, page 3. She stated the way they get involved is when they have to pay welfare on behalf of the child whose father has signed an agreement with the mother that he won't have to pay support.

Mr. Folsom stated Section 7 provides responsibility on the prosecuting attorney to handle URESA cases within the state of Nevada if they meet certain conditions. One condition is if they present a financial hardship or that no substantial compliance with a support order or agreement for at least six months prior to the application was met. If those conditions were not met, the District Attorney was not required to handle the case. They are requesting that those two conditions be eliminated from 130.305 because it sets up conditions that only Nevada residents have to meet. A District Attorney receiving a URESA case from out of state would have to provide service to a mother whether she met these conditions or not; however, the mothers that live in the state are forced to meet the conditions before the prosecutor can handle the case.

Senator Raggio stated he did not believe the District Attorneys should be a collection agency for all the child support cases once a divorce has been granted where there is not a hardship and where the parties have the ability to hire their own attorneys.

Ms. McDonald stated she did talk to the District Attorney in Washoe County, and he did not seem opposed to the amendment to S. B. No. 252. She said he read the language, "upon proper application by the obligee" on lines 17 and 18 as actually giving him some discretionary power, more than he has right now, on whether or not to take the case.

Mr. Folsom stated the amendment has the intent of bringing the discretionary power about so the people within Nevada receive the same services as those people outside the state of Nevada. He said he did not think the amendment would do anything effectively to the system because they are already handling all the cases they can conceivably handle and have a backlog.

Mr. Martelle stated they should do some additional research on section 7 and provide the committee with the Federal regulations which pertain to the changes.

Mr. Folsom explained that section 8, lines 39 through 43, deals with wage assignment and modifies Chapter 31. It sets up a protection to those absent parents who were placed on a wage assignment against losing their employment. Mr. Folsom stated the wage assignment clause is probably the most effective enforcement tool that is now available under Nevada statutes to get absent parents on a routine payment plan so that support is provided to their children in a timely manner. It also frees the court because they do not have the same client appearing month after month making alibis and excuses.

Section 9, lines 3 through 6 on page 4, allows for alternatives in making wage assignments unless that absent parent misses two monthly payments in a twelve-month period. It then requires the court to establish a wage assignment against that absent parent. The previous law did not have the limitation of missing two payments in a twelve-month period. Senator Ford stated the amendments as written needed further changes.

Chairman Close stated a mandatory wage assignment was a difficult problem and he did not know whether he could approve. Children in one state may have to be on welfare because the parent is forced to make support payments in another state.

Mr. Martelle stated the state of Nevada is doing a tremendous job for other states but is not getting the same service in return. Under the reciprocol agreement, a tremendous amount of money is being collected for other states and the problem is being made known to Congress. For every $1 the state of Nevada receives back, $4.60 is being sent out to other states in public assistance funds. During the year 1979, other states collected $111,000 for the state of Nevada but $411,000 was collected in Nevada and sent out of state in AFDC funds alone.

Mr. Folsom explained paragraph 2 on page 4 provides the method of service of the order by the court and allows for the collection of $3 by an employer for each withholding they have to make. Lines 13 and 14 provides for routine support payments to the children. Section 2 is changed to subsection 3 and line 23 provides that the district attorney appear in any proceeding to enforce an assignment order. Section 4 is an enforcement tool if the employer fails to honor an assignment, requiring him to pay the amount of the assignment. Section 5 discharges the employer's liability when he complies with an order of assignment. Section 10 provides that wage assignments could effectively be served on state, county and federal employees. It also provides for a method of service.

SENATE BILL NO. 253:

Allows district attorney to assess fees against applicant for child support or establishment of paternity who is not indigent.

Ms. McDonald explained S. B. No. 253 revises the parentage act, Chapter 126, to provide that the district attorney may assess fees for prosecution and it also revises URESA to provide the district attorney may assess fees for prosecution of URESA cases.

Mr. Folsom stated these fees are not exclusive of other proceedings under paragraph 1. Paragraph 2 allows the district attorney to assess a $20 application fee and 10 percent of any amounts collected for as long as he collects from the collection for the custodial parent. Paragraph 3 allows the court to assess the usual filing fees, charges or court costs against the nonsupporting parent and shall enforce their collection with the other provisions of the judgment. Since most departments are strapped for funding, this is a common method of collecting fees.

Chairman Close stated further testimony would be taken on S. B. No. 253 at a later date.

Senate Committee on Judiciary
February 26, 1981

Senator Keith Ashworth moved that the minutes of the February 16, 17 and 19, 1981 meetings be approved.

Senator Wagner seconded the motion.

The motion carried unanimously.

There being no further business, the meeting adjourned at 1:45 p.m.

Respectfully submitted by:

Iris Parraguirre, Secretary

APPROVED BY:

Senator Melvin D. Close, Chairman

DATE: March 5, 1981

AMENDED SENATE AGENDA

EXHIBIT A

COMMITTEE MEETINGS

Committee on JUDICIARY, Room 213.

Day Thursday, Date February 26, Time 9:00 a.m.

AS AMENDED

S. B. NO. 101--Removes limitations on interest rates for loans.

A. B. NO. 18 --Clarifies jurisdiction of judges of juvenile courts.

S. B. NO. 251--Revises provisions relating to parentage.

S. B. NO. 252--Strengthens provisions for assignment of earnings in child support cases and revises provisions for reciprocal enforcement of support.

S. B. NO. 253--Allows district attorney to assess fees against applicant for child support or establishment of paternity who is not indigent.

ATTENDANCE ROSTER FORM COMMITTEE MEETINGS

SENATE COMMITTEE ON JUDICIARY

DATE: Feb. 26, 1981 A.M. EXHIBIT B

PLEASE PRINT NAME	PLEASE PRINT PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
[illegible] ANDREW	J C Penney Co. Inc. 333 S. [illegible] St., Los Angeles CA [illegible]	(213) 620-1740
[illegible]	[illegible]	
RICHARD BLAKEY	ONE EAST FIRST ST. RENO	329-6131
[illegible]	Family Savings and Loan Assoc. 40 W. First St. Reno Nev	78[illegible]-7400
[illegible]	Nevada Savings & Loan - Las Vegas, NV	[illegible]-4414
VERNON BENNETT	PERS - 693 W. NYE, CC NV	885-[illegible]08
WILL KEATING	"	"
[illegible]	NEVADA [illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	NTA - [illegible]	45[illegible]-0150
LEWIS W. SHUMAN	AMERICAN INVESTORS - RENO	786-1633
R. E. PINCHINE	" " "	" "
[illegible]	[illegible]	[illegible]
Sharon L. McDonald	Dep. A.G. - Welfare Div.	885-5035
[illegible]	Welfare Div.	885-4774
Michael [illegible]	[illegible] Co [illegible]	[illegible]
GEORGE AKER	Nev. BANKER'S ASSN	785-6677
George L. Vargas	" " "	786-5000
MELVIN BRUNETTI	PERS - ALLISON BRUNETTI MACKENZIE TAYLOR 402 N DIVISION CC.	882-0202
Don B. Stout	HOME SAVINGS 4[illegible] S. VIRG RENO	786-7000
MIKE CALLIHAN	MBIC NEV. MTG. BANKERS ASSOC.	1-800 227-0864
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	329-[illegible]
JACK KENNEY	SELF	452-7714

530

ATTENDANCE ROSTER FORM

COMMITTEE MEETINGS

SENATE COMMITTEE ON JUDICIARY

DATE: 2-26-81

P.M.

PLEASE PRINT NAME	PLEASE PRINT PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
Ace Martelle	State Welfare Div	885-4690
Bill Furlong	Welfare Division	885-4744
D.L. McDonald	Welfare Deputy A.G.	885-5035
JOAN C. WRIGHT	A, B, MAC & T CC	882-0202

1/81.af:

MASTER

STATUTORY MAXIMUM INTEREST RATES AND RELATED CHARGES IN NEVADA

EXHIBIT C

A. Banks:

1. Limitation on agreed (contract) interest rates 18% per year. Rates on mortgage loans remain under previous law which states: if the daily prime interest rate is 9% or more the interest rate may equal the daily prime interest rate plus 3.5%. (See NRS 99.050.)

2. Rates on Small Loans:

   a. 8% add-on for loans up to $500.

   b. 7% add-on for loans of $501 to $1,500. (See NRS 662.165.)

B. Small Loan Companies:

1. The total of: 36% per year on unpaid cash balance up to $300.

   21% per year on unpaid cash balance of $301-$1,000.

   15% per year on unpaid cash balance $1,001 and up.

or 2. 18% on unpaid cash balance, whichever is greater. (See NRS 675.290.)

C. Retail Installment Sales of Goods and Services

1. Retail Installment Contracts - 1% of initial balance multiplied by the number of months, including any excess fraction of a month as one month, elapsing between the date of such contract and the due date of the last installment, or $25.00, whichever is greater. (See NRS 97.195.)

2. Retail Charge Agreements, Revolving Accounts, Credit Cards, etc. - A retail charge agreement may provide for a time price differential not to exceed a rate of 1.8% per month on the deferred balance. (See NRS 97.245.)

D. Thrift Companies:

1. For loans of a gross amount of $3,500, but less than $5,000:

a. A charge for interest in an amount not exceeding $10 per annum, add-on per $100 of the cash advance; or

b. A charge for interest in an amount not exceeding 1.5% per month on the unpaid principle balance. (See NRS 677.670.)

2. No maximum rate of interest for loans of $5,000 or more. (See NRS 677.730.)

E. <u>Credit Unions</u>:

1. 1% per month on the unpaid monthly balance unless a higher rate is approved by the commissioner. (See NRS 678.710.)

F. <u>Savings and Loan Associations</u>:

Same as contract rate for bank except "points" may be added on. (See NRS 673.324 et seq.)

G. <u>Pawn Brokers</u>:

1. 4% per month for money loaned on the security of personal property actually received in pledge.

2. An initial charge of $3 in addition to interest at the authorized rate. (See NRS 646.050.)

REPEALED: <u>Loans to an Individual Development Corporation by a Member</u>:

Not less than 0.25% in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the date of issue on unsecured loans. (See NRS 670.170.)

H. <u>Loan Finders</u>:

Fee not specified. However:

1. It is unlawful for a person to receive an advance fee, salary, deposit or money for the purpose of obtaining a loan for another unless he:

(a) Places the advance fee, salary, deposit or money in escrow pending completion of the loan or a commitment for the loan; or

(b) Refunds the full amount of the payment immediately upon demand of the person who made the payment. (See NRS 205.517.) Advance payments to cover reasonably estimated costs are excluded from these provisions if the person making them specifies the costs and signs a written agreement.

I. <u>Interest Rate When There is No Express Written Contract</u>:

Shall be allowed at the rate of 8 percent per annum upon all money from the time it becomes due, in the following cases:

1. Upon contracts, express or implied, other than book accounts.

2. Upon the settlement of book or store accounts from the day on which the balance is ascertained.

3. Upon money received to the use and benefit of another and detained without his consent.

4. Upon wages or salary, if it is unpaid when due, after demand therefor has been made. (See NRS 99.040.)

Prepared by the Research Division
Legislative Counsel Bureau
January 8, 1979
Revised November 13, 1979

EXHIBIT D

FEDERAL

Public Law 96-161, approved December 28, 1979 and effective until March 31, 1980, provided for a temporary federal preemption of state usury ceilings on home mortgage loans and some business and agricultural loans. Upon its expiration, the law was replaced by Public Law 96-221, approved March 31, 1980, which makes permanent, with some exceptions, the mortgage loan usury preemption and extends until March 31, 1983, the preemption relating to business and agricultural loans. The applicable provisions of the law appear in the "Federal Laws—Regulations" division beginning at ¶ 10,251. In connection with the preemption of state mortgage loan usury limits, the Federal Home Loan Bank Board has issued regulations which define terms, limit application of state laws and provide consumer protection rules for secured loans or mortgages on residential mobile homes. The regulation text begins at ¶ 10,281. Also reflected is the provision of the National Bank Act which sets an interest ceiling for member banks of the Federal Reserve System, appearing at ¶ 10,271.

Mortgage Loans . . . Effective April 1, 1980, state constitutional or statutory limits on rates or amounts of interest, discount points, finance charges or other charges in connection with loans do not apply to loans secured by first liens on residential real property, by first liens on all stock allocated to a dwelling unit in residential cooperative housing or by first liens on residential manufactured homes, as defined in the National Housing Act, made after March 31, 1980. (Fed. Laws—Regs. at ¶ 10,251) The requirement that the property must be designated principally for occupancy of from one to four families does not apply under the mortgage loan rate preemption. A credit sale which is secured by a first lien on a residential manufactured home is included within the scope of the preemption, as is a loan or credit sale secured by a first lien on a residential manufactured home, as the terms "federally related mortgage loan" and "residential loans" apply, and a creditor's sale of residential manufactured homes financed by loans or credit sales secured by first liens on residential manufactured homes if the creditor has an arrangement to sell the loans or credit sales to a lender, institution or creditor, regardless of whether a creditor makes or invests in loans aggregating more than $1,000,000 per year. (Fed. Laws—Regs. at ¶ 10,251, 10,281)

State laws or constitutional provisions which expressly limit the rate of interest do not apply to any deposit or account held by a depository institution. For the purposes of this preemptive law, a depository institution means any insured bank, savings bank or mutual savings bank as defined by the Federal Deposit Insurance Act, any insured credit union as defined by the Federal Credit Union Act, any member as defined by the Federal Home Loan Bank Act and any insured institution as defined by the National Housing Act. (Fed. Laws—Regs. ¶ 10,251)

A State may choose to override the federal usury preemption, after April 1, 1980 and before April 1, 1983, by adopting a law or certifying that the voters of the State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that the State does not want the mortgage usury limit preemption to apply in that State. Where a State takes such action, the preemption shall continue to apply to any loans in which a commitment was made during the period from April 1, 1980 until the date the State acted to override the preemption. The preemption will also continue to apply to any loan or mortgage which is a rollover of a loan or mortgage as described in regulations of the Federal Home Loan Bank Board, which was made or committed to be made during the period from April 1, 1980 until the

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date the State acted to override the preemption. Regardless of the other restrictions on a State's power to set interest limits, the States may continue to limit discount points or other charges on any loan, mortgage or advance which is subject to preemption by federal law. (Fed. Laws—Regs. ¶ 10,251, 10,283) [NOTE: Since the enactment of P. L. 96-221 five states have availed themselves of the opportunity to override portions of the federal usury preemption, as has the Commonwealth of Puerto Rico. Hawaii, Iowa, Kansas, and Minnesota have specifically overridden the preemption of state usury ceilings on home mortgages, except that the Minnesota override is not effective until December 31, 1981. In addition, effective October 1, 1980, Massachusetts has overridden the prohibition against setting loan fees and points on mortgage loans. Further, the actions of several states to override the temporary preemption established by P. L. 96-161, which expired March 31, 1980, did not extend beyond that date.—CCH.]

In relation to loans, mortgages, credit sales or advances secured by first liens on residential manufactured homes, the federal usury preemption will not apply unless the terms and conditions relating to the transaction comply with consumer protection provisions specified in regulations prescribed by the Federal Home Loan Bank Board. The regulations must include consumer protection provisions with respect to balloon payments, prepayment penalties, late charges and deferral charges; require a 30-day notice prior to any action leading to repossession or foreclosure require a refund of the unearned portion of the finance charge upon prepayment in full; and include any other additional protection required by the FHLBB.

The usury preemption may be applied to such transactions secured by a residential manufactured home until the above regulations take effect unless the transaction made prior to the regulation's effective date includes a precomputed finance charge and does not provide for a rebate of the unearned portion of the finance charge in the event of prepayment in full. The regulations must be issued and take effect prospectively not less than 30 days after publication in the Federal Register and not later than 120 days after enactment of the usury preemption. (Fed. Laws—Regs. ¶ 10,251)

Residential Mobile Homes . . . In connection with federally related loans, mortgages, credit sales and advances secured by first liens on residential mobile homes, the FHLBB has issued a set of consumer protection rules. Generally, states are prohibited from expressly limiting the rate or amount of interest, discount points or finance charge on such transactions if creditors covered by the regulation comply with its requirements.

In making residential mobile home loans or credit sales creditors must comply with state and federal law. If a state law regulates matters other than those covered by the regulation, then creditors must comply with those state law provisions. If state law covers the same matters as the regulation, the regulation applies unless state law provides greater protection to consumers. Such determinations are to be published in the Federal Register.

