
By Mr. Patterson of Worcester, petition of Charles W. Patterson for legislation to establish a usury law. Banks and Banking.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Five.

AN ACT ESTABLISHING A USURY LAW.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 140 of the General Laws is
2 hereby amended by striking out sections 90 through 95
3 and inserting in place thereof the following new sec-
4 tions:—

5 *Section 90. Rate of Interest.*— If there is no agree-
6 ment or provision of law for a different rate, the in-
7 terest of money shall be at the rate of six dollars on each
8 hundred for a year, simple interest, and no greater rate
9 shall be recovered in a suit unless the agreement to pay
10 such greater rate or its equivalent in money is in writing.

11 Where an agreement in writing exists to pay interest
12 at a rate greater than that referred to above, which
13 does not contain a stated period of time for which such
14 rate is to be calculated, interest shall be calculated at
15 the rate mentioned, by the year, in the same manner as
16 if the words “per annum” or “by the year” had been
17 added to such rate.

18 For the purpose of calculating interest, a month shall
19 be considered the twelfth part of a year, and as consist-
20 ing of thirty days and interest for any number of days
21 less than a month shall be estimated by the proportion
22 which such number of days shall bear to thirty. The
23 amount of money or value actually received or held at

24 the time of the loan, forbearance or other transaction
25 shall determine the amount of the obligation excepting
26 that, in the case of a renewal of an obligation, the
27 previous principal balance shall be added to the amount
28 of value or money received to determine the amount of
29 the new obligation.

30 In calculating interest, where partial payments may
31 have been made, the interest shall be calculated to the
32 time when the payment shall have been made and such
33 payment shall be applied to the payment first of such
34 interest and if such payment exceeds the interest, the
35 balance shall be applied to diminish the principal, and
36 the same course shall be followed in all subsequent
37 payments; but in no case shall there be a compound-
38 ing of interest.

39 The maximum interest shall include all sums paid,
40 *directly or indirectly*, by or on behalf of the borrower *to*
41 *the lender* for interest, brokerage, commissions, services,
42 extension of loan, forbearance to enforce payment and
43 all other sums charged, *directly or indirectly, by the*
44 *lender* against the borrower *including, therein, any charge*
45 *made, directly or indirectly, by the lender for making or*
46 *securing a loan. Notwithstanding the above, where a loan*
47 *is secured, a lender may require a borrower to pay reason-*
48 *able attorney's fees and recording costs when the services*
49 *of an attorney are utilized, in order to examine and/or*
50 *pass upon the title and the marketability thereof to said*
51 *security.*

52 *Section 90A. Usury Forbidden.* — No person shall,
53 directly or indirectly, charge, take or receive any money,
54 goods or chose in action for a loan or for forbearance of
55 any money, goods, or chose in action, a greater rate of
56 interest than one per cent per month on the unpaid
57 principal balance *except that a minimum charge not ex-*
58 *ceeding the sum of ten dollars may be charged for interest*
59 *and expenses on all loans exceeding one thousand dollars*
60 *except in cases where a loan has been renewed or refinanced;*
61 *provided, however, that no such minimum charge shall be*
62 *assessed against a borrower more than once in any con-*

63 *secutive twelve-month period.* All contracts and agree-
64 ments of whatever nature shall be void if the charge
65 made for interest is in excess of the amount specified
66 herein; except that bottomry, respondentia bonds,
67 *rental and lease agreements*, and any loan or forbearance
68 of money or goods or chose in action in excess of fifteen
69 hundred dollars secured *wholly or partially* by any assets
70 of the borrower's business, and any loan of money or
71 goods or for forbearance of money or goods or chose in
72 action to a corporation or to a receiver or trustee in
73 bankruptcy, *secured or unsecured*, shall not be subject
74 to the provisions of sections ninety through ninety-
75 four A of this chapter.

76 *Section 91. Recovery.* — Every person who shall pay
77 or deliver anything on a transaction illegal under sec-
78 tion ninety through ninety-four A of this chapter may
79 recover in a suit in equity in the supreme judicial or
80 superior court against the person who shall have taken
81 or received the same, or against his personal representa-
82 tives, the full amount of the money so paid, the thing
83 delivered, or its value, if such suit is brought within
84 three years after the payment or delivery. If such court
85 shall declare the contract or agreement void under the
86 provisions of sections ninety through ninety-four A of
87 this chapter it shall enjoin any prosecution thereon and
88 order any security to be surrendered to the plaintiff and
89 the contract or agreement shall be cancelled. The plain-
90 tiff shall recover reasonable attorney's fees and costs.
91 If a lender shall receive as a result of prepayment of
92 any instalments a greater rate of interest than is al-
93 lowed under section ninety A on a loan which if paid as
94 agreed when originally made would not have resulted
95 in such excessive rate, such lender shall not be subject
96 to any of the provisions of sections ninety through
97 ninety-four A if such lender shall within ten days after
98 final payment of the balance of such loan repay to the
99 borrower any excess paid by the borrower above the rate
100 provided in section ninety A.

