

## TWENTY-NINTH DAY

Tuesday, March 6, 1984

The Senate of the Twelfth Legislature of the State of Hawaii, Regular Session of 1984, convened at 11:30 o'clock a.m., with the President in the Chair.

The Divine Blessing was invoked by the Reverend Samuel Saffery of Liliuokalani Church, after which the Roll was called showing all Senators present.

The Chair announced that he had read and approved the Journal of the Twenty-Eighth Day.

The following introductions were then made to the members of the Senate:

Senator Kuroda introduced Mr. Glenn Muggelberg and Mr. Dale Miller and stated:

"Mr. President, it's an honor, as a former member of the Lions Club, to introduce visiting dignitaries of another service organization.

"We have visiting with us on the floor District Governor of Kiwanis International, representing the California-Nevada-Hawaii District, Mr. Glenn E. Muggelberg and his wife, Millie. The Kiwanis International has a division in Hawaii called District 22 and he is visiting with the various clubs here.

"The Kiwanis International celebrated its 69th Anniversary on January 21st and here with us on the floor, also, is Lt. Governor Dale Miller, a resident of Honolulu, representing District 22, which includes the Kiwanis Clubs located in Hawaii, Maui, Kauai and Oahu."

Mr. and Mrs. Muggelberg and Mr. Miller were asked to rise and be recognized. Senator B. Kobayashi presented Mrs. Muggelberg with a lei and Senator Kuroda presented a Senate Certificate to the gentlemen.

Senator Chang then introduced his second 'shadow' for the session, from the Coastal Zone Management Program and the Marine Options Program, Mr. Raymond Tabata who was sitting in the gallery.

At 11:49 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:50

o'clock a.m.

## HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 47 to 54) were read by the Clerk and were disposed of as follows:

A communication from the House (Hse. Com. No. 47), transmitting House Bill No. 1847-84, H.D. 1, which passed Third Reading in the House of Representatives on March 5, 1984, was placed on file.

On motion by Senator Cobb, seconded by Senator Soares and carried, H.B. No. 1847-84, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO BENEFIT SOCIETIES," passed First Reading by title and was referred to the Committee on Consumer Protection and Commerce.

A communication from the House (Hse. Com. No. 48), transmitting House Bill No. 1635-84, which passed Third Reading in the House of Representatives on March 5, 1984, was placed on file.

On motion by Senator Cobb, seconded by Senator Soares and carried, H.B. No. 1635-84, entitled: "A BILL FOR AN ACT RELATING TO LITTER," passed First Reading by title and was referred to the Committee on Health.

A communication from the House (Hse. Com. No. 49), transmitting House Bill No. 1721-84, H.D. 1, which passed Third Reading in the House of Representatives on March 5, 1984, was placed on file.

On motion by Senator Cobb, seconded by Senator Soares and carried, H.B. No. 1721-84, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO NAMES," passed First Reading by title and was referred to the Committee on Judiciary.

A communication from the House (Hse. Com. No. 50), transmitting House Bill No. 1722-84, H.D. 1, which passed Third Reading in the House of Representatives on March 5, 1984, was placed on file.

On motion by Senator Cobb, seconded by Senator Soares and carried, H.B. No. 1722-84, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO NAMES," passed First

Reading by title and was referred to the Committee on Judiciary.

A communication from the House (Hse. Com. No. 51), transmitting House Bill No. 1852-84, H.D. 1, which passed Third Reading in the House of Representatives on March 5, 1984, was placed on file.

On motion by Senator Cobb, seconded by Senator Soares and carried, H.B. No. 1852-84, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE UNIFORM DESERTION AND NONSUPPORT ACT (MODIFIED)," passed First Reading by title and was referred to the Committee on Judiciary.

A communication from the House (Hse. Com. No. 52), transmitting House Bill No. 1842-84, H.D. 1, which passed Third Reading in the House of Representatives on March 5, 1984, was placed on file.

On motion by Senator Cobb, seconded by Senator Soares and carried, H.B. No. 1842-84, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO SEPARATE MAINTENANCE," passed First Reading by title and was referred to the Committee on Judiciary.

A communication from the House (Hse. Com. No. 53), transmitting House Bill No. 79, which passed Third Reading in the House of Representatives on March 5, 1984, was placed on file.

On motion by Senator Cobb, seconded by Senator Soares and carried, H.B. No. 79, entitled: "A BILL FOR AN ACT RELATING TO STATE TORT LIABILITY," passed First Reading by title and was referred to the Committee on Judiciary.

A communication from the House (Hse. Com. No. 54), transmitting House Bill No. 1838-84, which passed Third Reading in the House of Representatives on March 5, 1984, was placed on file.

