

ACT 127

H.B. NO. 914

A Bill for an Act Relating to Industrial Loan Companies.

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

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

“(j) As an alternative to the interest authorized by subsection (b):

- (1) An industrial loan company may contract for and receive interest at a rate not exceeding eighteen per cent per year on the unpaid principal balance of a loan, for a loan period of no longer than fifteen years; provided that [retail installment contracts as defined in section 476-1,] unsecured loans for less than \$5,000, and loans for less than \$7,500 secured only by personal property shall not be contracted under this subsection for a loan period of longer than six years. Loans providing for repayment on demand may be contracted for under this subsection and subject to a maturity date not later than six years from the date of the note. For loans contracted under this subsection with a term exceeding six years, the note shall provide for repayment of the loan in equal monthly installments over the term of the loan with a final payment not exceeding twice the monthly payment. Upon the maturity date of the contract, the rate of interest on the unpaid principal balance of the loan may be twelve per cent a year, the original contract rate of interest, or, in the case of any extension or deferral, the rate of interest permitted by this subsection on the amount extended or deferred, whichever is greatest.
 - (2) For loans made or committed to after May 31, 1980₂ and prior to July 1, 1985, or made before May 31, 1980₂ and extended or deferred at maturity between May 31, 1980₂ and July 1, 1985, 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 prior to May 31, 1980, except loans made before May 31, 1980₂ and extended or deferred as provided in this paragraph.
 - (3) In addition to collecting interest at the rate established in paragraph (1) or (2) of this subsection, an industrial loan company may collect late charges on delinquent installments. [Except as otherwise provided in chapter 476, late] Late charges shall not exceed five per cent of each delinquent contractual installment or portion thereof which remains unpaid on the due date agreed upon in the contract or \$50, whichever is less. The late charges shall not be collected more than once for the same delinquent installment. Delinquency occurs when the installment or payment is not paid on the due date agreed upon in the contract. The company shall give the borrower written notice of the assessment of late charges prior to the due date of the next contractual payment. No late charges shall be assessed after acceleration of the maturity of the contract.
- (1) Open-end loan. An industrial loan company shall also have power to make open-end loans subject to the following requirements:
- (1) A licensee may not contract for and receive interest on an open-end loan in excess of that set forth in paragraph (j) (2) for loans made or committed to after May 31, 1980₂ and prior to July 1, 1985.

- (2) A licensee shall not compound interest by adding any unpaid interest authorized by this subsection to the unpaid principal balance of the borrower's open-end loan account; provided that the unpaid principal balance may include the charges (other than interest) authorized by subsection (h).
- (3) Interest authorized by this subsection shall be deemed not to exceed the maximum interest permitted by this section if such interest is computed for each billing cycle at an annual rate not to exceed that permitted in paragraph (j) (2) for loans made or committed to after May 31, 1980, and prior to July 1, 1985, by any of the following methods:
 - (A) By converting the annual rate to a daily rate and multiplying such daily rate by each daily unpaid principal balance of the open-end loan account in the billing cycle, and then adding the products of all such multiplications (in which case the daily rate is determined by dividing the authorized annual rate by 365); or
 - (B) By multiplying the annual rate by the average daily unpaid principal balance of the open-end loan account in the billing cycle (in which case the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle); or
 - (C) By converting the annual rate to a daily rate and multiplying such daily rate by the average daily unpaid principal balance of the open-end loan account in the billing cycle, and then multiplying the product so obtained by the number of days in the billing cycle (in which case the daily rate is determined by dividing the authorized annual rate by 365, and the average daily unpaid principal balance is the sum of the amounts unpaid for all days during the cycle divided by the number of days in the cycle); or
 - (D) By converting the annual rate to a daily rate by the method set forth in subparagraph (A) and multiplying such daily rate times the sum of all the daily unpaid principal balances of the open-end loan account during the billing cycle.
- (4) For all of the above methods of computation, the unpaid principal balance of any day shall be determined by adding to any balance unpaid as of the beginning of that day all advances and other permissible amounts (other than interest) charged to the borrower and deducting all payments and other credits made or received that day.
- (5) A licensee may increase the rate of interest being charged on the unpaid principal balance of the borrower's open-end loans, provided that with respect to open-end loans which are subject to the Federal Truth in Lending Act and the regulations of the Federal Reserve Board promulgated thereunder (i) that the licensee shall mail or deliver written notice of the change to the borrower at least thirty days prior to the effective date of the increase, unless the increase has been agreed to by the borrower, or the rate is increased as a result of the borrower's delinquency or default, and (ii) that the borrower may choose to terminate

the open-end loan account, and the licensee will allow the borrower to repay, under the existing open-end loan account terms, the unpaid balance incurred prior to the effective date of the increase, unless the borrower incurs additional debt on or after that date or otherwise agrees to the increase.

