

HOUSE No. 607

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-Seven.

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 striking out sections 90 through 95 and insert-
3 ing in place thereof the following new sections:—

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

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

16 For the purpose of calculating interest, a month shall be
17 considered the twelfth part of a year and as consisting of
18 thirty days, and interest for any number of days less than a
19 month shall be estimated by the proportion which such
20 number of days shall bear to thirty, except that the fore-
21 going shall not apply where the aggregate sum of the in-
22 terest has been discounted from or added to the principal

23 sum, in which cases month shall mean calendar month. The
24 aggregate of the amount of money or value actually received
25 or held at the time of the loan, forbearance or other trans-
26 action plus the sum of all existing indebtedness of the bor-
27 rower to the lender shall for the purposes of sections ninety
28 through ninety-four be deemed the amount of the loan.
29 Except where the aggregate sum of the interest has been
30 discounted from or added to the principal sum, or except
31 where the borrower agrees in writing to a different applica-
32 tion, in calculating interest, where partial payments may have
33 been made, the interest shall be calculated to the time when
34 the payment shall have been made, and such payment shall
35 be applied to the payment first of such interest, and if such
36 payment exceeds the interest, the balance shall be applied
37 to diminish the principal, and the same course shall be fol-
38 lowed in all subsequent payments.

39 The maximum interest shall include all sums paid, di-
40 rectly or indirectly, by or on behalf of the borrower to the
41 lender for interest, brokerage, commissions, services, ex-
42 tension of loan, forbearance to enforce payment or other-
43 wise for making or securing a loan. Notwithstanding the
44 above, a lender may require a borrower to pay or reimburse
45 the lender for recording costs and for reasonable attorney's
46 fees when the services of an attorney are utilized by the
47 lender in order to examine and/or pass upon the title and
48 the marketability of security for the loan or to draw security
49 instruments or documents, or when such services are utilized
50 to collect a debt or realize upon any security.

51 The word "loan" as used in sections ninety through
52 ninety-four shall mean any loan of money or goods or for
53 forbearance of money or goods or chose in action.

54 *Section 90A. Usury Forbidden.* — No person shall, di-
55 rectly or indirectly, charge, take or receive in money, goods
56 or chose in action for a loan a greater rate of interest than
57 either one per cent per month on the unpaid principal bal-
58 ance or, if the parties so agree, on a loan repayable in sub-
59 stantially equal periodic installments of substantially the
60 same duration, than the lender may charge a sum equal to
61 six per cent of the amount then actually being advanced, prior
62 to any discount of, or add on of, the sum of the interest, for

63 each year of the loan period and prorated for portions of a
64 year, either initially discounted from or added to the advance,
65 or if otherwise repayable a rate equivalent to the above dis-
66 count or add on rate except that a minimum charge not ex-
67 ceeding the sum of ten dollars may be charged for interest
68 and expenses on all loans exceeding one thousand dollars
69 except in cases where a loan has been renewed or refinanced;
70 provided, however, that no such minimum charge shall be
71 assessed against a borrower more than once in any consec-
72 tive twelve-month period. The discount method may only
73 be used for the first twelve months of any loan; on any loan
74 for a longer period, six per cent may be discounted for the
75 first twelve months, and for the remaining period six per
76 cent of the loan before discount may be added to the note
77 for each additional twelve months. In the event of prepay-
78 ment in full before maturity of the balance of any discounted
79 or added on loan, a credit shall be given to the borrower for
80 such prepayment computed after deduction of the aforesaid
81 minimum charge under the sum of the digits method other-
82 wise known as "the Rule of 78." Where the amount of the
83 credit for such prepayment is less than one dollar no credit
84 need be given. The provisions of sections ninety through
85 ninety-four shall apply to all loans in excess of fifteen hun-
86 dred dollars but shall not apply to bottomry, respondentia
87 bonds, rental and lease agreements, or to any loan in excess
88 of fifteen hundred dollars secured wholly or partially by any
89 assets of the borrower's business, or by shares of stock un-
90 less such shares were acquired at the lender's request by the
91 person giving the same to the lender as security and such
92 acquisition was solely for the purpose of excluding the loan
93 from the provisions of section ninety A or to any transaction
94 which involves any note or other instrument evidencing the
95 indebtedness of a buyer to the seller of goods, services or in-
96 surance for a party or all of the purchase price, or to any
97 loan to a corporation or to a receiver or trustee in bank-
98 ruptcy, secured or unsecured, or to construction loans se-
99 cured by a first mortgage of real estate.

