

SEVENTH DRAFT  
OF THE  
UNIFORM SMALL LOAN LAW  
As Revised June 1, 1942

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DEPARTMENT OF CONSUMER CREDIT STUDIES  
RUSSELL SAGE FOUNDATION  
130 East 22 Street  
New York City

## TITLE

A BILL FOR AN ACT TO DEFINE AND REGULATE THE BUSINESS OF LENDING IN AMOUNTS OF \$300<sup>1</sup> OR LESS; TO AUTHORIZE THE LICENSING OF PERSONS ENGAGED IN SUCH BUSINESS; TO PERMIT SUCH LICENSEES TO MAKE CHARGES AT A GREATER RATE THAN LENDERS NOT LICENSED HEREUNDER; TO PRESCRIBE MAXIMUM RATES OF CHARGE WHICH LICENSEES ARE PERMITTED TO MAKE; TO REGULATE ASSIGNMENTS OF WAGES OR SALARIES, EARNED OR TO BE EARNED, WHEN GIVEN AS SECURITY FOR A LOAN OF OR AS CONSIDERATION FOR A PAYMENT OF \$300<sup>1</sup> OR LESS; TO PROVIDE FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS ACT AND FOR THE ISSUANCE OF REGULATIONS AND ORDERS THEREFOR; TO AUTHORIZE THE MAKING OF EXAMINATIONS AND INVESTIGATIONS AND THE PUBLICATION OF REPORTS THEREOF; TO PROVIDE FOR A REVIEW OF ADMINISTRATIVE ACTS HEREUNDER; [<sup>2</sup>;] TO PRESCRIBE PENALTIES; AND TO REPEAL [<sup>3</sup>] AND TO REPEAL ALL ACTS AND PARTS OF ACTS WHETHER GENERAL, SPECIAL, OR LOCAL, WHICH RELATE TO THE SAME SUBJECT MATTER AS THIS ACT, SO FAR AS THEY ARE INCONSISTENT WITH THE PROVISIONS OF THIS ACT.

(ENACTING CLAUSE)

### SECTION 1

(a) DECLARATION OF LEGISLATIVE INTENT.<sup>4</sup> The legislature finds as facts and determines that:

1. There exists among citizens of this state a widespread demand for small loans. The scope and intensity of this demand have been increased progressively by many social and economic forces.

2. The expense of making and collecting small loans, which are usually made on comparatively unsubstantial security to wage-earners, salaried employes, and other persons of relatively low incomes is necessarily high in relation to the amounts lent.

3. Such loans cannot be made profitably under the limitations imposed by existing laws relating to interest and usury. These limitations have tended to exclude lawful enterprises from the small loan field. Since the demand for small loans cannot be legislated out of existence, many small borrowers have been left to the mercy of those willing to bear the opprobrium and risk the penalties of usury for a large profit.

4. Interest charges are often disguised by the use of subterfuges to evade the usury law. These subterfuges are so complicated and technical that the usual borrower of small sums is defenseless even if he is aware of the usurious nature of the transaction and of

his legal rights.

5. As a result, borrowers of small sums are being exploited, to the injury of the borrower, his dependents, and the general public. Charges are generally exorbitant in relation to those necessary to the conduct of a legitimate small loan business; trickery and fraud are common; and oppressive collection practices are prevalent.

6. These evils characterize and distinguish loans of \$300 or less. Legislation to control this class of loans is necessary to protect the public welfare.

7. It is the intent of the legislature in enacting this law to bring under public supervision those engaged in the business of making such loans, to eliminate practices that facilitate abuse of borrowers, to establish a system of regulation for the purpose of insuring honest and efficient small loan service and of stimulating competitive reductions in charges, to allow lenders who meet the conditions of this Act a rate of charge sufficiently high to permit a business profit, and to provide the administrative machinery necessary for effective enforcement.

(b) DEFINITIONS. The following words and terms when used in this Act shall have the following meanings unless the context clearly requires a different meaning. The meaning ascribed to the singular form shall apply also to the plural.

"PERSON" shall include individuals, co-partnerships, associations, trusts, corporations, and any other legal entities.

"LICENSE" shall mean a license, issued under the authority of this Act, to make loans in accordance with the provisions of this Act at a single place of business.

"LICENSEE" shall mean a person to whom one or more licenses have been issued.

