MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 4, 1981

The meeting of the Business and Industry Committee was called to order by Chairman Hazelbaker at 10 a.m. on Wednesday, March 4 in room 404 of the Capitol Building.

ROLL CALL: All members were present.

HOUSE BILL 14: Representative Manuel presented the bill. He stated that the bill would expand the permissible field of membership for credit unions to include groups in a neighborhood, community, or rural district. The provision that residence in a community is not a sufficient common bond for membership is deleted.

PROPONENTS:

For the record, my name is Jeff Kirkland, Director of Governmental and Community Relations for the Montana Credit Unions League. We are composed of 133 credit unions, 108 of which are federally-chartered and 25 of which are state-chartered. This bill would allow the state of Montana to charter community credit unions, a power that is currently prohibited by state law. This is a parity bill that would address an inequity between federal and state credit union law, since under federal law, the National Credit Union Administration has the power to charter federal community credit unions irrespective of state law and, in fact, has chartered some 35 federal community credit unions in Montana. Credit unions are cooperative, non-profit membership organizations, and the membership requirements are limited. Before discussing the merits of the bill, I would like to acquaint you with two terms unique to credit unions, "common bond" and "field of membership". He went on to explain how these would work. He presented charts and a copy of his testimony to the committee. Exhibit A.

GENE RICE: I am the chairman of the Montana Credit Unions League, and the manager of a Helena Credit Union. I support House Bill 14. It addresses the inequity that prevents the state from chartering credit unions. The state is clearly unable to meet this need. This places it on the federal government. In the past the dual chartering has been necessary for any number of innovations. Federal credit unions were allowed to make share drafts. It was the dual chartering system that made it possible. It provides the environment for innovation and change. The state will also allow the feds to implement the system. In this case the state government will meet a need that the federal government can also meet. We believe the state should follow the federal example. The Department of Business Regulation is responsible for credit unions. The Director would be responsible for establishing guidelines. We also believe that the state has a legal responsibility to charter state credit unions. I urge the committee recommend a do pass.

NO OPPONENTS:

QUESTIONS ON HOUSE BILL #14:

SENATOR GOODOVER: Do I understand correctly that this would apply only to sparsely populated communities, only rural areas.

JEFF KIRKLAND: The department would determine this.

REPRESENTATIVE MANUEL: This bill pretty much follows the federal guidelines. Any community over 25,000 could not do this, under the Department of Business Regulation.

JEFF KIRKLAND: They will attempt to establish boundaries.

REPRESENTATIVE MANUEL: I feel that the need is there for the rural sections to have the right to have a community credit union.

The hearing closed on House Bill 14.

HOUSE BILL 238 and HOUSE BILL 239: Representative Fabrega of House District 44 presented the bills. He asked that they be considered together since they are companion bills. The chairman granted this request. House Bill 238 exempts regulated lenders (banks, savings and loans, credit unions, trust companies, credit associations, the credit development corporation, and bank holding companies) from limitations on the amount of interest they may charge, and from the operation and effect of all usury statutes.

House Bill 239 eliminates usury limits under the retail installment sales act. Provisions governing revolving credit under retail charge account agreements are still contained in the bill. The finance charge on retail installment contracts would be at a rate agreed on by the buyer and seller.

Mr. Fabrega went on to explain the definition of regulated lenders. The bill retains the present language. He explained the retail sales act. The federal truth in lending act raises percentage rates. It has to be indicated how much in dollars and cents the borrower has to pay.

PROPONENTS:

JERRY RAUNIG: I'm the Executive Vice-President of the Montana Automobile Dealers Association, which is the trade association for the franchised new car and truck dealers of this state. We are in support of this concept. It is clear the shrinking market and financing is eroding the marketing system on which the entire industry is based, the ability of the consumer to buy a car on the installment plan. He discussed the ceiling rates which are add-on rates. He quoted interest rates allowed on new vehicles. Charts and testimony were presented to the committee. Exhibit "B".

REPRESENTATIVE NORM WALLIN: I am a Ford dealer and have been for thirty-four years. I am in favor of these bills. I have never experienced the difficulty in that time that we are having right now. We have to be able to sell the paper to local banks. The dealers are having some success in some areas, but in some areas the banks discount the contract 5%. I would surely urge your support of these bills.

JEFF KIRKLAND: I am Director of the Governmental and Community Relations for the Montana Credit Unions League. Our league is a trade association representing 133 of 136 credit unions in Montana. 108 of those are federally-chartered and 25 are state-chartered. The flexibility is needed to adjust rates to changing market conditions. 110 of 136 credit unions have a ceiling. The lenders need the flexibility. He quoted from charts and percentage rates which he presented to the committee. The prime rate is only one of many indicaters of the market. There is no need to have artificial usurary ceilings. We support the removal of the usury ceiling. He presented testimony to the committee. Exhibit C.

JOHN CADBY: I am the executive vice-president of the Montana Bankers Association. Our members are all 165 banks in the State of Montana. The testimony which I will pass out cites the detrimental effects of interest rate ceilings on the consumer, the farmer, the businessman and the economy of Montana. Also, enclosed is a speech given by a professor of economics to the Arizona legislature who repealed all their ceilings last year. I have tried to capsulize my file drawers for the past twenty years, to determine what effect it would have. He discussed the discriminatory effects of usury ceilings. California has not had a ceiling for the last fifty years. House Bill 14 is an example of the common bond and the rate of interest should be negotiated. Interest rate ceilings drive money out of state, creates discrimination, fuels and inflames inflation. Exhibit D.

GEORGE T. BENNETT: I am an attorney representing the Montana Bankers Association. Banks do not want to give loans at 12.3 when peole can invest in CD's at 14 or 13 or 15 percent. Volume won't help on this kind of a deal. He went on to expand on the problems banks are having at the present time.

LARRY HUSS: I am representing the Montana Savings & Loans. I want you to recall that usury was adopted in a day when there was less regulation of business. But today we are talking about very regulated markets. You now have enough control that this is no longer needed. The savings and loans can now make some of their money available for consumer loan transactions. We have found in the past that artificial ceilings become the rate, and the continued usury will cause a market shift. I support the bills.

Representative Fabrega asked the people in support of the bill to stand and state their name and who they represented. The individuals thus introduced signed the witness register which is attached.

CURTIS B. HANSEN: I am the executive vice-president of the Montana Retailers Association. I support House Bill 239, with some reservations. As originally drafted, introduced and intended, it included retailers. It was amended in the house committee and by the amendment, retailers were eliminated. I want to explain why retailers should not be eliminated, as well as to explain how we have eliminated the concerns we had previously. He went on to explain and presented written testimony of his concerns to the committee. He discussed how interest works and also the abuses of credit cards and how it could be stopped. I would request that you give it your consideration and we do support it with the amendment to include retailers. He presented written testimony to the committee. Exhibit E.

GREG ALLEN: I am the owner of a mens wear store in Helena which was started by my father who still runs a women's wear store here in Helena, also. Both of the stores have their own revolving credit account plans for our customers. I do feel there is a need to restrict this bill by amendment. We don't own our charge accounts. We sell them and we have to pay the difference on the interest rate. He presented a copy of testimony to the committee. Exhibit F.

COPIES OF WRITTEN TESTIMONY WERE PRESENTED BY THE FOLLOWING:

MIKE DeMARCO: Comptroller for Kayfmans Menswear of Montana
BRUCE SIMON: Owner of Cole's Department Store in Billings
LOIS TOPLARSKI: Owner of Lenz Card and Gift Shop in Butte
JACK WHIPPLE: Manager of Chambers-Fisher Department Store in Bozeman
LUCILLE BRAY: Credit Manager for the Hart-Albin Stores of Montana

NO OPPONENTS:

QUESTIONS FROM THE COMMITTEE:

SENATOR GOODOVER: As a joint sponsor of this bill I would rise in support. I would like an explanation of the difficulties with the amendment.

ANSWER: HB 239 encompasses two types of transactions, the retail transaction, large ticket items and charge accounts. When the retailers were amended out the state interest ceiling would still apply to them. I am in favor of the amendment but I would like to determine whether revolving credit should be accepted. New York had a special session because of the interest rate on credit cards. If this proposed language should be accepted the fact that there is a change of rate will only apply to new purchases. This particular area had not been addressed at the House hearing.

MR. HANSEN suggested the committee consider reinserting the amendment.

SENATOR BOYLAN: Asked of Jerry Raunig "are the rates on farm implements now 12.6%. He discussed the need for clarification of this.

MR. RAUNIG: Because of the availability of money and because it's costing more than the allowable rates many of the dealers are requiring 20, 30 or even 40% down. The trade-in doesn't make up the difference.

MR. CADBY: The federal law has preempted state law. Automobile dealers are the only ones subject to state law. The credit companies who represent farm dealers have provided a higher ceiling.

SENATOR REGAN: In discussing HB 238, since the federal government has already preempted the state I question whether we should enact this bill. The feds have already addressed the problem.

REPRESENTATIVE FABREGA: It covers it in some areas. He discussed the federal discount rate and how it would apply. You now have that money in only some operations. He elaborated further on the rate system and stated that it is bad and that we should do away with it.

SENATOR REGAN: HB 239 addresses the problems of the auto dealers, I am talking about 238.

REPRESENTATIVE FABREGA: Where would you go to get the money. He went on to talk about contracts. You cannot pass one without the other.

SENATOR REGAN: The federal law has already taken care of 238 except for automobile dealers which is added in 239. In terms of 238 if you pass 239 the installment rate has been addressed. 238 has already been done by the federal government. She elaborated further on this topic.

JOHN CADBY: In trying to define the difference, such as a new car sale it is a legal nightmare. The federal law only covers agriculture and commercial over 1,000. It does not apply to consumer loans. We have created a discriminatory situation.

SENATOR REGAN: I have a question on your exhibit D, on 239. How would you feel about an amendment that would indicate prior notice for future charges. She discussed the study in New York.

MR. HANSEN: The federal truth-in-lending already addresses that.

SENATOR BOYLAN: If this bill would pass today and I want to buy a car tomorrow what interest rate would I have to pay or would it be a variable interest rate?

MR. RAUNIG: Starting January 26 after deregulation went into effect, the rates were the same as before they deregulated. This is for auto dealers.

JOHN CADBY: It would depend on the use of the vehicle. The rate is subject to negotiation. The federal law says you can go up to twenty-one percent.

There was lengthy discussion on whether it would be a fixed rate or a variable rate.

SENATOR REGAN: I question the statement made about the interest rate of 25% down and 17% rate only costing $8 for the year. She elaborated further on this. There was some discussion.

SENATOR BLAYLOCK: I had a call this morning about these bills and the charge was made that banks are not taking auto paper. Is this true?

MR. CADBY: You should ask the car dealers if they are able to sell to banks.

REPRESENTATIVE WALLIN: Yes, sometimes, but at 7, 9 or 11 add-on interest. The banks won't buy that. There was lengthy discussion.

REPRESENTATIVE FABREGA: Lengthy discussion about the amendment. I will work out the language and present it to the committee. I do not agree with a statement by Mr. Kirkland about the $8.00. Eighteen percent is still eighteen percent.

Mr. Hansen explained the revolving charge account and how much you pay.

REPRESENTATIVE FABREGA: I believe the competition between the banks and the savings and loans will provide the competition that is necessary. The federal truth-in-lending law protects the consumer by requiring that he be informed of the interest rate and of the amount in interest he would have to pay. Leaving the setting of interest rates in the free marketplace eventually could result in rates lower than the limits imposed by the state. The present state law sets maximum rates, but they are often treated as the minimum, too. These rates are the hitching post at which everyone says that's what the legislature says we can charge. I will agree to amend. Because depositors can earn more on their deposit with this bill the depositors will now earn more money. I think the whole thing has come into balance. I would urge your support of both bills.

There was no further discussion and the hearing closed on House Bills 238 and 239.

HOUSE BILL 286:

REPRESENTATIVE FABREGA: This bill would allow a state-chartered savings and loan association to apply to the department of business regulation to receive the same rights as federally-chartered savings and loan associations. Because the state charters laws were not updated over the years there are, at the present time, only two in the state, one in Kalispell and one in Great Falls. He read an amendment he would like inserted. The amendment would mandate a state charter similar to the federal charter, for flexibility.

PROPONENTS:

KEN NEIL: Fidelity Savings and Loan Association. We have a dual situation that regulates finance situations, the actions of Congress and the Federal Home Loan Bank Board. And, also the legislature and the Department of Business Regulation. Some states are different. We think the legislature has an interest in being available to supervise and regulate the savings and loans. You can do that with those that have a federal charter. We find that under existing Montana law we find some differences if we remain state chartered. The laws are antiquated. We have no way of going out and competing. This bill gives us that right with the consent of the Department of Business Regulation to do the same things as a federally chartered savings and loan. We are asking the legislature to create a more favorable climate for us to compete. To get to the amendment, on page 2, and he went on to explain it. In the House we took the position that if opposing that amendment would jeopardize the bill we would let it go and oppose it in the Senate. Since 1923 we have been a responsible association and we think that the deposit insurance should not be required. He went on to discuss the insurance and the difficulties of having it or not having it. We see it as a competitiv distinction. It provides us to go after an isolated segment of the population.

JOHN BUCHANAN: Fidelity Savings and Loan. He passed out exhibits to members of the committee, and explained them. He quoted the percentages and explained them. The two institutions we are in direct competition with are Great Falls Federal and 1st Federal. He went on to talk about discretionary powers.

LARRY HUSS: Montana Savings and Loan League. We are genuinely concerned about the bill. This bill mandated the request for additional powers. There was no discretion by the Department of Business Regulation. He discussed the amendment at some length. We are not talking about a favorable climate. We are talking about a favored status. It is only fair that we operate under the same regulations. The exemption will be in favor of only one savings and loan in the state of Montana because it mandates the insurance. The Kalispell operation was required to have insurance. We think the bill should be passed in its present form without the amendment. We favor the original bill.

SENATOR REGAN: There was an interim study in which we addressed the problems of state chartered banks and savings and loans. The savings and loans said they were not interested. Mr. Neil, did you know that we were having these series of meetings. Why didn't you come in at that time.

MR. NEIL: I did not know about them.

SENATOR REGAN: It was in August of 1979 when we held a meeting and some follow-up to them. I have a series of questions. You say you want to do what other savings and loans can do. Does that mean branch.

MR. NEIL: I would like to make 90% real estate loans. Branching is only one of the things we are not allowed to do. There was a general question and answer session on branching.

SENATOR DOVER: If you want to get into all these things, it looks like you would be involved in more risk. Shouldn't you put on this insurance.

MR. NEIL: We are able to pay a higher rate to the savers and still profit. That is not a total response. The insurance would never cover all of the failures if they should fail. The savings and loans are caught in a bind.

SENATOR DOVER: It doesn't cover all risk but it does cover some.

JOHN BUCHANAN: We are interested in protecting our depositors. We are audited by the Department of Business Regulation.

MR. NEIL: The federal associations are regulated by the federal government. We think the Department of Business Regulation can properly protect the public interest.

SENATOR BOYLAN: This is the advantage, you don't have to pay on that insurance so you can pay more on the deposits.

MR. NEIL: It would have to do with the federal regulation.

SENATOR REGAN: Is your advantage gone when regulation "Q" is phased out.

MR. NEIL: That is true.

SENATOR LEE: We are saying that all savings and loan institutions should all be chartered by the federal government. The state should get out of the business of chartering. Is that true.

MR. NEIL: That is correct.

SENATOR LEE: Does it mean that there will be no further state charters.

MR. NEIL: The state can provide the climate.

SENATOR LEE: I want to ask Representative Fabrega a question. What was the process of this amendment. Was the Department of Business Regulation represented.

REPRESENTATIVE FABREGA: This was at the request of the savings and loan League. Actually there are two amendments. On line 24, I think that language would suffice. The first amendment would not be objected to. We do want some control by the Department of Business Regulation. I would recommend to the committee that you remove it and on lines 1 through 6, because the other amendment would take care of it.

SENATOR BOYLAN: Asked about the amendments and if they wanted the bill killed without it.

SENATOR REGAN: Do you feel that the first amendment is sufficient.

MR. HUSS: I don't think that as a condition for continuing their operation that could be done. I don't think you could require insurance. There is a statement of intent. That is a factor to require them to have insurance. He elaborated further.

REPRESENTATIVE FABREGA: This amendment makes it very limited. I don't see the need for the second amendment. More discussion followed on this.

SENATOR REGAN: Would an amendment to the amendment help you.

MR. NEIL: Discussed insurance to chartered savings and loans.

MR. FABREGA: He elaborated on the insurance and then said, "I think the general idea of insurance for several things would do it.

SENATOR REGAN: I really feel that insurance is absolutely necessary.

With some further discussion about the amendments it was decided that the staff attorney would draft them and present to the committee.

The hearing closed on House Bill 286.

The meeting adjourned at 12:10.

Frank W. Hazelbaker, Chairman
Mary Ellen Connelly, Secretary

ROLL CALL

BUSINESS and INDUSTRY COMMITTEE

47th LEGISLATIVE SESSION -- 1981 Date 3/4

NAME	PRESENT	ABSENT	EXCUSED
Goodover, Pat - Vice Chairman	✓		
Hazelbaker, Frank - Chairman	✓		
Blaylock, Chet	✓		
Boylan, Paul	✓		
Dover, Harold	✓		
Kolstad, Allen	✓		
Lee, Gary	✓		
Regan, Pat	✓		

Each day attach to minutes.

DATE March 4, 1981

COMMITTEE ON BUSINESS & INDUSTRY BILL NO. HB 14

Rep. Manuel

VISITOR'S REGISTER

NAME	REPRESENTING	Check One: Support	Check One: Oppose
[illegible]	[illegible] Credit Union League	✓	
Harold E. Gerke	" " " "	✓	
Ward F. Lohmann	Lohmann Motors Inc Miles City	✓	
Roger [illegible]	[illegible]	✓	
Gene Rice	Montana Credit Unions League	✓	

(Please leave prepared statement with Secretary)

NAME: Herbert Wallace Jr. DATE: 3-4-81

ADDRESS: Blue Sky Heights - Clancy

PHONE: 933-5302

REPRESENTING WHOM? Mont. Credit Union League

APPEARING ON WHICH PROPOSAL: HB 14

DO YOU: SUPPORT? X AMEND? ______ OPPOSE? ______

COMMENTS: ______

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

DATE March 4, 1981

COMMITTEE ON BUSINESS & INDUSTRY BILL NO. 238

Rep. Fabrega

VISITOR'S REGISTER

NAME	REPRESENTING	Check One Support	Check One Oppose
[illegible]	[illegible]		
Larry Huss	Mont Savings & Loan League	✓	
John Cadby	Mont Bankers	✓	
[illegible] Brown	MT S & L LEAGUE	✓	
[illegible]	Mont [illegible] ASSN		
Phyllis A. Bock	MT. LEGAL SERVICES ASSN		✓
[illegible]	[illegible]		

(Please leave prepared statement with Secretary)

DATE March 4, 1981

COMMITTEE ON BUSINESS & INDUSTRY BILL NO. HB 239

Rep. Fabrega

VISITOR'S REGISTER

NAME	REPRESENTING	Check One: Support	Check One: Oppose
Curt Hansen	Montana Retail Association	✓ with Amendments	
Lucile Brey	Hart-Albin Co. Billings Mt.	✓ "	"
Lois Toplarski	M. R. A.	✓ with Amendment	
Robert Barnes	Bruce Simon · Cole's Dept. Store	✓ "	"
Greg Allen	by George's & Shiela's	✓ "	"
Jack Whipple	Chambers-Fisher Dept. Store	✓ "	"
Mike DeMarco	Kaufman's Menswear of Mt.	✓ "	"
Jim McNally	Archie Cochrane Mtr-Billings	✓	
Jerry Rausig	Mt Auto Dealers Assoc	✓	
Jim Tannehill	G&R Volkswagen Audi Kalispell	✓	
[illegible]	[illegible]		
[illegible]	[illegible]		
Ralph Anderson	Capital Ford Helena	✓	
James Barker	Capital Ford Helena	✓	
Janis Ann Tobin	Mont Hdwe & Impl Assn	✓	
R. T. Hall	City Motor Co Great Falls Mt	✓	
Bruce J MacIntyre	MacIntyre Motor Co Billings	✓	
T. Joe Billing	Montana Svg + Loan League	✓	
Larry Huss	" "	✓	
John Cadby	Mont Bankers	✓	
Steve Brown	Mont Svgs & Loan League	✓	
George T. Bennett	Mont. Bankers Ass'n	✓	
Phyllis A. Bock	MT. Legal Services Assn		✓
Ben Havdahl	Mont. Motor Carriers Assn	✓	
Mark Lohmann	Lohmann Motors Inc Miles City	✓	
Vern Walling	Auto Dlr	✓	

(Please leave prepared statement with Secretary)

NAME: Herbert Wachung Jr. DATE: 3-4-81

ADDRESS: Blue Sky Height Clancy

PHONE: ______

REPRESENTING WHOM? Mont Cr Un. L

APPEARING ON WHICH PROPOSAL: HB 238

DO YOU: SUPPORT? X AMEND? ______ OPPOSE? ______

COMMENTS: ______

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: R. L. Reignam DATE: 3-4-81

ADDRESS: Box 1139 Miles City

PHONE: 232-1610

REPRESENTING WHOM? Mont. Bankers Assoc.

APPEARING ON WHICH PROPOSAL: HB 238 & 239

DO YOU: SUPPORT? X AMEND? ____ OPPOSE? ____

COMMENTS: Absolutely necessary to make the market set interest rates instead of an arbitrary figure. It is causing money to flow out of state!

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: JOHN CADBY DATE: 3-4-81

ADDRESS: 706 HARRISON

PHONE: 443-4121

REPRESENTING WHOM? MT BANKERS ASSN

APPEARING ON WHICH PROPOSAL: HB 238 + HB 279

DO YOU: SUPPORT? ✓ AMEND? ____ OPPOSE? ____

COMMENTS: WRITTEN TESTIMONY TURNED IN

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: ______________________ DATE: __________

ADDRESS: ______________________

PHONE: ______________________

REPRESENTING WHOM? ______________________

APPEARING ON WHICH PROPOSAL: ______________________

DO YOU: SUPPORT? ________ AMEND? ________ OPPOSE? ________

COMMENTS: ______________________

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Larry Huss DATE: 3-4-81

ADDRESS: Bx 514 Helena

PHONE: 442-8070

REPRESENTING WHOM? Mont Savings & Loan League

APPEARING ON WHICH PROPOSAL: HB 228 & 235

DO YOU: SUPPORT? X AMEND? ______ OPPOSE? ______

COMMENTS: ______

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: Curtis B. Hansen DATE: 3-4-81

ADDRESS: Helena

PHONE: 442-3388

REPRESENTING WHOM? Montana Retail Association

APPEARING ON WHICH PROPOSAL: H.B. 239

DO YOU: SUPPORT? ✓ AMEND? ✓ OPPOSE? ____

COMMENTS: Written copies of testimony will be given to Chairman, Secretary & Committee Members -

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Lois Koplarski DATE: 3-4-91

ADDRESS: Butte

PHONE:

REPRESENTING WHOM? Montana Retail Assn

APPEARING ON WHICH PROPOSAL: H.B. 239

DO YOU: SUPPORT? ✓ AMEND? ✓ OPPOSE?

COMMENTS: Copies of testimony will be presented to Committee.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Mike DeMarco DATE: 3-4-81

ADDRESS: Great Falls

PHONE:

REPRESENTING WHOM? Kaufman's Menswear of Montana

APPEARING ON WHICH PROPOSAL: H. B. 235

DO YOU: SUPPORT? ✓ AMEND? ✓ OPPOSE?

COMMENTS: Copies of testimony will be given to Committee

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Lucille Bray DATE: 3-4-81

ADDRESS: Billings

PHONE:

REPRESENTING WHOM? Hart- Albin

APPEARING ON WHICH PROPOSAL: H. B. 239

DO YOU: SUPPORT? ✓ AMEND? ✓ OPPOSE?

COMMENTS: Copies of testimony will be given to Committee.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Jack Whipple DATE: 3-4-81

ADDRESS: Bozeman

PHONE:

REPRESENTING WHOM? Chambers - Fisher Dept Store

APPEARING ON WHICH PROPOSAL: H.B. 234

DO YOU: SUPPORT? ✓ AMEND? ✓ OPPOSE?

