

DEVELOPMENT BANK OF AMERICAN SAMOA

Title 28

FINANCE AND FINANCIAL INSTITUTIONS

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Chapter 01

DEVELOPMENT BANK OF AMERICAN SAMOA

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28.0101 Purpose of Bank.

In order to provide the people of American Samoa with lending and investment facilities and assist in the promotion of private enterprise and meet the needs of developing economy, the corporate body known as the "Development Bank of American Samoa", hereinafter referred to as "the Bank", is empowered under the charter of the Bank to carry out its purposes.

History: 1972, PL 12-67 § 1.

28.0102 Charter of Bank-Powers.

The charter of the Bank is as follows in this section and 28.0103 through 28.0105:

- (a) The existence of the Bank shall be perpetual.
- (b) The principal office of the Bank shall be located at Pago Pago, Tutuila, American Samoa.
- (c) Subject to any existing limitation or limitations hereinafter enacted, the Bank, through its

officers and agents, is authorized to engage in all banking functions, other than to receive deposits of money that will assist in the economic advancement of American Samoa.

(d) In performing the functions authorized in subsection (c), the Bank shall have and exercise all lawful powers normally exercised by banking corporations, including the following:

(1) to adopt, alter and use a corporate seal:

(2) to adopt and amend bylaws governing the conduct of its business and the exercise of its powers;

(3) to sue and be sued in its corporate name;

(4) to acquire in any lawful manner, real, personal, or mixed property, either tangible or intangible, to hold, maintain, use, and operate such property, and to sell, lease, or otherwise dispose of such property.

(e) The Board may, by majority vote of its entire membership, adopt, amend, or repeal bylaws of the Bank providing for the management of the business of the Bank, the organization, meetings, and procedures of the Board, the duties of the officers of the Bank, the officers required to furnish bonds and the amounts thereof, the form of the seal of the Bank, and the preparation and submission of required reports. Bylaws may not be adopted, amended or repealed except after 1 week's written notice to each Director.

History: 1972, PL 12-67 § 2, 3.

28.0103 Board-President.

(a) The affairs of the Bank must be managed and its corporate powers exercised by a Board of Directors, hereinafter referred to as "the Board", which consists of 10 members, 9 of whom are to be appointed by the Governor with the advice and consent of the Senate. The Chairman, who is a Board member, is elected by a majority of the Board. In the event of a vacancy for any reason whatsoever, the Governor may appoint a person to fill the vacancy until the next session of the Legislature. All Directors serve two year terms. All appointees may be reappointed to the board and may be removed by the Governor for cause, provided the majority of the Board concurs in the cause or causes offered. At least 4 of the Board members are representatives of private business or financial interests in American Samoa. The President of the Development Bank is a nonvoting ex officio member of the Board of Directors. The President may not serve as Chairman of the Board of Directors.

(b) The Governor, with the approval of the Board, appoints a President of the Bank, with the advice and consent of the Senate. The President is responsible for the operation of the Bank with the assistance of such other officers and employees as the Board may authorize. The salary of the President and other officers is established by the Board.

History: 1972, PL 12-67 § 2, 3; 1973, PL 13-28 § 1; amd 1985, PL 19-3 § 1.

Amendments: 1973 Provided for approval by senate and omitted provisions relating to original appointments in subsection (a).

1985 Increased board membership from 9 to 10; made general amendments to overall language of the section.

28.0104 Audit.

The books and records of the Bank shall be thoroughly examined and audited annually, following the end of the Bank's fiscal year, to show the statement of condition as of that fiscal year end and operations of the Bank for the 12-month period, by qualified independent certified public accountants, preferably of recognized international standing, appointed by the Board. The government shall have the right 'through qualified personnel in the Department of Administrative Services, or its auditing offices, to examine the affairs of the Bank at reasonable

intervals, to insure that the Bank is operating its affairs on a sound businesslike basis.

History: 1972, PL 12-67 § 2, 3.

28.0105 Capital investment-Loan guarantees.

(a) The capital of the Bank, together with all funds and credits that it may obtain from any loans, credits, grants, or other advances from the United States Government, or any related instrumentality empowered to make funds available to the Bank or any international finance institution or from private financial institutions that may provide loans or credits to the Bank, shall be available for investment by the Bank whether in the form of loans or stock in enterprises controlled by private individuals, partnerships, or corporations engaged in business or industry of whatever nature, that are deemed to conform to the objectives of furthering the economy of American Samoa except as may be limited by subsection (b). The loans or stock investments and all temporary short term investments must be made on the terms and conditions that the management of the Bank may determine and shall be approved by the Board of Directors and must be based on prudent and sound business judgment, as to the capacity of the prospective borrowers to repay, and all stock investments made where, in the judgment of the board, the prospects of successful operation of the business or industry seem warranted. The loans or credits authorized by this section may be only to qualified borrowers who are American Samoans or permanent residents of American Samoa.

(b) The Bank may guarantee loans or equipment leases by qualified lenders or equipment leasing firms, and it may guarantee construction performance bonds by bonding companies to entities fully or majority owned or controlled by American Samoans who although having reasonable assurance of repayment, do not qualify for loans, leases, or performance bonds under the requirements imposed by the original lender, lessor or bonding agency. The guarantees by the Bank may not exceed in the aggregate at any one time a total of 4 times the capital and surplus (excluding undivided profits) of the Bank; nor may the aggregate of Bank loans to and guarantees for any person or entity, or group of persons or entities with a common ownership, business, or financial interest, exceed 10% of the Bank's capital and surplus unless the loan or the performance of a contract is secured directly or under right of assumption of collateral property, tangible or intangible, carrying a written and expert appraisal of at least 35 percent in excess of the amount guaranteed. All guarantees shall be approved by the Bank's Board of Directors. In making guarantees and thus assuming contingent liability, the Bank shall, consistent with conservative Banking principles, keep at all times a portion of its capital funds invested in securities of the Treasury or other agencies of the United States.

