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Small loan regulation in Massachusetts

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SMALL LOAN REGULATION IN MASSACHUSETTS
by
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SMALL LOAN REGULATION IN MASSACHUSETTS

INTRODUCTION

The Small Loan Business is considered, by people in Massachusetts as well as people in many other parts of the world, to be a "fringe" activity. It is something to be looked upon with suspicion and distrust. Small loan lenders are not considered to be "legitimate" business men.

It is the purpose of this thesis to investigate this attitude, to see if these lenders are on the "fringe" or if they are recognized, legitimate business men.

The proposed investigation as presented in this work will be of an historical nature. It has been assumed that, as mental attitudes are elusive, the best "yardstick" with which to measure recognition of the small loan business is governmental action, both state and federal.

Starting with a survey of lending in ancient times, we shall follow the development of regulation and recognition through to present day conditions in Massachusetts, indicating, on the way, the growth of prejudice against lenders, the problems which confronted regulators of lending activities and the growth of effective regulation of lending. The author feels that the actions of one state are conditioned to a great extent by the actions of her sister states. Therefore to understand the development of regulation in Massachusetts it is necessary to consider the development of regulation in the other states.
"Consumer Credit" is comprised of many independent activities, installment credit, charge account credit, service credit and small loan credit among others. We have recognized the existence of these various types of credit, but as public mistrust seems to center largely about the activities of the so-called "Personal Finance" or Small Loan type of credit, our primary interest will be in this type of business.
PART ONE

CONSUMER CREDIT
Consumer Credit is not a unified whole, rather it is made up of a variety of individual types of credit, many of which operate under different types of regulation. To understand the operation of any one part, it is necessary to recognize the existence of the others.
CHAPTER ONE

CONSUMER CREDIT STRUCTURE AND VOLUME

The term "consumer credit" is part of nearly everyone's vocabulary today. There exists, however, a great deal of confusion over the definition of the term. We will use the term "consumer credit," to include credit which satisfies the individual in his role as a consumer. The longevity of this type of credit is set at three years in order to eliminate credit used for business purposes, for real estate and other types of "investment" credit.

Consumer Credit may be divided into two broad categories; money credit and merchandise credit.

There are five principle financial institutions granting money credit: (1) Commercial Banks are rapidly becoming "financial department stores" offering a great number of different services. Their instalment or single-payment loans are usually made through "personal loan departments which, in recent years, have greatly expanded. In 1939, probably fewer than 200 commercial banks operated consumer credit departments with totals of loans not exceeding $45,000,000. The Federal Reserve Board reports that as of December 31, 1947, commercial banks held $717,000,000 in personal instalment cash loans, and $535,000,000 in loans to buy automobiles. In addition, these banks

1. In small banks, a special department may not be set up for this activity.

2. Rogers, Thomas W. The Consumer Credit Structure, National Conference on Consumer Credit, 1948 Page 12
held $487,000,000 in repair and modernization loans, $348,000,000 in auto retail paper, purchased from dealers, and $512,000,000 in loans and paper for other retail purposes.³

(2) Industrial Banking Companies or "Morris Plan Banking" are another specialized lending institution operating under special state statutes. These organizations specialize in instalment loans secured either by the signature of a co-maker, or other collateral supplied by the borrower. They obtain part of their working capital from deposits or from the sale of investments.

The first company of this type was initiated in Virginia about 1910. The statutory limits as set by the various states range from $1,000 to $2,000 with a few states permitting $5,000. The average size of loans made by these banking companies is between $300 and $400, about twice the size of the average loan made by small loan companies.

"According to recent estimates, there are approximately 425 industrial banking and industrial loan firms, (not including branches) operating in the United States. Of these, 95 operate under the so-called "Morris Plan" and the remaining 320 firms fall under the "Industrial banking" or "Industrial loan" classification. Total loans outstanding in the hands of "Industrial banking" organizations as of December 31, 1947, amounted to $168,000,000."⁴

Loans outstanding as of December 31, 1950 amounted to $291,000,000.⁵

(3) Industrial loan companies generally operate along the same general principles as do industrial banking companies. The distinction between the two is a vague one. The principle difference is that


4. Rogers, Thomas W., op.cit. Page 13

5. Federal Reserve Bulletin, ibid
industrial loan companies do not sell investments or receive deposits in order to obtain working capital. The Federal Reserve Board estimates that loans outstanding, held by industrial loan companies at the end of December 1949, totaled $134,000,000, in 1950 the total was $203,000,000.6

(4) Credit Unions, usually cooperatives comprising individuals having a common interest, take deposits from their members and make loans to them out of these deposits. The groups are not subject to federal income taxes which materially lowers their overhead. Credit unions are subject to state and federal supervision.

The first credit union law was enacted in Massachusetts in 1909. Today 44 states, and the District of Columbia have laws permitting their organization and operation. As of February 20, 1948, credit unions which were operating under state charters numbered 5,280 and 3,907 groups were operating under federal charters, or a total of 9,187 units.7 According to the Federal Reserve Board report, these organizations had $525,000,000 in loans outstanding as of December 31, 1950.8

(5) Small Loan Companies are privately owned companies operating under special state statutes which usually allow them to charge a higher rate of interest that is permitted by the general usury laws. Interest charges range from 2% to 3½% per month. The maximum loan allowed by a state "small loan law" is usually $300, with a few states

7. Rogers, Thomas W., op.cit., page 12
allowing $500 and above. This group of licensees had loans outstanding on December 31, 1950 in the amount of $1,084,000,000.9

In addition to these principal lenders of money credit, there is a number of other groups such as pawnbrokers, remedial loan companies, who lend a very small percentage of the total amount of consumer credit. They had loans outstanding as of December 31, 1950 in the amount of $157,000,000.10

Merchandise credit may be divided into two major parts; charge account credit and instalment sale credit.

Charge account credit is extended in connection with merchandise or services sold by individuals or organizations. Usually the terms and conditions of the accounts are determined by the customs established among merchants. In general these merchants carry such accounts on their books to maturity with no apparent charge for the service. The Federal Reserve Board estimates that charge accounts in the United States as of December 31, 1950, amounted to $4,239,000,000. The largest single consumer credit item.11

Service credit, a division of charge account credit, is extended in connection with the performance of professional or manual services by such as doctors and dentists. There is a growing tendency to put this type of credit on a formal basis. At the present time there are no detailed data on the number of persons extended this type of credit, but Federal Reserve Board estimates show $1,067,000,000 as of December 31, 1950.12

10. ibid
11. ibid
12. ibid
Instalment sales credit is principally used in connection with durable goods involving substantial sums. These sales involve a formal contract under which the seller retains the title to the merchandise, the buyer retains possession, until the payments are completed. Most sellers have a "carrying charge" to cover bookkeeping and collection costs. Many retail dealers sell or "discount" their instalment contracts in order to obtain operating capital. This selling of instalment contracts has let to the development of sales finance companies who buy these contracts from the dealers.

The Federal Reserve Board divides instalment sales credit into sections of (a) Automobiles, and (b) Others. As of the end of 1950, Automobile instalment credit amounted to $4,126,000,000, and Others amounted to $3,778,000,000.13

CONCLUSION

The term "consumer credit" is used loosely by almost everyone today. Actually it may be broken into two major categories; money credit and merchandise credit. Money credit consists of five principle institutions, Commercial Banks, Industrial Loan Companies, Industrial or "Morris Plan" banking companies, Credit Unions and Small Loan Companies. Sales credit is usually broken down into charge account credit and instalment sales credit.

In any discussion of either "consumer credit" in general, or of any one of the component parts, a realization of these components and their inter-actions is necessary.14

14. For an excellent discussion on the statistics and economic impact of consumer, see Dauer, E.A. Economics of Consumer credit, Finance Club, School of Business, Indiana University, April 27, 1950.
PART TWO

THE HISTORICAL BACKGROUND OF LENDING
The small loan business is considered by many to be an entirely new development, independent of any pre-existing forms of lending. The current structure of the small loan business may indeed be new; however, the development of that structure, as well as the social and legal restrictions imposed upon it, can be traced back to the earliest cultures. The current feeling of distrust and suspicion toward the small loan business and the ugly connotations of the word "usury" are a result of the thinking and writing of centuries past when there was little differentiation between the terms, interest and usury. Usury was a generic term covering all returns from the lending of money.

Most of the famous philosophers and thinkers of antiquity, at one time or another, concerned themselves with the moral and philosophical aspects of lending. From the seventh century through the Middle Ages, the Church took an active and determined stand on the matter. Kings, ministers, and legislators were all concerned with lending.

A survey of the history of lending is, therefore, of value as an aid to understanding today's problem in the small loan field. It can help us understand the development of the prejudices which color the credit picture of today. It can also illustrate the breakdown of the old theory which held that the way to cure the evils of lending was to prohibit loans. This breakdown opened the door to today's more enlightened theories which recognize the improbability of eliminating lending from society, (as shown by historical evidence) and which, therefore, attempt to protect borrowers through the regulation of the loan business.
CHAPTER TWO

THE GROWTH OF LENDING

Lending problems grew side-by-side with the spread of commercialism throughout the ancient world.

To illustrate the antiquity of lending problems, this chapter will, starting with lending in early societies, follow its growth up through the development of the Roman Empire.

LENDING IN EARLY SOCIETY

The history of lending starts with the most basic culture, primitive society. Because lending presupposes ownership and social culture revolves about ownership, there is consanguinity between the history of human society and the history of lending.

The first type of private property was personal possessions, dress, weapons and ornaments. Borrowing and lending were carried on with great freedom in early society. Owners of property lent were expected to bear any loss, unless the property had been borrowed without the owner's consent or knowledge. A rich man was expected to give aid to his underprivileged neighbors. Fruits of the hunt were to be divided among the whole tribe. The enforcement of such regulations as these was not based on formal legislation but rather on a sense of social obligation in which was included a highly developed feeling for the ethics of hospitality. The lack of restraint on borrowing does not indicate any disregard for property, but rather indicates the importance attached to neighborliness and mutual assistance by the more
primitive societies.¹

"In primitive communities, there were but few openings for the employment of fresh capital in enterprise, and anyone who had property that he did not need for his immediate use, would seldom forgo much by lending it on good security to others without charging any interest for the loan. Those who borrowed were generally the poor and the weak people, whose needs were urgent and whose powers of bargaining were very small. The sentiment against usury had its origin in tribal relationships in many other cases besides that of the Israelites, perhaps in all cases; and as Cliffe-Leslie remarks, it was "inherited from prehistoric times, when the members of each community still regarded themselves as kinsman" when communism in property existed at least in practice, and no one who had more than he needed could refuse to share his superfluous wealth with a fellow tribesman in want." ²

In more advanced cultures, there developed a tribal and family ownership of land. Under this concept which included communal ownership of hunting grounds, the members of a tribe were expected to have free use of the area, but the invasion by any outsider was resisted. As societies advanced, from the hunting state to the agricultural, more modern concepts of family and individual ownership appeared with increasing frequency.

Among many primitive peoples, the intra-tribal exchange of wealth was carried on by a system of gifts and ceremonial exchanges. Among the Hopi-Pueblos, for example, the flow of goods was accomplished by game forfeits and by gifts at such ceremonies as births, weddings and funerals. The best example of a ceremonial exchange of wealth is found in the practice of the Cattle People of Africa in fixing a "bride's price". The groom's family pays for the bride with cattle;

the bride's family, in turn, distributes these cattle among those who had previously helped them acquire the necessary cattle to arrange for a son's marriage. 3

BABYLONIA

One of the earliest capitalistic societies developed in ancient Babylonia. Monies invested in slaves, caravans, ships and the like, yielded a good return.

A. CODES OF HAMMURAPI

About 1900 BC, the King of Babylonia developed a system of laws, called the Code of Hammurapi. Hammurapi was one of the world's first great legal geniuses. He called in all the old laws of Sumer and combined them with the laws of his own Amorite people, reduced them to simpler and briefer forms and had them coded and listed with the violations and penalties. There were 282 laws of the land, and this was the first time the law of the land had been laid down in any society. Section 48-52 provided that the interest on agricultural loans might be paid in grain at the market value, if the debtor had no money. It also provided for an abatement of interest in cases of unavoidable crop failure, but interest was not to be canceled for any simple failure to raise crops. The temples were the agricultural banks of the land and all debts were paid into them. As in older societies, there were many loans made without interest, but the usual range of rates for money loans was from $5\%$ to $25\%$, not unreasonable when one remembers that the charges included very heavy risk costs. 4

3. Kerskovits, Melville J.
4. Jastrow, Morris

The Economic Life of Primitive People
Alfred A. Knopf, 1940, Ch.6

Civilization of Babylonia and Assyria
J.B. Lippincott Co.,1915, Pg.326-338
GREECE

The development of the Greek Empire saw the economic life of the Grecians change from a simple and obvious one to a complex pattern with division of labor, rise of exchange and money, and a stronger emphasis on impersonal financial relationships. The practice of lending at interest started very early and became quite common. The first banks were the temples, but as they did not give interest on deposited wealth, they were merely treasury storehouses. Private individuals soon organized their own banks and carried on the business of lending monies energetically.5

A. SOLON'S REFORM

When Solon was made dictator, he attempted to reform some of the worst features of the lending business. He abolished debt-slavery by restoring slaves to freedom and by abolishing land-security debts.6 These reforms freed debtors from many hardships but they were ineffective in reducing the high interest rate. The establishment of rates of interest was left almost entirely free from legal restrictions. The only orders issued in Athens were: "A banker shall demand no more interest money than what he agreed for at first" and "Let usurer's interest money be moderate."7 The current rate on loans for internal affairs ranged upward from about 12%, but on loans on shipping the rate was much higher because of the hazardous nature of the enterprise.

7. Plato Republic, Jowett Translation (Modern Library edition)
B. THE PHILOSOPHERS AND COMMERCIALISM

Greek philosophers and writers were concerned over this problem of interest, or as it was called, usury. While Xenophon urged that citizens be paid interest on investments in foreign trade, in order to build up a fund of capital, most of the principal writers in Greece were opposed to this rise of commercialism. Plato, in the development of his Republic, declared that in the perfect state, there should be no riches as well as no poverty, as both produce inefficiency and evil, that since money is a medium of exchange and a measure of value only, there can be no interest taking, nor can even the principal of the debt be repaid.

Aristotle recognized the usefulness of money in reducing the difficulties of barter and gave it two values; a value in use and a value in exchange. He emphasized the fact that there are two different reasons for the gathering of wealth. One is to maintain the household, which is a good and natural reason, the other is the gathering of wealth for itself alone, which is unnatural and therefore evil. Of the practice of lending at interest, he states:

"The most hated sort, and with the greatest reason, is usury, which makes a gain out of money itself, and not from the natural object of it. For money was intended to be used in exchange but not to increase at interest, and this term interest, which means the birth of money from money, is applied to the breeding of money because the offspring resembles the parent. Wherefore of all modes of getting wealth, this is the most unnatural."

The doctrines brought forth by these famous philosophers and

8. Plato, op. cit. page 150
9. Aristotle Politics, Jowett Translation, Modern Library edition, N.Y., Bk.1, Ch. 10
thinkers appeared to have little effect on the customs of the day, however, as banking continued to flourish in the Greek state.

ROME

The Romans were a practical people and were concerned more with the practical administration of business and empire than with the philosophical argumentation characteristic of Greek thinking and writing. Accordingly, their claim to fame was the development of legal doctrines. For the first three centuries, however, there appears to have been no regulation of the taking of usury in Rome. It was the growth of trade which brought to light the necessity for regulation. The Decemvirs, the ten magistrates in ancient Rome, compiled the twelve tables of Roman Law, fixing the interest rate at 12%. Over a relatively short period of time, the law was abolished, revived, reduced by ½% and abolished once again. Interest was set at 5% in 374 BC, but was once more abolished in 342 BC by the Lex Genucia. Because of the rapid spread of the Roman Empire, however, it soon became obvious that it was impossible to enforce the prohibition of the taking of interest and so, by a decree of the Senate in 50 BC, the lawful maximum of interest throughout the provinces was set at 12%.

These various and varied attempts by the Romans to prohibit and restrict interest shows the strong dislike and distrust of usury. This

10. Annals
11. Murray, J.B.C.
12. Ryan, F.W.
is exemplified clearly in that famous reply by Cato when he was questioned on the subject. He said, "What is murder?" However, it does indicate that here, as in Greece, the demands of trade for investment were more powerful than prohibitive law.

CONCLUSION

Lending, in the form of the exchange of goods, was carried on in the earliest societies. As culture became more advanced and complex, lending came to assume an increasingly important position in the economic structure. By the time of the Greek and Roman empires, lending activities had become so pronounced that regulation through legislation was attempted. The prohibitive theory of loan regulation was already taking shape. 13

13. infra., part three, chapter one
CHAPTER THREE

THE INFLUENCE OF THE CHURCH

The birth and growth of the Christian Church instituted a strong and vigorous force which battled usury for centuries. For ten centuries, practically from the seventh to the seventeenth century, the history of lending recounts the impact of commercial development on religious dogma.

THE STAGNANT IDEOLOGY

One of the strongest positions taken by the Church was that which gave the hitherto lowly workman a high position in the eternal scheme of things. The acquisition of wealth was not favored. Labor was of high value for itself alone and not for any resulting returns. A stagnant ideology, involving endurance of the trials of this world to secure the benefits of the next, was developed. The taking of usury was regarded by the clergy as simply a means of oppressing the poor, and they, therefore, came out against it in strong and vigorous language. St. Augustine, St. Bernard, Pope Alexander III, all expressed their disgust of the concept of usury.

MIDDLE AGE DILEMMA

The Medieval Renaissance transformed the intellectual life of Europe with its rebirth of philosophy, science, medicine and learning. One of the important factors in this rebirth was a strong revival of

1. Orchard and May Money Lending in Great Britain Russell Sage Foundation, N.Y., 1933

trade, industry and townlife, and active relations with the far eastern world. As a result of the Crusades and the Commercial Revolution, the west had rediscovered many highly desired goods and had acquired many new tastes which give a stimulus to trading activities.

By the Middle Ages, the Church had become a business institution through the acquisition of property. Financial problems were forcing it into trade, an activity previously supposed to be evil. The Church, exerting powerful influences on the whole society, was hard pressed to resolve its commercial activities into harmony with the established doctrine of other-worldliness. It turned eagerly to a revised edition of Aristotle’s works for a solution eloquently espoused by Thomas Aquinas.

A. THOMAS AQUINAS

The central theme underlying all medieval thinking was the idea of justice and, consequently, economic questions were considered in relation to morality. Aquinas evolved the idea of just price, just wage and value. He tolerated trade, previously condemned by Christian thinking, but divided it into two types; (1) a material exchange to meet the needs of life and (2) exchange with a profit motive. Trade for subsistence was considered natural and good, while trade for profit, an evil practice.

Aquinas considered it sinful to receive usury for money lent because it involved the sale of what does not exist. He considered it to be a sale of the same thing twice and, therefore, a sin of injustice. Aquinas and his followers made important exceptions to this rule, which
were used extensively by business men as loopholes to justify the continuance of loan businesses.

Thomas Aquinas makes a distinction between usury and interest. He states that a lender may, without sin, contract with a borrower for compensation of losses arising from the lending of his money. But, the transfer of money to a merchant was not the transfer of ownership and, therefore, the transferee could claim part of any profits as his property. It was permissible to charge for damages suffered, loss of expected profits and the cost of administration of a loan. It was not considered a sin to borrow money on usury, if the money was used to a good end, because it was lawful to use the sins of another for a good purpose. 3 Thus, it is shown how even such a powerful force as the medieval Church was required to retreat before the demands of trade.

CONCLUSION

For centuries, the Church waged a determined battle against usurious money-lending; indeed, any type of money lending was looked upon with disfavor. Powerful as it was, however, the church was unable to check the lending of funds which were necessary to finance expanding trade activities. The defeat of the Church illustrates, perhaps more clearly than any other single thing, the powerful position that lending had assumed in the economic society of the times.

A by-product of the efforts of the Church to stop lending was the development of strong prejudices against lenders in the minds of the general populace. These "mental sets" have carried forward to present day society.

3. An excellent sampling of the writings of Thomas Aquinas can be found in Selected Political Writings by Thomas Aquinas, A.P. D'Entreves.
CHAPTER FOUR
EUROPE, ENGLAND AND THE AMERICAN COLONIES

The development of lending in Europe and in England is of greatest importance from our viewpoint because of the tremendous influence it had over the type of lending regulations which were to be developed in America. The laws of the United States, both civil and commercial, are based upon the laws of England.

In this chapter, therefore, we shall consider lending in Europe, in England and in the American Colonies.

LENDING IN EUROPE

Italy is famous for its early development of banking and credit practices. Many of the ideas which originated with the great Italian banking families influenced the practices of banks and businesses the world over. 2

A. JEWISH INFLUENCE

The migration of the Jews into every country in Europe was one of the most important developments in the business of money lending during the Middle Ages.

At first, the Jewish people occupied themselves with a great variety of handicrafts, but with the increasing rise of anti-semitism, they were gradually forced into one major occupation, money-lending.

1. The word bank comes from the Italian Banco, meaning bench, the earliest place of business for money-lenders.

Although the Hebrew society had attained a relatively complex structure we note that the mores of hospitality and loans are coincidental with earlier, more simpler cultures. Every seventh year, all debts were to be canceled; "at the end of every seven years, thou shalt make a release"..."every creditor that lendeth ought unto his neighbor shall release it." 3 It would appear, according to Mosaic law, that loans were to be considered charity, especially when granted to the poor, to whom it was required to grant loans even though the seventh year was at hand. 4 The taking of usury was expressly forbidden. There was present, however, a loophole in the law, as it was permissable to lend at usury to foreigners. 5 "Unto a stranger thou mayest lend upon usury; but unto thy brother thou shalt not lend upon usury." 6

The Christian people felt that usury was a deadly sin and deemed it expedient and appropriate that the Jewish people handled all such transactions since they felt the Jews were damned beyond salvation. 7

B. THE MONTE DE PIETE

Through the influence of the Church there was decreed a system of lending, interest-free money to the poor, called Monte de Piete. 8

3. Deuteronomy, Chapter 15
4. ibid
5. The terms usury and interest were used synonymously
6. op.cit., Chapter 23
7. Encyclopedia Brittanica, section on pawnbroaking
8. JEWISH Encyclopedia, Articles on Pledges, Paris, London Etc.,
Developed in the fourteenth and fifteenth centuries, these organizations set only one requirement on loans. The value of the principal must be covered by a pledge. The early attempts to establish lending on this basis were complete failures. When the Vatican allowed the charging of enough interest to cover expenses, however, the system spread through Italy, into France, and, although the actual structure never became really popular, the later development of pawnbroking in England is reminiscent of the Monte de Piete.

LENDING IN ENGLAND

For many centuries, lending in England, as in other European countries, was conditioned and restricted by religious dogma. Usury was considered a grave sin of oppression. The demands of a developing trade, both internal and external, however, gradually undermined the strength of the restrictions.

A. PENAL LAWS

The first enactment against usury in England was issued in the seventh century by the Archbishop of Canterbury. The Penitentian of Theodore of Tarsus prescribed a penalty of three years penance for the sin of usurious actions, one year of which was to be spent on bread and water. This action of the Church in protecting the poor and oppressed was not new, as we have seen previously, the Old Testament prohibited the taking of usury.

During the reign of King Alfred, 900 AD, penal laws were enacted

10. Supra. page 21
against usury, whereby usurers were punished by the Church courts and
their chattels given to the King.

Edward the Confessor, in the next century, increased the severity
of the laws of Alfred, ruling that all the property of usurers was to
be forfeited, the usurers outlawed, and their heirs disinherited.
This dual punishment is restated by the statute of 1341.

