

1964

# National American Life Insurance Co. v. Bayou Country Club, Inc. : Brief of Amicus Curiae Utah Bankers Association

Utah Supreme Court

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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NATIONAL AMERICAN LIFE  
INSURANCE COMPANY, suc-  
cessor to CONTINENTAL RE-  
PUBLIC LIFE INSURANCE  
COMPANY,

*Plaintiff-Appellant,*

vs.

BAYOU COUNTRY CLUB, INC.,  
a Utah corporation, et al.,

*Defendants-Respondents.*

Case No.  
10138

UNIVERSITY OF UTAH

FEB 23 1967

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## BRIEF OF AMICUS CURIAE UTAH BANKERS ASSOCIATION

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Appeal from a Judgment of the Third District Court for  
Salt Lake County  
Honorable Merrill C. Faux, Judge

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*Defendants-Respondents.*

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## BRIEF OF AMICUS CURIAE UTAH BANKERS ASSOCIATION

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### PRELIMINARY STATEMENT

This amicus has no interest in the controversy between the two parties in this case. Its brief is submitted solely as an aid to the Court in the determination of the contention in Point V of appellant's brief that section 15-1-2 Utah Code Annotated 1953, as amended, is unconstitutional.



The interest of this amicus in the issue as to the constitutionality of section 15-1-2, however, is not merely academic. The Association has as members some fifty-three banks in the state of Utah which had loans outstanding on June 30, 1964, in excess of \$768,000,000. These loans came from deposits totaling \$1,180,000,000, of which some \$980,000,000 represented deposits of individuals, partnerships and corporations in the state of Utah.<sup>1</sup>

As of June 30, 1964, the most recent date of reports to the State Bank Commissioner, there were outstanding installment loans held by the banks in Utah totaling \$156,185,000—over \$71,000,000 to finance automobile purchases, nearly \$25,000,000 to finance the purchase of other consumer goods, \$18,500,000 for home modernization and repair, and the balance in personal loans. All these loans were made under the authority of proviso (g) to section 15-1-2 Utah Code Annotated 1953, as amended. If appellant's attack on that proviso be successful, and assuming that the average discount rate on these installment loans is 6 per cent, the potential liability of the banks in the state for treble damages under section 15-1-7 Utah Code Annotated 1953, is over \$97,000,000—an amount approximately equal to the combined capital accounts of all banks in Utah as of June 30, 1964, of \$101,976,000.

These figures, which do not include the \$300,000,000 of loans outstanding by the fifteen building and loan

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<sup>1</sup>The source of these figures is the Report of the State Banking Department as of June 30, 1964.

associations doing business in the state, demonstrate, without the necessity of any elaboration, the economic calamity which appellant's attack on the constitutionality of section 15-1-2, if successful, would inflict on the state. We have no way to measure the catastrophic loss to this state if all its financial institutions became bankrupt, resulting from the treble damage actions brought by borrowers under section 15-1-7 on the basis of the invalidity of section 15-1-2(g). But the figures do show that the financial institutions of this state have invested a substantial portion of their depositors' funds in loans of various kinds in reliance upon the Utah interest laws.

As the New Mexico Supreme Court noted in *First Thrift and Loan Association v. State*, 62 N. Mex. 61, 304 P.2d 582 (1956):

"We have carefully considered these far reaching and portentous assaults on the whole banking structure of the state, extending from its very foundations to its entire superstructure. Since statehood, or well nigh a half century the legality and basic soundness of the statutes upon which rests the banking business, as it has evolved from a small beginning to its now more than billion dollar status, have been more or less accepted and acquiesced in by those engaged therein, those who leave their earnings and profits there and, as well, those who look to banks for succor and aid when financial reverses come to plague and torment their peace of mind. We should have to be moved by stronger and more persuasive reasons than any here presented, before pronouncing judgment that would topple a business so vital and well entrenched as the one

now assailed. None of the challenges on constitutional grounds are meritorious. All are denied." 304 P.2d 582, 588.

Thus we confess that this brief is submitted frankly in support of the validity of the statute, should this Court find that resolution of that question is necessary to the disposition of the case before it.

**I. SECTION 15-1-2 UTAH CODE ANNOTATED 1953 DOES NOT VIOLATE ARTICLE I, SECTION 24 OR ARTICLE VI, SECTION 26 OF THE UTAH CONSTITUTION.**

*A. The Constitution requires that the Legislature not be unreasonable or arbitrary in its classifications.*

Appellant contends that section 15-1-2 violates both article I, section 24 and article VI, section 26 of the Utah Constitution. Article I, section 24 of the Utah Constitution provides:

"All laws of a general nature shall have uniform operation."

Article VI, section 26 provides:

"The Legislature is prohibited from enacting any private or special laws in the following cases: . . . (9) Regulating the interest on money. . . . In all cases where a general law can be applicable, no special law shall be enacted."