(c) Commercial, or non-residential, guarantees under this section shall not exceed 90 percent of the loan amount or the total encumbrance granted to secure such loan and guarantee, whichever is less.

(d) Guarantees of home loans under this section may, in the discretion of the Bank Board of Directors, exceed 90% of the loan amount, provided that such loan and guarantee is fully secured and collateralized by the home to be constructed or improved.

History: 1972, PL 12-67 § 2, 3; amd 1973, PL 13-28 § 1, 2; 1978, PL 15-78; 1980, PL 16-81 § 1; amd 1987, PL 20-21 § 1.

Amendments: 1973 Subsection (a): amended generally.

Subsection (b): deleted provisions relating to investment of capital funds by Bank.

1978 Subsection (b): amended generally.

1980 Subsection (b): added "of the total encumbrance granted" to next to last sentence.

1987 Replaced "Loans" with "Loan guarantees" in section title. Subsection (b): replaced language concerning loan

guarantees with clarifying language and required approval of all guarantees. Subsections (c) and (d): added.

Case Notes:

Common stock issued by government corporation to a Bank in exchange for retirement of debt was not improper and was within authority of corporation's board of directors. *Fa'atiligā v. Lutali*, 3 A.S.R.2d 139 (1986).

28.0106 Existence for public benefit-Tax exempt status-Government not liable for Bank's obligation.

The Bank exists and operates solely for the benefit of the public and is exempt from any taxes or assessments on any of its property, operations, or activities. The debts and obligations of the Bank are not debts or obligations of the government, the government may not be responsible for any such debts or obligations.

History: 1962, PL 7-11; 1969, PL 11-40.

28.0107 Annual report required.

(a) The Development Bank of American Samoa must prepare and file with the Governor and with the Legislature of American Samoa, annually, within 90 days after the close of its fiscal year, a report sworn to by an officer of the Bank stating:

- (1) the name and address of the Bank;
 - (2) a profit and loss statement of the last fiscal year and a statement of its assets and liabilities as of the close of the year; and
 - (3) the names and addresses of all Directors and officers of the Bank.
- (b) The report must be made available to the public by publication or otherwise.

History: 1971, PL 12-6 § 1.

28.0108 Assets and liabilities existing upon enactment of this chapter.

All assets and liabilities of the Bank existing at the time of the enactment of this chapter inure to the benefit of and are binding upon the Bank created by this chapter.

History: 1962, PL 7-11.

28.0109 Loans to aliens.

A loan shall be made only if the manager of the Bank believes that there are reasonable prospects for its repayment. Prior to making a loan to an alien who entered American Samoa after 1955, the manager of the Bank shall consult with the immigration officer to determine the status of residency of the alien.

History: 1968, PL 10-37.

28.0110 Malfeasance of director.

(a) Any director who, under color of his office, violates any law or knowingly or negligently permits any officer, agent, or employee of the Bank to violate any law, or any provision of the Bank's charter or bylaws, shall be subject to removal from the board.

(b) Any American Samoan who has reasonable grounds to believe that a director is subject to removal under this section may petition the High Court of American Samoa for removal of the director. If the court finds that the respondent director is subject to removal under this section, the court shall order his removal and provide for such other relief as the court deems just and appropriate.

History: 1962, PL 7-11; 1969, PL 11-40.

28.0111 Larceny and fraud-Penalty.

Any director, officer, employee, or agent of the Bank who, with the intent to injure or defraud the Bank or any other person, embezzles, steals, or misapplies any moneys, funds, credits, or securities; makes any false entry in a book, report, or record; or performs any other fraudulent act; and any person who, with like intent, aids or abets any director, officer, employee or agent in any of the acts described in this section shall be fined not more than \$3,000, or imprisoned for not more than 5 years, or both.

History: 1969, PL 11-40.

Chapters 02-08

(RESERVED)

Chapter 09

U.S. LOAN AGREEMENTS

Section

28.0901 Authorization for implementation of U.S. Public Law No. 106-113.

28.0901 Authorization for implementation of U.S. Public Law No. 106-113.

(a) The Governor, or his designee, is authorized to enter into such agreements, contracts and arrangements with the Secretary of the United States Department of the Interior (and any other officials of the United States Government as may be necessary), and to take all such other legal ministerial actions as may be required to implement Section 125 of “the Act making appropriations for the Department of Interior and related agencies for the fiscal year ending September 30, 2000 and for other purposes (H.R. 2466; PL No. 106-113)”, hereinafter referred to as “the Act.”

(b) The Governor is specifically authorized to enter into a loan agreement with the Secretary of Interior in accordance with the terms and conditions of Section 125 of the Act, the repayment of such loan principal and the interest thereon to be derived from an irrevocable assignment of funds as they become due and payable (annually or otherwise) to the American Samoa Government from the Escrow Account established under the terms and conditions of the Tobacco Master Settlement Agreement (and the subsequent Enforcing Consent Decree, hereinafter collectively referred to as “the Agreement”) entered into on November 23, 1998, and the judgment granted by the High Court of American Samoa on January 5, 1999 in Civil Action No. 119-98.