"That the King and his heirs shall have the consiance of the
usurers dead; and that the ordinaries of the Holy Church
have the consiance of usurers on life, as to them
appertaineth, to make compulsion by the censures of the
Holy Church for the sin, to make restitution of the usuries
taken against the laws of the Holy Church." 11

These severe laws, however, did not materially cease the flow of
credit as the Jews could not be regulated by Church laws. The majority
of credit business was soon in their hands. The Kings, in order to
secure credit for their court, encouraged this and even protected the
Jews. The statute of Jewry said that Jews and their property belonged to
the King and the King could, therefore, collect and keep any money owed
them. The Jews did not have an entirely free hand, since there was
imposed a legal maximum rate of interest which was subject to the
whims of the King. Mounting anti-Jewish feeling reached a climax
when Edward I, (1290 AD) banished them from the kingdom and made all
debts owed them payable to the King. 13 Even so, the flow of credit
was not seriously hampered. About 1235 AD, there had come to England
from the Vatican, collectors of Papal revenues. The huge sums collected

11. 15. Edward III, S.t.I, Ch.5; Orchard and May, op.cit., pg. 14
13. ibid, Pg. 40
furnished such a temptation, that it was not long before these collectors engaged in heavy competition with the Jews in money-lending. By 1251, they had become so numerous and powerful that any effort to stop their operations were immediately squelched by a Papal order. The Lombards inherited the business during the fourteenth century.

B. EVASIONS OF THE LAW

The church’s influence was powerful enough so that rather than directly violate Canon Law, devious means were utilized to evade the letter of the law. Such things as rent charges, compensation and losses, returns for risk taken, three cornered contracts were widely used. Interest takers used three major form of evasion:

1. Created a rent charge: A property owner could borrow money at interest by granting a lease at a nominal rent to the lender. The debtor held the right to redeem, the creditor set some of the profits of the land against the debt and the rent charge had to bear a reasonable relation to the capital sum paid for it.

2. Compensation for loss: It was permissible for the lender to expect compensation for the non-payment of a loan or for his failure to realize an expected profit resulting from the borrower's possessions of the money. Gradually the loss became to be presumed and the form became a subterfuge for interest charging.

3. Partnership: An English ordinance (London, 1391) recognized that lending for gain was not usury if it was accompanied by a risk. Lenders commonly used three types of partnerships in order to receive return for their loans: (a) Commenda, a merchant loan for foreign trade, the risk involved entitled the lender to a return, (b) Bottomry, the lender
took a mortgage on a ship. The risk entailed was the safe return of the
ship. (c) Three Cornered Contract, under this agreement A formed a
partnership with B. A insured himself with C against loss of
capital, A insured himself with D against fluctuations of the sale
of profit. It was eventually declared justifiable for A and B to
enter into a three-cornered contract amongst themselves. A could
lend at interest if B would agree to restore the capital lent and to
pay a particular rate of interest whether his gains were high, low
or nonexistent. 14

C. METHOD OF CREDIT OPERATIONS

With the legalization of interest charges, there developed in
England two methods of credit operations. The scriviners, clerks and
notaries, who acted as middle men for brokers, arranged meetings
between borrowers and lenders, collecting fees for so doing. Gradually
they engaged in the practice of making loans themselves. Also,
goldsmiths were required, through the very nature of their business,
to have adequate and safe storage facilities. At first, they were
merely safe keepers for valuables of the wealthy; soon, they began to
engage in lending, using the monies and valuables entrusted to their
care as capital. They issued a new medium of exchange, known as
"goldsmith notes."

The growth of deposit banking by the goldsmiths was disastrous
to the older type of money lender, who had to rely on his own capital
and soon became restricted to making loans to the poorer classes who

14. Orchard and May, op.cit., Ch.1
were without sufficient security to deal with the deposit bankers.
A phase of this restriction was a variation of the Monte de Piete lending society, the pawnbroker, who lent money on tangible security. The law of 1757 recognized the fact that pawnbrokers served a vital function among small borrowers, when they allowed the loans made by pawnbrokers up to ten pounds to be exempt from usury restriction.

The many restrictions imposed on money lenders forced them to seek ways of evading the law in order to stay in business. Perhaps the most popular means of evasion was through the use of annuities. A borrower would sell to a lender an annuity for the duration of the borrower's life, it being understood that the borrower could repurchase the grant. The price for repurchase equaled the amount lent plus arrears, plus an additional half year's charge. The difference between the original price and the repurchase price being, in reality, an interest charge on a loan.

D. GROWTH OF A NEW PHILOSOPHY

After the reformation, the way was cleared for better recognition of the necessity for interest in a trading nation. Francis Bacon declared the rate of interest should be limited, but should be sufficient to attract investments into trade.

"Two things are to reconciled: the one that the tooth of usurie be grinded, that it bite not too much; the other that there be left open a meanes to invite moneyed men to lend to the merchants for the continuing and quickening of trade."15

In an attempt to clarify any confused notions on usury and interest, Henry VIII, 1545 AD, issued a statute making the maximum rate of interest 10% yearly. The penalty for violations was triple the value of the

property loaned, plus imprisonment if the King so desired. The Churchmen of England were strongly opposed to this act, and in 1552 managed to have it repealed. Development of trade caused the act to be reinstated in 1571. Since the act provided for a maximum rate of 10%, this became established as the normal charge. James I, successively reduced the maximum rate in 1623 to 8%, in 1652 to 6%, and in 1713 to 5%. 16

With the increased reliance by England on trade, there developed in the sixteenth century a system of economic viewpoints, generally know as "Mercantilism." Mercantilists were greatly concerned with the balance of trade and with the idea of money wealth. The out-crop of their concern with money was a considerable discussion of the problem of interest. Thomas Mun, arguing in favor of interest taking, said it made possible the investment of funds in trade, and considered the interest rate a natural result of the conditions of trade. 17 Sir Joshua Child argued for a reduction in the interest rate, having noticed that the great trading wealth of Holland was accompanied by a low interest rate. He concluded that a low rate would encourage trading, by making capital cheap, and that a high rate might make money scarce. Sir William Petty, 1682, was against the establishment of any maximum interest rate. Sir Dudley North, about 1680, maintained that interest reflected the demand for capital goods. 18

16. Orchard and May, op.cit.  
There was not yet any clear understanding of the term interest, nor was there any over-all agreement as to the causes and effects of interest. They had but vague ideas of the basic principles of money, and usury was still considered as any payment for the use of money.

**THE AMERICAN COLONIES**

When the colonists migrated to the new world, they brought with them the customs and practices of the land in which they were born. From the first, the English colonists recognized Juris-Prudence and the Common law of England as their own. They also adopted a great body of English statutes including the rules on usury. As the settlements developed, they began to enact their own legislation. The first usury law in America was enacted by Massachusetts in 1661 and set the maximum rate of interest at 8%, with the penalty being voidance of contract for any violation of the maximum. In June, 1693, the General Assembly agreed that the maximum rate of 8% tended to discourage trade and, therefore, lowered the maximum to 6% yearly. They provided that any contracts negotiated for interest rates in excess of that amount were to be void and whomever violated the law would forfeit the full value of the money or goods lent, one-half going toward the support of the government and the other half to the person who sued for it.

This act, however, did not extend to farm practices or maritime contracts among merchants. The English rulers looked upon their colonies as a source of raw materials and as a market place for their industrial products. Industry in the colonies was practically non-existent and in some cases actually forbidden so farming and maritime activities were given special protection.
## INTEREST RATES CHARGED AT VARIOUS TIMES IN THE HISTORY OF THE WORLD

<table>
<thead>
<tr>
<th>PLACE</th>
<th>TIME</th>
<th>RATE a</th>
<th>LENDER</th>
</tr>
</thead>
<tbody>
<tr>
<td>INDIA</td>
<td>2300 BC</td>
<td>2% per mo.</td>
<td>rate established by the laws of Manu</td>
</tr>
<tr>
<td>BABYLONIA</td>
<td>1950 BC</td>
<td>20%</td>
<td>rate provided in the code of Hammurapi</td>
</tr>
<tr>
<td>CAPPADOCIA</td>
<td>1500 BC</td>
<td>30%</td>
<td>unknown</td>
</tr>
<tr>
<td>ASSYRIA</td>
<td>711 BC</td>
<td>33 1/3%</td>
<td>unknown, probably professional money lenders</td>
</tr>
<tr>
<td>ASSYRIA</td>
<td>684 BC</td>
<td>25%</td>
<td></td>
</tr>
<tr>
<td>BABYLONIA</td>
<td>675 BC</td>
<td>33 1/3%</td>
<td>Temple of Istar at Arbela</td>
</tr>
<tr>
<td>BABYLONIA</td>
<td>Reign of Nebuchadnezzer (618-581 BC)</td>
<td>11 2/3%</td>
<td>unknown, professional money lenders</td>
</tr>
<tr>
<td>GREECE</td>
<td>594 BC</td>
<td>16%</td>
<td>unknown</td>
</tr>
<tr>
<td>BABYLONIA</td>
<td>539 BC</td>
<td>20%</td>
<td>unknown</td>
</tr>
<tr>
<td>BABYLONIA</td>
<td>536 BC</td>
<td>16 2/3%</td>
<td>Nabu-mukin-zer, a scribe</td>
</tr>
<tr>
<td>BABYLONIA</td>
<td>516 BC</td>
<td>20%</td>
<td></td>
</tr>
<tr>
<td>ROME</td>
<td>450 BC</td>
<td>10%</td>
<td>rate established by the twelve tables Nurashu Sons, bankers</td>
</tr>
<tr>
<td>NIPPUR</td>
<td>438 BC (Artaxerxes I)</td>
<td>40%</td>
<td>professional money lenders</td>
</tr>
<tr>
<td>GREECE</td>
<td>4th Century BC</td>
<td>12-33 1/3%</td>
<td>penalty for delinquency of more than one year</td>
</tr>
<tr>
<td>ROME</td>
<td>347 BC</td>
<td>5%</td>
<td>established rate charging of interest prohibited by law</td>
</tr>
<tr>
<td>ROME</td>
<td>342 BC</td>
<td>---</td>
<td>government monopoly house (on pawned articles)</td>
</tr>
<tr>
<td>EGYPT</td>
<td>Ptolemy II-285-246 BC</td>
<td>2% per mo.</td>
<td>Zenon, a professional money lender</td>
</tr>
<tr>
<td>PHILADELPHIA</td>
<td>258 BC</td>
<td>100%</td>
<td>general rate</td>
</tr>
<tr>
<td>COCYRA</td>
<td>3rd Century BC</td>
<td>24%</td>
<td>general rate</td>
</tr>
<tr>
<td>ROME</td>
<td>88 BC (Lex Unciaria)</td>
<td>12%</td>
<td>Brutus</td>
</tr>
<tr>
<td>CIPRUS</td>
<td>51 BC</td>
<td>18%</td>
<td>legal rate</td>
</tr>
<tr>
<td>ROMAN PROVINCES</td>
<td>50 BC</td>
<td>12%</td>
<td></td>
</tr>
<tr>
<td>ARISONE, EGYPT</td>
<td>1st Century AD</td>
<td>18-22% per mo.</td>
<td>Bank of Didymus</td>
</tr>
<tr>
<td>OXYRHYNCHUS</td>
<td>17 AD</td>
<td>1½% per mo.</td>
<td>Heraclius—a money lender</td>
</tr>
</tbody>
</table>

a. annual unless otherwise noted
## Interest Rates Charged at Various Times in the History of the World

<table>
<thead>
<tr>
<th>PLACE</th>
<th>TIME</th>
<th>RATE</th>
<th>LENDER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roman Empire</td>
<td>Constantine (325 AD)</td>
<td>12%</td>
<td>Legal maximum</td>
</tr>
<tr>
<td>Roman Empire</td>
<td>Justinian (483-565 AD)</td>
<td>6%</td>
<td>General loans</td>
</tr>
<tr>
<td></td>
<td></td>
<td>8%</td>
<td>Mercantile loans</td>
</tr>
<tr>
<td>England</td>
<td>1272 (Henry III)</td>
<td>43%</td>
<td>Money lenders—small loans on pawned articles</td>
</tr>
<tr>
<td>France</td>
<td>1360</td>
<td>86%</td>
<td>Jewish moneylenders (authorized by John II)</td>
</tr>
<tr>
<td>England</td>
<td>14th Century</td>
<td>60%</td>
<td>Caursini, Collector of Revenue for the Pope</td>
</tr>
<tr>
<td>Bavaria</td>
<td>1358</td>
<td>32 1/7% (to citizens) 43% to others</td>
<td>Jewish moneylenders of Frankfort (authorized by Louis of Bavaria)</td>
</tr>
<tr>
<td>Augsburg</td>
<td>14th Century</td>
<td>86 2/3%</td>
<td>Legal maximum</td>
</tr>
<tr>
<td>Vienna</td>
<td>1420</td>
<td>20%</td>
<td>Travelling Lombard bankers</td>
</tr>
<tr>
<td>Florence</td>
<td>15th Century</td>
<td>40-80%</td>
<td>Travelling Lombard bankers</td>
</tr>
<tr>
<td>Florence and Venice</td>
<td>15th Century</td>
<td>1-5% per mo.</td>
<td>Montes Pietatis money lenders maximum rate established by law</td>
</tr>
<tr>
<td>Italy</td>
<td>15th Century</td>
<td>1 1/2%</td>
<td>Montes Pietatis money lenders maximum rate established by law</td>
</tr>
<tr>
<td>Piacenza, Italy</td>
<td>1462</td>
<td>40%</td>
<td>Jewish moneylenders of Frankfort (authorized by Louis of Bavaria)</td>
</tr>
<tr>
<td>England</td>
<td>1545 (Henry VIII)</td>
<td>10%</td>
<td>Money lenders—small loans on pawned articles</td>
</tr>
<tr>
<td>France</td>
<td>Henri V (1553-1610)</td>
<td>6 1/2%</td>
<td>General rule</td>
</tr>
<tr>
<td>Belgium</td>
<td>1619</td>
<td>15%</td>
<td>Belgium Montes founded by Archduke Albert</td>
</tr>
<tr>
<td>England</td>
<td>1624 (1650 Commonwealth)</td>
<td>8%</td>
<td>Legal maximum</td>
</tr>
<tr>
<td></td>
<td>1713 (Queen Anne)</td>
<td>6%</td>
<td>Legal maximum</td>
</tr>
<tr>
<td></td>
<td>18th Century</td>
<td>5%</td>
<td>Legal maximum</td>
</tr>
<tr>
<td></td>
<td></td>
<td>250%</td>
<td>An individual money lender</td>
</tr>
<tr>
<td>France</td>
<td>1797</td>
<td>30%</td>
<td>Pre-charitable</td>
</tr>
</tbody>
</table>

"That no person or persons whatsoever...shall take, directly or indirectly, for loan of any monies, wares, merchandize (s) or other commodities whatsoever above the value of six pounds for the forbearance of 100 pounds for a year." 19

A five year limited addition to this act was passed April 11, 1750 to the effect that the penalty for taking more than 6% interest is voidance of contract, the proof to be made by the debtor’s oath and the debtor fully discharged from debt; unless the creditors would swear they had not taken more than 6% and that the contracts did not provide for more than the maximum rate. This act was later renewed. 20

In March, 1834, a petition signed by 202 businessmen of Boston requested the repeal of the maximum limits on interest rates. Despite the fact that the petition was favorably reported, and a bill introduced to repeal the usury law, it failed to pass. In 1850, the legislators of New York, passed an act which took away much of the scope of the usury laws of that state and in December, 1859 a report was sent to the General Assembly of Tennessee recommending a repeal of their usury laws. The report was never acted upon.

In 1867 in Massachusetts, a proposal to repeal the maximum rate came again before the legislature and, on the strength of an appeal made by R.H. Dana, the rates were abolished and have never been reenacted. To this day in Massachusetts, there is no penalty for usury on loans, except on loans of less than $1,000. 21

19. Acts and Resolves of the Province of Massachusetts Bay Vol. I, 1692-1714, Pg. 113, 1869
20. ibid., Vol III, 1742-1756
21. Ryan, Frank W., op.cit., Pg. 15
CONCLUSION

Lending has its origin in antiquity. It has grown from a personal loan made to a friend or acquaintance to an impersonal business. The growth of the loan business has coincided with the growth of commerce and trading activities. Originating in the primitive stages of the business’s development, a continuous thread of feeling against the business of lending is evident and still persists. It is indicated in the Writings of Aristotle, it was enhanced by the Churchmen, The Middle Age philosopher Thomas Aquinas and continued in England and early America.

There have been various attempts to prohibit or severely curtail loan activities. History has shown, however, that the pressure of trade has rendered all these attempts useless. Trade had a powerful voice, which neither the all-powerful church of the Middle Ages, nor the governments of either England or America, could withstand. After the passage of the first usury laws in the United States, for example, all subsequent laws had the effect of either repealing or greatly reducing the effectiveness of the usury laws.
PART THREE

FEDERAL AND STATE REGULATION
The gradual realization that the small loan business is an economic as well as a social problem and that it is firmly entrenched in the United States business structure, is reflected in the prevailing tendency of the several states to swing from the ancient theory of prohibition to the more effective one of regulated protection.

In order to understand the haphazard and tortuous nature of the growth of the loan regulation, it is necessary to consider the major issues involved: the theories proposed, the interest rate and the loan shark, as well as the actual state and federal regulation.
CHAPTER FIVE
MAIN ISSUES OF THE LAWS

In order to further the understanding of the problem facing the various legislatures in developing a comprehensive regulatory small loan statute, this chapter will attempt to survey and outline the main problems involved in setting up such a statute. The starting point must be a decision by the law makers as to what theory of regulation would be most applicable and effective. We shall consider in this chapter the four main theories which have evolved concerning lending and shall attempt to indicate the problems which have arisen with the use of each. Having accepted a theory, the legislators at once encounter a two-fold problem; the establishment of an interest rate which is fair to both the consumer and the lender, and the problem of combatting the "loan shark."

THE THEORIES

As money is a commodity, the price of it, the interest rate, is regulated in part by the law of supply and demand. The difficulties of enforcing medieval usury laws were not essentially different from the difficulties experienced in the enforcement of modern restrictive usury laws. Borrowers are frequently forced to accept whatever terms are demanded by lenders as a result of their need or ignorance.

The inherent weakness of the borrower and the elements of risk and high operating costs, tend, naturally, to force the return demanded on consumer loans above that demanded on large business loans.
It was soon evident, therefore, that control was needed. The important question became, "What is the most effective type of control?". There have evolved four main approaches to the problem of regulating the operation of the small loan business:

A. THE PROHIBITIVE THEORY:

In terms of historical time, the prohibitive theory was the first control initiated. It was the prevailing method adopted during the development of lending in Europe. In essence, this theory states that small loans are evil and therefore the practice should be abolished. It advocates the prohibition, by legislation, of all interest charges or of charging a higher rate of interest than that which is allowed by the normal contract rate. This theory is the basis of traditional usury laws which attempt to hold down the rate charged on consumer loans to that charged on other types of loans. Since the return on consumer loans must be higher to meet higher operating costs, the result of such laws is to drive out the legitimate lender and open the door to the "loan shark." The inadequacy of this type of action is shown throughout part two of this work, where we saw that, despite the law, lending continued to flourish.

B. THE SEMI-PHILANTHROPIC THEORY:

The proponents of this theory hold that lending of itself is not evil, rather it is the desire for profit that is evil. The semi-philanthropic theory envisaged higher rates on consumer loans only when...
such lending was carried on by non-profit organizations. These organizations, set up by the followers of this theory, have performed a great service but as they are primarily financed through private investments, and the basic philosophy requires investors to assume the full risk of the lending for a low rate of return, there is apt to be a shortage of funds. The lack of capital funds has limited the expansion of these organizations and therefore they have not been able to meet the demand for loans.²

C. THE UNREGULATED COMMERCIAL THEORY:

The unregulated commercial theory states that the evils of small loan lending can be overcome by encouraging legitimate capital to control the business. To achieve this type of investment, the theory allows for the charging of higher-than-contract rates by those who make small loans. Laws drawn up with this end in mind usually provide a penalty for charges in excess of some maximum rate. The mere existence of a penalty, unless strictly enforced, is not enough to stop the activities of illegal lenders. The people who believe in this theory have failed to recognize this fact and have failed, therefore, to provide an effective enforcement procedure.

D. THE REGULATED AND SUPERVISED COMMERCIAL THEORY:

This theory has the same basic assumptions as the unregulated commercial theory. It recognizes the need for higher-than-contract rates and it desires that legitimate capital be induced into the

2. Robinson and Nugent Regulation of the Small Loan Business, Russell Sage Foundation 1935, Pg 83
business. There is one important difference between the two theories, however. The regulated theory holds that, because even approved, commercially profitable rates may be exceeded, government intervention is necessary. This theory seeks to limit to licensed lenders the privilege of charging higher rates. It attempts to regulate the conduct of the business in the public interest, by providing supervision and control.

Recently, the regulated and supervised commercial theory has been widely accepted as the one which will best protect the people. Its use has spread rapidly through the great majority of the states and has lent vitality and real meaning to the term, small loan regulation.

THE INTEREST RATE

In the states that have accepted the regulated commercial type of legislation, the main concern of the legislators, after the basic system of inspection and control has been set up, has been the establishment of a fair interest rate, a rate which is fair both to the borrower and the lender. This task is extremely difficult at best and is made even more difficult because there is much confusion in the public mind over what constitutes a fair rate. The public, as consumers, has the natural desire to borrow as cheaply as possible. The average person is not aware that regulations which are too strict have, in effect, the same result as no regulation whatsoever. A return on investment which is not adequate will cause a shift of investment away from the loan business to some other business

which offers a more profitable return. The legitimate loan business is financed largely by the sale of stock. Facing a shortage of capital funds, it would be forced to withdraw from the state in question. The borrower's only recourse would be to deal with the unscrupulous lender who evades the law with practiced ease. A vivid example of this is provided by the experience of the state of Missouri.

A. INTEREST PROBLEM IN MISSOURI

Missouri had been a well-regulated state, offering protection as well as reasonable charges to its borrowing citizens for some 19 years. On July 1, 1946 the Missouri Supreme Court ruled that the new constitution, adopted in 1945, had repealed the small loan law, as one of the provisions of the constitution stated that all statutes which fix maximum interest rates shall apply to all lenders without regard to the type of business. This provision outlawed the customary practice of allowing higher rates to be charged for small consumer loans. The result of this action is illustrated clearly in a pamphlet issued by the Better Business Bureau of Kansas City, called "What is happening in Missouri today?"

"A. Almost all small loan companies have had to close their offices, since they could not operate at anything like 8% a year.

B. Loan sharks who operate illegally at rates of 120 to 240% or more a year have moved in and are gouging thousands of Missouri families. These loan sharks are

taking millions of dollars a year out of the state in illegal interest.

C. Studies in Kansas City of personal bankruptcy and wage earner cases of Missouri citizens show victims of loan sharks often owe several different loan offices at the same time. The usual practice of loan sharks is to split up among their offices all loans over $50. For example, a borrower needing $200 must go to four separate offices, getting $50 at each.

D. Legal small loan companies in Alton, East St. Louis and Granite City, Illinois across the river from St. Louis, Missouri lend $5,630,856.82 to Missourians in the past year at the legal Illinois rate of 3% a month on that part of the unpaid balance up to $150, 2% a month on that part of the unpaid balance up to $300, and 1% a month on that part of the unpaid balance up to $500. Nebraska companies have lent $352,799.59 to Missouri residents at the legal Nebraska rate of 3% a month on the first $150, 2 1/2% to $300 and 3/4% to $1,000, during a period from January 1, 1949 to June 30, 1950. Missouri people also borrow from regulated lenders in Oklahoma and Iowa. Such transactions represent a serious tax loss to the state of Missouri. (Above figures were obtained from official state records of Illinois and Nebraska.)

