

SENATE BILL No. 549

June 4, 2003, Introduced by Senator GARCIA and referred to the Committee on Local, Urban and State Affairs.

A bill to amend 1966 PA 326, 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,"

by amending section 1c (MCL 438.31c), as amended by 1990 PA 94.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1c. (1) Interest charged by a broker or dealer
2 registered under title I of the securities exchange act of 1934,
3 chapter 404, 48 Stat. 881, 15 U.S.C. 78a to ~~78l~~, ~~78m~~ to 78o,
4 78o-3 to 78dd-1, 78ee to 78hh, and ~~78ll~~ ~~78kk~~ to 78mm, for
5 carrying a debit balance in an account for a customer is not
6 subject to the limitations of this act if the debit balance is
7 payable on demand and secured by stocks or bonds.
8 (2) The parties to a note, bond, or other evidence of
9 indebtedness, executed after August 11, 1969, the bona fide
10 primary security for which is a first lien against real property,

1 or a land lease if the tenant owns a majority interest in the
 2 improvements, or the parties to a land contract, may agree in
 3 writing for the payment of any rate of interest, but the note,
 4 mortgage, contract, or other evidence of indebtedness shall not
 5 provide that the rate of interest initially effective may be
 6 increased for any reason. In connection with the transaction,
 7 except a loan, insured or guaranteed by the federal government or
 8 ~~any~~ **an** agency of the federal government, if the security is a
 9 single family dwelling unit, the lender shall not do any of the
 10 following:

11 (a) Directly or indirectly require as a condition of the
 12 making of the loan, a deposit to be maintained by the borrower,
 13 other than an escrow account or a deposit account ~~which~~ **that** is
 14 established pursuant to subsection (13).

15 (b) Directly or indirectly impose or collect, as a condition
 16 of the making of the loan, a payment from a seller or borrower in
 17 the nature of a discount, point, or similar system, except that a
 18 lender may impose and collect, as a condition of making a loan,
 19 all fees, discounts, points, or other charges that lenders are
 20 permitted or required to impose, collect, or pay in order to
 21 qualify the loan for sale, in whole or in part, or in order to
 22 obtain a purchase commitment, under ~~any~~ **a** program authorized by
 23 federal statute or regulation.

24 (c) Charge a prepayment fee or penalty in excess of 1% of the
 25 amount of ~~any~~ **a** prepayment made within 3 years of the date of
 26 the loan, or ~~any~~ **charge a** prepayment fee or penalty ~~at all~~
 27 ~~thereafter~~ **after that**, or prohibit prepayment. ~~at any time.~~

1 (3) Subsection (2) shall not impair the validity of a
 2 transaction or rate of interest lawful without regard to
 3 subsection (2).

4 (4) Subsection (2) shall not authorize or permit a rate of
 5 interest in excess of the rate set forth in ~~Act No. 259 of the~~
 6 ~~Public Acts of 1968, being sections 438.41 to 438.42 of the~~
 7 ~~Michigan Compiled Laws~~ **1968 PA 259, MCL 438.41 to 438.42.**

8 (5) The provisions of subsection (2) ~~shall~~ apply only to
 9 loans made by lenders approved as a mortgagee under the national
 10 housing act, chapter 847, 48 Stat. 1246, or regulated by the
 11 state or by a federal agency, who are authorized by state or
 12 federal law to make ~~such~~ **the** loans.

