

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By Chairman Gene Thayer, on March 9, 1989,
at 10:00 a.m., Room 410

ROLL CALL

Members Present: Chairman Thayer, Vice Chairman Meyer,
Senator Boylan, Senator Noble, Senator Williams,
Senator Hager, Senator McLane, Senator Weeding,
Senator Lynch

Members Excused: None

Members Absent: None

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: None

HEARING ON HOUSE BILL 499

Presentation and Opening Statement by Sponsor:

Representative Giacometto, House District 24, said HB 499 was brought in as a custodial account, which was the account in the stockyard and livestock market. He stated that if an individual sold his livestock, the purchasers check went into that account, fees were extracted, and a check for the balance was sent to the seller. He said the money involved in that account amounted to millions and million of dollars in many of the stockyards. He said that currently it was only a misdemeanor if the funds were misused, and HB 499 would make it a felony. He stated Montana had not experienced any problems, and this was a protection measure to insure a correct course of action if the occasion arose. However, he reported a case in South Dakota where tens of thousands of dollars were involved, and many people had lost their money.

List of Testifying Proponents and What Group they Represent:

Les Graham - Montana Department of Livestock
Valerie Larson - Montana Farm Bureau Federation

Jerry Jack - Executive Vice President, Montana
Stockgrowers Association
Montana Cattlewomen
Association of State Grazing Districts

List of Testifying Opponents and What Group They Represent:

None

Testimony: Les Graham said he had handed out of his testimony, and said they were in support of HB 499. (See Exhibit #1)

Valerie Larson said they supported HB 499, because they felt anyone tampering with custodial accounts, and convicted of such tampering should be guilty of a felony. (See Exhibit #2)

Jerry Jack said they were in strong support of HB 499, and urged a do pass.

Questions From Committee Members: Chairman Thayer asked if this fine and sentence were consistent with other similar offenses and charges? Les Graham said HB 499 fit into the criminal code of the state law.

Representative Giacometto told Senator Thayer they left it open ended, to allow the discretion of the court. He said there could be a small monetary amount involved, or there may be hundreds of thousands of dollars. He said the bill did not have a minimal or an exclusion provided for, the judge and court had to decide each individual case.

Closing by Sponsor: Representative Giacometto said he would like to stress the point that there had not been any problems of this nature in Montana. He said they just wanted to make sure that we did not have a situation like the one South Dakota has experienced. He said HB 499 would facilitate recovery of the money, if misuse did occur.

DISPOSITION OF HOUSE BILL 499

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Lynch made a motion HB 499

BE CONCURRED IN. Senator Meyer seconded the motion. The motion Carried Unanimously. Senator Devlin carried the bill on the Senate floor.

HEARING ON HOUSE BILL 470

Presentation and Opening Statement by Sponsor:

Representative Rice, House District 43, said HB 470 was technically a housekeeping matter, but it was more important than that to the bankers. He said the 1987 legislature had passed HB 748 which allowed a corporation's articles to limit or eliminate a director's personal liability to the corporation or to stockholders for breach of his fiduciary duties. He said the issue was the internal liability of a corporation, not the liability concerns that may be raised with outside parties. He said it had been thought that HB 747 covered state banking corporations, but it has been decided that the specific laws regarding banking should also be amended. He said HB 470 simply extended that exemption to banking corporations also.

List of Testifying Proponents and What Group They Represent:

George Bennett - Montana Bankers Association
Forest H. Boles - President, Montana Chamber of
Commerce

List of Testifying Opponents and What Group They Represent:

None

Testimony: George Bennett said he had prepared testimony to present. (See Exhibit #3) He said Representative Rice had very adequately covered the bill, and he would sanction his testimony to the chapter of the law passed in 1987, which gave this same right to other corporations. He said HB 470 gave a state bank the option of limiting the liability of directors, rather than purchase liability insurance for officers and directors. He said they very strongly supported the bill.

Forest Boles said they supported the legislation when it was presented in 1987, and certainly supported HB 470. He asked the committee to give passage to the bill.

Questions From Committee Members: None

Closing by Sponsor: Representative Rice simply stated that

he closed.

DISPOSITION OF HOUSE BILL 470

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Noble made a motion HB 470 BE CONCURRED IN. Senator Hager seconded the motion. The motion Carried Unanimously. Senator Noble carried the bill on the Senate floor.

HEARING ON HOUSE BILL 521

Presentation and Opening Statement by Sponsor:

Representative Good, House District 36, said she perceived HB 521 to be a consumer protection bill. She said the purpose of the bill was to insure that people who gave brokerage type information, were indeed licensed. She said that because there was ongoing education available, and she thought that if one person had to get that education an license, it was only fair that everyone did. The bill amended two sections of the law which regulated real estate brokers and salesmen. The definition of a "broker" was expanded to include a person who "makes the advertising, sale, lease, or other real estate information available by public display to potential buyers".

Presently the exemption section of the law provided that any person who performed certain acts for a "commission or compensation" was a broker or salesman. This bill deleted the word "commission". The bill also clarified that the real estate licensing laws did not apply to a newspaper, other publication, or to radio or television media. Representative Good passed out copies of Exhibit #4.

List of Testifying Proponents and What Group They Represent:

Tom Hopgood - Montana Realtor Association

List of Testifying Opponents and What Group They Represent:

None

Testimony: Tom Hopgood said HB 521 arose from a concern of various people, most of them were real estate agents, and also the Board of Realty Regulations. He said it

pertained to the situation where groups were connoting to be a 'by owner' type sales organization and were actually doing the things licensed real estate agents did. He said they generally had an office, took information, gave advice regarding the market and methods of sale, and might disseminate information and do some paper work, gave advice about financing and legal agreements, and may end up closing a sale. He said that in essence, they were doing the same work as licensed real estate people did, and they were charging a fee for their services. He stated there was important difference, and that was that they were not regulated by the Board of Realty Regulations, and were not licensed as real estate agents. He said there were no requirements for these people's skills or qualifications. He said it was their position that if people were doing the work of a licensed real estate person, then they should be licensed and regulated. He said they believed HB 521 addressed the situation, and were in support of passage.

Questions From Committee Members: Chairman Thayer asked how wide spread the problem was? Representative Good said she understood there were several communities throughout Montana involved.

Senator Williams asked if she knew where the groups had originated? Representative Good said she wasn't aware of the origin, but she knew of people who had reported the group as far less than satisfactory.

Senator Meyer said he thought it was a rather small sized group to be dealt with, not a large organization.

Closing by Sponsor: Representative Good said she saw the bill as consumer protection, and one she thought every neighborhood deserved to have for their just protection.

DISPOSITION OF HOUSE BILL 521

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Lynch made a motion HB 521 BE CONCURRED IN. Senator McLane seconded the motion. The motion Carried, with Senator Williams and Senator Hager voting no. Senator Meyer carried the bill on the Senate floor.

HEARING ON HOUSE BILL 705

Presentation and Opening Statement by Sponsor:

Representative Hannah, House District 86, said that when he decided to get a credit card, he had obtained the sheet he was passing out to them. (See Exhibit #5) He said he had discovered that there were different interest rates which could be charged on retail charge cards, according to what state a person lived in. He cited some of the different rates being charged, and stated that Montana was classified in the 'all other' group. He said Montana law presently did not limit the interest rate that could be charged for the credit cards, and that was what HB 705 proposed. He said thirty-four states had imposed caps on credit card interest rates.

He said HB 705 affected credit cards, other than those issued by a federally chartered banks. He said the bill stipulated that if you were going to extend credit in Montana, the first \$500 loaned was charged at eighteen percent, and anything over \$500 was to be charged at fifteen percent. He said it had been fashioned after one of the floors in exhibit #5. He said the bill shouldn't cause too large an impact with Montana lenders, because it was working in other states.

List of Testifying Proponents and What Group They Represent:

None

List of Testifying Opponents and What Group They Represent:

Charles Brooks - Executive Vice President, Montana Retailers Association
Ed Lamb - Executive Vice President, Bank of Montana System
Dick James - Manager, Bon Marche, Great Falls, Montana
John Cadby - Montana Bankers Association
Bob Waller - First Interstate Bank, Billings, Montana
Connie Mathews - Jerry Noble Tires
Loren Davis - Davis Business Machines, Inc., Helena, Montana
Forest H. Boles - Montana Chamber of Commerce
Kay Foster - Billings Chamber of Commerce
Bruce Porter - Lewistown Farm Plan Corp
Self/consumer
Ted Neuman - Montana Council of Cooperatives

Testimony: Charles Brooks said they strongly opposed HB 705. He said that after Representative Hannah had presented the bill in the House, he had called Arizona and asked for a copy of their code. He read paragraph A. of Exhibit #6, and stated that Arizona did not have a control on interest when both parties had signed a written agreement.

