

The original documents are located in Box 40, folder “1976/02/27 S2672 Extending the State Taxation of Depositories Act” of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

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APPROVED
FEB 27 1976

82/27/76

THE WHITE HOUSE
WASHINGTON
February 24, 1976

ACTION

Last Day: February 27

Posted
7/28
Jo Archibald
3/1

MEMORANDUM FOR	THE PRESIDENT
FROM:	JIM CANNON
SUBJECT:	Enrolled Bill S. 2672 - Extending the State Taxation of Depositories Act

Attached for your consideration is S. 2672, sponsored by Senator Proxmire, which amends the State Taxation of Depositories Act to:

1. Extend the moratorium on the interstate taxation of Federally insured depository institutions from January 1, 1976 to September 12, 1976. (Section 1)
2. Permit Federal thrift institutions in Connecticut Rhode Island, Maine and Vermont to offer negotiable order of withdrawal (NOW) accounts. (Section 2)

The enrolled bill also amends the Truth in Lending Act with respect to cash and credit card sales transactions. (Section 3)

A detailed discussion of the provisions of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

The Office of Consumer Affairs, HEW recommends disapproval of the enrolled bill because of Section 3(c) which prohibits a seller from imposing a surcharge upon a credit-card holder who elected to pay for a purchase by credit card rather than cash.

OMB, Max Friedersdorf, Counsel's Office (Lazarus), Bill Seidman and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign S. 2672 at Tab B.





EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

FEB 20 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2672 - Extending the State Taxation
of Depositories Act
Sponsor - Sen. Proxmire (D) Wisconsin

Last Day for Action

February 27, 1976 - Friday

Purpose

To amend the State Taxation of Depositories Act to (1) extend the moratorium on the interstate taxation of depositories and (2) permit Federal thrift institutions in Connecticut, Rhode Island, Maine, and Vermont to offer negotiable order of withdrawal (NOW) accounts; and to amend the Truth in Lending Act with respect to cash and credit card sales transactions.

Agency Recommendations

Office of Management and Budget	Approval
Federal Reserve Board	Approval
Federal Home Loan Bank Board	Approval
Advisory Commission on Intergovernmental Relations	No objection
Department of the Treasury	No objection
Federal Deposit Insurance Corporation	No objection
Department of Health Education and Welfare	Disapproval
Department of Justice	Defer

Discussion

The enrolled bill consists of four sections. Only the surcharge prohibition included in Section 3 and discussed later in this memorandum has provoked any controversy.



The first section would extend the moratorium on the interstate taxation of Federally insured depository institutions from January 1, 1976, to September 12, 1976. This moratorium prohibits a State from levying "doing business" taxes on depositories whose principal offices are located in another State. Initially imposed with the enactment of P.L. 93-100, the State Taxation of Depositories Act, on August 16, 1973, the moratorium was to remain in effect until January 1, 1976. In the interim, the Advisory Commission on Intergovernmental Relations (ACIR) was directed to study and make recommendations to the Congress on the question of interstate taxation of depositories by December 31, 1974. This deadline was intended to give the Congress one year to consider legislative proposals on the issue before the moratorium expired. ACIR, however, did not report to the Congress until September 12, 1975. Accordingly, the enrolled bill extends the moratorium until September 12, 1976, to ensure a full year for Congressional consideration of the ACIR report. The fourth section of the bill would make this first section effective January 1, 1976.

The second section would allow Federal thrift institutions in all six New England States to offer negotiable order of withdrawal (NOW) accounts. Essentially, these are interest bearing savings accounts against which checks in favor of third parties may be written.

At present, Federal savings and loan institutions are prohibited from offering NOW accounts except in Massachusetts and New Hampshire where, pursuant to P.L. 93-100, they were introduced on an experimental basis. However, because other New England States are permitting State-chartered institutions to offer such accounts, Federal thrift institutions in these States have been placed at a competitive disadvantage. S. 2672 would adjust this imbalance by permitting Federal institutions to offer NOW accounts in Connecticut, Rhode Island, Maine, and Vermont, as well as in Massachusetts and New Hampshire.

