

Commerce: Johnson of Linn, Chair; Chiodo and Hoffmann.

Do Pass 4/15/81 (p. 1059)

FILED MAR 16 1981

SENATE FILE 423

BY COMMITTEE ON COMMERCE

Approved 5/13 (p. 814)

(FORMERLY SSB 57)

Passed Senate, Date 3-31-81 (p. 1030) Passed House, Date 4-24-81 (p. 1343)

Vote: Ayes 50 Nays 0 Vote: Ayes 95 Nays 0

Approved May 11, 1981

A BILL FOR

1 An Act establishing definitions and rules of construction to
2 be applied in connection with the interpretation of laws
3 relating to real property loans.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 535.10, subsection 1, Code 1981, is
2 amended to read as follows:

3 1. The following persons may agree in writing to pay any
4 rate of interest, and a person so agreeing in writing shall
5 not plead or interpose the claim or defense of usury in any
6 action or proceeding, and the person agreeing to receive such
7 rate of interest shall not be subject to any penalty or
8 forfeiture for agreeing to receive or receiving such interest:

9 a. A person borrowing money ~~to finance the acquisition~~
10 for the purpose of acquiring real property, including the
11 or refinancing of a contract for deed, and including the
12 ~~refinancing or assumption of a prior loan by a new borrower~~
13 ~~if the lender releases the original borrower from all personal~~
14 ~~liability with respect to the loan;~~

15 b. A person borrowing money or obtaining credit in an
16 amount which exceeds thirty-five thousand dollars, exclusive
17 of interest, for the purpose of constructing improvements
18 on real property, whether or not the real property is owned
19 by that person;

20 c. A vendee under a contract for deed to real property;
21 ~~or~~

22 d. A person described in section 535.2, subsection 2;
23 or

24 e. A person borrowing money or obtaining credit for
25 business or agricultural purposes, or a person borrowing money
26 or obtaining credit in an amount which exceeds thirty-five
27 thousand dollars for personal, family or household purposes.
28 As used in this paragraph, "agricultural purpose" means as
29 defined in section 535.13; and "business purpose" includes
30 but is not limited to a commercial, service or industrial
31 enterprise carried on for profit, and any investment activity.

32 f. In determining which loans are exempt under this
33 subsection, the rules of construction stated in this paragraph
34 shall apply:

35 (1) The purpose for which money is borrowed is the purpose

1 to which a majority of the loan proceeds are applied or are
2 designated in the agreement to be applied.

3 (2) Loan proceeds used to refinance or pay a prior loan
4 owed by the same borrower are applied for the same purposes
5 and in the same proportion as the original principal of the
6 loan that is refinanced or paid.

7 (3) If the lender releases the original borrower from
8 all personal liability with respect to the loan, loan proceeds
9 used to pay a prior loan by a different borrower are applied
10 for the new borrower's purposes in agreeing to pay the prior
11 loan.

12 (4) If the lender releases the original borrower from
13 all personal liability with respect to the loan, the assumption
14 of a loan by a new borrower is treated as if the new borrower
15 had obtained a new loan and had used all of the proceeds to
16 pay the loan assumed.

17 (5) The provisions of this paragraph shall not be construed
18 to modify or limit the provisions of section 535.8, subsection
19 2, paragraphs c or e.

20 Sec. 2. Section 535.10, subsection 3, Code 1981, is amended
21 to read as follows:

22 3. A lender may collect, in connection with any loan made
23 pursuant to a written agreement executed by the borrower on
24 or after May 10, 1980, or in connection with any loan made
25 pursuant to a written commitment by the lender mailed or
26 delivered to the borrower on or after that date, a loan
27 processing fee which does not exceed two percent of an amount
28 which is equal to the loan principal; ~~except that in the~~
29 ~~event to the extent~~ of an assumption ~~or refinancing of~~ by
30 a new borrower of the obligation to make payments under a
31 prior loan, or to the extent that the loan principal is used
32 to refinance a prior loan between the same borrower and the
33 same lender, the lender may collect a loan processing fee
34 which does not exceed an amount which is a reasonable estimate
35 of the expenses of processing the loan assumption or

1 refinancing but which does not exceed one percent of the
2 ~~amount~~ unpaid balance of the loan that is assumed or
3 refinanced. As used in this subsection, the term "loan" means
4 as defined in section 535.8, subsection 1. The provisions
5 of this subsection supersede conflicting provisions of section
6 535.8, subsection 2, paragraph "a", but no other provision
7 of this section is intended to affect any other subsection
8 or paragraph of section 535.8.