Before considering specifically the Utah interest statute, section 15-1-2, in the context of these constitutional provisions, attention should first be given to this

Court's interpretation of the cited sections of the Utah Constitution since the Utah Legislature is not operating in a vacuum but with full awareness of the gloss of court decisions relating to these rather abstract clauses.

Both clauses of the Constitution cited above pose the problem of what constitutes a "general" law as opposed to a "special" law, the one provision requiring that only general laws be enacted with regard to certain types of legislation and the other merely going one step further to require that all such general laws operate uniformly. An early case treating this distinction between general and special laws is *Love v. Liddle*, 26 Utah 62, 72 Pac. 185 (1903), in which the court stated that laws are objectionable if they either do not extend to the whole subject to which their provisions would be equally applicable, thus permitting a diversity of law relating to the same subject, or if they are not framed to have uniform operation even though embracing the whole subject. In *State v. Kallas*, 97 Utah 492, 94 P.2d 414 (1939), the Court approved the following definition of general laws:

"Laws which apply to and operate uniformly upon all members of any class of persons, places, or things requiring legislation peculiar to themselves in the matters covered by the laws in question, are general and not special." 94 P.2d 414, 420.

It is readily apparent that to be of a general nature laws need not pertain to all members of the community within the Legislature's jurisdiction, but need only

operate uniformly as within certain classes of persons. This poses the more difficult question of what persons or subjects must be included in the class to which the law must uniformly operate. Even more recently, this Court stated with respect to classification:

“General laws or laws of a general nature, or dealing with a specified subject, must, under our Constitution, have a uniform operation; but such provision does not prevent reasonable classification by the legislature, nor does it require that statutes be universal in their application or their result, or that they operate uniformly with respect to persons or things which are in fact different.” *Abrahamsen v. Board of Review of The Industrial Commission*, 3 Utah 2d 289, 283 P.2d 213, 215 (1955).

In *Blackmarr v. City Court of Salt Lake City*, 86 Utah 541, 38 P.2d 725 (1934), this Court upheld the constitutionality of a statute providing, with respect to fraternal benefit societies, for a departure from the general law regulating service of summons on the ground that since a fraternal benefit society must appoint the state insurance commissioner its process agent, it was a reasonable classification to give all such societies the privilege of receiving an additional copy of the summons and additional time to answer. In upholding the validity of this classification against a claim of “special law” the court stated:

“As ‘the classification to be valid must rest upon some ground of difference having fair and substantial relation to the object of the legislation,’ so also must a law to be valid providing for

a departure from the general law regulating the service of summons upon a defendant 'rest upon some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced shall be treated alike.' " 38 P.2d 725, 729.

The case most frequently cited by this Court as establishing the criteria by which the validity of classifications must be tested is *State v. Mason*, 94 Utah 501, 78 P.2d 920 (1938). The general rule there laid down and repeatedly quoted by this Court in subsequent opinions, is that if there is any reasonable basis for differentiation between classes based upon the purposes to be accomplished by the act, such classification must be upheld as constitutional. The Court stated this rule more specifically as follows:

"Of course, every legislative act is in one sense discriminatory. The Legislature cannot legislate as to all persons and all subject matters. It is inclusive as some class or group and as to some human relationships, transactions, or functions and exclusive as to the remainder. For that reason, to be unconstitutional the discrimination must be unreasonable or arbitrary. A classification is never unreasonable or arbitrary in its inclusion or exclusion features so long as there is some basis for the differentiation between classes or subject matters included as compared to those excluded from its operation, provided the differentiation bears a reasonable relation to the purposes to be accomplished by the act. . . . The objects and purposes of a law present the touchstone for determining proper and improper classifications." 78 P.2d 920, 923.

In the *Mason* case appellant claimed that the statute upon which he was convicted contained an unreasonable classification by requiring persons to take out a license in order to buy farm products on credit or by check while exempting those who bought for cash or who were regularly licensed to sell tangible property at retail. The Court pointed out that the establishment of such classifications was widely discretionary with the Legislature, and that it is immaterial whether a court agreed with the judgment of the Legislature so long as it can be assumed that the Legislature had in mind some reason relating to the purpose to be accomplished by the act:

“There are very definite reasons for including one and excluding the other class which may have seemed adequate to the Legislature. We as the judiciary cannot supplant their judgment with ours. The farmer is on an entirely different basis than the manufacturer or the merchant in his ability to protect himself from itinerant purchasers. . . . That here and there some shrewd and businesslike farmer may have more business acumen and be more cautious than some manufacturers or merchants does not affect the general statement. If classifications of such large groups so differently situated were not possible, practical and realistic legislation would be impossible.” 78 P.2d 920, 923.