If the entire indebtedness is prepaid, the unearned portion of the precomputed finance charge must be refunded to the debtor. The refund must be in an amount not less than the amount which would be refunded if the unearned precomputed finance charge were calculated in accordance with the actuarial method, except that a refund of less than $1 need not be made.

The unearned portion of the finance charge is, at the option of the creditor, either: (1) the portion of the precomputed finance charge which is allocable to all unexpired payment periods as originally scheduled, or if deferred,

as deferred. A payment period is un[illegible]ired if prepayment is made within 1[illegible] days after the payment period's scheduled due date. The unearned precomputed finance charge is the total of that which would have been earned for each period had the loan not been precomputed, by applying to the unpaid principal balance, according to the actuarial method, an annual percentage rate based on those charges which are considered precomputed finance charges, assuming that all payments were made as scheduled, or as deferred. The creditor, at its option, may round this annual percentage rate down to the nearest one-quarter of one percent; or

(2) the total precomputed finance charge less the earned precomputed finance charge. The earned precomputed finance charge is determined by applying an annual percentage rate based on the total precomputed finance charge to the unpaid balances for the actual time those balances were unpaid up to the date of prepayment.

A debtor may prepay the unpaid balance in full or in part at any time without penalty. Payment schedules in which any one payment is more than twice the amount of an otherwise regularly scheduled payment or where the intervals between consecutive payments differ substantially are prohibited except that the first payment may be deferred not longer than 2 months from the date the loan is closed. The parties may agree in writing to payments that are not substantially equal or are paid at unequal intervals if the debtor's income is intermittent, the payments or intervals are expressly related to anticipated income and the agreement sets out the schedule and amounts of payments.

Late charges may not be assessed unless provided for in the written contract. No late charge may be collected on an instalment which is paid on or before the 15th day after its scheduled or deferred due date even though an earlier instalment or late charge on an earlier instalment may not have been paid in full. A late charge may be imposed only once on an instalment, but no such charge may be collected for a late instalment which has been deferred.

Unless state law provides for a lower charge or longer grace period, a late charge on any instalment may not exceed the lesser of $5.00 or 5% of the unpaid amount of the instalment. Interest charged after the final scheduled maturity date may not exceed the maximum rate allowable under state law for such contracts, and if such interest is charged, no separate late charge may be made on the final scheduled instalment.

Agreements providing for deferral of mobile home transactions where there is a precomputed finance charge must be in writing, signed by the parties and provide for a charge not exceeding 1% of each instalment for each month from the date the instalment was due to the date it is agreed to become payable and proportionately for a part of each month, counting each day as 1/30th of a month, unless state law provides for a lower charge. The agreement must also incorporate by reference the transaction to which the deferral applied, disclose each instalment in the amount to be deferred, the date originally payable and the date agreed to become payable, and set forth the dollar amount of the deferral charge for each instalment to be deferred and the total amount to be paid by the borrower for deferral. A charge may not be collected for deferral of an instalment if a refinancing or consolidation agreement is concluded by the parties with respect to that instalment or if a late charge has been imposed or collected unless the late charge is refunded or credited to the deferral charge.

An action to repossess or accelerate payment of the outstanding balance may not be taken against the debtor until 30 days after the creditor sends the

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debtor notice of default in the required form (as set out in the text of the regulation). The notice must be sent by registered or certified mail return receipt requested. If the debtor cures the default on a timely basis and then defaults a second time, the notice must be given again. The debtor is not, however, entitled to notice of default more than twice in a one-year period. (Fed. Laws—Regs. ¶ 10,284)

The Federal Home Loan Bank Board has the authority to issue rules and regulations and publish interpretations governing the implementation of the federal preemption of State laws setting maximum rates for transactions secured by residential real property. (Fed. Laws—Regs. ¶ 10,251, 10,231, 10,235)

Business and Agricultural Loans . . . The federal preemption of State control of business and agricultural loans applies to loans in an amount of $1,000 or more and replaces State-imposed limits with an interest rate limit of not more than 5% in excess of the discount rate, including any surcharge, on 90-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the person is located.

Where the prescribed rate preempts a State-imposed limit, the taking, receiving, reserving or charging of interest at a greater rate, when knowingly done, must be considered a forfeiture of the entire interest on the loan. If the greater rate of interest has already been paid, the person who paid it may recover, in a civil action commenced not more than two years after the date of payment of the interest, an amount equal to twice the amount of interest paid from the person taking, receiving, reserving or charging the interest. (Fed. Laws—Regs. ¶ 10,255)

The federally imposed rate limit will apply to business and agricultural loans in the amount of $1,000 or more made in any State during the period beginning on April 1, 1980 and ending on the earlier of April 1, 1983 or the date, after April 1, 1980, on which a State adopts a law or certifies that the voters of the State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that the State does not want the federal preemption of business and agricultural loan rates to apply in that State. Any loan commitment made between April 1, 1980 and the earlier of April 1, 1983 or a State override of the federally imposed rate on a loan made after the earlier date will still be subject to the federal preemption.

A loan must be considered made during the above period if the loan: (a) is funded or made in whole or in part during that period, regardless of whether pursuant to a commitment or other agreement made before April 1, 1980; (b) was made on or before April 1, 1980, and provides for interest during the period on the outstanding amount of the loan at a variable or fluctuating rate; or (c) is a renewal, extension or other modification during the period of the loan, if such renewal, extension or other modification is made with the written consent of the person obligated to repay the loan.

A loan is also considered made during the prescribed period if: (a) it is in an original principal amount of $25,000 or more ($1,000 or more on or after October 6, 1980); or (b) it is part of a series of advances if the aggregate of all sums advanced or agreed or contemplated to be advanced pursuant to a commitment or other agreement is $25,000 or more ($1,000 or more on or after October 6, 1980). (Fed. Laws—Regs. at ¶ 10,256)

Insured Banks . . . As a measure to prevent discrimination against State-chartered insured banks, insured savings banks and insured mutual savings banks or insured branches of foreign banks with respect to interest rates,

the Federal Deposit Insurance Act has been amended to preempt State law and permit the charging of interest on any loan or discount at the rate of not more than 1% above the discount rate on 90-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the State bank or insured branch of a foreign bank is located or at the rate allowed by the law of the State where the bank is located, whichever is greater.

If the rate of 1% in excess of the discount rate is applied in preemption of a State law, the taking, receiving, reserving or charging of a greater rate of interest than that rate, when knowingly done, must be deemed a forfeiture of all interest on the note or other evidence of debt. If the excess interest has already been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of the payment, an amount equal to twice the amount of the interest paid from the bank charging the interest. (Fed. Laws--Regs. ¶ 10,260)

Insured Savings and Loan Associations . . . The National Housing Act has been amended to provide that insured institutions under that Act are permitted to charge interest on loans and are subject to the same penalties as provided for insured banks under the Federal Deposit Insurance Act as described above. (Fed. Laws—Regs. ¶ 10,261)

Insured Credit Unions . . . Credit unions under the Federal Credit Union Act are permitted to charge interest on loans and are subject to the same penalties as provided for insured banks under the Federal Deposit Insurance Act as described above. (Fed. Laws—Regs. ¶ 10,262)

Small Business Investment Companies . . . Under the terms of the Small Business Investment Act, in the case of a business loan, the small business investment company making the loan may charge interest on the loan at a rate that does not exceed the lowest of the following: (a) the maximum rate prescribed by regulation by the Small Business Administration for loans made by any small business investment company (determined without regard to any State rate incorporated by the regulation); (b) the maximum rate authorized by an applicable State law or constitutional provision which is not preempted; or (c) the higher of the Federal Reserve rate or the maximum rate authorized by applicable State law or constitutional provision (as determined without regard to preemption), the Federal Reserve rate being 1% above the discount rate on 90-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district in which the principal office of the small business investment company is located. The maximum rate, as determined, does not apply to loans made in a State if there is no maximum rate authorized by applicable State law or constitutional provision for small business loans or if there is a State-authorized maximum rate which has not been preempted by this Act. (Fed. Laws—Regs. ¶ 10,263)

A State law or constitutional provision is to be considered preempted if the loan is made before the date, on or after April 1, 1980, on which the State adopts a law or certifies that the voters of the State have voted in favor of any provision which explicitly and by its terms indicates that the State does not want its law preempted. If, however, a loan commitment was made on or after April 1, 1980 and before a State has acted to override any federal preemption, a loan made after the State has overridden the federal law will be made at the applicable rate under preemption.

If the maximum authorized interest rate on a small business loan exceeds the rate which would be authorized under State law were that State law not

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preempted, the charging of interest in excess of the permitted rate is to be treated as a forfeiture of the greater of all the interest the loan carries with it or all interest which has been agreed to be paid on the loan. In the case of a forfeiture, the person who paid the interest may recover from the small business investment company making the loan an amount equal to twice the amount of interest paid on the loan to be recovered in a civil action commenced in a court of appropriate jurisdiction not later than two years after the most recent payment of interest. (Fed. Laws—Regs. ¶ 10,263)

The provisions relating to insured banks, insured savings and loan associations and insured credit unions are applicable to loans made in any State during the period beginning on April 1, 1980 and ending only on the date, on or after April 1, 1980, on which a State adopts a law or certifies that the voters have voted in favor of any provision which explicitly and by its terms overrides the federal preemption of State law with respect to such loans. In the case of a loan made after a State has voted to override the federal preemption, but the loan commitment was made prior to the override and on or after April 1, 1980, then the federal preemption shall apply to the loan. (Fed. Laws—Regs. ¶ 10,264) In any case in which the rates provided for in this law and any other law apply with respect to the same loan, mortgage, credit sale or advance, the transaction may be made at the highest applicable rate. (Fed. Laws—Regs. ¶ 10,267)

National Bank Act.—A provision of the National Bank Act (12 U. S. C. 85) sets the maximum interest limit for associations organized under the Federal Reserve Act as the greater of the rate allowed by the law of the state where the bank is located or 1% in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the bank is located. If state law sets a different rate for banks organized under the state law, that limit will also apply to national banks. If there is no limit fixed by state law, the maximum rate will be the higher of 7% per annum or 1% in excess of the discount rate. (Fed. Laws—Regs. ¶ 10,271) Any taking, receiving or charging of interest in excess of the above limits constitutes forfeiture of the entire interest on the note or other evidence of debt. If the interest has already been paid, the person who paid it or his legal representative may recover, in a court action, twice the amount of excess interest paid if the action is commenced within two years of the occurrence of the usurious transaction. (Fed. Laws—Regs. ¶ 10,272)

[The next page is 1309.]

The state laws charted below are affected to varying degrees by the federal preemption and must be considered in conjunction with the federal provisions. See page 1302.

EXHIBIT E

State	Maximum Rates	Penalty	Corporate Defense
ALABAMA	Legal—$6 upon $100 Contract—$8 upon $100 Judgment—$6 upon $100 Corporate—15% for $10,000 to $100,000; no limit over $100,000 (Ala. ¶ 6401, 6408, 6415) Alternative Rate for Loans, Leases or Sales—Until 7-1-81, 2% above prime rate (Ala. ¶ 6426)	All interest forfeited; payments applied on principal (Ala. ¶ 6402)	Usury defense subject to corporate rate; none on loans over $100,000 (Ala. ¶ 6408, 6410)
ALASKA	Legal—10.5% Contract—For quarter beginning 1-1-81, 18%; any rate if over $100,000 Judgment—10.5%, or as set out in instrument but not over 10% (Alas. ¶ 6401, 6404) Corporate—No special rate	All interest forfeited; recover double all interest paid within 2 years of payment (Alas. ¶ 6402, 6403)	No law on defense
ARIZONA	Legal—10% Contract—Rate agreed to in writing Judgment—10% or as set out in instrument (Ariz. ¶ 6401, 6402) Corporate—No special rate	All interest forfeited; interest paid applied on principal, may be set off or recovered (Ariz. ¶ 6402, 6403, 6404)	Usury defense subject to corporate rate (Ariz. ¶ 6411)
ARKANSAS	Legal—6% Contract—10% Judgment—6%* (Ark. ¶ 6401, 6402, 6403) Corporate—No special rate	Contract void (Ark. ¶ 6401, 6405)	No law on defense
CALIFORNIA	Legal—7% Contract — Loan for personal, family, or household uses (real property excluded), 10%; for other uses, 17% if loan or loan commitment made before 1-1-81, 18% if made on or after 1-1-81 Judgment—7% (Cal. ¶ 6401, 6402) Corporate—No special rate	All interest forfeited; recover treble amount within 1 year of payment (Cal. ¶ 6402, 6403)	Usury defense allowed (Cal. ¶ 6403)
COLORADO	Legal—8%, compounded annually Contract—As set out in instrument, except as limited by UCCC; see UCCC Chart at ¶ 505 Judgment—8%, compounded annually (Colo. ¶ 6401, 6402, 6403) Corporate—No special rate	No statutory provisions except with reference to UCCC-governed transactions; see UCCC Chart at ¶ 505	No law on defense

* Unless otherwise specified in instrument up to contract rate.

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State interest-usury laws are under federal preemption. See page 1302.

State	Maximum Rates	Penalty	Corporate Defense
ILLINOIS	Legal—$5 upon $100 Contract — 9%; residential no limit through 12-31-81; eff. 12-6-80, 14% for state banks [1]; business loans, any rate ** Judgment—8% *** Corporate—Any rate (Ill. § 6401, 6401A, 6402, 6403, 6405, 6407)	All interest forfeited; recover twice total interest on contract or payment, whichever is greater, within 2 yrs. from last contract payment (Ill. § 6406, 6407)	No usury defense (Ill. § 6403)
INDIANA	Legal—8% Contract — See "UCCC" chart at § 505 Judgment—8% (Ind. § 6401—6403) Corporate—No special rate	See "UCCC" Chart at § 505	No law on defense
IOWA	Legal—5¢ on the 100 Contract—14.75% for February 1981; any rate for real estate investment trusts, business loans of $100,000 or more and agricultural loans of $500,000 or more Judgment—10% per year * Corporate—Any rate (Ia. § 6401, 6402)	All interest forfeited, plus 8¢ on the 100 of unpaid principal forfeited to state for school fund (Ia. § 6403)	No usury defense (Ia. § 6401)
KANSAS	Legal—10% Contract—10%, unless otherwise specified by law (See "UCCC" chart at § 505); 11% on residential mortgage loans Judgment—12% [2] (Kan. § 6401, 6404, 6405, 6405A) Corporate—No special rate	Excessive interest forfeited; equivalent amount deductible from principal and lawful interest (Kan. § 6405A)	No usury defense (Kan. § 6406)
KENTUCKY	Legal—8% Contract—eff. 12-5-80, 17% on $15,000 and less, and 14% on loans by banks and trust companies on contracts $15,000 or less [1]; $10 minimum on bank loan permitted; others, any rate Judgment—8% (Ky. § 6401, 6402, 6404, 6411) Corporate—No special rate	All interest forfeited; recover twice interest paid within 2 years of usurious transaction † (Ky. § 6402)	No usury defense unless principal asset is one or two family dwelling (Ky. § 6403)

[1] The rate is based on 1% above the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district where the bank is located.—CCH.

[2] This rate applies to judgments rendered on or after July 1, 1980. Judgments rendered before that date bear interest of 8% through June 30, 1980, and 12% on and after July 1, 1980.

† Violator deemed guilty of misdemeanor.

* Unless otherwise specified in instrument up to contract rate.

** Demand notes of $5000 or over, with collateral security, no limit.

*** 6% on judgments against governmental entities.

...te interest-usury laws are under federa... ...mption. See page 1302.