The deplorable conditions existing in this state are becoming widely recognized. Many elements within the state are making a determined fight to bring about some legislative remedy. Social and business leaders as well as labor organizations and the press are actively campaigning for an adequate small loan law. In 1949, the Governor of the state sent a message to the legislature, which said in part:

"There has been a crying need for almost three years to regulate small loan companies in Missouri. Some sort of legislation on this subject must be enacted this year. Under existing laws, the small borrower with little or no bargaining power and in financial need is powerless to protect himself."

5. Better Business Bureau, Kansas City


B. LENDING COSTS

Because private small loan companies charge an interest rate which is higher than that charged by banks and credit unions, it is assumed by many that they are reaping huge profits from the helpless borrower. Banks lend comparatively large amounts from their deposits, on preferred security. Credit unions are relieved of many expenses and enjoy tax advantages that loan companies do not enjoy. The loan company deals mainly with people with little security and who borrow comparatively small sums. They are required by law (in Massachusetts and other states) to include in their interest charges all other expenses such as investigation, bookkeeping, bad debt loss and taxes. It becomes evident, therefore, that banks and credit unions can operate successfully at a lower rate of return than can the small loan company.

The Pollak Foundation for Economic Research states that "the cost per account for the most efficient consumer lender is well over $1.00 a month." One of the larger small loan companies in the Boston area, has estimated that their cost per new account is $16. This figure includes such items as investigation and office expenses.

Facts from sworn reports, filed by licensed lenders with the banking commission of Massachusetts, may be used as an illustration of the profits of small loan companies. In 1933, there were 230 licensed lenders, 217 of which were in actual operation. These 217 licensees

7. Pollak Foundation, op.cit. Pg. 1
had a gross income of $5,036,346 for the year 1933. The expense of conducting the business including interest paid on loans was $3,181,186. The net earnings from a total investment of $24,874,576 were $1,556,160, or a rate of return on investment of 6.26%, or allowing interest paid 5.35%. These figures are after taxes, but before any allowance for interest on bonds or dividends on preferred or common stock.

In the course of 17 years, the level of the economy has undergone a great change. It is fitting that we use for further illustration an example based on figures for 1951. To show the amount of actual return on a loan, let us break down a sample loan and compare this return with the cost figures. The legal maximum rate under the Massachusetts law is 2% per month on the unpaid balance. As 2 x 12 is 24, the average person tends to accept this figure as the charge for a loan for a year, overlooking the very significant phrase, "the unpaid balance." In the case of a loan of $105.58 with the repayment time set at 12 months, the schedule of payments would be $10 per month including interest. The payments represented in the following chart were taken from an actual interest calculator used in Massachusetts small loan companies. Interest payments on loans of this amount might vary due to the difference in the length of time between each payment. The interest charged might be less if payments were made every 30 days rather than on a specific date each

8. Association of Personal Finance Companies

9. Loan companies sometimes grant loans of odd amounts to make payments an even amount.
month. We have assumed that the loan was paid on the 24th. of each month, the length of time for payment varying therefore from 28-30-31 days.

<table>
<thead>
<tr>
<th>PAY'T DATE</th>
<th>PAY'T</th>
<th>INTEREST PAY'T</th>
<th>PRINCIPAL PAY'T</th>
<th>BALANCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 24</td>
<td>$10.</td>
<td>$2.18</td>
<td>$7.82</td>
<td>$97.76</td>
</tr>
<tr>
<td>May 24</td>
<td>10.</td>
<td>1.96</td>
<td>8.04</td>
<td>89.72</td>
</tr>
<tr>
<td>June 24</td>
<td>10.</td>
<td>1.86</td>
<td>8.14</td>
<td>81.58</td>
</tr>
<tr>
<td>July 24</td>
<td>10.</td>
<td>1.69</td>
<td>8.31</td>
<td>73.27</td>
</tr>
<tr>
<td>August 24</td>
<td>10.</td>
<td>1.51</td>
<td>8.49</td>
<td>64.78</td>
</tr>
<tr>
<td>Sept. 24</td>
<td>10.</td>
<td>1.34</td>
<td>8.66</td>
<td>56.12</td>
</tr>
<tr>
<td>Oct. 24</td>
<td>10.</td>
<td>1.16</td>
<td>8.84</td>
<td>47.28</td>
</tr>
<tr>
<td>Nov. 24</td>
<td>10.</td>
<td>.98</td>
<td>9.02</td>
<td>38.26</td>
</tr>
<tr>
<td>Dec. 24</td>
<td>10.</td>
<td>.80</td>
<td>9.20</td>
<td>29.06</td>
</tr>
<tr>
<td>Jan. 24</td>
<td>10.</td>
<td>.60</td>
<td>9.40</td>
<td>19.66</td>
</tr>
<tr>
<td>Feb. 24</td>
<td>28</td>
<td>.41</td>
<td>9.59</td>
<td>10.07</td>
</tr>
<tr>
<td>March 24</td>
<td>10.28</td>
<td>.21</td>
<td>10.07</td>
<td>-</td>
</tr>
</tbody>
</table>

On a loan of $105.58 the interest return to the lender is $14.70 or a gross return on investment of 12%. Using the cost per new account figure of $16, it would seem that the lender is suffering a net loss of $1.30. This figure is not realistic as the majority of loans made by any company are renewals of present balances or re-opening of former accounts. The cost figure in these cases, since it is unnecessary to reinvestigate, is probably lower. The $1 plus cost figure as developed by the Pollak Foundation is probably more accurate. The 12 month expense figure would be, therefore, slightly in excess of $12. This would give the lender a net return on investment of $2.70, or less than 2.5%. (since the actual cost figure is in excess of $1 per month) In the majority of loan companies, the funds received

10. Because the calculators are pro-rated on a 30 day basis, the existence of 31 day months results in a slightly larger ($ .28) final payment.
from repayment of loans are used to meet expenses and to finance new loans.

THE LOAN SHARK

The primary objective of all small loan regulation is to protect the borrowing citizens of a state from "loan shark" operations. Is this danger a real one, or is it merely a "bug-a-boo" unworthy of all the time and money spent in the effort to eliminate it?

A. THE USURER AND THE LOAN SHARK

The loan shark may be commonly defined as one who lends small sums at higher rates of return than the law allows. The reasons for the rise of the loan shark, greed and necessity, are by no means new ones. The history of usury, gives conclusive evidence of the long-run existence of the problem. The loan shark is, however, essentially a modern development. There is a basic difference between early usurers and the modern loan shark. The usurers aimed at maximum returns, making loans almost entirely on tangible securities, thereby allowing the borrower the alternative of selling the security. As most borrowers were engaged in some business activity, the usurer became in effect a partner in the enterprise, demanding to be sure the greater share of the returns, but not wishing to wreck the business.

The loan shark is subject to none of these restrictions. While he may secure his loans with tangible property, he relies for payment upon the prospective income of the borrower. As long as wages remain near the subsistence level, the prospective income of borrowers has little value to the lender. When wages rise to a point where a
surplus is left after the minimum necessities of life have been procured, then these wages become assets against which loans can be made. The loan shark thrives, therefore, not upon poverty, but upon high wages and a rising standard of living. 11

The possibility of utilizing the margin between income and subsistence probably existed long before the birth of the loan shark, but it was left to him to exploit the field. The early lenders looked to the security behind each loan to assure themselves of the probability of collection. The loan shark dealt with borrowers on a "mass-production" basis, relying on volume to compensate for any losses which might occur. 12

B. THE SPREAD OF THE LOAN SHARK:

The loan shark business began in the mid-west shortly after the Civil War. The early operators rapidly invested their enormous profits in new offices. The great returns attracted a flood of new lenders, and loan shark offices spread rapidly into all the principal cities of the United States. It was estimated by Arthru H. Ham, that in cities of 30,000 or more population, there was by 1933, one loan shark for every five to ten thousand people. 13

The majority of loans made by this type of lender were for small amounts of money for a short period of time. Despite the high interest charges, ranging up to 40% per month, the borrower would not have been in any great distress if he could have paid the loan off within

11. Nugent, Rolf, The loan Shark Problem, Law and Contemporary Problems, Vol.8,1941,Pg.4
12. ibid.
13. ibid.,Pg.5
the contracted time. The lenders in an attempt to increase their volume, made it difficult to repay the principal and encouraged renewals. The result was that interest charges became ruinous to the borrower, standards of living were cut, family troubles and occasionally even suicide resulted.

The lending tactics of the loan shark were illegal under the usury laws of the states, but due to the inadequacy of the laws, the weakness of the borrowers and the pressures exerted by the lenders, little was done to check their operation until the Russell Sage Foundation and other civic-minded groups instigated a more effective type of small loan regulation.

In a great number of states, this grave problem of the loan shark has been effectively dealt with at the present time. There are still states, however, in which the citizens remain unprotected.

C. THE LOAN SHARK TODAY

The plight of borrowers under unregulated lending has been effectively illustrated by William Hays Simpson. Extensive research has shown that thousands of persons are paying as much as 300% per year for small loans. In South Carolina, for example, it is legal to charge one dollar in place of interest. Lenders, specialize in short-term small loans, therefore, the usual duration being two weeks. In the case of a $5 loan, the annual interest rate would be 520%. A table of the average annual rates charged on 1,042

loans in fourteen towns and cities of South Carolina as compiled by Mr. Simpson illustrates clearly the necessity for a better system of protection for borrowers than exists in that state.

It may be noted in the following chart, that there is a general decrease in the rate charged as the size of the loan increases. This is due, largely, to the fact that loans in the higher brackets are taken by borrowers with better security and who are generally more selective. Increased inflationary pressure that has existed since 1939 has, no doubt, moved the size of loans upward, but probably has had no material effect on the interpretation of the chart. It illustrates the point that the type of loan regulation which leaves the burden of proof upon the borrower is largely ineffective. The victims of the loan shark are, to a great extent, those who are in the lower income brackets or those persons who are unfit, either through a lack of understanding, or a lack of economic power, to defend themselves in a court of law. The statistics provide the basis for a weighty argument for government intervention into the regulation of the small loan business. Regulation which will protect all segments of economic society can best be provided by some powerful outside force. The government would appear to be the most logical enforcement agency.

The government has the power to enforce loan regulation on a statewide (or nation-wide) scale. In a democracy such as ours, representatives of the government are elected by the citizen's votes. The government, therefore, is primarily concerned with the welfare of its citizens and is, consequently, extremely sensitive to any mis-use of economic power or such oppressions as are inflicted by "loan shark" activity.
Average Annual Interest Rates paid on Loans of Different Sizes by Whites and Negro borrowers interviewed in South Carolina Towns and Cities, 1938-39

<table>
<thead>
<tr>
<th>LOCALITY</th>
<th>When loans to Whites were of the specified amounts</th>
<th>When loans to Negroes were of the specified amounts</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$10.00  $10.01  $25.01 Above</td>
<td>$10.00  $10.01  $25.01 Above</td>
</tr>
<tr>
<td></td>
<td>less    to    to    to</td>
<td>less    to    to    to</td>
</tr>
<tr>
<td>ANDERSON</td>
<td>373.33  362.39  208.38  ---</td>
<td>432.57  ---  ---</td>
</tr>
<tr>
<td>CHARLESTON</td>
<td>356.13  286.85  216.00  212.12*</td>
<td>955.20  286.14  ---</td>
</tr>
<tr>
<td>COLUMBIA</td>
<td>377.47  275.46  114.714*</td>
<td>386.55  349.25  680.00*</td>
</tr>
<tr>
<td>FLORENCE</td>
<td>417.55  221.03  157.73  ---</td>
<td>322.24  267.82  64.30  46.96*</td>
</tr>
<tr>
<td>GREENVILLE</td>
<td>383.60  255.70  151.88  98.99</td>
<td>595.67  ---  ---</td>
</tr>
<tr>
<td>ROCK HILL</td>
<td>598.54  ---  ---  ---</td>
<td>755.13  523.13  ---</td>
</tr>
<tr>
<td>SPARTANBURG</td>
<td>396.06  298.15  218.99  105.39</td>
<td>551.68  353.11  99.05*</td>
</tr>
<tr>
<td>SUMTER</td>
<td>278.64  224.14  140.56  ---</td>
<td>355.50  198.39  ---</td>
</tr>
<tr>
<td>CLINTON</td>
<td>394.12  290.08  195.76  ---</td>
<td>630.73  184.17  ---</td>
</tr>
<tr>
<td>GREENWOOD</td>
<td>328.54  290.08  195.76  ---</td>
<td>630.73  184.17  ---</td>
</tr>
<tr>
<td>NEWBERRY</td>
<td>558.74  297.79  159.63  29.19</td>
<td>522.90  183.50  99.25</td>
</tr>
<tr>
<td>HARTSVILLE</td>
<td>558.74  297.79  159.63  29.19</td>
<td>522.90  183.50  99.25</td>
</tr>
<tr>
<td>DARLINGTON</td>
<td>558.74  297.79  159.63  29.19</td>
<td>522.90  183.50  99.25</td>
</tr>
<tr>
<td>ORANGEBURG</td>
<td>558.74  297.79  159.63  29.19</td>
<td>522.90  183.50  99.25</td>
</tr>
</tbody>
</table>

*Percentage based on an insufficient number of loans to be representative.

The problem of the borrowers under such loan charges can best be illustrated by quoting an example of the findings of the investigation conducted by Mr. Simpson:

"One borrower, a white married man whose salary is $35 a week, has worked for his present employer for 27 years. His wife's prolonged sickness necessitated the borrowing of $83 from four different loan companies in the amounts of $25, $30, $18 and $10. The four loan companies charged this borrower $16 a month for the use of this money, and at the end of the year he still owed the $83 but had paid the companies $192 in interest."16

The operations of these unregulated lenders are by no means confined to South Carolina, but are prevalent in those states which have

15. Simpson, William Hays, op.cit. Pg.74

16. ibid
no small loan law or in which regulations are inadequate. There are six states which have no small loan law, Kansas, Missouri, Montana, North Dakota, South Dakota and South Carolina.\textsuperscript{17}

The people of Kansas are victims of illegal money lenders disregarding the usury law. Lenders in this state often charge as high as 240\% interest a year.

"The report of the interest received in a Kansas City, Kansas case shows that of the rates charged by one illegal lender on more than 2,000 loans in Topeka, Kansas, the lowest was 192\% and the highest was 413\%."\textsuperscript{18}

Texas is given the dubious distinction of being the leading loan shark state. Complaints made to the Anti-Usury Committee of Dallas show the lowest rate charged was 120\% a year, and the highest was 1,131\%.\textsuperscript{19}

The people in the remaining states without small loan laws, as well as those in the states such as Alabama and Tennessee where small loan laws have failed are in similar difficulties.

\textsuperscript{17} On May 8, 1951, Governor Forrest Smith of Missouri approved Senate bills \#78 and \#79 which provided a code for the regulation of small loans. Senate bill \#79 is an "interest code" which also includes a number of regulatory provisions. Senate bill \#78 is a "supervisory" law detailing conditions of licensing, annual reports, examinations etc. Taken together, these two laws cover most of the ground included in the standard small loan law of other states. Senate bill \#78 became effective upon the Governor's signature and Senate bill \#79 will become effective 90 days after the present session of the legislature adjourns, probably around October 1, 1951. Since this new legislation permits a legal interest charge which is lower than all other states except Massachusetts, it will be interesting to study the results under this new law. For a more complete analysis of Missouri's new consumer credit law see Appendix A.

\textsuperscript{18} Pollak Foundation, op.cit. Page 13

\textsuperscript{19} ibid, Page 15
The existence of these conditions in various states certainly proves that the loan shark is a very real and present danger. The time and money utilized to combat him has been well spent indeed, and it is evident that a sincere effort must be made to spread controls into those states that, at the present time, lack adequate ones.

CONCLUSION

There are four theories which have been devised concerning regulation of small loans. It would appear from the test of time that three of these are not adequate.

Laws based on the prohibitive theory have been proven unenforceable. Lending practices based on the semi-philanthropic theory, although basically good, can not attract enough capital investment to satisfy the needs of all the borrowers. The non-regulated commercial type shifts the burden of enforcement upon the shoulders of the lender and it is not realistic to expect the businessman to voluntarily curb his profits. The one which has been adopted in a great majority of states and which has proven itself to be a meaningful and vital one, is the regulated-commercial type.

In the states which have adopted a government supervised system of loan regulation, the major problem has been to set an interest rate sufficient to attract legitimate capital into the loan business and at the same time not burden, too greatly, the small borrower. The problem has been further intensified because of public misunderstanding as to what constitutes a fair interest rate. The conditions in the state of Missouri indicate that a rate which is too low has the same
effect as no regulation whatsoever. There is a further public misconception over the net return enjoyed by legitimate lenders. It has been shown in this chapter that although the lenders enjoy a profit gross charges of 12% to 15% per year do not provide an excessive profit.

The ever-present danger existing in the loan business is that of the infiltration of the loan shark. The problems of several states such as South Carolina, Kansas and Missouri where the citizens have been forced to pay up to 400% interest on small loans, show vividly that the regulators of the loan business must be constantly on the alert to protect the average citizen.
CHAPTER SIX

STATE REGULATION

This chapter will trace the development of loan regulation in the United States, dividing it into five major eras.

It will be observed that the spasmodic and independent actions of the several states resulted primarily in confusion and ineffectiveness until the economic importance of small loans was recognized and the Uniform Small Loan Law was developed by civic-minded organizations such as the Russell Sage Foundation.

EARLY REGULATION

A. LEGISLATIVE ACTION

State legislatures began very early to seek some solution to the problem of usurious small loans. At first it was thought that the problem involved better enforcement of the general usury laws. In many states, however, it was soon discovered that the usury laws were inadequate and attempts to enforce them served mainly to drive the illegal lenders underground. However, the acknowledgment that this type of law is ineffective is not universal. There are still states where attempts to regulate lending are carried on through the framework of prohibitive usury statutes. The inadequacy of this type of action has been shown earlier in this work.¹

¹ Supra., Part 2, Ch.4
The first attempt to combat illegal lenders saw the enactment of statutes that limited the rate of interest on all loans according to the prohibitive theory. Such laws provided proper regulation of large producers' loans, but ignored the fact that small consumer loans demand a higher rate of return for a profitable conduct of the business. Such laws were evaded by small lenders, just as they had been down through the ages.\(^2\)

A few states, noting that small lenders were tending to specialize in the types of security demanded for their loans, attempted to regulate the business by prohibiting or limiting one or two types of collateral. In 1884, New Jersey prohibited the assignment of wages to secure loans. Several years later, Missouri passed an act which regulated the use of chattel mortgages for loan security.\(^3\) The lender's answer to this type of regulation was merely to shift from the use of collateral which was regulated, to one which was not.

Massachusetts early recognized the weakness of prohibitive usury laws, and therefore dropped them entirely. Massachusetts was the first state to pass a small loan act of an all regulatory type. The act of 1888 restricted the interest on all loans under $1,000 to 18\% per year, plus a maximum fee of $10 for actual expenses.\(^4\) The other states did not profit immediately by this bold step of the Commonwealth, although in 1894, Maryland passed a law which applied only to loans secured by

\(^2\) Supra., Part II  
\(^3\) Gallert, Hilborn and May, Small Loan Legislation, Russell Sage Foundation, 1932, Pg. 19  
\(^4\) Massachusetts Acts & Resolves, Act 1888, Ch. 388
chattel mortgages, and in 1895, Wisconsin passed a law regulating loans on security of chattels. 5

In 1898, Massachusetts again proved herself to be a pioneer state when she instigated the first system of state supervision over the business of small loans. 6 This was a step so far in advance of anything that had previously been attempted that it was not immediately appreciated by other states.

"Between 1884 and 1889, the need for the regulation of small loans was recognized in nine states by legislation and was elsewhere the subject of discussion—The regulation of commercial enterprise was still in an elementary state. Different rates were being tried and different sized loans were being subjected to regulation." 7

B. ECONOMIC COMPETITION

During this era, the belief developed that legislative restriction was not the only method of regulation of the lending business. Many persons came to the conclusion that the effects of economic competition would provide a more satisfactory solution than would the enactment of statutes. This idea fostered the development of the remedial loan societies, semi-philanthropic organizations.

"The remedial loan societies were also called semi-philanthropic loan companies, because those who contributed funds ran the risk of loss of their principal and yet were entitled only to a limited return if the enterprise was successful." 8

5. Gallert, Hilborn and May, op.cit. Pg.21
6. Massachusetts Acts and Resolves, Act 1898, Ch. 577
7. Gallert, Hilborn and May, ibid, Pg.26
8. Robinson and Nugent, op.cit., Pg. 82
The first company of this type was the Collateral Loan Company of Boston, established in 1857. This idea spread rapidly through the United States and in 1885, Ohio passed a law authorizing this type of company. Minnesota, Missouri, New Jersey, Rhode Island and New York soon followed the example. It was New York that carried the idea of the remedial loan company the farthest and from the establishment of the first company in New York, the companies rapidly spread into all counties containing a city of over 25,000 population.

These corporations were empowered to make loans up to $200 with the charges set at 3% per month for the first two months and 2% thereafter, plus an initial charge of $3. Supervision of these corporations was placed under the state banking department which was also required to regulate the rates of interest in order to produce a net return of 10% on the capital investment.

The growth of these semi-philanthropic organizations was stimulated by the organization in 1909 of the National Federation of Remedial Loan Associations. The purpose of this organization is perhaps most clearly shown in the ideals stated in its constitution.

"The object of this organization shall be to encourage the formation of local organizations and to aid and direct persons interested in the work."

9. Robinson and Nugent, op. cit. Page 79
10. The Provident Loan Society, 1894
The remedial loan organizations played a special role in the development of loan regulation by helping, perhaps more than any other organization, to foster and spread the idea that the small loan business was a matter of public concern. Unfortunately they proved inadequate to meet the ever increasing demand for small loans from the growing wage-earning populace.\textsuperscript{13}

Attempts at regulation were largely ineffective during this era, as the problem was not seen as a whole although attempts were made to regulate segments of the whole. The legislatures did not recognize changes which were occurring in the economic structure. More and more, people were becoming dependent on wages for subsistence. The interruptions in the flow of this type of income caused by sickness, lay-offs, seasonal variations in employment and the like, made borrowing of small sums a necessity to a great number of persons. A large majority of legislators considered the loan business a social problem rather than an economic one and carried on the old cry of "stop the lending."\textsuperscript{14}

Perhaps the greatest defect in the laws of this period was that the majority of them placed the responsibility for their enforcement on the borrowers. These people were largely lacking in the necessary knowledge and ability to successfully assure their own protection.

\textsuperscript{13} Robinson and Nugent, op.cit., Page 79

\textsuperscript{14} Hubacheck, F. B. The Development of Regulatory Small Loan laws, Combatting the Loan Shark, Law and Contemporary Problems, Vol. 8, 1941 Page 110
EXPERIMENTATION

Many states had begun experimenting with loan laws during the early 20th. century. This experimentation ran the gauntlet from severe penalties (prohibitive legislation) to protective legislation of the regulated-commercial type.

It was not until the latter part of the 19th century that the states attempted to pool their experiences. The laws of the period, in one state or another, therefore, utilized all of the loan theories, (prohibitive, semi-philanthropic, non-regulated commercial and regulated commercial) outlined in Chapter Five. The prohibitive theory came to the test in Utah, North Carolian and Connecticut, New York, New Jersey and California pushed further experiments in semi-philanthropic organizations. Maine attempted legislation of the unregulated commercial type and the regulated and supervised commercial theory was being tested in Delaware, Michigan and Pennsylvania and, of course, was firmly established in Massachusetts.\(^{15}\)

The tendency was to recognize the need for higher rates, but these early permissive ideas still were inadequate. Unable to prevent fraud, the laws seemed, in many cases, to establish the precedent of high rates without providing compensating controls. One great defect was the method used to describe and limit maximum charges. Special charges, fees, discounts etc., were permitted and this practice of interest plus, enabled the unscrupulous lender to

\(^{15}\). Gallert, Hilborn and May, op.cit., Page 27-36
collect abortive returns on his loans.