9 Sec. 3. Section 537.1301, subsection 14, Code 1981, is
10 amended to read as follows:

11 14. CONSUMER LOAN.

12 a. Except as provided in paragraph "b", a "consumer loan"
13 is a loan in which all of the following are applicable:

14 (1) The person is regularly engaged in the business of
15 making loans.

16 (2) The debtor is a person other than an organization.

17 (3) The debt is incurred primarily for a personal, family
18 or household purpose.

19 (4) Either the debt is payable in installments or a finance
20 charge is made.

21 (5) Either the amount financed does not exceed thirty-
22 five thousand dollars, or the debt is secured by an interest
23 in land.

24 b. A "consumer loan" does not include:

25 (1) A sale or lease in which the seller or lessor allows
26 the buyer or lessee to purchase or lease pursuant to a seller
27 credit card.

28 ~~(2) A loan-secured-by-a-first-lien-on-land-given-to-finanee~~
29 ~~the-acquisition-of-that-land~~ debt which is incurred primarily
30 for the purpose of acquiring real property or refinancing
31 a contract for deed to real property and which is secured
32 by a first lien on that real property.

33 c. In determining which loans are consumer loans under
34 this subsection the rules of construction stated in this para-
35 graph shall be applied:

1 (1) A debt is incurred primarily for the purpose to which
2 a majority of the loan proceeds are applied or are designated
3 by the debtor to be applied.

4 (2) Loan proceeds used to refinance or pay a prior loan
5 owed by the same borrower are incurred for the same purposes
6 and in the same proportion as the principal of the loan
7 refinanced or paid.

8 (3) Loan proceeds used to pay a prior loan by a different
9 borrower are incurred for the new borrower's purposes in
10 agreeing to pay the prior loan.

11 (4) The assumption of a loan by a different borrower is
12 treated as if the new borrower had obtained a new loan and
13 had used all of the proceeds to pay the loan assumed.

14 (5) The provisions of this paragraph shall not be construed
15 to modify or limit the provisions of section 535.8, subsection
16 2, paragraph c or e.

17 Sec. 4. It is the purpose of this Act to clarify and
18 restate the existing law. In the event that a provision of
19 this Act is construed to amend the substance of prior law,
20 the provision shall not apply to a contract, note or agreement
21 executed prior to the effective date of this Act.

22 EXPLANATION

23 This bill amends Code sections 535.10 and 537.1301(14)
24 for purposes of defining, or creating rules of construction
25 to be used in interpreting, the applicability of laws governing
26 the maximum rate of interest payable on real property loans.

27 Section 1 defines the term "business purpose". Section
28 1 also creates rules that determine what the purpose of a
29 loan is and when an assumption is treated as a new loan.

30 Section 2 clarifies the meaning of "assumption" and
31 "refinancing" as used in the provision that limits the amount
32 of loan processing fee that may be collected in such a
33 transaction.

34 Section 3 amends a section of the consumer credit code
35 to clarify the exclusion from that code of loans that are

1 made to purchase real property or to refinance purchase-money
2 loans.

3 Section 4 states that the intent of the bill is for
4 clarification only, and that if any change is construed as
5 a substantive change in the law it shall not apply to
6 preexisting agreements.

7 The bill takes effect July 1 following enactment.

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SENATE FILE 423

AN ACT

ESTABLISHING DEFINITIONS AND RULES OF CONSTRUCTION TO BE APPLIED IN CONNECTION WITH THE INTERPRETATION OF LAWS RELATING TO REAL PROPERTY LOANS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 535.10, subsection 1, Code 1981, is amended to read as follows:

1. The following persons may agree in writing to pay any rate of interest, and a person so agreeing in writing shall not plead or interpose the claim or defense of usury in any action or proceeding, and the person agreeing to receive such rate of interest shall not be subject to any penalty or forfeiture for agreeing to receive or receiving such interest:

a. A person borrowing money ~~to finance the acquisition of for the purpose of acquiring real property, including the or refinancing of a contract for deed, and including the refinancing or assumption of a prior loan by a new borrower if the lender releases the original borrower from all personal liability with respect to the loan;~~

b. A person borrowing money or obtaining credit in an amount which exceeds thirty-five thousand dollars, exclusive of interest, for the purpose of constructing improvements on real property, whether or not the real property is owned by that person;

c. A vendee under a contract for deed to real property;

or

d. A person described in section 535.2, subsection 2;
or

e. A person borrowing money or obtaining credit for business or agricultural purposes, or a person borrowing money or obtaining credit in an amount which exceeds thirty-five thousand dollars for personal, family or household purposes. As used in this paragraph, "agricultural purpose" means as defined in section 535.13; and "business purpose" includes but is not limited to a commercial, service or industrial enterprise carried on for profit, and any investment activity.

f. In determining which loans are exempt under this subsection, the rules of construction stated in this paragraph shall apply:

(1) The purpose for which money is borrowed is the purpose to which a majority of the loan proceeds are applied or are designated in the agreement to be applied.

