

## ACT 307

S.B. NO. 3066

A Bill for an Act Relating to Interest and Usury.

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

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

**“§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~~]; and it shall in no case be unlawful, with respect to any credit card agreement, to stipulate by written contract for any rate of simple interest not exceeding one and one-half per cent per month or eighteen 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~~], and, with respect to any credit card agreement, to stipulate by written contract for the payment and receipt of a finance charge at an annual percentage rate not to exceed eighteen per cent, together 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 [paragraph] 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 [paragraph] 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.’’

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

“§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] 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) [Annual percentage rate,] 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 [~~finance charge~~] 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 [~~which~~] 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 card holder 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.”

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

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 Statutory material to be repealed is bracketed and stricken.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

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

(Became law on July 11, 2006, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)