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Colorado Interest Law

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NOTES

COLORADO INTEREST LAW

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This note will survey the Colorado law of interest and will place particular emphasis on small loan regulation.[1] The theory of small loan regulation[2] is two-fold. First, the law must protect the individual debtor so that he will not be subjected to unscrupulous rates of interest, methods of computation, and methods of collection. Second, the law must protect the investment of the lender[3] because consumer credit is a fact and a need of the modern economic society which will be fulfilled. To fulfill this need by proper and responsible parties, society must assure the lender an adequate return on his investment so that lending will be done in compliance with the law and individuals who need this financing will not be forced to resort to the loan shark.[4].

> An expert in the field of small loan legislation has said:
> I believe it will be conceded by all that the business of making small loans to workingmen, termed industrial banking, has a definite place in our system and fills a much felt need. Seemingly the means of ridding the communities of the loan sharks was to find a suitable substitute. Three substitutes suggested themselves. First there were the charitable institutions. . . . . Next there is the cooperative system, such as the credit union. . . . Finally, we have the licensed and regulated industrial lender, whose business is banking, with small loans a specialty and working men as his clientele.[5]

Colorado has, in one form or another, all three types of agencies.

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[1] For excellent symposia discussions of theories of consumer credit and interpretations, applications, and history of small loan legislation see 19 Law & Contemp. Prob. 1-138 (1954), and 8 Law & Contemp. Prob. 1-204 (1941).

[2] For a discussion of large loans affecting loan acquisition financing, construction financing, and home owner financing in Colorado, see Storke and Sears, **Subdivision Financing**, 28 Rocky Mt. L. Rev. 549 (1956).

[3] Notes, **An Ounce of Discretion for a Pound of Flesh: A Suggested Reform for Usury Laws**, 65 Yale L. J. 105 (1956).

[4] Redfield, **The Responsibility of All Consumer Lending Agencies to Help Eliminate the Loan Shark Evil**, 19 Law & Contemp. Prob. 104 (1954).

[5] Hellerstein, **Industrial Banking and Reforms**, 6 DICTA 5, 7 (1928).

This note excludes charitable agencies and focuses attention on the many statutes of Colorado and the United States which affect the consumer by regulating lending agencies. There are many and various types of lending agencies which are regulated by separate statutes. These statutes may be classified: first, general interest statutes—the legal rate statute, the Colorado Consumer Finance Act, and the 1913 loan law; second, those which have a direct effect upon consumer financing—the Retail Motor Vehicle Installment Sales Act, state and federal banking laws including regulations on industrial banks, title and guaranty companies and trust companies, credit union legislation, and pawnbroker legislation.

I. General Interest Statutes

Legal Rate Statute

The legal rate of interest in Colorado is 6% per annum.[6] This is material only in regard to interest as an element of damages,[7] for the legal rate of interest is not binding on contracting parties and they may enforce a stipulation for a higher rate[8] subject only to the limitations set forth in the statutes to be discussed. Even though the legislature did not see fit to include in the legal rate statute restrictions on the rate of interest to be charged, it is not precluded in later years from making certain interest charges void and criminal.[9]

Colorado Consumer Finance Act

Scope

This statute expressly repealed the Colorado Small Loan Act of 1943[10] and made the 1913 Loan Law[11] applicable only to loans in excess of $1500.[12] The essence of the Colorado Consumer Finance Act is that *any person* may charge, whether for interest, compensation, consideration or expense, an aggregate rate not greater than 12% per annum whether the loan is secured or not.[13] One who desires to engage in the business of making loans of $1,500 or less, whether secured or unsecured, and to charge more than 12% per annum, must obtain a license from the state bank commissioner.[14] The act does not apply to any (a) bank, trust company, savings bank, industrial bank, savings and loan association, credit union, or pawnbroker, (b) bona fide commercial loan made to a dealer upon the security of personal property held for resale, or (c) bona fide obligations for goods or services when such obligations are payable directly to the person who provided the goods or services.[15]

This exception in favor of the named agencies should not deny equal protection of the laws and should not constitute class or special legislation.[16] The exemption of commercial loans and obligations incurred for goods and services embodies Colorado case law to the effect that there may be any spread between cash price and installment price in credit sales.[17]

