



Sen. Don Harmon

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LRB096 07197 DRJ 38284 a

1 AMENDMENT TO SENATE BILL 1118

2 AMENDMENT NO. _____. Amend Senate Bill 1118 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Interest Act is amended by changing Section
5 4 as follows:

6 (815 ILCS 205/4) (from Ch. 17, par. 6404)

7 Sec. 4. General interest rate.

8 (1) Except as otherwise provided in Section 4.05, in all
9 written contracts it shall be lawful for the parties to
10 stipulate or agree that 9% per annum, or any less sum of
11 interest, shall be taken and paid upon every \$100 of money
12 loaned or in any manner due and owing from any person to any
13 other person or corporation in this state, and after that rate
14 for a greater or less sum, or for a longer or shorter time,
15 except as herein provided.

16 The maximum rate of interest that may lawfully be

1 contracted for is determined by the law applicable thereto at
2 the time the contract is made. Any provision in any contract,
3 whether made before or after July 1, 1969, which provides for
4 or purports to authorize, contingent upon a change in the
5 Illinois law after the contract is made, any rate of interest
6 greater than the maximum lawful rate at the time the contract
7 is made, is void.

8 It is lawful for a state bank or a branch of an
9 out-of-state bank, as those terms are defined in Section 2 of
10 the Illinois Banking Act, to receive or to contract to receive
11 and collect interest and charges at any rate or rates agreed
12 upon by the bank or branch and the borrower. It is lawful for a
13 savings bank chartered under the Savings Bank Act or a savings
14 association chartered under the Illinois Savings and Loan Act
15 of 1985 to receive or contract to receive and collect interest
16 and charges at any rate agreed upon by the savings bank or
17 savings association and the borrower.

18 It is lawful to receive or to contract to receive and
19 collect interest and charges as authorized by this Act and as
20 authorized by the Consumer Installment Loan Act and by the
21 "Consumer Finance Act", approved July 10, 1935, as now or
22 hereafter amended, or by the Payday Loan Reform Act. It is
23 lawful to charge, contract for, and receive any rate or amount
24 of interest or compensation with respect to the following
25 transactions:

26 (a) Any loan made to a corporation;

1 (b) Advances of money, repayable on demand, to an
2 amount not less than \$5,000, which are made upon warehouse
3 receipts, bills of lading, certificates of stock,
4 certificates of deposit, bills of exchange, bonds or other
5 negotiable instruments pledged as collateral security for
6 such repayment, if evidenced by a writing;

7 (c) Any credit transaction between a merchandise
8 wholesaler and retailer; any business loan to a business
9 association or copartnership or to a person owning and
10 operating a business as sole proprietor or to any persons
11 owning and operating a business as joint venturers, joint
12 tenants or tenants in common, or to any limited
13 partnership, or to any trustee owning and operating a
14 business or whose beneficiaries own and operate a business,
15 except that any loan which is secured (1) by an assignment
16 of an individual obligor's salary, wages, commissions or
17 other compensation for services, or (2) by his household
18 furniture or other goods used for his personal, family or
19 household purposes shall be deemed not to be a loan within
20 the meaning of this subsection; and provided further that a
21 loan which otherwise qualifies as a business loan within
22 the meaning of this subsection shall not be deemed as not
23 so qualifying because of the inclusion, with other security
24 consisting of business assets of any such obligor, of real
25 estate occupied by an individual obligor solely as his
26 residence. The term "business" shall be deemed to mean a

1 commercial, agricultural or industrial enterprise which is
2 carried on for the purpose of investment or profit, but
3 shall not be deemed to mean the ownership or maintenance of
4 real estate occupied by an individual obligor solely as his
5 residence;

6 (d) Any loan made in accordance with the provisions of
7 Subchapter I of Chapter 13 of Title 12 of the United States
8 Code, which is designated as "Housing Renovation and
9 Modernization";

10 (e) Any mortgage loan insured or upon which a
11 commitment to insure has been issued under the provisions
12 of the National Housing Act, Chapter 13 of Title 12 of the
13 United States Code;

14 (f) Any mortgage loan guaranteed or upon which a
15 commitment to guaranty has been issued under the provisions
16 of the Veterans' Benefits Act, Subchapter II of Chapter 37
17 of Title 38 of the United States Code;

18 (g) Interest charged by a broker or dealer registered
19 under the Securities Exchange Act of 1934, as amended, or
20 registered under the Illinois Securities Law of 1953,
21 approved July 13, 1953, as now or hereafter amended, on a
22 debit balance in an account for a customer if such debit
23 balance is payable at will without penalty and is secured
24 by securities as defined in Uniform Commercial
25 Code-Investment Securities;

26 (h) Any loan made by a participating bank as part of

1 any loan guarantee program which provides for loans and for
2 the refinancing of such loans to medical students, interns
3 and residents and which are guaranteed by the American
4 Medical Association Education and Research Foundation;

5 (i) Any loan made, guaranteed, or insured in accordance
6 with the provisions of the Housing Act of 1949, Subchapter
7 III of Chapter 8A of Title 42 of the United States Code and
8 the Consolidated Farm and Rural Development Act,
9 Subchapters I, II, and III of Chapter 50 of Title 7 of the
10 United States Code;