COMMENTS: Copies of testimony will be given to Committee.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Greg Allen DATE: 3-4-81

ADDRESS: Helena

PHONE:

REPRESENTING WHOM? by George Meneweaar & Shields

APPEARING ON WHICH PROPOSAL: H. B. 239

DO YOU: SUPPORT? ✓ AMEND? ✓ OPPOSE?

COMMENTS: Copies of testimony will be given to Committee.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Robert Barnes DATE: 3-4-81

ADDRESS: Helena - Barnes Jewelry

PHONE:

REPRESENTING WHOM? Bruce Simon · Cole's Dept. Store - Billings

APPEARING ON WHICH PROPOSAL: H. B. 239

DO YOU: SUPPORT? ✓ AMEND? ✓ OPPOSE?

COMMENTS: Copies of testimony will be presented to Committee.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: JERRY RAUNIG DATE: 3-4-81

ADDRESS: HELENA

PHONE: 442-1233

REPRESENTING WHOM? Montana Auto Dealers Assoc

APPEARING ON WHICH PROPOSAL: HB 239

DO YOU: SUPPORT? X AMEND? ____ OPPOSE? ____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Iris Ann Tobin DATE: 3-4-81

ADDRESS: Helena

PHONE: 442-1590

REPRESENTING WHOM? Mont. Hdwe & Impl Assn

APPEARING ON WHICH PROPOSAL: HB 239

DO YOU: SUPPORT? ✓ AMEND? ______ OPPOSE? ______

COMMENTS: ______

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

DATE March 4, 1981

COMMITTEE ON BUSINESS & INDUSTRY BILL NO. HB 286

Rep. Fabrega

VISITOR'S REGISTER

NAME	REPRESENTING	Check One: Support	Check One: Oppose
John Buchanan	Fidelity Savings & Loan	✓	
Sheila T. Buchanan	Fidelity Savings and Loan	✓	
Kenneth R. Neill	Fidelity S&L Assn	✓	

(Please leave prepared statement with Secretary)

NAME: Ken Neill DATE: 3/4/81

ADDRESS: 121 4th St. N
Great Falls

PHONE: 727-2220

REPRESENTING WHOM? Fidelity S + L Assn

APPEARING ON WHICH PROPOSAL: HB 286

DO YOU: SUPPORT? ✓ AMEND? ✓ OPPOSE? ____

COMMENTS: ____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: John Buchanon DATE: 3-4-81

ADDRESS: 526-1 Ave No Great Falls, Mt

PHONE: 406-4530387

REPRESENTING WHOM? Fidelity Savings & Loan

APPEARING ON WHICH PROPOSAL: HB 286

DO YOU: SUPPORT? ✓ AMEND? ✓ OPPOSE? ____

COMMENTS: We support this bill with the removal of the attached amendment

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Larry Huss DATE: 3-4-81

ADDRESS: Bx 514 Helena

PHONE: 442-8070

REPRESENTING WHOM? Montana Savings & Loan League

APPEARING ON WHICH PROPOSAL: HB 286

DO YOU: SUPPORT? ✓ AMEND? ______ OPPOSE? ______

COMMENTS: ______

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

STATE OF MINNESOTA

Banking Division
(612) 296-2135

Securities and Real Estate
Division
(612) 296-2594

Insurance Division
(612) 296-2488

Administrative Services
Division
(612) 296-2283

DEPARTMENT OF COMMERCE
500 Metro Square Building
St. Paul, Minnesota 55101

January 26, 1981

The Honorable Jay Fabrega
Chairman, Business and Industry Committee
Montana House of Representatives
State Capitol
Helena, Montana 59601

Dear Chairman Fabrega:

This is in response to your request for information as to the experience of Minnesota's detached facility law.

Minnesota banks are permitted to operate two detached facilities, at distances not to exceed 25 miles from the main banking office. This law has been in effect since August 1, 1977. Prior to that time, a bank in Minnesota was restricted to only one detached facility, at a location limited to 3,000 feet from the main office.

While I was not Commissioner of Banks at that time, I do know that the 1977 detached facility bill was extremely controversial; in fact, it passed the House of Representatives by just the bare majority needed. It was lobbied and debated as a big bank vs. small bank proposal.

There are 760 commercial banks in Minnesota including both state and national charters. 137 (18%) of these banks are affiliated with multi-bank holding companies. It is interesting to note which banks have made the greatest use of the detached banking facility law. Of the 268 detached facility applications (state and national charters combined) since the law took effect in 1977, 181 (67.5%) have been made by independent banks or those banks not affiliated with multi-bank holding companies. 253 applications have been approved, of which 187 are now opened. Of the total approved applications, 170 (67.2%) were made by independent banks. In other words, the non-affiliated or independent banks have utilized our state's detached facility authority by a ratio of two to one over banks affiliated with the multi-bank holding companies.

Minnesota, like Montana, had historically been a "unit banking" state. Its prohibition of branch banking was enacted in 1923. We are now considered a limited branch banking state as a result of a law passed in 1980, supported by the Minnesota Bankers Association, which permits a detached facility to provide all of the services available at the main banking house.

It is my impression that the experience of our detached facility law clearly demonstrates that it has met a need both for the banking industry in our state as well as those who use its services.

I hope this has been responsive to your question. Should you need any additional information, please do not hesitate to contact me.

Sincerely,

Michael J. Pint
Commissioner of Banks

MJP:sd

House Bill 14
Testimony of Jeffry M. Kirkland
Director of Governmental Relations
Montana Credit Unions League

Before the Senate Business & Industry Committee
on Wednesday, 4 March, 1981

Mr. Chairman and members of the Committee, for the record I am Jeff Kirkland, Director of Governmental and Community Relations for the Montana Credit Unions League. Our league is composed of 133 Montana credit unions, 108 of which are federally-chartered and 25 of which are state-chartered. On their behalf I thank you for the opportunity to testify in support of House Bill 14.

House Bill 14, quite simply, would allow the State of Montana to charter community credit unions, a power that is currently prohibited by state law. We see House Bill 14 as a "parity" bill that would address an inequity between federal and state credit union law, since under federal law, the National Credit Union Administration (NCUA) has the power to charter federal community credit unions irrespective of state law--and, in fact, has chartered some 35 federal community credit unions in Montana.

Before discussing the merits of the bill, I would like to acquaint you with two terms unique to credit unions: "Common Bond" and "Field of Membership." They work like this. Credit unions are cooperative, non-profit membership organizations, and the membership requirements are determined by the credit union's common bond.

A PERSON MUST BE A MEMBER OF THE CREDIT UNION TO BE ABLE TO UTILIZE ITS SERVICES.

TO COMPLICATE THINGS FURTHER, A PERSON CAN ONLY BECOME A MEMBER OF THE CREDIT UNION IF HE COMES WITHIN THE CREDIT UNION'S SPECIFIC CRITERIA FOR MEMBERSHIP--OR ITS FIELD OF MEMBERSHIP. THAT FIELD OF MEMBERSHIP IS DEFINED BY THE COMMON BOND UNDER WHICH THE CREDIT UNION WAS CHARTERED.

BOTH TRADITIONALLY AND STATUTORILY, FEDERAL CREDIT UNIONS HAVE BEEN CHARTERED BY THE FEDERAL GOVERNMENT ON THE BASIS OF THREE TYPES OF COMMON BOND: <u>OCCUPATIONAL</u>, <u>ASSOCIATIONAL</u>, OR <u>COMMUNITY</u>.

AND TRADITIONALLY AND STATUTORILY, TOO, STATE-CHARTERED CREDIT UNIONS HAD BEEN CHARTERED ON THE SAME BASIS--OCCUPATIONAL, ASSOCIATIONAL, OR COMMUNITY--UNTIL MONTANA'S CREDIT UNION LAW WAS RECODIFIED SOME YEARS AGO. AT THAT TIME THE STATE'S POWER TO CHARTER A STATE CREDIT UNION WITH THE COMMON BOND OF COMMUNITY RESIDENCE WAS STRICKEN FROM THE LAW.

HOWEVER, BECAUSE THERE WERE TWO STATE-CHARTERED COMMUNITY CREDIT UNIONS IN EXISTENCE AT THAT TIME, THE WHITEFISH CREDIT UNION ASSOCIATION AND THE MISSION RANGE CREDIT UNION IN CHARLO WERE ALLOWED TO KEEP THEIR COMMUNITY COMMON BOND.

JUST WHAT IS THIS COMMON BOND? TYPICAL EXAMPLES OF OCCUPATIONAL CREDIT UNIONS ARE THE BUTTE TELEPHONE EMPLOYEES FEDERAL CREDIT UNION, THE COLUMBUS HOSPITAL FEDERAL CREDIT UNION IN GREAT FALLS, THE GAZETTE EMPLOYEES CREDIT UNION IN BILLINGS, AND THE ZONOLITE EMPLOYEES CREDIT UNION IN LIBBY. MEMBERS AND POTENTIAL MEMBERS OF EACH OF THOSE CREDIT UNIONS MUST FALL WITHIN THE SPECIFIC FIELD OF MEMBERSHIP REQUIREMENTS OF BEING A BUTTE TELEPHONE EMPLOYEE, AN EMPLOYEE OF COLUMBUS HOSPITAL, AN EMPLOYEE OF THE BILLINGS GAZETTE, AND SO ON.

EXAMPLES OF ASSOCIATIONAL CREDIT UNIONS ARE THE IBEW LOCAL 653 FEDERAL CREDIT UNION IN MILES CITY, THE GREAT FALLS CATHOLIC FEDERAL CREDIT UNION, BUTTE METAL TRADES FEDERAL CREDIT UNION, YELLOWSTONE CONFERENCE FEDERAL CREDIT UNION IN BOZEMAN, OR THE BILLINGS STUDENT CREDIT UNION. EACH OF THOSE CREDIT UNIONS HAS A COMMON BOND OF ASSOCIATION RESULTING FROM MEMBERSHIP IN NON-CREDIT UNION ORGANIZATIONS.

NOW BACK TO HOUSE BILL 14. AS I MENTIONED, UNDER FEDERAL LAW THE FEDERAL GOVERNMENT HAS THE AUTHORITY TO CHARTER FEDERAL COMMUNITY CREDIT UNIONS IRRESPECTIVE OF STATE LAW AND HAS CHARTERED SOME 35 SUCH CREDIT UNIONS IN MONTANA.

WHAT IS THE COMMON BOND OF THOSE 35 FEDERAL COMMUNITY CREDIT UNIONS? IT IS PRIMARILY RESIDENCE WITHIN A WELL-DEFINED NEIGHBORHOOD, COMMUNITY, OR RURAL DISTRICT.

HOUSE BILL 14 WOULD ALLOW THE STATE OF MONTANA TO CHARTER COMMUNITY CREDIT UNIONS USING THAT SAME COMMON BOND OF RESIDENCE "WITHIN A WELL-DEFINED NEIGHBORHOOD, COMMUNITY, OR RURAL DISTRICT." IN OTHER WORDS, HOUSE BILL 14 WOULD ALLOW THE STATE TO CHARTER THE SAME TYPE OF CREDIT UNION AS CAN CURRENTLY BE CHARTERED BY THE FEDERAL GOVERNMENT.

WE CONTEND THAT A COMMON BOND BASED ON COMMUNITY RESIDENCE MEETS A DEFINITE NEED, AND THE EXISTENCE OF 35 FEDERALLY-CHARTERED COMMUNITY CREDIT UNIONS MAKES A STRONG CASE FOR THAT NEED.

ON THE FOLLOWING PAGE WE HAVE LISTED 23 OF THE 35 FEDERALLY-CHARTERED COMMUNITY CREDIT UNIONS THAT RESPONDED TO A SURVEY LAST SEPTEMBER. LISTED ARE COMMUNITY CREDIT UNIONS RANGING IN SIZE FROM $7,225,000 IN ASSETS TO $36,044 AND FROM 3,999 MEMBERS TO 180 MEMBERS.

FEDERALLY-CHARTERED COMMUNITY CREDIT UNIONS

	Federal Credit Unions	No. of Members	Location	Assets
1.	Fergus Co. FCU	1,915	Lewistown	$ 2,630,070
* 2.	Ft. Peck Community FCU	567	Fort Peck	692,981
* 3.	Greenfield Community FCU	921	Fairfield	843,741
4.	Helena FCU	3,999	Helena	5,407,669
* 5.	McCone FCU	374	Circle	219,124
6.	North Central Montana FCU	813	Havre	642,571
* 7.	Shelby Community FCU	1,337	Shelby	1,658,657
8.	Tri-Valley FCU	732	East Helena	647,344
9.	Valley County FCU	1,266	Glasgow	1,552,862
*10.	West Sanders FCU	211	Trout Creek	36,044
*11.	Bitterroot Community FCU	327	Darby	163,512
12.	Daniels County FCU	1,937	Scobey	3,609,698
*13.	Harlowton Community FCU	499	Harlowton	462,335
*14.	Liberty County FCU	262	Chester	79,323
*15.	Nashua Community FCU	334	Nashua	142,978
*16.	Opheim Community FCU	303	Opheim	144,807
17.	Richland FCU	2,700	Sidney	7,225,000
18.	Riverview FCU	3,721	Great Falls	5,031,391
*19.	Tobacco Root FCU	286	Whitehall	108,834
*20.	Toole County FCU	375	Sunburst	179,610
*21.	West Blaine FCU	180	Chinook	68,718
*22.	Carter County FCU	500	Ekalaka	81,044
*23.	Froid Federal	379	Froid	330,831

*No industrial base or sufficient population in any one interest group.

YOU WILL NOTE THAT 15 OF THE 23 CREDIT UNIONS ARE MARKED WITH ASTERISKS. WE HAVE DETERMINED THAT THE AREAS IN WHICH THOSE CREDIT UNIONS ARE LOCATED HAVE NO INDUSTRIAL BASE NOR EMPLOYERS LARGE ENOUGH TO EMPLOY ENOUGH PEOPLE TO MAINTAIN AN OCCUPATIONAL CREDIT UNION. WE HAVE ALSO DETERMINED THAT NONE OF THOSE AREAS HAVE SUFFICIENT POPULATION IN ANY ONE INTEREST GROUP OR ORGANIZATION TO MAINTAIN AN ASSOCIATIONAL CREDIT UNION.

THE ONLY TYPE OF COMMON BOND REMAINING THAT WOULD ALLOW RESIDENTS OF THOSE AREAS TO ENJOY CREDIT UNION SERVICE IS THAT OF COMMUNITY RESIDENCE. SO THE FEDERAL GOVERNMENT SAW FIT TO CHARTER COMMUNITY CREDIT UNIONS IN THOSE COMMUNITIES.

NATIONALLY, OF SOME 12,000 FEDERAL CREDIT UNIONS, ONLY ABOUT 4% ARE COMMUNITY CREDIT UNIONS. HOWEVER, IN MONTANA, OUT OF 110 FEDERAL CREDIT UNIONS, 35 ARE COMMUNITY CREDIT UNIONS--ABOUT 33%. WHY?

SPARSELY-POPULATED, LITTLE-OR-NO-INDUSTRIAL-BASE AREAS WITHOUT LARGE EMPLOYERS PRECLUDE, FOR THE MOST PART, OCCUPATIONAL OR ASSOCIATIONAL COMMON BONDS. RESIDENTS OF SUCH AREAS CAN ONLY BE SERVED BY COMMUNITY CREDIT UNIONS.

AND BECAUSE OF MONTANA'S PROHIBITION AGAINST STATE-CHARTERED COMMUNITY CREDIT UNIONS, THOSE CREDIT UNIONS CAN ONLY BE CHARTERED BY THE FEDERAL GOVERNMENT. BECAUSE OF MONTANA'S PROHIBITION AGAINST STATE-CHARTERED COMMUNITY CREDIT UNIONS, THE STATE HAS ABROGATED ITS RESPONSIBILITY TO PROVIDE FOR THE NEEDS OF ITS CITIZENS BY BOTH CHARTERING AND SUPERVISING CREDIT UNIONS THAT WOULD SERVE THEIR FINANCIAL NEEDS.

ON THE FOLLOWING PAGE WE HAVE IDENTIFIED 12 MONTANA COMMUNITIES OR AREAS SERVED NEITHER BY CREDIT UNIONS NOR BY COMMERCIAL BANKS.

MONTANA COMMUNITIES WITHOUT

CREDIT UNIONS OR BANKS

	County	Community	Population
1.	Mineral	Alberton	379
2.	Lewis & Clark	Augusta Division	847
3.	Yellowstone	Broadview	125
4.	Judith Basin	Hobson	253
5.	Carbon	Joliet	412
6.	Big Horn	Lodge Grass	776
7.	Sheridan	Medicine Lake	407
8.	Fergus	Moore	229
9.	Phillips	Saco	251
10.	Lincoln	Troy	1084
11.	Petroleum	Winnett	209
12.	Beaverhead	Wisdom/Big Hole Basin Division	741

Population figures are based on 1980 preliminary census data.

WHAT DO THESE COMMUNITIES OR AREAS HAVE IN COMMON? ALL ARE LOCATED IN SPARSELY-POPULATED AREAS IN WHICH THERE IS LITTLE OR NO INDUSTRIAL BASE, AREAS IN WHICH THERE IS NEITHER THE POSSIBILITY OF AN OCCUPATIONAL NOR AN ASSOCIATIONAL COMMON BOND, AND AREAS IN WHICH ONLY THE FEDERAL GOVERNMENT COULD CHARTER A COMMUNITY CREDIT UNION SHOULD THE RESIDENTS FEEL THE NEED TO ESTABLISH A LOCAL FINANCIAL INSTITUTION.

COULD THEY CHARTER A COMMERCIAL BANK. CHANCES ARE THEY COULD NOT, FOR ACCORDING TO THE DEPARTMENT OF BUSINESS REGULATION, NEW BANKS TODAY NEED BE CAPITALIZED AT ABOUT $1 MILLION. CHANCES ARE THAT THERE IS NOT THAT TYPE OF INVESTMENT CAPITAL IN ANY OF THOSE COMMUNITIES OR AREAS.

HOWEVER, ANY SEVEN OR MORE RESIDENTS OF THE STATE OF LEGAL AGE WHO HAVE A COMMON BOND OF OCCUPATION, ASSOCIATION, OR COMMUNITY RESIDENCE (EXCEPT FOR STATE-CHARTERED CREDIT UNIONS) MAY ESTABLISH EITHER A FEDERAL OR STATE CREDIT UNION BY FILING ARTICLES OF INCORPORATION AND OBTAINING A CERTIFICATE OF APPROVAL FROM EITHER THE FEDERAL GOVERNMENT OR THE STATE.

THE CREDIT UNION CAN INITIALLY BE CAPITALIZED FOR AS LITTLE AS $35 (ONE $5 SHARE PER PERSON), ALTHOUGH THAT HAS NEVER BEEN THE CASE IN MONTANA. THE LAST TWO CREDIT UNIONS CHARTERED IN MONTANA--ALTHOUGH BOTH FEDERAL CREDIT UNIONS, ONE OCCUPATIONAL AND ONE ASSOCIATIONAL--WERE CAPITALIZED AT $7,000 AND $20,000 RESPECTIVELY.

SO YOU CAN SEE THAT IT IS MUCH MORE FEASIBLE TO ESTABLISH A CREDIT UNION IN SUCH COMMUNITIES AND AREAS, SIMPLY BECAUSE OF THEIR MUCH LOWER CAPITALIZATION REQUIREMENTS. AND, FOR THE MOST PART, COMMUNITY RESIDENCE IS THE ONLY TYPE OF COMMON BOND AVAILABLE TO THE RESIDENTS OF THOSE COMMUNITIES.

THE STATE OF MONTANA SHOULD BE ABLE TO CHARTER COMMUNITY CREDIT UNIONS RATHER THAN LEAVING IT UP TO THE FEDERAL GOVERNMENT TO MEET THE FINANCIAL NEEDS OF MONTANA'S CITIZENS. THERE IS A DEFINITE NEED FOR THE ESTABLISHMENT OF COMMUNITY CREDIT UNIONS IN RURAL, SPARSELY-POPULATED COMMUNITIES AND AREAS OF THE STATE WHERE THERE IS NO INDUSTRIAL BASE NOR LARGE EMPLOYERS.

FOR THOSE REASONS, WE ASK THAT THIS COMMITTEE RECOMMEND THAT HOUSE BILL 14 BE CONCURRED IN. THANK YOU.

House Bill 238

Testimony of Jeffry M. Kirkland

Director of Governmental Relations

Montana Credit Unions League

Before the Senate Business & Industry Committee

on Wednesday, 4 March, 1981

Mr. Chairman and members of the Committee, for the record I am Jeff Kirkland, Director of Governmental and Community Relations for the Montana Credit Unions League. Our league is a trade association representing 133 of 136 credit unions in Montana. 108 of those are federally-chartered, and 25 are state-chartered.

Although House Bill 238 would only affect our 25 state-chartered credit unions, we join with the other regulated lenders in support of the bill, since we believe that there is industry-wide need for relief from current usury ceilings.

In essence, House Bill 238 would provide lenders and granters of credit the flexibility to tailor lending rates to current market conditions. And there is, catagorically, a definite need for that flexibility to adjust rates to rapidly changing market conditions.

Currently, state-chartered credit unions are limited to charging a maximum of 15% annual percentage rate (APR) on consumer loans. However, a little over three months ago the National Credit Union Administration, under emergency authority, raised the federal credit unions' 15% loan rate ceiling to 21%. That means that 110 of Montana's 136 credit unions now have a 21% ceiling. That action

BY THE FEDERAL REGULATORY AGENCY GRAPHICALLY ILLUSTRATES THE IMMEDIATE NEED FOR RELIEF FROM CURRENT USURY CEILINGS.

THAT NEED ALSO EXISTS FOR OUR 25 STATE-CHARTERED CREDIT UNIONS WHOSE LENDING RATE CEILING STILL REMAINS AT 15%.

YEARS AGO USURY CEILINGS COULD BE ESTABLISHED BY THE LEGISLATURE WITH LITTLE WORRY THAT THEY MIGHT BECOME OUTDATED BEFORE IT CONVENED TWO YEARS LATER. TODAY, THAT IS NOT THE CASE. LENDERS NEED THE FLEXIBILITY TO ADJUST RATES IN RESPONSE TO RAPID AND SOMETIMES WILD CHANGES IN THE MONEY MARKET.

WE'VE INCLUDED A CHART SHOWING THE PRIME INTEREST RATE FROM 1919 TO 24 NOVEMBER 1978, AND YOU CAN SEE THAT, ALTHOUGH THE PRIME RATE CHANGED FROM TIME TO TIME, THE CHANGE WAS GRADUAL AND NORMALLY IN SMALL, PREDICTABLE QUARTER-PERCENT INCREMENTS.

IF YOU'LL TURN TO THE SECOND PAGE OF OUR EXHIBITS, WE HAVE DEVELOPED A CHART GRAPHING THE NEW MARKET ENVIRONMENT WE ALL LIVE WITHIN--CHARACTERIZED BY RAPIDLY CHANGING, RAPIDLY INCREASING PRIME RATES. DURING THE 24-WEEK PERIOD FROM 12 SEPTEMBER 1980 THROUGH 20 FEBRUARY 1981, THE PRIME RATE ESCALATED FROM 12.25% TO 21% AND THEN DOWN TO 19.5%. JUST COMPARE THE ACTIONS OF THE PRIME RATE DURING THAT 24-WEEK PERIOD WITH THOSE FROM 1919 TO 24 NOVEMBER 1978.

THE PRIME RATE, OF COURSE, IS ONLY ONE OF MANY INDICATORS, BUT IT DOES AFFECT CREDIT UNIONS' COST OF BORROWED FUNDS, AND IT DOES AFFECT THE RATES CREDIT UNIONS HAVE TO PAY ON SAVINGS INSTRUMENTS TO REMAIN COMPETITIVE. IF YOU'LL LOOK AT THE SAME CHART, YOU CAN SEE HOW CREDIT UNIONS' COST OF BORROWED FUNDS REACTED TO CHANGES IN THE PRIME RATE AND HOW THE COST OF THOSE FUNDS COMPARED TO THE 15% MAXIMUM STATE-CHARTERED CREDIT UNIONS CAN CURRENTLY CHARGE FOR LOANS.