State	Maximum Rates	Penalty	Corporate Defense
MINNESOTA	Legal—$6 upon $100 for year. Contract—$8 on $100 for year: no limit on loans of $100,000 or more; home mortgages, for February 1981, 15%; eff. 12-5-80, business and agricultural loans, 17.5%; loan by bank or savings bank, 14%, eff. 12-5-80 Judgment—Rate based on the current average annual yield for U. S. treasury bills with one year maturities; state court administrator determines the yearly rate by Dec. 20 of each year; rate may not be less than 8% for year. (Minn. ¶ 6401, 6405, 6411, 6415) Corporate—No special rate.	Contract void except as to bona fide purchaser; recover interest within 2 years after payment; ½ of amount recovered to school fund. (Minn. ¶ 6402, 6404)	No usury defense (Minn. ¶ 6403)
MISSISSIPPI	Legal—8% until 7-1-82 Contract—eff. 12-5-80, 18% until 7-1-82 Judgment—8% * Corporate—15% over $2500 (Miss. ¶ 6401, 6402, 6404)	Forfeiture of all interest for evasion of 6% interest law; forfeiture of interest and finance charge if finance charge exceeds that authorized in any case; forfeiture of principal and all finance charges if finance charge contracted for exceeds authorized maximum by more than 100%. (Miss. ¶ 6401D, 6402)	Usury defense subject to corporate rate (Miss. ¶ 6401)
MISSOURI	Legal—9% Contract—14.8% for quarter beginning 1-1-81; any rate for securities pledged as collateral, business loan of $5,000 or more, loan of $5,000 or more secured by negotiable instrument Judgment—9%* Corporate—Any rate. (Mo. ¶ 6401—6403, 6408)	Liable for excess and costs of suit, of security agreement invalid; applied on principal; twice amount of interest paid. (Mo. ¶ 6402, 6404-6406, 6407)	No usury defense (Mo. ¶ 6405)
MONTANA	Legal—6% Contract—eff. 12-5-80; up to $150,000, 17%; over $150,000 to $300,000, 18%; over $300,000, any rate Judgment—10% † (Mont. ¶ 6401, 6402, 6405) Corporate—No special rate.	Forfeit double interest charged; recoverable within 2 years after payment. (Mont. ¶ 6403)	No law on defense
NEBRASKA	Legal—12% per annum Contract—16% per annum; any rate, corporate loans, guarantors or sureties of corporate loans, loans with aggregate principal amounts over $25,000, federally insured loans, loans made upon securities pledged as collateral Judgment—$12 per yr. upon $100 * Corporate—Any rate. (Neb. ¶ 6101—6103)	All interest forfeited, and costs (Neb. ¶ 6405)	No law on defense

† Where judgment involves contract, at rate specified in contract.
* Unless otherwise specified in instrument up to contract rate.

State	Maximum Rates	Penalty	Corporate Defense
OHIO	Legal—6% Contract—8%; any rate on loans over $100,000; any rate for securities pledged as collateral; real estate mortgages, 16%, eff. 12-5-80 Judgment—8% (NOTE: Until 7-30-80, 6%)* (Ohio ¶ 6401, 6402, 6403) Corporate—No special rate	Applied on principal (Ohio ¶ 6404)	No usury defense (Ohio ¶ 6405)
OKLAHOMA	Legal—6% Contract—See "UCCC" chart at ¶ 505 Judgment — 10%*; personal injury damages, 6% added for period of suit (Okla. ¶ 6404, 6405) Corporate—No special rate	See "UCCC" chart at ¶ 505	No usury defense (Okla. ¶ 6407)
OREGON	Legal—9% Contract—10%; any rate, more than $50,000; no limit for loans purchased by government organizations from national or state banks; 12%, loans secured by real estate Judgment—9% * Corporate—12%; any rate, more than $50,000 (Ore. ¶ 6301, 6303, 6401)	Entire debt, less interest and payments on principal, forfeited to school fund; interest paid applied to principal (Ore. ¶ 6402)	Usury defense subject to corporate rate; none on transactions over $50,000 (Ore. ¶ 6401, 6405)
PENNSYLVANIA	Legal—6% to $50,000 Contract—14.5%, residential for February, 1981; no rate, principal obligations over $50,000, secured principal amount of $50,000 or less other than residential, corporate loans, unsecured noncollateralized loans over $35,000 and business loans over $10,000; state banks, 14% and institutions 18%, eff. 12-5-80 Judgment—6% (Pa. ¶ 6404, 6409, 6411, 6432, 6441) Corporate—No special rate	Excess over lawful rate forfeited; recover triple excess of lawful rate in action within 4 years; excess over lawful rate applied on principal (Pa. ¶ 6422, 6423)	No usury defense (Pa. ¶ 6405)
PUERTO RICO	Legal—$6 on each $100 Contract — Mortgage loans: conventionals rate set by current yield of FHLMC auction; conventional second mortgages, ¼% above that rate; commercial, industrial and nonresidential loans, 2% over rate set per FHLMC auction; home improvements, same rate as FHA Title I loans. Business and agricultural, NYC prime rate from $25,000-$100,000; over $100,000 2% over prime rate; personal loans 17%; instalment loans 9½%; all other loans 17% Judgment—$6 on $100 (P. R. ¶ 6401, 6641) Corporate—No special rate	All interest forfeited, 25% of principal to Commonwealth; recover excess within 1 year after payment (P. R. ¶ 6402, 6403)	No usury defense, unless corp. limited to 11 or fewer stockholders (P. R. ¶ 4178, 6404)

* Unless otherwise specified in instrument up to contract rate.

State	Maximum Rates	Penalty	Corporate Defense
VIRGINIA	Legal—6% Contract—8%; state banks, 14%, eff. 12-5-80; any rate on non-agricultural loans secured by first mortgage on realty, including leaseholds over 25 years Judgment—8% * (Va. ¶ 6401, 6402, 6402A, 6409, 6420) Corporate—No special rate	All interest forfeited; recover double total interest paid within 2 years after the transaction occurred (Va. ¶ 6404, 6405)	No usury defense (Va. ¶ 6406)
WASHINGTON	Legal—6% Contract—12% Judgment—10% unless contract provides otherwise up to 12% (Wash. ¶ 6401, 6402, 6404) Corporate—No special rate	All interest forfeited and deducted from principal; where paid, deduct twice interest; aid and all accrued and unpaid interest, costs and atty's fees, and amount by which contract exceeds adjusted liability (Wash. ¶ 6405)	No usury defense for corp., Mass. trust, assoc., general or limited partnership, joint venture, or person for commercial or business transaction over $50,000. (Wash. ¶ 6405, 6406)
WEST VIRGINIA	Legal—$6 upon $100 Contract—$8 upon $100; nonprecomputed secured loans, 14% for February, 1981; State banks, 14%, eff. 12-5-80 Judgment—No statutory provision (W. Va. ¶ 6401, 6401B, 6405A) Corporate—No special rate	All interest void; recover 4 times all interest agreed to be paid, minimum $100; recover payment over unlawful rate (W. Va. ¶ 6402, 6404)	No usury defense (W. Va. ¶ 6406)
WISCONSIN	Legal—$5 upon $100; state banks, federal loan rate Contract—$12 upon $100; rate inapplicable to loans made on or after April 6, 1980 and before November 1, 1981, unless made by a savings and loan, or to loans over $150,000 except where secured by one-to-four family residence. Judgment—12% Corporate—Any rate (Wis. ¶ 6401, 6402, 6404, 6405)	Forfeit all interest and up to $2000 of principal; recover payments of interest and up to $2000 principal within 2 years of payment † (Wis. ¶ 6403)	No usury defense (Wis. ¶ 6402)
WYOMING	Legal—7% Contract—See "UCCC" chart at ¶ 505 Judgment—No statutory provision (Wyo. ¶ 6402) Corporate—No special rate	See "UCCC" chart at ¶ 505	No law on defense

[The next page is 1401.]

† Violator deemed guilty of misdemeanor.
* Unless otherwise specified in instrument up to contract rate.

VERNON BENNETT
EXECUTIVE OFFICER

WILL KEATING
ASSISTANT EXECUTIVE OFFICER

STATE OF NEVADA

EXHIBIT F

RETIREMENT BOARD
DARREL R. DAINES
CHAIRMAN
SAM A. PALAZZOLO
VICE CHAIRMAN
MEMBERS
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PEGGY GLOVER
BOYD D. MANNING
MARGIE MEYERS
TOM WIESNER

PUBLIC EMPLOYEES RETIREMENT SYSTEM

693 WEST NYE LANE
CARSON CITY, NEVADA 89701
TELEPHONE (702) 885-4200

TESTIMONY PROVIDED TO THE SENATE JUDICIARY COMMITTEE REGARDING SENATE BILL 101 ON FEBRUARY 26, 1981

I am Vernon Bennett, Executive Officer of the Public Employees Retirement System of Nevada. The Retirement System supports SB 101. During the past two years, the System has incurred considerable legal expenses and loss of income in trying to interpret and comply with NRS 99.035 and NRS 99.050. We understand that several attorneys and representatives of the Attorney General's Office are unclear regarding their specific meaning. We have been required to disregard additional interest income and servicing fees because of the ceilings provided by this law. We have also experienced considerable expense making additional amortization computations to be sure that we did not violate this law. We estimate that the 1979 Usury Law has cost the Retirement System over $200,000 during the past two years.

Our attorney, Mel Brunetti, has assisted us in drawing two amendments which we present for your consideration as follows:

1. On page 2, line 29, delete the "]" and on line 33, delete the "[".

2. On page 9, line 11, after the "12." and before "NRS" insert NRS 99.035 and and after "675.320" delete the word "is" and insert are .

Comment: These amendments will, in effect, repeal all of page 2, lines 29 through 35 and NRS 99.035 which define interest. The definition of interest is no longer necessary because the current wording on page 2, lines 27 and 28, will eliminate payment of interest. Our attorney feels that to leave in the interest definitions could possibly confuse future court interpretations.

VB:bb

EXHIBIT G

PROPOSED AMENDMENTS

TO

SENATE BILL NO. 101

Add three new Sections as follows:

Sec. 13. Sections 1 through 12 of this act do not apply to any contract or note made before the effective date of this act, regardless of any provision of the contract or note.

Sec. 14. It is hereby explicitly stated by the terms of this act that the provisions of Title V, Part A-Mortgage Usury Laws, Mortgages, Section 501(a)(1) and of Part B-Business and Agricultural Loans, of the Depository Institutions Deregulation and Monetary Control Act of 1980 shall not apply with respect to loans, mortgages, credit sales and advances made in this State, and that this State does not want the provisions of Title V, Part A-Mortgage Usury Laws, Mortgages, Section 501(a)(1) and of Part B-Business and Agricultural Loans, of the Depository Institutions Deregulation and Monetary Control Act of 1980 to apply with respect to loans, mortgages, credit sales and advances made in this State.

Sec. 15. This act shall become effective on passage and approval.

Mr. Chairman, Members of the Committee:

My name is Richard Blakey. I am an attorney practicing in Reno and I am here to [illegible] propose the addition of three Sections To SB101 as shown on the page which I have distributed to you.

The proposed Sections 13 and 15 are primarily technical. They would make the provisions of the bill effective upon passage and approval by the Governor and would prevent their retroactive application to contracts or notes in existence prior to the effective date. Because of the undesirable effects of the current statutory limitations, it is appropriate that this bill be made effective as soon as possible. It is also appropriate and essential that the interest rate provisions of existing contracts not be disturbed. Contracts are entered into in light of then applicable laws; the contract understanding and the expectations created thereby should not be changed by legislation. For these reasons, provisions essentially identical with the proposed Sections 13 and 15 were included in the 1979 interest rate legislation enacted by this Legislature. Those sections should be included as part of S.B. 101.

The proposed Section 14 addresses a new issue. That Section contains an express rejection of recent federal legislation preempting state laws with respect to interest rates. The federal law is entitled the "Depository Institutions Deregulation and Monetary Control Act of 1980"; it became effective April 1, 1980.

Among other things, it creates federal law for interest rates applicable to residential mortgages and business and agricultural loans. As such, this federal legislation preempts the State constitutional or statutory provisions for such interest rates.

The statute is unusual, however, in that it expressly permits a state legislature to override the federal preemption and to reassert the state's law governing such interest rates. This provision for a state override is an express recognition of the traditional role of state legislatures in the determination of interest rates.

As of December 1980, some five states had already overridden parts of the federal statutes. These states include Hawaii, Iowa, Kansas, Massachusetts and Minnesota. The proposed Section 14 is taken from the Hawaii statute. It complies with the rather precise override requirements of the federal law. The state override law must specifically refer to the federal act and indicate that the state does not want the federal preemptions to apply. Furthermore, since each of the federal preemption sections provides for a separate right of state override, the state law must refer specifically to each preemption which is to be overridden.

The proposed amendment to S.B. 101 would override the federal legislation both as it applies to residential mortgages and to business and agricultural loans. These are areas properly left to state control and this Legislature should not surrender its right to enact interest rate legislation it may regard as appropriate.

With respect to business and agricultural loans, there is another important reason for the state to override the federal legislation. In an amendment to the federal act, passed by Congress in October of 1980, the federal preemption is made applicable to loans made prior to April 1, 1980 and which provide for interest at a variable or fluctuating rate.

The retroactive application of a change in interest rates is unadvisable and contrary to previous legislation and policy in this State. To cite an actual case that illustrates the problem, I have a client to whom a lender made a $25,000,000 loan in 1977. The note provided for an annual interest rate at 2.5% over commercial bank prime rate, but not less than 9-1/2% nor more than the highest rate allowed by law. In 1977, the highest rate allowed by law and the maximum interest rate contemplated by the parties was 12%.

In 1979, the Nevada statute was changed, permitting a maximum of 18%. That statute expressly did not apply to existing loans. The maximum interest rate on that loan thus remained at 12%. This was true until the enactment of the federal preemption legislation. The federal law provides for a maximum rate of not more than 5% in excess of the discount rate, including any surcharge thereon, on ninety-day commercial paper in effect at the Federal Reserve Bank in the geographic district. By virtue of the October 1980 amendment, this legislation arguably became applicable to the above-described loan.

Last month, the lender, taking the position that the federal law was applicable, advised us that the Nevada statutes had been preempted and that it would begin charging interest at 21%, the maximum permitted under the federal law.

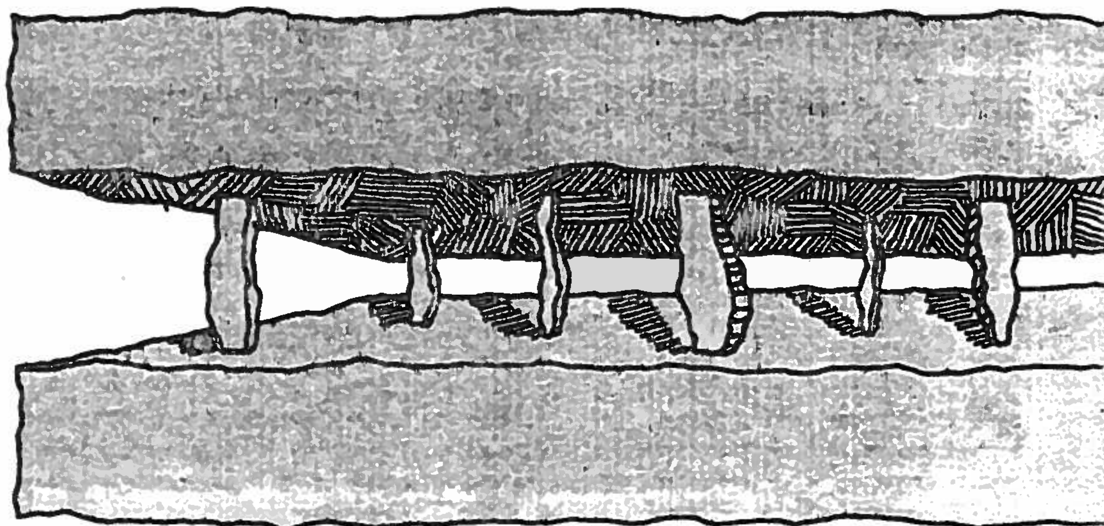
My client made a loan at a rate not to exceed the then permitted maximum--12%. The federal law, as interpreted by the lender, would permit the lender to collect interest at 21% or even higher. My client would never have made the loan if he thought he would some day be required to pay more than 12% interest. The retroactive application of the federal preemption has little justification. It seeks to impose an unanticipated and crushing burden on some borrowers. In the past, this Legislature has acted reasonably and has expressly avoided such retroactive application. It should do so again.

E 551

JBR

EXHIBIT H

Economic Analysis of Usury Laws



By Harold C. Nathan*
Financial Economist
Office of The Comptroller of the Currency
Washington, D.C.

*When this paper was written, the author was Financial Economist, Division of Research, Federal Deposit Insurance Corporation. The views expressed are those of the author and do not necessarily reflect the views or policy positions of the FDIC or the OCC. The author wishes to thank Ms. Susan Tracey for her invaluable assistance. Helpful comments were also provided by Lucille S. Mayne, Gary G. Gilbert and James R. Follain.

ABSTRACT

This paper contains a comprehensive analysis of the evidence to date on the impact of usury ceilings. The analysis is organized into two major areas: The impact of usury laws on the cost and availability of credit and the impact on the operations of financial institutions. The major conclusion of the study is that usury ceilings fail to achieve their goals and distort the flow of credit. Thus, the overwhelming weight of the evidence appears to support the elimination of these ceilings.