This same concept was expressed by this Court in *Carter v. State Tax Commission*, 98 Utah 96, 96 P.2d 727 (1939), in upholding the constitutionality of legislation imposing varying registration fees for vehicles

according to the weight of the vehicle and the type of fuel used. The Court found the classification to be reasonable since the purpose of the act was to compensate for wear and tear upon roads. Again the Court pointed out that it is up to the Legislature to set such lines of classification:

“The Legislature determines the lines of separation between classes. That is their prerogative, and the courts have no right to interfere on any theory that those lines were improperly placed—that the weights selected for a division into classes were not properly selected. Presumably the Legislature had the necessary information before it to justify such segregation into classes. It is obvious that the ground of difference between classes has a fair and substantial relation to the object of the legislation, that is, to regulation based upon the wear and tear to which the roads are subjected by the licensee.” 96 P.2d 727, 732.

The Legislature’s classification need not be perfect to be constitutionally valid so long as it aims generally at the object to be accomplished by the law. In *Abrahamsen v. Board of Review*, 3 Utah 2d 289, 283 P.2d 213, 216 (1955), this court stated:

“We are committed to the rule that the court will not interfere with the legislative judgment unless there is no fair reason for the law that would not require with equal force its extension to others which it leaves untouched. [Citing cases]. In the present instance, the type of possible discrimination cited by plaintiff is merely the result of the Legislature’s not being able



to make a perfect classification in all situations based on economic need, but the test in the main is directly pointed toward the achievement of the purpose of the Act.”

Applying this concept to section 15-1-2 the Legislature’s prohibition against interest rates in excess of 10 per cent need not be framed in all-embracing terms. Where there is a sound economic purpose to be served by allowing a certain class of lenders to charge a higher rate in order to supply funds to an important segment of the economy, such class may be constitutionally excluded from the general prohibition. And there is a presumption that the Legislature is deemed to have differentiated classes based upon reason and not upon arbitrary selection. The Supreme Court of the United States in *Arkansas Natural Gas Co. v. Arkansas Railroad Commission*, 261 U.S. 379, 384 (1923), noted:

“The reasons which influenced the classification are not disclosed on the face of the act, but the mere absence of such disclosure will not justify the court in assuming that appropriate reasons did not in fact exist. The presumption is that the action of the legislature—which applies alike to all falling within the class—was with full knowledge of the conditions, and that no arbitrary selection of persons for subjection to the prescribed rule was intended.”

This Court has also recognized that the exceptions to a general law should be as narrowly drawn as reasonably possible so as to support the general nature of the law. For example, in *Broadbent v. Gibson*, 105 Utah 53, 140

P.2d 939, 946 (1943), this Court struck down the Utah Sunday closing law for the following reasons:

“The exceptions in the Utah Sunday closing statutes are so broad that they in effect change the nature of this act from a general closing law, with exceptions, to a law aimed, without sufficient legal reason, at certain classes of businesses with a general exception to other classes which in effect is a grant of a special privilege to the excepted class while without legal excuse denying them to others.”

Here, section 15-1-2 is a general interest statute reflecting the Legislature’s intent to guard borrowers against excessive rates of interest. In allowing higher rates by a strictly regulated class of professional lenders in order to provide a source of funds for installment borrowers, it has only created a narrow range of exceptions to a general proscription.

An example of the application of the requirement of reasonable relationship between the class created and the objects of the legislation is the treatment of banks in section 34-10-2 relating to payment of wages and section 15-1-2 relating to interest on loans.

In *State v. J. B. & R. E. Walker, Inc.*, 100 Utah 523, 116 P.2d 766 (1941), this Court upheld the exclusion of banks and mercantile houses from the operation of a statute requiring the payment of wages to employees semi-monthly and immediate payment upon demand of a discharged or a resigned employee. The Court applied the rule of *State v. Mason* and found that:

“As to banks, the financial responsibility of the employer and the laws relative to banking reserves and bank examinations clearly might justify regarding their employees *as a class* to be better protected than any included group against loss of earnings, while the kind of workers employed might readily mark them as a group less in need of enforced frequent payment, than any other.” 116 P.2d 766, 770.

However, in a more recent case, *Justice v. Standard Gilsonite Company*, 12 Utah 2d 357, 366 P.2d 974 (1961), this Court expressly reconsidered the problem presented in the *Walker* case and again applying the rule of *State v. Mason* concluded that there was no reasonable basis for the exclusion of banks and mercantile houses from a statute imposing penalties on employers for failure to pay wages to separated employees within twenty-four hours after demand. The Court's declaration of the invalidity of the statute in the *Justice* case is relied upon heavily by appellant as evidence of the invalidity of the bank exception in the interest statute. Since the purposes of the statutes are completely unrelated to each other—the one being to insure the payment of wages to separated employees, the other to protect the borrowing public from excessive interest rates—the *Justice* case is not authority for plaintiff's contention that the interest statute is a discriminatory classification.

Since the essence of the rule established in *State v. Mason* is that the classification must bear some reasonable relationship to the purpose to be accomplished

by the act, it must be recognized that the *Justice* case only establishes that the exclusion of banks and mercantile houses is an unreasonable classification in a statute requiring the payment of wages to separated employees.