OBVIOUSLY, IF THE RATES CREDIT UNIONS OR ANY FINANCIAL INSTITUTIONS PAY FOR THEIR FUNDS ARE GREATER THAN THE RETURN THEY EARN FROM THE LENDING OF THOSE FUNDS, THEY HAVE TO STOP LENDING--OFTEN TO THE DETRIMENT OF THE CONSUMER.

THE CONCEPT OF USURY CEILINGS AROSE HUNDREDS OF YEARS AGO WHEN THE USE OF CREDIT WAS RELATIVELY RARE AND WHEN THERE WAS NOT ENOUGH OF A MARKET NOR ENOUGH COMPETITION TO EFFECTIVELY DETERMINE LENDING RATES. HOWEVER, TODAY THERE IS NO NEED FOR ARTIFICIAL USURY CEILINGS, FOR WHAT THE MARKET GIVETH, THE MARKET ALSO TAKETH AWAY. THAT IS, COMPETITION AMONG THE VARIOUS LENDERS TODAY DETERMINES THE RATES CHARGED ON LOANS--THAT AND THE COST OF FUNDS.

IF THE CREDIT UNION IS MAKING NEW CAR LOANS AT 15% AND THE BANK IS MAKING THEM AT 13%, PEOPLE ARE GOING TO GO TO THE BANK. AND IN OUR PARTICULAR INDUSTRY, IF FEWER PEOPLE BORROW, CREDIT UNION EARNINGS DECREASE. SO THE RATE MUST COME DOWN TO MEET THAT OF THE COMPETITION. THAT TYPE OF COMPETITIVE INTERACTION AND NOT USURY CEILINGS DETERMINES ACCEPTABLE LEVELS FOR LENDING RATES.

IN CONCLUSION, THERE IS A DEFINITE NEED TO ADDRESS THE LIMITATIONS OF OUR CURRENT USURY CEILINGS. WHILE ARTIFICIALLY LOW USURY CEILINGS DO, IN FACT, KEEP LENDING RATES LOW, THEY ALSO TEND TO DRY UP CONSUMERS' SOURCES OF CREDIT WHEN THE RATES FINANCIAL INSTITUTIONS PAY FOR THEIR FUNDS ARE GREATER THAN THE RETURN THEY RECEIVE FROM THE LENDING OF THOSE FUNDS.

LENDERS NEED THE FLEXIBILITY TO ADJUST THEIR RATES IN RESPONSE TO RAPID AND SOMETIMES WILD CHANGES IN THEIR COST OF FUNDS. SINCE FIRM CEILINGS HAVE THE EFFECT OF CURTAILING THAT FLEXIBILITY AND IN DOING SO MAKING CREDIT MORE DIFFICULT TO OBTAIN FOR THOSE WHO MOST NEED CREDIT AT RELATIVELY REASONABLE RATES, WE SUPPORT THE REMOVAL

OF ALL USURY CEILINGS AS PROVIDED FOR IN HOUSE BILL 238.

FOR THOSE VERY COMPELLING REASONS, WE URGE THAT THIS COMMITTEE RECOMMEND THAT HOUSE BILL 238 DO PASS.

CHRONOLOGY

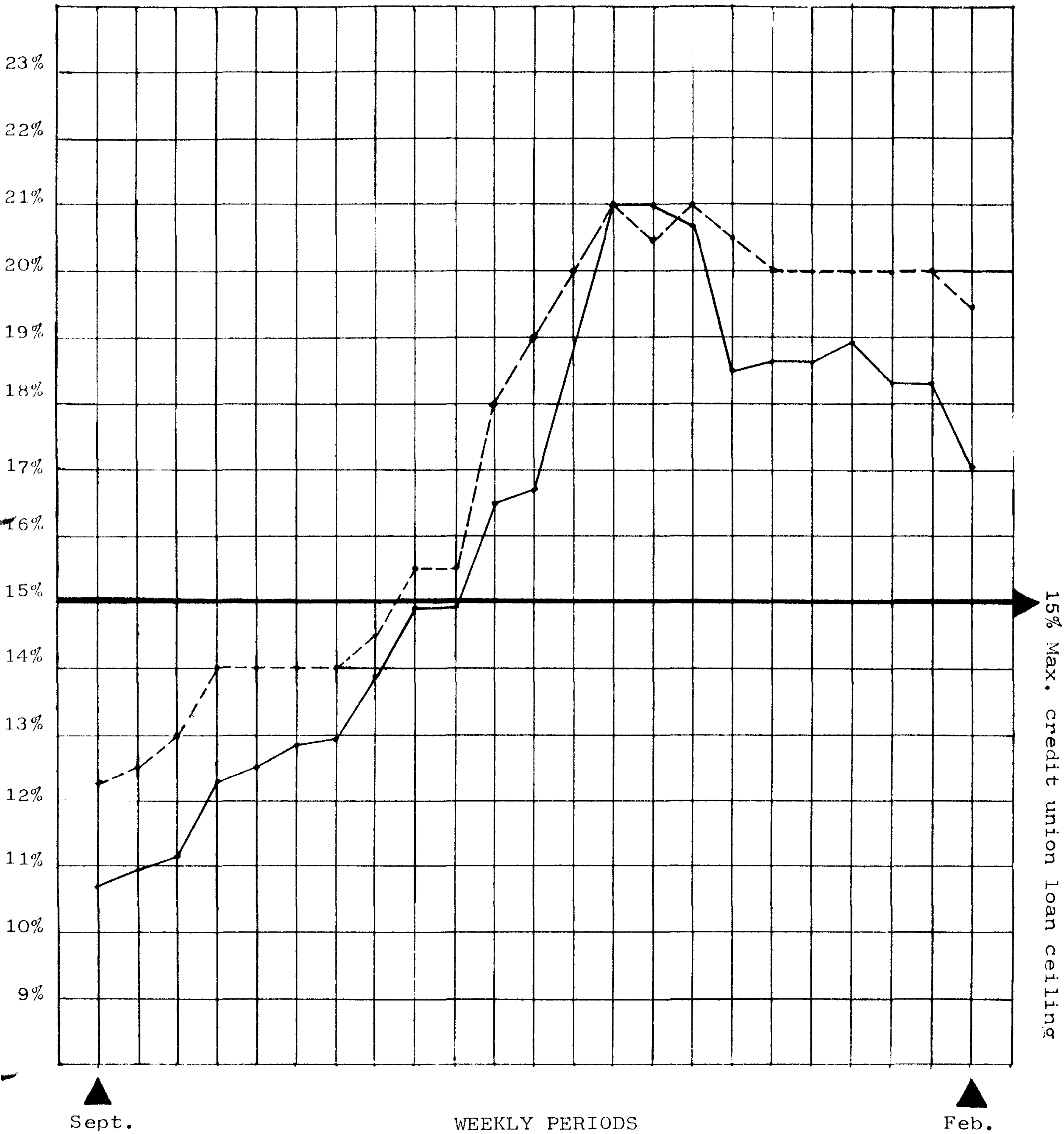
Prime Interest Rate

		1919	5 1/4%
		1920	7
		1925	3 1/2
		1928	5 1/2
		1929	6
		1933	1 1/2
Jan.		1948	1 3/4
Aug.		1948	2
Sept.		1950	2 1/4
Oct.		1950	2 1/2
Oct.		1951	2 3/4
Dec.		1951	3
Apr.		1953	3 1/4
Mar.		1954	3
Aug.		1955	3 1/4
Oct.		1955	3 1/2
Apr.		1956	3 3/4
Aug.		1956	4
Aug.		1957	4 1/2
Jan.		1958	4
Apr.		1958	3 1/2
Sept.		1958	4
May		1959	4 1/2
Aug.		1959	5
Aug.		1960	4 1/2
Dec.		1965	5
Mar.		1966	5 1/2
June		1966	5 3/4
Aug.		1966	6
Jan.		1967	5 3/4
Mar.		1967	5 1/2
Nov.		1967	6
Apr.		1968	6 1/2
Sept.		1968	6 1/4
Dec.		1968	6 1/2
Dec.		1968	6 3/4
Jan.		1969	7
Mar.		1969	7 1/2
June		1969	8 1/2
Mar.	25	1970	8
Sept.	22	1970	7 1/2
Nov.	13	1970	7 1/4
Nov.	24	1970	7
Dec.	22	1970	6 3/4
Jan.	7	1971	6 1/2
Jan.	15	1971	6 1/4
Jan.	18	1971	6
Feb.	16	1971	5 3/4
Mar.	12	1971	5 1/2
Mar.	23	1971	5 1/4
Apr.	24	1971	5 1/2
July	8	1971	6
Oct.	22	1971	5 3/4
Nov.	8	1971	5 1/2
Dec.	21	1971	5 1/4
Jan.	10	1972	5
Jan.	26	1972	4 3/4
Mar.	28	1972	5
June	27	1972	5 1/4
Aug.	28	1972	5 1/2
Oct.	3	1972	5 3/4
Dec.	26	1972	6
Feb.	2	1973	6 1/4
Mar.	26	1973	6 1/2
Apr.	18	1973	6 3/4
May	7	1973	7
May	25	1973	7 1/4
June	8	1973	7 1/2
June	22	1973	7 3/4
July	3	1973	8
July	11	1973	8 1/4
July	19	1973	8 1/2
July	31	1973	8 3/4
Aug.	7	1973	9
Aug.	14	1973	9 1/4
Aug.	22	1973	9 1/2
Aug.	28	1973	9 3/4
Sept.	18	1973	10
Oct.	23	1973	9 3/4
Feb.	2	1974	9 1/2
Feb.	21	1974	9
Feb.	27	1974	8 3/4
Mar.	22	1974	9
Mar.	30	1974	9 1/4
Apr.	4	1974	9 1/2
Apr.	9	1974	9 3/4
Apr.	11	1974	10
Apr.	22	1974	10 1/4
Apr.	25	1974	10 1/2
Apr.	29	1974	10 3/4
May	6	1974	11
May	13	1974	11 1/4
May	20	1974	11 1/2
June	28	1974	11 3/4
July	8	1974	12
Oct.	10	1974	11 3/4
Oct.	22	1974	11 1/2
Oct.	29	1974	11 1/4
Nov.	12	1974	11
Nov.	19	1974	10 3/4
Nov.	25	1974	10 1/2
Jan.	13	1975	10 1/4
Jan.	20	1975	10
Jan.	27	1975	9 3/4
Feb.	3	1975	9 1/4
Feb.	11	1975	9
Feb.	20	1975	8 3/4
Feb.	28	1975	8 1/2
Mar.	10	1975	8 1/4
Mar.	12	1975	8
Mar.	19	1975	7 3/4
Mar.	27	1975	7 1/2
May	21	1975	7 1/4
June	10	1975	7
June	16	1975	7 1/4
July	28	1975	7 1/2
Aug.	12	1975	7 3/4
Sept.	15	1975	8
Oct.	28	1975	7 3/4
Nov.	4	1975	7 1/2
Dec.	2	1975	7 1/4
Jan.	13	1976	7
Jan.	22	1976	6 3/4
June	1	1976	7
June	7	1976	7 1/4
Aug.	3	1976	7
Sept.	27	1976	6 3/4
Nov.	2	1976	6 1/2
Dec.	14	1976	6 1/4
May	16	1977	6 1/2
May	31	1977	6 3/4
Aug.	22	1977	7
Sept.	19	1977	7 1/4
Oct.	7	1977	7 1/2
Oct.	21	1977	7 3/4
Jan.	10	1978	8
May	2	1978	8 1/4
May	26	1978	8 1/2
June	16	1978	8 3/4
June	30	1978	9
Sept.	1	1978	9 1/4
Sept.	15	1978	9 1/2
Sept.	29	1978	9 3/4
Oct.	13	1978	10
Oct.	30	1978	10 1/4
Nov.	1	1978	10 1/2
Nov.	6	1978	10 3/4
Nov.	17	1978	11
Nov.	24	1978	11 1/2

CREDIT UNIONS : COST OF BORROWED FUNDS

FOR 24-WEEK PERIOD

SEPTEMBER 12, 1980 to FEBRUARY 20, 1981



Dotted line: Prime rate

Solid line: Cost of borrowed funds

STATEMENT FOR PUBLIC HEARING ON

HOUSE BILLS 239 and 240

My name is Jerry Raunig. I'm the Executive Vice-President of the Montana Automobile Dealers Association (MADA), which is the trade association for the franchised new car and truck dealers of this state.

The Problem

Many well-publicized factors have contributed to the ill-health of the automobile business in this state, but the biggest problem since the first of January, 1980, has been the shrinking availability of financing for the AVERAGE car buyer.

As the cost of money increased, following the rising prime rate, banks quickly found that Montana's rate ceilings were below their average cost of money, and car financing in this state became a losing proposition.

The disappearance of financing for the average car buyer immediately became the "ultimate problem" for the dealer because he couldn't get financing for many people who wanted to buy cars.

It is true that banks continued to finance cars for their regular customers, but on a very selective and restrictive basis. Some banks have gotten out of the car financing business altogether (except on a direct basis) while others that have stayed in the business are discounting the contracts they buy from dealers. It is important to remember that dealers must co-sign or guarantee those contracts sold to banks or financial institutions even though discounted.

The captive finance companies - - GMAC and Ford Motor Credit (Chrysler Credit does not have an office in Montana and does only a limited amount of business in the state) have done their best with their dealers during these difficult times, but are losing money on every new vehicle contract they buy in Montana.

We question how long they will continue buying contracts at a loss. In addition, not all dealers have access to a captive finance source - - Chrysler - Plymouth - Dodge - all import dealers - AMC - and Jeep dealers have no access to captive finance sources.

It is clear that shrinking financing is eroding the marketing system on which the entire industry is based - <u>the ability of the consumer to buy a car on the installment plan</u>.

A recent random telephone survey of several dealers around Montana indicates that the turn-down rate on consumer financing has been running between 20 and 40% over the last 9 to 10 months. There is no doubt that the scarcity of financing is still a problem today for the average consumer.

The Cause of the Problem

There is no argument about the cause of the problem, or the fact that it is a Montana legislative problem - not national. In fact, last spring the U.S. Senate was addressing the usury problem with a bill to temporarily override state usury limits but failed to take action because it was strongly felt that usury is a state's right.

Ceiling rates for automobile financing by dealers are set forth in the Retail Installment Act enacted in 1959. This law was designed to regulate car financing and protect the consumer by requiring standard provisions in contracts.

These ceilings, now 22 years old, were established with plenty of leeway, with the knowledge that the legislature could change them as need arose. It is significant to note that the prime rate in 1959 was 5%.

These ceiling rates are stated as add-on rates:

Class 1 - $7 per $100 per annum for new car
Class 2 - $9 per $100 per annum for used car up to 2 years
Class 3 - $11 per $100 per annum for used car over 2 years

The rates are translatable into Annual Percentage Rates (APR) which vary slightly depending upon the period of the loan. Using a period of 36 months, because it ties in with the attached rate sheet, we find that the add-on rates are equivalent to an APR of 12.83%, 16.24%, and 19.57%.

What has happened is that lenders have found that 12.83% is well below their average cost of money, and they're not in business to lose money.

The Numbers

At the start of our fiscal year, January 1, 1980, the MADA had 244 members which represented 96% of the 255 franchised new car and truck dealers in this state.

Since January, 1980, more than 30 dealerships have closed their doors. Only a few of these have been taken on by someone else - - most of them are still closed. Many of the 500 former employees of these dealerships have moved elsewhere, and many others are still not working.

Our field representative and the registration records from the Registrar's Bureau in Deer Lodge report that new vehicle sales were off by 21% statewide during 1980.

In checking with our dealer body we find that at least 20 other dealers are in difficult financial straits - - placing another 340 jobs in jeopardy.

Other States Legislative Action

In many other states, the car finance ceilings were as low as ours, or low enough to be inadequate, and when the nation-wide skyrocketing rise in interest rates hit, most other state legislatures took action to help their dealers, their economies, and their consumers.

The attached rate sheet shows ceiling rates in effect in 50 states. This sheet is up to date as of December, 1980.

Our neighboring states have all taken the necessary action. Their rates are set forth below as APR rates, based on 48 month loans:

Idaho	18%
North Dakota	18%
South Dakota	20%
Wyoming	18%

The State of New York was the most recent to take action. Effective December 1, 1980, automobile financing was deregulated in New York in a manner similar to this bill by eliminating add-on rates and allowing the competitive marketplace and the availability of money to determine the interest rate negotiated between the retail seller and the buyer.

The Reason We Need Help

The shrinking availability of financing for the average car buyer has become the SHRUNKEN availability of financing. The high-salaried person has little problem, but the average person with a modest income still finds that nobody really wants his new car finance business.

People on the lower end of the economic ladder, who have been considered marginal risks a year ago, but who still might have been qualified because the dealer guaranteed the contract, are simply out of luck now.

If automobile dealers are ever to regain their rightful share of the market, and if we are to safeguard the more than 3500 jobs provided by our dealers, this legislative action is necessary in order that Montana will once again become a reasonable, profitable market for car financing.

We do not feel that eliminating the rate ceilings would lead to overcharging on interest. On the contrary, we feel that deregulation would make the car financing business competitive once again in Montana, particularly with the Savings & Loans now being authorized to get into the consumer finance area.

We feel that passage of this bill would create a situation whereby banks, the captive sources, Savings & Loans, and credit unions would be placed in a very competitive situation in competing for consumer car financing which would tend to keep interest rates down.

We have also attached a sheet showing the difference in monthly payments at varying APR's beginning with our current 12.83% up to 22% which is the highest the prime rate ever reached during 1980. It is interesting to note that the difference between the lowest and the highest interest rates on a $5,000 - 3 year loan is approximately $23 per month.

We respectfully urge the committee to give favorable consideration to this bill, and we thank you for the time you have given us.

INTEREST RATES ALLOWABLE ON NEW VEHICLES

STATE	A P R	SPECIAL CONDITIONS
Alabama	17.6%	Plus $20. fee - No limit over $5,000.
Alaska	17.6%	
Arizona	No Limit	
Arkansas	10.0%	Seeking constitutional amendment
California	20.75%	
Colorado	18.0%	
Connecticut	16.0%	
District of Columbia	21.5%	
Delaware	No Limit	Auto financing deregulated 2-18-81
Florida	17.6%	
Georgia	17.6%	
Hawaii	18.0%	
Idaho	18.0%	
Illinois	20.75%	
Indiana	18.0%	
Iowa	20.75%	
Kansas	18.0%	
Kentucky	19.19%	
Louisiana	18.0%	
Maine	18.0%	
Maryland	21.5%	
Massachusetts	20.75%	
Michigan	16.5%	
Minnesota	17.6%	
Mississippi	18.0%	This date 5% over Federal discount rate
Missouri	17.6%	
Montana	12.68%	
Nebraska	18.0%	
Nevada	20.75%	
New Hampshire	16.0%	This date 3.0% over Federal discount rate
New Jersey	15.99%	
New Mexico	17.2%	
New York	No Limit	Auto financing deregulated 12-1-80
North Carolina	16.0%	

STATE	A P R	SPECIAL CONDITIONS
North Dakota	18.0%	
Ohio	18.0%	
Oklahoma	18.0%	
Oregon	14.35%	
Pennsylvania		Rates vary with Federal discount rate
Rhode Island	21.0%	
South Carolina	18.0%	
South Dakota	20.0%	
Tennessee	No Limit	
Texas	13.51%	
Utah	18.0%	
Vermont	18.0%	
Virginia	24.0%	
Washington	12.0%	Legislation pending
West Virginia	18.0%	
Wisconsin	17.0%	This date 4.0% over Federal discount rate
Wyoming	18.0%	

MONTHLY PAYMENTS FOR A

$5,000 LOAN FOR 36 MONTHS

APR	
12.83%	$167.68
13%	$168.47
14%	$170.89
15%	$173.33
16%	$175.79
17%	$178.26
18%	$180.76
19%	$183.28
20%	$185.82
21%	$188.38
22%	$190.96

MONTANA AUTOMOBILE DEALERS ASSOCIATION
INC.

MADA

501 N. SANDERS

PHONE 442-1233

HELENA, MONTANA 59601

MEMORANDUM

TO: All MADA Members

FROM: Gerald F. Raunig, Executive Vice President

DATE: January 29, 1981

RE: Legislation on Removal of Usury Limits

At its most recent meeting on January 23, 1981, the MADA Board of Directors discussed the pros and cons of the main street business bill amending the Montana Retail Installment Act to remove the add-on rate ceilings.

After discussing both sides of the issue, the Board voted unanimously to reaffirm the position of support for this legislation.

If you have questions about his position, you should contact your MADA Director for further comment.

mjo

TESTIMONY ON HOUSE BILLS #238 and #239

SENATE BUSINESS AND INDUSTRY COMMITTEE

March 4, 1981

Mr. Chairman and members of the Committee:

I am John Cadby, executive vice president of the Montana Bankers Association. Our Association has as dues paying members the large and small, independent and group, state and national, city and rural, or all 165 banks in the State of Montana. In their behalf, we thank you for giving us this opportunity to speak in support of House Bills #238 and #239.

The attached cites the detrimental effects of interest rate ceilings on the consumer, the farmer, the businessman and the economy of Montana. Also, enclosed is a speech given by a professor of economics to the Arizona legislature who repealed all their ceilings last year. In fact, most countries in the world and many states in this nation have removed all interest rate ceilings leaving it up to the borrower and the lender and the purchaser and the seller to negotiate a mutually agreed upon rate of interest in a free and competitive market.

In this era of deregulation and intensified competition, money like any other commodity should be subject to the marketplace and not the law. Congress has recognized this by deregulating financial institutions to stimulate competition, by preempting state usury laws to prevent distortions of credit and eliminating ceilings on savings to stimulate economic growth.

Interest rate ceilings drive money out of the state, restricts credit availability, creates discrimination, penalizes savers, does not protect the consumer and fuels inflation. In short, interest rate ceilings are no good for anyone in Montana and should be abolished once and for all by passing House Bills #238 and #239.

Today we have legal counsel for MBA, Mr. George Bennett and bankers to respond to questions if any from members of the committee. We also have additional studies and articles on the subject of interest rates by economists and experts throughout the nation in the event the committee would like more information on this subject.

* * * * *

EFFECTS OF INTEREST RATE CEILINGS ON:

Economy and Inflation

Statistics show states without interest rate ceilings have better economies than states with strict usury laws.

Depositors receiving 5½% on savings and with inflation at 13% are losing 7½% on purchasing power plus income taxes must be paid on the 5½5 interest received. The result is a lower percentage of savings of disposable income, thereby resulting in less investment capital for economic growth, less productivity and higher inflation.

Inflation is a primary cause of high interest rates. When inflation was zero, banks were lending money at 3%. Twenty years ago the inflation rate was 2% and the national prime rate average was less than 5%, even though Montana had a usury ceiling of 10%.

Most foreign countries do not have the interest rate ceilings. England repealed their usury law over 100 years ago.

Six states have no cilings on regulated lenders. South Dakota removed interest rate ceilings on regulated lenders last year. California removed their ceilings on regulated lenders 50 years ago. New York and Arizona recently removed all interest rate ceilings.

Availability of Capital

Interest rate ceilings drive money out of the state, consequently there is less working capital for farmers and businessmen and less credit for consumers.

Money does not recognize any geographical boundaries and flows to the highest bidder. Public funds as well as individual savings will flow out of state if Montana's financial institutions are prohibited from offering competitive interest rates.

Savers

Interest rate ceilings penalize savers by preventing financial institutions from paying marketplace rates.

Regulation Q is being phased out by Federal Law thereby subjecting the saver to the marketplace.

High interest rates have educated savers to shop for the highest yield.

Borrowers

Restrictive interest rate ceilings increase demand and decrease the supply of funds, so funds are rationed to favored customers.

Interest rate ceilings hurt those persons they are designed to help namely the poor, young and those less credit worthy due to limited amounts of capital.

Credit contracts are not only subject to rates of interest but maturity, down payments, security required and credibility of the purchaser. The lower the interest rate ceilings, the more restrictive other credit terms become.