- (6) The borrower may pay all or any part of the unpaid balance in the borrower's open-end loan account, or the borrower may pay the unpaid balance in periodic installments, subject to minimum payment requirements, date of maturity, and other conditions as determined by the licensee and set forth in the open-end loan agreement.
- (7) A licensee may contract for and receive the fees, costs, and expenses permitted under subsection (h).
- (8) If credit life or disability insurance is provided, the additional charge for credit life insurance or credit disability insurance shall be calculated in each billing cycle by applying the current monthly premium rate for such insurance as such rate may be approved by the insurance commissioner pursuant to chapter 435, to the entire outstanding balances in the borrower's open-end loan account, or so much thereof as the insurance covers using any of the methods specified in this subsection for the calculation of loan interest. A licensee shall not be responsible for advancing premiums for credit life or disability insurance on a borrower who is delinquent in the making of the required minimum payments on the loan if one or more of such payments is past due for a period of ninety days or more; provided that the licensee shall advance to the insurer the amounts required to keep such insurance, if provided, in force during such ninety-day period, which amounts may be debited to the borrower's open-end loan account.
- (9) A licensee, until the open-end loan account is terminated, may retain any security interest in real or personal property given to secure the open-end loan account. Upon such termination the licensee shall, within ten business days following receipt of written demand by the borrower, release the mortgage, security interest, pledge, or other security for the open-end loan. For the purposes of this paragraph, termination of the open-end loan account means the cancellation, rescission, or other cessation of the open-end loan account by mutual agreement where the borrower has paid all amounts owed on the open-end loan account and the borrower has complied with all of the terms of the open-end loan agreement. Nothing in this paragraph shall preclude any licensee from exercising any other rights the licensee has to or in the security for open-end loans in the event of the borrower's default.
- [(10) If the open-end loan agreement is a retail installment contract, the licensee shall comply with the requirements of chapter 476.]

SECTION 2. Section 408-17, Hawaii Revised Statutes, is amended to read as follows:

"§408-17 Making and payment of loans; written receipts and statements; chart of rates, etc. Every licensee shall:

- (1) Deliver to the borrower at the time any contract other than a contract for an open-end loan is made a statement showing clearly and distinctly the terms, the amount, and date of the loan and of its maturity, the nature of the security, if any, the name and address of the borrower and of the licensee, the agreed rates of all charges and the actual effective rate of interest a year on the contract; this statement shall contain such additional information as the bank examiner may require;
- (2) Give to the borrower a plain and complete receipt for all payments of installments made on any loan at the time the payments are made or at the time of sending the borrower the periodic statement (as described in paragraph (5) of this section) for the billing cycle in which such payment was made, together with such additional information as the bank examiner may require;
- (3) Upon repayment in full of a loan other than an open-end loan, mark forthwith indelibly every application and security signed or executed by the borrower with respect to such loan (where the security does not also secure any other then existing obligation to the lender) with the word "paid" or "canceled", and release any mortgage, restore any pledge, cancel and return any note, and cancel and return any assignment given to the licensee by the borrower with respect to the loan (where the security does not also secure any other then existing obligation to the lender);
- (4) Deliver to the borrower at the time any open-end loan account is opened a copy of the open-end agreement and, to the extent the following items are not covered by the loan agreement, a statement showing clearly and distinctly the terms under which the open-end loans are to be made, the nature of the security, if any, the name and address of the borrower and of the licensee, the agreed rates of charges and the actual effective rate of interest under section 408-15, together with such additional information as the bank examiner may require; and
- (5) Except in the case of an open-end loan account which the licensee deems to be uncollectible or with respect to which delinquency collection procedures have been instituted, the licensee shall deliver to the borrower, or any one thereof, at the end of each billing cycle in which there is an outstanding balance of more than \$1 in the open-end loan account or with respect to which a finance charge is imposed, a periodic statement of the dates and amounts of interest and other charges, advances, and other debits, and payments and other credits during the billing cycle, the balance of the account at the beginning of the billing cycle and as of the closing date of the billing cycle, and the minimum payment, if any, required on the account for the next billing cycle; together with such additional information as the bank examiner may require.

Every licensee shall during all business hours have prominently displayed in its office, located in such place and manner that all borrowers may be able clearly to

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read the same, a rate chart which shall set forth in such form as the bank examiner shall prescribe, the effective rate of interest a year charged by the licensee for the borrowing of money.

Every promissory note taken or accepted by a licensee as evidence of a loan made to a borrower shall, before its acceptance by the licensee, have clearly set forth a statement of the effective rate of interest a year charged by the licensee for the loan evidenced by the note.

The provisions of chapter 476 [and section 408-15(1) (9)] shall not apply to any loan made [directly] to a borrower, in compliance with this chapter.”

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

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

(Approved May 26, 1983.)