

A Bill for an Act Relating to Industrial Loan Companies.

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

SECTION 1. Section 408-1, Hawaii Revised Statutes, is amended to read as follows:

“§408-1 Application of chapter. This chapter may be cited as the Industrial Loan Companies Act and shall be applicable to every person[, firm, partnership, company, corporation, and unincorporated association engaged in or attempting] who engages in or attempts to engage in the business [as] of an industrial loan company [or which hereafter is organized for the purpose of engaging or attempting to engage in the industrial loan business, as defined in this chapter, and which charges, contracts for, or receives on any loan a greater rate of interest, discount, or consideration than would be permissible under section 478-3].”

SECTION 2. Section 408-1.1, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 408-2, Hawaii Revised Statutes, is amended to read as follows:

“§408-2 Definitions. As used in this chapter and unless a different meaning appears from the context:

[“Company” means any person, firm, partnership, corporation, and unincorporated association to which this chapter is applicable and includes any foreign corporation doing business in the State.

“Bank examiner” means the bank examiner of the State.

“Industrial loan company” means any person, firm, partnership, corporation, and unincorporated association organized or which may hereafter be organized, and which is engaged in or may hereafter be engaged in the lending of money to be repaid weekly, monthly, or other periodic installments of principal sums as a business; provided that this definition shall not be construed to include banks, trust companies, building and loan associations, or mortgage companies whose principal business consists of loans for the purchase of homes (if investment certificates issued by the mortgage companies are secured by mortgage and if the appraised value of the mortgaged property is thirty-three and one-third per cent in excess of the total of the certificates the mortgage secures), the credit unions, pawnbrokers, or licensees under chapter 409.

“Engaging in the business of an industrial loan company” or “carrying on the business of an industrial loan company” or “the industrial loan business” or any other term of similar import, means and includes the loaning of money to be repaid in weekly, monthly, or other periodical installments of principal sums,

and the charging, receiving, or requiring of compensation, interest, discount, fees, or charges of whatever nature or kind for the use of the money, in excess of the charges permitted by section 478-3; provided that direct financing to customers by mercantile firms or persons engaged in the mercantile business shall not be deemed engaging in the business of an industrial loan company; nor shall the loaning by an individual of his own funds be deemed engaging in such business, unless he charges, contracts for, or receives on any loan a greater rate of interest, discount, or consideration than would be permissible under section 478-3.

“Firm” means a partnership or an unincorporated association.

“Principal” or “principal amount” means the face amount of the note or other contract concerned.

“Contract” includes promissory notes.

“Affiliate” means any corporation, partnership, venture, business trust, association, or other similar organization:

- (1) Of which the industrial loan company, directly or indirectly, owns or controls either a majority of the voting shares or more than fifty per cent of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions; or
- (2) Of which control is held, directly or indirectly, through stock ownership or in any other manner, by shareholders of the industrial loan company who own or control either a majority of the shares of such company or more than fifty per cent of the number of shares voted for the election of directors of such company at the preceding election, or by the trustees for the benefit of the shareholders of any such company; or
- (3) Of which a majority of its directors, trustees, or other persons exercising similar functions are directors of the industrial loan company; or
- (4) Which owns or controls, directly or indirectly, either a majority of the shares of capital stock of the industrial loan company or more than fifty per cent of the number of shares voted for the election of directors of such company at the preceding election, or controls in any manner the election of a majority of the directors of such company, or for the benefit of whose shareholders all or substantially all the capital stock of such company is held by trustees.

“Person” means not only individuals but also partnerships, corporations, firms, associations, and federal, state and municipal governments.

“Primary obligor” means a person legally bound to comply with a demand for satisfaction of any security. This definition shall include the maker or endorser of a note, the corporate issuer of stock, and the issuer of any security or of any other evidence of indebtedness.

