

# HOUSE . . . . . No. 3572

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, March 28, 1962.

The committee on Banks and Banking, to whom were referred so much of the Governor's Address (Senate, No. 1) as relates to broadening and strengthening the usury laws (page 6); the petition (accompanied by bill, Senate, No. 81) of Harold W. McKelvey for legislation to establish a usury law; so much of the recommendations of the Commissioner of Banks (House, No. 2) as relates to establishing a usury law (accompanied by bill, House, No. 8); and the petition (accompanied by bill, House, No. 710) of Julius Ansel for legislation to regulate loans made for the construction of buildings under the small loans law, report the accompanying bill (House, No. 3572).

For the committee,

ROBERT H. QUINN.

## The Commonwealth of Massachusetts

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

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

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

14 For the purpose of calculating interest, a month shall be  
15 considered 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  
19 actually received or held at the time of the loan, forbearance  
20 or 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 of  
23 value or money received to determine the amount of the new  
24 obligation.

25 In calculating interest, where partial payments may have  
26 been made, the interest shall be calculated to the time when the  
27 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, commissions,  
35 services, extension of loan, forbearance to enforce payment,  
36 and all other sums charged against or paid or to be paid by  
37 the borrower for making or securing, directly or indirectly, the  
38 loan, and shall include all such sums when paid by or on be-  
39 half of or charged against the borrower for or on account of  
40 making or securing the loan, directly or indirectly, to or by  
41 any person, other than the lender, if such payment or charge  
42 was known to the lender at the time of making the loan, or  
43 might have been ascertained by reasonable inquiry. Notwith-  
44 standing the foregoing the lender may require the borrower to  
45 pay an acquisition charge of seven dollars and fifty cents if a  
46 loan is repaid in full in or within thirty days from the date of  
47 the note, and a lender may require a borrower to pay or reim-  
48 burse the lender for recording costs and for reasonable attor-  
49 ney's fees when the services of an attorney are utilized by the  
50 lender in order to examine or pass upon the title and the mar-  
51 ketability of security for the loan or to draw security instru-  
52 ments or documents, or when such services are utilized to  
53 collect a debt or realize upon any security, and for reasonable  
54 charges or expenses for services applicable to a revolving  
55 checking account in a bank.

56 *Section 90F. Usury Forbidden.* — No person shall, directly  
57 or indirectly, charge, take or receive any money, goods, chose  
58 in action, or otherwise for a loan or for forbearance of any  
59 money, goods, or chose in action, a greater rate of interest  
60 than one and one quarter per cent per month on the unpaid  
61 principal balance or in the alternative seven and one half per  
62 cent per annum discounted in advance from or added to the  
63 principal sum. The provisions of sections ninety E through  
64 ninety K shall apply to all loans not governed by sections  
65 ninety-six through one hundred and fourteen A of this chapter  
66 except a loan:

67 (a) To a corporation;

68 (b) Secured by certificates of stock, bonds, corporation or  
69 government debentures, certificates of deposit, warehouse re-  
70 ceipts, bills of lading, bills of exchange, or by notes receivable,

71 accounts receivable, chattel paper, inventory or equipment of  
72 borrower's business;

73 (c) Made for the purpose of engaging in a transaction su-  
74 pervised by the Securities and Exchange Commission or sub-  
75 ject to the Sale of Securities Act;

76 (d) Made to a receiver or trustee or other official appointed  
77 under the provisions of any section of the United States Bank-  
78 ruptcy Act.

79 The discount method may only be used for the first twelve  
80 months of any loan; on any loan for a longer period, seven  
81 and one half per cent may be discounted for the first twelve  
82 months, and for the remaining period an amount not greater  
83 than said one and one quarter per cent per month on the un-  
84 paid principal balance on the original sum actually received  
85 by the borrower may be precomputed and added to the note  
86 for each additional twelve month period, or any part thereof.  
87 In the event of prepayment in full before maturity of the  
88 balance of any discounted or added on loan a credit shall be  
89 given to the borrower for such prepayment which shall repre-  
90 sent at least as great a proportion of the finance charge appli-  
91 cable to the full installment periods following the date of such  
92 prepayment as the sum of the periodic time balances bears to  
93 the sum of all the periodic time balances under the schedule  
94 of installments in the contract. Where the amount of the credit  
95 for such prepayment is less than one dollar no credit need be  
96 given.