Some specific findings of the study include: 1) Usury limits prevent higher-risk (usually low income) borrowers from acquiring credit; 2) usury laws reduce the total volume of credit in markets where they are effective, and 3) the geographic distribution of credit is adversely affected by usury ceilings.

Many people charge usury laws with causing perverse resource allocation and having a pernicious effect on credit flows. In states with restrictive usury regulations, critics argue that output and employment suffer. Bank failures have been attributed to these laws. Also, many

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have accused these interest rate limitations of causing inefficient regional mortgage credit distribution. None would disagree that high variable market interest rates have made usury limitations distorting constraints in credit markets.

Each state may impose usury laws which limit interest rates and/or amounts of loans. Many states have a general usury law referring only to mortgage interest rates, and other states have more complex usury laws covering many credit markets. Usury laws have been changing recently; some states have eliminated them, while others have indexed the limits to market interest rates. Disputes over the disposition of existing laws continue in some states, e.g., New York. The detrimental impact of these laws is the subject of this discussion. It focuses on how usury laws have affected total credit flows, flows to various risk categories and flows between regional markets. The impact of these laws on costs, revenues and profits of financial intermediaries and on economies of scale and competition is also reviewed.

Usury laws gather support from many sources and have existed in widely different cultures at some time or other. Justifications for these laws center on two related concepts: Equity and efficiency. It has been argued that small borrowers need usury laws to allow them access to "fair" credit rates and to protect them from unscrupulous money lenders. Underlying this argument is the assumption that local money lenders or large bankers possess adequate market power to control the price and quantity of credit supplied. An ancillary argument is that treatment of creditors as regulated public utilities redistributes wealth from the rich creditors to the poor borrowers.

As the evidence reviewed below demonstrates, the good intentions of usury laws most often produce unintended and nonproductive effects. Usury controls attempt to alter free-market solutions without themselves resolving conflict. Rather, they perpetuate the conflict and channel it into the political arena. Introduction of this political power into credit markets initiates a dialectical process of adjustments and counteradjustments. In his discussion of selective credit allocation, Kane (1977) describes this continual conflict as an unnecessary inefficient activity.

Although Kane addresses credit allocation other than usury laws, his arguments fit well the history of usury laws in the United States. When usury limits become binding, the market begins to find and exploit loopholes in the law. Avoidance can raise the cost of doing business and, if successful, frustrate the coalition which initiated the regulation. As a result, legislators seek new methods to stem avoidance. This cyclical adjustment process is often wasteful and fails to produce the good intentions of government controls. Therefore, the net result is the unproductive use of scarce resources. The empirical evidence discussed below verifies Kane's analysis.

EMPIRICAL EVIDENCE ON THE IMPACT OF USURY LAWS

This section discusses empirical evidence on two long-standing justifications for usury laws: 1) Such laws result in the availability of more credit at reasonable rates (efficiency of the market); and 2) they have a favorable impact on the operations of financial institutions (efficiency of the firm). Both of these issues relate directly to the nature and magnitude of credit supply; therefore, there will be some overlap in the issues considered. But there exists enough dis-

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tinct evidence on each issue to consider them separately and in turn.

Statutes limiting interest rates have generally been directed to specific loan markets (exceptions include laws in Tennessee and Arkansas), in particular, to personal loan and mortgage markets. Most empirical studies relating to usury laws focus on these, with most of them concerned with the consumer finance industry. Some analysis of regional impacts is available from studies conducted in states that have comprehensive usury legislation.

Empirical studies have used regression analysis almost universally. Ratios traditionally used to describe costs and revenues, and risk are generally employed for market supply equations. Dummy variables often designate the existence of effective usury laws. When the restrictiveness of usury limits is considered explicitly, the most generally accepted method is to analyze the gap between the market rates and the legal ceiling rates; states or markets with effective ceiling rates are identified as those only slightly above market rates. These regression techniques have generated similar results over many data sets; but, unfortunately, most data are cross-sectional and the few time-series observations are limited. More time-series data could produce fruitful insights into market dynamics as interest rates vary.

Do Usury Laws Provide More Credit at Reasonable Rates to the Public?

If usury laws are to have redeeming social value, they should benefit consumers. They should allow economically qualified consumers access to credit at more reasonable rates than would be available without them. How usury laws actually accomplish this is the subject discussed below.

1) How do usury laws affect distribution of credit to various risk categories? Empirical studies dealing with usury laws generally begin with the same basic assumption—namely, that if a credit market has restrictive usury limitations placed on it, credit gets rationed by denying loans to customers who are poor risks. Suppliers who have interest-rate and/or loan-size limits will rationally supply credit to less-risky borrowers first and continue to provide credit only until the maximum allowable rate no longer compensates them for risks they perceive in making the loan. Although this is the assumption made in research papers, there is no direct way to test which risk categories get rationed out of the market. The standard proxy for level of risk is the number of loan losses. The standard proxy for the level of legal rate ceilings is gross revenues: The assumption being that higher level rate ceilings lead to higher gross revenues because lenders are willing to make more marginal (riskier) loans.

That these studies produce similar results perhaps reflects their similar methodologies. All the studies use ordinary-least-squares regressions to estimate similar supply functions for credit. Data employed are also similar. Benston (May, 1977) uses a recent cross-section and time-series sample of consumer-finance firms located in different states and makes most complete use of it. Both Goudzwaard (1968) and Shay (1967) use the identical 1964 data set. Greer (1974) uses a 1971 state-by-state survey of consumer finance companies; Paul F. Smith (1970) gathered his own survey data from commercial banks and Lindsay (1970) used mortgage data from mutual savings banks. The various specifications of equations using ratios, differences, dummy variables and logarithms generate consistent results.

Consumer-finance companies have been analyzed in almost every conceivable form by George Benston. In his 1977 study, he utilizes data from 124 finance companies. His regression results provide only weak evidence that finance companies whose operations are not constrained by low usury ceilings make more risky loans. He tentatively concludes that net losses incurred may be only a partial measure of risk acceptance related to usury limitations. Douglas Greer (1974, 1975) makes a precise statement that risk acceptance increases as usury rate ceilings increase. He suggests that higher allowable rates enable finance companies to tailor interest rates to customers and thus increase credit supply without incurring higher net losses. Goudzwaard (1968) and Robert Shay (1967) add confirming evidence.

For particular markets, Shay (1972) provides some additional insight. He found rate ceilings to be related significantly to loan availability in both the personal-loan and new-automobile-credit markets but not in the consumer-goods market. He maintains that the reduced credit availability hurts the poor-risk borrowers most.

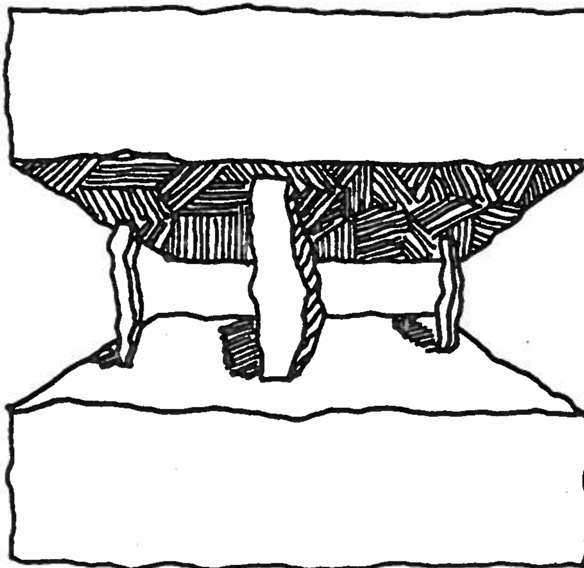
Paul F. Smith's study (1970) of consumer loans at commercial banks indicates that low-ceiling rates lead to credit restriction and limitation of bank risks. In high-ceiling states, loan rates become a competitive tool; actual rates are lower than rates in states which have low ceilings (Smith, p. 519). Finally, Robert Lindsay's study (1970) of the conventional mortgage loan market finds effective rates limiting the flow of funds to this market.

In summary, these studies have found usury laws defeating their own purpose. They prevent higher-risk borrowers from legally acquiring credit. These borrowers get rationed out of the market because creditors cannot receive a premium high enough to compensate for expected losses. To characterize more accurately the risk types that are excluded, more detailed survey data will be required. These data may be available from the agencies that regulate commercial banks and other intermediaries. Consumer loans by commercial banks and mortgage loans deserve more study since very little empirical research has been done relating risk acceptance and usury laws to these markets.

2) How do usury laws affect the total volume of credit supplied?

Sparse information exists on the consumer loan markets. The majority of research deals with particular characteristics of the markets and does not take an overview. However, the few analysts who have focused on this question have reached similar conclusions. Greer (1974) has done the most comprehensive analysis on the credit restriction effects of usury laws. Others (see Kawaja [1971]; Shay [1972]) comment only as a sidelight. Greer focuses on the effect of rate ceilings and market structure on the volume of finance company personal loans. He develops a theoretical model and employs convincing measures of market imperfections due to rate ceilings and market structure. Regarding the relation between supply of credit and rate ceilings, Greer concludes:

> ". . . both theory and empiricism indicate that risk acceptance is positively and uniformly related to the height of legal interest rate ceilings governing the consumer loans of finance companies. Simultaneously, the quantity of loans supplied appears to rise slightly then fall decisively as RCM [the mean legal rate ceiling] falls from an observed height of about 40% down to about 10%, with the peak in supplies occurring when RCM is in the neighborhood of 27%." (See Greer [1974] p. 1380.)



Greer also notes that the variables he uses to measure competition indicate vigorous competition, particularly for high-ceiling states. One final result of his investigation indicates that low legal loan-size limits are correlated with larger numbers of loans. But Greer is quick to point out that this does not necessarily imply that these stringent regulations are helpful in increasing loan volume. His judgment is that the regulations force consumers to acquire more costly multiple loans, not that aggregate supply is increased (see Greer [1974] p. 138). Data for Greer's study came from 48 states, so his study provides a broad look at the credit restriction problem. Supporting evidence for Greer's findings comes from Michael Kawaja's study (1971) of the New York State consumer finance industry. New York's low average rate ceiling and low loan limit combine to produce a relatively small dollar volume of loans compared to the state's population (see Kawaja [1971] p. 16).

An earlier study by Goudzwaard (1969) analyzes data on finance companies from 32 states. His findings support the idea that poor risks get rationed out of the market in states where usury laws are binding, but fall slightly short of confirming that total credit to this mar-

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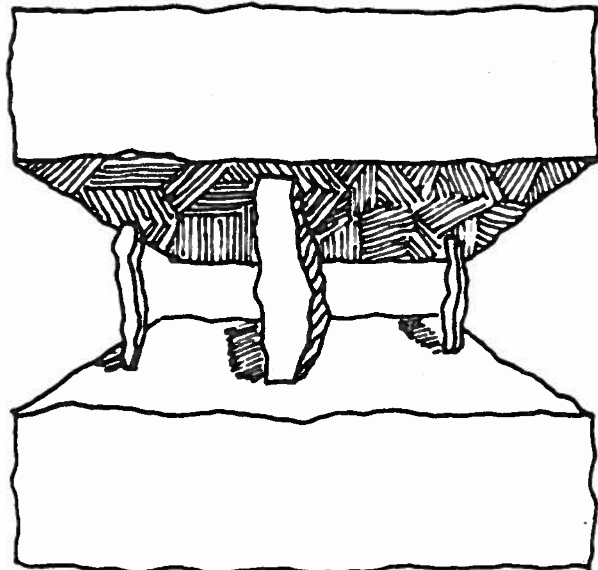
ket is restricted. However, in the new-automobile-credit market, Shay's analysis (1970) concludes that higher allowable rates tend to expand availability of credit moderately without appreciably affecting interest-rate charges.

Limited empirical results are available on the impact of usury laws on the mortgage-credit market. The data are major constraints because of the large differences in usury laws among states and the impact of VA and FHA mortgage rates on the market. Thus, in this market we are confronted with federal as well as state regulations. Given the current concern about housing policies, this aspect of usury laws deserves further analysis. To date, research indicates that usury restrictions have limited the flow of credit to mortgage markets.

Two studies by James R. Ostas (1975, 1976) yield the most economically sound results. In his 1975 article with Frank Zahn, Ostas concluded that equilibrium non-interest credit rationing and disequilibrium mortgage movements are explained by a theory of interaction in the market. This theory explicitly accounts for noninterest elements of price, (e.g., closing costs, downpayments, years to maturity) which vary to equate short-run supply and demand. A model which fails to include these terms is subject to serious specification errors. The empirical analysis generated statistically significant and economically reasonable results. But since the data are from savings and loans only, the overall market impact of noninterest rationing is not assessed. The statistical results imply that costs of altering these noninterest price terms (to compensate for usury ceilings) decrease the supply of credit.

In a more recent study (1976), Ostas addresses directly the question of how usury ceilings affect the mortgage market. Using a pooled cross-section and time-series data set for 15 large SMSAs, he first estimates the free-market rate in SMSAs which were effectively constrained by usury ceilings. His procedure was first to estimate free-market rates in unconstrained cities, then to use parameters from these equations to simulate equilibrium rates in the constrained cities. The term used to measure the constraining impact of usury ceilings (the difference between the constrained and unconstrained rates) had the expected inverse effect on noninterest terms and loan volume. The



costs associated with altering these noninterest terms apparently explain why lenders reduce the volume of rationed credit they supply. He concludes:

> ". . . the effect of a 100 basis point difference between what lenders would like to charge, . . . and what the law allows them to charge, . . . discourages 161 building permit applications per month, or 19% of the average permit volume over the 70 constrained observations." (See Ostas [1976] p. 829.)

Earlier research produced similar results using less well-defined models and simpler econometric techniques. Philip Robins (1974) analyzed data from 77 SMSAs using ordinary least squares. He concluded that, where usury rates are an effective constraint, the volume of housing starts is about 28% lower than in SMSAs where usury rates are ineffective. His results (using 1970 data) also indicate that if the maximum usury rate is increased by 1%, single-family housing starts will increase by 16% (see Robins [1974]). This estimate coincides fairly closely with the 19% cited by Ostas. Robins' results are generally less significant than those of Ostas', perhaps because Robins used dummy variables to capture the impact of usury limits, a different data base and attempted to include a large number of SMSAs.

Another study of Lindsay (1970), analyzing

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data from 1961 to 1968, found only weak support for the contention that interest-rate controls limit the flow of funds into the mortgage market. The one analysis which found no impact from usury laws (see Strangways and Yandle [1971]), is lacking in several respects. This analysis fails to account for state-by-state variations in usury laws applied to VA, FHA and conventional mortgages and singles out only the most restrictive usury laws.

3) What is the evidence on the geographic distribution credit? Before discussing of specific results from geographic research, it should be pointed out that any differences associated with usury ceilings among states that affect the total flows of credit to a particular market could also be viewed as geographic differences in credit distribution. In many cases the studies previously mentioned implied that usury laws caused uneven credit flows among states. But the evidence cited here deals directly with alterations in the geographic distribution of credit due to usury regulations.

Redlining, a much-publicized issue of late, relates directly to geographic credit distribution. It is commonly defined as denial of mortgage credit to certain urban areas based on expectations of insufficient returns from such lending. Perhaps restrictive usury rates play a role here also if, in fact, loans to redlined neighborhoods are considered too risky to compensate lenders operating under usury limitations. To date, no empirical work has directly linked usury laws to redlining.

Initially, one would expect that if a state imposed restrictive usury ceilings on all or some types of credit, the volume of credit subject to those ceilings would be lower than the same types of credit in states with no restrictive usury laws. There is significant state-by-state variation in usury limits. This is apparent from the types of financial institutions which exist in various states. For example, Arkansas, with a general 10% usury limit, has few consumer finance companies. Since credit functions as an important input to commerce, restrictions on its development should be expected to dampen economic growth in states with usury limitations. The few macroeconomic studies on the impact of usury laws to be discussed below support this view.

Studies of specific markets will be considered first, followed by discussion of studies of particular states. In general, relevant state-by-state data on markets affected by usury ceilings are scarce. But some survey data exist, and Shay (1972) uses a 1971 cross-section survey to analyze the impact of usury laws on certain types of instalment credit. Shay's study covers three credit markets: New-automobile credit, other consumer-goods credit (other than mobile homes, boats, aircraft and recreational vehicles) and personal loans. Regressions include cost and revenue measures along with concentration variables (to measure degree of competition) for each market. Conclusions from the regressions imply that the geographic distribution of instalment credit depends both on how restrictive usury laws are and on the market structure. These conclusions flow from a simple theoretical model, but Shay's work provides a rare bit of reliable empirical verification. Shay ([1972] pp. 408-418) also emphasizes the need to consider market structure along with government restrictions in analyzing the impact of changing usury ceilings.

