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RUSSELL SAGE FOUNDATION

S M A L L L O A N S E R I E S

ANNOTATIONS ON SMALL LOAN LAWS

Based on the Sixth Draft of the
Uniform Small Loan Law.

BY

F. B. HUBACHEK

OF THE CHICAGO BAR



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FOREWORD

THE law of small loans, like the law of many other fields, has two parts—the statutes themselves and the interpretations given to them by the courts.

The texts of small loan laws are generally available. They have been published in state session laws and general statutes, and may usually be had in pamphlet form. They have also been assembled in a single volume.¹ But up to the present time, the judicial law of small loans has not been compiled. Comprehensive knowledge of the subject has, therefore, been limited to a few attorneys whose practice has demanded close attention to decisions in this field.

The urgent need for a broad analysis of judicial decisions and opinions involving small loan laws has been demonstrated in many ways. As these decisions have increased in number and complexity, more and more requests for information concerning them have been addressed to the Department of Remedial Loans of the Russell Sage Foundation by public administrators, legislators, and social agencies; and the response has been less and less adequate. More important, perhaps, are the dangers to small loan legislation which arise from the lack of adequate annotations for the use of prosecutors and the legal profession as a whole. In recent years there has been an increase in the use of devices for evading small loan laws. These devices could be more easily combatted if the controlling decisions were more readily available. There is also the risk of unfortunate decisions with respect to the validity of small loan laws.

¹ Camalier, Renah F., *Digest of Personal Finance Laws*, American Association of Personal Finance Companies, Washington, D. C., 1932. This volume includes the texts of small loan laws as of June 1, 1932. It is understood that the Association expects in the near future to publish a revised edition which will include additional statutes and amendments enacted in the interim.

FOREWORD

The constitutionality of modern small loan legislation rests upon broad principles, but these principles involve certain niceties of application. Since the plea of unconstitutionality is frequently raised as a defense in minor cases, it is important that the pertinent decisions and opinions be available to the legal profession generally.

In 1935 F. B. Hubachek, feeling the need in his own work for an analysis of this nature, expressed his willingness to undertake the preparation of annotations on small loan laws for publication by the Russell Sage Foundation. His suggestion was accepted with alacrity. No one is better qualified than he to undertake this task. His association with the law of small loans together with that of his father, Frank R. Hubachek, covers the period during which all modern small loan laws have been enacted. From 1909 to 1927, Frank R. Hubachek, as counsel for a small loan company, was associated directly or indirectly with the preparation of most of the legislation and with much of the litigation which form the subject matter of this volume. Since 1922, F. B. Hubachek has come to occupy a position with respect to small loan legislation and litigation similar to that which his father held. For ten years he has been chairman of the law committee of the American Association of Personal Finance Companies. His law firm represents Household Finance Corporation, which is engaged in business under the small loan laws of many states.

It was planned at first to publish this study as a pamphlet which would deal only with cases specifically involving small loan laws. However, as the work progressed, the desirability of a more complete and symmetrical treatment became apparent. The Foundation wished to make the study as useful as possible to prosecutors, to state officials supervising the small loan business, to legal aid societies, and to other agencies interested in the protection of borrowers. The author has, therefore, introduced more extensive comment,

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cross references, cases from collateral fields, a discussion of evasions, and supplementary appendices.

This is essentially a legal reference book. Responsibility for the interpretation of cases and for statements having purely legal significance lies solely with the author. He has purposely minimized expressions of opinion on matters of social policy. Where such expressions seemed to be necessary, however, they have been made after consultation with the Department of Remedial Loans and have its endorsement.

Mr. Hubachek has used the Sixth Draft of the Uniform Small Loan Law as the basis for organizing his material. This has seemed desirable in spite of the fact that the publication of a Seventh Draft is contemplated in the near future—first, because these annotations deal with the interpretation of existing statutes and, second, because the changes contemplated in the new draft are not substantial and do not modify the philosophy of the law.

It seems necessary, however, to call attention to one of these changes in order that certain passages of this volume may be read in their correct light. Section 13 of the Sixth Draft grants to licensed lenders the special right to charge "interest" at a rate materially exceeding the general maximum contract rate. But in sweeping language this section also denies licensees the right to make any additional charges whatsoever, even though such charges might be allowed under the principles of law as *bona fide* expenses, clearly distinguishable from interest within the usual and customary meaning of that word. Thus the word "interest" has come to have two meanings. In relation to licensed lenders, it has included all sums which the borrower may be required to pay; while in relation to other lenders, it may and frequently does include only a part of the charges borne by the borrower. The use of the word in the Uniform Law has, therefore, tended to exaggerate the true extent of the special

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right granted to licensees, in comparison with the rights and practices of other lending agencies. In order to avoid this dual definition of interest and the misconceptions to which it gives rise, the word "charges" will be substituted for the word "interest" in Section 13 and in other sections which refer to the maximum rate permitted licensees.

The rate section of each draft of the Uniform Law has required licensees to state their charges in terms of a monthly percentage rate, or monthly percentage rates, which must be all-inclusive. The purposes were to compel disclosure of the full costs of borrowing in the clearest and most unequivocal terms, to stimulate competitive reductions, to prevent acceleration of the borrower's burden in case of default, to facilitate supervision, and to eliminate all questions of additional charges from the field of litigation. It will be noted that the substitution of the word "charges" for the word "interest" changes neither the principles nor the purposes of the Uniform Law.

ROLF NUGENT, *Director*,
Department of Consumer
Credit Studies¹
Russell Sage Foundation

¹ Formerly the Department of Remedial Loans. The name was changed on February 1, 1938 in recognition of the broadened scope of the department's activities. Because Mr. Hubachek's manuscript was prepared before the change in name occurred and because of the long association of the department under its former title with the subject matter of this volume, the department will be referred to in the text as the Department of Remedial Loans.

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INTRODUCTION

INTRODUCTION

PURPOSE, SCOPE, AND ARRANGEMENT

OF the many fields which have been affected by social legislation since the turn of the century, none has been more strikingly changed than that of small loans.

From early Biblical times until about 1900 the prevailing social policy with respect to the control of interest rates did not distinguish between the lending of small and large sums of money. Restrictions imposed on maximum charges for the use of money permitted lending in large amounts, but in practice prohibited lending in small amounts. Because of the high proportionate expense and the risks involved in loans of small sums, they were not commercially profitable at the conventional interest maximums. The futility of this policy was ultimately demonstrated by the social evils which gradually developed. With the expansion of machine production, masses of people crowded into industrial areas and became dependent on wages for subsistence. Both the incomes and necessities of these wage earners were irregular and their financial emergencies created a demand for loans of small sums for short periods. This demand was supplied at illegal and extremely high rates of charge by a business which came into existence about 1880 and grew with amazing rapidity.¹

Beginning in 1908 and 1909 with the publication by the Russell Sage Foundation of studies of lending on chattel mortgages and wage assignments,² the philosophy of control began to change. A new policy began to appear, which was permissive and regulatory. It permitted lenders, when specially licensed, to charge higher rates for small loans than were permitted for other loans, subjected them

¹ For elaboration of the origin of the small loan business and its social and economic causes see Robinson and Nugent, *Regulation of the Small Loan Business*, Russell Sage Foundation, New York, 1935, Chs. II and III.

² Wassam, Clarence W., *The Salary Loan Business in New York City*, Russell Sage Foundation, New York, 1908.

Ham, Arthur H., *The Chattel Loan Business*, Russell Sage Foundation, New York, 1909.

to public supervision, to positive requirements designed to prevent abuses, and to severe penalties for infraction of these regulations. In the last analysis the objective of the new policy was the opening of the field of small loans to legitimate commercial enterprise. It was anticipated that competition among lenders would eliminate the illegal lender, and would determine proper charges for various classes of loans within the regulated field.

Thirty-three states now have in effect comprehensive small loan laws based in varying degrees upon this new philosophy.¹ Under them the small loan business has increased in size, in economic importance, and in social significance. Its growth has brought new problems of increasing complexity for many groups, not the least of which has been the legal profession. The judicial mills have produced a substantial grist of decisions concerned with the validity of small loan laws, their interpretation, and their application to specific facts. As yet no comprehensive treatment of these decisions has been made available.

The number of persons and agencies interested in small loan law from various viewpoints has also grown enormously. Among them are the courts which are being called upon more and more frequently to resolve questions of small loan law; lawyers and laymen concerned with drafting new legislation, to whom judicial interpretations of language are of primary importance; officials charged with the supervision of the small loan business; prosecutors engaged in enforcing small loan laws; legal aid societies; professional and lay students of the small loan field; and lawyers representing lenders and borrowers. It is to these groups that this work is addressed.

To understand the scope and arrangement of the volume and to interpret the cases treated, it is essential to know something of the historical background of modern small loan legislation. The best available exposition of this development is contained in an earlier

¹ See Appendix D for citations of the current and prior small loan laws of these thirty-three states. Among these are listed five states with laws differing radically from the Uniform Small Loan Law and four with laws which establish so low a maximum rate of charge for licensees that they are practically inoperative. Several state statutes relating to small loan laws are not included because they are not sufficiently comprehensive in scope. The District of Columbia and the Territory of Hawaii are included among the thirty-three states listed.

volume of the Small Loan Series.¹ Three periods are described: an experimental period from 1898 to 1910, during which rudimentary regulatory statutes of diverse character were enacted; a coordinating period from 1910 to 1916, during which the general form and philosophy of an effective regulatory law were evolved from the lessons of the experimental period; and the period of the Uniform Small Loan Law, from 1916 to the present, during which many comprehensive regulatory laws, based on the model drafts, were enacted.

The legislation of the third period has been patterned with varying degrees of fidelity upon one or another of the drafts of the Uniform Small Loan Law which have been recommended by the Department of Remedial Loans of the Russell Sage Foundation. But even before the formal recommendation of the first draft in 1916 the principles which were later incorporated in the Uniform Law had been applied to legislation in five large industrial states—Massachusetts, New Jersey, New York, Ohio, and Pennsylvania. In spite of important differences between these early laws and the Uniform drafts, many of their provisions were similar and their philosophy of control was almost identical. It is not inaccurate, therefore, to refer to the last quarter century as the period of modern small loan legislation, in the sense that the important small loan laws enacted during this period were based on the philosophy of permission and regulation embodied in the Uniform drafts.

This volume is intended primarily for the use of persons concerned with small loan legislation of the modern period. However, several important cases cited in the annotations involve enactments of the earlier experimental period. Some of these enactments contained one or more provisions closely resembling those which later appeared in the Uniform Small Loan Law. Although these early statutes were fragmentary in comparison with the highly developed modern laws, the cases cited which involved them laid the foundations for subsequent controlling decisions of broad significance. Cases involving laws enacted during the coordinating period

¹ Gallert, Hilborn, and May, *Small Loan Legislation*, Russell Sage Foundation, New York, 1932.

See also Robinson and Nugent, *Regulation of the Small Loan Business*, Russell Sage Foundation, New York, 1935, Chs. IV, V, and VI.

(1910–1916) have, of course, even more direct bearing on the development of this body of law.

The field defined by the term “small loan laws” is necessarily somewhat vague. Statutes within the field differ greatly in scope, structure, and objectives, a fact which makes it difficult to classify the cases which involve these laws. To meet this difficulty, the cases have been arranged with respect to the text of the sixth draft of the Uniform Small Loan Law¹ which provides a convenient outline for that purpose.

However useful this method of arrangement may be, it has possibilities of misinterpretation. It should be borne constantly in mind that a heterogeneous mass of statutory material is being annotated. The Uniform Small Loan Law does not exist as a statute. It is merely a model form of an act, the precise provisions of which have not been adopted in their entirety by any state. Some of its provisions are necessarily so general that few states could enact them without material changes. It was intended that the recommended drafts would be adapted to the legal setting within each state as well as to the opinions of legislatures on matters of public policy.

Nevertheless, the Uniform Small Loan Law is the best common denominator upon which to organize the cases relating to this divergent statutory material. The philosophy of this model act and the method of regulation which it utilizes have been the dominating influences in modern small loan legislation. The great majority of existing comprehensive small loan laws conform to it in principle and substance. In most of them the sequence and language of the material provisions also follow the model. Few of the significant enactments fail to show the influence of the model on their philosophy, form, or language.

In the classifying of cases other problems arise from changes in the Uniform Small Loan Law itself. Since the original draft was recommended, five revisions have been made, reflecting the increased knowledge of the small loan business and the changing

¹ See final paragraphs of the FOREWORD for an explanation of the change of wording to be proposed for the seventh draft of the Uniform Small Loan Law, in relation to the maximum rate permitted licensees.

problems of its regulation. Small loan acts have tended to conform to the draft of the Uniform Law which was recommended at the time of enactment. The modifications introduced by the successive drafts, however, have consisted of amplifications and refinements rather than changes in principle. There has been no change in the philosophy and basic method of regulation. Accordingly, many cases which involve laws based on early drafts continue to be valid precedents applicable to subsequent drafts. Statutes enacted during the coordinating period and those based on early drafts of the Uniform Law have been frequently amended and revised. These changes have brought the acts more closely into line with the later drafts.¹ At present the sixth draft has more of substance which is common to existing small loan laws than any of the earlier drafts.

The first, second, and third drafts of the Uniform Small Loan Law differ chiefly in section numbering, phraseology, and minor provisions. The fourth draft extended the limitation on the size of loans to include contingent liabilities, required licensees to accept prepayments, and brought the purchase of wages for \$300 or less within the regulation of the law. The fifth draft made changes in many details and greatly broadened the discretionary powers of the licensing official with respect to the granting and revocation of licenses, the issuance of rules and regulations, and the determination of questions of fact. In the sixth draft the maximum rate of charge permitted licensees was changed.² Because of the similarity between the first three drafts and between the fifth and sixth drafts, the texts of the first, fourth, and sixth drafts only are given in Appendices A, B, and C.

The differences between the current state small loan acts must also be carefully noted in interpreting and applying the cases. Although it may consist of only a few words, the legal significance of

¹ See Appendix E, CHRONOLOGICAL CLASSIFICATION OF SMALL LOAN LAWS AND THEIR RELATION TO THE UNIFORM SMALL LOAN LAW.

See also Camalier, *Digest of Personal Finance Laws*, American Association of Personal Finance Companies, Washington, D. C., 1932, which contains the texts of small loan laws as of June 1, 1932.

² See final paragraphs of the FOREWORD for an explanation of the change of wording to be proposed for the seventh draft of the Uniform Small Loan Law, in relation to the maximum rate permitted licensees.

a deviation may be great. Differences must also be analyzed in the light of local facts. Because of differing local conditions a classification created by the exemption of certain lenders may be valid in one state but invalid in another. In considering any case the provisions of the particular small loan law and the facts involved must be analyzed in order to apply the holding intelligently to any other small loan law or to another set of facts. The provisions of the particular section of the sixth draft of the Uniform Small Loan Law under which a case is cited in Part II may or may not have been contained in the small loan law before the court in that case.

Modern small loan laws also differ materially in the effectiveness with which they accomplish their purposes. Laws having permissive rates of charge so low that lenders do not elect to do business under them are practically inoperative and of little social benefit.¹ No effort is made in the annotations to differentiate between operative and inoperative small loan laws. Although the rate of charge permitted to licensees is a vital practical feature of modern small loan laws, the commercial inadequacy of a permitted rate of charge is of little or no legal significance.

The provisions of modern small loan laws which have been before the courts and are apt to come before them again involve a broad range of substantive law. Questions of validity lie principally within the field of constitutional law and some of the relevant principles of constitutional law have been enunciated only in cases which do not involve small loan laws. The interpretation of the regulatory provisions similarly requires knowledge of collateral fields of law in which cases involving small loan laws may not exist. A symmetrical or exhaustive treatment of the entire field of small loan law would require the inclusion of many cases on such allied subjects. The scope of this volume, however, does not permit extensive excursions into collateral fields. Its principal purpose is to assist in finding the important judicial decisions which directly involve small loan laws. Cases from beyond that limited field have been cited

¹ For a discussion of the maximum rate of charge, see Robinson and Nugent, *Regulation of the Small Loan Business*, Russell Sage Foundation, New York, 1935, Ch. VI, pp. 122-132, and Ch. XII. See also Appendix C, Note 14.

only with reference to a few subjects so closely related that it was felt essential to provide authorities. Most of the collateral cases are cited in Part II, under COMMENT, and in Part III, which relates to evasions of statutory interest limitations generally. The cases were selected as illustrative or because of some feature deemed valuable in the particular context; many are not leading cases and the citations are by no means exhaustive.

The principal classification of cases involving small loan laws is presented in Part II where the cases are grouped, as already explained, according to the subject matter of the twenty-seven sections and title of the sixth draft. Its sections thus serve as an indexing plan for the classification of the cases which involve similar provisions of the several state small loan laws. Such cases do not necessarily involve small loan laws which contain a comprehensive scheme of regulation, but they do involve laws which have in substance provisions in common with the Uniform Small Loan Law on the point for which the case is cited.

In Part I is presented a secondary classification of certain small loan cases which require different arrangement because of the breadth or nature of their holdings. In the first two divisions are grouped cases which enunciate principles too broad for accurate segregation under one or more sections of the sixth draft. In the third division cases on the constitutionality of small loan laws are separately classified according to the jurisdictions in which they were decided and the constitutional provisions invoked.

Part III deals with evasions of statutory interest limitations generally. This subject is so closely related to small loan law that a brief discussion of it, supported by illustrative cases, is deemed essential to supplement the more specific annotations. Most of the cases there cited do not involve small loan laws.

Because of difficulties inherent in the organization and indexing of the diverse body of cases cited in Part II, most of the sections of that Part include two subdivisions which are in the nature of footnotes to the provisions of the section of the law which is involved. The subdivision Earlier Drafts will serve to identify, in a very gen-

eral way, the characteristics of the law which was before the court in any particular case cited. The subdivision Related Provisions contains cross references to other sections of the Uniform Small Loan Law which are germane to the section involved or which supplement it. It is important to note that these cross references may also be used in finding cases, treated under other sections of the law, which are related to the subject matter involved in the same way that the provisions of the sections themselves are interrelated. In addition to these cross references under Related Provisions, there are cross references under the CASES subdivisions which refer specifically to other case classifications.

The cases cited in Parts I and II are believed to include all the decisions of American courts of last resort, reported prior to January 1, 1938, which directly involve small loan laws.¹ A number of such decisions by intermediate appellate courts and a few decisions of trial courts are also treated.

Certain terms and phrases which are used in the text are intended to have special meanings:

The term "Uniform Small Loan Law" includes either the sixth draft of the model law or one of the prior drafts, according to the context.

When a "small loan law" is referred to it is intended to mean a law having a scheme of regulation designed to apply, or applied in fact, to the commercial lending of small sums of money.

The words "maximum contract rate" are used to mean the maximum interest rate prescribed in the general statutes of a state and which have general application to all loans and lenders not specifically excluded. Interest limitations applicable to special classes of loans or lenders and statutes prescribing the rate of interest to be

¹ The following table shows the state of the National Reporter System (West Publishing Company, St. Paul) on December 31, 1937:

<i>Reporter</i>	<i>Volume</i>	<i>Page</i>	<i>Reporter</i>	<i>Volume</i>	<i>Page</i>
Atl.	195	367	So.	177	312
Pac. (2d)	73	1408	N. Y. S.	300	384
N. E. (2d)	11	544	Fed. (2d)	92	737
N. W.	276	256	Fed. Supp.	21	129
S. E.	193	927	Sup. Ct.	58	272
S. W. (2d)	110	408			

borne by judgments and by contracts in the absence of agreement by the parties are not taken into account in the use of this phrase.

The words "rate permitted licensees" are used to mean the maximum rate of charge which a lender licensed under a small loan law is permitted to exact for a small loan.

The words "rate permitted non-licensees" are used to mean the maximum rate of charge which a lender who is not licensed under a small loan law is permitted to exact. In most states this would be the maximum contract rate, but in states which have statutes fixing different interest limitations for different classes of loans or lenders the phrase would have varying meanings.

In addition to the customary abbreviations, in citations and elsewhere, the following are used:

Cam.—Camalier, Digest of Personal Finance Laws, American Association of Personal Finance Companies, Washington, D. C., 1932.
U.S.L.L.—Uniform Small Loan Law.

When a case has been reported under more than one title it is cited in the text by the principal title used in the official report and the other titles are listed in the TABLE OF CASES AND CITATIONS with a cross reference to the principal title and the words "same citation."

Unconsolidated companion cases, with brief or memorandum opinions, are not cited in the text, except in Part I under CASES ON CONSTITUTIONALITY, CLASSIFIED BY STATES, but each is listed in the TABLE OF CASES AND CITATIONS with its own citation and a cross reference to the title of the principal case.

The holdings of each case are stated in only enough detail to indicate whether it should be studied in connection with a given question. Comment and opinion are restricted to those deemed necessary in order to interpret the decisions and relate them to each other in an adequate setting.

As this volume is intended for the use of laymen familiar with the field as well as for lawyers, compromises have been made with professional precedents in matters of typography, arrangement, and diction. It is offered as a reference work—not a textbook.

PART I
GENERAL ANNOTATIONS

PART I

GENERAL ANNOTATIONS

PURPOSE AND INTERPRETATION OF SMALL LOAN LAWS

Courts have frequently taken cognizance of the underlying purposes of small loan laws as the first step in resolving questions of their validity or interpretation. The weight of authority gives recognition to the remedial nature of such laws and requires interpretation of their provisions liberally in favor of the borrower. This is an application of the well established rule that statutes conferring special privileges on a class which are not available to all must be construed strictly against those to whom the privileges are granted.¹

CASES

The small loan law is remedial in purpose; it is to be liberally construed in favor of the borrower and so as to effectuate such remedial purpose, *Reagan v. District of Columbia*, (1914) 41 App. D. C. 409, Cam. 186, *writ of error denied* (U. S. Sup. Ct. 1914); *Winnick v. Aetna Acceptance Co.*, (1934) 275 Ill. App. 438; *Liberty Finance Co. v. Catterton*, (1932) 161 Md. 650, 158 Atl. 16, Cam. 422; *Cash Service Co. v. Ward*, (W. Va. 1937) 192 S. E. 344;

and it has been said that such a law is to be strictly construed and the ordinary rules pertaining to usury are not applicable. *Platz v. Lapinski*, (1933) 263 Mich. 240, 248 N. W. 607.

The small loan law was enacted for the purpose of protecting the weak and oppressed from the strong and powerful. *Solomon v. Dunne*, (1932) 264 Ill. App. 415.

Its purpose is to protect needy borrowers of small sums, *Liberty Finance Co. v. Catterton*, (1932) 161 Md. 650, 158 Atl. 16, Cam. 422,

¹ Black, *Interpretation of Laws*, second edition, West Publishing Company, St. Paul, 1911, Section 138, page 476.

and to furnish them with an opportunity to borrow. *G. Nicotera Loan Corp. v. Gallagher*, (1932) 115 Conn. 102, 160 Atl. 426; *Westville & Hamden Loan Co. v. Pasqual*, (1929) 109 Conn. 110, 145 Atl. 758, Cam. 142.

Its purpose is not to limit the profits of lenders but to relieve the burdens of indigent borrowers. *Davis Loan Co. v. Blanchard*, (1930) 14 La. App. 671, 129 So. 413, Cam. 373, *rehearing denied*, (1930) 130 So. 472.

"The object of the law is not to regulate the rate of interest, but, on the contrary, is to regulate the business of making loans of small sums of money to wage earners and salaried people, and the provision as to the rate of interest is only inserted as one of the incidents of such regulation." *People v. Stokes*, (1917) 281 Ill. 159, 174, 118 N. E. 87, Cam. 277.

The only practical method of dealing with the evils caused by the business of "money loan sharks" is proper regulation, not prohibition. *Commonwealth v. Puder*, (1918) 261 Pa. 129, 104 Atl. 505, Cam. 858, *aff'g* (1917) 67 Pa. Super. Ct. 11.

"Laws enacted to guard against unreasonable rates of interest are laws against oppression, and should be favorably regarded, as they always have been favored by the common law of England." *Eaker v. Bryant*, (1914) 24 Cal. App. 87, 94, 140 Pac. 310, Cam. 93, *review denied* (Cal. Sup. Ct. 1914).

For opinions in which the courts advert generally to the evils at which the small loan law is directed, and in some instances take judicial notice thereof, see: *In re Home Discount Co.*, (D. C. Ala. 1906) 147 Fed. 538, Cam. 27; *State v. Wickenhoefer*, (Del. Ct. of Gen. Sess., 1906) 6 Penne. 120, 64 Atl. 273, Cam. 162; *People v. Stokes*, (1917) 281 Ill. 159, 118 N. E. 87, Cam. 277; *Ravitz v. Steurele*, (1934) 257 Ky. 108, 77 S. W. (2d) 360; *Davis Loan Co. v. Blanchard*, (1930) 14 La. App. 671, 129 So. 413, Cam. 373, *rehearing denied*, (1930) 130 So. 472; *Palmore v. Baltimore & Ohio R. R.*, (1928) 156 Md. 4, 142 Atl. 495,

Cam. 425; *Liberty Finance Co. v. Catterton*, (1932) 161 Md. 650, 158 Atl. 16, Cam. 422; *Althaus v. State*, (1916) 99 Neb. 465, 156 N. W. 1038, Cam. 569; *London Realty Co. v. Riordan*, (1913) 207 N. Y. 264, 100 N. E. 800, Ann. Cas. 1914C 408, Cam. 672, *aff'g* (1912) 148 App. Div. 854, 133 N. Y. S. 595; *Dunn v. State*, (1930) 122 Ohio St. 431, 172 N. E. 148, Cam. 775, *aff'g* (1930) 36 Ohio App. 170, 173 N. E. 22, *appeal dismissed and cert. denied*, *Dunn v. Ohio*, (1930) 282 U. S. 801, 51 Sup. Ct. 84, 75 L. ed. 721; *State v. Ware*, (1916) 79 Ore. 367, 154 Pac. 905, Cam. 824, *rehearing denied*, (1916) 79 Ore. 377, 155 Pac. 364; *Commonwealth v. Puder*, (1918) 261 Pa. 129, 104 Atl. 505, Cam. 858, *aff'g* (1917) 67 Pa. Super. Ct. 11; *Cotton v. Cooper*, (Tex. Com. App. 1919) 209 S. W. 135, Cam. 946, *aff'g* (Tex. Civ. App. 1913) 160 S. W. 597; *Sweat v. Commonwealth*, (1929) 152 Va. 1041, 148 S. E. 774, Cam. 999; *State v. Sherman*, (1909) 18 Wyo. 169, 105 Pac. 299, 27 L. R. A. (N. S.) 898, Ann. Cas. 1912C 819.

WHO MAY QUESTION CONSTITUTIONALITY

Under the controlling principles of constitutional law the constitutionality of a small loan law can be properly challenged only by one whose rights are adversely affected by the provision attacked.

CASES

One convicted of lending money on security in violation of a small loan law regulating the business of lending on security cannot challenge the constitutionality of the act on the ground that it discriminates against one class and favors another class of borrowers. *Cavanaugh v. People*, (1916) 61 Colo. 292, 157 Pac. 200.

One who had not secured a license under a small loan law could not question the constitutionality of a discretionary grant of power to the licensing official to revoke licenses. *Wessell v. Timberlake*, (1916) 95 Ohio St. 21, 116 N. E. 43, Ann. Cas. 1918B 402, Cam. 778.

A person not prosecuted under Section 18 of the Louisiana Small Loan Law cannot challenge the constitutionality of that section on the ground that it violates the provision of the state constitution requiring laws to embrace but one object and have a title indicative thereof. *State v. Hill*, (1929) 168 La. 761, 123 So. 317, 69 A. L. R. 574, Cam. 377.

One not subjected to search or called upon to give evidence against himself cannot challenge the constitutionality of the provisions granting the licensing official powers in those respects. *State v. Hill*, (1929) 168 La. 761, 123 So. 317, 69 A. L. R. 574, Cam. 377.

A person convicted of lending sums in excess of \$300 without a license, in violation of the California Personal Property Brokers' Act, cannot challenge the constitutionality of the act on the ground that permitting brokers who lend sums of \$300 or less to charge interest at the rate of $3\frac{1}{2}$ per cent a month on such loans violates the constitutional provisions requiring laws of a general nature to have uniform operation and forbidding the grant of privileges and immunities to any citizen or class of citizens not granted to all upon the same terms. *In re Halck*, (1932) 215 Cal. 500, 11 Pac. (2d) 389.

In spite of the fact that defendants were charged with operating a small loan business without having obtained a license, the Florida court said that "having the benefit of the statute, they cannot challenge the validity of the provision requiring the license to be obtained." *Jannett v. Windham*, (1933) 109 Fla. 129, 130, 147 So. 296, 153 So. 784, *aff'd*, *Jannett v. Hardie*, (1933) 290 U. S. 602, 54 Sup. Ct. 345, 78 L. ed. 529.

CASES ON CONSTITUTIONALITY

The constitutionality of small loan legislation has been challenged on many grounds, including the due process, equal protection, and privileges and immunities clauses of the Fourteenth Amendment of the Federal Constitution and corresponding provisions of the sev-

eral state constitutions, as well as those which require uniformity of operation and which prohibit or limit local or special laws.

Regardless of which of these constitutional provisions is invoked against a small loan law, the basic question is whether the classifications effected are reasonable. In most of the cases the reasonableness of the classification with respect to the size of the loan, the rate of interest, or the exemptions has been involved. Such cases are treated primarily under the appropriate sections in Part II. Cases passing on classifications with respect to size of loan and rate of interest are treated under Section 1 of the law and with respect to exemptions under Section 20. Most of these cases are cited also in this division of Part I under both the jurisdiction involved and the constitutional provisions invoked.

The basic constitutional restraints on small loan regulation have been described as follows¹:

This control of the natural rights of property is subject, however, to those reservations contained in the various bills of rights and in certain provisions of many of the state constitutions which, in substance, declare that all men are equal in their rights; that none shall have exclusive privileges; that all laws shall be general and uniform in their operation; and that no special law shall be passed regulating the rate of interest on money.

Upon such control of natural property rights by state governments various restraints are also imposed by the federal Constitution, the particular restraint important here being the Fourteenth Amendment, which provides:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

This amendment operates upon the states alone, while the Fifth Amendment similarly restrains action by Congress, by providing that "no person . . . shall be deprived of life, liberty or property, without due process of law."

¹ For a general discussion of the principles governing the constitutionality of small loan legislation, see Hubachek, Frank R., *The Constitutionality of Small Loan Legislation*, Russell Sage Foundation, New York, 1931 (included as Ch. VIII on Constitutionality in Gallert, Hilborn, and May, *Small Loan Legislation*, Russell Sage Foundation, New York, 1932).

In addition there are other constitutional restrictions which may affect the validity of small loan laws in varying degrees. Primarily, they concern only the details of the acts, as distinguished from their essential validity. These constitutional restrictions include those relating to search and seizure, self-incrimination, impairment of the obligation of contract, the delegation of powers, and title requirements.

CASES CLASSIFIED BY STATES

CONSTITUTIONALITY UPHELD

Laws patterned after the Uniform Small Loan Law or resembling it in one or more essential respects have been sustained against attack on various constitutional grounds.

UNITED STATES. *In re Home Discount Co.*, (D. C. Ala. 1906) 147 Fed. 538, Cam. 27; *Morgan v. Georgia*, (1930) 281 U. S. 691, 50 Sup. Ct. 238, 74 L. ed. 1120, Cam. 223, *dismissing appeal from Morgan v. Lowry*, (1929) 168 Ga. 723, 149 S. E. 37, Cam. 221; *Dunn v. Ohio*, (1930) 282 U. S. 801, 51 Sup. Ct. 84, 75 L. ed. 721, *dismissing appeal and denying cert. to review Dunn v. State*, (1930) 122 Ohio St. 431, 172 N. E. 148, Cam. 775; *Jannett v. Hardie*, (1933) 290 U. S. 602, 54 Sup. Ct. 345, 78 L. ed. 529, *aff'g Jannett v. Windham*, (1933) 109 Fla. 129, 147 So. 296, 153 So. 784; *National Accounting Co. v. Dorman*, (D. C. Ky. 1935) 11 Fed. Supp. 872, *aff'd*, (1935) 295 U. S. 718, 55 Sup. Ct. 835, 79 L. ed. 1673.

ALABAMA. *In re Home Discount Co.*, (D. C. Ala. 1906) 147 Fed. 538, Cam. 27; *Bullard Investment Co. v. Ford*, (1921) 18 Ala. App. 167, 89 So. 837; *Ex parte Alabama Brokerage Co.*, (1922) 208 Ala. 242, 94 So. 87, *denying cert. to review Alabama Brokerage Co. v. Boston*, (1922) 18 Ala. App. 495, 93 So. 289.

CALIFORNIA. *Eaker v. Bryant*, (1914) 24 Cal. App. 87, 140 Pac. 310, Cam. 93, *review denied* (Cal. Sup. Ct. 1914); *In re Halck*, (1932) 215 Cal. 500, 11 Pac. (2d) 389; *Beneficial Loan Soc. v. Haight*, (1932) 215 Cal. 506, 11 Pac. (2d) 857. But compare

Ex parte Sohncke, (1905) 148 Cal. 262, 82 Pac. 956, 113 Am. St. Rep. 236, 2 L. R. A. (N. S.) 813, 7 Ann. Cas. 475. Note also in Part II, SECTIONAL ANNOTATIONS, Section 1, the constitutional cases cited under Special California Issues.

COLORADO. *Cavanaugh v. People*, (1916) 61 Colo. 292, 157 Pac. 200; *Warner v. People*, (1922) 71 Colo. 559, 208 Pac. 459, Cam. 118; *Rice v. Franklin Loan & Finance Co.*, (1927) 82 Colo. 163, 258 Pac. 223, Cam. 119; *Waddell v. Traylor*, (1937) 99 Colo. 576, 64 Pac. (2d) 1273; *Bown v. Traylor*, (1937) 99 Colo. 586, 64 Pac. (2d) 1277. But compare *Gronert v. People*, (1934) 95 Colo. 508, 37 Pac. (2d) 396; *Furlong v. People*, (1934) 95 Colo. 571, 37 Pac. (2d) 1119; also *Waddell v. Traylor*, *supra*, and *Bown v. Traylor*, *supra*, which involved the titles of two small loan laws, one of which was held to be defective and the other valid.

DELAWARE. *State v. Wickenhoefer*, (Del. Ct. of Gen. Sess., 1906) 6 Penne. 120, 64 Atl. 273, Cam. 162.

DISTRICT OF COLUMBIA. *Newman v. United States ex rel. Prender*, (1913) 41 App. D. C. 37, 41 Wash. L. R. 734, *writ of error dismissed*, (1915) 238 U. S. 642, 35 Sup. Ct. 602, 59 L. ed. 1502; *Reagan v. District of Columbia*, (1914) 41 App. D. C. 409, Cam. 186, *writ of error denied* (U. S. Sup. Ct. 1914).

FLORIDA. *Edwards v. State*, (1911) 62 Fla. 40, 56 So. 401; *Jannett v. Windham*, (1933) 109 Fla. 129, 147 So. 296, 153 So. 784, *aff'd*, *Jannett v. Hardie*, (1933) 290 U. S. 602, 54 Sup. Ct. 345, 78 L. ed. 529; *Beasley v. Cahoon*, (1933) 109 Fla. 106, 147 So. 288.

GEORGIA. *King v. State*, (1911) 136 Ga. 709, 71 S. E. 1093, Cam. 223, *opinion of Ct. of App. after reply to certified question*, (1911) 9 Ga. App. 714, 72 S. E. 176; *Badger v. State*, (1922) 154 Ga. 443, 114 S. E. 635, Cam. 228; *Morgan v. Lowry*, (1929) 168 Ga. 723, 149 S. E. 37, Cam. 221, *appeal dismissed*, *Morgan v. Georgia*, (1930) 281 U. S. 691, 50 Sup. Ct. 238, 74 L. ed. 1120, Cam. 223; *Morgan v. Shepherd*, (1930) 171 Ga. 33, 154

S. E. 780; *Family Finance Co. v. Allman*, (1932) 174 Ga. 467, 163 S. E. 143, Cam. 234; *Cole v. Franklin Plan Co.*, (1933) 176 Ga. 561, 168 S. E. 261.

ILLINOIS. *People v. Stokes*, (1917) 281 Ill. 159, 118 N. E. 87, Cam. 277; *Harbison v. Stamer*, (1917) 281 Ill. 450, 118 N. E. 94, Cam. 285.

KENTUCKY. *Ravitz v. Steurele*, (1934) 257 Ky. 108, 77 S. W. (2d) 360; *National Accounting Co. v. Dorman*, (D. C. Ky. 1935) 11 Fed. Supp. 872, *aff'd*, (1935) 295 U. S. 718, 55 Sup. Ct. 835, 79 L. ed. 1673.

LOUISIANA. *State v. Hill*, (1929) 168 La. 761, 123 So. 317, 69 A. L. R. 574, Cam. 377. But compare *State v. Jackson*, (1915) 137 La. 741, 69 So. 158.

MARYLAND. *Palmore v. Baltimore & Ohio R. R.*, (1928) 156 Md. 4, 142 Atl. 495, Cam. 425.

MASSACHUSETTS. *Commonwealth v. Morris*, (1900) 176 Mass. 19, 56 N. E. 896; *Dewey v. Richardson*, (1910) 206 Mass. 430, 92 N. E. 708.

MISSOURI. *Ex parte Berger*, (1905) 193 Mo. 16, 90 S. W. 759, 3 L. R. A. (N. S.) 530, 112 Am. St. Rep. 472, 5 Ann. Cas. 383. But compare *Sherrill v. Brantley*, (1933) 334 Mo. 497, 66 S. W. (2d) 529.

NEBRASKA. *Althaus v. State*, (1916) 99 Neb. 465, 156 N. W. 1038, Cam. 569. But compare *Althaus v. State*, (1913) 94 Neb. 780, 144 N. W. 799.

NEW JERSEY. *Richmond v. Conservative Credit System of N. J.*, (Sup. Ct. 1931) 10 N. J. Misc. R. 14, 157 Atl. 446, *rev'd on other grounds*, (1933) 110 N. J. Law 73, 164 Atl. 563.

NEW YORK. *People v. Blumenthal*, (Sup. Ct. 1936) 157 N. Y. Misc. R. 943, 284 N. Y. S. 873; *Gregg v. Personal Finance Co. of N. Y.*, (Sup. Ct. 1937) 298 N. Y. S. 266.

NORTH CAROLINA. *State v. Davis*, (1911) 157 N. C. 648, 73 S. E. 130, 39 L. R. A. (N. S.) 136.

OHIO. *Sanning v. Cincinnati*, (1909) 81 Ohio St. 142, 90 N. E. 125, 25 L. R. A. (N. S.) 686; *Wessell v. Timberlake*, (1916) 95 Ohio St. 21, 116 N. E. 43, Ann. Cas. 1918B 402, Cam. 778; *Dunn v. State*, (1930) 122 Ohio St. 431, 172 N. E. 148, Cam. 775, *aff'g* (1930) 36 Ohio App. 170, 173 N. E. 22, *appeal dismissed and cert. denied*, *Dunn v. Ohio*, (1930) 282 U. S. 801, 51 Sup. Ct. 84, 75 L. ed. 721; *State ex rel. Downing v. Powers*, (1932) 125 Ohio St. 108, 180 N. E. 647; see *Ohio Loan Co. v. Kletecka*, (1934) 47 Ohio App. 514, 515, 192 N. E. 182.

OREGON. *State v. Ware*, (1916) 79 Ore. 367, 154 Pac. 905, Cam. 824, *rehearing denied*, (1916) 79 Ore. 377, 155 Pac. 364; *Wrenn v. Portland Loan Co.*, (1937) 155 Ore. 395, 64 Pac. (2d) 520.

PENNSYLVANIA. *Commonwealth v. Puder*, (1918) 261 Pa. 129, 104 Atl. 505, Cam. 858, *aff'g* (1917) 67 Pa. Super. Ct. 11; *Wheeler v. Remedial Loan Co.*, (1918) 261 Pa. 139, 104 Atl. 508, *aff'g* (1917) 67 Pa. Super. Ct. 21. But compare *Commonwealth v. Young*, (1915) 248 Pa. 458, 94 Atl. 141, Cam. 852, *rev'g* (1914) 57 Pa. Super. Ct. 521.

TENNESSEE. *Koen v. State*, (1931) 162 Tenn. 573, 39 S. W. (2d) 283, Cam. 916. But compare *Spicer v. King Bros. & Co.*, (1916) 136 Tenn. 408, 189 S. W. 865, Cam. 932.

TEXAS. *Brand v. State*, (1927) 109 Tex. Crim. Rep. 96, 3 S. W. (2d) 439; *Hubbard v. State*, (1928) 109 Tex. Crim. Rep. 320, 4 S. W. (2d) 971, Cam. 945. But compare *Juhan v. State*, (1918) 86 Tex. Crim. Rep. 63, 216 S. W. 873.

VIRGINIA. *Sweat v. Commonwealth*, (1929) 152 Va. 1041, 148 S. E. 774, Cam. 999.

WEST VIRGINIA. *Cash Service Co. v. Ward*, (W. Va. 1937) 192 S. E. 344.

WISCONSIN. *State ex rel. Ornstine v. Cary*, (1905) 126 Wis. 135, 105 N. W. 792, 11 L. R. A. (N. S.) 174; *Fahringer v. State*, (1912) 148 Wis. 291, 134 N. W. 406.

WYOMING. *State v. Sherman*, (1909) 18 Wyo. 169, 105 Pac. 299, 27 L. R. A. (N. S.) 898, Ann. Cas. 1912C 819.

CONSTITUTIONALITY DENIED

Laws embodying one or more features of the Uniform Small Loan Law but differing from it in material respects have been held unconstitutional.

CALIFORNIA. *Ex parte Sohncke*, (1905) 148 Cal. 262, 82 Pac. 956, 113 Am. St. Rep. 236, 2 L. R. A. (N. S.) 813, 7 Ann. Cas. 475. (Law involved was an early one enacted prior to the publication of any of the drafts of the Uniform Small Loan Law.)

COLORADO. *Gronert v. People*, (1934) 95 Colo. 508, 37 Pac. (2d) 396; *Furlong v. People*, (1934) 95 Colo. 571, 37 Pac. (2d) 1119; *Waddell v. Traylor*, (1937) 99 Colo. 576, 64 Pac. (2d) 1273; *Bown v. Traylor*, (1937) 99 Colo. 586, 64 Pac. (2d) 1277. (Each case involved law with defective title.)

LOUISIANA. *State v. Jackson*, (1915) 137 La. 741, 69 So. 158. (Case involved law with defective title.)

MISSOURI. *Sherrill v. Brantley*, (1933) 334 Mo. 497, 66 S. W. (2d) 529. (Case involved law with defective title.)

NEBRASKA. *Althaus v. State*, (1913) 94 Neb. 780, 144 N. W. 799. (Law involved was an early one enacted prior to the publication of any of the drafts of the Uniform Small Loan Law.)

PENNSYLVANIA. *Commonwealth v. Young*, (1915) 248 Pa. 458, 94 Atl. 141, Cam. 852, *rev'g* (1914) 57 Pa. Super. Ct. 521. (Law involved contained no limitation on the size of the loans.)

TENNESSEE. *Spicer v. King Bros. & Co.*, (1916) 136 Tenn. 408, 189 S. W. 865, Cam. 932. (Law involved was an early one

enacted prior to the publication of any of the drafts of the Uniform Small Loan Law.)

TEXAS. *Juhan v. State*, (1918) 86 Tex. Crim. Rep. 63, 216 S. W. 873. (Law involved differed in essential respects from the Uniform Small Loan Law and invalidity was based on certain provisions, coupled with the bond requirement, which are not in the Uniform Small Loan Law.)

WASHINGTON. *Acme Finance Co. v. Huse*, (Wash. 1937) 73 Pac. (2d) 341 [Petition for rehearing pending. ED.]. (Law as passed differed materially from the Uniform Small Loan Law and Governor's veto of certain sections rendered it unworkable.)

CASES CLASSIFIED BY CONSTITUTIONAL PROVISIONS¹

It is clearly within the police power of the state to limit the rate of interest on money. In the leading case of *Griffith v. Connecticut*, (1910) 218 U. S. 563, 569, 31 Sup. Ct. 132, 54 L. ed. 1151, *aff'g State v. Griffith*, (1910) 83 Conn. 1, 74 Atl. 1068, the court said: "It is elementary that the subject of the maximum amount to be charged by persons or corporations subject to the jurisdiction of a State for the use of money loaned within the jurisdiction of the State is one within the police power of such State."

Regulation of the small loan business is likewise within the police power of the state, *Cavanaugh v. People*, (Colo.) *supra*; *State v. Wickenhoefer*, (Del.) *supra*; *People v. Stokes*, (Ill.) *supra*; *Althaus v. State*, (Neb. 1916) *supra*; *Richmond v. Conservative Credit System of N. J.*, (N. J.) *supra*; *People v. Blumenthal*, (N. Y.) *supra*; *Sanning v. Cincinnati*, (Ohio) *supra*; *Wessell v. Timberlake*, (Ohio) *supra*; *State ex rel. Downing v. Powers*, (Ohio) *supra*; *Hubbard v. State*, (Tex.) *supra*; *State v. Sherman*, (Wyo.) *supra*; see *Juhan v. State*, (Tex.) *supra*;

¹ Under each of the constitutional provisions set forth there are cited only the cases in which the court specifically mentioned the provision in question. This excludes many cases which might properly be cited in support of the law but in which the court does not refer specifically in the opinion to the constitutional provision. The first two propositions refer to a constitutional principle rather than constitutional provisions.

and of course this proposition is implicit in every case sustaining the constitutionality of a small loan law.

