

The meeting was called to order at 9:00 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
Senator Hernstadt
Senator Dodge
Senator Sloan
Senator Raggio
Senator Ford
Senator Don Ashworth

ABSENT: None

AB 316 Reclassifies certain batteries as to types of crimes.

Tom Susich, Assistant District Attorney, Douglas County, testified in support of this measure. For his remarks, see attached Exhibit A.

Mr. Susich informed the committee that he was having drafted, a bill which would further amend NRS 200.508 (subsection 2 of this bill). The amendment would read "Any person convicted of a battery other than a battery punishable as child abuse or neglect pursuant to NRS 200.508 shall be punished..." Under the present statute, it is conceivable that there would be no criminal penalty assessed for an adult hitting a child if it did not fall under the definition of abuse or neglect.

Senator Close stated that it would not be necessary to have a new bill drafted. The committee could amend subsection 2 of this bill to reflect that change.

Senator Ford informed the committee that she had requested a bill dealing with spousal assault. She asked that the committee withhold action on this bill until she could get the draft and possibly amend this measure further.

No action was taken at this time.

SB 228 Prohibits certain acts involving personal property whose manufacturer's identification mark has been covered, altered, defaced or removed.

For testimony, discussion and action on this measure, see the minutes of the meeting for February 27, 1979.

Senator Close informed the committee that there was an error in the first reprint of this measure.

Senator Sloan pointed out that if an individual had 3 different items, he would fall under this. It was the intention of the committee to make this applicable to the retail or wholesale outlet that was selling items from which the serial numbers had been removed. He suggested amending this to reflect 3 items of a similar or like nature.

Senator Ford expressed concern over the use of the term "identification mark." She stated that there are legitimate discount clothing stores that remove the brand names and sell the clothes at a much lower price.

Senator Dodge suggested using a serial number or identification number; some way in which each unit can be specifically identified through its manufacturer.

Senator Dodge moved to report SB 228 out of committee with an "amend and do pass" recommendation.

Seconded by Senator Hernstadt.

Motion carried unanimously.

SB 192 Prohibits plea bargains or probation where deadly weapon is used.

For further testimony and discussion of this measure, see the minutes for the meeting of February 20, 1979.

Sherman Simons of the Governor's Office informed the committee that all of the statistics that they had requested at the last hearing on this measure were not available.

He had talked with Charles L. Wolff of the Nevada State Prison and had learned that it costs approximately \$8,000 a year to house a prisoner.

Mr. Simons stated that both the Clark County Court Administrator and Judge Mendoza had refused to release figures on the cost of a trial.

In light of that, Mr. Simons had tried to estimate the cost of a trial and came up with a rough estimate of approximately \$777 per day or \$4,000 for a 5-day trial.

Mr. A. A. Campos, Parole and Probation, testified that the impact for making the use of a weapon non-probational would not be significant. He did not believe that it would require extensive planning for an additional prison facility at this time.

However, Mr. Campos felt that in the area of plea negotiations, there would be some impact within the first 3 years. He indicated that there would be approximately 200 additional inmates in the prison system during that period.

He stated that during a 3 year period in Clark County, there were 443 convictions for robbery. Out of that number, only 17 people who had been convicted for the use of a firearm in the commission of a crime received probation. In those 17 cases, almost all carried additional requirements of the court, such as one year in the county jail or mandatory in-patient programs.

Senator Hernstadt stated that during the previous hearing on this measure, there was some testimony regarding Florida's "Use a gun, go to jail" law. He asked if it had been determined whether they had had a decrease in crime due to that.

Mr. Simon responded that he had contacted the Attorney General's office in Florida and found that there was no significant overall decrease. The number of armed robberies had decreased but there had been a corresponding increase in the number of strong-arm robberies. However, they have a comprehensive anti-crime campaign advertising their "get tough" attitude which has contributed to a general, overall decrease in crime.

Michael Delatore, Director of the Department of Law Enforcement Assistance, informed the committee that there is presently an affirmative action anti-shoplifting program going on in the schools. He further stated that by the end of the year, the majority of that program will be funded by the business community as they are aware that if they prevent the crime initially, they will save in the long run.