The third section of the enrolled bill adds a number of amendments to the Truth in Lending Act (TILA). These amendments would:

- permit creditors to rely on interpretations of the Act by officers or employees of the Federal Reserve System as well as on interpretations by the Board. Currently, the Act exempts a creditor from liability under truth in lending

when acting in good faith pursuant to any rule, regulation or interpretation of the Board. This amendment is intended to aid, in particular, small businesses seeking guidance on how to conform to TILA legislation.

- define the meaning of the terms "discount" and "surcharge" when applied to cash and credit card sales transactions.

- preempt State usury laws which define discounts at the point of sale as finance charges. In many States the mandatory inclusion of discounts as finance charges would result in increasing the total finance charge beyond the usury law limits. Although the current TILA exempts discounts up to 5 per cent from the requirement that they be disclosed as finance charges for Federal truth-in-lending purposes, without this provision which exempts such discounts from liability under State usury laws, merchants would be reluctant to offer discounts for cash.

- prohibit a seller from imposing a surcharge upon a credit card holder who elects to pay for a purchase by credit card rather than by cash or check. The rationale for this provision stems from the belief that "no consumer should ever have to pay more than the regular price for goods and services." It was feared that if surcharging of credit card customers were permitted, retailers would simply add the surcharge to the existing "regular price" and label that price as the "discounted" price, thus offering no real benefit to the cash customer while penalizing the credit card customer with even higher prices.

- limit the period for which the surcharge prohibition is effective to three years after the date this bill is enacted. The intent of this limitation is to provide a trial period in which the Congress could review and determine to what extent surcharges, as well as discounts, should be permitted. In the development of S. 2672, the anti-surcharge provision was strongly supported by the House and opposed in the Senate. The three-year trial period represents, therefore, a compromise of these two positions.

Along with the other solicited agencies, the Department of Health Education and Welfare (Office of Consumer Affairs) supports or has no objection to all provisions of the proposed legislation except the surcharge prohibition. HEW's opposition to this provision is so strongly held that, on balance, it recommends a veto of the enrolled bill. The Department argues that the surcharge prohibition "works against the consumer interest by reducing the retailers' incentives to use price as an aggressive marketing tool." It further asserts that this prohibition appears to be an attempt by credit card companies to gain unfairly through this legislation what these companies probably could not achieve in the market place. Finally, it contends disapproval would be "consistent with the President's general desire to use competitive rather than legislative means where possible in the marketplace to achieve benefits for consumers."

In its views letter on the enrolled bill, the Federal Reserve Board notes that as a matter of principle, it would be preferable "to permit a creditor and customers to work out any arrangement that they might prefer in such transactions." However, the Board concludes that a veto is not warranted because the three-year limitation on the surcharge prohibition would constrain any possible ill effects while permitting a period in which to test the wisdom of this provision.

We concur with the Board's position on the surcharge issue, particularly in light of (a) the urgent necessity for enactment of the other parts of this bill and (b) the clear congressional intent that the surcharge prohibition be a limited experiment.

James M. Frey
Assistant Director for
Legislative Reference

Enclosures



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: February 20

Time: 700pm

FOR ACTION: Paul Leach
Max Friedersdorf
Bill Seidman
Ken Lazarus
Steve McConahey
Lynn May
FROM THE STAFF SECRETARY

cc (for information): Jack Marsh
Jim Cavanaugh

DUE: Date: February 23

Time: 400pm

SUBJECT:

S. 2672 - Extending the State Taxation of
Depositories Act

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

SEARCHED
INDEXED

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: February 25

Time: 400pm

FOR ACTION: Max Friedersdorf
Ken Lazarus
Robert Hartmann

cc (for information): J

FROM THE STAFF SECRETARY

DUE: Date: February 25

Time: 600pm

SUBJECT:

Signing statement for S. 2672 - Extending the State
Taxation of Depositories Act

ACTION REQUESTED:

___ For Necessary Action

___ For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

~~___~~ For Your Comments

___ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Statement not issued: Max Agreed to let it go.

jj

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a
delay in submitting the required material, please
telephne the Staff Secretary immediately.

K. R. COLE, JR.
For the President

Nobby Ryan

THE WHITE HOUSE
WASHINGTON

February 23, 1976

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *M.L.*
SUBJECT: S. 2672 - Extending the State Taxation of
Depositories Act

The Office of Legislative Affairs concurs with the agencies that the legislation should be signed. We also suggest that you possibly address the consumer issue in the signing statement to avoid consumer groups' attack.