"COMMISSIONER" shall mean the Commissioner of Banking.<sup>5</sup>

"DEPARTMENT" shall mean the Department of Banking.<sup>6</sup>

## SECTION 2

(a) SCOPE. No person shall engage in the business of lending in amounts of \$300 or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, which in the aggregate are greater than \_\_\_\_\_,<sup>7</sup> except as provided in and authorized by this Act and without first having obtained a license



from the Commissioner. For the purpose of this section, a loan shall be deemed to be in the amount of \$300 or less if the net amount or value advanced to or on behalf of the borrower, after deducting all payments for interest, principal, expenses, and charges of any nature taken substantially contemporaneously with the making of the loan, does not exceed \$300.

(b) EXEMPTIONS. No person doing business under the authority of any law of this state or of the United States relating to banks, savings banks, trust companies, savings or building and loan associations, [<sup>8</sup>,] or credit unions shall be eligible to become a licensee under this Act, nor shall this Act apply to any business transacted by any such person under the authority of and as permitted by any such law, nor to any bona fide pawnbroking business transacted under a pawnbroker's license.

(c) EVASIONS. The provisions of subsection (a) of this section shall apply to any person who seeks to evade its application by any device, subterfuge, or pretense whatsoever including, but not thereby limiting the generality of the foregoing: the loan, forbearance, use, or sale of credit (as guarantor, surety, endorser, co-maker, or otherwise), money, goods, or things in action; the use of collateral or related sales or purchases of goods or services, or agreements to sell or purchase, whether real or pretended; receiving or charging compensation for goods or services, whether or not sold, delivered, or provided; and the real or pretended negotiation, arrangement, or procurement of a loan through any use or activity of a third person, whether real or fictitious.

(d) PENALTY. Any person and the several members, officers, directors, agents, and employes thereof, who shall violate or participate in the violation of any provision or subsection (a) of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than \$1,000 and not less than \$100, or by imprisonment of not more than six months, or by both such fine and imprisonment, in the discretion of the court.<sup>9</sup> Any contract of loan in the making or collection of which any act shall have been done which violates subsection (a) of this section shall be void and the lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever.



4.

### SECTION 3

APPLICATION AND FEE. Application for a license shall be in writing, under oath, and in the form prescribed by the Commissioner. The application shall give the exact location where the business is to be conducted and shall contain such further relevant information as the Commissioner may require, including the names and addresses of the partners, officers, directors, or trustees, and of such of the principal owners or members as will provide the basis for the investigations and findings contemplated by section 4 of this Act. At the time of making such application, the applicant shall pay to the Commissioner the sum of \$50 as a fee for investigating the application and the sum of \$100 as a license fee for the period ending on the last day of the current calendar year; provided, that if the license is granted after June thirtieth in any year the license fee shall be \$50.

### SECTION 4

(a) INVESTIGATION OF APPLICATION. Upon the filing of such application and the payment of such fees, the Commissioner shall investigate the facts concerning the application and the requirements provided for in subsection (b) of this section. At least twenty days before entering the order granting or denying such application, he shall mail a notice of the receipt of the application to each licensee having a place of business in the community where the applicant proposes to do business and he may mail such a notice to such other persons, associations and institutions as he may see fit. The Commissioner shall grant or deny each application for a license within sixty days from the filing thereof with the required information and fees unless the period is extended by written agreement between the applicant and the Commissioner.

(b) ISSUANCE OF LICENSE. If the Commissioner shall find (1) that the financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the public and to warrant belief that the business will be operated lawfully, honestly, fairly, and efficiently, within the purposes of this Act, and (2) that allowing such applicant to engage in business will promote the convenience and advantage of the community in which the licensed office is to be located, and (3) that the applicant has available for the operation of such business at the specified location liquid assets of at least \$20,000,<sup>10</sup> he shall thereupon enter an order

granting such application, and file his findings with the Department, and forthwith issue and deliver a license to the applicant.

(c) DENIAL OF LICENSE. If the Commissioner shall not so find, he shall enter an order denying such application and forthwith notify the applicant of the denial, returning the license fee but retaining the investigation fee. Within ten days after the entry of such an order he shall file with the Department his findings and a summary of the evidence supporting them and shall forthwith deliver a copy thereof to the applicant.