He said the bottom line to the legislation was a question of whether we should let the time tested method of setting prices and services be the market place in the free enterprise system, or did they impose unnecessary interference by government regulation. He said HB 705 was narrowly directed to one segment of the retail industry, and addressed the open-end retail account. He said he thought it would be wise to note that out-of-state financial institutions under federal law would have unregulated credit card interest rates.

Mr. Brooks said there were two main components to the cost of providing consumer credit which needed addressed. He said one was operating cost, and that included credit losses or bad debts, and the other was the cost of funds. He said forty to sixty percent of the cost of offering credit was the cost of money necessary to finance accounts receivable, and the balance of the cost was the expense of running and servicing the program. He said granting credit to the consumer was expensive, and that expense was growing every day. He said HB 705 dealt with the basic economic freedoms that our country and state were founded on, and that was to let the marketplace determine the cost of goods and services. He urged a do not pass on the bill, and submitted his testimony in writing. (See Exhibit #7)

Ed Lamb said they opposed HB 705 because they thought it was bad legislation for Montana, for their employees, and would not benefit the consumers in Montana. He said their system owned fourteen banks, and a bank card company that issued Visa and Mastercard. He said they currently had about 10,000 of those cards outstanding. He said their credit card business was fifteen years old, currently employed seven people, and had an annual payroll of \$138,000. They decided the bill was not good, by recalculating their income and expense results of 1988, based on the interest rates proposed by HB 705. He said that by using those rates, they had found it would no longer be feasible to operate within Montana.

Dick James said he strongly opposed HB 705. He said the current rate of eighteen percent interest worked perfectly for them. He said that if limit restrictions were imposed, they would either have to underwrite the cost of credit, or increase credit standards and requirements. He said they felt the marketplace provided the best place to make this type of decision.

John Cadby said he had written testimony to pass out, and he would not read it, because a lot of it was repetitious. (See Exhibit #8) He said he thought interest rate ceilings would simply cause a loss of jobs in Montana. He said page two of his testimony quoted material that showed interest free loans lowered the effective interest rate by three percent. He said the federal reserve study also showed that the net earnings of bank card plans averaged 1.9% of the balances outstanding between 1972 and 1985. He said that figure was significantly lower than the average net returns on a major type of bank loan. He also stated it was true that administrative costs accounted for about sixty percent of credit card business.

Bob Waller said they were opposed to HB 705. He said their bank was part of a Montana based holding company, and were an issuer of Mastercard and Visa. He said they had been in the business of issuing credit cards for less than six months, and currently had about 1,000 cards outstanding. He said that in addition to providing the service for their affiliate banks, they had agreed to an agreement with twenty-one independent banks throughout Montana, which would enable them to offer a new program with cards featuring the individual community bank's name on it. He said most of the cards in eastern Montana were issued by out-of-state competitors who would not be affected by HB 705, and had rates ranging eighteen percent to nineteen point eight percent, and had annual fees from twelve dollars to twenty dollars. He said their own current rate fourteen point eight eight percent, and their annual fee was twelve percent. He said they were providing a credit facility to twenty-seven Montana communities, with charges substantially below major players. He said HB 705 discriminated against Montana credit card issuers, and provided a playing field that was significantly favored out-of-state card issuers. He said that if HB 705 passed, they would discontinue their credit card operation, as it would become an imprudent business practice.

Connie Mathews said HB 705 would cause a hardship on their business, because they would have to purchase services

of a computer programmer to modify their system to accommodate the requirements of this bill. She said it would also create a difficulty, by requiring their firm to explain to customers why they were charging a different rate of interest on different sized credit balances. She said it may be viewed unfair for smaller purchasing customers had to pay more than the larger purchasers. She said competition set interest rates, and didn't feel it was necessary for the credit industry to fix those interest rates. (See Exhibit #9)

Loren Davis said he was opposed to HB 705 because it was an anti-business bill which placed another regulation on Montana retail stores, and in some instances it could prevent businesses from issuing credit. He further stated it would cause a hardship on most retail stores that would have to change software to flag the open accounts, as they crossed the \$500 figure. (See Exhibit #10)

Forrest Boles said he objected to the bill because changing interest rates could require the removal of the limitations being requested, and he thought it discouraged investment in Montana. He said he thought HB 705 was a bill that should be defeated.

Kay Foster said she had received calls from several businesses which varied in size, from small to somewhat larger, and the concerns over HB 705 were expressed by all sizes of business. She said she felt all of the testimony had shown that the bill would be a detriment to Montana. She asked the committee to oppose the bill.

Bruce Porter said he was submitting written testimony. He said he opposed HB 705, and didn't feel that either business or the consumer would be better served by legislating the price of credit. He read his testimony, as presented. (See Exhibit #11)

Ted Neuman said he stood in opposition to HB 705, for many of the reasons previously stated. He said most of their businesses were not equipped to handle the changes HB 705 would require, with the need to differentiate between interest rates. He said it was necessary for most of their business to charge the existing interest rates to survive, because agricultural money was a high risk and cost more. He said they thought this piece of legislation would be detrimental to their businesses, and consequently detrimental to Montana farmers and ranchers.

Questions From Committee Members: Senator Lynch asked if Representative Hannah was aware that the information he presented on Arizona was in error? Representative Hannah said that apparently there was an agreement in existence. He said he was not aware of what was implied, but apparently it did not affect the first bank card.

Senator Lynch asked how they were able to have such reasonable rates? Mr. Waller said that when they did their original cost projections for last December, they had found the fourteen point eight eight percent rate would provide them with a satisfactory margin, but they were presently operating at a break even point. He said that as the environment changed, they would have to raise their rates.

Senator Williams asked what percent of their charge accounts were written off as a bad debt? Mr. James said he did not have specific figures with him, but 1988 had been a tough year for them, and they had actually lost money on their credit card operation.

Chairman Thayer said that the manager of Hennessy's had called to say that they sold their receivables to a New York market, and they currently had to pay a higher rate in that market, than the bill would allow. He asked how many other retailers would be affected similarly? Charles Brooks said Montgomery Ward had turned their entire credit operation over to one of the major banking institutions, so they were able to charge whatever interest rate the bank was marketing their's at, because they were then under federal regulation. He said it was his understanding that Hennessy's was currently charging eight percent, therefore it appeared they were subsidizing their credit operation.

Chairman Thayer said he understood that HB 705 would limit them to fifteen percent and Hennessys were currently paying sixteen plus percent when they sold their receivables. He said that was going to cause a company in that position to reevaluate their whole operation in Montana. Mr. Brooke said that was exactly correct, and it would restrict credit and create a need for increased consumer prices.

Closing by Sponsor: Representative Hannah said he thought the proponents to this type of legislation were the consumers who were home working, and were not free to be here. He said he thought there were a lot of consumers out there who would feel this was good legislation. He reiterated that thirty-four states had

laws that were very similar to the proposed law before them. He stated that consumer lending had not closed down in those states which had enacted the law, and businesses were still in operation there. He said he didn't think the bill was all bad, or nearly the ogre that it was described to be, by the opponents. He said he did not feel it would create the end to businesses.

DISPOSITION OF HOUSE BILL 705

Discussion: Senator Noble said he felt most small businesses like his own were charging in the eighteen percent range, and were being fair about the interest they charged consumers. He said consumers didn't have to pay any interest if they chose to buy in a matter they could utilize the billing date allocations for time allowed to pay the bill.

Senator Lynch said he supported the motion, even though he had signed the bill. He said he thought Representative Hannah was well intentioned, and he thought it would be good because he had thought it would include all credit cards. He said he didn't think it was fair if only in-state cards would be affected.

Chairman Thayer said he was going to vote for the motion, and he wondered if Representative Hannah thought the bill would cover all credit cards and would be equal treatment.

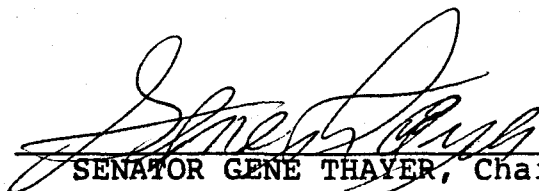
Senator Hager said he was going to vote for the motion for the same reasons.

