

Act No. 94  
Public Acts of 1990  
Approved by the Governor  
June 6, 1990  
Filed with the Secretary of State  
June 6, 1990

**STATE OF MICHIGAN  
85TH LEGISLATURE  
REGULAR SESSION OF 1990**

Introduced by Rep. Keith

# ENROLLED HOUSE BILL No. 4106

AN ACT 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. 186 of the Public Acts of 1987, being section 438.31c of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Section 1c of Act No. 326 of the Public Acts of 1966, as amended by Act No. 186 of the Public Acts of 1987, being section 438.31c of the Michigan Compiled Laws, is amended to read as follows:

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 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 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.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.