## SECTION 5

(a) POSTING OF LICENSE. Each license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a co-partnership or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Each license shall be kept conspicuously posted in the licensed place of business and shall not be transferable or assignable.

(b) CONTINUING LICENSE; ANNUAL FEE. Each license shall remain in full force and effect until surrendered, revoked, or suspended as hereinafter provided. Every licensee shall, on or before the tenth day of each December, pay to the Commissioner the sum of \$100 for each license held by him, as a license fee for the succeeding calendar year.

(c) MINIMUM ASSETS. Every licensee shall maintain assets of at least \$20,000<sup>10</sup> either used or readily available for use in the conduct of the business of each licensed office.

## SECTION 6

(a) PLACE OF BUSINESS. Not more than one place of business shall be maintained under the same license, but the Commissioner may issue additional licenses to the same licensee upon compliance with all the provisions of this Act governing issuance of a single license.

(b) REMOVAL. No change in the place of business of a licensee to a location outside of the original city or town<sup>11</sup> shall be permitted under the same license. When a licensee wishes to change his place of business within the same city or town,<sup>11</sup> he shall give written notice thereof to the Commissioner who shall investigate the facts and, if he shall find (1) that allowing the licensee to engage in business in the proposed location is not detrimental to the



convenience and advantage of the community and (2) that the proposed location is reasonably accessible to borrowers under existing loan contracts, he shall enter an order permitting the change and shall amend the license accordingly. If the Commissioner shall not so find he shall enter an order denying the licensee such permission in the manner specified in and subject to the provisions of section 4(c) of this Act.

(c) RESIDENCE OF BORROWER. Nothing in this Act shall be construed to limit the loans of any licensee to residents of the community in which the licensed place of business is situated.

## SECTION 7

(a) REVOCACTION OF LICENSE. The Commissioner shall, upon ten days' written notice to the licensee stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard, revoke any license issued hereunder if he finds that:

1. The licensee has failed to pay the annual license fee; or that

2. The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this Act or any regulation or order lawfully made pursuant to and within the authority of this Act; or that

3. Any fact or condition exists which, if it had existed or had been known to exist at the time of the original application for such license, clearly would have justified the Commissioner in refusing originally to issue such license.

(b) SUSPENSION OF LICENSE. If the Commissioner finds that probable cause for revocation of any license exists and that enforcement of the Act requires immediate suspension of such license pending investigation, he may, upon three days' written notice and a hearing, enter an order suspending such license for a period not exceeding thirty days.

(c) RECORD AND NOTICE. Whenever the Commissioner shall revoke or suspend a license issued pursuant to this Act, he shall enter an order to that effect and forthwith notify the licensee of the revocation or suspension. Within five days after the entry of such an order he shall file with the Department his findings and a summary of the evidence supporting them and he shall forthwith deliver a copy thereof to the licensee.



(d) SURRENDER OF LICENSE. Any licensee may surrender any license by delivering it to the Commissioner with written notice of its surrender, but such surrender shall not affect his civil or criminal liability for acts committed prior thereto.

(e) PRE-EXISTING CONTRACTS. No revocation, suspension, or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any borrower.

(f) REINSTATEMENT OF LICENSE. The Commissioner may reinstate suspended licenses or issue new licenses to a person whose license or licenses have been revoked if no fact or condition then exists which clearly would have justified the Commissioner in refusing originally to issue such license under this Act.

## SECTION 8

(a) EXAMINATION OF LICENSEES. At least once each year the Commissioner or his duly authorized representatives shall make an examination of the place of business of each licensee and of the loans, transactions, books, papers, and records of such licensee so far as they pertain to the business licensed under this Act. The actual cost of examination shall be paid to the Commissioner by each licensee so examined, and the Commissioner may maintain an action for the recovery of such costs in any court of competent jurisdiction.

(b) INVESTIGATIONS. For the purpose of discovering violations of this Act or of securing information lawfully required hereunder, the Commissioner or his duly authorized representatives may at any time investigate the business and examine the books, accounts, papers, and records used therein, of (1) any licensee, (2) any other person engaged in the business described in sub-section 2(a) of this Act or participating in such business as principal, agent, broker, or otherwise, and (3) any person who the Commissioner has reasonable cause to believe is violating or is about to violate any provision of this Act, whether or not such person shall claim to be within the authority or beyond the scope of this Act. For purposes of this section, any person who shall advertise for, solicit, or hold himself out as willing to make loan transactions in the amount or of the value of \$300 or less shall be presumed to be engaged in the business described in sub-section 2(a) of this Act.

