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ILLEGAL LENDING IN MISSOURI

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For over a half a century the Missouri legislature has struggled with the problem of building a protective wall against the loan shark and illegal lender.[1] That wall was breached as often as the loan shark found a weak spot. The 1939 amendment to the Small Loan Law[2] and the 1943 amendment to the Loan and Investment Act[3] marked the final strengthening of the wall and the defeat of the loan shark. Harbors of refuge and protection heretofore afforded him had been eliminated. He was then definitely pushed back beyond the borders of the state.

During the period from 1943 to July 1, 1946, all types of consumer installment loan business were licensed, regulated and supervised. Previous to that period, illegal lenders had operated without licensing or supervision, openly and notoriously from quarters in prominent downtown office buildings in metropolitan areas. They made loans to wage earners and persons in the lower income brackets in amounts of $50.00 and less, charging rates from 240 to 520 per cent per annum.[4] These operators, many of them

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1. See Mr. Gisler's article, *supra,* tracing the historical steps in loan legislation.

2. This amendment provided for an increase in rate of ½ per cent per month on loans under $100.00 made by licensees, and the reenactment of Section 16 outlawing salary buying. It was felt this increase in rate allowed licensees would encourage the making of "little" loans by licensees to persons previously exploited by salary buyers and other types of loan sharks charging rates at 240% per annum and more.

3. This amendment plugged up loopholes in the Loan and Investment Act by limiting the amount and frequency of "fee" charges and bringing the business under the regulation and supervision of the Department of Finance.

4. It was found in 1938 there were about 60 salary buying offices in St. Louis and 15 in Kansas City. These concerns were operating from the prominent office buildings, freely advertising for business, and did not hesitate to use the courts to enforce collections of their claims. There was nothing furtive about their operation.

See Gisler and Birkhead, *Salary Buying in Kansas City* (published by the Conference on Personal Finance Law, 1938); Snow, *Rid Missouri of the Hi-Rate 240% Lenders* (published by The Small Loans Committee of the Bar Association of St. Louis, 1939).

branches of nation wide syndicates, with headquarters outside the state, closed their offices when these amendments became effective. After the amendments, any loan shark operations, if they existed at all, were carried on by the so-called hip-pocket lender.[5]

In the main, borrowers appeared to be satisfied with the treatment they were receiving from the licensees. No complaints of illegal lending practices against licensees were reaching Better Business Bureaus. Bar Association free legal aid committees, appointed in 1936 and continuing through 1942, to give legal aid to loan shark victims, were discontinued as no longer necessary.[6]

Licensees, after being granted the rate increase on the loans of $100.00 and less, were actively seeking loans in amounts as low as $10.00. Advertisements of licensees appeared in newspapers offering a complete loan service in amount from $10.00 on up. The licensee had moved in to take over the field of small loans formerly serviced by the unlicensed loan shark. Competition among licensees, made possible by a workable rate, had a telling effect on the elimination of the loan shark.

The report of a special committee appointed by the Missouri House of Representatives in 1943, in respect to its investigation of Small Loan Companies concluded "not one scintilla of evidence was offered to this committee

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5. This type of operator was vulnerable to attack under the provisions of the Small Loan Law. He soon found his business unprofitable because of the civil penalties provided in the Small Loan Law.

See Vining v. Probst 186 S.W. 2d 611 (Mo. App. 1945). In this case Vining lent the defendant $50.00 in cash and the defendant signed a note for $57.50 payable in installments of $5.00 each two weeks, with interest at 8% per annum from date. The $7.50 charge was designated by the lender as "handling, investigating and hazard charges," making the rate approximately 59.93 per cent per annum. Defendant paid $28.00 on the note leaving a balance of $29.50. When defendant refused to pay that amount, plaintiff brought suit for $22.00 (the alleged unpaid balance of the $50.00 cash loaned) with interest at 6%. Plaintiff elected to abandon his original loan contract, as evidenced by the note and sue for money had and received with interest at only 6%. The appellate court unheld the defendant's contention that in making the loan the plaintiff was precluded from enforcing payment under the provision of Section 8168, Mo. REV. STAT. (1939), of the Small Loan Act, which section rendered such loan unenforceable. After this decision, the lender ceased operating.

6. In 1936 so many complaints were directed against salary buyers that special "Loan Shark Committees" were appointed by the Kansas City Bar Association, The Lawyers Association of Kansas City, The Bar Association of St. Louis and the Missouri Bar Association. During the period from 1936 to 1939 there were over 3,000 complaints against salary buyers made to the Kansas City bar committees alone. In the first 300 of these cases, a tabulation showed a total $5,848.85 was borrowed, $16,128.10 was paid in interest, the legal amount of interest at 8% was 537.36, the amount of overpayment—excess over principal and legal rate—was $9,741.89.

to show any of the licensed small loan companies were violating the Small Loan or any law of this State. The evidence before this committee showed that those operating under the Small Loan Law . . . furnished a complete and adequate loan service in all amounts from $5.00 or $15.00 to $300.00. . . . By doing so the licensees offered a service to the borrowing public whereby it became unnecessary for borrowers to patronize those lenders charging 240% per annum and up. We commend the licensed small loan lenders for their willingness to assume the obligation of rendering a complete loan service within the limits set forth in the Small Loan Law."[7]

What Has Happened After July 1, 1946

All special lending laws providing for licensing, regulation and supervision and a workable interest rate became inoperative on July 1, 1946, the effective date of Section 44 of the Missouri Constitution, which made all such laws unconstitutional. Since that date, lenders have not been subject to regulation or supervision, and the legal maximum rate of interest any lender may charge is eight per cent interest per annum.

The legitimate lenders were unable to make small installment loans except at a loss under the eight per cent rate. Many of the former licensees closed their offices, discharged their employees, and the state was then deprived of the benefits of licensed, regulated lending. A few companies continued for a time to operate under the restricted interest rate in anticipation that workable laws would be re-enacted to conform to the Constitution, but when it was seen that the legislature could not agree upon such legislation, most of these companies also went out of business.