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6 Colo. Rev. Stat. Ann. § 73-1-1 (1953).
7 See Id. § 41-2-1 and 73-1-2. See Magill, Interest as Damages in Colorado, 28 DICTA 285 (1951); 16 Rocky Mt. L. Rev. 162 (1944).
8 Colo. Rev. Stat. Ann. § 73-1-3 (1953).
9 Waddell v. Traylor, 99 Colo. 576, 64 P.2d 1273 (1937).
10 Colo. Rev. Stat. Ann. c. 73, art. 2 (1953).
11 Id. c. 73, art. 3.
12 Id § 73-4-19(1) (Supp. 1955).
13 Id. § 73-4-3(1).
14 Ibid.
15 Id. § 73-4-3(2).
16 Waddell v. Traylor, 99 Colo. 576, 64 P.2d 1273 (1937).
17 Daniels v. Fenton, 97 Colo. 409, 50 P.2d 62 (1935); Gilbert v. Hudgens, 92 Colo. 571, 22 P.2d 858 (1933).

In the leading Colorado case, X bought a used automobile from Z at an agreed purchase price of $351, upon which X made a down payment of $47, leaving a balance due Z of $304 secured by a chattel mortgage on the automobile. The chattel mortgage included a further charge of $36 which, if construed as interest, would have exceeded the interest rate then in effect. The Colorado Supreme Court held that parties are entitled, irrespective of usury statutes, to make such "spread" as they may agree upon between cash and credit price, and the percentage of that spread is immaterial. "The rule that a sale of goods on credit does not come within the prohibition of usury statutes, because such sale does not involve the loan or forbearance of money or credit, is of universal application."[18]

Rates for Licensees

The following are the maximum rates of interest which can be charged by a licensee on portions of a loan:[19]

$000.01 to $	300.00	3% per month
300.01 to	500.00	1½% per month
500.01 to	1,500.00	1% per month

Discounting, as between lender and borrower, is prohibited.[20] The new law gives the lender an option of *either* computing the above charges upon the unpaid balance *or* computing by precalculating the aggregate of the charges and adding them to the loan, then dividing the total into equal monthly installments.[21] The difference in the methods of computation is illustrated in the footnotes.[22]

The statute prohibits compounding interest if computation and collection are made on a per cent per month basis.[23] If computation is made by aggregating the total, (1) in case of prepayment *in full,* all charges in excess of what would have been paid on the per cent per month basis are to be credited to the debtor's account, (2) the licensee may charge 2% per month, computed on a daily basis, for arrearages, this charge to be refunded in case of prepayment *in full* of the contract, and (3) the contract is accelerated, charges in excess of what would have been charged under the per cent per month basis are to be credited to the amount due.[24]

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18 Daniels v. Fenton, supra note 17 at 411, 50 P.2d at 63.
19 Colo. Rev. Stat. Ann. § 73-4-14(1)(Supp. 1955).
20 Ibid.
21 Ibid.
22 There is no Colorado case interpreting the two statuory methods of computation. It may be urged that the wording of the statute permits two methods of computation illustrated in the following tables. The Colorado State Bank Commissioner and Louis A. Hellerstein are of the opinion that only an amortized schedule illustrated by the first table is permissible. The assumed amount of loan is $300.00.
23 Colo. Rev. Stat. Ann. § 73-4-14(2) (Supp. 1955).
24 Id. § 73-4-14(3).

TABLE I

Date	Total Pd	Pd on Int	Pd on Prin	Outstdg Balance	Int on Money in Use
2-1-57	39.00	9.00	30.00	270.00	3% per month
3-1-57	39.00	8.10	30.90	239.10	3% per month
4-1-57	39.00	7.17	31.83	207.27	3% per month
5-1-57	39.00	6.22	32.78	174.79	3% per month
6-1-57	39.00	5.24	33.76	140.73	3% per month
7-1-57	39.00	4.22	34.78	105.95	3% per month
8-1-57	39.00	3.18	35.82	70.77	3% per month
9-1-57	39.00	2.12	36.88	33.89	3% per month
10-1-57	34.91	1.02	33.89	.....	3% per month

TABLE II

Date	Total Pd	Pd on Int	Pd on Prin	Outstdg Balance	Int on Money in Use
2-1-57	39.00	9.00	30.00	270.00	3% per month
3-1-57	39.00	9.00	30.00	240.00	3⅓% per month
4-1-57	39.00	9.00	30.00	210.00	3¾% per month
5-1-57	39.00	9.00	30.00	180.00	4.23% per month
6-1-57	39.00	9.00	30.00	150.00	5% per month
7-1-57	39.00	9.00	30.00	120.00	6% per month
8-1-57	39.00	9.00	30.00	90.00	7½% per month
9-1-57	39.00	9.00	30.00	60.00	10% per month
10-1-57	39.00	9.00	30.00	30.00	15% per month
11-1-57	39.00	9.00	30.00	.....	30% per month