Small loan laws or important provisions thereof have been held not to violate the federal due process clause in the following cases: *Eaker v. Bryant*, (Cal.) *supra*; *Warner v. People*, (Colo.) *supra*; *State v. Wickenhoefer*, (Del.) *supra*; *King v. State*, (Ga.) *supra*; *Badger v. State*, (Ga.) *supra*; *Morgan v. Lowry*, (Ga.) *supra*; *People v. Stokes*, (Ill.) *supra*; *Ravitz v. Steurele*, (Ky.) *supra*; *National Accounting Co. v. Dorman*, (D. C. Ky.) *supra*; *State v. Hill*, (La.) *supra*; *Ex parte Berger*, (Mo.) *supra*; *Richmond v. Conservative Credit System of N. J.*, (N. J.) *supra*; *Gregg v. Personal Finance Co. of N. Y.*, (N. Y.) *supra*; *State v. Davis*, (N. C.) *supra*; *Dunn v. State*, (Ohio) *supra*; *Wessell v. Timberlake*, (Ohio) *supra*; *Sweat v. Commonwealth*, (Va.) *supra*; *State v. Sherman*, (Wyo.) *supra*.

Small loan laws or important provisions thereof have been held not to violate the federal equal protection clause in the following cases: *Warner v. People*, (Colo.) *supra*; *State v. Wickenhoefer*, (Del.) *supra*; *Jannett v. Windham*, (Fla.) *supra*; *Beasley v. Cahoon*, (Fla.) *supra*; *King v. State*, (Ga.) *supra*; *Badger v. State*, (Ga.) *supra*; *Family Finance Co. v. Allman*, (Ga.) *supra*; *Cole v. Franklin Plan Co.*, (Ga.) *supra*; *People v. Stokes*, (Ill.) *supra*; *Ravitz v. Steurele*, (Ky.) *supra*; *National Accounting Co. v. Dorman*, (D. C. Ky.) *supra*; *State v. Hill*, (La.) *supra*; *Ex parte Berger*, (Mo.) *supra*; *Althaus v. State*, (Neb. 1916) *supra*; *Gregg v. Personal Finance Co. of N. Y.*, (N. Y.) *supra*; *State v. Davis*, (N. C.) *supra*; *Wessell v. Timberlake*, (Ohio) *supra*; *Dunn v. State*, (Ohio) *supra*; *Koen v. State*, (Tenn.) *supra*; *Sweat v. Commonwealth*, (Va.) *supra*; *State v. Sherman*, (Wyo.) *supra*. But compare *Acme Finance Co. v. Huse*, (Wash.) *supra*.

Small loan laws or important provisions thereof have been held not to violate the federal privileges and immunities clause in the following cases: *Eaker v. Bryant*, (Cal.) *supra*; *People v. Stokes*, (Ill.)

supra; *Wessell v. Timberlake*, (Ohio) *supra*; *Dunn v. State*, (Ohio) *supra*; *State v. Ware*, (Ore.) *supra*.

Small loan laws or important provisions thereof have been held not to violate one or more provisions of the several state constitutions similar to the foregoing three clauses of the Fourteenth Amendment in the following cases: *Eaker v. Bryant*, (Cal.) *supra*; *In re Halck*, (Cal.) *supra*; *Warner v. People*, (Colo.) *supra*; *State v. Wickenhoefer*, (Del.) *supra*; *Beasley v. Cahoon*, (Fla.) *supra*; *King v. State*, (Ga.) *supra*; *Badger v. State*, (Ga.) *supra*; *Morgan v. Lowry*, (Ga.) *supra*; *Family Finance Co. v. Allman*, (Ga.) *supra*; *People v. Stokes*, (Ill.) *supra*; *Ravitz v. Steurele*, (Ky.) *supra*; *Ex parte Berger*, (Mo.) *supra*; *Gregg v. Personal Finance Co. of N. Y.*, (N. Y.) *supra*; *Wessell v. Timberlake*, (Ohio) *supra*; *Dunn v. State*, (Ohio) *supra*; *Koen v. State*, (Tenn.) *supra*; *State v. Sherman*, (Wyo.) *supra*. But compare *Ex parte Sohncke*, (Cal.) *supra*; *Spicer v. King Bros. & Co.*, (Tenn.) *supra*; *Juhan v. State*, (Tex.) *supra*; *Acme Finance Co. v. Huse*, (Wash.) *supra*.

Small loan laws have been held not to violate state constitutional provisions effecting prohibitions of or limitations on local or special laws: *Warner v. People*, (Colo.) *supra*; *Beasley v. Cahoon*, (Fla.) *supra*; *King v. State*, (Ga.) *supra*; *Badger v. State*, (Ga.) *supra*; *People v. Stokes*, (Ill.) *supra*; *Ravitz v. Steurele*, (Ky.) *supra*; *State v. Hill*, (La.) *supra*; *Althaus v. State*, (Neb. 1916) *supra*; *Gregg v. Personal Finance Co. of N. Y.*, (N. Y.) *supra*; *Wrenn v. Portland Loan Co.*, (Ore.) *supra*; *Commonwealth v. Puder*, (Pa.) *supra*; *State v. Sherman*, (Wyo.) *supra*. But compare *Althaus v. State*, (Neb. 1913) *supra*; *Commonwealth v. Young*, (Pa.) *supra*.

Small loan laws have been held not to impair the obligation of contracts. *Warner v. People*, (Colo.) *supra*; *Richmond v. Conservative Credit System of N. J.*, (N. J.) *supra*; *Cash Service Co. v. Ward*, (W. Va.) *supra*.

It has also been held that the small loan law does not violate a constitutional provision that no conviction shall work forfeiture of estate, *Badger v. State*, (Ga.) *supra*;

or one guaranteeing the right to acquire, possess, and protect property. *Warner v. People*, (Colo.) *supra*.

A provision of the California Personal Property Brokers' Act was held invalid on the ground that it conflicted with an initiative measure. *Beneficial Loan Soc. v. Haight*, (Cal.) *supra*.

An early Massachusetts act licensing and regulating the business of lending \$200 or less was held not to be void for vagueness or indefiniteness. *Commonwealth v. Morris*, (Mass.) *supra*.

Small loan laws have been held not to be repugnant to state constitutional provisions requiring separation of governmental powers.

Badger v. State, (Ga.) *supra*; *Morgan v. Lowry*, (Ga.) *supra*;

People v. Stokes, (Ill.) *supra*; *Ravitz v. Steurele*, (Ky.) *supra*;

Commonwealth v. Puder, (Pa.) *supra*.

It has been held that under the Ohio constitution the legislature may delegate to municipalities the power to regulate chattel mortgage and salary loan brokers. *Sanning v. Cincinnati*, (Ohio) *supra*.

A prior Illinois Small Loan Law was held not to violate a provision of the state constitution requiring that an act which amends another act must set out the amended act in full, against the contention that it amended the general interest act, on the ground that the small loan law was not an interest act but one regulating the business of making small loans. *People v. Stokes*, (Ill.) *supra*; compare *Koen v.*

State, (Tenn.) *supra*.

PART II

SECTIONAL ANNOTATIONS

PART II

SECTIONAL ANNOTATIONS¹

Based on the text of the Sixth Draft of Uniform
Small Loan Law, as revised January 1, 1935.

TITLE

of Sixth Draft of Uniform Small Loan Law.

Form of the Title

An act to define, license, and regulate the business of making loans or advancements in the amount or of the value of three hundred dollars (\$300) or less, secured or unsecured, at a greater rate of interest than per centum (. . . . %) per annum [maximum contract rate—See COMMENT below], prescribing the rates of interest and charges therefor and penalties for the violation thereof, regulating the assignment of wages or salaries, earned or to be earned, when given as security for any such loan or as consideration for a payment of three hundred dollars (\$300) or less, providing for the administration of this Act and for the issuance of rules and regulations therefor, authorizing the making of examinations and investigations and the publication of reports thereof, providing for a review of decisions and findings of the [specified licensing official] under this Act and to repeal [specified acts] and to repeal all acts

¹ As explained more fully in the INTRODUCTION, the annotations in Part II are arranged according to the title and the 27 sections of the sixth draft of Uniform Small Loan Law, which is a model act recommended by the Department of Remedial Loans of the Russell Sage Foundation. The enacted small loan laws differ widely in wording and substance from drafts of the model act and the six drafts of the latter which have been recommended since 1916 differ from each other. Consequently the reader must bear in mind constantly that the provisions of the section, as reprinted at the opening of each sectional annotation, constitute the text of the latest model act only, and that it may differ materially from the corresponding text of any small loan law which is now in effect or which was before the court in any cited case.

See final paragraphs of the FOREWORD for an explanation of the change of wording to be proposed for the seventh draft of the Uniform Small Loan Law, in relation to the maximum rate permitted licensees.

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.

Earlier Drafts

In the first four drafts the title was shorter. In the fifth draft the title was entirely rewritten and expanded to include references to the substance of Section 16 (wage purchases), the powers of administration, rule-making, examination, and publication of reports, and the provisions for judicial review. The only material change in the title of the sixth draft from that of the fifth draft is the rewording of the reference to the repeal section.

COMMENT

At the point indicated in the title the small loan laws contain either a stated percentage, which is usually the maximum contract rate of interest, or the clause "the lender would be permitted by law to charge if he were not a licensee hereunder." This figure or clause appears in the title and Sections 1, 15, and 18 of the sixth draft. The clause amounts to a formula which reaches the same result as a specific figure. The formula has two advantages over a figure: it applies more accurately if special interest rates are fixed by statute for special circumstances and it provides automatically for future changes in the maximum contract rate of interest. Use of the clause instead of a stated percentage was first recommended in the fifth draft.

The licensing official designated is usually the chief administrative official of the state having charge of banks and banking. Certain states have, however, designated the officials in charge of insurance, securities, trade and commerce, and similar matters. Some states have created special departments or bureaus of established departments for the administration of their small loan laws.

Variations in the constitutional requirements of the states as to titles of acts and in the judicial interpretation thereof have resulted

in corresponding differences in the titles of small loan laws. Some states have no constitutional requirements as to title.

CASES

Many small loan laws have been attacked on the ground that their titles did not comply with the constitutional requirements of the state involved. These constitutional provisions, however phrased, require in effect that an act relate to but one subject which must be expressed in its title. Small loan laws have been sustained against such attacks in the following cases: *In re Halck*, (1932) 215 Cal. 500, 11 Pac. (2d) 389; *Cavanaugh v. People*, (1916) 61 Colo. 292, 157 Pac. 200; *Warner v. People*, (1922) 71 Colo. 559, 208 Pac. 459, Cam. 118; *Rice v. Franklin Loan & Finance Co.*, (1927) 82 Colo. 163, 258 Pac. 223, Cam. 119; *Waddell v. Traylor*, (1937) 99 Colo. 576, 64 Pac. (2d) 1273; *King v. State*, (1911) 136 Ga. 709, 71 S. E. 1093, Cam. 223, *opinion of Ct. of App. after reply to certified question*, (1911) 9 Ga. App. 714, 72 S. E. 176; *Badger v. State*, (1922) 154 Ga. 443, 114 S. E. 635, Cam. 228; *Morgan v. Lowry*, (1929) 168 Ga. 723, 149 S. E. 37, Cam. 221, *appeal dismissed*, *Morgan v. Georgia*, (1930) 281 U. S. 691, 50 Sup. Ct. 238, 74 L. ed. 1120, Cam. 223; *Morgan v. Shepherd*, (1930) 171 Ga. 33, 154 S. E. 780; *People v. Stokes*, (1917) 281 Ill. 159, 118 N. E. 87, Cam. 277; *Ravitz v. Steurele*, (1934) 257 Ky. 108, 77 S. W. (2d) 360; *State v. Hill*, (1929) 168 La. 761, 123 So. 317, 69 A. L. R. 574, Cam. 377; *Richmond v. Conservative Credit System of N. J.*, (Sup. Ct. 1931) 10 N. J. Misc. R. 14, 157 Atl. 446, *rev'd on other grounds*, (1933) 110 N. J. Law 73, 164 Atl. 563; *State v. Ware*, (1916) 79 Ore. 367, 154 Pac. 905, Cam. 824, *rehearing denied*, (1916) 79 Ore. 377, 155 Pac. 364; *Wrenn v. Portland Loan Co.*, (1937) 155 Ore. 395, 64 Pac. (2d) 520; *Commonwealth v. Puder*, (1918) 261 Pa. 129, 104 Atl. 505, Cam. 858, *aff'g* (1917) 67 Pa. Super. Ct. 11; *Koen v. State*, (1931) 162 Tenn. 573, 39 S. W. (2d) 283, Cam. 916; see *Spicer v. King Bros. & Co.*, (1916) 136 Tenn. 408, 189 S. W. 865, Cam. 932.

The opposite result was reached in cases where the title or the act

deviated in material respects from the recommended form. *Gronert v. People*, (1934) 95 Colo. 508, 37 Pac. (2d) 396; *Waddell v. Traylor*, (1937) 99 Colo. 576, 64 Pac. (2d) 1273; *State v. Jackson*, (1915) 137 La. 741, 69 So. 158; *Sherrill v. Brantley*, (1933) 334 Mo. 497, 66 S. W. (2d) 529.

The title of the Tennessee Small Loan Law complies with the constitutional requirement that acts repealing, reviving, or amending former laws recite in their captions the title or substance of laws repealed, revived, or amended. *Koen v. State*, (1931) 162 Tenn. 573, 39 S. W. (2d) 283, Cam. 916.

The following are typical of the contentions which have been unsuccessfully advanced:

That the title contained insufficient notice of the provision for criminal punishment of one lending without a license, but the court held that the word "penalties" was sufficient notice, *Commonwealth v. Puder*, (1918) 261 Pa. 129, 104 Atl. 505, Cam. 858, *aff'g* (1917) 67 Pa. Super. Ct. 11;

That the act applied to single loan transactions although the title referred to engaging in the business of lending, *Rice v. Franklin Loan & Finance Co.*, (1927) 82 Colo. 163, 258 Pac. 223, Cam. 119; *People v. Stokes*, (1917) 281 Ill. 159, 118 N. E. 87, Cam. 277;

That the administration of the act by the licensing official was not mentioned in the title, *In re Halck*, (1932) 215 Cal. 500, 11 Pac. (2d) 389; *State v. Ware*, (1916) 79 Ore. 367, 154 Pac. 905, Cam. 824, *rehearing denied*, (1916) 79 Ore. 377, 155 Pac. 364; *Wrenn v. Portland Loan Co.*, (1937) 155 Ore. 395, 64 Pac. (2d) 520;

That the business of lending \$300 or less and the business of purchasing wages for \$300 or less are separate and distinct subjects of the act. *State v. Hill*, (1929) 168 La. 761, 123 So. 317, 69 A. L. R. 574, Cam. 377.

For cases involving amendment and repeal by implication, see Section 25.

See also cases under ENACTING CLAUSE.

ENACTING CLAUSE

The enacting clause, in the several drafts of Uniform Small Loan Law, is left to be written according to the requirements of each state.

COMMENT

Cases involving the legislative and executive procedure of enactment contain nothing peculiar to small loan laws. However, certain cases involving the enactment of small loan laws are cited.

CASES

The Colorado Small Loan Law of 1919 violated a constitutional provision that no bill be amended during its passage so as to change its original purpose because, as introduced, the purpose of the bill was to license and regulate the business of making loans of \$300 or less at more than 12 per cent a year while, as passed, it in effect prohibited such business. *Gronert v. People*, (1934) 95 Colo. 508, 37 Pac. (2d) 396.

The Tennessee small loan bill was held to have become a law, although the Governor attempted to veto it, because it was not returned with the veto within five days after its presentment to him, as required by the constitution. *State ex rel. Thompson v. Dixie Finance Co.*, (1925) 152 Tenn. 306, 278 S. W. 59, Cam. 924.

See also cases under TITLE.

SECTION 1

of Sixth Draft of Uniform Small Loan Law.

LICENSE: Required to engage in business of lending amounts of \$300 or less at more than maximum contract rate.

PROVISIONS OF THE SECTION

SEC. 1. No person, co-partnership, association, or corporation shall engage in the business of making loans of money, credit, goods, or things in action in the amount or of the value of three hundred dollars (\$300) or less and charge, contract for, or receive on any such loan a greater rate of interest, discount, or consideration therefor than per centum (. . . . %) per annum [maximum contract rate—See COMMENT below] except as authorized by this Act and without first obtaining a license from the [specified licensing official] hereinafter called the Commissioner.

Related Provisions

For maximum charge permitted licensees on loans of \$300 or less, see Section 13.

For maximum charge permitted licensees on loans exceeding \$300, see Section 15.

For maximum charge permitted non-licensees on any loan of \$300 or less, see Section 18.

For provisions governing application for license, see Sections 2 and 3.

For requirements for issuance and revocation of licenses, see Sections 4 and 9, respectively.

For general requirements as to conduct of licensee's business and relations of licensee with borrowers, see Sections 12 and 14.

For requirements as to form of note, see Section 12.

For Commissioner's visitorial powers, see Sections 10 and 11.

For Commissioner's powers regarding regulations, findings, and orders, see Section 21.

For lenders exempted from the act, see Section 20.

For status of licensees under prior act, see Section 23.

For criminal and civil penalties for violation, see Section 19.

Earlier Drafts

In the first draft Section 1 applied to one who "shall make any loan"; in all subsequent drafts Section 1 applies to one who "shall engage in the business of making loans." The words "whether secured or unsecured" appeared in the first draft but not in subsequent drafts. In the fifth and sixth drafts first appear the words "discount, or consideration" after the word "interest."

COMMENT

At the point indicated in the section the small loan laws contain either a stated percentage, which is usually the maximum contract rate of interest, or the clause "the lender would be permitted by law to charge if he were not a licensee hereunder." This figure or clause appears in the title and Sections 1, 15, and 18 of the sixth draft. The clause amounts to a formula which reaches the same result as a specific figure. The formula has two advantages over a figure: it applies more accurately if special interest rates are fixed by statute for special circumstances and it provides automatically for future changes in the maximum contract rate of interest. Use of the clause instead of a stated percentage was first recommended in the fifth draft.

The licensing official designated is usually the chief administrative official of the state having charge of banks and banking. Certain states have, however, designated the officials in charge of insurance, securities, trade and commerce, and similar matters. Some states have created special departments or bureaus of established departments for the administration of their small loan laws.

Section 1 creates the classification according to the size of the loan upon which the law is based. Accordingly, the cases on the general subject of classification are noted under this section, except those specifically concerned with exemptions from the scope of the law, which are noted under Section 20. Several of these cases are also included in the GENERAL ANNOTATIONS of Part I because of the breadth or character of their holdings.

Small loan legislation has not always been based on a classifica-

tion by the size of the loan. The Ohio Small Loan Law of 1915 contained no limitation on the size of the loans covered by it. In that form it was upheld in 1916. In 1929 it was amended by limiting to \$300 the amount of indebtedness upon which a licensee could charge more than 8 per cent a year interest. The present Nebraska Act, enacted in 1915, contains no limitation on the size of the loan and it was upheld in 1916. An earlier Pennsylvania Small Loan Law, containing no such limitation, was held invalid for that reason.

Section 1 applies only to engaging in the business of making the loans described while Section 18 applies to a single transaction. This distinction should be borne in mind in interpreting the cases cited and applying them to an instant case.

The fundamental principles upon which all regulatory small loan laws rest are established by cases which do not involve small loan laws. The following collateral cases will serve as introductions to a study of the propositions for which they are cited:

The subject of the maximum amount which may be charged for the use of money is within the police power of the state. *Griffith v. Connecticut*, (1910) 218 U. S. 563, 31 Sup. Ct. 132, 54 L. ed. 1151, *aff'g State v. Griffith*, (1910) 83 Conn. 1, 74 Atl. 1068.

The mere size of monetary transactions may afford a valid basis for classification in regulatory statutes. *Mutual Loan Co. v. Martell*, (1911) 222 U. S. 225, 32 Sup. Ct. 74, 56 L. ed. 175, Ann. Cas. 1913B 529, Cam. 461, *aff'g* (1909) 200 Mass. 482, 86 N. E. 916, 43 L. R. A. (N. S.) 746, 128 Am. St. Rep. 446; *Engel v. O'Malley*, (1911) 219 U. S. 128, 31 Sup. Ct. 190, 55 L. ed. 128, *aff'g* (D. C. N. Y. 1910) 182 Fed. 365.

A system of regulation is not rendered invalid by the fact that it is optional and grants benefits to those who elect to come within it and imposes burdens on those who do not, thereby discriminating between those within and without the regulation. *Middleton v. Texas Power & Light Co.*, (1919) 249 U. S. 152, 39 Sup. Ct. 227, 63 L. ed. 527, *aff'g* (1916) 108 Tex. 96, 185 S. W. 556, and *Hawkins v. Bleakley*, (1916) 243 U. S. 210, 37 Sup. Ct. 255, 61 L. ed. 678, *aff'g* (D. C. Iowa 1914) 220 Fed. 378 (involving workmen's compensation laws); *Assaria State Bank v. Dolley*, (1911) 219

U. S. 121, 31 Sup. Ct. 189, 55 L. ed. 123, *aff'g* (C. C. Kan. 1909) 175 Fed. 365 (involving bank deposit guarantee act).

For analytical statements of the principles of classification, see *Lindsley v. Natural Carbonic Gas Co.*, (1911) 220 U. S. 61, 31 Sup. Ct. 337, 55 L. ed. 369, *aff'g* (C. C. N. Y. 1909) 170 Fed. 1023; *Barbier v. Connolly*, (1885) 113 U. S. 27, 5 Sup. Ct. 357, 28 L. ed. 923; *State ex rel. Board of Courthouse & City Hall Com'rs v. Cooley*, (1893) 56 Minn. 540, 58 N. W. 150.

For a general discussion of the constitutionality of small loan legislation, see *The Constitutionality of Small Loan Legislation*.¹

For references to certain means, independent of small loan laws, of suppressing illegal moneylending, see COMMENT under Section 19.

CASES ON CONSTITUTIONALITY

Classification

License Requirement

Special California Issues

Classification

Classification based upon the size of the loan is valid. *In re Home Discount Co.*, (D. C. Ala. 1906) 147 Fed. 538, Cam. 27; *State v. Wickenhoefer*, (Del. Ct. of Gen. Sess., 1906) 6 Penne. 120, 64 Atl. 273, Cam. 162; *Edwards v. State*, (1911) 62 Fla. 40, 56 So. 401; *Cole v. Franklin Plan Co.*, (1933) 176 Ga. 561, 168 S. E. 261; *People v. Stokes*, (1917) 281 Ill. 159, 118 N. E. 87, Cam. 277; *Ravitz v. Steurele*, (1934) 257 Ky. 108, 77 S. W. (2d) 360; *State v. Hill*, (1929) 168 La. 761, 123 So. 317, 69 A. L. R. 574, Cam. 377; *Wrenn v. Portland Loan Co.*, (1937) 155 Ore. 395, 64 Pac. (2d) 520; *Commonwealth v. Puder*, (1918) 261 Pa. 129, 104 Atl. 505, Cam. 858, *aff'g* (1917) 67 Pa. Super. Ct. 11; *State v. Sherman*, (1909) 18 Wyo. 169, 105 Pac. 299, 27 L. R. A. (N. S.) 898, Ann. Cas. 1912C 819. But compare *Ex parte Sobncke*, (1905) 148 Cal. 262, 82 Pac. 956,

¹ Hubachek, Frank R., *The Constitutionality of Small Loan Legislation*, Russell Sage Foundation, New York, 1931 (included also as Ch. VIII in *Small Loan Legislation* by Gallert, Hilborn, and May, Russell Sage Foundation, New York, 1932).

113 Am. St. Rep. 236, 2 L. R. A. (N. S.) 813, 7 Ann. Cas. 475; *Althaus v. State*, (1913) 94 Neb. 780, 144 N. W. 799.

Similar laws have been sustained in the absence of such a classification. *Eaker v. Bryant*, (1914) 24 Cal. App. 87, 140 Pac. 310, Cam. 93, review denied (Cal. Sup. Ct. 1914); *Cavanaugh v. People*, (1916) 61 Colo. 292, 157 Pac. 200; *Althaus v. State*, (1916) 99 Neb. 465, 156 N. W. 1038, Cam. 569; *Wessell v. Timberlake*, (1916) 95 Ohio St. 21, 116 N. E. 43, Ann. Cas. 1918B 402, Cam. 778. Contra: *Commonwealth v. Young*, (1915) 248 Pa. 458, 94 Atl. 141, Cam. 852, rev'g (1914) 57 Pa. Super. Ct. 521.

The classification resulting from the discrimination in interest rates permitted to be charged by licensed and unlicensed lenders is valid.

Family Finance Co. v. Allman, (1932) 174 Ga. 467, 163 S. E. 143, Cam. 234; *Cole v. Franklin Plan Co.*, (1933) 176 Ga. 561, 168 S. E. 261; *People v. Stokes*, (1917) 281 Ill. 159, 118 N. E. 87, Cam. 277; *Ravitz v. Steurele*, (1934) 257 Ky. 108, 77 S. W. (2d) 360; *Althaus v. State*, (1916) 99 Neb. 465, 156 N. W. 1038, Cam. 569; *State ex rel. Downing v. Powers*, (1932) 125 Ohio St. 108, 180 N. E. 647; compare *State v. Wickenhoefer*, (Del. Ct. of Gen. Sess., 1906) 6 Penne. 120, 64 Atl. 273, Cam. 162.

Classifications based upon the nature of the security have been held to be valid. *National Accounting Co. v. Dorman*, (D. C. Ky. 1935) 11 Fed. Supp. 872, aff'd, (1935) 295 U. S. 718, 55 Sup. Ct. 835, 79 L. ed. 1673; *Edwards v. State*, (1911) 62 Fla. 40, 56 So. 401; *Ravitz v. Steurele*, (1934) 257 Ky. 108, 77 S. W. (2d) 360; *Eaker v. Bryant*, (1914) 24 Cal. App. 87, 140 Pac. 310, Cam. 93, review denied (Cal. Sup. Ct. 1914); *State v. Davis*, (1911) 157 N. C. 648, 73 S. E. 130, 39 L. R. A. (N. S.) 136; *State ex rel. Downing v. Powers*, (1932) 125 Ohio St. 108, 180 N. E. 647. But compare *Althaus v. State*, (1913) 94 Neb. 780, 144 N. W. 799; *Spicer v. King Bros. & Co.*, (1916) 136 Tenn. 408, 189 S. W. 865, Cam. 932; *Ex parte Sohcncke*, (1905) 148

Cal. 262, 82 Pac. 956, 113 Am. St. Rep. 236, 2 L. R. A. (N. S.) 813, 7 Ann. Cas. 475.

Classifications which result from confining the operation of a small loan law to the more populous areas of the state have been held to be valid, *State v. Wickenhoefer*, (Del. Ct. of Gen. Sess., 1906) 6 Penne. 120, 64 Atl. 273, Cam. 162; *Beasley v. Cahoon*, (1933) 109 Fla. 106, 147 So. 288. Contra: *Spicer v. King Bros. & Co.*, (1916) 136 Tenn. 408, 189 S. W. 865, Cam. 932; and small loan laws containing such limitations have been upheld against attack on constitutional grounds although the opinions do not advert to the point. *Jannett v. Windham*, (1933) 109 Fla. 129, 147 So. 296, 153 So. 784, *aff'd*, *Jannett v. Hardie*, (1933) 290 U. S. 602, 54 Sup. Ct. 345, 78 L. ed. 529; *In re Home Discount Co.*, (D. C. Ala. 1906) 147 Fed. 538, Cam. 27; *Bullard Investment Co. v. Ford*, (1921) 18 Ala. App. 167, 89 So. 837; *Ex parte Alabama Brokerage Co.*, (1922) 208 Ala. 242, 94 So. 87, *denying cert. to review Alabama Brokerage Co. v. Boston*, (1922) 18 Ala. App. 495, 93 So. 289.

License Requirement

The requirement that a license be procured as a condition to engaging in the small loan business is valid. *In re Halck*, (1932) 215 Cal. 500, 11 Pac. (2d) 389, followed in *Beneficial Loan Soc. v. Haight*, (1932) 215 Cal. 506, 11 Pac. (2d) 857; *Cavanaugh v. People*, (1916) 61 Colo. 292, 157 Pac. 200; *Dewey v. Richardson*, (1910) 206 Mass. 430, 92 N. E. 708.

Special California Issues

The course of small loan legislation in California has been radically different from that in any other state, largely because of the classification "Personal Property Brokers," the initiative usury measure of 1918, and the constitutional amendment of 1934. The issues passed upon by the California courts have therefore been peculiar to that state and the cases cannot be logically integrated into an arrangement based on the Uniform Small Loan Law. The follow-

ing recent cases should be noted in considering the present state of the California law. *In re Stephan*, (1915) 170 Cal. 48, 148 Pac. 196, Ann. Cas. 1916E 617; *Wallace v. Zinman*, (1927) 200 Cal. 585, 254 Pac. 946, 62 A. L. R. 1341; *In re Washer*, (1927) 200 Cal. 598, 254 Pac. 951; *Haines v. Commercial Mortgage Co.*, (1927) 200 Cal. 609, 254 Pac. 956, 53 A. L. R. 725, *rehearing denied*, (1927) 255 Pac. 805; *Crooks v. Peoples Finance & Thrift Co. of Pomona Valley*, (1930) 111 Cal. App. 769, 292 Pac. 1065; *Fenton v. Markwell & Co.*, (1935) 11 Cal. App. (2d) 755, 52 Pac. (2d) 297; *Matulich v. Marlo Investment Co.*, (Cal. 1936) 60 Pac. (2d) 842; *Penziner v. West America Finance Co.*, (1937) 94 Cal. Dec. 580; *Wolf v. Pacific Southwest Discount Corp.*, (1937) 94 Cal. Dec. 594.

See WHO MAY QUESTION CONSTITUTIONALITY, Part I.

For other cases on classification through exemptions, see Section 20.

CASES ON INTERPRETATION

Licensee	Licensing Official
Non-licensee	Installment Purchase
Special District of Columbia Provisions	

Licensee

A lender must show compliance with the conditions of the small loan law in order to enforce a loan alleged to have been made thereunder, *Jobson v. Masters*, (1924) 32 Ga. App. 60, 122 S. E. 724; *Southern Loan Co. v. McDaniel*, (1934) 50 Ga. App. 285, 177 S. E. 834; *Wells v. Indianapolis Co.*, (1928) 88 Ind. App. 231, 161 N. E. 687, Cam. 316; *Thompson v. Harbine*, (1925) 20 Ohio App. 394, 152 N. E. 671;

and must plead and prove that he was licensed when the loan was made. *Citizens' Budget Co. v. O'Connell*, (1931) 40 Ohio App. 160, 177 N. E. 840; *Snite v. New York Central R. R.*, (1931) 262 Ill. App. 269.

It has been held that even after the lapse of six months judgment entered on a note by confession would be vacated on a showing that the loan was made without a license in violation of the small loan

law, there having been no laches since the note and power to confess judgment contained therein were void *ab initio*. *Solomon v. Dunne*, (1932) 264 Ill. App. 415.

But it has been held that a lender who failed to show a license could recover the principal with interest at the maximum contract rate, *Natchitoches Finance Co. v. Smith*, (La. App. 1937) 175 So. 915;

and such a lender has been held to be limited to the maximum contract rate of interest. *Continental Bank & Trust Co. v. Bouterie*, (La. App. 1936) 170 So. 507, *on rehearing of* (La. App. 1936) 169 So. 812; compare *Citizens' Budget Co. v. O'Connell*, (1931) 40 Ohio App. 160, 177 N. E. 840.

A lender who had qualified under the Georgia Small Loan Law was held entitled to enforce a note of less than \$300 secured by a bill of sale of personalty without showing compliance with an early Georgia act which licensed and regulated the business of purchasing wages and of lending on the security of wages and personalty. *Stembridge v. Family Finance Co.*, (1934) 49 Ga. App. 353, 175 S. E. 663.

Licensees under the Oregon Small Loan Law of 1931 have been held not entitled to make loans of \$300 or less secured by liens on automobiles at more than the maximum contract rate of interest, because of the Oregon Motor Vehicle Finance Act of 1931 which licensed and regulated the business of lending \$800 or less on automobiles at more than the maximum contract rate of interest. *Ford v. Bates*, (1935) 150 Ore. 672, 47 Pac. (2d) 951.

A licensee who purchased from another licensee a note executed under the small loan law was held to be entitled to enforce the note and the chattel mortgage given as security. *Heymann v. Lazarus*, (La. App. 1935) 162 So. 230.

Non-licensee

A loan made by a non-licensee at more than the maximum contract rate of interest is void. *Raming v. Peyser*, (1930) 259 Ill. App. 152; *Geyer v. Spencer*, (Ind. App. 1934) 189 N. E. 429, *super-*

seded by 99 Ind. App. 418, 192 N. E. 769; *London Realty Co. v. Riordan*, (1913) 207 N. Y. 264, 100 N. E. 800, Ann. Cas. 1914C 408, Cam. 672, *aff'g* (1912) 148 App. Div. 854, 133 N. Y. S. 595; *Equity Service Corp. v. Agull*, (1937) 250 App. Div. 96, 293 N. Y. S. 872, *rev'g* (Sup. Ct. 1936) 158 N. Y. Misc. R. 780, 286 N. Y. S. 379, *rev'g* (Mun. Ct. 1935) 156 N. Y. Misc. R. 552, 281 N. Y. S. 292.

It was held that, after the expiration of a license, the lender might lawfully continue to collect a loan made as a licensee and that such collection did not constitute engaging in the small loan business,

Continental Finance Corp. v. Warren, (Sup. Ct. 1932) 10 N. J. Misc. R. 607, 160 Atl. 87; *Globe Industrial Loan Corp. v. Steinberg*, (Sup. Ct. 1936) 14 N. J. Misc. R. 541, 186 Atl. 45;

and the judgment for interest at the maximum rate permitted licensees was affirmed, without comment on that point by the court, even though the small loan law had since been amended reducing the maximum rate permitted licensees. *Continental Finance Corp.*

v. Warren, (Sup. Ct. 1932) 10 N. J. Misc. R. 607, 160 Atl. 87.

But it has been held in Louisiana that a licensee could not recover more than the maximum rate of interest permitted a non-licensee, after his license expired, on a loan made while he was licensed.

South Shreveport Finance & Loan Co. v. Stephenson, (1936) 184 La. 916, 168 So. 100; see *Continental Bank & Trust Co. v. Bouterie*, (La. App. 1936) 170 So. 507, *on rehearing of* (La. App. 1936) 169 So. 812.

The transfer by a licensee to a non-licensee, immediately after making the loan, of a note executed under the Louisiana Small Loan Law, the same being in accordance with a regular business custom of the licensee, was held valid, but the court said that the transferee took the note "burdened by all applicable provisions of the small loan statute." *Morris Plan Bank v. Schmidt*, (La. App. 1935) 164 So. 270, 272.

Convictions for engaging in a conspiracy to violate the small loan law were reversed because of instructions to the jury that the burden

was not on the state to prove that the defendants had no license as charged in the indictment and that the charge was to be taken as true unless they found otherwise from the evidence. *People v. White*, (1935) 279 Ill. App. 185.

An early Michigan act licensing and regulating lending on certain kinds of security was held to be merely permissive and not to invalidate a loan made by a lender who had not complied with it.

Union Investment Co. v. Weil, (1934) 269 Mich. 32, 256 N. W. 612.

For cases on maximum charges by unlicensed lenders, see Section 18.

Licensing Official

The licensing official was held to be without power to enjoin an unlicensed lender from engaging in the small loan business in violation of the small loan law. *Bennett v. Bennett*, (1926) 161 Ga.

936, 132 S. E. 528. (But see COMMENT under Section 19 for references to certain means, independent of small loan laws, of suppressing illegal moneylending.)

Where a small loan law named the State Bank Examiner as the licensing official and this office had been abolished by a previous act its duties having been lodged in a newly created office designated as the Superintendent of Banks, it was held that the latter became the State Bank Examiner, *Morgan v. Lowry*, (1929) 168 Ga. 723, 149

S. E. 37, Cam. 221, *appeal dismissed*, *Morgan v. Georgia*, (1930) 281 U. S. 691, 50 Sup. Ct. 238, 74 L. ed. 1120, Cam. 223;

and that the Superintendent of Banks was authorized to issue licenses under the small loan law. *Mathis v. Fulton Industrial Corp.*,

(1929) 168 Ga. 719, 149 S. E. 35, Cam. 229, *opinion of Ct. of App. after reply to certified question*, (1929) 40 Ga. App. 199, 149 S. E. 176.

For cases involving the power of the licensing official to make rules and regulations, see Section 21.

Installment Purchase

A contract to pay for the construction of a garage in installments was held not to be subject to the small loan law on the ground that neither the building contractor nor the one to whom he assigned the contract was in the business of making loans. *Stevens v. Grossman*, (1935) 100 Ind. App. 417, 196 N. E. 123.

Where the purchaser of an automobile on a conditional sale contract defaulted and the assignee of the contract repossessed and resold the automobile to the same purchaser at a price exceeding the former unpaid balance, payable in monthly installments, the transaction was held not to be within the small loan law on the ground that it was not a loan. *Wernick v. National Bond & Investment Co.*, (1934) 276 Ill. App. 84.

The *bona fide* sale of personalty on credit for an amount in excess of the cash price has been held not to be subject to the small loan law. *Daniels v. Fenton*, (1935) 97 Colo. 409, 50 Pac. (2d) 62; *General Motors Acceptance Corp. v. Swain*, (La. App. 1937) 176 So. 636; *People v. Sacks*, (N. Y. Ct. App. 1938) 12 N. E. (2d) 425.

A court has held that an installment note given for repairs to an automobile was not subject to the small loan law, saying that the act applied only to the lending of money. *People v. Morse*, (1933) 270 Ill. App. 207.

For cases involving excessive charges by subterfuge, see Section 18.

Special District of Columbia Provisions

The District Act applies only to persons making loans of \$200 or less on personal security, *Von Rosen v. Dean*, (1930) 59 App. D. C. 359, 41 Fed. (2d) 982; *Zirkle v. Daly*, (1931) 60 App. D. C. 344, 54 Fed. (2d) 455;

but the term "security" as used in this Act includes a promissory note, *Reagan v. District of Columbia*, (1914) 41 App. D. C. 409, Cam. 186, writ of error denied (U. S. Sup. Ct. 1914);

and also includes so-called receipts given to the lender by the borrower at the time the loan was made. *Chew v. District of Columbia*, (1914) 42 App. D. C. 410, 42 Wash. L. R. 710.

The Act has been held not to apply to a note for \$275 discounted at more than 60 per cent a year in the absence of evidence that the lender was in the lending business defined in the Act. *Whipp v. Glueck*, (1932) 61 App. D. C. 118, 58 Fed. (2d) 523.

A pawnbroker who stored pledged property and made collections within the District was held to be subject to this Act although all applications for loans were made across the Virginia line by the borrower in person (often by means of a free automobile service or a dime messenger service), on the ground that it was not necessary that the entire business be transacted in the District. *Horning v. District of Columbia*, (1920) 254 U. S. 135, 41 Sup. Ct. 53, 65 L. ed. 185, *aff'g* (1919) 48 App. D. C. 380.

SECTION 2

of Sixth Draft of Uniform Small Loan Law.

APPLICATION FOR LICENSE: Data required; fees; costs of examination; minimum assets.

PROVISIONS OF THE SECTION

SEC. 2. Application for such license shall be in writing, under oath, and in the form prescribed by the Commissioner, and shall contain the name and the address (both of the residence and place of business) of the applicant, and if the applicant is a co-partnership or association, of every member thereof, and if a corporation, of each officer and director thereof; also the county and municipality with street and number, if any, where the business is to be conducted and such further information as the Commissioner may require. Such applicant at the time of making such application shall pay to the Commissioner the sum of fifty dollars (\$50) as a fee for investigating the application and the additional sum of one hundred dollars (\$100) as an annual license fee [see COMMENT below] for a period terminating on the last day of the current calendar year; provided, that if the application is filed after June thirtieth in any year such additional sum shall be only fifty dollars (\$50). In addition to the said annual license fee every licensee hereunder shall pay to the Commissioner the actual costs of each examination as provided for in Section 10 of this Act.

Every applicant shall also prove, in form satisfactory to the Commissioner, that he or it has available for the operation of such business at the location specified in the application, liquid assets of at least twenty-five thousand dollars (\$25,000).

Related Provisions

For other provisions regarding payment of annual fees, see Sections 8 and 9 (a).

For payment of costs of examination, see Section 10.

For other provisions regarding minimum assets, see Sections 4, 6, and 23.

Earlier Drafts

The first four drafts were much shorter and almost identical. The fifth draft introduced for the first time the provisions regarding an investigation fee, the costs of examination, and the minimum assets requirement, all of which appear also in the sixth draft.

COMMENT

In many small loan laws the annual license fee covers the costs of examination. In such laws the following words appear at the point indicated in the section, "and in full payment of all expenses for examinations under and for administration of this Act," and the last sentence of the first paragraph of the section is omitted.

Several small loan laws provide for prorating the license fee by months.

The provision of this section for a license fee is supported by the case of *Gundling v. Chicago*, (1900) 177 U. S. 183, 20 Sup. Ct. 633, 44 L. ed. 725, *aff'g* (1898) 176 Ill. 340, 52 N. E. 44, 48 L. R. A. 230, which held that the requirement of a license fee for the operation of the business of selling cigarettes may be valid although the fee is larger than the cost of regulating the business.

For general discussion of requirements for license, see COMMENT under Section 4.

CASES ON CONSTITUTIONALITY

Fees

Costs of Examination

Minimum Assets

Fees

The requirement of a fee of \$100 for investigation of an application for license and of \$250 for an annual license is valid. *In re*

Halck, (1932) 215 Cal. 500, 11 Pac. (2d) 389, followed in *Beneficial Loan Soc. v. Haight*, (1932) 215 Cal. 506, 11 Pac. (2d) 857.

Costs of Examination

The requirement that the licensee pay the costs of examination is valid. *In re Halck*, (1932) 215 Cal. 500, 11 Pac. (2d) 389, followed in *Beneficial Loan Soc. v. Haight*, (1932) 215 Cal. 506, 11 Pac. (2d) 857.

Minimum Assets

The requirement that an applicant for license have a net worth of not less than \$20,000 has been held to be valid, *Ravitz v. Steurele*, (1934) 257 Ky. 108, 77 S. W. (2d) 360; and small loan laws containing a similar requirement have been held to be constitutional although the requirement was not specifically considered. *National Accounting Co. v. Dorman*, (D. C. Ky. 1935) 11 Fed. Supp. 872, *aff'd*, (1935) 295 U. S. 718, 55 Sup. Ct. 835, 79 L. ed. 1673; *People v. Blumenthal*, (Sup. Ct. 1936) 157 N. Y. Misc. R. 943, 284 N. Y. S. 873; *Gregg v. Personal Finance Co. of N. Y.*, (Sup. Ct. 1937) 298 N. Y. S. 266.

See also cases under Section 4.

CASES ON INTERPRETATION

The license fee imposed by the small loan law is not a tax. *Ravitz v. Steurele*, (1934) 257 Ky. 108, 77 S. W. (2d) 360; *Globe Security & Loan Co. v. Carrel*, (1922) 106 Ohio St. 43, 138 N. E. 364; *State ex rel. Downing v. Powers*, (1932) 125 Ohio St. 108, 180 N. E. 647; *O. H. May Co. v. Edington*, (1926) 154 Tenn. 618, 290 S. W. 10. Contra: *New Orleans v. Heymann*, (1935) 182 La. 738, 162 So. 582.

SECTION 3

of Sixth Draft of Uniform Small Loan Law.

BOND: Requirement; approval by Commissioner; amount; sureties; conditions.

PROVISIONS OF THE SECTION

SEC. 3. The applicant shall also at the same time file with the Commissioner a bond to be approved by him in which the applicant shall be the obligor, in the sum of one thousand dollars (\$1,000) with one or more sureties whose liability as such sureties need not exceed the said sum in the aggregate. The said bond shall run to the State for the use of the State and of any person or persons who may have cause of action against the obligor of said bond under the provisions of this Act. Such bond shall be conditioned that said obligor will faithfully conform to and abide by the provisions of this Act and of all rules and regulations lawfully made by the Commissioner hereunder, and will pay to the State and to any such person or persons any and all moneys that may become due or owing to the State or to such person or persons from said obligor under and by virtue of the provisions of this Act.

Related Provisions

For other provisions regarding bond, see Sections 6, 8, and 9 (a).

Earlier Drafts

These provisions vary only in minor respects throughout the six drafts. Compliance with the Commissioner's rules and regulations was first made a condition of the bond in the fifth draft.

COMMENT

The provision of this section requiring a bond is supported by the case of *Gundling v. Chicago*, (1900) 177 U. S. 183, 20 Sup. Ct.

633, 44 L. ed. 725, *aff'g* (1898) 176 Ill. 340, 52 N. E. 44, 48 L. R. A. 230, which held that the requirement of a bond to secure compliance with regulations for the operation of a business subject to regulation by the state (sale of cigarettes) is valid.

CASES ON CONSTITUTIONALITY

The requirement that the licensee file a bond is valid, *In re Halck*, (1932) 215 Cal. 500, 11 Pac. (2d) 389, followed in *Beneficial Loan Soc. v. Haight*, (1932) 215 Cal. 506, 11 Pac. (2d) 857; and the power of the licensing official to require an additional bond under provisions similar to Section 6 of the Uniform Small Loan Law is also valid. *People v. Stokes*, (1917) 281 Ill. 159, 118 N. E. 87, Cam. 277.

The requirement of a \$5,000 bond was held to be invalid where it was conditioned to pay any judgment, however foreign to the business regulated, and was coupled with a requirement that the lender must appoint the county judge his agent to accept service of process and must waive defective service, there being no requirement that notice of service be given the lender. *Juhan v. State*, (1918) 86 Tex. Crim. Rep. 63, 216 S. W. 873.

But an act requiring a corporate lender to file a power of attorney appointing a resident agent to accept service of process has been sustained. *State v. Ware*, (1916) 79 Ore. 367, 154 Pac. 905, Cam. 824, *rehearing denied*, (1916) 79 Ore. 377, 155 Pac. 364.