(c) The Governor is further authorized to pledge the full faith and credit of the American Samoa Government as additional security for the loan as required by Section 125(b)(1) of the Act.

(d) The Governor, or his designee, shall provide regular monthly reports to the Legislature on the progress of debt payments undertaken, regular quarterly reports to the Legislature on fiscal and managerial reform programs instituted in relation to Section 125(d) of the Act and regular annual reports to the Legislature on the status of repayment of the loan.

History: 2000, PL 26-25.

Chapter 10

BANKS

Sections:

- 28.1001** Short title.
- 28.1002** Regulations of Banks.
- 28.1003** Suspension of operations.
- 28.1004** Power of Governor to adopt rules.
- 28.1005** Title to or interest in communal land prohibited-Exception.

28.1001 Short title.

This chapter shall be known and may be cited as the “American Samoa Banking Act of 1975”.

History: 1975, PL 14-16 § 1.

28.1002 Regulations of Banks.

A Bank may not do business in American Samoa unless:

- (1) it is a corporation organized under the Banking laws of the United States or the Banking laws of a state of the United States or the general corporation laws of American Samoa, 30.0101 et seq., for the exclusive purpose of engaging in the general Banking business; and
- (2) it is a member of the Federal Deposit Insurance Corporation (FDIC); and
- (3) it has been approved by the Comptroller of the currency and FDIC if a national Bank; and
- (4) it has obtained the approval of the proper official of the state, if a state Bank; and
- (5) it shall have been authorized and licensed to conduct the business of Banking in American Samoa by the Economic Development Commission and Governor of American Samoa; and
- (6) if a state Bank, the charter, statutes, rules, and regulations under which it operates have been examined and found adequate by the Economic Development Commission and the Governor of American Samoa.

History: 1975, PL 14-16 § 1.

28.1003 Suspension of operations.

(a) In the event a Bank has had an application for FDIC insurance accepted for filing, but not yet approved, the Governor may suspend the operation of subsection (2) of 28.1002 for a period not exceeding one year upon conditions he may determine. The conditions imposed may include, but shall not be limited to, the following general areas of concern:

- (1) public notice;
- (2) accounting and record keeping;
- (3) insurance;
- (4) management and operations expertise;
- (5) Board of Directors membership;
- (6) loan policy and limits;
- (7) dividend policy; and
- (8) investment policy;

and shall be set forth in a public document to be known as “Certificate of Temporary Suspension of Requirement to obtain FDIC Insurance”.

(b) In the event FDIC insurance has not been obtained within one year from the date the above certificate is granted and the application for insurance is still pending, the Governor may grant up to 8, 90-day, extensions within which to comply.

(c) In the event the Bank does not obtain FDIC insurance within the one-year period and any extensions if granted, or if the Bank fails to comply with any of the conditions of the certificate, the Governor may immediately suspend the operation of that Bank, freeze its assets, and liquidate its business in accordance with Banking rules and regulations and generally accepted Banking principles.

History: 1979, PL 16-30 § 1; amd 1981, PL 17-13 § 1.

28.1004 Power of Governor to adopt rules.

(a) The Governor has the power to adopt rules under the Administrative Procedure Act, 4.1001 et seq., and from time to time amend, supplement, and revoke, in whole or in part, rules not inconsistent with this act or the laws of this Territory or the laws of the United States of America governing the business of Banking in American Samoa.

(b) The Governor shall adopt the rules under subsection (a) by 1 July 1978.

History: 1975, PL 14-16 § 1; amd 1978, PL 15-76 § 1.

Amendments: 1978 Designated existing section as subsection (a) and added subsection (b).

28.1005 Title to or interest in communal land prohibited-Exception.

(a) No bank, or corporation engaged in banking, may acquire or hold title to any land, except that a bank authorized to do business in American Samoa may acquire and hold title to land in trust for beneficial owners who are eligible under the laws of American Samoa to acquire and hold title to land, and may acquire and hold a leasehold interest in land, subject to the general restrictions and limitations on the alienation of land contained in the laws of American Samoa.

(b) This section does not apply to “Freehold lands”, as defined in 37.0201.

History: 1969, PL 11-42; 1975, PL 14-16 § 2; readopted 1980, PL 16-88 § 1, 2; 1982, PL 17-31 § 1, 2.

Reviser’s Comment. The law dealing with alienation of land contained in the A.S.C.A., as recodified by the legislative reference bureau had been questioned as to whether the requirements of Art. 1, § 3 and Art II, § 9. American Samoa Constitution, had been fulfilled. Since the records were not available to answer the question, the Legislature passed PL 16-48 and PL 17-31 to ensure that the law dealing with alienation of land complies with the Constitution.

Chapter 11

SAVINGS AND LOAN INSTITUTIONS

Sections:

- 28.1101 Short title.**
- 28.1102 Regulations of business.**
- 28.1103 Power of Governor to adopt rules.**

28.1101 Short title.

This chapter may be known and cited as the “American Samoa Savings and Loan Act of 1978”.

History: 1978, PL 15-70.

