

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 12, 2006

GOV. MSG. NO. 865

The Honorable Robert Bunda, President
and Members of the Senate
Twenty-Third State Legislature
State Capitol, Room 003
Honolulu, Hawaii 96813

Dear Mr. President and Members of the Senate:

Re: Senate Bill No. 3066 SD1 HD1

On July 11, 2006, Senate Bill No. 3066, entitled "A Bill for an Act Relating to Interest and Usury" became law without my signature, pursuant to Section 16 of Article III of the Constitution of the State of Hawaii.

This bill permits certain credit card service fees from being included in the calculation of the maximum interest rate credit card issuers can charge for firms that issue such cards and are domiciled in the State of Hawaii.

While I understand the concern of local credit card firms who want to remain competitive, I remain concerned that Hawaii's current law already permits an 18% per annum annual interest charge on credit card balances. This interest rate is significantly higher than interest charged on most other financial transactions such as non-secured loans, collateralized loans, and borrowings from a bank or lending institution. This interest rate is also considerably higher than inflation and other cost drivers, both locally and nationally.

I recognize that firms who issue credit cards need to make an adequate return on their money. However, it has not been demonstrated that they are not making such a return based on the current method of calculating the 18% interest rate.

For the foregoing reasons, I allowed Senate Bill No. 3066 to become law as Act 307 effective July 11, 2006 without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

A BILL FOR AN ACT

RELATING TO INTEREST AND USURY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 478-4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§478-4 Rate by written contract. (a) It shall in no
4 case be deemed unlawful, with respect to any consumer credit
5 transaction (except a credit card agreement) and any home
6 business loan to stipulate by written contract, for any rate of
7 simple interest not exceeding one per cent per month or twelve
8 per cent a year or, in the event the creditor is a financial
9 institution regulated under chapter 412 (other than a trust
10 company or a credit union), for any rate of simple interest not
11 exceeding two per cent per month or twenty-four per cent a
12 year[; ~~and it shall in no case be unlawful, with respect to any~~
13 ~~credit card agreement, to stipulate by written contract for any~~
14 ~~rate of simple interest not exceeding one and one half per cent~~
15 ~~per month or eighteen per cent a year].~~

16 (b) As an alternative to the rate of interest specified in
17 subsection (a), it shall be lawful with respect to any consumer
18 credit transaction (except a credit card agreement) and any home



1 business loan to stipulate by written contract for the payment
2 and receipt of a finance charge in any form or forms at an
3 annual percentage rate not to exceed twelve per cent, or
4 twenty-four per cent in the event the creditor is a financial
5 institution regulated under chapter 412 (other than a trust
6 company or a credit union), together in either case with any
7 other charges that are excluded or excludable from the
8 determination of finance charge under the Truth in Lending Act[
9 ~~and, with respect to any credit card agreement, to stipulate by~~
10 ~~written contract for the payment and receipt of a finance charge~~
11 ~~at an annual percentage rate not to exceed eighteen per cent,~~
12 ~~together with any other charges that are excluded or excludable~~
13 ~~from the determination of finance charge under the Truth in~~
14 ~~Lending Act)]. The rates in this [paragraph] subsection shall be
15 available as alternative permissible rates for any of the credit
16 transactions referred to, whether in fact or in law the Truth in
17 Lending Act applies to the transaction, notwithstanding the
18 advance, fixed, or variable manner in which interest or finance
19 charge may be computed under the contract, and whether the
20 contract uses the terms interest, annual percentage rate,
21 finance charge, or any combination of such terms. For rate
22 computation purposes, with respect to any contract to which this~~



1 ~~[paragraph]~~ subsection may apply, the creditor conclusively
2 shall be presumed to have given all disclosures in the manner,
3 form, and at the time contemplated by the Truth in Lending Act,
4 including those necessary to exclude any charges from the
5 finance charge.

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

10 (d) The rate limitations contained in subsections (a) and
11 (b) of this section and section 478-11.5 shall not apply to any
12 credit transaction authorized by, and entered into in accordance
13 with the provisions of, articles 9 and 10 of chapter 412 or
14 chapter 476.

15 (e) With respect to a credit card agreement, it shall be
16 lawful to stipulate by written contract any amount of interest
17 authorized by section 478-11.5."

18 SECTION 2. Section 478-11.5, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§478-11.5 Credit cards.** (a) With regard to every credit
21 card issuer wherever located and a customer who is a resident of
22 this ~~[State]~~ state and who is given the opportunity to enter



1 into a credit card plan, every solicitation and application for
2 the credit card plan shall set forth all of the following:

- 3 (1) [~~Annual percentage rate,~~] The initial simple interest
4 numerical periodic rate and any fee or charge payable
5 by the cardholder, directly or indirectly, as an
6 incident to or a condition of the extension of credit,
7 or if the rate or fee may vary, a statement that it
8 may do so and the circumstances under which it may
9 increase and the effects of the increase;
- 10 (2) The date or occasion upon which the [~~finance charge~~]
11 interest begins to accrue;
- 12 (3) Whether any annual fee is charged and the amount of
13 the fee;
- 14 (4) Any minimum, fixed, transaction, activity, or similar
15 charge that could be imposed; and
- 16 (5) That charges incurred by the use of a charge card are
17 due and payable upon receipt of a periodic statement
18 of charges, if applicable. For purposes of this
19 paragraph, the term "charge card" means any card,
20 plate, or other device pursuant to which the charge
21 card issuer extends credit [~~which~~] that is not subject
22 to a finance charge and where the charge cardholder



1 cannot automatically access credit that is repayable
2 in installments.

3 (b) With respect to any credit card agreement, in no case
4 shall it be deemed unlawful to stipulate by written contract for
5 any amount of interest, except that the simple interest
6 numerical periodic rate shall not exceed eighteen per cent per
7 year. Prior to charging any fee or charge, the credit card
8 issuer shall disclose the fee or charge to the credit card
9 holder in the credit card agreement or in an amendment to the
10 credit card agreement.

11 As used in this subsection, "interest" means the simple
12 interest numerical periodic rate and any other fee, charge, or
13 payment, directly or indirectly charged or received as an
14 incident to or a condition of an extension of credit under a
15 credit card agreement, including but not limited to:

- 16 (1) A currency exchange conversion fee;
17 (2) A late fee;
18 (3) A creditor-imposed "not sufficient funds" fee charged
19 when a borrower tenders payment on a debt with a check
20 drawn on insufficient funds;
21 (4) An over-the-credit limit fee;
22 (5) An annual fee or other periodic membership fee;



- 1 (6) A balance transfer fee;
- 2 (7) A cash advance fee; or
- 3 (8) A minimum finance charge."

4 SECTION 3. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun, before its effective date.

7 SECTION 4. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.


9 SECTION 5. This Act shall take effect upon its approval.

THE SENATE OF THE STATE OF HAWAII

Date: May 2, 2006
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.

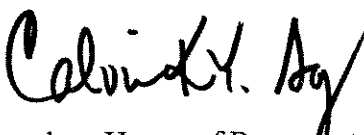

President of the Senate

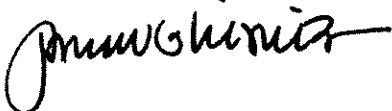

Clerk of the Senate

**THE HOUSE OF REPRESENTATIVES
OF THE STATE OF HAWAII**

Date: March 24, 2006
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the House of Representatives of the Twenty-third Legislature of the State of Hawaii, Regular Session of 2006.


Speaker, House of Representatives


Clerk, House of Representatives