

**CHAPTER 478**  
**INTEREST AND USURY**

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" **§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 \$250,000 or in which there is an express written commitment to extend credit in a principal amount not exceeding \$250,000; 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 (1) in which the principal amount does not exceed \$250,000 or in which there is an express written commitment to extend credit in a principal amount not exceeding \$250,000; (2) which is not a consumer credit transaction; and (3) 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. [L 1986, c 137, pt of §1; am L 1989, c 269, §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, except that, with respect to obligations of the State, interest shall be allowed at the prime rate for each calendar quarter but in no event shall exceed 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.

As used in this section, "prime rate" means the prime rate as posted in the Wall Street Journal on the first business day of the month preceding the calendar quarter. [CC 1859, §1480; am L 1868, p 9; am L 1898, c 4, §1; am L 1905, c 51, §1; RL 1925, §3585; RL 1935, §7050; am L 1935, c 19, §1; RL 1945, §8731; am L 1955, c 245, §1; RL 1955, §191-1; HRS §478-1; am L 1982, c 288, §1; ren L 1986, c 137, pt of §1; am L 1993, c 179, §1]

#### **Case Notes**

Interest not interrupted by debtor's death. 3 H. 397.

Statutory rate applies to balance due on an account stated when no written agreement for higher rate. 3 H. 397.

Foreign judgment carries interest. 8 H. 335.

Statutory rate applies to legacy not paid. 9 H. 492.

Written agreement for payment of rent is "instrument of writing", and rent carries interest from the due date. 19 H. 446.

Bank deposit is "money lent". 36 H. 571; 43 H. 1.

In computing blight damages where property was condemned, held legal rate applied in absence of evidence of normal commercial rate, where no special statutory rate. 45 H. 650, 372 P.2d 348.

In absence of specific agreement, obligation to pay becomes "due" within reasonable time. 48 H. 349, 402 P.2d 683.

Running of interest when stopped by garnishment. 48 H. 349, 402 P.2d 683.

Delinquent rentals carry interest. 61 H. 483, 605 P.2d 925.

Written agreement for payment of rent is "instrument of writing" and rent carries interest from the due date. 66 H. 431, 667 P.2d 251.

Prejudgment interest properly awarded under §636-16 from date of breach of contract at rate of ten per cent as provided in

paragraph (1) for money due on settlement agreement between parties. 86 H. 21, 946 P.2d 1317.

No interest allowable where judgment for "lost rental income" not "delinquent rentals". 5 H. App. 603, 705 P.2d 67.

Not applicable to judgments against the State. 6 H. App. 70, 708 P.2d 829, aff'd, 68 H. 220, 708 P.2d 824.

Where no interest rate was set forth in order confirming sale of property to successful bidder at a judicial foreclosure sale, interest damages for mortgagee bank when bidder defaulted on payment should have been calculated at the ten per cent interest rate allowed by this section, not the rate of interest the original mortgagor had agreed to pay bank under the original mortgagor's adjustable rate promissory note. 96 H. 348 (App.), 31 P.3d 205.

As §661-8 disallows prejudgment interest on claims against the State, except in certain, identified instances, the State did not waive its sovereign immunity from an award of prejudgment interest under §661-8, and this section did not contradict or supersede the limitation of the State's obligation to pay prejudgment interest only upon a "contract expressly stipulating for the payment of interest", the circuit court did not err when it denied plaintiffs' request for prejudgment interest. 122 H. 150 (App.), 223 P.3d 215 (2009).

Cited: 35 H. 352, 366; 36 H. 107, 109.

" **§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. [CC 1859, §1481; am L 1868, p 9; am L 1898, c 4, §2; RL 1925, §3586; RL 1935, §7051; am L 1935, c 18, §1; RL 1945, §8732; RL 1955, §191-2; HRS §478-2; am L 1979, c 211, §1; am L 1981, c 9, §2; ren L 1986, c 137, pt of §1]

#### **Cross References**

Eminent domain, see §§101-25, 101-33.

