



HOUSE BILL No. 4874

May 18, 1995, Introduced by Reps. Rhead, Middaugh and Randall and referred to the Committee on Commerce.

A bill to amend section 1c of Act No. 326 of the Public Acts of 1966, entitled

"An act to regulate the rate of interest of money; to provide exceptions; to prescribe the rights of parties; and to repeal certain acts and parts of acts,"

as amended by Act No. 94 of the Public Acts of 1990, being section 438.31c of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 1c of Act No. 326 of the Public Acts of
2 1966, as amended by Act No. 94 of the Public Acts of 1990, being
3 section 438.31c of the Michigan Compiled Laws, is amended to read
4 as follows:

5 Sec. 1c. (1) Interest charged by a broker or dealer regis-
6 tered under title I of the securities exchange act of 1934,
7 chapter 404, 48 Stat. 881, 15 U.S.C. 78a to 78l, 78m TO 78o,
8 78o-3 to 78dd-1, 78ee to 78hh, and 78kk TO 78ll, for carrying a

1 debit balance in an account for a customer is not subject to the
2 limitations of this act if the debit balance is payable on demand
3 and secured by stocks or bonds.

4 (2) The parties to a note, bond, or other evidence of
5 indebtedness, executed after August 11, 1969, the bona fide pri-
6 mary security for which is a first lien against real property, or
7 a land lease if the tenant owns a majority interest in the
8 improvements, or the parties to a land contract, may agree in
9 writing for the payment of any rate of interest, but the note,
10 mortgage, contract, or other evidence of indebtedness shall not
11 provide that the rate of interest initially effective may be
12 increased for any reason. In connection with the transaction,
13 except a loan ~~—~~ insured or guaranteed by the federal government
14 or any agency of the federal government, if the security is a
15 single family dwelling unit, the lender shall not do any of the
16 following:

17 (a) Directly or indirectly require, as a condition of the
18 making of the loan, a deposit ~~to~~ be maintained by the borrower,
19 other than an escrow account or a deposit account ~~which~~ THAT is
20 established pursuant to subsection ~~(+3)~~ (14).

21 (b) Directly or indirectly impose or collect, as a condition
22 of the making of the loan, a payment from a seller or borrower in
23 the nature of a discount, point, or similar system, except that a
24 lender may impose and collect, as a condition of making a loan,
25 all fees, discounts, points, or other charges that lenders are
26 permitted or required to impose, collect, or pay in order to
27 qualify the loan for sale, in whole or in part, or in order to

1 obtain a purchase commitment ~~—~~ under any program authorized by
2 federal statute or regulation.

3 (c) ~~Charge~~ PROHIBIT PREPAYMENT AT ANY TIME, CHARGE a pre-
4 payment fee or penalty in excess of 1% of the amount of any pre-
5 payment made within 3 years of the date of the loan, or CHARGE
6 any prepayment fee or penalty ~~at all thereafter, or prohibit~~
7 ~~prepayment at any time~~ AFTER 3 YEARS AFTER THE DATE OF THE
8 LOAN.

9 (3) Subsection (2) shall not impair the validity of a trans-
10 action or rate of interest OTHERWISE lawful. ~~without regard to~~
11 ~~subsection (2).~~

12 (4) Subsection (2) ~~shall~~ DOES not authorize or permit a
13 rate of interest in excess of the rate set forth in Act No. 259
14 of the Public Acts of 1968, being sections 438.41 to 438.42 of
15 the Michigan Compiled Laws.

16 (5) ~~The provisions of subsection (2) shall apply~~
17 SUBSECTION (2) APPLIES only to loans made by lenders approved as
18 a mortgagee under the national housing act, chapter 847, 48
19 Stat. 1246, or regulated by the state or ~~by~~ a federal agency ~~—~~
20 ~~who are~~ AND authorized by state or federal law to make such
21 loans.

22 (6) ~~Notwithstanding subsection (5), lenders~~ LENDERS or
23 vendors not qualified to make loans under subsection (5) may
24 make, or may have made, mortgage loans ~~and~~ OR land contracts
25 specified in subsection (2) on or after August 16, 1971, which
26 mortgage loans and land contracts provide for a rate of interest
27 not to exceed 11% per annum, which interest shall be inclusive of

1 all amounts defined as the "finance charge" in section 106 of the
2 truth in lending act, title I of THE CONSUMER CREDIT PROTECTION
3 ACT, Public Law 90-321, 15 U.S.C. 1605, and the regulations
4 promulgated under that act, 12 C.F.R. part 226.