On motion by Senator Cobb, seconded by Senator Soares and carried, H.B. No. 1838-84, entitled: "A BILL FOR AN ACT RELATING TO ENTERING THE MARRIAGE STATE," passed First Reading by title and was referred to the Committee on Judiciary.

#### SENATE CONCURRENT RESOLUTIONS

The following concurrent resolutions

(S.C.R. Nos. 41 and 42) were read by the Clerk and were disposed of as follows:

A concurrent resolution (S.C.R. No. 41), entitled: "SENATE CONCURRENT RESOLUTION CALLING FOR AN INVESTIGATION OF HIGH HOSPITAL COSTS," was offered by Senators Kawasaki, Carpenter, Abercrombie, Cayetano, Young, Holt, Henderson, Soares, Fernandes Salling and A. Kobayashi.

By unanimous consent, S.C.R. No. 41 was referred to the Committee on Health.

A concurrent resolution (S.C.R. No. 42), entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE GOVERNOR TO REINSTATE MR. JOHN HANKINS AS HILO HOSPITAL ADMINISTRATOR," was offered by Senators Carpenter and Henderson.

By unanimous consent, S.C.R. No. 42 was referred to the Committee on Health.

#### SENATE RESOLUTIONS

The following resolutions (S.R. Nos. 48 and 49) were read by the Clerk and were disposed of as follows:

A resolution (S.R. No. 48), entitled: "SENATE RESOLUTION REQUESTING A STUDY CONCERNING HIGH OCCUPANCY VEHICLES AT HONOLULU INTERNATIONAL AIRPORT," was offered by Senators Soares, Henderson, George, A. Kobayashi and Ajifu.

By unanimous consent, S.R. No. 48 was referred to the Committee on Transportation.

A resolution (S.R. No. 49), entitled: "SENATE RESOLUTION REQUESTING THE GOVERNOR TO REINSTATE MR. JOHN HANKINS AS HILO HOSPITAL ADMINISTRATOR," was offered by Senators Carpenter and Henderson.

By unanimous consent, S.R. No. 49 was referred to the Committee on Health.

#### STANDING COMMITTEE REPORTS

Senator Chang, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 148-84) recommending that Senate Bill No. 1450, as amended in S.D. 1, pass First Reading and be re-referred to

the Committee on Judiciary.

On motion by Senator Cobb, seconded by Senator Soares and carried, the report of the Committee was adopted and S.B. No. 1450, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO PAROLE," passed First Reading and was re-referred to the Committee on Judiciary.

Senator Cobb, for the majority of the Committee on Consumer Protection and Commerce, presented a report (Stand. Com. Rep. No. 149-84) recommending that Senate Bill No. 1747-84, as amended in S.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Cobb, seconded by Senator Soares and carried, the report of the majority of the Committee was adopted and S.B. No. 1747-84, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INDUSTRIAL LOAN COMPANIES," passed Second Reading and was placed on the calendar for Third Reading on Thursday, March 8, 1984.

Senator Kuroda, for the Committee on Tourism, presented a report (Stand. Com. Rep. No. 150-84) recommending that Senate Bill No. 2242-84, as amended in S.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Cobb, seconded by Senator Soares and carried, the report of the Committee was adopted and S.B. No. 2242-84, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE MOORING OF COMMERCIAL VESSELS IN SMALL BOAT HARBORS," passed Second Reading and was placed on the calendar for Third Reading on Thursday, March 8, 1984.

#### ORDER OF THE DAY

#### THIRD READING

#### MATTERS DEFERRED FROM MARCH 5, 1984

At 11:52 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:53 o'clock a.m.

Senate Bill No. 1532-84, S.D. 1:

On motion by Senator Cobb, seconded by Senator Soares and carried, S.B. No. 1532-84, S.D. 1, entitled: "A BILL FOR AN ACT

RELATING TO HAWAII COMMUNITY DEVELOPMENT AUTHORITY," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 24. Noes, none. Excused, 1 (Uwaine).

Senate Bill No. 1572-84:

By unanimous consent, action on S.B. No. 1572-84, entitled: "A BILL FOR AN ACT RELATING TO RESIDENTIAL LEASEHOLDS," was deferred until Wednesday, March 7, 1984.

Senate Bill No. 2087-84, S.D. 1:

Senator Cobb moved that S.B. No. 2087-84, S.D. 1, having been read throughout, pass Third Reading, seconded by Senator Soares.

Senator Kawasaki rose to speak against the measure and stated:

"Mr. President, in my judgment, of all the bills that will cross our desks this session, perhaps, this is the most objectionable one.

"Back a few years ago, we, in recognition of the fact that industrial loan companies that were committed to loan commitments at low rates of interest, much lower than the cost of money available to them, recognizing this emergency at a time when we experienced what is known as the panic year of 1980 where the prime interest went as high as 21 percent, recognized the plight of industrial loan companies so we raised the usury ceiling of what was 18 percent to a full 6 percentage points -- 24 percent. This was excessive, in my judgment, but be that as it may, a majority vote here carried a proposition that we raise the usury ceiling to 24 percent.

