

HOUSE No. 1052.

[Ordered printed as a House document, on motion of Mr. INNES of
Boston. March 11.]

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Ninety-eight.

AN ACT

Relative to Small Loans, the Interest and Expenses thereof, the Mortgages securing the same and the Redemption of the Security therefor.

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. No person, corporation or copart-
2 nership shall engage in or carry on the business
3 of making small loans, of less than one thousand
4 dollars each, at rates of interest above twelve per
5 centum per annum, without first having obtained
6 a license therefor in the city or town in which the
7 business is transacted.

8 Such licenses may be granted by the board of
9 police of the city of Boston in and for said city;

10 by the mayor and aldermen of any other city, in
11 and for such city, and by the selectmen of any
12 town in and for such town.

13 No license shall be granted until the applicant
14 or applicants therefor shall file with the board
15 authorized to grant the same a statement veri-
16 fied by oath, which in case of a corporation
17 may be the oath of the president thereof or the
18 agent thereof in charge of such business, set-
19 ting forth the place in the city or town where
20 the business is to be carried on, the name or
21 names, and the private and business address or
22 addresses of the applicant or applicants, and, in
23 case of a corporation, the state under the laws of
24 which it is organized and the name or names and
25 private address or addresses of the clerk or sec-
26 retary, and the agent or other officer having
27 charge of its business proposed, nor until the ap-
28 plicant or applicants shall, unless excused by the
29 board authorized to grant the license, file with said
30 board an irrevocable power of attorney appoint-
31 ing some person satisfactory to the board to be
32 his, their or its attorney, upon whom all lawful
33 processes may be served in any action or pro-
34 ceeding arising under this act, with the same
35 effect as if served upon such applicant or appli-
36 cants appointing such attorney.

37 If any change shall occur in the name or ad-
38 dress of any licensee, or of the clerk, secretary or
39 agent aforesaid of any licensed corporation, or in
40 the place where the licensed business is carried
41 on, a true and full statement of such change,

42 sworn to in the manner required above for the
43 original statement, shall forthwith be filed with
44 the board granting the license.

45 The license of any copartnership shall become
46 void upon the decease, or withdrawal therefrom,
47 of any member thereof, or the addition of any
48 partner thereto.

49 The board of officers granting any such license
50 shall have full power to revoke the same at any
51 time, and shall revoke the same for any violation
52 of this act or any failure to pay a final judgment
53 recovered against the licensee or licensees under,
54 or by virtue of this act.

55 No license shall be issued unless or until the
56 licensee or licensees named therein shall file with
57 the treasurer of the city or town in which the
58 business is to be carried on, a bond in the penal
59 sum of one thousand dollars, executed to said
60 treasurer by said licensee or licensees, and by
61 two responsible sureties, to be approved by the
62 licensing board, which bond shall be conditioned
63 upon the faithful performance by the licensee or
64 licensees, of the duties and obligations pertaining
65 to the business so licensed, and the prompt pay-
66 ment of any final judgment recovered, against the
67 licensee or licensees, under or by virtue of this
68 act.

69 Any person or persons aggrieved by a breach
70 of the condition of such bond may on endorsing,
71 and if any person suing does not reside in the
72 Commonwealth providing another responsible
73 endorser of his or their writ for costs, sue and

74 recover judgment upon such bond at his or their
75 own expense and in his or their own behalf, but
76 in the name of the obligee, and if any judgment
77 for the defendant or defendants for costs shall be
78 entered, execution therefor shall issue against the
79 endorser or endorsers of the writ, as if he or they
80 were plaintiffs of record, but not against the
81 obligee. In such suit like proceedings shall be
82 had as in a suit by a creditor on an administra-
83 tion bond.

84 The board issuing the license may at any time
85 require the licensee or licensees to file one or
86 more additional bonds of like nature and with
87 like effect, and to give full information as to all
88 judgments recovered on, or suits pending on, his
89 or their bonds at any time. On failure to file any
90 such bond required the license shall be revoked.

1 SECTION 2. In case of any small loan of less
2 than one thousand dollars for which interest is
3 charged at the rate of twelve per centum or more
4 per annum, but not exceeding eighteen per
5 centum per annum, a sum not exceeding two
6 dollars if the loan does not exceed twenty-five
7 dollars, and not exceeding three dollars if the
8 loan exceeds twenty-five dollars but does not
9 exceed fifty dollars, and not exceeding four dol-
10 lars if the loan exceeds fifty dollars but does
11 not exceed one hundred dollars, and not exceed-
12 ing five dollars if the loan exceeds one hundred
13 dollars, may, if both parties to the loan so agree,
14 be paid by the borrower or borrowers or added to

15 the debt, and taken by the lender as expense for
16 making and securing the loan, and such sum shall
17 not be counted as part of the interest of such
18 loan, and no greater sum shall be taken for such
19 purpose, but any sum so paid, promised or taken
20 in excess of such sum shall be deemed to be
21 taken as interest and shall be so considered for
22 the purposes of this act.

1 SECTION 3. Any loan hereafter contracted for
2 less than one thousand dollars shall be discharge-
3 able at or after maturity by the debtor or debtors
4 upon payment or tender of the principal sum
5 actually borrowed and interest at the rate of
6 eighteen per centum per annum from the time the
7 money was borrowed, together with the sum al-
8 lowed as provided in section two for the expense
9 of making and securing the loan. And all pay-
10 ments in excess of said rate and said sum allowed
11 for expenses, if any is owed, shall be applied to
12 the discharge of the principal, and the borrower
13 or borrowers shall only be obliged to pay or
14 tender the balance of the principal and interest at
15 said rate due after such application.

