

**ACT 114**

S.B. NO. 1441-80

A Bill for an Act Relating to Industrial Loan Companies.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 408-2, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

““Open-end loan” means a loan made by a licensee under this chapter pursuant to an agreement between the licensee and the borrower whereby:

- (1) The licensee may permit the borrower to obtain advances of money to the borrower from the licensee from time to time or the licensee may advance money on behalf of the borrower from time to time as directed by the borrower;
- (2) The amount of each advance and permitted interest and other charges are debited to the borrower's open-end loan account and payments and other credits are credited to the same account;
- (3) Interest and charges are computed on the unpaid principal balance or balances of the open-end loan account from time to time; and
- (4) The borrower has the privilege of paying either the full amount of the open-end loan account or periodic installments of fixed or determinable amounts as provided in the agreement.

“Billing cycle” means the time interval between periodic billing dates. Such intervals may be considered equal intervals of time unless the billing date varies by more than four days from the regular billing date.”

SECTION 2. Section 408-15, Hawaii Revised Statutes, is amended to read:

**“Sec. 408-15 Interest rates; late charges; other charges; refunds; open-end loans.** (a) No industrial loan company shall directly or indirectly charge, contract for, collect, or receive any interest, discount, fees, charges, or other consideration on any loan made by it except as provided by this section.

(b) Advance interest or discount. An industrial loan company may charge, contract for, receive, or collect in advance interest or discount at any rate which does not exceed the following maximum rate for the particular period and type of contract hereinafter set forth, computed in the manner set forth in section 408-3, at the inception of the contract, to wit:

- (1) Where interest is paid or deducted in advance for a period of not more than eighteen months upon any contract (whether the principal amount of the contract is payable in one payment at the end of the maturity period thereof or in installments), it shall not exceed twelve per cent a year computed in the manner set forth in section 408-3, at the inception of the contract.
- (2) Where interest is payable or deducted in advance upon a contract payable in a period of more than eighteen months, it shall not exceed an amount computed in the manner set forth in section 408-3, as follows: twelve per cent a year for the first eighteen months, plus nine per cent a year for the next twelve months (or portion thereof), plus six per cent a year for the next twelve months (or portion thereof), plus three per cent a year for the next six months (or portion thereof) of such period, as the case may be.

Interest shall not be deductible in advance for more than four years.

(For example: upon a contract, the principal amount of which is \$120, payable in twenty-four months, in monthly installments of \$5, the maximum amount of interest which may be deducted in advance under this

section is computed as follows:

12 per cent a year of \$120 for first 18 months	\$21.60
9 per cent a year of \$120 for next 6 months	5.40
Total interest deductible in advance of the contract	27.00)

- (3) In addition to requiring and collecting or deducting interest in advance, as aforesaid, the company may require and receive repayment of the principal amount of the contract in uniform weekly, monthly, or other periodic installments.
- (4) Late charges on delinquent installments. In addition to requiring and collecting or deducting interest in the manner and at the rates hereinbefore provided for, the company may also require and receive the payment of late charges not to exceed twelve per cent a year on any contractual installment or portion thereof which remains unpaid on the due date of the installment where there has been no extension or deferment by mutual agreement, or where the amount extended or deferred is not paid on the due date agreed upon. The company shall give the borrower written notice of the assessment of late charges prior to the due date for the next contractual payment. No late charges shall be assessed after acceleration of the maturity of the contract. This subsection (b)(4) shall not apply to open-end loans.
- (5) After maturity interest charges. Upon maturity of the contract, the rate of interest on the unpaid principal balance of the loan shall be eighteen per cent a year or the original contract rate of interest, whichever is less. This subsection (b)(5) shall not apply to open-end loans.

(c) Fraction of a month. In computing interest for any of the purposes of this section, or interest refunds under subsection (f), for any period, any fraction of a month shall be considered as a whole month.

(d) Where not an installment contract. Nothing in this chapter shall be deemed to prohibit an industrial loan company from lending money upon a contract to repay the principal amount at the end of the maturity period, instead of in installments, under which contract interest is either deductible in advance, or is payable in weekly, monthly, or other periodic installments, or at the end of such period, provided the interest payable or paid is not in excess of the maximum prescribed by this section for loans repayable in installments of principal.

(e) Applications, licensees only. No person, firm, or corporation (not holding a license issued under this chapter) shall charge, contract for, collect, or receive interest, discounts, fees, charges, or other consideration on any loan in the amount or in the manner provided in this section unless permitted so to do by other state law.