Consumer Protection

"The best allocation of resources and the best protection to the consumer is a freely competitive market". (Dr. John Buchler)

In a free market, interest rates are self-regulating and self controlling.

To single out the credit market to protect the gullible does not make sense when there are no price controls on any other product or service in the marketplace.

Between government regulators and fierce competition it is inconceivable a regulated lender could gouge its unsophisticated borrowers.

The discipline of the marketplace is the best discipline in controlling inflation and interest rates.

The Federal Truth and Lending Act requires all lenders and retailers to use the Annual Percentage Rate so borrowers and purchasers are able to compare rates advertised by financial institutions and retail stores.

Stability of Financial Institutions

Today, eighty percent of loans are funded by purchased money that is acquired by paying the market rate and not low cost savings and checking accounts as in the past. A profitable bank is the best security for the depositor, even preferable to FDIC Insurance. All banks, savings and loan and credit unions are vulnerable to high inflation and unstable interest rates. Their only hope is the ability to adjust to sudden fluctuations in the marketplace.

Any interest rate ceilings cannot adjust to a volatile interest rate market as has been experienced in the United States for the past six years. Said rates would have to be adjusted every legislative session and still would not keep up with the daily fluctuations in the marketplace. The same is true for any floating interest rate ceiling tied to a governmental indicator as the discount rate is a politically established rate to attempt to control inflation and is not changed necessarily when changes take place in the marketplace.

Exemptions to State Usury Law

The first exception to Montana's archaic 10% usury rate was in 1889 when pawnbrokers were allowed to charge 3% per month or 36% per annum. In 1911 wage brokers were allowed to charge 12% and in 1963 credit unions were allowed to charge 1% per month or 12% per annum. In 1975, the legislature raised the credit union rate to 1½% per month.

In 1959, the Montana legislature carved out another exception creating the Montana Consumer Loan Act, allowing finance companies to charge higher rates of interest which has been subsequently amended to increase the size of the loans and provide higher interest rates. Also in 1959, the legislature enacted the Montana Retail Installment Sales Act, allowing higher rates of interest on all retail installment loans including motor vehicle sales. In 1969, the banks were allowed to charge higher interest rates on installment loans.

Up until 1975, the general usury statute provided a maximum interest rate to 10% per annum, except for the above mentioned exceptions. In 1975 the Montana legislature enacted a floating ceiling which is in conflict with the exceptions above.

Discrimination

Small banks are unfairly penalized by interest rate ceilings as larger banks have a higher percentage of loans not covered by interest rate ceilings.

Banks, credit unions and savings and loans are discriminated against, being subject to ceilings when PCA's, Federal Land Banks and other competitors are not subject to any interest rate laws.

Federally chartered financial institutions such as credit unions are allowed to charge a higher rate of interest than state chartered financial institutions.

Farm equipment and truck manufactures credit companies are allowed by federal law to charge a higher interest rate whereas automobile and appliance dealers in Montana and their credit companies are subject to state law and lower interest rate ceilings.

It is virtually impossible to define a consumer loan, installment loan, a personal loan, agricultural or business loan to determine the legal rate of interest. All such loans would qualify as installment loans under state law, which defines an installment loan as any loan with one or more payments, yet legal ceilings vary from 12½% to 21% under state and federal laws, depending on the type of loan.

The Montana Development Credit Corporation is unable to make venture capital loans to high risk borrowers, due to the restrictive usury law. Typically, Montana's floating usury statute is below the average prime rate.

Highlights of Speech of

Dr. John Buehler, Professor of Economics, University of Arizona

February 26, 1980

It is my understanding I was invited here this evening to comment on the question of usury laws. I would like to make this recommendation . . . that there is no better program you could follow than to remove all ceilings on all interest rates. Interest rate is the price of credit. As other prices rise, the price of credit rises also. There is a misconception in this country that the reason interest rates are going up now is because the federal government is doing something about it. In a sense, this is true, but interest rates are rising because the federal government and the federal reserve system has followed a highly inflationary policy since late 1975. In a very crude sense, one can take about 3% on top of inflation rates to come up with a nominal rate of interest. The reason we are in a very dangerous situation right now is because the nominal rate of interest, that is, the interest rate that you and I see in the marketplace, whether we are savers or whether we are lenders, has actually been below the expected rate of inflation. And should the public ever adjust to the actual rate of inflation, which for the month of January was in an excess of 16% of consumer prices, and if you add another 3% onto that, you are looking at a 19% to 20% long-term rate.

To get on with the main topic, the trouble with regulation is that it interferes with the market. The best allocation of resources and the best protection to the consumer is a freely competitive market. The only justification in any market is when that market is monopolized. In today's world, financial markets are difficult, if not impossible, to monopolize, simply because of the mobility of funds. There is no bank that can monopolize the market in a large urban area because funds can be moved across state lines and national boundaries with telephone calls. So what are the consequences of interest rate ceilings? You set the regulative rate below the true market equilibrium rate. First of all you have a situation where the demand exceeds the supply and shortages must develop. The available quantity that is supplied now has to be rationed. Now some will be excluded from the market. Normally, the test will be on risk. What it comes down to, is there going to be an income test or a wealth test? There are others who are going to be subsidized. In other words, they are going to be paying a lower rate than they would otherwise pay if you allowed the market to work. So if you were a very rich person, then you ought to favor usury limits. Because you will wind up subsidizing the rich at the expense of the poor. In addition to that the available quantity of credit that appears on the market is going to be less than otherwise. So what does this mean? It means that funds are going to be shifted to other alternatives or they are going to leave the region entirely. And I would submit to you that Arizona is a growth state. You want to attract capital from outside. You do not want to be exporting it. The largest bank and the second largest bank in the state look over their shoulders constantly to see what the other banks are going to do. More importantly, they are not just concerned about the banks in Arizona because funds can be moved very easily from one state to another with a telephone call. In other words if a small bank in Arizona is in a position to take a very important loan, and is competing against the largest bank in the state, it is not limited to its own resources. It can move in the market and very quickly.

There is another concept of regulated rates. It is that growth will suffer, employment, income and tax revenue will be lower. In addition to that, it is a direct encouragement to loan sharking. If you want to establish a loan shark market, then set the regulated rate below the equilibrium rate, and you have created a new market for people to enter, with all the unfortunate consequences we have observed when that occurs.

Now you might want to consider what the impact would have been in Arizona if a usury law had been binding in sometime in the past. The obvious question to ask, is what would have been the right rate? Once you move away from a free market rate then somebody has got to decide what the right rate is. Nobody is smart enough to know that, because once you are below the true equilibrium rate you are going to have a misallocation of resources. What has happened in Arizona is that in the last four or five years, because it is a growth state, employment, income, tax revenue and wealth have increased dramatically. In fact the individual property owner has found that housing has been the best hedge against inflation. Inflation is somewhat capricious. It hits very hard at different groups depending upon what assets you own or do not own. The one group that has survived this inflation very well, in fact profited from it, is the residential homeowner. Because the rate of inflation in residential housing has exceeded the rate of inflation in consumer prices. The groups that have been hurt the hardest are the working poor, and surprising enough the rich people who have had bonds in their portfolio. In fact the people who are depending upon their pensions sometime down the road, might look over their shoulder to see what has happened to those pension funds in the last week, as a result of a collapse of the bond market. Now, the question is, how high are interest rates? When do you want to do something about it? Well, interest rates are not high independent of everything else. They are related to the rate of inflation. If the rate of inflation goes up, interest rates are bound to go up. And if they come down, the consumer is actually protected to some extent especially on residential mortgages, because the individual who has taken on a 12% mortgage today, if interest rates should go back to the rates of the 1960's, he will have the option of refinancing, although he will pay some penalties.

The problem we have had in this country for the past four or five years is that the effective rate of interest has been negative. So borrowing money has been a heck of a bargain. If you borrow money at 10%, the inflation rate is 12%, you can't lose. In fact, the guy lending it becomes the sucker, it seems. The people have figured that out as far as housing is concerned. While we have lamented the fact that mortgage rates have risen, the fact of the matter is the inflation rate on housing has far outstripped them. If the price of housing is going up at 2% a month, 24% a year, and you are only borrowing 10% of the money, and you are paying 12%, you could pay 20% and still make a substantial profit. So the interest rate is not going to restrict you from borrowing the money to buy the house, as long as you are faced with that kind of an expected rate of inflation.

Housing starts are down now because the rate is starting to bite on some groups, and there is also some question as to the availability of funds in some parts of the country. Where some states do have usury laws, funds are moving out of that area into higher rates of return. So there is some problems with availability.

We have to look at the root causes of inflation. And I think the root cause of inflation is very clear. It results from an over-expansion in the money supply in the central banks. What will happen if interest rates rise and the federal reserve system at the same time tightens down and does not contribute to a further expansion in the money supply, aggregate demand will slow down. The growth in aggregate demand will be arrested, then as the individual businessman tries to pass the higher interest costs on to the consumer, the field will be faced with resistance. There is going to be tremendous pressures on the federal reserve system if we start to head into a recession.

Some of what we have observed in the bond market this last week is reminiscent in what happened in the stock market crash of 1929. Things never happen in the same way twice. But if the public believes, not only in this country but in other countries as well, if the United States is not going to deal effectively with the rate of inflation, and if they are going to continue to pump money into the system, nobody is going to want to hold bonds, and nobody is going to want to hold mortgages. And the way you avoid suffering a substantial capital loss is to unload those instruments — get rid of them before the price goes down and the act of doing this will drive the price down and drive the interest rate further.

To go back again, we have generated an inflation rate in this country that is not sustainable over a long period of time. What has happened is the rates of inflation has outstripped the rising interest rates. If you are a lender, you do not want to lend me a hundred dollars for a year at 10% interest if over the course of that year prices are going up to 15%, because you are a loser. Now what has happened in this country is that the public has not adjusted to the actual rate of inflation. In fact, the public has had a lot more confidence in our system than perhaps they have had any right to have. So you have had a rate of inflation that has far outstripped interest rates. Now if the public comes to the conclusion that the government is not going to deal effectively with the rate of inflation, and they adjust their own behavior accordingly, then only a fool would continue to hold dead instruments. This does not apply just to people in the United States — it applies to the OPEC countries as well. In other words, you do not want to hold an asset that is going to go down in price. And the best way to beat that game is to sell it before it goes down. So the act of everybody selling those instruments to beat the price decline, which in turn will generate a price decline, and I would submit that this is partly what has happened in the bond market today. Now the federal reserve system has moved to try and tighten up on the money supply. Apparently they made some efforts in October of 1979, but if you have spent four or five years screwing up the system, you are not going to put it back in order in six or nine months. It will probably take an extended period of time, to get the ship back on course. For one thing, you have got to convince people that hold these assets that you do mean business. And if they have watched you misbehave over a long period of time, like going to church for a couple of times in a row, isn't going to convince them that you have seen the light. They are going to require a great deal more gratification of a tightening up policy before they are going to respond. So the problem is that we may have gone too far already. We may not be able to arrest the kind of speculation that is going on.

Now again, looking at it from the states standpoint, there is very little the state can do about it. You are at the mercy of the national economy. Interest rates and money markets are national markets — not local markets. It can move money around too quickly. If you sell some securities through your broker, the sale of those securites can be transmitted to the New York market within minutes. The worst thing a state can do, however, is to generate regulations which is going to interfere with the free flow of credit that is available.

Why do we have usury laws in the first place? I have always wondered about that myself. No one seems to say we should control the price of Coors beer or General Motors cars — we don't seem to worry about that, but we do worry about the price of credit. And the price of credit is just another price itself. Yet we feel compelled to do something different there. Some of it may have religious origins, and Sister Clare may know more about this than I, but it is true that back in the middle ages when usury laws were instigated, the countries where they were very slow in being removed, their growth and development was arrested. Spain and Portugal lagged very far behind other European countries because of usury laws. What would happen here if this state introduced a usury law is that the capital will leave the area. Again, we are a growing state. We need to be an importer of capital, we really don't want to export it. Again this applies to whether you're talking about the interest rate on residential mortgages or bank credit cards or the interest rate paid to savers.

Unfortunately, what has happened in this country is that the people who can least afford it are the ones who have been discriminated against. If you have a hundred thousand dollars, you have many options. If you have fifty dollars, your options are pretty much narrowed down to passbook savings, and those are regulated. This is not fair and it is not equitable. So there again, you have a case where regulation comes down and it hits very hard on lower income individuals.

There is some misconception that banks generate a tremendous amount of profit. However, if you take a look at the rate of return on bank capital, it is no better, and sometimes a heck of a lot worse than the rate of return on other types of capital. So common sense would dictate that the rate of return on bank capital is not excessible. If you need further confirmation on this, take a look at the cost of capital to the banks right now. At the close of business today the federal funds rate, that is the rate on one day money, was 14 1/8%. The interest rate on ninety day CD's is 15% but the effective costs of the banks is 17.86% because the banks have to keep reserves, that is non income running assets against those reserves. The interest rates on six month T-bill CD's is 13.5% and the effective rate is 13.85%. So the day is pretty much over where the banks can get money from their depositors at zero return or from checking accounts or 5.25% from savings accounts. They have to go out into the market and slug it out like everyone else. The last thing that we would want is to have an unhealthy institutional structure in this country. Because it is one of the institutions that has made this country very productive.

So in conclusion I would strongly recommend that you let the market work. Have confidence in the market and do not impose artificial ceilings because the costs are very, very high and they are also very inequitable.

BEFORE THE SENATE BUSINESS AND INDUSTRY COMMITTEE

HOUSE BILL 239

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE. MY NAME IS BRUCE SIMON. I AM FROM BILLINGS, MONTANA WHERE MY BROTHER AND I OWN AND OPERATE COLE'S DEPARTMENT STORE.

I AM A RETAILER, BY CHOICE AND HAVE HAD TO ENTER THE AREA OF FINANCING THE SALES I MAKE IN ORDER TO COMPETE WITH THE LARGER STORES THAT HAVE HAD REVOLVING CHARGE ACCOUNTS FOR YEARS.

IT TAKES A LOT OF CAPITAL TO MAINTAIN ADEQUATE STOCK AND INVENTORY IN ANY RETAIL OUTLET. I HAVE A LOT OF ADDITIONAL CAPITAL TIED UP IN FURNITURE, FIXTURES, EQUIPMENT, ETC..
IT TAKES SO MUCH MONEY TO MANAGE THE BASIC NEEDS OF OUR BUSINESS AND WE MUST ALSO HAVE ACCESS TO ADDITIONAL MONEY THAT WE CAN BORROW FROM TIME TO TIME. SINCE WE HAVE BEEN FORCED INTO THE FINANCING OF A LARGE PERCENTAGE OF OUR SALES, THE AMOUNT OF MONEY THAT WE MUST BORROW HAS INCREASED MARKEDLY.

IN ALL BUSINESSES WHERE BORROWED MONEY IS USED TO FINANCE THE OPERATION, THE BASIC IDEA IS TO GET A LARGER RETURN FROM THE MONEY THAN WE ARE REQUIRED TO PAY FOR ITS USE. THIS IS BECOMING MORE AND MORE DIFFICULT, IF NOT IMPOSSIBLE.

IF HOUSE BILL 239 IS ALLOWED TO GO THROUGH COMMITTEE, TO THE SENATE FLOOR AND IS PASSED TO BECOME LAW WITHOUT BEING AMENDED TO RESTORE IT TO THE WAY IT WAS WHEN DRAFTED AND INTRODUCED (INCLUDING RETAILERS WITHIN THE PROVISIONS TO REMOVE INTEREST RATE CEILINGS) WE WILL BE, BY LAW, PLACED

IN A POSITION WHERE WE WILL NO LONGER BE ABLE TO BE COMPETITIVE. WE WILL HAVE TO STOP FINANCING ANY OF OUR SALES. WE WILL FIND IT ALMOST IMPOSSIBLE TO BORROW THE NECESSARY MONEY. WE WILL LOSE SALES VOLUME, PROFIT AND WILL PROBABLY, IN TIME, BE FORCED TO CLOSE OUR DOORS ELIMINATING ONE MORE MONTANA OWNED BUSINESS WHERE MONTANANS CAN TRUELY "SHOP AT HOME". THE VOID LEFT BY OUR CLOSURE WILL BE QUICKLY FILLED BY EXPANSION OR NEW LOCATION OF ONE OF THE MAJOR CHAIN STORES THROUGH WHICH MONEY THAT SHOULD STAY IN MONTANA AND BE CONTINUALLY CIRCULATED TO IMPROVE OUR ECONOMY WILL BE TRANSFERRED OUT-OF-STATE.

THESE LARGE CHAINS WILL BE HURT TOO, BUT NOT TO THE EXTENT THAT MONTANA BUSINESSES WILL. THEY HAVE A MUCH GREATER BORROWING POWER. MORE AREAS OF ALTERNATEIVE FINANCING AND DIVERSIFICATION TO SUPPORT OR SUBSIDIZE ANY LOSSES IN THEIR CONSUMER CREDIT OPERATIONS.

I CAN SEE THE REASONING BEHIND THE AMENDMENT THAT REMOVED US AS RETAILERS FROM EQUAL TREATMENT UNDER HOUSE BILL 239. HOWEVER, I ALSO KNOW THAT NO AMOUNT OF PROTECTION CAN STOP A CONSUMER FROM GETTING INTO DEBT OVER HIS HEAD IF HE IS SO INCLINED. WHEN A PERSON IS AN IMPULSIVE BUYER OR BUYS IN THE "HEAT OF PASSION" NO DISCLOSURE OF ANY TYPE IN ANY AMOUNT IS GOING TO DISSUADE HIM. THAT TYPE OF PERSON BUYS IF THERE IS ANY POSSIBLE WAY HE CAN BUY NOW AND WILL NOT WORRY ABOUT ANY PAYMENTS TO THE ABILITY OF LACK OF ABILITY TO MAKE THEM UNTIL THEY BECOME DUE. HE ALWAYS LIVES ON THE DREAM THAT SOMETHING MIGHT HAPPEN BETWEEN NOW AND THEN THAT WILL PUT HIM ON EASY STREET. HE ALWAYS LIVES WITH, NOT ONLY THE HOPE, BUT THE BELIEF THAT TOMORROW HIS SHIP WILL COME IN.

THE MAJOR CHAINS WILL STILL FIND A WAY TO MAKE BUYING ON CREDIT AVAILABLE TO THEIR CUSTOMERS.

JUST THE OTHER DAY AN ARTICLE IN ONE OF THE LEADING TRADE PAPERS QUOTED THE CHAIRMAN OF THE BOARD OF SEARS ROEBUCK AND COMPANY AS TELLING ABOUT SEARS SALES FIGURES, THE FACT THAT THEY OWN AND OPERATE THEIR OWN INSURANCE COMPANY, THAT THEY OWN THEIR OWN FINANCE COMPANY, AND THAT THEY WERE AND ARE LOOKING AT FURTHER DIVERSIFICATION AND THEN QUOTED HIM AGAIN WITH WORDS TO THE EFFECT THAT SOMEDAY SOON YOU MIGHT BE ABLE TO FINANCE YOUR HOME OR WRITE YOUR CHECKS ON A SEARS ROEBUCK AND COMPANY BANK AND TRUST COMPANY. IF THIS SHOULD COME TO PASS AND SEARS SHOULD HAVE THEIR OWN BANK, LETS SAY IN A STATE WITH NO INTEREST RATE CEILINGS, THEY COULD ISSUE THEIR OWN SEARS BANK CREDIT CARDS AND BE FREE TO CHARGE WHATEVER INTEREST RATES THEY WANT TO IN MONTANA WITH COMPLETE AND UTTER DISREGARD TO THIS OR ANY OTHER MONTANA LAW.

THE AMENDMENT CURRENTLY RESTRICTING HOUSE BILL 239 TO EXCLUDE RETAILERS OPEN-END CREDIT PROGRAMS FROM ITS PROVISIONS MIGHT PUT A DENT IN THE BIG BOYS, BUT IT COULD VERY WELL BE FATAL TO MONTANA'S OWN BUSINESSES.

WHY ALLOW AN AMENDMENT THAT WOULD NOT HAVE ANY EFFECT ON BANK CREDIT CARDS ISSUED BY BANKS CHARTERED OUT-OF-STATE, THAT WOULD HARDLY EVEN BE NOTICED BY THE LARGE CHAINS, AND THAT WOULD IRREPARABLY DAMAGE MONTANA'S OWN BUSINESSES?

IF WE DO ALLOW A CUSTOMER TO GET IN OVER HIS HEAD, NOT ONLY DOES THE CUSTOMER SUFFER, BUT WE DO TOO. WE CAN'T AFFORD TO WRITE OFF UNCOLLECTABLE ACCOUNTS. WE CAN'T EVEN AFFORD TO PAY A COLLECTION AGENCY TO MAKE SUCH COLLECTIONS BECAUSE EVEN IF THEY ARE SUCCESSFUL WE STILL LOSE MONEY. WE ARE HERE IN

MONTANA, USUALLY RIGHT IN THE CUSTOMERS HOME TOWN. WHEN A CUSTOMER TALKS TO US, HE ISN'T DEALING WITH A COMPUTER OR JUST AN UNKNOWING, UNFEELING VOICE ON THE OTHER END OF A LONG-DISTANCE TELEPHONE CALL, WE ARE HERE TO STAY, WITH YOUR HELP, WHERE WE WILL FACE THAT CUSTOMER AND HIS FRIENDS EVERY DAY, AT OUR PLACES OF BUSINESS, IN OUR CHURCHES, AND MANY TIMES IN OUR HOMES.

WE CAN NOT AND WILL NOT TAKE UNFAIR ADVANTAGE OF OUR FRIENDS, NEIGHBORS AND CUSTOMERS. WE SPEND A LOT OF MONEY ON CREDIT REPORTS, ETC. TO BE SURE THAT NEITHER THE CUSTOMER OR OURSELVES WILL EVER BE SORRY THAT WE DID BUSINESS TOGETHER.

I APPEAR HERE TODAY TO URGE THIS COMMITTEE, MR. CHAIRMAN, TO AMEND HOUSE BILL 239 BACK TO ITS ORIGINAL INTENT SO IT WILL PROVIDE EQUAL OPPORTUNITY FOR THE RETAILER IN THE OPEN COMPETITIVE MARKETPLACE, AND THEN TO GIVE IT A DO PASS TO THE SENATE BODY AS A WHOLE.

BEFORE THE SENATE BUSINESS AND INDUSTRY COMMITTEE

IN SUPPORT OF - - -HOUSE BILL 239- - - WITH AMENDMENT

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE. FOR THE RECORD, MY NAME IS LOIS TOPLARSKI, I LIVE IN BUTTE, MONTANA WHERE MY HUSBAND AND I OWN AND OPERATE THE LENZ CARD AND GIFT SHOP.

I AM HAPPY TO BE ABLE TO SAY THAT IN OUR TYPE OF BUSINESS THERE IS NOT MUCH CALL FOR CREDIT AND WE DO NOT OFFER CREDIT TO OUR CUSTOMERS.

I AM NOT HERE TODAY TO TELL YOU ALL OF THE WOES OF THOSE RETAILERS WHO DO HAVE TO OFFER OR EXTEND CREDIT TO THEIR CUSTOMERS TO BE COMPETITIVE. YOU HAVE HEARD THE FACTS OF THAT TYPE SITUATION ANYWAY.

I AM HERE TO READ AND PRESENT TO EACH OF YOU A COPY OF A MONTANA RETAIL ASSOCIATION REPORT "MONTANA CONSUMER CREDIT AND INTEREST RATE CEILINGS".

PLEASE REMEMBER THAT THIS REPORT WAS COMPLETED PRIOR TO OUR HAVING ANY IDEA THAT RETAILERS WOULD HAVE ANY CHANCE OF BEING EXCLUDED FROM THE PROVISIONS OF HOUSE BILL 239 BY AMENDMENT.

I ASK YOU TO GIVE THIS REPORT AND THE TESTIMONY YOU HAVE HEARD JUST PREVIOUS TO THIS REPORT YOUR SERIOUS CONSIDERATION AND ATTENTION. AMENDMENT OF HOUSE BILL 239 TO INCLUDE RETAIL CREDIT ACCOUNTS IS NOT ONLY IMPORTANT TO RETAILERS THAT EXTEND THAT CREDIT, TO RETAILERS IN GENERAL, BUT TO THE CITIZENS AND THE ECONOMY OF MONTANA AS WELL. IT WILL HELP TO CREATE THAT "GOOD BUSINESS CLIMATE" WE ALL KNOW IS NEEDED AND THAT SO MANY

PEOPLE TALK ABOUT.

