INTEREST RATES

Act 326 of 1966

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.

History: 1966, Act 326, Eff. Mar. 10, 1967
Popular Name: Usury Act

The People of the State of Michigan enact:

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438.31 Legal interest rate; scope; limitation; construction; foreign obligations.

Sec. 1.

The interest of money shall be at the rate of $5.00 upon $100.00 for a year, and at the same rate for a greater or less sum, and for a longer or shorter time, except that in all cases it shall be lawful for the parties to stipulate in writing for the payment of any rate of interest, not exceeding 7% per annum. This act shall not apply to the rate of interest on any note, bond or other evidence of indebtedness issued by any corporation, association or person, the issue and rate of interest of which have been expressly authorized by the public service commission or the securities bureau of the department of commerce, or is regulated by any other law of this state, or of the United States, nor shall it apply to any time price differential which may be charged upon sales of goods or services on credit. This act shall not be construed to repeal section 78 of Act No. 327 of the Public Acts of 1931, as amended, being section 450.78 of the Compiled Laws of 1948. This act shall not render unlawful, the purchase of any note, bond or other evidence of indebtedness theretofore issued by any borrower not then domiciled in this state, which bear any rate of interest which is lawful under the law of the domicile of the borrower at the date of issue thereof, and in such case any such rate of interest may be charged and received by any person, firm, corporation or association in this state.

History: 1966, Act 326, Eff. Mar. 10, 1967 ;-- Am. 1970, Act 227, Imd. Eff. Nov. 25, 1970
Popular Name: Usury Act

438.31a Payment of reasonable and necessary charges in addition to interest; exceptions.

Sec. 1a.

A state or national bank, except as federal law and regulation provide otherwise, insurance company, or lender approved as a mortgagee under the national housing act, 12 U.S.C. 1701 to 1750g, or regulated by a federal agency, may require a borrower to pay reasonable and necessary charges which are the actual expenses incurred by the lender in connection with the making, closing, disbursing, extending, readjusting, or renewing of a loan. The charges shall be in addition to interest authorized by law, and are not a part of the interest collected or agreed to be paid on the loan within the meaning of a law of this state which limits the rate of interest which may be exacted in a transaction. Reasonable and necessary charges shall consist of recording fees; title examination or title insurance; the preparation of a deed, appraisal, or credit report; plus a loan processing fee. The charges shall be paid only once by the borrower to either the seller of the mortgage or the lender. A charge for inspection required by a local

unit of government shall be paid by the seller and shall not be charged to the borrower. This section does not apply to a corporation organized under Act No. 156 of the Public Acts of 1964, as amended, being sections 489.501 to 489.920 of the Michigan Compiled Laws, or a federally chartered savings and loan association.

History: Add. 1968, Act 266, Imd. Eff. July 1, 1968 ;-- Am. 1969, Act 255, Imd. Eff. Aug. 11, 1969 ;-- Am. 1978, Act 27, Imd. Eff. Feb. 24, 1978
Popular Name: Usury Act

438.31b Loan settlement statement.

Sec. 1b.

A state or national bank, insurance company, or lender approved as a mortgagee under the national housing act or regulated by a federal agency, shall furnish a loan settlement statement to a borrower upon closing of the loan, indicating in detail the charges the borrower has paid or obligated himself to pay the lender or to any other person in connection with the loan. A copy of the statement shall be retained in the records of the lender. This section does not apply to a corporation organized under Act No. 156 of the Public Acts of 1964, as amended, or a federally chartered savings and loan association.

History: Add. 1968, Act 266, Imd. Eff. July 1, 1968 ;-- Am. 1969, Act 255, Imd. Eff. Aug. 11, 1969 ;-- Am. 1978, Act 27, Imd. Eff. Feb. 24, 1978
Compiler's Notes: Act 156 of 1964, referred to in this section, was repealed by Act 307 of 1980.
Popular Name: Usury Act

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438.31c Interest charged by securities broker or dealer for carrying debit balance in customer account; written agreement for payment of interest on evidence of indebtedness; prohibitions when security is single-family dwelling unit; validity of transaction or rate of interest; limitation on rate of interest; loans to which subsection (2) applicable; mortgage loans or land contracts by lenders or vendors not qualified under subsection (5); rate of interest on purchase money mortgage or second mortgage; interest on extension of credit secured by lien on mobile home; interest not to be added or deducted in advance; computation of interest; injunction; agreement by certain parties for payment of interest; interest charged by certain trusts excepted; interest bearing deposit account; limitation; maintaining interest bearing account as condition of making mortgage loan or land contract providing for biweekly payments.

Sec. 1c.

(1) Interest charged by a broker or dealer registered under title I of the securities exchange act of 1934, chapter 404, 48 Stat. 881, 15 U.S.C. 78a to 78o, 78o-3 to 78dd-1, 78ee to 78hh, and 78ll for carrying a debit balance in an account for a customer is not subject to the limitations of this act if the debit balance is payable on demand and secured by stocks or bonds.

(2) The parties to a note, bond, or other evidence of indebtedness, executed after August 11, 1969, the bona fide primary security for which is a first lien against real property, or a land lease if the tenant owns a majority interest in the improvements, or the parties to a land contract, may agree in writing for the payment of any rate of interest, but the note, mortgage, contract, or other evidence of indebtedness shall not provide that the rate of interest initially effective may be increased for any reason. In connection with the transaction, except a loan,

insured or guaranteed by the federal government or any agency of the federal government, if the security is a single family dwelling unit, the lender shall not do any of the following:

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

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

(c) Charge a prepayment fee or penalty in excess of 1% of the amount of any prepayment made within 3 years of the date of the loan, or any prepayment fee or penalty at all thereafter, or prohibit prepayment at any time.