Attachments

THE WHITE HOUSE

WASHINGTON

February 25, 1976

MEMORANDUM FOR JUDY JOHNSTON

FROM: KATHLEEN RYAN *KAR*

SUBJECT: S. 2672

Attached is a short signing statement explaining why the President signed S. 2672 from the Consumer angle. I think it would be a good idea to include it.

Attachment.



Today, I am signing S.2672. This bill amends the State Taxation of Depositories Act to extend the moratorium on the interstate taxation of Federally insured depository institutions from January 2, 1976, to September 12, 1976. In addition, the bill permits Federal thrift institutions in all six New England states to offer negotiable order of withdrawal (NOW) accounts. I support these provisions without reservation.

However, I believe that it is necessary for me to comment upon a feature of the third provision of the bill, which amends the Truth in Lending Act with respect to cash and credit card sales transactions.

One of the features of S. 2672 is a three year time period prohibiting imposition of the surcharge to users of consumer credit. These three years should provide us with an opportunity to evaluate whether a continued legislative prohibition is necessary or whether the competitive forces in the marketplace can be relied on to achieve consumer benefits.

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: February 20

Time: 700pm

FOR ACTION: Paul Leach *pk*
Max Friedersdorf *pk*
Bill Seidman *pk*
Ken Lazarus *pk*
Steve McConahey *pk*
Lynn May *pk*
FROM THE STAFF SECRETARY

cc (for information): Jack Marsh
Robertavanaugh

DUE: Date: February 23

Time: 400pm

SUBJECT:

H. 2672 - Extending the State Taxation of
Depositories Act

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE
WASHINGTON

February 23, 1976

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *M.L.*
SUBJECT: S. 2672 - Extending the State Taxation of
Depositories Act

The Office of Legislative Affairs concurs with the agencies that the legislation should be signed. We also suggest that you possibly address the consumer issue in the signing statement to avoid consumer groups' attack.

Attachments



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

February 18, 1976

James F. C. Hyde, Jr.
Deputy Acting Assistant Director
for Legislative Reference
Office of Management and Budget
Attention: Miss Martha Ramsey
Room 7201
New Executive Office Building
Washington, D. C. 20503

Dear Mr. Hyde:

This letter is in response to your request yesterday for a written statement of the views of the staff of the Federal Reserve Board concerning Enrolled Bill S. 2672, given in light of the fact that HEW has decided to recommend veto of the bill.

Specifically, insofar as Section 1 of the Enrolled Bill is concerned, staff strongly favors an extension of the interstate tax moratorium. In fact, a failure to extend the moratorium presents great potential for harmful economic consequences, perhaps even the impairment of the allocation of credit resources in certain states. We, therefore, would strongly recommend enactment of Section 1 of the Enrolled Bill.

With respect to Section 2 of the Enrolled Bill, which would extend NOW authority to four additional New England states, the staff has no problem with this extension. In fact, the Boston Federal Reserve Bank already has made contingency plans by which to collect data from Connecticut, Rhode Island, Maine, and Vermont. The contingency plans parallel the data collection measures presently in effect for Massachusetts and New Hampshire. In other words, the staff has been preparing for some time to see such a provision enacted.

Insofar as the Truth-in-Lending amendments are concerned, the Board has had an opportunity to consider Section 3(b) of the Enrolled Bill. This section would protect creditors who rely upon "interpretations" or "approvals" of the Truth-in-Lending Act and regulations thereunder by duly authorized representatives of the Board. The Board has been concerned that this provision might have an unfortunate tendency to shift responsibility for compliance from creditors to the Board; but upon further consideration the Board is not inclined to recommend veto of the measure because of this provision. The Board continues to feel strongly that neither the Board nor its duly authorized representatives should pass upon the great variety of forms that particular creditors might propose to use, especially since this would entail the further formidable task of analyzing each form in terms of the details of the credit plan to which it relates. However, the Board believes that the provision as drafted would not require such action, and if the Enrolled Bill is signed by the President, the Board would propose that actions under it would be limited to expressions of opinion as to the meaning of various provisions of the act or regulation. This is believed to be the most appropriate method of implementing the provision and at the same time assisting both consumers and creditors to obtain a speedy and definitive resolution of questions.