(c) ACCESS TO RECORDS; WITNESSES. For the purposes of this section, the Commissioner or his duly authorized representatives shall have and be given free access to the offices and places of business,

files, safes, and vaults of all such persons, and shall have authority to require the attendance of any person and to examine him under oath<sup>12</sup> relative to such loans or such business or to the subject matter of any examination, investigation, or hearing.

(d) CEASE AND DESIST ORDERS; INJUNCTIONS; RECEIVERS. Whenever the Commissioner has reasonable cause to believe that any person is violating or is threatening to or intends to violate any provision of this Act, he may in addition to all actions provided for in this Act and without prejudice thereto enter an order requiring such person to desist or to refrain from such violation; and an action may be brought on the relation of the Attorney General and the Commissioner<sup>13</sup> to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound, and to appoint a receiver for the property and business of the defendant, including books, papers, documents, and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of this Act through or by means of the use of said property and business. Such receiver, when appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as shall from time to time be conferred upon him by the court.

## SECTION 9

(a) BOOKS AND RECORDS. Each licensee shall keep and use in his business such books, accounts, and records as will enable the Commissioner to determine whether such licensee is complying with the provisions of this Act and with the orders and regulations lawfully made by the Commissioner hereunder. Each licensee shall preserve such books, accounts, and records for at least two years after making the final entry on any loan recorded therein.

(b) ANNUAL REPORTS. Each licensee shall annually on or before the first day of March file a report with the Commissioner giving such relevant information as he may reasonably require concerning the business and operations during the preceding calendar year for each



licensed place of business conducted by such licensee within the state. Such report shall be made under oath and shall be in the form prescribed by the Commissioner, who shall make and publish annually an analysis and recapitulation of such reports.

#### SECTION 10

(a) REGULATIONS AND ORDERS. The Commissioner shall have authority to make regulations and orders for the administration and enforcement of this Act, in addition hereto and not inconsistent herewith. Every regulation shall be promulgated by an order, and any ruling, demand, requirement, or similar administrative act may be promulgated by an order. Every order shall be in writing, shall state its effective date and the date of its promulgation, and shall be entered in an indexed permanent book which shall be a public record. A copy of every order promulgating a regulation and of every other order containing a requirement of general application shall be mailed to each licensee at least ten days before the effective date thereof.

(b) CERTIFIED COPIES OF OFFICIAL DOCUMENTS. On application of any person and payment of the costs thereof, the Commissioner shall furnish, under his seal and signed by him or his deputy, a certified copy of any license, regulation, or order. In any court or proceeding such copy shall be prima facie evidence of the fact of the issuance of such license, regulation, or order.

#### SECTION 11

(a) ADVERTISING. No licensee or other person subject to this Act shall advertise, display, distribute, or broadcast or cause or permit to be advertised, displayed, distributed, or broadcast, in any manner whatsoever, any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions for loans in the amount or of the value of \$300 or less. The Commissioner may require that charges or rates of charge, if stated by a licensee, be stated fully and clearly in such manner as he may deem necessary to prevent misunderstanding thereof by prospective borrowers. The Commissioner may permit or require licensees to refer in their advertising to the fact that their business is under state supervision, subject to conditions imposed by him to prevent an erroneous impression as to the scope or degree of protection provided by this Act.

(b) SCHEDULE OF CHARGES. Each licensee shall display in each



licensed place of business a full and accurate schedule of the rates of charge upon all classes of loans currently to be made by him.

## SECTION 12

(a) OTHER BUSINESS IN SAME OFFICE. No licensee shall conduct the business of making loans under this Act within any office, suite, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction with any other business, unless authority to do so is given by the Commissioner. Upon receipt of written application for such authority the Commissioner shall investigate the facts and, if he finds that the character of the licensee and the nature of the other business warrant belief that such conduct of business would not conceal or facilitate violation or evasion of this Act or of regulations lawfully made hereunder, he shall enter an order granting such authority. If he shall not so find he shall enter an order denying such authority in the manner specified in and subject to the provisions of section 4(c) of this Act.