11 (j) Any loan by an employee pension benefit plan, as
12 defined in Section 3 (2) of the Employee Retirement Income
13 Security Act of 1974 (29 U.S.C.A. Sec. 1002), to an
14 individual participating in such plan, provided that such
15 loan satisfies the prohibited transaction exemption
16 requirements of Section 408 (b) (1) (29 U.S.C.A. Sec. 1108
17 (b) (1)) or Section 2003 (a) (26 U.S.C.A. Sec. 4975 (d)
18 (1)) of the Employee Retirement Income Security Act of
19 1974;

20 (k) Written contracts, agreements or bonds for deed
21 providing for installment purchase of real estate;

22 (1) Loans secured by a mortgage on real estate;

23 (m) Loans made by a sole proprietorship, partnership,
24 or corporation to an employee or to a person who has been
25 offered employment by such sole proprietorship,
26 partnership, or corporation made for the sole purpose of

1 transferring an employee or person who has been offered
2 employment to another office maintained and operated by the
3 same sole proprietorship, partnership, or corporation;

4 (n) Loans to or for the benefit of students made by an
5 institution of higher education.

6 (2) Except for loans described in subparagraph (a), (c),
7 (d), (e), (f) or (i) of subsection (1) of this Section, and
8 except to the extent permitted by the applicable statute for
9 loans made pursuant to Section 4a or pursuant to the Consumer
10 Installment Loan Act:

11 (a) Whenever the rate of interest exceeds 8% per annum
12 on any written contract, agreement or bond for deed
13 providing for the installment purchase of residential real
14 estate, or on any loan secured by a mortgage on residential
15 real estate, it shall be unlawful to provide for a
16 prepayment penalty or other charge for prepayment.

17 (b) No agreement, note or other instrument evidencing a
18 loan secured by a mortgage on residential real estate, or
19 written contract, agreement or bond for deed providing for
20 the installment purchase of residential real estate, may
21 provide for any change in the contract rate of interest
22 during the term thereof. However, if the Congress of the
23 United States or any federal agency authorizes any class of
24 lender to enter, within limitations, into mortgage
25 contracts or written contracts, agreements or bonds for
26 deed in which the rate of interest may be changed during

1 the term of the contract, any person, firm, corporation or
2 other entity not otherwise prohibited from entering into
3 mortgage contracts or written contracts, agreements or
4 bonds for deed in Illinois may enter into mortgage
5 contracts or written contracts, agreements or bonds for
6 deed in which the rate of interest may be changed during
7 the term of the contract, within the same limitations.

8 (3) In any contract or loan which is secured by a mortgage,
9 deed of trust, or conveyance in the nature of a mortgage, on
10 residential real estate, the interest which is computed,
11 calculated, charged, or collected pursuant to such contract or
12 loan, or pursuant to any regulation or rule promulgated
13 pursuant to this Act, may not be computed, calculated, charged
14 or collected for any period of time occurring after the date on
15 which the total indebtedness, with the exception of late
16 payment penalties, is paid in full.

17 (4) For purposes of this Section, a prepayment shall mean
18 the payment of the total indebtedness, with the exception of
19 late payment penalties if incurred or charged, on any date
20 before the date specified in the contract or loan agreement on
21 which the total indebtedness shall be paid in full, or before
22 the date on which all payments, if timely made, shall have been
23 made. In the event of a prepayment of the indebtedness which is
24 made on a date after the date on which interest on the
25 indebtedness was last computed, calculated, charged, or
26 collected but before the next date on which interest on the

1 indebtedness was to be calculated, computed, charged, or
2 collected, the lender may calculate, charge and collect
3 interest on the indebtedness for the period which elapsed
4 between the date on which the prepayment is made and the date
5 on which interest on the indebtedness was last computed,
6 calculated, charged or collected at a rate equal to 1/360 of
7 the annual rate for each day which so elapsed, which rate shall
8 be applied to the indebtedness outstanding as of the date of
9 prepayment. The lender shall refund to the borrower any
10 interest charged or collected which exceeds that which the
11 lender may charge or collect pursuant to the preceding
12 sentence. The provisions of this amendatory Act of 1985 shall
13 apply only to contracts or loans entered into on or after the
14 effective date of this amendatory Act, but shall not apply to
15 contracts or loans entered into on or after that date that are
16 subject to Section 4a of this Act, the Consumer Installment
17 Loan Act, the Payday Loan Reform Act, or the Retail Installment
18 Sales Act, or that provide for the refund of precomputed
19 interest on prepayment in the manner provided by such Act.

20 (5) For purposes of items (a) and (c) of subsection (1) of
21 this Section, a rate or amount of interest may be lawfully
22 computed when applying the ratio of the annual interest rate
23 over a year based on 360 days. The provisions of this
24 amendatory Act of the 96th General Assembly are declarative of
25 existing law.

26 (Source: P.A. 94-13, eff. 12-6-05; 94-635, eff. 8-22-05;

1 95-331, eff. 8-21-07.)

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.".