5 (7) THE PARTIES TO A LAND CONTRACT MAY AGREE IN WRITING FOR
6 THE PAYMENT OF ANY RATE OF INTEREST, WHICH INTEREST SHALL BE
7 INCLUSIVE OF ALL AMOUNTS DEFINED AS THE "FINANCE CHARGE" IN SEC-
8 TION 106 OF THE TRUTH IN LENDING ACT, TITLE I OF THE CONSUMER
9 CREDIT PROTECTION ACT, PUBLIC LAW 90-321, 15 U.S.C. 1605, AND THE
10 REGULATIONS PROMULGATED UNDER THAT ACT, 12 C.F.R. PART 226.

11 (8) ~~(7)~~ The parties to a purchase money mortgage or a
12 second mortgage may agree in writing for the payment of ~~a~~ ANY
13 rate of interest. ~~not to exceed 11% per annum.~~ A second mort-
14 gage made pursuant to this subsection shall be made in compliance
15 with Act No. 125 of the Public Acts of 1981, being sections
16 493.51 to 493.81 of the Michigan Compiled Laws, except for sec-
17 tion 2 of that act. As used in this subsection:

18 (a) "Purchase money mortgage" means a mortgage secured by a
19 first lien or junior lien taken or retained by the seller of real
20 property to secure all or part of the purchase price of the
21 property.

22 (b) "Second mortgage" means a mortgage from which the pro-
23 ceeds of a loan or other extension of credit made by a third
24 person are secured by a mortgage on the real property for which
25 the mortgagor has used the proceeds of the loan or other exten-
26 sion of credit to pay all or part of the purchase price of the
27 property.

(c) "Third person" means:

(i) A salesperson acting as an agent for a residential builder, or a residential builder ~~—~~ licensed under article 24 of the occupational code, Act No. 299 of the Public Acts of 1980, ~~as amended,~~ being sections 339.2401 to 339.2412 of the Michigan Compiled Laws, when made or negotiated in connection with the sale of a residential structure constructed by that builder.

(ii) A real estate broker or real estate salesperson licensed under article 25 of the occupational code, Act No. 299 of the Public Acts of 1980, ~~as amended,~~ being sections 339.2501 to ~~339.2515~~ 339.2518 of the Michigan Compiled Laws, and engaged in the sale of real estate as a principal vocation, when made or negotiated in connection with a real estate sale where the real estate broker or salesperson affiliated with the broker represents either the buyer or seller.

(9) ~~(8)~~ Subject to the title transfer provisions of sections 30c and 30d of the mobile home commission act, Act No. 96 of the Public Acts of 1987, being sections 125.2330c and 125.2330d of the Michigan Compiled Laws, the parties to an extension of credit which is secured by a lien on a mobile home taken or retained by the seller of a mobile home to secure all or part of the purchase price of the mobile home and which is not a retail installment transaction may agree in writing to ~~a~~ ANY rate of interest, ~~not to exceed 11% per annum,~~ which interest shall be inclusive of all amounts defined as the "finance charge" in section 106 of the truth in lending act, 15 U.S.C. 1605, and the regulations promulgated under that act, 12 C.F.R. part 226.

1 This subsection shall not prohibit an extension of credit secured
 2 by a lien on a mobile home and made on terms and at a rate of
 3 interest specifically authorized by another law of this state or
 4 the United States. As used in this subsection:

5 (a) "Mobile home" means mobile home as defined in section 2
 6 of the mobile home commission act, Act No. 96 of the Public Acts
 7 of 1987, being section 125.2302 of the Michigan Compiled Laws.

8 (b) "Retail installment transaction" means retail install-
 9 ment transaction as defined in section 2 of the retail install-
 10 ment sales act, Act No. 224 of the Public Acts of 1966, being
 11 section 445.852 of the Michigan Compiled Laws.

12 (10) ~~-(9)-~~ A mortgage loan or land contract made under this
 13 act shall not provide for a rate of interest added or deducted in
 14 advance, and interest on the mortgage loan or land contract shall
 15 be computed from time to time only on the basis of unpaid
 16 balances.