Senator Dodge asked Charles L. Wolff, Director of Department of Prisons, what he thought about about the deterrent aspects of this type of measure.

Mr. Wolff responded that he did not believe that it would be much of a deterrent in that about one-third of the perpetrators are transient and would not be aware of our laws. The majority of offenders, especially in the area of personal property, are juveniles and they would not be affected by laws in the adult area.

In discussion of the bill, Senator Close stated that the first decision to be made was whether or not to delete plea bargaining. He felt that in order to reduce the use of deadly weapons in the commission of a crime, plea bargaining should be retained.

Senator Sloan stated that the district attorney's who had testified on this measure were unanimously opposed to abolishing plea bargaining. They felt that it overly restricted their hands.

Senator Raggio concurred with Senator Sloan and further stated that he felt the courts might interpret this to be an invasion of their inherent powers to amend a plea.

Robert J. Miller, District Attorney, Clark County, agreed with Senators Sloan and Raggio. He felt that the bill as presently written would, from a defense standpoint, increase the number of cases brought to trial. If the ability to plea bargain is taken away, and the defendant is faced with a mandatory prison sentence, there is very little reason for the defense counsel not to consider not going to trial.

Senator Sloan moved to delete Section 1, which pertains to plea bargaining.

Seconded by Senator Raggio.

Motion carried. The vote was as follows:

AYE: Senator Sloan	NO: Senator Close
Senator Raggio	Senator Ford
Senator Dodge	Senator Ashworth
Senator Hernstadt	

Senator Raggio asked where the term "deadly weapon" is defined.

Geno Menchetti, Office of the Attorney General, stated that it is defined by case law and not in the statutes.

Senator Close suggested limiting this to use of a deadly weapon in specific crimes.

Senator Raggio concurred with that suggestion. He stated that existing law currently provides for enhancement of punishment in all crimes where a deadly weapon is used. This would restrict probation in those crimes to a specified list.

Senator Ford moved to delete lines 9-10 (whether or not the use of a deadly weapon is an element of the crime) and to limit the use of a deadly weapon in the following crimes: first degree kidnapping; sexual assault, robbery, and murder.

Seconded by Senator Dodge.

Motion carried unanimously.

Senator Ford moved to report SB 192 out of committee with and "amend and do pass" recommendation.

Seconded by Senator Dodge.

Motion carried unanimously.

AB 168 Prohibits discharge of firearm at structures and vehicles.

Steve McMorris, Douglas County District Attorney's Association, informed the committee that the Association and the law enforcement community were unanimous in their support for this measure.

He stated that at the present time there is a gap in the law involving cases where people discharge firearms at structures or vehicles. This bill would make it a felony to shoot at a structure or vehicle which had not been abandoned; it would be a misdemeanor for those that were abandoned.

Senator Close stated that the felony punishment would have to be amended to conform with a previous Senate bill (SB 9). That would make it 6 years imprisonment and/or a \$5,000 fine.

Geno Menchetti, Office of the Attorney General, stated that his office wanted to go on record in support of this measure.

Tom Susich, Assistant District Attorney, Douglas County, also indicated his support for this measure.

Senator Sloan moved to report AB 168 out of committee with an "amend and do pass" recommendation.

Seconded by Senator Raggio.

Motion carried unanimously.

SB 26 Increases maximum contractual rate of interest.

For testimony and discussion on this measure, see the minutes for the meetings of February 8, 13, 21, and March 6.

The committee discussed Amendments 216 and 230 with Frank Daykin of the Legislative Counsel Bureau. See attached Exhibits B and C.

Senator Raggio informed the committee that he would be abstaining from the vote on this measure.

Senator Ashworth informed the committee that he, too, will be abstaining from the vote.

Senator Close questioned whether or not appraisals were included in the definition of interest. It was his opinion that any possible charge connected with the obtaining of a loan should be included as interest.

