

ACT 196

H.B. NO. 1871-80

A Bill for an Act Relating to Industrial Loan Companies.

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

SECTION 1. Section 408-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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; or as permitted by any exemption provided under chapter 478.”

SECTION 2. Section 408-15, Hawaii Revised Statutes, is amended by amending† subsection (1) to read as follows:

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

†So in original, but word “amending” probably should read “adding”.

- (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 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 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 means the cancellation, rescission, or other cessation 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.
- (I) If the open-end loan agreement is a retail installment contract, the licensee shall comply with the requirements of chapter 476."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 4. This Act shall take effect upon its approval, but shall not affect any rights which accrued prior to the effective date.

(Approved May 31, 1980.)

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