28.1102 Regulations of business.

A savings and loan institution may not do business in American Samoa unless:

(1) it is a corporation organized under the savings and loan laws of the United States (12 U.S.C. § 1461 et seq.), or under the savings and loan laws of a state or territory of the United States, or the general corporation laws of American Samoa (30.0101 et seq.) for the exclusive purpose of engaging in the general business of savings and loan Banking business;

(2) it is a member of the Federal Savings and Loan Insurance Corporation;

(3) it has been approved by the Federal Home Loan Bank Board, if a federal savings and loan association;

(4) it has obtained the approval of the proper official of the state, or territories if a state or territorial savings and loan;

(5) it shall have been authorized and licensed to conduct the business of savings and loan Banking in American Samoa by the Territorial Planning Commission and Governor of American Samoa;

(6) if a state or Territory savings and loan, the charter, statutes, and rules under which it operates have been examined and found adequate by the Territorial Planning Commission and the Governor of American Samoa; and

(7) it reserves 50 percent of its deposits generated from within the Territory to mortgage loans to be loaned here in the Territory. This subsection specifically applies to all institutions regulated by this chapter, whether in place in the Territory when this act is effective or hereafter admitted.

History: 1978, PL 15-70.

28.1103 Power of Governor to adopt rules.

The Governor has the power to adopt rules under the Administrative Procedure Act, 4.1001 et seq., and from time to time amend, supplement, and revoke, in whole or in part, rules not inconsistent with this chapter or the laws of this Territory or the laws of the United States of America governing the business of savings and loan banking in American Samoa.

History: 1978, PL 15-70.

Chapters 12-13

(RESERVED)

Chapter 14

A.S.G. CREDIT FACILITY AGREEMENTS

Sections:

28.1401 Authorization of Credit Facility-Source of Repayment-Reports.

28.1410 Authorization of Loan—American Samoa Medical Center—Reports—Source of funding.

28.1401 Authorization of Credit Facility-Source of Repayment-Reports.

(a) The Treasurer, on behalf of the government, is authorized to enter into a credit facility with the Bank of Hawaii in an amount not to exceed \$5,000,000 to satisfy appropriated obligations of the government. The Treasurer is authorized to negotiate the terms of the credit, including a variable interest rate, repayment terms and such other terms and conditions as may be required to obtain the credit facility, so long as said terms are standard in the lending industry

and consistent with standard banking practices and established principles of government borrowing. The Treasurer is further authorized to execute all instruments and documents necessary to conclude the transaction, including promissory notes which evidence indebtedness of the government. Said instruments and documents shall be subject to review and approval by the Attorney General for legal sufficiency prior to execution by the Treasurer.

(b) The principal, plus accrued interest thereon, owing on the credit facility and any charges and fees associated with the facility shall be paid with revenues from the general fund.

(c) Within 30 days of the end of each fiscal year, the Treasurer shall provide a report to the Governor and the Legislature detailing the status of the credit facility and all transactions related thereto which occurred during the prior fiscal year.

History: 2001, PL 27-2.

28.1410 Authorization of Loan—American Samoa Medical Center—Reports—Source of funding.

(a) American Samoa Medical Center (ASMC), on behalf of ASMC, are authorized to enter into a credit facility whereby the government will lend and ASMC will borrow an amount not to exceed \$5,000,000.00 for the purpose of providing immediate financial assistance to ASMC. The Governor, or his designee, and the Board of Directors, or its designee, are authorized to negotiate the terms of the credit, including interest rate, repayment terms and such other terms and conditions as may be required to obtain the credit facility. The Governor and the Board are further authorized to execute all instruments and documents necessary to conclude the transactions, including promissory notes which evidence indebtedness of the ASMC.

(b) Proceeds of the loan shall be expended to satisfy, or partially satisfy to the extent of the proceeds, current indebtedness of the ASMC in the following priorities:

- (i) U.S. FICA and Medicare taxes;
- (ii) Employee and employer contributions owing to the American Samoa Employees' Retirement Fund;
- (iii) Utility payables;
- (iv) Pharmaceutical company payables;
- (v) Other vendor payables incurred for essential operational services; and
- (vi) ASG withholding taxes.

(c) A.S.C.A., Section 13.0109 notwithstanding, the loan shall be repaid to the government from revenues appropriated by the Legislature for ASMC on such terms as negotiated.

(d) As a condition of the loan, ASMC shall enter into a fiscal and operations reform plan with the government, acceptable to the Governor, whereby ASMC will implement procedures to increase its revenues, reduce its expenditures, achieve a balanced budget and improve operations of L.B.J. Tropical Medical Center. Plans to reduce expenditures shall specifically address reduction of personnel costs.

(e) Within 30 days of the end of each fiscal quarter, the Treasurer shall provide a report to the Governor and the Legislature detailing the status of the credit facility and all transactions related thereto which occurred during the prior fiscal quarter.

History: 2003, PL 28-10.

Chapter 15

LOANS

Sections:

- 28.1501 Interest rate-Agreements signed and written-Charge for loans.**
- 28.1502 Small loans-Interest.**
- 28.1503 Business loans.**
- 28.1505 Open-end credit.**
- 28.1510 Penalty for usury.**

28.1501 Interest rate-Agreements signed and written-Charge for loans.

(a) Except as provided in this title, no person may charge more than 15 percent per year as interest on a debt or obligation, and no agreement to pay a rate of interest higher than 6 percent per year shall be enforceable unless the same is in writing and is signed by the party to be charged. The rate of interest when there is no written agreement with respect thereto shall be 6 percent per year, and such interest shall be presumed on overdue debts.

(b) Lending institutions are empowered to set, from time to time as the cost of money and the cost of lending operations warrant, a minimum charge for their loans where the normal interest is not equal to the average cost of making a loan. In no event may both a minimum charge and interest be collected.

(c) Banks that are authorized and licensed to conduct the business of banking in American Samoa are empowered to charge, contract for, and receive interest on loans at a rate up to 24% per year, provided that:

- (1) The principal amount of the loan is \$5,000.00 or less, and
- (2) The principal amount of the loan and interest rate are disclosed in written agreement that is signed by the parties to be charged.

