

ACT 121

H.B. NO. 2353

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 subsection (j) to read as follows:

“(j) Other charges. In addition to the interest and any other charges permitted by this section, a licensee shall also have the right to 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 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 the conveyances, security agreements, or instruments or financing statements or other notices¹, or insurance premiums of the kind and to the extent described in paragraph (2) of subsection (e) of Section 226.4 of Regulation Z of the Board of Governors of the Federal Reserve System; provided that the insurance premium shall not exceed \$4.
- (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 commissioner may require that an appraisal by an independent appraiser be obtained at the expense of the licensee whenever the commissioner 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.
- (5) Premiums actually paid for insuring real and personal property used as security on a contract and other personal property owned by the borrower, premiums for insurance on the life or disability or both of the borrower, premiums for private mortgage insurance, and premiums for involuntary unemployment 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.

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- (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.
- (7) A reasonable charge 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 the conveyances of any real or personal property which constitutes all or a portion of the security on a contract; provided that the charge shall not exceed \$25 for any consumer loan.
- (8) Any reasonable attorneys' fees incurred for the preparation of any contract, including any promissory note or any other obligation evidencing an indebtedness, any bill of sale, assignment, deed, or other conveyance, any mortgage or other security agreement or instrument, any financing statement or other notice, and any partial or complete release, discharge, or satisfaction of any conveyances, security agreements or instruments, financing statements, or other notices, or of any judgment, mortgage, lien, or other encumbrance 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.
- (9) Actual charges for credit reports and other credit screening expenses incurred for loans of \$5,000 or more; provided that the charges are paid to third parties and no portion of the charges inures to the benefit of the licensee.
- (10) A prepayment charge as provided in the contract, on any amount voluntarily, and not pursuant to any acceleration provision, prepaid; provided that on any consumer loan, the 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, 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 (c) or (d); and provided further that on a consumer loan the prepayment charge on any 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 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 the 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."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 27, 1988.)