

## ACT 204

H.B. NO. 1511

A Bill for an Act Relating to Interest and Usury.

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

SECTION 1. Section 478-8, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(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 May 30, 1980; provided that for the purposes of this section a wraparound lien wherein the wraparound lender has committed to loan sufficient funds to pay off the principal amount of all prior liens shall be considered a first lien; or
- (2) Agreement of sale made after May 30, 1980 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.”

SECTION 2. Chapter 478, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§478- Wraparound lien.** A wraparound lien is a lien arising from a purchase-money loan which:

- (1) Is secured by a lien (the wraparound lien) on residential real property on which there exists one or more prior liens securing prior indebtedness;
- (2) Matures no earlier than the latest maturity date of any prior indebtedness; and
- (3) Is evidenced by a note or bond which:
  - (A) In principal amount equals the aggregate of the outstanding prior indebtedness plus the additional funds advanced by the wrap-around lender;
  - (B) Requires payments by the wraparound borrower to the wrap-

- around lender of periodic installments at least sufficient, to make required current payments on the prior indebtedness; and
- (C) Requires the wraparound lender to make the payments due on the prior indebtedness as long as installments are received from such borrower.”

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstances 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 the Act are severable.

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 Statutory material to be repealed is bracketed.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

SECTION 5. 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 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; provided that if any commitment for a wraparound loan entered into before the effective date of this Act was conditioned in effect on the fact that the interest, discount, charges, or other consideration agreed to would not be usurious at the time of closing of the loan then the provisions of this Act will apply if the loan so committed to is closed after the effective date of this Act.

(Approved June 18, 1981.)

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