History: 1962, PL 7-23; 1963, PL 8-13; 1975, PL 14-16 § 3; 1978, PL 15-76 § 2; amd 1980, PL 16-67 § 1; 1980, PL 16-75 § 1, amd 2004, PL 28-24.

Case Notes:

Territorial statute providing that no debtor can be charged interest in excess of 6% unless the amount "is in writing and is signed by the party to be charged" precluded court from holding debtor liable to pay interest at a higher rate in the absence of a signed agreement, even when debtor knew Bank would charge creditor a higher rate of interest on amounts not timely paid by debtor. A.S.C.A. § 28.1501(a). *Meridian Breckwoldt Samoa, Ltd., v. Max Haleck, Inc.*, 7 A.S.R.2d 95 (1988).

Since in the absence of a written agreement specifying the rate of interest applicable to a promissory note the statutory rate of 6% will apply, where a note specified an interest rate of 12.5% "until maturity" the rate after maturity was 6%. A.S.C.A. § 28.1501. *Pritchard v. Amerika Samoa Bank*, 8 A.S.R.2d 157 (1988).

In assessing post-judgment interest, the court set the rate at six per cent, the maximum enforceable rate on unwritten contracts. A.S.C.A. § 28.1501(a). *Samoa Products, Inc. v. A`asa*, 17 A.S.R.2d 66 (1990).

The statutory rate of six percent interest is presumed on overdue debts for which no contractual interest rate is specified. A.S.C.A. § 28.1501(a). *Ghiselli Bros., Inc. v. Ryan, Inc.*, 22 A.S.R.2d 57 (1992).

Amendments: 1978 Subsection (a): raised interest rates. Subsection (b): deleted "normal" from before "interest be collected" at end of subsection.

1980 Subsection (a): raised interest rates.

Subsection (b): amended generally; and added last sentence.

28.1502 Small loans-Interest.

Any bank, savings and loan association, person, firm, corporation or government entity which has been approved by the Governor as a small loan agency may charge a fee of not more than \$8 per \$100 per year on loans, debts and obligations of not more than \$8,000 with an allowable minimum charge to be fixed in an amount not to exceed a current schedule set by any lending institution under the standards prescribed in subsection (b) of 28.1501. Fees charged under this

section are not to be levied in addition to the interest or minimum charge allowed under 28.1501. If any loan under this section is paid before its due date, the lender shall credit to the unpaid balance, or shall refund, unearned interest.

History: 1972, PL 12-51 § 1; amd 1978, PL 15-76 § 3; amd 1980, PL 16-67 § 2.

Amendments: 1978 Added “(b)” to reference to section in Amendments: 1980 Amended to conform with penalties pro-first sentence.
1980 Deleted reference to Bank of Hawaii; raised rates of fees vided for in Title 46, Criminal Justice and amount of loans.

28.1503 Business loans.

It is lawful to charge, contract for, and receive any rate or amount of interest or other compensation, not to exceed 18 percent annually, with respect to any loan to any business or commercial organization or to a person or persons owning or desiring to acquire a business as a sole proprietor or joint venture, if the loan is transacted solely for the purpose of carrying on or acquiring a business or commercial investment. Business or commercial organization includes corporations, copartnerships, joint venture, limited partnerships, trusts, and any other bona fide business entity.

History: 1973, PL 13-22; 1975, PL 14-16 § 3; amd 1980, PL 16-67 § 3.

Amendments: 1980 Raised interest rates.

Case Notes:

Section not applicable to 90-day time or usage draft used in arrangement between an importer and a foreign corporation to buy goods on credit; 28.1501 applies *Trans United Marketing, Ltd. v. Max Haleck, Inc.*, ASR (1977).

Use of creditor’s funds to “keep the company afloat” falls within gambit of “carrying on” business”, therefore 28.1503 applies and not subsection (a) of 28.1501. *Max Haleck, inc. v. Trans United Marketing, inc.*, ASR (1977).

Under statute providing that interest on business loans may not exceed 18 per cent annually, creditor whose contract specified 20 per cent interest would have judgment for only 18 per cent. *A.S.C.A. § 28.1503. Shantilal Brothers Limited v. K.M.S.T. Wholesales, Inc.*, 9 A.S.R.2d 62 (1988).

28.1505 Open-end credit.

(a) Notwithstanding any other provision to the contrary, the maximum rate of interest chargeable on open-end credit issued in American Samoa shall be determined by reference to the law of the creditor’s principal place of business.

(b) Open-end credit means credit extended by a creditor under a plan which:

(1) The creditor reasonably contemplates repeated transactions,

(2) The creditor may impose a finance charge from time to time on an outstanding unpaid balance, and

(3) The amount of credit that may be extended during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

(c) Creditor means a person who extends credit that is subject to a finance charge.

(d) Person means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.”

History: 1991 PL 22-21; 2004, PL 28-15.

28.1510 Penalty for usury.

Any person who loans money or extends credit in any manner whatsoever and takes, receives, reserves, or assesses interest, fees, or minimum charges thereon at a rate higher than that allowed by law shall upon conviction be sentenced as for a class A misdemeanor; and in addition, shall forfeit to the debtor the full amount of the debt or obligation upon which the unlawful interest,

fee, or minimum was charged.

History: 1962, PL 7-23; 1963, PL 8-13; 1975, PL 14-16§ 3; amd 1980, PL 16-90 § 25.