We cannot quarrel with this Court's conclusion in the *Justice* case that banks are in no substantially different position as employers than are other business corporations, but we think it clear that banks as lenders do stand in a different category. Their principal business is lending the funds they hold on deposit. In that business they are strictly regulated and supervised by the state banking department to insure compliance with law. That is the basis of the Legislature's classification in proviso (g) to section 15-1-2.

Appellant's contention that all lenders constitute a class to which interest legislation must equally apply is as invalid as the appellant's contention in *State v. Packard Corporation*, 77 Utah 500, 297 Pac. 1013 (1931), that all persons in the advertising business must be treated alike. In the *Packard* case, this Court upheld a statute prohibiting the advertising of cigarettes on billboards while permitting such advertising in newspapers, magazines, and periodicals. In referring to the *Packard* case, this court in *State v. Mason* states:

“[I]t should not require much strain of the imagination when the classifications can be that refined to justify a classification between farmers on one side and manufacturers and merchants or others on the other side.” 78 P.2d 920, 923.

We submit that this statement is equally applicable to the case at bar; i.e., "to justify a classification between banks and other lenders subject to supervision and regulation by the state bank commissioner on one side and unregulated lenders on the other side." The Court stated further in the *Packard* case:

"Certainly all persons similarly situated are treated alike, since the law applies equally to all engaged in billboard advertising." 297 Pac. 1019.

Again we submit that this statement is equally applicable with respect to the interest statute and might be restated as follows:

"Certainly all persons similarly situated are treated alike, since the law applies equally to all supervised and regulated lenders (except small loan licensees which are treated elsewhere in the statute)."

The statute involved in the *Packard* case was also attacked on federal constitutional grounds and was upheld by the United States Supreme Court in an opinion by Justice Brandeis. *Packard Corporation v. Utah*, 285 U.S. 1045 (1932), 52 S. Ct. 273, 76 L. Ed. 643, 79 A.L.R. 546.

Other Utah cases in which statutory classifications have been upheld under the *State v. Mason* rule and which have not found any distinction between article I, section 24 and article VI, section 26 of the Utah Constitution include the following: *Merkley v. State*

*Tax Commission*, 11 Utah 2d 336, 358 P.2d 991 (1961); *Abrahamsen v. Board of Review of the Industrial Commission of Utah*, 3 Utah 2d 289, 283 P.2d 213 (1955); *Entre Nous Club v. Toronto*, 4 Utah 2d 98, 287 P.2d 670 (1955); *Kent Club v. Toronto*, 6 Utah 2d 67, 305 P.2d 870 (1957); *Hansen v. Public Employees Retirement System Board of Administration*, 122 Utah 44, 246 P.2d 591 (1952); *Slater v. Salt Lake City*, 115 Utah 476, 206 P.2d 153 (1949); *Wallberg v. Utah Public Welfare Commission*, 115 Utah 242, 203 P.2d 935 (1949); *Patterick v. Carbon Water Conservancy District*, 106 Utah 55, 145 P.2d 503 (1944).

Courts in other jurisdictions having constitutional provisions similar to the Utah clauses under discussion have dealt specifically with problems relating to interest statutes. In *Wrenn v. Portland Loan Company*, 64 P.2d 520 (Ore. 1937), an attack was made on the Oregon Small Loan Act on the grounds that it violated a provision of the Oregon Constitution prohibiting special or local laws in relation to interest on money. The Oregon Small Loan Act allowed small loan licensees to charge 3 per cent per month on loans that were less than \$300. Upholding this exception from the general usury law, the Oregon Supreme Court stated:

“A law may be general, however, and have but a local application, and it is none the less general and uniform, because it may apply to a designated class, if it operates equally upon all the subjects within the class for which the rule is adopted; . . . [A] law is general when it operates

equally and uniformly upon all persons, places or things brought within the relation and circumstances for which it provided. . . . We shall only repeat that the classification need not be scientific nor logically appropriate, and if not palpably arbitrary, and is uniform within the class, it is within such discretion [of the Legislature].” 69 P.2d 520, 521.

With respect to the Small Loan Act, the Oregon Supreme Court found that the Legislature saw fit to allow a greater rate of interest than permitted under the general usury statute because of the greater risk involved with small loans, and that the Act was made to apply to everyone within the class. The court found further that the classification could not be deemed unreasonable or unjustifiable as it was within the legislative discretion.

The Oregon case was cited with approval in *Kelleher v. Minshull*, 119 P.2d 302 (1941), in which the Supreme Court of Washington similarly upheld the Washington Small Loan Act against the claim that it constituted an arbitrary classification. In its opinion the Washington court also distinguished *Acme Finance Company v. Huse*, 192 Wash. 96, 73 P.2d 341 (1937), upon which appellant relies in its brief as authority for the proposition that the provisions of section 15-1-2 (g) with respect to banks is an unconstitutional qualification. The Washington court noted that the statute reviewed in *Acme Finance* had been so emasculated by the veto of a number of its sections that the

remaining portion of the statute did not carry out the legislative intent in making the classification.