Mr. Daykin responded that the list of exclusions in Amendment 216 was taken directly from Regulation Z in the federal code and that reasonable appraisal fees were not required. He felt that it would be appropriate to include the word "appraisal" to avoid any doubt.

Senator Close asked what was to be considered in the definition of annual percentage rate.

Mr. Daykin replied that anything that is paid by way of inducement to extend credit is countable as interest. Using appraisal fees as an example, he stated that they are service charges required to get a loan started, which is distinct from an inducement for making it.

In regard to Amendment 230, Senator Hernstadt asked if having two different definitions of interest - APR for banks and savings and loans; and subsection 3 for mortgage brokers - would make the statute unconstitutional.

Mr. Daykin responded that the fact that there were two different definitions of interest would not make it void constitutionally, unless the result of it was such as to amount to a denial of equal protection of the law. He stated that under present market conditions, this gives the banks a greater level of permissible rate upon what could conceivably be the same type of loan. This does not distinguish the category or amount of the loan. It distinguishes the lender.

Senator Hernstadt asked, if this were found to be unconstitutional, would there then be no usury rate.

Mr. Daykin replied that what would be held to be unconstitutional is the special rate provided for the mortgage companies. If that were the case, then they would come under the general usury law.

Senator Close asked if there would be any problem in defining interest as interest for mortgage bankers and interest as APR for everyone else.

Mr. Daykin responded that if it was a situation where the permissible interest rate under both statutes was about the same, but interest was defined differently, there might be a discrimination.

Senator Ford moved to amend Amendment 216 by including appraisals under the list of items excluded from the definition of interest.

Seconded by Senator Hernstadt.

Motion carried unanimously. Senators Raggio, Ashworth and Dodge abstained from the vote.

Senator Hernstadt moved to amend Amendment 230 by deleting subsection 3.

Seconded by Senator Sloan.

Motion carried unanimously. Senators Raggio, Ashworth and Dodge abstained from the vote.

Senator Hernstadt moved to report SB 26 out of committee with an "amend and do pass" recommendation.

Seconded by Senator Sloan.

Motion carried unanimously. Senators Raggio, Ashworth and Dodge abstained from the vote.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Cheri Kinsley
Cheri Kinsley, Secretary

APPROVED:

Senator Melvin D. Close, Jr., Chairman

ASSEMBLY BILL 316 - SUMMARY

PURPOSE: This legislation has been introduced to clarify the battery provisions set forth in Section 200.481 of the Nevada Revised Statutes.

Presently a gap exists in the application of the battery statute to certain specific fact situations. At the time the battery statute was originally drafted, the Legislature apparently did not note that in situations where an individual is hit and receives a physical injury, but that physical injury does not arise to substantial bodily harm, the statute does not apply. Specifically NRS 200.481 now says that a person who hits another but does not cause a physical injury is guilty of a misdemeanor. It also states that if a person hits another without a deadly weapon, causing substantial bodily harm, then that person is guilty of a gross misdemeanor. The problem arises in situations where an individual hits another causing a physical injury but that physical injury does not arise to substantial bodily harm. Apparently, at the time the battery statute was enacted it was felt that "physical injury" is the same thing as "substantial bodily harm". However, because "substantial bodily harm" is defined in NRS 193:015, it has a very different meaning than the phrase "physical injury".

NRS 193.015 defines substantial bodily harm as:

- "1. Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or
2. Prolonged physical pain."

The problem is illustrated by this example. Suppose X strikes V's mouth with his fist causing V's lip to swell. This does not constitute "substantial bodily harm" as it is defined in NRS 193.015, yet it is a "physical injury". Where there is a "physical injury" caused by a battery but not to the extent of "substantial bodily harm", the battery prohibitions do not apply. Fortunately this problem has been seldom recognized. In any event, this gap in the law must be eliminated.

AB 316 substitutes the language "substantial bodily harm" for the current language "physical injury" in subsection "2(a)". All criminal batteries which result in less than "substantial bodily harm" will fall within the misdemeanor battery classification. Any battery resulting in "substantial bodily harm" will fall within the gross misdemeanor class.

