

By Mr. Manning of Waltham, petition of Donald J. Manning and Paul C. Menton for legislation to regulate secondary mortgage loans. Banks and Banking.

**The Commonwealth of Massachusetts**

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

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 Chapter 140 of the General Laws is hereby amended by  
2 striking out section 90A and inserting in place thereof the  
3 following section:—

4 *Section 90A.* No person shall directly or indirectly charge,  
5 take or receive for a loan of more than fifteen hundred dollars  
6 secured wholly or partially by a mortgage of real estate  
7 having an assessed value of not over twenty-five thousand  
8 dollars, having thereon a dwelling house with accommoda-  
9 tions for six or less separate households and occupied in whole  
10 or in part at the time the loan is made as a home by any  
11 obligor on the mortgage debt or by any person granting or  
12 releasing any interest under said mortgage, a greater rate of  
13 interest than an amount equivalent to one and one half per  
14 cent a month computed on unpaid balances, but such interest  
15 shall not exceed one per cent a month after a continuing  
16 default for a total period of six months. The borrower shall  
17 have the right to anticipate his debt in whole or in part at  
18 any time without being required to pay a penalty to the  
19 lender therefor. The aggregate of the amount of money or  
20 value actually received or held at the time of the loan, plus  
21 the sum of all existing indebtedness of the borrower to the  
22 lender shall for the purposes of this section and sections  
23 ninety B to ninety D, inclusive, be deemed the amount of the  
24 loan. Except where the borrower agrees in writing to a

25 different application of his payments, in cases where partial  
26 payments are made, the interest shall be calculated to the  
27 time of payment, and such payment shall first be applied to  
28 interest, and the balance thereafter remaining, if any, shall be  
29 applied to principal.

30 The maximum interest shall include all sums paid, directly  
31 or indirectly by or on behalf of the borrower to the lender for  
32 interest, brokerage, commissions, services, extension of loan,  
33 forbearance to enforce payment or otherwise for making or  
34 securing the loan, not including, however, sums the lender  
35 may require the borrower to pay or reimburse the lender for  
36 actual recording and foreclosure costs for reasonable legal  
37 charges incurred for the examination of the title and the  
38 marketability of the security for the loan, for the drafting of  
39 the security instruments or documents, and, when such  
40 services are utilized, for collecting the debt or realizing upon  
41 the security.

42 As used in this section and in sections ninety B to ninety D,  
43 inclusive, the following words shall have the following  
44 meanings:—

45 “Loan”, any loan of money or goods or forbearance of  
46 money or goods or choses in action; “Note”, the instrument,  
47 other than the mortgage, evidencing or containing the debt  
48 secured by the mortgage or any extension or renewal of such  
49 instrument; “Lender”, any person making a loan of more  
50 than fifteen hundred dollars secured by a mortgage as des-  
51 cribed in this section and shall include any legal successor to  
52 the rights of the lender; “Borrower”, shall include any legal  
53 successor to the borrower’s rights or obligations.

54 No person shall make or negotiate, or offer to make or  
55 negotiate, any loan subject to this section unless he or his  
56 broker, agent or other representative shall have first obtained  
57 a license from the commissioner of banks. An application for  
58 a license shall be in writing, under oath, and shall be in the  
59 form prescribed by the commissioner. The application shall  
60 state the name and residence and business addresses of the  
61 applicant, and if the applicant is a partnership, of every  
62 member thereof, and if a corporation, of each officer and  
63 director thereof. It shall also state the address where the  
64 business is to be conducted and any other information the

65 commissioner may require. The fee for each license shall be  
66 not less than one hundred dollars and the license year shall be  
67 the calendar year.

68 The commissioner shall, from time to time, establish rules  
69 and regulations relative to the granting of licenses and the  
70 renewal thereof, the fees to be charged therefor and the  
71 business carried on by licensees. He may, whenever he  
72 determines it to be in the public interest, investigate the  
73 affairs of a licensee and, for that purpose, shall have free  
74 access to the vaults, books and papers thereof. The commis-  
75 sioner may cause an examination of said books and business  
76 to be made by an accountant whom he may select, and the  
77 cost of such examination shall be paid by the licensee whose  
78 books are so examined.