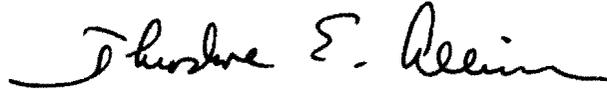
Section 3(c) of the Enrolled Bill would prohibit a seller from imposing a surcharge upon a credit-card holder who elected to pay for a purchase by credit card rather than cash. Staff believes that as a matter of principle, it would be preferable to permit a creditor and customers to work out any arrangement that they might prefer in such transactions. However, the three-year limitation included for the provision limits any possible ill effects it might have and would, at the same time, permit a period of experimentation to see how such a provision might work. In the circumstances, it is not believed that the bill should be vetoed because of this provision regarding surcharges.

Section 3(d), provides that discounts authorized by the Enrolled Bill shall not be considered a finance charge or other charge for credit under the usury laws of any state. The Board believes that such an enactment would have been better handled by state law. However, in the absence of such state law and in light of the fact that failure

to have such a provision has proved seriously disadvantageous to both creditors and consumers, then a Federal statute on the subject is probably desirable, and the Board reluctantly concurs in enactment of this provision.

We are happy to have offered our views in response to your request and hope that they will be of assistance to the Office of Management and Budget.

Very truly yours,

A handwritten signature in cursive script, reading "Theodore E. Allison". The signature is written in dark ink and is centered on the page.

Theodore E. Allison
Secretary of the Board



FEDERAL HOME LOAN BANK BOARD

WASHINGTON, D. C. 20552

320 FIRST STREET N.W.

FEDERAL HOME LOAN BANK
SYSTEM
FEDERAL HOME LOAN
MORTGAGE CORPORATION
FEDERAL SAVINGS & LOAN
INSURANCE CORPORATION

OFFICE OF
GENERAL COUNSEL

February 13, 1976

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

This is in response to your Enrolled Bill request of February 10, 1976, concerning S. 2672, to extend the State Taxation of Depositories Act.

Section 1 of the bill would extend through September 12, 1976 the moratorium on State taxation of depository institutions, including institutions insured by the Federal Savings and Loan Insurance Corporation and any thrift or home financing institution which is a member of the Federal Home Loan Bank System, established by Public Law 93-100, 87 Stat. 342. This moratorium expired for taxable years beginning on or after January 1, 1976.

Section 2 of the bill will remove the prohibitions contained in section 2 of Public Law 93-100 on the offering of so-called negotiable order of withdrawal accounts for the States of Connecticut, Rhode Island, Maine and Vermont. The States of New Hampshire and Massachusetts are presently excluded from this prohibition and would continue to be excluded from the prohibition.

Section 3 of the bill would amend the Truth in Lending Act with respect to discounts and surcharges in credit card transactions and to acts done or omitted in good faith in conformity with any rule, regulation or interpretation thereof by the Board of Governors of the Federal Reserve System or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by said Board to issue such interpretations or approvals.

Mr. James M. Frey
Page Two

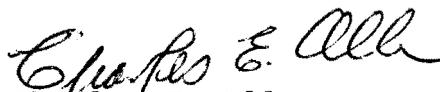
Finally, Section 4 would give section 1 of the bill effectiveness as of January 1, 1976 so as to make the moratorium contained in section 1 continuous through taxable years beginning before September 12, 1976.

The Board supports the proposed extension, contained in sections 1 and 4 of the bill, of the moratorium provided for in the State Taxation of Depositories Act. The extension will give Congress an opportunity to study the recommendations of the Advisory Commission on Intergovernmental Relations regarding the application of State "doing business" taxes on out-of-State commercial banks, mutual savings banks and savings and loan associations.

The Board defers to the Board of Governors of the Federal Reserve System regarding the advisability of proposed amendments to the Truth in Lending Act contained in Section 3 of the bill.

The Board supports enactment of Section 2 of the bill regarding the extensions of NOW accounts in the additional States of Connecticut, Rhode Island, Maine and Vermont. The experience obtained thus far in the States of New Hampshire and Massachusetts indicates that the accounts permitted by Section 2 of Public Law 93-100 have provided significant consumer benefits without disruption of the safe and sound operations of Federal Savings and Loan Associations and other institutions which are insured by the Federal Savings and Loan Insurance Corporation or members of the Federal Home Loan Bank System.

