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Cox v. Cooper, 3AN-15-10101 CI (Alaska Sup. Ct., 18 Apr. 2016) (J. Morse) (holding that A.S. 45.45.010(a) applies to private party loans exceeding \$25,000.00 and the usury cap rate is 10.5%).¹

Alaska Usury Interest Rules²

Has your lender violated Alaska usury laws? Have you paid more than 10.5% interest on loans larger than \$25,000.00? Are the loans from a person or non-bank? Do you still owe or have you paid any interest in the past two years? You may have a basis to recover money.

Alaska Usury Interest Rules

Alaska Usury rules establish the maximum interest that a lender may charge. The rules also provide different remedies for maximum interest charge rules. The Alaska statutes provide six different sets of usury or interest rules:

1. The Legal Rate of Interest Rules in the Trade and Commerce Code at *Alaska Statutes 45.45.010-070*;
2. The Retail Installment Sale Contract at *Alaska Statutes 45.45.010-230*;
3. The Small Loan Rules at *Alaska Statutes 06.20.010-920*;
4. The Credit Card Rules at *Alaska Statutes 06.05.209*;
5. The Judgment on Contracts at *Alaska Statutes 09.30.070*;
6. The Credit Union Rules at *Alaska Statutes 06.45.060*; and,
7. The Negotiable Instruments Rules at *Alaska Statutes 45.03.112*.

Alaska Legal Rate of Interest A.S. 45.45.010-.070

There are two key subsections that define the usury rate. They are found in Section 45.45.010, subsection (a) and subsection (b). Those two provisions provide:

- (a) The rate of interest in the state is 10.5 percent a year and no more on money after it is due except as provided in (b) of this section.
- (b) Interest may not be charged by express agreement of the parties in a contract or loan commitment that is more than the greater of 10 percent or five percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District on the day on which the contract or loan commitment is made. A contract or loan commitment in which the principal amount exceeds \$25,000.00 is exempt from the limitation of this subsection.

Many people who read these two provisions simply disregard the existence of subsection (a) and only read subsection (b). For Instance Matsu Title Usury Alert³ issued their Usury notice and only quoted subsection (b) and wholly ignored (a). They then imply that any interest rate may

¹ <http://aloinc.com/wp-content/uploads/2016/05/3AN-15-10101CI.pdf>

² <http://aloinc.com/alaska-usury-interest-rules/>

³ http://www.matsutitle.com/resources/usury_alert_update.pdf

be applied to loans exceeding \$25,000.00. However, loans that exceed \$25,000.00 are exempt only from the limitation of subsection (b). Loans exempt from subsection (b) are then governed by subsection (a) which does not have the value exemption limitation. Large Alaska loans are capped at the higher 10.5%.

The Retail Installment Sale Contract at *Alaska Statutes 45.45.010-230*

If the transaction qualifies as a retail installment contract, then the parties may charge any interest rate to which they agree in writing. Alaska Statute 45.10.120. To be a qualified retail installment contract the seller must be financing the transaction. Virtually every car deal from a dealership will be written in this way. The law doesn't protect you on these transactions. However, if a car dealer independently finances the down payment separately from the car loan itself usury laws apply.

The Small Loan Rules at *Alaska Statutes 06.20.010-920*

Licensed small loan lenders, typically pawn shops and payday lenders, are allowed to charge higher rates:

- (a) A licensee may lend any sum of money not exceeding \$25,000 and may charge, contract for, and receive on the loan interest at a rate not exceeding *three percent a month* on that part of the unpaid principal balance of a loan not in excess of \$850; *two percent a month* on the unpaid principal balance exceeding \$850 but not exceeding \$10,000; and *at a rate agreed by contract on the remainder* of any unpaid principal balance exceeding \$10,000 but not exceeding \$25,000.
- (b) Notwithstanding the provisions of (a) of this section, a licensee who makes open-end loans under this chapter may charge, contract for, and receive interest at a rate not exceeding three percent a month on that part of the unpaid principal balance of a loan not in excess of \$850; two percent a month on the unpaid principal balance exceeding \$850 but not exceeding \$10,000; and at a rate agreed by contract on the remainder of any unpaid principal balance exceeding \$10,000 but not exceeding \$25,000.
- (c) Interest on loans under (b) of this section shall be computed according to the actuarial method on the entire unpaid principal balance as determined under AS 06.20.285 (b).