79 The commissioner, or such other of his assistants as he may  
80 designate, may summon a licensee, or any of his agents or  
81 employees, and such other witnesses as he deems necessary,  
82 and examine them relative to their transactions, may require  
83 the production of books and papers and, for such purposes  
84 may administer oaths. Whoever, without justifiable cause,  
85 fails or refuses to appear and testify or to produce books and  
86 papers when so required, or obstructs the commissioner or his  
87 representatives in the performance of their duties, shall be  
88 punished by a fine of not more than five hundred dollars or  
89 by imprisonment for not more than six months, or both.

90 If the commissioner refuses to issue a license, he shall  
91 notify the applicant of the denial, return the sum paid by the  
92 applicant as a license fee, less an investigation fee of fifty  
93 dollars for each application to cover the cost of investigating  
94 the applicant; and within twenty days thereafter he shall  
95 enter upon his records a written decision and findings con-  
96 taining the reasons supporting the denial, and shall forthwith  
97 give written notice thereof by registered mail to the appli-  
98 cant. Within thirty days after the date of such notice the  
99 applicant may appeal from such denial to the superior court  
100 for the county of Suffolk, sitting in equity. The court shall  
101 hear all pertinent evidence and determine the facts, and upon  
102 the facts as so determined review said denial and, as justice  
103 and equity may require, affirm the same or order the com-  
104 missioner to issue such license.

105 A license may be suspended or revoked by the commis-  
106 sioner on the following grounds:—(1) material misstatement  
107 in application for license; (2) failure to comply with the  
108 provisions of this chapter; (3) defrauding any borrower to  
109 the borrower's damage; (4) fraudulent misrepresentation,  
110 circumvention or concealment by the licensee through what-  
111 ever subterfuge or device of any of the material particulars or  
112 the nature thereof required to be stated or furnished to the  
113 borrower under this section; (5) the existence of any fact or  
114 condition which, if it had existed at the time of the original  
115 application for such license, clearly would have warranted the  
116 commissioner in refusing to issue such license.

117 If a licensee is a corporation, it shall be sufficient cause for  
118 the suspension or revocation of its license that any officer or  
119 director of a licensed corporation, or any member of a  
120 licensed partnership, has so acted or failed to act as would be  
121 cause for suspending or revoking a license to such party as an  
122 individual. Each licensee shall be responsible for the acts of  
123 any of his employees while acting as his agent, if such  
124 licensee after actual knowledge of said acts retained the  
125 benefits, proceeds, profits or advantages accruing from said  
126 acts or otherwise ratified said acts.

127 No license shall be suspended or revoked except after  
128 hearing thereon by the commissioner or such of his assistants  
129 as he may designate. The commissioner shall give the licensee  
130 at least ten days' written notice, in the form of an order to  
131 show cause, of the time and place of such hearing by  
132 registered mail addressed to the principal place of business in  
133 this commonwealth of such licensee. The said notice shall  
134 contain the grounds of complaint against the licensee. Any  
135 order suspending or revoking such license shall recite the  
136 grounds upon which the same is based. The order shall be  
137 entered upon the records of the commissioner and shall not be  
138 effective until after thirty days' written notice thereof given  
139 after such entry forwarded by registered mail to the licensee  
140 at such principal place of business. No revocation, suspension  
141 or surrender of any license shall impair or affect the obliga-  
142 tion of any lawful note or mortgage acquired previously  
143 thereto by the licensee. Within thirty days after such suspen-  
144 sion or revocation the person aggrieved thereby may appeal

145 to the superior court for the county of Suffolk, sitting in  
146 equity. The court shall hear all pertinent evidence and  
147 determine the facts, and upon the facts as so determined  
148 review said suspension or revocation and, as justice and  
149 equity may require, affirm the same or order that the com-  
150 missioner rescind it.

151 This section and sections ninety B to ninety D, inclusive,  
152 shall not apply to a loan secured by a first mortgage on real  
153 estate.



### The Government of Massachusetts

#### The Executive Department

The Governor of the Commonwealth is elected by the people for a term of four years, and may be re-elected for one term only. He is the chief executive officer of the State, and his powers are defined by the Constitution and the laws of the Commonwealth.

The Governor has a Council of State, which is composed of seven members, one of whom is the Lieutenant Governor. The Council of State is appointed by the Governor, and its members hold office for a term of two years. The Council of State is the highest advisory body to the Governor, and it has the power to advise him on all matters of State. The Council of State also has the power to recommend to the Governor the appointment and removal of officers of the State.

The Governor is also the commander in chief of the State Militia, and he has the power to call the Militia into service. He also has the power to pardon and commute the sentences of criminals, and he has the power to grant reprieves and commutations of sentence.