17 (11) ~~-(10)-~~ A party to a transaction subject to this act
 18 ~~shall be~~ IS entitled to have his or her rights under this act
 19 enforced or protected by injunctive order of a court.

20 (12) ~~-(11)-~~ The parties to a note, bond, or other indebted-
 21 ness of \$100,000.00 or more, the bona fide primary security for
 22 which is a lien against real property other than a single family
 23 residence, or the parties to a land contract of ~~such amount and~~
 24 ~~nature~~ \$100,000.00 OR MORE, may agree in writing for the payment
 25 of any rate of interest.

26 (13) ~~-(12)-~~ Interest charged by a trust created or organized
 27 in the United States forming a part of a stock bonus, pension, or

1 profit sharing plan ~~which~~ THAT satisfies the requirements of
2 section 401(a) of the internal revenue code OF 1986, 26
3 U.S.C. 401, on a loan to a participating employee or beneficiary
4 of the trust is not subject to ~~the limitations of~~ this act.

5 (14) ~~(+3)~~ In the case of a mortgage or land contract, an
6 interest bearing deposit account held in a depository financial
7 institution may be established as a condition of the making of
8 the mortgage or land contract, subject to the conditions speci-
9 fied in this subsection. The deposit account shall be pledged to
10 the lender or seller as additional security for the mortgage or
11 land contract. The lender or seller shall withdraw from the
12 deposit account agreed upon specified amounts at agreed upon
13 periodic times and APPLY the withdrawals ~~shall be applied~~
14 against the periodic payments otherwise due from the borrower or
15 buyer pursuant to the terms of the mortgage or land contract.
16 All interest earned on the pledged deposit account shall be cred-
17 ited to the deposit account. This subsection ~~shall only apply~~
18 APPLIES to a loan the primary security for which is a dwelling to
19 be occupied by the owner, or a land contract given as considera-
20 tion for the sale of a dwelling ~~which~~ THAT is to be occupied by
21 the owner. The mortgage or land contract shall specifically
22 state the amounts by which the payments are supplemented by with-
23 drawals from the pledged account, the amounts required from the
24 borrower or buyer to make up the difference, and the period of
25 time during which withdrawals from the pledge account shall be
26 utilized.

1 (15) ~~(14)~~ A lender or seller who offers 5 or more
 2 mortgages or land contracts in any 1 calendar year may not
 3 require a deposit account established pursuant to subsection
 4 ~~(13)~~ (14) as a condition of making a mortgage or land contract
 5 on more than 20% of the mortgages or land contracts made by the
 6 lender or seller in any 1 calendar year.

7 (16) ~~(15)~~ Notwithstanding subsections (2), ~~(2)(a)~~, ~~(13)~~
 8 (14), and ~~(14)~~ (15), in the case of a mortgage loan or land
 9 contract providing for biweekly payments, a regulated depository
 10 financial institution or its service corporations, subsidiaries,
 11 or affiliates may require, or may have required, as a condition
 12 of ~~the making of the~~ MAKING A mortgage loan or land contract,
 13 that the borrower maintain an interest bearing account with ~~any~~
 14 A depository institution for the purpose of making the biweekly
 15 payments by automatic withdrawals from the account, electroni-
 16 cally or otherwise. If an institution does not offer interest
 17 bearing transaction accounts, or if an institution does not gen-
 18 erally offer automatic withdrawals from interest bearing
 19 accounts, a noninterest bearing checking account may be main-
 20 tained for the purpose of making the biweekly payments.
 21 ~~However, the~~ THE borrower shall not be required to maintain
 22 funds in the account in excess of an amount sufficient to meet
 23 the required biweekly loan payments, including required escrow
 24 payments for taxes and insurance, if any, as they become due. As
 25 used in this subsection: ~~, "regulated depository financial~~
 26 ~~institution" means a state or nationally chartered bank, or a~~

1 ~~state or federally chartered savings and loan association or~~
2 ~~savings bank, or a state or federally chartered credit union.~~

3 (A) "Affiliate" means a person, other than a natural person,
4 that directly or indirectly through 1 or more intermediaries is
5 controlled by or is under common control of a regulated deposi-
6 tory financial institution.

7 (B) "REGULATED DEPOSITORY FINANCIAL INSTITUTION" MEANS A
8 STATE OR NATIONALLY CHARTERED BANK, SAVINGS AND LOAN ASSOCIATION,
9 SAVINGS BANK, OR CREDIT UNION.