The court refused to pass on the bond requirement of the Nebraska Small Loan Law, but said that its invalidity would not affect the validity of the remainder of the act. *Althaus v. State*, (1916) 99 Neb. 465, 156 N. W. 1038, Cam. 569.

CASES ON INTERPRETATION

It has been held that a lender need not allege compliance with the bond requirement where he has alleged that he was licensed, on the ground that the licensing official will be presumed to have required such compliance as a condition to issuing the license. *Cotton v. Commonwealth Loan Co.*, (1934) 206 Ind. 626, 190 N. E. 853.

SECTION 4

of Sixth Draft of Uniform Small Loan Law.

REQUIREMENTS FOR LICENSE: Responsibility, experience, character, and fitness of applicant; convenience and advantage of community; minimum assets; denial of application; review of denial.

PROVISIONS OF THE SECTION

SEC. 4. Upon the filing of such application and the payment of such fees and the approval of such bond, if the Commissioner shall find upon investigation (a) that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant be a co-partnership or association, and of the officers and directors thereof if the applicant be a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this Act, and (b) that allowing such applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted, and (c) that the applicant has available for the operation of such business at the specified location liquid assets of at least twenty-five thousand dollars (\$25,000) (the foregoing facts being conditions precedent to the issuance of a license under this Act), he shall thereupon issue and deliver a license to the applicant to make loans in accordance with the provisions of this Act at the location specified in the said application, which license shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended as hereinafter provided; if the Commissioner shall not so find he shall not issue such license and he shall notify the applicant of the denial and return to the applicant the bond and the sum paid by the applicant as a license fee, retaining

the fifty dollars (\$50) investigation fee to cover the costs of investigating the application. The Commissioner shall approve or deny every application for license hereunder within sixty (60) days from the filing thereof with the said fees and the said approved bond.

If the application is denied, the Commissioner shall within twenty (20) days thereafter file with the Department of [specified department] a written decision and findings with respect thereto containing the evidence and the reasons supporting the denial, and forthwith serve upon the applicant a copy thereof, which decision and findings may be reviewed by a writ of certiorari or writ of mandamus within thirty (30) days after the filing thereof. [See COMMENT below.]

Related Provisions

For revocation, suspension, surrender, and reinstatement of license, see Section 9.

For status and treatment of licensees under prior act, see Section 23.

For revocation of license on grounds which would have justified a denial, see Section 9 (c).

For other provisions regarding minimum assets, see Sections 2, 6, and 23.

For Commissioner's powers regarding regulations, findings, and orders, see Section 21.

For other provisions regarding judicial review, see Sections 9 and 24.

Earlier Drafts

These provisions were substantially the same in the first four drafts, in which the granting of a license was mandatory upon compliance with ministerial requirements, and the license expired on a fixed date. In the fifth and sixth drafts substantial conditions precedent to the granting of a license were established, the Commissioner was given power to determine whether such conditions were fulfilled, and the license was made effective until revocation, suspension, or surrender. Provision was also made for judicial review of the Commissioner's acts.

COMMENT

The second paragraph of the section varies considerably in the small loan laws patterned after the fifth and sixth drafts. The procedure specified necessarily depends on the judicial procedure and constitutional requirements of each state. This paragraph should be read in connection with a similar paragraph in Section 9 and with Section 24 which is intended to contain such provisions for judicial review of discretionary acts of the licensing official as may be necessary to conform to or supplement the existing judicial machinery of the state.

Some of the older small loan laws, notably the 1914 New Jersey Act and the 1915 Pennsylvania Act, prescribed rudimentary requirements concerning the character and general fitness of the applicant as conditions precedent to the granting of a license. In 1929 Connecticut, by amendment, established minimum capital requirements. With these exceptions the changes in Section 4, which were first recommended in 1932 in the fifth draft, were innovations. They introduced a very different plan of regulation which required substantial changes throughout the law.

Under acts patterned after the first four drafts any applicant could demand and obtain a license to engage in business upon paying a fee, filing a bond, and complying with ministerial requirements. It was originally believed that competition and the free flow of capital would produce the best results, particularly in this field where ill-advised restraints had already played havoc. Under this system a large small loan business came into existence. While the supply of money to be lent was large it was not distributed in close accordance with the legitimate demand. In some localities the supply exceeded the demand for the type of credit which was contemplated by the act. Licenses were issued to do business in localities where the natural demand was insufficient to sustain a properly conducted lending business. In other places the legitimate demand was not supplied. While the maximum rate of charge permitted was primarily responsible for the distribution of capital between states, it became apparent that competition and natural forces alone would not bring

about a distribution of capital in which the supply closely approximated the demand, nor would they produce the best results in respects which depended on the character of the licensees.

Where competition was too intense events demonstrated that the public interest was not well served. "There is a tendency for excessive competition to increase costs of lending, and consequently to restrain competitive rate reductions."¹ There was evidence that some licensees were not operating efficiently or were inadequately financed, either condition obstructing attainment of the objectives of the law. Stock promoters, without practical experience or realization of the commercial importance of fair dealings with borrowers, entered the business to its detriment.

To meet these conditions the recommended system of licensing was changed in 1932. The Commissioner was given fact finding powers the exercise of which permitted wide discretion. The standards established applied both to the qualifications of the applicant and to the conditions in the community where the business was to be conducted. The powers of and grounds for revocation (Section 9) maintain in force, as conditions subsequent, the standards which Section 4 establishes as conditions precedent to the granting of a license.

These changes made by the fifth draft serve to classify the first four drafts in one group and the last two drafts in another. The present acts of Hawaii, Illinois, New Jersey, New York, Rhode Island, Vermont, and West Virginia approximate the last two drafts; those of Connecticut, Kentucky, Indiana, Iowa, and Wisconsin do so in substance although not in form, but the last three also provide for the fixing of the maximum rate of charge by an administrative body; that of Pennsylvania contains a number of provisions found in the last two drafts but it differs materially in substance and form from any recommended draft. Several of the older acts contain one or more features of the last two drafts but none approximates either in its entirety.

¹ Note 14, following SIXTH DRAFT, UNIFORM SMALL LOAN LAW, Appendix C.

Because of the comparatively recent enactment of small loan laws which prescribe standards for the granting of licenses, there are as yet only a few cases directly in point involving these standards. There is, however, abundant authority among collateral cases for the validity of the standards prescribed in the small loan laws patterned after the fifth and sixth drafts.

Thus a finding of good character, reputation, responsibility, or fitness of the owner or operator may be required as a condition precedent to the granting of a license to engage in a business subject to regulation. *Hall v. Geiger-Jones Co.*, (1917) 242 U. S. 539, 37 Sup. Ct. 217, 61 L. ed. 480, *rev'g Geiger-Jones Co. v. Hall*, (D. C. Ohio 1916) 230 Fed. 233 (involving Blue Sky law); *State v. Richcreek*, (1906) 167 Ind. 217, 77 N. E. 1085, 5 L. R. A. (N. S.) 874, 119 Am. St. Rep. 491, 10 Ann. Cas. 899 (involving state bank charter); *Gundling v. Chicago*, (1900) 177 U. S. 183, 20 Sup. Ct. 633, 44 L. ed. 725, *aff'g* (1898) 176 Ill. 340, 52 N. E. 44, 48 L. R. A. 230 (involving license requirement for sale of cigarettes).

A finding that the convenience, advantage, or necessity of the community will be served thereby may be required as a condition precedent to the granting of a license to engage in a business subject to regulation. *State ex rel. Dybdal v. State Securities Commission*, (1920) 145 Minn. 221, 176 N. W. 759; *Schaake v. Dolley*, (1911) 85 Kan. 598, 118 Pac. 80, 37 L. R. A. (N. S.) 877, Ann. Cas. 1913A 254, and *Bank of Italy v. Johnson*, (1926) 200 Cal. 1, 251 Pac. 784 (involving state bank charters).

The number of places of business licensed within a community may be limited for the welfare of the community although it results in the granting of an exclusive privilege and the exclusion of persons otherwise qualified. *Decie v. Brown*, (1897) 167 Mass. 290, 45 N. E. 765 (involving liquor dispensary).

See COMMENT under Sections 2 and 9.

CASES ON CONSTITUTIONALITY

The requirement regarding the financial responsibility, experience,

character, and general fitness of the applicant is constitutional and does not confer "arbitrary and unguided discretion" upon the licensing official, *In re Halck*, (1932) 215 Cal. 500, 503, 11 Pac.

(2d) 389, followed in *Beneficial Loan Soc. v. Haight*, (1932) 215 Cal. 506, 11 Pac. (2d) 857;

and a requirement that an applicant have a net worth of at least \$20,000 is also valid. *Ravitz v. Steurele*, (1934) 257 Ky. 108, 77 S. W. (2d) 360.

A similar grant of power to the licensing official to determine the applicant's character and general fitness has been held not to be a delegation of legislative power. *Commonwealth v. Puder*, (1918) 261 Pa. 129, 104 Atl. 505, Cam. 858, *aff'g* (1917) 67 Pa. Super. Ct. 11.

Small loan laws, containing substantially the same provisions as Section 4 of the Uniform Small Loan Law, have been held to be constitutional although the provisions were not specifically considered in the opinions, *National Accounting Co. v. Dorman*, (D. C. Ky. 1935) 11 Fed. Supp. 872, *aff'd*, (1935) 295 U. S. 718, 55 Sup. Ct. 835, 79 L. ed. 1673; *People v. Blumenthal*, (Sup. Ct. 1936) 157 N. Y. Misc. R. 943, 284 N. Y. S. 873; *Gregg v. Personal Finance Co. of N. Y.*, (Sup. Ct. 1937) 298 N. Y. S. 266; and also, except that the court passed specifically on the net worth provision. *Ravitz v. Steurele*, (1934) 257 Ky. 108, 77 S. W. (2d) 360.

The provision of the Nebraska Small Loan Law that the licensing official "shall have the power to reject any application for license" after notice and a public hearing, was held not to render the act unconstitutional, the court saying that, even though the act contained no provision for judicial review, it was not an attempt to vest arbitrary authority in the licensing official and that: "Adequate remedies exist for the protection of any legal rights infringed by the unwarranted rejection of an application for a license." *Althaus v. State*, (1916) 99 Neb. 465, 468, 156 N. W. 1038, Cam. 569.

SECTION 5
of Sixth Draft of Uniform Small Loan Law.

LICENSE FORM: Posting thereof.

PROVISIONS OF THE SECTION

SEC. 5. Such 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. Such license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable.

Related Provisions

For other provisions regarding place of business, see Sections 7, 12, and 14.

Earlier Drafts

The substance of this section appeared in the first four drafts at other points.

SECTION 6

of Sixth Draft of Uniform Small Loan Law.

ADDITIONAL BOND. MAINTENANCE OF MINIMUM ASSETS.

PROVISIONS OF THE SECTION

SEC. 6. If the Commissioner shall find at any time that the bond is insecure or exhausted or otherwise doubtful, an additional bond to be approved by him, with one or more sureties and of the character specified in Section 3 of this Act, in the sum of not more than one thousand dollars (\$1,000), shall be filed by the licensee within ten (10) days after written demand upon the licensee by the Commissioner.

Every licensee shall maintain at all times assets of at least twenty-five thousand dollars (\$25,000) either in liquid form available for the operation of or actually used in the conduct of such business at the location specified in the license.

Related Provisions

For other provisions regarding bond, see Sections 3, 8, and 9 (a).

For other provisions regarding minimum assets, see Sections 2, 4, and 23.

Earlier Drafts

The first paragraph of Section 6 first appeared as above in the fifth draft, its substance having been contained in Section 1 of the first draft and in Section 5 of the next three drafts.

The second paragraph of Section 6 appeared first in the fifth draft and was reworded as above in the sixth draft.

COMMENT

The first state to require a licensee to maintain a minimum amount of assets was Connecticut, where such a provision was added to the small loan law by amendment in 1929, before publication of the

fifth draft. One purpose of this requirement is to insure that each small loan business is of sufficient size to permit reasonably efficient operation, which tends to reduce the rates of charge to borrowers. The requirement also tends to keep the business out of rural areas where insufficient natural demand may exist and the evils at which the law is aimed are hence at a minimum or entirely lacking. The requirement also discourages the operation of a small loan business as an adjunct to another business, a practice which makes supervision difficult and frequently tends to defeat the remedial purposes of the law. By requiring that licensees have a substantial amount of money at stake in the small loan business, evasions of the law are reduced and compliance with its spirit is fostered.

CASES ON CONSTITUTIONALITY

The delegation to the licensing official of the power to require an additional bond is not "an unwarranted delegation of judicial power" and is valid. *People v. Stokes*, (1917) 281 Ill. 159, 176, 118 N. E. 87, Cam. 277.

The requirement that a licensee maintain a net worth of not less than \$20,000 has been held to be valid, *Ravitz v. Steurele*, (1934) 257 Ky. 108, 77 S. W. (2d) 360;

and small loan laws containing a similar requirement have been held to be constitutional although the requirement was not specifically considered. *National Accounting Co. v. Dorman*, (D. C. Ky. 1935) 11 Fed. Supp. 872, *aff'd*, (1935) 295 U. S. 718, 55 Sup. Ct. 835, 79 L. ed. 1673; *People v. Blumenthal*, (Sup. Ct. 1936) 157 N. Y. Misc. R. 943, 284 N. Y. S. 873; *Gregg v. Personal Finance Co. of N. Y.*, (Sup. Ct. 1937) 298 N. Y. S. 266.

See also cases under Section 4.

SECTION 7

of Sixth Draft of Uniform Small Loan Law.

PLACES OF BUSINESS: One under each license; additional by same licensee; change of location.

PROVISIONS OF THE SECTION

SEC. 7. Not more than one place of business shall be maintained under the same license, but the Commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this Act governing an original issuance of a license, for each such new license.

Whenever a licensee shall change his place of business to another location within the same municipality, he shall at once give written notice thereof to the Commissioner, who shall attach to the license in writing his record of the change and the date thereof, which shall be authority for the operation of such business under such license at such new location. No change in the place of business of a licensee to a location outside of the original municipality shall be permitted under the same license.

Related Provisions

For other provisions regarding place of business, see Sections 5, 12, and 14.

Earlier Drafts

The substance of the first paragraph appeared in the first four drafts at other points, including Sections 8 and 10, but the granting of an additional license to the same licensee was mandatory upon compliance with ministerial requirements, as in the case of an original license, and the licensee was permitted to move the place of business without restriction. Section 7 in the older drafts contained the requirement for posting the license which appears in Section 5 of the fifth and sixth drafts.

SECTION 8

of Sixth Draft of Uniform Small Loan Law.

ANNUAL LICENSE FEE AND NEW BOND

PROVISIONS OF THE SECTION

SEC. 8. Every licensee shall, on or before the twentieth day of each December, pay to the Commissioner the sum of one hundred dollars (\$100) as an annual license fee for the next succeeding calendar year and shall at the same time file with the Commissioner a bond in the same amount and of the same character as required by Section 3 of this Act.

Related Provisions

For other provisions regarding payment of annual fees, see Sections 2 and 9 (a).

For other provisions regarding bond, see Sections 3, 6, and 9 (a).

For limitations on powers of revocation as to licensees under prior act, see Section 23.

Earlier Drafts

This section did not appear in the first four drafts, under which the license was an annual one, its issuance was mandatory, and a new application under Section 2 was required annually. When, under the fifth draft, the license became a continuing one the above section became necessary.

CASES ON CONSTITUTIONALITY

The requirement of an annual license fee of \$250 is constitutional.

In re Halck, (1932) 215 Cal. 500, 11 Pac. (2d) 389, followed in *Beneficial Loan Soc. v. Haight*, (1932) 215 Cal. 506, 11 Pac. (2d) 857.

SECTION 9

of Sixth Draft of Uniform Small Loan Law.

TERMINATION OF LICENSE: Revocation; procedure; grounds; suspension; surrender; continuance and reinstatement; review of revocation or suspension.

PROVISIONS OF THE SECTION

SEC. 9. The Commissioner shall, upon ten (10) days' 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 shall find that:

(a) The licensee has failed to pay the annual license fee or to maintain in effect the bond or bonds required under the provisions of this Act or to comply with any demand, ruling, or requirement of the Commissioner lawfully made pursuant to and within the authority of this Act; or that

(b) The licensee has violated any provision of this Act or any rule or regulation lawfully made by the Commissioner under and within the authority of this Act; or that

(c) Any fact or condition exists which, if it had existed at the time of the original application for such license, clearly would have warranted the Commissioner in refusing originally to issue such license.

The Commissioner may, without notice or hearing, suspend any license for a period not exceeding thirty (30) days, pending investigation.

The Commissioner may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist, or, if he shall find that such grounds for revocation or suspension are of general application to all offices, or to more

than one office, operated by such licensee, he shall revoke or suspend all of the licenses issued to said licensee or such licenses as such grounds apply to, as the case may be.

Any licensee may surrender any license by delivering to the Commissioner written notice that he thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

No revocation or suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any borrower.

Every license issued hereunder shall remain in force and effect until the same shall have been surrendered, revoked, or suspended in accordance with the provisions of this Act, but the Commissioner shall have authority on his own initiative to reinstate suspended licenses or to issue new licenses to a licensee whose license or licenses shall have been revoked if no fact or condition then exists which clearly would have warranted the Commissioner in refusing originally to issue such license under this Act.

Whenever the Commissioner shall revoke or suspend a license issued pursuant to this Act, he shall forthwith file with the Department of [specified department] a written order to that effect and findings with respect thereto containing the evidence and the reasons supporting the revocation or suspension, and forthwith serve upon the licensee a copy thereof, which order may be reviewed by a writ of certiorari or writ of mandamus within thirty (30) days after the filing thereof. [See COMMENT below.]

Related Provisions

For granting or denial of license, see Section 4.

For other provisions regarding payment of annual fees, see Sections 2 and 8.

For other provisions regarding bond, see Sections 3, 6, and 8.

For status and treatment of licensees under prior act, see Section 23.

For Commissioner's visitorial powers, see Sections 10 and 11.

For Commissioner's powers regarding regulations, findings, and orders, see Section 21.

For other provisions regarding judicial review, see Sections 4 and 24.

For effect of amendment or repeal of act on existing contracts, see Section 22.

For criminal and civil penalties for violation of certain sections of the act, see Section 19.

Earlier Drafts

The development of these provisions has paralleled that of the provisions for the grant or denial of licenses. The revocation provisions were substantially the same in the first four drafts, although in the first draft it was expressly left to the discretion of the Commissioner to determine whether a violation had occurred and whether a new license should be issued after a revocation. In the second, third, and fourth drafts the express provision did not appear but the implication remained. In the first four drafts revocation was discretionary except in the case of a conviction by a court for a violation of the interest limitations following a prior conviction, in which event revocation was mandatory and the issuance of a new license was restricted.

In the fifth draft the revocation provisions were entirely rewritten in substantially the above form. Revocation was made mandatory upon the finding of grounds therefor by the Commissioner. The grounds of revocation were expanded to include non-payment of annual fees, default in the bond requirement, non-compliance with an order or regulation of the Commissioner, and the existence of any fact or condition which clearly would have warranted original denial of an application. The provisions for suspension and surrender of licenses and permitting different treatment of different licenses held by the same licensee first appeared in the fifth draft.

COMMENT

The last paragraph of the section varies considerably in the small loan laws patterned after the fifth and sixth drafts. The procedure specified necessarily depends on the judicial procedure and consti-

tutional requirements of each state. This paragraph should be read in connection with a similar paragraph in Section 4 and with Section 24 which is intended to contain such provisions for judicial review of discretionary acts of the licensing official as may be necessary to conform to or supplement the existing judicial machinery of the state.

The grounds for revocation, particularly those contained in paragraph (c), maintain in force, as conditions subsequent, the standards which Section 4 establishes as conditions precedent to the granting of a license.

For general discussion of requirements for license, see COMMENT under Section 4.

CASES ON CONSTITUTIONALITY

It was held that the power to revoke licenses for violations of the prior Illinois Small Loan Law, which was delegated to the licensing official, was not "an unwarranted delegation of judicial power" and was valid, and, even though the act contained no provision for judicial review, the court said that a licensee whose license was revoked without proper cause would have an unquestioned right to resort to the courts to compel a restoration of the license. *People v. Stokes*, (1917) 281 Ill. 159, 176, 118 N. E. 87, Cam. 277.

For cases regarding the conditions under which licenses may be granted or refused, see Section 4.

See WHO MAY QUESTION CONSTITUTIONALITY, Part I.

SECTION 10

of Sixth Draft of Uniform Small Loan Law.

EXAMINATIONS: Commissioner's powers as to licensees and others; required at least annually; costs.

PROVISIONS OF THE SECTION

SEC. 10. For the purpose of discovering violations of this Act or securing information lawfully required by him hereunder, the Commissioner may at any time, either personally or by a person or persons duly designated by him, investigate the loans and business and examine the books, accounts, records, and files used therein, of every licensee and of every person, co-partnership, association, and corporation who or which shall be engaged in the business described in Section 1 of this Act, whether such person, co-partnership, association, or corporation shall act or claim to act as principal or agent, or under or without the authority of this Act. For that purpose the Commissioner and his duly designated representatives shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons, co-partnerships, associations, and corporations. The Commissioner and all persons duly designated by him shall have authority to require the attendance of and to examine under oath all persons whomsoever whose testimony he may require relative to such loans or such business. [See COMMENT below.]

The Commissioner shall make such an examination of the affairs, business, office, and records of each licensee at least once each year. The actual cost of every examination shall be paid to the Commissioner by every licensee so examined, and the Commissioner may maintain an action for the recovery of such costs in any court of competent jurisdiction. [See COMMENT below.]

Related Provisions

For provisions regarding books, records, and reports, see Section 11.

For Commissioner's power regarding regulations, findings, and orders, see Section 21.

For payment of costs of examination, see Section 2.

Earlier Drafts

Except for minor changes these provisions have appeared in all six drafts. The provisions requiring an examination at least once annually and concerning payment of the costs of examination first appeared in the fifth draft.

COMMENT

In some small loan laws the powers of the licensing official to take testimony and obtain evidence are extended by additional provisions in the first paragraph of the section.

In many small loan laws the annual license fee covers the costs of examination. In that case the last sentence of the second paragraph of the section is omitted.

Sections 10 and 11 of the Uniform Law confer visitorial powers on the licensing official. There are few cases passing directly on these provisions although similar provisions have been contained in most of the small loan laws which have been sustained against attack on constitutional grounds. The constitutional provisions to which these visitorial powers must conform have been adjudicated, however, in many cases not involving small loan laws. While the Fourth and Fifth Amendments of the Federal Constitution do not apply to the states, the principles enunciated by the federal courts with respect to the search and seizure and the self-incrimination clauses of these amendments are valuable in considering the corresponding provisions of the state constitutions which might be invoked in connection with Sections 10 and 11. For a leading case containing a discussion of the federal clauses, see *Boyd v. United States*, (1886) 116 U. S. 616, 6 Sup. Ct. 524, 29 L. ed. 746.

Provisions similar to those in Section 10 have been held not to violate the search and seizure and self-incrimination clauses of the

federal or state constitutions. *Bartlett Frazier Co. v. Hyde*, (C. C. A. 7th, 1933) 65 Fed. (2d) 350, *aff'g* (D. C. Ill. 1932) 56 Fed. (2d) 245, *cert. denied*, *Bartlett Frazier Co. v. Wallace*, (1933) 290 U. S. 654, 54 Sup. Ct. 70, 78 L. ed. 567 (involving Grain Futures Act); *Northwest Bancorporation v. Benson*, (D. C. Minn. 1934) 6 Fed. Supp. 704, *aff'd*, (1934) 292 U. S. 606, 54 Sup. Ct. 775, 78 L. ed. 1468 (involving Blue Sky Law); *United States v. Mulligan*, (D. C. N. Y. 1920) 268 Fed. 893 (involving Lever Act); *Culver v. Smith*, (Tex. Civ. App. 1934) 74 S. W. (2d) 754 (involving law regulating oil industry); *State v. Legora*, (1931) 162 Tenn. 122, 34 S. W. (2d) 1056 (involving law regulating junk dealers); *St. Louis v. Baskowitz*, (1918) 273 Mo. 543, 201 S. W. 870 (involving ordinance regulating junk dealers); *St. Joseph v. Levin*, (1895) 128 Mo. 588, 31 S. W. 101, 49 Am. St. Rep. 577 (involving ordinance regulating pawnbrokers); *State v. Davis*, (1910) 68 W. Va. 142, 69 S. E. 639, 32 L. R. A. (N. S.) 501, Ann. Cas. 1912A 996 (involving law relating to medical prescriptions); *People v. Henwood*, (1900) 123 Mich. 317, 82 N. W. 70 (involving law concerning liquor sales by druggists); *Launder v. Chicago*, (1884) 111 Ill. 291, 53 Am. Rep. 625 (involving ordinance regulating pawnbrokers).

Provisions similar to those in Section 10 have been held to comply with the requirements of due process. *Standard Home Co. v. Davis*, (D. C. Ark. 1914) 217 Fed. 904 (involving Blue Sky Law); *Northwest Bancorporation v. Benson*, (D. C. Minn. 1934) 6 Fed. Supp. 704, *aff'd*, (1934) 292 U. S. 606, 54 Sup. Ct. 775, 78 L. ed. 1468 (involving Blue Sky Law); *Bartlett Frazier Co. v. Hyde*, (C. C. A. 7th, 1933) 65 Fed. (2d) 350, *aff'g* (D. C. Ill. 1932) 56 Fed. (2d) 245, *cert. denied*, *Bartlett Frazier Co. v. Wallace*, (1933) 290 U. S. 654, 54 Sup. Ct. 70, 78 L. ed. 567 (involving Grain Futures Act); *Culver v. Smith*, (Tex. Civ. App. 1934) 74 S. W. (2d) 754 (involving law regulating oil industry).

CASES ON CONSTITUTIONALITY

The grant of power to the licensing official to examine persons under oath in order to discover violations by licensees, is not "an

unwarranted delegation of judicial power” and is valid. *People v. Stokes*, (1917) 281 Ill. 159, 176, 118 N. E. 87, Cam. 277.

The Georgia Small Loan Law does not violate the prohibition of the Fourth Amendment against unreasonable search and seizure, or the provisions of the Fifth Amendment and of the Georgia Constitution which grant immunity from self-incrimination. *Badger v. State*, (1922) 154 Ga. 443, 114 S. E. 635, Cam. 228.

The requirement that the licensee pay the costs of examination is valid. *In re Halck*, (1932) 215 Cal. 500, 11 Pac. (2d) 389, followed in *Beneficial Loan Soc. v. Haight*, (1932) 215 Cal. 506, 11 Pac. (2d) 857.

See case under Section 11.

See WHO MAY QUESTION CONSTITUTIONALITY, Part I.

SECTION 11

of Sixth Draft of Uniform Small Loan Law.

BOOKS AND RECORDS: Maintenance and preservation by licensees; annual reports by licensees and Commissioner.

PROVISIONS OF THE SECTION

SEC. 11. The 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 rules and regulations lawfully made by the Commissioner hereunder. Every licensee shall preserve such books, accounts, and records, including cards used in the card system, if any, for at least two (2) years after making the final entry on any loan recorded therein.

Each licensee shall annually on or before the fifteenth day of March file a report with the Commissioner giving such relevant information as the Commissioner reasonably may require concerning the business and operations during the preceding calendar year of 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.

Related Provisions

For criminal and civil penalties for violation, see Section 19.

For Commissioner's power to examine lender's business, see Section 10.

Earlier Drafts

Except for minor changes, the provisions of the first paragraph of this section remained the same in the first four drafts, although in the first draft the preservation of records was required for only one

year. In the fifth draft first appeared the second paragraph requiring an annual report by the licensee and the publication of a recapitulation of reports by the Commissioner.

COMMENT

A Blue Sky law containing a requirement that books and records be kept as prescribed by an administrative body has been held valid. *Caldwell v. Sioux Falls Stock Yards Co.*, (1917) 242 U. S. 559, 37 Sup. Ct. 224, 61 L. ed. 493.

Requirements that reports of business operations be filed have been sustained. *Culver v. Smith*, (Tex. Civ. App. 1934) 74 S. W. (2d) 754 (involving law regulating oil industry); *People v. Henwood*, (1900) 123 Mich. 317, 82 N. W. 70 (involving law concerning liquor sales by druggists); *Baltimore & Ohio R. R. v. Interstate Commerce Commission*, (1911) 221 U. S. 612, 31 Sup. Ct. 621, 55 L. ed. 878 (involving Interstate Commerce Act).

For additional cases, see COMMENT under Section 10.

CASES ON CONSTITUTIONALITY

The provision of a Cincinnati ordinance regulating chattel mortgage and salary loan brokers, requiring that they file periodic reports of all loans made which would be open to inspection by the mayor and chief of police, was held to be valid. *Sanning v. Cincinnati*, (1909) 81 Ohio St. 142, 90 N. E. 125, 25 L. R. A. (N. S.) 686.

SECTION 12

of Sixth Draft of Uniform Small Loan Law.

ADVERTISING: Misleading statements prohibited; Commissioner's powers over advertising and rate statements. LIENS ON REAL ESTATE. LICENSED PLACE OF BUSINESS: No other business to be conducted there; licensed business to be transacted there and in licensed name only. PAPERS SIGNED BY BORROWER: No confessions of judgment or powers of attorney; what must be contained therein; no unfilled blanks.

PROVISIONS OF THE SECTION

SEC. 12. No licensee or other person, co-partnership, association, or corporation shall advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever any statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action in the amount or of the value of three hundred dollars (\$300) or less, which is false, misleading, or deceptive. [See COMMENT below.] The Commissioner may order any licensee to desist from any conduct which he shall find to be a violation of the foregoing provisions.

The Commissioner may require that 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.

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 upon the recording of a judgment. [See COMMENT below.]

No licensee shall conduct the business of making loans under this Act within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the Commissioner upon his finding that the character of such other business is such that the granting of such authority would not facilitate evasions of this Act or of the rules and regulations lawfully made hereunder.

No licensee shall transact such business or make any loan provided for by this Act under any other name or at any other place of business than that named in the license.

No licensee shall take any confession of judgment or any power of attorney. No licensee shall take any note, promise to pay, or security that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of interest, nor any instrument in which blanks are left to be filled in after execution.

Related Provisions

For other general requirements imposed on licensees, see Section 14.

For other provisions regarding place of business, see Sections 5, 7, and 14.

For Commissioner's powers regarding regulations, findings, and orders, see Section 21.

For criminal and civil penalties for violation, see Section 19.

Earlier Drafts

In the first four drafts the false advertising prohibition read "print, publish, or distribute" and applied only to statements which were "false, or calculated to deceive." In the fifth and sixth drafts the provision was expanded to include "advertise," "display," and "broadcast" and the statements prohibited were those which were "false, misleading, or deceptive." In the fifth and sixth drafts the Commissioner was also given power to issue orders to desist from the making of such statements. In the sixth draft the provision was

added giving the Commissioner the power to require clarity in statements if rates of charge are stated. This addition coincided with the elimination of the last sentence of Section 14 of the fifth draft which required the rate of charge to be stated in all advertising.

The prohibitions against taking liens on real estate and conducting a licensed business in conjunction with any other business first appeared in the fifth draft.

The provisions regarding the place of transacting business and the name to be used have varied little in the six drafts.

The provisions regarding confessions of judgment, powers of attorney, and the papers to be signed by the borrower have varied little in the six drafts.

COMMENT

At the point indicated in the first paragraph of the section several small loan laws contain the words, "or, in the case of a licensee, which refers to the supervision of such business by the State of . . . or any department or official thereof."

The wording of the third paragraph of the section differs among the small loan laws patterned after the fifth and sixth drafts. It is the intention of this paragraph, however worded, to prevent licensees from lending at the special rate permitted by Section 13 on the security of real estate in the first instance but not to deprive them of any right against a judgment debtor's real estate which is given to judgment creditors generally by the statutes of the state.

The legal significance of a case cited under this section may depend on whether the small loan law involved made violation of the provisions of the section a crime and whether it contained a provision invalidating a loan in the making or collection of which a crime was committed. Treatment of the cases on this point is under Section 19.

CASES ON INTERPRETATION

Advertising
 Liens on Real Estate
 Licensed Name and Place
 of Business

Papers Signed by Borrower:
 (1) Powers of Attorney
 (2) What Papers Must Contain
 (3) No Unfilled Blanks

Advertising

Similar provisions of the Georgia Small Loan Law have been held not to be violated. *Brooks v. Hartsfield Co.*, (Ga. App. 1937) 192 S. E. 459.

Liens on Real Estate

In the absence of such a provision a licensee may take a lien on real estate. *Snow v. Anderson*, (1933) 270 Ill. App. 453; *Liberty Finance Co. v. Catterton*, (1932) 161 Md. 650, 158 Atl. 16, Cam. 422; *Standard Founders v. Wiley*, (1932) 162 Md. 81, 158 Atl. 353.

But under the Oregon Small Loan Law of 1915, where in the absence of this provision it was held that the law did not apply to loans secured by mortgages upon real property, compare *Portland Loan Co. v. La France*, (1932) 139 Ore. 565, 9 Pac. (2d) 1051. An early Indiana small loan law specifically exempted loans secured by mortgage on real estate and the court enforced the provision. *Bell v. Rush*, (1934) 98 Ind. App. 303, 189 N. E. 181.

Licensed Name and Place of Business

Under an act which required that loans be made only at the place of business named in the license and which made violation a misdemeanor, it was held that a lender must show compliance with the requirements in order to enforce a loan at the maximum rate permitted licensees. *Jobson v. Masters*, (1924) 32 Ga. App. 60, 122 S. E. 724. Contra: *Morris Plan Bank v. Schmidt*, (La. App. 1935) 164 So. 270.

But the fact that a co-maker signed a note at a place other than the place of business stated in the license has been held not to be a violation of the requirement. *First Industrial Loan Co. of N. J. v. Rosenhand*, (1935) 115 N. J. Law 252, 179 Atl. 309.

Under an act prohibiting the transaction of business under any other name than that stated in the license, and providing that violation of its provisions constituted a misdemeanor and that the commission of any misdemeanor in connection with a loan invalidated it, the court held that a note executed to "Union Loan Company," when the license was issued to "Union Loan Association" violated the prohibition and was void, *Union Loan Ass'n v. Woodie*, (Sup. Ct. 1935) 13 N. J. Misc. R. 214, 177 Atl. 438;

but a change of the lender's name after expiration of his license when he continued to collect a loan made while licensed was held not to be a violation of the provision. *Globe Industrial Loan Corp. v. Steinberg*, (Sup. Ct. 1936) 14 N. J. Misc. R. 541, 186 Atl. 45.

Papers Signed by Borrower: (1) Powers of Attorney

A stipulation in a note authorizing the holder upon bankruptcy of the debtor to make a claim for so much of the homestead right as would pay the note, has been held to be a power of attorney. *Southern Loan Co. v. McDaniel*, (1934) 50 Ga. App. 285, 177 S. E. 834.

A stipulation in a loan contract authorizing the lender on default to take possession of and sell the security has also been held to be a power of attorney. *Southland Loan & Investment Co. v. Brown*, (1936) 53 Ga. App. 787, 187 S. E. 131.

Under a small loan law which prohibited the taking of powers of attorney but did not provide that a violation was a misdemeanor and did not expressly invalidate the loan, the taking of a power of attorney in connection with a loan was held to invalidate the loan, *Southern Loan Co. v. McDaniel*, (1934) 50 Ga. App. 285, 177 S. E. 834; see *Southland Loan & Investment Co. v. Brown*, (1936) 53 Ga. App. 787, 187 S. E. 131;

even though the power was not exercised. *Southern Loan Co. v. McDaniel*, (1934) 50 Ga. App. 285, 177 S. E. 834.

But it has been said that only the power of attorney itself is void. *Mason v. City Finance Co.*, (1933) 113 Fla. 73, 151 So. 521.

Under the same provision it has been held that a judgment on "con-

sent" and on "motion" of the borrower and lender was not prohibited and that an injunction would not be granted against the enforcement of a judgment procured by confession, the court saying the objection should have been raised in the suit on the note.

Nolan v. Southland Loan & Investment Co., (1933) 177 Ga. 59, 169 S. E. 370.

Papers Signed by Borrower: (2) What Papers Must Contain

The purpose of requiring the note to state the actual amount of the loan is to prevent a licensee from taking a note for an amount larger than the amount of the loan. See *G. Nicotera Loan Corp. v. Gallagher*, (1932) 115 Conn. 102, 160 Atl. 426.

The recital "value received" in a note does not fulfill the above requirement, *G. Nicotera Loan Corp. v. Gallagher*, (1932) 115 Conn. 102, 160 Atl. 426; *Snider v. Industrial Finance Corp.*, (Ga. App. 1936) 188 S. E. 917; *Wells v. Indianapolis Co.*, (1928) 88 Ind. App. 231, 161 N. E. 687, Cam. 316;

but a note which recited in addition "amount of money actually paid to borrower—\$93.00" complies with the requirement. *Rothchild v. Citizens Loan Co. of Indianapolis*, (Ind. App. 1936) 2 N. E. (2d) 810.

Under an act which did not make violation of this requirement a misdemeanor, it was held that the failure of the note to state the actual amount of the loan did not invalidate it, the bill of sale given as security having contained an acknowledgment of the correct amount of the loan, *Allison v. United Small-Loan Corp.*, (1937) 54 Ga. App. 820, 189 S. E. 263;

but under the same act violation of this requirement has been held to result in the forfeiture of the lender's right to interest. *Snider v. Industrial Finance Corp.*, (Ga. App. 1936) 188 S. E. 917.

The requirement of an early Ohio act that wage assignments given as security state the "proper figures" was held to have been violated by filling out an assignment form with the word "all" in such a manner that, literally construed, it assigned three years' wages, ap-

proximately \$3,000, instead of the amount of the loan which was \$36.15. *Andrews v. State*, (1914) 3 Ohio App. 436.

It has been held that notes taken under a small loan law may be negotiable in form. *Brooks v. Hartsfield Co.*, (Ga. App. 1937) 192 S. E. 459; *Chicago Discount Corp. v. Palmer*, (1935) 279 Ill. App. 216.

For cases involving the required statement of the actual amount of the loan and the rate of interest charged, see Section 14.

Papers Signed by Borrower: (3) No Unfilled Blanks

The fact that a note contained blanks when an accommodation maker signed it was held not to be a violation of this provision, since it was not delivered to the lender and therefore was not executed until after the borrower had filled in the blanks. *Trustees System Co. of Newark v. Stoll*, (Sup. Ct. 1935) 13 N. J. Misc. R. 490, 179 Atl. 372.

Under a small loan law which did not provide that violation of this provision was a misdemeanor, it was held that a loan was not void because a stock certificate given as security was assigned in blank. *Allison v. United Small-Loan Corp.*, (1937) 54 Ga. App. 820, 189 S. E. 263.

SECTION 13

of Sixth Draft of Uniform Small Loan Law.

MAXIMUM CHARGE BY LICENSEE ON LOANS OF \$300 OR LESS: Splitting loans; taking interest in advance; compounding of interest; computation of interest; limitation of other charges; penalty.

PROVISIONS OF THE SECTION

SEC. 13. Every licensee hereunder may lend any sum of money not to exceed three hundred dollars (\$300) in amount and may charge, contract for, and receive thereon interest at a rate not exceeding three and one-half per centum ($3\frac{1}{2}\%$) per month on that part of the unpaid principal balance of any loan not in excess of one hundred dollars (\$100) and two and one-half per centum ($2\frac{1}{2}\%$) per month on any remainder of such unpaid principal balance. [See COMMENT below.] No licensee shall induce or permit any borrower to split up or divide any loan. 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 or with the result of obtaining a higher rate of interest than would otherwise be permitted by this section.

Interest shall not be paid, deducted, or received in advance. Interest shall be computed and paid only on unpaid principal balances and shall not be compounded. The maximum interest permitted on loans made under this Act shall be computed on the basis of the number of days actually elapsed and for the purpose of such computations a month shall be any period of thirty (30) consecutive days.

In addition to the interest herein provided for no further or other charge or amount whatsoever for any examination, service, broker-

age, commission, expense, fee, or bonus or other thing or otherwise shall be directly or indirectly charged, contracted for, or received. If any interest, consideration, or charges in excess of those permitted by this Act are charged, contracted for, or received, the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, interest, or charges whatsoever.

Related Provisions

For license requirement to engage in business of lending sums of \$300 or less, see Section 1.

For maximum charge permitted licensees on loans exceeding \$300, see Section 15.

For maximum charge permitted non-licensees on any loan of \$300 or less, see Section 18.

For general requirements as to conduct of licensee's business and relations of licensee with borrowers, see Sections 12 and 14.

For requirements as to form of note, see Section 12.

For Commissioner's powers regarding regulations, findings, and orders, see Section 21.

For criminal and civil penalties for violation, see Section 19.

Earlier Drafts

The development of these provisions has been complex. Changes of form and substance have been frequent in the different drafts. Only the most significant changes are noted below.

In the first three drafts the language was substantially the same although, in the first draft, the permission to exact the maximum rate of charge extended to loans of "goods or things in action." In the second and third drafts the section also contained a prohibition against any person owing a licensee "as such," more than \$300 for principal. This provision did not appear in the fourth, fifth, or sixth drafts, all of which contained a substitute provision, as noted below.

In the fourth draft only there appeared in this section provisions which denied licensees the right to exact more than the rate of charge permitted non-licensees on loans exceeding \$300, and which combined the direct and contingent liabilities of borrowers for the pur-

pose of this prohibition. These provisions constitute Section 15 of the fifth and sixth drafts. These provisions were placed in Section 13 of the fourth draft and in Section 15 of the fifth and sixth drafts as substitutes for the provision referred to above which prohibited an indebtedness of more than \$300 to a licensee "as such."

The first four drafts contained a provision permitting licensees to collect from borrowers the amounts of certain fees actually and necessarily paid out for filing or recording certain documents. This provision was omitted from the fifth and sixth drafts.

In the sixth draft the maximum permitted rate of charge was first expressed as the aggregate of two percentages on separate portions of the unpaid principal balance of any loan. The last two sentences of the first paragraph of this section first appeared in the sixth draft.

The provision defining a month, for the purpose of interest computation, first appeared in the sixth draft.

COMMENT

Because of the variations in Section 13 in the several small loan laws, any case involving this section must be read in the light of the exact wording of the section then before the court.

Attention is directed to Note 14, following the sixth draft in Appendix C, which refers to the maximum rates of charge recommended by the Department of Remedial Loans of the Russell Sage Foundation and the methods of expressing them. For a more comprehensive discussion, see Regulation of the Small Loan Business.¹

The earlier small loan laws prescribed a single percentage rate as the maximum permitted charge, although small fees were permitted in a few states. A maximum rate of charge consisting of the aggregate of two percentages appeared first in 1932. It has since been widely adopted by legislatures and administrative rate making bodies. In approximately one-third of the states now having comprehensive small loan laws the maximum rate of charge permitted licensees varies with the size of the unpaid balance of the loan in

¹ Robinson and Nugent, Regulation of the Small Loan Business, Russell Sage Foundation, New York, 1935, Ch. VI, pp. 122-132, and Ch. XII.

such a manner that the smaller balances may be subjected to higher rates of charge. The last two sentences of the first paragraph of the section were placed in the sixth draft to provide for such cases.

A noteworthy deviation from the recommended drafts of Uniform Small Loan Law occurs in the acts of Massachusetts, Indiana, Wisconsin, and Iowa, under which the power to fix the maximum rates of charge by licensees is delegated to an administrative official or body. In Massachusetts a maximum rate is fixed by the act as a limitation upon the administrative agency. In the other three states the only maximum rate fixed by the act is one which becomes operative in default of a different rate effectively determined by the rate making body. In connection with the validity of a delegation of power to an administrative agency to fix maximum rates permitted to be charged by licensees, see *J. W. Hampton, Jr. & Co. v. United States*, (1928) 276 U. S. 394, 48 Sup. Ct. 348, 72 L. ed. 624, *aff'g* (1927) 14 Ct. Cust. App. 350, which involved a flexible tariff act.

The subject of evasions of statutory interest limitations, in general, is treated in Part III.

The device of casting the transaction in another form than that of a loan, for example a sale or purchase, in order to evade the small loan law, is dealt with under Sections 16 and 18.

It should be noted that the four most frequently used devices of the usurer who casts the transaction in the form of a loan are specifically prohibited in Section 13. They are:

- (1) Deducting or obtaining payment of interest in advance;
- (2) Deducting or obtaining at any time payment of an amount which is called something else than interest but from which the lender derives a benefit;
- (3) Computing interest either on a larger amount of money than the borrower actually has the use of or for a longer time than that for which he actually has its use;
- (4) Compounding of interest or other charges.

If any of these devices is utilized the rate of interest charged is increased above the ostensible rate. When the increased rate exceeds the applicable statutory maximum usury exists.

Because of the strict and effective prohibition of all devices, however mild or customary, and of payments made to compensate the lender for something other than the use of money and hence not "interest," the aggregate limitation on the charges permitted licensees is not comparable with the "interest" charged by other lending agencies. It is a flat limitation on all charges the licensee may make, including interest. It may fairly be assumed that the legislatures have recognized this when enacting small loan laws with maximum rates sufficiently high to permit a licensed small loan business to be conducted.

The Uniform Small Loan Law and most state small loan laws are silent as to the right of a licensee to statutory court costs and fees in suits against borrowers after default.

The small loan laws differ with reference to the rights of licensees to contract for or receive attorney's fees and other collection expenses after default by the borrower, and there is some conflict between the cases. The cases under Limitation of Other Charges can only be properly interpreted after examination of each small loan law involved.

See final paragraphs of the FOREWORD for an explanation of the change of wording to be proposed for the seventh draft of the Uniform Small Loan Law, in relation to the maximum rate permitted licensees.

CASES ON CONSTITUTIONALITY

A provision of an early Massachusetts small loan law granting the licensing official power to fix rates of interest on loans of \$200 or less, "having due regard to the amount of the loan and the time for which it is made," and authorizing the fixing of different rates for different localities, was held to be valid. *Dewey v. Richardson*, (1910) 206 Mass. 430, 92 N. E. 708.