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

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

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

(6) Notwithstanding subsection (5), lenders or vendors not qualified to make loans under subsection (5) may make, or may have made, mortgage loans and land contracts specified in subsection (2) on or after August 16, 1971, which mortgage loans and land contracts provide for a 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, title I of Public Law 90-321, 15 U.S.C. 1605, and the regulations promulgated under that act, 12 C.F.R. part 226.

(7) The parties to a purchase money mortgage or a second mortgage may agree in writing for the payment of a rate of interest not to exceed 11% per annum. A second mortgage made pursuant to this subsection shall be made in compliance with Act No. 125 of the Public Acts of 1981, being sections 493.51 to 493.81 of the Michigan Compiled Laws, except for section 2 of that act. As used in this subsection:

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

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

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339.2501 to 339.2515 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.

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

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

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

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

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

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

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

(13) In the case of a mortgage or land contract, an interest bearing deposit account held in a depository financial institution may be established as a condition of the making of the mortgage or land contract, subject to the conditions specified in this subsection. The deposit account shall be pledged to the lender or seller as additional security for the mortgage or land contract. The lender or seller shall withdraw from the deposit account agreed upon specified amounts at agreed upon periodic times and the withdrawals shall be applied against the periodic payments otherwise due from the borrower or buyer pursuant to the terms of the mortgage or land contract. All interest earned on the pledged deposit account shall be credited to the deposit account. This subsection shall only apply to a loan the primary security for which is a dwelling to be occupied by the owner, or a land contract given as consideration for the sale of a dwelling which is to be occupied by the owner. The mortgage or land contract shall specifically state the amounts by which the payments are supplemented by withdrawals from the pledged account, the amounts required from the borrower or buyer to make up the

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difference, and the period of time during which withdrawals from the pledge account shall be utilized.

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

(15) Notwithstanding subsections (2), (2)(a), (13), and (14), in the case of a mortgage loan or land contract providing for biweekly payments, a regulated depository financial institution or its service corporations, subsidiaries or affiliates may require, or may have required, as a condition of the making of the mortgage loan or land contract, that the borrower maintain an interest bearing account with any depository institution for the purpose of making the biweekly payments by automatic withdrawals from the account, electronically or otherwise. If an institution does not offer interest bearing transaction accounts, or if an institution does not generally offer automatic withdrawals from interest bearing accounts, a noninterest bearing checking account may be maintained for the purpose of making the biweekly payments. However, the borrower shall not be required to maintain funds in the account in excess of an amount sufficient to meet the required biweekly loan payments, including required escrow payments for taxes and insurance, if any, as they become due. As used in this subsection, "regulated depository financial institution" means a state or nationally chartered bank, or a state or federally chartered savings and loan association or savings bank, or a state or federally chartered credit union. "Affiliate" means a person other than a natural person that directly or indirectly through 1 or more intermediaries is controlled by or is under common control of a regulated depository financial institution.

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History: Add. 1969, Act 305, Imd. Eff. Aug. 12, 1969 ;-- Am. 1970, Act 75, Imd. Eff. July 16, 1970 ;-- Am. 1971, Act 94, Imd. Eff. Aug. 16, 1971 ;-- Am. 1971, Act 228, Imd. Eff. Jan. 3, 1972 ;-- Am. 1973, Act 6, Imd. Eff. Apr. 2, 1973 ;-- Am. 1973, Act 21, Imd. Eff. May 16, 1973 ;-- Am. 1974, Act 311, Imd. Eff. Dec. 9, 1974 ;-- Am. 1977, Act 56, Imd. Eff. July 6, 1977 ;-- Am. 1978, Act 440, Imd. Eff. Oct. 9, 1978 ;-- Am. 1980, Act 238, Imd. Eff. July 24, 1980 ;-- Am. 1981, Act 190, Imd. Eff. Dec. 29, 1981 ;-- Am. 1982, Act 193, Imd. Eff. June 28, 1982 ;-- Am. 1982, Act 322, Imd. Eff. Dec. 3, 1982 ;-- Am. 1983, Act 1, Imd. Eff. Mar. 1, 1983 ;-- Am. 1984, Act 6, Imd. Eff. Feb. 1, 1984 ;-- Am. 1985, Act 7, Imd. Eff. Mar. 29, 1985 ;-- Am. 1987, Act 186, Imd. Eff. Dec. 2, 1987 ;-- Am. 1990, Act 94, Imd. Eff. June 6, 1990
Popular Name: Usury Act

438.31d Waiver of defense of usury by nonprofit corporation.

Sec. 1d.

Notwithstanding the provisions of section 78 of Act No. 327 of the Public Acts of 1931, as amended, being section 450.78 of the Compiled Laws of 1948, a charitable, religious or other nonprofit corporation may waive the defense of usury without regard to the amount borrowed.

History: Add. 1971, Act 94, Imd. Eff. Aug. 16, 1971
Popular Name: Usury Act

438.32 Violation of act; attorney fees and court costs, recovery.

Sec. 2.

Any seller or lender or his assigns who enters into any contract or agreement which does not comply with the provisions of this act or charges interest in excess of that allowed by this act is barred from the recovery of any interest, any official fees, delinquency or collection

charge, attorney fees or court costs and the borrower or buyer shall be entitled to recover his attorney fees and court costs from the seller, lender or assigns.

History: 1966, Act 326, Eff. Mar. 10, 1967
Popular Name: Usury Act

438.33 Repeal.

Sec. 3.

Act No. 156 of the Public Acts of 1891, as amended, being sections 438.51 to 438.53 of the Compiled Laws of 1948, is repealed.

History: 1966, Act 326, Eff. Mar. 10, 1967
Popular Name: Usury Act

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