240 Per Cent Lenders Take Over

Almost immediately after July 1, 1946, the old loan sharks, with out-of-state headquarters, began returning to Missouri. As will be shown, they brought with them both old and new schemes and methods of collecting exorbitant interest and charges.

One of the first salary buyers to open in the state was the Salary Purchasing Company, Incorporated, which opened an office in Jefferson City, Missouri, on a prominent business street almost within the shadow of the dome of the state capitol.[8]

7. Report of the Committee Appointed to Investigate Money-Lending Agencies, House Journal, 62nd General Assembly, Vol. II, 1943, pp. 2218 to 2222 inclusive.

8. The records of the Secretary of State show this company was incorporated in August, 1946 (the month following the invalidation of the Small Loan

Upon commencing business about August 19, 1946, the company started an extensive advertising campaign by direct mail, by passing out business cards and advertising in Jefferson City newspapers. Among other claims, the advertisements stated, "A new money service was being offered working people of Jefferson City." Hon. J. E. Taylor, Attorney General of Missouri, filed a quo warranto suit in the Supreme Court of Missouri, on July 31, 1947.[9] In his information he charged the company with "being in the business of lending money to members of the public in amounts of $300.00 and less and charging interest at a minimum of 256 per cent per annum." The Attorney General alleged the salary buying device was a subterfuge to evade the state eight per cent per annum general usury statute and the two per cent a month misdemeanor statute.

The testimony before the commissioner, appointed by the court, was voluminous.[10] Relator offered the testimony of 29 witnesses who had had money transactions with the respondent corporation. They were described by the commissioner as in the main a class with limited education or economic background, a majority of the witnesses being janitors, custodians and other employees of the low income class. Few of the witnesses knew whether the transaction was a loan or a salary purchase or whether the amount in excess of the money they received was interest or discount. All were hard-pressed financially. The usual charge exacted was five per cent per week of the amount advanced, according to the findings of the commissioner. This amounts to 20 per cent a month or 260 per cent per year.

Virtually all witnesses testified they approached the office of the Salary Purchasing Company, Incorporated, and asked to "make a loan." Each applicant was asked detailed information concerning his credit standing. A typical "credit reference card" of one applicant elicited the following information. Customer's name, address, place of employment, name of immediate

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Law) as a Missouri corporation "to buy, acquire and discount salary or wage accounts." The incorporators of the Salary Purchasing Co., were J. R. Meadows, Nashville, Tennessee, D. L. Battle, Charlotte, North Carolina, and Ray Jensen, Jefferson City, Missouri, all well known for their salary buying and high rate lending operations in other states.

9. State *on Inf.* of Taylor, Attorney General v. Salary Purchasing Co., 218 S.W. 2d 571 (Mo. 1949).

10. The supreme court appointed Hon. Francis Smith, St. Joseph, Missouri, attorney and former member of the Missouri Senate, as Commissioner to take evidence and report his findings. The report of the commissioner is interesting as it gives in considerable detail the methods employed by this chain salary buying company. It is believed the pattern of operations described in the report is the pattern generally followed by such companies.

employer, marital status, wife's name, number of children, place of wife's employment, name of insurance policy possessed, amount of insurance, whether customer owns furs, owns cars, his total indebtedness, etc.

The commissioner found the general pattern of the testimony was that the customer receiving $20.00, for instance, would return on his next pay day two weeks later, pay the sum of $22.00 to respondent's agent, and in a substantial number of cases would receive another $20.00. The agent of the company would then tear the customer's signature from the alleged assignment, and execute a new assignment of the same type with the instructions to return the money the following pay day. There was no record of any reduction in charges should the customer return the money prior to the end of the two week period.

The commissioner observed, "The evidence is replete with instances where those who dealt with respondent week after week and month after month, renewed their transactions and a long line of such renewals appear upon the books of the respondents offered in evidence." Some accounts from the records disclosed 38 renewals, 132 renewals, 133 renewals, 26 renewals, and so on. The record did not disclose the amount of money volume of loans outstanding but did show at one time the company had 550 active accounts.

The commissioner's report holding the alleged salary purchasing scheme to be a subterfuge and recommending that the company be fined and ousted from the state was upheld by the supreme court on March 14, 1949, in *State on Inf. of Taylor, Attorney General v. Salary Purchasing Co.*[11] The court observed that soon after the information was filed by the Attorney General, "the respondent began to transfer its surplus money beyond the jurisdiction of the court and is now here as a traveler virtually without baggage."

On May 18, 1948, or about a year previous to the decision and about that long after the action was started, according to the records in the office of the Secretary of State of Missouri, one J. A. Gordon, Birmingham, Alabama, field under the Fictitious Name Statute that he was operating under the name of Salary Purchasing Company, at respondent's address, 232A E. High Street, Jefferson City, Missouri. This procedure follows the usual scheme of loan shark operators who allegedly sell out to new owners before the courts reach a decision, and the "new" owners continue as before at the same location.

11. 218 S.W. 2d 571 (Mo. 1949).

"Brokerage Companies"

A practice which is relatively new in Missouri for exacting an exorbitant charge from borrowers is the so-called brokerage plan. Under this plan, the company to whom the borrower applies for a loan, claims, according to written instruments which the borrower signs, that the company will "arrange" a loan with a third party in return for a "fee" to be paid by the borrower. If these were the actual facts, the charge would be legal. Here, however, in many cases, straw parties are a camouflage for usury.[12]

In March, 1951, in Kansas City, there were ten brokerage companies actively engaged in business, operating under fictitious names. Four were registered under the Fictitious Name Statute of Missouri, Section 417.200, *Missouri Revised Statute* (1949) showing resident ownership. Although the ownership of two of these companies is registered in the name of the same person, it is believed that this person is fictitious, because he cannot be found at the address shown on the record as his residence. One of the six companies not registered with the Secretary of State is known to be a branch of a company with headquarters in Birmingham, Alabama. Two companies doing the largest volume of business in Kansas City have, formally at least, changed ownership within the last year.