In *Carter v. Seaboard Finance Co.*, 203 P.2d 758 (Calif. 1949), the Supreme Court of California upheld a California constitutional amendment granting certain classes of lenders special rates of interest against an attack under the 14th Amendment of the federal Constitution. Even a dissenting judge concurred as to the reasonableness of classification with respect to banks on the basis that they were strictly regulated.

The Connecticut interest statute which is very similar in its wording to the Utah statute and which prohibits the charging of interest in excess of 15 per cent per annum was attacked on the ground that its exclusion of any national bank or other bank or trust company duly incorporated under the laws of the state denied other lenders equal protection of the laws. In *Griffith v Connecticut*, 218 U.S. 563, 54 L.Ed. 1151 (1910), the Supreme Court of the United States sustained the classification on the basis that banks and other corporations excluded from operation of the act were subject to regulation by bank commissioners and were managed by those experienced in financial operations who were familiar with the day-to-day money market. In affirming the Connecticut Supreme Court's decision upholding the classification, the United States Supreme Court stated that the contentions against the correctness of the state court decision were so wholly without merit as not to require further argument.



Similarly, in *Mutual Loan Company v. Martell*, 222 U.S. 225, 56 L. Ed. 175 (1911), the United States Supreme Court upheld the exclusion of national banks and banks under the supervision of the bank commissioner and certain local companies from a Massachusetts statute invalidating wage assignments unless in writing, filed and recorded and with the written consent of the wife. Appellant claimed such exclusion denied equal protection of the laws. In sustaining the classification the United States Supreme Court stated:

“We have declared so often the wide range of discretion which the legislature possesses in classifying the objects of its legislation that we may be excused from a citation of the cases. We shall only repeat that the classification need not be scientific nor logically appropriate, and if not palpably arbitrary, and is uniform within the class, it is within such discretion. The legislation under review was directed at certain evils which had arisen, and the legislature, considering them and from whence they arose, might have thought or discerned that they could not or would not arise from a greater freedom to the institutions mentioned than to individuals. This was the view that the supreme judicial court took, and, we think, rightly took. The court said that the legislature might have decided that the dangers which the statute was intended to prevent would not exist in any considerable degree in loans made by institutions which were under the supervision of bank commissioners, and ‘believed rightly that the business done by them would not need regulation in the interest of employees or employers.’ ” 222 U.S. 225.

The rules for establishing whether or not a classification is discriminatory were summarized by the United States Supreme Court in *Lindsley v. Natural Carbonic Gas Company*, 220 U.S. 61, 78, 79, (1911), 35 L.Ed. 369, 377, 31 S. Ct. 337, and were recently reiterated by the court in *Morey v. Doud*, 354 U.S. 457 (1957), 1 L.Ed. 2d 1485, 77 S. Ct. 1344, as follows:

"1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When a classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary." 354 U.S. 457, 463-464.

*B. The classifications adopted by the Utah Legislature in section 15-1-2 are not unreasonable or arbitrary.*

Appellant bases its attack on the constitutionality of the Utah interest statutes on the provisos to section 15-1-2. It is submitted that the classifications there

selected by the Legislature meet the standards promulgated by this Court and the Supreme Court of the United States in the cases above discussed. A brief review of the provisions of 15-1-2 clearly demonstrates the reasonableness of the legislative classifications.

Subsections (a) and (b) are not interest provisions at all. They merely make clear that in addition to interest (the charge for the use of the money), a lender (other than under subsection (g)) may charge a service fee not to exceed 4 per cent and all lenders on all loans may provide for reasonable collection costs and attorney's fees in the event of default or delinquency.

Appellant raises no issue with subsections (a) and (b) nor with (c) which allows a high rate of interest for the first month on loans of less than \$100. Apparently, appellant concedes this is a reasonable classification because of the very small size of the loans.

Subsections (d), (e) and (f) are housekeeping provisions adopted by the Legislature in the 1955 revision of section 15-1-2 to make clear that the specific legislation dealing with the regulation and powers of small loan licensees, credit unions and industrial loan corporations are exceptions to the general interest statute. The validity of these three provisos thus turns on the validity of the specific legislation regulating these classes of lenders.

The Small Loan Act, chapter 10 of Title 7, has been upheld universally when questioned on constitu-

tional grounds. See the long list of cases from many jurisdictions cited by the Washington court in *Kelleher v. Minshull*, 119 P.2d 302 (1941).

