

HOUSE BILL No. 4106

February 7, 1989, Introduced by Rep. Keith and referred to the Committee on Corporations and Finance.

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. 186 of the Public Acts of 1987, 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. 186 of the Public Acts of 1987, 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 78o, 78o-3 TO 78dd-1,
8 78ee TO 78hh, AND 78ll for carrying a debit balance in an account

1 for a customer is not subject to the limitations of this act if
2 the debit balance is payable on demand and secured by stocks or
3 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. ~~whatsoever.~~ In connection with the
13 transaction, except a loan, insured or guaranteed by the federal
14 government or any agency of the federal government, ~~when~~ IF the
15 security is a single family dwelling unit, the lender shall not
16 DO ANY OF THE 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 is estab-
20 lished pursuant to subsection (13).

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 ~~such~~ THE loan for sale, in whole or in part, or in

1 order to obtain a purchase commitment, under any program
2 authorized by federal statute or regulation.

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

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

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

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

19 (6) Notwithstanding subsection (5), lenders or vendors not
20 qualified to make loans under subsection (5) may make, or may
21 have made, mortgage loans and land contracts specified in subsec-
22 tion (2) on or after August 16, 1971, which mortgage loans and
23 land contracts provide for a rate of interest not to exceed 11%
24 per annum, which interest shall be inclusive of all amounts
25 defined as the "finance charge" in section 106 of the truth in
26 lending act, TITLE I OF PUBLIC LAW 90-321, 15 U.S.C. 1605, and
27 the regulations promulgated under that act, 12 C.F.R. part 226.

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

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

12 (b) "Second mortgage" means a mortgage from which the pro-
13 ceeds of a loan or other extension of credit made by a third
14 person are secured by a mortgage on the real property for which
15 the mortgagor has used the proceeds of the loan or other exten-
16 sion of credit to pay all or part of the purchase price of the
17 property.

18 (c) "Third person" means:

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

25 (ii) A real estate broker or real estate salesperson
26 licensed under article 25 of the occupational code, Act No. 299
27 of the Public Acts of 1980, as amended, being sections 339.2501

1 to 339.2515 of the Michigan Compiled Laws, and engaged in the
2 sale of real estate as a principal vocation, when made or negoti-
3 ated in connection with a real estate sale where the real estate
4 broker or salesperson affiliated with the broker represents
5 either the buyer or seller.

6 (8) Subject to the title transfer provisions of sections 30c
7 and 30d of the mobile home commission act, Act No. ~~419~~ 96 of
8 the Public Acts of ~~1976~~ 1987, being sections ~~125.1130c~~ and
9 ~~125.1130d~~ 125.2330C AND 125.2330D of the Michigan Compiled Laws,
10 the parties to an extension of credit which is secured by a lien
11 on a mobile home taken or retained by the seller of a mobile home
12 to secure all or part of the purchase price of the mobile home
13 and which is not a retail installment transaction may agree in
14 writing to a rate of interest not to exceed 11% per annum, which
15 interest shall be inclusive of all amounts defined as the
16 "finance charge" in section 106 of the truth in lending act, 15
17 U.S.C. 1605, and the regulations promulgated under that act, 12
18 C.F.R. part 226. This subsection shall not prohibit an extension
19 of credit secured by a lien on a mobile home and made on terms
20 and at a rate of interest specifically authorized by another law
21 of this state or the United States. As used in this subsection:
22 (a) "Mobile home" means mobile home as defined in section 2
23 of the mobile home commission act, Act No. ~~419~~ 96 of the Public
24 Acts of ~~1976~~ 1987, being section ~~125.1102~~ 125.2302 of the
25 Michigan Compiled Laws.
26 (b) "Retail installment transaction" means retail
27 installment transaction as defined in section 2 of the retail

1 installment sales act, Act No. 224 of the Public Acts of 1966,
2 being section 445.852 of the Michigan Compiled Laws.

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

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

11 (11) The parties to a note, bond, or other indebtedness of
12 \$100,000.00 or more, the bona fide primary security for which is
13 a lien against real property other than a single family resi-
14 dence, or the parties to a land contract of such amount and
15 nature, may agree in writing for the payment of any rate of
16 interest.

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

23 (13) In the case of a mortgage or land contract, an interest
24 bearing deposit account held in a depository financial institu-
25 tion may be established as a condition of the making of the mort-
26 gage or land contract, subject to the conditions specified in
27 this subsection. The deposit account shall be pledged to the

1 lender or seller as additional security for the mortgage or land
2 contract. The lender or seller shall withdraw from the deposit
3 account agreed upon specified amounts at agreed upon periodic
4 times and the withdrawals shall be applied against the periodic
5 payments otherwise due from the borrower or buyer pursuant to the
6 terms of the mortgage or land contract. All interest earned on
7 the pledged deposit account shall be credited to the deposit
8 account. This subsection shall only apply to a loan the primary
9 security for which is a dwelling to be occupied by the owner, or
10 a land contract given as consideration for the sale of a dwelling
11 which is to be occupied by the owner. The mortgage or land con-
12 tract shall specifically state the amounts by which the payments
13 are supplemented by withdrawals from the pledged account, the
14 amounts required from the borrower or buyer to make up the dif-
15 ference, and the period of time during which withdrawals from the
16 pledge account shall be utilized.

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

23 (15) Notwithstanding subsections (2), (2)(a), (13), and
24 (14), in the case of a mortgage loan or land contract providing
25 for biweekly payments, a regulated depository financial institu-
26 tion or its service corporations, subsidiaries or affiliates may
27 require, or may have required, as a condition of the making of

1 the mortgage loan or land contract, that the borrower maintain an
2 ~~interest bearing~~ account with any depository institution for
3 the purpose of making the biweekly payments by automatic with-
4 drawals from the account, electronically or otherwise. However,
5 the borrower shall not be required to maintain funds in the
6 account in excess of an amount sufficient to meet the required
7 biweekly loan payments, including required escrow payments for
8 taxes and insurance, if any, as they become due. As used in this
9 subsection, "regulated depository financial institution" means a
10 state or nationally chartered bank, or a state or federally
11 chartered savings and loan association or savings bank, or a
12 state or federally chartered credit union. "Affiliate" means a
13 person other than a natural person that directly or indirectly
14 through 1 or more intermediaries is controlled by or is under
15 common control of a regulated depository financial institution.