(f) Refunds; prepayment. On a contract which has been discounted or on which interest has been collected in advance, and which is then paid or refinanced or on which judgment is then obtained before maturity, the industrial loan company involved shall refund to the borrower on account of unearned discount or interest an amount computed, on that portion of the principal amount which has not yet matured, at the same rate of discount or interest as was charged at the time the contract was

made, for the term of the contract remaining after the date of the payment or after the date of the judgment; provided that no refund less than 25 cents need be made; and provided further that checks issued to refund interest which are not presented for payment within three years from the date of issue may be declared canceled and the sum thereof retained as earnings of the licensee. Each company shall permit any borrower from it to pay partially or wholly any contract or installment on a contract before the due date, if the contract has been in effect for a period of at least three months. The company shall not be required to refund any portion of the unearned discount or interest which results in a minimum discount or interest retained on the contract of less than \$15. This subsection (f) shall not apply to open-end loans.

(g) Deferred payments, interest, etc. Any payment on account of the principal amount of a contract, which is due on a particular date, may be extended or deferred to a later date by mutual agreement, and, upon the amount of the principal payment so extended or deferred, interest, not exceeding that permitted upon an original loan by this section, for the actual period of the extension or deferment, may be charged and may be collected in advance at the commencement of the period of extension or deferment, provided that the term and conditions of the extension or deferment, including the principal amount so extended or deferred, and the period of, and the charge for, the extension or deferment, shall be set forth in writing and signed in duplicate by the borrower and the company, one copy of the same to be kept on file with the contract and the other copy to be given to the borrower.

(h) Other charges. In addition to the interest, discount, or other charges permitted by this section, an industrial loan company shall also have power to collect in advance or otherwise from the borrower any of the following charges:

- (1) The actual taxes and fees charged by a governmental agency for recording, filing, or entering of record, any bill of sale, assignment, mortgage, chattel mortgage, or other conveyance, or any partial or complete release, discharge, or satisfaction of judgment, mortgage, lien, or other encumbrance, or any of such conveyances or instruments, of or on any real or personal property which constitutes all or a portion of the security on a contract;
- (2) Appraisal fees, and abstractors' fees, or title insurance actually paid to third parties, no portion of which fees inures to the benefit of the company;
- (3) Premiums actually paid for insuring real and personal property pledged as security on a contract, and premiums for insurance on the life and/or disability of the borrower, provided the insurance is obtained from insurance companies authorized to do and doing business in the State under the laws thereof and provided the borrower, if the property is adequately insured for the amount of the loan, shall not be required to substitute other insurance therefor upon the property or to take out additional insurance thereon; and
- (4) Attorney's fees, if provided for in the contract, and costs of court, incurred in the collection of any contract in default.
- (5) A charge not exceeding \$10 upon the transfer of any equity under a chattel mortgage or a conditional sale contract, or upon any partial or complete release, discharge, or satisfaction of judgment, mortgage, lien, or other encumbrance, or upon any of such conveyances of any real or personal

property which constitutes all or a portion of the security on a contract.

- (6) Loan fees or "points" on all loans primarily secured by an interest in real property where the interest rate is computed in accordance with subsection (j) of this section; provided, that the total finance charge payable by the borrower in connection with any such loan shall include the amount of any such loan fees or "points" and shall not exceed an annual percentage rate (as defined in the Federal Truth In Lending Act and the regulations of the Federal Reserve Board promulgated thereunder) of eighteen per cent per annum.
- (7) Any reasonable attorneys' fees incurred for the preparation of any contract, or any promissory note or any obligation evidencing an indebtedness, or any bill of sale, assignment, mortgage, chattel mortgage, or other conveyance, or any partial complete release, discharge, or satisfaction of judgment, mortgage, lien, or other encumbrance, or any of such conveyances or instruments of or on any real or personal property which constitutes all or a portion of security on a contract, or any other documents relating to a contract.
- (8) Actual charges for credit reports and other credit screening expenses incurred for loans of \$5,000 or more, provided that such charges shall not exceed \$15 per applicant and such charges are paid to third parties and no portion of such charges inures to the benefit of the company.
- (i) Minimum discount or interest on conditional sale. When the discount or interest on a conditional sale contract of \$100 or more is less than \$15, a charge for discount or interest of \$15 shall be allowed.