The reasoning of these cases is spelled out in the recent Nebraska decision upsetting its conditional sales contract law in *Elder v. Doerr*, 175 Neb. 483, 122 N.W. 2d 528 (1963), where the Nebraska court said with respect to a constitutional provision similar to article VI, section 26 of the Utah constitution:

“Article III, section 18, of the Constitution provides in part: ‘The Legislature shall not pass local or special laws in any of the following cases, that is to say: \* \* \* Regulating the interest on money.’ Under this section of the Constitution, the Legislature may fix the rates of interest that may be charged for the hire of money or the forbearance of debt in installment sale contracts, if the classification is reasonable and has relation to the public interest. That a reasonable classification is required in this type of case is made clear in *Althaus v. State*, 99 Neb. 465, 156 N.W. 1038, wherein it is said: ‘The law assailed regulates the interest chargeable by two classes—unlicensed lenders of money limited to 10 per cent per annum, and licensed lenders authorized to make an additional charge, called a “brokerage fee,” not exceeding one-tenth of the money actually lent and, in exceptional cases, to charge an examination fee of 50 cents. The latter class is open to all who comply with the terms of the statute. One class of borrowers may be required to pay more for their loans than others, but this condition already existed and was not created by legislation. The lawmakers recognized a class

of borrowers from whom exorbitant rates of interest had been exacted under existing conditions and attempted to afford them some measure of protection. Those making such loans are required to obtain a license. Their methods of doing business are regulated. The act makes no discrimination against any class of borrowers. It is not unconstitutional as being a "local or special law \* \* \* regulating the interest on money." The better rule is that the classification is neither unreasonable nor arbitrary. It is also clear that the act does not deny the equal protection of the laws.' "

The reasoning of the Nebraska court as to the reasonableness of this type of classification also applies to the legislation creating and regulating credit unions (chapter 9 of Title 7) and industrial loan corporations (chapter 8 of Title 7). It also supports the classification in subsection (g), the apparent source of appellant's primary attack on the whole of section 15-1-2.

Subsection (g) is the only new aspect included in the 1955 amendments to section 15-1-2. It makes two classifications: one on the size and nature of the loan, i.e., those repayable in installments over a period not in excess of sixty-three months and not exceeding \$5,000 in principal amount—and the other on the basis of the identity of the lender, i.e., any corporation, except small loan licensees, operating under the supervision of the state banking department, and national banks and federal savings and loan associations doing business in the state.

The first basis of classification in subsection (g)

is similar to that on which subsection (c) is founded, which appellant does not attack. The courts have long recognized that classification based on the size of the loan is valid. *In re Home Discount Co.*, 147 Fed. 538 (D.C. Ala. 1906); *State v. Wickenhoefer*, 6 Pa. 120, 64 Atl. 273 (Del. Ct. of Gen. Sess., 1906); *Edwards v. State*, 62 Fla. 40, 56 So. 401 (1911); *Cole v. Franklin Plan Co.*, 176 Ga. 561, 168 S.E. 261 (1933); *People v. Stokes*, 281 Ill. 159, 118 N.E. 87 (1917); *Ravitz v. Steurele*, 257 Ky. 108, 77 S.W. 2d 360 (1934); *State v. Hill*, 168 La. 761, 123 So. 317 (1929), 69 A.L.R. 574; *Wrenn v. Portland Loan Co.*, 155 Ore. 395, 64 P.2d 520 (1937); *Commonwealth v. Puder*, 261 Pa. 129, 104 Atl. 505 (1918), aff'g (1917) 67 Pa. Super. Ct. 11; *State v. Sherman*, 18 Wyo. 169, 105 Pac. 299 (1909), 27 L.R.A. (N.S.) 898, Ann. Cas. 1912C 819. But compare *Ex Parte Sohncke*, 148 Cal. 262, 82 Pac. 956 (1905), 113 Am. St. Rep. 236, 2 L.R.A. (N.S.) 813, 7 Ann. Cas. 475; *Althaus v. State*, 94 Neb. 780, 144 N.W. 799 (1913). The reasoning is obvious. Loans in small amounts repayable in installments are more expensive to handle because of additional processing and bookkeeping required and the collection efforts necessary to secure repayment.<sup>1</sup> They also involve greater credit risks because of the nature of the borrower.<sup>2</sup> Loans of this nature form a

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<sup>1</sup>Loan loss ratios on installment loans run approximately double that for all loans held by banks and delinquency ratios involving costly collection efforts range even higher.

<sup>2</sup>In 1955, about one-half of the consumer units with annual incomes ranging from \$2,000 to \$10,000 reported installment debt outstanding. CONSUMER INSTALMENT CREDIT, Board of Governors, Federal Reserve System (1957), p. 87.

substantial portion of the nation's economy as they are involved in the financing of the purchase of automobiles, major appliances, farm equipment and mobile homes and in home modernization and repair.

In 1957 the Board of Governors of the Federal Reserve System published a study on consumer installment credit in the United States. That study reported that at the end of 1955 there was outstanding in the United States approximately \$30,000,000,000<sup>3</sup> in consumer installment credit, of which 37 per cent was held by the commercial banks of the country. Of the total of \$30,000,000,000 of outstanding consumer credit in 1955, 46 per cent was represented by automobile paper, 26 per cent for loans to purchase other consumer goods, 6 per cent for repair and modernization loans and 22 per cent for personal loans. The commercial banks of the country held 39 per cent of the automobile paper, 27 per cent of paper representing purchases of other consumer goods and 31 per cent of personal installment loans.