"Also at that time, because of problems encountered by the industrial loan companies, at their behest, we enacted a law that created Thrift Guaranty Corporation to help some of these industrial loan companies in dire financial circumstances. Well, those were past years.

"The daily newspapers only a few days ago pointed out the fact that the lending institutions, including industrial loan companies, savings and loan companies, and the banks, I suppose more particularly the banks, are enjoying prosperity today. Their growth in the way of loans, in

assets, net profit is quite good.

"In this improved climate it just seems to me that we should not be passing the bill before us.

"I would suggest this committee, of which I am also a member, should look into the possibility of helping to bring about some permanent relief to that category of our population, because of their financial circumstances, those citizens who are forced to go to industrial loan companies because of necessity, to pay 18 percent interest on their loans, as high as 24 percent in some cases if these institutions wanted to charge them that much...I think we'd better look into their plight and perhaps make amendments to our lending laws so that we could help bring about some relief to this sector of our borrowing population. This bill does not address their plight.

"This bill is quite complicated. For one thing what it does, which is good, is to put a ceiling on what people entering into agreements of sale would pay in the way of interest when agreement of sale contracts expire and there is a renegotiated agreement of sale. This bill provides that the owner of that agreement of sale cannot then charge the borrower more than 2 percent of what the underlying mortgage interest rate was. This is fine. But, contained in this bill, ironically, is also the provision that we delete the 'drop dead' clause which brings back interest rates back to what it was in 1980 -- 24 percent ceiling for industrial loan company loans and 18 percent for commercial loans permanently, thereby removing all usury ceilings.

"The bill also states, in the committee report, that without the deletion of the 'drop dead' clause which drops dead in June of next year, after next year's session, that some of these lending institutions would be faced with hardships because they have to worry about long-term commitments in the way of long-term loans.

"The question I have is, how have these institutions gotten by in these years that we did have the 'drop dead' clause taking effect in June of next year? It just seems to me that there is no imperative need...I'm not convinced that we to delete the 'drop dead' clause now.

"This bill is, admittedly, an industry bill. In the course of questioning during the committee

hearings I inquired whether this was not a bill formulated and developed by people primarily representing the industry, the lending institutions. This fact was admitted. Also, it was stated that one member from the regulatory agencies was present and they sort of gave a passive approval of the bill on the point of the structure and administration of the bill.

"The committee report contains quite a few claims, one of which is that, generally, most states in the nation are doing away with usury ceilings. I find this to be patently untrue. I've asked the reference bureau to get me the very latest possible data on what usury ceilings are in 50 of the states in the nation. I did that again this morning to make sure that the data they submitted to me before our caucus discussion was the very latest, and contrary to what the committee report claims that generally we are doing away with usury laws, usury laws which were part of our national scene and our local scene for literally a century, perhaps...we are not doing away with usury laws, it is true that some states perhaps five or six states have done away with usury laws...states like Nevada, Utah, New Hampshire, a few others, but contrary to this committee report we still do maintain usury ceilings in many states and I will not take the time of this body to recite the list of states that have usury ceilings, some ceilings much lower than what we have in this state.

"So, the committee report in my judgment is not factual. But, to cut a long story short, I think by the enactment of this bill we are not helping to protect that segment of our population which needs help the most. I'm not too concerned about the commercial loans where big businesses borrow money from the Bank of Hawaii or other banks and what they have to pay in interest does not particularly interest me because they are in a position to handle those loans for the period of time that they borrow these big amounts of money. It is the ordinary taxpayer-consumer who's got to, of necessity, go to these industrial loan companies and who are forced to pay 18 percent interest. And then if their loan expires and they are not able to pay up even that 18 percent loan, at the expiration of that loan, is going to be charged 24 percent. This only compounds his hardship.

"It just seems to me that we have time enough to study this situation a

little more carefully. Certainly, we do not need to delete the 'drop dead' clause. I would suggest, in the interim, that the committee or a subcommittee that you might appoint, really look into how we can bring about relief to the lower income category of consumers, the consumers that need to borrow money, even at 18 percent, of necessity, look into our existing laws to find whether we can improve these laws by amendments that will help to bring them a little more relief.

"My concern also centers on the fact that while the borrowers are by law today allowed to be charged up to 24 percent interest, I find that the existing rates of interest paid to depositors, people who put money into these institutions, they are really treated very well. As a matter of fact, I find out that on a certificate of deposit, the best return I could get for an organization that I represent as a trustee, the best return of interest that I could get on certificates of deposit for 90 days was 9½ percent. The bank that paid this amount probably lends this same money out at about 18 percent to borrowers. The spread is what is beginning to worry me. It just seems to me the 'nature of the beast' is that the lending institutions will charge borrowers whatever they can get away with and they will pay depositors, to let them use their money, as little as possible.