(j) As an alternative to the interest authorized by subsection (b), an industrial loan company may contract for and receive interest at a rate not exceeding one and one-half per cent per month on the unpaid principal balance of a loan, for a loan period of no longer than fifteen years; provided that retail installment contracts as defined in section 476-1, unsecured loans for less than \$5,000, and loans for less than \$7,500 secured only by personal property shall not be contracted under this subsection for a loan period of longer than six years. Loans providing for repayment on demand may be contracted for, under this subsection and subject to a maturity date not later than six years from the date of the note. For loans contracted under this subsection with a term exceeding six years, the note shall provide for repayment of the loan in equal monthly installments over the term of the loan with a final payment not exceeding twice the monthly payment. Upon the maturity date of the contract, the rate of interest on the unpaid principal balance of the loan may be twelve per cent a year or the original contract rate of interest, whichever is greater.

In addition to collecting interest at the rate established in the first paragraph of this subsection, an industrial loan company may collect late charges on delinquent installments. Except as otherwise provided in chapter 476, relating to Retail Installment Sales, late charges shall not exceed five per cent of each delinquent contractual installment or portion thereof which remains unpaid on the due date agreed upon in the contract or \$50, whichever is less. The late charges shall not be collected more than once for the same delinquent installment. Delinquency occurs when the installment or payment is not paid on the due date agreed upon in the contract. The company

shall give the borrower written notice of the assessment of late charges prior to the due date of the next contractual payment. No late charges shall be assessed after acceleration of the maturity of the contract.

(k) Acceleration of installments. An industrial loan company shall have the rights, in the event of default under a contract or open-end loan agreement, to declare the entire unpaid balance under the contract or open-end loan agreement due and payable, subject to the interest refund provisions of this section, if applicable, and to exercise any other rights in addition to such acceleration as provided in the contract or open-end loan agreement, including without limitation the right to stop payment of advances to or on behalf of a borrower in default under the contract or open-end loan agreement, provided such other rights are not in conflict with the other provisions of this chapter.

(1) Open-end loan. An industrial loan company shall also have power to make open-end loans subject to the following requirements:

- (A) A licensee may not contract for and receive interest on an open-end loan in excess of that set forth in subsection (j) of this section.
- (B) A licensee shall not compound interest by adding any unpaid interest authorized by this subsection to the unpaid principal balance of the borrower's open-end loan account; provided that the unpaid principal balance may include the charges (other than interest) authorized by subsection (h) of this section.
- (C) Interest authorized by this subsection shall be deemed not to exceed the maximum interest permitted by this section if such interest permitted by this section if such interest is computed for each billing cycle at a monthly rate not to exceed that permitted in subsection (j) of this section by any of the following methods:
  - (i) By converting the monthly rate to a daily rate and multiplying such daily rate by each daily unpaid principal balance of the open-end loan account in the billing cycle, and then adding the products of all such multiplications (in which case the daily rate is determined by multiplying the authorized monthly rate by 12 and dividing by 365); or
  - (ii) By multiplying the monthly rate by the average daily unpaid principal balance of the open-end loan account in the billing cycle (in which case the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle); or
  - (iii) By converting the monthly rate to a daily rate and multiplying such daily rate by the average daily unpaid principal balance of the open-end loan account in the billing cycle, and then multiplying the product so obtained by the number of days in the billing cycle (in which case the daily rate is determined by multiplying the authorized monthly rate by 12 and dividing by 365, and the average daily unpaid principal balance is the sum of the amounts unpaid for all days during the cycle divided by the number of days in the cycle); or