For cases on classification, see Section 1.

CASES ON INTERPRETATION

Intention to Violate Section	Limitation of Other Charges:
Taking Interest in Advance	(1) Specific Charges
Compounding of Interest	(2) Attorney's Fees
Computation of Interest	(3) Other Collection Expenses
Computation of Interest	(4) Sale of Stock to Borrower
Computation of Interest	(5) Insurance on Security
after Judgment	(6) Payment of Taxes on Security
	(7) Special Tennessee Provisions
Waiver of Notice by Endorser	
Acceleration Clause	
Disclaimer as Means of Avoiding Penalty	

Intention to Violate Section

It has been held in cases involving provisions comparable to Section 13 that it is immaterial whether the lender intended to violate the statute. *Consolidated Plan of N. J. v. Shanholtz*, (Sup. Ct. 1929) 7 N. J. Misc. R. 876, 147 Atl. 401, Cam. 620, *aff'd*, *Consolidated Plan of N. J. v. Palkowitz*, (1931) 107 N. J. Law 517, 153 Atl. 906; *Richmond v. Conservative Credit System of N. J.*, (Sup. Ct. 1931) 10 N. J. Misc. R. 14, 157 Atl. 446, *rev'd on other grounds* (1933) 110 N. J. Law 73, 164 Atl. 563; *Ulin v. Walowitz*, (Mun. Ct. 1933) 147 N. Y. Misc. R. 724, 265 N. Y. S. 745; *Colonial Plan Co. v. Tartaglione*, (1929) 50 R. I. 342, 147 Atl. 880.

But in Tennessee, compare *O. H. May Co. v. Anderson*, (1927) 156 Tenn. 216, 300 S. W. 12; *Lewis v. Richards Loan Co.*, (1934) 18 Tenn. App. 252, 75 S. W. (2d) 821, *cert. denied* (Tenn. Sup. Ct. 1934).

Taking Interest in Advance

The receipt or charging of interest in advance invalidates the loan. *Langer v. Morris Plan Corp. of N. J.*, (Sup. Ct. 1932) 10 N. J. Misc. R. 128, 158 Atl. 325, *aff'd*, (1933) 110 N. J. Law 186, 164 Atl. 428; *Levin v. Morris Plan Corp.*, (Sup. Ct. 1934) 12 N. J. Misc. R. 666, 174 Atl. 237; *Colonial Plan Co. v. Tartaglione*, (1929) 50 R. I. 342, 147 Atl. 880.

But it has been held that discounting 10 per cent from a note which bears no interest before maturity and is payable in fifty equal weekly

installments is permitted under peculiar provisions of the Louisiana Small Loan Law if it does not result in a greater rate of interest than that permitted licensees, on the ground that "discounting" does not constitute taking interest in advance. *Unity Plan Finance Co. v. Green*, (1934) 179 La. 1070, 155 So. 900, *rev'g* (La. App. 1933) 151 So. 85, *rev'g on rehearing* (La. App. 1933) 148 So. 297. (The provisions interpreted in these cases are not in the Uniform Small Loan Law.)

Compounding of Interest

The compounding of interest invalidates a loan. *Fishburne v. Hartsfield Loan & Savings Co.*, (1928) 38 Ga. App. 784, 145 S. E. 495; *Frazier v. City Investment Co.*, (1930) 42 Ga. App. 585, 157 S. E. 102; *Lanier v. Consolidated Loan & Finance Co.*, (1933) 47 Ga. App. 148, 170 S. E. 99; *Nash Loan Co. v. Dixon*, (1935) 181 Ga. 297, 182 S. E. 23; compare *Langer v. Morris Plan Corp. of N. J.*, (1933) 110 N. J. Law 186, 164 Atl. 428, *aff'g* (Sup. Ct. 1932) 10 N. J. Misc. R. 128, 158 Atl. 325.

But where the interest at no time exceeded the maximum rate permitted licensees, compare *Unity Plan Finance Co. v. Green*, (1934) 179 La. 1070, 155 So. 900, *rev'g* (La. App. 1933) 151 So. 85, *rev'g on rehearing* (La. App. 1933) 148 So. 297.

Taking a new note for unpaid interest as well as unpaid principal of a prior note has been held to constitute a violation of the prohibition against compounding, *Frazier v. City Investment Co.*, (1930) 42 Ga. App. 585, 157 S. E. 102; *Commonwealth v. State Loan Corp.*, (1935) 116 Pa. Super. Ct. 365, 176 Atl. 516;

even though the new note included an amount of additional money. *Lanier v. Consolidated Loan & Finance Co.*, (1933) 47 Ga. App. 148, 170 S. E. 99. But compare *Rouse v. Jennings*, (1933) 263 Mich. 609, 249 N. W. 10.

And the taking of such a new note has been held to constitute compounding even though interest on the prior note was not in excess of the legal contract rate. *Lanier v. Consolidated Loan & Finance Co.*, (1933) 47 Ga. App. 148, 170 S. E. 99.

A stipulation which the court construed to require a borrower on default to pay the maximum rate of interest permitted by this section on the unpaid balance of principal and interest, has been held to constitute compounding. *Fishburne v. Hartsfield Loan & Savings Co.*, (1928) 38 Ga. App. 784, 145 S. E. 495.

But a stipulation in a note that judgment entered on it would bear the same interest as the note was construed to require interest on only the part of the judgment attributable to unpaid principal and therefore not to constitute compounding. *Southern Loan Co. v. McDaniel*, (1934) 50 Ga. App. 285, 177 S. E. 834.

Computation of Interest

The requirement that interest be computed on unpaid balances of principal was held to have been violated. *Langer v. Morris Plan Corp. of N. J.*, (Sup. Ct. 1932) 10 N. J. Misc. R. 128, 158 Atl. 325, *aff'd*, (1933) 110 N. J. Law 186, 164 Atl. 428; *Levin v. Morris Plan Corp.*, (Sup. Ct. 1934) 12 N. J. Misc. R. 666, 174 Atl. 237.

The computation of interest at the maximum rate permitted licensees on the basis of thirty days in each month has been held to be valid although the act did not specifically permit it. *Broce v. Master Loan Service*, (1930) 171 Ga. 22, 154 S. E. 324, Cam. 231; *Stembridge v. Family Finance Co.*, (1934) 49 Ga. App. 353, 175 S. E. 663; *Cotton v. Commonwealth Loan Co.*, (1934) 206 Ind. 626, 190 N. E. 853, followed in *Figg v. Nicholes*, (Ind. App. 1936) 200 N. E. 431. Contra: *Jobson v. Masters*, (1924) 32 Ga. App. 60, 122 S. E. 724.

Computation of interest on the basis of the number of days actually elapsed was held to be valid although the act did not specifically permit it. *Stembridge v. Family Finance Co.*, (1934) 49 Ga. App. 353, 175 S. E. 663.

A note dated several days before the actual date of the loan and which bore the maximum rate of interest permitted licensees from the date of the note is void, *Hartsfield Co. v. Ray*, (1931) 42 Ga. App. 637, 157 S. E. 111;

but where it was shown that the interest was collected only from the actual date of the loan, the loan was held to be valid. *Brooks v.*

Hartsfield Co., (Ga. App. 1937) 192 S. E. 459.

Where the maximum rate of interest permitted licensees was charged on the face amount of a note and the face amount was greater than the actual amount of the loan, it was held that the interest charged was excessive and the instruments involved were void. *Seaboard Security Co. v. Campbell*, (1930) 42 Ga. App. 299, 155 S. E. 779, Cam. 233; *Automobile Security Corp. v. Nemo*, (La. App. 1932) 144 So. 269.

Mistakes of computation resulting in the charge of a few cents more than the maximum rate permitted licensees have been held not to invalidate a loan. *Bailey v. Williams*, (1923) 155 Ga. 806, 118 S. E. 354.

Computation of Interest after Judgment

It has been held that judgment on a small loan note, entered after acceleration of maturity on default, bears interest at the rate contracted for in the note until payment of the judgment. *Hartsfield*

Co. v. Demos, (1931) 174 Ga. 43, 162 S. E. 138.

Under the Virginia Small Loan Law, which expressly limited interest after judgment to 6 per cent a year, it was held that the filing of a debtor's petition by the borrower and allowance of the lender's claim under Section 74 of the Federal Bankruptcy Act did not operate to limit interest under this provision. *Cotton v. Etheridge*, (C. C. A. 4th, 1936) 84 Fed. (2d) 129.

Limitation of Other Charges: (1) Specific Charges

This section is intended to prohibit all charges in addition to the maximum charge prescribed. See *London Realty Co. v. Riordan*,

(1913) 207 N. Y. 264, 100 N. E. 800, Ann. Cas. 1914C 408, Cam. 672, *aff'g* (1912) 148 App. Div. 854, 133 N. Y. S. 595; *Equity Service Corp. v. Agull*, (1937) 250 App. Div. 96, 293 N. Y. S. 872, *rev'g* (Sup. Ct. 1936) 158 N. Y. Misc. R. 780, 286 N. Y. S. 379, *rev'g* (Mun. Ct. 1935) 156 N. Y. Misc. R. 552, 281 N. Y. S. 292.

A charge made by a lender for an examination of title to the security was held to invalidate the loan. *Lewis v. Richards Loan Co.*, (1934) 18 Tenn. App. 252, 75 S. W. (2d) 821, *cert. denied* (Tenn. Sup. Ct. 1934); see *London Realty Co. v. Riordan*, (1913) 207 N. Y. 264, 100 N. E. 800, Ann. Cas. 1914C 408, Cam. 672, *aff'g* (1912) 148 App. Div. 854, 133 N. Y. S. 595.

A charge for a notarial fee in connection with an invalid and unrecorded chattel mortgage was held to invalidate the loan. *Davis Loan Co. v. Blanchard*, (1930) 14 La. App. 671, 129 So. 413, Cam. 373, *rehearing denied*, (1930) 130 So. 472.

It has been held that, under the Tennessee Small Loan Law, the exaction of an illegal charge must be wilful in order to invalidate the loan, *O. H. May Co. v. Anderson*, (1927) 156 Tenn. 216, 300 S. W. 12; *Lewis v. Richards Loan Co.*, (1934) 18 Tenn. App. 252, 75 S. W. (2d) 821, *cert. denied* (Tenn. Sup. Ct. 1934); and that the voluntary payment of an illegal charge does not entitle the borrower to recover the entire amount paid on the loan. *Scheid v. Family Loan Co.*, (1932) 163 Tenn. 611, 45 S. W. (2d) 54.

A charge for fees paid in connection with recording an instrument taken to secure a loan has been sustained under an act which specifically permitted collection from the borrower of fees paid out to any public officer for filing or recording. *Brooks v. Hartsfield Co.*, (Ga. App. 1937) 192 S. E. 459; *Platz v. Lapinski*, (1933) 263 Mich. 240, 248 N. W. 607; *McRae v. Knoxville Finance Co.*, (1929) 10 Tenn. App. 79, *cert. denied* (Tenn. Sup. Ct. 1929); compare *Lewis v. Richards Loan Co.*, (1934) 18 Tenn. App. 252, 75 S. W. (2d) 821, *cert. denied* (Tenn. Sup. Ct. 1934).

Under the California Personal Property Brokers' Act as amended in 1911, the payment of a commission to a broker for services to the borrower was sustained. *Niles v. Kavanagh*, (1918) 179 Cal. 98, 175 Pac. 462, 1 A. L. R. 831.

Limitation of Other Charges: (2) Attorney's Fees

A stipulation in a note for attorney's fees, in addition to the maximum rate permitted licensees, if the lender employed an attorney

to enforce the note on default, was held to invalidate the note.

Consolidated Plan of N. J. v. Shanholtz, (Sup. Ct. 1929) 7 N. J. Misc. R. 876, 147 Atl. 401, Cam. 620, *aff'd*, *Consolidated Plan of N. J. v. Palkowitz*, (1931) 107 N. J. Law 517, 153 Atl. 906; *Morris Plan Corp. of N. J. v. Schwartz*, (Sup. Ct. 1930) 8 N. J. Misc. R. 417, 150 Atl. 390, Cam. 618.

A similar result was reached where less than such maximum rate of interest was charged. *Ulin v. Walowitz*, (Mun. Ct. 1933) 147 N. Y. Misc. R. 724, 265 N. Y. S. 745.

A stipulation for attorney's fees was held to invalidate a chattel mortgage, *Ideal Financing Ass'n v. LaBonte*, (1935) 120 Conn. 190, 180 Atl. 300;

and a bill of sale given as security. *Seaboard Security Co. v. Jones*, (1930) 40 Ga. App. 710, 151 S. E. 412.

But the rule is to the contrary in Louisiana. *Automobile Security Corp. v. Randazza*, (1931) 17 La. App. 489, 135 So. 45, Cam. 382, *judgment recalled on application for rehearing*, 135 So. 674, Cam. 385, *writs of cert. and review denied* (La. Sup. Ct. 1931); *Heymann v. Mathes*, (1931) 18 La. App. 403, 137 So. 871, *writs of cert. and review denied* (La. Sup. Ct. 1932); *Foundation Finance Co. v. Robbins*, (1934) 179 La. 259, 153 So. 833, *rev'g* (La. App. 1933) 149 So. 166; *General American Finance System v. Senseney*, (La. App. 1934) 154 So. 56; *Unity Plan Finance Co. v. Green*, (1934) 179 La. 1070, 155 So. 900, *rev'g* (La. App. 1933) 151 So. 85, *rev'g on rehearing* (La. App. 1933) 148 So. 297; *General American Finance System v. Brodnax*, (La. App. 1934) 157 So. 746; *Industrial Loan & Investment Co. v. Senseney*, (La. App. 1934) 154 So. 58. But compare *Davis Loan Co. v. Blanchard*, (1930) 14 La. App. 671, 129 So. 413, Cam. 373, *rehearing denied*, (1930) 130 So. 472.

Where a note provided for "collection fees," a charge made thereunder for attorney's fees was held to be a violation. *Commonwealth v. Pennsylvania Loan Corp.*, (Pa. Super. Ct. 1937) 193 Atl. 141.

A stipulation in a chattel mortgage, given to secure a loan at the

maximum rate permitted licensees, under which the lender was permitted to apply the proceeds of a sale of the security on default to attorney's fees, was held to be valid. *Mason v. City Finance Co.*, (1933) 113 Fla. 73, 151 So. 521; compare *Walker v. Peoples Finance & Thrift Co.*, (1935) 45 Ariz. 226, 42 Pac. (2d) 405, *rev'd on rehearing on another ground*, (1935) 46 Ariz. 224, 49 Pac. (2d) 1005.

Attorney's fees may be contracted for to the extent that the act specifically permits, *Snow v. Anderson*, (1933) 270 Ill. App. 453; *Rothchild v. Citizens Loan Co. of Indianapolis*, (Ind. App. 1936) 2 N. E. (2d) 810; *Richmond v. Conservative Credit System of N. J.*, (1933) 110 N. J. Law 73, 164 Atl. 563, *rev'g* (1931) 10 N. J. Misc. R. 14, 157 Atl. 446; and, where the particular provision for attorney's fees was held to violate the act, compare *Wells v. Indianapolis Co.*, (1928) 88 Ind. App. 231, 161 N. E. 687, Cam. 316.

Limitation of Other Charges: (3) Other Collection Expenses

A stipulation in a note for payment of court costs which may be incurred in a suit to enforce the note has been held to invalidate the note. *Southern Loan Co. v. McDaniel*, (1934) 50 Ga. App. 285, 177 S. E. 834.

A stipulation for costs of collection, including attorney's fees, was held to invalidate the loan contract. *Fishburne v. Hartsfield Loan & Savings Co.*, (1928) 38 Ga. App. 784, 145 S. E. 495.

But a stipulation for accrued court costs which was construed to refer only to such court costs as are allowed by the general law in a suit by a creditor against a debtor has been sustained. *Hartsfield Co. v. Shoaf*, (Ga. 1937) 191 S. E. 693.

A stipulation to pay a percentage of the amount due on default to cover costs of collection, when no attorney was employed and such charges added to the interest charged did not exceed the maximum rate of interest permitted licensees, was held to be valid. *Unity Plan Finance Co. v. Green*, (1934) 179 La. 1070, 155 So. 900, *rev'g* (La. App. 1933) 151 So. 85, *rev'g on rehearing* (La. App. 1933) 148 So. 297.

A provision in a real estate mortgage for payment of the expenses of foreclosure was held to be valid on the ground that the enumerated expenses were only those which the mortgagee was entitled to under general law, *Snow v. Anderson*, (1933) 270 Ill. App. 453; and when a chattel mortgage was involved, compare *Mason v. City Finance Co.*, (1933) 113 Fla. 73, 151 So. 521.

However, it has been held that a chattel mortgage containing a stipulation requiring the borrower to pay the costs of reclaiming the security, including attorney's fees, would invalidate the loan. *Ideal Financing Ass'n v. LaBonte*, (1935) 120 Conn. 190, 180 Atl. 300.

Limitation of Other Charges: (4) Sale of Stock to Borrower

Requiring a borrower to subscribe for stock of the lending corporation and to make a down payment thereon, as a condition precedent to obtaining a loan, was held to invalidate the loan. *Beneficial Loan & Investment Co. v. Ira*, (1924) 75 Colo. 379, 226 Pac. 136.

Limitation of Other Charges: (5) Insurance on Security

A requirement, imposed as a condition to making the loan, that the borrower insure the security given and apply a portion of the proceeds of the loan to payment of the premium was held not to invalidate the loan, when it was affirmatively stipulated that none of the money thus applied went to the lender. *Platz v. Lapinski*, (1933) 263 Mich. 240, 248 N. W. 607.

The same result was reached under the California Personal Property Brokers' Act as amended in 1911 on similar facts, except that the amount of the loan was \$600. *Niles v. Kavanagh*, (1918) 179 Cal. 98, 175 Pac. 462, 1 A. L. R. 831.

Limitation of Other Charges: (6) Payment of Taxes on Security

A stipulation in a real estate mortgage that the borrower's failure to pay taxes or assessments was a breach of the loan contract and authorizing payment, out of the proceeds of foreclosure sale, of amounts advanced by the lender on account of such taxes or assessments, was held to be valid. *Snow v. Anderson*, (1933) 270 Ill. App. 453.

Limitation of Other Charges: (7) Special Tennessee Provisions

Article XI, Section 7 of the Tennessee Constitution limits interest to 10 per cent a year. The 1925 Tennessee Small Loan Law distinguishes between interest and expenses in connection with a loan. Originally, it permitted a maximum "interest" rate of 6 per cent a year and a "fee" of not more than 3 per cent a month for "investigating the moral and financial standing of the applicant, investigating the security, titles, etc., and for other expenses and losses of every nature whatsoever, and for closing the loan." This fee provision has been interpreted to limit the charge for expenses to 3 per cent a month but not to authorize an arbitrary charge. To justify the fee there must be a "reasonable relation" between the expenses in connection with a particular loan and the amount of the fee. In connection with the special Tennessee issues note the following cases:

Koen v. State, (1931) 162 Tenn. 573, 39 S. W. (2d) 283, Cam. 916; *Personal Finance Co. v. Hammack*, (1932) 163 Tenn. 641, 45 S. W. (2d) 528; *Jones v. Memphis Security Co.*, (1933) 17 Tenn. App. 571, 69 S. W. (2d) 248, *cert. denied* (Tenn. Sup. Ct. 1934); *Pugh v. Hermitage Loan Co.*, (1934) 167 Tenn. 389, 70 S. W. (2d) 22; *Family Loan Co. of Nashville v. Hickerson*, (1934) 168 Tenn. 36, 73 S. W. (2d) 694, 94 A. L. R. 664; *Nolen v. Family Loan Co.*, (1935) 19 Tenn. App. 108, 83 S. W. (2d) 559, *cert. denied* (Tenn. Sup. Ct. 1935); *Golightly v. Hermitage Loan Co.*, (Tenn. Sup. Ct. 1937) 100 S. W. (2d) 654; *Williams v. Personal Finance Co.*, (Tenn. Sup. Ct. 1937) 109 S. W. (2d) 1166.

In 1937 the fee maximum was reduced by amendment to one per cent a month.

Waiver of Notice by Endorser

Waiver of notice of presentment and protest by endorsers of a note does not violate comparable provisions of the earlier New Jersey small loan law. *New Jersey Mortgage & Loan Co. v. Popick*, (Sup. Ct. 1931) 9 N. J. Misc. R. 1314, 157 Atl. 671.

Acceleration Clause

Where the amount of interest charged was included in the amount of the note, and the note also contained an acceleration clause which, if exercised, might have resulted in a greater rate of interest than that permitted licensees, the note was held to be void. *Langer v.*

Morris Plan Corp. of N. J., (1933) 110 N. J. Law 186, 164 Atl.

428, *aff'g* (Sup. Ct. 1932) 10 N. J. Misc. R. 128, 158 Atl. 325.

But in Louisiana, where the general rules of law entitled the borrower on acceleration to a rebate of any resulting excessive interest, a contrary result was reached, the court expressly finding that the acceleration did not result in excessive interest. *Unity Plan Finance*

Co. v. Green, (1934) 179 La. 1070, 155 So. 900, *rev'g* (La.

App. 1933) 151 So. 85, *rev'g on rehearing* (La. App. 1933)

148 So. 297.

Disclaimer as Means of Avoiding Penalty

A provision in a note that it shall not be so construed as to provide for any charge in excess of that permitted by the small loan law does not save the note if it would otherwise be invalid because of provision therein for illegal charges. *Consolidated Plan of N. J.*

v. Shanholtz, (Sup. Ct. 1929) 7 N. J. Misc. R. 876, 147 Atl. 401,

Cam. 620, *aff'd*, *Consolidated Plan of N. J. v. Palkowitz*, (1931)

107 N. J. Law 517, 153 Atl. 906; *Richmond v. Conservative*

Credit System of N. J., (Sup. Ct. 1931) 10 N. J. Misc. R. 14, 157

Atl. 446, *rev'd on other grounds*, (1933) 110 N. J. Law 73,

164 Atl. 563; *Ulin v. Walowitz*, (Mun. Ct. 1933) 147 N. Y.

Misc. R. 724, 265 N. Y. S. 745; compare *Fishburne v. Harts-*

field Loan & Savings Co., (1928) 38 Ga. App. 784, 145 S. E.

495.

SECTION 14

of Sixth Draft of Uniform Small Loan Law.

REQUIREMENTS FOR MAKING AND PAYMENT OF LOANS: Form of loan statement to be delivered to borrower; form of receipts required; prepayments to be permitted; cancellation of papers required; rate schedule to be posted.

PROVISIONS OF THE SECTION

SEC. 14. Every licensee shall:

Deliver to the borrower at the time any loan is made a statement (upon which there shall be printed a copy of Section 13 of this Act) in the English language showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, and the agreed rate of charge;

Give to the borrower a plain and complete receipt for all payments made on account of any such loan at the time such payments are made, specifying the amount applied to interest and the amount, if any, applied to principal, and stating the unpaid principal balance, if any, of such loan;

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 interest in full at the agreed rate up to the date of such payment;

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

Display prominently in each licensed place of business a full and

accurate schedule, to be approved by the Commissioner, of the charges to be made and the method of computing the same.

Related Provisions

For other general requirements imposed on licensees, see Section 12.
For other provisions regarding place of business, see Sections 5, 7, and 12.
For Commissioner's powers regarding regulations, findings, and orders, see Section 21.
For criminal and civil penalties for violation, see Section 19.

Earlier Drafts

The first, second, and fourth paragraphs of the above section have appeared in all six drafts with only minor variations. The third paragraph first appeared in the fourth draft. The last paragraph first appeared in the fifth draft.

In the fifth draft only there appeared at the end of Section 14 a requirement that the rate of charge be stated in all advertising; for an explanation of the omission of this requirement from the sixth draft, see Earlier Drafts under Section 12.

COMMENT

The legal significance of a case cited under this section may depend on whether the small loan law involved made violation of the provisions of the section a crime and whether it contained a provision invalidating a loan in the making or collection of which a crime was committed. Treatment of the cases on this point is under Section 19.

CASES ON INTERPRETATION

Loan Statement:	Receipts Required
(1) To be Delivered to	Cancellation of Papers
Borrower	Required
(2) Form Required	

Loan Statement: (1) To be Delivered to Borrower

In the absence of a provision in the act making violation a misdemeanor the failure to deliver a loan statement does not invalidate the loan. *Walker v. Peoples Finance & Thrift Co.*, (1935) 45 Ariz. 226, 42 Pac. (2d) 405, *rev'd on rehearing on another*

ground, (1935) 46 Ariz. 224, 49 Pac. (2d) 1005; *Williams v. Yarbrough*, (1925) 34 Ga. App. 500, 130 S. E. 361; *Unity Plan Finance Co. v. Green*, (1934) 179 La. 1070, 155 So. 900, *rev'g* (La. App. 1933) 151 So. 85, *rev'g on rehearing* (La. App. 1933) 148 So. 297; compare *Michigan Loan Ass'n of Jackson v. Cabill*, (1931) 253 Mich. 358, 235 N. W. 182, 74 A. L. R. 1181, Cam. 490. But compare *Jobson v. Masters*, (1924) 32 Ga. App. 60, 122 S. E. 724.

Under an act which provided that any violation thereof was a misdemeanor and rendered the loan void, it was held that such failure to furnish a loan statement invalidated the loan, *Morris Plan Corp.*

of N. J. v. Leschinsky, (Sup. Ct. 1933) 12 N. J. Misc. R. 1, 169 Atl. 357, *aff'd*, 113 N. J. Law 414, 174 Atl. 729;

and the same result was reached in the absence of a specific civil penalty. *Atta v. Bergin*, (1935) 120 Conn. 152, 180 Atl. 298.

Delivery of a loan statement to an accommodation co-maker of a note is unnecessary. *Trustees System Co. of Newark v. Stoll*, (Sup. Ct. 1935) 13 N. J. Misc. R. 490, 179 Atl. 372.

Delivery of a loan statement to one of two makers of a note was held to comply with the requirement. *Rothchild v. Citizens Loan Co. of Indianapolis*, (Ind. App. 1936) 2 N. E. (2d) 810.

It has been said that there is no presumption of failure to deliver the loan statement. See *North Hudson Loan Co. v. Roth*, (Sup. Ct. 1927) 5 N. J. Misc. R. 409, 136 Atl. 712.

Loan Statement: (2) Form Required

The purpose of requiring a statement of the amount of the loan is to prevent a licensee from taking a note for a larger amount. See *G. Nicotera Loan Corp. v. Gallagher*, (1932) 115 Conn. 102, 160 Atl. 426.

The failure of a loan statement to show the date of maturity of the loan does not invalidate a loan where the loan contract showed the date and amount of the loan and the amount payable each month, so that the date of maturity was readily ascertainable, *Sartor v. Engle-*

wood Finance Co., (Sup. Ct. 1931) 9 N. J. Misc. R. 675, 155 Atl. 462;

but a statement which did not show that absconding, removing from the jurisdiction, or disposing of his property, by any signer of the note would accelerate the maturity, was held insufficient. *Atta v. Bergin*, (1935) 120 Conn. 152, 180 Atl. 298.

The loan statement must contain the correct address of the licensee's place of business, which must correspond to the address recorded with the licensing official. See *Wells v. Indianapolis Co.*, (1928) 88 Ind. App. 231, 161 N. E. 687, Cam. 316.

Where a note for \$300 required weekly principal payments with interest, "at the rate stated on the receipt book," and the receipt book showed weekly payments of principal and interest on a loan for \$100 without stating the rate of interest, it was held that the requirement that the loan statement show the rate of interest charged had not been complied with. *G. Nicotera Loan Corp. v. Gallagher*, (1932) 115 Conn. 102, 160 Atl. 426.

The requirement that Section 13 be printed on the loan statement was held to have been substantially complied with, although the language of an amendment to the section was omitted. *Sartor v. Englewood Finance Co.*, (Sup. Ct. 1931) 9 N. J. Misc. R. 675, 155 Atl. 462.

Receipts Required

This requirement was held to have been violated. *Automobile Security Corp. v. Nemo*, (La. App. 1932) 144 So. 269.

Cancellation of Papers Required

This requirement was held to have been violated where, on renewal, the lender retained the old note and merely marked it with lead pencil "renewed with new note." *Automobile Security Corp. v. Nemo*, (La. App. 1932) 144 So. 269.

SECTION 15

of Sixth Draft of Uniform Small Loan Law.

MAXIMUM CHARGE BY LICENSEE ON LOANS EXCEEDING \$300: Contingent liabilities to be included.

PROVISIONS OF THE SECTION

SEC. 15. No licensee shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than per centum (. . . . %) per annum [maximum contract rate—see COMMENT below] upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit, of the amount or value of more than three hundred dollars (\$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, to owe directly or contingently or both to the licensee at any time a sum of more than three hundred dollars (\$300) for principal.

Related Provisions

For license requirement to engage in business of lending sums of \$300 or less, see Section 1.

For maximum charge permitted licensees on loans of \$300 or less, see Section 13.

For maximum charge permitted non-licensees on any loan of \$300 or less, see Section 18.

Earlier Drafts

The substance of this section first appeared in Section 13 of the fourth draft. In the fifth and sixth drafts it appeared as Section 15 above. For an explanation of the provision of the first three drafts which the above provisions replaced, see Earlier Drafts under Section 13.

COMMENT

At the point indicated in the section the small loan laws contain either a stated percentage, which is usually the maximum contract rate of interest, or the clause "the lender would be permitted by law to charge if he were not a licensee hereunder." This figure or clause appears in the Title and Sections 1, 15, and 18 of the sixth draft. The clause amounts to a formula which reaches the same result as a specific figure. The formula has two advantages over a figure: it applies more accurately if special interest rates are fixed by statute for special circumstances and it provides automatically for future changes in the maximum contract rate of interest. Use of the clause instead of a stated percentage was first recommended in the fifth draft.

The early small loan laws contained a provision in Section 13 reading, "No person shall owe any licensee, as such, at any time more than three hundred dollars (\$300) for principal." This provision was too narrow in one interpretation and too broad in another. The meaning of the words "as such" was not clear. The provision was subject to the construction that a licensee could not maintain a bank account exceeding \$300 or engage in normal business activities in which he might acquire credits against one person aggregating over \$300. On the other hand, licensees might violate the clear intent of the law by lending, for example, \$300 to a wife and \$300 to her husband, each on the endorsement of the other. Accordingly the provision was reworded and placed in a separate section.

The prohibition of any indebtedness exceeding \$300 was changed to a limitation on the interest which could be charged on loans of more than \$300 to the maximum rate permitted non-licensees. The definition of indebtedness was broadened to include the aggregate of direct and contingent liabilities for the purpose of applying the \$300 limit.

CASES ON INTERPRETATION

General Purpose and Effect

Purchase of Loan from
Another Licensee

Contingent Liabilities

General Purpose and Effect

It has been held that this provision prohibits licensees from lending sums of more than \$300 at more than the rate of interest permitted non-licensees, *Smetal Corp. v. Family Loan Co.*, (1935) 119 Fla. 497, 161 So. 438; compare *Hartsfield Co. v. Kitchens*, (1935) 51 Ga. App. 154, 179 S. E. 920; *Easy Term Loan Co. v. Silberman*, (1924) 100 N. J. Law 67, 125 Atl. 561, Cam. 618; but in Michigan the renewal of a \$300 loan at the rate of interest permitted licensees, and the simultaneous taking of a second note for \$185 for unpaid interest on the previous loan and for an additional \$60 in cash, at the rate of interest permitted non-licensees, was held not to be a violation, and the court said that a license under the small loan law did not bar the lender from making other loans at regular and lawful rates of interest. *Rouse v. Jennings*, (1933) 263 Mich. 609, 249 N. W. 10.

A loan made in violation of this provision, under an act which provided that such violation was a misdemeanor and rendered the loan void, was held to be unenforceable even though made to a corporation which under another statute was denied the right to plead usury, *Smetal Corp. v. Family Loan Co.*, (1935) 119 Fla. 497, 161 So. 438;

but the court subsequently held with reference to the same transaction that the lender, having acted in good faith, was entitled to recover the money lent. *Family Loan Co. v. Smetal Corp.*, (1936) 123 Fla. 900, 169 So. 48.

Where the lender made several loans to the borrower of less than \$300, resulting in an aggregate indebtedness exceeding \$300, it was said that a prohibition against owing a licensee more than \$300 for principal was violated and all the loans, except the first, were held to be void notwithstanding the fact that the prohibition had been

omitted from the act in a general statutory revision. *Walker v. Peoples Finance & Thrift Co.*, (1935) 46 Ariz. 224, 49 Pac. (2d) 1005, *on rehearing of* (1935) 45 Ariz. 226, 42 Pac. (2d) 405. On the facts there was held to be no violation of a prohibition against making a loan or advancement of more than \$300 or owing more than that amount either directly as maker or indirectly as endorser or guarantor. *Stadtmauer v. Jefferson Finance Corp.*, (D. C. 1931) 9 N. J. Misc. R. 1341, 157 Atl. 844; *Home Loan Co. v. Scanlon*, (Sup. Ct. 1937) 15 N. J. Misc. R. 509, 192 Atl. 389.

Under an act which prohibited any person from owing any licensee, as such, more than \$300 for principal and made violation a misdemeanor, it was held that an injunction would not be granted against the enforcement of judgments entered the same day on three notes aggregating more than \$300 but each for less than \$300, the court saying that this defense should have been raised in the suits on the notes. *Nolan v. Southland Loan & Investment Co.*, (1933) 177 Ga. 59, 169 S. E. 370.

Purchase of Loan from Another Licensee

It has been held that a licensee did not violate this provision by purchasing from another licensee the indebtedness of a borrower who was already indebted to the purchaser, although as a result the borrower owed him more than \$300. *General American Finance System v. Brodnax*, (La. App. 1934) 157 So. 746.

Contingent Liabilities

Under an act which made the violation a misdemeanor, a prohibition against any person owing a licensee, as such, more than \$300 for principal which did not extend to contingent liabilities was held to be violated where a person already indebted to a licensee executed a note as co-maker, with the result that his total obligation to the licensee exceeded \$300, and the note which he executed as co-maker was held to be void, *Westville & Hamden Loan Co. v. Pasqual*, (1929) 109 Conn. 110, 145 Atl. 758, Cam. 142; and it was held that, where a borrower became primarily liable as a

surety and thereby increased his liability beyond \$300, his original obligation was void. *Hartsfield Co. v. Robertson*, (1934) 48 Ga. App. 735, 173 S. E. 201.

But a guaranty executed while the guarantor was obligated under a different note was held to be valid where he had discharged his original obligation before the licensee attempted to enforce the guaranty. *Hartsfield Co. v. Hamil*, (1935) 180 Ga. 615, 180 S. E. 128, 99 A. L. R. 921.

Under a similar prohibition an accommodation note given to enable the real borrower to obtain more than \$300 was held to be unenforceable. *Burque v. Brodeur*, (1932) 85 N. H. 310, 158 Atl. 127. Such an accommodation note was also held to be void under an act which prohibited making a loan or advancement of more than \$300, or owing more than that amount, and made violation a misdemeanor and rendered the loan void, *Easy Term Loan Co. v. Silberman*, (1924) 100 N. J. Law 67, 125 Atl. 561, Cam. 618;

but the simultaneous endorsement of two notes for \$300 each, given to the same licensee, was held not to have been a violation. *New Jersey Mortgage & Loan Co. v. Popick*, (Sup. Ct. 1931) 9 N. J. Misc. R. 1314, 157 Atl. 671.

SECTION 16

of Sixth Draft of Uniform Small Loan Law.

PURCHASE OF WAGES FOR \$300 OR LESS: To be regulated as loans; limitations thereon.

PROVISIONS OF THE SECTION

SEC. 16. The payment of three hundred dollars (\$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 secured by such assignment, and the amount by which such assigned compensation 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.

Related Provisions

For provisions regulating wage assignments generally, see Section 17.

Earlier Drafts

This section first appeared in the fourth draft and, with minor changes in wording, it was also in the fifth draft.

COMMENT

This section was incorporated in the Uniform Small Loan Law to bring within its regulation the practice of "salary buying," an evil which had become widespread by 1924 when the section was first enacted in Maryland. It appears in most of the small loan laws enacted since then and has been added to several of the older laws

by amendment. In the absence of this section it has been found difficult to curb the illegal operations of moneylenders who cast their loans in the form of purchases of wages, usually earned but not yet payable, because of the difficulty of proving the true nature of the transaction by extrinsic evidence in each case. Even when prosecutions were successful in individual cases the "salary buying" offices were not permanently barred from the state. This section dispenses with the necessity to prove the true character of each transaction by declaring that salary or wage purchases shall be regulated as though they were loans. The section itself contains no prohibitions and hence cannot be violated. It merely brings certain transactions within the scope of the other sections of the small loan law.

The constitutionality of Section 16 rests on this principle: innocuous transactions may be brought within an otherwise valid system of regulation or a prohibition if their inclusion is reasonably deemed necessary by the legislature to insure the effectiveness of the system of regulation or the prohibition. *Purity Extract & Tonic Co. v. Lynch*, (1912) 226 U. S. 192, 33 Sup. Ct. 44, 57 L. ed. 184, *aff'g* (1911) 100 Miss. 650, 56 So. 316; *Booth v. Illinois*, (1902) 184 U. S. 425, 22 Sup. Ct. 425, 46 L. ed. 623, *aff'g Booth v. People*, (1900) 186 Ill. 43, 57 N. E. 798, 50 L. R. A. 762, 78 Am. St. Rep. 229; *Otis v. Parker*, (1903) 187 U. S. 606, 23 Sup. Ct. 168, 47 L. ed. 323, *aff'g Parker v. Otis*, (1900) 130 Cal. 322, 62 Pac. 571, *rehearing denied*, (1910) 62 Pac. 927; *New York ex rel. Silz v. Hesterberg*, (1908) 211 U. S. 31, 29 Sup. Ct. 10, 53 L. ed. 75, *aff'g People ex rel. Silz v. Hesterberg*, (1906) 184 N. Y. 126, 76 N. E. 1032, 3 L. R. A. (N. S.) 163, 128 Am. St. Rep. 528, 6 Ann. Cas. 353.

Section 16 is only one of several provisions of the Uniform Small Loan Law which extend its application to transactions other than the mere lending of money. Such extensions result from the words "upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit" in Sections 15 and 18, and similar words in Section 1. The principle stated above sustains these extensions of the Uniform Small Loan Law as it did Section 16. See *Morgan v. Lowry*, (1929) 168 Ga. 723, 149 S. E. 37, Cam.

221, *appeal dismissed*, *Morgan v. Georgia*, (1930) 281 U. S. 691, 50 Sup. Ct. 238, 74 L. ed. 1120, Cam. 223, in which sales of credit were involved. Courts have also applied the provisions of Section 16 without passing specifically on its constitutionality. See *Cash Service Co. v. Ward*, (W. Va. 1937) 192 S. E. 344.

The small loan laws of the following seventeen jurisdictions contain provisions which approximate those of Section 16 of the Uniform Small Loan Law: Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin.

For additional cases, see COMMENT under Section 17.

See also Small Loan Legislation, Ch. XI.¹

CASES ON CONSTITUTIONALITY

The provisions of this section have been held valid against attack on various constitutional grounds. *Palmore v. Baltimore & Ohio R. R.*, (1928) 156 Md. 4, 142 Atl. 495, Cam. 425, (with which read *Wight v. Baltimore & Ohio R. R.*, (1924) 146 Md. 66, 125 Atl. 881, 37 A. L. R. 864, Cam. 428); *State v. Hill*, (1929) 168 La. 761, 123 So. 317, 69 A. L. R. 574, Cam. 377; *Dunn v. State*, (1930) 122 Ohio St. 431, 172 N. E. 148, Cam. 775, *aff'g* (1930) 36 Ohio App. 170, 173 N. E. 22, *appeal dismissed and cert. denied*, *Dunn v. Ohio*, (1930) 282 U. S. 801, 51 Sup. Ct. 84, 75 L. ed. 721; *Sweat v. Commonwealth*, (1929) 152 Va. 1041, 148 S. E. 774, Cam. 999.

The West Virginia Small Loan Law which contains provisions similar to Section 16 has been held to be constitutional in a case involving the business of purchasing of wages. *Cash Service Co. v. Ward*, (W. Va. 1937) 192 S. E. 344.

An amendment adding this section to the Missouri Small Loan Law was held invalid because of a defective title. *Sherrill v. Brantley*, (1933) 334 Mo. 497, 66 S. W. (2d) 529.

¹ Gallert, Hilborn, and May, Small Loan Legislation, Russell Sage Foundation, New York, 1932.

CASES ON INTERPRETATION

Even in the absence of the provisions of this section small loan laws have been held to be applicable to transactions in the form of sales of wages where in reality they were loans, *Tennessee Finance Co. v. Thompson*, (C. C. A. 6th, 1922) 278 Fed. 597, Cam. 921; *Rosenbusch v. Frey*, (D. C. 1927) 5 N. J. Misc. R. 312, 136 Atl. 711; *State ex rel. Spillman v. Central Purchasing Co.*, (1929) 118 Neb. 383, 225 N. W. 46;

but not to transactions which were *bona fide* sales. *Atlanta Joint Terminals v. Walton Discount Co.*, (1922) 29 Ga. App. 225, 114 S. E. 908; *Tollison v. George*, (1922) 153 Ga. 612, 112 S. E. 896; *State v. Mehaffey*, (1925) 112 Ohio St. 330, 147 N. E. 506.

In Georgia, where the small loan law lacks provisions comparable to Section 16, a transaction in the form of a sale of wages was held to be invalid and it was held that it was immaterial whether or not the transaction was in fact a loan or sale in view of a prior act licensing and regulating the business of purchasing wages with which the lender or purchaser had not complied. *McLamb v. Phillips*, (1925) 34 Ga. App. 210, 129 S. E. 570.

The business of acquiring assignments of wages in exchange for money and merchandise coupons was held to be brought within the small loan law by the provisions of this section. *Cash Service Co. v. Ward*, (W. Va. 1937) 192 S. E. 344.

SECTION 17

of Sixth Draft of Uniform Small Loan Law.

WAGE ASSIGNMENTS AND LIENS ON HOUSEHOLD FURNITURE: Conditions for validity; amount collectible under wage assignment; manner of enforcement.

PROVISIONS OF THE SECTION

SEC. 17. 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 under this Act, 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, nor 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.

Under any such assignment or order for the payment of future salary, wages, commissions, or other compensation for services, given as security for a loan made by any licensee under this Act, a sum not to exceed ten per centum (10%) 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, is served upon the employer.

Related Provisions

For provisions regarding purchase of wages for \$300 or less, see Section 16.

Earlier Drafts

The provisions of this section have not varied materially in substance since the first draft except in the following respects: the first draft did not contain the provision concerning spouses who have lived apart for five months or more, and in the third draft first appeared the requirement that both spouses must sign instruments creating liens on household furniture in use by the borrower.

COMMENT

This section differs materially in the several small loan laws. Its form and substance have been governed by the public policy of each state and adapted to the existing statutes on wage assignments. As such statutes, particularly those relating to unearned wages, are numerous and complicated, the enacted sections often contain provisions not found in any of the drafts or omit entirely provisions recommended in them.

The power of the state to prohibit or stringently regulate the assignment of past or future earnings has long been recognized. Illustrations of the valid exercise of this power are: the absolute prohibition of the assignment of unearned wages, *International Text-Book Co. v. Weissinger*, (1902) 160 Ind. 349, 65 N. E. 521, 65 L. R. A. 599, 98 Am. St. Rep. 334, Cam. 313; a requirement that the spouse consent, *Mutual Loan Co. v. Martell*, (1911) 222 U. S. 225, 32 Sup. Ct. 74, 56 L. ed. 175, Ann. Cas. 1913B 529, Cam. 461, *aff'g* (1909) 200 Mass. 482, 86 N. E. 916, 43 L. R. A. (N. S.) 746, 128 Am. St. Rep. 446; *Wight v. Baltimore & Ohio R. R.*, (1924) 146 Md. 66, 125 Atl. 881, 37 A. L. R. 864, Cam. 428; and the imposition of numerous formal and substantial requirements for the validity of wage assignments, *Mutual Loan Co. v. Martell*,

(1911) 222 U. S. 225, 32 Sup. Ct. 74, 56 L. ed. 175, Ann. Cas. 1913B 529, Cam. 461, *aff'g* (1909) 200 Mass. 482, 86 N. E. 916, 43 L. R. A. (N. S.) 746, 128 Am. St. Rep. 446; *Wight v. Baltimore & Ohio R. R.*, (1924) 146 Md. 66, 125 Atl. 881, 37 A. L. R. 864, Cam. 428; *West v. Jefferson Woolen Mills*, (1922) 147 Tenn. 100, 245 S. W. 542.

For additional cases, see COMMENT under Section 16.

See also Small Loan Legislation, Ch. XI.¹

CASES ON CONSTITUTIONALITY

The inclusion of similar provisions in the Louisiana Small Loan Law was held not to violate the requirement that laws shall embrace only one object and shall have a title indicative of such object. *State v. Hill*, (1929) 168 La. 761, 123 So. 317, 69 A. L. R. 574, Cam. 377.

CASES ON INTERPRETATION

The practice of giving a check and coupon for an assignment of wages was held to violate the requirement that the amount of the loan be paid to the borrower simultaneously with the execution of the assignment where the coupon was good only at certain stores and then only if it and the full amount of the check were used to purchase merchandise. *Cash Service Co. v. Ward*, (W. Va. 1937) 192 S. E. 344.

It was held that the provision limiting the collectible percentage of a borrower's wages could not be defeated by taking more than one assignment, each for the maximum percentage. *Snite v. Chicago & E. I. Ry.*, (1927) 247 Ill. App. 118, Cam. 286.