Since lending companies are no longer required to make reports to the Finance Commissioner, there are no public records of the volume of business done by these loan brokers. From a source believed to be reliable, it is estimated the loan volume outstanding for each office runs from $25,000 to $50,000, averaging $40,000. When it is considered the minimum charge for "brokerage fees" amounts to 260 per cent per year, the gross profits on this type of high rate lending would amount to $1,040,000 or more annually in Kansas City alone.

How the Loan Broker Operates

The loan brokers have various methods of obtaining customers. Some of them offer a bonus of $1.00 for each new customer brought in. Since the Kansas City newspapers do not accept their advertisements, they resort to direct mail advertising and advertising cards distributed at various places of employment. They claim in their advertising that loans are "arranged." The advertising gives emphasis to the "confidential" nature of their services,

12. It is believed the brokerage scheme is a more popular device because it permits installment repayments. Under the wage assignment plan the customer is supposed to repay the entire amount assigned in one payment.

"no red tape," "money in five minutes," and "no embarrassment." Nothing is said in the advertising concerning the cost of the loan.

When a prospective borrower goes to the office of a so-called loan broker, certain formal procedure is followed. The broker takes an application from the prospective borrower securing such information as his name, address, age, place of employment, pay days, wife's name, names of relatives, references, schedule and total indebtedness. The applicant is then required to sign a "broker employment agreement," stating in effect that the applicant has employed the broker as an agent to "procure, negotiate and/or arrange within ten days from this date, from any person, firm or corporation willing to make same, a loan in the sum of .....," etc.

The purported employment agreement further states that for such services and services later to be rendered, the applicant agrees to pay the agent a stipulated fee. At the same time the agent or broker obtains from the applicant a promissory note payable to a third party (the alleged lender) in the total sum of the amount of cash advanced, plus interest at eight per cent. The note is to bear interest at eight per cent per annum after maturity. The eight per cent interest charge allegedly is paid the third party for making the loan.

On a $50.00 loan the usual charge under the brokerage plan is $19.92. The total amount of $69.92 is repayable in eight installments of $8.74 each two weeks. This rate exceeds 260 per cent per annum. In the deposition of a loan broker in a suit brought by a borrower, the broker stated of the $19.92 charge he figured the interest to be $1.33 and the broker's commission $18.59. In this same case, the broker was asked how he computed the brokerage fee in each case, and he replied, "Well, just look it over and see what the traffic will bear!"[13]

Although the brokerage companies purport to act as the agent for the borrower in "arranging" loans, it is interesting to note that the borrower is seldom aware of this alleged relationship. He thinks he is borrowing money from the company he contacts. He signs the papers that are shoved at him without reading them. The money is given him almost immediately without his leaving the office. He is given no copies of what he signed.[14]

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13. Deposition of Bernard J. McNamara in Miller v. McNamara, in the Circuit Court of Jackson County, Mo., at Kansas City, Mo., Case No. 527,297.

14. A Jackson County Circuit Court Jury on November 21, 1944, awarded Miller $59.09 actual and $475 punitive damages from Bernard T. McNamara, operating as the Lea Service Co., Lee Building, Kansas City, Mo. The suit involved a $50.00 loan on which Miller asserted he had been charged fraudulently excessive

There is evidence that the brokerage set-up is simply a screen to cover up usurious practices. In the deposition of one broker claiming to "arrange" loans, he testified that he and his two other partners contributed the funds to open the office and from time to time he called on the partners to contribute funds as the money was loaned out.

In some so-called "brokerage" deals, the "broker" does not take notes payable to a third person, or allege the third person is making the loan. One such "broker" uses a contract denominated "Employment Contract" (see copy set out in appendix) which provides that the borrower appoints the broker as agent "to negotiate a loan," and that "the said agent is instructed to *sell* the note and mortgage to any person, firm or corporation whoever or wherever they may be." It further provides "for his services of endorsement, sale, receiving and transmitting payments, I agree to pay the agent (blank sum) which sum shall be deducted and withheld by him from the proceeds of the sale of the note. The said (agent) shall pay all expenses of investigation and *sale* and all interest charges and discounts." The borrower agrees to pay the entire sum, including brokerage fee, in installments.

In a suit now pending in the Circuit Court of Jackson County, Missouri, the borrower attacks the validity of the "Employment Contracts" used in a series of several loan transactions, as fraudulent.[15] Plaintiff contends defendant loaned plaintiff his own money and the rate of interest defendant could legally charge was 6 per cent per annum on unpaid balances of the loans. Any amount collected in excess of 6 per cent was alleged to be illegal and usurious.

The petition, in three counts, set up three loan transactions as follows:

Loan Number 1	Actual Cash received	$50.00	
	Interest at 6%	.32	
	Due	50.32	
	Repaid	75.00	
	Excess		$24.68 (480%)

interest. Defendant claimed the alleged overcharge was legal as a brokerage fee. In his deposition Miller testified as follows concerning his knowledge of the papers he signed:

Q. And you don't remember whether you signed one instrument or two?
A. I signed two.
Q. Did you read the first one?
A. No, I didn't read either one of them.
Q. So you don't know what you signed, do you?
A. No, I don't know what I signed.

15. Case No. 550,896, Nunamaker v. Dillard, in the Circuit Court of Jackson County, Missouri, at Kansas City, Missouri.

Loan Number 2	Actual Cash received	50.00	
	Interest at 6%	.36	
		50.36	
	Repaid	75.00	
	Excess		24.64 (429%)
Loan Number 3	Actual cash received	165.00	
	Interest at 6%	1.47	
		166.47	
	Repaid	277.50	
	Excess		111.03
	Total Excess		$160.36 (483%)

(The above calculations and figures were prepared by a Certified Public Accountant and are based on the declining balance owed at 6% per annum.) Whether Dillard may sustain the legality of his "Employment Contract" remains to be seen.

It should be borne in mind that a charge made by a third party acting as a legitimate intermediary between the lender and the borrower for services in negotiating a loan or guaranteeing a loan may be legal.[16] However, the courts have often held that where the relationship exists in form only, it is merely a device to circumvent the usury laws.[17]

General Usury Laws Inadequate

The schemes or subterfuges as described are being carried on at a great hardship to the borrower as the general usury statutes of Missouri afford him little effective protection. One might reasonably ask, why doesn't the borrower, upon learning the charges are illegal or questionable, refuse to pay them. The answers are numerous.