"In this kind of climate, perhaps of necessity, the Legislature has to look into this whole issue of credit availability, borrower costs, what depositors will be paid. With deregulation, notwithstanding the predictions made by many people, there have been abuses that have come about. Certainly, I think we should not prematurely.

"For those reasons, I speak against passage of the bill."

Senator Fernandes Salling also rose to speak against the measure and stated:

"Mr. President, many of us may not be aware that the regulation of interest originated approximately 5,000 years ago when the charging of any interest was prohibited.

"Today, only unconscionable interest rates are prohibited by usury statutes and although usury once referred to the charging of any interest, the term has evolved to mean only the charging of excessive

interest. A valid construction of usury statutes requires an understanding of the social purposes that underlie them. At least two goals are commonly advanced by general usury laws. One is the fixing of interest itself and, two, the protection of borrowers from excessive rates of interest.

"Despite the shift from strict prohibition to the explicit approval of interest charging, the moral opposition to interest charges persists. One reason for this is the recognition that inequalities in bargaining power create a need to protect individuals from oppressive bargains. For instance, a substantial number of small loans are used by consumers for emergency situations and such borrowers are willing to pay extremely high interest rates to obtain the credit.

"Usury laws minimize the extent to which lenders can take advantage of desperate or inexperienced borrowers by setting a maximum conscionable limit on interest rates, a safety net, so to speak. This situation is similar to adhesion contracts in the area of installment sales. The borrower in that case has no room to negotiate and is forced to agree to the terms and conditions of the seller's contract. The similarity here is that a person who goes to a bank to make a loan is presented with a contract; he has no room to negotiate if he wants the funds; he must agree to the terms, the conditions, and the interest rate being charged by the lender.

"By spelling out in statute a lower interest ceiling, we are affording this person some measure of protection against those who are in the position of dictating the terms of the contract.

"Since 1980 when the ceiling was increased to 24 percent, surveys have shown that the interest rates for savings and loans institutions averaged about 18 percent and only once in 1981 did it go as high as 19 percent. This being the case, why is it necessary for us to set such a high ceiling as 24 percent and almost invite or tempt, if you will, these financial institutions to increase their rates and thereby destroying any protection we may be able to afford the small borrower?

"The committee report states that there is a trend in the nation to reduce, or to do away with the ceilings. Well, then, if this is the rationale for us to pass a measure

such as this, perhaps we should use this rationale also to reinstate the death penalty clause in the state. Not that I am an advocate of the death penalty clause.

"Also, the committee report states that it must institute this 'drop dead' clause this year although it was to be looked at next year, and it goes on to state that the reason for this is because we have budget considerations to review, we have the state plans, we have tax revisions, and other pressing issues.

"The point I think that we should try to make is that we are dealing with individual rights here as opposed to the concerns of the large financial institutions and as such I don't think that we should be rushing into passing this measure this year. That we should, perhaps, consider looking at it next year when it would be up for consideration.

"I think this is something that concerns most people, most consumers, and I ask you to consider very carefully the passage of this bill. We are dealing here with individual rights as opposed to the concerns and the needs of large financial institutions and as such I think we should weigh the facts in favor of the individual.

"Thank you."

Senator Cobb then rose to speak in support of the measure and stated:

"Mr. President, very briefly, I think a little background is important.

"In 1980, the Federal Congress passed a measure that in effect gave the states three years in which to take action of their own on the question of usury. Otherwise, the states would be preempted by the federal law, which in effect repealed all provisions and all ceilings on usury; and the only protection that would have then been existent would have been Federal Regulation Z which sets out loan standards and computation of charges as well as disclosure requirements.

"Hawaii was one of the first states in 1980 to take advantage of the federal law and said no, we choose to reject the federal law of totally no ceilings and no control and instead reimpose our own ceilings. And that was done. The five-year 'drop dead' was put on at that time to sunset effective June 30, 1985.

"In terms of what most states are doing, the evidence presented before the committee showed that most states are repealing usury ceilings on commercial loans and raising them on consumer loans, not as a function of deliberately increasing interest rates, but rather to allow the marketplace forces to work.

"The State of New York, for example, has repealed all interest rates and, in effect, they have adopted the federal position. We didn't go that far in Hawaii. We felt that we should maintain a 24 percent rate for industrial loans and an 18 percent rate for other financial institutions under Chapter 476.

"I think, Mr. President, the clearest thing this bill recognizes is, the cost of money is a national phenomenon, not a state one, and that money market rates and the cost of money are set nationally, not locally; that money is entirely free-flowing; and if a state has unrealistically low or restrictive interest ceilings, capital is denied that state or it flows out of it or lenders who are foreign to that state would then be making a loan under the auspices of their own state laws or federal laws.