Failure to comply with a requirement of the Georgia Small Loan Law that notice of the wage assignment, accompanied by a verified copy, be served upon the employer within five days after execution, was held to invalidate the assignment, *Atlantic Coast Line R. R. v. Nash Loan Co.*, (1934) 179 Ga. 52, 175 S. E. 247;

¹ Gallert, Hilborn, and May, Small Loan Legislation, Russell Sage Foundation, New York, 1932.

although it has been held that violation of this requirement does not subject one to criminal penalty. *Tollison v. George*, (1922) 153 Ga. 612, 112 S. E. 896.

A general act which invalidated any assignment of wages to be earned in whole or in part more than six months after the making of such assignment was held to be applicable to an assignment of wages given to secure a loan executed under a subsequently enacted small loan law. *Liberty Finance Co. v. Schlissler*, (1934) 165 Md. 585, 170 Atl. 173.

Provisions of the Ohio Small Loan Law comparable to the first paragraph of this section have been held to be inapplicable to an assignment given to secure credit extended on a sale of merchandise, *Springgate v. Daneman*, (1929) 32 Ohio App. 279, 167 N. E. 908;

and where provisions of the Ohio act comparable to the second paragraph of this section and a similar transaction were involved, compare *American Laundry Machinery Co. v. Daneman*, (1928) 118 Ohio St. 331, 160 N. E. 897, *aff'g* (1927) 27 Ohio App. 103, 160 N. E. 867.

SECTION 18

of Sixth Draft of Uniform Small Loan Law.

MAXIMUM CHARGES BY NON-LICENSEE ON LOAN OF \$300 OR LESS: Single transaction at more than maximum contract rate prohibited. EXCESSIVE CHARGES BY SUBTERFUGE. LOANS UNENFORCEABLE IF CHARGES ARE EXCESSIVE: Applies to foreign loans; exception.

PROVISIONS OF THE SECTION

SEC. 18. No person, co-partnership, association, or corporation, except as authorized by this Act, shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than per centum (. . . . %) per annum [maximum contract rate—see COMMENT below] upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit of the amount or value of three hundred dollars (\$300) or less.

The foregoing prohibition shall apply to any person, co-partnership, association, or corporation who or which, by any device, subterfuge, or pretense whatsoever shall charge, contract for, or receive greater interest, consideration, or charges than is authorized by this Act for any such loan, use, or forbearance of money, goods, or things in action or for any such loan, use, or sale of credit.

No loan of the amount or value of three hundred dollars (\$300) or less for which a greater rate of interest, consideration, or charges than is permitted by this Act has been charged, contracted for, or received, wherever made, 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 which then has in effect a regulatory small loan law similar in principle to this Act.

Related Provisions

For license requirement to engage in business of lending sums of \$300 or less, see Section 1.

For maximum charge permitted licensees on loans of \$300 or less, see Section 13.

For maximum charge permitted licensees on loans exceeding \$300, see Section 15.

For lenders exempted from the act, see Section 20.

For criminal and civil penalties for violation, see Section 19.

Earlier Drafts

The substance of the section has appeared in all six drafts, with changes in wording. The provision in the last paragraph regarding loans made in states having similar regulatory small loan laws, first appeared in the fifth draft.

COMMENT

At the point indicated in the section the small loan laws contain either a stated percentage, which is usually the maximum contract rate of interest, or the clause "the lender would be permitted by law to charge if he were not a licensee hereunder." This figure or clause appears in the Title and Sections 1, 15, and 18 of the sixth draft. The clause amounts to a formula which reaches the same result as a specific figure. The formula has two advantages over a figure: it applies more accurately if special interest rates are fixed by statute for special circumstances and it provides automatically for future changes in the maximum contract rate of interest. Use of the clause instead of a stated percentage was first recommended in the fifth draft.

This section applies to single loans of \$300 or less at more than the maximum contract rate of interest, while Section 1 applies to engaging in that business. Section 15 defines and deals with loans by licensees in excess of \$300.

As to the inclusion of loans other than of money and the use or sale of credit, see COMMENT under Section 16.

The second paragraph of the section supplements the provisions of Section 13 prohibiting any charge in addition to that authorized

by the act; it is intended to include transactions cast in a form other than a loan whether entered into by a licensee or a non-licensee.

The third paragraph of the section declares the public policy of the state as to loans of the character described. It thus prevents the application of comity and so denies the use of the courts of the state to such a creditor, with the exception stated in the proviso.

For references to certain means, independent of small loan laws, of suppressing illegal moneylending, see COMMENT, Section 19.

CASES ON CONSTITUTIONALITY

The regulation of single transactions in a small loan law is valid although the title of the act does not specifically refer to them but does refer to the business of making loans of \$300 or less. *Rice v. Franklin Loan & Finance Co.*, (1927) 82 Colo. 163, 258 Pac. 223, Cam. 119; *People v. Stokes*, (1917) 281 Ill. 159, 118 N. E. 87, Cam. 277.

It has been said that even if this section were invalid the act would stand without it. *State v. Hill*, (1929) 168 La. 761, 123 So. 317, 69 A. L. R. 574, Cam. 377.

The same has been said of the provision relating to sales of credit. *Morgan v. Lowry*, (1929) 168 Ga. 723, 149 S. E. 37, Cam. 221, *appeal dismissed*, *Morgan v. Georgia*, (1930) 281 U. S. 691, 50 Sup. Ct. 238, 74 L. ed. 1120, Cam. 223.

See WHO MAY QUESTION CONSTITUTIONALITY, Part I.

CASES ON INTERPRETATION

Maximum Charge by Non-licensee on Loan of \$300 or Less	Excessive Charge by Subterfuge
Conflict of Laws	

Maximum Charge by Non-licensee on Loan of \$300 or Less

Provisions similar to those contained in the first paragraph of this section have been held to make the act applicable to all small loan transactions whether or not the lender was engaged in that business, *Rice v. Franklin Loan & Finance Co.*, (1927) 82 Colo. 163, 258 Pac. 223, Cam. 119; *Raming v. Peyser*, (1930) 259 Ill. App.

152; see *Nikkel v. Lindhorst*, (1929) 85 Colo. 334, 276 Pac. 678, 63 A. L. R. 959; *Kaufman v. Schwartz*, (1918) 183 App. Div. 510, 170 N. Y. S. 318; *People v. Stokes*, (1917) 281 Ill. 159, 118 N. E. 87, Cam. 277; compare *Winnick v. Aetna Acceptance Co.*, (1934) 275 Ill. App. 438. Contra: *Ellis v. Williams*, (Ga. App. 1937) 192 S. E. 491; *Turk v. Bender*, (1933) 273 Ill. App. 84; compare *State v. Hill*, (1929) 168 La. 761, 123 So. 317, 69 A. L. R. 574, Cam. 377;

and such provisions have been applied to single transactions without a showing that the lender was engaged in the small loan business. *London Realty Co. v. Riordan*, (1913) 207 N. Y. 264, 100 N. E. 800, Ann. Cas. 1914C 408, Cam. 672, *aff'g* (1912) 148 App. Div. 854, 133 N. Y. S. 595; *Equity Service Corp. v. Agull*, (1937) 250 App. Div. 96, 293 N. Y. S. 872, *rev'g* (Sup. Ct. 1936) 158 N. Y. Misc. R. 780, 286 N. Y. S. 379, *rev'g* (Mun. Ct. 1935) 156 N. Y. Misc. R. 552, 281 N. Y. S. 292.

In the absence of comparable language it has been held that the act does not apply to a single transaction. *Goodowsky v. Rubenstein*, (1917) 225 Mass. 448, 114 N. E. 683.

A provision similar to the first paragraph of this section has been held to prohibit all interest and charges by an unlicensed lender which exceed the rate of interest permitted non-licensees, even though such interest and charges may not be subterfuges. *London Realty Co. v. Riordan*, (1913) 207 N. Y. 264, 100 N. E. 800, Ann. Cas. 1914C 408, Cam. 672, *aff'g* (1912) 148 App. Div. 854, 133 N. Y. S. 595; *Equity Service Corp. v. Agull*, (1937) 250 App. Div. 96, 293 N. Y. S. 872, *rev'g* (Sup. Ct. 1936) 158 N. Y. Misc. R. 780, 286 N. Y. S. 379, *rev'g* (Mun. Ct. 1935) 156 N. Y. Misc. R. 552, 281 N. Y. S. 292; see *Kaufman v. Schwartz*, (1918) 183 App. Div. 510, 170 N. Y. S. 318.

A loan made by a non-licensee at more than the rate of interest permitted non-licensees is void. *Raming v. Peyser*, (1930) 259 Ill. App. 152; *Geyer v. Spencer*, (Ind. App. 1934) 189 N. E. 429, *superseded by* 99 Ind. App. 418, 192 N. E. 769; *London Realty Co. v. Riordan*, (1913) 207 N. Y. 264, 100 N. E. 800, Ann. Cas.

1914C 408, Cam. 672, *aff'g* (1912) 148 App. Div. 854, 133 N. Y. S. 595; *Equity Service Corp. v. Agull*, (1937) 250 App. Div. 96, 293 N. Y. S. 872, *rev'g* (Sup. Ct. 1936) 158 N. Y. Misc. R. 780, 286 N. Y. S. 379, *rev'g* (Mun. Ct. 1935) 156 N. Y. Misc. R. 552, 281 N. Y. S. 292.

It has been held that the provisions of this section limit the charge permitted to be made by a non-licensee for guaranteeing a note and that under them the borrower can recover the unlawful portion of the charge from the guarantor. *Morgan v. Shepherd*, (1930) 171 Ga. 33, 154 S. E. 780.

Excessive Charge by Subterfuge

A transaction alleged to have been contrived to avoid the small loan law, whereby \$175 was advanced to a borrower who gave the lender a bill of sale for his automobile and executed a conditional sale contract to repurchase it for \$275, was held to violate the small loan law. *Winnick v. Aetna Acceptance Co.*, (1934) 275 Ill. App. 438.

Where the amount of a loan was in fact less than \$300 it was held to be subject to the small loan law although it purported to be for more than \$300, *Angleton v. Franklin Finance Co.*, (1931) 88 Colo. 322, 295 Pac. 797;

but where a note for \$321 was given for a loan of \$171, plus compensation to the lender for his services in procuring a different loan, the transaction was held not to be subject to the small loan law.

Hippler v. Argus, (1931) 16 La. App. 80, 133 So. 179.

Where a corporation required the borrower to subscribe for its stock as a condition to obtaining a loan, and took notes for \$365 bearing the maximum rate of interest permitted non-licensees and gave two checks, one for \$300 and one for \$65, the latter being returned to the lender to apply on the stock subscription, it was held that the transaction was a loan of \$300 and that the loan was void. *Beneficial Loan & Investment Co. v. Ira*, (1924) 75 Colo. 379, 226 Pac. 136.

The sale of a diamond ring on credit at an exorbitant price, which

the purchaser promptly pawned, was held to violate an early New York Small Loan Law. *People v. Silverberg*, (1915) 33 N. Y. Cr. R. 46, 160 N. Y. S. 727, *aff'd*, 171 App. Div. 914, 155 N. Y. S. 1132. But compare *People v. Sacks*, (N. Y. Ct. App. 1938) 12 N. E. (2d) 425.

The business of acquiring assignments of earned wages in exchange for checks for 90 per cent of the amount of the wages and merchandise coupons for the balance, the coupons being good only at certain stores and then only if the full amount of the checks was used to purchase merchandise, has been held to be subject to and in violation of the small loan law. *Cash Service Co. v. Ward*, (W. Va. 1937) 192 S. E. 344.

Under the facts, where a buyer of an automobile executed a note for \$295 which the seller also executed, and the seller received the proceeds amounting to \$250, the transaction was held to be subject to the small loan law against the contention that the lender acquired the note by purchase. *Ryan v. Indiana Finance & Loan Corp.*, (1930) 91 Ind. App. 622, 171 N. E. 812, *rehearing denied*, (1930) 172 N. E. 550.

Whether usurious charges are paid by the borrower or another is immaterial; their receipt by the lender is sufficient. See *Cash Service Co. v. Ward*, (W. Va. 1937) 192 S. E. 344.

For cases involving wage buying, see Section 16.

See EVASION OF STATUTORY INTEREST LIMITATIONS, IN GENERAL, Part III.

Conflict of Laws

In the absence of the proviso in the last paragraph of this section a court held that it would not enforce a small loan made in another state, at a rate of interest which the majority of the court assumed to be higher than that permitted by the small loan law of its state, although the loan was valid where made, on the ground that the small loan law of its state constituted a legislative declaration of public policy. *Personal Finance Co. of Council Bluffs v. Gilinsky Fruit Co.*, (1934) 127 Neb. 450, 255 N. W. 558 (*dissenting*

opinion 256 N. W. 511), *cert. denied*, (1935) 293 U. S. 627, 55 Sup. Ct. 348, 79 L. ed. 714.

In New Jersey, where an earlier small loan law provided that, "When an application for a loan, or for an endorsement or guarantee, or for the purchase of a note, is made by any person within this state, and the money is advanced, or the endorsement or guarantee is made or furnished, or the note purchased by any person situated without this state, the transaction shall be deemed a loan made within this state, and such loan, and the parties making it, shall be subject to the provisions of this act," it was held that a loan made by an Indiana licensee to a resident of New Jersey, at a greater rate of interest than that permitted by the New Jersey act, would not be enforced by the New Jersey court; the court did not advert to the fact that the rate of interest provided in the note was not greater than that permitted by the Indiana act. *Continental Adjustment Corp. v. Klause*, (D. C. 1934) 12 N. J. Misc. R. 703, 174 Atl. 246.

But under the same provision it has been held that the fact that one of the co-makers signed in New Jersey where he resided did not subject the note to the New Jersey Small Loan Law so as to invalidate it where it was executed by several co-makers to a New York lender under a New York date, and was delivered to the lender and made payable in New York. *Morris Plan Co. of N. Y. v. Rosenzweig*, (Sup. Ct. 1933) 11 N. J. Misc. R. 505, 167 Atl. 161.

A loan to a resident of Alabama made and payable in Georgia, under the Georgia Small Loan Law, at a higher rate of interest than that permitted under the Alabama Small Loan Law, was enforced by the court; the opinion did not refer to the Alabama act which does not contain the proviso in the last paragraph of this section. *Personal Finance Co. of Columbus v. Gibson*, (1933) 26 Ala. App. 18, 152 So. 462, *cert. denied*, (1934) 228 Ala. 107, 152 So. 466.

The fact that a note was dated and headed at "South Bend, Indiana," without otherwise indicating the place of payment or per-

formance, or any contrary intention of the parties or that the contract was intended to have effect in Georgia, was considered sufficient evidence that Indiana was the place of contract, payment, and performance. *Folsom v. Continental Adjustment Corp.*, (1934) 48 Ga. App. 435, 172 S. E. 833.

In the absence of the proviso in the last paragraph of this section a Georgia court has held that a note which provided for 3½ per cent a month interest and which apparently was valid under the small loan law of the state where the loan was made and performable, was not subject to the Georgia Small Loan Law, but the court said that the Georgia Usury Law would be applied to deny the right to interest although the rate of interest provided in the note corresponded to the maximum permitted licensees by the Georgia Small Loan Law. *Folsom v. Continental Adjustment Corp.*, (1934) 48 Ga. App. 435, 172 S. E. 833.

A New York court has applied the New Jersey Small Loan Law to invalidate a note executed and payable in New Jersey. *Ulin v. Walowitz*, (Mun. Ct. 1933) 147 N. Y. Misc. R. 724, 265 N. Y. S. 745.

SECTION 19

of Sixth Draft of Uniform Small Loan Law.

CRIMINAL PENALTIES. INVALIDITY OF LOANS INVOLVING VIOLATIONS.

PROVISIONS OF THE SECTION

SEC. 19. Any person, co-partnership, association, or corporation and the several members, officers, directors, agents, and employees thereof, who shall violate or participate in the violation of any of the provisions of Sections 1, 11, 12, 13, 14, or 18 of this Act, shall be guilty of a misdemeanor. [See COMMENT below.]

Any contract of loan not invalid for any other reason, in the making or collection of which any act shall have been done which constitutes a misdemeanor under this Section, shall be void and the lender shall have no right to collect or receive any principal, interest, or charges whatsoever.

Earlier Drafts

The sections of the several drafts, violation of which incurred a criminal penalty, have been as follows: first draft—the sections corresponding generally to Sections 13 and 18 of the sixth draft; second and third drafts—their Sections 1, 8, 12, 13, and 17; fourth draft—its Sections 1, 8, 12, 13, and 18; fifth and sixth drafts—their Sections 1, 11, 12, 13, 14, and 18.

The second paragraph of this section first appeared in the fifth draft.

COMMENT

Small loan laws differ materially in the nature and extent of the penalties prescribed and in designation of the sections violation of the provisions of which is penalized. Some laws prescribe penalties for violation of any of their provisions.

While the penal provisions of the Uniform Small Loan Law have

been an effective means of eliminating so-called "loan sharks," there are available in some states other remedies against this evil as illustrated by the cases cited below, the opinions of which contain references to additional cases.

In New Jersey one engaged in the business of lending small sums at high and illegal rates of interest was held to be guilty of the crime of keeping a disorderly house, which, through judicial interpretation, had been defined as "any place . . . in which illegal practices are habitually carried on." *State v. Martin*, (1909) 77 N. J. Law 652, 73 Atl. 548, 24 L. R. A. (N. S.) 507, 134 Am. St. Rep. 814, 18 Ann. Cas. 986, *aff'g* (Sup. Ct. 1908) 76 N. J. Law 292, 69 Atl. 1091.

In Kansas persons lending small sums at high and illegal rates of interest were held to be subject to injunction against carrying on such business on the ground that the practice was so contrary to public morals and welfare as to constitute a public nuisance which an equity court had power to abate. *State ex rel. Smith v. McMahon*, (1929) 128 Kan. 772, 280 Pac. 906, 66 A. L. R. 1072, Cam. 348. In a later case the same court on similar facts ordered that an injunction be granted and that a receiver be appointed to close the lender's business. *State ex rel. Beck v. Basham*, (Kan. 1937) 70 Pac. (2d) 24.

It has been held that a state may oust an otherwise qualified foreign corporation from doing business in that state where the business of the corporation consistently violated the small loan law. *State ex rel. Spillman v. Central Purchasing Co.*, (1929) 118 Neb. 383, 225 N. W. 46; *State ex rel. Spillman v. Beck Finance Corp.*, (1929) 118 Neb. 382, 225 N. W. 49; *State ex rel. v. Family Loan Co.*, (1934) 167 Tenn. 654, 73 S. W. (2d) 167.

In Kentucky persons engaged in the business of lending small sums at high and illegal rates of interest and who falsely registered the ownership of the lending office were held to be guilty of the common law offense of criminal conspiracy. *Commonwealth v. Donoghue*, (1933) 250 Ky. 343, 63 S. W. (2d) 3, 89 A. L. R. 819.

CASES ON INTERPRETATION

Criminal Penalties
Effect of Penalties on Validity
of Loans

Meaning of "Void"
Equitable Relief

Criminal Penalties

A lender is guilty of violating Section 1 by engaging in the business of lending sums of \$300 or less at more than the maximum contract rate. *Harris v. State*, (1932) 45 Ga. App. 477, 165 S. E. 331; *People v. Blumenthal*, (Sup. Ct. 1936) 157 N. Y. Misc. R. 943, 284 N. Y. S. 873; *State v. Guida*, (Sup. Ct. 1937) 118 N. J. Law 289, 192 Atl. 445.

A licensee who took a renewal note which included unpaid interest on the previous obligation was convicted of violating a prohibition against compounding comparable to that found in Section 13, despite the fact that he had in fact received no unlawful interest, *Commonwealth v. State Loan Corp.*, (1935) 116 Pa. Super. Ct. 365, 176 Atl. 516;

and where a charge for attorney's fees was made, compare *Commonwealth v. Pennsylvania Loan Corp.*, (Pa. Super. Ct. 1937) 193 Atl. 141.

A conviction for violation of Section 1 by engaging in the business of lending sums of \$300 or less at more than the maximum contract rate without a license has been held not to bar convictions for violation of Section 18 by making specific loans, evidence of the latter not having been used in obtaining the conviction on the first charge. *People v. Faden*, (1936) 271 N. Y. 435, 3 N. E. (2d) 584, *aff'g* (1936) 247 App. Div. 777, 778, 286 N. Y. S. 405, 407, 408, 409.

A judgment convicting a lender of violation of Sections 1 and 18 was reversed for insufficient evidence. *People v. Fillipone*, (1936) 248 App. Div. 554, 287 N. Y. S. 379.

The fact that violation was subject to a specified civil penalty (permitting borrowers to recover unlawful interest payments plus \$50) was held not to bar conviction under a general provision that one

violating any provision of the act shall be guilty of a misdemeanor.

Commonwealth v. State Loan Corp., (1935) 116 Pa. Super. Ct. 365, 176 Atl. 516.

The violation of a provision of the small loan law which is not subject to the penal section is not a crime. *Tollison v. George*, (1922) 153 Ga. 612, 112 S. E. 896.

A conviction for violating an early Ohio act requiring wage assignments given as security to state "the proper figures" was sustained. *Andrews v. State*, (1914) 3 Ohio App. 436.

Effect of Penalties on Validity of Loans

The provisions of an act which made any violation a misdemeanor and any loan void, in the making or collection of which a misdemeanor was committed, were applied in the following cases: *Easy*

Term Loan Co. v. Silberman, (1924) 100 N. J. Law 67, 125 Atl. 561, Cam. 618; *Consolidated Plan of N. J. v. Shanholtz*, (Sup. Ct. 1929) 7 N. J. Misc. R. 876, 147 Atl. 401, Cam. 620, *aff'd*, *Consolidated Plan of N. J. v. Palkowitz*, (1931) 107 N. J. Law 517, 153 Atl. 906; *Morris Plan Corp. of N. J. v. Leschinsky*, (Sup. Ct. 1933) 12 N. J. Misc. R. 1, 169 Atl. 357, *aff'd*, 113 N. J. Law 414, 174 Atl. 729; *Union Loan Ass'n v. Woodie*, (Sup. Ct. 1935) 13 N. J. Misc. R. 214, 177 Atl. 438.

Violation of such an act was held to invalidate a note, despite a declaration in the note that the borrower had no defense to any action which might be brought on the note. *Independent Loan Co. v. Tyson*, (1936) 117 N. J. Law 259, 187 Atl. 361.

It was said, in a case involving a small loan law, that it is well settled that there can be no recovery on a contract made in violation of a statute, as between the parties thereto, where the violation is punishable by a penalty. *Wells v. Indianapolis Co.*, (1928) 88 Ind. App. 231, 161 N. E. 687, Cam. 316.

It was held that a provision making violation a misdemeanor did not provide an exclusive penalty and that, despite the absence of an express provision for a civil penalty, such a violation invalidated

the loan. *Westville & Hamden Loan Co. v. Pasqual*, (1929) 109 Conn. 110, 145 Atl. 758, Cam. 142; *G. Nicotera Loan Corp. v. Gallagher*, (1932) 115 Conn. 102, 160 Atl. 426; *Burque v. Brodeur*, (1932) 85 N. H. 310, 158 Atl. 127. But compare *Waddell v. Traylor*, (1937) 99 Colo. 576, 64 Pac. (2d) 1273; *Dowd v. Labor Finance Corp.*, (1937) 100 Colo. 512, 69 Pac. (2d) 305; *Morris Plan Bank v. Schmidt*, (La. App. 1935) 164 So. 270.

The same result was reached in other cases involving similar provisions although the point was not discussed. *Atta v. Bergin*, (1935) 120 Conn. 152, 180 Atl. 298; *Hartsfield Co. v. Robertson*, (1934) 48 Ga. App. 735, 173 S. E. 201.

But in Louisiana, where violation was a misdemeanor, it was held that the criminal penalty was exclusive on the ground that loans are invalidated only by those violations which the act provides shall render loans void. *Morris Plan Bank v. Schmidt*, (La. App. 1935) 164 So. 270.

A loan of more than \$300 made by a licensee under the Florida Small Loan Law at more than the legal contract rate of interest was held to violate the small loan law, and the civil penalty of invalidity contained in Section 13 was applied by the court to render such loan void, *Smetal Corp. v. Family Loan Co.*, (1935) 119 Fla. 497, 161 So. 438;

but the court subsequently held, with respect to the same transaction, that the lender, having acted in good faith, could recover the money lent. *Family Loan Co. v. Smetal Corp.*, (1936) 123 Fla. 900, 169 So. 48.

In the absence of provisions making violation a misdemeanor or imposing the civil penalty of invalidity, violations have been held not to invalidate the loan. *Walker v. Peoples Finance & Thrift Co.*, (1935) 45 Ariz. 226, 42 Pac. (2d) 405, *rev'd on rehearing on another ground*, (1935) 46 Ariz. 224, 49 Pac. (2d) 1005; *Williams v. Yarbrough*, (1925) 34 Ga. App. 500, 130 S. E. 361; *Allison v. United Small-Loan Corp.*, (1937) 54 Ga. App. 820, 189 S. E. 263; *Unity Plan Finance Co. v. Green*, (1934) 179 La.

1070, 155 So. 900, *rev'g* (La. App. 1933) 151 So. 85, *rev'g on rehearing* (La. App. 1933) 148 So. 297; compare *Michigan Loan Ass'n of Jackson v. Cahill*, (1931) 253 Mich. 358, 235 N. W. 182, 74 A. L. R. 1181, Cam. 490. Contra: *Southern Loan Co. v. McDaniel*, (1934) 50 Ga. App. 285, 177 S. E. 834; *Southland Loan & Investment Co. v. Brown*, (1936) 53 Ga. App. 787, 187 S. E. 131.

However, such a violation has been held to forfeit the licensee's right to interest but not to principal. *Snider v. Industrial Finance Corp.*, (Ga. App. 1936) 188 S. E. 917.

It has been held that a conviction is not essential to the invalidation of a loan in the making or collection of which a violation which constitutes a misdemeanor has occurred, under the provisions of Section 19. *Independent Loan Co. v. Tyson*, (1936) 117 N. J. Law 259, 187 Atl. 361.

But under the Oregon Motor Vehicles Act which, like the Oregon Small Loan Law, provided that a certain violation was a misdemeanor and upon conviction the loan would be void and the lender must return the security, it was held that a violation did not invalidate a chattel mortgage in the absence of a conviction. *Ford v. Bates*, (1935) 150 Ore. 672, 47 Pac. (2d) 951.

Meaning of "Void"

A provision stating that loans shall be void on account of certain violations has been interpreted to mean void, and not merely "voidable" and hence to entitle a borrower to cancellation of his note even in the hands of a holder in due course. *Cuneo v. Bornstein*, (1929) 269 Mass. 232, 168 N. E. 810, Cam. 463.

Equitable Relief

Where the exaction of illegal charges has been attempted, the borrower has been granted equitable relief. *Atlanta Finance Co. v. Fulwiler*, (1924) 158 Ga. 859, 124 S. E. 689; *Davis v. Atlanta Finance Co.*, (1925) 160 Ga. 784, 129 S. E. 51; *Nash Loan Co. v. Dixon*, (1935) 181 Ga. 297, 182 S. E. 23. But compare *Cal-*

houn v. Davis, (1927) 163 Ga. 760, 137 S. E. 236; *Lawrence v. Patterson*, (1930) 170 Ga. 419, 153 S. E. 29.

The Massachusetts Small Loan Law provides specifically for equitable relief against illegal charges, *Thomas v. Burnce*, (1916) 223 Mass. 311, 111 N. E. 871; *Cuneo v. Bornstein*, (1929) 269 Mass. 232, 168 N. E. 810, Cam. 463;

and it was said that independently of such a provision courts of equity will grant relief against usurious contracts. *Thomas v. Burnce*, (1916) 223 Mass. 311, 111 N. E. 871.

SECTION 20
of Sixth Draft of Uniform Small Loan Law.

EXEMPTIONS

PROVISIONS OF THE SECTION

SEC. 20. This Act shall not apply to any person, co-partnership, association, or corporation doing business under and as permitted by any law of this State or of the United States relating to banks, savings banks, trust companies, building and loan associations, credit unions, or licensed pawnbrokers.

Related Provisions

For provisions requiring licenses and fixing maximum charges for licensees and non-licensees, see Sections 1, 13, 15, and 18.

Earlier Drafts

The exempted classes have been increased between the first and sixth drafts by the addition of savings banks and credit unions and qualified by adding "licensed" before "pawnbrokers." In the fifth draft first appeared the words "and as permitted by."

COMMENT

This section differs materially in the small loan laws, particularly as to the exempted persons, companies, and, in some instances, transactions. The issues involved in determining the validity of any exemption are essentially those of classification.

The classes exempted by Section 20 of the Uniform Small Loan Law are those which are commonly subject to separate and distinct schemes of state or federal regulation. The validity of exempting from a general interest limitation lenders who are already subject to regulation has been sustained, *State v. Hurlburt*, (1909) 82 Conn. 232, 72 Atl. 1079, and *Griffith v. Connecticut*, (1910) 218 U. S. 563, 31 Sup. Ct. 132, 54 L. ed. 1151, *aff'g State v. Griffith*, (1910) 83 Conn. 1, 74 Atl. 1068, (involving general usury laws). These

decisions, however, do not confine such exemptions to this limited extent. They establish the general principle that a state may deal with different classes of lenders or borrowers or loan transactions in different ways provided that there is nothing apparently unreasonable in the distinctions made between the different classes and that all members of each class are treated alike. Several small loan laws have exempted lenders who were not subject to state or federal regulation; although such exemptions have been sustained in some cases, no general principles have been established thereby.

See COMMENT under Sections 1 and 13.

CASES ON CONSTITUTIONALITY

The exemption of the following classes from the operation of the small loan law has been held to effect a reasonable classification and to be valid:

Banks

In re Home Discount Co., (D. C. Ala. 1906) 147 Fed. 538, Cam. 27; *Cavanaugh v. People*, (1916) 61 Colo. 292, 157 Pac. 200; *Waddell v. Traylor*, (1937) 99 Colo. 576, 64 Pac. (2d) 1273; *State v. Wickenhoefer*, (Del. Ct. of Gen. Sess., 1906) 6 Penne. 120, 64 Atl. 273, Cam. 162; *Reagan v. District of Columbia*, (1914) 41 App. D. C. 409, Cam. 186, *writ of error denied* (U. S. Sup. Ct. 1914); *Beasley v. Cahoon*, (1933) 109 Fla. 106, 147 So. 288; *Cole v. Franklin Plan Co.*, (1933) 176 Ga. 561, 168 S. E. 261; *People v. Stokes*, (1917) 281 Ill. 159, 118 N. E. 87, Cam. 277; *State v. Hill*, (1929) 168 La. 761, 123 So. 317, 69 A. L. R. 574, Cam. 377; *Dewey v. Richardson*, (1910) 206 Mass. 430, 92 N. E. 708; *State v. Ware*, (1916) 79 Ore. 367, 154 Pac. 905, Cam. 824, *rehearing denied*, (1916) 79 Ore. 377, 155 Pac. 364; *Koen v. State*, (1931) 162 Tenn. 573, 39 S. W. (2d) 283, Cam. 916; see *Spicer v. King Bros. & Co.*, (1916) 136 Tenn. 408, 189 S. W. 865, Cam. 932.

Trust Companies

Cavanaugh v. People, (1916) 61 Colo. 292, 157 Pac. 200; *Wad-*

dell v. Traylor, (1937) 99 Colo. 576, 64 Pac. (2d) 1273; *State v. Wickenhoefer*, (Del. Ct. of Gen. Sess., 1906) 6 Penne. 120, 64 Atl. 273, Cam. 162; *Reagan v. District of Columbia*, (1914) 41 App. D. C. 409, Cam. 186, *writ of error denied* (U. S. Sup. Ct. 1914); *Beasley v. Cahoon*, (1933) 109 Fla. 106, 147 So. 288; *People v. Stokes*, (1917) 281 Ill. 159, 118 N. E. 87, Cam. 277; *State v. Ware*, (1916) 79 Ore. 367, 154 Pac. 905, Cam. 824, *rehearing denied*, (1916) 79 Ore. 377, 155 Pac. 364.

Morris Plan Banks

Beasley v. Cahoon, (1933) 109 Fla. 106, 147 So. 288.

Building and Loan Associations

Cavanaugh v. People, (1916) 61 Colo. 292, 157 Pac. 200; *Waddell v. Traylor*, (1937) 99 Colo. 576, 64 Pac. (2d) 1273; *Reagan v. District of Columbia*, (1914) 41 App. D. C. 409, Cam. 186, *writ of error denied* (U. S. Sup. Ct. 1914); *Beasley v. Cahoon*, (1933) 109 Fla. 106, 147 So. 288; *Cole v. Franklin Plan Co.*, (1933) 176 Ga. 561, 168 S. E. 261; *People v. Stokes*, (1917) 281 Ill. 159, 118 N. E. 87, Cam. 277; *State v. Hill*, (1929) 168 La. 761, 123 So. 317, 69 A. L. R. 574, Cam. 377; *State v. Ware*, (1916) 79 Ore. 367, 154 Pac. 905, Cam. 824, *rehearing denied*, (1916) 79 Ore. 377, 155 Pac. 364.

Credit Unions

State v. Hill, (1929) 168 La. 761, 123 So. 317, 69 A. L. R. 574, Cam. 377.

Pawnbrokers

Beasley v. Cahoon, (1933) 109 Fla. 106, 147 So. 288; *Cole v. Franklin Plan Co.*, (1933) 176 Ga. 561, 168 S. E. 261; *People v. Stokes*, (1917) 281 Ill. 159, 118 N. E. 87, Cam. 277.

Title and Guaranty Associations

Cavanaugh v. People, (1916) 61 Colo. 292, 157 Pac. 200; *Waddell v. Traylor*, (1937) 99 Colo. 576, 64 Pac. (2d) 1273.

Title Insurance Companies

Ravitz v. Steurele, (1934) 257 Ky. 108, 77 S. W. (2d) 360.

Real Estate Brokers

Reagan v. District of Columbia, (1914) 41 App. D. C. 409, Cam. 186, *writ of error denied* (U. S. Sup. Ct. 1914); *State v. Ware*, (1916) 79 Ore. 367, 154 Pac. 905, Cam. 824, *rehearing denied*, (1916) 79 Ore. 377, 155 Pac. 364.

Wage Loan Companies

People v. Stokes, (1917) 281 Ill. 159, 118 N. E. 87, Cam. 277.

Loan Companies and Associations Established by Special Charter and under State Supervision

Dewey v. Richardson, (1910) 206 Mass. 430, 92 N. E. 708.

Loan Companies

Koen v. State, (1931) 162 Tenn. 573, 39 S. W. (2d) 283, Cam. 916.

Bona Fide Purchasers of Choses in Action or Property

Beasley v. Cahoon, (1933) 109 Fla. 106, 147 So. 288.

Those Lending at Twelve per cent per Annum or Less

Cavanaugh v. People, (1916) 61 Colo. 292, 157 Pac. 200; *Waddell v. Traylor*, (1937) 99 Colo. 576, 64 Pac. (2d) 1273.

Those Making Single or Occasional Loans

Eaker v. Bryant, (1914) 24 Cal. App. 87, 140 Pac. 310, Cam. 93, *review denied* (Cal. Sup. Ct. 1914).

Those Engaged in the Business of Making Loans on the Sole Security of Liens on Motor Vehicles

National Accounting Co. v. Dorman, (D. C. Ky. 1935) 11 Fed. Supp. 872, *aff'd*, (1935) 295 U. S. 718, 55 Sup. Ct. 835, 79 L. ed. 1673; *Ravitz v. Steurele*, (1934) 257 Ky. 108, 77 S. W. (2d) 360.

Those Lending without Security or on the Security of Bank Deposits, Bank Books, Interests in Estates, or Contracts, or Mortgages on Real Property

Eaker v. Bryant, (1914) 24 Cal. App. 87, 140 Pac. 310, Cam. 93, *review denied* (Cal. Sup. Ct. 1914); compare *Ex parte Sohncke*,

(1905) 148 Cal. 262, 82 Pac. 956, 113 Am. St. Rep. 236, 2 L. R. A. (N. S.) 813, 7 Ann. Cas. 475.

It was said that the exemption of banks and of merchants furnishing supplies and taking liens on personal property to secure the debt was valid, but it was held that the additional exemption of those lending money or furnishing goods on the security of buggies, wagons, livestock, agricultural products, or farm implements was invalid. *Spicer v. King Bros. & Co.*, (1916) 136 Tenn. 408, 189 S. W. 865, Cam. 932.

In sustaining certain exemptions in the prior Illinois Small Loan Law the court said that even if such exemptions were held to be void the remainder of the act would not thereby be rendered void.

People v. Stokes, (1917) 281 Ill. 159, 118 N. E. 87, Cam. 277.

But compare *Spicer v. King Bros. & Co.*, (1916) 136 Tenn. 408, 189 S. W. 865, Cam. 932.

The exemptions from the 1937 Washington Small Loan Law, which as passed differed materially from the Uniform Small Loan Law and was rendered unworkable by the Governor's veto of certain sections thereof, were held to be unconstitutional. *Acme Finance Co. v.*

Huse, (Wash. 1937) 73 Pac. (2d) 341 [Petition for rehearing pending. Ed.].

SECTION 21

of Sixth Draft of Uniform Small Loan Law.

RULES, REGULATIONS, FINDINGS, AND ORDERS BY COMMISSIONER.

PROVISIONS OF THE SECTION

SEC. 21. [Specified licensing official] is hereby authorized and empowered to make such general rules and regulations and such specific rulings, demands, and findings as may be necessary for the proper conduct of such business and the enforcement of this Act, in addition hereto and not inconsistent herewith.

Related Provisions

For provisions for judicial review of Commissioner's discretionary acts, see Sections 4, 9, and 24.

For provisions regarding revocation of license for violation of Commissioner's orders or regulations, see Sections 9 (a) and 9 (b).

For Commissioner's powers over advertising, see Section 12.

Earlier Drafts

This section first appeared in the fifth draft.

COMMENT

The licensing official designated is usually the chief administrative official of the state having charge of banks and banking. Certain states have, however, designated the officials in charge of insurance, securities, trade and commerce, and similar matters. Some states have created special departments or bureaus of established departments for the administration of their small loan laws.

The provisions of this section are logically necessary to supplement the discretionary powers first vested in the Commissioner in the fifth draft.

CASES ON CONSTITUTIONALITY

The California Personal Property Brokers' Act was sustained against the contention that the grant of power to the licensing official to make regulations conferred upon him an "arbitrary and unguided discretion." *In re Halck*, (1932) 215 Cal. 500, 503, 11 Pac. (2d) 389.

The grant of power in an early Massachusetts act to make regulations respecting the small loan business was sustained. *Dewey v. Richardson*, (1910) 206 Mass. 430, 92 N. E. 708.

CASES ON INTERPRETATION

In the absence of this provision it has been said that, although the Commissioner has power to determine whether or not a licensee is complying with the small loan law, he has no power to limit or qualify the rights or obligations of a licensee, and it was held that a regulation which required licensees to take only non-negotiable notes and prohibited the pledging or hypothecation thereof to non-licensees, was not within the power of the licensing official. *Chicago Discount Corp. v. Palmer*, (1935) 279 Ill. App. 216.

Although the act contained no specific provision authorizing the licensing official to make regulations, the court held that it should take such judicial notice of a departmental regulation respecting the computation of interest as it would take of the decision of an inferior court. *Cotton v. Commonwealth Loan Co.*, (1934) 206 Ind. 626, 190 N. E. 853.

SECTION 22

of Sixth Draft of Uniform Small Loan Law.

AMENDMENT OR REPEAL OF ACT: Not to impair obligation of then existing contracts.

PROVISIONS OF THE SECTION

SEC. 22. 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.

Related Provisions

For effect of revocation on existing contracts, see Section 9.

For effect of repeal of prior act on existing contracts, see Section 25.

Earlier Drafts

This section first appeared in the fifth draft.

SECTION 23

of Sixth Draft of Uniform Small Loan Law.

STATUS OF LICENSEES UNDER PRIOR SMALL LOAN LAW.

PROVISIONS OF THE SECTION

SEC. 23. Any person, co-partnership, association, or corporation having a license under [prior regulatory small loan law], in force when this Act becomes effective, shall notwithstanding the repeal of the said [prior regulatory small loan law], be deemed to have a license under this Act for a period expiring six (6) months after the said effective date, if not sooner revoked, provided that such person, co-partnership, association, or corporation shall have paid or shall pay to the Commissioner as a license fee for such six (6) months' period the sum of fifty dollars (\$50) and shall keep on file with the Commissioner during such six (6) months' period the bond required either by this Act or by the said [prior regulatory small loan law]. Any such license so continued in effect under the provisions of this Act shall be subject to revocation during such six (6) months' period as provided in Section 9 of this Act except that it may not be revoked during such six (6) months' period either upon the ground that such licensee has not the minimum amount of assets required in Section 6 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.

Related Provisions

For other provisions regarding minimum assets, see Sections 2, 4, and 6.
For provisions regarding granting or denial of licenses, see Section 4.
For provisions regarding revocation of licenses, see Section 9.
For effect of repeal of prior regulatory act on existing contracts, see Section 25.

Earlier Drafts

This section first appeared in the fifth draft.

SECTION 24

of Sixth Draft of Uniform Small Loan Law.

JUDICIAL REVIEW

PROVISIONS OF THE SECTION

SEC. 24. [This section is left to be written according to the requirements of each state.]

Related Provisions

For other provisions regarding judicial review, see Sections 4 and 9.
For Commissioner's powers regarding regulations, findings, and orders, see Section 21.

Earlier Drafts

This section was first provided for in the fifth draft when broad discretionary powers were granted the licensing official.

COMMENT

This section is intended to contain provisions prescribing the procedure for judicial review of discretionary acts of the Commissioner. Provisions with similar purposes appear in Sections 4 and 9. In some states the existing provisions have been deemed adequate and therefore special provisions in the small loan law unnecessary. The procedure specified necessarily depends on the judicial procedure and constitutional requirements of each state.

CASES ON CONSTITUTIONALITY

The provision of the Nebraska Small Loan Law that, after notice and a public hearing, the licensing official "shall have the power to reject any application for license," was held not to render the act unconstitutional, the court saying, even though the act contained no provision for judicial review, that it was not an attempt to vest an arbitrary authority in the licensing official and that: "Adequate remedies exist for the protection of any legal rights infringed by the

unwarranted rejection of an application for a license.” *Althaus v. State*, (1916) 99 Neb. 465, 468, 156 N. W. 1038, Cam. 569.

It has been held that the power to revoke licenses for violations of the prior Illinois Small Loan Law which was delegated to the licensing official was not “an unwarranted delegation of judicial power” and was valid, and, even though the act contained no provision for judicial review, the court said that a licensee whose license was revoked without proper cause would have an unquestioned right to resort to the courts to compel a restoration of the license.

People v. Stokes, (1917) 281 Ill. 159, 176, 118 N. E. 87, Cam. 277.

SECTION 25

of Sixth Draft of Uniform Small Loan Law.

REPEAL OF PRIOR ACTS: Not to impair obligation of existing contracts.

PROVISIONS OF THE SECTION

SEC. 25. [Specified acts] 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 the Act, are hereby repealed. [See Earlier Drafts below.]

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 [prior regulatory small loan law] and any borrower, which was lawfully entered into prior to the effective date of this Act.

Related Provisions

For effect of revocation of license on existing contracts, see Section 9.

For effect of repeal on status of licensees under prior act, see Section 23.

Earlier Drafts

This section remained unchanged throughout the first five drafts. The title of the sixth draft first contained the words "whether general, special, or local, which relate to the same subject matter as this Act, so far as they are," but these words were omitted from Section 25 of the published sixth draft. The second paragraph of this section first appeared in the fifth draft.

COMMENT

Certain principles of law, stated briefly and generally below, should be borne in mind in considering the cases cited under this section.

An act which contains a broad and comprehensive scheme of regulation within a certain field repeals prior regulatory acts within the same field. *United States v. Tynen*, (1871) 78 U. S. 88, 20 L. ed. 153; *Rogers v. Nashville, Chattanooga & St. Louis Ry.*, (C. C. A. 6th, 1898) 91 Fed. 299; *State v. Marxhausen*, (1919) 204 Mich. 559, 171 N. W. 557, 3 A. L. R. 1505.

General acts within a field do not, in the absence of evidence of legislative intent to the contrary, repeal special or local acts within that field. *Washington v. Miller*, (1914) 235 U. S. 422, 35 Sup. Ct. 119, 59 L. ed. 295, *aff'g* (1912) 34 Okla. 259, 129 Pac. 58; *State ex rel. Seng v. Peter*, (1907) 101 Minn. 462, 112 N. W. 866; *Commonwealth ex rel. Schier v. Ruggles*, (1924) 280 Pa. 568, 124 Atl. 689.

When the fields of two acts overlap, the more specific controls. *Rodgers v. United States*, (1902) 185 U. S. 83, 22 Sup. Ct. 582, 46 L. ed. 816, *aff'g* (1901) 36 Ct. Cl. 266; *Crane v. Reeder*, (1871) 22 Mich. 322; *State ex rel. County Commissioners, San Miguel County v. Romero*, (1914) 19 N. M. 1, 140 Pac. 1069.

Amendments by implication, by reason of inconsistencies between the provisions of a new law and those of a pre-existing law, are not favored. *Nelson v. Nelson*, (1922) 72 Colo. 20, 209 Pac. 810; *Board of Commissioners of County of Hamilton v. State ex rel. Baker*, (1916) 184 Ind. 418, 111 N. E. 417; *People v. Bromwich*, (1911) 200 N. Y. 385, 93 N. E. 933, *aff'g* (1909) 135 App. Div. 67, 119 N. Y. S. 833.

CASES ON CONSTITUTIONALITY

One engaged in the business of acquiring assignments of earned wages in exchange for money and merchandise coupons, in connection with which contracts were made with merchants prior to the enactment of a small loan law, contended that it was unconstitutional on the ground that it impaired the obligation of such contracts; the contention was rejected on the ground that the transactions violated the general usury law. *Cash Service Co. v. Ward*, (W. Va. 1937) 192 S. E. 344 [See concurring opinion].