The volume of mortgage credit also appears to vary from state to state, depending on how restrictive usury laws become when market rates rise. But once again we lack reliable state-by-state comparisons. The study by Robins mentioned previously (1974) generated some estimates using data for 77 SMSAs in 1970. This study provides an indication of the magnitude of the impact of usury laws. Regressions revealed that, when usury rates are low relative to market rates, they widen regional variation in mortgage rates by up to ½% and reduce housing starts by approximately one-fourth (see Robins [1974] p. 235).

Both New York and Missouri have experienced the effects of low usury ceilings. New York has maintained an 8½% ceiling which effectively applies only to mortgages on one- to four-family conventional homes. Missouri had an 8% mortgage ceiling through 1974. Financial intermediaries licensed in these states need not lend less-profitable mortgage funds in their home states. They are free to go out of state and purchase mortgages from other dealers or as packages in the secondary mortgage market. This has been the practice of mutual savings banks in New York. According to the New York State Banking Department (1976), about

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48% of mortgages held by New York mutuals have been from out-of-state during the years 1966-1976. To a certain extent, New York mutuals have redlined the entire state, not because its buildings are old or because it has an abundance of declining neighborhoods but because its usury rate remains restrictive. Missouri faced a similar problem from early 1973 to early 1974. New mortgage loans at Missouri savings and loans declined 37%, compared to a 6% decline in neighboring states (see Business Week [Aug 17, 1974] p. 93).

A few states have more comprehensive laws which affect all credit markets. Comprehensive state laws in Tennessee and Arkansas have created structural differences in credit markets as compared to states without such restrictive ceilings. As market interest rates remain high, the attention given these ceilings remains intense. Tennessee voters recently removed the 10% usury ceiling from the state constitution.

A wide variety of studies focus on various distortions created by usury limits in these states. A few deal specifically with geographic distortions. Using a survey of credit institutions in Arkansas cities bordering other states, one study finds important differences among the states (see Blades and Lynch [1976]). In Texarkana, Arkansas-Texas, there are distinct differences in the types of firms located on the Texas side of the city and on the Arkansas side of the city. Much less retail trade exists on the Arkansas side despite the approximately equal distribution of population between states. The majority of automobile dealers, appliance stores and furniture stores have moved to the Texas side of the city. Obvious inefficiencies result from locational patterns set up by this 10% ceiling.

Tennessee receives more publicity about its usury laws than any other state. Much interest has been generated due to the state's 1977 consitutional convention. One major study by Richard Gustely and Harry L. Johnson (1977) attacks usury-law problems on a statewide macroeconomic level. This study provides the most comprehensive view of the present and expected effect of the 10% interest-rate limitation.

Gustely and Johnson, using a large econometric model that attempts to portray the essential characteristics of the state's economy, emphasize the role of financial intermediaries in the growth of the Tennessee economy. Using data from commercial banks and savings and loan associations, they model financial-sector behavior and incorporate the equations into the large model for simulation and prediction. Their analysis provides a solid approach to a problem characterized by severe data limitations.

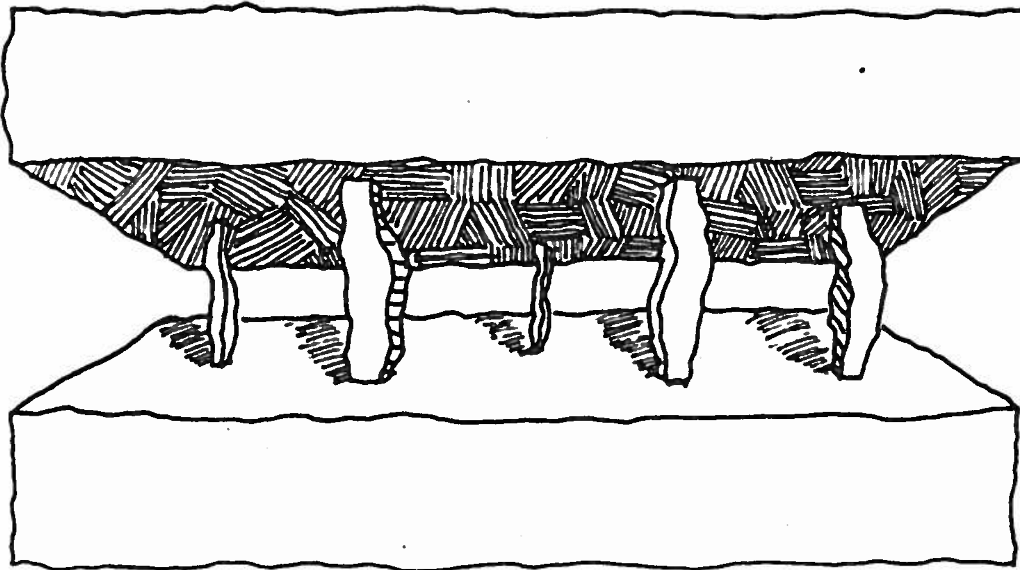
Results of the Tennessee study show the state's economy growing at a faster rate than the national economy except when market interest rates rise above the state usury ceiling, at which time growth slows substantially. This study is unique because it estimates the effect of the usury ceiling on output, employment, retail sales and assets of commercial banks and savings and loan associations (see Gustely and Johnson [1977] pp. 6-7). The estimates may suffer from incomplete model specification, but they provide some rough figures. Between 1974-1976, annual loss in output averaged $150 million, average jobs lost were 7,000 per year, retail sales loss averaged $80 million and financial assets loss to financial intermediaries averaged $1.25 billion per year. The study offers projections through 1984, assuming a continued high level of interest rates, and estimates the depressing impact of the usury ceiling to be about the same as it was during the 1974-1976 period (see Gustely and Johnson [1977] p. 84). If we are to know more about the impact of usury constraints, more studies of this type need to be initiated.

An obvious conclusion of this discussion is that the geographic impact of usury laws could benefit from a great deal more research. The major obstacle common to most regional studies is lack of data. More attempts such as the Gustely and Johnson study should be made.

The Impact of Usury Laws on Cost, Revenues and Profits of Financial Intermediaries

If usury laws affect the flow of credit to consumers, they must do so by altering some structural or cost feature of the industry providing credit. This section specifically looks into the impact of usury laws on costs, revenues and profits. Studies find that usury laws significantly change the organization of some financial intermediaries.

This section, by necessity, is severely limited in scope. Data are restricted to the consumer



loan market, and consumer-finance companies whose output is easy to identify and associate with various costs. These firms produce one type of output, whereas commercial banks, credit unions, and mutual savings banks produce a variety of services. Although the empirical literature has been limited, it has produced some results which could have important extensions into other financial markets.

1) Volume of Credit. This section focuses on how usury laws change the number and/or the size of loans made. Depending on production costs and effective usury limits, lenders may find it profitable to market larger loans, thus reducing the number of outstanding loans (with the same volume of credit extended). They may, however, want to increase the number of small loans since most usury rules permit higher interest rates on small loans.

During the past 10 years the consumer-finance industry has undergone increased scrutiny. Some recent empirical studies (see Benston [Sept. 1977]; Greer [1974]; Kawaja [1967, 1971]; and Shay [1967]) have contributed to an understanding of the effect of usury laws on the volume of credit. The two earliest studies (Kawaja [1967]) and Shaw [1967]) use cross-section data for finance companies to determine the economic effects of state regulation. Shay indicates that, in general, large companies have larger average loan sizes than small lenders. But Kawaja's results indicate that Shay's findings might be subject to a large variance between loan categories since state ceiling rates and loan limits also affect the size of loans lenders make. Low ceiling rates are associated with large average loan sizes. Also, if low ceilings are combined with large loan limits, lenders would probably make few large loans. Despite differences in the size of the companies, these early studies reveal that usury limitations have a significant effect on the number of loans made and amount of risk accepted, but total credit to a specific market was not altered.

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Kawaja produced another study (1971) dealing specifically with New York, using an approach similar to his earlier study. Of interest here are Kawaja's findings which agree with Greer's results from a 1974 study. The two agree that low ceiling rates tend to produce few loans, but that this effect may be offset by the counteracting effect of restrictive limits on loan amounts. Therefore, low loan limits and low rate ceilings are associated with a large number of loans extended. It might appear that these restrictions on lenders allow more individuals to acquire loans. But as Greer and Kawaja argue, the most likely result is that the good-risk customers are forced to "double-up"—acquire costly multiple loans—to get the amount of credit they desire without additional credit extended to other customers.

A recent study of scale economies by Benston (June, 1977) adds some insight into costs relative to loan size. He found that large loans (greater than $1000) are marginally less profitable than small loans. But, in spite of this effect, ceiling-rate structures existing in most states give lenders an incentive to "push" larger loans because the largest loan a borrower can repay is the most profitable. This is due to scale economies and the character of loan servicing costs.

These results provide insight into the difficulties of efficient regulation. Frequently, regulations intended to produce a particular effect—to provide credit at reasonable rates to all those deserving—produce something entirely different—costly multiple loans or larger loans than needed for the low-risk customers.

2) Cost, Revenues and Profits. Empirical estimations and explanations concerning costs, revenues and profits of consumer-finance companies are so uniform that it might cast doubt on their validity. Usually, the results of at least one investigator will differ from others, but in this area all researchers agree on fundamental conclusions. This section, as the previous one, is limited to consumer-finance companies and the results discussed below may not be applicable to other financial intermediaries.

Research on the relationships between costs, revenues, and profits and how these relationships are affected by usury laws began on a large scale about 10 years ago and has produced results which substantiate initial investigations. But sound research remains limited to only a few papers, with some authors producing two studies (see Benston [June, Sept. 1977], Kawaja [1967, 1969], Shay [1967] and Zwick [1967]).

Initially, Jack Zwick (1967), Shay (1967) and Kawaja (1969) wanted to determine the relationships between gross income, operating costs and profits. In their investigations they discovered that a variable that systematically affects gross income and expenses was a measure of the restrictiveness of usury laws. They all found that the firms in the industry earn approximately the same profits independent of the state-by-state variations in usury laws. These researchers concluded that the lenders adjust operating costs to attain a desired rate of gross income and thus a desired profit rate. Usury laws influence the decision by allowing lenders to incur more (less) cost. Profits, therefore, are substantially unaffected. Thus, lower ceilings are accompanied by lower costs resulting from increasing the average size of loans made and reducing average risk. Larger average size of firms and loan branches accompany these market features (see Kawaja [1967]).

On a firm-by-firm basis, several features have been singled out as causing cost differences. Zwick focuses on the degree of office utilization (number of loans divided by number of offices operated by a firm) as a variable accounting for differences in operating profits. Benston (Sept., 1977) finds that costs vary in relation to: 1) Whether loans are made to new or old customers, 2) whether other business is done in the same office and 3) whether the office is located in a high- or low-cost area. Although these internal differences in cost do not relate directly to usury laws, they do have important implications for establishing a basis for usury regulations if those regulations are to be based on estimated firm costs.

If these conclusions are strictly limited to the consumer-finance industry, usury laws do influence how firms operate. An obvious extension of this analysis is to investigate how regulation affects economies of scale and competition.

3) Competition and Economies of Scale. Competition among firms within the consumer-finance industry and from other financial intermediaries affects profitability of consumer-loan companies and is affected by usury laws. These laws may explicitly restrict entry into the in-

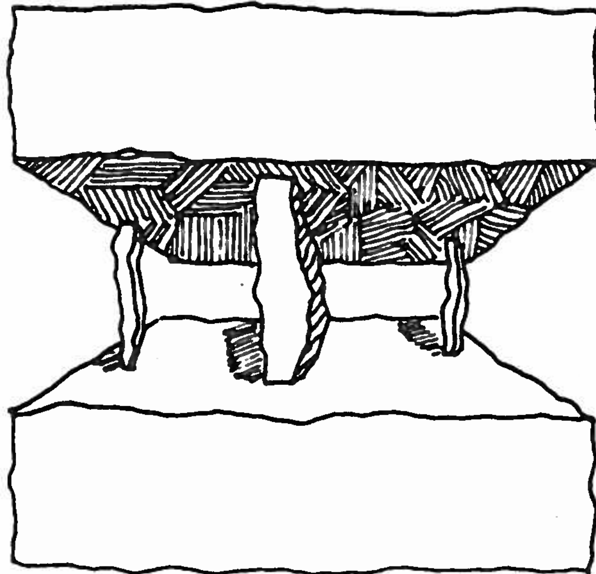
dustry by invoking convenience-and-need considerations and thereby create a noncompetitive industry structure with the accompanying excess profits. These laws may also restrict interest charges so that only a few firms large enough to capture the economies of scale found in very large operations can exist in the market. Smith, Shay and Eisenbeis and Murphy all discovered substantial inter-industry competition.

Smith's study of consumer-loan pricing policies of commercial banks provides regression results indicating that strong competition exists from nonbank sources. He states that the competitive influence of consumer-finance companies was observed to have a significant effect on bank rates and portfolio composition (see Paul F. Smith [1970] p. 524). Shay (1970) also finds a surprisingly strong degree of competition between commercial banks and finance companies. Greer agreed with Smith and Shay in his 1974 study of the consumer-finance industry (1977). His estimates also indicate that loans are positively associated with easy market entry and low market concentration.

In their study of consumer loans in Maine, Robert Eisenbeis and Neil Murphy (1974) use a survey of borrowers to investigate credit rationing and market segmentation. Their study finds that, at least in Maine, banks, credit unions and finance companies compete in the same market. This last study is unique in that it uses discriminant analysis instead of regression analysis and a fresh data set.

These reinforcing empirical findings are very important for regulators. They indicate that industrywide competition has a great potential for keeping consumer-loan rates at competitive (nonexploitive) levels, and that regulated loan amounts or rates will provide no long-run solution for granting credit to worthy consumers.

Studies that deal exclusively with the consumer-finance industry have demonstrated that economies of scale on the firm level and thus the industry's structure are affected by usury regulations. Kawaja in his study of New York State (1971) found that the low average cost of large-scale operations and the resulting small number of firms are required to compensate for low loan-rate limits. Thus, New York is characterized by a few large lenders that have achieved sufficient economies of scale to maintain a desired profit rate. These results confirm



results of an earlier, more comprehensive study by the same author (1967).

The most thorough study of economies of scale was recently completed by Benston (September 1977). Measuring variables contributing to costs in logarithms, Benston finds all the coefficients significant and less than one, indicating economies of scale for firms in the industry. He considers the primary reason for these scale economies to be the small office size used by companies. But, as office size increases, unit costs decline slightly. Currently, the small average office size does not allow for employees to be used effectively (see Benston [September 1977] pp. 1181-1182).

SUMMARY

Most researchers agree that currently enforced usury ceilings fail to serve any useful function. In many cases they cause severe economic distortions that extend far beyond the market they were intended to regulate. The major example of distortion is inefficient resource allocation between states. A viable alternative to usury laws is to encourage more competitive credit markets by removing constraints on market transactions.

One sound theoretical justification for control of credit markets remains, however, and is cited in many papers: Credit markets may be charac-

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terized by such economies of scale that they will efficiently accommodate only one supplier and thus generate monopoly profits if not regulated. This is the valid case for regulation of a natural monopoly. This argument may not be applicable here because credit markets are characterized by substantial competition from all types of financial intermediaries. Since empirical investigations show that any given market encompasses a wide range of credit suppliers, attempts to force outcomes in one submarket are frustrated.

Future research should move toward filling the gap on the macroeconomic impacts of usury controls. In addition, research techniques to study the effects of usury laws in particular markets should be expanded to focus on other types of artificial constraints such as Regulation Q. Despite the existence of a substantial amount of literature urging their modification or elimination, further research is needed to alter misconceptions about the costs and benefits of usury laws. □

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EXHIBIT I

Re: SB101

Honorable Senators:

My name is Don Brodeen. I am Chairman of the Legislative Committees of the Nevada Mortgage Bankers Association and the Southern Nevada Mortgage Bankers Association. Much of my testimony may be repetitious of prior testimony and I will not belabor those issues except for minor remarks.

1. Usury is an archaic law which has no use in todays society. We don't legislate the price of a loaf of bread and money is as much a commodity as that loaf of bread. If we limit the price we are going to eliminate the supply or seriously deplete it. If we had not had the Federal pre-emption of State usury law since December 28, 1979, there would have been literally no construction in Nevada in 1980.

