

A Bill for an Act Relating to Interest.

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

SECTION 1. Section 478-1, Hawaii Revised Statutes, is amended to read as follows:

“§478-1 Legal rate; computation. When there is no express written contract fixing a different rate of interest, interest shall be allowed at the rate of [six] ten per cent a year as follows:

- (1) For money due on any bond, bill, promissory note, or other instrument of writing, or for money lent, after it becomes due;
- (2) For money due on the settlement of accounts, from the day on which the balance is ascertained;
- (3) For money received to the use of another, from the date of a demand made; and
- (4) For money upon an open account, after sixty days from the date of the last item or transaction.”

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

“§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 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. As used in this paragraph, agreement of sale includes sub-agreement of sale or other subsequent sub-agreement of sale made during the period from the effective date of this Act to midnight on June 30, 1985.
- (3) Indebtedness which is secured by a purchase-money junior mortgage lien on real property that is agreed to and incurred after the effective date of this paragraph; provided that purchase-money junior mortgage lien means a mortgage that is subordinate in lien priority to an existing mortgage on the same real property which is given to the seller as part of the buyer's consideration for the purchase of real property and delivered at the same time that the real property is transferred as a simultaneous part of the transaction made during the period from the effective date of this Act to midnight on June 30, 1985.

(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) The provisions of this chapter shall not apply to transactions of merchants. The maximum rate of interest charged by merchants in such transactions shall be eighteen per cent per annum made during the period from the effective date of this Act to midnight on June 30, 1985.

tive date of this Act to midnight on June 30, 1985.

For purposes of this chapter, the term, "merchant" shall be as defined in section 490:2-104. This subsection shall not apply to any transactions regulated by chapters 403, 406, 407, 408, 409, 410, and 431.

[(h)](i) 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. Section 408-15, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

"(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 from principal	
amount of the contract	\$27.00)

- (3) For loans made or committed to after [[]May 31, 1980[[] and prior to July 1, 1985, the maximum rates of interest specified in paragraphs (1)

and (2) of this subsection shall be as follows: A maximum rate of interest specified as twelve per cent a year shall be fourteen per cent a year, a maximum rate of interest specified as nine per cent a year shall be ten and one-half per cent a year, a maximum rate of interest specified as six per cent a year shall be seven per cent a year, and a maximum rate of interest specified as three per cent a year shall be four per cent a year. This paragraph shall not apply to loans made or committed to before [[] May 31, 1980[]].

- (4) 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.
- (5) 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)(5)] paragraph shall not apply to open-end loans.
- (6) 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)(6)] paragraph shall not apply to open-end loans."

2. By amending subsection (j) to read:

"(j) As an alternative to the interest authorized by subsection (b)[,]:

- (1) An industrial loan company may contract for and receive interest at a rate not exceeding eighteen per cent per year 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.
- (2) For loans made or committed after [[] May 31, 1980[]] and prior to July

1, 1985, the maximum rate of interest permitted by this subsection shall be twenty-four per cent a year. This paragraph shall not apply to loans made or committed to prior to [[]May 31, 1980[]].

- (3) In addition to collecting interest at the rate established in paragraph (1) or (2) 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 of \$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."

SECTION 4. Chapter 478, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§478- Uniform Securities Act (Modified); exempt. The provisions of this chapter shall not apply to any security regulated by chapter 485; provided that the maximum legal rate of interest permissible with respect to a security shall not exceed eighteen per cent per annum."

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored.¹

SECTION 6. 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 or any indebtedness agreed to or loan 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 June 18, 1982.)

Note

1. Edited pursuant to HRS §23G-16.5.