

SENATE BILL No. 587

July 10, 2001, Introduced by Senator GARCIA and referred to the Committee on Economic Development, International Trade and Regulatory 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 regis-
2 tered under title I of the securities exchange act of 1934, chap-
3 ter 404, 48 Stat. 881, 15 U.S.C. 78a to 78l, 78m TO 78o, 78o-3 to
4 78dd-1, 78ee to 78hh, and ~~78i~~ 78kk TO 78mm, for carrying a
5 debit balance in an account for a customer is not subject to the
6 limitations of this act if the debit balance is payable on demand
7 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
25 the amount of ~~any~~ A prepayment made within 3 years of the date
26 of 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 subsec-
3 tion (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 fed-
12 eral 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 subsec-
16 tion (2) on or after August 16, 1971, which mortgage loans and
17 land contracts provide for a rate of interest not to exceed 11%
18 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 promul-
22 gated 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 inter-
25 est not to exceed 11% per annum. A second mortgage made pursuant
26 to this subsection shall be made in compliance with ~~Act No. 125~~
27 ~~of the Public Acts of 1981, being sections 493.51 to 493.81 of~~

1 ~~the Michigan Compiled Laws~~ THE SECONDARY MORTGAGE LOAN ACT, 1981
2 PA 125, MCL 493.51 TO 493.81, except for section 2 of that act.

3 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 pro-
9 ceeds 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 exten-
12 sion of credit to pay all or part of the purchase price of the
13 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 struc-
21 ture constructed by that builder.

22 (ii) A real estate broker or real estate salesperson
23 licensed under article 25 of the occupational code, ~~Act No. 299~~
24 ~~of the Public Acts of 1980, as amended, being sections 339.2501~~
25 ~~to 339.2515 of the Michigan Compiled Laws~~ 1980 PA 299, MCL
26 339.2501 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 125.2330c~~
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~~

1 ~~section 125.2302 of the Michigan Compiled Laws~~ 1987 PA 96, MCL
2 125.2302.

3 (b) "Retail installment transaction" means retail install-
4 ment transaction as defined in section 2 of the retail install-
5 ment sales act, ~~Act No. 224 of the Public Acts of 1966~~, being
6 ~~section 445.852 of the Michigan Compiled Laws~~ 1966 PA 224, MCL
7 445.852.

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

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

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

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

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

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

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

1 Enacting section 1. This amendatory act does not take
2 effect unless Senate Bill No. _____ or House Bill No. _____
3 (request no. 00205'01) of the 91st Legislature is enacted into
4 law.