Sincerely,


Charles E. Allen
General Counsel



ADVISORY
COMMISSION ON INTERGOVERNMENTAL RELATIONS
WASHINGTON, D.C. 20575

February 11, 1976

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

The Advisory Commission on Intergovernmental Relations has not specifically considered S. 2672, an act to extend the State Taxation of Depositories Act. It is the staff's opinion that the Commission would not object to this bill.

Under the terms of Sec. 7 of P.L. 93-100, Congress charged ACIR to conduct a study and make recommendations relating to the application of State "doing business" taxes on out-of-State commercial banks, mutual savings banks, and savings and loan associations. Pending completion of the study and up until January 1, 1976, Congress prohibited any State or political subdivision from imposing any tax measured by income or receipts or any other "doing business" tax on any (Federally) insured depository not having its principal office within such State.

The first paragraph of S. 2672 would extend this moratorium on such State taxation of insured depositories from January 1, 1976, to September 12, 1976. Presumably the purpose of the extension is to allow Congress additional time to enact legislation that will assure uniform and equitable methods of State taxation consistent with the national goals of fostering both an efficient banking system and the free flow of commerce among the States. The Commission has given Congress its recommendations on these matters and awaits further Congressional action.

Sincerely yours,

Will S. Myers
Will S. Myers
Senior Analyst





THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

FEB 11 1976

Director, Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Attention: Assistant Director for Legislative
Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of S. 2672, "To extend the State Taxation of Depositories Act."

The enrolled enactment, insofar as it is of primary interest to this Department, would extend through September 12, 1976 the current moratorium on state taxation of depositories. It would also extend to the entire New England region the authority for depository institutions to offer negotiable order of withdrawal (NOW) accounts that are presently available in Massachusetts and New Hampshire. This feature of the bill would have the effect of implementing in the New England states a small part of the Financial Institutions Act that has already passed the Senate and is embodied in the principles of the FINE study in the House of Representatives. The Treasury Department has no objection to a recommendation that the enrolled enactment be approved by the President, but believes that if it is approved, the approval should not be accompanied by any ceremony or public comment, since the bill is otherwise routine and the NOW account provision is only a small part of the Financial Institutions Act which would extend NOW accounts nationally. Our contacts with Congressional leaders and other regulatory agencies indicate that they concur in that approach.

Subject to the foregoing comment, the Treasury Department would have no objection to the recommendation that the enrolled enactment be approved by the President.

Sincerely yours,

Richard R. Albrecht



FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, D. C. 20429

OFFICE OF THE CHAIRMAN

February 12, 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Dear Mr. Lynn:

By enrolled bill request dated February 10, 1976, your Office requested the FDIC's views and recommendations on S. 2672, 94th Congress, an enrolled bill "To extend the State Taxation of Depositories Act."

The State Taxation of Depositories Act, approved August 16, 1973 (Pub. L. 93-100), deferred the imposition of "doing business" taxes on depository institutions by any State other than that in which a particular depository institution has its principal office, until such time as uniform and equitable methods could be developed for determining jurisdiction to tax and for dividing the tax base. Pub. L. 93-100 directed the Advisory Commission on Inter-Governmental Relations to make a study of all pertinent matters relating to multistate taxation of depositories and to make a report to Congress of the results of its study and recommendations not later than December 31, 1974. In order that Congress would have one year to consider the Commission's recommendations, Pub. L. 93-100 imposed a moratorium on interstate taxation of depositories that would have expired on January 1, 1976. Since the Commission did not submit its completed report until September 12, 1975, section 1 of the enrolled bill would extend this moratorium to September 12, 1976.

Pub. L. 93-100 also authorized so-called negotiable order of withdrawal ("NOW") accounts to be offered in two States -- Massachusetts and New Hampshire -- on an experimental basis, while prohibiting them in all other States. Anticipating the enactment of comprehensive financial reform legislation at the Federal level which would permit the extension of NOW accounts nationwide, four other New England States have already granted State-chartered institutions third party payment powers. In effect, therefore, all State-chartered thrift institutions as well as all commercial banks -- both national and State-chartered -- in Connecticut, Rhode Island, Maine and Vermont already have the power to offer some type of third-party payment account. In order to remedy the competitive disadvantage of federally-chartered thrift institutions in these four States vis-a-vis State-chartered thrift institutions and commercial banks, section 2 of the enrolled bill would exempt all financial institutions in Connecticut, Rhode Island, Maine and Vermont from the presently existing Federal ban on NOW accounts.