Amendments and Votes: None

Recommendation and Vote: Senator McLane made a motion HB 705 BE NOT CONCURRED IN. Senator Noble Seconded the motion. The motion Carried Unanimously. Chairman Thayer carried the adverse committee report on the Senate floor.

ADJOURNMENT

Adjournment At: 12:34 p.m.


SENATOR GENE THAYER, Chairman

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 3/9/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
<u>SENATOR DARRYL MEYER</u>	✓		
<u>SENATOR PAUL BOYLAN</u>	✓		
<u>SENATOR JERRY NOBLE</u>	✓		
<u>SENATOR BOB WILLIAMS</u>	✓		
<u>SENATOR TOM HAGER</u>	✓		
<u>SENATOR HARRY MC LANE</u>	✓		
<u>SENATOR CECIL WEEDING</u>	✓		
<u>SENATOR JOHN "J.D." LYNCH</u>	✓		
<u>SENATOR GENE THAYER</u>	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 9, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 499 (third reading copy -- blue), respectfully report that HB 499 be concurred in.

Sponsor: Giacometto (Devlin)

BE CONCURRED IN

Signed: 

Gene Thayer, Chairman

3-9-89
1:15

SENATE STANDING COMMITTEE REPORT

March 9, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 470 (third reading copy -- blue), respectfully report that HB 470 be concurred in.

Sponsor: Rice (Noble)

BE CONCURRED IN

Signed: 

Gene Thayer, Chairman

SENATE STANDING COMMITTEE REPORT

March 9, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 521 (third reading copy -- blue), respectfully report that HB 521 be concurred in.

Sponsor: Good (Meyer)

BE CONCURRED IN

Signed:


Gene Thayer, Chairman

3-9-89
scrhb521.309
15

SENATE STANDING COMMITTEE REPORT

March 9, 1989

MR. PRESIDENT,

We, your committee on Business and Industry, having had under consideration HB 705 (third reading copy -- blue), respectfully report that HB 705 be not concurred in.

Sponsor: Hannah (Thayer)

BE NOT CONCURRED IN

Signed: 
Gene Thayer, Chairman

H.B. 499

Summary.

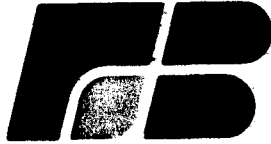
The Department of Livestock supports this legislation. We have not had the problem in Montana that other states and areas have witnessed. We have a close working relationship with our state's 15 auction markets.

However, a custodial account is a trust of sorts in that only four transactions are allowed to pass thru this account.

- 1.) Proceeds from the sale of the animal.
- 2.) Check written by the auction to pay the seller.
- 3.) Check or withdrawal by the auction to withhold cost of sale and
- 4.) The auction may withdraw interest accumulated.

Les Graham

502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153



BILL # HB499 ; TESTIMONY BY: Valerie Larson
DATE 3/09/89 ; SUPPORT yes ; OPPOSE _____

Mr. Chairman, members of the Committee, for the record, my name is Valerie Larson, speaking for over 3500 Farm Bureau members from throughout Montana.

Mr. Chairman, Farm Bureau strongly supports House Bill 499. We feel that anyone tampering with the proceeds or custodial funds of livestock, grains, or any other agricultural products should be guilty of a felony if convicted of such a crime.

Farm Bureau urges this committee to pass HB 499 and give farmers and ranchers in Montana the protection provided in this bill.

Thank you for your attention.

SIGNED: _____

Valerie Larson

SENATE BUSINESS COMMITTEE
TESTIMONY OF MONTANA BANKERS ASSOCIATION
IN SUPPORT OF HOUSE BILL 470

The Montana Bankers Association is the principal trade association of the commercial banks, state and federal, in the State of Montana.

This bill (H. B. 470) will allow state banking corporations, by amending their articles of agreement (articles of incorporation), to limit the liability of their directors to the shareholders and the corporation.

In the 1987 session House Bill No. 748 (copy attached) was enacted and became Chapter 559 of the Laws of 1987. House Bill 748 of the 1987 session authorized various corporations to limit their directors' liability in the same manner now proposed in House Bill 470. House Bill 748 of the 1987 session allowed a limitation of liability for directors of business corporations, nonprofit corporations; cooperative, agricultural, cooperative marketing, and cemetery associations; and rural cooperative utilities.

The need to allow corporations to limit the liability of their directors is directly affected by the costs and availability of directors and officers liability insurance. Since this insurance, if available, has become almost prohibitively expensive, corporations will either have to limit the liability of their directors, or agree to indemnify in order to obtain the services of qualified directors. House Bill 470 simply extends

Testimony on House Bill 470

Page 2

to state banking corporations the same ability to limit their directors' liability as was extended to the other corporations and associations in 1987 under House Bill 748 of that session.

(4) A license issued or continued under this section may be revoked or suspended by the commissioner for violation of this title.

Section 11. Extension of authority. Any existing authority of the commissioner of insurance to make rules on the subject of the provisions of this act is extended to the provisions of this act.

Section 12. Codification instruction. Section 10 is intended to be codified as an integral part of Title 33, chapter 30, part 1, and the provisions of Title 33, chapter 30, part 1, apply to section 10.

Section 13. Applicability. Section 8 applies to individuals appointed as enrollment representatives on or after the effective date of this act.

Section 14. Effective date. This act is effective January 1, 1988.

Approved April 20, 1987.

CHAPTER NO. 559

[HB 748]

AN ACT TO ALLOW A CORPORATION OR ASSOCIATION IN ITS ARTICLES OF INCORPORATION TO ELIMINATE OR LIMIT A DIRECTOR'S PERSONAL LIABILITY TO THE CORPORATION, ASSOCIATION, OR SHAREHOLDERS OF THE CORPORATION OR MEMBERS OF THE ASSOCIATION FOR MONETARY DAMAGES FOR BREACH OF FIDUCIARY DUTY AS A DIRECTOR; AMENDING SECTIONS 35-1-202, 35-2-202, 35-15-201, 35-16-202, 35-17-202, 35-18-203, AND 35-20-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-1-202, MCA, is amended to read:

"35-1-202. Articles of incorporation. (1) The articles of incorporation shall set forth:

- (a) the name of the corporation;
- (b) the period of duration, which may be perpetual;
- (c) the purpose or purposes for which the corporation is organized, which may be stated to be or to include the transaction of any or all lawful business for which corporations may be incorporated under this chapter;
- (d) the aggregate number of shares which the corporation shall have authority to issue and, if such shares are to be divided into classes, the number of shares of each class;
- (e) if the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect of the shares of each class;

(f) if the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

(g) any provision granting to shareholders the preemptive right to acquire additional shares of the corporation;

(h) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;

(i) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify;

(j) the name and address of each incorporator.

(2) In addition to provisions required therein, the articles of incorporation may also contain provisions not inconsistent with law regarding:

(a) the direction of the management of the business and the regulation of the affairs of the corporation;

(b) the definition, limitation, and regulation of the powers of the corporation, the directors, and the shareholders or any class of the shareholders, including restrictions on the transfer of shares;

(c) the par value of any authorized shares or class of shares;

(d) any provision that, under this chapter, is required or permitted to be set forth in the bylaws;

(e) *the elimination or limitation of the personal liability of a director to a corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except:*

(i) *for a breach of a director's duty of loyalty to a corporation or its shareholders;*

(ii) *for acts or omissions that constitute willful misconduct, recklessness, or a knowing violation of law;*

(iii) *under 35-1-409; or*

(iv) *for a transaction from which a director derives an improper personal benefit. A provision under this subsection may not eliminate or limit the liability of a director for an act or omission occurring before the effective date of the provision. For purposes of this subsection, "director" includes a member of a governing body of a corporation that is not authorized to issue capital stock.*

(3) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter."

Section 2. Section 35-2-202, MCA, is amended to read:

"35-2-202. Articles of incorporation — control over bylaws. (1) The articles of incorporation shall set forth:

- (a) the name of the corporation;
- (b) the period of duration, which may be perpetual;
- (c) the purpose or purposes for which the corporation is organized;
- (d) any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation;
- (e) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;
- (f) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;
- (g) the name and address of each incorporator.

(2) *In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).*

(3) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(4) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling."

Section 3. Section 35-15-201, MCA, is amended to read:

"35-15-201. Incorporation. (1) Whenever any number of persons, not less than three or more than seven, may desire to become incorporated as a cooperative association for the purpose of trade or of prosecuting any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, they shall make a statement to that effect under their hands setting forth:

- (a) the name of the proposed corporation;
- (b) its capital stock;
- (c) its location;
- (d) the duration of the association; and
- (e) the particular branch or branches of industry which they intend to prosecute.