Many borrowers believe that if they default in payment their wages or salaries can be garnisheed immediately, causing them embarrassment with their employer and possible loss of employment.[18] The loan shark

16. See Stewart v. Boone County Trust Co., 87 S.W. 2d 223 (Mo. App. 1935).
17. See Webster v. Sterling Finance Co., 355 Mo. 193, 195 S.W. 2d 509 (1946).
18. In granting injunctive relief at the suit of the state against the continuation of a usurious wage buying scheme, the Supreme Court of Kansas in the following language held the remedies of the individual borrowers under the usury law were

knows the borrowers fear of garnishment proceedings and does not hesitate to employ the threat of garnishment to enforce his demands.[19]

Section 408.050, *Missouri Revised Statutes* (1949), gives the borrower, who has paid an amount in excess of the principal and legal rate of interest, the right to sue to recover the excess amounts together with a reasonable attorney fee and court costs. The Missouri courts have held that no cause of action exists under this section until the borrower has actually paid an amount in excess of the principal and legal rate of interest.[20]

While the statute provides for the recovery of a reasonable attorney fee, the amount of usurious interest overpayment, in most individual cases, is not sufficient to warrant a substantial attorney fee and the borrower usually is not in a position to pay attorney fees himself. Loan sharks will go to great lengths in opposing recovery suits so as to make it unprofitable for both the borrower and his attorney. From 1936 to 1939 no actions were brought in

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inadequate: "But, according to plaintiffs' allegations, the truth of which is conceded by the demurrers, this statute is systematically set at naught by the defendants. Between money lender and borrower, of course, it is altogether ineffective until invoked in some lawsuit. And according to the plaintiffs' allegations such a lawsuit will not arise once in every hundred times the usurious toll is taken from the wages of his victim. The wage earner has no time to attend court nor means to employ a lawyer to invoke the defense to the usurer's claim accorded by this statute. He must earn wages every working day to support his family. If garnishment proceedings are instituted which will bring his employer into court on matters of no concern to that employer, the unfortunate debtor is discharged. This dread consequence to the debtor can only be avoided by continued submission to defendants' usurious exactions.

". . . In the situation portrayed by plaintiffs, it is perfectly obvious that for the hundreds of indigent debtors held in financial peonage by defendants the remedy supplied by law is pitifully inadequate; . . ." State *ex rel.* Smith v. McMahon, 128 Kan. 772, 280 Pac. 906, 66 A.L.R. 1072 (1929).

19. The following typical collection methods, usually based upon threats, are described in borrower affidavits made to the Kansas City Better Business Bureau.

1. A shoe clerk who had paid back his loan and legal interest, refused to pay anymore money. The loan shark threatened to "send a collector to the shoe department where I work and instruct the man to sit there until I paid off the loan."
2. A motor car supply company employee who had fallen behind in one of his payments, said, "This lender called my home and talked to my wife threatening to take some sort of action."
3. A mail clerk told this story: "Since obtaining this loan, my wife has been under a doctor's care, and I have been off work because of illness. We have gotten behind in our payments and been unable to make the payments demanded. This company has called my wife several times and told her he would go to my employer."
4. A railroad worker complained of receiving collect telegrams late at night threatening garnishment proceedings if he didn't pay.

See a series of articles appearing in the Kansas City Star from October 9 to October 30, 1949, exposing current loan shark operations and collection tactics.

20. Rukavina v. Accounts Supervision Co., d/b/a Victor Finance Co., 237 S.W. 2d 503 (Mo. App. 1951).

Missouri under this section except by free legal aid committees appointed by bar associations. In one test case the legal aid attorneys were required to go to the supreme court twice in opposition to writs aimed at stopping the suit. In that suit a total of $120.00 was recovered and the attorneys for the borrowers spent over five hundred hours in the recovery and collection of the judgment.

Since 1946, when the loan sharks returned to Missouri, efforts to collect overpaid interest have been carried on by a few individual lawyers rendering free legal aid assistance.

The other statute seemingly affording the borrower protection is Section 408.070, *Missouri Revised Statutes* (1949). This section provides that a chattel mortgage obtained as security on a usurious loan is void. Under the section, the borrower may sue to cancel the chattel mortgage in order to avoid losing his household goods or other chattels, but at his own expense. This statute does not provide for recovery of attorneys fees. In many cases, the cost of bringing such a suit would make the action impractical. The borrower would have to pay attorneys fees to have the mortgage cancelled which may amount to as much or more than the balance owing on the loan. The cancelling of the mortgage would not relieve the borrower from paying the balance legally due on the loan.

It may seem strange that the legislature intended by Section 408.050 to permit attorneys fees to be recovered with as little as one cent paid in excess of principal and legal rate of interest, whereas it did not intend to permit attorneys fees to be recovered by the borrower in an action to cancel a chattel mortgage on the ground of usurious interest.

In the case of *Rukavina v. Accounts Supervision Corp.*,[21] it was argued that Sections 408.070 and 408.050 should be construed together as they were both remedial in nature, a part of the same chapter, deal with the same subject, and were intended to protect the borrower. The Kansas City Court of Appeals refused to construe them together, and as a result the small borrower has little or no practical protection under either or both sections.

The loan shark is not deterred by the civil remedies afforded by Sections 408.050 and 408.070. Too many schemes have been devised by the loan shark to circumvent or evade the usury law.[22] Often usury is too hard to prove. Was the charge exacted for the loan really interest or compensation

21. 237 S.W. 2d 503 (Mo. App. 1951).
22. "The business of the loan shark in America . . . cannot be operated successfully without many and devious methods of deceit, evasion, chicanery, and ruthless methods of collection. Only those having a natural talent for these things

for services rendered? The loan shark sees to it that the borrower does not secure the return of his papers. If the borrower has been given receipts for payments at all, they are usually inadequate to prove his case by written evidence. Few victims ever complain to a lawyer and if they do, they hesitate to appear in court.