Honorable James T. Lynn

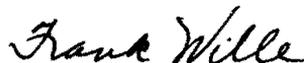
-2-

February 12, 1976

Section 3 of the enrolled bill contains a three-year ban against the imposition by merchants of surcharges on credit card transactions and would also authorize the Board of Governors of the Federal Reserve System to delegate to an officer or employee of the Federal Reserve System the power to issue binding interpretations of the Truth in Lending Act.

The Corporation has no objection to approval of S. 2672 by the President.

Sincerely,

A handwritten signature in cursive script that reads "Frank Wille".

Frank Wille
Chairman



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
OFFICE OF CONSUMER AFFAIRS
WASHINGTON, D.C. 20201

February 17, 1976

MEMORANDUM

TO: James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget

FROM: Michael A. Sterlacci *MAS*
General Counsel
Office of Consumer Affairs

SUBJECT: S. 2672, an Act to extend the State Depositories Act

Donald Hirsch has asked me to respond for the Department of Health, Education and Welfare to your request for views on the Enrolled Bill, S. 2672.

The Act itself appears to be a housekeeping matter, combining three non-germane subjects for the purposes of extending or clarifying them.

Section 1 would extend the moratorium on interstate taxation of depository institutions from January 1, 1976 until September 12, 1976. This is to fulfill the underlying intent of Public Law 93-100 that Congress have a full year in which to consider the recommendations of the Advisory Commission on Intergovernmental Relations before enacting legislation governing this matter. The Office of Consumer Affairs has no comment as this topic does not fall within our province of concern.

Section 2 is another emergency measure to remedy a critical situation in the New England area. It proposes to extend the NOW account experiment to all the financial institutions in six New England states, and thereby to restore the competitive parity between the State and Federal financial institutions. The overwhelming success of the NOW accounts in Massachusetts and New Hampshire is a clear indication of the benefit they afford the American consumer. It is the hope of this office that this service will soon be



Mr. James M. Frey

Page 2

available to all consumers nationwide with the passage of the Financial Institutions Act. In the interim, we endorse the extension of this service to as many people as possible.

Section 3 would amend the Truth in Lending Act by clarifying two issues in the Fair Credit Billing Act (FCBA). Section 167 of the FCBA invalidates any contract between a credit card issuer and a merchant prohibiting cash discounts. With this practice now permissible, two areas become of immediate concern: (1) the potential conflict of this practice with the usury laws in 19 states, and (2) the possibility of a merchant assessing a credit card user a surcharge in lieu of offering a cash customer a discount.

With respect to the first question, S. 2672 would place a 5% ceiling on the cash discounts a merchant can offer and still be exempt from both state usury laws and federal Truth in Lending disclosure regulations. We feel this is a reasonable solution for it allows for cash discounts up to five percent to be a simple matter and thereby encourage the merchant to offer them. Thus we would have no objection to this provision.

Regarding the controversial surcharge issue, this Act would prohibit the imposition of a surcharge on credit card customers for a period of three years. This is essentially a compromise measure between the Senate and the House of Representatives. The record discloses that the intent of §167 of the FCBA was to encourage merchants to offer a two tier pricing system so that cash customers would no longer subsidize credit card customers. The Senate initially declined to legislate how a two tier pricing system was to be achieved, leaving it to the merchant to elect either a cash discount or a credit card surcharge method. However, the House of Representatives expressed its opposition to credit card surcharges by passing H.R. 10561 and then incorporating, by way of amendment, the language of this antisurcharge bill into Sec. 3 of S. 2672. The Senate agreed to this ban but insisted on a three year limitation.

The stated rationale for the antisurcharge bill is the feeling that "no consumer should ever have to pay more than the regular price for goods and services." The underlying assumption is that the term "regular price" has some definite meaning but that premise is questionable. Moreover, the fear is expressed that under a surcharge plan, the benefit of the price differentials will not be passed through to the cash customer while the credit card customer will be penalized by even higher prices.