The uncooperative experimentation by the several states was in great need of some force which would combine the failures and successes of each into a single unit capable of constructive analysis. In 1907, the Russell Sage Foundation supplied such a force by starting research into the small loan problem. For the first time, a national policy was formulated concerning small loan laws. Using the findings of this institution as a nucleus, the legislatures began to enact statutes which recognized the economic changes which made small loans necessary. They also recognize that it was essential to provide sufficient return to attract legitimate capital into the business and that the business should be subject to a regulatory system which would enforce a rigid code of conduct.

Gallert, Hilborn and May saw seven result from this period of experimentations, fixed by them as being from 1898 to 1910. These points are:

1. An attempt was being made to widen the scope of the small loan law to include all loans below a certain amount.

2. The maximum size of loans to be covered by the law was being arrived at through trial and error.

3. Although the necessity for charging higher rates on small loans was recognized, the actual rate had not been discovered.

4. Supervision of the business was being extended from the semi-philanthropic era into the commercial.

5. It was not yet generally recognized that to establish a monopoly for licensed lenders it was necessary to punish non-licensed operators.
6. It was recognized that the borrower should be given a detailed account of the loan transaction as well as receipts for payments.

7. The states had not yet profited largely from one another's experience—but the laws did contain elements of the sound idea later to come into successful practice. 16

COORDINATION

A. RUSSELL SAGE FOUNDATION AND THE NATIONAL FEDERATION OF REMEDIAL LOAN ASSOCIATION

The coordination instigated by the Russell Sage Foundation was continued by the cooperation of the National Federation of Remedial Loan Association, established in 1909 by non-commercial lenders. Throughout these years public interest in the small loan business was very high. The department of Remedial Loans of the Russell Sage Foundation was established in 1910, and the National Federation was working in close harmony. Together they made public recommendations for an adequate uniform small loans act and prepared and sponsored several bills before specific legislatures. This was a period of great legislative activity, during which some 22 states attempted to deal with the problem. Although much of this legislation was hasty and ill-advised, the National Federation and the Russell Sage Foundation attempted as far as possible to advise the legislators of their own findings and experience.

The Department of Remedial Loans believed, at first, that a maximum interest rate should not be over 2% a month. The recommendation

of a rate which was unquestionably too low for successful consumer lending operations resulted in strong opposition by these lenders. Independent lending organizations sprang up in several states and in Philadelphia in April, 1916, a group of representatives from these organizations met and formed the American Association of Small Loan Brokers. Two years later, (1918) the name was changed to the American Industrial Licensed Lender's Association. Its main purpose as stated in its first constitution was "to promote the welfare of all members of the association." 17 Its policy was to cooperate with state associations in an effort to secure laws and legal interpretations which would be "fair and practical." Mr. Ham, a representative of both the National Federation and the Russell Sage Foundation, attended the convention and, commending the aims of the association, promised his cooperation.

By 1915, despite all opposition, the theory, regulated and supervised commercialism, had been enacted in five states, Massachusetts, 1911, New Jersey, 1914, New York, Ohio and Pennsylvania, 1915. "The stage was thus set for the opening of the modern period." 18

The theory of legislative control had by now undergone a radical change. The theory of prohibition had died out almost completely and in its place had come the regulated-supervised commercial theory.


THE SMALL LOAN ERA

In 1916, a committee of the American Association of Small Loan Brokers called on the Russell Sage Foundation. After a series of conferences, they agreed to the drafting of a law to be called the Uniform Small Loan Act. The acceptance of the small loan act was very rapid. In 1917, the uniform draft was submitted to the legislatures of California, Illinois, Indiana and Maine. With the strong support of a number of local organizations, as well as the Department of Remedial Loans, the draft was made law in Maine, Indiana and Illinois. The California bill failed to pass the House by only a few votes. This bill was not adopted in its entirety by the three states but the variations, although not allowing as complete coverage as the bill intended, did not affect its essential aim.

After 1917, the Uniform Small Loan Act had become sufficiently well known to serve as a basis for small loan legislation in most states. The adoption of the basic ideas of the act spread rapidly from three states to five and then to twenty-five states. It has served as a basis for most of the laws in effect in the states today. A record of the enactments and complete revisions of the small loan laws inspired by the Uniform Small Loan Act is presented in the following chart. This chart lists laws without regard to the effectiveness of the law. It shows the years in which the states first enacted laws based on the Uniform Law or revised an earlier law. It can not be assumed that all these laws are effective since no state has put into effect a law which duplicated the Uniform Small Loan Law in its entirety.

ENACTMENTS OF SMALL LOAN LAWS SINCE 1916

1917 Illinois, Indiana, Maine, New Hampshire, Utah
1918 Maryland, Virginia
1919 Arizona, Colorado, Connecticut
1920 Georgia
1921 Iowa, Michigan
1923 Rhode Island
1925 Florida, Michigan (revision) Tennessee, West Virginia
1927 Missouri, Wisconsin
1928 Louisiana
1929 Missouri, Ohio (revisions)
1931 Oregon, California (revisions)
1932 New Jersey, New York (revisions)
1933 Indiana, West Virginia and Wisconsin (revisions)
1934 Iowa (revision) Kentucky
1935 Colorado, Illinois (revisions)
1937 Connecticut, Pennsylvania, Rhode Island (revisions) Arkansas Hawaii, Vermont
1939 California, Michigan (revisions) Minnesota, New Mexico, Canada
1941 Florida, Nebraska, Oregon (revisions) Oklahoma, Washington
1942 Louisiana (revision)
1943 Colorado, Maryland, Nebraska, Ohio (revisions) Idaho and Nevada
1944 Virginia (revision)
1945 Utah (revision)
1947 Illinois, Michigan, New Mexico (revisions)
1948 New Jersey (revision)
1949 Connecticut, California, New York (revisions)

20. Pollak Foundation, op.cit., Page 3
THE UNIFORM SMALL LOAN ACT

The first draft of the Uniform Small Loan Act was compiled in 1916 and spread its basic philosophy rapidly through the United States.

Although the act has been re-drafted six times, 1918, 1919, 1923, 1932, 1935 and 1942, in an effort to plug all loopholes, the section numbering and plan remain basically the same. This makes possible generalizations as to the essential provisions.

Sections, 1, 18 and 20 fix the scope of the act. Section 1 requires that those making loans of $300 or less at higher rates than the banking rate, be licensed. Section 18 carries these same provisions for single payment loans. These two sections state that loans of goods and the like are to be in the same class as money loans, all discounting etc., to be treated as interest. Section 20 exempts banks, trust companies, building and loan associations, credit unions, licensed pawnbrokers, etc., which do business under special charters.

Sections 2-9 set up the machinery for granting and revoking licenses, payment of application fees, filing of bonds etc. Section 10 gives the supervisory officer complete power to visit and inspect licensees and makes an annual examination mandatory. Section 11 requires that accounts and records be kept by licensees and requires an annual report to the supervisor.

Section 12 contain specific prohibitions against false advertising, transacting business under any name or at any place other than those stated on the license, and the like. Section 13 states that the licensed lender may lend money up to $300 and make charges, including
interest, at a rate not to exceed a specific percent per month on unpaid balances. Section 14 requires the licensee to give the borrower a statement of the loan, an itemized receipt for all payments, to cancel all obligations upon final payment, permit payment at any time and to display a schedule of charges. These two provisions are aimed directly at the loan shark since they prohibit the customary procedures under which he operates.

Section 15 limits up to $300 the indebtedness upon which the licensed lender may collect more than the contract rate of interest. Section 16 provides that purchase of wages or salary assignments under $300 is a loan and, therefore, under the provisions of the act. Section 17 requires that a wage assignment be signed by both husband and wife, unless separated for five months, and requires that a copy of assignments for future wages be delivered to the employer.

Section 19 makes violations of the major provisions of the act a misdemeanor and provides that any loan in violation of these acts is totally void and unenforceable. Section 21 authorizes the state supervisor to make rules and regulations for the proper conduct of the business.

The other provisions of the act are largely delegated to the establishment of mechanical processes and routine measures. The economic charge (the interest rate) has been changed as the needs of the business have required in order to insure both an adequate return to the lender and a minimum cost to the borrower. The original draft of the act recommends 3½% a month. In 1935, the sixth draft of the law provided for 2½% a month on the loan balance over $100, but kept
the 3½% maximum on loans of $100 or less. The seventh draft published in 1942, provided for 3% a month on loans up to $100 and 2% a month on the part over $100.

Through the use of these major provisions, the act provided the essentials of an effective small loan law. It provided for proper classification, an economic charge, a monopoly by licensees, and adequate penalties to make the requirements enforceable. 21

EXISTING LOAN LEGISLATION

Laws concerning the small loan business exist today in forty-two states. The existence of laws does not, necessarily, mean that effective loan regulation is present. Indeed, in some ten states, the laws are largely inoperative. The majority of the laws are based on the philosophy of the Uniform Small Loan Act but there is no state which exactly follows any one of the seven drafts of that law. These drafts were intended only as models and, of course, the earlier drafts are now inadequate and out-of-date.

The clearest picture of the state positions on lending can perhaps be gained from a classification of their regulation systems as, effective, partially effective, inoperative and "no laws." In classifying the state laws in existence today, the Uniform Small Loan Law may be used as a standard.

The following table shows six states which have no small loan law whatsoever, Kansas, Missouri, Montana, North Dakota, South Dakota

21. See Appendix #8
and South Carolina. There are also many small loan laws which have failed in their purpose of protecting the borrower. These laws have become inoperative chiefly because of four reasons: (1) the permitted rates have been too low to permit sufficient legitimate capital entry, (2) the rate provisions, as set up, are so complicated and involved that they favor and even, perhaps, encourage the operations of illegal lenders, (3) the permitted maximum rate has allowed extremely high rates on small loans, or (4) the law has failed to provide complete regulation of the various aspects of the business, permitting lenders to avoid the law by merely switching from one type of operation to another.

This indicates, then, that despite the glowing picture presented by the growth and speedy acceptance of such enlightened regulation as the Uniform Small Loan Law, there are still sections in the United States where the people are in desperate need of legislative reform. Anti-social lending has not as yet been completely abolished.

CONCLUSION

Loan regulation in the United States has had a varied and often confused history. The existence of the problem of usury was recognized at a very early date. Small lending was, according to tradition, considered a social evil and it was natural that the first attempts at solving the problem should be of a prohibitive nature.

As a partner to legislative attempts, there developed, during the early era, a belief that the force of economic competition would
solve the problem of lending. It was out of this idea that the semi-philanthropic societies grew.

A defect in the laws of this period was that they placed the burden of regulation on the one least able to carry it, the borrower.

From approximately 1898 to 1910, the states recognized the need for firmer action on the small loan front. They insitgated independent experimentation which utilized nearly all existing theories. This groping by the several states was rather ineffective because each tended to disregard the action of the sister states and could not, therefore, benefit from the successes gained, nor the failures suffered.

By 1910, the public interest in the lending problem was very great. The Russell Sage Foundation had been doing extensive research into lending operations. Working in close cooperation, the Russell Sage Foundation and the National Federation of Remedial Loan associations coordinated to a remarkable degree the actions of the various states.

With the organization in 1916 of a model law known as the Uniform Small Loan Act, the chaos which had previously been prevalent was rapidly reduced, and a majority of the states, using this model law as a basis, were able to enact comprehensive and effective small loan legislation.

The theory of regulation had, by now, undergone a radical change. The prohibitive theory had died out and in its place had come the regulated-supervised theory. The loan business was winning recognition and with its recognition came effective regulation.
### SUMMARY OF SMALL LOAN LAWS

(Abbreviations: USLL: Uniform Small Loan Law, Approx: Approximates, Dr: Draft)

<table>
<thead>
<tr>
<th>EFFECTIVE REGULATION</th>
<th>RELATION TO USLL</th>
<th>MAXIMUM RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARIZONA</td>
<td>Early dr: material variations</td>
<td>3%</td>
</tr>
<tr>
<td>CALIFORNIA</td>
<td>Two accts, taken together approx. 6th dr.</td>
<td>2% to $100 (2% if security is insured) 2% to $500, 5/6% to $2,000</td>
</tr>
<tr>
<td>COLORADO</td>
<td>7th Dr. features; material omissions</td>
<td>3% to 2% at $150</td>
</tr>
<tr>
<td>CONNECTICUT</td>
<td>Approx 6th dr. differs in form</td>
<td>3% to $100; 2% to $300; 1/2% to $500</td>
</tr>
<tr>
<td>FLORIDA</td>
<td>4th dr. plus later features material variations</td>
<td>3%</td>
</tr>
<tr>
<td>HAWAII</td>
<td>Approx 6th dr.</td>
<td>3% to 2% at $100</td>
</tr>
<tr>
<td>IDAHO</td>
<td>6th dr. with differences</td>
<td>3%</td>
</tr>
<tr>
<td>ILLINOIS</td>
<td>Approx 6th dr.</td>
<td>3% to $150; 2% to $300; 1% to $500</td>
</tr>
<tr>
<td>INDIANA</td>
<td>Approx 6th dr. administrative rate control</td>
<td>3% to 1/2% at $150</td>
</tr>
<tr>
<td>IOWA</td>
<td>Approx 6th dr. administrative rate control</td>
<td>3% to 2% at $150</td>
</tr>
<tr>
<td>KENTUCKY</td>
<td>Approx 6th dr. differs in form</td>
<td>3% to 2% at $150</td>
</tr>
<tr>
<td>LOUISIANA</td>
<td>4th dr. later features</td>
<td>3% to 2% at $150</td>
</tr>
<tr>
<td>MAINE</td>
<td>Early dr. later features</td>
<td>3% to 2% at $150; 25¢ minimum charge</td>
</tr>
<tr>
<td>MARYLAND</td>
<td>4th dr. later features by amendment, material variations</td>
<td>3%</td>
</tr>
<tr>
<td>MASSACHUSETTS</td>
<td>Prior to USLL approx. early drs. in substance-administrative rate control</td>
<td>2%</td>
</tr>
<tr>
<td>MICHIGAN</td>
<td>Approx 6th dr.</td>
<td>3% to $50; 2% to $300; 3/4% to $500</td>
</tr>
</tbody>
</table>

1. Pollak Foundation, op.cit Page 9

2. Rates per month on unpaid balance of $300 or less; unless otherwise indicated. Where more than one rate is given, the first rate is charged on a part of the balance up to a certain amount, and the second rate on the remainder. Thus, in Conn., the maximum charge for a month during which the balance on $1140 is 3\% of $100 plus 2\% of $40, or $3.80 a

3. Rate reduced one year after maturity to 8\% a year in Louisiana and 6\% a year in Mass. The 2\% rate in Mass., is considered to be a marginal in spite of the volume of business in that state.
<table>
<thead>
<tr>
<th>State</th>
<th>Effectiveness</th>
<th>Relation to USLL</th>
<th>Maximum Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minnesota</td>
<td>Approx 6th dr.</td>
<td></td>
<td>3%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>Approaches 7th dr.</td>
<td>Differences</td>
<td>3% to $150; 2 1/2% on $150 to $300, 3 1/4% to $100 to $300</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>Early dr. amended to resemble 4th dr.</td>
<td></td>
<td>2% fees in advance of $1 on loans up to $50, $2 on larger loans up to $300</td>
</tr>
<tr>
<td>New Jersey</td>
<td>Approx 5th dr.</td>
<td></td>
<td>2 1/2% to $100, 2% to $300, 1 1/4% to $500</td>
</tr>
<tr>
<td>New York</td>
<td>Approx 5th dr.</td>
<td></td>
<td>2 1/2% to $100, 2% to $300, 1 1/4% to $500</td>
</tr>
<tr>
<td>Ohio</td>
<td>7th dr. with variations</td>
<td></td>
<td>3% to $150, 2% to $300, 1% to $500</td>
</tr>
<tr>
<td>Oregon</td>
<td>like 5th dr. material variations, auto loans separately regulated</td>
<td></td>
<td>3%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>Resembles 6th dr, differs in form, lacks some features</td>
<td></td>
<td>3% to $150, 6% a year after 18 mos.</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>approx 6th dr.</td>
<td></td>
<td>3%</td>
</tr>
<tr>
<td>Utah</td>
<td>7th dr. with variations</td>
<td></td>
<td>3%</td>
</tr>
<tr>
<td>Vermont</td>
<td>Approx 6th dr.</td>
<td></td>
<td>2 1/2-2 1/2% at $125</td>
</tr>
<tr>
<td>Virginia</td>
<td>7th dr. with variations</td>
<td></td>
<td>2 1/2% to 3%</td>
</tr>
<tr>
<td>Washington</td>
<td>Approx 6th dr, with variations</td>
<td></td>
<td>3% to $300; 1% to $500, $1 minimum</td>
</tr>
<tr>
<td>West Virginia</td>
<td>like 4th and 5th drs.</td>
<td></td>
<td>3 1/2-2 1/2% at $150</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>Approx 5th dr differs in form, administrative rate control</td>
<td></td>
<td>2 1/2-2 1/2-1% at $100 and $200</td>
</tr>
</tbody>
</table>

**PARTIALLY EFFECTIVE REGULATION**

<table>
<thead>
<tr>
<th>State</th>
<th>Effectiveness</th>
<th>Relation to USLL</th>
<th>Maximum Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nevada</td>
<td>7th dr, inform; material deficiencies</td>
<td></td>
<td>3 1/2-3% at $100; $5 minimum, other charges</td>
</tr>
<tr>
<td>New Mexico</td>
<td>7th dr. material variations</td>
<td></td>
<td>5% on loans of $50 or less, larger loans 3% to $150, 2% to $300, 1% to $500</td>
</tr>
</tbody>
</table>

1. Rate reduced to 6% a year (a) after judgement (b) 90 days after adjudication in bankruptcy (c) 90 days after death of the borrower (d) 23 months after the date of making the loans.

2. The rate must be reduced to 10% a year on a balance which is outstanding 12 months after maturity and in certain other cases similar to those mentioned in the footnote to Virginia.
### PARTIALLY EFFECTIVE REGULATION RELATION TO USLLL MAXIMUM RATE

<table>
<thead>
<tr>
<th>State</th>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>OKLAHOMA</td>
<td>6th dr. material variations</td>
<td>10% a year plus fees</td>
</tr>
<tr>
<td>ALABAMA</td>
<td>inadequate law</td>
<td>8% a year</td>
</tr>
<tr>
<td>ARKANSAS</td>
<td>many features of USLL, no rate provision</td>
<td>10% a year (usury law)</td>
</tr>
<tr>
<td>DISTRICT OF COLUMBIA</td>
<td>inadequate law</td>
<td>1% a month</td>
</tr>
<tr>
<td>DELAWARE</td>
<td>inadequate law, supervision insufficient, suited to commercial and industrial banks</td>
<td>6% a year discount, plus 2% service chg. plus fines, for delinquency</td>
</tr>
<tr>
<td>GEORGIA</td>
<td>early dr. of USLL</td>
<td>1 1/2% a month</td>
</tr>
<tr>
<td>MISSISSIPPI</td>
<td>crude and confused, excessive fees, those charging more than 20% a year (a violation of law) to pay privilege tax of $2000; inadequate supervision</td>
<td>10% a year, fees</td>
</tr>
<tr>
<td>NORTH CAROLINA</td>
<td>inadequate law</td>
<td>6% a year, fees</td>
</tr>
<tr>
<td>TENNESSEE</td>
<td>resembles 4th dr, material variations</td>
<td>6% a year, fee of not exceeding 1% a month</td>
</tr>
<tr>
<td>TEXAS</td>
<td>very crude law, no size limit no supervision</td>
<td>10% a year (usury Law)</td>
</tr>
<tr>
<td>WYOMING</td>
<td>crude law</td>
<td>3 1/2% a month, on $150 or less, $1 for recording fee of $1 on laws of $50 or less</td>
</tr>
</tbody>
</table>

**NO SMALL LOAN LAWS:**
- Kansas, Missouri
- Montana, North Dakota, South Carolina, South Dakota

*Missouri legislature passed a new small loan act which will be effective October, 1951. It is structurally sound and improvement of the loan situation in that state may be reasonably expected.*
CHAPTER SEVEN

FEDERAL REGULATION

There has been no federal regulation of small loans as such. The regulation of lending has been carried on by the several states. Indeed, the main fight has been to make the legislators realize that this section of consumer credit had become an important and often necessary function. As realization of the importance of the small loan came, so came effective regulation.

In an effort to curb the inflationary pressures of credit in wartime, the Federal Reserve System issued for the government, a regulation designed to curb the activities of consumer credit. Regulation "W" specifically includes small loans. It is this evidence of recognition of the small loan business that makes the federal action an important consideration in any discussion on the regulation of small loans. The government through its regulation has recognized the vital role that consumer credit plays in the economy and the effect its operational practices have on vast numbers of people. It is apparent, therefore, that the business can no longer be called or regarded as an activity which falls somewhat outside the range of ordinary, ethical business operation in our economy. It is not a so-called "fringe occupation."

1. Regulation as used by the various states implies statutes or supervision and restrictions on lending charges and business procedures. The Federal Regulation "W" makes no attempt to intervene into this type of regulation, rather its purpose is to check the inflationary aspect of consumer credit.
REGULATION "W"

Regulation of Consumer Credit was first instigated in World War II, by the Board of Governors of the Federal Reserve System. In September, 1950 it was felt that there was again a strong tendency for the economy to become inflationary and the regulation which had previously been relaxed was, therefore, re-introduced.

The act in its entirety attempts to cover all phases of consumer credit. The scope of the act is best expressed by Section 1.

"The regulation applied, in general, to any person who is engaged in the business of extending instalment credit in amounts of $5000 or less, or discounts purchasing or lending on obligations arising out of such credit. It applied whether the person is a bank, loan company or finance company, or a person who is so engaged in connection with any other business, such as by extending credit as a dealer, retailer, or other person in connection with the selling of consumer's durable goods." 2

The act requires that all persons engaged in instalment sales or instalment loans be licensed by the board and register with the local Federal Reserve Bank within 60 days after the effective day of the act.

Section 4 of the regulation, deals with the general rules on instalment loans. It states that for certain listed articles, the principle lent shall not exceed the maximum loan value and that the maturity of the credit shall not exceed a specified maximum maturity. In the case of loans made on unlisted articles, or for unlisted reasons, the maximum maturity is also specified.

2. Board of Governors, Federal Reserve System, Regulation "W", Consumer Credit, Federal Reserve System, Section 1, Pg. 3
General instalment payments are required to be substantially equal in an amount that is to be made payable at approximately equal intervals, not to exceed one month and not to be less than $5 per month or $1.25 per week on the indebtedness of a debtor to the same creditor. The terms of payments must be set forth in a bona-fide record.

The lender must receive from the borrower a statement indicating the purpose of the loan. Loans to make down-payments on any article are prohibited.

There are certain exemptions to these regulations, however, For example; loans to business or agriculture people are exempt providing the money is used for that purpose, as well as loans to government agencies, religious institutions, loan for fire and casualty insurance, real estate, medical expense, disaster credit, etc.

The license of any registrant may be suspended by the board either in whole or in part after a reasonable notice or opportunity for a hearing has been provided. It may be suspended because of any wilful or negligent failure to comply with the regulations imposed by the Board of Governors.

CONCLUSION

This regulation by the federal government has restricted lending operations to a marked degree. It has regulated the size and type of loans to be made as well as providing a maximum repayment period. Even more important perhaps, is the inclusion of consumer loans in the regulation, indicating the great success the business has had in its fight to be recognized as a legitimate business
Should economic conditions warrant, federal regulation "W" will no doubt, once again be withdrawn. This should have no real effect on the effectiveness of regulation as this statute attempted to restrict rather than regulate the loan business.
CHAPTER EIGHT

RECENT TRENDS

Regulation is seldom static in a democracy. Changing public opinion forces legislators to constantly shift their aims and objectives. For this reason, if for no other, it is well to inquire briefly into the trends which at the present time appear to be indicative of future changes in small loan legislation.