Subsection 2(c)(3) has been modified to specifically state the punishment possible for battery on a peace officer. This is in line with the proposed overhaul of the punishment provisions in SB 9.

1979 REGULAR SESSION (60TH)

ASSEMBLY ACTION	SENATE ACTION	Senate	AMENDMENT BLANK
Adopted <input type="checkbox"/>	Adopted <input type="checkbox"/>	AMENDMENTS to <u>Senate</u>	
Lost <input type="checkbox"/>	Lost <input type="checkbox"/>	Bill No. <u>26</u>	<u>Joint</u>
Date: _____	Date: _____		<u>Resolution No.</u>
Initial: _____	Initial: _____	BDR <u>8-187</u>	
Concurred in <input type="checkbox"/>	Concurred in <input type="checkbox"/>	Proposed by <u>Committee on Judiciary</u>	
Not concurred in <input type="checkbox"/>	Not concurred in <input type="checkbox"/>		
Date: _____	Date: _____		
Initial: _____	Initial: _____		

Amendment No. 216

Conflicts with Amendment No. 170
Replaces Amendment No. 174

Amend the bill as a whole by renumbering section 1 as section 2 and inserting a new section designated section 1, following the enacting clause, to read as follows:

"Section 1. Chapter 99 of NRS is hereby amended by adding thereto a new section which shall read as follows:

Except as otherwise provided by statute with respect to a particular kind of transaction:

1. "Interest" includes every payment made to the lender or with his knowledge to any third party as an incident to or condition of the extension of credit, such as a commission, bonus, fee, premium or penalty.

2. "Interest" does not include:

(a) Reasonable amounts actually applied in payment of the expense of inspecting any security offered in connection with the loan, investigating the responsibility of the applicant or procuring or extending any abstract of title or certificate of title insurance

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EXHIBIT B

Date 3-2-79 Drafted by FWD:ml

covering the security.

(b) The amount actually paid for the examination of any such abstract or title insurance certificate.

(c) The cost of the preparation, execution and recording of any papers necessary in consummating the loan.

(d) Charges or premiums for credit life, accident or health insurance, or insurance against loss of income, written in connection with any credit transaction if:

(1) The insurance is not required by the lender and this fact is clearly and conspicuously disclosed in writing to the borrower; and

(2) Any borrower desiring such insurance coverage gives specifically dated and separately signed affirmative written indication of this desire after receiving written disclosure to him of the cost of such insurance.

(e) Charges or premiums for insurance, written in connection with any credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, if a clear, conspicuous, and specific statement in writing is furnished by the lender to the borrower setting forth the cost of the insurance if obtained from or through the lender and stating that the borrower may choose the person through whom

the insurance is to be obtained."

Amend section 1, page 1, line 22, after the closed bracket by inserting:

"In computing the rate of interest, any payment made or amount included in the obligation, as consideration for the extension of credit, which is computed as a percentage of the amount of the credit extended must be prorated over the period from the extension of credit to the date when the final payment is due."

Amend section 1, page 1, by deleting lines 23 and 24 and inserting:

"section is [null and void and of no effect as to such excessive rate of] void as to all interest."

Amend the bill as a whole by inserting a new section designated section 3, following section 1, to read as follows:

"Sec. 3. This act shall become effective upon passage and approval."

Amend the title of the bill, 1st line, after "rate;" by inserting:

"defining the components of interest;"

1979 REGULAR SESSION (60TH)

ASSEMBLY ACTION	SENATE ACTION	Senate	AMENDMENT BLANK
Adopted <input type="checkbox"/>	Adopted <input type="checkbox"/>	AMENDMENTS to <u>Senate</u>	
Lost <input type="checkbox"/>	Lost <input type="checkbox"/>	Bill No. <u>26</u>	<u>Joint</u> Resolution No. _____
Date: _____	Date: _____	BDR <u>8-187</u>	
Initial: _____	Initial: _____	Proposed by <u>Committee on Judiciary</u>	
Concurred in <input type="checkbox"/>	Concurred in <input type="checkbox"/>		
Not concurred in <input type="checkbox"/>	Not concurred in <input type="checkbox"/>		
Date: _____	Date: _____		
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Amendment No. 230