Mr. James M. Frey
Page 3

Our office opposes what appears to be an attempt by Congress to legislate a particular method for a two tier pricing system. We are apprehensive that this section is an attempt by the credit card companies to gain an unfair advantage by legislation that they might not be able to achieve in the marketplace. We feel that this legislation works against the consumer interest by reducing the retailers' incentives to use price as an aggressive marketing tool.

While we have no objection to the first two sections of this Act and, indeed, recognize the urgent need for their passage, nevertheless, we feel so strongly about the surcharge prohibition contained in Sec. 3 that we recommend that the President disapprove this legislation. Our approach is consistent with the President's general desire to use competitive rather than legislative means where possible in the marketplace to achieve benefits for consumers.

Department of Justice
Washington, D.C. 20530

February 19, 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill S. 2672, "To extend the State Taxation of Depositories Act."

Section 1 of S. 2672 would amend P.L. 93-100, 87 Stat. 342, by extending the effective date of coverage of section 7, the "State Taxation of Depositories Act," from January 1, 1976 to September 12, 1976. Section 2 would further amend P.L. 93-100 to add the states of Connecticut, Rhode Island, Maine, and Vermont, to the list of states exempted from the Act's prohibition on so-called "NOW" (negotiable order of withdrawal) accounts. Section 3 of the bill would make a number of amendments to the Truth in Lending Act (15 U.S.C. 1601 et seq.).

The Department of Justice defers to those agencies more directly concerned with the subject matter of the bill as to whether it should receive Executive approval.

Sincerely,



Michael M. Uhlmann
Assistant Attorney General



Rec'd 2/23

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: February 20

Time: 700pm

FOR ACTION: Paul Leach
Max Friedersdorf
Bill Seidman
Ken Lazarus
Steve McConahey
Lynn May

cc (for information): Jack Marsh
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: February 23

Time: 400pm

SUBJECT:

S. 2672 - Extending the State Taxation of
Depositories Act

ACTION REQUESTED:

- | | |
|---|---|
| <input type="checkbox"/> For Necessary Action | <input type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks |

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Revised Approval 2/23

A. L. May

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jan 23 1968
For the Staff Secretary

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: February 20

Time: 700pm

FOR ACTION: Paul Leach
Max Friedersdorf
Bill Seidman
Ken Lazarus
Steve McConahey
Lynn May

cc (for information): Jack Marsh
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: February 23

Time: 400pm

SUBJECT:

S. 2672 - Extending the State Taxation of
Depositories Act

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

*Approved
JMS*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jack Marsh
For [unclear]

THE WHITE HOUSE

ON MEMORANDUM

WASHINGTON

LOG NO.:

Date: February 20

Time: 700pm

FOR ACTION: Paul Leach
 Max Friedersdorf
 Bill Seidman
 Ken Lazarus
 Steve McConahey

cc (for information): Jack Marsh
 Jim Cavanaugh

Lynn May
 FROM THE STAFF SECRETARY

DUE: Date: February 23

Time: 400pm

SUBJECT:

S. 2672 - Extending the State Taxation of
 Depositories Act

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

No objection -- Ken Lazarus 2/23/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James
 For

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: February 25

Time: 400pm

FOR ACTION: Max Friedersdorf
Ken Lazarus
Robert Hartmann

cc (for information):

FROM THE STAFF SECRETARY

DUE: Date: February 25Time: 600pm

SUBJECT:

Signing statement for S. 2672 - Extending the State
Taxation of Depositories Act

ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Suggested editorial changes noted on the draft. Also note that an "insert" is needed describing the general purposes of the bill.

Ken Lazarus 2/25/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

FEB 20 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2672 - Extending the State Taxation
of Depositories Act
Sponsor - Sen. Proxmire (D) Wisconsin

Last Day for Action

February 27, 1976 - Friday

Purpose

To amend the State Taxation of Depositories Act to (1) extend the moratorium on the interstate taxation of depositories and (2) permit Federal thrift institutions in Connecticut, Rhode Island, Maine, and Vermont to offer negotiable order of withdrawal (NOW) accounts; and to amend the Truth in Lending Act with respect to cash and credit card sales transactions.

Agency Recommendations

Office of Management and Budget	Approval
Federal Reserve Board	Approval
Federal Home Loan Bank Board	Approval
Advisory Commission on Intergovernmental Relations	No objection
Department of the Treasury	No objection
Federal Deposit Insurance Corporation	No objection
Department of Health Education and Welfare	Disapproval
Department of Justice	Defer

Discussion

The enrolled bill consists of four sections. Only the surcharge prohibition included in Section 3 and discussed later in this memorandum has provoked any controversy.