INCREASED REGULATION

The history of regulation has been, until recently, a series of disjointed, disunited actions by the states. It was not until the development of the Uniform Small Loan Law, that the states became aware of the experiences and difficulties of their sister states and thought to profit by them. In fact, no state adopted the law in its entirety but amended and revised it according to its own whims. The result of this independent action of the states is that there remain in the United States some nine states with inadequate small loan laws and six states with no loan regulation whatsoever.¹

The increased activity of civic groups, the ever growing number of petitions which are being presented to the legislators of such poorly regulated states as Kansas and Missouri, indicate that the public is well aware of the necessity of introducing the regulatory methods which have been shown to be effective. This tide of feeling may well result, eventually, in the spread of comprehensive loan

¹ One of these six states, Missouri, has passed a small loan act which becomes effective October, 1951.
regulation into all the states of the Union.

The vast majority of the states today has effective regulation of small loans. There is a growing feeling that the effective operation of the business would be substantially increased if there were established one act which would set uniform rates and standard regulations for the country as a whole.2

Because the value of the dollar has depreciated during the past few years, several states have changed the maximum dollar limit to be governed by the small loan law. This action has expanded regulation upward into fields of lending hitherto untouched and where some regulation has long been needed. It will also bring greater protection to the borrower and serve to drive the loan shark into an ever narrower corner.

In the modern economy the use of consumer credit has increased tremendously in a multitude of directions. Time sales of innumerable commodities as well as small lending are a common occurrence today. The wage earner has come to depend on consumer credit to supply his wants and to maintain his standard of living. It is increasingly felt that the various segments of consumer credit are closely related in function. It follows, therefore, that comprehensive regulation which would cover all phases of consumer credit is necessary if the institution is to prosper and gain freedom from such unethical operators as the "loan shark."

2. For a more complete discussion of this point, the articles by G.G. Robert, FUTURE OF SMALL LOAN LEGISLATION, and by F.B. Hubacheck, THE DRIFT TOWARD A CONSUMER CREDIT CODE, Univ. of Chicago Law Review are recommended.
F. B. Hubacheck indicated these trends when he summed up the record of recent legislation:

"1. By slow and faltering steps society is bringing consumer creditors towards a harmonious system of regulation.

2. The strongest emphasis is on the maximum charge the creditor will be permitted to take.

3. Advancement toward a code of regulation has been forced by legislative recognition of isolated evils." 3

SELF REGULATION

Up to this point in our discussion, the term regulation of the loan business has implied interference by some outside force, usually by the state governments. There is another type of regulation, however, which, though often overlooked, may well be of great importance in the near future. This is self-regulation. Many persons remembering the abuses of the public welfare by the small loan businesses in the pre-regulatory era, hold a very dim view of the results of any attempt at self-regulation by the small lenders. It is a truism that regulation may be either good or bad. The development of adequate regulatory practices by the business presupposes intelligent management and high business morals. These two factors exist today, it may reasonably be expected that they will spread into more and more business organizations as time goes by.

There are today several factors which point to the fact that the management of the loan business is being carried on with an increasing amount of intelligence. There has been recently a great

3. Hubacheck, F. B. The Drift Toward A Consumer Credit Code, Univ. of Chicago Law Review, Vol. 16 #4, Pg. 628
deal of research done and books written about the "credit function". These books lay down general principles of credit to which there is rather complete agreement. Books filed away and unread are of no use to the managerial personnel. The important thing is whether these facts and principles of credit practices are known and used by the business men responsible for setting policies. We need only to think of the number of institutions, colleges and training programs which offer courses of instruction on credit and it becomes evident that there is a growing number of persons aware of the accepted basic principles of sound intelligent credit practices.

A development which seems to indicate that the teachings of the various institutions are being carried out, is the existence of a high degree of cooperation between the various companies engaged in the loan business, despite its rather intensive competitive nature. In the majority of states which have adequate loan legislation, there has been set up, by the loan companies, an organization generally known as a credit exchange. The primary function of these exchanges is to distribute information on "open accounts" among its members. The exchange is usually run by a board of governors, the members of which are representatives of the various loan companies which constitute the exchange. Monthly dues as well as fees for excess services rendered are paid by all who belong to the organization.  

Because the highly competitive nature of the business demands

4. An example of this type of organization is the Massachusetts Greater Boston Exchange Bureau which consists of some 100 members.
efficient management if the concern is to succeed it may be reasonably assumed that the average credit company is being run intelligently.

Whether there exist adequate moral standards in the small loan business is a question which, by its very nature cannot be proved or disproved by the mere listing of facts. Professor Robert Bartels points to several factors which seem to indicate that the greater percentage of the men engaged in the credit business have a growing awareness of their place in the social structure. He states that:

"Credit managers are becoming convinced of the important part of the role of consumer credit and the part it plays in business in general. Credit managers recognized the service they perform in providing consumers with funds to meet their needs. Credit managers recognize the inflationary and deflationary influence of credit policies."

It is admitted that none of these is universally realized, but the spreading force of these ideas is rapidly lifting the moral attitude of managers toward their business.

A growing moral standard together with intelligent operation of the loan business is evidence of the trend toward good self-regulation. This self-regulation cannot be expected to replace state regulation. It may be expected to supplement and re-inforce the legislation so that the borrower may look forward to better service as well as more adequate protection.

CONCLUSION

Recent trends would seem to indicate that well thought out, comprehensive legislation will spread, not only into those states that are...
at the present time lacking adequate protection, but also in all sections of the consumer credit field.

There is at present strong pressure by several organizations who are convinced that regulation should be made uniform over the whole country to prohibit confusion and overlapping authority, which is the realm in which the "loan shark" operates and prospers.

State supervision is rapidly being augmented by the lending companies themselves. The increased morality and intelligent operational procedures of the loan business have given rise to attempts at self-regulation which could be extremely beneficial to both the lender and the borrower.
PART FOUR

MASSACHUSETTS REGULATION
Massachusetts regulation of small loans is worthy of special note for several reasons.

Massachusetts has pioneered the development of effective regulation throughout the United States. Its act of 1911 anticipated the first draft of the Uniform Small Loan Law, published by the Russell Sage Foundation.

Massachusetts offers an excellent example of the benefits received by the public from efficient cooperation on the part of its licensed lenders with the authorities. It illustrates the superiority of the regulated commercial theory of loan regulation over other theories so far developed.

In order to understand the development of small loan regulation in Massachusetts, it is necessary to discuss the tortuous growth of regulation, the problems confronting the legislators, the interest rate, the loan shark, the contribution of the Bureau of Loan Agencies and the legitimate lenders, and the trends which are in evidence today.
CHAPTER NINE
NEED FOR REGULATION

The colony of Massachusetts Bay inherited, as did all the colonies, the traditions and legal procedures of the mother country, England. Business in the new country was carried on in much the same manner as the English businessmen, fathers and grandfathers of the colonists, carried on their affairs. It was unavoidable that the usurer should cross the ocean side-by-side with the hardy builders of a new world and a new way of life.

The strategic geographical location of Massachusetts with its fine harbor, quickly resulted in vigorous trading activities and the unscrupulous actions of usurers soon became evident. The inevitable attempt to restrain the money lenders was carried on by means of an adoption of the English usury laws. ¹

MASSACHUSETTS USURY LAWS

The colony of Massachusetts usury laws as enacted in 1641 and 1643, and revised and published by order of the General Court in October, 1658, state that:

"It is ordered, decreed and by this court declared, that no man shall be adjudged for the meer forbearance of any debt, above 8 pound in the hundred, for one year, and not above the rate proportionably for all sums whatsoever (bits of exchange excepted) neither shall this be a colour or

¹. The basis for usury legislation in the colonies was the English statute of Usury, enacted in 1711, which lowered the legal interest rate to 5%—12 Anne, Chapter 16. Although the statutes provided somewhat higher rates presumably to attract British capital for investment in the colonies.
countenance to allow any usury amongst us contrary to the law of God." 2

These usury laws were no more effective than the previous legislation in England.3 Businessmen and bankers were opposed to these restrictions which they declared were interfering with the adjustments brought about through unhampered economic forces. 4

In 1834, 202 business men of Boston "having long experienced the inconveniences arising from the existent usury laws" signed a petition urging that the Massachusetts Legislature repeal these laws. This petition offers strong evidence that the state usury laws were evaded on a large scale.

"We would respectfully direct the attention of the Legislature to the numerous modes that have been devised for evading the laws; modes of transacting business, which, besides being circuitous and inconvenient, and besides taking away the sanction and protection of the law from those who engage in them, leaving no security but what is termed honor, thus increasing the risk, and of course the premium paid--besides these evils, which are loss of time, money comfort and security--produce a fearful disregard of the laws, and establish a precedent of the utmost danger, while they tend to throw pecuniary negotiations in the hands of unprincipled and dangerous men. We need not specify the various methods by which the law is now evaded, and by which interest above six percent is taken in defiance of law, under the various names of "premium," "exchange," and "commission"; for these are matters of notoriety, and need only be alluded to in order to secure the attention of the Legislature. So long as our laws remain unchanged, it is vain to hope for a better state of things." 5

2. Massachusetts The Colonial Laws of Massachusetts, with supplements 1650 to 1673, Boston, 1889, Pg. 198
3. Supra., Part II
4. The age-old argument that the "laws of supply and demand" will cure all ills, is heard even today.
5. Ryan, F.W. Usury and Usury Laws, Houghton Mifflin Co., Boston, 1924 (Appendix C)
Massachusetts repealed its usury laws in 1867, primarily as a result of a speech made by Representative Richard H. Dana Jr. 6

Convinced that this type of prohibitive regulation of small loans had been proven ineffective, the legislature to this day has imposed no penalty for usury on loans over $1,000. 7

THE INTEREST RATE

Massachusetts has experienced the same difficulties in establishing a "fair" interest rate as have other states. Massachusetts legislators and citizens, like the legislators and citizens of other states, have been confused over what constitutes a fair return, the effects of too stringent interest rate policies, and the actual return provided by interest rates figured on a compound basis.

The legislators have, over the years, experimented with several legal maximum rates of interest on small loans. In 1888 a law was enacted which set the maximum interest on loans under $1,000 at 18% per year, plus a maximum fee of $10 for actual expenses. The Massachusetts Act of 1911 set the interest rate at 3% per month. 8

6. Dana's argument followed the same general line adopted by the 18th-century economists Turgot and Bentham who held that laws restricting the charging of interest were mischievous and easily evaded; that the market rate of interest was not influenced by arbitrary rates set by legislature. For elaboration see Ryan, Usury and Usury Laws, Ch.6-7.

7. Ryan, F.W., op.cit., chapter 1

8. Massachusetts Acts and Resolves, 1888, Ch.388

9. ibid., Laws 1911, chapter 727, section 7
The Supervisor of Loan Agencies, acting upon the authority granted him under this law, set a flat charge of 15% which was to include all charges and interest, upon loans of $10 or less for one month. The rate in effect today, 2%, is considered to be a marginal one, in spite of the volume of business in the state.

A. INTEREST COSTS IN MASSACHUSETTS

The question of the interest rate is essentially a practical one.

"In its final analysis, it resolves itself into the question, what is the lowest rate that will attract private capital to the business of making the kind of loans which the regulatory act contemplates?"

In determining this rate, it must be born in mind that, while there are cost factors of making a loan which are controllable by the lender in the management of his business, there are many costs which are determined for the lender by the nature of the borrower with whom he does business and by the conditions under which he operates.

The expenses of the small loan broker such as investigation and payment recovery are higher than similar expenses of such lending institutions as banks, which in general cater to a different type of borrower. It is axiomatic, then, that in order to insure an adequate return on capital investment, interest charges on loans made

10. Massachusetts Information, Rules and Regulations Relating to the Business of making Small Loans Commonwealth of Massachusetts, Jan.1, 1913
13. Neifeld, Mr. M.R. Personal Finance Comes of Age, Harper & Bros., 1939, Ch. 25, pg. 204
by small lenders tend to be higher than those charged on other types of contract loans.

Maximum rates of 3%, and more recently 2% per month, on unpaid balances, as allowed by the Massachusetts Small Loan Laws, have not resulted in excess profits being realized by the licensed lenders of the state. This fact is born out by an analysis of expenses to the lender per account, and of the annual net earnings of lenders as published by the Bureau of Loan Agencies.

<table>
<thead>
<tr>
<th>EXPENSE TO LENDER PER ACCOUNT PER YEAR</th>
<th>1941</th>
<th>1942</th>
<th>1943</th>
<th>1944</th>
<th>1945</th>
<th>1946</th>
<th>1947</th>
<th>1948</th>
<th>1949</th>
</tr>
</thead>
<tbody>
<tr>
<td>EXPENSE TO LENDER PER ACCOUNT PER YEAR</td>
<td>22.38</td>
<td>25.56</td>
<td>27.96</td>
<td>28.91</td>
<td>31.94</td>
<td>28.10</td>
<td>27.84</td>
<td>26.76</td>
<td></td>
</tr>
<tr>
<td>ANNUAL NET EARNINGS</td>
<td>6.52%</td>
<td>5.92%</td>
<td>4.47%</td>
<td>4.37%</td>
<td>4.50%</td>
<td>4.40%</td>
<td>3.49%</td>
<td>2.67%</td>
<td>3.84%</td>
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<tr>
<td>AVERAGE LOAN MADE</td>
<td>150.08</td>
<td>153.20</td>
<td>148.16</td>
<td>151.23</td>
<td>157.69</td>
<td>164.35</td>
<td>173.53</td>
<td>184.20</td>
<td>189.69</td>
</tr>
</tbody>
</table>

The Russell Sage Foundation of New York, an organization which has done extensive research into the problem of regulation of the small loan business and which, perhaps, has aided the development of effective regulation more than any other single organization, advised that the fair maximum lawful rate, fair to the borrower and sufficient to give legitimate capital invested in the business a fair return, is:

15. Bureau of Loan Agencies
   Annual Report, Sept. 30, 1945, Pg. 11
   Ibid

16. It must be realized that, according to law, this bureau is concerned only with loans of $300 or less.
"3½% 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 centum (2½%) per month on any remainder of such unpaid principal balance." 17

THE LOAN SHARK IN MASSACHUSETTS

The birth and spread of the loan shark came just after the end of the Civil War. 18 Massachusetts had repealed its usury laws, which were largely ineffective at any rate, and had not yet developed substitute legislation which could effectively deal with the influx of loan sharks. 19

Taking advantage of the necessity and ignorance of his prey, the loan shark worked quickly and successfully using all the underhanded tricks of his trade. Many borrowers were forced to pay from 15% per month to 180% per year to 30% per month and 360% per year for their small loans. Thousands of employees of the city of Boston were in the coils of debt and their pay was each week attached by the lenders. Over the years the rates charged in the City of Boston ranged from 3-10% a month in the period 1887-1888; 200-300% a year in 1911; and in 1915-16, 15% a month prevailed on $10 or less, 8-10% a month, 200% a year. 20

The Boston Legal Aid Society, an organization which offers legal council to the needy and desperate persons of the district, became increasingly aware of the plight of hundreds of Massachusetts' citizens. It, as well as other charities and social agencies, was flooded with

17. Infra., Appendix B
18. Supra, Page 45
19. Mass. laws from 1888 to 1916, although pioneering loan regulation in the U.S., either provided for incomplete supervision, or restricted only special types of security.
20. Robinson and Nugent, op.cit., Chapter 3, page 57
appeals from persons who were hopelessly involved with the loan sharks. Responding to the pleas, the Society, in cooperation with the City of Boston Law Department and a member of the House of Representatives, initiated the advice and help of the Russell Sage Foundation. As a result of this action the legislature of Massachusetts passed in June, 1916, a small loan act which spelled "finis" to the loan shark in the Commonwealth. Today Massachusetts is included in the list of well regulated states as compiled by the Pollak Foundation for Economic Research.

CONCLUSION

As the problem of lending in Massachusetts mounted, the people grew dissatisfied with the effectiveness of the existing usury laws and so repealed them in 1867.

The development of new, more effective legislation was hindered considerably by misunderstanding over the interest rate, especially over the net return enjoyed by lenders and the mathematical consequences of "compounded interest!"

The need for effective regulation was emphasized by the continual growth of "loan sharks", some of whom were charging as much as three hundred per cent (300%) per year.
CHAPTER TEN
DEVELOPMENT OF STATE REGULATION

The development of small loan regulation in Massachusetts has been of a tortuous nature similar to that experienced by the other states. Massachusetts is unique, however, in that it has developed a dual system of legislative control. For loans of $300 and less, the Small Loan Law was enacted, and for those loans under $1,000 not covered by the Small Loan Law, a Tender Act was made effective.

THE TENDER ACT

To compensate for the lack of any usury law, the legislature of Massachusetts in 1888 enacted a statute which is unique in the annals of United States Law. Originally the Tender Act applied to all loans of less than $1,000, but with the enactment of the Small Loan Law, it is now taken to apply to those loans of less than $1,000 which are not covered by the Small Loan Act. Rather than prohibit the lender from charging more than a certain maximum rate, the Tender Act provides that the borrower may discharge his interest obligation by tendering the principal amount due plus interest at the rate of 18% on unpaid balances and a $5.00 expense fee. The lender may charge more, but the borrower may insist on his right not to pay more. The Statute imposed some additional restrictions on the lender, but it provides for no state supervision. The revision of 1946 states that:

"Section 1. Chapter one hundred and forty of the General laws is hereby amended by striking out section ninety, as amended by section one of Chapter one hundred and seventy-nine, of the acts of nineteen hundred and thirty-four and inserting in place thereof the following:—SECTION 90. A loan of less than one thousand dollars made at a rate of more than six per cent per annum shall be discharged upon payment or tender by the debtor of the principal sum actually borrowed, with interest for the period between the borrowing of said money and the payment or tender hereunder at the rate agreed upon if said rate is not more than eighteen per cent per annum, or at the rate of eighteen per cent per annum, if the agreed rate is in excess thereof, for any part of the period occurring prior to the termination of one year after maturity, and in either case at the rate of six per cent per annum for any part of the period occurring after the termination of said year, and a sum not exceeding five dollars for the actual expenses of making and securing the loan; but the lender shall be entitled to interest for six months from the time of the borrowing at said agreed rate or at said rate of eighteen per cent per annum, as the case may be, if the debt is paid before the expiration of said six months. All payments in excess of the rate or rates therein required for discharge by payment or tender shall be applied to the discharge of the principal and the borrower shall be obliged to pay or tender only the balance of the principal and interest, or at said rate or rates, due after such application. This section shall not affect so much of section three of chapter one hundred and seven as provides that if there is no agreement for a different rate the interest of money shall be at the rate of six dollars upon each hundred dollars for a year. If the action is brought upon a loan coming within the purview of this section, the verdict or finding entered for the plaintiff in such action shall in no event exceed the amount that would be required to discharge, by payment or tender, the indebtedness at the time of such verdict or finding. Any agreement whereby the borrower waives the benefits of this section or releases any rights he may have acquired by virtue hereof shall be deemed to be against public policy and void. If, after all deductions or payments, whether on account of interest, expenses or principal made substantially, contemporaneously with the making of the loan, the amount retained by the borrower be less than one thousand dollars, the transaction shall be deemed to be a loan in the amount of the sum so retained by the borrower after such deductions or payments, notwithstanding that the loan be nominally for a greater sum.

SECTION 2. This act shall apply only to loans made after its effective date, April 22, 1946."

2. Massachusetts, An Act Relative to the Rate of Interest on Certain Loans of Less Than One Thousand Dollars., General Laws, Ch. 140
Inflation, together with the reduction to 2% per month of the maximum rate of interest under the Small Loan Act, has, in recent years, substantially increased the proportion of loans made by the small loan licensees above three hundred dollars.3 These loans, due to the structure of the Tender Act, are not subject to state regulation as provided under the Small Loan Law.

The recent increase in the number of loans made under the Tender Act brings to light a serious weakness in the effectiveness of Massachusetts regulation of small lending. The act, although it imposes certain restrictions on the lender, provides for no system of state supervision. The initiative in correcting illegal lending practices rests upon the borrower himself. History has shown that the typical borrower comes from the low income brackets, and seeks badly needed funds from loan companies rather than from banks because he lacks the necessary security to negotiate such a loan. The average borrower is also very likely to be completely ignorant of his rights and duties under this statute, if he is aware of the existence of the law at all. For all practical purposes therefore, there is no enforcement of the law except that which the lender imposes on himself.

A large number of the loan companies now operating in Massachusetts are controlled by legitimate capital investors who scrupulously stay within the law. They have as great, if not greater, fear of the label,

"loan shark" as does the general public. Legitimate capital investors steer clear of illegal operations for two principal reasons: (a) because of the disastrous effect the label "loan shark" would have on their business and (b) because a growing majority of these companies have developed a feeling for their place and duties in society. It would be, however, extremely idealistic to suppose that all lending is carried on by lenders with high morals and a concern for long run operations as opposed to opportunites for high profits in the short run.

EARLY REGULATION

A. LEGISLATIVE ACTION

The first small loan law in Massachusetts was passed as early as 1898. This act required the licensing of all persons engaged in the business of making loans for less than two hundred dollars at a rate greater than 12%. The licensee was required to post a bond, to file a sworn statement as to his name and place of business, and to notify the correct authorities as to any change of address or name. The law further stated that any unlawful amount of interest collected could be recovered, that the mortgage or pledge was to be discharged on payment of the sum due, that the mortgage or pledge was not valid unless it stated the amount of the loan, and that a receipt was to be given for any payment on account. The act established a penalty for non-licensed lending of not more than $300 or imprisonment for not more than sixty days, or both. The effective date of this statute was set as September 1, 1898. 4

There was no change in loan regulation for some ten years. Finally, an act was passed, effective September 1, 1908, which reiterated the necessity for lenders to be licensed and which empowered the licensing officer or board to establish regulations respecting the operating of the business and the rate of interest charged. It added, also, that any assignment of wages for securing loans was not valid unless it was accepted in writing by the employer and filed and recorded with the City Clerk. In the case of a married man, no assignment of wages was valid without the written consent of the wife. The penalty for non-licensed lending was reaffirmed.  

B. ECONOMIC COMPETITION

The belief in the power of the "law of supply and demand" to cure all ills was no less strong in Massachusetts than in other states. It was, in fact, in Massachusetts that the first loan company established according to this belief was created. In 1857, the first remedial society began business, and was called the Collateral Loan Company of Boston. In Boston also, the Workingmen's Loan Association, the first remedial society to lend on chattels, was organized in 1888. (These two chartered companies were engaged in the business of making small loans and were licensed for the year ending September 30, 1950, according to the report of the Bureau of Loan Agencies, September 30, 1949.)

5. Massachusetts Acts and Resolves, Act 1908, ch. 605
6. Supra., Page 54
7. Robinson and Nugent, op.cit., Page 79
A similar society was organized in Worcester, Massachusetts in 1896.

In June, 1909, a convention of remedial loan associations was held at Buffalo, New York (upon the suggestion of W. N. Finley in March of that year), and the Collateral Loan Association of Boston, and the Worcester Collateral Loan Association of Worcester were numbered among the eleven societies present. The result of the convention was the organization of the National Federation of Remedial Loan Associations, an institution which greatly stimulated the promotion of remedial loan associations throughout the nation.

Although the remedial loan societies have suffered a great decline in importance as lending agencies (there are only two in existence today in Massachusetts), they played an important part in helping to spread the idea that the small loan business was a matter of public concern; an idea which was vital to the development of effective regulation.

EXPERIMENTATION

From 1911, when the legislature of Massachusetts appointed a special commission to investigate small loans, to 1916, Massachusetts went through a period of legislative experimentation.