Under the statute the following "extras" and no others may be included with the principal[25] to determine the amount of the loan upon which the interest is based: (1) specified types of insurance,[26] (2) lawful fees, without limit, for filing or noting a motor vehicle lien upon a certificate of title, releasing or recording any instrument securing the loan, or releasing an existing lien,[27] and (3) the amount required to retire an existing loan.[28]

Penalties

Although under the repealed statute,[29] if the rates were excessive, the lender lost all right to principal, interest, and any other charges, under the present statute such a contract is not void. However it is enforceable only as "to the amount advanced thereunder."[30] The statute specifically states that insurance premiums shall be included in "the amount advanced thereunder,"[31] but it is questionable whether or not "the amount advanced thereunder" includes the amount required to retire an existing loan and the lawful charges referred to above. The state bank commissioner may revoke the lender's license if rates are excessive.[32]

Making a loan contrary to the *licensing* section of the statute constitutes a misdemeanor and subjects the lending participants to possible fines of $25 to $500.[33] Further, the loan is void and the lender loses all right to principal, interest, or any charges whatever.[34]

The statute also prohibits false or misleading advertising with regard to the charges for or terms of loans[35] imposing the sanction of possible license revocation.[36]

25 Id. § 73-4-2.
26 Ibid. and § 73-4-14(8).
27 Id. §§ 73-4-2 and 14(4).
28 Id. § 73-4-2.
29 Id. § 73-2-20 (1953).
30 Id. § 73-4-14(7) (Supp. 1955).
31 Ibid.
32 Id. § 73-4-8(1)(b).
33 Id. § 73-4-3(3).
34 Ibid.
35 Id. § 73-4-12.
36 Id. § 73-4-8(1)(b).

1913 Loan Law

Scope and Rates

The portion of the 1913 loan law still in effect dictates that anyone may lend more than $1,500 so long as the aggregate of interest, discount, and consideration is not more than 12% per annum.[37] And if the loan exceeds $1,500 there is no statutory maximum rate of interest and no requirement for licensing so long as no security[38] of any kind is required.[39] But if one desires to engage in the business of making loans for a greater rate of return than 12% per annum, he must obtain a license from the state bank commissioner.[40]

Like the Colorado Consumer Finance Act, the 1913 loan law expressly exempts national banks, state banks, trust companies, banks operating under state charters or supervision, savings and loan associations, and title and guaranty companies.[41] These exemptions should not constitute class or special legislation or deny equal protection of the laws.[42]

Discounting, as between lender and borrower, is prohibited.[43] Interest allowable to a licensee is 2% per month.[44] Computation under this statute must be based upon the unpaid balance.[45] This maximum rate covers "all expenses, demands, and services of every character, including notarial and recording fees and charges, except upon the foreclosure of the security."[46]

Penalties

If a licensee charges more than 2% per month, he may have his license revoked,[47] may be liable for treble the amount of the over-charge and costs of suit,[48] and may be guilty of a misdemeanor punishable by a fine of $25 to $300 and/or imprisonment in the county jail from five to thirty days.[49] If a non-licensee charges more than his maximum the same penalties apply except, of course, he has no license to revoke.[50]

Summary of General Interest Statutes

The general interest statutes of Colorado permit, on a loan not exceeding $1,500, a licensee's maximum rate of interest of 3% per month on the first $300, 1½% per month on the next $200, and 1% per month on the remainder. On a loan exceeding $1,500, a licensee's maximum rate of interest is 2% per month. In the case of a non-licensee the maximum rate of interest on any loan is 1% per month, provided that if the loan exceeds $1,500 and there is no security given, the lender is subject to no maximum rate of interest.

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[37] Id. § 73-3-1 (1953).
[38] The unusual case Reagan v. District of Columbia, 41 App. D. C. 409 (1914) held that the promissory note itself was a "security" under a federal statute similar to the Colorado statute under examination.
[39] Colo. Rev. Stat. Ann. § 73-3-1 (1953).
[40] Ibid.
[41] Id. § 73-3-10.
[42] Waddell v. Traylor, 99 Colo. 576, 64 P.2d 1273 (1937).
[43] Colo. Rev. Stat. Ann § 73-3-5 (1953).
[44] Ibid.
[45] Ibid.
[46] Ibid.
[47] Id. § 73-3-6.
[48] Id. § 73-3-7. It is questionable whether the one year statute of limitations mentioned in this section affects both treble damages and costs of suit.
[49] Colo. Rev. Stat. Ann. § 73-3-9 (1953).
[50] See notes 48 and 49 supra.