CASES ON INTERPRETATION¹

It has been held that the Maryland Small Loan Law did not repeal a general act imposing several substantial and formal requirements for the validity of wage assignments, *Wight v. Baltimore & Ohio R. R.*, (1924) 146 Md. 66, 125 Atl. 881, 37 A. L. R. 864, Cam. 428; *Liberty Finance Co. v. Schlissler*, (1934) 165 Md. 585, 170 Atl. 173;

and a provision of such general act invalidating assignments of wages to be earned in whole or in part more than six months after making, was applied to an assignment of wages made to secure a loan under the small loan law. *Liberty Finance Co. v. Schlissler*, (1934) 165 Md. 585, 170 Atl. 173.

The Tennessee Small Loan Law was held to have repealed a prior act, *State ex rel. Thompson v. Dixie Finance Co.*, (1925) 152 Tenn. 306, 278 S. W. 59, Cam. 924; *O. H. May Co. v. Anderson*, (1927) 156 Tenn. 216, 300 S. W. 12;

on the ground that it was a complete revision of the subject matter, and an amendment of the prior act passed at the same session of the legislature was held to be void. *State ex rel. Thompson v. Dixie Finance Co.*, (1925) 152 Tenn. 306, 278 S. W. 59, Cam. 924.

An earlier Tennessee Small Loan Law was held not to have repealed the general usury act in so far as it applied to unlicensed lenders.

McWhite v. State, (1921) 143 Tenn. 222, 226 S. W. 542, Cam. 919.

For opinions involving early New York Small Loan Laws and their effect on other statutory interest limitations, see: *Lowry v. Collateral Loan Ass'n*, (1902) 172 N. Y. 394, 65 N. E. 206, *aff'g* 62 App. Div. 240, 71 N. Y. S. 822; *People v. City Prison*, (1903) 176 N. Y. 577, 68 N. E. 1120 (see dissenting opinion), *aff'g*

¹ Since December 31, 1937 (the closing date mentioned in the INTRODUCTION) the Florida Supreme Court has handed down the opinion in *Beasley v. Coleman* (January 8, 1938) which has not yet been officially reported. This case involves the effect of the Florida Small Loan Law on a prior general usury law which makes it a misdemeanor to charge more than 25 per cent per annum, including interest. The issues are involved and the full general effect of the opinion is obscure. Additional litigation seems necessary in order to ascertain the exact import of this decision.

86 App. Div. 626, 83 N. Y. S. 1113; *People v. Schultz*, (1912) 206 N. Y. 627, 99 N. E. 1114, *aff'g* 149 App. Div. 844, 134 N. Y. S. 293; *People v. Young*, (1913) 207 N. Y. 522, 101 N. E. 451, *aff'g* (1912) 153 App. Div. 567, 138 N. Y. S. 50; *Clark v. Taylor*, (1915) 167 App. Div. 376, 152 N. Y. S. 664; *Kaufman v. Schwartz*, (1918) 183 App. Div. 510, 170 N. Y. S. 318.

The Georgia Small Loan Law which does not contain provisions comparable to Section 16 was held not to repeal a prior act, which licensed and regulated the business of purchasing wages or of lending on the security of wages or personalty, so far as the prior act related to the *bona fide* business of purchasing wages, *McLamb v.*

Phillips, (1925) 34 Ga. App. 210, 129 S. E. 570;

and a lender who had qualified under the Georgia Small Loan Law was held to be entitled to enforce a note for less than \$300 secured by a bill of sale of personalty without showing compliance with such prior act. *Stembridge v. Family Finance Co.*, (1934) 49 Ga. App. 353, 175 S. E. 663.

A licensee under the Oregon Small Loan Law of 1931 was held not to be entitled to make loans of \$300 or less, secured by liens on automobiles, because of the Oregon Motor Vehicle Finance Act of 1931, which licensed and regulated the business of lending \$800 or less on the security of liens on automobiles at more than the maximum contract rate of interest. *Ford v. Bates*, (1935) 150 Ore. 672, 47 Pac. (2d) 951.

The prior Illinois Small Loan Law was held not to have amended the general interest act through a partial repeal thereof by implication, on the ground that the small loan law was not an interest act but one regulating the business of making small loans. *People v. Stokes*, (1917) 281 Ill. 159, 118 N. E. 87, Cam. 277.

The District of Columbia Small Loan Law was held to repeal a prior pawnbrokers act. *Newman v. United States ex rel. Prender*, (1913) 41 App. D. C. 37, 41 Wash. L. R. 734, *writ of error dismissed*, (1915) 238 U. S. 642, 35 Sup. Ct. 602, 59 L. ed. 1502.

It has been held that the civil penalty of forfeiture of the loan imposed by the prior Tennessee Small Loan Law for violation thereof would not be enforced against a loan made thereunder after the repeal of that act by the present Tennessee Small Loan Law where the later act did not have a saving provision. *O. H. May Co. v. Anderson*, (1927) 156 Tenn. 216, 300 S. W. 12. But compare *State v. Ware*, (1916) 79 Ore. 367, 154 Pac. 905, Cam. 824, *rehearing denied*, (1916) 79 Ore. 377, 155 Pac. 364.

SECTION 26

of Sixth Draft of Uniform Small Loan Law.

SEPARABILITY OF PROVISIONS

PROVISIONS OF THE SECTION

SEC. 26. 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 impair, affect, or invalidate the remainder of this Act, which shall remain in full force and effect thereafter.

Earlier Drafts

This section first appeared in the fifth draft.

COMMENT

This section contains nothing peculiar to small loan laws.

SECTION 27

of Sixth Draft of Uniform Small Loan Law.

EFFECTIVE DATE OF ACT

PROVISIONS OF THE SECTION

SEC. 27. This Act shall take effect immediately.

Earlier Drafts

This section first appeared in the fifth draft.

COMMENT

This section contains nothing peculiar to small loan laws.

PART III

EVASION OF STATUTORY INTEREST
LIMITATIONS, IN GENERAL

PART III
EVASION OF STATUTORY INTEREST
LIMITATIONS, IN GENERAL

OUTLINE

Interest

Nature of Interest

Computation of Interest

Confusion in Computation

Proof of Evasion

Devices Used for Evasion

Concealment of Fact that Transaction is a Loan

Purchase of Borrower's Wages

Purchase of Property from Borrower

Sale of Property to Borrower.

Sale of Credit

Use of Covenants or Conditions

Use of Collateral Transaction

Sale of Property to Borrower

Use of an Intermediary

*Exaction of Charge from Borrower Ostensibly for Something Other
than Use of Money*

Chicanery

Relevant Provisions of Uniform Small Loan Law

Interest Limitations

Evasions Prevented

The treatment of this subject can be neither comprehensive nor entirely accurate because its brevity does not permit detailed qualifications of general statements. The discussion and cases are intended to supplement the annotations on specific provisions of small loan laws for the convenience of those who may wish to pursue studies in the fields indicated or to apply the interest limitations of a small loan law to a known set of facts. To that end there are

abbreviated discussions of interest and usury in general and of the factors to be considered in reading and applying usury cases, an analysis of some common devices used to evade statutory interest limitations, and citations of illustrative cases. The cases have been selected for their value as starting points in an examination of the law, or for particularly apt language of the court, or because their facts were typical. They are not necessarily leading cases.

This discussion is not intended to be a treatise on usury laws. Its purpose is to expose certain devices for the evasion of such laws.

Devices of evasion which are not peculiarly adapted to the business of exacting usury in small sums are not treated, however common or important they may be in other types of moneylending.

While the closely related problems of usury in connection with the sale of goods on credit are at least as complex as those arising in moneylending, the devices which are peculiarly apt for use by vendors on credit are not treated in this discussion, nor are cases arising within that field of law cited as such.

The cases in which evasions of the interest limitations of small loan laws were directly involved are treated in Part II, largely under Sections 13, 16, and 18.

In Appendix F, CLASSIFIED BIBLIOGRAPHY, the references to legal literature relating to evasion of usury laws are found mainly under USURY AND RELATED LAWS—INTERPRETATION, where they are classified in general according to the subdivisions of this Part under DEVICES USED FOR EVASION.

INTEREST

NATURE OF INTEREST

Questions of usury turn ultimately on the meaning of interest. Interest is compensation for the use of money lent.¹ Whatever thing of benefit comes to the lender as compensation for the use of

¹ American Law Institute, Restatement of the Law of Contracts, American Law Institute Publishers, St. Paul, 1932; Topic 4, Sec. 526, p. 1020, et seq.

Webb, James A., Law of Usury, The F. H. Thomas Law Book Co., St. Louis, 1899; Chap. 1, Sec. 1, p. 1, et seq.

Williston, Samuel, The Law of Contracts (1st ed.), Baker, Voorhis & Co., New York, 1924; Chap. XLV, Sec. 1684, p. 2962, et seq.

money is interest, no matter what name it may be given or what expedients may be adopted to conceal the fact that the benefit received is, in essence, compensation for the use of the money. No matter how remote a collateral transaction may seem to be, no matter how shrewdly it is made to appear that a payment to the lender is for something else, if the facts, taken together and read in the light of human experience, justify a natural inference that the lender received the benefit because the borrower had the use of his money and as compensation for the use, the benefit is interest. As such it must be added to all similar benefits to determine whether the aggregate exceeds the rate of compensation which the lender is permitted to receive.¹

For a discussion of the nature of the limitation on licensees' charges imposed by Section 13 of the Uniform Small Loan Law, see Interest Limitations under RELEVANT PROVISIONS OF THE UNIFORM SMALL LOAN LAW, later in this Part III.

COMPUTATION OF INTEREST

The computation of interest—that is, the determination of the rate of interest—introduces perplexing problems. The elementary principles involved are simple, yet they are often lost sight of in pursuing a transaction through the labyrinth created by a usurer.

The term “interest” is a device of language by which a formula is expressed in a word. The formula is frequently stated in general statutes fixing maximum contract rates in such words as “six dollars for the use of one hundred dollars for one year, and greater or lesser amounts and times in proportion.” There are three elements in the formula and each is essential to its proper application. They are: the amount charged, the amount lent, and the time involved. When each element has been accurately determined, application of the formula to ascertain the rate of interest charged requires merely the use of elementary arithmetic. In the determination of the three elements, however, the difficulties are often great.

¹ See final paragraphs of the FOREWORD for an explanation of the change of wording to be proposed for the seventh draft of the Uniform Small Loan Law, in relation to the maximum rate permitted licensees.

The standards for determining the amount charged, that is, the amount of compensation for the money lent, have been referred to under NATURE OF INTEREST.

The amount lent means the exact sum of which the borrower obtains the actual use. This may not be the amount stated in the loan contract. Any portion of that stated amount which does not come to the borrower free of conditions which deprive him of its beneficial use, cannot be included in the amount lent for the purpose of computing interest.¹ One cannot properly pay for the use of something of which one does not have the use.

One qualification of this principle requires mention. A lender may require a borrower to bear certain expenses involved in the making of a loan. These expenses commonly relate to the security, for example, its inspection or appraisal, proof of title, and protection against liens or hazards. Such expenses must be reasonable, *bona fide*, and the lender may not obtain from them any benefit except the increased probability that the loan will be paid. The borrower may pay such expenses from separate funds or from the proceeds of the loan, or the lender may pay them on the borrower's behalf and deduct them from the amount lent. Although lenders may set up conditions precedent to granting loans, compliance with which ordinarily requires expenses to be incurred, such disbursements must be voluntarily made or authorized by the borrower. The amounts of such expenses need not be deducted from the amount stated in the loan contract to determine the amount lent, for purposes of interest computation. There is a substantial body of law on the subject of such expenses which cannot be here expounded in detail.²

The time involved means the exact period for which the borrower has the free use of the amount lent. Like rent paid for the use of property, the rate of charge for the use of money necessarily depends on the length of time it is used. The amount of an interest charge, in dollars and cents, is not legally significant until the

¹ See the first sentence of Part III.

² See CLASSIFIED BIBLIOGRAPHY, Appendix F, under Exaction of Charge Ostensibly for Something Other than Use of Money.

amount lent and the time involved are known. Only when all three factors are known can the rate of charge be computed and reduced to per cent per annum for comparison with the rate allowed by law. If these elementary concepts were thoroughly understood many types of loan transactions which are now in common use would be recognized to be usurious.

The unit of time for which the maximum contract rate is expressed in statutes is usually one year, but in interest limitations of small loan laws it is almost always one month. By general usage one day is the minimum unit of time measurement in applying interest limitations.

CONFUSION IN COMPUTATION

While statutes or decisions sometimes validate practices which have the effect of increasing the maximum contract rate, and many current business practices are countenanced which increase the rate of interest beyond that stated in loan contracts, the judicially established principles of interest computation remain unchanged. Under these principles the true interest rate per cent per unit of time may always be obtained. The fact that business methods which raise this true rate above the statutory limit go unchallenged does not indicate that the transactions are not usurious. Such practices persist because of the difficulty of adducing competent proof of the facts, or because of the economic weakness of the borrowers or their mere reluctance to exhaust their legal remedies. Whatever the reasons, the constant use of certain devices for evading interest limitations or increasing the interest rates stated in loan contracts has led to widespread belief that such practices are legal. This in turn has tended to confuse and distort popular opinion as to the nature of interest and the principles by which the courts have held that it must be computed.

An illustration is the charging of fines for delinquency in the payment of installments. Many loan contracts provide for such penalties, often at the rate of five cents per dollar per diem on the amount overdue. The only thing paid for is the use or forbearance of one dollar for one day. This is interest, and the rate per annum is 1825

per cent. The words "fine" or "penalty" do not change the nature of the payment or the principles of interest computation.

Another common case of faulty computation is involved in the requirement of commercial banks that borrowers of substantial sums must maintain supporting balances as a condition precedent to the granting of loans. Under this practice the borrower does not obtain the use of the supporting balance but the stated interest rate is applied to the principal amount expressed in the note. If a 20 per cent supporting balance is required, a stated rate of 6 per cent per annum becomes 7.5 per cent. While commercial borrowers are seldom misled and of course usury may not result, the practice serves to illustrate how lenders in many fields obtain a higher rate of interest than that stated in the loan contract.

In addition to the casual acceptance of practices of this kind, other confusing factors are introduced into the problem of interest computation by statutory or judicial authorization of practices which permit in fact the exaction of interest at a higher rate than the general contract maximum. An example is the deduction in advance of interest at the maximum rate. This practice reduces the sum of which the borrower has the use and thus necessarily increases the percentage rate of charge beyond the maximum. The deduction of maximum interest in advance was originally countenanced because it facilitated early transactions in legitimate trade and commerce which were carried on through the discounting of bills of exchange. In some states the practice now has statutory authority, in some it has been sanctioned judicially, but in many states the law is unsettled. In the absence of special statute, the extension of this privilege to small loans not made in trade or commerce has not been adjudicated; it is doubtful whether the privilege extends to such loans, for in connection with them the reason for the rule does not exist.

Another illustration may demonstrate the peculiar difficulties which commercial practices have created in the application of the principles of interest computation. When the privilege of deducting the maximum interest in advance exists it extends only to interest which is accurately computed. It has been used, however, to

mask a different practice—the deduction in advance of interest computed on the initial amount of a loan which is repayable in brief periodic installments of principal, in spite of the fact that the amount of which the borrower originally has the use diminishes constantly during the life of the indebtedness. This practice produces a percentage rate of interest approximately twice as large as the original discount rate.

Several states have enacted special statutes which by their terms would authorize this method of charging interest. Under these statutes the borrower usually must “buy an investment certificate,” upon the purchase price of which his installment payments are credited. By this means the lender obtains repayment of the loan without calling it such until the last installment is paid. At that time the investment certificate is taken over by the lender to pay the note. Such statutes, if valid, permit the exaction of a much higher rate of charge than the ostensible or discounted rate.

The confusion which results from faulty computation of interest is well illustrated by the method of lending adroitly used by many so-called industrial banking companies, discount loan companies, and personal loan departments of banks. In a typical case the applicant is offered a loan of \$120 “at 6 per cent per annum,” the principal being repayable at \$10 per month. The lender deducts and retains—discounts—\$7.20, which is 6 per cent of \$120. The amount of which the borrower actually has the use is thus \$112.80. He has the use of that sum for only one month because he repays \$10 at the end of the first month. Thereafter he has the use of only \$102.80 for one month because he repays another \$10 at the end of the second month. This continues until he has repaid \$112.80 plus the discounted \$7.20. In such a plan the lender has computed and retained interest either on an amount approximately twice as large as the borrower actually had the use of or for a period of time approximately twice as long as the actual period of use. The interest rate charged in the example given is 12.5 per cent per annum (or, if the interest is assumed to be payable monthly, 11.5 per cent) instead of the 6 per cent “discounted.”

In the absence of valid statutory justification such loans are usurious if the interest, properly computed, exceeds the maximum contract rate.

In such cases the lender frequently deducts other amounts in addition to the sum labeled "interest." These deductions are called such names as "service charges," "examination fees," or "loss reserves," but they are often merely additional compensation for the use of the money lent. If, in the example given, an additional \$4 of "service charge" had been deducted, the interest rate would have been 18.48 per cent per annum; an additional charge of \$7.50 would have resulted in an interest rate of 24.8 per cent per annum.

For interesting decisions and opinions bearing upon the methods of lending and the statutes referred to above, see:

Connor v. Minier, (1930) 109 Cal. App. 770, 288 Pac. 23.

Beneficial Loan and Investment Co. v. Ira, (1924) 75 Colo. 379, 226 Pac. 136.

Dowd v. Labor Finance Corp., (1937) 100 Colo. 512, 69 Pac. (2d) 305.

Columbus Industrial Bank v. Rosenblatt, (1930) 111 Conn. 84, 149 Atl. 209.

PROOF OF EVASION

In considering any transaction in which usury is suspected, it is important to understand that courts will always look to the true nature and substance of the transaction, particularly to the intent of the parties, and if the natural inference is that the total compensation received for the use of the money lent exceeds the statutory maximum rate they will find that usury exists and impose the legal consequences. Many courts have stated this proposition in many ways.

One of the earliest cases on this subject decided by the United States Supreme Court was *Scott v. Lloyd*, (1835) 34 U. S. (9 Pet.) 418, 9 L. ed. 178. The issue was whether a transaction which appeared on its face to be a sale of annuities was actually such or a usurious loan. Chief Justice John Marshall said (9 L. ed. 188):

. . . where the contract is in truth for the borrowing and lending of money, no form which can be given to it will free it from the taint of usury, if more than legal interest be secured.

The ingenuity of lenders has devised many contrivances, by which, under forms sanctioned by law, the statute may be evaded. Among the earliest and most common of these is the purchase of annuities. . . . The statute does not reach these . . . because it was not the intention of the Legislature to interfere with individuals in their ordinary transactions of buying and selling. . . . The purchase of an annuity . . . if a bona fide sale, has never been considered as usurious, though more than six per cent. profit be secured. Yet it is apparent that if giving this form to the contract will afford a cover which conceals it from judicial investigation, the statute would become a dead letter. Courts, therefore, perceived the necessity of disregarding the form, and examining into the real nature of the transaction. If that be in fact a loan, no shift or device will protect it.

Though this principle may be extracted from all the cases, yet as each depends on its own circumstances, and those circumstances are almost infinitely varied, it ought not to surprise us if there should be some seeming conflict in the application of the rule by different judges. Different minds allow a different degree of weight to the same circumstances.

In *Montague v. Sewell*, (1881) 57 Md. 407, 414, the issue was whether a certain deed, mortgage, and contract for ground rent were *bona fide* or disguised a loan to evade the usury act. The court stressed the intention of the parties, saying:

So far as the transaction in question is evidenced by the legal instruments executed by the parties, it is *prima facie* valid and free from objection. The form taken is in all respects legal, and the instruments used fail to disclose any taint of usury. . . . Courts, therefore, have recognized the necessity of disregarding the form, and examining into the real nature of the transaction; and if that be in fact a loan, no shift or device will protect it. And as in such cases the original intention of the parties can seldom be arrived at except by resort to matters *de hors* the particular instruments of writing executed by them, extrinsic evidence must be received to show the real nature and intent of the transaction.

In *Tyson v. Rickard*, (Md. 1810) 3 Har. & J. 109, 113, 5 Am.

Dec. 424, which involved issues as to the true nature of certain transactions and charges, the court said:

On a question of usury it is the view, the intention of the parties, which gives character to the transaction, and no matter what the form, where the real truth and substance is a loan of money—a lending on one side, and a borrowing on the other, at more than an interest of *six per centum per annum*, no shift or device can take it out of the act of assembly [against usury].

In the investigation of such questions the original intention of the parties must often be come at by matter *de hors* the particular instrument of writing executed between them, otherwise the act of assembly would be a dead letter . . . the court below did right in leaving it to the jury to decide upon the whole of the evidence, whether in the true contemplation of the parties, the transaction in question was a real sale by one, and a purchase by the other; or whether it was only colourable to hide an usurious loan. . . .

In determining the true intent of the parties their conduct is at least as important as the written instruments. Inherent probabilities, natural inferences, implications which would impress a reasonable man, will, in the last analysis, determine the conclusions to be drawn from the facts in cases where usury is alleged.

The continuity of transactions is a material consideration. It becomes obvious that the parties are attempting to conceal loans when there have been continual repetitions of wage sales through which the proceeds of one sale are delivered to the pretended purchaser by selling another increment of wages. The same is true of other methods of concealment.

The general course of conduct or dealing of the one charged with exacting usury is also material. Circumstances which, if they had occurred in an isolated transaction, would give rise to no natural inference of concealment become persuasive indications of usurious intent when they are shown to have been common practice.

Two well established rules with reference to the admissibility of evidence facilitate the proof of usury. When usury is in issue parol evidence is admissible to vary the terms of a written instrument by showing the true nature and details of the transaction; evidence of

independent transactions similar to the one in issue is admissible to show knowledge or intent of the parties.

In *Flood v. Empire Investment Co.*, (1926) 35 Ga. App. 266, 269, 133 S. E. 60, the court said:

It is a well settled rule that, in the absence of fraud, accident, or mistake, parol evidence is ordinarily inadmissible to vary the terms of a written contract. This, however, is not true where the contract out of which the suit arises is tainted with usury, and that fact is sought to be shown. In *Brown v. Bonds*, 125 Ga. 833, 838 (54 S. E. 933), the Supreme Court said:

"If this instrument, which was signed by both parties, correctly sets forth the agreement between them, then the two writings evidence a sale and conveyance of the land, with an option to the vendor to repurchase it within a designated period. *Felton v. Grier*, 109 Ga. 320 [35 S. E. 175]. No mention is made of a loan. However, if a loan was in point of fact made, and these writings merely furnish the cloak for a usurious transaction, then the truth may be shown by parol."

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In *Lytle v. Scottish American Mortgage Co.*, 122 Ga. 458 (6) (50 S. E. 402) it was ruled that:

"While a valid written contract cannot be contradicted or varied by parol, it is competent by such evidence to show that the writing is but a cover for usury, penalty, or forfeiture.

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". . . It is always permissible to show that a paper is but a cover for usury, penalty, forfeiture, or other illegal advantage to one of the parties. For if the law did not sedulously disregard form and seek for substance, nothing would be easier than its evasion by giving innocent names to prohibited acts."

See also *Service Purchasing Co. v. Brennan*, (1931) 226 Mo. App. 110, 42 S. W. (2d) 39.

The federal courts have followed the same rule. In *Houghton v. Burden*, (1913) 228 U. S. 161, 33 Sup. Ct. 491, 57 L. ed. 780, *aff'g In re Canfield*, (C. C. A. 2d, 1912) 193 Fed. 934, *rev'g* (D. C. N. Y. 1911) 190 Fed. 266, it was held that a debtor and those in privity with him may plead usury as a defense although they thereby contradict a written instrument, and that the true nature of a trans-

action may be shown by evidence *dehors* the agreement in order to prevent the defeat of the very purposes of the usury law.

DEVICES USED FOR EVASION¹

Whether the occasion for the application of usury principles arises because of an evasion resorted to by an unlicensed lender or by a licensee, knowledge of the principles by which usury is determined and familiarity with the devices employed to escape the impact of interest laws are essential.

The usurious character of a loan is rarely disclosed by the written agreements which purport to express it. In an early usury case, *Scott v. Lloyd*, (1835) 34 U. S. (9 Pet.) 418, 9 L. ed. 178, the court said (9 L. ed. 189):

If an express stipulation for the repayment of the sum advanced be indispensable to the existence of usury, he must be a bungler indeed, who frames his contract on such terms as to expose himself to the penalties of the law.

The concealment of usury is accomplished by casting the transaction in a form calculated to conceal the fact that it is a loan; by disguising the fact that benefits received by the lender are compensation for the use of money; or by some downright fraud such as shortchanging, false computation, or other chicanery. While the devices of the usurer are myriad, they all fall within these classes. Often devices of two or more classes are used in connection with the same loan.

Few of the means utilized to evade usury laws are usurious *per se*. It is only when they are employed as subterfuges with the intent to evade that they become usurious. Since the basic question is the intent of the parties, and the facts of many cases may be interpreted with opposite results by different courts or juries, the cases are necessarily confusing. Their holdings are often less important than the principles which are applied in them. Armed with a few un-

¹ See CLASSIFIED BIBLIOGRAPHY, Appendix F, division headed USURY AND RELATED LAWS—INTERPRETATION, under which the references to legal literature are classified in general according to the main subdivisions under this heading.

derlying conceptions, one who wishes to prove existing usury can do so if his analysis of the facts is sufficiently penetrating and he is able to adduce proof of the cogent facts.

Attempted evasions of the past have taken their forms in part from the nature of the statutory limitation sought to be evaded and in part from current economic practices. The anxiety of courts as to the good faith of transactions alleged to be usurious has varied through the years according to contemporaneous business customs and standards. These factors and others have been reflected not only in the level of statutory interest limitations but also in the enthusiasm with which the courts have applied them, in the form of relief granted, and in the nature of the penalties imposed.

The courts have been less inclined to construe general interest statutes against the lender than statutes which apply to special classes of lenders. All interest limitations are established to prevent overreaching by lenders, but small loan laws are enacted for the special benefit of the necessitous borrower whose economic weakness would otherwise place him at the lender's mercy. See PURPOSE AND INTERPRETATION OF SMALL LOAN LAWS in Part I.

A classification of the devices most often used to evade interest limitations in the lending of small sums, and citations of cases in connection therewith, follow.

CONCEALMENT OF THE FACT THAT THE TRANSACTION IS A LOAN BY CASTING IT IN A DIFFERENT FORM

Purchase of Borrower's Wages at a Discount

Transactions cast in the form of purchases of wages have frequently been held to be loans. Among the facts which make it evident that such transactions are in reality loans rather than purchases of wages are the following:

1. The wage buyer is also engaged in the business of making loans.
2. The transaction has its inception in a request for a loan.
3. The buyer does not comply with statutory requirements which are conditions precedent to the enforceability of a wage assignment.

4. The buyer does not present the assignment to the seller's employer or give notice thereof.

5. The buyer permits the seller to receive the wages and trusts him to pay over the assigned portion.

6. The buyer does not require the seller to pay over all the wages assigned but only a portion thereof and takes a new assignment for the same amount.

7. The transaction is repeated each pay day.

The following cases hold that transactions which are in reality loans, although disguised as purchases of wages, are subject to the general usury laws:

In re Cleapor, (D. C. Ga. 1936) 16 Fed. Supp. 481.

Flood v. Empire Investment Co., (1926) 35 Ga. App. 266, 133 S. E. 60.

Jackson v. Bloodworth, (1929) 41 Ga. App. 216, 152 S. E. 289.

Crowe v. State, (1932) 44 Ga. App. 719, 162 S. E. 849.

Parsons v. Fox, (1934) 179 Ga. 605, 176 S. E. 642.

Brandt v. Hall, (1907) 40 Ind. App. 651, 82 N. E. 929.

Service Purchasing Co. v. Brennan, (1931) 226 Mo. App. 110, 42 S. W. (2d) 39.

Wilmarth v. Heine, (1910) 137 App. Div. 526, 121 N. Y. S. 677.

Willson v. Fisher, (Co. Ct. 1912) 75 N. Y. Misc. R. 382, 135 N. Y. S. 532, *aff'd*, (1913) 155 App. Div. 877, 139 N. Y. S. 1150.

Martin v. Pacific Mills, (1931) 160 S. C. 458, 158 S. E. 831.

McWhite v. State, (1921) 143 Tenn. 222, 226 S. W. 542, Cam. 919.

Cotton v. Cooper, (Tex. Com. App. 1919) 209 S. W. 135, Cam. 946, *aff'g* (Tex. Civ. App. 1913) 160 S. W. 597.

A transaction in the form of a purchase of wages will not necessarily be treated as a loan under general usury laws. The following cases recognize that a *bona fide* purchase of wages may be distinguished from a loan transaction disguised as a purchase of wages. In cases involving transactions cast in the form of purchases of

wages it has been held that the facts did not show that the transactions involved were loans:

- Decatur Finance Co. v. Newsom*, (1932) 25 Ala. App. 126, 142 So. 438, *cert. denied*, (1932) 225 Ala. 126, 142 So. 440.
Tollison v. George, (1922) 153 Ga. 612, 112 S. E. 896.
Jackson v. Johnson, (1924) 157 Ga. 189, 121 S. E. 230.
Hubbard v. Bibb Brokerage Co., (1931) 44 Ga. App. 1, 160 S. E. 639, *refusal of Sup. Ct. to answer certified questions*, (1931) 172 Ga. 520, 157 S. E. 649.

The provisions of Section 16 of the Uniform Small Loan Law subject wage purchases to the same regulations to which loans are subject whether they are *bona fide* purchases of wages or subterfuges. For cases directly involving small loan laws, see Section 16, Part II.

Purchase of Property from Borrower at a Low Price

Transactions cast in the form of purchases of property from the borrower, in which the seller retains the right to regain title at an increased price, and variations of the same device, have often been held to be subterfuges to evade usury laws. In the following cases it was held that transactions given the form of purchases were in fact loans to the seller and that the transfers of property were only for the purpose of securing loans:

- Home Bond Co. v. McChesney*, (1915) 239 U. S. 568, 36 Sup. Ct. 170, 60 L. ed. 444, *aff'g* (C. C. A. 6th, 1914) 210 Fed. 893, *aff'g In re American Fibre Reed Co.*, (D. C. Ky. 1913) 206 Fed. 309.
In re Grand Union Co., (C. C. A. 2d, 1914) 219 Fed. 353, *cert. denied*, *Hamilton Investment Co. v. Ernst*, (1914) 238 U. S. 626, 35 Sup. Ct. 664, 59 L. ed. 1495.
Sparks v. Robinson, (1899) 66 Ark. 460, 51 S. W. 460.
Tisdale v. Maness, (Ark. 1936) 92 S. W. (2d) 380.
Liebelt v. Carney, (1931) 213 Cal. 250, 2 Pac. (2d) 144.
Monroe v. Foster, (1873) 49 Ga. 514.
Manget Realty Co. v. Carolina Realty Co., (1929) 169 Ga. 495, 150 S. E. 828.

Mercantile Trust Co. of Ill. v. Kastor, (1916) 273 Ill. 332, 112 N. E. 988, *aff'g* (1915) 191 Ill. App. 219.

Dorothy v. Commonwealth Commercial Co., (1917) 278 Ill. 629, 116 N. E. 143, L. R. A. 1917E 1110, *aff'g* (1916) 198 Ill. App. 601.

Stober v. Ehrhart, (1922) 223 Ill. App. 543.

Winnick v. Aetna Acceptance Co., (1934) 275 Ill. App. 438.

Hurt v. Crystal Ice & Cold Storage Co., (1926) 215 Ky. 739, 286 S. W. 1055.

Montague v. Sewell, (1881) 57 Md. 407.

Schrump v. Jennrich, (1928) 174 Minn. 204, 219 N. W. 86.

Pomplun v. Hudson, (1929) 177 Minn. 321, 225 N. W. 115.

Stockwell v. Richardson, (1886) 101 N. Y. 643, 5 N. E. 45.

Turney v. Goldberg's Loan Office, (1928) 135 Okla. 147, 274 Pac. 464.

Commercial Securities Co. v. Rea, (Tex. Civ. App. 1934) 78 S. W. (2d) 707.

Liskey v. Snyder, (1904) 56 W. Va. 610, 49 S. E. 515.

In the following cases involving transactions in the form of purchases of property it was unsuccessfully contended that the transactions were in fact loans. In none of these cases did the facts demonstrate an intention to make a loan.

Sherwood v. Burgess, (C. C. D. C. 1843) 1 Hayw. & H. 132, Fed. Cas. No. 12,775.

Barfield v. Jefferson, (1887) 78 Ga. 220, 2 S. E. 554.

Chase & Baker Co. v. National Trust & Credit Co., (D. C. Ill. 1914) 215 Fed. 633.

Mills v. Crocker, (1854) 9 La. Ann. 334.

Connolly v. Keenan, (Sup. Ct. 1904) 42 N. Y. Misc. R. 589, 87 N. Y. S. 630.

Yarborough v. Hughes, (1905) 139 N. C. 199, 51 S. E. 904.

This device is also frequently used as a collateral transaction in connection with a loan. In that event the purchase is a condition precedent to granting the loan. Whether the purchase is the only transaction or a collateral one, the resulting profit to the lender is compensation for the use of money and hence interest.

Sale of Property to Borrower at a High Price

Transactions cast in the form of sales of property to the borrower, in which the buyer agrees to pay the purchase price in the future, have been held to be subterfuges to evade usury laws. Thus the sale for \$90 of stock which had a market value of \$74, when the buyer paid for the stock by a note and, presumably, obtained the money lent by selling the stock, was held to be a usurious loan.

Trauernicht v. Kingston, (1923) 156 Minn. 442, 195 N. W. 278.

There was a similar holding as to a sale of bonds worth \$85 for \$107.50.

Quackenbos v. Sayer, (1875) 62 N. Y. 344.

Other cases which involved similar transactions and in which there were similar holdings are the following:

Miller v. Bates, (1860) 35 Ala. 580.

Dry Dock Bank v. American Life Insurance & Trust Co., (1850) 3 N. Y. 344.

People v. Silverberg, (1915) 33 N. Y. Cr. R. 46, 160 N. Y. S. 727, *aff'd*, 171 App. Div. 914, 155 N. Y. S. 1132.

Anonymous, (S. C. Eq. 1806) 2 Desaus 333.

However, such transactions do not constitute loans as a matter of law, without proof of circumstances showing an intent to make a loan.

Barry v. Paranto, (1906) 97 Minn. 265, 106 N. W. 911, 7 Ann. Cas. 984.

Kelley v. Sprague, (N. Y. Sup. Ct. 1890) 58 Hun 611, 13 N. Y. S. 64, *aff'd*, (1891) 128 N. Y. 582, 28 N. E. 250.

Selby v. Morgan, (Va. 1832) 3 Leigh 577.

Greenhow's Administratrix v. Harris, (Va. 1820) 6 Munf. 472, 8 Am. Dec. 751.

Brockenbraugh's Executors v. Spindle's Adm'rs, (Va. 1866) 17 Gratt. 21.

Rose v. Wheeler, (1934) 140 Cal. App. 217, 35 Pac. (2d) 220.

People v. Sacks, (N. Y. Ct. App. 1938) 12 N. E. (2d) 425.

The device of a sale to the borrower at an excessive price as a cover for a usurious loan is frequently used as a collateral transaction in connection with a loan. In that event the sale is a condition precedent to granting the loan. The buyer may or may not agree to pay the purchase price in the future. Whether the sale is the only transaction or a collateral one, the resulting profit to the lender is compensation for the use of money and hence interest.

Sale of Credit

This device usually consists of exacting a price for guaranteeing the borrower's promise to pay, whether as endorser, co-maker, or otherwise. There are many variations. Often a fictitious third person is used. If an actual third person is used, he is in privity with the lender and some part or all of the price he exacts from the borrower in fact benefits the lender. While there have been many cases involving established loan shark businesses in which the sale of guarantees by fictitious persons or ones in privity with the lender were involved, most of them did not reach appellate courts where opinions are available.

In the following cases it was held that transactions given the form of sales of credit were in fact usurious loans:

White v. Anderson, (1912) 164 Mo. App. 132, 147 S. W. 1122.
Palmer v. Jones, (N. Y. Sup. Ct. 1893) 69 Hun 240, 23 N. Y. S. 584, *appeal dismissed*, (1893) 140 N. Y. 657, 35 N. E. 893.
Forgotson v. Raubitschek, (N. Y. Sup. Ct. 1904) 87 N. Y. S. 503.

However, transactions in the form of sales of credit have been sustained as *bona fide* where the facts did not demonstrate the intention to make loans.

Philadelphia Warehouse Co. v. Seeman, (C. C. A. 2d, 1925) 7 Fed. (2d) 999, *aff'd*, *Seeman v. Philadelphia Warehouse Co.*, (1927) 274 U. S. 403, 47 Sup. Ct. 626, 71 L. ed. 1123.
Oil City Motor Co. v. C. I. T. Corp., (C. C. A. 10th, 1935) 76 Fed. (2d) 589, 104 A. L. R. 240.
Brown v. Harrison, (1850) 17 Ala. 774.

Birdsall v. Wheeler, (1901) 62 App. Div. 625, 71 N. Y. S. 67, *aff'd*, (1903) 173 N. Y. 590, 65 N. E. 1114.

Under Sections 1 and 18 of the Uniform Small Loan Law, loans of "credit, goods, or things in action," and under Section 18 "the loan, use, or sale of credit" are included within the provisions of the respective sections. A sale of credit was held to be subject to the Georgia Small Loan Law, because of the terms of the act, whether or not it was a subterfuge.

Morgan v. Shepherd, (1930) 171 Ga. 33, 154 S. E. 780.

Use of Covenants or Conditions Which are Designed to Make a Loan Immune from Usury Limitations

The most common application of this device is the use of covenants terminating the indebtedness upon the happening of stated contingencies which are usually remote in fact. This has been called a "hazard agreement." It is an attempt to take advantage of the principle that a loan must be repayable in all events in order that interest limitations may apply. The question of usury should turn upon the intent of the parties rather than the remoteness of the contingencies, although the latter may be persuasive in determining intention. If it was the lender's intention to escape a usury law by utilizing such covenants, then they should be disregarded.

An agreement to repay a sum to a lender (not an insurance company) which contained a provision that it should be unenforceable if the borrower became physically disabled or sustained damage to his furniture exceeding one-half the value thereof, was held to be a cover for usury.

Doyle v. American Loan Co., (1932) 185 Ark. 233, 46 S. W. (2d) 803.

Likewise, an agreement to repay a sum to a lender (not an insurance company) has been held to be void for usury notwithstanding a provision that death of the borrower would release unpaid installments.

Missouri, Kansas & Texas Trust Co. v. Krumseig, (1898) 172

U. S. 351, 19 Sup. Ct. 179, 43 L. ed. 474, *aff'g* (C. C. A. 8th, 1896) 23 C. C. A. 21, 77 Fed. 32, *aff'g Krumseig v. Missouri, Kansas & Texas Trust Co.*, (C. C. Minn. 1896) 71 Fed. 350. *Missouri, Kansas & Texas Trust Co. v. McLachlan*, (1894) 59 Minn. 468, 61 N. W. 560.

A recent New York case held a transaction to be usurious which involved a hazard agreement providing that a loan made on the security of an automobile should be discharged on the surrender of the automobile though damaged or destroyed by fire, accident, or other enumerated causes. The majority opinion was based upon the illegality of charges for certain specific items of service and expense, but a concurring opinion held that the hazard agreement was a device to evade the usury law.

Equity Service Corp. v. Agull, (1937) 250 App. Div. 96, 293 N. Y. S. 872, *rev'g* (Sup. Ct. 1936) 158 N. Y. Misc. R. 780, 286 N. Y. S. 379, *rev'g* (Mun. Ct. 1935) 156 N. Y. Misc. R. 552, 281 N. Y. S. 292.

However, when repayment of the money loaned was subject to a true hazard and the facts did not demonstrate intention to evade usury laws, the exaction of compensation for the risk assumed has been sustained.

Laughlin v. Irwin, (1931) 262 Ill. App. 40.

Ordway v. Price, (1923) 156 Minn. 160, 194 N. W. 321.

Provident Life & Trust Co. v. Fletcher, (D. C. N. Y. 1916) 237 Fed. 104, *aff'd*, (C. C. A. 2d, 1919) 258 Fed. 583.

Heist v. Blaisdell, (1901) 198 Pa. 377, 48 Atl. 259.

Embola v. Tuppela, (1923) 127 Wash. 285, 220 Pac. 789.

USE OF A COLLATERAL TRANSACTION FROM WHICH THE LENDER DERIVES A BENEFIT

Sale of Property to Borrower at a High Price

Transactions cast in the form of sales of property to the borrower at more than its market value, imposed as conditions precedent to granting loans, have been held to be subterfuges to evade usury laws, the resulting profit to the lender being compensation for the

use of money and hence interest. In the following cases it was held, on the evidence, that the lender in requiring the borrower to purchase the property did so for the purpose of evading the usury law:

E. C. Warner Co. v. W. B. Foshay Co., (C. C. A. 8th, 1932) 57 Fed. (2d) 656, *cert. denied*, (1932) 286 U. S. 558, 52 Sup. Ct. 641, 76 L. ed. 1292.

Beneficial Loan & Investment Co. v. Ira, (1924) 75 Colo. 379, 226 Pac. 136.

Sanford v. Hawthorne, (1919) 103 Neb. 867, 174 N. W. 863.

Stockwell v. Richardson, (1886) 101 N. Y. 643, 5 N. E. 45.

Bishop v. Rider, (1932) 235 App. Div. 736, 255 N. Y. S. 787, *aff'd*, (1933) 261 N. Y. 512, 185 N. E. 717.

Fidelity Security Corp. v. Brugman, (1931) 137 Ore. 38, 1 Pac. (2d) 131, 75 A. L. R. 1333.

Fitzsimons v. Baum, (1862) 44 Pa. 32.

However, in the following cases it was held that the facts did not demonstrate that the sale of property to the borrower was a condition precedent to the granting of the loan imposed to cover usurious exactions.

Mosier v. Norton, (1876) 83 Ill. 519.

Citizens' Savings Bank v. Globe Brass Works, (1908) 155 Mich. 3, 118 N. W. 507.

Saxe v. Womack, (1896) 64 Minn. 162, 66 N. W. 269.

Norton v. Nathanson, (1916) 85 N. J. Eq. 409, 97 Atl. 166, *aff'd*, (1916) 86 N. J. Eq. 433, 99 Atl. 1070.

Keese v. Parnell, (1925) 134 S. C. 207, 132 S. E. 620.

A variation of this device is the practice of requiring the borrower to accept as part of the proceeds of the loan a merchandise coupon. The coupon is redeemable only by designated merchants, with whom the lender has made previous arrangements, in conjunction with the purchase of goods of a specified price; sometimes the entire proceeds of the loan must be so used. Ordinarily the borrower is unable and does not intend to make the purchase which is necessary to redeem the coupon. The monetary value of the coupon is usually doubtful. When a lender makes a practice of

requiring the borrower to accept such a coupon, there is a clear natural inference that it is a device to evade an interest limitation.

Each of the following four cases involved such a practice and was tried on stipulated facts which seem to have been dictated by the lender. The stipulations did not show a settled practice of requiring borrowers to accept coupons and did not indicate that the coupons were of doubtful value. It was stipulated that the lender did not know that the borrower did not intend to use the coupon. In three cases the courts decided for the lender.

Hornsby v. Rush, (1934) 26 Ala. App. 170, 155 So. 637, *cert. denied*, (1934) 229 Ala. 68, 155 So. 638.

Hogan v. Thompson, (1932) 186 Ark. 497, 54 S. W. (2d) 303.

Page v. Johnson, (1935) 174 Okla. 516, 51 Pac. (2d) 301.

But in one case, in spite of the stipulated facts, the court held the transaction to be a usurious loan and pointed out the improbability that necessitous borrowers would make use of the coupon or that such use was within the contemplation of either party.

Glover v. Buchman, (Tex. Civ. App. 1937) 104 S. W. (2d) 66.

The same view was taken under the West Virginia Small Loan Law in a case involving transactions cast in the form of wage purchases. The lender delivered to the borrower a check for 90 per cent of the wages acquired and a merchandise coupon for 10 per cent thereof, the coupon being redeemable only at designated stores and then only if used with the full amount of the check to buy merchandise. The lender was denied an injunction against criminal prosecutions for engaging in the small loan business without a license. This method of doing business was held to violate the West Virginia Small Loan Law, the court saying that "the identity of the one who pays usury to the lender is not material."

Cash Service Co. v. Ward, (W. Va. 1937) 192 S. E. 344.

The sale of insurance, particularly life insurance, to borrowers has been involved in many cases. By the weight of authority a lender may require a borrower to obtain insurance on his life or on the security offered, as a condition precedent to granting a loan, provided that this requirement is not imposed as a means of increas-

ing the compensation for the use of the money but only for the *bona fide* purpose of obtaining better security. The ultimate intention of the parties is the controlling consideration. Many decisions based on identical principles appear to be inconsistent with one another, because the basic issue in the cases is one of fact, the facts vary widely, and the opinions do not always fully reveal the findings and reasoning.

A loan may be tainted with usury when, to obtain the loan, the borrower is required not only to furnish ample mortgage security but also to buy from and assign to the lender an endowment policy in the amount of the loan which requires the payments of monthly premiums.

Brower v. Life Insurance Co. of Virginia, (C. C. N. C. 1898) 86 Fed. 748.

Miller v. Life Insurance Co. of Virginia, (1896) 118 N. C. 612, 24 S. E. 484, 54 Am. St. Rep. 741.

Carter v. Life Insurance Co. of Virginia, (1898) 122 N. C. 338, 30 S. E. 341.

It was held that compelling the borrower, a corporation, to take out a \$50,000 policy on the life of its president as a condition to the lending of \$5,000 made the loan usurious when other security was furnished to insure the repayment of the loan, although the policy was not assigned to the lender and no contention was made that it was issued as additional security for the loan.

Bankers Discount Co. v. Cinderella Theatre Co., (1925) 231 Mich. 168, 203 N. W. 837.