WE ALL TEND TO KEEP LOOKING FOR A "QUICK FIX" FOR THIS MOST COMPLICATED PROBLEM. THERE IS NO ONE THING WE CAN DO TO CREATE THAT "GOOD BUSINESS CLIMATE", BUT THERE IS ONE THING WE CAN DO THAT WILL BE A BIG STEP IN THE DIRECTION OF CREATION OF A FAVORABLE CLIMATE FOR BUSINESS IN MONTANA, AND THAT IS THE AMENDMENT OF HOUSE BILL 239, SO THAT IT WILL INCLUDE RETAILERS WITHIN ITS PROVISIONS AND THEN PASSING IT ON TO THE SEANTE AS A WHOLE WITH A "DO PASS" RECOMMENDATION.

MONTANA RETAIL ASSOCIATION

REPORT: MONTANA CONSUMER CREDIT AND INTEREST RATE CEILINGS

JANUARY 1, 1981

A HEALTHY RETAILING INDUSTRY PROMOTES A HEALTHY MONTANA ECONOMY

Retailing is a vital part of Montana's economic well being. Consider the following:

* Retailing, as the state's second largest employer, employs approximately 57,000 people and annually pays more than $500 million in salaries. We are prime employers of unskilled workers and we provide the major first level entry jobs for youth.
* Retailing has annual sales in Montana of over $3 billion, from which millions are paid in income, property and corporate taxes.
* Shopping centers contribute substantially to the area's economic and tax base. Retail facilities create non-retail forms of employment (construction, maintenance, security, advertising, transportation, printing and other services).

REALISTIC CREDIT RATES WILL KEEP THE STATE COMPETITIVE

Montana competes with every other state in attracting and maintaining investment capital.

* Credit rate ceilings which result in credit operation losses are a disincentive to business expansion, forcing companies to look to states with more favorable laws. Operating losses threaten the existance of marginal stores and discourage the location of new facilities which might be only marginally profitable in their early years.

* Lack of business expansion in Montana will adversely affect jobs and taxes.
* Business diversions to neighboring states will jeopardize existing Montana businesses which must compete with those in neighboring states.
* Retailers establishing or expanding in Montana are not offering new credit plans, where new in-house credit plans would normally strengthen merchandising policies and growth opportunities.

EXISTING RATES DO NOT COVER THE COST OF EXTENDING RETAIL CREDIT

Retailer's costs of providing credit include a variety of expenses for the extension, maintenance and collection of credit accounts. In addition, like their customers, retailers must pay to borrow money, in this case to finance credit account balances.

* In 1972, one year after Montana set interest rate ceilings at 18%, retail creditors participated in a major Cost of Credit Study. They represented typical small, medium and large merchants offering credit. NOT ONE recovered their 1972 cost of extending credit charging a rate of 18%. Losses as a percent of credit sales ranged as follows:

Store Type			
Chains	Public	Private	Combined
2.49%	4.42%	6.00%	3.71%

For example, a chain store with $10 million in credit sales would have a credit operating deficit of $249,000.

* Costs have risen sharply since adoption of Montana's rate ceiling in 1971. Comparisons of some are:

	1971	1981	Percent Increase
Postage	$.08	$.15	87.5%
Minimum Wage	$1.60	$3.35	109.4%
Soc. Security Tax	5.20%	6.65%	27.9%
Wage Base	$9,000	$29,700	230%
Prime Rate (Approx.)	5.2%	21.5+ %	313.5%

* Payroll, postage and cost of capital make up the bulk of a creditor's total expenses in the extension of credit. In 1971, these costs represented the following percentages of total expense:

	Store Type			
Expense Category	Chain	Public	Private	All Stores
Payroll costs (incl. S.S. taxes)	33%	16%	30%	22%
Postage	4%	4%	4%	4%
Cost of Capital	41%	51%	44%	49%
% total of these expenses	78%	65%	78%	75%

Since the 1971 survey, these expenses have doubled, while credit rate ceilings have remained unchanged.

CREDIT RATE CEILINGS DO NOT PROTECT CONSUMERS

* Normally credit-worthy consumers who represent marginal risks are now denied credit. This prevents consumers from establishing or rehabilitating their line of credit with Montana creditors. Unfortunately, the majority of these consumers have low incomes and often are young adults or the elderly.

* Increased pressure by merchants and banks to minimize outstanding delinquencies result in earlier attorney collection activity and add to the number of judgements and bankruptcies. Such reports reflect adversely on consumer credit histories.

* Credit operating deficits and high fees charged by financing agents to merchants who no longer offer or administer their own credit plans significantly distort cash prices. Consequently, cash customers might pay for a service they do not receive. This would be particularly unfair to consumers who were denied credit or elected not to use that service.

* Current rate ceilings became less meaningful as some creditors charged rates in excess of those allowed to other creditors. For example, a bank in a state with a higher rate or no rate ceiling can charge a Montana consumer a higher rate than a Montana creditor could for the same form of credit.

IMPACT OF CURRENT CONDITIONS ON RETAILERS

Finance charge ceilings seriously affect the current and future viability of the retail community.

* Small retailers once offered their own credit plans as a merchandising tool which provided a useful service to their customers. Most have now abandoned their own credit plans and are dependent on financing agents (bankcards and others) to provide the credit service vital to their business. Having abandoned their plans, a large segment of their business is dictated not by their own merchandising strategies but the lending community's policies.

* Charges by financing agents are already at levels that jeopardize the financial ability of small retailers to remain in business.
* Failure on the part of the Montana lending community to continue serving the needs of Montana retailers will result in intervention by out-of-state lenders who need not comply with Montana limitations. This will detrimentally affect relations between retailers and their Montana sources of credit for other needs such as inventory and business loans.
* Artificially low finance charge ceilings, combined with relatively high rates of return on savings and investments, encourages misuse of retail credit. Under present conditions, a consumer with a savings certificate or money market account of $1500 has no incentive to repay from his savings a credit obligation in the same amount. Thus, the retailer's credit resources are tied up financing purchases that would normally not be financed.

COMPARISON WITH OTHER STATES

* Unregulated rates have long been in effect in other states and are being adopted elsewhere. Three states, Kentucky, New Hampshire and Oregon, have long histories of unregulated finance charges. Arizona and New York have recently done away with their statutory rate ceilings.

* The absence of rate ceilings have not resulted in exhorbitant finance charges. For example, in New Hampshire, the bulk of retailers are still under 19.5% for rates on consumer credit. The explanation for this is simple. Each retailer attempts to remain competitive with other stores in its market, using credit rates to efficiently and equitably allocate the cost of doing business.

CONSUMERS SUFFER WHEN COMPETITION DIMINISHES

* Rate ceilings destroy competition. Lack of competition does not protect consumers - it hurts them. In Montana, retailers are restricted to a rate that is lower than the actual cost of extending credit. This forces retailers to not extend credit to otherwise credit-worthy borrowers. Some of these people borrow elsewhere at higher rates.

* Rate ceilings fixed at unrealistically low levels preclude competition among creditors, forcing them all to charge the maximum permissible amount. Thus, there is no opportunity for consumer savings from differing, competing plans.

* An unregulated market which encouraged competition would insure that household goods could be brought on credit at the best possible rate, not on the only terms available.

SUMMARY

* Rate ceilings have become inappropriate and impractical in today's rapidly changing credit market. Legislatures can no longer keep up with the frequent fluctuations and unfortunately cannot control them. It would be in the best interest of all to decontrol credit rates and allow natural competitive forces to be restored to the marketplace.

* Statutory credit rate ceilings hurt the state's economy by making retailing a less attractive investment in Montana than in other neighboring states. They hurt consumers by forcing credit grantors to more selectively extend credit and shift the cost of credit into non-credit operations. Higher risk applicants - to whom credit is a necessity rather than a luxury - are denied credit when the statutory rate is too low to cover the risk. Customers paying with cash must subsidize credit customers by paying higher prices charged to cover credit losses.

BEFORE THE SENATE BUSINESS AND INDUSTRY COMMITTEE

IN SUPPORT OF - - - HOUSE BILL 239 - - - WITH AMENDMENT

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE. MY NAME IS MIKE DEMARCO. I AM THE COMPTROLLER FOR KAYFMANS MENSWEAR OF MONTANA.

I APPEAR HERE TODAY IN SUPPORT OF HOUSE BILL 239 WITH AMENDMENT TO INCLUDE RETAIL CONSUMER CREDIT ACCOUNTS THAT ARE COMMONLY REFERED TO AS "REVOLVING CHARGE ACCOUNTS" AND/OR "OPEN-END ACCOUNTS".

AN ARTICLE IN THE F-BRUARY 4, 1981 EDITION OF THE HELENA INDEPENDENT RECORD IS ATTACHED AS EXHIBIT "A". AS YOU WILL NOTE, IT STATES, "THE SWEEPING ELIMINATION OF STATE USURY LAWS DOES NOT APPLY TO REVOLVING CHARGE ACCOUNTS, INCLUDING CREDIT CARDS,". IT FURTHER QUOTES REPRESENTATIVE FABREGA, "FEDERAL TRUTH-IN-LENDING DISCLOSURE REQUIREMENTS INCLUDE SUFFICIENT SAFEGUARDS TO MAKE BORROWERS AWARE OF INTEREST COSTS, HE ARGUED, ADDING THAT WHERE PRECISE DOLLAR DISCLOSURES ARE NOT WELL KNOWN TO CONSUMERS - SUCH AS WITH CREDIT CARDS AND RETAIL REVOLVING CHARGE ACCOUNTS - THE OLD INTEREST LIMITATIONS WILL REMAIN."

THE AMENDMENT THAT EXCLUDES CREDIT CARDS AND RETAIL REVOLVING CHARGE ACCOUNTS FROM THE PROVISIONS UNDER THIS BILL WAS WELL INTENDED. IT WAS PURPORTEDLY GOING TO ELIMINATE POTENTIAL ABUSES BY CREDIT CARD COMPANIES AND THOSE PROVIDERS OF CONSUMER CREDIT THAT USE OPEN-END REVOLVING CHARGE PLANS.

As we are now aware, the credit card companies can not be limited by State Legislation because of federal pre-emption. It might be argued that the limited protection that this amendment might provide consumer credit purchasers in Montana off-sets the damages it will do to local established and legitimate Montana owned and operated retail establishments. However, as we can now see, the protection it might provide against abuses by out-of-state interests, is very limited, almost to the point of being non-existant. Further, we now can see that even if such limited protection against these out-of-state interests could be strengthened enough to be a deterrent, they would, if they could not find any other way around the law, just eliminate their own in-house programs and resort back to the credit cards (like K-Mart has) and we would be faced with even greater abuses than before.

I am attaching as exhibit "B" a copy of an article copied from the Retail Prophet, that shows the new requirements for disclosure under federal Truth-in-Lending, that we, the retailers, do not feel are sufficient protection for the credit customer as evidenced by our proposed amendment that would preclude the charging of new increased interest rates on existing balances owed.

We are not in business to rip-off the consumer. They are our customers and they provide us with our livelyhood.

Why in a fruitless attempt to control out-of-state entities, should you stand by and watch Montana's own businesses suffer nedlessly.

Please amend and then pass House Bill 239.

To establish national uniformity, the Federal Reserve Board recently issued new rules regarding notice requirements that cover any change in open-end (revolving) credit plan terms.

Prior to these regulations, rules that governed account term changes varied from state to state.

The new rules apply to all open-end creditors who change terms of their revolving credit plans after March 14, 1981, pre-empt any state law or private contract provisions and modify the notice requirements of Regulation Z of the federal "Truth in Lending" Act.

Under the new rules, any open-end creditor who after March 14, 1981, (1) Imposes or increases any finance or other charge, (2) changes the method of computing the balance upon which the charges are imposed or (3) increases the minimum periodic payment must meet two conditions:

The creditor must mail or deliver a written notice of the change in terms to each open-end account at least 30 days before the effective date of change. (The notice must be on a single document and sent to each account holder, although only one notice is required for each joint account.)

The creditor must permit each account to pay the outstanding balance under the existing account terms, or accept the new terms on both the existing and new balances by use of the account on or after the effective date of the change.

The Federal Reserve suggests language for the notice, and the use of it would insulate a business from any future charge of non-compliance.

It reads as follows: WARNING: Continued use of your account on or after (effective date of change) will result in stricter terms. You have TWO OPTIONS:

(1) You may stop making charges on your account before (effective date of change) and pay off under the existing terms described in this notice all or any part of what you owe us on that date. You may continue to use your account on or after that date, but if you do so, the new terms will apply as explained in option (2) below. OR

(2) You may make charges on your account on or after (effective date of change), in which case the new terms described in this notice will apply to what you then owe us and to future charges.

Montana Retail Association

Executive Office
P.O. Box 440
34 West Sixth
Helena, MT 59624
Phone (406) 442-3388

The Independent Record, Helena, Mont., Wednesday, February 4, 1981—1B

House would dump usury laws

By GARRY J. MOES
Associated Press Writer

All interest limitations on loans from regulated financial institutions and on retail installment contracts would be wiped out under a bill overwhelmingly endorsed by the Montana House Tuesday.

The sweeping elimination of state usury laws does not apply to revolving charge accounts, including credit cards, or to unregulated commercial small loan companies. It does apply to loans from banks, credit unions, savings and loan associations, government-sponsored lending agencies and retail establishments extending non-revolving credit.

Rep. Jay Fabrega, R-Great Falls, sponsor of both measures, said ceilings on interest have tended to make credit virtually unavailable in certain areas of the economy. He said interest limits on auto loans, for example, were largely responsible for poor car sales and the fact that some 30 Montana dealers went out of business in recent months.

Fabrega said the time is ripe for allowing the competitive marketplace to control interest rates.

Federal truth-in-lending disclosure requirements include sufficient safeguards to make borrowers aware of interest costs, he argued, adding that where precise dollar disclosures are not well known to consumers — such as with credit cards and retail revolving accounts — the old interest limitations will remain.

The two bills sailed through their first votes in the House with little or no debate. One more House vote is needed on each bill, HB238 and HB239, before they go to the Senate.

Meanwhile, labor won another victory in the conservative House Tuesday when members voted 55-41 to kill a bill to deny unemployment benefits to non-professional school personnel during summer vacation months.

Opponents said the bill would unfairly discriminate against a segment of the working population which is already poorly paid, some being retirees making as little as $4,000 a year. They said the bill would simply force such workers as janitors, bus drivers, lunch workers and secretaries onto welfare during non-school periods.

Backers of the bill argued that unemployment benefit payments are merely subsidizing summer vacations for these school employees. They said there have been many abuses of the present system, and school districts which must pay for jobless insurance are being victimized.

The bill not have covered such employees who work under written contracts.

The House killed, without discussion, a proposed constitutional amendment which would have limited the number of initiatives which could appear on the ballot.

The bill was sponsored by Rep. Joe Kanduch, D-Anaconda.

BEFORE THE SENATE BUSINESS AND INDUSTRY COMMITTEE

IN SUPPORT OF HOUSE BILL 239 WITH AMENDMENT

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE, FOR THE RECORD MY NAME IS JACK WHIPPLE. I AM THE MANAGER OF THE CHAMBERS-FISHER DEPARTMENT STORE IN BOZEMAN, MONTANA AND WE DO HAVE OUR OWN INTERNAL CONSUMER CREDIT DEPARTMENT.

I WAS VERY INTERESTED AND DELIGHTED WHEN I FOUND THAT HOUSE BILL 239 WAS DRAFTED AND INTRODUCED. I UNDERSTOOD THAT THERE WAS A MUTUAL AGREEMENT OF ALL OF THE COMPONENTS CONCERNED THAT THE TOTALITY WOULD SUPPORT HOUSE BILL 238 & 239 AS AN ANSWER TO MUTUAL CONCERNS.

I WAS LET-DOWN WHEN I READ OF THE AMENDMENT THAT WAS MADE TO HOUSE BILL 239 AND EVEN MORE FLABBERGASTED WHEN I READ OF THE CONCERNS AND/OR REASON THAT SUCH AMENDMENT WAS MADE.

NOT ONLY, HAS SUCH AMENDMENT PLACED THE RETAILER IN A MOST DISADVANTAGEOUS POSITION IN THE MERKETPLACE, IT IS ALSO DISCRIMINATING IN SUCH A WAY THAT IF INDUSTRY ITSELF TOOK ANY ACTIONS OF SIMILAR CONSEQUENCE, THE FEDERAL GOVERNMENT WOULD BE INVESTIGATING AND TAKING LEGAL ACTIONS THROUGH THE FEDERAL TRADE COMMISSION TO PROHIBIT ITS ENFORCEMENT AND CONTINUATION.

THE AMENDMENT WAS SUPOSEDLY MADE TO PROTECT MONTANA CITIZENS AGAINST OUT-OF-STATE CREDIT CARD COMPANIES THAT WOULD TEND TO TAKE ADVANTAGE OF THE SITUATION FOR SELF-ENRICHMENT AT THE COST OF THE CONSUMER.

ATTACHED HERETO, YOU WILL FIND A COPY OF AN ARTICLE FROM

THE LOS ANGELES TIMES, DATED DECEMBER 19, 1978, THAT BACKS UP THE STATEMENT THAT MONTANA CAN NOT CONTROL THE RATES OR AMOUNTS CHARGED BY OUT-OF-STATE CREDIT CARD ISSUERS, DUE, IN PART, TO A UNITED STATES SUPREME COURT DECISION, ISSUED OVER TWO YEARS AGO AND STILL IN FULL FORCE AND EFFECT.

I AM SURE THAT THE INTENTIONS BEHIND SUCH AMENDMENT WERE HONORABLE AND THOUGHT TO BE IN THE BEST INTERESTS OF THE CITIZENS OF MONTANA, BUT, AS YOU CAN SEE, THE ACTUAL EFFECT IS QUITE THE OPPOSITE.

IF ANY ENTITY OR PART OF THE CONSUMER CREDIT GRANTING INDUSTRY IS INTENT ON TAKING ADVANTAGE OF THEIR CARD HOLDERS THEY WILL FIND A LOOP-HOLE OR OTHER WAY TO DO SO REGARDLESS OF WELL INTENTIONED ATTEMPTS AT PROHIBITION. THIS IS CONFIRMED BY THE ATTACHED ARTICLE FROM THE WALL STREET JOURNAL DATED FEBRUARY 4, 1981, WHEREIN YOU WILL NOTE THAT SUCH CIRCUMVENTION HAS OCCURED BEFORE AND IS STILL IN PROCESS NOW.

I STRONGLY SUGGEST AND REQUEST THAT THIS COMMITTEE LOOK VERY CLOSLY AT HOUSE BILL 239 AS IT WAS DRAFTED AND INTRODUCED, LOOK BEYOND THE TECHNICAL LANGUAGE AND TO THE INTENT THEREIN, LOOK AT THE AMENDMENT MADE AND THE TRUE EFFECT IT HAS, AND THEN TAKE THE NECESSARY ACTION TO REPEAL THE EFFECT OF THAT AMENDMENT AND BY SO DOING, TREAT THE RETAILING SEGMENT WITH THE FAIRNESS AND RESPECT IT DESERVES.

THE BEST, AND POSSIBLY ONLY, WAY TO COMBAT ANY ADVERSE ACTIONS BY THE OUT-OF-STATE CREDIT CARD ISSUERS, IS TO ALLOW LOCAL LEGITMENT MONTANA BUSINESS TO COMPETE ON EQUAL FOOTING AND BY SUCH COMPETITION MAKE ALL OUTSIDERS TREAT MONTANANS WITH THE SAME DIGNITY AND RESPECT THAT THEY ARE TREATED BY

THOSE OF US THAT HAVE EARNED THEIR RESPECT BY YEARS OF FAIR AND SQUARE DEALINGS AND THEREBY HAVE BEEN REWARDED FINANCIALLY BY THEM AND THEIR CONTINUED SUPPORT.

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE, I ASK YOU TO AMEND HOUSE BILL 239 AS REQUESTED AND MOVE IT TO THE SENATE FLOOR WITH A UNANIMOUS "DO PASS" RECOMMENDATION.

THANKING YOU FOR YOUR TIME AND ATTENTION,

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Delaware Tries to Lure Out-of-State Banks With Bill to Offer Regulatory, Tax Haven

By JOHN HELYAR
And JULIE SALAMON
Staff Reporters of THE WALL STREET JOURNAL

Delaware is poised to join South Dakota in the ranks of the nation's unlikely banking centers.

The Delaware Senate passed a bill last night that would, among other things, give income tax breaks to banks earning more than $20 million a year. That, in turn, is expected to attract subsidiaries of money-center banks unhappy with their regulatory and tax treatment elsewhere.

Two New York bank-holding companies, J. P. Morgan & Co. and Chase Manhattan Corp., will be first in line, with Morgan set to transfer some of its commercial banking operations and Chase planning to move some of its credit-card operations, an aide to Delaware Gov. Pierre DuPont said.

Part of Delaware's Financial Center Development Act was modeled on South Dakota legislation, which resulted in Citicorp planning to move its credit-card operations to South Dakota from New York. Like South Dakota, Delaware wants to eliminate interest rate ceilings and allow banks to charge fees on credit cards.

More important, however, is the proposed income tax structure, which would mean that the bigger the profit the smaller the levy. Banks earning less than $20 million a year on their Delaware operations would pay an 8.7% tax. That percentage would be scaled down to the point where banks making more than $30 million would pay 2.7%.

Delaware would become, says secretary of community affairs and economic development Nathan Hayward III, "the Luxembourg of the U.S. for banking and financing."

The state's General Assembly apparently shares his enthusiasm. The bill was introduced Jan. 14 in the House of Representatives and was passed 33-3 on Jan. 22.

Last night, after an eight-hour debate, the bill was voted by the Senate, 14-7, and sent to Gov. DuPont, who is expected to sign it. The outcome was never really in doubt, because the bill had 13 Senate cosponsors.

Focus on Jobs

Their big interest is jobs. Morgan and Chase Manhattan are expected to generate 360 jobs by the end of next year, and that's a healthy number in economically troubled Delaware. Plenty more jobs—from them and other institutions—could be in the offing.

When contrasted with New York's tax rate, the big banks' keen interest is understandable, too. New York City banks pay local taxes at a 13.8% rate and state taxes at 12%. "That's why your friendly bankers are annoyed," says John Morris, a vice president at Morgan Guaranty Trust Co., J. P. Morgan's chief subsidiary.

Morgan and Chase Manhattan weren't just interested bystanders in the Delaware legislation, however. They helped design it, beginning last June in meetings with the DuPont administration. What little opposition there is stems in part from suspicion of this cooperative approach. "Are New York bankers dictating Delaware law now?" asks Sen. David B. McBride, a suburban Wilmington Democrat.

He was planning to offer at least a dozen amendments to modify the legislation. He doesn't expect to get his way, but he would like some more debate on "whether we're opening up some kind of Pandora's box."

So would fellow Democratic Sen. Thomas B. Sharp, the senate majority leader who's willing to stretch debate long into the evening by going over the 50-plus pages of legislation "line by line, page by page."

"This is a very complex bill, and we only got it a week ago," Sen. Sharp notes. "My concern is what this is doing to the small consumer—what it means for mortgages and credit. There hasn't been time enough to learn its intricacies."

The concern of some state and federal banking authorities is that this could be the start of full-scale tax war between states.

"I hope we don't get into a situation where everyone tries to steal each other's employes," says Muriel Siebert, New York State superintendent of banking. The New York Federal Reserve Bank's president, Anthony M. Solomon, urged bankers last week to think twice before succumbing to the lure of Delaware or other seeming havens. "The large New York money-center banks must surely appreciate that they draw their basic strength from being active participants in this market," he said.

Even consumer activist Ralph Nader has jumped into the fray, in a letter to the Delaware senate president pro tempore, Sen. Richard S. Cordrey. Warned Mr. Nader: "At a time when it is critical for many of the nation's older central cities to make large-scale social and economic infrastructure investments, it would be unwise to trigger bank-tax-reduction war between the states."