"In short, Mr. President, the experience on usury over the last four years has demonstrated that the free market works. The only abuse that I have really discovered in the four years of monitoring this has been in the area of agreements of sale and, as alluded to earlier, that area is addressed in the bill. There was evidence, Mr. President, of long-term loan commitments being made primarily on variable rates that would go far beyond the June 30, 1985 cutoff, and if the cutoff rates were then lower than the cost of money, either the loan activity would stop or would have to be renegotiated or capital would be denied.

"Mr. President, there's some rather dramatic evidence about the rise and fall of the prime rate in the cost of money and I would like to share, in summary form, that information with the members of the Senate.

"The fastest increase in the prime rate occurred from August 23, 1980 to December 19, 1980, a period of 121 days in which the prime rate rose 11½ percent. The fastest decrease occurred from April 17 to July 23, 1980, a period of 98 days in which the prime rate decreased 9 percent from 20 to 11. All that indicates,

Mr. President, is that the prime rate is very clearly subject to high degrees of fluctuation, largely in periods when we are not in session and not able to address the problem.

"Allusion was made, also, to this being an industry bill. This bill and the whole subject of usury was addressed by a group including members of the Department of Commerce and Consumer Affairs last year. In fact, the area of industrial loans as well as the overall area of usury was so addressed per request of the committee because we wanted to have clear evidence, one way or another, as to how well it either was working or was not working and what changes would be necessary.

"Mr. President, I think it's very clear in the committee report that, if we have an unrealistically low ceiling in terms of today's cost of money, it's the small borrowers who won't be able to get the loans. And in a companion bill, 1747, which incorporates the protections of Regulation Z, the computation of interest is very strict; the points application charges and other fees are computed as interest under Regulation Z, so that there would be a lower rate to the consumer.

"The essence of this bill, Mr. President, is that the free market works in an environment where we have had this ceiling of 24 percent and 18 percent, respectively, since 1980. Under the 24 percent ceiling, today's rates, given the lower cost of money in the national marketplace, are between 15 and 17 percent.

"Therefore, Mr. President, in view of the fact that it has worked, I would ask the members' support. Thank you."

Senator Cayetano then asked if the chairman would yield to a question.

The Chair posed the question and Senator Cobb asked to hear the question.

Senator Cayetano stated and inquired as follows:

"Mr. President, before I give the question, let me just state that I haven't made up my mind on how I'm going to vote on this bill.

"I find very little to disagree with the chairman in terms of his remarks regarding the impact of the Federal Government on loans and interest rates in the state. However, in

looking at the committee report I have some reservations about the reason given for acting on this bill this year instead of addressing it next session because as I read the bill the 'drop dead' deadline is in 1985, is that correct? Would the chairman explain the reason behind that portion of the bill?"

Senator Cobb answered: "Mr. President, basically, it's not only a question of us addressing a variety of other major issues not next year, but the more important reason, as I've stated previously but will elaborate on, is that there are a number of large long-term loan commitments involving construction on developments and other projects that are being made even now for a period that would considerably exceed June 30, 1985. And even though the law is silent on the question of variable loans, nevertheless, on a number of those loans, particularly on the basis of commercial loans, transactions are being made.

"If the June 30, 1985 'drop dead' went into effect the concern of both the lenders and the borrowers is that then they would either be cut off or forced to a lower rate, and if the lower rate exceeded the cost of money they would both be operating at a loss. It's been this concern that's been expressed to my committee, as well as to me personally, and is the reason I'm willing to take a look at it this year and take action on it.

"I hope that responds to the question."

Senator Abercrombie also rose to speak against the bill and stated:

"Mr. President, the answers to this discussion by the way, or a good portion of the discussion, took place in the caucus and it's too bad that some members, the majority of the members, were not able to attend then. I think the discussion back and forth would have been fruitful for everybody in determining how to vote.

"As one of the previous speakers indicated, this is a complicated bill. I daresay, however, it's not as complicated as the industrial loan bill that will be before us this Thursday. I certainly hope, when we have a caucus on that, that people will come and will read it inasmuch as the industrial loan company area is such a disaster in this state and before we vote these things through we should know what we're voting on.

"I certainly hope everybody that walks out of here today, if they intend to vote for this bill, can tell the people who will be affected by it exactly what it does and what the consequences are. In this particular instance, I understand what the chairman's argument is.

"The problem is one of philosophy. Inasmuch as the votes on this bill for the most part are going to be determined by the Democratic Majority in this body, I urge all the members of the Majority to consider what it is in fact they are voting for. If we are to follow the logic of the chairman we should be removing all the interest rate restrictions.