II. SPECIAL INTERPRETATIONS AND PROBLEMS OF GENERAL COLORADO INTEREST STATUTES

Right to Principal of a Usurious Loan Contract

It would seem that the 1913 Loan Law and the Colorado Consumer Finance Act imply that usurious loan contracts offend public policy. It therefore seems that, should one enter a usurious contract, the entire loan should be void and the lender should have no right to either the principal or the interest. Such is not the Colorado law, as it is stated in *Waddell v. Traylor*:[51]

> Since the act (1913 Loan Law) does not in express terms make a note void when the consideration charged for the use of the money is in excess of that therein specified as lawful, but provides that only charges in excess of those specified shall constitute a misdemeanor, and fixes the punishment therefor; providing further that treble the interest paid may be recovered, we hold that other penalties are thereby excluded and that there may be a recovery of the money actually loaned with such consideration for its use as might lawfully have been contracted for under the act.

The rule of this case not only allows recovery of the principal but goes further and allows the lender to recover the interest for which he could have legally contracted. However, a later Colorado case[52] allowed recovery of the principal but did not allow the lender to recover the interest for which he could have legally contracted.

> (W) e hold that Waggener (borrower) is entitled to have judgment entered in his favor for treble the amount by him paid as excess interest, and that such payment be credited on his note and deed of trust, and that upon payment by him of the balance remaining due, he have a release of the deed of trust.[53]

We have already seen that the Colorado Consumer Finance Act leaves no doubt of the fact that the "amount advanced thereunder" is collectible in usurious loan contracts together with advances for insurance premiums.[54] Under the theory of *Waddell v. Traylor*,[55] the rate of interest allowable by the act should not be recoverable by the lender because the act expressly lists what is recoverable by the lender in a usurious loan contract.

Persons Subject to Usury Statutes

The Colorado Consumer Finance Act[56] and the 1913 Loan Law[57] refer to "those engaged in the business of loaning money." The question arises whether the usury laws apply only to those whose occupation is lending money or if everyone is subject to the usury laws no matter how seldom he might lend money. A leading Colorado case[58] has held that a prior statute prohibited usury even by one whose occupation is not lending money. This result, it is submitted, would obtain today. The statutes state, "*No person* shall charge or receive a greater rate of interest than two per cent per month . . ."[59] and, "*Every Person* . . . may

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51 99 Colo. 576, 582, 64 P.2d 1273, 1276 (1937).
52 Waggener v. Motor Co., 130 Colo. 294, 274 P.2d 968 (1954).
53 Id. at 301, 274 P.2d at 972 (parenthetical matter added).
54 Colo. Rev. Stat. Ann. § 73-4-14(7) (Supp. 1955).
55 Waddell v. Traylor, 99 Colo. 576, 64 P.2d 1273 (1937).
56 Colo. Rev. Stat. Ann. § 73-4-3(1) (Supp. 1955).
57 Id. § 73-3-1 (1953).
58 Rice v. Franklin Loan and Finance Co., 82 Colo. 163, 258 Pac. 223 (1927).
59 Colo. Rev. Stat. Ann. § 73-3-5 (1953)(emphasis supplied).

recover treble damages . . . against the person who shall have received . . ." excessive interest,[60] and, "*No further* or other amount whatsoever shall be directly or indirectly charged . . ."[61]

Factors Which Determine the Amount of Loan

It is important to determine the amount of the loan, first, to see which statute controls; second, to determine upon what base the interest charges are computed if the loan is governed by the 1913 statute; and third, to determine whether the penalty provisions of the interest statutes apply. The Colorado Consumer Finance Act specifically defines the base upon which the interest rate is applied as follows: " 'Amount of loan' or 'loan' shall mean the amount of money advanced to or for and upon behalf of borrower including the amount required to retire an existing loan, insurance premiums and costs incurred . . ."[62] The costs incurred are the lawful fees paid by the licensee to a licensed abstract company or public officer for filing, noting a motor vehicle lien upon a certificate of title, releasing or recording an instrument securing the loan or releasing a lien.[63]

[60] Id. § 73-3-7 (emphasis supplied).
[61] Id. § 73-4-14(7) (Supp. 1955)(emphasis supplied).
[62] Id. § 73-4-2.
[63] Id. § 73-4-14(4).