May be adopted only after Amendment No. 216
Replaces Amendment No. 170

Amend the bill as a whole by renumbering section 3 (as renumbered) as section 4 and inserting a new section designated section 3, following section 2 (as renumbered), to read as follows:

"Sec. 3. Chapter 645B of NRS is hereby amended to read as follows:

1. For an extension of credit which is secured by a deed of trust or mortgage of real property and which is made by or through a mortgage company, the rate of interest must not exceed the greater of:

(a) Twelve percent per annum; or

(b) If the lowest daily prime rate at the three largest United States banking institutions is 9 percent or more, that lowest daily prime rate plus 3.5 percent.

2. If the rate of interest exceeds 12 percent:

(a) The lender shall certify on the loan document, under penalty of perjury, what the lowest prime rate is on the date of execution of the final loan document.

(b) The lender shall not impose any charge or penalty for

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prepayment of all or any part of the loan.

(c) The lender shall not require any compensating balance or use any other device to increase the cost to the borrower of borrowing the net amount of the loan.

3. For the purposes of this section, "interest" means the periodic charge made for the use or forbearance of money, and does not include any charge made or amount included in the principal sum at the time of extending credit as an inducement to extend the credit or as compensation for any service performed in arranging the extension."

Amend the title of the bill (as amended), after:

"components of interest;" by inserting "providing separately for mortgage companies;"

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SENATE BILL NO. 228—SENATOR KOSINSKI

FEBRUARY 14, 1979

Referred to Committee on Judiciary

SUMMARY—Prohibits certain acts involving personal property whose manufacturer's identification mark has been covered, altered, defaced or removed. (BDR 16-1115)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.



EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to crimes against property; prohibiting certain acts involving personal property whose manufacturer's identification mark has been covered, altered, defaced or removed; providing a penalty; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. Chapter 205 of NRS is hereby amended by adding
2 thereto a new section which shall read as follows:
3 *Every person who knowingly buys, sells, receives, disposes of or con-*
4 *ceals any personal property from which a manufacturer's nameplate,*
5 *serial number or any other distinguishing number or identification mark*
6 *has been covered, altered, defaced or removed is guilty of a misde-*
7 *meanor. This section does not apply to motor vehicles.*

SENATE BILL NO. 192—COMMITTEE ON JUDICIARY

FEBRUARY 7, 1979

Referred to Committee on Judiciary

SUMMARY—Prohibits plea bargains or probation where deadly
weapon is used. (BDR 14-1054)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.



EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to crimes; prohibiting plea bargains or probation where use of a
deadly weapon is alleged or proved; and providing other matters properly
relating thereto.

*The People of the State of Nevada, represented in Senate and Assembly,
do enact as follows:*

- 1 SECTION 1. NRS 174.065 is hereby amended to read as follows:
2 174.065 1. On a plea of guilty to an information or indictment
3 accusing a defendant of a crime divided into degrees, when consented to
4 by the prosecuting attorney in open court and approved by the court, the
5 plea may specify the degree, and in such event the defendant shall not
6 be punished for a higher degree than that specified in the plea.
7 2. On a plea of guilty to an indictment or information for murder of
8 the first degree, when consented to by the prosecuting attorney in open
9 court and approved by the court, the plea may specify a punishment less
10 than death. The specified punishment, or any lesser punishment, may be
11 imposed by a single judge.
12 3. *If an indictment or information charges the use of a firearm or*
13 *other deadly weapon in the commission of the crime, the court shall not:*
14 *(a) Accept a plea of guilty which is accompanied by or conditioned*
15 *upon the dismissal of the charge of using the deadly weapon; or*
16 *(b) Allow an amendment of the information to remove the charge of*
17 *using the deadly weapon.*
18 SEC. 2. NRS 193.165 is hereby amended to read as follows:
19 193.165 1. Any person who uses a firearm or other deadly weapon
20 in the commission of a crime shall be punished by imprisonment in the
21 state prison for a term equal to and in addition to the term of imprison-
22 ment prescribed by statute for such crime. The sentence prescribed by
23 this section shall run consecutively with the sentence prescribed by statute
24 for such crime.