Commencement date of interest, see §636-16.

#### **Case Notes**

Right to prejudgment interest. 381 F.2d 965, 971, aff'g 245 F. Supp. 981.

Foreign judgment, interest on. 8 H. 335.

Rate provided by the eminent domain statute relates back to date of judgment where payment delayed more than thirty days, this section being inapplicable. 45 H. 650, 372 P.2d 348.

Compare 30 H. 1, 10, where applicability of this section during the thirty day period was not appealed.

Section does not preclude prejudgment interest. 51 H. 346, 461 P.2d 140.

Decree in mortgage foreclosure action which only orders sale of mortgaged property is not a money judgment upon which statutory interest accrues. 60 H. 413, 591 P.2d 104.

Interest accrues only on judgments for an in personam liability for money on a determined amount. 60 H. 467, 591 P.2d 1060.

Not applicable to interest assessed by arbitrator as compensation or penalty to prevent further damages. 66 H. 663, 675 P.2d 760.

Section cannot be interpreted to allow postjudgment interest on §636-16 prejudgment interest. 74 H. 1, 837 P.2d 1273.

Court did not abuse its discretion under this section and §636-16 in awarding appellee ten per cent interest per annum on appellee's back pay. 74 H. 599, 851 P.2d 311.

Nothing in the language of §431:15-323 or this section precluded an award of post-judgment interest to insurance commissioner upon final judgment awarding commissioner the unpaid premiums from customer of liquidated mutual benefit society. 99 H. 53, 52 P.3d 823.

Insofar as the State has not expressly and statutorily waived its sovereign immunity from postjudgment interest in suits brought pursuant to §661-1, the State is immune from awards of postjudgment interest under this section in §661-1 actions; thus, the trial court erred in ordering that the employees' retirement system pay statutory interest at the rate of ten per cent per annum, pursuant to this section. 106 H. 416, 106 P.3d 339.

Section not retroactive. 3 H. App. 646, 658 P.2d 898.

Plaintiff ex-wife was entitled to post-judgment interest on the child support arrearage ex-husband owed; family court erred in failing to award interest on the principal. 97 H. 160 (App.), 34 P.3d 1059.

Cited: 35 H. 352, 366; 36 H. 107, 109.

" **§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 one per cent per month or twelve per cent a year or, in the event the creditor is a financial institution regulated under chapter 412 (other than a trust company or a credit union), for any rate of simple interest not exceeding two per cent per month or twenty-four per cent a year.

(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, or twenty-four per cent in the event the creditor is a financial institution regulated under chapter 412 (other than a trust company or a credit union), together in either case 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 subsection 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 subsection 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 and section 478-11.5 shall not apply to any credit transaction authorized by, and entered into in accordance with the provisions of, articles 9 and 10 of chapter 412 or chapter 476.

(e) With respect to a credit card agreement, it shall be lawful to stipulate by written contract any amount of interest authorized by section 478-11.5. [CC 1859, §1482; am L 1898, c 4, §3; RL 1925, §3587; RL 1935, §7052; RL 1945, §8733; RL 1955, §191-3; HRS §478-3; ren and am L 1986, c 137, pt of §1; am L 1993, c 350, §§24, 25; am L 2006, c 307, §1]

### **Law Journals and Reviews**

Administering Justice or Just Administration: The Hawaii Supreme Court and the Intermediate Court of Appeals. 14 UH L. Rev. 271.

### **Case Notes**

Cited: 11 H. 747, 748; 36 H. 107, 108; 49 H. 160, 171, 413 P.2d 221.

" **§478-5 [OLD] REPEALED.** L 1986, c 137, pt of §1.

