

SENATE No. 825

The Commonwealth of Massachusetts

SENATE, October 1, 1956.

The committee on Ways and Means, to whom was committed the House Bill establishing a usury law (House, No. 2958, amended), report recommending that the same ought to pass, with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document No. 825.

For the committee,

HAROLD R. LUNDGREN.

1 SECTION 1. Chapter 140 of the General Laws is
2 hereby amended by adding thereto the following new
3 sections:— *Section 90A. Rate of Interest.*— No per-
4 son shall directly or indirectly charge, take or receive
5 for a loan of more than fifteen hundred dollars secured
6 wholly or partially by a mortgage of real estate other
7 than a first mortgage having thereon a dwelling house
8 with accommodations for six or less separate house-
9 holds and occupied in whole or in part at the time the
10 loan is made as a home by any obligor on the mortgage
11 debt or by any person granting or releasing any interest
12 under said mortgage, a greater rate of interest than one
13 and one half per cent per month on the unpaid princi-
14 pal balance of the loan and for the period after the
15 expiration of six successive months of continuing de-
16 fault a greater rate of interest than one per cent per
17 month. The aggregate of the amount of money or
18 value actually received or held at the time of the loan,
19 forbearance or other transaction plus the sum of all
20 existing indebtedness of the borrower to the lender shall
21 for the purposes of sections ninety A through ninety E
22 be deemed the amount of the loan. Except where the
23 borrower agrees in writing to a different application,
24 in calculating interest, where partial payments may
25 have been made, the interest shall be calculated to the
26 time when the payment shall have been made, and such
27 payment shall be applied to the payment first of such
28 interest, and if such payment exceeds the interest, the
29 balance shall be applied to diminish the principal, and
30 the same course shall be followed in all subsequent
31 payments.

32 The maximum interest shall include all sums paid,
33 directly or indirectly by or on behalf of the borrower
34 to the lender for interest, brokerage, commissions, serv-
35 ices, extension of loan, forbearance to enforce payment
36 or otherwise for making or securing the loan. Not-
37 withstanding the above, the lender may require the
38 borrower to pay or reimburse the lender for actual re-

39 cording and foreclosure costs and for reasonable attor-
40 ney's fees when the services of an attorney are utilized
41 by the lender in order to examine and/or pass upon the
42 title and the marketability of the security for the loan
43 or to draw the security instruments or documents, or
44 when such services are utilized to collect the debt or
45 realize upon the security.

46 As used in sections ninety A through ninety E, the
47 word "loan" shall mean any loan of money or goods or
48 for forbearance of money or goods or chose in action as
49 described in the first sentence of this section; the word
50 "note" shall mean the instrument, other than the
51 mortgage, evidencing or containing the debt secured by
52 the mortgage or any extension or renewal of such instru-
53 ment; the word "lender" shall mean any person mak-
54 ing a loan of more than fifteen hundred dollars secured
55 by a mortgage as described in this section and shall
56 include the lender or any legal successor to the rights
57 of the lender; the word "borrower" shall mean the
58 borrower or any legal successor to the borrower's rights
59 or obligations.

60 *Section 90B. Requirements of Note and Notice.* —
61 Any note secured by such a mortgage and any such
62 mortgage shall, among its provisions, specify as sepa-
63 rate items the principal sum, the rate of interest or its
64 equivalent in money the period of the loan and the
65 periodic due dates, if any, of principal and interest,
66 otherwise the lender shall have no right to collect
67 interest.

68 Within fifteen days after receipt by the lender of a
69 written request therefor from the borrower or his au-
70 thorized representative sent by registered or certified
71 mail the lender shall by either of such mail send to the
72 person requesting the same to the address specified in
73 the request a conformed copy of the note. At least
74 fifteen days prior to the commencement of any fore-
75 closure proceedings the lender shall send to the borrower
76 by either of such mail a statement of intention to fore-
77 close which shall specify the amount of principal, in-

78 terest and other indebtedness, if any, owing and ac-
79 cruing under the note and mortgage. Failure by the
80 lender to comply with the foregoing provisions of this
81 paragraph shall suspend the holder's rights until such
82 requirements are complied with.

83 *Section 90C. Lender to give Borrower Receipts for*
84 *Payments.* — The lender shall, whenever the borrower
85 makes payment of any money, either principal or in-
86 terest, give to said borrower, upon request, upon such
87 payment being made, a receipt, said receipt containing
88 the date of the payment and the amount paid, and
89 whether the payment is applicable to interest on the
90 sum borrowed or applicable to the principal, and in the
91 amounts applicable to each. All such receipts shall be
92 signed with the signature of the lender or his duly au-
93 thorized representative. Whoever refuses upon written
94 demand received by registered or certified mail to give
95 a receipt or statement in accordance with the require-
96 ment of this section shall forfeit the entire interest upon
97 the principal sum.

98 *Section 90D. Civil Penalties.* — A willful violation
99 of section ninety A by any person shall make the loan
100 void and the lender shall have no right to collect or re-
101 ceive any principal, interest or charges whatsoever.
102 Upon such finding by the court it shall order the lender
103 to return to the borrower all notes and mortgages in
104 connection with such loan and shall further order the
105 lender to provide the borrower forthwith a discharge of
106 such mortgage. Where the court determines that a
107 violation of section ninety A is not willful, the borrower
108 shall recover three times the excess interest. The su-
109 perior or district court shall have jurisdiction of all ac-
110 tions arising under section ninety A and if a finding is
111 made for the borrower he shall be entitled to a reason-
112 able attorney's fee if the services of an attorney are
113 utilized in such an action.

114 *Section 90E. Criminal Penalty.* — A willful violation
115 of section ninety A by any person shall be punishable
116 by a fine of not less than one hundred dollars nor more
117 than five hundred dollars.

118 *Section 90F. Unconstitutionality, Effect.* — If any
119 section or clause of sections ninety A through ninety E
120 of this chapter is held invalid or unconstitutional by a
121 court of competent jurisdiction the remainder shall not
122 be affected thereby.

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

1 SECTION 3. This act shall take effect on January
2 first, nineteen hundred and fifty-seven.

REPORT OF THE COMMISSIONERS OF THE LAND OFFICE

AND THE LAND OFFICE OF THE STATE OF CALIFORNIA
IN RESPONSE TO RESOLUTIONS PASSED BY THE SENATE
AND ASSEMBLY IN 1889 AND 1890

ALBANY: PUBLISHED BY THE STATE PRINTING OFFICE,
1890

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