2. Usury in Nevada is an invitation to disaster. Nevada is a "Cash Poor" state in that we must rely on "foreign" capital from outside Nevada to satisfy our money needs. If we have a usury law, no matter at what level, it will only serve to dry up that supply in "tight money" times as we have seen in the recent past and surely will see in the future.

3. Usury <u>does not</u> protect the small borrower, in fact <u>it hurts him</u>. He is forced to go to whatever source he can find if he needs money badly. We constantly hear of loan sharking and gouging. The investor who is limited on his return is not going to put his money into a high risk loan without a proper return. That proper return should be at the discretion of the investor who is willing to take the risk and the borrower who needs the money.

4. Our usury statutes as they now exist are confusing, to say the least, and suffer conflicting interpretation from almost any legal mind that reviews them. We have usury placed as high as 4% per month for certain criteria and as low as 18% per annum for probably the most vulnerable of all markets, Real Estate Loans. Lets get rid of these inequities.

5. We have revised the usury law in the last 3 sessions of the Legislature, as I recall, and each time our efforts were proven to be insufficient. Lets get the job done this time so no more valuable time has to be wasted two years from now and thereafter.

The usury bill addressed here, SB101, serves to eliminate all usury and we support that concept. However, should there be amendments or deletions from the exemptions we wish to present a very valid case for the Mortgage Banking Industry as distinguished from Banking, Savings and Loans, Mortgage Brokers, or Mortgage Companys. The proper definition of a "Mortgage Banker" is an organization which "Originates and services loans for institutional investors". We do not originate for our own portfolio nor do we originate for individual or private investors. All of the money which we lend is derived from "foreign" capital with the exception of loans originated for sale to the Nevada Housing Division. There might be some minor exceptions to this, but this is the basic concept. Our business is governed by NRS99. We presently are exempt from licensing under NRS645B per Paragraph .190, Section 4 which exempts "Any firm or corporation which lends money on real property and is subject to licensing, supervision or auditing by the Federal National Mortgage Association as an approved seller or servicer". Should there be modification or elimination of certain parties being exempt from usury we would suggest that we as an industry be exempt under the same above specified criteria.

We are submitting herewith for your information a three year summary of mortgage activity in Clark County, Nevada. Under the identified activity you will note that "Mortgage Bankers" have originated (78) 42.6%, (79) 44.7% and (80) 42.6% of the three years activity. In those same three years Savings and Loan Associations originated (78) 29.9%, (79) 25.9% and (80) 27.6% and Banks originated (78) 27.5%, (79) 29.4% and (80) 29.7%. In the unidentified category there were nine "Mortgage Bankers" and one Savings and Loan. The "Unidentified" "Mortgage Bankers" reported to me that they had 1980 recordings in excess of $99,675,000.00 and the "Unidentified" Savings and Loans had $48,779,000.00. This would serve to increase the percentages considerably for "Mortgage Bankers". Banks and Savings and Loan Associations can, and do, operate as mortgage bankers, but facts do prove that the "Mortgage Banker" is a very necessary and predominate factor in the Nevada economy.

Your consideration of this information in your deliberations on this subject will be highly appreciated by our association and we trust that you will endorse the contents herein.

Respectfully Submitted,

Don Brodeen, Chairman, Legislative Committee
Nevada Mortgage Bankers Association
Southern Nevada Mortgage Bankers Association

REAL ESTATE LOANS as recorded in
CLARK COUNTY NEVADA

Compiled for your records by
TITLE INSURANCE AND TRUST COMPANY

THREE YEAR SUMMARY
1980***1979***1978

PRINCIPAL LENDERS	DOLLAR VALUE ACTIVITY			No. of TRUST DEEDS		
	1980	1979	1978	1980	1979	1978
VALLEY BANK OF NEVADA	160,882,000.	100,926,600.	159,336,400.	558	771	1019
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
FIRST NATIONAL BANK OF NEVADA	68,370,000.	215,096,500.	108,262,500.	625	1090	1324
WEYERHAEUSER	53,123,000.	94,583,500.	109,440,800.	512	1261	1509
MASON McDUFFIE	49,968,000.	94,343,400.	60,896,200.	858	1537	980
SHERWOOD & ROBERTS	41,819,000.	41,092,800.	43,902,800.	359	380	346
MARGARETTEN & COMPANY	41,673,000.	54,342,200.	36,186,200.	645	906	781
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
KISSELL COMPANY	36,192,000.	34,329,600.	26,552,100.	644	652	586
NEVADA NATIONAL BANK	34,816,000.	50,535,700.	42,032,500.	344	710	814
LOMAS & NETTLETON	33,103,000.	28,822,700.	10,665,200.	104	166	73
[illegible]E COLWELL COMPANY	27,137,000.	44,966,400.	60,054,000.	194	466	565
NEVADA STATE BANK	17,599,000.	15,724,100.	26,578,600.	314	280	393
THE STANWELL COMPANY	16,579,000.	49,443,500.	45,247,200.	179	875	876
THE HAMMOND COMPANY	15,905,000.	3,689,000.	-	303	72	-
SUBURBAN COASTAL	15,069,000.	-	-	243	-	-
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
WESTERN PACIFIC MORTGAGE	14,546,000.	13,822,000.	18,259,400.	155	278	363
TRANSAMERICAN MORTGAGE	13,571,000.	27,213,600.	25,314,100.	259	523	568
APPLEWHITE	11,366,000.	21,600,900.	17,186,050	202	393	389
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
WESTERN MORTGAGE & LOAN CORP	7,750,000.	-	-	82	-	-
INVESTORS MORTGAGE	7,657,000.	9,158,400.	8,437,900	109	185	184
SECURITY PACIFIC MTGE CORP.	6,401,000.	32,992,200.	29,977,300.	127	442	259
J[illegible]TICE MORTGAGE	5,501,000.	17,498,700	23,746,100.	98	334	541
PACIFIC MORTGAGE	5,371,000.	4,638,000.	-	97	90	-
KNUTSON MORTGAGE	4,640,000.	-	-	71	-	-
PIONEER CITIZENS BANK	4,144,000.	5,770,500.	6,617,500.	50	82	102
WESTERN MORTGAGE CORP.	3,383,000.	18,102,900.	14,818,800.	56	280	329
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SUB-TOTALS	961,598,000.	1,320,172,600.	1,246,792,900.	10,753	16,741	17,167
INDIVIDUALS & OTHERS	1,390,022,000.	1,275,441,900.	893,106,600.	18,683	18,773	15,386
TOTALS	2,351,620,000.	2,595,614,500.	2,139,899,500.	29,436	35,514	32,553
MORTGAGE BANKERS	410,754,000. 42.7%	590,639,800. 44.7%	530,684,150. 42.6%	5,297	8,840	8,349
SAVINGS & LOAN ASSN'S	[illegible] 27.6%	[illegible] 25.9%	[illegible] 29.9%	[illegible]	[illegible]	[illegible]
BANKS	285,811,000. 29.7%	388,053,400. 29.4%	342,827,500. 27.5%	1,891	2,933	3,652

ITEMS OF INTEREST

No. of DEEDS / REAL PROPERTY TRANSFER TAX

Year	No.	Amount
1980	32,754	$1,567,274.40
1979	40,675	$1,656,262.30
1978	38,422	$1,110,799.90

BUILDING PERMITS

Year	No.	Value
COUNTY OF CLARK		
1980	8,457	$365,425,649.
1979	11,874	$427,572,674.
1978	13,191	$428,062,102.
CITY OF LAS VEGAS		
1980	6,639	$188,061,472.
1979	1,056	$ 20,562,042.
1978	1,261	$ 11,890,271.
NORTH LAS VEGAS		
1980	880	$ 21,883,516.
1979	1,056	$ 20,562,042.
1978	1,261	$ 11,890,271.
HENDERSON		
1980	5,155	$ 61,080,842.
1979	6,295	$ 65,933,856.
1978	5,702	$ 69,302,150.
BOULDER CITY		
1980	796	$ 6,792,183.
1979	1,537	$ 37,630,894.
1978	1,433	$ 19,488,721.

*This report is furnished as a public service by Title Insurance and Trust Company, but no responsibility is assumed for the accuracy herein

SB 101

JOHN E. KENNEY, JR.
2330 ABARTH STREET
LAS VEGAS, NEVADA 89122

EXHIBIT J

22 Feb 1981

Dear fellow Southern Nevada Home Builder Director:

RE: Usury bills

Please read builder Bill Smith's package (marked (A)) before the 24 Feb Board meeting. Bill is the man, who first five years ago came forward with the concept of creating more lendable money for our industry -e.g. exempting from taxation the interest earned on savings accounts that lenders use for housing.

This is the equivalent of the average man's tax exempt municipal bond. Today this is one of the top legislative priorities of NAHB.

WHY USURY FOREVER WITHOUT A CAP?

When prime was 20% in the US during 1980, two countries, Japan and West Germany (both with little oil or coal), kept their prime rates (at the same time) below 9-3/4%.

WHY? Becuase the Federal Reserve System is of, by and for the bankers. Last March, the London Economist cover story referred to the recession as the usurers' recession.

Don't give all lenders a blank check forever....

SUGGESTIONS: Admend bills in several ways.

1. Reviewed every 2 years by legislature- automatically reverts to present law.
2. Current law ties interest rate to prime rate (see article on reverse). Change to 3 points over yield on 30 year Treasury Bills (or some other Treasury obligation).
3. If cross state banking comes, revert to present law or my proposed change.
4. If cross state S & Ls come, revert to present law or my proposed chnage.
   Note: S & Ls can do this by change of regulations of FHLBB.
5. Need to keep Nevada savers money in Nevada. Penalty if loaned outside state. If loaned outside state, then revert to present law.
6. Excess profits tax if money taken out of state.
7. Timing is very poor politically. What other bills are coming from the bill drafter later in the session? Do not make any blanket endorsements (even in concept) now. Keep some trading chips.

What will we get if there is no cap on usury? The lenders are using stampede tactics, but do we have any guarantee of anything more than a blank check for the lenders?

E 568

over please

U.S. Housing is Competing For Funds With Foreign Government Deficits And Foreign Investments.

The U.S. housing consumer is crowded out of what has become an international money market for U.S. savings dollars, by the demand to fund the deficits of foreign governments and foreign capital investments.

The changes in banking laws, the creation of money market funds, plus the revolution in communication through satellites and computers, has created an international market for U.S. savings dollars in which the consumer of housing can no longer compete.

U.S. savings dollars that formerly provided the funding for housing for U.S. consumers, are now being packaged by money market funds and S & L's, in the form of C.D.s of 100 thousand dollars or more, and then marketed by Money Center Banks in the international money market.

These funds are now disintermediated, for example, into supporting the deficits of the British government, their nationalized steel, automotive, shipbuilding, airframe, and mining industry, plus their socialized housing program. U.S. money center banks have been major customers in the purchase of British Gilts (Treasury bills). "Economist," Nov. 8, 1980, 92)

Money center banks in the U.S. have been taking U.S. savings dollars raised by issuing C.D.s to S & L's and money market funds and are immediately investing them in the Eurodollar market. N.Y. Times, Mike Quint, 3 Sept. 80.

The Federal Home Loan Bank branches are acting as agents for the S & L's which have been investing their depositor's U.S. savings dollars in Japanese bank C.D.s, and other foreign bank C.D.s, insured by the Federal Deposit Insurance Corporation. These funds are then used to support the investments of these foreign banks in funding importation of Japanese autos and steel and other foreign

savings, is crowded out of the market by U.S. banks and security houses acting as intermediataries to fund foreign deficits and foreign investment.

The steel workers and automobile workers of the United States are actually funding their competition, loosing their jobs, and being denied the opportunity to buy homes.

There is an answer. It is quite simple. Savings dollars seek the greater after tax rate of return. It should also seem reasonable that U.S. savings dollars should have some preference for the use within the United States to house the savers.

Tax free treatment of all interest earned on savings deposits used for residential mortgage purposes would give a tax preference for use of U.S. savings and for producing housing for U.S. consumers, in competition with the foreign government deficits, foreign investments, and even U.S. Federal deficits.

It would also immediately produce a residential mortgage rate of about 9½% while the Federal Reserve Board pursues its policy of restricting growth of money supply. This would immediately revitalize the economy, create employment, and reduce the budget deficit. It would also reduce the cost of living attributable to the cost of housing and interest rates.

This concept is incorporated into a Bill written by the author and introduced in the house by representative Bill Archer of the Ways and Means Committee as H.R.6907.

It is not a matter of housing competing for U.S. savings dollars with U.S. industry for capital formation, but a matter of competition with foreign governments, foreign investment, and the treasury of the U.S. in funding U.S. deficits.

U.S. industry similarly needs a tax preference in competing for U.S. savings dollars. Such legislation must similarly be targeted to U.S. industry to produce for investors a greater after tax rate of return than that

Congress and the bank regulators are still pursuing their marathon debate over Regulation Q interest ceilings and the precise fraction of one percent more interest we may, at some future time, be permitted to pay our depositors with small savings. Meanwhile, small savers can earn twice as much interest—and more—by placing their funds with financial intermediaries like money-market mutual funds that didn't exist when Regulation Q was invented.

Moreover, they can get a broad range of credit and other banklike services from financial intermediaries that until recently were known as department stores, telephone companies, broadcasting networks, food chains, and manufacturers. These new, aggressive competitors are able to gather funds and dispense financial services without the constraints on geography and activities or the restrictive rates and regulations that are imposed on us.

Under the pressures of constantly changing customer needs, entirely new technologies, and the aggressive market thrust of these less-regulated nonbank competitors who now hold about 62% of the financial assets of America, the traditional concept of banking is gone. Like a jigsaw puzzle with some pieces lost, some shrunk or expanded, and others newly added the banking industry can never be reassembled to what it once was. Traditional banking has been effectively superseded by a much broader based financial services industry with new players, new challenges and new rules.

We live in a global marketplace of some four billion people made up in turn of many national markets. The United States is fast becoming a de facto national financial marketplace, and thus many of the comments in this letter relate to this phenomenon. Electronics is becoming the way financial assets are stored and transferred from one user to another. This is the core of the financial intermediary business today. This movement of assets via electronics will affect commercial and financial activities at least as profoundly as the substitution of paper money for bullion. The laws must change to accommodate new technology and technology must adjust to the law.

An important and forward-looking ruling was issued by the Federal Reserve Board early in 1980 permitting us to expand the number of our Edge Act offices around the United States to facilitate the vital flow of international trade and other overseas business. Moreover, we were permitted to consolidate the administration of those offices under a single roof. Thus, Citibank International, headquartered in Miami, will have offices in Atlanta, Boston, Chicago, Cleveland, Houston, Los Angeles, Minneapolis, St. Louis, San Francisco and Seattle.

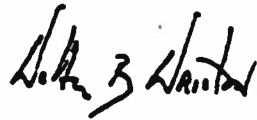
This expansion and restructuring constitute a major milestone in building our U.S. business.

We believe that the time has now come for legislators at the state level to recognize the validity of another progressive proposal—that they enact reciprocal state banking laws. Federal laws dating from the late 1920s and early 1930s prevent most banks from establishing branches outside the state where their head office is located. However, a later federal law, enacted in 1956, gives state authorities the option of opening their borders to out-of-state banks or bank-holding companies that wish to acquire local banks. One state has already done so on a reciprocal basis, and similar legislation is pending in several other states.

It isn't necessary to make a sudden or drastic change in the structure of the U.S. banking industry to test the benefits of this proposal. Reciprocal state banking laws could limit the number of locations where a local bank acquired by an out-of-state banking entity could operate. Initially, these locations could be restricted to one or more cities that have the largest and most competitive banks. That would ensure the kind of vigorous competition that historically has exerted upward pressure on quality and downward pressure on the cost of services.

Banks would benefit from the ability to tap larger and more diverse markets, while utilizing the latest transaction and communication technologies, which make geographic distance meaningless. Nationwide banking has already been tested by a number of thriving foreign banks that now have networks of branches throughout the U.S.

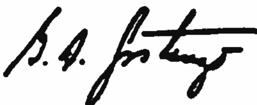
If more states enact reciprocal banking laws, it would also enhance prospects for regulatory approval of "monetary free trade zones" in the United States. This very practical proposal would permit banking transactions to be processed, much as foreign goods are processed, in "free trade zones"—and much as international banking is now handled in other competitive financial centers of the world. The measure has been slowed by those who believed that New York City would derive the major benefits, but it now appears to be attracting national support as more and more bankers across the country see its benefits.