**§478-5 Usury not recoverable.** If a greater rate of interest than that permitted by law 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 has been directly or indirectly contracted for, the creditor shall only recover the principal and the debtor shall recover costs. 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 loans made by financial services loan companies and credit unions at the rates authorized under and pursuant to articles 9 and 10 of chapter 412. [CC 1859, §1483; am L 1898, c 4, §4; RL 1925, §3588; am L 1931, c 137, §1; RL 1935, §7053; am L 1939, c 75, pt of §1(6782 W); RL 1945, §8734; RL 1955, §191-4; am L 1957, c 95, §1; HRS §478-4; am L 1984, c 253, §10; ren and am L 1986, c 137, pt of §1; am L 1989, c 266, §3; am L 1993, c 350, §26]

#### **Rules of Court**

Costs, see HRCP rule 54(d).

#### **Case Notes**

Recovery of principal may be had where principal and usurious interest are separable even though they are lumped together in note sued on; payments made on account of such note should be applied on principal. 11 H. 747.

Statute applied and payments made under usurious contract applied on principal. 34 H. 639, modified 34 H. 685.

Usury voluntarily paid not recoverable. 36 H. 107; 37 H. 295.

This section docks interest in action brought by lender, but does not render contract entirely void as to interest. 49 H. 160, 183-86, 413 P.2d 221, reh'g den. 49 H. 255, 413 P.2d 221.

" **§478-6 Usury; penalty.** Any person who directly or indirectly receives any interest or finance charge at a rate greater than that permitted by law or who, by any method or device whatsoever, receives or arranges for the receipt of interest or finance charge at a greater rate than that permitted

by law on any credit transaction shall be guilty of usury and shall be fined not more than \$250, or imprisoned not more than one year, or both. [L 1905, c 38, §1; RL 1925, §3589; am L 1933, c 72, §1; RL 1935, §7055; am L 1937, c 222, §1; RL 1945, §8736; RL 1955, §191-6; HRS §478-6; gen ch 1985; am L 1986, c 137, pt of §1]

### Law Journals and Reviews

The Corporate Usury Exemption Statute in Hawaii: An Invitation to Litigation. 9 HBJ 5.

Administering Justice or Just Administration: The Hawaii Supreme Court and the Intermediate Court of Appeals. 14 UH L. Rev. 271.

### Case Notes

This section considered with §§1-6 and 478-4 in determining whether usurious contract void as to interest. 49 H. 160, 185, 413 P.2d 221, reh'g den. 49 H. 255, 413 P.2d 221.

Elements of usury. 62 H. 583, 618 P.2d 276.

Attorney has a duty when drawing a promissory note to see that it is not usurious and the attorney can be held liable for damages if the attorney does not. 1 H. App. 331, 618 P.2d 1157.

Cited: 36 H. 107, 109; 37 H. 295, 298.

" **§478-7 Compound, not recoverable.** No action shall be maintainable in any court of the State to recover compound interest upon any consumer credit transaction or upon any credit card agreement whatever. [CC 1859, §1484; RL 1925, §3590; RL 1935, §7056; RL 1945, §8737; RL 1955, §191-7; HRS §478-7; am L 1986, c 137, pt of §1]

### Case Notes

Notes given to cover accumulated compound interest held to be not void. 8 H. 614.

Interest upon interest may be contracted for. 8 H. 742; 30 H. 359, 379. See 31 H. 958; 36 H. 571, 596.

This section states common law rule. 8 H. 742.

Effect of express promise to pay interest at a specified time. 36 H. 571, 598.

" **§478-8 Exemptions from usury.** (a) This chapter (except for this section and section 478-3) shall not apply to any mortgage loan transaction 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, the Small Business Act, Chapter 14A of Title 15 of the United States Code, and the Small Business Investment Act, Chapter 14B of Title 15 of the United States Code.