13 (6) Notwithstanding subsection (5), lenders or vendors not
 14 qualified to make loans under subsection (5) may make, or may
 15 have made, mortgage loans and land contracts specified in
 16 subsection (2) on or after August 16, 1971, which mortgage loans
 17 and land contracts provide for a rate of interest not to exceed
 18 11% per annum, which interest shall be inclusive of all amounts
 19 defined as the "finance charge" in section 106 of the truth in
 20 lending act, title I of **the consumer credit protection act,**
 21 Public Law 90-321, 15 U.S.C. 1605, and the regulations
 22 promulgated under that act, 12 C.F.R. part 226 **(regulation Z).**

23 (7) The parties to a purchase money mortgage or a second
 24 mortgage may agree in writing for the payment of a rate of
 25 interest not to exceed 11% per annum. A second mortgage made
 26 pursuant to this subsection shall be made in compliance with ~~Act~~
 27 ~~No. 125 of the Public Acts of 1981, being sections 493.51 to~~

1 ~~493.81 of the Michigan Compiled Laws~~ **the secondary mortgage loan**
2 **act, 1981 PA 125, MCL 493.51 to 493.81**, except for section 2 of
3 that act. As used in this subsection:

4 (a) "Purchase money mortgage" means a mortgage secured by a
5 first lien or junior lien taken or retained by the seller of real
6 property to secure all or part of the purchase price of the
7 property.

8 (b) "Second mortgage" means a mortgage from which the
9 proceeds of a loan or other extension of credit made by a third
10 person are secured by a mortgage on the real property for which
11 the mortgagor has used the proceeds of the loan or other
12 extension of credit to pay all or part of the purchase price of
13 the property.

14 (c) "Third person" means:

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

22 (ii) A real estate broker or real estate salesperson licensed
23 under article 25 of the occupational code, ~~Act No. 299 of the~~
24 ~~Public Acts of 1980, as amended, being sections 339.2501 to~~
25 ~~339.2515 of the Michigan Compiled Laws~~ **1980 PA 299, MCL 339.2501**
26 **to 339.2518**, and engaged in the sale of real estate as a
27 principal vocation, when made or negotiated in connection with a

1 real estate sale where the real estate broker or salesperson
2 affiliated with the broker represents either the buyer or
3 seller.

4 (8) Subject to the title transfer provisions of sections 30c
5 and 30d of the ~~mobile home~~ **manufactured housing** commission act,
6 ~~Act No. 96 of the Public Acts of 1987, being sections 125.2330e~~
7 ~~and 125.2330d of the Michigan Compiled Laws~~ **1987 PA 96, MCL**
8 **125.2330c and 125.2330d**, the parties to an extension of credit
9 ~~which~~ **that** is secured by a lien on a ~~mobile~~ **manufactured** home
10 taken or retained by the seller of a ~~mobile~~ **manufactured** home
11 to secure all or part of the purchase price of the ~~mobile~~
12 **manufactured** home and ~~which~~ **that** is not a retail installment
13 transaction may agree in writing to a rate of interest not to
14 exceed 11% per annum, which interest shall be inclusive of all
15 amounts defined as the "finance charge" in section 106 of the
16 truth in lending act, **title I of the consumer credit protection**
17 **act, Public Law 90-321**, 15 U.S.C. 1605, and the regulations
18 promulgated under that act, 12 C.F.R. part 226 (**regulation Z**).
19 This subsection ~~shall~~ **does** not prohibit an extension of credit
20 secured by a lien on a ~~mobile~~ **manufactured** home and made on
21 terms and at a rate of interest specifically authorized by
22 another law of this state or the United States. As used in this
23 subsection:

24 (a) ~~"Mobile"~~ **"Manufactured** home" means mobile home as
25 defined in section 2 of the ~~mobile home~~ **manufactured housing**
26 commission act, ~~Act No. 96 of the Public Acts of 1987, being~~
27 ~~section 125.2302 of the Michigan Compiled Laws~~ **1987 PA 96, MCL**

1 125.2302.

2 (b) "Retail installment transaction" means retail installment
3 transaction as defined in section 2 of the retail installment
4 sales act, ~~Act No. 224 of the Public Acts of 1966, being section~~
5 ~~445.852 of the Michigan Compiled Laws~~ **1966 PA 224, MCL 445.852.**

6 (9) A mortgage loan or land contract made under this act
7 shall not provide for a rate of interest added or deducted in
8 advance and interest on the mortgage loan or land contract shall
9 be computed from time to time only on the basis of unpaid
10 balances.