(2) *In addition to provisions required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).*

(3) The statement shall be filed in the office of the secretary of state as the articles of incorporation of the association. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such corporation, at such time and place as they may determine, for which he shall receive the fee of \$20."

Section 4. Section 35-16-202, MCA, is amended to read:

"35-16-202. Petition for incorporation — contents and filing — bond. (1) Such persons must prepare, sign, acknowledge, and file a petition with the clerk of the district court of the county in which the lands or the greater portion of the lands included in the petition are situate, such petition to state:

- (a) the name of the corporation or district proposed to be formed;
- (b) the purpose for which it is formed;
- (c) the place where its principal business is to be transacted;
- (d) the number of its directors or trustees, which shall not be less than three, and the names and residences of those who are selected for the first 3 months and until their successors are elected and qualified. Such directors or trustees shall at all times be resident freeholders in the state of Montana.
- (e) the names and addresses of the petitioners applying for such incorporation or district, with a description of the lands which each owns and proposed to be submitted to said corporation or district and the character of the same and their production, also a consent of the owners to submit the lands to the provisions hereof;
- (f) the assessed valuation of the land;
- (g) the term for which it is to exist, not exceeding 40 years;
- (h) if shares, acres, production, or other evidences of membership are to be used, the basis for issuing the same in either value, acreage, or production.

(2) *In addition to provisions required in subsection (1), the petition for incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).*

(3) Such petition shall be accompanied by a map giving location of the lands sought to be included in such corporation or district, nothing herein to be construed as requiring such lands to be contiguous.

(4) A bond in the sum of \$1,000 to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of such corporation or district, shall be filed with the petition."

Section 5. Section 35-17-202, MCA, is amended to read:

"35-17-202. Articles of incorporation — contents — filing — articles or copies as prima facie evidence. (1) Each association formed under this chapter must prepare and file articles of incorporation setting forth:

- (a) the name of the association;
- (b) the purposes for which it is formed;
- (c) the place where its principal business will be transacted;
- (d) the term for which it is to exist, which may be perpetual;
- (e) the number of its directors or trustees, which shall not be less than 5 or more than 13, and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;

(f) ~~if organized without capital stock, whether the property rights and~~ interest of each member shall be equal or unequal, and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed. The association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules.

(2) *In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).*

(3) The articles must be subscribed by the incorporators and shall be filed in accordance with the provisions of the general corporation law of this state, and when so filed the articles of incorporation or certified copies thereof shall be received in all the courts of this state and other places as prima facie evidence of the facts contained therein and of the due incorporation of such association."

Section 6. Section 35-18-203, MCA, is amended to read:

"35-18-203. Articles of incorporation. (1) The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this chapter, shall be signed by each of the incorporators, and shall state:

- (a) the name of the cooperative;
- (b) the address of its principal office;
- (c) the names and addresses of the incorporators;
- (d) the names and addresses of the persons who shall constitute its first board of trustees; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

(2) *In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).*

(3) Such articles of incorporation shall be submitted to the secretary of state for filing as provided in this chapter.

(4) It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter."

Section 7. Section 35-20-103, MCA, is amended to read:

"35-20-103. Document of incorporation — contents — filing.

(1) ~~The chairman and secretary of such meeting shall within 5 days after the holding of the same make a written certificate, which shall state:~~

(a) the names of the associates who attended such meeting;

(b) the corporate name of the association determined upon by a majority of the persons who met;

(c) the number of persons fixed upon to manage the concerns of the association;

(d) the names of the trustees chosen at the meeting and their classification;

(e) the day of the year fixed upon for the annual election of trustees and the manner of their election.

(2) *In addition to provisions required in subsection (1), the document of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).*

(3) Such certificate shall be signed by the chairman and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause such certificate so acknowledged to be recorded in the office of the county clerk and recorder of the county in which said meeting was held, and a certified copy of such certificate so recorded shall be filed with the secretary of state of the state of Montana, who shall thereupon issue his certificate therefor without charge."

Section 8. **Effective date.** This act is effective on passage and approval.

Approved April 20, 1987.

BY OWNER**REALITY NETWORK™ ■ GREAT FALLS****NO PERCENTAGE COMMISSIONS!****BUYERS AND SELLERS – SAVE MONEY!****– AMERICA'S –
PEOPLE-TO-PEOPLE
REAL ESTATE MARKETPLACE****ADVANTAGES TO BUYERS**

- Central display of **MANY PROPERTIES** offered directly from the sellers.
- **NO SALES PRESSURE.**
- Buyers are encouraged to **DEAL DIRECTLY WITH SELLERS.** (We make it easy!)
- **COMPLETE BROKER'S SERVICES** available as needed at low rates.
- **NO PERCENTAGE COMMISSIONS** mean potentially lower property prices.

ATTENTION SELLERS!

- **NO PERCENTAGE COMMISSIONS**
Saves you \$\$\$\$\$\$.
- A central marketplace for **MAXIMUM EXPOSURE** to property buyers.
- Low selling costs mean a **COMPETITIVE PRICE** for your property.
- Buyers are referred directly to you. **YOU DEAL DIRECT.**
- **BUYER REGISTRATION** for your benefit.
- All professional **BROKERAGE SERVICES** and guidance available at remarkably low cost.
- A complete & organized **MARKETING SYSTEM** means a potentially **QUICKER SALE** for you at a much lower cost.
- Newspaper **ADVERTISING** or other marketing methods may cost more without the **BENEFITS THAT WE OFFER.**
- Prospective **BUYERS ARE ATTRACTED** because of the many and colorful properties displayed.

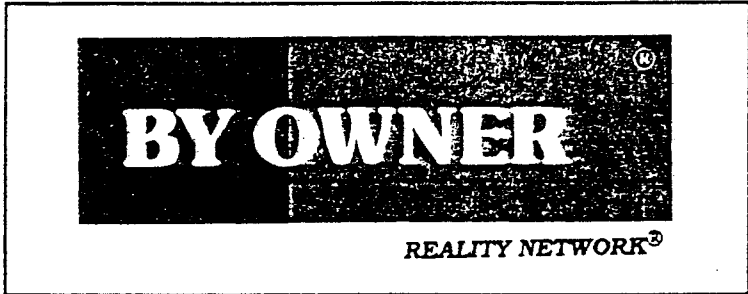
**BENEFIT FROM BOTH LOCAL AND
MULTI-OFFICE EXPOSURE
VIA OUR FRANCHISED NETWORK!**

Ex. #4

3/9/89

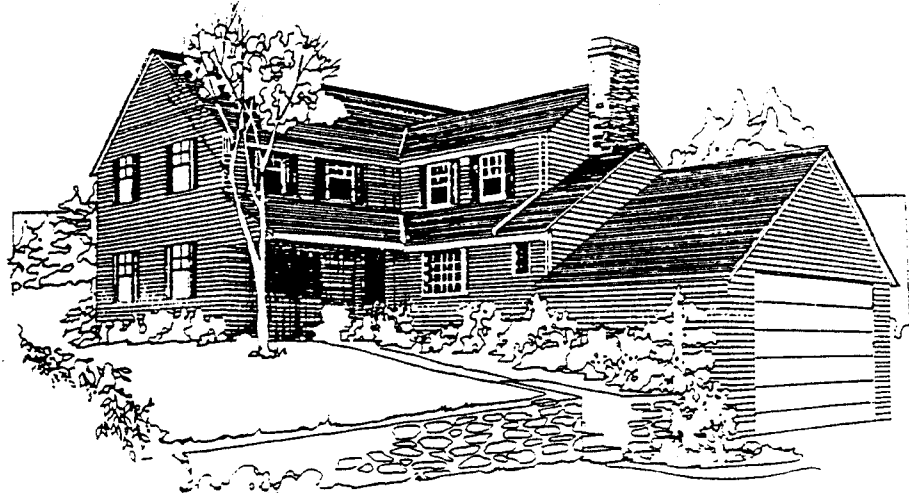
MONTANA & ALBERTA, CANADA

July
1988



FREE

REAL ESTATE GUIDE



SELLERS —

CALL YOUR LOCAL BY OWNER OFFICE TO LEARN ABOUT ALL THE SERVICES OFFERED!

- Colorful retail display centers.
- No % commissions.
- No listing agreements necessary.
- Buyer deals directly with you.