100 *Section 90B. Loans not Void.* — Nothing contained in
101 sections ninety through ninety-four shall be construed to
102 entitle any one to assert affirmatively, or by way of defence

103 or otherwise, that any loan or any security therefor is void,
104 voidable or unenforceable in accordance with its terms ex-
105 cept to the extent that the right to collect interest charged
106 in violation of section ninety A is limited by the provisions
107 of sub-paragraph (a) of section ninety-one.

108 *Section 91. Civil Penalties.* — (a) If a lender shall charge
109 as interest on a loan a rate or sum in excess of that permitted
110 under section ninety A, such lender shall not be entitled to
111 recover any interest on such loan in any action brought
112 against the borrower therefor.

113 (b) Every person who shall pay as interest on a loan a sum
114 in excess of that permitted under section ninety A may re-
115 cover in a suit in equity in the supreme judicial or superior
116 court against the person who with knowledge of such viola-
117 tion shall have received and accepted the same or against
118 his personal representatives three times the excess so ac-
119 cepted plus a reasonable attorney's fee if the services of an
120 attorney are utilized if such suit is brought within one year
121 after the payment or delivery. If a lender shall receive as a
122 result of prepayment of any installments a greater sum than
123 is allowed under section ninety A on a loan which if paid as
124 agreed when originally made would not have resulted in such
125 greater sum, such lender shall not be subject to any of the
126 provisions of sections ninety through ninety-four if such
127 lender shall upon the expiration of thirty days after final
128 payment of the balance of such loan and thereafter, within
129 ten days after written demand therefor by the borrower, re-
130 pay to the borrower any excess paid by the borrower above
131 the sum provided in section ninety A.

132 (c) None of the penalties provided in the foregoing sub-
133 paragraphs (a) and (b) of this section shall apply to a holder
134 in due course.

135 *Section 92. Persons lending Money to give Borrower Re-*
136 *ceipts for Payments.*— Every person lending money shall,
137 whenever the borrower makes payment of any money, either
138 principal or interest, give to said borrower, upon request,
139 upon such payment being made, a receipt, said receipt con-
140 taining the date of the payment and the amount paid, and
141 if the loan is other than one where the sum of the interest has
142 been discounted from or added to the advance, the lender

143 shall within sixty days after written demand therefor by the
144 borrower made after the payment give a statement showing
145 whether the payment is applicable to interest on the sum
146 borrowed or applicable to the principal, and in the amounts
147 applicable to each. All such receipts shall be signed with the
148 signature of the lender or his duly authorized representative.
149 Whoever refuses upon written demand received by regis-
150 tered or certified mail to give a receipt or statement in ac-
151 cordance with the requirement of this section shall forfeit
152 the entire interest upon the principal sum.

153 *Section 93. Penalty.* — A willful violation of section
154 ninety A by any person shall be punishable by a fine of not
155 less than one hundred dollars nor more than five hundred
156 dollars.

157 *Section 94. Restitution a Bar to Further Penalties.* — No
158 person shall be subject to section ninety-three unless within
159 ten days after receipt of written demand by registered or
160 certified mail from the borrower such person shall fail to re-
161 turn the excess money, goods or thing taken, accepted or re-
162 ceived, or the value thereof, in violation of section ninety A.

163 *Section 95. Certain Other Statutes not Affected.* — Nothing
164 contained in sections ninety through ninety-four of this chap-
165 ter shall be construed to affect the provisions of section
166 seventy-two and sections ninety-six through one hundred
167 and fourteen A of this chapter, and sections one hundred and
168 thirty-two and one hundred and forty-two of chapter one
169 hundred and seventy-five, which sections shall be controlling
170 in the case of loans to which they apply.

171 *Section 95A. Unconstitutionality, Effect.* — If any section
172 or clause of sections ninety through ninety-four of this chap-
173 ter is held invalid or unconstitutional by a court of competent
174 jurisdiction the remainder shall not be affected thereby.

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

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