Unfortunately, the 1913 Loan Law is not as specific as the Colorado Consumer Finance Act in this regard. The 1913 law provides, "this charge (2% per month) shall cover all expenses, demands, and services of every character, including notarial and recording fees and charges, except upon the foreclosure of the security."[64] This language restricts the rate of interest but does not define the base upon which the rate is to be applied. It is clear from the cases that the base may not include "service fees."[65]

Meaning of "Value Delivered"

The 1913 Loan Laws grants "treble the amount of money *so paid or value delivered* above the rate aforesaid (2% per month)."[66] Does the note and deed of trust given to secure a loan constitute the "value delivered"? Two recent Colorado decisions squarely conflict on this issue. *Waggener v. Motor Co.* stated, "The value or thing of value delivered in the instant case was the note and deed of trust which secured it."[67] However, *Horlbeck v. Walther* declared, "We hold that the note and trust deed received by the lenders did not constitute the 'value' received by them under the statute, for these were merely evidence of a promise to pay and a lien to secure the same."[68] Determining what constitutes the "value delivered" is crucial if it is assumed that no payments are in fact made on a usurious contract. Under the reasoning of the *Waggener* case, a lender is liable for treble damages notwithstanding the fact that no payments are made by the borrower if a note and deed of trust are delivered.

The court in the *Waggener* case was faced with the question whether a lender who was not licensed when the contract was entered, making 2% per month usurious, and was licensed when the loan was partially paid, making 2% per month not usurious, will be subject to the penalty section of the 1913 Loan Law. The court stated, "Defendant in error not having procured the license at the time the loan was made, violated the Act and made a charge which by the terms of the Act was unlawful. The subsequent issuance of the license could not make lawful that which on the date of the loan was unlawful."[69] This case might be interpreted to mean that the penalty provision is *ex contractu* and not *ex delicto* and therefore the penalty would arise upon formation of the contract and not upon payment of the overcharge. Such a theory, however, is inconsistent with prior case law. In *Siebers v. Disque*,[70] X loaned money to Z and the interest to be later paid was usurious under the then existing statute. The statute was repealed before any interest payments were made. However, a saving clause in the repealing act provided that the repeal should not modify any penalty "which shall have been incurred" under the repealed statute. The issue was whether the debtor could recover the penalty even though his payments were not made until after enactment of the repealing statute. The court held that the

64 Id. § 73-3-5 (1953).
65 Personal Finance Co. v. Day, 126 F.2d 281 (10th Cir. 1942); Finance Co. v. Baker, 105 Colo. 1, 94 P.2d 460 (1939); Angleton v. Franklin Finance Co., 88 Colo. 322, 295 Pac. 797 (1931); Beneficial Loan and Investment Co. v. Ira, 75 Colo. 379, 226 Pac. 136 (1924).
66 Colo. Rev. Stat. Ann. § 73-3-7 (1953).
67 130 Colo. 294, 300, 274 P.2d 968, 971 (1954).
68 133 Colo. 19, 26, 291 P.2d 688, 692 (1956).
69 Waggener v. Motor Co., 130 Colo. 294, 299, 274 P.2d 968, 971 (1954).
70 102 Colo. 39, 76 P.2d 1108 (1938).

penalty was not incurred unless some payment was made at a time when the contract was usurious.

Is the "value delivered" determined by the foreclosure price, or is it determined by the market value of that foreclosed upon if the debtor defaults upon the note and the creditor forecloses upon the security? *Horlbeck v. Walther*[71] evidently applies the former as the test, holding that where no redemption of the property followed the trustee's sale, and the trustee's deed was issued to the lenders, the lenders were not subjected to treble damages for the market value of the property in excess of the sum bid on foreclosure.