"I am familiar with the activities of the senate president in the State of New York, Senator Anderson, and the speaker of the assembly in the State of New York, Speaker Stanley Fink. I understand the reason. I think I'm at least familiar with the context in which all interest rates were removed in the State of New York. It is to accommodate the large corporations, the gigantic, in many instances Mafia-controlled construction unions and companies, who see to it that the major financial combines in New York State and those combines doing business in New York State are protected against the burgeoning deficit in this country. That's why I'm talking philosophy.

"If you think we in the State of Hawaii are not part of a possible national tragedy with respect to what might happen with what has been mentioned as the free market in terms of money considerations, we are deluding ourselves, and I'm deadly serious about it.

"Will it be possible for the chairman in rebuttal to stand up and say that the State of Hawaii and the financial transactions in Hawaii are not subject or cannot, rather, subject the national picture to any particular scrutiny with respect to whether or not what we do with this bill will affect that picture that I've just described? I understand that. But I also understand that if we are to be responsible individuals and if every state legislator, as the one in New York State has recently done, takes the attitude...oh well, that's just a problem that will have to be solved on the national level; we can't contribute anything positive to that...then what will happen is we will abrogate our responsibilities here at the local level, if we can call various states, just local.

"What we will be doing is encouraging the national and international corporations to whose benefit either the elimination of interest rates or this rise in interest rates will be, encouraging them to be able to ride out the coming financial crisis in this country. It is not an abstraction, Mr. President and members of the Majority, on the contrary, I think that the reason this is coming up a year early and the reason as the chairman of the Consumer Protection Committee indicated this is being taken up all over the country...especially in those states where there is significant control in the legislature by those who favor the large financial institutions over the consumer, and in New York State succeeding for reasons by the way which have more to do with the relationship of the president of the senate and the assembly speaker in New York with respect to certain pork barrel projects throughout New York State, etc., than it does on behalf of the consumer in loans, I can assure you...the reason that this is going on is that these people foresee in November the possibility of victory by the incumbent President of the United States and that as a result there would be a continuation of the present fiscal policies at the federal level to the detriment of these large corporations because they can see what is happening with this hemorrhaging deficit, something which, by the way, is unprecedented in this nation's history. To cite deficits of the past, including those incurred in World War II, in no way reflects the situation as it exists today for which there is no precedent.

"The only reason many of the loans now in existence are being made at the present interest rates is because of the overvaluation, the inflated valuation of the American dollar on the world market and the influx of foreign dollars into this country to take advantage of the interest rates to be made available to them. Otherwise, we would be on the brink, if not in the actual situation, of being a debtor nation. If this continues, there's going to be a hemorrhage at the federal level and there will be a situation in which the free market, which was previously mentioned, will in fact not exist.

"It is not market forces which have kept the interest rates even now at the level that they're at. On the contrary, it's for the reasons that I have just cited or from the profits of



the major corporations that are able to internally finance such expansions as they have undertaken. In many industries this is not taking place. It's being done on the backs of the ranks of the unemployed.

"We're postponing until November having to deal with the ramifications of this deficit...but I said the reason I pose this is a philosophical one and it particularly concerns members of the Majority on this floor...we have to see what's going to happen in November and try to change this situation and bring it back.

"This 'drop dead' clause takes place in 1985. Nothing will change in the law if this bill is not passed. The chairman was quite candid about this in the caucus. The 18 and 24 percent limit will remain in effect, nothing changes, and we will have the presidential election over and done with before we come into session when we have to deal with it.

"The loans that the chairman speaks about have been in the same, exact condition during the entire time that this law has been in effect; that is to say, long-term loans are made on the basis of the 18 and 24 percent figure. If we remove the 'drop dead' clause, it will still be made at the 18 and 24 percent figure. That doesn't change. That's the key to understanding why I'm making this argument to you, especially the Majority, about the philosophy of waiting until after the presidential election.

"We have heard arguments on this floor, Mr. President, and I imagine there will be arguments made in the future with respect to various bills. There's the Tax Commission report coming; there are other reports that are coming in with respect to revenues and how we are going to deal with it, etc., etc., so let's wait till next year. That argument has been made by members on this floor and will be made by others. If that's the case, then shouldn't the same logic prevail here?

"If this is in fact, if you agree, especially members of the Majority Democratic Party, that there is a fundamental decision to be made this November with respect to how we are going to deal with the national budget and its implication, then doesn't it make sense, inasmuch as the law now states that this law will 'drop dead' next year, to take it up in due course, in due time. To not do it, not take this course of action is to say...and this is something that I

think you have to keep in mind as the Majority...that you do anticipate that there's going to be chaos in the national economy with respect to what's going to be available to consumers and that we as Democrats have decided to take our stand with the banks and the major corporations and the major financial interests to see that they can ride through this particular time and we want to ride with them, as opposed to the interest of the consumer.