Walter B. Wriston
Chairman

William I. Spencer
President

Edward L. Palmer
Chairman of the Executive Committee



G.A. Costanzo
Vice Chairman

[illegible] 571

Key indicators: World bourses

As Wall Street prepares to welcome America's new president, Hongkong gets tipsy on Jardine's efforts to repel phantom Chinese boarders. So does Milan on nothing in particular. London trembles lest BL blows its last gasket.

	Stock price indices Nov 4	1980 high	1980 low	Percentage change on one week	one month	one year	record high
London	480.0	508.9	406.9	−3.1	−0.7	+14.7	−14.1
New York	937.2*	974.6	759.1	+0.5	−2.4	+16.2	−10.9
Canada	2303.0	2368.3	1702.5	−0.8	+0.7	+44.2	−2.7
Australia	1023.5	1025.7	760.0	+1.8	+5.6	+46.5	−0.2
Japan	496.0	498.0	449.0	+0.8	+0.6	+10.6	−0.4
Hongkong	1556.4	1557.5	738.9	+5.7	+18.0	+117.0	−12.3
Belgium	90.3	105.6	85.9	+1.1	+0.2	−10.5	−36.5
France	118.3	118.3	97.1	+2.6	+5.0	+19.5	nil
Germany	710.6	749.2	667.0	+0.7	−4.4	−0.2	−31.1
Holland	64.7	68.2	58.2	+0.8	+4.5	−6.0	−54.0
Italy	188.2	188.2	83.1	+9.2	+31.3	+119.9	−23.1
Singapore	691.7	695.6	429.8	+4.9	+13.4	+70.7	−0.6
South Africa	656.7	656.7	456.0	+1.2	+8.1	+61.2	nil
Sweden	383.4	387.0	334.7	+2.3	+8.4	+14.4	−19.6
Switzerland	308.9	317.9	276.0	+2.4	+0.8	+0.3	−34.2

*Nov 3

Confident that they now have Japanese banks on a leash, as well as the balance of payments under control, officials in Tokyo are easing their restrictions on Eurolending too. A meeting of banks and finance officials two weeks ago rounded off weeks of talks in which banks have been told that they can lend 30-50% more in foreign currencies in the next six months than the $3 billion limit for the half year ended September, the first months after the freeze on big-ticket Euroloans.

Although this looser corset will make Japanese banks more active in the Euromarket, bankers say there will be no rush to lend. Officials are determined to keep Japan's share of large public Euroloans to about 10% of the total market in the year to next March, down from about 20% in 1978 and 1979. But they are prepared to relax the unofficial, but strictly-observed rule that Japanese banks may not take more than 20% of an international syndicated credit.

They are also keen on concentrating the Japanese lending force. By basing lending limits for the rest of the year on the size of banks' existing international loans, and, some say, allowing more expansion on the books of the larger banks, the authorities are trying to limit the number of important Japanese international lenders. The top half dozen of the 24 banks in international lending—Bank of Tokyo, Dai-Ichi Kangyo, Mitsubishi, Mitsui, Fuji and Sumitomo—will probably lend at least half of what all Japanese banks will be allowed to add to their books in the next six months.

Small banks' complaints about lending limits are muted by the low profits on international loans. But western partners of Japanese banks in syndicated loans, while they say that official intervention now causes fewer problems, are irritated by the finance ministry's insistence that Japanese banks must take prominent (fee-earning) positions in lending syndicates when they are allowed to break the 20% rule. They reckon this leads to bigger earnings than the Japanese banks would get on their own.

Gilt-edged market

Pond-hoppers stay loyal

Soaring American interest rates, tight conditions in the London money market and a 2% jump in the (sterling M3) money supply is a combination which would once have floored the gilt-edged market. But the rules have changed: a little hesitation when the banking figures were published on November 4th was followed by some easily-absorbed overseas selling, and by mid-week the market was edging confidently ahead.

One factor which has altered the chemistry of gilts is the American invasion. Ironically, sedate American bond fund managers used to view British government securities as unreasonably volatile. No longer: battered by the gyrations of the United States treasury bond markets, gilts are now seen by many international money managers as a haven of stability. American investors, particularly the bond trading desks of the money centre banks, have recently become some of the market's most active participants. So far few of them show signs of getting out, despite the rapidly-closing gap between bond yields on either side of the Atlantic.

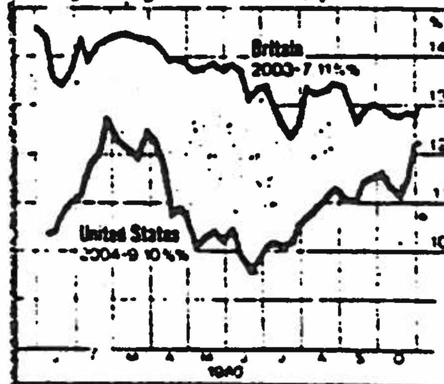
Another blurring influence is the increasing sophistication of domestic institutional investors. Within minutes of the official estimate that the sterling M3 measure of the money supply had grown by about 2% in the month to mid October, for instance, most of the heavyweight investors had (rightly) been convinced by their brokers that the fig- ures were not as bad as they seemed.

More than 1% of the growth came fro[m] an apparently erratic, unfavourable swin[g] in the external component of sterling M[3] (which probably reflected only to a sma[ll] extent official attempts to "smooth" ster- ling downwards). The seasonal adjus[t]- ments to the sterling M3 series are know[n] to be particularly badly out for Octobe[r] and probably distorted the figure up- wards by another 1%.

There was also a strong feeling in th[e] market (unconfirmed but not eradicate[d] by official guidance) that "round-trip- ping" had boosted the figures significant- ly: the clearing banks certainly noticed a[n] abnormal increase in their overdraft[s] about the use of which some of the[m] harbour off-the-record doubts.

Gilt-edged investors are, in any even[t] more impressed at the moment by stron[g] anecdotal evidence of a further round o[f] destocking by industry which should (a[t] last) cut the growth in bank lending to th[e] private sector over the next few month[s]. A bigger problem is that the trend i[n] government borrowing is likely to pick u[p] to a high level in November and Decem- ber before the government accou[nt] moves into substantial surplus in the fin[al] quarter of the financial year.

This implies that, to have any chance o[f] meeting whatever the new money suppl[y] target is, several more new issues wi[ll] have to be sold between now and Chris[t]- mas. There should be no problem i[n] persuading the building societies to finis[h] off the unsold two thirds of the curren[t] medium tap stock, the 11¾% Exchequ[er] 1986, over the next few weeks. But at th[e] long end, domestic insurance compani[es] and pension funds will need some fair[ly] tangible hopes on interest rates to wh[et] their appetites. The market knows thi[s] and may increasingly be inclined to ta[ke] the next long tap announcement as a lea[d] indicator of a cut in minimum lendi[ng] rate the following week.



Encl. 1 (13)

OCT 30 1975
BANKING DIVISION

EXHIBIT K

THE REGIONAL ADMINISTRATOR OF NATIONAL BANKS

FOURTEENTH NATIONAL BANK REGION
555 CALIFORNIA STREET, ROOM 3939
SAN FRANCISCO, CALIFORNIA 94104

October 28, 1975

Mr. Preston E. Tidvall
Superintendent of Banks
Nye Building, Room 220
201 South Fall Street
Carson City, Nevada 89710

Dear Mr. Tidvall:

This is in reply to your letter dated September 24, 1975, and your subsequent telephone conversation with me on October 21, 1975 regarding the newly enacted Thrift Company Act, which was authorized by the 1975 Nevada Legislature and the Nevada Revised Statute Chapter 99, which was also amended by the 1975 Nevada Legislature. Both in your letter and the telephone conversation, you expressed concern that this legislation might permit national banks in Nevada to charge interest on its loans at the highest rate permitted to be charged by any financial institution licensed by the State, particularly, thrift companies, which are classified as financial institutions in the State of Nevada.

I have reviewed both bills, and it is my opinion that under the legislation in question, national banks can charge a rate of interest comparable with that being charged by thrift companies on the same category loans. 12 USC 85 and its interpretive regulation, 12 Code of Federal Regulation Part 7.7310, permits a national bank to charge interest at the maximum rate permitted by state law to any competing state-chartered or licensed lending institution. Thus, national banks in Nevada may charge the rate allowed by state law to state-chartered banks, small loan companies, building and loan associations, industrial loan companies, credit unions, etc.

National banks are, however, subject to the amount limitations contained in state law. For example, if state law allows a small loan company to charge 15% simple interest per annum on a first $250.00, a national bank would have to abide by the $250.00 ceiling. The bank could not, in other words, charge 15% on amounts greater than $250.00. Accordingly, national banks in Nevada would be restricted under the Thrift Company Act to such dollar amount limitations. See Sections 57 and 63 of the Act.

The original version of 12 U.S.C. 85, as enacted in the National Bank Act of 1864, intended to place national banks in a position at least as advantageous as that held by any lender within the state in which the national bank was located. Thus, prior to the 1933 amendment ("or at a rate of 1 per centum... may be the greater"), national banks were permitted to charge the maximum rate permitted by state law for lenders generally, but if state law made special exceptions for state banks, thereby authorizing them to charge a higher rate than that permitted to other lenders, national banks could also levy the higher rate. Tiffany v. National Bank of Missouri, 85 U.S. (18 Wall.) 409, 411-412, 21 L. Ed. 862 (1873); Northway Lanes v. Hackley Union National Bank & Trust Co., 334 F. Supp. 723, 726-727 (W.D. Mich. 1971), aff'd. 464 F. 2d 885 (6 Cir. 1972); Partain v. First National Bank of Montgomery 336 F. Supp. 65 (M.D. Ala. 1971), rev'd. on other grounds, 467 F. 2d 167 (6 Cir. 1972); Comm'r. of Small Loans v. First National Bank of Maryland 300 F. 2d 680 (Md. 1973); Acker v. Provident National Bank, 373 F. Supp. 56 (E.D. Pa. 1974).

In 1933, Congress amended 12 U.S.C. 85 to permit national banks to charge interest at a rate 1 percent in excess of the discount rate on ninety day commercial paper in effect at the district Federal Reserve Bank. The amendment is phrased in the disjunctive, giving national banks the privilege of charging "whichever may be the greater" between the state usury limit, on the one hand, and a rate of 1 percent in excess of the ninety day commercial paper rate, on the other.

That Congress intended to read the amended statute in the alternative is clearly indicated by the description furnished in the committee reports on the legislation known as the "Banking Act of 1933". Both the Senate Report (S. Rep. No. 77, 73rd Cong., 1st Sess. 17) and the House Report (H.R. Rep. No. 150, 73rd Cong., 1st Sess. 4) describe the amendment in identical language, using the disjunctive "or". According to the committee reports, the amendment:

> Limits the interest that may be charged by a national bank to that which may be charged by local banks in the state where the national bank is located, <u>or</u> to a rate 1 percent higher than the discount rate on 90 day commercial paper in effect at the Federal Reserve bank . . .If no rate is fixed by state law, the maximum rate the national bank may charge is limited to 7 percent, <u>or</u> 1 percent in excess of such discount rate, whichever is greater. (Emphasis added.)

Thus, since the enactment of the 1933 amendment, national banks have had a choice:

1. They can charge interest at the highest rate allowed by state law to lenders generally, but if state banks are permitted still a higher rate, national banks are authorized to charge that rate (See Interpretive Ruling 7.7310. Comptroller's Manual for National Banks); or

2. They can charge interest at 1 percent above the discount rate on ninety day commercial paper in effect at the district Federal Reserve Bank or 5 percent above the discount rate on business or agriculture loans in the amount of $25,000 or more.

The only case to our knowledge which has construed the 1933 amendment was rendered in the Court of Common Pleas of York County, Pennsylvania. In National Central Bank v. Haindel (Civ. Actions Nos. 2054, 2065, 2066, and 2067, May Term 1970), defendant homeowners petitioned to re-open judgments entered against them by confession in 1970. The grounds for the petition was that National Central Bank had charged interest at 7 percent in violation of Pennsylvania's 6 percent usury limit. The court held that, regardless of state law, the bank's status as a national bank permitted it to charge interest at a rate of 1 percent above the discount rate on ninety day commercial paper. Since the discount rate in effect at the Federal Reserve Bank of Philadelphia was 6 percent at the time, the bank was permitted to charge 7 percent.

The statute, as it now stands, is not a model of clarity. Without a knowledge of its original purpose, the Supreme Court's holding in Tiffany and the exact wording of the 1933 amendment, one will find the syntax baffling. Not surprisingly, then, some erroneous notions have arisen concerning its interpretation. The principal misconception is that the statute is intended to assure that national banks and state banks are on an equal footing when charging interest. This idea was disposed of in Tiffany, where the Supreme Court, taking note of the critical importance that Congress placed upon the establishment of a strong national banking system to provide a uniform currency for the country, declared:

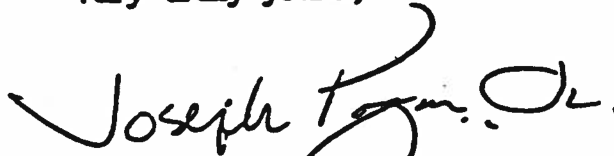
> (The statute) speaks of allowances to National banks and limitations upon State banks, but it does not declare that the rate limited to state banks shall be the maximum rate allowed to National banks...National banks have been National favorites. They were

Mr. Preston E. Tidvall
Page Five
October 28, 1975

> established for the purpose in part, of providing a currency for the whole country, and in part to create a market for the loans of the General government. It could not have been intended, therefore, to expose them to the hazard of unfriendly legislation by the States, or to ruinous competition with State banks. On the contrary, much has been done to insure their taking the place of State banks. The latter have been substantially taxed out of existence. A duty has been imposed upon their issues so large as to manifest a purpose to compel a withdrawal of all such issues from circulation. In harmony with this policy is the construction we think should be given to the thirtieth section of the act of Congress we have been considering. It gives advantages to National banks over their State competitors. It allows such banks to charge such interest as State banks may charge, and more, if by the laws of the State more may be charged by natural persons. (Emphasis added.)

I hope that the aforementioned information assists you in analyzing the thrust of the new Thrift Company Act legislation. If you have any further questions on the matter, please give me a call at (415) 781-4438.

Very truly yours,



JOSEPH POGAR, JR.
Regional Counsel

E-577

IN THE SUPREME COURT OF THE

STATE OF NEVADA

BRADY WILLIAMS KERESEY, CASE NO. 12705

Appellant,

vs.

NEVADA NATIONAL BANK, a Nevada banking association,

Respondent.

FILED
AUG 8 1980
CLERK OF SUPREME COURT
DEPUTY CLERK

APPELLANT'S OPENING BRIEF

NOEL STEPHEN TOPOL, ESQ.
Attorney and Counselor at Law
Security Bank of Nevada Building
One East Liberty Street
Suite 410
Reno, Nevada 89501
Attorney for Appellant

BELFORD & SEMENZA
Samuel W. Belford, II, Esq.
1885 South Arlington Avenue
Reno, Nevada 89509
Attorneys for Respondent

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Attorney and Counselor at Law
Security Bank of Nevada Building
One East Liberty Street
Suite 410
Reno, Nevada 89501

Attorney for Appellant.

BELFORD & SEMENZA
Samuel W. Belford, II, Esq.
1885 South Arlington Avenue
Reno, Nevada 89509

Attorneys for Respondent.

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PRELIMINARY STATEMENT

This an appeal from an order of the Second Judicial District Court, Washoe County, Nevada, granting Respondent's motion for summary judgment to enforce against Appellant the terms of a promissory note and particularly holding lawful the twenty percent (20%) interest rate charged by respondent for the loan in question.

References to the record on appeal will be designated as (R.O.A. Page _____, Lines _____).

STATEMENT OF THE CASE

On April 8, 1980, Respondent filed with the clerk of the court of the Second Judicial District, Washoe County, Nevada, a complaint for a declaratory judgment, and praying that the terms and conditions of a promissory note executed by Appellant was the legal, valid, and binding act of Appellant and enforceable by Respondent in accordance with the terms of the note including the payment of twenty percent (20%) interest as stated therein (R.O.A. Pages 1 through 3).

On April 4, 1980, Respondent made a loan to Appellant in the principal amount of TWELVE THOUSAND DOLLARS ($12,000.00), said loan being evidenced by a promissory note secured by a deed of trust recorded real property owned by the Appellant (R.O.A., Page 2,

Lines 5 through 7). The proceeds of said loan were paid to Appellant through an escrow maintained at Title Insurance and Trust Company, of Reno, Nevada (R.O.A. Page 2, Lines 11 through 13). Appellant received the proceeds of the loan and has had the unrestricted use of the loan proceeds (R.O.A. Page 2, Lines 13 through 15).