The court held a transaction to be usurious in which the borrower executed an agreement reciting that, in consideration of making a loan of \$2,500 secured by a mortgage, he agreed to take out and keep in force during the duration of the loan life insurance to be issued by the lender either on his own life or on that of some other person and pay or cause to be paid an annual insurance premium of not less than \$310.

Missouri Valley Life Insurance Co. v. Kittle, (C. C. Neb. 1880) 2 Fed. 113.

But it has been held that the fact that the lender requires the borrower to take out insurance on usual terms as a condition to the making of a loan does not of itself demonstrate usury, and that for the transaction to be held usurious, it must be proved that the insurance requirement was intended as a cover for usury.

Washington Life Insurance Co. v. Paterson Silk Mfg. Co., (1874) 25 N. J. Eq. 160.

Homeopathic Mutual Life Insurance Co. v. Crane, (1874) 25 N. J. Eq. 418, *aff'd*, *Crane v. Homeopathic Mutual Life Insurance Co.*, (1875) 27 N. J. Eq. 484.

Union Central Life Insurance Co. v. Hilliard, (1900) 63 Ohio St. 478, 59 N. E. 230, 81 Am. St. Rep. 644, 53 L. R. A. 462.

A common practice of loan sharks who operate established businesses is the repeated sale of an article to the borrower at an exorbitant price. The thing sold is ordinarily a small article in everyday use—such as a pipe, ink well, or rubber mat—having a value of only a few cents. These articles are sold for several dollars each simultaneously with granting a loan of a small amount for a short time. The resulting profit is compensation to the lender for the use of money. Usually, in such cases, there is both a continual repetition of the transactions by each borrower and a general course of dealing with other borrowers by the lender. The inherent improbability that either of the parties to these transactions entered them in good faith creates a natural inference of usury.

The Use of an Intermediary Who Exacts Something from the Borrower for the Benefit of the Lender

The principle here involved is that the lender exacts additional compensation for the use of the money lent by utilizing a collateral transaction in which a third person receives something of value ostensibly for services rendered or expenses incurred on behalf of the borrower but which is in fact compensation to the lender. Such payments to an intermediary fall into two classes. Either the intermediary is merely a means of passing the money to the lender, or if the intermediary performs any services or incurs any expenses they

are for the benefit of the lender and not of the nature for which the lender is entitled to exact compensation from the borrower.

Commissions to intermediaries may be classified in the following groups according to the facts of each case. In the following cases transactions were held to be usurious:

(1) Where the intermediary is in reality the lender and a commission, brokerage, or fee is exacted.

Louisiana Agricultural Corp. v. Interstate Trust & Banking Co., (C. C. A. 5th, 1927) 17 Fed. (2d) 751.

Sanford v. Kane, (1890) 133 Ill. 199, 24 N. E. 414, 8 L. R. A. 724, 23 Am. St. Rep. 602.

Yantis v. Foreman, (1866) 1 Ky. Ops. 282.

Harston v. Ralston, (1917) 174 Ky. 509, 192 S. W. 646.

State v. Martin, (Sup. Ct. 1908) 76 N. J. Law 292, 69 Atl. 1091, *aff'd*, (1909) 77 N. J. Law 652, 73 Atl. 548, 24 L. R. A. (N. S.) 507, 134 Am. St. Rep. 814, 18 Ann. Cas. 986.

Texas Loan Agency v. Hunter, (1896) 13 Tex. Civ. App. 402, 35 S. W. 399.

Deming Investment Co. v. Giddens, (Tex. Civ. App. 1931) 41 S. W. (2d) 260, *answer to certified question*, (1930) 120 Tex. 9, 30 S. W. (2d) 287.

(2) Where the intermediary divides the commission, brokerage, or fee with the lender or delivers it all to him.

Jones v. Phillippe, (1918) 135 Ark. 578, 206 S. W. 40.

Harrison v. Stiles, (1894) 95 Ga. 264, 22 S. E. 536.

Dodson v. Peck, (Tex. Civ. App. 1934) 75 S. W. (2d) 461.

Collamer v. Goodrich, (1858) 30 Vt. 628.

(3) Where the intermediary exacts from the borrower a commission, brokerage, or fee which can be referable only to services rendered or disbursements incurred on the account of the lender, the services or disbursements being of such a nature that the lender is not entitled to exact reimbursement from the borrower.

Fowler v. Equitable Trust Co., (1891) 141 U. S. 384, 12 Sup. Ct. 1, 35 L. ed. 786.

Sherwood v. Roundtree, (C. C. Ga. 1877) 32 Fed. 113.

New England Mortgage Security Co. v. Gay, (C. C. Ga. 1888)

33 Fed. 636, *writ of error dismissed*, (1892) 145 U. S. 123, 12 Sup. Ct. 815, 36 L. ed. 646.

McHenry v. Vaught, (1921) 150 Ark. 612, 234 S. W. 995.

Dickinson-Reed-Randerson Co. v. Stroupe, (1925) 169 Ark. 277, 275 S. W. 520.

Payne v. Henderson, (1899) 106 Ky. 135, 20 Ky. L. Rep. 1739, 50 S. W. 34.

Friedman v. Katz, (1929) 246 Mich. 296, 224 N. W. 325.

New England Mortgage Security Co. v. Hendrickson, (1882) 13 Neb. 157 and 574, 12 N. W. 916.

Brown v. Brown, (1892) 38 S. C. 173, 17 S. E. 452.

Texas Loan Agency v. Hunter, (1896) 13 Tex. Civ. App. 402, 35 S. W. 399.

In all cases where the intermediary is not fictitious the lender and intermediary must have been in privity in order that usury exist. If the exaction by the intermediary is made without the lender's express or implied knowledge or consent it will not be treated as compensation to the lender.

Call v. Palmer, (1885) 116 U. S. 98, 6 Sup. Ct. 301, 29 L. ed. 559.

Whaley v. American Freehold Land-Mortgage Co. of London, (C. C. A. 4th, 1896) 74 Fed. 73.

If an intermediary renders services or incurs disbursements in good faith as the agent of the borrower and upon the borrower's behalf, a commission, brokerage, or fee paid to the intermediary is not compensation for the use of money and will not be added to the interest paid the lender for the purpose of determining whether the loan is usurious.

Best v. British & American Mortgage Co., (C. C. N. C. 1897) 79 Fed. 401.

McDougall v. Hachmeister, (1931) 184 Ark. 28, 41 S. W. (2d) 1088, 76 A. L. R. 1463.

Abbott v. Stone, (1898) 172 Ill. 634, 50 N. E. 328, 64 Am. St. Rep. 60, *aff'g* (1897) 70 Ill. App. 671.

Union Central Life Insurance Co. v. Edwards, (1927) 219 Ky. 748, 294 S. W. 502.

Federal Bond & Mortgage Co. v. Burstein, (1923) 222 Mich. 88, 192 N. W. 549.

Nance v. Welborne, (1928) 195 N. C. 459, 142 S. E. 477.

Hudmon v. Foster, (Tex. Civ. App. 1919) 210 S. W. 262, *rev'd on another ground*, (Tex. Com. App. 1921) 231 S. W. 346.

EXACTION OF A CHARGE FROM THE BORROWER OSTENSIBLY
FOR SOMETHING OTHER THAN THE USE OF MONEY BUT
IN FACT CONVEYING A BENEFIT TO THE LENDER

When used as a device, the exaction of such charges falls into one of two classes. Either they are only pretended and no services were rendered or expenses incurred, or the services rendered or expenses incurred were not of the nature for which a lender is entitled to exact reimbursement from a borrower. In either case such charges may be classified principally according to whether the lender attempts to justify them by giving them innocuous sounding names and ostensible settings of fact or simply imposes them upon the borrower without attempting to make them appear *bona fide*.

Among the labels given to charges of this kind with varying degrees of justification are: "service charge," "fee," "bonus," "commission," "brokerage," and "loss reserve." Justifications frequently assigned for such charges are examination of security, drawing of papers, services by way of advice, deposits to protect against losses, and commissions and brokerage for the benefit of intermediaries.

If such charges have foundation in fact they may be classified according to whether or not they represent *bona fide* services rendered or expenses incurred in direct connection with the loan at the request of and for the benefit of the borrower. For such services or expenses the lender is entitled to exact payment from the borrower and such payments can be compensatory only.¹ The lender cannot make a charge to the borrower for his own general overhead. Many decisions based on identical principles appear to

¹ For an analysis and classification of such services and expenses, see *Usury: Expenses or Charges Incident to Loan of Money*, (1922) 21 A. L. R. 797; (1928) 53 A. L. R. 743; (1929) 63 A. L. R. 823; (1936) 105 A. L. R. 795; and *Exaction from Borrower of Expenses of Making Loan as Usury*, Ann. Cas. 1914C 410.

be inconsistent because the basic issues in such cases are those of fact, the facts vary, and the opinions do not always fully reveal their findings and reasoning. These cases are, therefore, difficult to classify. The following, however, involve situations of the nature indicated:

(1) Bonuses or Fees.

Tallman v. Union Loan & Trust Co., (1923) 161 Ark. 614, 256 S. W. 379.

Henning v. Akin, (1928) 91 Cal. App. 246, 266 Pac. 981.

Babcock v. Olhasso, (1930) 109 Cal. App. 534, 293 Pac. 141.

Westman v. Dye, (1931) 214 Cal. 28, 4 Pac. (2d) 134.

McCullough v. Hill, (1931) 105 Fla. 680, 133 So. 846, *on rehearing*, (1933) 145 So. 259.

Wilson v. Conner, (1932) 106 Fla. 6, 142 So. 606.

Clausen v. Salhus, (1932) 187 Minn. 534, 246 N. W. 21.

Mee v. Lewis, (1936) 177 Okla. 364, 58 Pac. (2d) 883.

Baker v. Lynchburg National Bank, (1917) 120 Va. 208, 91 S. E. 157.

(2) Commissions or Brokerage.

Pitts v. Pease, (C. C. A. 5th, 1930) 39 Fed. (2d) 14.

Gibson v. Alexander, (1935) 231 Ala. 77, 163 So. 601.

Smith v. Brokaw, (1927) 174 Ark. 609, 297 S. W. 1031.

Blodgett v. Rheinschild, (1922) 56 Cal. App. 728, 206 Pac. 674.

Haines v. Commercial Mortgage Co., (1927) 200 Cal. 609, 254 Pac. 956, 53 A. L. R. 725, *rehearing denied*, (1927) 255 Pac. 805.

Menzenberger v. American State Bank, (1935) 101 Ind. App. 600, 198 N. E. 819.

Rantala v. Haish, (1916) 132 Minn. 323, 156 N. W. 666.

Detweiler v. Forman, (1931) 120 Neb. 780, 235 N. W. 330.

Gold-Stabeck Loan & Credit Co. v. Kinney, (1916) 33 N. D. 495, 157 N. W. 482.

Deming Investment Co. v. Giddens, (Tex. Civ. App. 1931) 41 S. W. (2d) 260, *answer to certified question*, (1930) 120 Tex. 9, 30 S. W. (2d) 287.

Murphy v. Fidelity Investment Co., (1932) 161 Okla. 48, 17 Pac. (2d) 472.

Jupiter Finance Corp. v. Hess, (1930) 157 Wash. 29, 288 Pac. 226.

(3) Charges for Drawing Papers, Examining Security, General Overhead, or Other Ostensible Services or Disbursements.

Terry Trading Corp. v. Barsky, (1930) 210 Cal. 428, 292 Pac. 474.

Lewis v. Pacific States Savings & Loan Co., (1934) 1 Cal. (2d) 691, 37 Pac. (2d) 439.

Kidwell v. White, (1916) 44 App. D. C. 600.

Real Estate Trustee v. Lentz, (1927) 153 Md. 624, 139 Atl. 351.

Cooper v. Ross, (1925) 232 Mich. 548, 205 N. W. 592.

Miller v. Ashton, (1927) 241 Mich. 46, 216 N. W. 448.

First National Bank of Ada v. Phares, (1918) 70 Okla. 255, 174 Pac. 519, 21 A. L. R. 793.

Kelter v. American Bankers Finance Co., (1932) 306 Pa. 483, 160 Atl. 127, 82 A. L. R. 999.

Joy v. Provident Loan Soc., (Tex. Civ. App. 1931) 37 S. W. (2d) 254.

National Bond & Mortgage Corp. v. Mahanay, (Tex. Civ. App. 1934) 70 S. W. (2d) 236, *modified and aff'd*, (Tex. Com. App. 1935) 80 S. W. (2d) 947.

CHICANERY

Under this general heading may be included a variety of devices which partake of the nature of shortchanging or trickery. They have to do largely with methods of computing interest or the failure to compute interest at all. Most of them involve manipulation of the amount lent, the amount charged, or the length of time involved. Several illustrations of such practices have already been referred to under COMPUTATION OF INTEREST.

Illustrations of chicanery in moneylending are the dating of notes prior to delivery of the money to the borrower and the use of notes containing a larger principal amount than that lent. Such practices differ from those already enumerated mainly in their boldness. They are utilized principally for the purpose of making the proof of facts difficult.

Often there is a failure to make any computation of interest.

This usually takes the form of inducing the borrower to pay stated amounts at stated intervals for the use of an amount smaller than the aggregate of the repayments, without mentioning or attempting to compute interest. In a typical case the borrower would receive \$50 and agree to make seven monthly payments of \$9.87 each. The computation of the interest rate is made difficult, and is usually impossible for the average borrower of a small sum.

There are many other devices by which the ostensible or stated rate of interest is increased. Fines or penalties for delinquency are typical examples. Whether or not usury results depends upon the rate of interest exacted, as computed by the principles of interest computation which are set forth in the earlier section on COMPUTATION OF INTEREST.

In all such practices the lender depends on the inability of the borrower to determine the rate of interest charged, or to prove the facts upon which the existence of usury would be determined, or to exercise his legal rights because of economic weakness.

RELEVANT PROVISIONS OF THE UNIFORM SMALL LOAN LAW

INTEREST LIMITATIONS

The broad subject of the evasion of interest limitations includes, of course, evasions of the limitations which are found in many different kinds of statutes. The statutes which fix the conventional maximum contract rates are of general application and are commonly known as the usury laws. The wording of such statutes and the interpretations given their provisions by the courts differ slightly in all states and radically in some. The preceding discussion has dealt largely with evasions of the general usury laws.

The Uniform Small Loan Law and the state small loan laws have their own interest limitations. Questions of evasion which arise under them must be resolved according to the specific limitations of the act in question. It is often necessary to determine whether a loan or a lender comes within the scope of a small loan law, and similarly whether a loan made by a licensee complies with the provisions of the small loan law involved. There are certain distinctions

between the interest limitations contained in small loan laws and those commonly found in interest statutes of more general application. The reason for these distinctions lies largely in the social purpose of small loan laws. That purpose was to remedy conditions such as are described in the following passage from *The Constitutionality of Small Loan Legislation*:¹

The unregulated small loan business has in fact produced a chain of evil consequences. Of this, experience has furnished conclusive demonstration. Borrowers have almost invariably been poor people at times of their most exigent needs. Untrained in the refinements of business negotiations, usually ignorant of the existence of usury laws, and incapable of using the rights which the law gave them, they have often fallen easy victims of unconscionable money lenders. The lenders, on the other hand, have generally been persons endowed with a shrewd business sense for profitable opportunities, and in many cases have been more devoid of respect for usury statutes than the more responsible lenders of larger sums. Frequently this has been due not so much to the inordinate greed of lenders, as to the fact that the usury laws assumed risk and expense factors in lending much below those in the small loan business. Whatever its cause, the result has been to subject a considerable body of the public to oppressive and illegal interest exactions. The sufferers have been the economically weak. The conditions under which lender and borrower met lacked that equality of bargaining power essential to just business transactions.

In order to correct the conditions mentioned the Uniform Small Loan Law classifies loans according to size and rate of charge. The scope of its operation is confined to the lending of small amounts at rates of charge exceeding the maximum contract rate. It is not designed to regulate the lending of any amounts, small or large, at rates of charge within the maximum contract rate. Neither is it designed to regulate the lending of large amounts at any rate of charge, high or low. Its entire impact is upon a class of loans which are distinguished by being small in amount and by involving charges in excess of the maximum contract rate. To accomplish this scheme

¹ Hubachek, Frank R., *The Constitutionality of Small Loan Legislation*, Russell Sage Foundation, New York, 1931 (included as Ch. VIII on Constitutionality in Gallert, Hilborn, and May, *Small Loan Legislation*, Russell Sage Foundation, New York, 1932).

of classification the law must by its terms distinguish, first, between loans of small and large amounts; and, second, between loans at rates of charge within the maximum contract rate and exceeding it. Having made this classification, the law imposes a third limitation—that which restricts the charges which may be made by licensees.

As to the first of these distinctions the Uniform Small Loan Law defines "small" loans as those of \$300 or less. Sections 1 and 18 effectuate the distinction between loans which are large and small in amount; Section 15 makes the definition more exact in certain cases.

As to the second distinction—the determination of whether a given loan is made at more than the maximum contract rate—Sections 1 and 18 contain provisions which, speaking broadly, constitute a restatement of the maximum contract rate as though the latter were incorporated in these sections by reference. However, these provisions of Sections 1 and 18 add important elements to the definition of the maximum contract rate as it is usually expressed in the general statutes. Under these provisions certain transactions are brought within the Uniform Small Loan Law although their rates of charge would not necessarily exceed the maximum contract rate under the provisions of the general interest statute. For example: The words "charge, contract for, or receive" in the Uniform Small Loan Law are broader than the corresponding words of most general interest acts; loans included within the scope of the Uniform Small Loan Law may be of "credit, goods, or things in action" in addition to loans of money; the "use or sale of credit" is included in the small loan law but is seldom included in general interest acts. Because of these additions, the standards by which it is determined whether a transaction falls within the scope of the Uniform Small Loan Law are often different from those prescribed in general interest statutes. These differences must be given due weight in interpreting the cases and in applying for judicial determination of a known set of facts.

As to the third limitation mentioned, the Uniform Small Loan Law prescribes in Section 13 a maximum rate of charge permitted

to be made by licensees. This limitation differs in substance from both the maximum contract rate as expressed in the general statutes and the corresponding interest limitations contained in Sections 1 and 18. As noted in COMMENT under Section 13, Part II, the grant to licensees of the right to exact a higher rate of charge is coupled with conditions upon its exercise. The limitation on licensees' charges to an aggregate percentage figure is all-inclusive. The Uniform Small Loan Law contains a strict prohibition of all charges whatsoever except the rate of charge specifically permitted to licensees. Additional charges are prohibited whether or not they would be permitted under the general statute prescribing the maximum contract rate or by the general principles of law which govern loans.¹ This difference must be given due weight in any case in which the limitation on charges by licensees is involved.

EVASIONS PREVENTED BY UNIFORM SMALL LOAN LAW

The practices and devices which permit lenders of small sums at usurious rates to operate successfully are prevented by the Uniform Small Loan Law. This result is obtained either by direct prohibitions or by affirmative requirements under which contrary practices are impossible.

Among the practices prevented by the Uniform Small Loan Law, all of which would facilitate evasions of its interest limitations, are the following:

- Operation of a small loan business at more than one office or at points outside the office;
- Use of fictitious names and addresses or names of persons located outside the jurisdiction;
- Operation of a small loan business in conjunction with other businesses;
- Failure to maintain and preserve accurate and complete office records of all transactions with borrowers;
- Use of false, misleading, or deceptive advertising;

¹ See final paragraphs of the FOREWORD for an explanation of the change of wording to be proposed for the seventh draft of the Uniform Small Loan Law, in relation to the maximum rate permitted licensees.

- Failure to state fully the terms of the transaction in written or printed matter which is made available to the borrower;
- Taking confessions of judgment and powers of attorney;
- Denying the borrower access to the facts and documents regarding the loan after it has been made;
- Taking notes and other instruments with blanks not filled in;
- Taking more than one note;
- Delay in delivering proceeds of loan to borrower;
- Deductions of interest or charges in advance;
- Computation of interest or charges on any other basis than as a percentage of unpaid principal balances;
- Compounding of interest or charges;
- Refusing to accept or give due credit for prepayments of principal;
- Giving no receipts for payments or receipts which do not show the application of the payment between principal and charges;
- Failure to cancel and return all documents signed by the borrower.

In addition to barring the foregoing practices by one or more of its specific provisions the Uniform Small Loan Law subjects lenders licensed under it to constant examination and supervision by designated state officials, and in case of violation of the law subjects them also to criminal penalties and to the civil penalties of revocation of license and invalidity of loans.

APPENDICES

APPENDIX A

FIRST DRAFT OF UNIFORM SMALL LOAN LAW

November 29, 1916

A BILL for an Act to license and regulate the business of making loans in sums of three hundred dollars (\$300) or less, secured or unsecured, at a greater rate of interest than [legal contract rate] per centum per annum, prescribing the rate of interest and charge therefor, and penalties for the violation thereof, and regulating the assignment of wages or salaries earned or to be earned, when given as security for any such loan.

SEC. 1. *License Bond.* [Be it enacted, etc., or other appropriate enacting clause]: No person, co-partnership, or corporation shall make any loan of money, credit, goods, or things in action in the amount or to the value of three hundred dollars (\$300), or less, whether secured or unsecured and charge, contract for, or receive a greater rate of interest than [legal contract rate] per centum per annum therefor, without first obtaining a license from the [state officer in charge of bank examination] Application for such license shall be in writing and shall contain the full name and address, both of the residence and place of business, of the applicant and if the applicant is a co-partnership, or corporation, of every member, or officer thereof; also the county and municipality, with street and number, if any, where the business is to be conducted. Every such applicant, at the time of making such application, shall pay to the [officer] the sum of one hundred dollars (\$100) as an annual license fee and in full payment of all expenses of examinations under and administration of this Act. The applicant shall also, at the same time, file with the [officer] a bond in which the applicant shall be the obligor, in the sum of one thousand dollars (\$1,000) with one or more sureties to be approved by said [officer] which bond shall run to the People of the State of for the use of the State and of any person, or persons who may have a cause of action against the obligor of said bond under the provisions of this Act, and shall be conditioned that said obligor will conform to and abide by each and every provision of this Act and will pay to the State and to any such person or persons, any and all moneys that may become due or owing to the State and to such person, or persons, from said obligor, under and by virtue of the provisions of this Act.

Upon the filing of such application and the approval of said bond and

the payment of said fee, the [officer] shall issue a license to the applicant to make loans in accordance with the provisions of this Act for a period which shall expire the first day of next following the date of its issuance: provided, that if the license is issued for a period of less than six months the license fee shall be fifty dollars (\$50). Such license shall not be assigned.

Additional bond. If in the opinion of the [officer] the bond shall at any time appear to be insecure or exhausted, or otherwise doubtful, an additional bond in the sum of not more than one thousand dollars (\$1,000) satisfactory to the [officer] shall be filed and upon failure of the obligor to file such additional bond, the license shall be revoked by the [officer]

Revoking license. The [officer] may, in his discretion, upon notice to the licensee and opportunity to be heard, revoke such license if satisfied that the licensee has violated any provision of this Act; and in case the licensee shall be convicted a second time of a violation of Section two (2) of this Act the [officer] shall revoke such license; provided, that the second offense shall have occurred after a prior conviction. The issuance of another license after a revocation shall be at the discretion of the [officer]

Posting. The license shall be kept conspicuously posted in the place of business of the licensee.

Place of loans. No person, co-partnership, or corporation so licensed shall make any loan or transact any business provided for by this Act, under any other name, or at any other place of business than that named in the license. Not more than one office, or place of business shall be maintained under the same license but the [officer] may issue more than one license to the same person upon the payment of an additional license fee and the filing of an additional bond for each license.

Removal. In case of the removal of a licensee, he shall at once give written notice thereof to the [officer] who shall attach to the license his consent in writing to the removal.

Examinations. The [officer] for the purpose of discovering violations of this Act, may either personally, or by any person designated by him, at any time and as often as he may desire, investigate the loans and business of every licensee and of every person, co-partnership, and corporation by whom or which any such loan shall be made, whether such person, co-partnership, or corporation shall act, or claim to act as principal, agent, or broker, or under, or without the authority of this Act; and for that purpose he shall have free access to the books, papers, records and vaults of all such persons, co-partnerships and corporations; he shall

also have authority to examine, under oath, all persons whomsoever, whose testimony he may require, relative to such loans, or business.

Books and records. The licensee shall keep such books and records as in the opinion of the [officer] will enable [officer] to determine whether the provisions of this Act are being observed. Every such licensee shall preserve the records of final entry used in such business, including cards used in the card system, if any, for a period of at least one year after the making of any loan recorded therein.

No licensee or other person or corporation shall print, publish or distribute or cause to be printed, published or distributed in any manner whatsoever, any written or printed statement with regard to the rates, terms or conditions for the lending of money, credit, goods or things in action, in amounts of three hundred dollars (\$300) or less, which is false or calculated to deceive.

SEC. 2. *Rates, fees and charges.* Every person, co-partnership and corporation licensed hereunder may loan any sum of money, goods or things in action not exceeding in amount or value the sum of three hundred dollars (\$300) and may charge, contract for and receive thereon interest at a rate not to exceed three and one-half ($3\frac{1}{2}$) per centum per month.

No advance interest. Interest shall not be payable in advance or compounded and shall be computed on unpaid balances. In addition to the interest herein provided for, no further or other charge, or amount whatsoever for any examination, service, brokerage, commission or other thing, or otherwise, shall be directly or indirectly charged, contracted for or received, except the lawful fees, if any, actually and necessarily paid out by the licensee to any public officer, for filing, or recording any instrument securing the loan in any public office, which fees may be collected when the loan is made, or at any time thereafter.

When loan void. If interest, or charges in excess of those permitted by this Act shall be contracted for, or received, the contract of loan shall be void and the licensee shall have no right to collect, or receive any principal, interest or charges whatsoever.

No person shall owe any licensee at any time more than three hundred dollars (\$300) for principal.

SEC. 3. *Restrictions on methods of making and paying loans.* Every licensee shall:

Deliver to the borrower, at the time a loan is made, a statement in the English language showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee and the

rate of interest charged. Upon such statement there shall be printed in English a copy of Section two (2) of this Act;

Give to the borrower a plain and complete receipt for all payments made on account of any such loan at the time such payments are made;

Upon repayment of the loan in full, mark indelibly every paper signed by the borrower with the word "paid" or "canceled," and discharge any mortgage, restore any pledge, return any note and cancel any assignment given by the borrower as security.

No licensee shall take any confession of judgment, any power of attorney, nor shall he take any note, promise to pay, or security that does not state the actual amount of the loan, the time for which it is made and the rate of interest charged, nor any instrument in which blanks are left to be filled after execution.

SEC. 4. *Salary and wage assignments.* No assignment of any salary or wages, earned or to be earned, given to secure a loan, shall be valid unless in writing signed in person by the borrower, nor, if the borrower is married, unless it shall be signed in person by both husband and wife; nor shall such assignment be valid unless given to secure a debt contracted simultaneously with its execution.

Under any such assignment or order for the payment of future salary or wages given as security for a loan made under this Act, a sum of at least ten (10) per centum of the borrower's salary or wages, but not exceeding such sum as may be levied upon an execution, shall be collectible therefrom at the time of each payment of salary or wages, from the time that a copy thereof, verified by the oath of the licensee, or his agent, together with a verified statement of the amount unpaid upon such loan has been served upon the employer.

SEC. 5. *Penalties.* No person, co-partnership or corporation except as authorized by this Act shall, directly or indirectly, charge, contract for, or receive any interest or consideration greater than [the legal contract rate] per centum per annum upon the loan, use or forbearance of money, goods or things in action or upon the loan, use or sale of credit, of the amount or value of three hundred dollars (\$300) or less.

The foregoing prohibition shall apply to any person who, as security for any such loan, use or forbearance of money, goods or things in action or for any such loan, use or sale of credit, makes a pretended purchase of property from any person and permits the owner or pledgor to retain the possession thereof, or who, by any device or pretense of charging for his services, or otherwise, seeks to obtain a greater compensation than is authorized by this Act.

Any person, and the several officers and employes of any corporation, who shall violate the foregoing prohibitions shall be guilty of a misde-

meanor and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars (\$500) or by imprisonment of not more than six (6) months, or by both such fine and imprisonment in the discretion of the court.

Any licensee and any officer or employe of a licensee who shall violate any of the provisions of Section two (2) of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars (\$500) or by imprisonment of not more than six (6) months or by both such fine and imprisonment in the discretion of the court.

No loan for which a greater rate of interest or charge than is allowed by this Act has been contracted for or received, wherever made, shall be enforced in this state and any person in any wise participating therein in this state shall be subject to the provisions of this Act.

SEC. 6. *Exemptions.* This Act shall not apply to any person, co-partnership or corporation doing business under any law of this state or of the United States relating to banks, trust companies, building and loan associations, or pawnbrokers.

SEC. 7. All Acts and parts of Acts inconsistent with the provisions of this Act are hereby repealed.

APPENDIX B

FOURTH DRAFT OF UNIFORM SMALL LOAN LAW

December 31, 1923

A BILL for an Act to license and regulate the business of making loans in sums of three hundred dollars (\$300) or less, secured or unsecured, at a greater rate of interest than [insert legal contract rate] per centum per annum, prescribing the rate of interest and charge therefor, and penalties for the violation thereof, and regulating the assignment of wages or salaries, earned or to be earned, when given as security for any such loan.

SEC. 1. *License.* [Insert appropriate enacting clause] that no person, co-partnership or corporation shall engage in the business of making loans of money, credit, goods or things in action in the amount or to the value of three hundred dollars (\$300) or less, and charge, contract for or receive a greater rate of interest than [insert legal contract rate] per centum per annum therefor, except as authorized by this Act and without first obtaining a license from the [insert title of state officer in charge of banks] hereinafter called the licensing official.

SEC. 2. *Application and fee.* Application for such license shall be in writing and shall contain the full name and address, both of the residence and place of business, of the applicant; and if the applicant is a co-partnership, of every member thereof; or if a corporation, of each officer thereof; also the county and municipality, with street and number, if any, where the business is to be conducted. Every such applicant at the time of making such application shall pay to the licensing official the sum of one hundred dollars (\$100) as an annual license fee and in full payment of all expenses for examinations under and for administration of this Act; provided that if the license is issued for a period of less than twelve months, the license fee shall be pro-rated according to the number of months that said license shall run.

SEC. 3. *Bond.* The applicant shall also at the same time file with the licensing official a bond in which the applicant shall be the obligor, in the sum of one thousand dollars (\$1000), with one or more sureties, whose liability as such sureties shall not exceed the sum of one thousand dollars (\$1000) in the aggregate, to be approved by the licensing official, and said bond shall run to the State of for the use of the State and of any person or persons who may have a cause of action against

the obligor of said bond under the provisions of this Act. Such bond shall be conditioned that said obligor will conform to and abide by each and every provision of this Act and will pay to the State and to any such person or persons any and all moneys that may become due or owing to the State or to such person or persons from said obligor under and by virtue of the provisions of this Act.

SEC. 4. *License to issue.* Upon the filing of such application and the approval of said bond and the payment of said fee the licensing official shall issue a license to the applicant to make loans in accordance with the provisions of this Act for a period which shall expire the day of next following the date of its issuance. Such license shall not be assignable.

SEC. 5. *Additional bond.* If in the opinion of the licensing official the bond shall at any time appear to be insecure or exhausted or otherwise doubtful, an additional bond in the sum of not more than one thousand dollars (\$1000) satisfactory to the licensing official shall be filed within ten (10) days after notice to the licensee; and upon failure of the obligor to file such additional bond the license shall be revoked by the licensing official.

SEC. 6. *Revoking license.* The licensing official may, upon notice to the licensee and reasonable opportunity to be heard, revoke such license if the licensee has violated any provision of this Act; and in case the licensee shall be convicted by a court a second time of a violation of Section Thirteen (13) of this Act the licensing official shall revoke such license, provided that the second offense shall have occurred after a prior conviction; and thereafter no license shall be issued to such licensee, nor to the husband or wife of the licensee, nor to any co-partnership or corporation of which he is a member or officer.

SEC. 7. *Posting.* The license shall be kept conspicuously posted in the place of business of the licensee.

SEC. 8. *Name, place of business, etc.* No person, co-partnership or corporation so licensed shall make any loan provided for by this Act, under any other name or at any other place of business than that named in the license. Not more than one place of business shall be maintained under the same license, but the licensing official shall issue more than one license to the same licensee upon the payment of an additional license fee and the filing of an additional bond for each license.

SEC. 9. *Removal.* Whenever the licensee shall change his place of business he shall at once give written notice thereof to the licensing official, who shall attach to the license his approval in writing of the change.

SEC. 10. *Examinations.* The licensing official, for the purpose of discovering violations of this Act, may either personally or by any person

designated by him, at any time and as often as he may desire, investigate the loans and business of every licensee and of every person, co-partnership and corporation by whom or by which any such loan shall be made, whether such person, co-partnership or corporation shall act or claim to act as principal, agent or broker, or under or without the authority of this Act; and for that purpose he shall have free access to the office or place of business, books, papers, records, safes and vaults of all such persons, co-partnerships and corporations; he shall also have authority to examine under oath all persons whomsoever whose testimony he may require relative to such loans or business.

SEC. 11. *Books and records.* The licensee shall keep such books and records in his place of business as in the opinion of the licensing official will enable the licensing official to determine whether the provisions of this Act are being observed. Every such licensee shall preserve the records of final entry used in such business, including cards used in the card system, if any, for a period of at least two years after the making of any loan recorded therein.

SEC. 12. *Misleading advertising.* No licensee or other person, co-partnership or corporation shall print, publish or distribute, or cause to be printed, published or distributed in any manner whatsoever any written or printed statement with regard to the rates, terms or conditions for the lending of money, credit, goods or things in action in amounts of three hundred dollars (\$300) or less, which is false or calculated to deceive.

SEC. 13. *Rate of interest.* Every person, co-partnership and corporation licensed hereunder may loan any sum of money not exceeding in amount the sum of three hundred dollars (\$300), and may charge, contract for and receive thereon interest at a rate not to exceed three and one-half ($3\frac{1}{2}$) per centum per month. Interest shall not be payable in advance or compounded and shall be computed on unpaid balances. In addition to the interest herein provided for, no further or other charge or amount whatsoever for any examination, service, brokerage, commission or other thing or otherwise shall be directly or indirectly charged, contracted for or received, except the lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing or recording or releasing in any public office any instrument securing the loan, which fees may be collected when the loan is made or at any time thereafter. If interest or charges in excess of those permitted by this Act shall be charged, contracted for or received, the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, interest, or charges whatsoever.

No licensee shall directly or indirectly charge, contract for or receive any interest or consideration greater than [legal contract rate] per

annum upon the loan, use or forbearance of money, goods, or things in action, or upon the loan, use or sale of credit, of the amount or value of more than three hundred dollars (\$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, to owe directly or contingently or both to the licensee at any time the sum of more than three hundred dollars (\$300) for principal.

SEC. 14. *Requirements on making and payment of loans.* Every licensee shall:

Deliver to the borrower at the time a loan is made, a statement in the English language showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, and the rate of interest charged. Upon such statement there shall be printed in English a copy of Section Thirteen (13) of this Act;

Give to the borrower a plain and complete receipt for all payments made on account of any such loan at the time such payments are made;

Permit payment of the loan in whole or in part prior to its maturity with interest on such payment to the date thereof;

Upon repayment of the loan in full mark indelibly every paper signed by the borrower with the word "paid" or "cancelled," and release any mortgage, restore any pledge, cancel and return any note, and cancel and return any assignment given by the borrower as security.

SEC. 15. *No confessions, powers, etc.* No licensee shall take any confession of judgment or any power of attorney. Nor shall he take any note, promise to pay or security that does not state the actual amount of the loan, the time for which it is made, and the rate of interest charged, nor any instrument in which blanks are left to be filled after execution.

SEC. 16. *Wage assignments.* The payment of three hundred dollars (\$300) or less in money, credit, goods or things in action as a consideration for any sale, assignment or order for the payment of wages, salary, commissions or other compensation for services, whether earned or to be earned, shall be deemed a loan within the provisions of this Act secured by such assignment; and the amount by which such assigned compensation exceeds such payment shall be deemed interest upon such loan from the date of such payment to the date such compensation is payable. Such loan and such assignment shall be governed by and subject to the provisions of this Act.

SEC. 17. *Validity and payment of assignments.* No assignment of or order for the payment of any salary, wages, commissions or other compensation for services, earned or to be earned, given to secure any such loan 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 be in writing signed in person by the borrower ; nor, if the borrower is married, unless it be 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 such assignment, order, mortgage or lien.

Under any such assignment or order for the payment of future salary, wages, commissions or other compensation for services, given as security for a loan made under this Act, a sum equal to ten (10) per centum of the borrower's salary, wages, commissions or other compensation for services shall be collectable from the employer of the borrower by the licensee at the time of each payment of 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, is served upon the employer.

SEC. 18. *Prohibitions.* No person, co-partnership or corporation, except as authorized by this Act, shall directly or indirectly charge, contract for or receive any interest or consideration greater than [insert the legal contract rate] per centum per annum upon the loan, use or forbearance of money, goods or things in action, or upon the loan, use or sale of credit, of the amount or value of three hundred dollars (\$300) or less.

The foregoing prohibition shall apply to any person who as security for any such loan, use or forbearance of money, goods or things in action, or for any such loan, use or sale of credit, makes a pretended purchase of property from any person and permits the owner or pledgor to retain the possession thereof, or who by any device or pretense of charging for his services or otherwise seeks to obtain a greater compensation than is authorized by this Act.

No loan for which a greater rate of interest or charge than is allowed by this Act has been contracted for or received, wherever made, shall be enforced in this State, and every person in any wise participating therein in this State shall be subject to the provisions of this Act.

SEC. 19. *Penalties.* Any person, co-partnership or corporation and the several officers and employees thereof who shall violate any of the provisions of Sections One (1), Eight (8), Twelve (12), Thirteen (13), or Eighteen (18) of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hun-

dred dollars (\$500) or by imprisonment of not more than six (6) months or by both such fine and imprisonment in the discretion of the court.

SEC. 20. *Excepted lenders.* This Act shall not apply to any person, co-partnership or corporation doing business under any law of this State or of the United States relating to banks, trust companies, building and loan associations, or to licensed pawnbrokers.

SEC. 21. *Repeal.* All Acts and parts of Acts inconsistent with the provisions of this Act are hereby repealed.

APPENDIX C
SIXTH DRAFT OF THE UNIFORM SMALL LOAN LAW
January 1, 1935

HISTORICAL DEVELOPMENT

The interest of the Russell Sage Foundation in the small loan problem dates from 1907. In that year and in 1908, the Foundation financed two studies of the small loan business: *The Salary Loan Business in New York City* by Clarence W. Wassam, and *The Chattel Loan Business* by Arthur H. Ham. These studies revealed that the need for loans in emergencies by people of small means was widespread, that a large illegal business dealing in loans on the security of salaries and furniture had developed to supply this need, and that the charges made for these loans were generally exorbitant and frequently fraudulent.

Believing that the conditions surrounding the small loan business were an important cause of distress among families of low income, the Foundation established its Department of Remedial Loans in 1910 to continue the study of the small loan problem and to find remedies for it. From 1910 to 1916 the Department undertook to encourage the organization of remedial loan societies. These are local semi-philanthropic companies organized by public-spirited citizens to make loans at the lowest cost consistent with a limited dividend on capital. In 1911 the Department also became interested in the credit union as a device for supplying personal loans at reasonable rates. The credit union is a co-operative society which accumulates the savings of a group of people and makes loans to members of the same group. The Department has continued this interest in the credit union to the present time although its active participation has been confined to New York State and has been still further limited in recent years.

The difficulty of the task of meeting the demand for small loans by the development of institutions whose motives were other than commercial, and the persistence of lending at exorbitant interest rates in spite of the competition offered by these other agencies led the Department to experiment with legislation regulating commercial lenders. In 1911, at the request of a legislative commission in Massachusetts, the Department proposed certain standards for small loan legislation which were incorporated in a law enacted in that year. Three years later the Department took an active part in drafting a small loan bill for New Jersey which also became law.

The cardinal principles of both of these statutes were as follows: Those engaged in the business of making loans of \$300 or less were required to be licensed, bonded, and supervised by the banking department. Each licensee was required to keep adequate records and to give borrowers receipts and a clear statement of the terms of the contract. The maximum interest rate which might be charged was 3 per cent a month on outstanding balances. Criminal penalties were provided for infraction of the law.

The recommended maximum interest rate was determined after a study of the expenses of remedial loan societies. The opposition of commercial lenders to this rate was unanimous, and the enactment of the Massachusetts and New Jersey laws was fought bitterly by them. In 1916 a group of the more progressive commercial lenders representing the newly formed American Association of Small Loan Brokers (predecessor of the American Association of Personal Finance Companies) met with representatives of the Foundation to discuss the possibility of agreement between the Foundation and the Association upon the terms of a regulatory law under which commercial lenders would be willing to operate. The lenders contended that the maximum rate proposed by the Department of Remedial Loans was too low to permit a profitable business except in large cities, and they proposed that fees be allowed in addition to the rate of 3 per cent a month. This would have resulted in a charge approximating 4 per cent a month. The Foundation was firmly opposed to this proposal because of the abuse of fees in the past. The maximum rate to be proposed in the Uniform Law was finally fixed by compromise at 3½ per cent a month and a model law acceptable to both organizations was drafted. Both the Foundation and the American Association agreed to support the enactment of this law and to refrain from proposing changes in it until it had been given a fair test in any states in which it might be enacted.

This agreement was amicably terminated in 1930. The present form of the Uniform Small Loan Law has therefore been determined solely by the Department of Remedial Loans, and its acceptance by the American Association of Personal Finance Companies is no longer implied.

Since the original draft in 1916, the recommended form of the Uniform Small Loan Law has been revised five times: in 1918, 1919, 1923, 1932, and 1935.

The changes accomplished by the first three revisions were not basic. The Second Draft differed from the first principally in section numbering and phraseology. The Third Draft extended the earlier requirement that both husband and wife must sign a wage assignment given to secure a loan to chattel mortgages on household furniture, and to assignments of commissions and other compensation for services. The Fourth Draft

extended the limitation of the maximum amount of each loan to contingent liabilities of endorsers as well as to direct loans, compelled licensees to permit payment of any loan in whole or in part before its maturity with interest only to the date of payment, and, by means of a new section, expressly brought the purchase of wages for \$300 or less within the regulations of the act.

The changes made in the Fifth Draft were more substantial. They increased the discretionary power of the licensing officer, established conditions precedent to the issuance of a license, required more adequate reports, and extended the grounds for revoking a license. The Sixth Draft, which is published herein, differs from the preceding one only in regard to the recommended maximum interest rate¹ and in minor editorial points.

ROLF NUGENT, *Director*,
Department of Remedial Loans,
Russell Sage Foundation

THE SIXTH DRAFT²

A BILL for an Act to define, license, and regulate the business of making loans or advancements in the amount or of the value of three hundred dollars (\$300) or less, secured or unsecured, at a greater rate of interest than per centum (. . . .%) per annum [Note 1], prescribing the rates of interest and charges therefor and penalties for the violation thereof, regulating the assignment of wages or salaries, earned or to be earned, when given as security for any such loan or as consideration for a payment of three hundred dollars (\$300) or less, providing for the administration of this Act and for the issuance of rules and regulations therefor, authorizing the making of examinations and investigations and the publication of reports thereof, providing for a review of decisions and findings of the [Note 2] under this Act [Note 3] and to repeal [Note 4] 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 [Note 5].

SEC. 1. *License.* No person, co-partnership, association, or corporation shall engage in the business of making loans of money, credit, goods, or things in action in the amount or of the value of three hundred dollars (\$300) or less and charge, contract for, or receive on any such loan a greater rate of interest, discount, or consideration therefor than per

¹ The reasons for, and significance of, this change are given in Note 14 following the Sixth Draft.

² See notes at end of text.

centum (. . . . %) per annum [Note 1] except as authorized by this Act and without first obtaining a license from the [Note 2] hereinafter called the Commissioner [Note 6].

SEC. 2. *Application and fee.* Application for such license shall be in writing, under oath, and in the form prescribed by the Commissioner, and shall contain the name and the address (both of the residence and place of business) of the applicant, and if the applicant is a co-partnership or association, of every member thereof, and if a corporation, of each officer and director thereof; also the county and municipality with street and number, if any, where the business is to be conducted and such further information as the Commissioner may require. Such applicant at the time of making such application shall pay to the Commissioner the sum of fifty dollars (\$50) as a fee for investigating the application and the additional sum of one hundred dollars (\$100) as an annual license fee [Note 7] for a period terminating on the last day of the current calendar year; provided, that if the application is filed after June thirtieth in any year such additional sum shall be only fifty dollars (\$50) [Note 7d]. In addition to the said annual license fee every licensee hereunder shall pay to the Commissioner the actual costs of each examination as provided for in Section 10 of this Act.

Every applicant shall also prove, in form satisfactory to the Commissioner, that he or it has available for the operation of such business at the location specified in the application, liquid assets of at least twenty-five thousand dollars (\$25,000).

SEC. 3. *Bond.* The applicant shall also at the same time file with the Commissioner a bond to be approved by him in which the applicant shall be the obligor, in the sum of one thousand dollars (\$1,000) with one or more sureties whose liability as such sureties need not exceed the said sum in the aggregate. The said bond shall run to the State for the use of the State and of any person or persons who may have cause of action against the obligor of said bond under the provisions of this Act. Such bond shall be conditioned that said obligor will faithfully conform to and abide by the provisions of this Act and of all rules and regulations lawfully made by the Commissioner hereunder, and will pay to the State and to any such person or persons any and all moneys that may become due or owing to the State or to such person or persons from said obligor under and by virtue of the provisions of this Act.