"If there is a change in the national office this November, we may possibly have a chance to thwart that. I foresee a terrible time, financially, for this nation and one which will affect, obviously, the economic and social well-being of this state as well.

"So, it was not for rhetorical device that I stand and oppose this bill on the basis of philosophy of the Majority Party but rather that inasmuch as the chairman has indicated that the present law as it stands will stay in effect through and until the 'drop dead' time, nothing is lost if you decide you want to let it go until next year. If things take place as I foresee it, if there are no changes in the economic posture of the President and in the national picture, it may be that the chairman will have to come in next year and say, yes, we have to take the interest rates right off; forget everything for the very survival of any kind of financial stability; that the interest rates will have to come off. I think you all know what that will mean. It will mean that we're in the throes of a financial panic which will make the previous one cited by the chairman seem mild by comparison.

"So, let us, and I mean this most sincerely, it's not so much an argument with the chairman and his committee about the consequences as it is an argument to say, why should we anticipate bailing out these people when they are doing this to protect themselves, not the consumer, prior to the 1984 presidential election which is the real focus of why the industry is trying to push it at this time...let's do our duty here in the Majority to look after the consumer interest and give ourselves the opportunity over the time allotted us in the law that we passed, and many of us on this floor were here when this law passed, to take the time to do the right thing at the right time and not anticipate a crisis on the side of those people whose interest is not that of the consumer, but in

protecting their own financial well-being at this time.

"Thank you."

Senator Kawasaki further remarked:

"Mr. President, in the interest of getting information accurately, let me just recite the five states that have done away with usury ceilings states of Nevada, New Hampshire, New Mexico, Wisconsin and Utah.

"Comments by the good Senator from the 7th District, I think, left an impression here that the Feds are really not interested at the federal level...they're not very interested in providing usury ceilings and, back in 1980, unless people at the state level enacted their own legislation regarding interest rates, that Regulation Z is going to take place or is going to be the law by which lending institutions will be regulated. As a result, we enacted our own regulations which, in my judgment, has caused a burden on the consumers.

"I have a question to ask of the chairman of the Consumer Protection Committee. I think it was last week when Congress extended the interest ceilings on credit cards, could he apprise us as to what had taken place last week in that regard?"

Senator Cobb answered: "Yes, Mr. President. My understanding is that the matter is still before Congress, having passed one house and under debate in another. Also, if it has come out of that, I have received no information as yet on any recent update; however, this bill does not address the question of credit cards. That was addressed last year when we passed the measure that said that if credit cards, because of the service fees that have been imposed by local financial institutions, that any business would have a choice on the matter of credit cards. It would either be 21 percent interest without a service fee or 18 percent with a service fee."

Senator Kawasaki continued and stated:

"All right.

"Mr. President, the reason I brought it up is because I said that I got the impression here that the Feds are really not interested in providing any kind of ceiling on interest rates chargeable to consumers, generally. But I do know that on credit card

sales interest rate up to the present is 18 percent and I think they allow few other charges but that law still is in effect today. This only points out that indeed the Federal Government is interested in protecting consumers with some ceilings on interest chargeable.

"You alluded to Regulation Z that would have taken place if we had not enacted back in 1980 our present usury ceiling laws and all laws relating to lending institutions. What kinds of interest rates in different categories of loans would Regulation Z have permitted?"

Senator Cobb, in response, stated: "Mr. President, I don't believe Regulation Z does set specific limits. It gets very specific, however, in the computation of interest rates and what charges or other items are computed in the computation of interest rates?"

Senator Kawasaki continued: "So, in effect Regulation Z still would have some measure of control in what interest rates would be allowed to be charged consumers. Is that not correct, under the Federal Regulation Z?"

Senator Cobb answered: "Not in terms of an absolute figure. It would, however, impose very specific computation requirements on what charges would be included and what charges would not be in the particular interest rate. If a firm is operating under the auspices of the federal law from 1980, it is basically operating without an interest ceiling.

"In response also, Mr. President, I would like to give a brief listing of the states and their status with usury. Based on evidence presented, the number of states with no usury is 9; the number of states with no usury for real estate loans over \$150,000 is 33; the number of states with high usury ceilings of over 25 percent is 11; the number of states with no usury for commercial loans is 45; the number of states with restrictive usury ceilings, below what we have, is 5; and the number of states with complicated usury laws (by that we mean would both exceed in some cases and be below in other cases of what Hawaii's laws are) is 12."

Senator Kawasaki further remarked: "Probably, our sources of information seem to differ quite a bit on what is the data provided us. The listing that was just cited by the Senator from the 7th District just happens to

be the listing given to us by the industry at my request at the committee hearing. However, the Legislative Reference Bureau, under our instruction, provided me even just this morning with what they consider to be the latest data, and while I don't say that theirs is a helluva lot more reliable than the industry data, let me, just to keep things in perspective, just give you a brief listing of some of the ceilings.