“Open-end loan” means a loan made by a licensee under this chapter pursuant to an agreement between the licensee and the borrower whereby:

- (1) The licensee may permit the borrower to obtain advances of money to the borrower from the licensee from time to time or the licensee may advance money on behalf of the borrower from time to time as directed by the borrower;
- (2) The amount of each advance and permitted interest and other charges are debited to the borrower’s open-end loan account and payments and other credits are credited to the same account;
- (3) Interest and charges are computed on the unpaid principal balance or balances of the open-end loan account from time to time; and
- (4) The borrower has the privilege of paying either the full amount of the open-end loan account or periodic installments of fixed or determinable amounts as provided in the agreement.

“Billing cycle” means the time interval between periodic billing dates. Such intervals may be considered equal intervals of time unless the billing date varies by more than four days from the regular billing date.]

“Affiliate” means any corporation, partnership, venture, business trust, association, or any other similar organization:

- (1) Of which the industrial loan company, directly or indirectly, owns or controls either a majority of the voting shares or more than fifty per cent of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions; or
- (2) Of which control is held, directly or indirectly, through stock ownership or in any other manner, by shareholders of the industrial loan company who own or control either a majority of the shares of such company or more than fifty per cent of the number of shares voted for the election of directors of such company at the preceding election, or by the trustees for the benefit of the shareholders of any such company; or
- (3) Of which a majority of its directors, trustees, or other persons exercising similar functions are directors of the industrial loan company; or
- (4) Which owns or controls, directly or indirectly, either a majority of the shares of capital stock of the industrial loan company or more

than fifty per cent of the number of shares voted for the election of directors of such company at the preceding election, or controls in any manner the election of a majority of the directors of such company, or for the benefit of whose shareholders all or substantially all the capital stock of such company is held by trustees.

“Bank examiner” means the bank examiner of the State.

“Billing cycle” means the time interval between periodic billing dates.

“Company” means any person to which this chapter or any portion of this chapter is applicable. The term “company” includes any foreign corporation doing business in the State.

“Consumer loan” means a loan made to a natural person primarily for a personal, family, or household purpose (1) in which the principal amount does not exceed \$25,000 or in which there is an express written commitment to extend credit in a principal amount not exceeding \$25,000, or (2) such loan is secured by real property, or by personal property used or expected to be used as the borrower’s principal dwelling.

“Contract” means credit agreements, loan agreements, promissory notes, and other documents constituting the contract for credit.

“Engage in the business of an industrial loan company” or “carry on the business of an industrial loan company” or “the industrial loan business” or any other term of similar import, means the loaning of money and charging, contracting for, or receiving interest, fees, compensation, or charges of whatever nature or kind for the use of money where the interest charged, contracted for, or received is in excess of the interest permitted by law other than this chapter; provided that direct financing to customers by mercantile firms or by persons engaged in the mercantile business shall not be deemed engaging in business as an industrial loan company.

“Industrial loan company” means any person who engages in the industrial loan business as defined in this chapter; provided that this definition shall not be construed to include banks, trust companies, savings and loan associations, credit unions, mortgage companies, pawnbrokers, or licensees under chapter 409. As used in this chapter the term “savings and loan association” includes “building and loan association”.

“Interest” includes interest, discount, points, loan fees, and loan origination charges, if charged, contracted for, or received for the use of money, but excludes other charges, including the charges permitted by section 408-15(e) and (j).

“Licensee” means any company holding a license issued pursuant to this chapter.

“Open-end loan” means a loan made by a licensee under this chapter pursuant to an agreement between the licensee and the borrower whereby:

- (1) The licensee may permit the borrower to obtain advances of money from the licensee from time to time or the licensee may advance money on behalf of the borrower from time to time as directed by the borrower;
- (2) The amount of each advance and allowable interest and other charges are debited to the borrower's open-end loan account and payments and other credits are credited to the same account;
- (3) Interest and other charges are computed on the unpaid principal balance or balances of the open-end loan account from time to time; and
- (4) The amount of credit extended to the borrower (up to any limit set by the licensee) is generally made available to the extent any outstanding balance is repaid.