(b) BUSINESS CONFINED TO LICENSED OFFICE. No licensee shall conduct the business of making loans provided for by this Act under any name, or at any place of business within this state, other than that stated in the license.

(c) LIENS ON REAL ESTATE. No licensee shall take a lien upon real estate as security for any loan made under this Act, except such lien as is created by law through the rendition or recording of a judgment.<sup>14</sup>

## SECTION 13

(a) MAXIMUM RATE OF CHARGE. Every licensee hereunder may contract for and receive, on any loan of money not exceeding \$300 in amount, charges at a rate not exceeding 3 per cent a month on that part of the unpaid principal balance of any loan not in excess of \$100, and 2 per cent a month on any remainder of such unpaid principal balance.<sup>15</sup> No licensee shall induce or permit any person, nor any husband and wife, jointly or severally, to become obligated, directly or contingently or both, under more than one contract of loan at the same time, for the purpose of obtaining a higher rate of charge than would otherwise be permitted by this section.<sup>16</sup>

(b) METHOD OF COMPUTING CHARGES. Charges on loans made under this Act shall not be paid, deducted, or received in advance. Such charges shall not be compounded; provided that, if part or all of the consideration for a loan contract is the unpaid principal balance of

a prior loan, then the principal amount payable under such loan contract may include any unpaid charges on the prior loan which have accrued within sixty days before the making of such loan contract. Such charges shall (1) be computed and paid only as a percentage per month of the unpaid principal balance or portions thereof, and (2) be so expressed in every obligation signed by the borrower, and (3) be computed on the basis of the number of days actually elapsed. For the purpose of computing charge, whether at the maximum rate or less, a month shall be any period of 30 consecutive days and the rate of charge for each day shall be 1/30th of the-monthly rate.

(c) NO FURTHER CHARGES. In addition to the charges herein provided for, no further or other amount whatsoever shall be directly or indirectly charged, contracted for, or received. If any amount in excess of the charges permitted by this Act is charged, contracted for, or received, except as the result of an accidental and bona fide error of computation, the contract of loan shall be void, and the licensee shall have no right to collect or receive any principal, charges, or recompense whatsoever; and the licensee and the several members, officers, directors, agents, and employes thereof who shall have participated in such violation, shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than \$1,000 and not less than \$100 or by imprisonment of not more than six months, or by both such fine and imprisonment, in the discretion of the court.<sup>9</sup>

#### SECTION 14

(a) REQUIREMENTS FOR MAKING AND PAYMENT OF LOANS. Every licensee shall:

1. At the time any loan is made deliver to the borrower, or if there are two or more borrowers to one of them, a statement in the English language, on which shall be printed a copy of section 13 of this Act, disclosing in clear and distinct terms the amount and date of the loan, a schedule of payments or a description thereof, the type of the security, if any, for the loan, the name and address of the licensed office and of each person primarily obligated on the note, and the agreed rate of charge;

2. For each payment made on account of any such loan, give to the person making it at the time the payment is made a plain and complete receipt specifying the amount applied to charges and the amount, if any applied to principal, and stating the unpaid principal



balance, if any, of such loan; provided that an unitemized receipt may be given temporarily and replaced within a reasonable time with a receipt as prescribed above;

3. Permit payment to be made in advance in any amount on any contract of loan at any time, but the licensee may apply such payment first to all charges in full at the agreed rate up to the date of such payment;

4. Upon repayment of the loan in full, mark plainly every obligation and security signed by any obligor with the word "Paid" or "Cancelled," and release any mortgage, restore any pledge, and cancel and return any note and any assignment given to the licensee.

(b) CONFESSIONS OF JUDGMENT; INCOMPLETE INSTRUMENTS. No licensee shall (1) take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for the borrower in a judicial proceeding; nor (2) take any note, promise to pay, or instrument of security that does not disclose the amount of the loan, a schedule of payments or a description thereof, and the agreed rate of charge, nor any instrument in which blanks are left to be filled in after execution.

(c) INSTALMENT PAYMENTS; CONTRACT PERIOD. No licensee shall enter into any contract of loan under this Act under which the borrower agrees to make any payment of principal more than twenty-one calendar months from the date of making such contract. Every loan contract shall provide for repayment of principal and charges in instalments which shall be payable at approximately equal periodic intervals of time and which shall be so arranged that no instalment is substantially greater in amount than any preceding instalment.

