

ACT 137

H.B. NO. 1940-86

A Bill for an Act Relating to Interest and Usury.

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

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

**“CHAPTER 478
INTEREST AND USURY**

§478-1 Definitions. As used in this chapter and unless a different meaning appears from the context:

“Annual percentage rate” shall have the meaning given the term in the Truth in Lending Act.

“Consumer credit” means credit extended to a natural person primarily for a personal, family, or household purpose:

- (1) In which the principal amount does not exceed \$100,000 or in which there is an express written commitment to extend credit in a principal amount not exceeding \$100,000; or
- (2) Such credit is secured by real property or by personal property used or expected to be used as the borrower’s principal dwelling.

“Credit” means the right to defer payment of debt or to incur debt and defer its payment.

“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.

“Credit card agreement” means any agreement that provides primarily for the extension of credit pursuant to the cardholder’s use of a credit card. Neither an agreement providing for an overdraft line of credit nor an agreement

for a line of credit secured by equity in real property becomes a credit card agreement for the purposes of this chapter because a cardholder can access it through the use of a credit card.

“Finance charge” has the same meaning given such term by the Truth in Lending Act.

“Home business loan” means a credit transaction (a) in which the principal amount does not exceed \$100,000 or in which there is an express written commitment to extend credit in a principal amount not exceeding \$100,000, (b) which is not a consumer credit transaction, and (c) which is secured by a mortgage of the principal dwelling of any natural person who is a mortgagor named in the mortgage given as security in connection with the credit transaction.

“Real property” includes stock in a cooperative housing corporation and personal property used or intended to be used as a consumer’s residence.

“Truth in Lending Act” means the federal Truth in Lending Act (15 U.S.C. 1601, et seq.), Regulation Z of the Board of Governors of the Federal Reserve System, and the Official Staff Commentary to Regulation Z prepared by the staff of the Federal Reserve Board, and amendments of the Act, Regulation Z, and such Commentary.

§[478-1] **478-2 Legal rate; computation.** When there is no express written contract fixing a different rate of interest, interest shall be allowed at the rate of 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.

§[478-2] **478-3 On judgment.** Interest at the rate of ten per cent a year, and no more, shall be allowed on any judgment recovered before any court in the State, in any civil suit.

§[478-3] **478-4 Rate by written contract.** (a) It shall in no case be deemed unlawful, with respect to any consumer credit transaction (except a credit card agreement) and any home business loan to stipulate by written contract, for any rate of simple interest not exceeding the greater of one per cent per month or twelve per cent per annum, and it shall in no case be unlawful, with respect to any credit card agreement, to stipulate by written contract for any rate of simple interest not exceeding the greater of one and one-half per cent per month or eighteen per cent a year. [provided the contract to that effect is signed by the party to be charged therewith.]

(b) As an alternative to the rate of interest specified in subsection (a), it shall be lawful with respect to any consumer credit transaction (except a credit card agreement) and any home business loan to stipulate by written contract for the payment and receipt of a finance charge in any form or forms at an annual percentage rate not to exceed twelve per cent, together with any other charges that are excluded or excludable from the determination of finance charge under the Truth in Lending Act, and, with respect to any credit card agreement, to stipulate by written contract for the payment and receipt of a finance charge at an annual percentage rate not to exceed eighteen per cent, together with any other charges that are excluded or excludable from the determination of finance

charge under the Truth in Lending Act. The rates in this paragraph shall be available as alternative permissible rates for any of the credit transactions referred to, whether in fact or in law the Truth in Lending Act applies to the transaction, notwithstanding the advance, fixed, or variable manner in which interest or finance charge may be computed under the contract, and whether the contract uses the terms interest, annual percentage rate, finance charge or any combination of such terms. For rate computation purposes, with respect to any contract to which this paragraph may apply, the creditor conclusively shall be presumed to have given all disclosures in the manner, form and at the time contemplated by the Truth in Lending Act, including those necessary to exclude any charges from the finance charge.

(c) With respect to any transaction other than a consumer credit transaction, a home business loan or a credit card agreement, it shall be lawful to stipulate by written contract for any rate of interest not otherwise prohibited by law.