The wage earner finds it difficult to lose time from work to testify in court. As was observed by the Kansas Supreme Court in the *McMahon* case,[23] "he must earn wages every working day to support his family." If the borrower does file suit, the loan shark will manage to obtain several continuances, thus adding to the problems of the claimant. Few loan sharks concerns operate as corporations, and it is often difficult to get service on the real owners who may be non-residents. From this experience in Missouri, it can scarcely be maintained that the Sections 408.050 and 408.070 afford adequate remedies to the borrower.

Another weakness in the general usury laws is that they do not effectively control so-called tie-in transactions. Here the lender ostensibly lends his money at not to exceed the maximum legal interest rate but may make a profit from a collateral transaction made a condition of the loan.[24] Following the rate reduction to eight per cent simple interest on July 1, 1946, certain lenders, confronted with the problem of either going out of business or operating at a loss, began to explore the field for new lending techniques.

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enter or long remain in the business. A natural aptitude for these things characterizes a loan shark and is essentially what makes him a loan shark. As a class they are endowed with a shrewd business sense. They are experienced in the chicanery by which illegal and unenforceable loan contracts and agreements are actually collected, in the means by which an aura of legality is thrown of escaping personal responsibility. They have a corresponding lack of respect for usury laws.

"The borrowers, on the other hand, are almost invariably poor people, laborers and wage earners, forced at the time of their most exigent needs to borrow small sums of money. They are generally untrained in the refinements of business negotiations and are frequently ignorant of the existence of usury and other laws regulating the rate of interest and the business of making small loans. As a class, their economic condition and relative lack of business and understanding render them incapable of using the rights which the law gives them.

"Loan sharks are economically strong, while their victims are economically weak. The conditions under which the loan shark and his victim meet lack that equality of bargaining power essential to just business transactions. When borrower and lender meet on such a basis, exaction of oppressive and unconscionable terms by the lender is certain. The harsh method is necessary to enforce these unconscionable terms greatly magnify the harm." State *ex rel.* Goff v. O'Neil, doing business as Metro Loan Company, 205 Minn. 366, 286 N.W. 316 (1939).

23. *Supra,* n. 18.

24. This weakness in the general usury law was overcome in the formulation of the Small Loan Law which provided for one all-inclusive charge and prohibited all other charges under penalty of voiding the entire loan contract both as to principal and charges.

Possible methods of augmenting their income were sought.[25] It was soon discovered that one of the more profitable forms of collateral transactions was the sale by the lender to the borrower of credit life, accident and health insurance as a condition precedent to obtaining the loan. The lender or his employee[26] obtains an insurance agent's license to sell policies indemnifying against liability accruing under a loan contract after the borrower's death, and during disability following illness or accident.

Commissions derived from the sale of such insurance by the lender are retained by him. One form of agency contract between an insurance company and lender operating in Missouri showed the premium rate on disability insurance to be $3.50 per year for every $5.00 of monthly installments. The annual premium rate for life insurance, when no allowance is made for reduction of loan principal by installment payments, is 2 per cent of the amount of the loan, while on the reducing basis it was one per cent. Thus on a $120.00 installment loan, payable $10.00 monthly over a period of one year, the non-reducing life insurance premium would be $2.40 while the disability premium would be $7.00 or a total of $9.40. This is about equal to interest at the rate of 15 per cent per annum on unpaid principal balances.[27] In connection with this same agency contract it was stated the agent's compensation was 80 per cent of the premium, less the amount of claims allowed.

In some cases it was found the lender was permitted to adjust his own

25. The St. Louis Better Business Bureau Bulletin dated January 22, 1947, stated: "In an effort to determine what effect the present lack of any law to license and supervise money lending has had upon the borrowers, the Better Business Bureau has compiled data from complaints and inquiries made of our office, and by special investigation. This study indicates that most of the small loan companies and some banks are now making extra charges of one sort or another (which the general interest laws providing for a maximum of 8% per annum do not sanction or prohibit), such as requiring borrowers to buy life, health and accident, and other insurance from the lenders; collecting for notary fees, credit investigations, and all having the effect of bringing more revenue to the lenders, and in some cases making the true cost of the loans equal to or greater than under the 2½% and 3% per month on unpaid balances paid to small loan companies before July 1, 1946, when the old laws became void. A few companies and banks are making loans at not over 8% simple interest to borrowers, but there is not enough of this to be of real protection to the majority of the needy borrowers."

26. In some cases the employee of the lender is designated as the agent to sell the insurance receiving only his salary as an employee of the loan company as compensation. Commissions on the insurance sales ultimately reach the lender.

27. The amount of extra profits which may accrue to lenders in the form of insurance commissions is shown by the annual report of the Small Loan Division of the Nebraska Banking Department for the year 1946. This shows that although about a third of the companies didn't sell insurance, the net return to all licensees was increased from 7.68% to 9.525% because of insurance commissions received by those companies who did sell insurance.

claims. Under such arrangement he would control, to a degree, the amount of his commissions. It is obvious the lender might be disposed to "discourage" the filing of claims by the borrower. Instances were not uncommon where the borrower, in order to obtain a loan, was required to purchase credit life, health and accident insurance in amounts of four or five times the amount of the loan.

The widespread abuse of insurance tie-in sales with loans was officially recognized by the Missouri Superintendent of Insurance in his order dated March 26, 1948, directed to all agents and companies writing credit insurance. The order placed restrictions on the sale of credit insurance.[28]

The bad practices giving rise to the order were described as follows in the order:

> "Numerous complaints have come to the Division of Insurance that lending agencies engaged in the business of making personal loans, or lending money secured by chattel mortgages on motor vehicles or other personal property, require as a condition to making such loans that the borrower purchase life insurance and accident and health insurance in amounts greatly in excess of the loan, and that they are aided and encouraged in such practice under an arrangement with certain insurance companies that designate employees of the lending agency to act as their agents, paying commissions on premiums written ranging, in recorded instances, up to 80%. It has been charged that such practice is a mere subterfuge on the part of lending agencies to collect usurious interest rates from the borrower.
>
> "Such practices are certainly not in the public interest."