"Person" means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or governmental unit.

"Primary obligor" means a person legally bound to comply with a demand for the satisfaction of any security. This definition includes the maker or endorser of a note, the corporate issuer of stock, and issuer of any security or of any other evidence of indebtedness.

"Principal" or "principal amount" means the face loan amount of the note or other form of contract.

"Section 408-3 loan" means a loan for which the interest is computed in a manner permitted by section 408-3.

"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."

SECTION 4. Section 408-7, Hawaii Revised Statutes, is amended to read as follows:

"§408-7 License required. [Every company charging, contracting for, or receiving on any loan a greater rate of interest than permitted by section 478-3, which may hereafter engage in the industrial loan business shall obtain] No company shall engage in the industrial loan business without first obtaining a license to engage in such business in the manner and subject to the conditions provided in this chapter [provided].

Any company obtaining such a license shall be subject to this chapter and shall possess all of the benefits, rights, powers, and privileges and shall be subject to all of the duties, restrictions, and limitations contained in this chapter. No company [which fails to obtain, in the manner herein provided, a license, as

aforesaid,] shall possess or exercise, [unless expressly given and possessed or exercised under other laws,] as a licensee, any of [the] a licensee's benefits, rights, [power,] powers, or privileges [which are herein] as conferred [upon licensees.] by this chapter unless such company obtains a license pursuant to this chapter."

SECTION 5. Section 408-9, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 408-15, Hawaii Revised Statutes, is amended to read as follows:

"§408-15 Interest [rates; late charges]; other charges; refunds; open-end loans. (a) [No industrial loan company shall directly or indirectly charge, contract for, collect, or receive any interest, discount, fees, charges, or other consideration] A licensee shall have the right to charge, contract for, and receive on any loan made by it [except], interest, fees, and other charges as provided by this section[;] or as permitted by any exemption provided under chapter 478[.] or as otherwise permitted by law, and may make loans not governed by the provisions of this chapter applicable to loans if the rate of interest on such loans is permitted by law other than this chapter.

(b) Advance interest [or discount. An industrial loan company] on section 408-3 loans. A licensee may charge, contract for, and receive[, or collect] in advance interest [or discount] at any rate which does not exceed the [following] maximum rate allowed by this subsection, for the particular period and type of contract [hereinafter] set forth[,] in this subsection, computed in [the] any manner [set forth in] permitted by section 408-3, at the inception of the contract[, to wit]:

- [(1) Where interest is paid or deducted in advance for a period of not more than eighteen months upon any contract (whether the principal amount of the contract is payable in one payment at the end of the maturity period thereof or in installments), it shall not exceed twelve per cent a year computed in the manner set forth in section 408-3 at the inception of the contract.
- (2) (1) Where interest is [payable] paid or deducted in advance upon a contract [payable in a period of more than eighteen months], it shall not exceed an amount computed in the manner set forth in section 408-3, as follows: twelve per cent a year for the first eighteen months[,] (or portion thereof), plus nine per cent a year for the next twelve months (or portion thereof), plus six per cent a year for the next twelve months (or portion thereof), plus three per cent a year for the next six months (or portion thereof), of such period, as the case may be.

Interest shall not be [deductible] paid or deducted in advance on section 408-3 loans for more than four years.

(For example: upon a contract, the principal amount of which is \$120, payable in twenty-four months, in monthly installments of \$5, the maximum amount of interest which may be paid or deducted in advance under this [section] subsection is computed as follows:

12 per cent a year of \$120 for <u>the</u> first 18 months	\$21.60
9 per cent a year of \$120 for <u>the</u> next 6 months	\$5.40
Total interest [deductible] <u>paid or deducted</u> in advance [from principal amount of the contract]	\$27.00

