

A Bill for an Act Relating to Interest and Usury.

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

SECTION 1. It is hereby explicitly stated by the terms of this Act that the provisions of Title V, Part A-Mortgage Usury Laws, Mortgages, Section 501(a)(1) and of Part B-Business and Agricultural Loans, of the Depository Institutions Deregulation and Monetary Control Act of 1980 shall not apply with respect to loans, mortgages, credit sales and advances made in this State, and that this State does not want the provisions of Title V, Part A-Mortgage Usury Laws, Mortgages, Section 501(a)(1) and of Part B-Business and Agricultural Loans, of the Depository Institutions Deregulation and Monetary Control Act of 1980 to apply with respect to loans, mortgages, credit sales and advances made in this State.

SECTION 2. Section 478-8, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 478-8 Exemptions from usury. (a) There shall not be interposed the defense or statement of a claim of usury in any action on a contract or promissory note, the principal amount of which exceeds the sum of \$750,000.

Section 478-6 shall not apply to parties to contracts or holders of promissory notes where the principal amount of such contracts or notes exceeds the sum of \$750,000.

(b) Small business investment companies shall be exempt from this chapter. The maximum rate of interest charged by such small business investment companies on any loan shall be the maximum rate of interest permitted, without reference to state law, by the federal Small Business Administration pursuant to the Small Business Investment Act of 1958, as amended.

As used in this subsection “small business investment company” means a company approved by the federal Small Business Administration to operate under the

provisions of the federal Small Business Investment Act of 1958 (72 U.S. Statutes at Large 689 et seq.; 15 U.S.C. 661 et seq.), as amended, and issued a license as provided thereunder.

(c) This chapter shall not apply to any mortgage loan wholly or partially secured by a guarantee or insurance or a commitment to insure issued under the provisions of the National Housing Act, Chapter 13 of Title 12 of the United States Code, the Veterans Benefit Act, subchapters I and II of Chapter 37 of Title 38 of the United States Code, and subchapter III of Chapter 8A of Title 42 of the United States Code.

(d) This chapter shall not apply to any mortgage loan wholly or partially secured by an alternative mortgage instrument as approved by the bank examiner in section 402-18.

(e) The provisions of this chapter expressly limiting the rate or amount of interest, discount, charges, or other consideration which may be directly or indirectly taken, received, or reserved shall not apply to any:

- (1) Indebtedness which is secured by a first mortgage lien on real property, or by a first lien on stock in a residential cooperative housing corporation, and is agreed to or incurred after the effective date of this subsection; or
- (2) Agreement of sale made after the effective date of this subsection under which a vendor agrees to sell real property to a vendee but retains legal title to the real property and in which the rate of interest is clearly stated.

(f) The provisions of this chapter shall not apply to a loan made by an employee welfare benefit trust plan or an employee pension benefit plan approved by the Internal Revenue Service pursuant to the Employee Retirement Income Security Act of 1974 and by the United States Department of Labor or a loan made by the Employees' Retirement System of the State of Hawaii.

(g) The provisions of this chapter shall not apply to farm or livestock credit corporations which are authorized by federal law to borrow directly from Federal Intermediate Credit Banks for their lending activities.

(h) Subsections (f) and (g) shall expire at the close of June 30, 1985 except that they shall continue to apply to any loan for the duration of such loan if it is made prior to the close of June 30, 1985 or if it is made during the two year period beginning July 1, 1985 and ending June 30, 1987 pursuant to a commitment issued prior to the close of June 30, 1985."

SECTION 3. Chapter 478, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"Sec. 478- Interest; credit cards. Notwithstanding any other provision to the contrary, the maximum rate of interest chargeable on indebtedness incurred under a credit card agreement shall not exceed 18 per cent per year. For purposes of this section, credit card means any instrument or device, whether known as a credit card, credit plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value, on credit. This section shall remain in effect until June 30, 1985."

SECTION 4. Sections 478-9 and 478-10, Hawaii Revised Statutes, are repealed.

SECTION 5. Chapter 506, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“Sec. 506- Mortgages on real property, damage or destruction of collateral. Notwithstanding any provisions to the contrary in any agreement between a mortgagor and a mortgagee, if residential real property which is the subject of a mortgage securing a loan is damaged or destroyed by fire, earthquake, tidal wave or any natural disaster, the rate of interest on the loan shall not be increased by reason of the damage or destruction and the proceeds of any insurance insuring against such damage or destruction shall be applied, at the option of the mortgagor, to reduce the indebtedness due under the loan or to repair, restore or rebuild the residential real property.”

SECTION 6. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. Statutory material to be repealed is bracketed. New material is underscored. The Revisor of statutes shall publish section 1 in the Hawaii Revised Statutes and the Session Laws of Hawaii.*

SECTION 8. This Act shall take effect upon its approval, but shall not affect any rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the effective date of this Act. This Act shall not increase the maximum legal rate of interest, discount, charges, or other consideration permissible under Hawaii or federal law on any indebtedness agreed to or agreement of sale made before the effective date of this Act. This Act shall not increase the rate of interest, discount, charges, or other consideration agreed to in any commitment entered into before the effective date of this Act.

(Approved May 30, 1980.)

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