(d) PENALTY. Any contract of loan in the making or collection of which any provision of this section shall have been violated either knowingly or without the exercise of due care to prevent the same shall be void and the licensee shall have no right to collect or receive any principal, charges, or recompense whatsoever.

## SECTION 15

INDEBTEDNESS OF MORE THAN \$300. No licensee shall directly or indirectly charge, contract for, or receive a greater rate of interest than \_\_\_\_\_<sup>7</sup> upon any loan, or upon any part or all of any aggregate indebtedness of the same person, in excess of \$300. The foregoing prohibition shall also apply to any licensee who permits any person, as borrower or as endorser, guarantor, or surety for any



borrower, or otherwise, or any husband and wife jointly or severally, to owe directly or contingently or both to the licensee at any time a sum of more than \$300 for principal.<sup>17</sup>

#### SECTION 16

WAGE PURCHASES. The payment of \$300 or less in money, credit, goods, or things in action, as consideration for any sale or assignment of, or order for, the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, shall for the purposes of regulation under this Act be deemed a loan of money secured by such sale, assignment, or order. The amount by which such compensation so sold, assigned, or ordered paid exceeds the amount of such consideration actually paid shall for the purposes of regulation under this Act be deemed interest or charges upon such loan from the date of such payment to the date such compensation is payable. Such transaction shall be governed by and subject to the provisions of this Act.

#### SECTION 17<sup>18</sup>

(a) VALIDITY AND PAYMENT OF ASSIGNMENTS. No assignment of or order for payment of any salary, wages, commissions, or other compensation for services, earned or to be earned, given to secure any loan made by any licensee, shall be valid unless the amount of such loan is paid to the borrower simultaneously with its execution; nor shall any such assignment or order, or any chattel mortgage or other lien on household furniture then in the possession and use of the borrower, be valid unless it is in writing, signed in person by the borrower, or if the borrower is married unless it is signed in person by both husband and wife, provided that written assent of a spouse shall not be required when husband and wife have been living separate and apart for a period of at least five months prior to the making of such assignment, order, mortgage, or lien.

(b) AMOUNT COLLECTIBLE UNDER ASSIGNMENT. A valid assignment or order for the payment of future salary, wages, commissions, or other compensation for services, may be given as security for a loan made by any licensee and under such assignment or order, a sum not to exceed 10 per cent of the borrower's salary, wages, commissions, or other compensation for services shall be collectible from the employer of the borrower by the licensee at the time of each payment to the borrower of such salary, wages, commissions, or other compensation for

services, from the time that a copy of such assignment, verified by the oath of the licensee or his agent, together with a similarly verified statement of the amount unpaid upon such loan and a printed copy of this section, is served upon the employer.

#### SECTION 18

LOANS MADE ELSEWHERE. No loan made outside this state in the amount or of the value of \$300 or less for which a greater rate of interest, consideration, or charges than is permitted by section 13 of this Act has been charged, contracted for, or received shall be enforced in this state and every person in anywise participating therein in this state shall be subject to the provisions of this Act; provided that the foregoing shall not apply to loans legally made in any state under and in accordance with a regulatory small loan law similar in principle to this Act.

#### SECTION 19

REVIEW. In addition to any other remedy he may have, any licensee and any person considering himself aggrieved by any act or order of the Commissioner hereunder may, within 30 days from the entry of the order complained of, or within 60 days of the act complained of if there is no order, bring an action in the \_\_\_\_\_ Court to review such act or order.<sup>19</sup>

#### SECTION 20

PRE-EXISTING CONTRACTS. This Act or any part thereof may be modified, amended, or repealed so as to effect a cancellation or alteration of any license or right of a licensee hereunder, provided that such cancellation or alteration shall not impair or affect the obligation of any pre-existing lawful contract between any licensee and any borrower.

#### SECTION 21

STATUS OF PRE-EXISTING LICENSES. Any person having a license under [20], in force when this Act becomes effective, shall notwithstanding the repeal of the said Act, be deemed to have a license under this Act for a period expiring six months after the said effective date, if not sooner revoked, provided that such person shall have paid or shall pay to the Commissioner as a license fee for such six months' period the sum of \$50. Any such license so continued in effect under the provisions of this Act shall be subject to revocation during such six months' period as provided in section 7 of this Act;

except that it may not be revoked during such six months' period either upon the ground that such licensee has not maintained the minimum amount of assets required in section 5 of this Act or upon the ground that the convenience and advantage of such community will not be promoted by the operation therein of such business.