Original bill is 2 pages long.
Contact the Research Library for
a copy of the complete bill.

ASSEMBLY BILL NO. 168—ASSEMBLYMEN HAYES AND
BARENGO

JANUARY 23, 1979

Referred to Committee on Judiciary

SUMMARY—Prohibits discharge of firearm at structures and vehicles.
(BDR 16-789)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.



EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to crimes against public safety; prohibiting discharging a firearm at or into a structure, vehicle, aircraft or watercraft; prescribing a penalty; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

1 SECTION 1. Chapter 202 of NRS is hereby amended by adding
2 thereto a new section which shall read as follows:

3 1. *Any person who willfully and maliciously discharges a firearm at*
4 *or into any house, room, apartment, tenement, shop, warehouse, store,*
5 *mill, barn, stable, outhouse or other building, tent, vessel, aircraft, vehicle,*
6 *vehicle trailer, semitrailer or housetrailer, railroad locomotive, car or*
7 *tender, shall be punished by imprisonment in the state prison for not*
8 *less than 1 year or more than 10 years, or by a fine of not more than*
9 *\$5,000, or by both fine and imprisonment.*

10 2. *Whenever a firearm is so discharged at or into any vessel, aircraft,*
11 *vehicle, vehicle trailer, semitrailer or housetrailer, railroad locomotive,*
12 *car or tender, in motion or at rest, and it cannot with reasonable certainty*
13 *be ascertained in what county the crime was committed, the offender may*
14 *be arrested and tried in any county through which the vessel, aircraft,*
15 *vehicle, vehicle trailer, semitrailer or housetrailer, locomotive or railroad*
16 *car may have run on the trip during which the firearm was discharged at*
17 *or into it.*

18 SEC. 2. NRS 202.253 is hereby amended to read as follows:

19 202.253 As used in NRS 202.255 to 202.360, inclusive, *and section*
20 *1 of this act,* "firearm" means any weapon with a caliber of .177 inches
21 or greater for which a projectile may be propelled by means of explosive,
22 spring, gas, air or other force.

Original bill is 2 pages long.
Contact the Research Library for
a copy of the complete bill.

SENATE BILL NO. 26—COMMITTEE ON JUDICIARY

JANUARY 17, 1979

Referred to Committee on Judiciary

SUMMARY—Increases maximum contractual rate of interest. (BDR 8-178)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.



EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to interest; increasing the maximum contractual rate; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. NRS 99.050 is hereby amended to read as follows:
2 99.050 [1.] Parties may agree for the payment of any rate of interest
3 on money due or to become due on any contract which does not exceed the
4 rate of [12] 18 percent per annum. [, except as otherwise provided in
5 subsection 2.
6 2. If the lowest daily prime rate at the three largest United States
7 banking institutions is 9 percent or more, the maximum rate of interest
8 shall not exceed such lowest daily prime rate plus 3.5 percent. If a loan is
9 made pursuant to this subsection:
10 (a) The lender shall certify on the loan document, under penalty of per-
11 jury, what the lowest prime rate is on the date of execution of the final
12 loan document.
13 (b) The lender shall not impose any charge or penalty for prepayment
14 of all or any part of the loan.
15 (c) The lender shall not require any compensating balance or use any
16 other device to increase the cost to the borrower of borrowing the net
17 amount of the loan.
18 As used in this subsection, "lender" means any person who advances
19 money for the use of another or forbears the immediate collection of
20 money due for value received, and the terms "borrower" and "loan" have
21 corresponding meanings.
22 3.] Any agreement for a greater rate of interest than specified in this
23 section is [null and void and of no effect as to such] void as to the exces-
24 sive rate of interest.