Case Notes:

Under Territorial statute, one who makes a contract within the territory to extend credit at the rate of 20 per cent commits the crime of usury and is liable to imprisonment and to forfeiture of the entire amount of the debt. A.S.C.A. § 28.1510. *Shantilal Brothers Limited v. K.M.S.T. Wholesales, Inc.*, 9 A.S.R.2d 62 (1988).

Where debtor did not plead usury as a defense to action on debt, court need not decide whether statutory penalty of forfeiture can be invoked in a civil action. A.S.C.A. § 28.1510. *Shantilal Brothers Limited v. K.M.S.T. Wholesale, Inc.*, 9 A.S.R.2d 62 (1988).

Chapter 16

ESCHEAT OF UNCLAIMED BANK DEPOSITS

Sections:

- 28.1601 Definitions.**
- 28.1602 Certified check or account acquired through merger or otherwise.**
- 28.1603 Fee or charges on inactive or dormant savings or time deposit account.**
- 28.1604 Presumption of no claimants-Eschat.**
- 28.1605 Notice of unclaimed deposit-Mailing-Publication.**
- 28.1606 Annual reports to Treasurer of unclaimed deposits-Failure to make-Inspection by public.**
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28.1601 Definitions.

As used in this chapter, unless the context clearly requires otherwise:

(1) "Bank" means any bank, trust company, savings bank, and savings bank having shares of capital stock, organized and existing under any general or special law of this territory, including any such bank, trust company, savings bank, and savings bank having shares of capital stock, which may be in voluntary dissolution or which may be in the possession of the commissioner of banking and insurance or in receivership, and any private banker including any private banker for whose banking business a receiver has been appointed, and any national banking association organized under the Acts of Congress and doing business in this Territory including any national banking association which may be in voluntary dissolution or in receivership. This definition includes the Development Bank of American Samoa.

(2) (a) "Unclaimed Bank deposit" means and includes an unpaid balance of money to the

credit or in the name of: a maker or payee of a certified check held by a Bank, together with all interest accrued thereon whether entitled thereto or not on the records of the Bank, and which after a period of 10 years has remained unclaimed, and a depositor, in any capacity whatsoever, with a Bank in any demand, savings, or time deposit account, together with all interest accrued thereon whether credited thereto or not on the records of the Bank, which after a period of 10 years has remained unclaimed exclusive of:

(i) the unpaid balance in any such account which has been reduced by withdrawal or increased by deposit, exclusive of interest credit, within 10 years;

(ii) the unpaid balance in any such account which is evidenced by a passbook in which entry of interest credit has been made within 10 years or which passbook has been presented for entry of interest credit within 10 year;

(iii) the unpaid balance in any such account with respect to which the Bank has written evidence received within 10 years that the depositor or other person entitled thereto had knowledge thereof;

(iv) the unpaid balance in any such account of a depositor known by an officer or employee of the Bank to be living; and

(v) the unpaid balance in any such account which is evidenced by a passbook, which book has, to the knowledge of the Bank, within 10 years been balanced or verified.

(b) In the case of a time deposit, no account shall be deemed to be an unclaimed deposit until 10 years after its original date of maturity.

(c) "Unclaimed Bank deposit" also means, includes, and refers to credits and deposits of every kind, character or form in any name whatsoever and in any capacity whatsoever, including but not limited to individuals, corporations, companies, associations, societies, firms, partnerships, joint stock companies, and fiduciaries of any nature.

(3) "Treasurer" means the Treasurer of American Samoa.

History: 1988, PL 20-27.

26.1602 Certified check or account acquired through merger or otherwise.

Any bank which, through merger, reorganization, consolidation, or otherwise, acquires any certified check or any account of any depositor in any capacity whatsoever, shall, for the purpose of this chapter, be deemed to have been in existence from the date such check was certified by any other bank or such account originated in any other bank; and such certified check or account constitutes an unclaimed bank deposit if it otherwise accords with the definition of an unclaimed bank deposit.

History: 1988, PL 20-64.

26.1603 Fees or charges on inactive or dormant savings or time deposit account.

During the 10 year period of inactivity or dormancy specified in section 28.1601(2) and until payment of funds to the Treasurer as provided in section 28.1608, it is unlawful for any Bank to assess, collect, or deduct any fee or charge from any savings or time deposit account because of that inactivity or dormancy, except for the cost of publication in accordance with section 28.1605.

History: 1988, PL 20-64.

26.1604 Presumption of no claimants-Escheat.

It shall be presumed that there is or are no claimant or claimants who or which directly or indirectly has or have any right, title or interest in any unclaimed bank deposit held by a bank, and such unclaimed bank deposit shall be subject to escheat to the Territory.

History: 1988, PL 20-64.

26.1605 Notice of unclaimed deposit-Mailing-Publication.

(a) For the purposes of this section, an unclaimed bank deposit shall be deemed to be one in which as of August 1 of a particular year no transaction has occurred during the preceding 9 consecutive years.

(b) Every bank having any such unclaimed deposits shall, prior to August 15 of the year in which it becomes an unclaimed deposit mail a "notice of unclaimed deposit" to the owner or owners of each such account in the name and to the address of the owner or owners which appears on the records of the bank, provided, however, that the bank need not mail the notice to an owner or owners if any mailings by the bank to that owner or owners within the prior year were returned to the bank as undeliverable. The notice of unclaimed deposit shall be in such form as approved by the Treasurer and must set forth the name of the bank and where the name of the bank has been changed by merger, reorganization, consolidation or otherwise, it must also set forth the original name and address of the bank in which the deposit originated, the name of the owner or owners and a statement that the balance of the account will be paid over to the Territory on the following January unless the bank is contacted in writing by the owner or his representative. If such a written response is received by the bank, the response is deemed to be a transaction with respect to the account and the account thereafter ceases to be an unclaimed bank deposit for the purposes of advertising as set forth in subsection (c) of this section.