1 SECTION 4. No person or persons, corpora-
2 tion or copartnership, whether licensed or not,
3 shall take, directly or indirectly, as interest, or
4 for the use of any loan of less than one thousand
5 dollars in amount, a higher rate than eighteen per
6 centum per annum, nor when the interest taken ex-
7 ceeds twelve per centum per annum, any sum for

8 expenses of making and securing the loan above
9 the amount allowed therefor in section two.

10 No contract or assurance for the payment of
11 money with interest or charges for expenses at a
12 greater rate than is allowed in this section shall
13 be thereby rendered void; but when in an action
14 brought on such contract or assurance it appears
15 that a greater rate of interest or a greater sum
16 for expenses than is so allowed has been directly
17 or indirectly reserved, taken or received, if the
18 principal of the loan is less than one thou-
19 sand dollars, the defendant shall recover his full
20 costs, and the plaintiff shall forfeit threefold the
21 amount of interest and charges unlawfully re-
22 served or taken, and no more, and shall have
23 judgment for any balance remaining due after
24 deducting said threefold amount.

1 SECTION 5. When any greater rate of interest
2 or amount for expenses than is allowed by law
3 has been paid the party paying the same may,
4 either by an action of contract or a suit in equity,
5 recover back threefold the amount of the unlaw-
6 ful interest, and three times the unlawful amount
7 for expenses, so paid and no more: *provided*, that
8 such action or suit shall be prosecuted within two
9 years from the time of payment.

1 SECTION 6. When a loan of less than one
2 thousand dollars is secured by mortgage or pledge
3 of personal property or an assignment of wages,
4 the creditor or creditors, shall discharge such

5 mortgage, release such assignment and restore
6 such pledge upon payment or tender to him, it or
7 them of the sum legally due under this act and
8 such payment or tender may be made by the
9 debtor, by any person duly authorized by him, or
10 by any person having an interest in the property
11 mortgaged or pledged or the wages assigned.

12 Whoever refuses or neglects, after request, to
13 discharge a mortgage or release an assignment
14 or restore to the party entitled to receive the
15 same or pledge, after payment of the debt secured
16 thereby or tender of the amount due thereon, as
17 aforesaid, shall be liable in an action of tort to
18 the borrower or borrowers for all damages
19 thereby resulting to him or them.

1 SECTION 7. No mortgage of personal prop-
2 erty to secure a debt of which the principal is
3 less than one thousand dollars on which interest
4 is charged at a rate exceeding twelve per centum
5 per annum, or to secure payment for expenses
6 for making and securing the loan constituting
7 such debt in excess of the amount allowed by this
8 act, shall be valid unless it states, with substan-
9 tial accuracy, the actual amount of the loan, the
10 time for which the loan is made, the rate of in-
11 terest to be paid, the expense for making and
12 securing the loan, nor unless it contains a pro-
13 vision that the debtor shall be notified, in the
14 manner provided in section seven of chapter one
15 hundred and ninety-two of the Public Statutes,
16 of the time and place of any sale to be made in

17 foreclosure proceedings at least seven days before
18 such sale. And no notice of intention to fore-
19 close under sections seven or ten of said chapter
20 shall be valid in such case, unless it expressly
21 states where such notice is to be recorded, and
22 that the right of redemption will be foreclosed
23 sixty days after such recording. Unless such
24 mortgage shall be recorded within the time al-
25 lowed therefor by chapter seventy-three of the
26 acts of the year eighteen hundred and eighty-
27 three it shall not be valid against any party.

1 SECTION 8. Whenever any payment shall be
2 made on account of any loan of less than one
3 thousand dollars on which interest is payable at
4 a rate exceeding twelve per centum per annum,
5 or for the making and securing of which a sum for
6 expenses, in addition to said rate, greater than is
7 allowed by law, has been paid or promised, the
8 person receiving the payment or his principal,
9 shall, when the payment is taken, give the person
10 paying a receipt setting forth the amount paid
11 and identifying the note, mortgage or assignment
12 to which it is to be applied.

1 SECTION 9. Any person or persons not being
2 duly licensed as provided for in this act, who, on
3 his or their own account, and any person or per-
4 sons, who on account of any other person or per-
5 sons, copartnership or corporation, not so licensed,
6 shall engage in or carry on, directly or indirectly
7 the business of making small loans in sums of less

8 than one thousand dollars each at rates of interest
9 exceeding twelve per centum per annum, or for
10 the making and securing of which a greater sum,
11 in addition to said rates, is charged or taken than
12 is allowed by law, shall be punished by a fine of
13 not less than fifty nor more than three hundred
14 dollars, or by imprisonment in the house of cor-
15 rection not more than sixty days, or by both.

1 SECTION 10. Chapter three hundred and
2 eighty-eight of the acts of the year eighteen hun-
3 dred and eighty-eight, and chapter four hundred
4 and twenty-eight of the acts of the year eighteen
5 hundred and ninety-two are hereby repealed, but
6 this repeal shall not affect any right of action which
7 has accrued under either of the same. Nothing
8 in this act shall be construed to apply to licensed
9 pawnbrokers, or to repeal or affect section thirty-
10 four of chapter one hundred and two of the Public
11 Statutes, or section six of chapter one hundred
12 and ninety-two of the Public Statutes, or chapter
13 four hundred and ninety-seven of the acts of the
14 year eighteen hundred and ninety-five or chapter
15 one hundred eighty-three of the acts of the year
16 eighteen hundred ninety-six, or so much of section
17 three of chapter seventy-seven of the Public
18 Statutes as provides that when there is no agree-
19 ment for a different rate, the interest of money
20 shall be at the rate of six dollars upon each hun-
21 dred dollars for a year.

