

By Mr. Belmonte of Framingham, petition of Shepard A. Spunt, Robert A. Belmonte, Martin A. Linsky and Mary B. Newman for legislation to regulate interest charges on loans and usury. Banks and Banking.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy.

AN ACT TO REGULATE INTEREST CHARGES AND USURY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws are hereby amended by inserting after
2 chapter 140B the following chapter:—

3 CHAPTER 140C.

4 REGULATION OF INTEREST CHARGES AND USURY.

5 *Section 1.* It shall be illegal and unlawful for any lender to
6 charge or receive, directly or indirectly, interest on any loan
7 transaction at a rate in excess of twenty-four per cent per
8 year simple interest.

9 *Section 2.* Whosoever shall charge, request, require, or
10 demand interest at a rate in excess of twenty-four per cent
11 per year simple interest shall forfeit all interest and all
12 principal set forth in any such obligation, oral or written, and
13 any obligation bearing or in any way providing for such an
14 excessive rate shall be ipso facto null and void and not
15 enforceable in or by the courts of this commonwealth.

16 *Section 3.* If any obligation in any way providing for or
17 requiring an interest rate in excess of that set forth in section
18 one hereof shall be secured by collateral of any name, nature,
19 or description, such collateral shall be returned to the bor-
20 rower upon demand within three business days of such
21 demand upon the lender or holder thereof; such return to be
22 at the expense of the holder and/or lender. In the instance

23 where such collateral is real or personal property upon or
24 against which a lien has been recorded anywhere upon or
25 against the same, such lien shall be discharged at any place or
26 places where it may have been recorded, if the recordings are
27 within the commonwealth of Massachusetts and/or if the
28 contract shall be a Massachusetts contract.

29 *Section 4.* The intent of this act shall not be circumvented
30 by any extra charges, fees, inspection or appraisal charges,
31 safe keeping or storage charges, or any other expenses to the
32 borrower except in the event of a default in the obligation the
33 lender may, if, and when provided for in the obligation be
34 reimbursed for expenses of and for enforcement of the obliga-
35 tion and for collection expenses and costs; such expenses and
36 costs which may specifically include but not necessarily be
37 limited to legal fees and foreclosure expenses expended in
38 addition to the obligation due plus interest thereon without
39 violating the intent of this act.

40 *Section 5.* The intent of this act shall not be circumvented
41 by the transaction of business outside the commonwealth of
42 Massachusetts if any collateral or security located within this
43 commonwealth is a part of such transaction.

44 *Section 6.* Whosoever shall transact a loan with an interest
45 rate in excess of that set forth in section one hereof as lender,
46 or transferee or assignee of any lender, shall be deprived of
47 and shall not have the right to enforce the obligation or any
48 other rights therein within this commonwealth, and the
49 courts of the commonwealth of Massachusetts shall not
50 enforce such an obligation or the judgment of another
51 jurisdiction if such judgment arises out of such an illegal and
52 unlawful transaction as herein provided and described.

53 *Section 7.* Whosoever shall refuse, neglect, or otherwise fail
54 to return collateral or security or to discharge any lien on real
55 or personal property after demand to do so as provided in
56 section three hereof, shall in addition be liable to the bor-
57 rower, the assignees or transferees of the borrower, or any
58 third party damaged by such refusal, neglect or failure for
59 triple the damages sustained by such injured or damaged
60 party or owner of such collateral or security, which damages
61 shall specifically include but not necessarily be limited to
62 expenses and costs of recovery of such collateral or security,
63 or the value thereof if lost, stolen or otherwise destroyed,

64 and/or discharge of liens on real or personal property and
65 may by way of example and not in a limiting sense attorney's
66 fees, court costs and land registration expenses.

67 *Section 8.* This act shall not apply to obligations of three
68 hundred dollars or less; however, if any lender shall make or
69 become a holder of two or more obligations or loans from any
70 one borrower or common borrowers that shall amount in total
71 to more than three hundred dollars, then this act shall
72 become applicable at the time and upon the whole total
73 obligation.

74 *Section 9.* Nothing shall or may be done by any borrower
75 to waive the provisions of this act, and any such waiver
76 incorporated in or relating to any obligation or obligations
77 shall be ipso facto null and void and unenforceable.

78 *Section 10.* In the event of any dispute regarding the
79 effective percentage of interest rate, the burden of proof shall
80 be conclusively upon the lender.

81 *Section 11.* Whosoever initiates any action at law or equity
82 for enforcement or collection of any obligation in any court
83 within this commonwealth which obligation provides for or
84 requires interest at a rate in excess of that set forth in section
85 one hereof shall appear prima facie guilty of malicious abuse
86 of legal process and shall be subject to payment of damages
87 to any injured party as a result of such action to the extent of
88 three times the damage or damages sustained, such injury to
89 include but not necessarily be limited to reasonable attorney's
90 fees and expenses.

91 *Section 12.* Payment by the borrower of recording fees, for
92 municipal lien certificates, and for the expenses of legal fees
93 for the examination of title to real or personal property shall
94 not be construed to be in circumvention of this act as set
95 forth in section four hereof. Recording fees shall be the actual
96 amount charged by the appropriate recording authority, city
97 or town clerk, or registry of deeds. Any legal fees paid shall be
98 paid by the borrower directly to the attorney or firm of
99 attorneys performing the examination, and no part of such
100 fee may be rebated or in any way accrue to the benefit or
101 credit of the lender. If any part of any legal fee is rebated or
102 in any way accrues to the benefit of any lender within the
103 context of this section, it shall then and in such case be

104 construed as an extra charge as set forth in section four
105 hereof.

106 *Section 13.* This act shall not apply to unsecured non-
107 renewable term loans with a term of less than fifteen days
108 where the principal amount loaned and actually advanced
109 exceeds one hundred thousand dollars. If there shall be a
110 renewal or extension in whole or in part of an obligation as
111 above described in this paragraph, the act shall apply from
112 the outset of the initial term.

113 *Section 14.* Any section, sentence, clause, word, or part of
114 this act that may be found to be unconstitutional shall not
115 affect any other section, sentence, clause, word, or other part
116 of this act.

117 *Section 15.* Any chapter, title, section, paragraph, sentence,
118 clause, word or part of the General Laws of this common-
119 wealth, and most particularly chapter one hundred and forty
120 and chapter one hundred and forty A of the General Laws of
121 this commonwealth are hereby amended to conform to this
122 act.

123 *Section 16.* The value of warrants to purchase stock,
124 conversion rights, or other rights to acquire equity stock of
125 such borrower received by lenders subject to regulation and
126 examination and authorized to do business in the common-
127 wealth in connection with the making of a loan of three
128 hundred thousand dollars or more to a corporation or to an
129 association or trust as defined in section one of chapter one
130 hundred and eighty-two which corporation, association or
131 trust has a net worth of at least five hundred thousand dollars
132 shall not be included in any computation of interest under
133 this chapter.