

# HOUSE BILL No. 5831

April 29, 2004, Introduced by Rep. DeRoche and referred to the Committee on Commerce.

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.~~

7       (3) In connection with ~~the~~ a transaction **described in**  
8 **subsection (2)**, except a loan, insured or guaranteed by the  
9 federal government or ~~any~~ **an** agency of the federal government,  
10 if the security is a single family dwelling unit, the lender  
11 shall not do any of the following:

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

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

25       ~~(c) Charge a prepayment fee or penalty in excess of 1% of~~  
26 ~~the amount of any prepayment made within 3 years of the date of~~  
27 ~~the loan, or any prepayment fee or penalty at all thereafter, or~~

1 ~~prohibit prepayment at any time.~~

2       (4) ~~-(3) Subsection (2) shall~~ **Subsections (2) and (3) do not**  
3 impair the validity of a transaction or rate of interest lawful  
4 without regard to ~~subsection (2)~~ **those subsections.**

5       (5) ~~-(4) Subsection (2) shall~~ **does not** authorize or permit  
6 a rate of interest in excess of the rate set forth in ~~Act~~  
7 ~~No. 259 of the Public Acts of 1968, being sections 438.41 to~~  
8 ~~438.42 of the Michigan Compiled Laws~~ **1968 PA 259, MCL 438.41 to**  
9 **438.42.**

10       (6) **Subsections (2) and (3) do not apply to a loan, mortgage,**  
11 **credit sale, or advance that is described in section 501(a)(1) of**  
12 **title V of the depository institutions deregulation and monetary**  
13 **control act of 1980, Public Law 96-221, 12 U.S.C. 1735f-7 nt.**

14       (7) ~~-(5) The provisions of subsection (2) shall~~ **Subsections**  
15 **(2) and (3) apply only to** ~~loans~~ **a loan** made by ~~lenders~~ **a**  
16 **lender** approved as a mortgagee under the national housing act,  
17 chapter 847, 48 Stat. 1246, or regulated by the state or by a  
18 federal agency, ~~who are~~ **and that is** authorized by state or  
19 federal law to make ~~such~~ **those** loans. ~~-(6) Notwithstanding~~  
20 ~~subsection (5), lenders or vendors not qualified to make loans~~  
21 ~~under~~ **A lender who is not approved or regulated and authorized**  
22 **as described in this** subsection ~~-(5)~~ **or a land contract vendor**  
23 may make, or may have made, **a mortgage** ~~loans and~~ **loan or land**  
24 ~~contracts specified~~ **contract described** in subsection (2) on or  
25 after August 16, 1971, ~~which~~ **if the mortgage** ~~loans and~~ **loan**  
26 **or land** ~~contracts provide~~ **contract provides** for a rate of  
27 interest ~~not to~~ **that does not** exceed 11% per ~~annum, which~~

1 ~~interest shall be inclusive of~~ **year, including** all amounts  
2 defined as the "finance charge" in section 106 of the truth in  
3 lending act, title I of **the consumer credit protection act,**  
4 Public Law 90-321, 15 U.S.C. 1605, and the regulations  
5 promulgated under that act, 12 C.F.R. part 226.

6 **(8)** ~~—(7)—~~ The parties to a purchase money mortgage or a  
7 second mortgage may agree in writing for the payment of a rate of  
8 interest ~~not to~~ **that does not** exceed 11% per ~~annum~~ **year.** A  
9 second mortgage ~~made pursuant to~~ **described in** this subsection  
10 shall ~~be made in compliance~~ **comply** with ~~Act No. 125 of the~~  
11 ~~Public Acts of 1981, being sections 493.51 to 493.81 of the~~  
12 ~~Michigan Compiled Laws~~ **the secondary mortgage loan act, 1981**  
13 **PA 125, MCL 493.51 to 493.81,** except for section 2 of that act,  
14 **MCL 493.52.** As used in this subsection:

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

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

25 (c) "Third person" means **any of the following:**

26 (i) A salesperson acting as an agent for a residential  
27 builder, or a residential builder, licensed under article 24 of

1 the occupational code, ~~Act No. 299 of the Public Acts of 1980,~~  
2 ~~as amended, being sections 339.2401 to 339.2412 of the Michigan~~  
3 ~~Compiled Laws 1980 PA 299, MCL 339.2401 to 339.2412, when if~~  
4 **the loan or extension of credit is** made or negotiated in  
5 connection with the sale of a residential structure constructed  
6 by that builder.

