HOUSE . . . . No. 782

By Mr. Patterson of Worcester, petition of Charles W. Patterson for legislation relative to small loans. Banks and Banking.

The Commonwealth of Massachusetts

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

AN ACT RELATIVE TO SMALL LOANS.

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

SECTION 1. Sections 96, 100 and 110 of chapter 140 of the General Laws are hereby amended as follows: —

Section 1. Section 96 of chapter 140 of the General Laws is hereby amended by striking out the words "three hundred" wherever they appear therein and inserting in place thereof the words: — one thousand, — so that said section will read as follows: — *Section 96.* No person shall directly or indirectly engage in the business of making loans of one thousand dollars or less, if the amount to be paid on any such loan for interest and expenses exceeds in the aggregate an amount equivalent to twelve per cent per annum upon the sum loaned, without first obtaining from the commissioner of banks, in sections ninety-six to one hundred and fourteen, inclusive, called the commissioner, a license to carry on the said business in the town where the business is to be transacted. When an application for a loan or for an endorsement or guarantee or for the purchase of a note is made by any person within this commonwealth, and the money is advanced or the endorsement or guarantee is made or furnished by any person without this commonwealth, the transaction shall be deemed a loan made within this commonwealth, and such a loan and the par-

24 ties making it shall be subject to sections ninety-six to
25 one hundred and thirteen, inclusive. The buying or
26 endorsing of notes or the furnishing of guarantee or se-
27 curity for compensation shall be considered to be engag-
28 ing in the business of making small loans within said
29 sections, but the foregoing provisions of this sentence
30 shall not apply in the case of any transaction which
31 involves any note or other instrument evidencing the
32 indebtedness of a buyer to the seller of goods, services or
33 insurance for a part or all of the purchase price. In
34 prosecutions under said sections, the amount to be paid
35 upon any loan of one thousand dollars or less for interest
36 or expenses shall include all sums paid or to be paid by or
37 on behalf of the borrower for interest, brokerage, record-
38 ing fees, commissions, services, extension of loan, forbear-
39 ance to enforce payment, and all other sums charged
40 against or paid or to be paid by the borrower for making
41 or securing directly or indirectly the loan, and shall
42 include all such sums when paid by or on behalf of or
43 charged against the borrower for or on account of making
44 or securing the loan, directly or indirectly, to or by any
45 person, other than the lender, if such payment or charge
46 were known to the lender at the time of making the loan,
47 or might have been ascertained by reasonable inquiry.
48 Any person directly or indirectly engaging in the business
49 of negotiating, arranging, aiding or assisting the borrower
50 or lender in procuring or making loans of one thousand
51 dollars or less, for which the amount paid or to be paid for
52 interest and expenses, including al amounts paid or to
53 be paid to any other party therefor, exceeds in the aggre-
54 gate an amount equivalent to twelve per cent per annum,
55 whether such loans are actually made by such person or
56 by another party, shall be deemed to be engaged in the
57 business of making small loans, and shall be subject to
58 sections ninety-six to one hundred and twelve, inclusive.
59 If, after all deductions or payments, whether on account
60 of interest, expenses or principal made substantially con-
61 temporaneously with the making of the loan, the amount
62 retained by the borrower plus the sum of all other exist-

ing principal loan indebtedness owing by the borrower to the lender, be one thousand dollars or less, the transaction shall be deemed to be a loan in the amount of the aggregate of the sum so retained and so owing by the borrower after such deductions or payments notwithstanding that the loan be nominally for a greater sum.

SECTION 2. Section 100 of chapter 140 of the General Laws is hereby amended by striking out said section and inserting in place thereof the following section: —

Section 100. The total amount to be paid on any loan for interest and expenses shall not exceed an amount equivalent to two and one quarter per cent per month on any part of the unpaid principal balance of the loan not in excess of one hundred dollars, and one and three quarters per cent per month on any part of the unpaid principal balance of the loan not in excess of five hundred dollars, and one and one half per cent per month on any part of the unpaid principal balance of the loan in excess of five hundred dollars, but not in excess of one thousand dollars for a period terminating not later than one year after maturity and to six per cent per annum after the termination of said year, on the amount actually received by the borrower, computed on unpaid balances; and persons subject to this section shall be entitled to a minimum charge of six dollars for interest and expenses, except in cases where a loan has been renewed or refinanced; provided, however, that no such minimum charge shall be assessed against a borrower more than once in any consecutive twelve-month period; and no licensee or company or association to which sections ninety-six to one hundred and twelve, inclusive, apply shall charge or receive upon any loan a greater rate of interest than that established herein. No charge, bonus, fee, expense or demand of any nature whatsoever, except as above provided, shall be made upon loans to which said sections relate.

Notwithstanding the foregoing maximum rates the commissioner of banks may increase or decrease such

maximum rates on a per annum basis from time to time but no oftener than once each six months by an amount up to but not exceeding such amount as the federal reserve discount rate effective in Massachusetts is increased above or decreased from the federal reserve discount rate in force in Massachusetts at the time this act becomes effective.

In fixing any such increase or decrease the commissioner shall have due regard solely to changes in the cost of borrowing by lenders licensed under section ninety-six of chapter one hundred and forty attributable solely to changes in said federal reserve discount rate.

SECTION 3. Section 110 of chapter 140 of the General Laws is hereby amended by striking out the words "three hundred" wherever they appear therein and inserting in place thereof the words: — one thousand, — so that said section will read as follows: — *Section 110.* Whoever, not being duly licensed as provided in section ninety-six, on his own account or on account of any other person not so licensed, engages in or carries on, directly or indirectly, either separately or in connection with or as a part of any other business, the business of making loans or buying notes or furnishing endorsements or guarantees, to which sections ninety-six to one hundred and eleven, inclusive, apply, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than two months, or both. Any loan made or note purchased or endorsement or guarantee furnished by an unlicensed person in violation of said sections shall be void. In prosecutions under said sections the fact that the defendant has made or assisted in the making of two or more loans of one thousand dollars or less, upon which there has directly or indirectly been paid or charged, for interest, brokerage, recording fees, commissions, services, extension of loan, forbearance to enforce payment or other expenses, a sum which exceeds in the aggregate an amount equivalent to twelve per cent per annum upon the amount actually received by the bor-

rower, whether such sum has been paid to or charged by the defendant or paid to or charged by any other person, shall be prima facie evidence that the defendant has engaged in and carried on the business of making loans to which sections ninety-six to one hundred and twelve, inclusive, apply.

SECTION 4. Chapter 140 of the General Laws is hereby amended by adding after section 114 the following new section: —

Section 114A. Trust companies, savings banks, co-operative banks, savings and loan associations, credit unions, national banking associations and federal savings and loan associations shall not be subject to the provisions of sections ninety-six to ninety-nine, inclusive, or sections one hundred and one to one hundred and fourteen, inclusive, of this chapter. Loans made by trust companies, savings banks, co-operative banks, savings and loan associations, credit unions, national banking associations and federal savings and loan associations in violation of section one hundred of this chapter, or any regulations made thereunder, may be declared void by the supreme judicial or superior court in equity upon petition by the person to whom the loan was made, and any person violating any provision of said section one hundred, or any regulation made thereunder, shall be subject to a fine of not more than five hundred dollars.

SECTION 5. Clause Ninth (*a*) of section 54 of chapter 168 of the General Laws, as most recently amended by chapter 365 of the acts of 1950, is hereby amended by striking out the last sentence.