



Alaska's Anti-Evasion Bill: A Threat to Small Business Lending and Modern Bank-Fintech Partnerships

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A number of states have considered – and some have enacted – laws to regulate strategic partnerships between banks and technology companies that act as service providers. **One such bill – Alaska's Senate Bill 39/House Bill 132**, titled “An Act relating to loans in an amount of \$25,000 or less; relating to the Nationwide Multistate Licensing System and Registry; relating to deferred deposit advances; and providing for an effective date” – **would reduce access to capital to individuals and small businesses in the Last Frontier.**

Like many states, Alaska has a small loan licensing scheme that allows licensed lenders to exceed a statutory interest rate cap in exchange for obtaining a license. The Small Loans Act (“SLA”)^[i] provides an optional licensing scheme for the purpose of making loans in amounts of \$25,000 or less at “a greater rate of interest, discount, or consideration than the lender would be permitted by law to charge if the person were not a licensee.”^[iii] The SLA applies to both consumer and commercial credit. The SLA exempts a person doing business under and as permitted by any law of Alaska or of the United States relating to banks, savings banks, trust companies, building and loan associations, or credit unions from its licensing requirements. However, an exempt entity must still comply with all other provisions of the SLA if it chooses to contract for interest at a greater rate than permitted under Alaska's usury limit on loans of \$25,000 or less. The SLA does not currently require entities that broker, purchase or service consumer loans to obtain a license. Senate Bill 39/House Bill 132 would incorporate an anti-evasion provision into the SLA that recharacterizes a bank's partner/service provider as the “true lender” on the credit transaction. In hearings thus far, discussion around this anti-evasion language has been focused on stopping unregulated, potentially offshore entities from circumventing Alaska law and even federal law. There is likely no argument over that objective. However, these bills would impair highly regulated U.S. banks from making legal loans to Alaskans. While we have seen similar anti-evasion language in other states like Illinois, Alaska's version is unique in that it is so broad that it captures small business lending as well. These bills would destroy the market for commercial credit in the state, as there are no commercial lenders that would lend to Alaska businesses at 36% interest per year, the cap that Senate Bill 39/House Bill 132 would implement.

Financial institutions of all sizes employ the use of technology to reach customers where they are and to respond to growing consumer preference to conduct more commerce online – think of the growth in retail with Amazon Prime. While big banks have the ability to invest sizable capital into technology, smaller banks do not. Fintechs act as service providers to banks and offer technology-based solutions that the bank could not financially develop on its own. This collaboration has extended to lending, where banks work in conjunction with their technology service providers to

extend credit to businesses and individuals. Through computers and smartphones, almost any consumer or business can search for credit through an array of competing products. In a remote state like Alaska, technology creates options that would not exist otherwise.

Banks are highly regulated by state and federal officials who oversee their activities for compliance with a myriad of laws and regulations, including consumer protection laws and safety and soundness standards. Fintechs that act as service providers to the banks are subject to a high level of scrutiny from the bank and their regulator. In fact, the Office of the Controller of Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation have published extensive guidance for banks in managing their third party service providers.^[iii]

Furthermore, fintechs operate with a high degree of regulatory requirements. Fintechs contractually agree, as the service provider of the banks, to comply with the panoply of consumer financial services laws that apply to consumer lending, and they may need to comply with specific licensing requirements in certain states, depending on what functions they are performing as service providers for the bank.

Federal law clearly allows banks to make loans to borrowers in other states with varying usury limits. Section 85 of the National Bank Act and section 521 of the Depository Institutions Deregulation and Monetary Control Act (“DIDMCA”), allow federally-chartered banks and federally-insured state banks, state credit unions, and state savings institutions the ability to export the “interest” permitted under their home state laws to customers/borrowers in other states.^[iv]

Clearly, federal law authorizes banks to make loans to borrowers across state lines, and it also allows these banks to work with third parties in the loan making process. Senate Bill 39 and House Bill 132 ignore this reality, and Alaska consumers and small businesses will pay the price.

The language in this bill ignores that in today’s world banking regulators demand strict legal compliance from its member banks, and banks further demand strict legal compliance from their service providers. The anti-evasion language in this bill does not add any additional protections for consumers. Rather, it impairs the ability of banks to contract with service providers to offer lending products that consumers want. Succinctly put, banks are great at lending; they are not great at technology. Without the assistance of fintechs, many banks are not able to provide credit the way that most consumers expect to access it in 2025 – online and through our mobile phones. Alaska should not deny its residents and businesses access to such credit products based on outdated concepts that do not align with how fintech partnerships operate today.

^[i] Alaska Stat. §§ 06.20.010 *et seq.*

^[ii] Alaska Stat. § 06.20.010.

^[iii] See <https://www.occ.gov/news-issuances/bulletins/2024/bulletin-2024-11.html>.

^[iv] See <https://www.congress.gov/96/statute/STATUTE-94/STATUTE-94-Pg132.pdf>.

