

# HOUSE . . . . . No. 318

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By Mr. Lawton of Brockton, petition of James R. Lawton for legislation to limit interest rates on home mortgages. Banks and Banking.

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## The Commonwealth of Massachusetts

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

### AN ACT LIMITING INTEREST RATES ON HOME MORTGAGES.

*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 hereby  
2 amended by adding thereto the following new sections:—  
3 *Section 90A. Rate of Interest.* — No person shall directly or  
4 indirectly charge, take or receive for a loan of more than fifteen  
5 hundred dollars secured wholly or partially by a mortgage of  
6 real estate, except a first mortgage, having thereon a dwelling  
7 house with accommodations for six or less separate households  
8 and occupied in whole or in part at the time the loan is made as  
9 a home by any obligor on the mortgage debt or by any person  
10 granting or releasing any interest under said mortgage, a  
11 greater rate of interest than one and one half per cent per  
12 month on the unpaid principal balance on the loan and for the  
13 period after the expiration of six successive months of con-  
14 tinuing default a greater rate of interest than one per cent per  
15 month. The aggregate of the amount of money or value actu-  
16 ally received or held at the time of the loan, forbearance or  
17 other transaction plus the sum of all existing indebtedness of  
18 the borrower to the lender shall for the purposes of sections  
19 ninety A through ninety E be deemed the amount of the loan.  
20 Except where the borrower agrees in writing to a different  
21 application, in calculating interest, where partial payments

22 may have been made, the interest shall be calculated to the  
23 time when the payment shall have been made, and such pay-  
24 ment shall be applied to the payment first of such interest,  
25 and if such payment exceeds the interest, the balance shall be  
26 applied to diminish the principal, and the same course shall be  
27 followed in all subsequent payments.

28 The maximum interest shall include all sums paid, directly  
29 or indirectly by or on behalf of the borrower to the lender for  
30 interest, brokerage, commissions, services, extension of loan,  
31 forbearance to enforce payment or otherwise for making or  
32 securing the loan. Notwithstanding the above, the lender may  
33 require the borrower to pay or reimburse the lender for actual  
34 recording and foreclosure costs and for reasonable attorney's  
35 fees when the services of an attorney are utilized by the lender  
36 in order to examine and/or pass upon the title and the market-  
37 ability of the security for the loan or to draw the security in-  
38 struments or documents, or when such services are utilized to  
39 collect the debt or realize upon the security.

40 As used in sections ninety A through ninety E, the word  
41 "loan" shall mean any loan of money or goods or for forbear-  
42 ance of money or goods or chose in action as described in the  
43 first sentence of this section; the word "note" shall mean the  
44 instrument, other than the mortgage, evidencing or containing  
45 the debt secured by the mortgage or any extension or renewal  
46 of such instrument; the word "lender" shall mean any person  
47 making a loan of more than fifteen hundred dollars secured by  
48 a mortgage as described in this section and shall include the  
49 lender or any legal successor to the rights of the lender; the  
50 word "borrower" shall mean the borrower or any legal suc-  
51 cessor to the borrower's rights or obligations.

52 *Section 90B. Requirements of Note and Notice.* — Any note  
53 secured by such a mortgage and any such mortgage shall,  
54 among its provisions, specify as separate items the principal  
55 sum, the rate of interest or its equivalent in money, the period  
56 of the loan and the periodic due dates, if any, of principal and  
57 interest, otherwise the lender shall have no right to collect  
58 interest.

59 Within fifteen days after receipt by the lender of a written  
60 request therefor from the borrower or his authorized repre-

61 tentative sent by registered or certified mail the lender shall by  
62 either of such mail send to the person requesting the same to  
63 the address specified in the request a confirmed copy of the  
64 note. At least fifteen days prior to the commencement of any  
65 foreclosure proceedings the lender shall send to the borrower  
66 by either of such mail a statement of intention to foreclose  
67 which shall specify the amount of principal, interest and other  
68 indebtedness, if any, owing and accruing under the note and  
69 mortgage. Failure by the lender to comply with the foregoing  
70 provisions of this paragraph shall suspend the holder's rights  
71 until such requirements are complied with.

72 *Section 90C. Lender to give Borrower Receipts for Payments.* —

73 The lender shall, whenever the borrower makes payment of any  
74 money, either principal or interest, give to said borrower, upon  
75 request, upon such payment being made, a receipt, said receipt  
76 containing the date of the payment and the amount paid, and  
77 whether the payment is applicable to interest on the sum  
78 borrowed or applicable to the principal, and in the amounts  
79 applicable to each. All such receipts shall be signed with the  
80 signature of the lender or his duly authorized representative.  
81 Whoever refuses upon written demand received by registered  
82 or certified mail to give a receipt or statement in accordance  
83 with the requirement of this section shall forfeit the entire  
84 interest upon the principal sum.

85 *Section 90D. Civil Penalties.* — A willful violation of section  
86 ninety A by any person shall make the loan void and the lender  
87 shall have no right to collect or receive any principal, interest  
88 or charges whatsoever. Upon such finding by the court it shall  
89 order the lender to return to the borrower all notes and mort-  
90 gages in connection with such loan and shall further order the  
91 lender to provide the borrower forthwith a discharge of such  
92 mortgage. Where the court determines that a violation of sec-  
93 tion ninety A is not willful, the borrower shall recover three  
94 times the excess interest. The superior or district court shall  
95 have jurisdiction of all actions arising under section ninety A  
96 and if a finding is made for the borrower he shall be entitled to  
97 a reasonable attorney's fee if the services of an attorney are  
98 utilized in such an action.

99 *Section 90E. Criminal Penalty.* — A willful violation of sec-

100 tion ninety A by any person shall be punishable by a fine of not  
101 less than one hundred dollars nor more than five hundred  
102 dollars.

103 *Section 90F. Unconstitutionality, Effect.* — If any section or  
104 clause of sections ninety A through ninety E of this chapter is  
105 held invalid or unconstitutional by a court of competent juris-  
106 diction the remainder shall not be affected thereby.

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

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