SENATE . . . . . No. 9

By Mr. Brennan, a petition (accompanied by bill, Senate, No. 9) of John A. Brennan, Jr., for legislation to further regulate certain mortgage lenders. Banks and Banking.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-two.

AN ACT FURTHER REGULATING CERTAIN MORTGAGE LENDERS.

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, as most recently amended by chapter
3 19 of the acts of 1973, and inserting in place thereof the fol-
4 lowing section: —

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

27 of payment, and such payment shall first be applied to interest,
28 and the balance thereafter remaining, if any, shall be applied
29 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 forebearance 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 mar-
38 ketability of the security for the loan, for the drafting of the
39 security instruments or documents, and, when such services are
40 utilized, for collecting the debt or realizing upon the security.

41 As used in this section and in sections ninety B to ninety D,
42 inclusive, the following words shall have the following mean-
43 ings: —

44 "Loan", any loan of money or goods or forebearance of
45 money or goods or choses in action;

46 "Note", the instrument, other than the mortgage, evidencing
47 or containing the debt secured by the mortgage or any exten-
48 sion or renewal of such instrument;

49 "Lender", any person making a loan of more than fifteen
50 hundred dollars secured by a mortgage as described in this
51 section and shall include any legal successor to the rights of
52 the lender;

53 "Borrower", shall include any legal successor to the bor-
54 rower's rights or obligations.

55 No person, other than a bank as defined in section one of
56 chapter one hundred an sixty-seven, a national banking asso-
57 ciation, a federally chartered credit union or a federal savings
58 and loan association, more than eight times in one calendar
59 year, shall make or negotiate, or offer to make or negotiate,
60 any loan subject to this section unless he or his broker, agent
61 or other representative shall have first obtained a license from
62 the commissioner of banks. An application for a license shall
63 be in writing, under oath, and shall be in the form prescribed
64 by the commissioner. The application shall state the name and
65 residence and business address of the applicant, and if the ap-

66 plicant is a partnership, of every member thereof, and if a
67 corporation, of each officer and director thereof. It shall also
68 state the address where the business is to be conducted and
69 any other information the commissioner may require. Each
70 application for a license shall be accompanied by an investiga-
71 tion fee of fifty dollars.

72 The fee for each license shall be not less than one hundred
73 dollars and the license year shall be the calendar year. If a
74 licensee desires to carry on business in more than one place,
75 he shall procure a license for each place where the business is
76 to be conducted. Such license shall not be transferable or
77 assignable. Any change of location of an office of a licensee
78 shall require the prior approval of the commissioner. Such re-
79 quest for relocation shall be in writing setting forth the rea-
80 son or reasons for the request, and shall be accompanied by a
81 relocation investigation fee of fifty dollars.

82 The commissioner shall from time to time establish regula-
83 tions respecting the granting of licenses and the removal there
84 of, the fees to be charged therefor and the business carried on
85 by the licensees. He may either personally or by such assistants
86 as he may designate, whenever he determines it to be in the
87 public interest, investigate the affairs of such licensees, and for
88 that purpose shall have free access to the vaults, books and
89 papers thereof, and shall ascertain the condition of the business
90 and whether it has been transacted in compliance with the law
91 and the regulations made hereunder. The commissioner shall
92 assess the licensee a fee of ninety dollars per day for each per-
93 son participating in such an examination, except that the
94 assessment for the examiner in charge of an examination shall
95 be one hundred and twenty-dollars per day; provided, how-
96 ever that the assessment for any examination which requires
97 only one examiner shall be ninety dollars per day.

98 The commissioner may cause an examination of the said
99 books and business to be made by an accountant whom he
100 may select and the cost of any such examination shall be paid
101 by the person whose books are so examined.

102 The commissioner, or such other of his assistants as he may
103 designate, may summon a licensee, or any of his agents or em-
104 ployees, and such other witnesses as he deems necessary, and

105 examine them relative to their transactions, may require the
106 production of books and papers and, for such purposes may ad-
107 minister oaths. Whoever, without justifiable cause, fails or
108 refuses to appear and testify or to produce books and papers
109 when so required, or obstructs the commissioner or his rep-
110 resentatives in the performance of their duties, shall be pun-
111 ished by a fine of not more than five hundred dollars or by im-
112 prisonment for not more than six months, or both.
113 If the commissioner refuses to issue a license, he shall notify
114 the applicant of the denial, and within twenty days thereafter
115 he shall enter upon his records a written decision and findings
116 containing the reasons supporting the denial, and shall forth-
117 with give written notice thereof by registered mail to the ap-
118 plicant. Within thirty days after the date of such notice the
119 applicant may appeal from such denial to the superior court
120 for the county of Suffolk, sitting in equity. The court shall
121 hear all pertinent evidence and determine the facts, and upon
122 the facts as so determined review said denial and, as justice
123 and equity may require, affirm the same or order the commis-
124 sioner to issue such license.
125 A license may be suspended or revoked by the commissioner
126 on the following grounds: (1) material misstatement in ap-
127 plication for license; (2) failure to comply with the provisions
128 of section 90A through 90D of this chapter; (3) defrauding
129 any borrower to the borrower's damage; (4) fraudulent mis-
130 representation, circumvention or concealment by the licensee
131 through whatever subterfuge or device of any of the material
132 particulars or the nature thereof required to be stated or fur-
133 nished to the borrower under this section; (5) the existence of
134 any fact or condition which, if it had existed at the time of the
135 original application for such license, clearly would have war-
136 ranted the commissioner in refusing to issue such license.
137 If a licensee is a corporation, it shall be sufficient cause for
138 the suspension or revocation of its license that any officer or
139 director of a licensed corporation, or any member of a licensed
140 partnership, has so acted or failed to act as would be cause
141 for suspending or revoking a license to such party as an indi-
142 vidual. Each licensee shall be responsible for the acts of any
143 of his employees while acting as his agent, if such licensee

144 after actual knowledge of said acts retained the benefits, pro-
145 ceeds, profits or advantages accruing from said acts or other-
146 wise ratified said acts.

147 No license shall be suspended or revoked except after hear-
148 ing thereon by the commissioner or such of his assistants as
149 he may designate. The commissioner shall give the licensee at
150 least ten days' written notice, in the form of an order to show
151 cause, of the time and place of such hearing by registered
152 mail addressed to the principal place of business in this com-
153 monwealth of such licensee. The said notice shall contain the
154 grounds of complaint against the licensee. Any order suspend-
155 ing or revoking such license shall recite the grounds upon
156 which the same is based. The order shall be entered upon the
157 records of the commissioner and a copy thereof forwarded by
158 certified mail to the licensee at such principal place of business.
159 No revocation, suspension or surrender of any license shall im-
160 pair or affect the obligation of any lawful note or mortgage
161 acquired previously thereto by the licensee. Within thirty days
162 after such suspension or revocation the person aggrieved there-
163 by may appeal to the superior court for the county of Suffolk,
164 sitting in equity. The court shall hear all pertinent evidence
165 and determine the facts, and upon the facts as so determined
166 review said suspension or revocation and, as justice and equity
167 may require, affirm the same or order that the commissioner
168 rescind it.

169 This section and sections ninety B to ninety D, inclusive,
170 shall not apply to a loan secured by a first mortgage on real
171 estate.