- [(3)] For loans made or committed to after May 31, 1980 and prior to July 1, 1985, the maximum rates of interest specified in [paragraphs (1) and (2) of] this subsection shall be as follows: A maximum rate of interest specified as twelve per cent a year shall be fourteen per cent a year, a maximum rate of interest specified as nine per cent a year shall be ten and one-half per cent a year, a maximum rate of interest specified as six per cent a year shall be seven per cent a year, and a maximum rate of interest specified as three per cent a year shall be four per cent a year. This paragraph shall not apply to loans made or committed to before May 31, 1980.
- [(4)] In addition to requiring and collecting or deducting interest in advance, as aforesaid, the company may require and receive repayment of the principal amount of the contract in uniform weekly, monthly, or other periodic installments.
- (5) Late charges on delinquent installments. In addition to requiring and collecting or deducting interest in the manner and at the rates hereinbefore provided for, the company may also require and receive the payment of late charges not to exceed twelve per cent a year on any contractual installment or portion thereof which remains unpaid on the due date of the installment where there has been no extension or deferment by mutual agreement, or where the amount extended or deferred is not paid on the due date agreed upon. The company shall give the borrower written notice of the assessment of late charges prior to the due date for the next contractual payment. No late charges shall be assessed after acceleration of the maturity of the contract. This paragraph shall not apply to open-end loans.
- (6) (2) After maturity interest charges. Upon maturity of the contract, the rate of interest when computed under this subsection on the unpaid principal balance of the loan shall be [eighteen per cent a year or the original contract rate of interest, whichever is less. This paragraph shall not apply to open-end loans.] twenty- four per cent

a year unless a lesser rate is specified in the contract as an after-maturity interest rate.

- (3) Refunds; prepayment. On a contract for a section 408-3 loan on which interest has been collected or deducted in advance, and which then is paid (including refinancing) or on which judgment then is obtained, before maturity, the borrower shall be entitled to a refund of unearned interest in an amount computed on that portion of the principal amount which has not yet matured, at the same rate of interest as was charged at the time the contract was made, for the term of the contract remaining after the date of the payment or after the date of the judgment; provided that no refund less than \$1 need be made and the licensee shall not be required to refund any portion of the unearned interest which results in a minimum interest retained on the contract of less than \$15; and provided that checks issued to refund interest which are not presented for payment within three years from the date of issue may be declared canceled and the sum thereof retained as earnings of the licensee. Each licensee shall permit any borrower from it to pay partially or wholly any contract or installment on a contract before the due date if the contract has been in effect for a period of at least three months.

(c) Simple interest loans. As an alternative to the interest authorized by subsections (b) and (d):

- (1) A licensee may contract for, charge, and receive interest computed at a rate not exceeding twenty-four per cent a year on the principal balance remaining unpaid from time to time under the contract whether or not the interest rate under the contract is a fixed or variable rate; provided that for loans committed to and made after July 1, 1985, the maximum rate of interest permitted by this subsection shall be eighteen per cent a year. Upon maturity, the rate of interest on the unpaid principal balance of the loan shall be twenty- four per cent a year, unless a lesser rate is specified in the contract as an after-maturity interest rate, or in the case of any extension or deferral, the rate of interest permitted shall be that permitted by this subsection on the amount extended or deferred.
- (2) For loans made or committed to before May 31, 1980 and extended or deferred at maturity after May 31, 1980, 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 before May 31, 1980, except loans made or committed before May 31, 1980 and extended or deferred as provided in this paragraph.
- (3) On all loans where the interest rate is computed in accordance with this subsection, a licensee shall have the right to charge, contract

for, and receive discount, points, loan fees, and loan origination charges; provided that on consumer loans where the interest rate is computed in accordance with this subsection, such discount, points, loan fees, and loan origination charges shall be permitted only if the loan is secured by an interest in real property. Except for open-end loans, such discount, points, loan fees, and loan origination charges shall be included as interest for purposes of determining compliance of the loan with the interest rate limits provided in this subsection when the contract is made. Such discount, points, loan fees, and loan origination charges shall be fully earned on the date the loan is made and shall not be subject to refund upon prepayment of the loan.