Miscellaneous

Colorado has not yet decided whether the defense of usury will be applied against a holder in due course[72] nor has it decided whether, if a note is discounted, and if the rate of discount considered as interest would be usurious, that transaction would be usurious.[73]

III. Statutes Dealing With Specific Business Entities

Wagebrokers

Although a wage assignment as *security* is prohibited under the present statute,[74] the statute does allow such an assignment as consideration for a loan of money.[75]

Wagebrokers in Denver are in a precarious position. According to a city ordinance,[76] a wagebroker may charge no more than 2% per month on the amount actually advanced. However, under the state statute,[77] the maximum rate is not a flat per cent per month but is 3%, 1½%, or 1% per month, according to the amount loaned. Yet a wagebroker must be licensed with both the state and the City and County of Denver. Query: If a wagebroker charges a rate of interest consistent with the city ordinance, will he be violating the state statute and thus be subject to all state penalties? In *Ray v. Denver*,[78] a Denver city ordinance specified a lower rate of interest than was allowable under an existing statute. The court held the city ordinance invalid, saying that the case fell within the fundamental principle that an ordinance which is in conflict with a state law of general character and statewide application is invalid. The court rejected the application in this situation of the principle that a municipality may exact requirements additional to the regulations of the state because the court found a "conflict" with existing state statute. It is submitted that the present Denver wagebroker ordinance conflicts with the state statute and is, therefore, invalid.

Pawnbrokers

A "pawnbroker" is defined as one who loans money on personal property and charges as much as 3% per month.[79] He must be licensed by the proper authorities of the town or city in which he operates.[80]

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[71] 133 Colo. 19, 291 P.2d 688 (1956); But see Camellia v. Siegal, 131 Colo. 570, 283 P.2d 1083 (1955) (court allowed debtor to show fair market value of the property which was turned over to the secured creditor after default in a case where there was no foreclosure sale).

[72] Compare Nuckols v. Bank of California, 10 Cal. 2d 278, 74 P.2d 271 (1938) with Hall v. Mortgage Security Corp., 119 W. Va. 140, 192 S.E. 145 (1937).

[73] See HELLERSTEIN, CHATTEL MORTGAGES IN COLORADO, 113 (1956). "Renewal" of the balance of the purchase price note does come within the statute. Colo. Rev. Stat. Ann. § 73-4-3(2) (Supp. 1955).

[74] Colo. Rev. Stat. Ann. § 73-4-17 (Supp. 1955).

[75] Id. § 73-4-16.

[76] Denver Rev. Munic. Code § 963.5 (1950).

[77] Colo. Rev. Stat. Ann. § 73-4-16 (Supp. 1955).

[78] 109 Colo. 74, 121 P.2d 886 (1942).

[79] Colo. Rev. Stat. Ann. § 139-58-16 (1953).

[80] Id. § 139-58-1.

If a "pawnbroker" operates without a license he may be guilty of a misdemeanor and if convicted not only does he forfeit the loan but also may be liable to imprisonment and/or fine.[81]

The maximum rate of interest is 3% per month on the money actually advanced.[82] If a pawnbroker charges more than the statutory rate, he is subject to a fine of one hundred dollars for each offense.[83] There is no express provision depriving the pawnbroker of his right to the money actually advanced pursuant to a usurious contract nor depriving him of the right to the usurious interest charged.

A pawnbroker licensed in Denver, like a wagebroker, is in a precarious position. The Denver ordinance[84] permits a pawnbroker to charge a higher rate of interest than does the state statute. Under the doctrine of *Ray v. Denver*,[85] the city ordinance is probably invalid; therefore, if a pawnbroker charges the maximum rate allowed by the city, he will nevertheless be violating the state statute.

Credit Unions

It is interesting to note again[86] an observation made in 1928 on types of lending agencies and theories to rid the community of loan sharks. The prediction regarding credit unions has been given effect. The chart below[87] concerns itself only with *state* chartered credit unions.

Year	No. of Charters	Outstanding Loans	Total Assets
1950	72	$ 6,314,791.00	$ 8,030,130.00
1951	75	6,736,918.00	9,753,245.00
1952	83	10,009,005.00	12,541,434.00
1953	95	13,043,035.00	15,671,215.00
1954	105	16,317,221.00	20,038,202.00
1955	114	20,600,356.00	24,563,027.00
1956	121	24,375,086.00	29,289,828.00

Credit unions are organized under state[88] or federal[89] statutes. Although a federal credit union may make loans payable within a time period not to exceed three years,[90] there is no such statutory time limit

