

ACT 234

H.B. NO. 40

A Bill for an Act Relating to Interest.

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

SECTION 1. Section 408-15, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Advance interest on section 408-3 loans. A licensee may charge, contract for, and receive in advance interest at any rate which does not exceed the maximum rate allowed by this subsection, for the particular period and type of contract set forth in this subsection, computed in any manner permitted by section 408-3, at the inception of the contract:

- (1) Where interest is paid or deducted in advance upon a contract, 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 (or portion thereof), 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 paid or deducted in advance on section 408-3 loans 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 paid or deducted in advance under this subsection is computed as follows:

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

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

- (2) After maturity interest charges. Upon maturity of the contract, the rate of interest when computed under this subsection on the unpaid principal balance of the loan shall be twenty-four per cent a year unless a lesser rate is specified in the contract as an after-maturity interest rate.
- (3) Refunds; prepayment. On a contract for a section 408-3 loan on which interest has been collected or deducted in advance, and which then is paid (including refinancing) or on which judgment then is obtained, before maturity, the borrower shall be entitled to a refund of unearned interest in an amount computed on that portion of the principal amount which has not yet matured, at the same rate of 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 \$1 need be made and the licensee shall not be required to refund any portion of the unearned interest which results in a minimum interest retained on the contract of less than \$15; and provided 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 licensee 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.

(c) Simple interest loans. As an alternative to the interest authorized by subsections (b) and (d):

- (1) A licensee may contract for, charge, and receive interest computed at a rate not exceeding twenty-four per cent a year on the principal balance remaining unpaid from time to time under the contract whether or not the interest rate under the contract is a fixed or variable rate; provided that for loans committed to and made after July 1, 1985, the maximum rate of interest permitted by this

subsection shall be eighteen per cent a year]. Upon maturity[,] of a loan committed to or made after May 31, 1980, the rate of interest on the unpaid principal balance of the loan shall be twenty-four per cent a year, unless a lesser rate is specified in the contract as an after-maturity interest rate, or in the case of any extension or deferral[,] of such a loan, the rate of interest permitted [shall be that permitted by this subsection] on the amount extended or deferred[,] shall be twenty-four per cent a year.

- (2) For loans made or committed to before May 31, 1980, and extended or deferred at maturity after May 31, 1980, 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 before May 31, 1980, except loans made or committed before May 31, 1980, and extended or deferred as provided in this paragraph.
- (3) On all loans where the interest rate is computed in accordance with this subsection, a licensee shall have the right to charge, contract for, and receive discount, points, loan fees, and loan origination charges; provided that on consumer loans where the interest rate is computed in accordance with this subsection, such discount, points, loan fees, and loan origination charges shall be permitted only if the loan is secured by an interest in real property. Except for open-end loans, such discount, points, loan fees, and loan origination charges shall be included as interest for purposes of determining compliance of the loan with the interest rate limits provided in this subsection when the contract is made. Such discount, points, loan fees, and loan origination charges shall be fully earned on the date the loan is made and shall not be subject to refund upon prepayment of the loan."

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 and development companies shall be exempt from this chapter. The maximum rate of interest charged by such small business investment companies and development 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" and "development company" mean a company approved by the federal Small Business Administration to operate under the provisions of the federal Small Business Investment Act of 1958, Public Law 699, as amended.

(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[.]; provided that upon extension at maturity or renegotiation of any agreement of sale made on or after the effective date of this Act, the maximum rate of interest charged thereafter shall not be more than four percentage points above the weekly average yield on United States Treasury securities adjusted to a constant maturity of three years, as made available by the Federal Reserve Board at the time of extension or renegotiation. As used in this paragraph, agreement of sale includes subagreement of sale or other subsequent subagreement of sale made [during the period from [June 18, 1982] to midnight on June 30, 1985.] on or after the effective date of this Act; or
- (3) Indebtedness which is secured by a purchase-money junior mortgage lien on real property that is agreed to and incurred after [ [June 18, 1982] ]; 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 [June 18, 1982] 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 [June 18, 1982] to midnight on June 30, 1985.] a year.

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.

(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 478-11, Hawaii Revised Statutes, is amended to read as follows:

“§478-11 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 eighteen per cent per year. For purposes of this section:

- (1) Credit card means any card, plate, coupon book, or other single credit device, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value, from time to time, on credit[, and].
- (2) Credit card agreement means any agreement that provides primarily for the extension of credit pursuant to a cardholder's use of a credit card. An agreement providing for an overdraft line of credit does not, because a cardholder can access it through the use of a credit card, become a credit card agreement for purposes of this section.

[This section shall remain in effect until June 30, 1985.]”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. 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 this Act are severable.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 1985.

(Approved June 5, 1985.)

**Note**

1. A closing bracket is missing.