8. Robinson and Nugent, op.cit., Page 84

9. Two other developments which are of importance to the loan business sprang up about the same time as the organization of the National Federation of Remedial Loan Associations. The story of the development of Credit Unions and Morris Plan Companies, is of considerable interest. It is not felt that they are pertinent to the discussion involved, as Credit Unions are regulated under different statutes than are Small Loan Companies and as Morris Plan Companies have ceased operation in Massachusetts. For an excellent discussion of Credit Unions see CREDIT UNIONS IN MASSACHUSETTS, Snider, Joseph L., Cambridge, Harvard University Press, 1939
Because of a growing awareness and concern over the plight of people caught in the maw of the loan shark (interest rates as high as 1300% per year have been charged on small loans\(^\text{10}\)) the Massachusetts legislature created a special commission in 1911 to investigate the loan problem. The committee recommended that there be established a reasonable rate of interest on small loans and that there also be established a centralized control of Massachusetts' lending by the creation of a state supervisor.

The Act of 1911 was passed prior to the first draft of the Uniform Small Loan Law (a reform proposed by the Russell Sage Foundation as a result of its extensive research into the field, and which has been adopted either in full or in part by most states having effective small loan law.) The Massachusetts act anticipated this draft in substance. The act established the office of the State Supervisor of Loan Agencies and required that all persons making loans of $300 or less, and charging more than 12% per year interest, obtain a license from the supervisor. The license fee was $100 and the posting of a $5,000 bond was required. The supervisor was to investigate the business of each licensee at least one time a year and was, therefore, to have free use of the vaults, books and papers of each business firm. Annual reports were required from each lender, giving any information demanded by the supervisor. The license contained the name and place of business and was to be kept posted in a conspicuous place. The supervisor was to establish the interest rate at a figure not to exceed

3% a month and to establish the regulations as to the conduct of the business. Loan contracts were to state accurately the full details of the loans and a receipt had to be given for any payment of account. Lending without a license was punishable as a misdemeanor by fine or imprisonment, or both. A licensee who violated the law was punishable by revocation of his license and by a fine. The Courts of Equity were given the power to declare the transaction void and a borrower could recover the excess interest paid and twice the legal costs. The statute further said that 10% of each payment of wages was to be exempt from liability under wage assignments and that such assignment must be accepted by the employer, consented to by the wife of a married man, and filed and recorded with the municipal clerk.11

This act of 1911 marked a great advance in small loan legislation as it made an effort to provide a sufficient return on capital, proper supervision, a monopoly to licensed lenders by punishing non-licensees, and publication of the identity of the lender and of the transaction. In an effort to plug the loopholes in the law as they appeared, several amendments were subsequently passed.

In 1912 an amendment was passed which provided that payments to residents by foreign lenders (out of state) were loans, that loans with excess interest charges or those made by non-licensees might be declared void, and the excess interest refunded to the borrower. This correction was necessary as the 1911 act did not distinctly provide that transactions made by non-licensees could be void.12

12. ibid., Acts 1912, ch. 675
In 1913 there was passed an act which provided that the term, "interest", should include all charges, and which defined persons engaged in the business of making loans.13

COORDINATION

Prior to 1916 Massachusetts borrowers had been forced to pay up to 360% interest per year on small loans. Although the law of 1911 had fixed the charge at 3% per month, the Supervisor of Loan Agencies, in exercising his powers and believing it necessary, allowed lenders to make other charges for expenses in addition to the flat 3% per month. Thousands of people, unable to pay such high interest rates, sank deeper into debt, and it was not long before a good portion of their weekly wage was being attached by the lenders. Charities and social agencies were flooded with appeals for aid from the desperate. The knowledge of the hardships caused by lenders soon spread over the state and there arose a great deal of feeling against these lenders.

A. AID OF THE RUSSELL SAGE FOUNDATION

The City of Boston Law Department, together with aid societies and members of the House of Representatives, requested the aid of the Russell Sage Foundation in formulating some reasonable solution to the loan problem. The foundation had carried on an extensive investigation into this very problem. It advised Massachusetts that a rate of 3½ or 3% a month would be fair to the borrower and adequate to insure a return on capital investment sufficient to induce and maintain the operation of the business by legitimate interests. This rate, as proposed by the

13. Massachusetts Acts and Resolves, Acts 1913, Ch.347
Russell Sage Foundation, was to include all charges of every type and was to be computed on the unpaid balance.

A bill to fix the maximum legal charge at 3% per month was drafted. It was supported by the Governor who said, "Some of the most cruel things that happen in our society result from the extortion that is sometimes produced. The 8% or 10% per month often paid as interest devours the wages of the borrower. It is important that legislation be passed doing away with the abuses connected with the making of small loans." The bill was also supported by the Mayor of Boston, by labor and religious societies, by newspapers and by thousands of private citizens. The bill passed the house by a unanimous voice vote, and passed the senate by a vote of 30 to 3.

This act stated that the legal maximum interest rate of 3% per month was to be computed on the unpaid balance. All additional charges were prohibited.

The act of 1919 created the office of Commissioner of Banks and placed the Supervisor of Loan Agencies under the control of this office.

The act of 1934 limited recovery on illegal loans to the actual amount of the loan plus charges. It declared that any waiver of this provision was contrary to public policy and it defined a loan as the amount actually received by the borrower after any authorized deductions by the lender or payments on account by the borrower were made.

11. Mass. Assoc. of Personal Finance Companies
13. ibid., Acts 1919, ch. 350
15. ibid., Acts 1934, ch. 179
Effective October 1, 1937, an administrative order was issued which established the maximum rates of interest at 3% per month on the first $150 and 2 1/2% per month on the remaining amount on unsecured loans; at 3% per month on the first $150 and 2% per month on the remaining amount on secured or co-maker loans; at 2% per month on loans secured on real property; and at 1% per month on loans secured by stock, bonds and insurance policies. 18

The amendment of 1941 provided in section 2 that:

"This act shall apply in the case of any transaction entered into prior to, on or subsequent to its effective date which involved or involved any note or other instrument evidencing the indebtedness of a buyer to the seller of goods, services or insurance for a part or all of the purchase price." 19

B. THE OPPOSITION

An account of the development of laws and amendments such as the foregoing is apt to give the impression that such action was unopposed independent action on the part of the law makers, that they, in some vaulted chamber, proposed such statutes when the occasion arose. Such was not the case. In the development of loan legislation, the underlying pressures which brought about these acts cannot be overlooked.

The development of the law of 1916, for example, was accomplished only after the public was aroused and demanded action from the law-making bodies of the Commonwealth. Accompanying public demand was the action of the Boston Legal Aid Society which endorsed the bill and which provided case records to substantiate the claims of existing inequities.

19. Massachusetts Acts and Resolves, 1941, Sect. 2
There have been strong forces fighting any new development in loan legislation. Opposing a proposed reduction of interest, the Massachusetts Association of Personal Finance Companies published, in 1934, a powerful document entitled a "Brief in Support of the Present Massachusetts Law, Governing and Regulating Small Loans."

The struggle involved in the passing and enforcing of acts can best be illustrated by citing a few of the cases which have entered the courts, as each law was tested or as attempts were made to circumvent the law.

In 1900 there was legal action which contended that the statute of 1898 relative to small loans and the redemption of the security, "was vague, defective, uncertain and silent upon essential points, and hence void." It was alleged that Section 1 of the above act did not set a penalty and that Section 10 did not define the offense. It was further contended that the statute was silent as to the period of time for which the charging of more than 12% interest was unlawful.

The state maintained that the wording of Section 10 was such that it did indeed set out an offense and that, while section 1 did not set out a penalty, "the office must be proved by showing a number of distinct acts of the kind forbidden in section 1." The state further maintained that it is plain that in the absence of a stated time, the interest was to be taken as a "per annum" rate.

On the basis of these arguments by the state, the appeal was dismissed and the exceptions overruled. 20

20. Commonwealth vs. Morris (1900) 176 Mass., 19
The case of Thomas vs Burnce, 1916, dealt with the law of 1911 as amended in 1912. A borrower attempted to recover in equity for interest paid in excess of the established rate. Upon hearing the case, the court decided that there were grounds for a recovery under equity according to law and "therefore a decree should be entered overruling the demurrer and ordering the defendant to answer over." 21

A case which came before the courts in 1929 gives a good example of the complicated transactions which were carried on in attempting to evade the law. A Mr. Wall had, at different times, made four notes for a Mr. Cuneo; a four month note at $150, two four month notes at $200, and a three month note for $200. Cuneo sold these notes to the Realty Investment Company, which was headed by Mr. Bornstein and which was not licensed for lending. The $150 note was sold for $125, each of the $200 notes for not more than $175. The discount rate for the $150 note was, therefore, 60% per year, the three month $200 note was discounted at not less than 57 1/10% per year and the four month $200 notes at not less than 42 8/10% per year. The Realty Investment Company then sold the notes to Glickman for $700. Glickman was ignorant of the standing of the realty company.

It was held that, as the small loan act prohibited un-licensed lending and prohibited an excessive interest rate, the loan might be declared void, in equity upon petition by the person to whom the loan was made. "The plaintiffs were not required to make payment or tender of the

amount actually loaned as a condition to the maintenance of the suit." 22

This case established the fact that, although the law provides that
the loan may be "declared void in equity", the loan is not simply
voidable, but is void "ab initio" (from the beginning) and can not be
collected by the holder.

"Special interests" are still hard at work in Massachusetts, as in
all other states, to retard, stop or even nullify legislative action
which conflicts with their "profit" opportunities. It is apparent and
important, therefore, that the government and the general public be
constantly on the alert, to be continually striving for "fair" regulation
of small lending.

The development of the loan law in Massachusetts indicates a
growing understanding and appreciation of a series of principles
concerning loan regulation which have given vitality to the regulations
and which have dealt a death blow to the theory of prohibition. These
principles may be set down as follows:

1. The business was recognized as a public necessity.

2. To obtain sufficient capital to supply this necessity
the law had to allow the business to be conducted on a
commercial basis, and to authorize a return which would
attract into the field enough capital to supply the needs
of borrowers.

3. This return had necessarily to be above the usual legal
contract rate and the conventional banking rate of the state.

4. In consideration of this higher return on loans, the
business had to submit to public supervision and regulation.

5. Such supervision and regulation were necessary to prevent the lenders from abusing their privileges and to protect the section of the public most needing protection.

6. The law had to contain certain regulation for the conduct of the business, which experience had shown to be necessary.

7. The law had to govern all loans below a certain amount, except such as were otherwise specially regulated by law.

8. The penalties of the law had to be such that the law would be effective." 23

CONCLUSION

Massachusetts has two acts governing the lending of money: The Tender Act which regulates loans of less than $1,000 not covered by the Small Loan Act, which allows for an interest charge of 18% on the unpaid balance plus a $5 expense fee; the Small Loan Act which regulates loans of $300 and less and allows for an interest charge of 2% per month on the unpaid balance including all charges.

The development of an effective Small Loan Act was the result of much experimentation. It was an issue over which there were many bitter battles. The advantages of the regulated-commercial theory of lending control was finally realized and Massachusetts with the aid and council of the Russell Sage Foundation of New York, developed a law which protected a great majority of its borrowers from the "loan shark."

CHAPTER ELEVEN

EXISTING LOAN REGULATION

After much experimentation and effort, Massachusetts has developed a type of regulation which is considered to be among the most effective in the United States.¹ The Russell Sage Foundation of New York and the Massachusetts Bureau of Loan Agencies have contributed a great deal in making the law efficient.

THE LAW

The small loan law in existence today is basically that statute enacted in 1916.² The several revisions have made it a "tighter" law; that is, they have plugged up any loopholes that became evident as the law was put into practice. One of the outstanding features of the Massachusetts small loan law of today is that it has set one of the lowest legal maximum rates of interest (2% per month) in existence in the United States, and has, at the same time, practically eliminated the loan shark.

The Massachusetts law is considered to be an effective one by most authorities.³ Despite the fact that the law lacks several recent improvements which have been instituted into the Uniform Small Loan Act, the average borrower of money need no longer fear being exploited by unscrupulous loan sharks. The effectiveness of the Massachusetts

1. Pollak Foundation, op. cit., Page 10
2. Appendix C
3. Including the Supervisor of Loan Agencies, the Pollak Foundation among others.
law is to a large degree a direct result of vigorous activity by the Bureau of Loan Agencies.

THE BUREAU OF LOAN AGENCIES

The Bureau of Loan Agencies is entering into its fortieth continuous year of operation. The act of 1911 established the office of the State Supervisor of Loan Agencies, giving him broad supervisory powers. On September 20, 1911, E. Gerry Brown was appointed the first Supervisor of Loan Agencies. His appointment was confirmed by the Executive Council on December 20, 1911.

The lenders of this period had assumed certain privileges in as much as they had not been expressly forbidden by law. In an effort to reform these practices, the office of the Supervisor's first action was to attack these interpretations of the law. The power of the Supervisor and the constitutionality of the whole act were tested in the Courts; "the decision in favor of the Commonwealth reached far beyond the claims of the contestant." 

From the date of its creation, the Bureau of Loan Agencies has been very efficient. It has been one of the most important factors in making Massachusetts small loan laws effective. It has enforced the law and, of almost equal importance, enlisted the cooperation of the legitimate lenders of the state, as well as several welfare and charitable organizations.

4. Massachusetts Acts and Resolves, Acts 1911, Ch., 727
5. ibid., Acts 1919, Ch., 330 placed the Supervisor under the office of the Commissioner of Banks.
7. ibid., pg. 8
ENFORCING THE LAW

The Bureau, consisting of the Supervisor, three clerks, one chief clerk and four travelling examiners are responsible for enforcing the Small Loan Law of Massachusetts. The examiners make periodic checks upon the business operations of the lenders, especially the interest charged by all the licensed lenders in the state.

To facilitate the enforcement of the law, and to encourage cooperation of the lenders, the Bureau publishes and distributes instructions to applicants for a loan license and regulations relating to the small loan business. These instructions and regulations cover such items as: the formal requirements and procedures to be carried out in order to obtain a license to operate a small loan business, capital requirements, computation of charges, payment of loans, collection of loans, books of account and audits, monthly reports and advertising regulations. The lender has at hand at all times, therefore, an up-to-date statement of his rights and duties as established under the state lending law. These publications keep the lenders well informed and therefore encourage their cooperation as well as making the work of the Bureau of Loan Agencies easier.

CONCLUSION

The Massachusetts small loan law of 1916 is the basis for state regulation today. Several revisions of the law have been made to keep it in line with modern developments.

8. For a reproduction of these instructions and regulations see Appendix D
The Russell Sage Foundation of New York lent its experience and knowledge of lending problems to the Massachusetts legislature thereby contributing much to the development of a "good" law.

Massachusetts has not complied as closely with recent revisions of the Uniform Small Loan Law as have other states. It has retained a very effective law, however, chiefly through the efforts of the Bureau of Loan Agencies, which was created in 1911, to supervise lending in the state. The Bureau has efficiently enforced the law by publishing and distributing instructions to applicants for a loan license, enforcing regulations relating to the business of making small loans, by making periodic inspections of the licensed lenders of the state, and by enlisting the cooperation of licensed lenders and various charitable organizations.
CHAPTER TWELVE
RECENT TRENDS

It is virtually impossible for small loan regulation to be a static affair. In Massachusetts as well as in all other states, there are dynamic forces which constantly work for change. "Loan shark" lenders continually press for a repeal of laws hampering their actions and oppose any proposed reforms. Civic groups and welfare organizations are sensitive to public dissatisfaction or exploitation and demand reforms.

INCREASED REGULATION

The general feeling that the country as a whole, its citizens and its business men, would benefit by the establishment of one uniform act, has already been discussed. If this is ever realized, it will, of course, have a profound effect upon the structure of Massachusetts laws regulating the business of making small loans.

In the past, regulations of the various types of consumer credit have gone down their individual roads. The tremendous expansion of consumer credit has forced the realization that, in function, the segments of consumer credit are closely related. Although reform may yet be years away, far sighted men in Massachusetts are today advocating comprehensive regulation of consumer credit.

The growing inadequacy of the $300 limit set upon the Massachusetts Small Loan Law because of inflationary pressures has already been noted.

1. Supra., Page 75
2. Supra., Page 90
There have been several petitions presented to the Massachusetts legislature recently, demanding that this inadequacy be remedied.

Each petition has met defeat, but, it is very likely that, in the near future, the maximum as set by the Small Loan Law will be increased to some figure which more nearly conforms to modern lending conditions.

Recent trends evidenced in Massachusetts indicate, that the general reforms advocated elsewhere, comprehensive regulation of consumer credit and a uniform small loan act, are being accepted by a growing number of persons. This would seem to indicate, moreover, that popular demand will soon remedy a weakness of the Massachusetts law by increasing its range.

**SELF REGULATION**

Massachusetts provides an excellent example of the results that are possible if the regulators and the lenders cooperate. The high degree of cooperation that exists between these two factions indicates that the legitimate lenders in Massachusetts have a highly developed sense of responsibility to the citizens of the state. It is an example of efficient self-regulation.

In many states, cooperation of lenders is either very new or is still something to be hoped for, in Massachusetts it was already an established fact as early as 1936. In the Annual Report of 1936, the Supervisor of Loan Agencies said:

"The overwhelming number of licensed lenders of today not only comply with the law scrupulously; they go beyond that. The Bureau has no hesitation in requesting the lender to adjust the contract of a borrower if, after investigation, it is found that because of sickness, loss of employment or other justifiable cause, the borrower cannot live up to his loan contract without hardships to himself and his
family and, not infrequently, the Bureau request the lender to waive both principal and interest. The lenders accept the recommendations of the Bureau, although—and that is the point to be noticed—it involves their giving up perfectly definite legal rights." 3

This is indeed strong evidence of the degree of self-regulation that exists among Massachusetts legal lenders.

A. MASSACHUSETTS ASSOCIATION OF SMALL LOAN COMPANIES

The development of the Massachusetts Association of Small Loan Companies is another indication of the growth of cooperation and self-regulation both between lending companies and with state regulators. The Association was organized in 1921 and has two principal subdivisions: the executive committee and the public relations committee.

The Executive Committee, as the name implies, handles legal and other executive-type actions for the member loan companies. The legislative counsel for example, a lawyer-lobbyist registered at the state house, appears before the legislature and presents the case for the loan companies.

The Public Relations Committee advises the loan companies of the type of advertising which will probably produce the best results. The Division of Social Relations of the Association, headed by Mr. Hoare, was established in 1933. Its purpose is stated in a letter sent to social agency heads by the Massachusetts Association of Small Loan Companies:

"This Association of State Supervised Small Loan Companies

has long realized that the extension of credit to the
wage earner, has real social significance. Our companies
rely on the family as a going concern. When sickness,
unemployment, marital discord or other special ills
threaten, our investment in the family is endangered.
We have long felt the need of a social worker in our
business—We have now engaged such a worker whose first
obligations shall be to be of service to social agencies
in the state so that our members may learn your view-
point on family problems—that social agencies may better
understand our policies and our methods of operation." 4

The division attempts to advise and aid borrowers referred to
it by social agencies of all types. To facilitate this program the
Massachusetts Association made an agreement with social agencies that:

"1. No small loan company will knowingly accept money
from a family whose sole support is derived from a
public or privately supported social agency.

2. Social Agencies are invited to refer the case of any
family it is aiding, in which an unpaid loan is a
source of worry to the family, to the Division of
Social Relations, where the Director, in cooperation
with the social agency will attempt to devise a plan
for the re-establishment of that family on a solid
social and economic footing." 5

During the period of January 1, 1950 to December 13, 1950, there
were 199 cases referred to the Division. In each case, a complete
record was made, contact was made with the creditor by the Director
of the Division, and a solution was agreed upon which was mutually
acceptable to the borrower and lender. 6

The effectiveness of Massachusetts Regulation of small loans is
indicative of the results that can be obtained through cooperation and
self-regulation on the part of the lender.

4. Massachusetts Association
of Small Loan Companies

5. ibid., Page 5

6. Massachusetts Association
of Small Loan Companies

A Venture in Cooperation, Division
of Social Relations, Page 2

Report on cases referred to the Div-
ision of Social Relations, Division
of Social Relations, 1950, Page 2
CONCLUSION

Recent trends in Massachusetts would seem to indicate that the people of the state appreciate reforms being developed in other parts of the country. There is also a strong movement underway to correct any weakness in the present Massachusetts law.

Massachusetts has achieved a high degree of cooperation between the state supervisory officials and the legitimate lenders. This cooperation has been in evidence as early as 1916.

The Massachusetts lenders have shown that they are capable of a high degree of self-supervision. This self regulation is carried on chiefly through the auspices of the Massachusetts Association of Small Loan Companies. It has produced excellent results in increasing the effectiveness of Massachusetts Small Loan Regulation.
The term Consumer Credit is frequently used as if it were a unified whole but it actually consists of several different types of credit. These types of credit may be divided into two broad categories, Money Credit and Merchandise Credit. Money Credit consists of five principle institutions, Commercial Banks, Credit Unions, Industrial or "Morris Plan" banking companies, Industrial Loan Companies and Small Loan Companies. Merchandise Credit is usually sub-divided into charge account credit and installment sales credit. Each of these types of credit is designed to fulfill a special need of the consumer, and many operate under special legislation.

Lending has its origin in antiquity. It has grown from a personal loan made to a friend or acquaintance to an impersonal business. The growth of the loan business has followed closely the growth of commerce and trading. Originating in the early stages of business development, a continuous thread of feeling against the business of lending has persisted up to the present time. It is indicated in the writings of Aristotle, of the Churchmen and of English and American writers.

There has been various attempts to prohibit or severely curtail loan activity. History has shown that the pressure of trade has rendered all these attempts useless, it has shown the weakness of the prohibitive theory of lending.

Through the ages there have developed four major theories on lending regulation; the prohibitive theory, the semi-philanthropic
theory, the non-regulated commercial theory and the regulated-commercial theory. It would appear from the test of time that it is only the last type, the regulated-commercial theory, that can give vitality and real meaning to small loan regulation.

There still exists great confusion over what constitutes a "fair" interest charge on small loans. Because of higher costs, the small loan lender is forced to charge a higher rate of interest than do other types of lenders, it has been shown, however, that although the lenders enjoy a profit, a gross charge of 12% to 15% does not provide an excessive one. This general misconception has hampered the development of effective regulation. There exists an opponent to progress, the loan shark, who fights any attempt to make regulation more efficient.

Loan regulation in the United States has a varied history. For many years it is the story of independent action on the part of the several states with no consideration or, or use of, the experiences of the others. It is the story of experimentation with many various theories and practices, including the concept of economic competition.

With the intervention of the Russell Sage Foundation and the development of the National Federation of Remedial Loan Association order was made out of chaos. The publishing of the modal law, the Uniform Small Loan Act, was perhaps the greatest factor in bringing cooperation and effective action on the part of the states. The loan business was winning recognition and with this recognition came effective regulation.

The federal government has made no attempt to regulate the small
loan business, it has recognized it as a legitimate part of Consumer Credit by including it in the Federal Reserve Board's anti-inflation regulation, Regulation "W".

Recent trends would seem to indicate that comprehensive legislation will spread, not only into those states that are lacking adequate protection but also into all sections of consumer credit. State supervision is being rapidly augmented by the lending companies themselves through cooperation with the state officials and through effective self-regulation.

Massachusetts, dissatisfied with the effectiveness of its law, repealed its Usury laws in 1867. The development of new, more effective legislation was hindered by misunderstanding over the interest rate, especially over what constituted a "fair" return and what was the net return enjoyed by lenders. The need for efficient regulation was emphasized by the growth of the "Loan Shark."