With respect to the effect of installment credit on the economic growth of the country, the Federal Reserve report stated:

“This chapter has indicated that the growth of instalment credit has been an integral part of the development of the United States economy in the 20th century. Instalment credit has been viewed as a means of adaptation by both con-

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<sup>3</sup>As of the end of 1963, consumer installment credit held by financial institutions in the United States totaled \$46.9 billion. See “Federal Reserve Bulletin”, August, 1964, p. 1064.

sumers and business to technological, economic and social developments that have transformed the consumer into an owner of capital goods that provide him with services. Consumer debt has grown with the ownership of consumer capital as a reasonable method of amortizing its cost over a part of its service life. Furthermore, consumer ownership of such assets eliminates consumer expenditures that would otherwise be made to business suppliers of services, offsetting in part monthly payments on instalment debt. Similarly, the growth of instalment debt may be regarded as partly a substitute for business debt that would have been incurred if consumers had continued to rely on business for services instead of acquiring their own service-producing durable assets.

“Apart from this basic rationale for the development of instalment credit, its growth can also be viewed as a cumulative process of action and reaction. The existence of instalment credit facilities, called forth by the need to finance automobiles and other expensive durable goods, influenced attitudes toward borrowing and also led to the use of instalment credit for the financing of other goods and services. In turn, new types of credit facilities have been established. Use of instalment credit has thus become deeply embedded among the habits and customs of American consumers and businessmen.”

It is clear that the Legislature felt, in light of the importance of securing a source of funds for this important segment of the economy, that installment loans of the nature described should be treated separately for the purpose of fixing the maximum interest



rates applicable to them. One who assails the classification must carry the burden of showing that it does not rest on any reasonable basis, but is essentially arbitrary. *Morey v. Doud*, 354 U.S. 457 (1957). Appellant has neither claimed nor shown anything arbitrary or unreasonable in that determination.

The second basis of classification in subsection (g)—the nature and identity of the lender—is also well recognized by the courts as a reasonable classification. *Griffith v. Conn.*, 218 U.S. 563 (1910); *Mutual Loan Company v. Martell*, 222 U.S. 225 (1911); *Cavanaugh v. People*, 157 Pac. 200 (Colo. 1916); *Carter v. Seaboard Finance Co.*, 203 P.2d 758 (Calif. 1949); *Wrenn v. Portland Loan Company*, 64 P.2d 520 (Ore. 1937).

In proviso (g) the lenders are those, other than small loan licensees, operating under the supervision of the state banking department of Utah, national banks and federal savings and loan associations doing business in the state. The reason for the inclusion of the latter two is obviously to avoid the constitutional problem of discrimination between federal and state chartered institutions of similar import. Section 7-1-7 of Utah Code Annotated lists those financial institutions which are subject to the jurisdiction of the banking department. These are banks, building and loan associations, industrial loan corporations and credit unions.

In the first place, it should be noted that these are all institutions engaged primarily in the business of

lending money—the subject matter of interest. They are all engaged in the pooling of the surplus funds of the community in the form of bank deposits, savings accounts and thrift accounts and using these funds to supply the credit needs of the Utah economy. One of these needs is for installment loans to finance home improvements, the purchase of automobiles and major appliances and to meet the emergency cash requirements of the wage earner who can repay only on the installment basis out of current earnings.

Secondly, these lenders are all strictly regulated by the banking department. They cannot get into business without the prior approval of the bank commissioner, who checks into the plan of operation and the character, responsibility and general fitness of the incorporators or organizers to determine that the business will be honestly conducted in accordance with law and for the best interest of the members of the institution and for the public welfare. (Section 7-1-26 Utah Code Annotated 1953.) They are all subject to visitation and examination at least once a year by the banking department (section 7-1-8), to determine if they are conducting their business in accordance with law, and they are required to pay special fees for such examination and supervision (section 7-1-10). They must keep their books and records open for inspection by the banking department and in such form as will enable it to immediately ascertain their condition, (section 7-1-12). Their officers and employees must be bonded (section 7-3-25), and may be removed from office if dishonest,

reckless or incompetent or for failure to perform any duty of office (section 7-1-17). The directors of all such institutions are required to examine regularly the books and affairs of each such corporation (section 7-1-14). The banking department may take over their property and affairs and liquidate them if the bank commissioner determines they have violated the law or are otherwise operating improperly (section 7-2-1 et seq.). They may establish and operate branch offices only if approved by the bank commissioner (sections 7-3-6 and 7-7-2). Savings and loan associations (section 7-7-5), credit unions (section 7-9-16) and industrial loan corporations (section 7-8-5) are limited as to the size and nature of the loans they may make.<sup>1</sup>

It is obvious that the purpose of the legislature in enacting subsection (g) was to provide a source of funds for the installment borrowing needs of the state. Its selection of those engaged primarily in the lending business and already strictly regulated by the banking department to assure compliance with the law is clearly a reasonable classification.<sup>2</sup> As the Colorado Supreme Court in *Cavanaugh v. People, supra*, noted:

“The exceptions, however, appear to be reasonable, inasmuch as they cover only money lenders who are already subject to governmental supervision and control.”