"In the State of Alabama, involving consumer credit accounts, the ceiling in Alabama is 8 percent; no limit on loans over \$5,000; and after July 1, 1987 there will be no ceilings on loans over \$25,000. In the State of Arkansas, the allowable interest rate ceiling under their usury laws would be 5 percent over the Federal Reserve Board discount rate, which of course varies, and not over 17 percent per year for consumer loans. In the District of Columbia, what is allowable under installment loans of various categories is 8 percent, and what is allowable in the way of interest charges for real estate mortgages would be 15 percent, maximum. In the State of Georgia, the allowable interest rate on installment loan contracts is 16 percent; on loans more than \$3,000 there's no limit, but not over 5 percent a month so for all intents and purposes that's 60 percent a year. In the State of Indiana, the interest ceiling is 21 percent for consumer related loans up to \$55,000. In the State of Kansas, the ceiling is 15 percent. In the State of Kentucky, it's 4 percent over the Federal Reserve Board discount rate, but no more than 19 percent maximum. And I could go on, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska...Nebraska, incidentally, is 16 percent and there's no limit for real estate and business loans; North Carolina; Ohio has an 8 percent ceiling, no limit on loans over \$100,000.

"The point here is that there is a very appreciable number of states that indeed have usury ceilings involving consumers and, more importantly, consumers in the category that I am concerned about...the consumers who do not have assets and who are not in the position to be able to borrow money at reasonable rates of interest, they have to borrow money at a high rate of interest.

"The point is that it is not as if most of the states in the union have

done away with usury laws. Usury laws are very much in existence today and in most cases their limits are much lower than what we allow."

Senator Abercrombie added to his remarks as follows:

"Mr. President, just to bring a final focus to this for the members' attention.

"Not everybody on the floor may be familiar with Regulation Z. They think it's part of a book on Japanese industrialism. But the chairman of the Consumer Protection Committee is quite right that Regulation Z is a calculation device and what it guarantees...but I hesitate to use the word 'guarantee' because we might think about a certain 'Guaranty' corporation and we all know how much that's worth...but what it does is to make sure that it is a series of charges that can be included in various loans are calculated into the final figure of whatever that figure may be if there is a restriction with respect to the percentage of interest that could be charged, so that if you have a 25 percent interest rate, for example, and there are various charges associated with the making of that loan, that those charges will be included when you calculate the 24 percent. I think I've stated that essentially correct.

"Now, the point here, members, is this, has there been a compelling argument made on this floor for passing this legislation, getting rid of the 'drop dead' clause a year early? If you can honestly answer to yourself that there is compelling argument, other than vague references to loans being made into the future when the chairman himself has indicated that these figures, 18 and 24 percent, will remain in effect regardless of whether this bill passes today, then it seems to me you can't in good conscience vote, yes.

"There's not a compelling argument for changing it; then why vote for it now? There can be only one real reason for that. It's the companies represented here...looking to the future, seeing some kind of potential disaster and asking us to take them off the hook ahead of time. I don't think we in the Majority Party should be doing that. I don't think that we should be taking that kind of an attitude. If we really believe, and if we pass this bill today because we really believe that's what's going to happen, I would like to know from those of you who are voting for it,

just what you exactly intend to do and what you have under way right now in your committees or in your legislation that is going to address the financial disaster that you are anticipating by virtue of this vote, other than taking care of the relative few who will be the immediate beneficiaries. I think that's a fair question. I think it's a fair question you should ask yourself.

"So, I don't deny that we have a crisis that needs to be dealt with. What I am saying is that no compelling case has been made to accelerate changes in this law beyond that was contemplated when we passed it in 1980 and that, on the other hand, it puts up a flag, if you will, for us waving very, very clearly, a clear signal to us that we have to deal with the ramifications of what this problem embodies and what the intent of this legislation portends for us in terms of a possible economic crisis, nationally, and its implications for us locally.

"Thank you."

The motion was put by the Chair

and carried and, Roll Call vote having been requested, S.B. No. 2087-84, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INTEREST," having been read throughout, passed Third Reading on the following showing of Ayes and Noes:

Ayes, 19. Noes, 6 (Abercrombie, Carpenter, Cayetano, Fernandes Salling, Kawasaki and Toguchi).

At this time, Senator Yamasaki, chairman of the Ways and Means Committee requested a waiver of the 48-hour Notice of a Public Hearing on Senate Bill No. 538 (1983) listed on the amended agenda of the Senate Ways and Means Committee's hearing notice for Wednesday, March 7, 1984, and the President granted the waiver.

#### ADJOURNMENT

At 12:49 o'clock p.m., on motion by Senator Cobb, seconded by Senator Soares and carried, the Senate adjourned until 11:30 o'clock a.m., Wednesday, March 7, 1984.