EXTENSION OF STATE TAXATION OF DEPOSITORIES ACT

NOVEMBER 20 (legislative day, NOVEMBER 18), 1975.—Ordered to be printed

Mr. PROXMIER, from the Committee on Banking, Housing and Urban Affairs, submitted the following

REPORT

[To accompany S. 2672]

The Committee on Banking, Housing and Urban Affairs, to which was referred the bill (S. 2672) to extend the State Taxation of Depositories Act, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

EXPLANATION OF STATE TAXATION OF DEPOSITORIES ACT

The purpose of the extension of the State Taxation of Depositories Act is to extend the existing moratorium on interstate taxation of depositories to September 12, 1976. The existing moratorium on such taxation expires on January 1, 1976.

Public Law 93-100, approved on August 16, 1973, sought to defer the imposition of all types of "doing business" taxes in States other than the States in which depositories have their principal offices until such time as uniform and equitable methods could be developed for determining jurisdiction to tax and for dividing the tax base.

Public Law 93-100 directed the Advisory Commission on Intergovernmental Relations to make a study of all pertinent matters relating to multi-state taxation of depositories and to make a report to the Congress of the results of its study and recommendations not later than December 31, 1974. In order that Congress would have one year to consider the Commission's recommendations a moratorium on interstate taxation of depositories was provided to expire on January 1, 1976.

The Commission did not submit its completed report to the Congress until September 12, 1975. The extension of the moratorium provided for in S. 2672 will give the Congress a full year to consider the rec-

ommendations of the Commission as was provided in the original legislation.

CHANGES IN EXISTING LAW

The complete text of the bill (S. 2672) is as follows:

[S. 2672, 94th Cong., 1st sess.]

A BILL To extend the State Taxation of Depositories Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (c) of the State Taxation of Depositories Act (section 7(c) of Public Law 93-100) is amended by striking out "January 1, 1976" and inserting in lieu thereof "September 12, 1976".



Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

To extend the State Taxation of Depositories Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (c) of the State Taxation of Depositories Act (section 7(c) of Public Law 93-100) is amended by striking out "January 1, 1976" and inserting in lieu thereof "September 12, 1976".

SEC. 2. Section 2(a) of Public Law 93-100 (12 U.S.C. 1832(a)) is amended by inserting after "Massachusetts" a comma and the following: "Connecticut, Rhode Island, Maine, Vermont,".

SEC. 3. (a) Section 103 of the Truth in Lending Act (15 U.S.C. 1602) is amended by redesignating subsections (p), (q), and (r) as subsections (r), (s), and (t), respectively, and by adding after subsection (o) the following:

"(p) The term 'discount' as used in section 167 means a reduction made from the regular price. The term 'discount' as used in section 167 shall not mean a surcharge.

"(q) The term 'surcharge' as used in section 103 and section 167 means any means of increasing the regular price to a cardholder which is not imposed upon customers paying by cash, check, or similar means."

(b) Section 130(f) of the Truth in Lending Act (15 U.S.C. 1640(f)) is amended to read as follows:

"(f) No provision of this section or section 112 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason."

(c) (1) Section 167(a) of the Truth in Lending Act (15 U.S.C. 1666f) is amended by inserting "(1)" immediately after "(a)" and by adding at the end thereof the following new paragraph:

"(2) No seller in any sales transaction may impose a surcharge on a cardholder who elects to use a credit card in lieu of payment by cash, check, or similar means."

(2) The amendment made by paragraph (1) shall cease to be effective upon the expiration of three years after the date of enactment of this Act.

(d) Section 171 of the Truth in Lending Act (15 U.S.C. 1666j) is amended by adding at the end thereof the following new subsection:

“(c) Notwithstanding any other provisions of this title, any discount offered under section 167 (b) of this title shall not be considered a finance charge or other charge for credit under the usury laws of any State or under the laws of any State relating to disclosure of information in connection with credit transactions, or relating to the types, amounts or rates of charges, or to any element or elements of charges permissible under such laws in connection with the extension or use of credit.”

SEC. 4. The first section of the Act takes effect on January 1, 1976.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*