(d) Alternative permissible rate. As a further alternative to the interest authorized by subsections (b) and (c), a licensee may on any loan, charge, contract for, and receive a "finance charge" in any form or forms at an "annual percentage rate" not to exceed the maximum per cent a year figure then permitted for simple interest loans authorized under subsection (c)(1), together with any other charges that are excluded or excludable from the determination of finance charge under the Truth in Lending Act. The terms "finance charge" and "annual percentage rate" as used in this subsection shall have the meanings given them in the Truth in Lending Act.

The rate in this subsection shall be available as an alternative permissible rate for any loan, whether or not 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 or not the contract uses the terms interest or annual percentage rate or finance charge or any combination of such terms.

For rate computation purposes the licensee conclusively shall be presumed to have given all disclosures in accordance with the terms of the contract that are contemplated by the Truth in Lending Act, including those necessary to exclude any charges from the finance charge.

(e) Late charges. On any loan a licensee may charge, contract for, and receive late charges as provided in the contract on any delinquent installment or portion thereof where there has been no extension or deferment by mutual agreement or where payment of the amount extended or deferred is delinquent; provided that late charges on any consumer loan shall not exceed five per cent of the delinquent installment and late charges shall not be assessed on a consumer loan after acceleration of the maturity of the contract. 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. On a consumer loan the licensee shall give the borrower written

notice of the assessment of late charges prior to the due date of the next contractual payment.

[(c)] (f) Fraction of a month. In computing interest for any of the purposes of this section, late charges under subsection (e), or interest refunds under [subsection (f),] subsection (b)(3), for any period, any fraction of a month [shall] may be considered as a whole month.

[(d)] (g) [Where not an installment contract.] Repayment terms. Nothing in this chapter shall be deemed to prohibit [an industrial loan company] a licensee from lending money upon a contract to repay the principal amount at the end of the maturity period, [instead of] or in installments, [under which contract] or upon demand, or otherwise as agreed in the contract, whether or not interest is [either] collectible or deductible in advance[, or is payable in weekly, monthly, or other periodic installments, or at the end of such period,] under the contract, provided the interest payable or paid is not in excess of the maximum prescribed by this section [for loans repayable in installments of principal].

[(e)] (h) Application, licensees only. No person[, firm, or corporation (]not holding a license issued under this chapter[)] shall charge, contract for, [collect,] or receive interest[, discounts, fees, charges, or other consideration] on any loan in the amount or in the manner provided in this section unless permitted so to do by other state law.

[(f) Refunds; prepayment. On a contract which has been discounted or on which interest has been collected in advance, and which is then paid or refinanced or on which judgment is then obtained before maturity, the industrial loan company involved shall refund to the borrower on account of unearned discount or interest an amount computed, on that portion of the principal amount which has not yet matured, at the same rate of discount or interest as was charged at the time the contract was made, for the term of the contract remaining after the date of the payment or after the date of the judgment; provided that no refund less than 25 cents need be made; and provided further, that checks issued to refund interest which are not presented for payment within three years from the date of issue may be declared canceled and the sum thereof retained as earnings of the licensee. Each company shall permit any borrower from it to pay partially or wholly any contract or installment on a contract before the due date, if the contract has been in effect for a period of at least three months. The company shall not be required to refund any portion of the unearned discount or interest which results in a minimum discount or interest retained on the contract of less than \$15. This subsection shall not apply to open-end loans.

[(g)] (i) Deferred payments, interest, etc. Any payment on account of the principal amount of a contract, or a portion thereof, which is due on a particular date, may be extended or deferred to a later date by mutual agreement, and,

upon the amount [of the principal payment] so extended or deferred, interest, not exceeding that permitted upon an original loan by this section, for the actual period of the extension or deferment, may be charged and may be collected either in advance at the commencement of the period of extension or deferment[;] or otherwise as agreed; provided that the term and conditions of the extension or deferment, including the principal amount so extended or deferred, and the period of, and the charge for, the extension or deferment, shall be set forth in writing and signed [in duplicate] by the borrower [and the company, one copy of the same to be kept on file with the contract and the other] with one copy to be given to the borrower.