SAVE THOUSANDS
NEITHER PARTY PAYS
ANY PERCENTAGE COMMISSIONS!

BUYERS —

- Buyers are free to examine many sellers' properties displayed in one location with no pressure to look or buy.
- Immediate access to information on any property.
- With no large percentage commissions involved, more competitive prices are possible.
- Buyers deal directly with sellers - and with professional help always available.
- Guidance in securing financing, title insurance, legal documents and anything else you need to buy or sell your real estate.

STOP BY & VISIT ONE OF OUR SHOWROOM OFFICES

BOZEMAN FLATHEAD VALLEY GREAT FALLS
 MISSOULA BILLINGS HAMILTON STEVENSVILLE
 LETHBRIDGE & MEDICINE HAT ALBERTA, CANADA

DVANTAGES TO SELLERS...

NO PERCENTAGE COMMISSIONS

Saves you \$\$\$\$\$\$.

A central marketplace for **MAXIMUM EXPOSURE** to property buyers.

Low selling costs mean a **COMPETITIVE PRICE** for your property.

Buyers are referred directly to you. **YOU DEAL DIRECT.**

BUYER REGISTRATION for your benefit.

All professional **BROKERAGE SERVICES** and guidance available at remarkably low cost.

A complete & organized **MARKETING SYSTEM** means a potentially **QUICKER SALE** for you at a much lower cost.

Newspaper **ADVERTISING** or other marketing methods may cost more without the **BENEFITS THAT WE OFFER.**

Prospective **BUYERS ARE ATTRACTED** because of the many and colorful properties displayed.

DVANTAGES TO BUYERS

Central display of **MANY PROPERTIES** offered directly from the sellers.

NO SALES PRESSURE.

Buyers are encouraged to **DEAL DIRECTLY WITH SELLERS.** (We make it easy!)

COMPLETE BROKER'S SERVICES available as needed at low rates.

NO PERCENTAGE COMMISSIONS mean potentially lower property prices.

We may give you just the edge you need. Please call or stop in, see for yourself!

INTRODUCING.....

Ex. #4
3-9-89

BY OWNER

REALITY NETWORK

AMERICA'S PEOPLE-TO-PEOPLE REAL ESTATE MARKETPLACE!

SAVE THOUSANDS!

NO PERCENTAGE COMMISSIONS!



BY OWNER OF GREAT FALLS
TIMES SQUARE LEVEL

625 E. 10th Street

P. O. BOX 6018
GREAT FALLS, MT 59406-6018

406-541-02

EACH OFFICE INDEPENDENTLY OWNED AND OPERATED

That's Right!

No Percentage

Commissions!

BUYERS AND SELLERS

SAVE MONEY!

Neither

PARTY PAYS ANY

PERCENTAGE

COMMISSIONS!

BY OWNER

®

REALITY NETWORK™

... MEETS TODAY'S NEEDS
for REAL ESTATE SELLERS

AND BUYERS!

HERE'S HOW

BY OWNER

REALITY NETWORK™

WORKS FOR YOU

Ex. #4

SELLERS — A MODEST BASIC FEE provides

3-9-89

all these services:

- We will photograph your property and help you to prepare a distinctive photographic display.
- We will showcase your property in our attractive, professional display centers.
- We will provide a distinctive "FOR SALE" sign featuring your phone number.
- Phone message answering service available at no charge.
- A sales packet containing information, sales tips and important forms.
- A property review with suggestions that may help you make the sale.
- You provide information about your property and we distribute it DIRECTLY to prospective buyers.
- Exposure power!! Local or regional exposure through our multi-state office network.

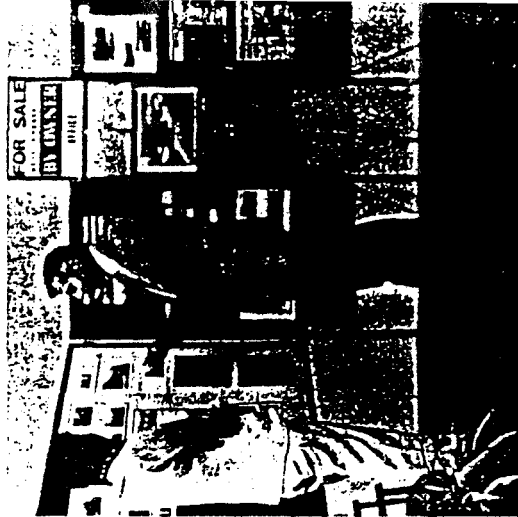
OPTIONAL SERVICES FOR SELLERS AND BUYERS

We can assist you with all your selling OR your buying needs!

- In-House Consulting Brokers to assist you in many of our offices. You pay only for the services you need.
- A one-stop Service Center for help in obtaining the Professional services you need.

BUYERS

- Buyers are free to examine many property displays in one location with no pressure to look or buy.
- Immediate access to information on any property.
- Buyers may deal directly with sellers with no percentage commissions involved, and with professional help always available.
- More competitive prices are possible with no percentage commissions.
- For the first time, buyers have easy access to...



EXXON RETAIL INSTALMENT CREDIT AGREEMENT
(Exxon Credit Sale Agreement)

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 5 39-9

I agree with Exxon Company, U.S.A. (a division of Exxon Corporation) (Exxon), P.O. Box 3505, Houston, Texas 77001, that I will pay for all purchases charged on my Exxon credit card account by me or with my permission, according to the terms set out below.

- Charge Privileges.** Any single credit card purchase which totals \$40.00 or more is eligible for revolving charge privileges and is payable in accordance with the schedule shown in Section 2 (Payment Terms) below. Single credit card purchases under \$40.00 are not eligible for revolving charge privileges and are payable in full each month. All single credit card purchases under \$40.00 will be included in the "Minimum Payment" on my monthly billing statement.
- Payment Terms.** I will make a "Minimum Payment" each month of (a) the total amount of all current purchases which are not eligible for revolving charge privileges, plus (b) the minimum amount due on purchases which are eligible for revolving charge privileges, according to the following schedule, plus (c) all amounts past due.

Revolving Charge Balance	Minimum Due
\$0 to \$30	Payable in Full
Over \$30 to \$300	\$30
Over \$300	\$30 plus all over \$300

43705

I MAY AT ANY TIME PAY MY TOTAL INDEBTEDNESS.

Payment must be received by the due date shown on the statement. Exxon may specify on my monthly billing statement or on accompanying material reasonable requirements with respect to the form, amount, manner, location, and time for receipt of payments.

3. **Cost of Credit.** A FINANCE CHARGE not in excess of that permitted by law will be assessed on the outstanding balance(s) from month to month at the rate in my state of residence as shown below. No FINANCE CHARGE will be imposed for a billing period in which there is no Previous Balance or in which Payments and Credits received within 27 days of the Closing Date shown on my monthly billing statement equal or exceed the Previous Balance.

State	Periodic Rate	ANNUAL PERCENTAGE RATE	Portion of Average Daily Balance to Which Applied	State	Periodic Rate	ANNUAL PERCENTAGE RATE	Portion of Average Daily Balance to Which Applied
CT, FL, HI, IN, LA, MA, ME, NC, ND, OH, RI, TN, VA, WA	1.5%	18%	entire	DC	1.5%	18%	\$500 or less over \$500
				KS	1.75%	21%	\$300 or less over \$300
NE, OK, SC	1.75%	21%	\$500 or less over \$500	MD	1.5%	18%	\$700 or less over \$700
				MI	1.7%	20.4%	entire
AK, MO	1.5%	18%	\$1,000 or less over \$1,000	MN	1.33%	16%	entire
				PA	1.25%	15%	entire
IA, VT	1.5%	18%	\$500 or less over \$500	SD	1.66%	19.92%	entire
				WI	1.5%	18%	\$1,000 or less over \$1,000
AL	1.75%	21%	\$750 or less over \$750	WV	1.5%	18%	\$750 or less over \$750
				AR	.83%	10%	entire
CA	1.6%	19.2%	\$1,000 or less over \$1,000	ALL OTHER	1.75%	21%	entire
					1%	12%	

4. **Method of Figuring FINANCE CHARGE.** The FINANCE CHARGE is figured on my account by applying the periodic rate to the "average daily balance" of my account. To get the "average daily balance" you take the beginning balance of my account each day, add any new purchases (except in the states of MA, ME, MN, MS, MT, NE, NM, and RI), and subtract any payments or credits, unpaid FINANCE CHARGES and unpaid Exxon Travel Club dues. This gives you the daily balance. Then, you add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives you the "average daily balance."