101 *Section 92. Persons lending Money to give Borrower*

102 *Receipts for Payments.* — Every person lending money
103 shall, whenever the borrower makes payment of any
104 money either principal or interest, give to said borrower,
105 upon request, immediately upon such payment being
106 made, a receipt, said receipt containing the date of the
107 payment, the amount paid and whether the payment
108 is applicable to interest on the sum borrowed or appli-
109 cable to the principal, and in the amounts applicable to
110 each. All such payments shall be signed with the signa-
111 ture of the lender or his duly authorized representative.
112 Whoever refuses upon demand to give a receipt in ac-
113 cordance with the requirement of this section shall for-
114 feit the entire interest upon the principal sum.

115 *Section 93. Who may plead Usury.* — The borrower
116 and his assignees, vendees, creditors, legal representa-
117 tives, heirs, devisees, legatees or any person having a
118 legal or equitable interest in the assets or the estate of
119 a borrower may plead the benefit of the provisions of
120 sections ninety through ninety-four A of this chapter
121 as plaintiff or defendant. A defence of usury shall not,
122 however, be interposed against a holder in due course.

123 *Section 93A. Creditor may sue to annul Usurious*
124 *Contract, Decree, Sale, Disposition of Proceeds.* — Any
125 creditor whose debtor has given a lien by mortgage,
126 pledge or otherwise on real or personal property to se-
127 cure payment based upon a usurious contract or agree-
128 ment, may bring a suit in equity against the parties to
129 such usurious contract or agreement and recover judg-
130 ment for his debt against the debtor, and a decree shall
131 issue cancelling and annulling such usurious lien, and
132 directing the sale of the property to satisfy the plain-
133 tiff's judgment and costs. A creditor, however, before
134 bringing such suit shall post a satisfactory bond to in-
135 demnify the lender and the borrower against any
136 diminution in value of the property covered by said
137 lien and for legal costs including reasonable attorney's
138 fees in the event the court shall determine that said
139 loan was not in violation of sections ninety through
140 ninety-four A of this chapter. Any surplus that may

141 remain after satisfying the plaintiff's judgment shall be
142 paid to the debtor.

143 *Section 93B. Affidavit of No Usury.* — A suit upon
144 a contract or agreement for a loan or for forbearance of
145 money, goods or chose in action by the lender against
146 the borrower shall not be maintained until the lender
147 shall have filed an affidavit setting forth that the con-
148 tract or agreement sued on was not made in violation
149 of any of the provisions of sections ninety through
150 ninety-four A of this chapter and that a greater rate of
151 interest than is legal has not been charged, reserved or
152 collected upon such contract or agreement. If a find-
153 ing is made against the lender and the court determines
154 that the contract or agreement is void as being in vi-
155 olation of sections ninety through ninety-four A of this
156 chapter, the court shall make such *finding* on behalf of
157 the borrower as is consistent with the intent of sections
158 ninety through ninety-four A of this chapter.

159 *Section 94. Penalty.* — A willful violation of sections
160 ninety through ninety-four A of this chapter by any
161 person shall be punishable by a fine of not less than one
162 hundred dollars or more than one thousand dollars or
163 imprisonment of not less than one month or more than
164 six months or both.

165 *Section 94A. Restitution a Bar to Further Penalties.*
166 — Every person who shall return the money, goods or
167 other thing so taken, accepted or received, or the value
168 thereof, shall be discharged from any other or further
169 forfeiture, penalty or punishment which he may have
170 incurred by taking or receiving the money, goods or
171 other thing so repaid or returned.

172 *Section 95. Certain Other Statutes not Affected.* —
173 Nothing contained in sections ninety through ninety-
174 four A of this chapter shall be construed to affect the
175 provisions of section seventy-two and sections ninety-
176 six through one hundred and fourteen of this chapter,
177 clause Ninth A, section fifty-four of chapter one hun-
178 dred and sixty-eight and section nine of chapter one
179 hundred and seventy-two A.

180 *Section 95A. Unconstitutionality, Effect.* — If any
181 section or clause of sections ninety through ninety-
182 four A of this chapter is held invalid or unconstitutional
183 by a court of competent jurisdiction the remainder shall
184 not be affected thereby.

1 SECTION 2. Chapter 107 of the General Laws is
2 hereby amended by striking out section 3.

1 SECTION 3. All contracts and agreements legally in
2 existence prior to the enactment of this act to which
3 the provisions of section one would apply shall not be
4 affected thereby.