[(h)] (j) Other charges. In addition to the interest[, discount, or] and any other charges permitted by this section, [an industrial loan company] a licensee shall also have [power] the right to [collect] charge, contract for, and receive in advance or otherwise from the borrower any of the following charges[:] for any loan made under subsection (b) or (c):

- (1) The actual taxes and fees charged by a governmental agency for recording, filing, or entering of record, any bill of sale, assignment, deed, or other conveyance, any mortgage[, chattel mortgage, or other conveyance,] or other security agreement or instrument, any financing statement or other notice, and any partial or complete release, discharge, or satisfaction of any judgment, mortgage, lien, or other encumbrance, or of any of such conveyances, security agreements, or instruments[, of or on any real or personal property which constitutes all or a portion of the security on a contract.] or financing statements or other notices.
 - (2) Abstractors' fees, appraisal fees, survey fees, notary fees, and title report or title insurance fees, where actually paid to third parties, no portion of which fees inures to the benefit of the company.
 - (3) Licensee appraisal fees; provided that the appraisals shall be made by a competent, qualified person connected with the licensee, designated and approved by the board of directors or by a competent, qualified, independent appraiser. The bank examiner may require that an appraisal by an independent appraiser be obtained at the expense of the licensee whenever the bank examiner deems it necessary.
 - (4) Mortgage reserve funds to be held by the licensee for payment of taxes, insurance, lease rent, condominium assessments, and similar expenses.
- [(3)] (5) Premiums actually paid for insuring real and personal property [pledged] used as security on a contract, [and] premiums for insurance on the life or disability or both of the borrower[:], and premiums for private mortgage insurance; provided the insurance is

obtained from insurance companies authorized to do and doing business in the State under the laws thereof; and provided the borrower, if the property is adequately insured for the amount of the loan, shall not be required to substitute other insurance therefor upon the property or to take out additional insurance thereon.

- [(4)] (6) Attorney's fees[,] and expenses, including costs and expenses of repossession, foreclosure, or other legal remedies, if provided for in the contract, and costs of court, incurred in the collection of any contract in default.
- [(5)] (7) A reasonable charge [not exceeding \$10] upon the transfer of any equity under a chattel mortgage or a conditional sale contract, or upon any partial or complete release, discharge, or satisfaction of any judgment, mortgage, lien, security interest, or other encumbrance, or upon any of such conveyances of any real or personal property which constitutes all or a portion of the security on a contract[.]; provided that such charge shall not exceed \$25 for any consumer loan.
- [(6)] Loan fees or "points" on all loans primarily secured by an interest in real property where the interest rate is computed in accordance with subsection (j); provided that the total finance charge payable by the borrower in connection with any such loan shall include the amount of any such loan fees or "points" and, when the loan agreement is made, shall not exceed an annual percentage rate (as defined in the Federal Truth In Lending Act and the regulations of the Federal Reserve Board promulgated thereunder) equal to the maximum rate of interest permissible under subsection (j). Loan fees or "points" shall be fully earned on the date the loan is made and shall not be subject to refund upon prepayment of the loan.
- (7)] (8) Any reasonable attorneys' fees incurred for the preparation of any contract, [or] including any promissory note or any other obligation evidencing an indebtedness, [or] any bill of sale, assignment, deed, or other conveyance, any mortgage[, chattel mortgage, or other conveyance,] or other security agreement or instrument, any financing statement or other notice, and any partial or complete release, discharge, or satisfaction of any such conveyances, security agreements or instruments, financing statements, or other notices, or of any judgment, mortgage, lien, or other encumbrance[, or any of such conveyances or instruments of or] on any real or personal property which constitutes all or a portion of security on a contract, or any other documents relating to a contract.
- [(8)] (9) Actual charges for credit reports and other credit screening expenses incurred for loans of \$5,000 or more; provided that [such