5. **Obtaining and Furnishing Credit Information.** I give Exxon permission to investigate my credit standing by obtaining a credit report, or by directly contacting others who have this information, in connection with my application for credit or later in connection with an update, renewal or extension of credit under this Agreement. Upon my request, Exxon will tell me if a credit report was asked for and, if it was asked for, will give me the name and address of the credit bureau that furnished the report. I agree that Exxon may furnish information about my account to credit bureaus and others who, in its discretion, may properly receive such information.

6. **Cancelling or Limiting My Credit.** Exxon has the right at any time to limit or terminate the use of this account without giving me notice in advance. Upon Exxon's request, I will return any Exxon credit card issued for my account and pay what I owe under the terms of this Agreement.

7. **Default and Collection Costs.** If I do not pay any minimum payment when due, Exxon has the right to demand immediate payment of the full amount outstanding on my account subject to any rights I have under state law to correct my non-payment. If the account is referred for collection to a lawyer who is not Exxon's salaried employee, I agree to pay, in addition to the full amount owed, a reasonable attorney's fee as set by the court if suit is filed and court costs, if allowed by the law of my state of residence.

8. **Changing this Agreement.** Exxon has the right to change this Agreement at any time by giving me notice at my last known address of the intended change, or otherwise allowed by law. If I do not agree to the change, I may end this Agreement before the effective date of the change by notifying Exxon. If I end this Agreement for any reason, I will return all Exxon credit cards issued for my account and pay what I owe under the terms of this Agreement.

9. **Questions About My Bill.** Questions about billing errors may be directed to Exxon Company, U.S.A., P.O. Box 3505, Houston, Texas 77001 (Phone 713-680-6500). I must write to preserve my billing dispute rights under Federal law.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

NOTICE TO THE BUYER: 1. DO NOT SIGN THIS CREDIT AGREEMENT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACE. 2. YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS CREDIT AGREEMENT AT THE TIME YOU SIGN. KEEP IT TO PROTECT YOUR LEGAL RIGHTS. 3. YOU HAVE THE RIGHT TO PAY IN ADVANCE THE FULL AMOUNT DUE WITHOUT INCURRING ANY ADDITIONAL CHARGE FOR PREPAYMENT. 4. FINANCE CHARGES WILL BE MADE IN AMOUNTS OR AT RATES NOT IN EXCESS OF THOSE PERMITTED BY LAW.

ADDITIONAL NOTICE FOR WASHINGTON RESIDENTS:

YOU MAY CANCEL ANY PURCHASES MADE UNDER THIS CHARGE AGREEMENT IF THE SELLER OR HIS REPRESENTATIVE SOLICITED IN PERSON SUCH PURCHASE, AND YOU SIGN AN AGREEMENT FOR SUCH PURCHASE, AT A PLACE OTHER THAN THE SELLER'S BUSINESS ADDRESS SHOWN ON THE CHARGE AGREEMENT, BY SENDING NOTICE OF SUCH CANCELLATION BY CERTIFIED MAIL RETURN RECEIPT REQUESTED TO THE SELLER AT HIS ADDRESS SHOWN ON THE CHARGE AGREEMENT, WHICH NOTICE SHALL BE POSTED NOT LATER THAN MIDNIGHT OF THE THIRD DAY (EXCLUDING SUNDAYS AND HOLIDAYS) FOLLOWING YOUR SIGNING OF THE PURCHASE AGREEMENT. IF YOU CHOOSE TO CANCEL THE PURCHASE, YOU MUST RETURN OR MAKE AVAILABLE TO SELLER AT THE PLACE OF DELIVERY ANY MERCHANDISE, IN ITS ORIGINAL CONDITION RECEIVED BY YOU UNDER THIS PURCHASE AGREEMENT.

ADDITIONAL NOTICE FOR MASSACHUSETTS RESIDENTS:

YOU MAY CANCEL A PURCHASE UNDER THIS AGREEMENT IF IT HAS BEEN CONSUMMATED BY A PARTY THERETO AT A PLACE OTHER THAN THE ADDRESS OF THE SELLER WHICH MAY BE HIS MAIN OFFICE OR BRANCH THEREOF PROVIDED, YOU NOTIFY THE SELLER IN WRITING AT HIS MAIN OFFICE OR BRANCH BY ORDINARY MAIL POSTED, BY TELEGRAM SENT OR BY DELIVERY, NOT LATER THAN MIDNIGHT OF THE THIRD BUSINESS DAY FOLLOWING A PURCHASE UNDER THIS AGREEMENT.

I HAVE READ, AGREE TO, AND ACKNOWLEDGE RECEIPT OF A COPY OF THIS RETAIL INSTALMENT CREDIT AGREEMENT.

INTEREST

Ch. 9

Depository Institutions Deregulation and Monetary Control Act, effect. Ariz. State L.J. 1 (1981) p. 211.
Economic effects in Arizona. Ariz. State L.J. 1 (1981) p. 35.

Federal control over the money market. Ariz. State L.J. 1 (1981) p. 159.
Future. Ariz. State L.J. 1 (1981) p. 275.
History. Ariz. State L.J. 1 (1981) p. 61.

44-1201. Rate of interest for loan or indebtedness; interest on judgments

A. Interest on any loan, indebtedness, judgment or other obligation shall be at the rate of ten per cent per annum, unless a different rate is contracted for in writing, in which event any rate of interest may be agreed to.

B. A judgment given on an agreement bearing a higher rate not in excess of the maximum permitted by law shall bear the rate of interest provided in the agreement, and it shall be specified in the judgment.

Amended by Laws 1969, Ch. 79, § 3; Laws 1974, Ch. 94, § 1; Laws 1978, Ch. 186, § 4; Laws 1980, 2nd S.S., Ch. 2, § 4, eff. Dec. 14, 1979; Laws 1980, Ch. 200, § 9, eff. April 23, 1980.

Historical Note**Source:**

Civ.Code 1913, § 3505.
Rev.Code 1928, § 1883.
Laws 1933, Ch. 44, § 1.
Code 1939, § 36-101.

Adopted from Minnesota, see M.S.A. § 334.01.

The 1969 amendment increased the rate of interest from 8% to 10% in subsec. B.

The 1974 amendment added subsecs. C and D which provided for an interest rate not to exceed 12% on specified loans exceeding \$25,000 not including loans secured by a mortgage or deed of trust on a one or two family dwelling.

The 1978 amendment increased the rate of interest from 10% to 12% in subsec. B and deleted subsecs. C and D.

Laws 1980, 2nd S.S., Ch. 2, § 4 substituted "ten per cent" for "six per cent" in subsec. A; deleted, in subsec. B, the former first sentence, which provided for a payment of an interest rate not to exceed twelve per cent per annum, if agreed to in writing and clarified the agreement subject to judgment.

Laws 1980, 2nd S.S., Ch. 2, § 9, eff. Dec. 14, 1979, provided in the introductory clause and pars. 3 and 4:

"Until January 1, 1982, the maximum rates of interest or time price differential are as follows:

"3. Maximum interest pursuant to §§ 44-1201, subsection B, except as provided in paragraph 4 of this section, 44-1202, 4-1203, 44-1204 and 44-1205, subsection A, paragraph 1,

Arizona Revised Statutes, eighteen per cent per annum.

"4. A rate of interest not to exceed sixteen per cent per annum, if agreed to in writing, signed by the debtor, shall be paid on any loan made to a natural person which loan is secured by a mortgage, deed of trust or other security instrument made for the purpose of financing the acquisition, construction or improvement of one to four family residential dwelling units. A judgment given on such an agreement shall bear the rate of interest provided in the agreement, and it shall be specified in the judgment."

Laws 1980, 2nd S.S., Ch. 2, § 18, eff. Dec. 14, 1979, provided:

"A. Section 9 of this act shall not be applicable to a loan procured and executed prior to the effective date of this act, by a natural person directly with a lender, secured by a mortgage or deed of trust on a dwelling to be occupied by such person, and the rate of interest shall not exceed the maximum permitted by law prior to the effective date of this act. The provisions of this section shall apply only to original borrowers and not to transferees or purchasers.

"B. A rate of interest not to exceed the maximum for each type of transaction allowed by § 9 of this act is lawful and not usurious on any legal indebtedness, loan, contract, or refinancing made or contracted for in writing signed by the debtor from and after the effective date of this act and before January 1, 1982. The rate of interest contracted for during such period remains lawful for the term of the indebtedness, loan, contract, or refinancing."