Nonsense, sniffs Delaware Gov. DuPont. "America has been built on a competitive system, and I think this is an acceptable form of competition," he says. The governor is out to diversify the state's economy, which has long been tied to the chemical industry's swings. Luring banks is logical, according to the patrician Republican: "It's a growth industry, it's nonpolluting, and it pays good wages."

Besides, notes Gov. DuPont, the new Delaware banking rules are aimed only at a limited number of players. Under the House-passed version, incoming banks must commit themselves to having $25 million capital and at least 100 employes by the end of their first year. That restricts the field pretty much to large banks (which aren't meant by this legislation to get into retail competition with the Delaware banks).

Jerseyans Watch Delaware

Nonetheless, some smaller banks also have a keen eye out for the senate's action. "We have a distinct interest in Delaware," concedes James D. Lowry, chairman of Bancshares of New Jersey. The income tax break could provide healthy working conditions for the investment and investment advisory services of this $1 billion-assets bank holding company. But, notes Mr. Lowry, unless the law is amended to allow lower capital levels, the Moorestown, N.J., institution would have to set up shop in conjunction with other banks, pooling resources.

First Maryland Bancorp., Maryland's second largest bank holding company, also may be interested in Delaware. The Maryland senate is likely to approve this week the final reading of a bill that would ban banks from charging credit card membership fees. At a hearing on that bill William Weaver, executive vice president of the Maryland Bankers Association, said First credit-card operations to its northern neigh-credit-cards operations to its northern neighbor. First Maryland officials failed to return phone calls seeking elaboration.

The Philadelphia Federal Reserve Bank hasn't received any applications or had any questions from area banks seeking a beachhead in Delaware, says Thomas K. Desch, bank supervision vice president. But then, he adds, the region's banks may be less concerned with moving operations than with pressing their state legislators for breaks similar to Delaware's.

V. W. JONES

12-19-78

Los Angeles Times Tues., Dec. 19, 1978—Part III 13

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Federal Banks Win Key Test on Usury Law

Homes State Rates on Credit Cards Apply Elsewhere, Court Rules

BY JIM MANN
Times Staff Writer

WASHINGTON—The Supreme Court ruled unanimously Monday that a state has no authority over the interest rates charged credit-card holders by an out-of-state national bank.

The ruling means that a customer of an out-of-state bank may be charged rates of 18% a year or more on the unpaid balances of credit card accounts—even if usury laws within the card-holder's state limit interest rates to a maximum of 12%.

Rejecting protests that a national bank should be forced to obey each individual state's usury laws, the high court decided that federal banking law gives a national bank the right to charge credit card customers whatever interest rate is permitted in the state where it is chartered.

The ruling came in a case in which Minnesota, which limits interest rates to no more than 1% per month, sought to stop the First National Bank of Omaha from charging its BankAmericard customers in Minnesota rates of 1½% per month. The Omaha bank is chartered in Nebraska, whose laws permit the higher rates.

"The protection of state usury laws is an issue of legislative policy, and any plea to alter (federal banking law) to further that end is better addressed to the wisdom of Congress than to the judgment of this court," wrote Justice William J. Brennan Jr.

The decision was a significant victory for the nation's 4,700 national banks. Many have already been charging credit card holders rates that exceed some states' usury laws. But this practice had never been approved by the high court. Recently, the Supreme Court of Iowa had ruled that the practice was illegal.

The National Banking Act of 1864 permits a national bank to charge interest on any loan at whatever rate is allowed in the state where the bank is "located." The justices concluded that no matter how many credit card transactions take place in another state, under the law a bank is still located wherever it is chartered.

Although Minnesota had limited interest rates on credit card accounts to no more than 12% a year, it had also allowed banks in the state to charge $15 a year for the privilege of using a credit card. Nebraska, which permitted interest rate charges of up to 18%, did not allow annual service charges.

The ruling affirmed a decision by the Minnesota Supreme Court [illegible] vs. First of Omaha [illegible]

BEFORE THE SENATE BUSINESS AND INDUSTRY COMMITTEE

IN SUPPORT OF HOUSE BILL 239 WITH AMENDMENT

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE, FOR THE RECORD MY NAME IS GREG ALLEN. I AM THE OWNER AND OPERATOR OF BY GEORGE'S IN HELENA, MONTANA. BY GEORGE'S IS A MENSWEAR STORE WHICH WAS STARTED BY MY FATHER GEORGE ALLEN WHO STILL RUNS SHELIA'S SMART APPERAL, A WOMEN'S WEAR STROE HERE IN HELENA. BOTH OF THE STORES HAVE THEIR OWN REVOLVING CREDIT ACCOUNT PLANS FOR OUR CUSTOMERS.

I AM HERE TODAY IN SUPPORT OF HOUSE BILL 239 AS IT WAS ORIGINALLY INTRODUCED, DRAFTED AND AGREED UPON PRIOR TO THE START OF THIS SESSION.

HOUSE BILL 239 WAS AMENDED IN THE HOUSE BUSINESS AND INDUSTRY COMMITTEE AFTER EXTENSIVE TESTIMONY WAS RECEIVED BY THAT BODY IN HEARING. THERE WAS NO TESTIMONY HEARD THAT URGED OR HINTED AT A NEED TO RESTRICT THIS BILL BY AMENDMENT AS IT WAS.

THE AMENDMENT OF HOUSE BILL 239 AND ITS PASSAGE OUT OF COMMITTEE AND FROM THE HOUSE TO THIS SENATE COMMITTEE, TOGETHER WITH SIMILAR MOVEMENT OF COMPANION LEGISLATION, HAS PLACED THE RETAILER AT A SEVERE DISADVANTAGE IN THE OPEN COMPETITIVE MARKETPLACE. ALL INTEREST RATE CEILINGS HAVE BEEN REMOVED FROM OTHER SEGIMENTS OF THE INDUSTRY AND HAVE LEFT THOSE OF US WITH OPEN-END, CONSUMER CREDIT TO ATTEMPT TO COMPETE WHEN WE ARE STRADDLED WITH AN 18% MAXIMUM INTEREST RATE.

THE AMENDMENT THAT DID THIS TO US WAS OFFERED AND AGREED ON IN EXECUTIVE SESSION BY THAT COMMITTEE WHERE THERE WAS NO MEANS OF REFUTING IT OR EVEN OFFERING ANY RESPONSE OR OTHER

ALTERNATIVES THAT COULD BE CONSIDERED.

THE CONCERN THAT PROMPTED THE AMENDMENT WAS AN HONEST CONCERN AND WAS TWOFOLD,

1) THERE WAS A CONCERN THAT A CUSTOMER WITH A LARGE BALANCE IN THEIR REVOLVING ACCOUNT AT PRESENT, WOULD NOT HAVE SUFFICENT LIQUID ASSETS TO PAY OFF THE ACCOUNT AND THAT THE RETAILER WOULD INCREASE THE INTEREST RATES BURDENING THAT CONSUMER WITH HIGHER MONTHLY PAYMENTS AND INTEREST COSTS. THIS HAS, OF COURSE, BEEN ANSWERED AND THAT CONCERN HAS BEEN ELIMINATED BY THE AMENDMENT YOU JUST HEARD OFFERED TO THIS COMMITTEE BY MR. HANSEN.

2) THERE WAS A CONCERN EXPRESSED THAT THE CONSUMER DOES NOT HAVE THE SAME PROTECTION OFFERED IN OPEN-END CREDIT THAT HE DOES IN CLOSED-END CREDIT, BY THE FEDERAL TRUTH-IN-LENDING DISCLOSURE REQUIREMENT THAT THE DOLLAR AMOUNT OF INTEREST FOR THE ENTIRE TERM OF THE CONTRACT BE DISCLOSED. AS YOU WILL NOTE FROM THE TESTIMONY OF MR. HANSEN AND THE EXHIBITS ATTACHED TO HIS TESTIMONY, RETAILERS WOULD BE MORE THAN HAPPY TO MAKE THIS DISCLOSURE. HOWEVER, WHEN TRUTH-IN-LENDING WAS INITIATED, IT WAS RECOGNISED THAT THE CONSUMER WAS OR WOULD BE MORE INCLINED TO OVER SPEND ON CREDIT WITH SUCH A DISCLOSURE THAN THEY ARE WITHOUT IT. THE PEOPLE WHO INITIATED TRUTH-IN-LENDING FELT THAT SUCH DISCLOSURE WOULD BE "COUNTER PRODUCTIVE" TO THEIR INTENT.

NOW I WOULD LIKE TO EXPLAIN WHY WE NEED TO BE INCLUDED IN HOUSE BILL 239.

IT MIGHT BE TRUE THAT SOMETIME IN THE FUTURE WE WILL INCREASE OUR INTEREST RATES IF ALLOWED TO DO SO. HOWEVER, BE

ASSURED THAT SUCH A MOVE WILL NOT EVEN BE ANTICIPATED UNTIL IT IS ABSOLUTELY NECESSARY. WE DO NOT WANT TO BE IN THE FINANCE BUSINESS IN THE FIRST PLACE, WE DO SO ONLY TO BE COMPETITIVE. TO ARBITRARILY INCREASE INTEREST RATES WOULD MAKE US LOSE ANY COMPETITIVE POSITION WE WOULD HAVE HAD AND WOULD MOST CERTAINLY BE AGAINST OUR OWN BEST INTERESTS.

IT MOST CERTAINLY APPEARS THAT INTEREST RATE CEILINGS WILL BE REMOVED FROM OTHER SEGIMENTS OF OUR INDUSTRY, INCLUDING "REGULATED LENDERS". VERY FEW RETAILERS HAVE SUFFICIENT CAPITAL TO ENTIRELY FINANCE THEIR OWN REVOLVING CHARGES OR OTHER CONSUMER CREDIT PROGRAMS. WE MUST BORROW THE MONEY NECESSARY FROM OTHER LENDERS AND IN MOST CASES FROM THE BANKS WHERE WE DO BUSINESS. INTEREST RATE CEILING REMOVAL WILL ALLOW THE FREE ENTERPRISE SYSTEM TO WORK, AND IT WILL WORK IF ALL SEGIMENTS ARE GIVEN EQUAL ADVANTAGE TO MAKE IT WORK. LOANS WILL BE NEGOIATED AS THEY NEVER HAVE BEFORE IN OUR LIFETIMES. PLACE YOURSELF IN A RETAILERS POSITION WHEN HE GOES IN TO NEGOIATE A LOAN TO HANDLE HIS CONSUMER LOAN BUSINESS. HE IS GOING TO TRY TO CONVINCE THE BANKER TO LEND HIM MONEY THAT HE IS GOING TO USE TO OPERATE HIS CONSUMER CREDIT AND HE CAN ONLY HOPE FOR A MAXIMUM 18% RETURN ON HIS MONEY <u>GROSS</u>. HOW WOULD YOU APPROACH THE PROBLEM OF CONVINCING YOUR BANKER THAT HE SHOULD LEND YOU THE MONEY AND THAT THERE WAS ANY CHANCE THAT YOU WERE GOING TO BE SUCCESSFUL AND BE ABLE TO REPAY HIM WHEN THE TIME CAME AND THE LOAN WAS DUE? WITHOUT BEING STIFFLED BY AN 18% MAXIMUM CEILING WE WOULD AT LEAST BE IN A POSITION TO BE ABLE TO SHOW THAT IF IT BACAME ABSOLUTELY NECESSARY WE COULD ADJUST OUR RATES SO THAT WE COULD RECOVER OUR BARE COSTS. WE WOULD NO LONGER

HAVE TO RELY ON THE COMPLEX ARGUEMENT AND EXPLANATION THAT THE INCREASED SALES WOULD INCREASE OUR VOLUME OF BUSINESS, WOULD INCREASE OUR BUYING POWER, WOULD INCREASE OUR MARKUP AND OUR COMPETIVENESS, WOULD IMPROVE OUR PROFITS, WOULD INCREASE OUR ABILITIES TO REPAY THE LOAN, AND ALL OF THIS BECAUSE HIS LOAN WOULD ALLOW US TO OFFER OUR CUSTOMERS A TIME PAYMENT PURCHASE PLAN AND MAKE US COMPETITIVE WITH OTHER RETAILERS.

MR. CHAIRMAN, MEMBERS OF THIS COMMITTEE FOR ME TO GO ON WOULD BE REDUNDANT AND REPEATING MANY THINGS YOU HAVE ALREADY HEARD AND WILL HEAR AGAIN.

I AM SURE THAT YOU CAN ALL SEE WHY IT WOULD BE UNFAIR TO ALLOW THE RETAIL INDUSTRY TO BE DISCRIMINATED AGAINST AND PRAY THAT YOU WILL AMEND HOUSE BILL 239 AS REQUESTED BY US TODAY AND FORWARD IT TO THE FLOOR OF THE SENATE WITH A UNANIMOUS "DO PASS" RECOMMENDATION.

THANK YOU FOR YOUR TIME AND ATTENTION,

BEFORE THE SENATE BUSINESS AND INDUSTRY COMMITTEE

IN SUPPORT OF - - -House Bill 239- - - WITH AMENDMENT

Mr. Chairman and members of this committee, for the record my name is Lucile Brey. I am the Credit Manager for the Hart-Albin Stores of Montana.

Retailing is not an easy business, to be even moderately successful one must have expertise in many areas, such as: bookeeping, inventory control, purchasing, selling, markups, markdowns, margins, management, personnel, accounting, shipping and receiving, freight rates, taxation, labor relations, etc., etc., etc..

The larger one becomes in business the easier all of those tasks become, because then the business can afford to hire people to assist in some, many, or even each of these areas.

As the business grows so do the opportunities to expand into other areas. Such expansion renews the same growing pains as when the business was smaller (the need for expertise in many new areas) and again growth allows hiring of people with the abilities needed.

It seems like we are always within the area of being to big to stay where we are and to little to be able to afford the help we need.

That is where we, most of the retailers in Montana, find ourselves at this time.

To meet our competition we have had to expand into the areas of offering consumer credit to our customers so that

THEY CAN PURCHASE OUR MERCHANDISE THROUGH TIME PAYMENTS. THIS WAS A NATURAL AND LOGICAL STEP. DUE TO INFLATION AND ALL OTHER ECONOMIC CONDITIONS, IT HAS BECOME MORE AND MORE DIFFICULT FOR OUR CUSTOMERS TO MAKE MAJOR PURCHASES FOR CASH ON DELIVERY.

WE HAVE ENTERED INTO THIS NEW AREA WITHOUT THE ABILITY, AT THIS TIME, TO HIRE THOSE WITH THE EXPERTISE NEEDED TO PROVIDE THE GUIDANCE TO ASSURE SUCCESS. WE ARE ALL FAIRLY NEW AT THIS PART OF THE BUSINESS AND ARE COMPETING WITH THOSE WHO ARE MUCH MORE EXPERIENCED AND FINANCIALLY MUST BETTER TO HANDLE IT THAN WE ARE. HOWEVER, WE HAVE BEEN IN THIS POSITION MANY TIMES BEFORE AND BECAUSE OF THE ADVANTAGES WE HAVE IN BEING HOME OWNED AND OPERATED, THEREBY MUCH CLOSER TO OUR CUSTOMERS, WE HAVE SUCCEDED.

WE HAVE BORROWED ON OUR INVENTORIES, FURNITURE, FIXTURES, EQUIPMENT AND ON OUR GOOD NAMES AND REPUTATIONS, SO THAT WE COULD OBTAIN THE MONEY TO FINANCE OUR CONSUMER CREDIT PROGRAMS.

THOSE THAT WE EXTEND CREDIT TO ARE SCREENED VERY CAREFULLY. WE CAN NOT AFFORD TO ALLOW ANYONE TO GET INTO DEBT SO FAR THAT THEY CAN NOT MAKE THEIR PAYMENTS BECAUSE IF WE DID, WE WOULD NOT ONLY LOSE THE MONEY WE HAVE EXTENDED IN CREDIT, BUT WOULD LOSE THE COST OF AND PROFIT ON THE MERCHANDISE WE SOLD AS WELL AND EVEN MORE THAN THAT WE WOULD LOSE A CUSTOMER.

I WAS BOTHERED WHEN I READ IN THE NEWSPAPERS OF THIS STATE ABOUT THE ACTIONS TAKEN IN THE HOUSE BUSINESS AND INDUSTRY COMMITTEE. THIS ACTION NOT ONLY HURT US AS RETAILERS IN MONTANA BUT HINTED AT IMPROPRIETIES BY MONTANA'S RETAILING COMMUNITY.

WE HAVE NOT AND WOULD NOT TAKE ADVANTAGE OF OUR CUSTOMERS,

IF WE DID WE WOULDN'T CONTINUE TO BE IN BUSINESS LONG ENOUGH TO PULL THE SHADES BEFORE WE HAD TO CLOSE OUR DOORS.

THIS IS NOT NECESSARILY TRUE OF SOME OF THOSE THAT EXTEND CREDIT. AS YOU CAN SEE FROM THE ATTACHED LETTER DIRECTED TO CREDIT CUSTOMERS FROM CITIBANK MASTERCARD, THEY HAVE INCREASED THEIR INTEREST RATES FROM 18% TO 19.8 %, RAISED THEIR ANNUAL MEMBERSHIP FEE TO $15.00 A YEAR AND HAVE INCREASED THEIR MINIMUM PAYMENT REQUIREMENTS. PLEASE NOTE WITH PARTICULAR INTEREST THAT THE PRESIDENT OF CITICORP CREDIT SERVICES, INC. STATES "WE ARE ALSO MAKING SOME CHANGES, AND, AT THE SAME TIME, MAKING YOUR CITIBANK CARD MORE VALUABLE." THEY MADE THE CARD "MORE VALUABLE" BY INCREASING THE CREDIT CEILING ALLOWED INDISCRIMINATELY. IT IS ACTIONS OF THIS TYPE THAT WILL TAKE ADVANTAGE OF CONSUMER CREDIT CUSTOMERS AND CAUSE ADVERSE REACTIONS THROUGHOUT THE COUNTRY.

THE AMENDMENT THAT WAS PLACED ON HOUSE BILL 239 DOES NOTHING TO PROHIBIT THIS TYPE OF ACTIONS. IT DOES PLACE US, THE LEGITIMATE MONTANA RETAILERS, AT A SEVERE DISADVANTAGE WHICH COULD VERY EASILY MAKE US GET OUT OF THE CONSUMER FINANCE BUSINESS - - JUST LIKE K-MART DID - - AND RELY ON CONSUMER CREDIT FOR OUR CUSTOMERS AS PROVIDED BY THESE BANK CARDS. THAT AMENDMENT WILL ONLY TEND TO FURTHER THE ABUSES ON THE CREDIT CONSUMER THAT IT WAS DESIGNED TO PROTECT.

GENTLEMEN, AND SENATOR REGAN, PLEASE GIVE YOUR FULL ATTENTION AND COMPLETE CONSIDERATION TO THE TESTIMONY YOU HAVE HEARD THIS DAY. AMEND HOUSE BILL 239 TO PROVIDE EQUAL ADVANTAGES FOR THE RETAILERS, AND GIVE IT YOUR "DO PASS" APPROVAL.

THANK YOU.

Citibank MasterCard™
P.O. Box 276
Melville, New York 11750

M25-CL

December, 1980

Dear Cardmember:

You may be aware that banks across the country are changing the way they charge cardmembers. This is because wages, general operating expenses, and the cost of funds have risen considerably over the last several years. To solve these cost problems, banks are taking steps like increasing interest rates, charging annual fees, and making other changes.

We are also making some changes, and, at the same time, making your Citibank card more valuable.

1. To meet our costs, we are adjusting our interest rate to 19.8%, charging an annual membership fee of 15 dollars, and revising the minimum payment. These are explained in the enclosed notice.

2. To make our card more valuable to you, we are increasing your credit line by $550. You have earned this extra available credit because of the responsible way you have handled your account with us. Your new credit line will give you the continuing convenience of ample available credit.

If for any reason you do not wish to have your credit increased at this time, please call us toll-free, Monday through Friday, 9AM to 6PM.

Sincerely,

Richard C. Kane
President
Citicorp Credit Services, Inc.

NOTICE TO CARDMEMBERS

Wages, general operating expenses, and cost of funds have risen rapidly over the last several years, and now make it impossible for banks to continue to offer cards and extend credit under existing conditions.

Therefore we are making certain adjustments to how we charge you. These changes will become effective January 19, 1981. We are sorry they are necessary and realize they will cause some inconvenience. You can compare the new terms to the existing terms which are described on the back of this notice.

Most of these changes will not affect you if you pay your bill in full each month.

Starting January 19, 1981, the Annual Percentage Rate on purchases and advances you wish to finance will be 19.8%. This change does not apply to your existing balance, nor to any purchases and advances made before January 19, 1981.

We are adding a $15 annual membership fee. On your first billing statement after January 19, 1981 which contains a new charge, you will see an anniversary date for this annual fee. That statement will also contain the charge for the pro-rated portion of the membership fee up to the anniversary date. After that, the full annual fee will be billed on your anniversary date.

The minimum payment on purchases is being changed. Effective January 19, the minimum payment will be 20 dollars for purchase balances below 720 dollars. Each time your total purchase balance exceeds 720 dollars, your minimum payment will be 1/36 of your new highest billed balance, rounded to the next dollar.

Enclosed is a new Retail Installment Credit Agreement which we have revised to show these changes. You can agree to its terms by continuing to use your card, or permitting a person authorized by you to use your card, on or after January 19, 1981. If you decide not to use your card on or after January 19, 1981, none of these changes apply to your account. If you have any questions, please call us toll-free, Monday through Friday, 9 AM to 6 PM.

You are an important customer to us, and we want to continue to provide you with the convenience and availability of your Citibank MasterCard™ card.

Customer Service Numbers

From New York City (212) 895-4320 From Long Island (516) 752-8808

From New York State (not NYC) Toll Free (800) 732-9102

Toll Free From All Other Areas: (800) 645-9560

For your convenience, listed below are the old terms on your account.

Minimum Payment For unpaid purchase balances, the minimum payment is 1/36 of your "New Balance" for purchases, but at least 5 dollars.

Finance Charge On Purchases The **Annual Percentage Rate** on purchases is as follows:

Address Of Account Holder	Monthly Periodic Rate on Balance Subject to **Finance Charge**	Corresponding **Annual Percentage Rate**
New York & All Others	1-1/2% First $500 1% excess over $500	18% 12%
Missouri	1-1/2% First $500 5/6% excess over $500	18% 10%
Arizona	1-1/3% on entire balance	16%
Connecticut, Idaho, Pennsylvania	1-1/4% on entire balance	15%
New Jersey	1-1/4% First $700 1% excess over $700	15% 12%
Oregon	1-1/4% First $500 5/6% excess over $500	15% 10%
Minnesota, Washington	1% on entire balance	12%
Arkansas	5/6% on entire balance	10%

Finance Charge On Cash Advances The **Annual Percentage Rate** on advances is as follows:

Address Of Account Holder	Daily Periodic Rate	Corresponding **Annual Percentage Rate**
New York & All Others	0.03287%	12%
District of Columbia	0.03151%	11-1/2%
Nebraska	0.03014%	11%
Arkansas, Tennessee	0.02740%	10%

Annual Membership Fee Currently, there is no annual membership fee.

Fidelity Savings & Loan

RE: H.B. 286, Information
March 3, 1981

To: Legislative Committee Members,

This bill would authorize State Chartered Savings and Loans with the approval of the Montana Department of Business Regulation to be allowed the rights, privileges and duties given to Federal Institutions by Federal Law. The Federal Charter Savings and Loans retain rights and privileges not given uninsured State institutions by virtue of their membership in the Federal Home Loan Bank and the Federal Mortgage Corporation. They are able to borrow money from the Federal Home Loan Bank, sell mortgages to the Mortgage Corporation, insure savings accounts and many other advantages.

H.B. 286 as originally proposed would provide limited new lending powers as given in the Federal Public Law 96-221 - cited as the Depository Institutions Deregulation and Monetary Control Act of 1980. Please see Exhibit A which is a partial list of the additional lending and other powers given by the Federal Law as compared to present State Law limitations.

