

ACT 158

H.B. NO. 1450

A Bill for an Act Relating to Financial Services Loan Companies.

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

SECTION 1. The purpose of this Act is to broaden the authority of financial services loan companies to charge bona fide and reasonable fees for preparation of loan documents for real estate secured consumer loans, thereby treating the cost for loan documentation the same as other financial institutions.

The legislature finds that financial services loan companies spend thousands of dollars preparing and revising their loan application, processing, and disclosure forms to meet ever-changing federal laws and regulations. Changes in state laws and rules also add to the loan documentation costs. Under current law, financial services loan companies cannot pass on these government imposed costs to their customers. However, banks, savings and loans, and credit unions may and do charge loan preparation fees to partially cover these government imposed costs. Only the law governing financial services loan companies limits charges for loan documentation. Under article 9 of chapter 412, Hawaii Revised Statutes, only outside or in-house attorney's fees for loan documentation may be passed on to customers.

The legislature finds that these restrictions in article 9 are a carryover from old out-dated thinking in the repealed chapter 408, Hawaii Revised Statutes, governing industrial loan companies. Drafted in the 1930's and revised many times over, there was an unfounded but persistent suspicion that customers who borrowed from industrial loan companies needed special protection. If this suspicion were ever true, it has long since passed. Financial services loan companies compete directly with banks, savings and loans, credit unions, and mortgage brokers for various segments of the loan market. Their customers are bank customers, savings and loan customers, and credit union and mortgage broker customers.

Documenting real estate secured loans is particularly costly. For example:

- (1) The Real Estate Settlement Procedures Act ("Regulation X") and Truth in Lending Act ("Regulation Z") require pre-disclosures to all applicants within three business days;
- (2) For each adjustable rate mortgage type a different set of early disclosures are required;
- (3) The Equal Credit Opportunity Act ("Regulation B") requires special disclosure language in applications and special notices for applications denied or withdrawn;

- (4) The Home Mortgage Disclosure Act (“Regulation C”) requires financial institutions to gather and report to the federal regulators specific data on the applicants and the loan requests for loans originated, canceled, denied, and withdrawn; and
- (5) The Community Reinvestment Act requires additional data gathering and reporting.

Compliance and the forms on which to comply and disclose requires thousands of dollars in legal expenses to develop and revise. This is in addition to insuring that the loan documents contain the hundreds of clauses and covenants that are necessary to be enforceable and comply with state and federal laws. Financial services loan companies must absorb all of the development costs for its loan and compliance forms and documents. Other financial institutions charge preparation fees and recover some of those costs. The legislature finds that treating financial services loan companies costs differently is fundamentally unfair.

SECTION 2. Section 412:9-304, Hawaii Revised Statutes, is amended to read as follows:

“**§412:9-304 Consumer loan charges.** Unless specifically authorized in this article or by rule adopted by the commissioner, a financial services loan company shall only have the right to charge, contract for, and receive in advance or otherwise the following charges in addition to the interest permitted in section 412:9-302 for a consumer loan made under this article:

- (1) Late charges under the consumer loan on any delinquent installment, or portion of the delinquent installment where there has been no extension or deferment. Delinquency occurs when the installment or payment is not paid on the due date. Late charges shall not be collected more than once for the same delinquent installment. Late charges on any consumer loan shall not exceed five per cent of the delinquent installment, and late charges shall not be assessed on any consumer loan after acceleration of the maturity of the consumer loan;
- (2) A prepayment penalty as provided in the note or other form of contract signed by the borrower on any amount that is voluntarily prepaid; provided that:
 - (A) The prepayment penalty on any consumer loan with a term of five years or more that is primarily secured by an interest in real property and in which the interest rate is computed under section 412:9-301(2) and which is prepaid within five years of the date of the loan shall be computed on the amount prepaid in excess of twenty per cent of the original principal amount of the loan in any twelve-month period measured from the date of the loan or from any anniversary of the loan date. The prepayment penalty may be charged only on amounts in excess of the twenty per cent amount in each twelve-month period in such five-year period and shall not exceed six months of interest at the maximum interest rate permissible for the consumer loan by law on the amount prepaid;
 - (B) The prepayment penalty shall not be charged on a consumer loan that is a variable rate or open-end loan, on a precomputed loan on which interest is computed under section 412:9-301(1), or on loans that are not secured by real estate; and
 - (C) The prepayment penalty shall not be charged on any amount that is paid because of the exercise of any acceleration provision by the financial services loan company;

- (3) Extension or deferment charges on any payment on account of the principal balance of a loan, or a portion thereof, that is due on a particular date but is extended or deferred to a later date by mutual agreement. The charges shall be based upon the amount so extended or deferred at interest not exceeding that permitted upon the original loan under section 412:9-302, for the actual period of the extension or deferment. The extension or deferment charges may be collected either in advance at the commencement of the period of extension or deferment or otherwise as agreed. The term and conditions of the extension or deferment, including the amount of the consumer loan so extended or deferred, and the period of, and the charge for the extension or deferment shall be set forth in writing and signed by the borrower with one copy given to the borrower;
- (4) Nonrefundable discount, points, loan fees, and loan origination charges, provided that:
- (A) Discount, points, loan fees, and loan origination charges shall not be charged on precomputed loans on which interest is computed under section 412:9-301(1); and
- (B) The nonrefundable discount, points, loan fees, and loan origination charges shall be permitted on consumer loans on which interest is computed under section 412:9-301(2) if the consumer loan is secured by an interest in real property or if the consumer loan is made to a lessee of land subject to the Hawaiian Homes Commission Act and the loan, but for the provisions of the Act, would be secured by a mortgage on the leasehold interest. Provided further that, except for open-end loans, the nonrefundable discount, points, loan fees, and origination charges shall be included as interest to determine compliance of the loan with the interest rate limits under section 412:9-302(b)(2) when the consumer loan is made.

The nonrefundable discount, points, loan fees, and loan origination charges shall be fully earned on the date the loan commitment agreement or other form of contract is executed and the commitment fee paid or on the date the consumer loan is made and shall not be subject to refund on prepayment of the consumer loan;

- (5) Fees, charges, and expenses reasonably related to the consumer loan transaction that are retained by the financial services loan company; provided that the fees are bona fide and reasonable and not unfair or deceptive. These fees are limited to notary fees, appraisal fees, appraisal review fees, and [attorney's fees for preparing] a fee for the development, processing, and preparation of loan documents, including deeds, promissory notes, mortgages, and reconveyance, settlement, and similar documents[.]; provided that fees are charged only on [a] consumer [loan] loans which [is] are secured by an interest in real property. The commissioner may adopt, pursuant to rule, any fees in addition to those enumerated in this [subsection;] paragraph;
- (6) Fees, charges, and expenses reasonably related to the consumer loan transaction that are actually paid to third parties, no portion of which inures to the benefit of the financial services loan company. The fees, charges, and expenses may include, but are not limited to, charges for credit reports, actual taxes, and fees charged by a governmental agency for recording, filing, or entering of record any security agreements or instruments including the partial or complete release of such security agreements or instruments, insurance premiums of the kind and to the

extent described in paragraph (2) of subsection (e) of Section 226.4 of Regulation Z of the Board of Governors of the Federal Reserve System; provided that the insurance premium shall not exceed \$20, appraisal fees, appraisal review fees, title report or title insurance fees, mortgage reserve funds to be used for payment of taxes, insurance, lease rent and condominium assessments, and attorney's fees and expenses for documentation of the consumer loan or for the collection of any consumer loan in default.''

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

SECTION 4. This Act shall take effect upon its approval.

(Approved June 16, 1997.)