
By Mr. Long (by request), petition of Harold W. McKelvey for legislation relative to establishing a usury law. Banks and Banking.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Sixty-Three.

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 hereby
2 amended by adding after section 90D the following ten sec-
3 tions: —

4 *Section 90E.* If there is no agreement or provision of law
5 for a different rate, the interest of money shall be at the rate
6 of six dollars on each hundred for a year, simple interest, and
7 no greater rate shall be recovered in a suit unless the agree-
8 ment to pay it is in writing.

9 When an agreement in writing exists to pay interest at a
10 rate greater than that referred to above, which does not con-
11 tain a stated period of time for which such rate is to be calcu-
12 lated, interest shall be calculated at the rate mentioned, by
13 the year, in the same manner as if the words "per annum" or
14 "by the year" had been added to such rate.

15 For the purpose of calculating interest, a month shall be
16 considered the twelfth part of a year, and as consisting of
17 thirty days and interest for any number of days less than a
18 month shall be estimated by the proportion which such num-
19 ber of days shall bear to thirty. The amount of money or value
20 actually received or held at the time of the loan, forbearance
21 or other transaction shall determine the amount of the obliga-
22 tion excepting that, in the case of a renewal of an obligation,
23 the previous principal balance shall be added to the amount of

24 value or money received to determine the amount of the new
25 obligation.

26 In calculating interest, where partial payments may have
27 been made, the interest shall be calculated to the time when
28 the payment shall have been made and such payment shall be
29 applied to the payment first of such interest and if such pay-
30 ment exceeds the interest, the balance shall be applied to
31 diminish the principal, and the same course shall be followed
32 in all subsequent payments; but in no case shall there be a
33 compounding of interest.

34 The maximum interest shall include all sums paid by or on
35 behalf of the borrower for interest, brokerage, recording fees,
36 commissions, services, extension of loan, forbearance to en-
37 force payment, and all other sums charged against or paid or
38 to be paid by the borrower for making or securing, directly or
39 indirectly, the loan, and shall include all such sums when paid
40 by or on behalf of or charged against the borrower for or on
41 account of making or securing the loan, directly or indirectly,
42 to or by any person, other than the lender, if such payment
43 or charge was known to the lender at the time of making the
44 loan, or might have been ascertained by reasonable inquiry.

45 *Section 90F.* No person shall, directly or indirectly, charge,
46 take or receive any money, goods, chose in action, or other-
47 wise for a loan or for forbearance of any money, goods, or
48 chose in action, a greater rate of interest than three fourths
49 of one per cent per month on the unpaid principal balance. All
50 contracts and agreements of whatever nature shall be void if
51 the charge made for interest is in excess of the amount speci-
52 fied herein; except that bottomry, respondentia bonds and con-
53 tracts, and a loan of money or goods in excess of fifteen hun-
54 dred dollars secured by assets of the borrower's business, and
55 a loan of money or goods or for forbearance of money or goods
56 to a corporation, shall not be subject to the provisions of sec-
57 tions ninety E through ninety M.

58 *Section 90G.* Every person who shall pay or deliver any-
59 thing on a transaction illegal under sections ninety E through
60 ninety M may recover in a suit in equity in the supreme ju-
61 dicial or superior court against the person who shall have

62 taken or received the same, or against his personal representa-
63 tives, the full amount of the money so paid, the thing deliv-
64 ered, or its value, if such suit is brought within three years
65 after the payment or delivery. If such court shall declare the
66 contract or agreement void under the provisions of sections
67 ninety E through ninety M it shall enjoin any prosecution
68 thereon and order any security to be surrendered to the
69 plaintiff and the contract or agreement shall be cancelled. The
70 plaintiff shall recover reasonable attorney's fees and costs.

71 *Section 90H.* Every person lending money upon security
72 shall, whenever the borrower makes payment of any money
73 either principal or interest, give to said borrower, immediately
74 upon such payment being made, a receipt, said receipt con-
75 taining the date of the payment, the amount paid and whether
76 the payment is applicable to interest on the sum borrowed
77 or applicable to the principal, and in the amounts applicable
78 to each. All such payments shall be signed with the signature
79 of the lender or his duly authorized representative. Whoever
80 refuses upon demand to give a receipt in accordance with the
81 requirement of this section shall forfeit the entire interest
82 upon the principal sum.

83 *Section 90I.* The borrower and his assignees, vendees, cred-
84 itors, legal representatives, heirs, devisees, legatees or any
85 person having a legal or equitable interest in the assets or the
86 estate of a borrower may plead the benefit of the provisions
87 of sections ninety E through ninety M as plaintiff or defend-
88 ant. A defense of usury shall not, however, be interposed
89 against a holder in due course.

90 *Section 90J.* Any creditor whose debtor has given a lien by
91 mortgage, pledge or otherwise on real, or personal property to
92 secure payment based upon a usurious contract or agreement,
93 may bring a suit in equity against the parties to such
94 usurious contract or agreement and recover judgment for his
95 debt against the debtor, and a decree shall issue cancelling and
96 annulling such usurious lien, and directing the sale of the prop-
97 erty to satisfy the plaintiff's judgment and costs. Any surplus
98 that may remain after satisfying the plaintiff's judgment shall
99 be paid to the debtor.

100 *Section 90K.* A suit upon a contract or agreement for a
101 loan or for forbearance of money, goods or chose in action by
102 the lender against the borrower shall not be maintained until
103 the lender shall have filed an affidavit setting forth that the
104 contract or agreement sued on was not made in violation of
105 any of the provisions of sections ninety E through ninety M
106 and that a greater rate of interest than is legal has not been
107 charged, reserved or collected upon such contract or agree-
108 ment. If a finding is made against the lender and the court
109 determines that the contract or agreement is void as being in
110 violation of sections ninety E through ninety M the court shall
111 make such order on behalf of the borrower as is consistent
112 with the intent of sections ninety E through ninety M.

113 *Section 90L.* A violation of sections ninety E through
114 ninety M by any person shall be punishable by a fine of not
115 less than one hundred dollars or more than one thousand dol-
116 lars or imprisonment of not less than one month or more than
117 six months or both.

118 *Section 90M.* Every person who shall return the money,
119 goods or other thing so taken, accepted or received, or the
120 value thereof, shall be discharged from any other or further
121 forfeiture, penalty or punishment, which he may have incurred
122 by taking or receiving the money, goods or other thing so re-
123 paid or returned.

124 *Section 90N.* Nothing contained in sections ninety E
125 through ninety M shall be construed to affect the provisions
126 of section seventy-two and sections ninety-six through one
127 hundred and fourteen of this chapter and section nine of chap-
128 ter one hundred and seventy-two A.

129 If any section or clause of sections ninety E through ninety
130 M of this chapter is held invalid or unconstitutional by a court
131 of competent jurisdiction the remainder shall not be affected
132 thereby.

1 SECTION 2. The provisions of this act shall not apply to any
2 contract or agreement in existence prior to its effective date.