Massachusetts has dual control of lending. The Tender Act regulates loans of less than $1,000 not covered by the Small Loan Act which has a legal maximum loan size of $300. The development of Massachusetts legislation came as a result of much experimentation. With the assistance of the Russell Sage Foundation, Massachusetts adopted the regulated-commercial type of legislation. Although Massachusetts has not complied as closely with modern revisions of the Uniform Small Loan Act as have other states, its laws are made very effective through the activity of the Bureau of Loan Agencies and the cooperation of the licensed lenders of the state. It would appear that the cooperation existing between the state officials and the
licensed lenders will be increased in the future. There is also a
movement under way to correct the weakness existing in the dual
legislation structure of Massachusetts loan laws.

It has been shown therefore, through this historical study,
that although there has existed, and still exists, lenders of the
usurious or loan shark type, the great majority of lenders today are
legitimate business men with a growing sense of business ethics.
The net profit enjoyed by these men is not an excessive one. The
federal government as well as the vast majority of state governments
have recognized the small lender as part of their ordinary business
structure. There is little doubt that those few states which have
not yet recognized the small loan business will do so in the near
future.

It cannot be truthfully said that the small loan business of
today is a "fringe" activity. The great majority of people in the
United States need no longer fear the "Loan Shark".
APPENDICES

A. MISSOURI'S 1951 CONSUMER CREDIT LAW

B. UNIFORM SMALL LOAN LAW

C. LAWS RELATING TO THE SUPERVISION OF LOAN AGENCIES AND TO THE BUSINESS OF MAKING SMALL LOANS

D. INSTRUCTIONS TO APPLICANTS FOR A LICENSE AND REGULATIONS RELATING TO THE BUSINESS OF MAKING SMALL LOANS
APPENDIX A

MISSOURI'S 1951 CONSUMER CREDIT LAW

In recent years, loan shark operations have caused the people of Missouri great hardship. Missouri has had no small loan law since the adoption of the 1945 State Constitution. As a result of statewide demands the legislature of Missouri has just enacted a new consumer credit law which promises to substantially relieve existing mal-practices.

PROVISIONS OF THE MISSOURI LAW

As a result of the language in Section 44 of the 1945 Constitution and subsequent court decisions concerning Section 44, the bills which have been enacted into law in Missouri are consumer credit or instalment lending laws designed to be applicable to any type of lending business doing an instalment type of business.

Senate Bill 78 is a regulatory bill and is a new act in the Missouri statutes. Section 1 of the bill deals with definitions describing consumer credit loans which are "for the benefit of, or use by, an individual or individuals".

Section 2 requires the lender to obtain a certificate of registration from the commissioner.

Section 3 provides that the lender must secure a certificate of registration for the business.

Section 4 provides that the Commissioner may require a bond.

Section 5 provides that there shall be an annual registration fee of $150 for each separate license; that the certificate of registration shall not be assignable; that each separate place of business must have a certificate of registration; that the certificate must be displayed in
a prominent place in the office.

Section 6 provides that each lender shall file an annual report with the State Finance Commissioner, giving in detail the operation of the business during the year.

Section 7 provides that the Commission shall have full power and authority at any time, and as often as necessary, to investigate and examine the supervised business.

Section 8 gives the lender the right to sell insurance, the registrant, or any of his employees, may be a licensed agent. The insurance premiums shall not be considered as interest, service charges or fees for any loan. The Commissioner must issue regulations governing the types and limits of insurance which can be sold by the lender. The regulations governing the type and limits of insurance will be issued by the Finance Commissioner; the bill does not take any authority away from the Insurance Commission in supervising and regulating the types of policies, etc., which shall be used by insurance companies.

Section 9 provides that the lenders shall keep books and records of the supervised business.

Section 10 provides the commissioner with the authority to revoke a certificate of registration if the lender does not comply with the law.

Section 11 sets the penalty for violation of the law as a misdemeanor.

Section is an emergency clause.

Senate Bill 79 is an amendment to Chapter 408 of the revised Statutes of Missouri, 1949, and adds five new sections to the law known as Sections 408,031, 408,032, 408,033, 408,034 and 408,035.
Section 408,031 is the rate section:

"This section shall apply to all loans of $400 or less which are not made as permitted by other laws of this state except loans which are secured by a lien on real estate, non-processed farm products or crops and except loans to corporations. On any loan subject to this section, any person, firm or corporation may charge, contract for and receive interest in any manner at a rate which shall not exceed the rate (a) which will yield $15.00 for $100.00 of principal which is to be repaid in 12 equal and consecutive monthly installments of principal and interest combined and (b) which shall not exceed 2.218% per month on the unpaid principal balanced."

Section 408,032 provides that no interest shall be deducted in advance, but it may be added to the principal of the loan. It prohibits the compounding of any interest. It also provides that loans be repaid in consecutive monthly installments. There is no limit to the number of monthly installments to be included in any contract. The section provides that a written statement concerning certain information shall be given to the borrower at the time the loan is made, and further provides that any pledge assignment or mortgage which no longer secures a loan can be restored, cancelled or released. No other charge whatsoever can be made on the loan except those necessarily paid out by the lender to any public officer, concerning the filing, releasing etc. If any lender charges more than the legal rate of interest, except as a bona fide error, all evidence of the money loaned and all securities etc., shall be unenforceable. It regulates advertising; it provides the method by which a refund shall be made when interested is added to the principal of the note; it makes it mandatory that the commissioner verify the rate and the amount of interest charged.

Section 408,033 permits the lender to lend more than $400 to one borrower at the same or different times with one loan being made up to
$400 under Section 408,031 of the bill, and any additional amount loaned at 8% simple interest. The bill further provides that two loans may be considered in one contract.

Section 408,034 is the salary buying section.

Section 408,035 is the penalty section providing a misdemeanor for the violation of the loan.

While there were two bills passed--Senate bills 78 and 79, actually they were strictly companion bills, each requiring the other. In effect, while the rate has a $400 ceiling on it, the ceiling at which a lender can make loans at 8% per year is not limited.
UNIT. A bill for an Act to define and regulate the business of making loans in the amount of three hundred dollars ($300) or less; to permit the licensing for persons engaged in such business; to authorize such licensees to make charges at a greater rate than unlicensed lenders; to prescribe maximum rates of charge which licensees are permitted to make; to regulate assignments of wages or salaries, earned or to be earned, when given as security for any such loan or as consideration for a payment of three hundred dollars ($300) or less; to provide for the administration of this Act and for the issuance of rules and regulations therefor; to authorize the making of examinations and investigations and the publication of reports thereof; to provide for a review of decisions and findings of the licensing official under this Act; to prescribe penalties; 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.

LICENSE

SECTION 1. No person 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 the lender would be permitted by law to charge if he were not a licensee hereunder except as authorized by this Act and
without first obtaining a license from the licensing official hereinafter called the Commissioner. The work "person," when used in this Act, shall include individuals, co-partnerships, associations, and corporations unless the context requires a different meaning.

APPLICATION AND FEE

SECTION 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 of 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 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 application 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).
BOND

SECTION 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 to be approved by him 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.

REQUIREMENTS FOR LICENSE

SECTION 4. Upon the filing of such application and the payment of such fees and the approval of such bond, the Commissioner shall investigate the facts and if he shall find (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.

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 —(the principal department charged with the duty
of administering the Act)—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.

POSTING OF LICENSE

SECTION 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.

ADDITIONAL BOND

SECTION 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 to be approved by him 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 available for the operation of or actually used in the conduct of such business at the location specified in the license.

PLACE OF BUSINESS, ETC

SECTION 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.

REMOVAL Whenever a licensee shall wish to change his place of business to a street address other than that designated in his license he shall give written notice thereof to the Commissioner who shall
investigate the facts and, if he shall find that allowing such licensee to engage in business in such new location will promote the convenience and advantage of the community in which the licensee desires to conduct his business, he shall attach to the license in writing his approval of the change and the date thereof which shall be authority for the operation of such business under such license at such new location; if the Commissioner shall not so find he shall deny the licensee permission so to change the location of his place of business, in the manner specified and subject to the provisions contained in the last paragraph of Section 4 of this Act. 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.

PAYMENT OF LICENSE FEE

SECTION 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.

REVOCATION OF LICENSE

SECTION 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 licensee fee or to maintain in effect the bond or bonds required under the provisions of the 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 upon three (3) days' notice and a 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 ground for revocation or suspension are of general application to all officers, 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 or 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, 
suspend 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 a 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 forth- 
with file with the department (charged with the duty of administering 
the Act) 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 license 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.

EXAMINATIONS

SECTION 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 who shall be engaged in the business described in Section 1 
of this Act, whether such person 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. The Commissioner and all persons duly designated by him shall have authority to require the attendance of witnesses and to examine under oath all persons whomsoever whose testimony he may require relative to such loans or such business or to the subject matter of any examination, investigation, or hearing.

ANNUAL EXAMINATION--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.

BOOKS AND RECORDS

SECTION 11. The licensee shall keep and use in his business, such books, accounts, and records as will enable the Commissioner to determine whether such license 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.

ADVERTISING

SECTION 12. No licensee or other person 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 at a great rate of charge than lenders not licensed hereunder would be permitted by law to make, which is false, misleading or deceptive. 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 it is created by law upon the recording of a judgment.

OTHER BUSINESS IN SAME OFFICE—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 may make any loans provided for under this Act under any name or at any other place of business than that named in the license.

NO CONFESSIONS OF JUDGMENT, ETC.—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 charge, nor any instrument in which blanks are left to be filled in after execution.

MAXIMUM RATE OF CHARGE

SECTION 13. Every licensee hereunder may lend any sum of money not to exceed three hundred dollars ($300) in amount and may contract for any receive therefor charges at a rate not exceeding three and one-half per centum (3½%) 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 (2½%) per month on any remainder of such unpaid principal balance. (The maximum rate of charge of 3½ per cent a month on that part of any loan balance not exceeding $100 and 2½ per cent a month on that part exceeding $100 is recommended as an initial rate in all states.)

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, not any husband and wife jointly or severally to be 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 charge than would otherwise be permitted by this section.

No charges on loans made under this Act shall be paid, deducted, or received in advance or compounded. All charges on loans made under this
Act (a) shall be computed and paid only as a percentage per month of the unpaid balance or portions thereof, and (b) shall be so expressive in every obligation signed by the borrower and (c) shall be computed on the basis of the number of days actually elapsed, for the purpose of which computations a month shall be any period of thirty (30) consecutive days. In addition to the charges herein, provided for no further or other amount whatsoever shall be directly or indirectly charged, contracted for, or received.

In any amount other than or in excess of the charges permitted by this Act is 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, charge or recompense whatsoever.

REQUIREMENTS FOR MAKING AND PAYMENT OF LOANS

SECTION 14. Every licensee shall:

Deliver to the borrower at the time of making any loan 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 its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of 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 charges 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 charges 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 work "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 Commission, of the charges to be made and the method of computing the same.

PROHIBITION

SECTION 15. No licensee shall directly or indirectly charge, contract for or receive any interest, discount or consideration greater than the lender would be permitted by law to charge if he were not a licensee hereunder, (if there is only one interest statute of general application, than, the maximum percentage rate fixed by such statute may be inserted in place of the words "the lender would be permitted by law to charge if he were not a licensee hereunder") 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 of 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.

WAGE ASSIGNMENTS

SECTION 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 regulations 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 loans 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.

VALIDITY AND PAYMENT OF ASSIGNMENTS

SECTION 17. No assignment of or order for payment of any salary wages, commission 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 by both husband and wife in person, provided that written consent 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, commission, 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 compensations for services from the time that a copy of such assignment, verified by the oath of the licensee or his agent, together with a similarly verified statement of the amount unpaid upon such loan, and printed copy of Section 17 of this Act is served upon the employer.

PROHIBITION

SECTION 18. No person except as authorized by this Act, shall directly or indirectly charge, contract for or receive any interest, discount or consideration greater than the lender would be permitted by law to charge if he were not a licensee hereunder (see Section 15) 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 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 or 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.
PENALTIES

SECTION 19. Any person and the several members, officers, directors, agents and employees thereof, who shall violate or participate in the violation of any of the provisions of Section 1, 12, 13, 14, or 18 of this Act, shall be guilty of a misdemeanor.

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.

EXCEPTED LENDERS

SECTION 20. This Act shall not apply to any person 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.

REGULATIONS

SECTION 21. A licensed official is hereby authorized and empowered to make general rules and regulations and specific rulings, demands, and findings for the enforcement of this Act, in addition hereto and not inconsistent herewith.

PRE-EXISTING CONTRACTS

SECTION 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.

STATUS OF PRE-EXISTING LICENSES

SECTION 23. Any person having a license under any existing regulatory
small loan law similar in principle to this Act, in force when this Act becomes effective, shall not withstanding the repeal of the said 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 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 similar law. Any such license so contained 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.

PROCEDURE FOR JUDICIAL REVIEW

SECTION 24. This section should prescribe the procedure for judicial review of all discretionary acts of the Commissioner which might be open to the construction and the application of all rules and regulations by demands or requirements made upon licensees. In Section 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 an appropriate detail. The last paragraphs of Section 4 and 9 may have to be redrafted to bring them into accord with Section 23 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.

This section should also prescribe such necessary procedural details as may be required under the judicial decisions and by the statutes, and constitution of the particular state in connection with the exercising of discretionary powers; for example, the manner of giving notices, the length of notice, the making and recording of findings, the nature of hearings, and other compliances with the requirements of due process.

REPEAL

SECTION 25. All Acts and parts of Acts whether general, special or local, which relate to the same subject manner as this Act, so far as they are inconsistent with the provisions of this Act, are hereby repealed.

STATUE 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 Act and any borrower which was lawfully entered into prior to the effective date of this Act.

DECISIONS AFFECT ADJUDICATED SECTIONS ONLY

SECTION 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 affect thereafter.¹

APPENDIX C

LAWS

Relating to the

SUPERVISION OF LOAN AGENCIES

and to the

BUSINESS OF MAKING SMALL LOANS

MASSACHUSETTS

Chapter 140, General Laws, Sections 96-114, Inclusive

LICENSES FOR BUSINESS OF MAKING SMALL LOANS

SECTION 96. No person shall directly or indirectly engage in the business of making loans of three hundred dollars or less, if the amount to be paid on any such loan for interest and expenses exceeds in the aggregate an amount equivalent to twelve percent per annum upon the sum loaned, without first obtaining from the commissioner of banks, in sections ninety-six to one hundred and fourteen, inclusive, called the commissioner, a license to carry on the said business in the town where the business is to be transacted. 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 commonwealth, and the money is advanced of the endorsement or guarantee is made or furnished by any person without this commonwealth, the transaction shall be deemed a loan made within this commonwealth, and such a loan and the parties making it shall be subject to sections ninety-six to one hundred and thirteen inclusive. The buying or endorsing of notes or the furnishing of guarantee or security for compensation shall be considered to be engaging in the business of making small loans within said sections but the foregoing provisions of this sentence shall not
apply in the case of any transaction which involves any note or other instrument evidencing the indebtedness of a buyer to the seller of goods, services or insurance for a part or all the purchase price. In prosecutions under said sections, the amount to be paid upon any loan of three hundred dollars or less for interest or expenses shall include all sums paid or to be paid by or on behalf of the borrower for interest, brokerage, recording fees, commissions, services, extension of loan, forbearance to enforce payment, and all other sums charged against or paid or to be paid by the borrower for making or securing directly or indirectly the loan, and shall include all such sums when paid by or on behalf or or charged against the borrower for or on account of making or securing the loan, directly or indirectly, or to any person, other than the lender, if such payment or charge was known to the lender at the time of making the loan, or might have been ascertained by reasonable inquiry. Any person directly or indirectly engaging in the business of negotiation, arranging, aiding or assisting the borrower or lender in procuring or making loans of three hundred dollars or less for which the amount paid or to be paid for interest and expenses, including all amounts paid or to be paid to any other party therefor, exceeds in the aggregate an amount equivalent to twelve per cent per annum, whether such loans are actually made by such person or by another party, shall be deemed to be engaged in the business of making small loans, and shall be subject to sections ninety-six to one hundred and twelve, inclusive. If, after all deductions or payments, whether on account of interest, expenses or principal made substantially contemporaneously with the making of the loan, the amount retained by the borrower be three hundred dollars or less, the transaction shall be deemed to be a loan in the amount of the sum so retained by the borrower after
such deductions or payments, notwithstanding that the loan be nominally
for a greater sum.

Addition per Chap. 158, Acts of 1941

This act shall apply in the case of any transaction entered into
prior to, on, or subsequent to its effective date which involved or
involves any note, or other instrument evidencing the indebtedness of a
buyer to the seller of goods, services or insurance for a part or all the
purchase price.

If any provision of this act, or the application thereof to any
person, firm, corporation or association or to any circumstances, is held
invalid by any court of final jurisdiction, the remainder of this act,
and the application of such provision to other persons, firms, corporations
or associations, or to other circumstances shall not be affected thereby.

REGULATIONS. INVESTIGATIONS

SECTION 97. The commissioner shall from time to time establish regulations
respecting the granting of licenses and the business carried on by the
licensees, and by loan companies and associations established by special
charter. He shall either personally or by such assistants as he may des-
ignate, at least once a year and oftener if he deems it necessary, invest-
igate the affairs of such licensees, companies and associations, and for
that purpose shall have free access to the vaults, books and papers there-
of, and shall ascertain the condition of the business and whether it has
been transacted in compliance with the law and the regulations made here-
under. The commissioner may cause an examination of the said books and
business to be made by an accountant whom he may select, and the cost of
any such examination shall be paid by the person whose books are so
examined.
RETURNS TO SUPERVISOR

SECTION 98. All persons required by sections ninety-six to one hundred and fourteen, inclusive, to be under the supervision of the commissioner shall annually on November first make a return to him in the form of a trial balance of their books at the close of business on September thirtieth preceding, and shall specify the different kinds of liabilities and the different kinds of assets, with such other information as may be called for by the commissioner in accordance with a blank form to be furnished by him. The commissioner shall make an annual report and shall forward therewith a copy of such returns or so much thereof as he may deem necessary.

EXAMINATION OF LICENSEES

SECTION 99. The commissioner may summon said licensee, companies or associations or any of their agents or employees, and such other witnesses as he deems necessary, and examine them relative to their transactions and to the condition of their business, and for that purpose may administer oaths. Whoever without justifiable cause refused to appear and testify when so required, or obstructs the commissioner or his representatives in the performance of their duties, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more that six months, or both.

RATE OF INTEREST

SECTION 100. He shall establish the rate of interest to be collected, and in fixing said rate shall have due regard to the amount of the loan, and the nature of the security, and the time for which the loan is made; but the total amount to be paid on any loan for interest and expenses shall not, in the aggregate, exceed an amount equivalent to two per cent a month.
for a period terminating not later than one year after maturity, and to six per cent per annum after the termination of said year, on the amount actually received by the borrowers, computed on unpaid balances and no licensee or company or association to which sections ninety-six to one hundred and twelve, inclusive apply shall charge or receive upon any loan a greater rate of interest than that fixed by the commissioner. No charge, bonus, fee, expense or demand of any nature whatsoever, except as above provided, shall be made upon loans to which said sections relate.

Addition per Chap. 174, Acts of 1946

This act shall not affect any loan made prior to the time at which any new rate of interest established under authority thereof becomes effective.

TERM OF LICENSES, ETC.

SECTION 101. Licenses granted by the commissioner shall be for a period of one year from October first. Each license shall plainly state the name of the licensee, and the city or town, with the name of the street, and the number, if any, of the place where the business is to be carried on, and shall be posted in a conspicuous place in the office where the business is transacted.

FEES

SECTION 102. The fee for all licenses granted under section ninety-six shall be not less than one hundred dollars. If the licensee desires to carry on business at more than one place he shall procure a license for each place where the business is to be conducted.

PENALTY FOR VIOLATION OF LAW BY LICENSEES

SECTION 103. Any person violating any provision of sections ninety-six to ninety-eight, inclusive, and one hundred to one hundred and nine,
inclusive or any regulation made thereunder, or any rule or order made by the commissioner, shall be subject to a fine of not more than five hundred dollars and the license may be suspended or revoked by the commissioner. Any loan upon which a greater rate of interest or expense is charged or received than is allowed by sections ninety-six to one hundred and eleven, inclusive and the regulations made thereunder, may be declared void by the supreme judicial or superior court in equity upon petition by the person to whom the loan was made.

CONDITIONS OF GRANTING LICENSE

SECTION 104. A license under section ninety-six shall not be granted until the applicant has filed with the commissioner a statement on oath, which in the case of a corporation or association may be made by the president or agent thereof in charge of the business, stating the place in the town, where the business is to be carried on, the name and the private and business address of the applicant, and in the case of a corporation the state under the laws of which it is organized, and the name and private address of the clerk or secretary and of the agent or other office having charge of its proposed business, nor until the applicant, unless excused by the commissioner, files with him a power of attorney, appointing a person satisfactory to the commissioner to be his attorney, upon whom all lawful process may be served in any action or proceeding arising under sections ninety-six to one hundred and twelve, inclusive, with the same effect as if served upon the licensee. If any change occurs in the name or address of a licensee or of the clerk, secretary or agent aforesaid of any licensed corporation, or in the place where the licensed business is carried on, or in the membership of any partnership licensed under said sections, a true and full
statement of such change, sworn to in the manner required by this section in the case of the original statement, shall forthwith be filed with the commissioner, who may after a hearing revoke the license.

BOND

SECTION 105. No license shall be issued under section ninety-six until the licensee gives to the state treasurer a bond in the sum of five thousand dollars, executed by the licensee and by a surety company approved by the commissioner, conditioned upon the faithful performance by the licensee of the duties and obligations pertaining to the business so licensed and the prompt payment of any judgment recovered against him or for which he may be liable under sections ninety-six to one hundred and eleven, inclusive, but no suit at law or in equity shall be begun against the sureties on such a bond within thirty days after judgment against the licensee. If in any case at law or in equity against the licensee under sections ninety-six to one hundred and eleven, inclusive, it appears that the plaintiff is entitled to judgment or decree, except for proceedings in bankruptcy or insolvency, or the discharge therein of the licensee, the court may at any time, on motion, enter a special judgment or decree for the plaintiff for the amount of his debt, damages and costs, or for such other relief as he may be entitled to; and the said bond shall be conditioned upon the payment of any such special judgment and upon compliance with any such decree. Whoever is aggrieved by a breach of the condition of such a bond may sue thereon at his own expense and in his own behalf, but in the name of the obligee; and if judgment shall be entered for the defendant for costs, execution therefor shall issue against the person for whose benefit the suit is brought, as if he were the plaintiff of record, but not against the obligee, in such a suit.
like proceedings shall be had as in a suit by a creditor on an administration bond. The commissioner may at any time require the licensee to file an additional bond of like nature and with like effect, and to give full information as to all judgments recovered or suits pending on his bond. Upon failure to file and bond so required, the license shall be revoked.

RECOVERY OF ILLEGAL INTEREST

SECTION 106. If a greater rate of interest or amount for expenses than is allowed under sections ninety-six to one hundred and eleven, inclusive, has been paid on any loan to which said sections apply, the person who paid it may file a complaint with the commissioner, who may, after a hearing, order such excess amounts refunded, or may make such other order as he may deem necessary. The filing of the complaint and the decision of the commissioner shall not affect the right of the complainant under section one hundred and three, who may, in an action of contract or suit in equity, recover back the amount of the unlawful interest or expenses, with twice the legal costs, if such action or suit is brought within two years after the time of payment.

MORTGAGE, ETC., AS SECURITY DISCHARGED ON PAYMENT OF LOAN

SECTION 107. If a loan to which sections ninety-six to one hundred and eleven, inclusive, apply is secured by a mortgage or pledge of personal property or by an assignment of wages, the mortgage shall be discharged, the pledge restored or the assignment released upon payment or tender of the amount legally due under said sections; and such payment or tender may be made by the debtor, by any person duly authorized by him, or by any person having an interest in the property mortgaged or pledged or in the wages assigned. Whoever refuses or neglects, upon request, to discharge a mortgage, release an assignment or restore a pledge to the party entitled
to receive the same, after payment of the debt secured thereby or the
tender of the amount due thereon as aforesaid, shall be liable in tort
to the borrower for all damages thereby sustained by him.