- charges shall not exceed \$15 per applicant and] such charges are paid to third parties and no portion of such charges inures to the benefit of the [company.] licensee.
- (9) Appraisal fees; provided that the appraisals shall be made by a competent, qualified person connected with the company, designated and approved by the board of directors, or by a competent, qualified, independent appraiser. The bank examiner may require that an appraisal by an independent appraiser be obtained at the expense of the company whenever it deems necessary.]
- (10) A prepayment charge [equal to a sum measured by six months of interest at the loan rate,] as provided in the contract, on any amount voluntarily, and not pursuant to any acceleration provision, prepaid; provided that on any consumer loan, such prepayment charge shall be computed on the amount prepaid in any twelve-month period measured from the date of the contract or from any anniversary thereof in excess of twenty per cent of the original principal amount of any loan contracted for five years or more[; provided this prepayment charge], and may be charged only on amounts prepaid within five years of the date of the contract and may be charged only on loans primarily secured by an interest in real property where the interest rate is computed in accordance with subsection [(j).] (c) or (d); and provided further that on a consumer loan the prepayment charge on any such amount shall not exceed a sum equal to six months of interest at the loan rate on the amount prepaid. The prepayment charge shall not apply to adjustable or variable rate loans [and] or open-end loans.
- (11) Commitment fees as provided in the contract for the licensee's written commitment to a borrower to make, extend, or assume a loan or loans. The written commitment may make such fees nonrefundable.
- (12) Application fees charged to all applicants for a loan, whether or not the loan is approved.
- (13) Charges imposed by a licensee for payment of items that overdraw an open-end loan account.
- (14) Charges for participation in an open-end credit plan, whether assessed on an annual, periodic, or other basis.

This subsection shall not limit the authority that is available under subsection (d) to charge, contract for, and receive charges other than interest whether or not such other charges are finance charges.

(i) Minimum discount or interest on conditional sale. When the discount or interest on a conditional sale contract of \$100 or more is less than \$15, a charge for discount or interest of \$15 shall be allowed.

- (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 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, 1980, and prior to July 1, 1985, or made before May 31, 1980, and extended or deferred at maturity between May 31, 1980, 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, 1980, 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. 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.]

(k) Acceleration of installments. [An industrial loan company] A licensee shall have the rights, in the event of default under a contract [or open-end loan agreement], or otherwise as provided in the contract, to declare the entire

unpaid balance under the contract [or open-end loan agreement] due and payable, subject to the interest refund provisions of this section, if applicable, and to exercise any other rights in addition to such acceleration as provided in the contract [or open-end loan agreement], including without limitation the right to stop payment of advances to or on behalf of a borrower in default under the contract [or open-end loan agreement], provided such other rights are not in conflict with the other provisions of this chapter.

(l) Open-end loan. [An industrial loan company] A licensee 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 the higher of that set forth in [paragraph (j)(2) for loans made or committed to after May 31, 1980, and prior to July 1, 1985.] subsection (c) or (d).
- (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).] and late charges.
- (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,] (1) of this subsection by any of the following methods:
 - (A) By converting [the] such 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] such annual rate by the average daily unpaid principal balance of the open-end loan account in the billing cycle and then dividing the product so obtained by 365 and then multiplying the quotient by the number of days 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] such 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] such 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)] (A) that the licensee shall mail or deliver written notice of the change to the borrower at least [thirty] fifteen 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)] (B) 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.] contract.
- (7) A licensee may charge, contract for, and receive the [fees, costs, and expenses] interest, fees, and charges permitted under [subsection (h).] subsections (c), (e), and (j) or subsections (d) and (e).
- (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."

SECTION 7. Section 408-16, Hawaii Revised Statutes, is amended to read as follows:

"§408-16 Other [interest] provisions inapplicable; effect of excessive interest. Sections 478-4 and 478-6 shall not apply to loans made by industrial loan companies[.] under the authority of this chapter.