No Missouri decision has been found showing when a lender's requirement of insurance renders a loan usurious. The examination of authorities

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28. The principal restrictions were as follows:
    (1) Insurance may not exceed the amount and term of a loan except that life insurance may be written in multiples of $100.
    (2) Insurance must be written by an insurance company qualified and licensed in Missouri.
    (3) Premium rates must be reasonable.
    (4) Health and accident insurance must be optional with the borrower and must not exceed loan payments and term.
    (5) The insurance policy or a copy thereof must be furnished to the borrower when the loan is made or within 15 days.
    (6) Insurance may not be cancelled except when a loan is refinanced, and if cancelled the unearned premium must be refunded.
    (7) Claims must be adjusted by the insurance company, and not by the agent.

Author's note: (The authority of the Superintendent of Insurance to issue such order is believed to be questionable.)

from other jurisdictions shows that whenever a lender receives some profit or advantage from the sale of insurance other than, or in addition to, its value as security, the transaction is viewed with suspicion and closely scrutinized by the courts. This is to determine whether the lender is attempting to obtain additional compensation for a loan by means of insurance.

Though insurance may in form be required as security, this is not conclusive that security is the lender's real or primary object. As in the case of other subterfuges to conceal usury, the courts go behind the form of the transaction, and ascertain the real facts and the purpose of the lender.

In a number of cases involving loans conditioned on the purchase of life insurance by borrowers, where it appeared that the lender obtained a commission or other profit from the sale of insurance, the insurance was held to be a usurious device. *Commonwealth*, ex rel., *Grauman v. Continental Co.*[29] was a suit by the state of Kentucky to enjoin an unlicensed lender from charging usurious interest on small loans. The defendant purported to charge only three per cent per year on its loans, but required borrowers to purchase a life insurance policy in an amount not less than $1,000.00. Seventy per cent of the first premium was retained as an agent's commission. In a typical loan of $25.00, the lender collected 34 cents for interest and $17.52 as commission. The court reached the following conclusion:

> "It is our view that the evidence in this case brings it within the purview of the statutes, supra, in that it is a device, subterfuge, or pretence of Mr. Motte, the President of the defendant company, in combining his agency with the insurance company, with the defendant company for the purpose of obtaining a rate of interest in excess of 6 % per annum upon the loans made by defendant company, such loans being $300.00 or less. It is admitted that defendant company has no license to engage in the small loan business, and has not qualified to operate under the Small Loan Law."

Accordingly, it directed the issuance of the injunction sought.

In re Graham[30] was a borrower's bankruptcy proceeding. It was held that the loan, in the amount of $451.81, was usurious because of the lender's requirement that the borrower purchase life insurance in the amount of $4,500.00, the premium for which was $151.88. The lender was the insurance company's agent, and deducted the premium from the proceeds of the loan. The amount of the agent's commission did not appear, but the

29. 275 Ky. 238, 121 S.W. 2d 49 (1938).
30. 22 F. Supp. 233 (W. D. Ky. 1938).

court took judicial notice of the "well known business practice that the agent received the greater part of the first premium."

In Jernigan v. Loid Rainwater Co.,[31] the facts were substantially similar to those in *Commonwealth* ex rel. *Grauman v. Continental Co., supra,* but the proceeding concerned the propriety of the denial of a license to a lender under the Arkansas small loan law. In holding that the lender's practice of requiring borrowers to purchase life insurance in the minimum amount of $1,000.00 justified the refusal to issue a license, the court remarked:

> "It is argued on behalf of appellee that the insurance is worth what it costs, and that no more is charged these borrowers than is charged others who take out similar insurance. This may be true, but the fact cannot be disguised that it is not insurance which the borrower wants. His pressing need is for a small loan, which he accepts upon any terms that may be imposed, and it is no service to the borrower to require him to take something he may not want and can ill afford to have, but which he accepts because his necessity permits no alternative."

Criminal Prosecutions Only Partially Effective

It is frequently urged that the loan shark problem may be successfully and effectively met by making the exaction of usury a crime. The history of criminal prosecutions in Missouri and other states, does not bear out this contention. Although for over fifty years Missouri has had a statute making it a crime to charge more than two per cent per month on any loan,[32] the number of criminal prosecutions have been relatively few in comparison to the widespread extent of the loan shark evil.

Prosecuting attorneys have experienced many difficulties in the enforcement of this statute. To be effective they must depend upon complaints from borrowers and evidence furnished them by borrowers to start the law enforcement machinery. Borrowers hesitate to complain to the prosecuting officials because they know that if they prefer formal charges, their case will become a matter of court record. Newspaper publicity invariably follows the filing of the charge and the subsequent hearing in court. The authors of this article know from personal experiences in aiding loan shark victims that they are possessed of a sense of pride which rebels against public disclosure of

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31 196 Ark. 251, 117 S.W. 2d 18 (1938).

32. Section 563.800, Mo. Rev. Stat. (1949), was enacted in 1899, and makes it a misdemeanor for any person, firm or corporation "to receive, or agree to receive" a greater rate of interest than 2% a month. It provides for a jail sentence not to exceed 90 days and a maximum fine of $500.00.

their financial difficulties. Publicity in the newspapers would make their financial problems known to their friends and neighbors. Many victims of loan sharks suffer in silence rather than be humiliated.

CRIMINAL PROSECUTIONS IN ST. LOUIS AND KANSAS CITY, MISSOURI

Complaints of usurious interest charges came to the attention of the Prosecuting Attorney of the City of St. Louis[33] after the regulatory small loan laws became inoperative. The prosecutor announced through the St. Louis newspapers that he would prosecute lenders violating the two per cent a month criminal statute and invited borrowers, who had been overcharged, to complain to his office.

Illegal lending practices grew in St. Louis until by November, 1949, an estimated 35,000 families in that area were involved. It was found by the prosecutor in most instances that the compainant had no evidence other than his uncorroborated statement of the transaction. He possessed no receipts for payments, no cancelled notes, no witnesses to the transaction.