H.B. 286 as amended does nothing for the only uninsured State Savings and Loan. The one institution in Kalispell that is also State Chartered is FSLIC insured and as an insured institution already has the power to do everything in the way of lending powers and NOW accounts, plus most other Federal Charter powers. The bill with the amendment attached affects practically nothing. It is absolutely necessary for our institution to be able to offer our customers an opportunity to borrow monies on an equal basis as any other Savings and Loan or other financial institution. We are not competitive in the lending field. The two Federal Savings and Loans in Great Falls that would be competitively affected by this bill do not oppose this bill for our institution.

Our institution, Fidelity Savings and Loan, has been in business since 1923. We have paid regular dividends and have been profitable for over 50 years. Please examine the enclosed State of our Financial Condition for 1980. We feel our growth indicates a good consumer response to us as an uninsured State Charter Savings and Loan. I feel it necessary to request your kind consideration in removing the amendment and passing the bill as originally written.

Sincerely,

John D. Buchanan

John D. Buchanan
President
Fidelity Savings and Loan Association

PH. 453-0387 • 526—1st AVENUE NORTH • GREAT FALLS, MT 59401

EXHIBIT A

Lending and other powers given by the Federal Law 96-221 as compared to present Montana State Law limitations. A partial List.

1980 FEDERAL LAW	PRESENT STATE LIMITATIONS
90% on improved Real Estate.	75% on improved Real Estate.
662/3% in unimproved Real Estate.	Not Allowed.
75% on improved lots and sub-divisions.	Not Allowed.
Home improvement loans.	Not Allowed.
Loans to Financial Institutions, Brokers and Dealers.	Not Allowed.
Commercial Real Estate, 20% of assets.	75 %.
Consumer Loans, 20% of assets.	Not Allowed.
Educational Loans, 5% of assets.	Not Allowed.
Community Development Investments, 5% of assets.	Not Allowed.
Pay dividends daily.	Pay dividends semi-annually.
Branch Offices.	Not Allowed.
Trust Powers.	Not Allowed.
NOW Accounts.	Not Allowed.

Source: Montana Code Annotated, 1978, PP. 66 to 87. Public Law 96-221, 96th. Congress, March 31, 1980.

FIDELITY SAVINGS AND LOAN ASSOCIATION
STATEMENT OF CONDITION
December 31, 1980

ASSETS

Cash	$ 94,668
Time deposits	880,000
Investments	85,000
Loans receivable	796,760
Furniture, fixtures and equipment	24,345
Accrued interest receivable	7,347
Income tax refund receivable	1,275
Prepaid expense	1,130
Total	$1,890,525

LIABILITIES AND RETAINED EARNINGS

Savings deposits	$1,042,784
Time savings certificates	745,699
Escrow accounts	51,685
Accrued payroll taxes payable	855
Income taxes payable	354
Accounts payable	11,838
Deferred income taxes	2,061
Total liabilities	$1,855,276
Retained earnings	35,249
Total	$1,890,525

Fidelity Savings & Loan is audited each year by the State of Montana Examiners. Fidelity Savings & Loan was also audited in January 1981 by Junkermeir, Clark, Campanella, Stevens, PC.

Statement of Condition

FIDELITY SAVINGS & LOAN

526—FIRST AVENUE NORTH
GREAT FALLS, MONTANA
453-0387

MONTANA CORPORATION

SERVING YOU SINCE 1923

"THE YEAR OF 1980"

Fidelity Savings & Loan continued to pay their savers the high rate of 7.25% on their regular passbook savings account. Savings grew $1,350,000 during the year and now total $1,788,482.

New first mortgage real estate loans grew $703,033 and now total $776,906. Assets increased by 346% to $1,890,525.

FIDELITY SAVINGS & LOAN IS GROWING TO MEET YOUR NEEDS

December 1979 . . . .$547,364
December 1980. . . . .$1,890,525

SERVICES AVAILABLE:

7.25% Regular Passbook Savings
Christmas Club Accounts
Savings Certificates
Money Orders
Travelers Cheques
FHA, VA & Conventional Home Loans
Save-By-Mail
Friendly & Personal Service

OFFICERS AND STAFF

John D. Buchanan . . . . President
Sheila F. Buchanan . . . . . . Sr. Vice President and Managing Officer
Cheryl L. Pygott . . . . Vice President and Managing Officer
Ronald M. Reichelt . . . . Secretary of the Corporation
Shelley A. Bloomdahl . . . . Teller/Bookkeeper

DIRECTORS

John D. Buchanan
Ronald M. Reichelt
Sheila F. Buchanan
Delano F. Voegele
John R. Skees
William B. Lewis
Kenneth R. Neill

7 1/4%
ANNUAL RATE

REGULAR PASSBOOK SAVINGS

- $10.00 Minimum
- Add to anytime
- Withdraw from no penalties

Geographic Restrictions on Commercial Banking in the United States

The Report of the President

Department of the Treasury
January 1981

I. Introduction

The United States' financial system, which today encompasses 42,000 depository institutions including almost 15,000 commercial banks, has long been distinctive for its fragmented structure. That fragmentation is a product of neither historic accident nor unencumbered market forces; rather, today's balkanized financial system is largely a result of deeply held beliefs which have been codified in Federal policy. Specifically, our diverse financial system reflects a Federal statutory framework which limits the functions of different classes of depository institutions and defers to the states on the issue of geographic expansion by banks. That framework, in turn, is an outgrowth of long-standing fear of an undue concentration of financial power in the hands of banking institutions. That is, the statutory framework that separates one class of depository institution from another, and that proscribes bank mergers and acquisitions across certain geographic boundaries, makes it more difficult for one class of institution, or for certain institutions within any class, to achieve a dominant market position.

This Administration is committed to the avoidance of an undue concentration of resources and supports the continuation of a viable dual banking system. The issue treated in this report is whether the existing framework of geographic restrictions on bank expansion is an effective, efficient and equitable way to avoid undue concentration in the financial environment of the 1980s. Put another way, given that existing geographic restraints can impede competition and reduce efficiency in many markets, could undue concentrations of financial power be avoided <u>without</u> such restraints? The Administration has concluded that market forces inside and outside banking <u>per se</u> are diminishing the effectiveness and increasing the inequities and inefficiencies produced by current geographic limitations, that the persistence of those forces will create growing pressure for change in the statutory framework in the early 1980s, and that a phased liberalization of existing restraints would serve the public interest.

Fundamental changes in today's statutory structure will not be easily achieved. Despite the increasing ineffectiveness of prohibitions on interstate banking, state boundaries on bank expansion have attained an almost mystical significance among many supporters of the present system. Existing law provides a protective umbrella, albeit an increasingly perforated one, for many institutions, and modification of that law could significantly alter existing competitive relationships. Yet the Administration views the burgeoning debate on these issues as desirable and an intensification of that debate as inevitable.

The debate is desirable because the national interest is served by a stable, strong and competitive commercial banking system, and achievement of the industry's potential to serve the public as efficient financial intermediaries will increasingly be impeded by existing geographic restraints. The Administration cannot justify on grounds of logic or economics the prohibition, on one side of a state border, of the bank's activities which are permissible on the other side of the border. Financial markets have experienced fundamental and accelerating change; businesses, households, and the financial institutions serving their needs have expanded their geographic reach; but the basic Federal statutory approach toward geographic expansion by banks has been virtually unaltered for nearly half a century. Whatever their benefits in an earlier era, the Administration regards existing geographic limitations as anachronistic in the competitive marketplace of the 1980s. The gap between the powers of commercial banks and the geographic breadth of today's financial services markets is growing, and as it grows the inefficiencies and inequities for both banks and the public they serve will become more severe.

The financial services industry is inherently an interstate business, and banking activities on the wholesale side are increasingly conducted on an interstate basis. Today, the nation's major corporations and wealthy individuals frequently effect transactions with banks across state lines; it is only the small business and household customers who continue to be deprived of the benefits of a competitive interstate banking system. In the Administration's view, the failure to liberalize the present framework will perpetuate the existing discrimination against the retail customer, deprive the public of the benefits of increased competition, impede the efficient allocation of resources, retard the development and application of new technologies, and restrict the ability of bank management to compete with other, nonbank financial institutions playing under a different set of rules.

Intensification of the debate is inevitable because market forces will continue to undermine the effectiveness of artificial boundaries unrelated to those forces. Changes in the financial services markets already have substantially altered the character of the banking business. The financial system which emerged from the statutory and regulatory reforms initiated in the 1930s, and which evolved slowly through the next three decades, consisted of distinct kinds of financial institutions, offering distinct financial products, generally in limited geographic areas. Although an important role for specialized institutions continues, changes in demographics, technology, consumer preferences, regulation and the financial industry itself have eroded many of the barriers erected in the 1930s. What was once a financial system consisting of highly segmented geographic markets has, for many kinds of banking services, been transformed into a competitive nationwide marketplace. What was once a segmented product market has been replaced by head-to-head competition between banks and various nonbank institutions; indeed, there is no longer a single service or product line offered exclusively by commercial banks.

A central feature of the financial services industry today is the increasing number of banklike competitors with banklike powers offering banklike services -- but on a more flexible geographic basis than is available for commercial banks. Just as the Federal government cannot repeal the changes which market forces have produced, commercial banks cannot insulate themselves from the competition of nonbank entities. Either commercial banks will be permitted to evolve as efficient financial intermediaries and to meet the needs of the market under a modernized statutory structure, or the demands of the market will be satisfied outside the banking system by institutions not subject to the same restraints.

A decline in the commercial banks' share of the financial services market *per se* would not necessarily be a concern of government if it reflected the inability of banks to provide services comparable to those of nonbank competitors. But it is inefficient and inequitable for government to force such a decline and deprive the public of the benefits of a competitive banking system through the retention of antiquated restraints. The realization of the public benefits which a free enterprise commercial banking system can provide requires that banks be authorized to operate full-service offices on a geographic basis which is better related to the structure of the financial marketplace of the 1980s.

Critical to any assessment of the existing statutory framework is the likelihood that the early 1980s will witness the beginning of a contraction in the number of financial institutions in the United States. A wide range of forces in the financial services industry point toward some degree of contraction, yet the existing statutory structure governing bank mergers and acquisitions simply is not compatible with a rational and orderly transistion to a more efficient banking structure. The forces for consolidation include:

- The elimination of consumer deposits as a cheap and stable source of funds, with resulting increasing cost pressures. Household depositors are increasingly rate-sensitive, and Regulation Q ceilings may no longer provide cost protection for depository institutions. At the same time, many depository institutions, especially thrifts, are not well positioned to weather periods of high and volatile interest rates (*i.e.*, many institutions still have significant proportions of their assets tied up in low-yield long-term mortgages). Cost pressures, particularly on the retail side of the business, will impose the most serious strains on the profitability of many institutions, and those strains will induce a number of firms to seek affiliations with other institutions.

- Economies of scale associated with new electronic and other technologies, as well as the provision of more sophisticated services. In general, the provision of retail srvices as well as accounting and inventory methods will become more automated. In the long run, many intermediate- to smaller-size banks may be placed at a competitive disadvantage relative to large firms that can afford more sophisticated data processing systems and other electronic and electromechanical devices that can reduce unit costs. Again, some institutions will perceive their interest to lie in merging or forming servicing corporations under joint-venture arrangements in order to compete successfully with others in the financial services business.

- The penetration of the "banking" business by nonbanking entities. Competition from nonbank sources -- money funds, broker/dealers, retailers, and so forth -- increasingly will affect households' demand for narrow bank services. The result will be a potential decline in bank profitability for which some individual institutions may not be well prepared.

- Many institutions will be hard pressed to achieve the capital necessary to sustain the growth of credit in the 1980s. Current limitations on bank mergers and acquisitions not only restrict opportunites for capital infusions but, in addition, may dampen investor interest in bank equities, which in turn inhibits the ability of the industry to attract new capital.

There are several important caveats to our projection of significant consolidation. Canada, Great Britain, France and West Germany combined have less than 700 commercial banks. The Administration does not believe that the United States is likely to replicate the Canadian/Western European model. Nor does the Administration foresee a financial environment which does not include a role for the specialized lender or the community bank. In a nation committed to diversity and the avoidance of undue concentration of financial power, these institutions will continue to serve important market needs. Finally, the view that pressures for consolidation will increase should not imply that the Administration perceives such pressures to be desirable; the point is simply that they exist.

The Administration evaluated the existing statutory framework by analyzing its effects in terms of traditional public policy concerns. The ultimate test should be: What is the minimum level of government interference in market structure necessary to achieve optimum public benefits? There should be a presumption against government interference in the free market system, and consumer freedom of choice should be constrained by government only to the extent that competing public policy objectives warrant such restraint. In reaching its conclusions, the Administration based its analysis on a range of broad criteria: competition, concentration of resources, economic efficiency, competitive equity, the impact on small banks, credit availability, institutional safety and soundness, the convenience and needs of the local community, and the preservation of the dual banking system. These issues, which are discussed in depth in the research compendium attached to this report, were important in the evolution of statutes establishing geographic limitations on the structure of banking organizations.

II. Background: History of Geographic Restraints

Prior to the Civil War, there is scant evidence of strong feelings for or against branch banking in the United States. Despite Alexander Hamilton's reservations about a lack of managerial capacity, the First Bank of the United States, organized in 1791 and headquartered in Philadelphia, established eight branches in the nation's leading cities. During this priod most state banks were established under special charters issued individually by state legislatures, so branching authority frequently varied from bank to bank rather than from state to state.

Branching was not mentioned in the National Currency Act of 1863, which provided for the chartering of national banks. However, subsequent interpretations of the Act and of its successor, the National Bank Act of 1864, prohibited the establishment of branches by national banks. This restriction on national bank branching was consistent with traditional public concern that concentration of economic power among a few large banking organizations might permit these institutions to exert undue influence over the allocation of national resources. However, over time the restrictions created competitive inequities as various states gave state-chartered banks branching powers.

A. The McFadden Act

In 1927 Congress adopted the McFadden Act, which authorized a national bank to branch within its home city if state law permitted a state bank to do so. This legislation has come to symbolize a policy of restrictiveness regarding geographic expansion; yet it is important to note that the Act actually liberalized then-existing limits on branching for national banks.

State banks continued to have a competitive advantage in those states which permitted branching beyond a bank's home city. To remedy this remaining inequity, Congress included in the Banking Act of 1933 a further liberalization of geographic restraints on banking to permit national banks to establish branches at any place within the state where state law permitted state banks to branch. One draft of this bill would have permitted a national bank to branch anywhere within its state and into a neighboring state within 50 miles of the home office, but this provision was filibustered out of the bill.

In essence, the Banking Act of 1933 established state boundaries as the ultimate limits for bank branching and gave state legislatures the authority to determine the branching structure within each state. For purposes of the Act, a "branch" was defined as an office of a bank which receives deposits, pays checks or lends money.

B. The Bank Holding Company Act

Prior to the Bank Holding Company Act of 1956, banks frequently achieved geographic expansion through the formation of multi-bank holding companies (BHCs). BHCs, which first emerged during the late nineteenth century, flourished during the 1920s and again in the period following World War II. Originally most holding companies were created in an effort to expand geographically within what were otherwise unit banking states. In some instances, the multi-bank holding companies also chartered or acquired banks in other states.

By 1956, the statewide and interstate expansion of some large multi-bank holding companies had generated pressure for the enactment of legislation to restrict the growth of BHCs. The Bank Holding Company Act of 1956 was the first Federal legislation to focus exclusively on the holding company form of organization. Section 3 (d) of the Act, known as the Douglas Amendment, prohibited multi-bank holding companies from acquiring a bank in another state, unless the law of the state in which the bank to be acquired was domiciled affirmatively provided for such entry. States were permitted to regulate BHC activities within their borders to the same degree as prior to 1956. In 1970, the legislation was extended to cover one-bank holding companies and was broadened to establish standards for determining the permissible "nonbanking" activities of BHCs. The term "bank" was defined narrowly in the Act to mean any institution which accepts demand deposits <u>and</u> makes commercial loans. Thus, nonbank subsidiaries of BHCs can operate across state lines and perform many functions of commercial banks.

The evolution of Federal laws regarding limits on geographic expansion reflected historic concerns about undue economic concentration, competitive equality among state and national banks, and the sovereignty of states. The McFadden Act and the Douglas Amendment embody these basic principles: (1) banks and BHCs generally may not operate "full-service" banking offices in more than one state, (2) within each state, state and national banks are subject to the same restrictions on geographic expansion, and (3) each state has the responsibility to determine its multi-office structure, if any. The net result is the current patchwork of state limitations on the structure of banking organizations ranging from single-office (unit banking) restrictions to full statewide branching, and a wide variety of permissible interstate BHC activities.

III. Geographic Limitations and the Present Banking Environment

Statutory geographic restraints on bank expansion may have been responsive to the issues of public concern in the banking markets which existed when those laws were enacted. But other legal mechanisms have emerged with the potential to deal more effectively with anti-competitive behavior, undue economic concentration and other concerns regarding bank expansion. Indeed, in today's environment geographic boundaries are counterproductive: they frequently preclude pro-competitive market entry and thus undermine the competitive objectives they were purportedly designed to achieve.

Through the first half of this century communications and transportation technology naturally constrained the geographic boundaries for most banking functions. Government intervention, custom, and economic forces promoted segmentation of financial markets along product and geographic lines. In particular, geographic restrictions on banking organizations were roughly consistent with the structure of banking markets, and until recently such restrictions did not significantly distort economic behavior.

In recent decades technological advances have greatly expanded the average consumer's geographic realm and irreversibly altered patterns of social and financial behavior. The American consumer, working, shopping, and playing, is now a mobile commuter. The consumer has also become a far more sophisticated user of financial services, sensitive to interest rate differentials and to alternatives for keeping idle, non-earning balances at a minimum. Inflation has accelerated this learning process and greatly increased the range of savings and investment vehicles familiar to consumers. In sum, the days when the individual was effectively limited to and satisfied with a handful of deposit instruments at a local depository institution have ended.

The technological forces which have changed the face of American life have revolutionized the delivery of "banking" services and the scope of "banking" markets, but statutory geographic restraints are increasingly limiting the ability of the commercial banking industry to respond in this new environment. The technological, financial, and regulatory changes which have undermined the effectiveness of geographic restrictions and imposed growing competitive disadvantages upon commercial banks are described below.

A. Commercial Bank Interstate Activity

Most commercial bank activities except for retail deposit taking are no longer subject to restraints imposed under the Douglas Amendment and the McFadden Act. For years, banks have lawfully availed themselves of various corporate devices to conduct banklike activities independent of geographic limitations. In recognition of the interstate character of the corporate financial markets, the regulatory structure has evolved to permit the largest banks to compete nationwide for "wholesale" business; it is only the retail customer who is effectively precluded from taking advantage of the benefits of a freely competitive system.

The multi-bank holding company device permits banks to expand geographically within many states with laws restricting branching per se, although such expansion is often more costly and less efficient than the straightforward establishment of a branch. Twelve bank holding companies grandfathered under the Bank Holding Company Act of 1956 continue to do business in more than one state, and the Administration has found no compelling evidence of the concerns alleged to accompany interstate banking.

More significantly, BHCs provide a wide range of banklike services across state lines through devices such as nonbank subsidiaries. The Bank Holding Company Act Amendments of 1970 effectively allow BHCs to offer virtually any banking service, except the acceptance of deposits, on a multi-state basis. Under the 1970 Amendments, BHCs have achieved nationwide networks of consumer finance, mortgage banking and other "nonbank" subsidiaries. One holding company currently operates 13 subsidiaries, including a finance company with over 370 offices in 39 states. Approximately 350 loan production offices operate in 20 states to solicit loan business at the commercial and retail levels for the parent banks. Edge Act corporations, which had assets of nearly $14 billion at the end of 1979, operate on a multi-state basis and offer both deposit and loan services related to international trade to business customers. The International Banking Act of 1978 substantially broadened the power of Edge corporations, authorizing the Federal Reserve to allow them to branch interstate and to broaden their operating flexibility.

Foreign banks have achieved an interstate presence in ways beyond those available to domestic banks, at least until the adoption of the multi-office limitations imposed under the International Banking Act of 1978 (IBA). The IBA brought future branching powers of foreign banks closer into line with those of domestic banks, but still grandfathered 36 foreign banking organizations conducting operations in more than one state. The IBA also extended foreign bank powers to create Edge corporations and engage in nonbank activities

More recently, attention has focused on the fact that a foreign bank may purchase a domestic bank, whereas out-of-state domestic banks are precluded from making such acquisitions. The available evidence suggests no compelling reason for additional legislation to prohibit or further regulate foreign acquisitions of United States banks on supervisory, community service, competitive or national interest grounds. To the contrary, such legislation would run counter to this nation's policy of non-intervention with respect to international investment, and special restrictions on foreign acquisitions could damage the interests of U.S. banks abroad and perhaps those of other U.S. investors as well. It could also have an adverse effect on the health of some financial institutions, since capital injections in cases well short of failure could be precluded by the sort of moratorium in effect from April 1 through June 30, 1980, under the Depository Institutions Deregulation and Monetary Control Act of 1980.

Yet the prohibition on interstate acquisitions by domestic BHCs has created an anomalous situation which is difficult to justify on economic grounds. A foreign bank can purchase a U.S. bank, but a domestic bank which happens to be located in a different state is precluded from making a competing offer. Indeed, the combined effect of the Douglas Amendment and existing antitrust standards is that most of the largest banks in most states cannot be purchased by any bank other than a foreign one. The public interest is not well served by a system which effectively limits to foreign institutions the opportunity to acquire or merge with many domestic banks. The interests of individual banking institutions, investors and the banking public would be enhanced by a framework providing domestic banks with greater flexibility in identifying appropriate partners for merger or acquisition on an interstate basis.

B. <u>Thrift Institution Competition</u>

The McFadden Act and Douglas Amendment restrict competition among banks but cannot insulate banks from the competitive impact of thrift institutions. Thrift institutions are not subject to the statutory framework which governs geographic expansion by commercial banks, but the thrifts' broadened asset and liability powers will increasingly make them direct competitors on the retail side of the banking business. Recent legislation and regulatory reforms are expanding the capabilities of thrift institutions to offer new products and services -- such as NOW accounts, large CDs and consumer lending -- competitive with those traditionally offered exclusively by commercial banks. Indeed, thrift institutions will increasingly look like retail-oriented banks in the future. As these powers are implemented, the effects of the banks' competitive disadvantage vis-a-vis geographic expansion will become more visible.

Traditionally, the Federal Home Loan Bank Board (FHLBB), which determines the branching authority of Federally-chartered savings and loan associations (S&Ls), had established branching powers for these institutions in each state similar to the branching restrictions on state-chartered S&Ls, savings banks, banks, and BHCs. But as of January 1, 1980, the FHLBB has permitted full intrastate branching by Federally-chartered S&Ls in all states. Moreover, while the FHLBB has not yet approved establishment of S&L branches outside the home state, it is considering a proposal to allow Federal S&Ls headquartered in the Washington, D.C. SMSA to establish branches throughout the District of Columbia and the parts of Maryland and Virginia in the SMSA. If S&Ls in the Washington, D.C. SMSA are freed from existing restraints on geographic expansion within the SMSA, the Administration believes that this action would serve the public interest and provide useful information on the impact of a less restricted statutory framework.

Mutual savings banks (MSBs) generally are state-chartered institutions subject to state branching restrictions. Recent legislation permits MSBs to obtain Federal charters which would allow MSBs, with FHLBB approval, to branch anywhere intrastate despite a more restrictive state law. Credit unions are mutual institutions limited to groups with a common bond or affinity and therefore tend to be small, local organizations with one office; however, if the common bond requirement is satisfied, a credit union may branch nationwide or even worldwide. For example, the Navy Credit Union, with almost $1 billion in assets, has worldwide offices.

C. Nondepository Institution Competition

Perhaps the most dramatic change in the structure of the financial services industry has been the recent and accelerating penetration of what was formerly the "banking" business by non-depository institutions. Brokerage firms can compete for "deposits" nationwide by paying interest on idle balances in a customer's brokerage account. This process has moved a significant step further through the development of a "cash management account", which allows an account holder to draw interest on idle balances, to access the account for third-party-payment purposes by means of a check-like instrument, and to draw credit against the account by means of a credit card.