81 **Id.** § 139-58-16.
82 **Id.** § 139-58-8.
83 **Ibid.** The fine is payable one-half to the informer and one-half to the school fund of the county where the fine is collected. **Id.** § 139-58-17.
84 Denver Rev. Munic. Code § 952.15 (1950).
85 109 Colo. 74, 121 P.2d 886 (1942).
86 Hellerstein, Industrial Banking and Reforms, 6 DICTA 5, 7 (1928).
87 Statement of Condition of State Chartered Credit Unions, compiled by the Colorado Bank Commissioner (unpublished annual report).
88 Colo. Rev. Stat. Ann. c. 38, art. 1 (1953).
89 48 Stat. 1216 (1934), 12 U.S.C. §§ 1752-67 (1952).
90 48 Stat. 1218 (1934), as amended, 12 U.S.C. § 1757(5) (1952).

for the state credit union. Both types are limited to a maximum rate of interest not to exceed one per cent per month on the unpaid balance.[91] The one per cent per month interest rate includes all charges incident to making the loan,[92] except that in the state regulated credit union there is a twenty-five cent entrance fee.[93]

If a federally chartered credit union charges excessive interest, not only may it suffer revocation of its charter,[94] but it may also suffer a forfeiture of the entire amount of interest contracted.[95] Further, if the greater rate of interest has been paid, it is recoverable in an action in the nature of debt, subject to a two year statute of limitations.[96] If a state chartered credit union charges excessive interest, the only express statutory penalty is revocation of the certificate of approval by the state bank commissioner.[97]

Typically, a state credit union is composed of members of a common economic group,[98] although some Colorado communities[99] have organized municipal credit union associations pursuant to federal statute.[100]

Retail Motor Vehicle Installment Sales Act[101]

This statute governs agreements to purchase or to lease a motor vehicle where the vendee or lessee pays as compensation for its use a sum substantially equivalent to its value and the lessee is bound to become, or has the option of becoming, the owner of the motor vehicle.[102] With certain stated exceptions, one engaged in the business of acquiring such contracts must be licensed by the state bank commissioner.[103] The amount that the purchaser owes the dealer is determined by subtracting the down payment from the cash price of the automobile and adding to the difference the insurance cost and the "time price differential."[104] The statute provides for prepayment in full and credits therefor.[105]

The "time price differential" is that sum of money which the purchaser obligates himself to pay for the privilege of purchasing the car on installments rather than for cash.[106] The time price differential is not interest and is not subject to Colorado interest law regulations. The statute specifically permits any amount of time price differential.[107] Such a statutory provision embodies Colorado case law that to be subject to usury law, there must be a loan or forbearance of money or credit and since, in the *sale* of real or personal property, there is no such loan or forbearance the amount of the spread is immaterial.[108]

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91 Colo. Rev. Stat. Ann. § 38-1-14 (1953); 48 Stat. 1218 (1934), 12 U.S.C. § 1757(5) (1952).
92 Ibid.
93 Colo. Rev. Stat. Ann. § 38-1-12 (1953).
94 48 Stat. 1221 (1934), 12 U.S.C. § 1766(b)(1) (1952).
95 48 Stat. 1218 (1934), as amended, 12 U.S.C. § 1757(5) (1952).
96 Ibid.
97 Colo. Rev. Stat. Ann. § 38-1-6 (1953).
98 Rye and Center, Colorado, have "quasi-municipal" state regulated credit unions.
99 Akron, East Prowers, Haxton, Holyoke, Hotchkiss, Peetz, Ray, Rocky Ford, Sugar City, Swink, Stratton, Telluride, and Yuma.
100 48 Stat. 1219 (1934), 12 U.S.C. § 1759 (1952).
101 See Hellerstein, **The Retail Motor Vehicle Installment Sales Act**, 28 DICTA 229 (1951).
102 Colo. Rev. Stat. Ann. § 13-16-1(2) (1953).
103 Id. § 13-16-2(1).
104 Id. § 13-16-6(2), as amended, Colo. Laws 1st Reg. Sess. 1957, c. 85.
105 Id. § 13-16-7.
106 Id. § 13-16-1(8).
107 Ibid.
108 Daniels v. Fenton, 97 Colo. 409, 50 P.2d 62 (1935); Gilbert v. Hudgens, 92 Colo. 571, 22 P.2d 858 (1933).

The writer submits that the statute regulating installment sales of automobiles should be amended to provide that the amount of the time price differential be construed as interest subject to Colorado's usury laws.[109] In the sale of automobiles it seems unjustifiable to distinguish spread from interest; to the purchaser the result is the same. If automobile dealers desire to sell cars, let them do so; if automobile dealers desire to enter the consumer finance market, let them do so. However, if they choose to enter the finance market, let them be subject to the same regulations as others in the same business.