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<sup>1</sup>Similar extensive regulation and supervision is maintained by the Comptroller of the Currency over national banks and by the Federal Home Loan Bank Board over federal savings and loan associations. State member banks of the Federal Reserve System are also regulated and supervised by the Board of Governors of the Federal Reserve System and all insured banks by the Federal Deposit Insurance Corporation.

<sup>2</sup>Similar classification is made by thirty-four other states with respect to installment loans by banks as shown by the following table:

# MAJOR PROVISIONS OF STATE LAWS REGULATING PERSONAL INSTALMENT LOANS OF COMMERCIAL BANKS, SEPTEMBER, 1956

State	Loan Limit	Maximum term (months)	Maximum rate (percent per annum) and type of charge
Alabama	None	None	6; add-on.
Alaska	\$3,500	None	6; discount.
Arizona	\$1,000	None	8; discount
Connecticut (savings banks and departments).	\$1,000	18	6; discount.
Delaware	\$500 <sup>1</sup>	36	6; discount.
Florida	\$3,000	None	6; discount.
Georgia	None	None	6; discount.
Indiana	None	None	8; discount
Iowa	\$2,500	37	6; discount.
Kansas <sup>2</sup> (under the usury law)	\$2,000	30	8; add on or discount.
Kentucky	\$5,000	37	6; discount on first \$2,500; 5 per cent on balance
Maine (savings banks)	\$1,000	36	None.
Massachusetts <sup>3</sup> (savings banks and departments)	\$1,000 (exclusive of interest or discount)	24	Rate to be approved by Commissioner.
Michigan	per cent of capital and surplus.	36	7; discount.
Minnesota	\$2,500	3 years	6; discount.
Mississippi	\$500	None	8; discount
Missouri <sup>2</sup>			
Nebraska <sup>2</sup>			
New Jersey <sup>4</sup>	\$2,500 net proceeds	24-36	6; discount.
New Mexico <sup>2</sup>			
New York <sup>5</sup>	\$5,000	24-37	12; simple.
North Carolina	\$1,500	None	6; discount.
Ohio (savings and special plan banks).	None	None	8; discount
Oregon <sup>2</sup> (under the banking law).	\$500	None	\$8 per \$100 charged in lieu of interest on first \$500 of principal; 10 percent simple on balance.
Pennsylvania	\$3,500	36	6; discount.
Rhode Island (savings banks and departments).	\$1,000	18	Fixed by Department of Business Regulation
South Carolina <sup>4</sup>	\$1,000	12-18	7; discount.
South Dakota	\$3,000	36	8; add-on first \$1,000, 6 per cent add-on on balance.
Texas	None	None	7; discount (5 percent plus 2 percent fee)
Utah	\$5,000	63	7; discount, but not exceeding 14 percent simple interest.
Vermont	None	None	Not specified in law.
Virginia	None	None	6; discount; plus a 2 percent investigation fee on loans not exceeding \$1,000.
West Virginia	None	None	6; discount.
Wisconsin	\$1,000	None	10 percent simple, plus \$1 per 90 days on outstanding balances.
Wyoming	\$1,000	None	8; discount

<sup>1</sup> Limit is 10 percent of capital and surplus, if paid-in capital exceeds \$10,000.

<sup>2</sup> Banks may be licensed under small-loan law and then operate under the provisions shown in table 17.

<sup>3</sup> On loans of less than \$1,000 at an interest rate in excess of 18 percent per annum, borrower may discharge loan by tendering principal plus 18 percent interest plus \$5 fee.

<sup>4</sup> Longer term applies to secured loans.

<sup>5</sup> Longer term applies to loans for property repair, alteration, or improvement.

Source: CONSUMER INSTALMENT CREDIT, Board of Governors, Federal Reserve System (1957), p. 65.

## CONCLUSION

The Legislature has met all of the criteria delineated by this Court in its interpretation of article I, section 24, and article VI, section 26 of the Utah Constitution. Section 15-1-2 is a general statute fixing the maximum rate of interest to which parties to a loan transaction may agree. Its provisos are reasonable classifications based on the size and nature of the loan. The lenders affected are those engaged primarily in the lending business and strictly regulated and supervised by the state banking department. These classifications have a reasonable relationship to the purpose of interest regulation—protection of borrowers against unconscionable charges, yet providing a source of funds for the credit needs of every segment of the economy.

The constitutionality of section 15-1-2 should be sustained.

Respectfully submitted,

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