VALIDITY OF MORTGAGE, ETC.

SECTION 108. A mortgage or pledge of personal property, or an assignment
of or order for wages or salary to which sections ninety-six to one
hundred and eleven, inclusive, apply, shall not be valid unless it states
with substantial accuracy the actual amount of the loan, the time for
which the loan is made, the rate of interest to be paid, and the expense
of making and securing the loan, if any; nor unless it contains a provis­
ion that the debtor shall be notified in the manner provided in section
five of chapter two hundred and fifty-five, of the time and place of any
sale to be made in foreclosure proceedings at least seven days before
such a sale. A notice of intention to foreclose under the provisions of
section five or section eight of chapter two hundred and fifty-five shall
not be valid in such a case unless it expressly states wheresuch notice
is to be recorded, and that the right of redemption will be foreclosed
sixty days after such recording. At any time after twenty days from the
date of any such mortgage, if the same has not been recorded the holder
thereof shall forthwith, on demand and payment of tender of one dollar,
give to the mortgagor or any person interested in the mortgaged property
a copy of the mortgage and of the note or other obligation secured
thereby, which such holder shall certify to be a true copy thereof.

RECEIPT FOR PART PAYMENT

SECTION 109. If a payment is made, on account of a loan to which sections
ninety-six to one hundred and eleven, inclusive, apply, the person who
received the payment, or his principal shall, when the payment is taken
give to the person paying a receipt setting forth the amount they paid and the amount previously paid, and identifying the loan, note, mortgage or assignment to which it is to be applied.

PENALTY FOR ACTING WITHOUT A LICENSE

SECTION 110. Whoever, not being duly licensed as provided in section ninety-six on his own account or on account of any other person not so licensed, engaged in or carries on, directly or indirectly, either separately or in connection with or as a part of any other business, the business of making loans or buying notes or furnishing endorsements or guarantees, to which sections ninety-six to one hundred and eleven, inclusive, apply, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than two months, or both. Any loan made or note purchased or endorsement or guarantee furnished by an unlicensed person in violation of said sections shall be void. In prosecutions under said sections the fact that the defendant has made or assisted in the making of two or more loans of three hundred dollars or less upon which there has directly or indirectly been paid or charged, for interest, brokerage, recording fees, commissions, services, extension of loan, forbearance to enforce payment or other expenses, a sum which exceeds in the aggregate an amount equivalent to twelve per cent per annum upon the amount actually received by the borrower, whether such sum has been paid or charged by the defendant or paid to or charged by any other person, shall be prima facie evidence that the defendant has engaged in and carried on the business of making loans to which sections ninety-six to one hundred twelve, inclusive apply.

LAW AS TO RATE OF INTEREST IN ABSENCE OF AGREEMENT NOT AFFECTED
SECTION 111. Sections ninety-six to one hundred and eleven, inclusive, shall not affect so much of section three of chapter one hundred and seven as provides that, if there is no agreement for a different rate, the interest on money shall be at the rate of six dollars upon each one hundred dollars for a year.

DUTIES OF STATE POLICE, ETC.

SECTION 112. The state police and the police of the cities or towns shall carry out the directions of the commissioner in enforcing sections ninety-six to one hundred and thirteen, inclusive, and any regulations made by him.

OLD RETURNS MAY BE DESTROYED

SECTION 113. Returns made to the commissioner under section ninety-eight may be destroyed or disposed of by his order after the lapse of three years from the date of their receipt, and any proceeds received in the course of their disposal shall be paid to the commonwealth.

CERTAIN ASSOCIATIONS NEED NOT PROCURE LICENSES

SECTION 114. Loan companies and loan associations established by special charter, and fraternal mutual benefit societies the membership of which is limited to the employees of any one person and which make loans to its members only, shall be subject to the supervision of the commissioner, but need not procure a license.

SUPERVISOR OF LOAN AGENCIES

GENERAL LAWS, CHAP. 26, SECTION 4, provides: "The commissioner of banks may, with the approval of the governor and council, appoint and remove a deputy as supervisor of loan agencies, who shall give bond in the sum of
five thousand dollars, with sufficient sureties, payable to and approved by the state treasurer, and, subject to the approval of the governor and council, may fix his compensation," thus creating the Bureau of Loan Agencies.
APPENDIX D

INSTRUCTIONS TO APPLICANTS FOR A LICENSE
and

REGULATIONS

RELATING TO THE BUSINESS OF MAKING SMALL LOANS

MASSACHUSETTS

INSTRUCTIONS TO APPLICANTS FOR A LICENSE TO ENGAGE IN THE BUSINESS OF MAKING LOANS OF $300 OR LESS

"The term "small loan" refers to loans of $300 or less where the combined interest, expenses and all other charges exceed the rate of 12 per cent a year.

Licenses are granted to qualified residents of Massachusetts, including partnerships, associations, trusts, and corporations organized under the laws of the Commonwealth of Massachusetts. A license must be obtained for each place where the business is to be conducted and must be posted in a conspicuous place therein. The license fee of $150 must accompany the application. Licenses expire on the thirtieth day of September of each year, but may be suspended or revoked at any time for cause.

Each new applicant shall submit with the application:

(a) A statement indicating the reasons which warrant the belief that the granting of a license will promote the public advantage and convenience of the community to be served.

(b) Two banks references for each individual making application; or, if a partnership for each member thereof; or, if a corporation, trust or association, for each officer thereof.

(c) Applicants shall submit a brief outline of previous and present business connections and a statement as to whether, and to what extent, they have been engaged in, or interested
in the business of making loans of $300 or less, "salary buying" or any similar business wherever conducted.

(d) Each applicant shall submit a current balance sheet showing his or its entire assets and liabilities.

(e) A corporation, association, or trust shall submit such evidence of its organization as may be required.

Each applicant shall furnish satisfactory evidence of a net capital available for the granting of small loans of at least $25,000 or of at least $10,000 in a community having a population of not over ten thousand inhabitants according to the last official census.

After an application has been approved by the Supervisor of Loan Agencies, the applicant shall furnish a bond, on a form furnished by the Supervisor, in the sum of five thousand dollars, executed and witnessed by the applicant as principal and by a surety company approved to conduct business in Massachusetts. Accompanying the bond of an association or of a corporation shall be an attested copy of the authority of the signer of the bond to bind the association or corporation. It may be an attested copy of that part of the by-laws covering the authority or an attested copy of the vote of the Board of Directors granting such authority.

When the license is issued a copy of the small loans law, regulations promulgated thereunder, certain supplies and forms for making weekly and monthly reports are furnished by the Commonwealth for use in making reports to the Supervisor.

Before starting to make loans, drafts, in duplicate, of the form of application, note, mortgage, lender card, borrower's payment book and receipt to be used when payment book is not presented by a borrower must be submitted to the Supervisor and approved by him before an order for
printing such forms is placed by the licensee.

Proofs, in duplicate, of all planned advertising are to be submitted to the Supervisor before use and a statement as to the manner in which they are to be used is to be designated.

REGULATIONS RELATING TO THE BUSINESS OF MAKING SMALL LOANS

Regulation 1. Licenses.

Licenses may be issued to qualified residents of Massachusetts, including partnerships, associations, trusts and corporations organized under the laws of the Commonwealth of Massachusetts, or having a usual place of business therein. The fee for each license shall be one hundred and fifty dollars and, whatever the date of issue, each license shall expire on September thirtieth. The license fee shall be payable to the Commonwealth of Massachusetts and shall accompany the application. No license will be issued until the applicant furnishes a surety bond in the sum of five thousand dollars, executed by the licensee and by an approved surety company, in compliance with General Laws (ter.ed.) chapter 140, section 105. A license must be obtained for each place where the business is to be conducted and must be posted in a conspicuous place therein.

Regulation 2. Application for License.

An application for a license shall be made on oath on a form supplied by the supervisor and shall be accompanied by the following and such other information, if any, as may be required:

(a) Statement as to Public Advantage. A statement indicating the reasons which warrant the belief that the granting of a license will promote the public convenience and advantage of the community to be served.
(b) Statement of Previous Experience. Every individual applicant, or the members of a partnership, or the officers, directors, or trustees of a corporation, trust or association, shall submit a brief but complete outline of their present and previous business connections.

Regulation 3. Capital Requirements.

Each applicant for a license shall furnish satisfactory evidence to show that such applicant, after all organization and other expenses have been paid or provided for, has a net capital available for the granting of small loans equal to at least ten thousand dollars, except that if the place of business be in a municipality having more than ten thousand inhabitants according to the last official census, said net capital shall not be less than twenty-five thousand dollars, and such capital shall be continuously maintained in connection with such place of business. The foregoing requirements as to minimum capital may be waived in renewing licenses heretofore granted.

Regulation 4. Place of Business.

Except as otherwise provided in General Laws (ter.ed.) chapter 140, section 104, a license shall be valid for the transaction of business only at the address therein designated, and any loan consummated by the licensee at any other place may be determined to be illegal.

Regulation 5. Changes in Personnel.

If any change occurs in the name or address of the manager of any licensee, a notice such as is required by section 104 of chapter 140 with respect to other changes shall forthwith be filed with the supervisor.

Regulation 6. Rates of Charge.

The total amount to be paid on any loan for interest and expenses
shall not, in the aggregate, exceed an amount equivalent to 2 per cent a month for a period terminating not later than one year after maturity, and to 6 per cent per annum after the termination of said year, on the amount actually received by the borrower, computed on unpaid balances.

Regulation 7. Computation of Charges.

For purposes of computation a month shall be deemed to be any period of thirty consecutive days. For a period of less than thirty days, that the borrower actually has the use of the money, per diem interest may be computed and charged. The per diem rate cannot exceed 1/30th of 2 per cent per month. Chapters 119 and 174 of the Acts of 1946 provide in part that the total amount to be paid on any loan for interest and expenses shall not in aggregate exceed an amount equivalent to 2 per cent a month, computed on unpaid balances.

Regulation 8. Notes and Loan Numbers.

The obligation of the borrower expressed in the form of a note shall bear its loan number; the date when the loan is made; the actual amount of the loan; the time for which the loan is made; the rate of interest to be paid. The form of the note to be used shall be approved by the supervisor.

Every loan made in each agency shall have its proper consecutive number.

Regulation 9. Incomplete or Duplicate Papers, Borrower's Copy.

No lender shall request, receive, or have in his possession (a) any document relating to the loan contract which is signed in blank or before completion by the borrower or (b) any duplicate note or other document
except such as constitutes the true evidence of the obligation of the borrower to the lender as of the time the loan is consummated. Each borrower shall be entitled to see the original instrument representing his obligation and, on request, to receive an accurate copy of every document which he is required to sign except his application for the loan.

Regulation 10. Payment of Loan.

The lender shall not alter, mutilate, deface or obliterate any note or other document and, upon the payment of a loan, shall forthwith return to the borrower or his duly authorized representative the note, intact, but with the fact of payment indelible endorsed thereon, together with any property or a discharge of any lien which may have been given as security for the payment of the loan.

Regulation 11. Prepayments.

A borrower may prepay instalments or parts thereof in advance of their due day, and the lender shall be entitled to collect charges only on unpaid balances of principal. A borrower may at any time repay the entire loan in full by paying the principal balance plus charges for interest and expenses due to the date of such payment in full.

Regulation 12. Receipts for Payments.

At the time a loan is made the lender shall deliver to the borrower a payment book, which term may include a slip or folder, in such form as may be approved. Such payment book shall set forth a true and complete statement of the account; the date, number, and amount of the loan; the rate of charge; the number and amount of instalments, if any, for the payment of the principal and of the charges; the due dates and amounts
of each such instalment; and such other data or information as may be
prescribed. Such payment book shall provide blank spaces for the entry
of each item of debit or credit to be made in connection with the loan
until final payment thereof and shall be in such form that the balance
due for principal and for charges may at all times be readily
ascertainable. On presentation of such payment book the lender shall
enter or cause to be entered all payments received on account of said
loan together with the signature or initials of the person receiving
such payment. If a payment is made without presentation of the pre-
scribed payment book, a receipt shall be given which shall show the date
and amount of the payment, the number of the loan to which it is to be
applied, the total amount of principal previously paid and the amount
remaining unpaid. In the event of the loss of the payment book or such
separate receipt, the lender shall, on request and without expense, furnish
the borrower a duplicate showing all the entries that should have appeared
in the lost original.


When an account is placed for collection, or is assigned or sold,
a written report thereof shall simultaneously be made to the supervisor,
including satisfactory evidence of adequate notice to the borrower of
the date and time of the sale of any chattels given as security for such
account.

Whenever a lender has placed an account in the hands of an
attorney, constable, sheriff, or other agent, for collection, all pay-
ments there after made by the borrower to the lender or to such attorney,
officer, or agent, shall be credited by the lender to the account of the
borrower as of the date when the payment is actually made and in the full amount paid, first applying what is due for interest and the balance to the principal account.


No licensee shall make or accept any contract or agreement for the payment of any sum whether for investigating or locating a borrower, or on account of any default, or for any forbearance, or for attorney's fees, or for trouble or expense of collection, or for any other purpose, which shall make the total sum to be charged to or paid by the borrower, for interest and expenses, greater than the rate established. The fees allowed by law for the service of civil process, or for service by a sheriff or constable, or other public officer required by law, may be charged to a borrower in addition to said established rate when any such services have been actually performed.

A notice of intention to foreclose a mortgage after breach of condition is invalid unless it expressly states where such notice is to be recorded (section 93 and 108, chapter 140, General Laws), and is served in accordance with sections 5 and 6, chapter 255, General Laws.


No licensee shall, at the time of making a loan, take from the borrower any confession of judgment or any general power of attorney, but this shall not preclude a licensee from accepting a chattel mortgage, or other instrument given as security, which contains a power of sale, in accordance with the laws of the Commonwealth, to be exercised in the event of a default or breach of any provision of such chattel mortgage
or other instrument given as security.


The licensee's books of account shall conform to standard accounting practices and all methods of accounting shall be subject to approval.

Every licensee shall preserve for at least two years after the discharge of each loan all records of final entry, including ledger cards used in connection with such loan.

Every licensee shall, at least once a year, have his books audited by a certified public accountant or by a public accountant who shall be acceptable to the commissioner and a copy of such audit, duly certified by the accountant, shall be filed with the supervisor.

If the licensee's annual report is prepared, and is certified to, by an approved accountant, that shall be deemed to be a sufficient compliance with the requirements of the preceding paragraph.

Regulation 17. Inspection of Lender's Records

All books, accounts, records, and papers pertaining to the licensee's small loan business, shall be subject to inspection. The supervisor and his assistants shall have free access thereto. The records shall be kept at the location for which the license is issued, and shall not be removed therefrom except for use in judicial proceedings or with the permission of the commissioner.

Regulation 18 to 20 Now obsolete.

Regulation 21. Monthly Reports.

On or before the tenth of each month, unless an extension is granted,
each licensee shall make a report, on prescribed forms, showing all business transacted during the preceding calendar month.

Regulation 22. Annual Reports.

On or before November first of each year, each licensee shall file an annual report on a form furnished by the supervisor.

Regulation 23. Advertising.

All advertising that relates to the business of making small loans shall be subject to inspection.

No licensee shall make, or cause to be made, printed, displayed distributed, broadcasted or otherwise published, any statement or representation with respect to the rates, terms, or conduct of his small loan business which is false, deceptive or misleading.

The work "license" with the license number following must be included in all advertising. When prior approval has been obtained, a licensed lender may, by using the work "license" and his license number, indicate that the lender's small loan business is supervised by the Commonwealth, but no licensee shall advertise in such a way as to lead the public to believe that any loaning or other business conducted by the licensee, other than his small loan business, is thus supervised.

No licensee shall state, or in any manner suggest, in any advertising that a loan which a prospective borrower has with another licensee will be paid or discharged or that the amount of such loan may be increased.

The placing, by licensees, of tags or other advertising matter in or on automobiles, or other vehicles and the house-to-house advertising of circulars, handbills or any other similar types of advertising, not
enclosed in envelopes is prohibited.

Regulation 24. Holiday Closings.

Licensees must close their offices on all state-wide legal holidays.

Regulation 25. Revocation or Suspension of License.

Each licensee will be held accountable for the conduct of his business and such business must at all times be under the direct supervision of some person or persons thoroughly familiar with the statutes and regulations applicable thereto. A license may be suspended at any time whenever it is deemed to be in the public interest; a license may be revoked after a hearing.


These regulations may from time to time be supplemented, amended or revoked and notice thereof shall be given by mail directly to each licensee and by filing notice with the secretary for the Commonwealth not less than fifteen days prior to the effective date thereof.
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Regulation "W", Board of Governors, Federal Reserve System.
SMALL LOAN REGULATION IN MASSACHUSETTS

ABSTRACT

Consumer credit may be defined as that type of credit which satisfies the individual in his role as a consumer. The maximum contract life is set at three years in order to eliminate real estate credit and other types of "investment" credit. Consumer credit is commonly divided into two categories, Money Credit and Merchandise Credit. Money Credit institutions are commercial banks, credit unions, industrial or "Morris Plan" banking companies, industrial loan companies, small loan companies and miscellaneous agencies such as pawnbrokers. Merchandise Credit has two principle sub-divisions, charge account credit and installment sales credit. Statistical information as to consumer credit throughout the United States appears each month in the Federal Reserve Bulletin under the heading, "Consumer Credit Statistics".

Lending started with the earliest cultures as an exchange of material goods. It developed into loans made to a friend or acquaintance and finally into an impersonal business. As early as 1900 B.C. lending had reached such proportions that there was an attempt to regulate it by means of the Codes of Hammurapi. Famous philosophers and writers of both the Greek and Roman empires were vitally concerned with the practice of interest taking. The prohibitive theory of lending regulation was already taking shape.

One of the strongest and most determined opponents of interest and lending was the Christian Church. It was gradually forced to
to give way before the pressure of growing trade during the Middle Ages. One of the best illustrations of this withdrawal is that Saint Thomas Aquinas made a distinction between interest and the sin of usury. The prejudice against lenders which developed as a result of this battle has lasted up to the present day.

During the Middle Ages there was a migration of Jewish peoples into almost every country of Europe. Because of the rise of antisemitism and because a "loophole" in the Mosaic law allowed the Jews to lend to Christians, they came to be the principle moneylenders of Europe.

It was during this period that charitable loan associations were set up, the Monte de Piete. These associations never were very successful in Europe and did not penetrate into England at all.

The first penal laws against usury were enacted in England in the seventh century, A.D. These laws were refined and altered through the centuries but the basic philosophy of prohibition remained the same. Lending continued to flourish because of the Jewish lender, papal revenue collector, the Lombards and evasions of the law such as rent charges, compensation for loss and partnerships.

Goldsmiths, because they were required to provide safe storage of valuables, gradually developed a deposit banking business. The expansion of the goldsmiths into banking forced the older type of lender into pawnbroking activities as the lacked the capital to compete.

After the Reformation there came a gradual growth of a new philosophy towards lending. Frances Bacon expressed this philosophy
when he declared that while the rate of interest should be limited it should be sufficient to attract investment into trade.

The Colonists took English law with them to the New World. As trade increased they soon became dissatisfied with the effectiveness of usury laws. After the passage of the first usury laws in the United States, all subsequent laws had the effect of either repealing or greatly reducing the effectiveness of the law. The search for more efficient regulation was underway.

There were many problems facing the legislators who were attempting to develop a comprehensive regulatory small loan law. They had to choose between the various theories which had sprung up, they had to solve the problems of the interest rate and of the loan shark.

There are four theories which have been used in an attempt to regulate small loan lending. The prohibitive theory, the semi­philanthropic theory, the non-regulated commercial theory and the regulated-commercial theory have all been tried. It would appear that three theories are not adequate. The prohibitive theory, developed in very early times, has been proven inadequate, the semi­philanthropic theory, which envisages non-profit lending, is basically good but has not been able to attract sufficient capital to meet consumer demand, the non-regulated commercial theory, which seeks to attract capital to the business by allowing higher interest rates, is unrealistic as it provides for no regulation. It was the adoption of the regulated-commercial theory, which allows for higher interest rates but under supervision, that has supplied real meaning to the term "regulation".
Public misconceptions over the interest rate has complicated the development of effective regulation. Because of high overhead, personal loan companies are required to charge a rate of interest which is above that charged by other types of lenders. A rate which is set too low has the same effect as no regulation whatsoever, recent conditions in the state of Missouri where the citizens have suffered great hardships and were forced to pay up to 240% per year interest to illegal lenders, exemplifies this problem. Because of high costs and the risks involved in the business of making small loans, gross charges of 12% to 15% per year do not provide an excessive profit to the legitimate small lender.

The ever present danger existing in the small loan business is that of the infiltration of the loan shark. The problems of several states such as South Carolina, Kansas and Missouri where the citizens have been forced to pay up to 400% interest on small loans, show vividly that the regulators of the loan business must be constantly on the alert to protect the average citizen.

Early regulation in the United States generally followed the prohibitive type. There came an increasing realization that this type of regulation was not working. Massachusetts repealed usury laws and pioneered the development of state supervision of small loans. An interesting development during this era was the belief that economic competition could resolve the problem. The "law of supply and demand" was looked upon as a magic formula. This idea fostered the development of semi-philanthropic organizations.

During the early twentieth century the states experimented with
all types of regulation. There was no attempt to exchange information between the states until the Russell Sage Foundation started to do extensive research into the problem of small lending. The Russell Sage Foundation and the National Federation of Remedial Loan Associations, instigated an era of coordination. The Russell Sage Foundation published a model law, the Uniform Small Loan Act, and an increasing number of states adopted the better features of this act. Today there are 31 states with effective regulation in the United States and only five with no small loan law at all. The state of Missouri is "on the fence" at the present time, as it has just passed regulation which is not yet effective.

The federal government has made no attempt to regulate the small loan business. It has recognized it as a legitimate part of consumer credit by including it in the Federal Reserve Board's anti-inflation regulation, Regulation "W".

Recent trends would seem to indicate that comprehensive legislation will spread, not only into those states that are lacking adequate protection, but also into all sections of consumer credit. State supervision is rapidly being augmented by the lending companies themselves, through cooperation with the state regulators and through effective self-regulation.

The colony of Massachusetts Bay inherited the English law. Usury laws were enacted which followed the same general principles of those developed in England. The people of Massachusetts soon became dissatisfied, however, with the workings of these laws, and so they were repealed in 1867.
The development of a new more effective regulation in Massachusetts was hampered by the same misconceptions over correct interest rate policies and by the existence of loan sharks as were the other states.

Massachusetts has gone through a tortuous growth of loan regulation. They have experimented with the four major theories of loan regulation as well as the concept of economic competition. The state of Massachusetts has the distinction of pioneering the development of effective state-supervised regulatory laws. Its act of 1911 anticipated the first draft of the Russell Sage Foundation's Uniform Small Loan Act.

The act of 1916, which is the basic law of today in Massachusetts, was formulated with the advice and council of the Russell Sage Foundation.

Regulation today functions with a great degree of effectiveness through the competent action of the state supervisory office, the Bureau of Loan Agencies, and as a result of cooperation and self-regulation on the part of the licensed small lenders of the state. Massachusetts has one of the lowest legal maximum rates of interest (2%) in the United States. Its citizens need no longer fear the "loan shark".

There is a movement under way in the state to correct one of the outstanding weaknesses of its law. Massachusetts has developed a dual control of lending which is unique. The Tender act regulates loans under $1,000 which are not covered by the Small Loan Act, which provides for a legal maximum loan of $300. The weakness has arisen as a result of increasing prices and of demand. The $300 limit is not too small and the Tender Act provides for no state supervision of lending.