7 (ii) A real estate broker or real estate salesperson licensed  
8 under article 25 of the occupational code, ~~Act No. 299 of the~~  
9 ~~Public Acts of 1980, as amended, being sections 339.2501 to~~  
10 ~~339.2515 of the Michigan Compiled Laws 1980 PA 299, MCL 339.2501~~  
11 **to 339.2518**, and engaged in the sale of real estate as a  
12 principal vocation, ~~when if the loan or extension of credit is~~  
13 made or negotiated in connection with a real estate sale where  
14 the real estate broker or salesperson affiliated with the broker  
15 represents either the buyer or seller.

16 (9) ~~(8)~~ Subject to the title transfer provisions of  
17 sections 30c and 30d of the mobile home commission act, ~~Act~~  
18 ~~No. 96 of the Public Acts of 1987, being sections 125.2330c and~~  
19 ~~125.2330d of the Michigan Compiled Laws 1987 PA 96,~~  
20 **MCL 125.2330c and 125.2330d**, the parties to an extension of  
21 credit ~~which~~ **that** is secured by a lien on a mobile home taken  
22 or retained by the seller of a mobile home to secure all or part  
23 of the purchase price of the mobile home and ~~which~~ **that** is not  
24 a retail installment transaction may agree in writing to a rate  
25 of interest **that does** not ~~to~~ exceed 11% per ~~annum, which~~  
26 ~~interest shall be inclusive of~~ **year, including** all amounts  
27 defined as the "finance charge" in section 106 of the truth in

1 lending act, **title I of the consumer credit protection act,**  
2 **Public Law 90-321,** 15 U.S.C. 1605, and the regulations  
3 promulgated under that act, 12 C.F.R. part 226. This subsection  
4 ~~shall~~ **does** not prohibit an extension of credit secured by a  
5 lien on a mobile home and made on terms and at a rate of interest  
6 specifically authorized by another law of this state or the  
7 United States. As used in this subsection:

8 (a) "Mobile home" means mobile home as defined in section 2  
9 of the mobile home commission act, ~~Act No. 96 of the Public Acts~~  
10 ~~of 1987, being section 125.2302 of the Michigan Compiled Laws~~  
11 **1987 PA 96, MCL 125.2302.**

12 (b) "Retail installment transaction" means **a** retail  
13 installment transaction as defined in section 2 of the retail  
14 installment sales act, ~~Act No. 224 of the Public Acts of 1966,~~  
15 ~~being section 445.852 of the Michigan Compiled Laws~~ **1966 PA 224,**  
16 **MCL 445.852.**

17 **(10)** ~~(9)~~ A mortgage loan or land contract made under this  
18 act shall not provide for a rate of interest added or deducted in  
19 advance and interest on the mortgage loan or land contract shall  
20 be computed from time to time only on the basis of unpaid  
21 balances.

22 **(11)** ~~(10)~~ A party to a transaction subject to this act  
23 ~~shall be~~ **is** entitled to have his or her rights under this act  
24 enforced or protected by injunctive order of a court.

25 **(12)** ~~(11)~~ The parties to a note, bond, or other  
26 indebtedness of \$100,000.00 or more, the bona fide primary  
27 security for which is a lien against real property other than a

1 single family residence, or the parties to a land contract of  
2 ~~such~~ **that** amount and nature, may agree in writing for the  
3 payment of any rate of interest.

4 **(13)** ~~(12)~~ Interest charged by a trust created or organized  
5 in the United States forming a part of a stock bonus, pension, or  
6 profit sharing plan ~~which~~ **that** satisfies the requirements of  
7 section 401(a) of the internal revenue code **of 1986** on a loan to  
8 a participating employee or beneficiary of the trust is not  
9 subject to the limitations of this act.

10 **(14)** ~~(13)~~ ~~In~~ **Except as provided in subsection (15), in the**  
11 case of a mortgage or land contract, **a lender or vendor may**  
12 **require that** an interest bearing deposit account ~~held~~ in a  
13 depository financial institution ~~may~~ be established as a  
14 condition of the making of the mortgage or land contract, subject  
15 to the conditions specified in this subsection. The deposit  
16 account shall be pledged to the lender or ~~seller~~ **vendor** as  
17 additional security for the mortgage or land contract. The  
18 lender or ~~seller~~ **vendor** shall withdraw from the deposit account  
19 agreed upon specified amounts at agreed upon periodic times and  
20 **apply** the withdrawals ~~shall be applied~~ against the periodic  
21 payments otherwise due from the borrower or buyer ~~pursuant to~~  
22 **under** the terms of the mortgage or land contract. All interest  
23 earned on the pledged deposit account shall be credited to the  
24 deposit account. This subsection ~~shall~~ only ~~apply~~ **applies** to  
25 a loan ~~the primary security for which is~~ **where** a dwelling to be  
26 occupied by the owner **is the primary security**, or a land contract  
27 given as consideration for the sale of a dwelling ~~which~~ **that** is