TESTIMONY

HB 705

March 9, 1989

10:00 A.M.

Mr. Chairman and Members of the Committee,

For the record, my name is Charles Brooks, representing the Montana Retail Association. I also represent the Montana Hardware and Implement Association, the Montana Tire Dealers and the Montana Office Equipment Dealers.

We appear before you today in STRONG OPPOSITION to HB 705. This proposed legislation is very narrowly directed to one segment of the retail industry "open end retail credit accounts." Also it would be wise to note that a state cannot affect interest rates charged by out of state financial institutions. Because of federal law, credit cards issued in South Dakota, California, Arizona and cards of some retailers that are issued by out of state financial institutions will be able to charge any rate that competition will allow.

There are two main components to the cost of providing consumer credit: operating costs, including credit losses, and the cost of funds. Only the last cost is a function of changes in the short term money market. Studies have shown that 40 - 60% of the cost of offering credit is in the cost of money necessary to finance receivables. The other 60 - 40% consists of costs of running and servicing the program such as:

Payroll, postage, telephones, rent, monthly statements, office equipment costs and credit losses.

Therefore, if money costs on the average amount to 50% of the cost of granting credit, and if a retailer can borrow money at the prime rate of 11%, he will need a finance charge to yield 22% to break even. Since operating costs are largely unrelated to interest rates, but tend to move upward with inflationary pressures, we should not expect rates on consumer credit to decline in direct response to lower interest rates. Operating costs will always provide a barrier to a direct association of rates on consumer credit with market interest rates.

EX #7
3/9/89

The plain fact of the matter is there are no "Economic Santa Clauses". Granting credit to consumers is expensive, and becoming more so every day as the cost of doing business increases. Those costs will be paid for by the consumer - as all business costs are - in one way or another. The only real question is "who" will pay the costs of credit and "how" that cost will be paid.

The main problem with price controls - like interest rate caps - is that some groups may benefit, at least initially, but it is always at the expense of others. It has been fully documented over the years that interest rate caps have these main effects:

(1) CREDIT RATIONING- Making it harder for lower-income families, individuals with limited credit experience, those newly employed, renters, and other high risk customers to obtain credit.

(2) ATTEMPTS TO RECOVER CREDIT LOSSES BY INCREASING CASH PRICE ON MERCHANDISE; In the words of a recent federal reserve study, "research evidence indicates that restrictive ceilings on rates are associated with significantly higher retail prices for some types of merchandise. Higher retail prices could mean that customers who usually pay in cash - including lower income families who cannot obtain credit cards - would subsidize buyers who use credit services." (1)

(3) INCREASING OR IMPOSING "FEES" Of one sort or another (for example: annual fees, late payment fees, and transaction charges, etc.)

(4) REDUCTION IN THE GRACE PERIOD.

"Consumers, on the whole, benefit from a market place that provides a large number of credit alternatives. States which have removed interest rate ceilings have experienced an increase in the number of competitive alternatives for consumers, credit has been available to a wider range of consumers, and the price of credit has remained reasonable and competitive." (2)

This proposed legislation deals with the very basic economic freedoms that our country and state was founded upon "letting the market place determine the cost of goods and services."

I urge you to give HB 705 a "DO NOT PASS" as it is not in the best interest of the consumer or the retailer.

Thank you for your consideration.

(1) "The Economic Effects of Proposed Ceilings on Credit Card Interest Rates, Federal "Reserve Bulletin, January 1987, P. 12

(2) Ray McCallister, PHD., Professor of Marketing, College of Business, North Texas State University, Denton, Texas

Ex. # 7
3/9/89

BASIC FACTS ABOUT CREDIT CARD RATE CEILINGS*

*Ray McAlister, Ph.D., Professor of Business administration,
North Texas State University, Denton, TX 76203
February, 1987 (817/565-3134)

QUESTION: AREN'T RATE CEILINGS NECESSARY TO PREVENT EXCESSIVE RATES?

A) Statutes setting artifically low credit card rates primarily benefit above-average income households who have no trouble getting all of the credit they desire. On the other hand, families with less income, a new job, lacking homeownership, and other similar "high-risk" applicants are more likely to be denied retail credit--forcing them to turn to even higher cost loans or other more expensive alternatives, such as renting.

B) A reduction in finance charge revenues forces merchants to offset credit losses by inflating merchandise prices--a move which results in the cost of credit being paid for by those who either cannot obtain it or who choose not to use it.

C) New Jersey consumers have benefited from a deregulated environment. There are a wide range of credit alternatives available--both store cards and bank cards. Retail rates are somewhat higher than those prevailing in the early 1970s, but most of them are no higher than 19.8 or 21 percent--a level that seems justified in light of cost experiences over the past decade or so.

QUESTION: SINCE THE PRIME RATE HAS FALLEN, WHY HAVEN'T RETAIL RATES COME DOWN ALSO?

A) Credit card rates do not rise and fall as do other types of rates such as the prime because money cost is less of a factor in credit card operations than is true for lending. Money cost is usually only 40 to 60 percent of total credit costs. Expecting credit card rates to fall when the prime declines would be like expecting the price of a house to decrease because lumber prices have fallen or the price of a new automobile to go down because the price of steel has decreased somewhat.

B) Retail credit card rates never increased in the first place as much as the prime rate and other loan rates. Retail rates were largely at 18 percent until the late 1970s or early 1980s, increasing, for the most part, to only 19.8 to 21 percent at the present time--an increase of only 10 to 17 percent. On the other hand, the prime commercial rate rose from about 5 or 6 percent in the 1960s to almost 19 percent in 1981--an increase of about 300 percent.

Ex. #7
3/9/85

C) Even though the prime in 1986 was lower than the highs reached in 1981, 1986 rates were still almost 60 percent higher than the 1972 level when New Jersey first legislated credit card ceilings at 18 percent.

D) The commercial prime rate is really not a good indicator of a retailer's cost of funds. Retailers use a mixture of both short- and long-term financing; prime, on the other hand, is only one measure of short-term borrowing costs.

E) The other major part of credit costs--non-money factors such as payroll, postage, computer equipment, etc.--have not declined at all. Rather, they have risen substantially as shown in the accompanying table: for example, just since 1972 postage is up 175 percent and average weekly retail earnings have risen over 90 percent. In fact, since New Jersey removed credit card rate ceilings in 1981, ONLY the cost of borrowing money has declined; most other categories of costs have continued to escalate.

QUESTION: SOME BANK CARD RATES ARE CURRENTLY LOWER THAN MANY RETAIL RATES; DOESN'T THAT MAKE THEM A BETTER DEAL?

A) Not necessarily, because there are more factors to consider in determining the best deal than simply looking at the APR. Most banks charge an annual fee of \$20 or so, increasing substantially the total cost of using those cards relative to retail cards even though the latter may involve a higher APR.

B) Also, retail cards provide a "free period" or grace period in the event the monthly balance is paid in full. With a bank card the customer still has to pay the annual fee even if the account is paid in full every month. Existence of this "free ride" on retail accounts has the effect of lowering the actual effective rate of charge to a level below that of the stated APR. This means that use of the retail account can actually cost less than another form of credit (bank card or instalment loan) which advertises a lower APR.

C) Another factor affecting the relative cost of a retail card compared to a bank card depends on how the customer uses his account--the size of his monthly balance and whether he pays in full some, all, or none of the time.

D) The critical point to recognize is that no one factor alone--not the APR, the annual fee, or account use pattern--can tell which kind of credit is the best deal. It is important that there be a choice because only the customer knows one of the most critical elements--how the account is likely to be used. Focusing only on the finance charge--the APR--can actually lead to the wrong decision.

MONTANA BANKERS ASSOCIATION

TESTIMONY ON

HB-705

SENATE BUSINESS & INDUSTRY COMMITTEE:

MARCH 9, 1989

THE PRIMARY AFFECT OF IMPOSING INTEREST RATE CEILINGS WOULD BE A REDUCTION IN THE AVAILABILITY OF CREDIT AND SUPPLY OF SHORT TERM CREDIT. SOME MONTANA BANKS COULD BE DRIVEN OUT OF THE MARKET, FURTHER LESSENING THE SUPPLY OF CREDIT AND OTHERS WOULD BE DETERRED FROM ENTERING THE CREDIT CARD MARKET. WE ESTIMATE 30 INDEPENDENT BANKS IN MONTANA HAVE BECOME CARD ISSUERS IN THE LAST 2 YEARS. THIS CREATES JOBS FOR MONTANAN'S! THIS NEW SERVICE SHOULD NOT BE THWARTED WITH INTEREST RATE CEILINGS.