(c) Every bank having any unclaimed bank deposits must advertise once during the second week of the month of October and once during the second week of the month of November, printed in 8-point size type in a newspaper published in American Samoa, a notice entitled "Notice of the names of persons appearing as the owners of unclaimed amounts held by (name of Bank)". Such notice must be in a form approved by the Treasurer and must set forth the name and address of the bank and where the name of the bank has been changed by merger, reorganization, consolidation or otherwise, the notice must also set forth the original name and address of the bank in which the deposit originated, and must list in alphabetical order the name of each person to whose credit an unclaimed bank deposit stands, but not the amount to the credit of each account, but no account shall be advertised in which the unpaid balance is less than \$50.00. Any amount paid to a newspaper for such publication must be charged by the bank equally against the unclaimed bank deposits so advertised.

History: 1988, PL 20-64.

26.1606 Annual reports to Treasurer of unclaimed deposits-Failure to make-Inspection by public.

(a) Not later than the thirty-first day of January in each year after the year in which this act takes effect and as of December thirty-first of the preceding year, every bank must make in duplicate a written report to the Treasurer containing a true and accurate statement of all unclaimed bank deposits held by the bank as of such date.

(b) The report must set forth the name and address of the bank and where the name of the bank has been changed by merger, reorganization, consolidation or otherwise, also the original name and address of the bank in which the deposit originated, and must list in alphabetical order

the name of each person to whose credit an unclaimed bank deposit stands, the last address of the depositor appearing on the records of the bank, the identification number, if any, of each account, and the amount to the credit of each account.

(c) The report must, where the bank is a corporation, be signed by its president, a vice-president, Treasurer, assistant Treasurer, cashier, or assistant cashier. If such bank is in voluntary dissolution, the report must be signed by one or more of its trustees designated by its Board of Trustees for that purpose. If such bank is in the possession of the commissioner of banking and insurance, the report must be signed by the commissioner or by a special deputy commissioner appointed by him and in actual charge of the business and affairs of the bank. If a receiver has been appointed for a corporate bank or private banker, the report must be signed by such receiver. In the case of a private banker, the report must be signed by such banker.

(d) The person signing the report must certify that such report is a true and accurate statement of all unclaimed bank deposits held by the bank as of the report date to the best of his knowledge, information and belief after diligent inquiry. The person signing the report may, in making the report, rely upon information with respect to unclaimed bank deposits furnished by the officers and employees and records of the bank.

(e) If the bank has no unclaimed bank deposits a written report so stating must be made to the Treasurer.

(f) Any bank which fails to file such a report with the Treasurer shall forfeit to the Territory the sum of fifty dollars (\$50.00) for each day such report is not filed, and if not paid, such penalty must be sued for and be received by the Treasurer in a civil action in the name of the Territory. The Treasurer has the power to waive the penalty and to extend the time within which a report may be filed.

(g) Immediately upon receipt of such report the Treasurer must deliver one duplicate of the report to the attorney and the Treasurer must cause the other duplicate report to be permanently bound with an alphabetical index of the depositors with appropriate references to the bound reports. The bound reports and indices must be open for public inspection during usual business hours and under regulations prescribed by the Treasurer.

History: 1988, PL 20-64.

26.1607 Escheat-Deposits of less than fifty dollars.

All unclaimed bank deposits of less than fifty dollars (\$50.00) held by any bank as of December thirty-first of any year shall escheat to the Territory. When a report thereof is made to the Treasurer pursuant to the provisions of section 28.1606 the funds must be paid to the Treasurer simultaneously with the making of such report.

History: 1988, PL 20-64.

26.1608 Unclaimed deposits reported on December 31 to escheat-Deposits less than fifty dollars reported separately.

(a) All unclaimed bank deposits reported by any bank as held by it as of December thirty-first, one thousand nine hundred and eighty-seven and as of December thirty-first of each year thereafter, regardless of the amount thereof, shall escheat to the Territory. When a report thereof is made to the Treasurer pursuant to section 28.1606 the funds must be paid over to the Treasurer by such bank simultaneously with the making of the report. All unclaimed bank deposits of less than fifty dollars (\$50.00), when reported in any report or revised report or supplemental report filed, must be separately listed under the heading "Deposits of less than fifty dollars (\$50.00)"

and the total of all such deposits must be separately indicated.

History: 1988, PL 20-64.

26.1609 Penalty for failure of bank to pay over unclaimed deposits when payable-Suits.

Any bank which fails to pay over to the Treasurer any unclaimed bank deposit as provided in section 26.1608 shall be liable to a penalty of fifty dollars (\$50.000) for each day such payment is not made. If such penalty, is not paid, the Treasurer must file a civil action in the name of the Territory against the Bank to recover it.

History: 1988, PL 20-64.

26.1610 Actions for escheat-Jurisdiction-Procedure.

It is the duty of the Attorney General within a reasonable time after receipt by him of the duplicate report to institute actions for escheat to the Territory of the unclaimed Bank deposits disclosed by such report which are in an amount of fifty dollars (\$50.00) or more and which have not been paid over to the Territory. The High Court has jurisdiction of such actions. In any such action absent defendants may be proceeded against by newspaper publication, upon order of the court.