If a greater rate of interest than that permitted by this chapter is contracted for in any contract within the purview of this chapter, 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 this chapter has been directly or indirectly contracted for, the plaintiff shall only recover upon the contract the amount actually received by the borrower on the contract in cash, credit, or the equivalent thereof, or any combination of cash, credit, or the equivalent thereof, or any combination of cash, credit, or the equivalent, plus the charges (if any) which were [actually incurred by the company and] properly

charged to the borrower [under items (1) to (3), of section 408-15(h),] and which have not been deducted from the principal amount of the contract or otherwise paid by the borrower; and, if interest has been paid, judgment shall be for the aforesaid recoverable amount less the amount of interest so paid[;] up to one year after the date of the contract; and the defendant shall recover his costs. The provisions of chapter 476 shall not apply to any loan made in compliance with this chapter.”

SECTION 8. 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) for the billing cycle in which such payment was made, together with such additional information as the bank examiner may require; provided that any payment made by check or draft as defined in section 490:3-104, shall not require a receipt unless requested by the borrower;
- (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 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 shall not apply to any loan made to a borrower, in compliance with this chapter.] Contract copy to borrowers. Every licensee shall deliver or mail a copy of the contract to the borrower at the time the contract is made or as soon thereafter as is reasonably practicable. For purposes of this section, the term "borrower" means the person or persons to whom the licensee is required by the Truth in Lending Act to deliver a disclosure statement, or if the Truth in Lending Act disclosure requirements are inapplicable, then any one person who is personally obligated by the contract to pay the principal amount."

SECTION 9. Section 408-20, Hawaii Revised Statutes, is amended to read as follows:

"§408-20 Other restrictions on business. [No industrial loan company shall engage in the banking or trust company or building and loan association business. A licensee shall not charge, contract for, collect, or receive interest, discounts, fees, fines, commissions, charges, or other considerations in excess of

the interest or discount, charges, recording and satisfaction fees, or premiums for insurance authorized by this chapter and shall not split or divide any contract so as to obtain charges in excess of those authorized by this chapter. A licensee shall not sell any loan to another person or company doing business in this State whenever such loan provides by contract for a rate of interest greater than would be permissible under section 478-3 unless such person or company has the right to 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 this chapter and such loans are sold without recourse. This section shall not be construed to prohibit any licensee from selling any loan, secured by an interest in real property, to any person or company licensed, authorized or permitted by any other state or the federal government to make, purchase, or service such loans, nor to prohibit such person or company from collecting interest and enforcing the terms of the loan to the same extent permitted the licensee but for the sale of the loan.] Any loan made pursuant to the authority of this chapter including section 408-15 may be assigned, sold, or pledged in whole or in part to any person, and such person shall have the right to charge, contract for, and receive interest on, and enforce the terms of, the loan to the same extent permitted but for the assignment, sale, or pledge; provided that no such loan shall be assigned, sold, or pledged to another person doing business in this State unless such person has the right to charge, contract for, or receive interest at the same rate as that on the loan, and in the case of an assignment or sale, such loan is assigned or sold without recourse."

SECTION 10. Section 478-4, Hawaii Revised Statutes, is amended to read as follows:

"§478-4 Usury not recoverable. If a greater rate of interest than one per cent a month is contracted for, 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 one per cent a month has been directly or indirectly contracted for, the plaintiff shall only recover the principal and the defendant shall recover costs; provided[,] that any bank 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, [if in relation to the contract such bank shall be in compliance with] 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."

SECTION 11. Section 407-92.5, Hawaii Revised Statutes, is amended to read as follows:

"~~[]§407-92.5[]~~ **Charges.** Any 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, [if in relation to the contract such savings and loan association shall be in compliance with] 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 [licenses] licensees under chapter 408."

SECTION 12. All acts passed by the Twelfth Legislature of the State of Hawaii during the Regular Session of 1984, before or after the effective date of this Act shall be amended to conform with this Act.

SECTION 13. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 14. This Act shall take effect upon its approval.

(Approved June 4, 1984.)