Money market mutual funds have become an important element in the competition for savers' funds. The money fund has in effect reduced the minimum denomination of a bank certificate of deposit from $100,000 to as little as $500 but without interest rate restrictions. Money funds issue what is in effect a liquid liability to savers and use the proceeds to purchase bank certificates of deposit and other high-yield, short-term, relatively riskless instruments. Many money funds allow deposits in almost any amount and most funds offer checking services -- so that the customer enjoys many characteristics of an interest-bearing transaction deposit, though one which is not Federally insured. Finance companies and retailers with a nationwide presence make loans to individuals and businesses, and such companies may issue uninsured, small-denomination, deposit-like liabilities in competition with banks. Mortgage companies, insurance corporations and credit card companies also offer products and services similar to those of banks with little or no governmental constraints on geographical expansion. As the range of nondepository institutions in the "banking" business broadens, their freedom to apply new technologies without geographic limitations will provide them with an increasingly critical competitive advantage in the 1980s.

D. Technological Advance

New technologies have the potential to virtually eliminate time and space restrictions on the delivery of financial services. Just as the telephone and airplane induced the liberalization of geographic restraints on the wholesale side of banking, off-premise electronic devices are straining geographic limits on the retail side. Recent advances in transportation, communication and computer technology have made physical proximity to the customer a less important consideration in the market for financial services. Because a customer has access to most banking functions without even entering the traditional brick-and-mortar branch, geographic restrictions based on the location of physical branches are no longer an effective means of limiting the range of banking markets. Yet the application of the McFadden Act to cover electronic banking facilities produces distortions, inefficiencies and discrimination against the retail customer.

Today, bank customers need no longer queue up at their local branch to conduct their banking business. Billions of dollars are transferred almost instantaneously to the other side of the world through sophisticated electronic networks; automated teller machines (ATMs) provide round-the-clock service and relieve customer congestion at banks; deposits are made by mail, or automatically from payroll departments using electronic tapes; customers can use the telephone to transfer funds among accounts or between institutions; in the 1980s, the consumer will be able to engage in telephone and television banking through computers at home. Over the coming decade the combination of card, telephone and mail systems is likely to be developed to provide all the banking functions currently performed by brick-and-mortar branches.

In addition to its contribution to pressures for consolidation which were cited earlier, this technological revolution has three major implications. First, technology will be a major catalyst in extending the "banking" business beyond depository institutions to include nontraditional participants ranging from retail chains to department stores to large corporations such as oil, telephone or television companies. Second, the ever more sophisticated and versatile technology available to those who choose to use it will widen the gap between the banking services the public demands, and the services many commercial banks can offer. The wider the gap becomes, the greater the incentive will be for financial institutions not subject to geographic restraints to pursue the opportunities presented.

Finally, these new technologies have the potential to reduce costs and provide increased customer convenience; but the cost/convenience promise has not yet begun to be fully realized, in part due to regulatory distortions. A recent court ruling has determined electronic funds transfer (EFT) terminals to be branches for purposes of determining permissible placement of automated teller machines (ATMs) and, indeed, most ATMs are located at the site of a physical branch. Thus, the Federal statutes, as interpreted by the courts, have slowed the development of cost-saving, convenience-enhancing financial service innovations -- to the detriment both of bankers and their customers. Such limitations are most restrictive on household, small business and agricultural customers. Large corporations have access to competitive national -- even worldwide -- markets for their borrowing needs, via commercial paper, acceptance financing, or loans from a worldwide network of money center banks, and for investment alternatives such as repurchase agreements, large negotiable CDs and other market instruments. Thus, such larger corporations typically do not depend on physical proximity of a brick-and-mortar branch or ATM facility to conduct their financial business.

IV. Geographic Expansion and Public Policy Issues

Several additional issues must be considered in the analysis of geographical restrictions and the prospects of liberalization: competition and concentration, credit availability and service to the local community, the survival of small banks, the safety and soundness of the banking system, and the dual banking system. The report finds that liberalization (1) could improve competitive conditions in local markets and, subject to the establishment of appropriate controls, would not raise significantly the risk of undue concentration of economic power; (2) would increase the range of financial services available to local communities but would have little impact on credit availability; (3) does not pose a significant threat to the viability of the small bank as an institution; (4) would not have a material impact on the safety and stability of the banking system; and (5) need not threaten the vitality of the dual banking system.

A. Competition and Concentration

The empirical studies of banking markets cited in the research compendium generally support the theoretical proposition that price and quality performance in banking is improved through greater actual and potential competition promoted by low barriers to entry, and through lower concentration of economic power in the relevant markets for banking services. Existing restraints on geographical expansion create artificial, arbitrary barriers to entry and therefore are anti-competitive. On the other hand, relaxation of these restraints could lead to increased concentration in some markets.

Higher levels of concentration have been found statewide and in SMSAs in states which permit branching than in either limited branching or unit banking states. However, even if liberalized geographic expansion does increase market concentration in some cases, the negative competitive effects of increased extant concentration likely are outweighed by the new entry potential in a jurisdiction which permits branching. That is, an aggressive firm can achieve a substantial market share in a free-branching environment, but such a firm must continue to offer low prices and high quality in view of the potential new entry (i.e., a new branch) by an outside rival. The beneficial impacts on bank performance of liberalized entry are likely to be most substantial in those states where intrastate limits are now most restrictive. For example, compared to single-office banks in statewide branching states, single-office banks in unit branching states were found to have lower operating costs and pay lower interest to depositors, but charge similar rates to borrowers; that is, they have used their protected market status to earn higher rates of return. Liberalization of restrictions on multi-office expansion would remove the protective barriers to entry -- immediately increasing potential competition in all local markets, and, with de novo and foothold entry, eventually increasing actual competition.

Quite apart from the traditional debate over the impact of multi-office structure on concentration and competitive performance of retail banking in local markets, a concern has been expressed about the effects of concentration on national banking markets. This concern prompts some to worry about increased concentration leading to anti-competitive behavior in wholesale banking and, on a more philosophical level, about undue concentration.

Such concern is not consistent with recent historical trends, however. The domestic commercial bank share of both national and world markets for banking and financial services has been on the decline in recent years, despite liberalization in many states of intrastate banking laws. The commercial bank share of financial assets at depository institutions generally has also dropped. While these trends might be altered by the liberalization of existing geographic restraints, and while the potential for unrestricted branching leading to a possibly undesirable increase in national concentration in banking cannot be ignored, it is not a compelling reason to maintain the current inefficient and inequitable restrictions. The prevention of undesirable concentration in both local and national banking markets can be addressed more effectively through alternative legal mechanisms, the most important of which is the body of antitrust laws.

When the Douglas Amendment was enacted, there was some question whether banking was subject to the antitrust provisions of the

Sherman and Clayton Acts. These issues were resolved through court decisions and legislation in the 1960s, making it clear that bank expansion through acquisition was subject to the antitrust laws and, in addition, to antitrust criteria which are applied in the first instance by the bank regulatory agencies. By dealing directly with competition in individual markets, these antitrust constraints are a more sophisticated means of dealing with market concentration than are artificial state boundaries. In considering applications for branches, mergers or acquisitions, the bank regulatory agencies must consider the effects of the proposed transaction on existing competition in the relevant market areas, as well as on potential competition and probable future competition. Moreover, the regulators consider the effects on the "convenience and needs" of the bank customers, the financial condition of the expanding bank and -- if applicable -- that of the bank to be acquired, and the effects on the financial conditions of other banks.

Some question may remain as to whether the present body of antitrust laws as interpreted by the courts would apply in the case of a large bank or BHC acquiring another bank with substantial market share in another geographical market where no existing local competition is eliminated.1/ Such reservations suggest that it is undesirable to move immediately to unrestricted nationwide branching. A more moderate liberalization initially should include safeguards designed to complement existing antitrust laws, thereby allowing the pro-competitive aspects of intra- and interstate expansion to develop while minimizing the prospect of a significant increase in nationwide concentration. Such safeguards could include, for example, limits on regions or product markets to be entered or on the size or market share of banks in new geographical markets that might be acquired, in other than emergency circumstances.

B. <u>Service to Local Communities</u>

Multi-office expansion has been shown to be associated with more bank offices per capita and a wider range of financial services for local communities. Studies also suggest that bank expansion, on balance, can result in a greater proportion of loans to locally limited customers than where expansion is limited. Moreover, there

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1/ The Bank Holding Company Act expressly calls for consideration of "undue" concentration in acquisitions of <u>nonbanking</u> firms, and the Federal Reserve has applied this consideration to deny acquisition of nonbanking entities by bank holding companies. Since 1967, eleven cases have been brought before the courts to prevent mergers of banks in different markets on the basis of elimination of <u>potential competition</u>; none has been successful.

is no evidence to support the claim that banks use outlying branches to transfer funds to head offices in urban areas; rather, banks transfer funds among rural offices as dictated by needs.1/ These findings, combined with findings regarding more competitive bank price and profitability performance in statewide branching states versus unit banking states, demonstrate that the convenience and needs of the community may be enhanced through a liberalization of geographic restraints.

C. Viability of Small Banks

While concern has been expressed that geographic liberalization could lead to the disappearance of the small bank, such concern is not supported by evidence from the past. Economies of scale, if any, have been small, have diminished rapidly with size (with little improvement in efficiency for banks above $50 million), and have varied with organizational structure and product line. Furthermore, where branching laws have been liberalized, smaller banks have survived and even prospered under the pressures of new entry. More directly, the present broad mix of large and small, unit and branch, and independent and affiliated banks existing as competitors in the same markets is ample testimony to the ability of small banks to compete with large institutions. In California, for example, despite the largest branching networks in the country there exist over 75 independent unit banks serving local communities, and California is among the leading states each year in the number of newly chartered banks. Further evidence of the staying power of efficient small banks with a hold on local loyalties is found in the resistance met by the New York City banks in their efforts to penetrate the upstate New York markets after state branching laws were liberalized in the early 1970s. In sum, permitting multi-office expansion would result in a banking industry more diversified as to size, services rendered, and organizational structures.

1/ Furthermore, recent legislation is designed explicitly to induce insured institutions to meet the credit needs of the local communities in which they are chartered. The Community Reinvestment Act of 1977 (CRA) directs the bank supervisory agencies to consider an institution's CRA record in evaluating any application for a charter, deposit insurance, branch or other deposit facility, office relocation, merger, or acquisition. CRA also requires that, in connection with the examination of a financial institution, the appropriate supervisory agency shall "assess the institution's record and encourage it to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of such institution."

This is not to suggest that relaxation of geographic restraints would not bring about any structural changes including a reduction in the number of banks. Clearly, it would. However, structural change will occur with or without the relaxation of geographic restraints in response to market forces. Without relaxation of geographic restraints, the response to these forces will be less efficient than otherwise. With relaxed geographic restraints, commercial banks will have additional alternatives for maintaining or enhancing market share and achieving economies through geographic expansion, internally or by affiliation with other banks, large or small. Competition in banking would be protected by the antitrust laws, increased potential competition from banks, and increased competition from nonbank competitors.

D. Safety and Stability of the Banking System

Multi-office expansion does not have any appreciable effect on the safety and soundness of individual banks. Theoretically, geographical diversification, other things equal, ought to reduce risk; however, empirical studies are inconclusive on this point. More broadly, liberalization may in fact lead to greater continuity and stability in financial markets generally. Weak or failing banks could be acquired or merged into existing banks with no interruptions or inconvenience in the provision of banking services to bank customers in the local communities, an opportunity not available if only unit banking is permitted. Moreover, the merger partners available in the presence of wider branching authority may be more consistent with antitrust considerations.

E. The Dual Banking System

It is frequently argued that a change in existing geographic restraints would severely damage the dual banking system. Of foremost importance is the recognition that the dual banking system is not dependent upon state authority over geographic limits on bank expansion. The essence of the dual banking system lies in its provision of alternative routes of entry into the business of banking and alternative sources of regulation and supervision. The relaxation of geographic restraints need not in any way jeopardize this system.

Furthermore, liberalization of geographic restraints can be accomplished in ways that have virtually no impact on the existing prerogatives, responsibilities and activities of state bank regulators -- namely, through modification of the Douglas Amendment. By this avenue, the benefits of relaxed geographic restraints could be achieved while continuing to allow affiliated banks to choose between state and Federal agencies as their primary supervisor and without creating the potential administrative problems associated with the interstate supervision of a branch network of a state-chartered institution.

V. Recommendations

On the basis of the empirical and analytical findings of the financial regulatory agencies, and in line with the analysis set forth in this report, the Administration has concluded that the interests of banking consumers and the financial system would be served by significant liberalization of existing geographic restrictions on the provision of banking services. The Administration's major conclusions and recommendations are set forth below.

1. The Administration has concluded that the McFadden Act, as amended, and Section 3(d) of the Bank Holding Company Act are increasingly ineffective, inequitable, inefficient and anachronistic, and that the existing de facto system of interstate banking should be ratified and further liberalized through a phased relaxation of current geographic restraints. Since government shaped the financial world that presently exists, government is obliged to create conditions which will permit an orderly evolution to a new financial environment. Liberalization of geographic limitations should be accomplished in stages to avoid short-run instability and should be designed to foster a competitive and relatively unconcentrated system of financial intermediaries.

There are two ways through which the benefits of a liberalized geographic framework could be achieved: through modification of the McFadden Act, or through modification of Section 3(d) of the Bank Holding Company Act, the so-called "Douglas Amendment." While either approach could be structured to achieve a more pro-competitive and equitable financial environment, the evidence is inconclusive as to which approach is superior. As a transition to a liberalized statutory structure, however, a modification of the Douglas Amendment would have a less intrusive impact upon many institutions and the existing regulatory structure.

Interstate expansion through BHC acquisitions should be viewed as less disruptive in terms of the dual banking system than would interstate branching authority. First, conferring interstate branching powers upon Federally-chartered banks would effectively require the states to give comparable authority to state-chartered institutions or witness large numbers of conversions to national charters. Second, interstate branching authority would create jurisdictional problems for state regulators who, under current law, could not cross state lines to examine the records of a branch head office; multi-state examination authority for state regulators would be necessary to overcome this difficulty if interstate brick-and-mortar branching for state-chartered institutions were permissible. In the Administration's view, these byproducts of interstate branching would not spell the demise of the dual banking system, but they would alter the character of that system more substantially than would interstate acquisitions.

Authority for interstate acquisitions -- i.e., the Douglas Amendment approach -- would obviate these problems. First, this route would avoid the jurisdictional problems cited above: books and records would be kept at each subsidiary bank's headquarters, a subsidiary bank would be domiciled where it was located, and there would be no necessity to cross state lines for examinations. Second, the interstate acquisition approach would preserve each state's control over its multi-office banking structure. Once an out-of-state BHC chartered a new bank or acquired an existing one in a particular state, the newly chartered or acquired institution would be subject to the structural laws of the state in which it was located. Thus, in a unit banking state that did not permit multi-bank ownership by BHCs, an out-of-state BHC could purchase only one in-state bank, and could not then open any branches of that bank. There is ample precedent for multi-state BHCs, and the Administration has not found meaningful evidence of any of the problems which purportedly would accompany interstate banking. Finally, the interstate acquisition route would be relatively more attractive for many institutions, particularly smaller institutions, already operating in a given market; this factor will be particularly important if the Administration's assessment of the forces favoring some consolidation of the financial services industry is correct. Liberalization of the Douglas Amendment would give these institutions the choice of affiliating with a potential outside competitor or continuing as an independent bank -- and one conclusion of this report is that small independent institutions have historically been able to withstand competition from new competitors, albeit with the pro-competitive result of lower prices for financial services and an attendant reduction in earnings.

In view of these considerations, the Administration recommends that over the short term the Congress enact a phased liberalization of the Douglas Amendment. To accommodate the concerns of banks which have relied upon the existing framework, this deregulation might be accomplished in stages. For example, Congress could consider initially restricting interstate acquisitions by imposing limits on the markets that might be entered -- e.g., interstate acquisitions might be limited to a regional basis. Alternatively, or in addition, Congress might impose limits on the banks to be acquired -- e.g., a bank eligible for acquisition by an out-of-state BHC could not hold more than a specified percentage of local market share.

With respect to the McFadden Act, this report has set forth the Administration's view that the effectiveness of this legislation is being steadily eroded by market forces. But to the extent that restraints on branch banking succeed in impeding the expansion of retail deposit taking and related activities, those restraints are anti-competitive. And to the extent that the restraints are circumvented, that circumvention entails a cost which will weaken earnings or be passed on to bank customers. McFadden Act restraints also impose inequities on banks vis-a-vis their nonbank competitors and on the average customer vis-a-vis wealthy individuals and major corporations, for whom geographic convenience is frequently a relatively unimportant factor in establishing banking relationships.

The adverse effects of branching limitations are most pronounced in those states which continue to place tight restrictions on geographic expansion by their banks. If these restrictions continue, banks in those states may find themselves at a serious competitive disadvantage in the evolving financial services environment. In these markets in particular, significant improvements in bank competition and performance could be achieved through the relaxation of restraints on intrastate multi-office banking. Therefore, the Administration strongly urges those states to enhance the opportunities for consumers of bank services by liberalizing restrictions on intrastate geographic expansion. In addition, in principle the Administration expresses its support for interstate reciprocal compacts, although this support is tempered by the recognition that arrangements which will be perceived as equitable by two or more states are not easily achieved.

As part of a phased liberalization of existing geographic restraints, this report has recommended that the Congress focus initially on relaxation of the Douglas Amendment. However, over the longer term, the Administration recommends that the Congress consider what changes in the McFadden Act as it applies to brick-and-mortar facilities might be appropriate in view of the findings of this report. For example, the Congress might consider permitting unlimited intrastate branching or interstate branching within "natural market areas" such as SMSAs for Federally-chartered institutions.

2. <u>The Administration believes that the deployment of EFT terminals ought to be subject to less onerous geographic restrictions than those imposed on brick-and-mortar branches, and that this modification of the McFadden Act should be undertaken along with liberalization of the Douglas Amendment in the first phase of geographic deregulation.</u>

Initially, deployment of EFT terminals should be permitted on a statewide basis and within SMSAs which cross state lines for all banking services, including deposit taking. Nationwide EFT deployment should be permissible at a later date.

The expanded deployment of EFT terminals would bring added convenience to the banking public and, given sufficient volume, EFT networks should result in cost savings to both financial institutions and their customers. EFT terminal deployment would not directly alter the dual banking system; state agencies still would regulate the expansion of state-chartered firms and still would, at least at this time, determine the banking structure with respect to brick-and-mortar branches in their respective states.

There is some concern that liberalization of EFT deployment restrictions would tend to benefit the larger banks that can take advantage of scale economies. In fact, the great majority of EFT terminals at present, and probably in the immediate future, are off-line, self-contained units to which scale economies do not significantly apply. Also, sharing of EFT networks among depository institutions would mitigate any tendency for EFT development to foster a concentration of resources, and appropriate antitrust standards could be designed to minimize any such tendency.

3. Interstate BHC acquisitions to accommodate the "failing bank" problem should be authorized.

Enactment of legislation to permit the interstate purchase of a financially troubled or failing bank by another domestic bank or BHC could substantially ease the regulatory problem of finding a suitable merger partner for a troubled firm, especially if the distressed bank is a large one. Each of the Federal depository institution regulatory agencies supports enactment of such legislation, which also would eliminate the present anomaly whereby foreign banks, but not out-of-state domestic banks, may be candidates to purchase a distressed institution.

It is critically important that acquisitions of financially troubled institutions be accomplished in a manner which is efficient and which promotes competition or at least does not significantly increase concentration. Thus, the statutory framework should give the Federal deposit insurance agencies the widest possible latitude in effecting a merger between a troubled and a healthy institution -- and this means choosing from the largest possible pool of "marriage partners," including out-of-state partners.

A preferred method of achieving this end would be to adopt the draft legislation proposed by the Federal Financial Institutions Examination Council in early 1980. The proposed bill -- the "emergency bank acquisition bill" -- would expand the flexibility of the Federal regulatory agencies when deciding the disposition of large failing depository institutions and when otherwise extending assistance to troubled institutions.

The bill would amend the Bank Holding Company Act and the Savings and Loan Holding Company Act, authorizing the Federal

Reserve Board and the Federal Home Loan Bank Board to permit interstate holding company acquisitions in certain extraordinary situations. Such a situation would exist if the Examination Council determined, with at least four members concurring, that an intrastate alternative was not feasible for the acquisition of a large insured commercial bank, savings and loan association, or mutual savings bank in receivership; i.e., a commercial bank with assets in excess of $1.5 billion, a thrift with assets in excess of $1 billion, or one of the three largest such banks or thrifts in the state.

Other provisions of the proposed legislation would give the regulatory agencies more flexibility in extending assistance to troubled depository institutions. For example, the FDIC would be authorized to make loans to, purchase assets of, and make deposits in an insured bank which might otherwise be in danger of closing. The FHLBB would be allowed to suspend temporarily the requirement that the Federal Home Loan Banks semiannually carry to their reserve accounts 20 percent of net earnings. It would also be able to authorize the regional Banks to make dividend (or other) payments to their members out of their reserves, and to charter a Federal stock savings bank or S&L to acquire an association or savings bank in receivership. The NCUA would be authorized to act as conservator for a failed insured credit union, while the Share Insurance Fund and the Central Liquidity Facility would gain flexibility for the purpose of assisting troubled member institutions. The authority of the National Credit Union Administration to permit the merger of a troubled credit union with another CU also would be extended by this legislation.

In view of the pressures which the current economic and financial environment is likely to impose on many depository institutions, the Administration believes that the Congress will ultimately want to consider preserving the authority of the regulators to permit mergers between healthy bank and thrift institutions. Opportunities for cross-industry mergers and acquisitions would provide depository institutions with a degree of flexibility which may prove vital in the difficult competitive climate likely to characterize the financial services industry in the 1980s. Over the immediate term, however, the Administration regards the enactment of the limited "failing bank" legislation described above as critically important.

Amendment to HB 238

1. Page 5, line 9.
Following: "date"
Insert: " -- termination"

2. Page 5, line 10.
Following: "approval"
Insert: "and terminates on July 1, 1983"

Amendments to HB 239

1. Page 4, lines 6 through 10.
Following: "<u>LAW</u>"
Strike: remainder of line 6 through "<u>THEREUNDER</u>" on line 10.
Insert: "the finance charge included in a retail charge account agreement shall be at a rate agreed upon by the retail seller and the buyer."

2. Page 4, line 10.
Following: "<u>CHARGE</u>"
Strike: "<u>MAY</u>"
Insert: "shall"

3. Page 4, lines 12 through 18.
Following: "<u>BY</u>"
Strike: remainder of line 12 through "<u>(B)</u>" on line 18
Insert: "using"

4. Page 4, line 20 through line 3 on page 5.
Following: "<u>CYCLE</u>"
Strike: remainder of line 20 through line 3 on page 5.
Insert: ". (a) A seller may change the terms of a revolving charge account whether or not the change is authorized by prior agreement. The seller shall give the buyer written notice of any change in the two billing cycles prior to the effective date of the change.

(b) If the retail seller increases his finance charge on a retail charge account agreement, then such increased rate may only be applied to the balance consisting of purchases on other charges incurred on or after the effective date of the increase.

(c) For purposes of determining the balance to which the increased rate applies, all payments may be considered to be applied to the balance existing prior to the change in rate until that balance is paid in full."

5. Page 6, line 11.
Following: line 10
Insert: "Section 3. Merchant finance. A finance operation that finances transactions between merchants, as defined in 30-2-104, is also exempt from usury limits."
Renumber: subsequent sections

6. Page 6, line 11.
Following: "<u>DATE</u>"
Insert: " -- Termination"

7. Page 6, line 12.
Following: "<u>APPROVAL</u>"
Insert: "and terminates on July 1, 1983"

Amendments to HB 286

1. Statement of Intent, line 13.
Following: "covered by"
Strike: remainder of line 13.
Insert: "insurance on accounts"

2. Page 2, lines 4 through 6.
Following: "ACCOUNTS"
Strike: remainder of line 4 through "ET SEQ" on line 6.
Insert: "acceptable to the department"

3. Page 2, line 11.
Following: line 10
Insert: "Section 3. Effective date. This act is effective on passage and approval."