In Kansas City, Jackson County, Missouri, Henry H. Fox, Jr., County Prosecutor, issued the following public statement on February 26, 1949:

> "The criminal complaints filed by my office today mark the beginning of a drive to protect wage earners and salaried persons from the illegal and unconscionable interest charges now being exacted by loan sharks operating in Kansas City.
>
> "Although the Missouri Supreme Court has said in a recent decision no lenders may charge since July 1, 1946 more than eight per cent simple interest per annum on any loan, investigation by my office reveals certain lenders are charging rates as high as 240% per annum on small loans. Many of the borrowers from these loan sharks are in the lower income bracket and are being defrauded out of money needed for the support of their families.
>
> "My office invites any person believing he has been charged an illegal rate of interest by any lender in Jackson County to get in touch with this office and bring with him any receipts, papers, etc., having to do with the loan or payments. Every effort will be made to see that the name of the borrower will not be made public, and

33. Wm. C. Lochmoeller, co-author of this article, is a former Prosecuting Attorney of the City of St. Louis. During his term, his office filed about 30 criminal charges against lenders. The St. Louis Globe-Democrat, August 22, 1948 issue, stated, "Prosecuting Attorney William C. Lochmoeller yesterday joined the growing movement to protect the public from loan sharks, when he announced he is ready to prosecute any lender who charges more than 2% per month interest.

"Lochmoeller called on borrowers to examine the terms of their loans. If they think they are being gypped, he said, they should come to his office in the Municipal Courts Building."

in the event of prosecution by this office, the newspapers will be asked to refrain from disclosing the name of the borrower. Persons complaining will be afforded full protection of the prosecutor's office against intimidation, embarrassment or reprisal.

"Labor union leaders, employers, welfare and other agencies, attorneys and all persons are urged to cooperate with the efforts of this office. It has been my experience borrowers hesitate to complain because of the fear of loss of employment should it become known they borrowed from a loan shark. Assurance from employers that employees will not have their employment jeopardized will be appreciated. Collection tactics of illegal lenders are most frequently directed at the borrower's fear of losing his job.

"The Better Business Bureau since 1946 has accumulated a great number of affidavits covering complaints of high rate charges. These affidavits have been made available to this office.

"The study of these affidavits further leads me to believe that there is a real problem calling for affirmative action by my office."

Following these announcements inviting borrowers to complain to the prosecutors of the two cities, about 30 cases were filed by the prosecutor in St. Louis and eight in Kansas City. A list of the cases resulting in convictions appears in Appendix B. These public officials experienced a general unwillingness on the part of the borrower to go to court. Of the operators who were prosecuted, few ceased business. Despite the efforts on the part of the prosecuting attorneys in the two largest cities of Missouri, the evidence of illegal lending practices appeared to be on an increase. The inadequacies of the criminal statute to stop the loan shark was apparent to the prosecuting attorneys. Both were led to the conclusion that the only permanent solution to the problem was the enactment of a workable small loan law.[34]

Appendix A
EMPLOYMENT CONTRACT

Kansas City, Missouri.....

I/We the undersigned ..... employ and appoint .....,
hereafter referred to as an agent, as my/our agent to negotiate a loan of

34. On December 13, 1950, Mr. Henry H. Fox, Jr., Prosecuting Attorney of Jackson County, at Kansas City, Missouri, who has made many sincere efforts to prosecute loan sharks said, "There can be no successful prosecution or elimination of loan shark practices without an effective small loan law."

The St. Louis Post-Dispatch in an editorial of June 24, 1950, stated "Loan shark practices are on the increase in Missouri" despite some 30 cases having been prosecuted by Prosecuting Attorney Lochmoeller. "The reason for this distressing situation is that Missouri lacks a small loan statute," stated the editorial.

..... and herewith deliver unto said agent my/our note for ..... which note is secured by Chattel Mortgage on my/our ..... The aforesaid note is payable in installments as follows, to wit: .... and ..... on the ..... of each succeeding ..... thereafter until the entire sum is paid in full.

The said agent is instructed to sell the above described note and mortgage to any person, firm or corporation whoever or wherever they may be.

Pursuant to the consumation of this transaction the said agent is authorized to furnish any prospective purchaser of this note and mortgage with any and all information relative to my credit, employment, and any other information considered by either of them to have any bearing or effect on this transaction.

The said ....., as my/our agent is further authorized and instructed to pay the following bills or obligations for me/us from the proceeds of the sale of this note: .....

For his services of endorsement, sale, receiving and transmitting payments I/We agree to pay ..... which sum shall be deducted and withheld by him from the proceeds of the sale of this note. The said ..... shall pay all expenses of investigation and sale and all interest charges and/or discounts.

I have read and received a copy of this contract and acknowledge that no loan has been made to me by ..... and that the fee of ..... paid by me to him as my agent is compensation for his guarantee of my note, sale and other valuable services rendered and shall not in any manner what-so-ever be construed as an interest charge as all interest charges up to the maturity date of this note shall be paid by the said .....

(The above is a contract form used by a Kansas City broker who claims he charges a legal "fee" for negotiating a loan.)

Appendix B

Criminal Convictions in St. Louis for usury under the two per cent per month criminal statute, Section 563.800, Mo. REV. STAT. (1949).

Name	Date	Sentence
Walter F. McBryan, Mgr. Webster Company 316 N. 6th Street	January 23, 1950	$250.00 fine 60 days in workhouse
Commonwealth Loan and Finance Co.	January 28, 1950	$300.00 fine
Alva L. Appelman of Appelman Loan Co. 3460 S. Kingshighway	January 23, 1950	$250.00 fine 60 days in workhouse

Name	Date	Sentence
David Seibert, Mgr. Central Finance Co. 2112 Olive St.	February 9, 1950	$250.00 fine 60 days in workhouse
Louis Pinkley	May 22, 1950	$250.00 fine 60 days in workhouse
Emmett Million	May 23, 1950	$250.00 fine 60 days in workhouse
George Pappas	May 10, 1950	$250.00 fine 60 days in workhouse
Paul Weisser, Mgr. United Company 119 N. 7th	January 24, 1950	$250.00 fine 60 days in workhouse
Elgin Bauman	February 20, 1950	$250.00 fine 60 days in workhouse
Austin Glenn	March 16, 1950	$250.00 fine 60 days in workhouse
Charles Bardol, Mgr. Brokerage Loan & Finance Co. 3903 Olive St.	October 4, 1949	$250.00 fine 60 days in workhouse
Harry Steiner, with H. Steiner Finance Co. 2617 N. 14th St.	December 1, 1949	$500.00 fine 90 days in workhouse
Lawrence H. Hardaway	May 10, 1950	$250.00 fine 60 days in workhouse
John B. Greeson	November 13, 1950	$250.00 fine 60 days in workhouse
Meyer Fried	January 24, 1947	$250.00 fine 60 days in workhouse

(Most of the above named defendants, who were given workhouse sentences, were paroled from the workhouse sentence by the Judge of the Court of Criminal Correction, usually on the condition they cancel out the debt, or some other concession made to the borrower.)