11 (10) A party to a transaction subject to this act ~~shall be~~
12 **is** entitled to have his or her rights under this act enforced or
13 protected by injunctive order of a court.

14 (11) The parties to a note, bond, or other indebtedness of
15 \$100,000.00 or more, the bona fide primary security for which is
16 a lien against real property other than a single family
17 residence, or the parties to a land contract of ~~such~~ **that**
18 amount and nature, may agree in writing for the payment of any
19 rate of interest.

20 (12) Interest charged by a trust created or organized in the
21 United States forming a part of a stock bonus, pension, or profit
22 sharing plan ~~which~~ **that** satisfies the requirements of section
23 401(a) of the internal revenue code **of 1986** on a loan to a
24 participating employee or beneficiary of the trust is not subject
25 to the limitations of this act.

26 (13) In the case of a mortgage or land contract, an interest
27 bearing deposit account held in a depository financial

1 institution may be established as a condition of the making of
2 the mortgage or land contract, subject to the conditions
3 specified in this subsection. The deposit account shall be
4 pledged to the lender or seller as additional security for the
5 mortgage or land contract. The lender or seller shall withdraw
6 from the deposit account agreed upon specified amounts at agreed
7 upon periodic times and the withdrawals shall be applied against
8 the periodic payments otherwise due from the borrower or buyer
9 pursuant to the terms of the mortgage or land contract. All
10 interest earned on the pledged deposit account shall be credited
11 to the deposit account. This subsection ~~shall~~ only ~~apply~~
12 **applies** to a loan the primary security for which is a dwelling to
13 be occupied by the owner, or a land contract given as
14 consideration for the sale of a dwelling ~~which~~ **that** is to be
15 occupied by the owner. The mortgage or land contract shall
16 specifically state the amounts by which the payments are
17 supplemented by withdrawals from the pledged account, the amounts
18 required from the borrower or buyer to make up the difference,
19 and the period of time during which withdrawals from the pledge
20 account shall be utilized.

21 (14) A lender or seller who offers 5 or more mortgages or
22 land contracts in any 1 calendar year may not require a deposit
23 account established pursuant to subsection (13) as a condition of
24 making a mortgage or land contract on more than 20% of the
25 mortgages or land contracts made by the lender or seller in any 1
26 calendar year.

27 (15) Notwithstanding subsections (2), ~~-(2)(a),~~ (13), and

1 (14), in the case of a mortgage loan or land contract providing
 2 for biweekly payments, a regulated depository financial
 3 institution or its service corporations, subsidiaries or
 4 affiliates may require, or may have required, as a condition of
 5 the making of the mortgage loan or land contract, that the
 6 borrower maintain an interest bearing account with any depository
 7 institution for the purpose of making the biweekly payments by
 8 automatic withdrawals from the account, electronically or
 9 otherwise. If an institution does not offer interest bearing
 10 transaction accounts, or if an institution does not generally
 11 offer automatic withdrawals from interest bearing accounts, a
 12 noninterest bearing checking account may be maintained for the
 13 purpose of making the biweekly payments. However, the borrower
 14 ~~shall~~ **is** not ~~be~~ required to maintain funds in the account in
 15 excess of an amount sufficient to meet the required biweekly loan
 16 payments, including required escrow payments for taxes and
 17 insurance, if any, as they become due. As used in this
 18 subsection: ~~—, "regulated~~

19 **(a) "Regulated** depository financial institution" means a
 20 state or nationally chartered bank, or a state or federally
 21 chartered savings and loan association or savings bank, or a
 22 state or federally chartered credit union.

23 **(b) "Affiliate"** means a person other than a natural person
 24 that directly or indirectly through 1 or more intermediaries is
 25 controlled by or is under common control of a regulated
 26 depository financial institution.

27 Enacting section 1. This amendatory act does not take

1 effect unless Senate Bill No. 544
2 of the 92nd Legislature is enacted into
3 law.