It is imperative for the attorney to realize that the statute sets forth many strict conditions precedent to the validity of automobile installment sales contracts.[110] A holder of the installment contract may suffer revocation of his sales finance license[111] and may lose his right to the time price differential or any other charges if contract requirements or prepayment requirements are knowingly violated and there is a retention of profits.[112] One who violates the license requirements may be guilty of a misdemeanor and punishable by a fine not to exceed $500.[113]

Banks, Savings and Loan Associations, and Trust Companies

Industrial banks are limited to a 10% per annum rate of interest.[114] The statute permits discounting or permits parties to agree to payments based either upon the unpaid balance or upon aggregating the total interest and principal and dividing that total by equal monthly payments.[115] The statute appears to be ambiguous[116] as to whether interest must be based on the unpaid balance if payments are to be made in installments.

The loan or base upon which the rate is computed includes any amount paid to retire an existing loan, insurance premiums, filing and recording fees, the amount advanced, examination and investigation fees paid to public officials, fees for executing necessary instruments, fees incurred by satisfying a judgment or encumbrance on the security to the contract, abstract fees, reasonable attorney's fees, and taxes.[117] It appears that although the statute with the right hand gives protection to the borrower by allowing a maximum rate of 10% per annum, with the left hand it gives the investor a "fair" return on his investment by allowing the "amount of loan" to be padded to an extent and by allowing a method of computing interest supposedly not allowed by the Colorado Consumer Finance Act or by the 1913 Loan Law.

If an excessive rate of interest has been charged, all interest charges on the loan are uncollectible, but the principal is collectible.[118] Provision is made for prepayment *in full*.[119]

State banks are governed neither by the 1913 Loan Law[120] nor by the Colorado Consumer Finance Act.[121] Indeed, there is no maximum

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109 H.B. 161 after passing both houses was vetoed by Governor McNichols March 28, 1957. This bill sought to limit the amount of time price differential to a rate per $100 per annum based on the age of the automobile sold or leased.
110 Colo. Rev. Stat. Ann. § 13-16-6 (1953).
111 Id. § 13-16-3(1)(b).
112 Id. § 13-16-9(2).
113 Id. § 13-16-9(1).
114 Id. § 14-7-7(6)(a) (Supp. 1955).
115 Id. § 14-7-7(6)(c).
116 Id. § 14-7-7(6)(a) implies that the computation must be based on an amortization system. But see § 14-7-7(6)(c).
117 Id. § 14-7-7(6)(d).
118 Id. § 14-7-7(9) (1953).
119 Id. § 14-7-7(7) (Supp. 1955).
120 Id. § 73-3-10 (1953).
121 Id. § 73-4-3(2) (Supp. 1955).

rate of interest which a state bank may charge. However, because of (1) the relatively large size of state bank loans and (2) the banking practice of securing loans with conservative collateral, the small proportion of the cost of paper work to the amount loaned reduces the cost of making the loan. This lower cost of making the loan enables a state bank to make the same profit as a consumer finance agency while charging a smaller rate of interest.

Federal banks located in Colorado are subject to no maximum rate of interest. This is true because a federal statute[122] allows a federal bank to charge the same rate of interest as that allowed state banks by the laws of the state where the bank is located. Since Colorado state banks are subject to no interest maximum, federally chartered banks are also unrestricted and therefore the penalty[123] for charging usurious interest has no effect.

State savings and loan associations are subject to no usury statute. The authorizing statute specifies, "Any savings and loan association may charge, contract for and recover such rate of interest as may be provided in the notes or other evidences of indebtedness . . . No interest that may accrue to an association shall be deemed usurious . . ."[124]

State trust companies are subject to no maximum rate of interest because the statute[125] makes their rate of interest the same as that imposed on state banks.

IV. Conclusion

This survey of the Colorado law of interest has shown that various lending agencies are governed by various statutes, various rates of interest, various penalties, various methods of computing interest, and various methods of determining the base upon which the interest is computed. It has been shown that reference to special statutes is imperative because there is no one statute which is the exclusive repository of Colorado interest law.

[122] Rev. Stat. § 5197 (1875), 12 U.S.C. § 85 (1952).
[123] Rev. Stat. § 5198 (1875), 12 U.S.C. § 86 (1952).
[124] Colo. Rev. Stat. Ann. § 122-2-15 (1953).
[125] Id. § 14-6-15.