

By Mr. Cawley of Boston, petition of Robert L. Cawley for legislation to regulate interest rates on certain loans. Banks and Banking.

The Commonwealth of Massachusetts

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

AN ACT REGULATING INTEREST RATES.

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 90E the following ten sec-
3 tions:—

4 *Section 90F.* 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 rate
10 greater than that referred to above, which does not contain a
11 stated period of time for which such rate is to be calculated at
12 the rate mentioned, by the year, in the same manner as if the
13 words “per annum” or “by the year” had been added to such rate.

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

25 In calculating interest, where partial payments may have
26 been made, the interest shall be calculated to the time when
27 the payment shall have been made and such payment shall be

28 applied to the payment first of such interest and if such pay-
29 ment exceeds the interest, the balance shall be applied to
30 diminish the principal, and the same course shall be followed
31 in all subsequent payments; but in no case shall there be a
32 compounding of interest.

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

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

57 *Section 90H.* Every person who shall pay or deliver any
58 thing on a transaction illegal under sections ninety E through
59 ninety N may recover in a suit in equity in the supreme judicial
60 or superior court against the person who shall have taken or
61 received the same, or against his personal representatives, the
62 full amount of the money so paid, the thing delivered, or its
63 value, if such suit is brought within three years after the pay-
64 ment or delivery. If such court shall declare the contract
65 or agreement void under the provisions of sections ninety E
66 through ninety N it shall enjoin any prosecution thereon and
67 order any security to be surrendered to the plaintiff and the

68 contract or agreement shall be cancelled. The plaintiff shall
69 recover reasonable attorney's fees and costs.

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

82 *Section 90J.* The borrower and his assignees, vendees,
83 creditors, legal representatives, heirs, devisees, legatees or
84 any person having a legal or equitable interest in the assets
85 or the estate of a borrower may plead the benefit of the pro-
86 visions of sections ninety E through ninety N as plaintiff or
87 defendant. A defense of usury shall not, however, be inter-
88 posed against a holder in due course.

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

99 *Section 90L.* A suit upon a contract or agreement for a
100 loan or for forbearance of money, goods or chose in action
101 by the lender against the borrower shall not be maintained
102 until the lender shall have filed an affidavit setting forth that
103 the contract or agreement sued on was not made in violation
104 of any of the provisions of sections ninety E through ninety N
105 and that a greater rate of interest than is legal has not been
106 charged, reserved or collected upon such contract or agree-
107 ment. If a finding is made against the lender and the court

108 determines that the contract or agreement is void as being in
109 violation of sections ninety E through ninety N the court shall
110 make such order on behalf of the borrower as is consistent with
111 the intent of sections ninety E through ninety N.

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

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

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

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