SEC. 4. *Requirements for license.* Upon the filing of such application and the payment of such fees and the approval of such bond, if the Commissioner shall find upon investigation (a) that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant be a co-partnership or asso-

ciation, and of the officers and directors thereof if the applicant be a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this Act, and (b) that allowing such applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted, and (c) that the applicant has available for the operation of such business at the specified location liquid assets of at least twenty-five thousand dollars (\$25,000) (the foregoing facts being conditions precedent to the issuance of a license under this Act), he shall thereupon issue and deliver a license to the applicant to make loans in accordance with the provisions of this Act at the location specified in the said application, which license shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended as hereinafter provided; if the Commissioner shall not so find he shall not issue such license and he shall notify the applicant of the denial and return to the applicant the bond and the sum paid by the applicant as a license fee, retaining the fifty dollars (\$50) investigation fee to cover the costs of investigating the application. The Commissioner shall approve or deny every application for license hereunder within sixty (60) days from the filing thereof with the said fees and the said approved bond.

Denial of application and right of review. If the application is denied, the Commissioner shall within twenty (20) days thereafter file with the Department of [Note 8] a written decision and findings with respect thereto containing the evidence and the reasons supporting the denial, and forthwith serve upon the applicant a copy thereof, which decision and findings may be reviewed by a writ of certiorari or writ of mandamus within thirty (30) days after the filing thereof [Note 9].

SEC. 5. *Posting of license.* Such 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. Such license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable.

SEC. 6. *Additional bond.* If the Commissioner shall find at any time that the bond is insecure or exhausted or otherwise doubtful, an additional bond to be approved by him, with one or more sureties and of the character specified in Section 3 of this Act, in the sum of not more than one thousand dollars (\$1,000), shall be filed by the licensee within ten (10) days after written demand upon the licensee by the Commissioner.

Minimum assets. Every licensee shall maintain at all times assets of at least twenty-five thousand dollars (\$25,000) either in liquid form avail-

able for the operation of or actually used in the conduct of such business at the location specified in the license.

SEC. 7. *Place of business, etc.* Not more than one place of business shall be maintained under the same license, but the Commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this Act governing an original issuance of a license, for each such new license.

Removal. Whenever a licensee shall change his place of business to another location within the same [Note 10], he shall at once give written notice thereof to the Commissioner, who shall attach to the license in writing his record of the change and the date thereof, which shall be authority for the operation of such business under such license at such new location. No change in the place of business of a licensee to a location outside of the original [Note 10] shall be permitted under the same license.

SEC. 8. *Payment of license fee.* Every licensee shall, on or before the twentieth day of each December, pay to the Commissioner the sum of one hundred dollars (\$100) as an annual license fee for the next succeeding calendar year and shall at the same time file with the Commissioner a bond in the same amount and of the same character as required by Section 3 of this Act.

SEC. 9. *Revocation of license.* The Commissioner shall, upon ten (10) days' 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 shall find that:

(a) The licensee has failed to pay the annual license fee or to maintain in effect the bond or bonds required under the provisions of this Act or to comply with any demand, ruling, or requirement of the Commissioner lawfully made pursuant to and within the authority of this Act; or that

(b) The licensee has violated any provision of this Act or any rule or regulation lawfully made by the Commissioner under and within the authority of this Act; or that

(c) Any fact or condition exists which, if it had existed at the time of the original application for such license, clearly would have warranted the Commissioner in refusing originally to issue such license.

Suspension of license. The Commissioner may, without notice or hearing, suspend any license for a period not exceeding thirty (30) days, pending investigation.

The Commissioner may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist, or, if he shall find that such grounds for revocation or suspension

are of general application to all offices, or to more than one office, operated by such licensee, he shall revoke or suspend all of the licenses issued to said licensee or such licenses as such grounds apply to, as the case may be.

Surrender of license. Any licensee may surrender any license by delivering to the Commissioner written notice that he thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

No revocation or suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any borrower.

Reinstatement of license. Every license issued hereunder shall remain in force and effect until the same shall have been surrendered, revoked, or suspended in accordance with the provisions of this Act, but the Commissioner shall have authority on his own initiative to reinstate suspended licenses or to issue new licenses to a licensee whose license or licenses shall have been revoked if no fact or condition then exists which clearly would have warranted the Commissioner in refusing originally to issue such license under this Act.

Filing reasons for revocation, etc. Whenever the Commissioner shall revoke or suspend a license issued pursuant to this Act, he shall forthwith file with the Department of [Note 8] a written order to that effect and findings with respect thereto containing the evidence and the reasons supporting the revocation or suspension, and forthwith serve upon the licensee a copy thereof, which order may be reviewed by a writ of certiorari or writ of mandamus within thirty (30) days after the filing thereof [Note 9].

SEC. 10. *Examinations.* For the purpose of discovering violations of this Act or securing information lawfully required by him hereunder, the Commissioner may at any time, either personally or by a person or persons duly designated by him, investigate the loans and business and examine the books, accounts, records, and files used therein, of every licensee and of every person, co-partnership, association, and corporation who or which shall be engaged in the business described in Section 1 of this Act, whether such person, co-partnership, association, or corporation shall act or claim to act as principal or agent, or under or without the authority of this Act. For that purpose the Commissioner and his duly designated representatives shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons, co-partnerships, associations, and corporations. The Commissioner and all persons duly designated by him shall have authority to require the attendance of [Note 11] and to examine under oath all persons whom-

soever whose testimony he may require relative to such loans or such business.

Annual examination. The Commissioner shall make such an examination of the affairs, business, office, and records of each licensee at least once each year [Note 7e]. The actual cost of every examination shall be paid to the Commissioner by every licensee so examined, and the Commissioner may maintain an action for the recovery of such costs in any court of competent jurisdiction.

SEC. 11. *Books and records.* The 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 rules and regulations lawfully made by the Commissioner hereunder. Every licensee shall preserve such books, accounts, and records, including cards used in the card system, if any, for at least two (2) years after making the final entry on any loan recorded therein.

Annual reports. Each licensee shall annually on or before the fifteenth day of March file a report with the Commissioner giving such relevant information as the Commissioner reasonably may require concerning the business and operations during the preceding calendar year of 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.

SEC. 12. *Advertising.* No licensee or other person, co-partnership, association, or corporation shall advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever any statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action in the amount or of the value of three hundred dollars (\$300) or less, which is false, misleading, or deceptive [Note 12]. The Commissioner may order any licensee to desist from any conduct which he shall find to be a violation of the foregoing provisions.

The Commissioner may require that 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.

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 upon the recording of a judgment [Note 13].

Other business in same office. No licensee shall conduct the business of making loans under this Act within any office, room, or place of busi-

ness in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the Commissioner upon his finding that the character of such other business is such that the granting of such authority would not facilitate evasions of this Act or of the rules and regulations lawfully made hereunder.

No licensee shall transact such business or make any loan provided for by this Act under any other name or at any other place of business than that named in the license.

No confessions of judgment, etc. No licensee shall take any confession of judgment or any power of attorney. No licensee shall take any note, promise to pay, or security that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of interest,¹ nor any instrument in which blanks are left to be filled in after execution.

SEC. 13. *Maximum rate of charge.*¹ Every licensee hereunder may lend any sum of money not to exceed three hundred dollars (\$300) in amount and may charge, contract for, and receive thereon interest at a rate not exceeding three and one-half per centum ($3\frac{1}{2}\%$) per month on that part of the unpaid principal balance of any loan not in excess of one hundred dollars (\$100) and two and one-half per centum ($2\frac{1}{2}\%$) per month on any remainder of such unpaid principal balance [Note 14].

Split loans prohibited. No licensee shall induce or permit any borrower to split up or divide any loan. 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 or with the result of obtaining a higher rate of interest than would otherwise be permitted by this section [Note 14a].

Method of computing charges. Interest shall not be paid, deducted, or received in advance. Interest shall be computed and paid only on unpaid principal balances and shall not be compounded. The maximum interest permitted on loans made under this Act shall be computed on the basis of the number of days actually elapsed and for the purpose of such computations a month shall be any period of thirty (30) consecutive days.

No further charges. In addition to the interest herein provided for no further or other charge or amount whatsoever for any examination, serv-

¹ See final paragraphs of the FOREWORD for an explanation of the change of wording to be proposed for the seventh draft of the Uniform Small Loan Law, in relation to the maximum rate permitted licensees.

ice, brokerage, commission, expense, fee, or bonus or other thing or otherwise shall be directly or indirectly charged, contracted for, or received. If any interest, consideration, or charges in excess of those permitted by this Act are charged, contracted for, or received, the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, interest, or charges whatsoever.

SEC. 14. *Requirements for making and payment of loans.* Every licensee shall:

Deliver to the borrower at the time any loan is made a statement (upon which there shall be printed a copy of Section 13 of this Act) in the English language showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, and the agreed rate of charge;

Give to the borrower a plain and complete receipt for all payments made on account of any such loan at the time such payments are made, specifying the amount applied to interest¹ and the amount, if any, applied to principal, and stating the unpaid principal balance, if any, of such loan;

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 interest¹ in full at the agreed rate up to the date of such payment;

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

Display prominently in each licensed place of business a full and accurate schedule, to be approved by the Commissioner, of the charges to be made and the method of computing the same.

SEC. 15. *Prohibition.* No licensee shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than per centum (. . . . %) per annum [Note 1] upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit, of the amount or value of more than three hundred dollars (\$300). The foregoing prohibition shall also apply to any licensee who permits any person, as borrower or as endorser, guarantor, or

¹ See final paragraphs of the FOREWORD for an explanation of the change of wording to be proposed for the seventh draft of the Uniform Small Loan Law, in relation to the maximum rate permitted licensees.

surety for any borrower, or otherwise, to owe directly or contingently or both to the licensee at any time a sum of more than three hundred dollars (\$300) for principal [Note 14b].

SEC. 16. *Wage assignments.* The payment of three hundred dollars (\$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 secured by such assignment, and the amount by which such assigned compensation 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.

SEC. 17. *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 under this Act, 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, nor 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.

Amount collectible under assignment. Under any such assignment or order for the payment of future salary, wages, commissions, or other compensation for services, given as security for a loan made by any licensee under this Act, a sum not to exceed ten per centum (10%) 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, is served upon the employer.

SEC. 18. *Prohibition.* No person, co-partnership, association, or corporation, except as authorized by this Act, shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than per centum (. . . . %) per annum [Note 1] upon the

loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit of the amount or value of three hundred dollars (\$300) or less.

The foregoing prohibition shall apply to any person, co-partnership, association, or corporation who or which, by any device, subterfuge, or pretense whatsoever shall charge, contract for, or receive greater interest, consideration, or charges than is authorized by this Act for any such loan, use, or forbearance of money, goods, or things in action or for any such loan, use, or sale of credit.

No loan of the amount or value of three hundred dollars (\$300) or less for which a greater rate of interest, consideration, or charges than is permitted by this Act has been charged, contracted for, or received, wherever made, 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 which then has in effect a regulatory small loan law similar in principle to this Act.

SEC. 19. *Penalties.* Any person, co-partnership, association, or corporation and the several members, officers, directors, agents, and employees thereof, who shall violate or participate in the violation of any of the provisions of Sections 1, 11, 12, 13, 14, or 18 of this Act, shall be guilty of a misdemeanor [Note 15].

Any contract of loan not invalid for any other reason, in the making or collection of which any act shall have been done which constitutes a misdemeanor under this Section, shall be void and the lender shall have no right to collect or receive any principal, interest, or charges whatsoever.

SEC. 20. *Excepted lenders.* This Act shall not apply to any person, co-partnership, association, or corporation doing business under and as permitted by any law of this State or of the United States relating to banks, savings banks, trust companies, building and loan associations, credit unions, or licensed pawnbrokers.

SEC. 21. *Regulations.* [Note 16] is hereby authorized and empowered to make such general rules and regulations and such specific rulings, demands, and findings as may be necessary for the proper conduct of such business and the enforcement of this Act, in addition hereto and not inconsistent herewith.

SEC. 22. *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.

SEC. 23. *Status of pre-existing licenses.* Any person, co-partnership,

association, or corporation having a license under [Note 17], in force when this Act becomes effective, shall notwithstanding the repeal of the said [Note 17], be deemed to have a license under this Act for a period expiring six (6) months after the said effective date, if not sooner revoked, provided that such person, co-partnership, association, or corporation shall have paid or shall pay to the Commissioner as a license fee for such six (6) months' period the sum of fifty dollars (\$50) [Note 7b] and shall keep on file with the Commissioner during such six (6) months' period the bond required either by this Act or by the said [Note 17]. Any such license so continued in effect under the provisions of this Act shall be subject to revocation during such six (6) months' period as provided in Section 9 of this Act except that it may not be revoked during such six (6) months' period either upon the ground that such licensee has not the minimum amount of assets required in Section 6 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.

SEC. 24. [Note 18]

SEC. 25. *Repeal.* [Note 4] and all Acts and parts of Acts inconsistent with the provisions of this Act, are hereby repealed.

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 [Note 17] and any borrower, which was lawfully entered into prior to the effective date of this Act.

SEC. 26. *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 impair, affect, or invalidate the remainder of this Act, which shall remain in full force and effect thereafter.

SEC. 27. This Act shall take effect immediately [Note 19].

NOTES APPENDED TO THE SIXTH DRAFT, AS PUBLISHED¹

Note 1. Here insert the maximum legal contract rate if it is the only interest statute except those which apply to the special institutions named in the exemption section hereof (Sec. 20). If there is more than one interest maximum fixed by a statute of general application, then the following language may be here inserted:

"Than the lender would be permitted by law to charge if he were not a licensee hereunder."

The same situation exists in Sections 1, 15, and 18.

¹ These NOTES were prepared by the Department of Remedial Loans of the Russell Sage Foundation.

Note 2. Here insert title of licensing official.

Note 3. 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 be created in charge of a special deputy to supervise the small loan business and administer this Act, such subdivision to be designated as the Bureau of Personal Finance. See Note 16, Section 21.

Note 4. Here insert titles of Acts to be specifically repealed in whole or in part.

Note 5. Here insert enacting clause.

Note 6. The title "Commissioner" is used throughout this form of Act for convenience, but local usage should fix this title and it should then be substituted for "Commissioner" throughout the Act. "The licensing official" may be used in lieu of a specific title.

Note 7. It is thought that \$100 per year per office will return enough revenue to cover the cost of necessary general supervision including the preparation, analysis, and tabulation of the annual report.

If the fiscal policy of the State or other considerations make it advisable to collect the full costs of individual examinations from each office in a stated annual fee, \$200 or \$250 should provide sufficient funds for this purpose. In such an event

- (a) the greater amount should be substituted in Section 2,
- (b) one-half thereof should be inserted in Section 23,
- (c) at [Note 7] should be inserted "and in full payment of all expenses for examinations under and for administration of this Act,"
- (d) the sentence following [Note 7d] should be eliminated, and
- (e) the sentence following [Note 7e] should be eliminated.

See also Note 16, Section 21, regarding disposition of revenues under this Act.

Note 8. Here insert the name of the department charged with the duty of administering the Act. If a subdivision of a larger department administers the Act, the principal department should be named here.

Note 9. The provisions for judicial review of the determinations, rulings, findings, and similar discretionary acts of the licensing official will necessarily vary widely with the codes of judicial procedure of the several states and the constitutional and statutory provisions relating thereto. If satisfactory general provisions exist and apply to this situation, the specific provisions hereof may be eliminated. In states which have a sufficiently flexible judicial code, a direct action to review the Com-

missioner's acts is the best procedure. See also similar material in Sections 9 and 24 and Note 18.

Note 10. Here insert a description of the municipality according to the system of nomenclature employed within the State, for example, "municipality," or "city," "town," or "village." The political subdivisions used should be those which best reflect an integral urban unit or community.

Note 11. Special treatment will be required in order effectually to authorize the Commissioner to require the attendance of witnesses. In some states such power cannot be so delegated. See Note 15.

Note 12. The following words may be added at this point if deemed desirable:

"or, in the case of a licensee, which refers to the supervision of such business by the State of or any department or official thereof."

Note 13. This paragraph is not intended to prevent licensees from taking and recording valid judgments and must be so drawn as to prevent such a result. The exception must therefore be drafted in such language as the local law requires in order to accomplish this result.

Note 14. The maximum interest rate of $3\frac{1}{2}$ per cent a month on that part of any loan balance not exceeding \$100 and $2\frac{1}{2}$ per cent a month on that part exceeding \$100 is recommended as an initial rate in all states. This combination of rates permits a maximum charge ranging from $3\frac{1}{2}$ per cent a month on outstanding balances of \$100 or less to 2.83 per cent a month on outstanding balances of \$300. The rate is designed to attract aggressive competition by licensed lenders following the enactment of the law in order to drive unlicensed lenders out of business. This rate should be reconsidered after a reasonable period of experience with it.

From the experience with various maximum rates in many states, it is clear that it is no longer possible to make generalizations with reference to an adequate maximum rate for all states. The distribution of population, the character and stability of the industries in urban areas, costs of lending revealed by reports of licensees, local legislation and tradition affecting the forms of security available to licensees, the extent of unlicensed lending, the size of loans in which it occurs, and many other factors should be considered in revising the maximum rate in any state.

In some states, it would undoubtedly be possible to reduce the initial maximum rate recommended here. In others, a lower rate would probably be impracticable, and a careful study of the question might produce evidence in favor of an increase in the initial rate. The evidence available at present leads us to believe that $2\frac{1}{2}$ per cent a month, applying to all contracts, is the lowest maximum rate which would be effective under

the most favorable conditions, and that this rate is too low to be effective in most states.

A reduction of the maximum rate in New Hampshire to 2 per cent a month led to the destruction of the licensed small loan business in that State, and a similar reduction in West Virginia tended to eliminate licensed lending on chattel mortgages and wage assignments and encouraged a rapid rise of illegal lending at exorbitant interest rates. In New Jersey, where costs of lending appear to be as low as, if not lower than, those in any other state, a rate of $2\frac{1}{2}$ per cent a month on all loans appears to be an adequate maximum. But in Missouri a similar maximum is clearly inadequate and unlicensed high-rate lending in sums of less than \$100 is prevalent. It seems probable that reductions below the initial maximum recommended here would be found to be generally possible in the northern industrial states, while reductions below the initial rate would probably prove to be generally undesirable in southern and western states where urban areas are distant from each other and the existing demand is for relatively small loans.

The relationship between the possibility of lower maximum interest rates and the vigilant and aggressive exercise by the supervising officer of the discretionary powers granted by the Fifth and Sixth Drafts should be clearly recognized. Without the discretionary powers granted by the Fifth and Sixth Drafts of the Uniform Law and without forceful administration of the Act, it would probably be unwise to attempt reduction below the 3 and $3\frac{1}{2}$ per cent a month maximum rates now in effect in most states.

The general recommendation of a graduated rate is a departure from the previous policy of the Department of Remedial Loans. Heretofore the Department has consistently recommended a flat maximum rate applying to all contracts. This change has been adopted only after an examination of all of the available expense data for the small loan business and after an examination of the experience with graduated rates in several states. The possibility of lower rates of charge on larger loans has always been recognized. But the flat rate was the most easily enforced by state supervising officers, and most readily understood by the borrower. It was anticipated that competition would reduce the going rate for the most profitable loans and that this competition would be most effective if the maximum charge were expressed as a single rate.

The graduated rate has been recommended in spite of these advantages of the flat rate rather than because they no longer exist. Three circumstances have influenced the choice. First, the greater profitableness of larger loans has led to a vigorous competition for such loans to the neglect, although not to the exclusion, of loans of smaller sums. Because of

this neglect of the smaller loans by licensed lenders, unlicensed lenders have frequently been able to build up a business in very small loans at exorbitant rates. We believe the graduated rate will tend to encourage the making of smaller loans by licensed lenders, and to prevent unlicensed lending in these sums. Second, although competition has succeeded in reducing rates of interest on larger loans in many communities, the maximum rate has continued to prevail in others. There is a tendency for excessive competition to increase costs of lending, and consequently to restrain competitive rate reductions. Third, the interest burden in dollars upon borrowers of large sums is high. While it is not considered socially desirable that very small loans should bear their full share of operating costs, it has seemed proper to provide a less inequitable distribution of these costs than was possible under a flat maximum rate.

Note 14a. This paragraph is necessary only when a graduated rate is used, and may require modification to meet local conditions in some states.

Note 14b. This section should be modified for use in certain states in which licensees under the existing small loan act are engaged in the business of financing the liquidation of accounts receivable of retail merchants and professional men. In these instances it is recommended that this practice be permitted in the discretion and with the specific approval of the supervising officer.

Note 15. Local considerations may require changes in or elaboration of the nature of the crime and/or its penalties. It may also be necessary to add a paragraph attaching a criminal penalty for failure of the licensee (or others) to submit to subpoena, produce documents, make reports, etc. See Note 11.

Note 16. Here insert full title of the licensing official. In this section insert the appropriate paragraphs if it is desired to create a new department or subdivision or official, providing for revenues and disbursements, defining new duties, etc. See Note 3. All general rules and regulations and all denials, revocations, and suspensions of licenses should be required to have the written approval of the head of the principal department if a subdepartment administers this Act.

In this section should also appear provisions for the disposition of license fees, investigation fees, and any other revenue, if the fiscal policy or statutory requirements of the State make such special provisions necessary or desirable; if so, the title of the Act should contain the words "providing for the disposition of revenues received hereunder." It is recommended that all revenues go direct to the supervising department for the expenses of administering the Act, if such is possible.

Note 17. Here cite any existing regulatory small loan law similar in principle to this Act.

Note 18. This section should prescribe the procedure for judicial review of all discretionary acts of the Commissioner which might be open to the construction that they are exercises of judicial powers, including all findings, decisions, and determinations and the application of all rules and regulations by demands or requirements made upon licensees. In Sections 4 and 9 general provisions are made for the right of review in the specific cases covered by such sections. In Section 24 corresponding provisions should be made to cover all other cases. In addition, if required in any State, the specific procedure for all cases should be provided for in appropriate detail. The last paragraphs of Sections 4 and 9 may have to be redrafted to bring them into accord with Section 24 as to procedure. Where the judicial code does not specifically so provide, provision should be made that review is by the State court of general, original jurisdiction.

Note 19. If a greater number of affirmative votes is required to pass an act effective immediately, this section should be changed or eliminated, depending on local requirements.

APPENDIX D
CITATIONS OF SMALL LOAN LAWS
(Compiled as of December 31, 1937)

The states listed in this table are those which have in effect regulatory small loan laws of comprehensive scope. Most of these laws resemble one or more drafts of the Uniform Small Loan Law but several of them are so notably different in essential features that they cannot be said to have been patterned after it. Such dissimilar laws are indicated by notes. Several of the laws listed are inoperative in practice and that fact is also indicated.

There are in effect statutes of various kinds relating to small loans which are not listed in this table. Such statutes include those authorizing the operation of remedial loan companies and several acts containing rudimentary or fragmentary schemes of regulation. They are omitted because they are not comprehensive enough in scope to justify inclusion.

The table contains the present code or general statute citations and the session law citations of all small loan laws of the nature described which are now in effect. It also contains a condensed legislative history of small loan enactments in each such state, and the session law citations of all prior small loan laws and amendments enacted during and after 1909.

The table does not purport to contain the citations of all the statutes which were involved in cases cited in this volume, nor does it contain citations of statutes of a collateral nature, even though of direct application to the small loan business.

For a chronological classification of the current small loan laws of the states listed in this table and their relation to the Uniform Small Loan Law, see Appendix E.

ALABAMA

General Acts 1927, No. 268, p. 264; new enactment General Acts 1932, (Ex. Sess.) No. 339, p. 331.

Note: The laws above cited are omitted from the Alabama Code 1928, Ann., and 1936 Supp. thereto.

The current law is inoperative in practice due to the low rate of charge permitted licensees.

ARIZONA

Laws 1919, ch. 91, p. 125; as amended by Laws 1935, ch. 39, p. 147.

Rev. Code, (Struckmeyer) 1928, ch. 45, secs. 1989–2013, p. 481; and Supp., (Courtright) 1936, ch. 45, sec. 2013, p. 270.

Note: Rev. Code, (Struckmeyer) 1928, prepared under authority of Laws 1925, ch. 35, revised and reenacted the Small Loan Law.

CALIFORNIA

Laws 1909, ch. 634, p. 969; as amended by Laws 1911, ch. 490, p. 978; as amended by Laws 1931, ch. 273, p. 558; as amended by Laws 1933, ch. 577.

St. and Code Amdts., 1933, ch. 577, p. 1496.

1933 Supp., Deering's Codes and Gen. Laws, 1931, Title 429, secs. 1–24, p. 2046.

Note: Laws 1933, ch. 577, in effect repealed the existing act and enacted a complete new act.

See also Usury Law, an initiative measure effective 1918, St. and Code Amdts., 1919, secs. 1–5, p. lxxxiii; Gen. Laws, (Deering's 1931) vol. 2, Title 276, secs. 1–5, p. 1908, and Assembly Constitutional Amendment, No. 79, effective 1934.

The current law differs greatly from the Uniform Small Loan Law in form and substance.

COLORADO

Laws 1913, ch. 108, p. 400; new enactment Laws 1917, ch. 93, p. 350; repealed and new enactment Laws 1919, ch. 159, p. 524; new enactment Laws 1935, ch. 157, p. 690.

Colo. St. Ann., 1935, vol. 3, ch. 88, art. 2, secs. 6–21, p. 719.

Note: The current law differs greatly from the Uniform Small Loan Law in form and substance.

CONNECTICUT

Public Acts 1919, ch. 219, p. 2878; as amended by Public Acts 1923, ch. 223, p. 3669; as amended by Public Acts 1927, ch. 100, p. 4202, and ch. 233, p. 4302; as amended by Public Acts 1929, ch. 207, p. 4638; as amended by Public Acts 1933, ch. 288; as amended by Public Acts 1935, ch. 320; as amended by Public Acts 1937, ch. 172.

Gen. St., Rev. 1930, Title 37, ch. 213, secs. 4066–4082, p. 1314; and Cum. Supp., 1931–1933–1935, Title 37, ch. 213, secs. 1551c–1556c, p. 675; and 1937 Supp., ch. 213, secs. 755d–759d, p. 403.

DISTRICT OF COLUMBIA

Act of Congress, Feb. 4, 1913, 37 U. S. St., ch. 26, p. 657; as amended by Act of Congress, March 3, 1917, 39 U. S. St., ch. 160, p. 1006.

Code, 1929, Title 17, ch. 2, secs. 21–31, p. 155.

Note: The current law is inoperative in practice due to the low rate of charge permitted licensees and it differs greatly from the Uniform Small Loan Law in form and substance.

Act of May 29, 1928, and Public Resolution of March 2, 1929, authorized consolidation and codification of the laws. The Small Loan Law was revised and codified by virtue of said acts.

FLORIDA

Laws 1925, vol. 1, ch. 10177, p. 346.

Comp. Gen. Laws, 1927, (Ann.) vol. 1, ch. 71, secs. 3999–4017, p. 1431.

Comp. Gen. Laws, 1927, (Compact ed.) ch. 71, secs. 3999–4017, p. 1410.

GEORGIA

Acts 1920, p. 215; as amended by Acts 1935, ch. 285, p. 394.

Code, 1933, Title 25, ch. 25–3, secs. 25–301—25–319, p. 739.

Code Ann., 1935, Book 9, Title 25, ch. 25–3, secs. 25–301—25–319, p. 352.

Note: The 1935 amendment rendered the law inoperative in practice due to the low rate of charge permitted licensees.

HAWAII

See Territory of Hawaii.

ILLINOIS

Laws 1917, p. 553; as amended by Laws 1925, p. 454; as amended by Laws 1933, p. 674 and p. 676; repealed and new enactment Laws 1935, p. 925.

Rev. St., (State Bar ed.) 1937, ch. 74, secs. 19–46, p. 1887.

Jones Ann. St., 1934, vol. 13, 1937 Pocket Supp., ch. 75, secs. 75.37(1)—75.37(28), p. 19.

Smith-Hurd Ann. St., 1934, 1936 Pocket Supp., ch. 74, secs. 19–46, p. 5.

INDIANA

Acts 1913, ch. 167, p. 457; repealed and new enactment Acts 1917, ch. 125, p. 401; as amended by Acts 1933, ch. 154, p. 806.

Burns' Ann. St., 1933, vol. 5, Title 18, ch. 30, secs. 18–3001—18–3005, p. 375.

Baldwin's St., Ann., 1934, ch. 64, art. 5, secs. 10465–10469, p. 2196.

IOWA

Laws 1921, ch. 35, p. 27; repealed and new enactment Acts 1933-1934, (Ex. Sess.) ch. 125, p. 242.

Code, 1935, Title 23, ch. 419-f1, secs. 9438-f1 through 9438-f25, p. 1393.

KENTUCKY

Acts 1934, ch. 17, p. 32.

Carroll's Ky. St., Baldwin's 1936 Revision, ch. 32, art. 16, secs. 883i-1 through 883i-32, p. 474.

LOUISIANA

Laws 1928, (Reg. Sess.) Act No. 92, p. 93; new enactment Laws 1928, (Ex. Sess.) Act No. 7, p. 20.

Gen. St., (Dart) 1932, vol. 1, Title 8, ch. 13, secs. 768-787, p. 273.

MAINE

Public Laws 1917, ch. 298, p. 428; as amended by Public Laws 1919, ch. 163, p. 164; as amended by Public Laws 1923, ch. 144, p. 223; as amended by Public Laws 1929, ch. 195, p. 156, ch. 208, p. 168, ch. 319, p. 323, and ch. 324, p. 330.

Rev. St., 1930, ch. 57, secs. 143-161, p. 938.

Note: Rev. St., 1930, prepared under authority of Resolutions of the Legislature of 1927 and 1929, revised and reenacted the Small Loan Law.

MARYLAND

Laws 1912, ch. 836, p. 1621; repealed and new enactment Laws 1918, ch. 88, p. 197; as amended by Laws 1924, ch. 115, p. 236; as amended by Laws 1929, ch. 564, p. 1367; as amended by Laws 1937, ch. 358, p. 713.

Ann. Code, (Bagby's) 1924, vol. 2, art. 58A, secs. 1-20, p. 2084; and 1929 Supp., art. 58A, p. 367.

Note: Laws 1937, ch. 360, p. 717 created the office of Commissioner of Loans.

MASSACHUSETTS

Acts 1911, ch. 727, p. 882; as amended by Acts 1912, ch. 675, p. 740; as amended by Acts 1913, ch. 347, p. 293; as amended by Acts 1916, ch. 224, p. 199; as amended by Acts 1919, ch. 350, Part 3, art. 7, secs. 45-51, p. 400; as amended by Acts 1934, ch. 179, sec. 2, p. 222.

Ann. Laws, 1933, vol. 4, ch. 140, secs. 96-114, p. 428; and current Pocket Supp.

MICHIGAN

Public Acts 1911, No. 105, p. 154; new enactment Public Acts 1915, No. 228, p. 383; repealed and new enactment Public Acts 1921, No. 317, p. 585; as amended by Public Acts 1925, No. 181, p. 255.

Comp. Laws, 1929, vol. 3, Title 23, ch. 240, secs. 12198–12218, p. 4316. Mich. St., Ann., 1937, vol. 17, Title 23, ch. 240, secs. 23.631–23.651, p. 322.

MISSOURI

Laws 1913, p. 545; new enactment Laws 1927, p. 252; as amended by Laws 1929, p. 201.

Rev. St., 1929, vol. 1, ch. 34, art. 7, secs. 5544–5564, p. 1580.

Mo. St., Ann., 1932, vol. 11, ch. 34, art. 7, secs. 5544–5564, p. 7704.

Note: Laws 1933, p. 309, repealed Laws 1913, p. 545.

NEBRASKA

Laws 1913, ch. 250, p. 778; repealed and new enactment Laws 1915, ch. 204, p. 435; as amended by Laws 1929, ch. 124, p. 471; as amended by Laws 1933, ch. 159, p. 603.

Comp. St., 1929, ch. 45; art. 1, secs. 45–112—45–123, p. 1103; and C. S. Supp., 1935, ch. 45, secs. 45–124—45–127, p. 269.

Note: The current law differs greatly from the Uniform Small Loan Law in form and substance.

NEW HAMPSHIRE

Laws 1917, ch. 228, p. 792; as amended by Laws 1931, ch. 163, p. 188; as amended by Laws 1933, ch. 129, p. 185.

Public Laws, 1926, vol. 2, ch. 269, secs. 1–29, p. 1063.

Note: The current law is only partially operative in practice due to the submarginal rate of charge permitted licensees.

Laws 1923, ch. 41, authorized revision and codification of the laws. The Small Loan Law, as published in Public Laws, 1926, was revised and reenacted by virtue of said Act. See also Report of Code Commissioners, 1925, ch. 269, secs. 1–29, p. 986.

NEW JERSEY

Laws 1910, ch. 269, p. 466; as amended by Laws 1912, ch. 394, p. 808; repealed and new enactment Laws 1914, ch. 49, p. 75; as amended by Laws 1928, ch. 251, p. 497; as amended by Laws 1929, ch. 293, p. 683; repealed and new enactment Laws 1932, ch. 62, p. 94; as amended by Laws 1937, ch. 171, p. 413.

Rev. St., 1937, Vol. I, Title 17, p. 71, ch. 10, secs. 17:10–1 to 17:10–26.

NEW YORK

Laws 1915, vol. 2, ch. 588, art. 9, secs. 340–373, p. 1800; as amended by Laws 1920, vol. 3, ch. 703, p. 1750; as amended by Laws 1930, ch. 243, p. 613, and ch. 281, p. 662; repealed and new enactment Laws 1932, ch. 399, p. 869; as amended by Laws 1937, ch. 425, p. 1038.

Cahill's Consol. Laws, 1931–1935 Supp., ch. 3, art. 9, secs. 340–365, p. 88; and 1937 Supp., ch. 3, art. 9, sec. 358, p. 66.

McKinney's Consol. Laws, Ann., book 4, (1937 ed.) art. 9, secs. 340–365, p. 578.

OHIO

Laws 1911, p. 469; repealed and new enactment Laws 1915, p. 281; as amended by Laws 1917, sec. 13, p. 506, at p. 509; as amended by Laws 1923, p. 209; as amended by Laws 1929, p. 43 and p. 479; as amended by Laws 1933, p. 435; as amended by Laws 1935, p. 45; as amended by Laws 1937.

Throckmorton's Code, Ann., Baldwin's 1936 Revision, Part Second, Title 2, ch. 25, secs. 6346–1—6346–13, p. 386; Baldwin's Jan. 1938, Ohio Code Service, sec. 6346–13, p. 250.

Page's Desk Ed., Gen. Code 1930, Part Second, Title 2, ch. 25A, secs. 6346–1—6346–12, p. 1617; and Page's 1937 Code Service (No. 21), sec. 6346–13, p. 250.

Page's Ann. Code, 1926, vol. 1, Part Second, Title 2, ch. 25A, secs. 6346–1—6346–12, p. 2493; and Supp., 1926–1935, secs. 6346–2a, 6346–5a, 6346–11—6346–13, p. 981.

OREGON

General Laws 1913, ch. 278, p. 527; repealed and new enactment General Laws 1915, ch. 219, p. 286; repealed and new enactment Laws 1931, ch. 385, p. 810; as amended by Laws 1933, ch. 426, p. 726; as amended by Laws 1935, ch. 201, p. 297.

1935 Supp., Oregon Code, 1930, Title 22, ch. 27, secs. 22–2701—22–2728, p. 487.

PENNSYLVANIA

Laws 1909, No. 290, p. 518; repealed and new enactment Laws 1913, No. 285, p. 429; new enactment Laws 1915, No. 432, p. 1012; as amended by Laws 1919, No. 186, p. 375; as amended by Laws 1937, No. 268.

Purdon's St., Ann., 1930, Title 7, ch. 27, secs. 751–760, p. 188; and 1937 Pocket Supp., Title 7, ch. 27, secs. 751–761, p. 33.

Purdon's St., 1936, (Compact ed.) Title 7, ch. 27, secs. 751–760, p. 87.

RHODE ISLAND

Public Laws 1923, ch. 2312, p. 24; as revised by Public Laws 1923–1924, ch. 427, p. 24; as amended by Public Laws 1927, ch. 1060, p. 284; as amended by Public Laws 1937, ch. 2496, p. 27.

Note: Public Laws 1937, ch. 2496, in effect repealed the existing act and enacted a complete new act.

TENNESSEE

Public Acts 1917, ch. 62, p. 133; new enactment Public Acts 1925, vol. 2, ch. 153, p. 5; as amended by Public Acts 1937, ch. 34, p. 130.

Code, 1932, Part I, Title 14, ch. 33, secs. 6721–6743, p. 1510.

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Note: The current law differs materially from the Uniform Small Loan Law in certain essential features. The low rate permitted licensees has not been in effect long enough to determine its practical result but experience elsewhere demonstrates that such a rate will be inoperative in practice.

Code of 1932, authorized by the Legislature and prepared by Code Commission, modified and reenacted the Act of 1925. It also incorporated into Small Loan Law sec. 3 of Public Acts of 1925, ch. 76, p. 168, which Act sought to amend Act of 1917.

TERRITORY OF HAWAII

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Wis. St., 1937, ch. 214, secs. 214.01—214.28, p. 2176.

Note: Ch. 347, Laws 1933, as published was reenacted by ch. 443, Laws 1933.

APPENDIX E

CHRONOLOGICAL CLASSIFICATION OF SMALL LOAN
LAWS AND THEIR RELATION TO THE
UNIFORM SMALL LOAN LAW
(As of December 31, 1937)

An accurate time chart of small loan enactments would have significance in two respects. It would portray the general development of modern small loan legislation among the several states and it would locate the place of each state in that history. But a chronological presentation of the small loan laws now in effect necessarily involves very broad, if not arbitrary, assumptions because of the complex history of such laws. Many early acts which were originally of great significance have been replaced in recent years by up-to-date laws, sometimes by patching and sometimes by enacting complete new laws. Portions of several current laws represent survivals of enactments of two or more prior years. It is often difficult to determine which one of several amendments gave a current law its essential character in the development of modern small loan legislation.

In the following table each state is placed under the year during which were enacted the provisions which are thought to fix its general place in relation to the drafts of Uniform Small Loan Law. If a prior law of that state resembled the Uniform Small Loan Law in substance, the prior law is noted below the state name and the state is also listed under the year of the prior enactment with a cross reference to the subsequent year of the current law. No reference is made to prior laws which did not resemble the Uniform Small Loan Law, although many of such laws existed.

If the law of a state was changed after the year under which the state is placed, the year of the change is noted below the state name. The word "Amended" indicates amendments, revisions, reenactments, and codifications. No reference is made to changes which occurred prior to the year under which the state is placed.

The dates on which the drafts of Uniform Small Loan Law were recommended are also noted.

For complete citations of the current and prior small loan laws of all states listed in this table, see Appendix D.

<i>State</i>	<i>Relation of Current Law to Uniform Small Loan Law</i>	<i>Present Maximum Monthly Rate Permitted Licensees</i>
1911		
Massachusetts Amended 1912, 1913, 1916, 1919, 1934	Prior to U.S.L.L. but approximates early drafts in substance; differs in wording and arrangement; later features added; has administrative rate control	Various rates ¹
1913		
District of Columbia Amended 1917, 1929	Differs greatly from U.S. L.L. in form and substance; inoperative in practice due to low rate permitted	1%
1914		
New Jersey (See 1932 for current law)	Prior to U.S.L.L. but approximated early drafts	(See 1932)
1915		
Nebraska Amended 1929, 1933	Differs greatly from U.S. L.L. in form and substance; permits deduction of interest and charges in advance	10% per annum; fee of 1/10 of loan; examination fee on loans of \$50 or less
New York (See 1932 for current law)	Prior to U.S.L.L.; differed materially in form and substance but was based on same general principles	(See 1932)
Ohio Amended 1917, 1923, 1929, 1933, 1935	Prior to U.S.L.L. but approximates early drafts in substance; later features added	3%; fee of \$1 on loans of \$50 or less
Pennsylvania (See 1937 for current law)	Prior to U.S.L.L. but approximated early drafts in substance	(See 1937)

¹ By administrative order effective October 1, 1937, the following maximum rates of charge were established in Massachusetts:

Unsecured loans: 3% on first \$150; 2½% on remainder.

Loans secured by chattel mortgage or with endorser or co-maker: 3% on first \$150; 2% on remainder.

Loans secured by real estate: 2%.

Loans secured by certain bonds, stocks, bank books, or insurance policies: 1%.

<i>State</i>	<i>Relation of Current Law to Uniform Small Loan Law</i>	<i>Present Maximum Monthly Rate Permitted Licensees</i>
1916		
<i>First Draft of U.S.L.L. recommended, November 29</i>		
1917		
Illinois (See 1935 for current law)	Approximated first draft in substance	(See 1935)
Indiana (See 1933 for current law)	Approximated first draft in substance	(See 1933)
Maine Amended 1919, 1923, 1929, 1930	Early draft; later features added	3%; minimum charge of 25 cents
New Hampshire Amended 1926, 1931, 1933	Early draft, much altered by amendments; resembles fourth draft; rate permitted is submarginal	2%; fee of \$1 on loans under \$50 and \$2 on larger loans
Utah Amended 1933	Early draft; differs in minor features	3%
1918		
Maryland Amended 1924, 1929, 1937	Early draft; important later features added; approaches fourth draft	3½%
Virginia Amended 1920, 1922, 1928	Early draft; improved by amendments; approaches fourth draft	3½%
<i>Second Draft of U.S.L.L. published, August 19</i>		
1919		
Arizona Amended 1928, 1935	Early draft with material variations	3½%
Colorado (See 1935 for current law)	Differed greatly from U.S. L.L. in form and substance	(See 1935)
Connecticut (See 1937 for current law)	Approached early drafts	(See 1937)
<i>Third Draft of U.S.L.L. published, November 6</i>		

<i>State</i>	<i>Relation of Current Law to Uniform Small Loan Law</i>	<i>Present Maximum Monthly Rate Permitted Licensees</i>
1920		
Georgia Amended 1935	Early draft; rendered inoperative in practice by amendment reducing rate permitted	1½%
1921		
Iowa (See 1934 for current law)	Approximated third draft	(See 1934)
Michigan (See 1925 for current law)	Approximated third draft in form but differed in material features	(See 1925)
1923		
Rhode Island (See 1937 for current law)	Approximated fourth draft	(See 1937)
<i>Fourth Draft of U.S.L.L. published, December 31</i>		
1925		
Florida	Approximates fourth draft in form but differs in material features	3½%
Michigan Prior Law 1921	Approximates fourth draft	3½%
Tennessee Amended 1932, 1937	Resembles fourth draft in form but differs in essential features; amendment reducing rate permitted will, on basis of experience elsewhere, render it inoperative in practice	6% per annum; fee of not exceeding 1% per month
West Virginia (See 1933 for current law)	Approximated fourth draft	(See 1933)

<i>State</i>	<i>Relation of Current Law to Uniform Small Loan Law</i>	<i>Present Maximum Monthly Rate Permitted Licensees</i>
1927		
Alabama Amended 1932	Resembles fourth draft in form; inoperative in practice due to low rate permitted	8% per annum
Missouri Amended 1929	Resembles fourth draft	2½%
Wisconsin (See 1933 for current law)	Approximated fourth draft	(See 1933)
1928		
Louisiana	Approximates fourth draft	3½%
1931		
California (See 1933 for current law)	Resembled fifth draft in form but lack of effective rate permission made it inoperative in practice	(See 1933)
Oregon Amended 1933, 1935	Resembles fourth draft but differs in material respects	3%; minimum charge of \$1
1932		
<i>Fifth Draft of U.S.L.L. published, January 1</i>		
New Jersey Prior Law 1914	Approximates fifth draft	2½%
New York Prior Law 1915 Amended 1937	Approximates fifth draft	3% on first \$150; 2½% on remainder
1933		
California Prior Law 1931	Differs greatly from U.S. L.L. in form and substance	None prescribed
Indiana Prior Law 1917	Approximates fifth draft in principle but has administrative rate control	3% on first \$150; 1½% on remainder; fee of 50 cents on certain loans ¹

¹ See Regulations issued by administrative body which affect the rates permitted licensees.

<i>State</i>	<i>Relation of Current Law to Uniform Small Loan Law</i>	<i>Present Maximum Monthly Rate Permitted Licensees</i>
West Virginia Prior Law 1925	Resembles fourth and fifth drafts	3½% on first \$150; 2½% on remainder
Wisconsin Prior Law 1927	Approximates fifth draft in principle but differs materially in form; has administrative rate control	2½% on first \$100; 2% on second \$100; 1% on remainder
1934		
Iowa Prior Law 1921	Approximates sixth draft but has administrative rate control	3% on first \$150; 2½% on remainder
Kentucky	Approximates fifth draft in substance but differs in form	3½% on first \$150; 2½% on remainder
1935		
<i>Sixth Draft of U.S.L.L. published, January 1</i>		
Colorado Prior Law 1919	Differs greatly from U.S. L.L. in form and substance; permits fees and charges	10% per annum; fee of 1/10 of loan; other charges
Illinois Prior Law 1917	Approximates sixth draft	3% on first \$150; 2½% on remainder
1937		
Connecticut Prior Law 1919	Approximates sixth draft in substance but differs greatly in form	3% on first \$100; 2% on remainder
Pennsylvania Prior Law 1915	Approaches sixth draft in substance but differs greatly in form and lacks important features	3% on first \$150; 2% on remainder; 6% per annum after 18 months
Rhode Island Prior Law 1923	Approximates sixth draft	3%
Territory of Hawaii	Approximates sixth draft	3½% on first \$100; 2½% on remainder
Vermont	Approximates sixth draft	3½% on first \$100; 2½% on remainder

APPENDIX F

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Other Bibliographies

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Small Loan Laws—Constitutionality

Small Loan Laws—Interpretation

Usury and Related Laws—Constitutionality

Usury and Related Laws—Interpretation¹

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*Manipulation of Amount Lent, Amount Charged, or Time Involved in
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Note: The following abbreviations are used in this Index:

SLL: small loan law

USLL: Uniform Small Loan Law

Page references to the text of the Uniform Small Loan Law are enclosed in brackets.

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