- (iv) By converting the monthly rate to a daily rate by the method set forth in subparagraph (i) and multiplying such daily rate times the sum of all the daily unpaid principal balances of the open-end loan account during the billing cycle.
- (D) For all of the above methods of computation, the unpaid principal balance of any day shall be determined by adding to any balance unpaid as of the beginning of that day all advances and other permissible amounts (other than interest) charged to the borrower and deducting all payments and other credits made or received that day.
- (E) The borrower may pay all or any part of the unpaid balance in the borrower's open-end loan account, or the borrower may pay the unpaid balance in periodic installments, subject to minimum payment requirements, date of maturity and other conditions as determined by the licensee and set forth in the open-end loan agreement.
- (F) A licensee may not contract for and receive the fees, costs, and expenses permitted under subsection (h) of this section.
- (G) If credit life or disability insurance is provided, the additional charge for credit life insurance or credit disability insurance shall be calculated in each billing cycle by applying the current monthly premium rate for such insurance as such rate may be approved by the insurance commissioner pursuant to chapter 435, to the entire outstanding balances in the borrower's open-end loan account, or so much thereof as the insurance covers using any of the methods specified in this subsection for the calculation of loan interest. A licensee shall not be responsible for advancing premiums for credit life or disability insurance on a borrower who is delinquent in the making of the required minimum payments on the loan if one or more of such payments is past due for a period of ninety days or more; provided that the licensee shall advance to the insurer the amounts required to keep such insurance, if provided, in force during such ninety-day period, which amounts may be debited to the borrower's open-end loan account.
- (H) A licensee, until the open-end loan account is terminated, may retain any security interest in real or personal property given to secure the open-end loan account. Upon such termination the licensee shall, within ten business days following receipt of written demand by the borrower, release the mortgage, security interest, pledge, or other security for the open-end loan. For the purposes of this paragraph, termination of the open-end loan account by mutual agreement where the borrower has paid all amounts owed on the open-end loan account and the borrower has complied with all of the terms of the open-end loan agreement. Nothing in this paragraph shall preclude any licensee from exercising any other rights the licensee has to or in the security for open-end loans in the event of the borrower's default. Notwithstanding any other provision in this chapter, no open-end loan may be secured by a lien on the borrower's principal residence. The lender shall require certification, by the borrower, that the real property used

as security for the open-end loan is not the borrower's principal residence, and the lender may rely thereon.

- (1) If the open-end loan agreement is a retail installment contract, the licensee shall comply with the requirements of chapter 476."

SECTION [3.]† Section 408-17, Hawaii Revised Statutes, is amended to read:

**"Sec. 408-17 Making and payment of loans; written receipts and statements; chart of rates, etc.** Every licensee shall:

- (1) Deliver to the borrower at the time any contract other than a contract for an open-end loan is made a statement showing clearly and distinctly the terms, the amount, and date of the loan and of its maturity, the nature of the security, if any, the name and address of the borrower and of the licensee, the agreed rates of all charges and the actual effective rate of interest a year on the contract; this statement shall contain such additional information as the bank examiner may require;
- (2) Give to the borrower a plain and complete receipt for all payments of installments made on any loan at the time the payments are made or at the time of sending the borrower the periodic statement (as described in paragraph (5) of this section) for the billing cycle in which such payment was made, together with such additional information as the bank examiner may require;
- (3) Upon repayment in full of a loan other than an open-end loan, mark forthwith indelibly every application and security signed or executed by the borrower with respect to such loan (where the security does not also secure any other then existing obligation to the lender) with the word "paid" or "canceled", and release any mortgage, restore any pledge, cancel and return any note, and cancel and return any assignment given to the licensee by the borrower with respect to the loan (where the security does not also secure any other then existing obligation to the lender);
- (4) Deliver to the borrower at the time any open-end loan account is opened a copy of the open-end agreement and, to the extent the following items are not covered by the loan agreement, a statement showing clearly and distinctly the terms under which the open-end loans are to be made, the nature of the security, if any, the name and address of the borrower and of the licensee, the agreed rates of charges and the actual effective rate of interest under section 408-15, together with such additional information as the bank examiner may require; and
- (5) Except in the case of an open-end loan account which the licensee deems to be uncollectible or with respect to which delinquency collection procedures have been instituted, the licensee shall deliver to the borrower, or any one thereof, at the end of each billing cycle in which there is an outstanding balance of more than \$1 in the open-end loan account or with respect to which a finance charge is imposed, a periodic statement of the dates and amounts of interest and other charges, advances and other debits, and

---

†"[3]" substituted for "4" to correct manifest clerical error.



payments and other credits during the billing cycle, the balance of the account at the beginning of the billing cycle and as of the closing date of the billing cycle, and the minimum payment, if any, required on the account for the next billing cycle; together with such additional information as the bank examiner may require.

Every licensee shall during all business hours have prominently displayed in its office, located in such place and manner that all borrowers may be able clearly to read the same, a rate chart which shall set forth in such form as the bank examiner shall prescribe, the effective rate of interest a year charged by the licensee for the borrowing of money.

Every promissory note taken or accepted by a licensee as evidence of a loan made to a borrower shall, before its acceptance by the licensee, have clearly set forth a statement of the effective rate of interest a year charged by the licensee for the loan evidenced by the note.”

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored.\*

SECTION 5. This Act shall take effect upon its approval.

(Approved May 24, 1980.)

---

\*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.