1 to be occupied by the owner. The mortgage or land contract shall  
2 specifically state the amounts by which the payments are  
3 supplemented by withdrawals from the pledged account, the amounts  
4 required from the borrower or buyer to make up the difference,  
5 and the period of time during which **the lender or vendor may**  
6 **utilize** withdrawals from the pledge account. ~~shall be utilized.~~

7 **(15)** ~~(14)~~ A lender or ~~seller~~ **vendor** who offers 5 or more  
8 mortgages or land contracts in any 1 calendar year may not  
9 require a deposit account established ~~pursuant to~~ **under**  
10 subsection ~~(13)~~ **(14)** as a condition of making a mortgage or  
11 land contract on more than 20% of the mortgages or land contracts  
12 made by the lender or ~~seller~~ **vendor** in any 1 calendar year.

13 **(16)** ~~(15)~~ Notwithstanding subsections (2), ~~(2)(a), (13),~~  
14 ~~and (14)~~ **(3)(a), (14), and (15)**, in the case of a mortgage loan  
15 or land contract providing for biweekly payments, a regulated  
16 depository financial institution or its service corporations,  
17 subsidiaries, or affiliates may require, or may have required, as  
18 a condition of the making of the mortgage loan or land contract,  
19 that the borrower maintain an interest bearing account with ~~any~~  
20 **a** depository institution for the purpose of making the biweekly  
21 payments by automatic withdrawals from the account,  
22 electronically or otherwise. If an institution does not offer  
23 interest bearing transaction accounts, or if an institution does  
24 not generally offer automatic withdrawals from interest bearing  
25 accounts, **the borrower may maintain** a noninterest bearing  
26 checking account ~~may be maintained~~ for the purpose of making  
27 the biweekly payments. However, the borrower ~~shall not be~~ **is**



1 not required to maintain funds in the account in excess of an  
2 amount sufficient to meet the required biweekly loan payments,  
3 including required escrow payments for taxes and insurance, if  
4 any, as they become due. As used in this subsection: —  
5 ~~regulated~~

6 (a) "Affiliate" means a person other than a natural person  
7 that directly or indirectly through 1 or more intermediaries is  
8 controlled by or is under common control of a regulated  
9 depository financial institution.

10 (b) "Regulated depository financial institution" means a  
11 state or nationally chartered bank, or a state or federally  
12 chartered savings and loan association or savings bank, or a  
13 state or federally chartered credit union. ~~"Affiliate" means a~~  
14 ~~person other than a natural person that directly or indirectly~~  
15 ~~through 1 or more intermediaries is controlled by or is under~~  
16 ~~common control of a regulated depository financial institution.~~

17 (17) Subject to subsection (18), the parties to a loan, land  
18 contract, or other extension of credit may agree in writing to  
19 any of the following:

20 (a) If the obligor fails to pay an installment when it is  
21 due, the obligor is required to pay a late payment charge in an  
22 amount to which the parties agree in writing.

23 (b) If the obligor pays all or any part of the principal  
24 before it is due, the obligor is required to pay a prepayment fee  
25 in an amount to which the parties agree in writing.

26 (c) If the obligor fails to pay the unpaid principal balance  
27 at maturity, the rate of interest accruing on the unpaid

1 principal balance is increased to a rate to which the parties  
2 agree in writing.

3 (d) If the obligor fails to pay any interest on the unpaid  
4 principal balance when due, whether before or after default or  
5 maturity, the accrued interest is added to the unpaid principal  
6 balance and the amount added accrues interest. The parties may  
7 agree to this at any time, including when the credit is  
8 extended.

9 (18) All of the following apply to subsection (17):

10 (a) A late payment charge, prepayment fee, or increased rate  
11 of interest described in subsection (17) is not a penalty.

12 (b) Subsection (17) does not apply to the extent that another  
13 statute of this state prescribes a lower maximum amount for a  
14 charge, fee, or rate of interest than that subsection describes.

15 (c) "Maturity" means the time when the unpaid balance is due  
16 and payable in full, whether in accordance with the agreed-upon  
17 payment schedule or by reason of acceleration due to an event of  
18 default or other circumstance.