(b) The provisions of this chapter (except for this section and section 478-3) shall not apply to any:

- (1) Indebtedness that is secured by a first mortgage lien on real property, and is agreed to or incurred after May 30, 1980;
- (2) Consumer credit 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. 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, 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 within sixty days prior to the time of extension or renegotiation;
- (3) Indebtedness that 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 that 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;
- (4) 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 412 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;

- (5) Payment of any claim under section 431:13-108; or
- (6) Indebtedness secured by a time share interest defined in section 514E-1, if that time share interest is not otherwise governed by section 478-8(a) or 478-8(b) (1) to (4), and if the rate of interest does not exceed eighteen per cent per year. This paragraph shall not be deemed to limit a seller's right to charge interest under section 478-2.

(c) The provisions of this chapter (except for this section and section 478-3) shall not apply to a loan made by an employee benefit plan as defined in section 1002(3) of Title 29 of the United States Code, as amended, or a loan made by the employees' retirement system of the State of Hawaii.

(d) This chapter shall not apply to any mortgage loan which may be made by a financial institution pursuant to rules adopted by the commissioner of financial institutions pursuant to section 412:2-108. [L 1970, c 199, §2; am L 1974, c 20, §1; am L 1980, c 188, §2; am L 1981, c 204, §1; am L 1982, c 92, §2 and c 288, §2; am L 1985, c 234, §2, c 247, §3, and c 269, pt of §55; am L 1986, c 137, pt of §1; am L 1993, c 350, §27; am L 1995, c 36, §1; am L 1999, c 99, §§3, 5; am L 2001, c 68, §2; am L 2002, c 52, §2; am L 2005, c 22, §33]

#### Case Notes

Section not applicable between merchants. 691 F. Supp. 247.

" **§478-8.5 REPEALED.** L 1986, c 137, pt of §1.

" **§478-9 [OLD] REPEALED.** L 1980, c 188, §4.

**§478-9 Rejection of federal law.** It is hereby explicitly stated by the terms of this section 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. [L 1980, c 188, §1; ren and am L 1986, c 137, pt of §1; am L 1988, c 141, §51]

" **§478-10 REPEALED.** L 1980, c 188, §4.

" **§478-11 REPEALED.** L 1986, c 137, pt of §1.

" **§478-11.5 Credit cards.** (a) With regard to every credit card issuer wherever located and a customer who is a resident of this State and who is given the opportunity to enter into a credit card plan, every solicitation and application for the credit card plan shall set forth all of the following:

- (1) The initial simple interest numerical periodic rate and any fee or charge payable by the cardholder, directly or indirectly, as an incident to or a condition of the extension of credit, or if the rate or fee may vary, a statement that it may do so and the circumstances under which it may increase and the effects of the increase;
- (2) The date or occasion upon which the interest begins to accrue;
- (3) Whether any annual fee is charged and the amount of the fee;
- (4) Any minimum, fixed, transaction, activity, or similar charge that could be imposed; and
- (5) That charges incurred by the use of a charge card are due and payable upon receipt of a periodic statement of charges, if applicable. For purposes of this paragraph, the term "charge card" means any card, plate, or other device pursuant to which the charge card issuer extends credit that is not subject to a finance charge and where the charge cardholder cannot automatically access credit that is repayable in installments.

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

As used in this subsection, "interest" means the simple interest numerical periodic rate and any other fee, charge, or payment, directly or indirectly charged or received as an

incident to or a condition of an extension of credit under a credit card agreement, including but not limited to:

- (1) A currency exchange conversion fee;
- (2) A late fee;
- (3) A creditor-imposed "not sufficient funds" fee charged when a borrower tenders payment on a debt with a check drawn on insufficient funds;
- (4) An over-the-credit limit fee;
- (5) An annual fee or other periodic membership fee;
- (6) A balance transfer fee;
- (7) A cash advance fee; or
- (8) A minimum finance charge. [L 1987, c 206, §1; am L 2006, c 307, §2]

" **§478-12 Renumbered as §478-9.**

" **§478-13 REPEALED.** L 1986, c 137, pt of §1.