## SECTION 22

(a) REPEAL. [<sup>3</sup>] and all Acts and parts of Acts whether general, special, or local, which relate to the same subject matter as this Act, so far as they are inconsistent with the provisions of this Act, are hereby repealed.

(b) STATUS OF PRE-EXISTING OBLIGATIONS. Nothing herein contained shall be so construed as to impair or affect the obligation of any contract of loan between any licensee under the said [<sup>20</sup>] and any borrower, which was lawfully entered into prior to the effective date of this Act.

## SECTION 23

DECISIONS AFFECT ADJUDICATED SECTIONS ONLY. If any clause, sentence, section, provision, or part of this Act shall be adjudged to be unconstitutional or invalid for any reason by any court of competent jurisdiction, such judgment shall not invalidate, impair, or affect the remainder of this Act, which shall remain in full force and effect.

## SECTION 24

This Act shall be know and may be cited as the           [NAME  
OF STATE] Small Loan Act.



## FOOTNOTES

1. The \$300 maximum loan has been recommended in each successive draft of the Uniform Small Loan Law. When the first draft was formulated in 1916, abuses toward which the law was directed were most prevalent among loans of \$100 or less and were practically unknown among loans of more than \$200. Although the \$300 maximum loan was probably higher than necessary at that time, rising price levels resulting from the World War I soon changed this situation. The size of loans made by licensees increased progressively, and during the late 1920's, there was some evidence to indicate that the \$300 maximum was, if anything, too low in certain areas.

The depression of the 1930's, by reducing prices and incomes, relieved the pressure upon the maximum loan. But the relief was temporary, and certain developments of the last few years have again raised the question of the desirability of a higher maximum. Among other factors, increases in real wages and reductions in rates of charge for small loans have increased the size of loans which borrowers were able to repay from given incomes.

The Department of Consumer Credit Studies believes that \$300 is still the most desirable maximum under most circumstances. In general, it believes that an increase in the maximum loan might encourage neglect of borrowers of very small sums whom licensed lenders are expected to serve and that other types of lending agencies, such as commercial banks, industrial banks, and credit unions, which enjoy lower capital costs by virtue of their access to deposit funds, should be relied upon to supply the need for larger loans.

The Department concedes, on the other hand, that an increase in the maximum loan to \$400 or even to \$500 may be warranted in certain states. Such an increase would appear desirable where the business to be regulated makes a substantial number of loans of more than \$300, where under an existing small loan law excessive rates are charged by lenders specializing in loans of more than \$300, or where facilities for personal loans of more than \$300 are lacking.

2. If a separate department or supervising official is created, there should be added to the title of the bill descriptive language covering the creation of such department or office, the duties thereof, the raising and disbursing of revenues, and other special provisions incident to such creation. It is recommended that a subdivision of the Banking Department, in charge of a special deputy, be created to supervise the small loan business and administer this Act, such subdivision to be designated as the Division of Small Loans.

3. Here insert titles of Acts to be specifically repealed in whole or in part.

4. This form of Declaration of Legislative Intent is not appropriate for use in bills to revise existing small loan laws. In such legislation, the declaration should be modified substantially to conform with the specific circumstances. In some such legislation the declaration could be limited to paragraph 7.

5. If some other title is given to the official who supervises banking institutions or if a new office is to be created to administer the small loan law, substitute the appropriate title of the administrative official.

6. If the department that supervises banking institutions is known by another name or if a new agency is to be created to administer the small loan law, substitute the appropriate name.

7. If there is no usury law in the state, it is suggested that the words "10 per cent per annum" be inserted at this point. Otherwise, the words "the interest that the lender would be permitted by law to charge for a loan of money if he were not a licensee under this Act" are recommended. If there is only one interest statute of general application, the maximum percentage rate so fixed may be substituted, but the more general language would usually be preferable even under this circumstance because of the possibility of subsequent changes in the general maximum interest rate or of subsequent exemptions and exceptions.