On or about April 7, 1980, Appellant's attorney reviewed the terms and conditions of the promissory note executed by Appellant (R.O.A. Page 2, Lines 22 through 25). As a result of that review, Appellant sent written notice to Respondent that the interest rate of TWENTY PERCENT (20%) per annum reflected in the promissory note was in excess of the maximum rate of interest permitted by Nevada Revised Statute 99.050, and was also contrary to the decisions of the Supreme Court of the State of Nevada; and that as a result of the excessive interest charged, Appellant was not obligated to pay any interest due or to become due (R.O.A. Page 2, Lines 22 through 26).

On May 7, 1980, the Honorable Peter I. Breen entered his order granting summary judgment in favor of Respondent holding the promissory note signed by Appellant as the valid, legal, and binding act of Appellant and enforceable by Respondent against Appellant in accordance with its terms (R.O.A. Page 22, Lines 14 through 18). From this order, appeal is taken.

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STATEMENT OF THE ISSUES

The basic questions or issues are:

1. Whether a national bank may charge interest on loans greater than allowed by the statutes of the forum state.

2. Whether Nevada usury laws apply to loans made by Nevada situated national banks.

SPECIFICATIONS OF ERRORS OF LAW

1. The court below erred in granting Respondent's motion for summary judgment holding the promissory note, signed by Appellant in favor of Respondent, as the valid, legal, and binding act of Appellant and enforceable by Respondent against Appellant according to its terms.

ARGUMENT

I

NATIONAL BANKS CANNOT CHARGE INTEREST ON LOANS GREATER THAN ALLOWED BY THE STATUTES OF THE FORUM STATE.

The National Bank Act, 12 USC §21, et seq., relating to interest receivable and chargeable by national banks, supersedes state laws on the subject of usury. (See, in general, Evans v. National Bank, 251 U.S. 108, 64 L.Ed. 171 (1919); Barnet v. National Bank, 98 U.S. 555, 25 L.Ed. 212 (1878).

Section 85 of the National Bank Act, entitled "Rate of Interest on Loans, Discounts, and Purchases", provided, *inter alia*, that a national bank may charge the

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rate of interest allowed by the state, territory, or district where it is located, or at a rate of one percent (1%) in excess of the discount rate of ninety (90) day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District where the bank is located.

However, §85 also provides that when no rate is fixed by the laws of the state, a national bank may charge a rate not exceeding seven percent (7%), or one percent (1%) in excess of the discount rate on ninety (90) day commercial paper at such Federal Reserve Bank.

The purpose of 12 USC §85 is to place national banks on equal footing with state banks so they will not be limited by Congressional restrictions in competing with state banks, (See, in general, Brown vs. First National City Bank, 503 F2d. 114 (CA 2 NY, 1974); First National Bank v. Nowlin, 509 F2d. 872 (CA 8 ARK, NY, 1975); Monongahela Appliance Co. v. Community Bank and Trust, 393 F. Supp. 1226 (DC W Va, 1975), aff'd 532 F2d. 751 (CA 4 W Va); Fisher v. First National Bank, 548 F2d. 225 (CA 8 Neb, 1977); United Missouri Bank, N.A. v. Danforth, 394 F. Supp. 774 (DC Mo, 1975).

The highest specified rate of interest which a national bank may charge is decided according to the law of the state involved if the state fixes a rate.

There is no question that the interest rate set forth in the promissory note executed by Appellant is in

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excess of the eighteen percent (18%) maximum specified rate of interest specified by the Nevada General Usury Statute - N.R.S. 99.050. Respondent, however, contends that the loan is not usurious on the basis that the Nevada Thrift Companies Act is controlling it under the "most favored lender" doctrine. Appellant disagrees.

Under N.R.S. 677.730, licensed Thrift Companies in the State of Nevada may lend FIVE THOUSAND DOLLARS ($5,000.00) 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.

Loans of TEN THOUSAND DOLLARS ($10,000.00) or more must be secured by collateral having a market value of at least one hundred fifteen percent (115%) of the amount due on the loan.

The words "at any rate of interest" do no fix a rate of interest to be applied by thrift companies. Accordingly, the National Bank Act is controlling on this issue. Section 85 clearly provides that when no rate is fixed by state law, a national bank may charge a rate not exceeding seven percent (7%) or one percent (1%) in excess of the discount rate of ninety (90) day commercial paper at the appropriate Federal Reserve Bank. The Nevada Thrift Companies Act is

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not controlling in this case for the reason that no rate of interest is fixed by the Act. Accordingly, Federal law applies and the instant loan must be labelled usurious.

Furthermore, a national bank is subject ot the penalties prescribed by the National Bank Act for Usury. 12 USC §86. Section 86 reads as follows:

> "The taking, receiving, reserving, or charging of interest greater than is allowed by the preceding section [12 USC §85], when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back, in an action in the nature of action of debt, twice the amount of interest thus paid from the association taking or receiving the same: provided such action is commenced within two (2) years from the time the usurior transaction occurred."
>
> (R.S. §5198 in part.)

There is a distinction between reserving or changing excessive interest and actually receiving or taking

it. When a national bank charges interest at a higher rate than the legal rate fixed by state law, it forfeits its right to any interest. (Farmers', etc., National Bank v. Dearing, 91 US 29, 23 L.Ed. 196 (1875); Landau v. Chase Manhattan Bank, N.A., 367 F. Supp. 992, (D.C. N.Y., 1973); American Timber & Trading Co. v. First National Bank of Oregon, 334 F. Supp. 888 (D.C. OR., 1971), Aff'd 511 F2d. 980, cert. den. 412 U.S. 921. The penalties incurred by a bank for actually receiving excessive interest are the forfeiture of the unpaid interest and a penalty of twice the amount of interest that has been paid, if sued for with two (2) years.

II

NEVADA USURY LAWS APPLY TO LOANS MADE BY NEVADA SITUATED NATIONAL BANKS.

N.R.S. 99.050, entitled "Limitations on Agreed Interest Rates", states that "Parties may agree for the payment of any rate of interest on money due or to become due on any contract which does not exceed the rate of eighteen percent (18%) per annum." This is the general, maximum rate of interest which may be charged by a national bank or state-chartered bank in the State of Nevada. This eighteen percent (18%) rate is subject to certain exceptions which will not be listed here as they are inapplicable.

In the leading case of Pease v. Taylor, 88 Nev. 287, 496 P2d. 757 (1972), the Nevada Supreme Court held that the Usury Statutes form a part of the public policy of the State. The Court ruled that any agreement for a usurious

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rate of interest is null and void as to all interest whatsoever. (See also, in general, Miller v. York, 92 Nev. 226, 548 P2d. 941 (1976); Carson Meadows Incorporated v. Pease, 91 Nev. 187, 533 P2d. 458 (1975); Ferdie Sievers and Lake Tahoe Land Company, Inc., v. Diversified Mortgage Investors, -NEV-, 603 P2d. 270 (1979)).

The Pease ruling is in accord with, and, at the same time, subservient to the Federal Rule of 12 USC §86, which provides that when a national bank charges interest at a higher rate than the legal rate fixed by state law, it forfeits its right to any interest.

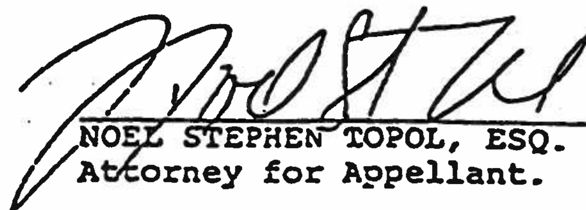
CONCLUSION

Appellant, therefore, respectfully submits that the lower court erred in granting Respondent's motion for summary judgment holding enforceable the charging of twenty percent (20%) interest on the loan in question.

In light of the record on appeal, and from the foregoing authorities, it is manifest that the judgment be reversed. The protections afforded Nevada consumers by state enacted legislation must be enforced to discourage the outrageous and unconscionable attempts of Nevada situated banks from circumventing the usury laws of the State of Nevada.

DATED this 8th day of August, 1980.

Respectfully submitted,



NOEL STEPHEN TOPOL, ESQ.
Attorney for Appellant.

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EXHIBIT L-

S. B. 251

SENATE BILL NO. 251—COMMITTEE ON JUDICIARY

FEBRUARY 18, 1981

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to parentage. (BDR 11-181)
FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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

AN ACT relating to parentage; providing an exception to the presumption of paternity; revising provisions for notice in actions to determine paternity; clarifying provisions establishing periods of limitation; prohibiting the assessment of costs against the state; revising provisions relating to the district attorney's role in bringing actions to establish parentage and the obligation of support; clarifying the existence of a privilege between lawyer and client in communications relating to such actions; and providing other matters properly relating thereto.

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

1 SECTION 1. Chapter 126 of NRS is hereby amended by adding
2 thereto a new section which shall read as follows:
3 *In an action brought to determine the existence or nonexistence of the*
4 *father and child relationship, unless the person mentioned is a party to*
5 *the action:*
6 *1. Except as otherwise provided in subsection 2, every person*
7 *identified as the natural father or a possible natural father must be given*
8 *notice of the proceeding in the manner provided by Rule 4(d) of*
9 *N.R.C.P. or, where applicable, as provided in NRS 126.091.*
10 *2. Where a person is alleged to be, is presumed to be or claims to*
11 *be the father and a determination is sought that he is not the father, he*
12 *may be served as provided in Rule 4(e) of N.R.C.P. if his place of*
13 *residence is unknown or he is not subject to the jurisdiction of the court.*
14 *3. The natural mother must be given notice in a manner prescribed*
15 *by the court.*
16 SEC. 2. NRS 126.051 is hereby amended to read as follows:
17 126.051 1. A man is presumed to be the natural father of a child if:
18 (a) He and the child's natural mother are or have been married to
19 each other and the child is born*:* [during]
20 *(1) During* the marriage [,] *; or* [within]
21 *(2) Within* 285 days after the marriage is terminated by death,

annulment, declaration of invalidity or divorce, or after a decree of separation is entered by a court [.] , *unless he and the natural mother were separated without cohabitation during the period of conception.*

(b) He and the child's natural mother were cohabiting for at least 6 months before the period of conception and continued to cohabit during that period.

(c) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is invalid or could be declared invalid, and:

(1) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 285 days after its termination by death, annulment, declaration of invalidity or divorce [;] , *but the presumption does not apply if he and the natural mother were separated without cohabitation during the period of conception;* or

(2) If the attempted marriage is invalid without a court order, the child is born within 285 days after the termination of cohabitation.

(d) After the child's birth, he and the child's natural mother have married or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is invalid or could be declared invalid, and:

(1) He has acknowledged his paternity of the child in writing;

(2) With his consent, he is named as the child's father on the child's birth certificate; or

(3) He is obligated to support the child under a written voluntary promise or by court order.

(e) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child.

(f) At any time he acknowledges his paternity of the child in a writing filed with the state registrar of vital statistics.

2. The registrar shall promptly inform the natural mother of the filing of an acknowledgment, and the presumption is nullified if she disputes the acknowledgment in a writing filed with the registrar within 60 days after this notice is given. Each acknowledgment filed [is to] *must* be maintained by the registrar in a sealed confidential file until it is consented to by the mother and any other presumed father. This does not preclude access by an appropriate state official incident to his official responsibility concerning the parentage of the child. The acknowledgment must not be made public unless the mother affirmatively consents to the acknowledgment or a court adjudicates parentage. Each acknowledgment must be signed by the person filing it, and contain:

[(1)] *(a)* The name and address of the person filing the acknowledgment;

[(2)] *(b)* The name and last-known address of the mother of the child; and

[(3)] *(c)* The date of birth of the child, or, if the child is unborn, the month and year in which the child is expected to be born.

If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the

presumed father or after the presumption has been rebutted by a court decree. Acknowledgment [of] *by* both parents as to the parentage of a child makes the child legitimate from birth, and the birth [shall] *must* be documented as provided in chapter 440 of NRS.

3. A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

SEC. 3. NRS 126.081 is hereby amended to read as follows:

126.081 *1. Except as otherwise provided in subsection 3, an action brought by or on behalf of a child whose paternity has not been determined is not barred until 3 years after the child reaches the age of majority.*

2. Except as otherwise provided in NRS 41.210 to 41.260, inclusive, and in this chapter, an action to determine the existence of the father and child relationship as to a child who has no presumed father under NRS 126.051 may not be brought *other than by or on behalf of the child* later than 3 years after the birth of the child, or July 1, 1982, whichever is later.

3. The welfare division of the department of human resources acting on behalf of a child receiving public assistance may bring an action to establish paternity within 1 year after the child becomes a recipient of public assistance or within 3 years after the birth of the child, whichever is later. [But an action brought by or on behalf of a child whose paternity has not been determined is not barred until 3 years after the child reaches the age of majority.]

4. NRS 126.071 and this section do not alter the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise.

SEC. 4. NRS 126.101 is hereby amended to read as follows:

126.101 The child must be made a party to the action. If he is a minor he must be represented by his general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may appoint the welfare division of the department of human resources as guardian ad litem for the child. The natural mother, each man presumed to be the father under NRS 126.051, and each man alledged to be the natural father must be made parties or, if not subject to the jurisdiction of the court, be given notice of the action [in a manner prescribed by the court] and an opportunity to be heard. The court may align the parties.

SEC. 5. NRS 126.171 is hereby amended to read as follows:

126.171 The court may order reasonable fees of counsel, experts and the child's guardian ad litem, and other costs of the action and pretrial proceedings, including blood tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid by the county. *In no event*

may the state be assessed any costs when it is a party to an action to determine parentage.

SEC. 6. NRS 126.381 is hereby amended to read as follows:

126.381 1. The district attorney of the county of residence of the child shall take such action as is necessary to establish parentage of the child and locate and take legal action against a deserting or nonsupporting parent of the child when requested to do so by the custodial parent or a public agency which provides assistance to the parent or child. If the court for cause transfers the action to another county, the clerk of the receiving court shall notify the district attorney of that county and that district attorney shall proceed to prosecute the cause of action and take such further action as is necessary to establish parentage and the obligation of support.

2. In a county where the district attorney has deputies to aid him in the performance of his duties, such district attorney shall designate himself or a particular deputy as responsible for performing the duties imposed by subsection 1.

3. The district attorney and his deputies do not [become representatives of] *represent* the parent or *the* child [by reason of performing] *in the performance of* their duties pursuant to this chapter [. Except as to disclosures of criminal activity, the] *, but are rendering a public service as representatives of the state.*

4. Subject to the exceptions in subsections 5 and 6, a privilege between lawyer and client arises [from the performance of those duties, but officials] *between the parent or child to whom the public service is rendered and the district attorney.*

5. Officials of the welfare division of the department of human resources are entitled to access to the information obtained by the district attorney if that information is relevant to the performance of their duties. The district attorney or his deputy shall inform each person who provides information pursuant to this section concerning the limitations on the privilege between lawyer and client under these circumstances.

6. Disclosures of criminal activity by a parent are not privileged.

SEC. 7. NRS 47.250 is hereby amended to read as follows:

47.250 All other presumptions are disputable. The following are of that kind:

1. That an unlawful act was done with an unlawful intent.
2. That a person intends the ordinary consequences of his voluntary act.
3. That evidence willfully suppressed would be adverse if produced.
4. That higher evidence would be adverse from inferior being produced.
5. That money paid by one to another was due to the latter.
6. That a thing delivered by one to another belonged to the latter.
7. That things which a person possesses are owned by him.
8. That a person is the owner of property from exercising acts of ownership over it, or from common reputation of his ownership.
9. That official duty has been regularly performed.
10. That a court or judge, acting as such, whether in this state or

any other state or country, was acting in the lawful exercise of his jurisdiction.

11. That a judicial record, when not conclusive, does still correctly determine or set forth the rights of the parties.
12. That a writing is truly dated.
13. That a letter duly directed and mailed was received in the regular course of the mail.
14. That a person not heard from in 7 years is dead.
15. That a child born in lawful wedlock is legitimate [.] *, unless the spouses were separated without cohabitation during the period of conception.*
16. That the law has been obeyed.
17. That a trustee or other person, whose duty it was to convey real property to a particular person, has actually conveyed to him, when such presumption is necessary to perfect the title of such person or his successor in interest.
18. In situations not governed by the Uniform Commercial Code:
(a) That an obligation delivered up to the debtor has been paid.
(b) That private transactions have been fair and regular.
(c) That the ordinary course of business has been followed.
(d) That there was good and sufficient consideration for a written contract.