(d) The rate limitations contained in subsections (a) and (b) of this section shall not apply to any credit transaction authorized by, and entered into in accordance with the provisions of, chapters 408 or 476.

§[478-4] 478-5 Usury not recoverable. If a greater rate of interest than that permitted by law [one per cent a month] is contracted for with respect to any consumer credit transaction, any home business loan or any credit card agreement, the contract shall not, by reason thereof, be void. But if in any action on the contract proof is made that a greater rate of interest than that permitted by law [one per cent a month] has been directly or indirectly contracted for, the [plaintiff] creditor shall only recover the principal and the [defendant] debtor shall recover [cost;] costs; provided that any bank or savings and loan association may charge, contract for, receive, collect in advance, or recover interest, discount, and other charges at the same rates and in the same amounts as permitted by law in the case of loans made by industrial loan companies licensed under chapter 408, subject to the penalties imposed by that chapter if a greater rate of interest than that permitted by chapter 408 is contracted for or there is any other violation of sections 408-15 and 408-17 applicable to licensees under chapter 408. If interest has been paid, judgment shall be for the principal less the amount of interest paid. This section shall not be held to apply [to contracts for money lent upon bottomry bonds or upon other maritime risks nor], except for the foregoing proviso, to loans made under chapter 408.

[§478-5 Acts of agent. All acts of an agent in lending money at a rate of interest in excess of one per cent a month shall bind the principal to the same extent as though the principal acted in person, and where the same person acts as the agent of the borrower and lender he shall be deemed the agent of the lender for the purposes of this chapter.]

§478-6 Usury; penalty. [Except as otherwise permitted by law, any] Any person who directly or indirectly receives any interest or finance charge[, discount, or consideration for or upon the loan or forbearance to enforce the payment of money, goods, or things in action,] at a rate greater than that permitted by law [one per cent a month] or who, by any method or device whatsoever, receives or arranges for the receipt of interest or finance charge[, increase, or profit] at a greater rate than that permitted by law [one per cent a month] on any credit transaction [loan made by him] shall be guilty of usury and shall be fined not more than \$250, or imprisoned not more than one year, or both. [The rate of one per cent a month shall cover all commissions, fees, charges, interest, increase, and profit of every character whatsoever.]

§478-7 Compound, not recoverable. No action shall be maintainable in any court of the State to recover compound interest upon any [contract] consumer credit transaction or upon any credit card agreement whatever.

§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)] (a) The provision of this [This] chapter (except for this section and Section 478-3) 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 commissioner of financial institutions in section 402-18.]

[(e)] (b) 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] (except for this section and Section 478-3) 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) Consumer credit agreement [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 or the manner in which such rate shall be determined is clearly stated[;]. As used in this paragraph, agreement of sale includes subagreement of sale or other subsequent subagreement of sale made on or after June 18, 1982. [provided that] Notwithstanding the first sentence of this paragraph, with respect to any consumer credit agreement of sale made on or after July 1, 1985, upon extension at maturity or renegotiation thereof, [of any agreement of sale made on or after [July 1, 1985],] the maximum rate of interest charged thereafter shall not be more than the greater of the rate of interest payable under the agreement of sale

immediately prior to such maturity or renegotiation or four percentage points above the highest 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] within 60 days prior to 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 on or after [June 18, 1982]]; 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[.]; or
- (4) Any transaction for the sale of goods, services, or both, by a seller in the business of selling such goods or services, if the transaction is subject to Chapter 476 or the rate of interest charged by the seller in the transaction does not exceed eighteen per cent a year; provided that this paragraph shall not apply to any transaction regulated by Chapter 403, 406, 407, 408, 409, 410, or 431 or to any transaction for the sale of financial services. This paragraph shall not be deemed to limit any seller's right to charge interest under Section 478-2.

[(f) (c) The provisions of this chapter (except for this section and Section 478-3) shall not apply to a loan made by an employee [welfare] benefit [trust] plan as defined in Section 1002(3) of Title 29 of the United States Code, as amended, [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 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.]

[§478-8.5 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 wraparound lender;
 - (B) Requires payments by the wraparound borrower to the wraparound 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.]

[[§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.
- (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.]

[[§478-12] §478-9 Rejection of federal law. []] 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.

[[§478-13] 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 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 12, 1986.)