8. Industrial banking companies or similar institutions known by various other names in a number of states should be included in the list of exempted agencies when such enterprises operate under a

statute which establishes a valid classification of loans, which fixes maximum charges at a level appropriate to the type of business to be done, and which provides adequate protection to borrowers against over-reaching by lenders.

9. Local considerations may require changes in or elaboration of the nature of the crime or of its penalties or of both.

10. The fixed minimum capital requirement may be advantageously replaced under some circumstances by a graduated requirement based on size of city. The following graduation is suggested: In places of more than 100,000 population, \$30,000; in places of 30,000 to 100,000 population, \$20,000; and in places of less than 30,000 population, \$10,000.

11. For the words "city and town," it will be necessary in some states to substitute "municipality" and other terms appropriate to the system of nomenclature employed within the state.

12. Special treatment will be necessary in many states to authorize the Commissioner to require attendance of witnesses. In some states such power cannot be so delegated.

13. In some states, this language will require modification to conform with established procedure.

14. This paragraph is not intended to prevent licensees from taking and recording valid judgments and should be drawn in accordance with the requirements of local law so as to avoid such a result.

15. The maximum rate given here is recommended for purposes of initial legislation in states which lack regulatory small loan laws.

Experience with various maximum rates in a large number of jurisdictions makes it clear that it is no longer desirable to recommend a specific rate or any specific combination of rates for all states. The initial rate or rates in any small loan law should be reconsidered after a reasonable period of experience. The distribution of population, the character and stability of the principal industries in urban areas, local statutes and traditions affecting the security and means of enforcement available to licensees, the extent and nature of unlicensed lending, if any, and the nature of the service and availability of other types of lending agencies all have a bearing upon the most desirable maximum rate. These factors, as well as costs and profits revealed by licensees' reports, and the rate experience of other states in which conditions are similar should be studied in recommending changes.

The initial rate recommended here is known as a "combination rate." It has long been recognized that percentage costs of lending vary with the size of the loan, and the combination rate has the advantage of permitting a smooth downward graduation as loans increase in size beyond a certain level. The so-called "step rate" also permits rates to be related to the size of loans (for instance, a maximum rate of  $3\frac{1}{2}\%$  a month on loans of \$50 or less,  $3\%$  a month on loans of \$50.01 to \$100, and  $2\frac{1}{2}\%$  a month on loans of more than \$100). While the step rate has the important advantage of greater clarity and simplicity when applied to individual contracts, it has two disadvantages: (1) It creates absurdities at the margins (for instance, under the step rate example given above \$60 could be borrowed at less cost than \$50 and \$120 could be borrowed more cheaply than \$100) and (2) it can be abused by refinancing as the loan is repaid and the outstanding balance is reduced to the level at which a higher rate would be permitted for a new loan. These two disadvantages are primarily responsible for a general preference for the combination rate.

A flat maximum rate, say, of  $2\frac{1}{2}\%$  per month on unpaid balances on all sizes of loans is the most clearly intelligible to borrowers, most readily calculable, and most easily enforced by the supervisory authority. Whenever such a rate can be established without restricting the availability of loans of very small sums, it is to be preferred to other maximum rate structures.

16. This sentence should be eliminated wherever a single maximum rate applying to all loans is used.

17. In states where existing licensees are engaged in liquidating receivables of merchants and professional persons by lending at moderate rates to the debtor on the security of the merchant's or professional person's endorsement, it may be desirable to add the following proviso: "provided, however, that if the proceeds of any loan



of \$300 or less are used to discharge a pre-existing debt of the borrower for goods or services owed directly to the person who provided such goods or services, the licensee may accept from such person a guaranty of payment of the principal of such loan with interest at a rate not exceeding \_\_\_\_\_ and the acceptance of one or more such guaranties in any aggregate amount shall not affect the rights of such licensee to make the charges against the borrower authorized by section 13 of this Act."

Where the grant of permission to conduct both a sales finance business and a small loan business in the same office is contemplated under section 12, a further proviso excluding instalment sales contracts from the limitations upon total indebtedness may be desirable.

18. The intent of this section is to limit the rights of licensees with respect to wage assignments rather than to provide rights which are not otherwise available. If assignments of earned or unearned wages are further restricted under existing statutes, this section should be redrawn to conform with such statutes.

19. This section should be revised to conform with the standards, precedents, and practices of each state.

20. Here cite any existing regulatory small loan act similar in principle to this law.