BANK CREDIT CARDS ARE THE MOST COSTLY CONSUMER CREDIT PROGRAM TO ADMINISTER. THE COST OF MONEY GENERALLY ACCOUNTS FOR LESS THAN HALF OF THE PROGRAM COSTS. IF INTEREST RATE CEILINGS ARE SET AND THE COSTS AND RISKS REMAIN THE SAME OR INCREASE, THEN ISSUERS WOULD BE LESS LIKELY TO OFFER CREDIT TO MINIMAL LEVEL PARTICIPANTS. LOW INCOME AND YOUNG CONSUMERS WHO ARE THE ONES WHO DESPERATELY NEED TO ESTABLISH CREDIT. IT WOULD BE UNFAIR TO SIMPLY MAKE BANK CARDS AVAILABLE TO UPPER INCOME AND WEALTHY CONSUMERS. MARGINAL BORROWERS WOULD BE FORCED TO SEEK CREDIT FROM MORE COSTLY FORMS OF BORROWING, SUCH AS FINANCE COMPANIES, OR SIMPLY FIND CREDIT UNAVAILABLE ALL TOGETHER.

HISTORY HAS SHOWN THAT ANY INTEREST RATE CAPS ARE UNSUCCESSFUL AND UNECONOMICAL. TEN YEARS AGO MANY STATE USURY LAWS DID NOT ALLOW CREDIT CARD ISSUERS TO ADJUST THEIR RATES ACCORDING TO THE

Ex. #8
3/9/89

RISING COST OF FUNDS. NEW CARDS WERE SELECTIVELY ISSUED, MINIMUM PAYMENTS SCHEDULES WERE INCREASED, CREDIT QUALIFICATIONS WERE TIGHTENED, AND MANY BANKS ACTUALLY DROPPED OUT OF THE BUSINESS DUE TO THE ADDITIONAL BURDENS THEY FACED. AS A RESULT, MORE AND MORE STATES ARE TAKING OFF INTEREST RATE CEILINGS.

BANK CARDS PROVIDE THE CONVENIENCE OF IMMEDIATE FINANCING WITH FLEXIBLE REPAYMENT TERMS AND GRACE PERIODS. CARDS GIVE SAFETY BY ELIMINATING THE NEED TO CARRY CASH, PLUS ACCESS TO CASH WHEN NEEDED. THEY ALLOW FLEXIBLE REPAYMENT TERMS AND GRACE PERIODS.

MOST CREDIT CARDS GIVE THE CONSUMER THE CHOICE OF PAYING MONTHLY BALANCES IN FULL, AND PAYING NO INTEREST CHARGE AT ALL. THIS IS AN INTEREST FREE LOAN FOR 30 DAYS WHICH LOWERS THE EFFECTIVE INTEREST RATE BY 3% BELOW THE STANDARD RATE.

CREDIT CARD PLANS HAVE NOT GENERATED EXCESSIVE PROFITS. THE JANUARY 1987 FEDERAL RESERVE BULLETIN STATES THAT NET EARNINGS OF BANK CARD PLANS BEFORE TAXES AVERAGE 1.9% OF BALANCES OUTSTANDING FROM 1972 THROUGH 1985. THIS IS SIGNIFICANTLY LOWER THAN THE AVERAGE NET RETURNS ON MAJOR TYPES OF BANK LOANS FOR THE SAME PERIOD: 2.3% ON REAL ESTATE MORTGAGES, 2.4% ON COMMERCIAL AND OTHER LOANS.

March 9, 1989

For the record my name is Connie Mathews. I represent Jerry Noble Tires, and am Credit Mgr. for the Great Falls, Bozeman, Cut Bank, and Havre Stores. I grant & maintain credit ranging from \$500,000 to \$1,000,000.00 per month. And I want you to know I am concerned about this bill.

This Bill (705) would cause a hardship on us because we do not have a computer system that can handle two different interest rates. We would have to purchase services of a programmer to modify our system to accomodate the requirements of this bill, as many other businesses would and that would be very costly. In addition the majority of Montana Small Businesses using computerized accounting are unable to make program changes, therefore they would find it impossible to comply.

It also would be difficult to explain to the customers why we charge a different rate of interest on one balance then on another. It may be viewed as unfair that smaller purchase customers pay more finance charges than do larger purchase customers. And for good customer relations the simpler the statement, the better.

The credit industry does not need to fix interest rates as competition takes care of that. Many banking institutions issuing credit cards are from out of state and the Supreme Court ruled in 1978 that the states may export their finance charges to credit card customers in other states. As a result of this, several

EX # 9
3/9/89

Great Falls Banks with headquarters out of state, their credit card rates are 19.8 and 17.5 where our local banks are 15.96 and 15% variable. So you can see competition takes care of itself. Consumers will shop around for a lower rate where they do business. Another thought, if interest rates are fixed the credit card companies can and possibly will increase their annual fee and late charges.

I urge you to vote against this Bill in the best interest of Montana Small Businesses and Consumers.

Thank you for your time

Cornie Mathews



SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 10
DATE 3/9/89
MACHINES, HB 705
Davis

DAVIS BUSINESS MACHINES, INC.

1429 HELENA AVENUE
PHONE 406/442-9810
HELENA, MONTANA 59601

March 8, 1989

BUSINESS & INDUSTRY COMMITTEE

SUBJECT: HB 705

Chairman and Members of the Committee:

I am opposed to House Bill 705. This is an anti-business Bill that places another regulation on Montana retail stores and in some instances it could prevent businesses from issuing credit which would slow down the economy even more than it is today.

On most open charge accounts interest does not get entered on a statement until the second billing, and that could be 90 days from invoice date. As an example, at Davis Business Machines an invoice costs in time, material, and postage \$1.90 and the monthly statement \$1.10, not including the cost of the computer and software. On a \$500.00 charge account, on the second statement a service (interest) charge of \$7.50 would appear if charged 18% per year interest. At this point Davis Business Machines would have \$3.40 invested in time, material, and postage which brings the actual carrying charge to \$4.10, which represents a 6.8% interest, that is if the customer pays immediately on receipt of the statement. In a regular savings account a depositor could have made \$7.02 interest on the \$500.00 over the same period, at 5% interest.

Not only is it an inequitable Bill, but it would cause a hardship on most retail stores that would have to change software to flag the open accounts when surpassing or dropping from \$500.00.

Please Vote: Do not pass to House Bill 705

Loren W. Davis

Loren W. Davis
President

LWD/bd



EXHIBIT NO. 11

DATE 3/9/89

BILL NO. HB 705

Porter

TESTIMONY
HB 705Business and Industry Committee of the Senate
9 March 1989

Dear Chairman and Members of the Committee:

I am here as a representative of Farm Plan Corporation and as a consumer to voice my opposition to HB 705. I don't feel that either business or the consumer will be better served by legislating the price of credit.

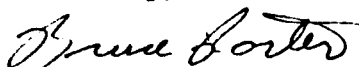
The company I represent, a subsidiary of John Deere, offers an accounts receivables program to agri-businesses and their customers. I call on implement, feed, fuel, and automobile dealers as well as veterinarians, lumber yards and hardware stores across the state. In my travels I have become very aware of credit considerations for both the business owner and the customer, and I don't know of any business that charges interest on accounts that are paid in full once a month.

Customers demand credit for three reasons. It provides convenience for those times when they don't have cash, they can use someone else's money for a period of time at no cost, and it provides buying power to enjoy a product's benefit without waiting. Businesses, large and small, respond to this demand for two reasons. Credit fulfills the needs of the customer and can be a profitable use of time and money.

Credit, like any other commodity, is supplied in response to a demand. The price of that product should be determined by competition in the marketplace. This will assure a fair return to the suppliers and the consumer is assured of the lowest possible cost. If the profit incentive is taken away, one of two things can happen. The product is taken off the market completely, or the price of other goods is raised to cover the costs of the service. IF HB 705 were to pass, chances are good that even people that don't use credit will be forced to pay for it.

There is no free lunch in this world, and as a consumer, I know who will pay for HB 705. Senators, please vote against this bill that will hinder the market's ability to respond to supply and demand, and ultimately drive up the price of goods and services in our state.

Sincerely,



Bruce Porter
Senior Field Representative
Farm Plan Corporation
P.O. Box 997
Lewistown, MT 59457