History: 1988, PL 20-64.

26.1611 Liability of Bank ceases on payment to Treasurer.

No Bank which must pay over to the Treasurer any unclaimed bank deposit shall be held liable to any claimant having or asserting any right, title or interest in or to the same personally or in any capacity whatsoever; and no action or proceedings of any kind for the recovery of money represented thereby, or any part thereof, shall lie against such bank.

History: 1988, PL 20-64.

28.1612 Bank records of escheated deposits-Preservation-Copies furnished to Treasurer.

No bank shall destroy or otherwise dispose of any of its records or files pertaining to any unclaimed bank deposit which is subject to escheat to the Territory or which has escheated to the Territory; but all banks must preserve such records and files, and any of the originals thereof or photostatic copies thereof duly certified by any official of the bank to be true copies, must be furnished to the Treasurer whenever he makes a request therefore in writing.

History: 1988, PL 20-64.

28.1613 Records of Treasurer of escheated deposits-Disposition.

(a) The Treasurer must establish and maintain records of all escheated unclaimed bank deposits received by him, which in the case of deposits with a net balance of fifty dollars (\$50.00) or more, must show in alphabetical order the names of the depositors, the amounts received, the name and address of the bank from which the funds were received, the identification numbers of the accounts, if any, and must also establish and maintain an index thereto, which records and index must at all times during the usual business hours be open to public examination.

(b) The Treasurer must credit seventy-five percent (75%) of the amount of each escheated unclaimed bank deposit received by him to the general fund, and must establish and maintain a separate account to be designed as the “unclaimed bank deposits escheat receive fund” which is hereinafter referred to as the “reserve fund” and credit it with the other twenty-five percent (25%).

(c) The Treasurer must invest and reinvest all moneys credited to the reserve fund in bonds of interest bearing notes or obligations of the United States or in bonds or interest bearing notes or obligations guaranteed as to principal and interest by the United States or in bonds or interest bearing notes or obligations for the payment of the principal and interest of which the faith and credit of the United States are distinctly pledged or in bonds or interest bearing notes or other obligations of this Territory or in bonds or interest bearing notes or other obligations of any county, city, town, township, borough, village or other municipal or political subdivision of this Territory, issued under authority of any law of this Territory.

(d) The income received from the investments and reinvestments of the reserve fund must be added to the reserve fund and be held and retained as part thereof subject to like investment and reinvestment.

(e) The reserve fund must be used and expended by the Treasurer for the payment of expenses and costs incurred by the Treasurer and the attorney general pursuant to the provisions of section 28.1614.

(f) At any time after receipt by the Treasurer of any escheated unclaimed bank deposit anyone claiming to be entitled thereto or to any part thereof may file a claim therefor with the Treasurer who is authorized to pass upon and determine the claimant’s claim. If the Treasurer determines the claimant’s proof of title is sufficient, he must pay the escheated unclaimed bank deposit or such part thereof to which the claimant is entitled, without interest, out of the reserve fund to the claimant. If the cash balance in the reserve fund is insufficient to make such payment the Treasurer must sell such of the investments of the reserve fund as may be necessary to make such payment.

(g) If the Treasurer determines that the claimant’s proof of title is not sufficient to entitle the claimant to such payment, the claimant may, within sixty days after the date of such determination by the Treasurer, file an action in the High Court against the Treasurer, and it shall be the duty of the Treasurer, and of the attorney on his behalf, to take such action with respect thereto as they may deem necessary to protect the interests of the Territory. The court may proceed in the action in a summary manner or otherwise. Upon proof satisfactory to the court of plaintiff’s claim of title to the escheated unclaimed bank deposit or any part thereof, judgment must be entered establishing his claim and ordering the Treasurer to pay to the plaintiff the amount specified in such judgment together with such costs as the court may allow the plaintiff. Upon service upon the Treasurer of a copy of such judgment certified to be a true copy by the clerk of the High Court, the Treasurer must pay to the plaintiff out of the reserve fund the amount of amounts specified.

(h) If the court determines that plaintiff’s proof of title is not sufficient to establish his claim to the escheated unclaimed bank deposit or any part thereof, a judgment to that effect must be entered. If on any appeal from the judgment, it is reversed and plaintiff’s claim of title to the escheated unclaimed bank deposit or any part thereof is sustained, the Treasurer must pay to the plaintiff, out of the reserve fund, the amount or amounts to which the plaintiff is entitled, together with such costs awarded to the plaintiff.

History: 1988, PL 20-64.

28.1614 Services by salaried officials to be without charge-Expense of administration.

All services required by this chapter to be performed by the Clerk of the High Court, the Marshall and any other salaried public official, shall be without fees, costs, counsel fees or any other charge, but the Treasurer must pay out of the reserve fund all expenses and costs incurred by the Treasurer for the administration of the fund and for the establishment and maintenance of his records relative to escheated unclaimed bank deposits, and also all expenses and costs incurred by the attorney general, including costs and expenses for legal and clerical services. The Treasurer and the Attorney General may each employ such persons as needed to carry out the provisions of this chapter and fix their compensation.

History: 1988, PL 20-64.

28.1615 Credit unions.

When no transaction has occurred in a credit union member's share or deposit account for 12 months and his whereabouts are unknown, as verified by the return of a certified letter addressed to him at his last known address, all sums due to the member shall be credited to a special reserve account. If the sums are not reclaimed within a five year period, they shall escheat to the Territory and be forwarded to the Treasurer in accordance with procedures in this chapter.

History: 1988, PL 20-64.