Criminal Convictions for Usury in Kansas City, Missouri

Name	Date	Sentence
Joseph Drew, with Midwest Service Co. Lee Building	April 12, 1949	Entered plea of guilty. Fined $100.00
Chester L. Eastwood, with Midwest Service Co. Lee Building	April 12, 1949	Entered plea of guilty. Fined $100.00
Bernard J. McNamara, with Midwest Service Co. Lee Building	April 12, 1949	Entered plea of guilty. Fined $100.00
Hal Fogel, with Sun Brokerage Co. Ridge Building	April 12, 1949	Entered plea of guilty. Fined $100.00
C. E. Glass, with Rudd Service Co. Ridge Building	April 12, 1949	Entered plea of guilty. Fined $100.00
Harold C. DeMoss, Mgr. I. S. O'Dell Brokerage Co. 928 Main Street	March 28, 1950	Found guilty. Fined $100.00. Defendant appealed to Kansas City Court of Appeals. Appeal pending.

(The above named Kansas City defendants were operating as alleged brokers and claimed they charged a "fee" for negotiating loans at legal interest rates.)

Appendix C

Typical Complaints on Loan Shark Gouging in Kansas City and St. Louis

Kansas City Examples

A railroad worker received an advertisement from a loan company stating "Loans arranged—$5.00 up—Immediate Service." He borrowed $50.00 on November 5, 1947 without asking the cost. On January 8, 1948, he paid the loan in full and was required to pay $67.46 or a charge of $17.46 for the $50.00 for approximately two months, or over 200% per year.

A factory worker, the father of seven children, borrowed $200 for medical expenses. He signed a note without the amount filled in and also

gave a mortgage on his household goods. Several days after obtaining this $200.00 he learned the loan company was demanding $280.00, repayable in installments over a year. In attempting to obtain an explanation from the lender for the $80.00 charge, the borrower was told "insurance" was included in the $80.00 although the borrower never was furnished any insurance policies.

Another railroad employee reported his experience with five lenders, all claiming to be "loan brokers" according to forms. Sometimes he borrowed from one to meet the payment demands of another. From lender *A* he borrowed $50.00 and paid $9.00 each 30 days to renew the $50.00 loan, or over 200% per year. Lender *B* charged him $10.00 each 30 days to renew a $50.00 loan, or approximately 240% per annum. *C* loan company required him to repay $2.50 each two weeks on a $25.00 loan. *D* company loaned him $50.00 and demanded eight payments of $8.74 each two weeks, totaling $69.92. *E* loan company made him repay eight payments of $8.67 each two weeks on $50.00 loan, or a total of $69.36.

None of these companies returned the "paid" notes to the borrower and when he got behind in payments they called the railroad yard, requesting his "boss" to call the borrower to the phone to demand payment, to his embarrassment.

A Negro woman, employed as a dishwasher in a downtown restaurant at a weekly salary of $28.50 has been paying since January 1948, a $19.92 charge each four months on $50 loans. The $50.00 loans were repaid in installments of $8.74 each two weeks until the total sum of $69.92 was repaid. After paying off a $50.00 loan, she would borrow another $50.00 and repeat the payment schedule as before. This is at the rate of 239 per cent per annum.

An employee in the order department of a wholesale dry goods company from April, 1947, until June, 1950, obtained cash loans from loan company *A* totaling $281.48, and repaid during that period $613.10. The company claims he still owes $52.44. From loan company *B* he obtained cash loans totaling $205.60 from December, 1947 to June, 1950 and repaid $426.60. This company claims he still owes $39.50. From *C* company, his cash loan payments totaled $372.48 from May, 1947, to June, 1950. He has repaid during this time $649.36, and the loan company claims his present indebtedness is $52.44.

St. Louis Examples

A woman employed by the government as a file clerk, secured a $25.00 loan and was expected to pay back $37.73 in six semi-monthly payments. After paying $12.61 on her account, leaving principal balance of $12.39, she

secured another loan of $29.88 in cash, or a net principal balance of $42.27 due, for which she was required to agree to pay 8 semi-monthly payments totaling $79.30.

Charles J. Bardol, operating the Brokerage Loan & Finance Company, 3903 Olive Street, pleaded guilty before Judge Louis Comerford, of the Court of Criminal Correction, on October 4, 1949, to a warrant issued on July 6, 1949. The complaining witness was Leonidas Haley, a $150.00 a month elevator operator, who apparently borrowed $25.00 and was expected to pay back $40.48 in four equal monthly installments.

After pleading guilty, Judge Louis Comerford imposed a fine of $250.00 and a 60-day sentence in the work house, which was suspended because "Bardol was a first offender" and would be required to cancel out the remaining indebtedness due from Leonidas Haley who had paid $10.12 on his $25.00 loan.

Bardol explained to the court that he charged only the legal 8% per annum interest, but that he charged a substantially large sum for his brokerage fee in arranging a loan, which he secured from a bank in Louisiana, etc. In pleading guilty Bardol estimated his charge as about 16% a month, whereas it is actually about 340% a year.

A laborer, employed as a railroad engine cleaner, borrowed $49.00, repaid $62.30 and the lender claimed he still owed $36.00

The above complaints are taken from the files of the St. Louis and Kansas City Better Business Bureaus.