The Credit Card Rules at *Alaska Statute 06.05.209*

In order to allow Alaska banks to compete with national banks, Alaska allows credit card issuers to charge any rate agreed to in the parties' contract.

- (b) A state bank may issue a credit card or other similar credit granting device to a customer for obtaining money, goods, services, or anything else of value, and, notwithstanding AS 45.45.010, the state bank, when credit is extended under this section, may impose a service charge at a monthly rate as agreed upon by contract between the state bank and the customer receiving the credit granting device.

The old version of the statute capped interest rates on credit cards at 17%. The statute was changed to conform with the reality of federal preemption having stripped usury protection from credit cards.

The Judgment on Contracts at *Alaska Statutes 09.30.070*

This statute provides an interest formula that may allow interest rates to exceed the Alaska usury statute.

- (a) Notwithstanding AS 45.45.010, the rate of interest on judgments and decrees for the payment of money, including prejudgment interest, is three percentage points above the 12th Federal Reserve District discount rate in effect on January 2 of the year in which the judgment or decree is entered, except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree.

The Credit Union Rules at *Alaska Statutes 06.45.060*

Alaska Credit Unions have their own usury rule that provides:

- (vi) the rate of interest may not exceed the greater of 15 percent a year or the rate specified in AS 45.45.010 (b).

Though there is no case law on this matter, it is possible that federal preemption may allow them to ignore this rule. Also note that because 45.45.010(b) specifically exempts loans less than \$25,000, loans greater than \$25,000 would be limited to 15%.

The Negotiable Instruments Rules at *Alaska Statutes 45.03.112*

The Alaska Negotiable Instruments rules provides the following rules that may exceed regular usury rules:

- (a) Unless otherwise provided in the instrument, an instrument is not payable with interest, and interest on an interest-bearing instrument is payable from the date of the instrument.
- (b) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

Federal Preemption

The Federal Banking Statute of 1864 preempts state law.⁴ National Banks and state chartered banks competing with National Banks are exempt from state law under federal preemption. The National banks can export the interest rate rules of their home state. This is true even if their home state is either higher or completely unregulated. Most credit cards are issued in states with high or unregulated interest rates. Most credit cards are issued by National Banks so that they can charge the high unregulated rates.

Alaska Remedies for Usury Violations

1. If you have paid an amount greater than the original principle, the additional amount counts as interest paid and you may recover double that amount. Alaska Stat. 45.45.030; *Werner v. Lorentzen*, 3 Alaska 275 (1907). Unlike most states, Alaska requires you to have paid the illegal interest to gain a double recovery.
2. Charging an illegal rate is a forfeiture of all interest. 45.45.040. The debtor still owes the principal, less any amounts paid.
3. Recovery of Attorney fees and costs whether the matter is contested or not.
4. Small lenders that forfeit principal and interest. Alaska Stat. 06.20.310.

Federal Criminal Extortion

Interest rates in excess of 45% are per se criminal extortion. 18 USC 891. Violation of a federal criminal extortion statute may be a violation of the Alaska Unfair Trade practices act.

Alaska Usury laws and associated federal statutes are often complicated. Alaska has very little case history interpreting the interplay between the statutes, or even between the subsections of the statutes. It is obvious from third-party, non-legal information present in the state that there is a great deal of confusion about the meaning of the statutes. If you are paying greater than 10.5% interest on a loan, and that loan is not from a bank or other licensed lender, you may be paying too much.

⁴ *House of Cards*, ABA Journal (1 Mar. 2010) (http://www.abajournal.com/magazine/article/house_of_cards/).