97 *Section 90G. Recovery.*—The taking, receiving, reserving or  
98 charging a rate of interest greater than is allowed by the pre-  
99 ceding section, when knowingly done, shall be deemed a for-  
100 feiture of the entire interest which the note, bill or other evi-  
101 dence of debt carries with it, or which has been agreed to be  
102 paid thereon. In case the greater rate of interest has been  
103 paid, the person by whom it has been paid, or his legal repre-  
104 sentative, may recover back, in an action at law, twice the  
105 amount of the interest thus paid from the person taking or  
106 receiving the same; provided, that such action is commenced  
107 within two years from the time the usurious transaction oc-  
108 curred. The plaintiff shall recover reasonable attorney's fees  
109 and costs.

110 *Section 90H. Persons lending Money to give Borrower Re-*  
111 *ceipts for Payments.* — Every person lending money upon se-  
112 curity shall, whenever the borrower makes payment of any  
113 money either principal or interest, give to said borrower, im-  
114 mediately upon such payment being made, a receipt, said  
115 receipt containing the date of the payment, the amount paid  
116 and whether the payment is applicable to interest on the sum  
117 borrowed or applicable to the principal, and in the amounts  
118 applicable to each. All such payments shall be signed with the  
119 signature of the lender or his duly authorized representative.  
120 Whoever refuses upon demand to give a receipt in accordance  
121 with the requirement of this section shall forfeit the entire  
122 interest upon the principal sum.

123 *Section 90I. Who may plead Usury.* — The borrower and  
124 his heirs, executors or administrators may plead the benefit  
125 of the provisions of sections ninety E through ninety L of  
126 this chapter as plaintiff or defendant.

127 *Section 90J. Creditor may sue to annul Usurious Contract,*  
128 *Decree, Sale, Disposition of Proceeds.* — Any creditor whose  
129 debtor has given a lien by mortgage, pledge or otherwise on  
130 real, or personal property to secure payment based upon a  
131 usurious contract or agreement, may bring a suit in equity  
132 against the parties to such usurious contract or agreement,  
133 and recover judgment for his debt against the debtor, and a  
134 decree shall issue cancelling and annulling such usurious lien,  
135 and directing the sale of the property to satisfy the plaintiff's  
136 judgment and costs. Any surplus that may remain after  
137 satisfying the plaintiff's judgment shall be paid to the debtor.

138 *Section 90K. Affidavit of no Usury.* — A suit upon a con-  
139 tract or agreement for a loan or for forbearance of money,  
140 goods or chose in action by the lender against the borrower  
141 shall not be maintained until the lender shall have filed an  
142 affidavit setting forth that the contract or agreement sued on  
143 was not made in violation of any of the provisions of sections  
144 ninety E through ninety J of this chapter and that a greater  
145 rate of interest than is legal has not been charged, reserved or  
146 collected upon such contract or agreement.

147 *Section 90L. Penalty.* — A violation of sections ninety E  
148 through ninety K of this chapter by any person shall be pun-

149 ishable by a fine of not less than one hundred dollars or more  
150 than one thousand dollars or imprisonment of not less than  
151 one month or more than six months or both.

1 SECTION 2. Nothing contained in sections ninety E through  
2 ninety L of chapter one hundred and forty shall be construed  
3 to affect the provisions of sections seventy-two, ninety A  
4 through ninety D, ninety-six through one hundred and four-  
5 teen A of said chapter, section 162B of chapter 175, or charges  
6 made by vendors for the deferred payment for goods or serv-  
7 ices sold on credit.

1 SECTION 3. If any section or clause of sections ninety E  
2 through ninety L of chapter one hundred and forty is held  
3 invalid or unconstitutional by a court of competent jurisdic-  
4 tion the remainder shall not be affected thereby.

1 SECTION 4. 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.

EDUCATION

Bill No. 2873

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