(2) Loan proceeds used to refinance or pay a prior loan owed by the same borrower are applied for the same purposes and in the same proportion as the original principal of the loan that is refinanced or paid.

(3) If the lender releases the original borrower from all personal liability with respect to the loan, loan proceeds used to pay a prior loan by a different borrower are applied for the new borrower's purposes in agreeing to pay the prior loan.

(4) If the lender releases the original borrower from all personal liability with respect to the loan, the assumption of a loan by a new borrower is treated as if the new borrower had obtained a new loan and had used all of the proceeds to pay the loan assumed.

(5) The provisions of this paragraph shall not be construed to modify or limit the provisions of section 535.8, subsection 2, paragraphs c or e.

Sec. 2. Section 535.10, subsection 3, Code 1981, is amended to read as follows:

3. A lender may collect, in connection with any loan made pursuant to a written agreement executed by the borrower on or after May 10, 1980, or in connection with any loan made pursuant to a written commitment by the lender mailed or delivered to the borrower on or after that date, a loan processing fee which does not exceed two percent of an amount which is equal to the loan principal; ~~except that in the event to the extent of an assumption or refinancing of by a new borrower of the obligation to make payments under a prior loan, or to the extent that the loan principal is used to refinance a prior loan between the same borrower and the same lender,~~ the lender may collect a loan processing fee which does not exceed an amount which is a reasonable estimate of the expenses of processing the loan assumption or refinancing but which does not exceed one percent of the ~~amount~~ unpaid balance of the loan that is assumed or refinanced. As used in this subsection, the term "loan" means as defined in section 535.8, subsection 1. The provisions of this subsection supersede conflicting provisions of section 535.8, subsection 2, paragraph "a", but no other provision of this section is intended to affect any other subsection or paragraph of section 535.8.

Sec. 3. Section 537.1301, subsection 14, Code 1981, is amended to read as follows:

14. CONSUMER LOAN.

a. Except as provided in paragraph "b", a "consumer loan" is a loan in which all of the following are applicable:

- (1) The person is regularly engaged in the business of making loans.
- (2) The debtor is a person other than an organization.
- (3) The debt is incurred primarily for a personal, family or household purpose.

(4) Either the debt is payable in installments or a finance charge is made.

(5) Either the amount financed does not exceed thirty-five thousand dollars, or the debt is secured by an interest in land.

b. A "consumer loan" does not include:

(1) A sale or lease in which the seller or lessor allows the buyer or lessee to purchase or lease pursuant to a seller credit card.

(2) A loan secured by a first lien on land given to finance the acquisition of that land debt which is incurred primarily for the purpose of acquiring real property or refinancing a contract for deed to real property and which is secured by a first lien on that real property.

c. In determining which loans are consumer loans under this subsection the rules of construction stated in this paragraph shall be applied:

(1) A debt is incurred primarily for the purpose to which a majority of the loan proceeds are applied or are designated by the debtor to be applied.

(2) Loan proceeds used to refinance or pay a prior loan owed by the same borrower are incurred for the same purposes and in the same proportion as the principal of the loan refinanced or paid.

(3) Loan proceeds used to pay a prior loan by a different borrower are incurred for the new borrower's purposes in agreeing to pay the prior loan.

(4) The assumption of a loan by a different borrower is treated as if the new borrower had obtained a new loan and had used all of the proceeds to pay the loan assumed.

(5) The provisions of this paragraph shall not be construed to modify or limit the provisions of section 535.8, subsection 2, paragraph c or e.

Sec. 4. It is the purpose of this Act to clarify and restate the existing law. In the event that a provision of this Act is construed to amend the substance of prior law, the provision shall not apply to a contract, note or agreement executed prior to the effective date of this Act.

TERRY E. BRANSTAD
President of the Senate

DELWYN STROMER
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 423, Sixty-ninth General Assembly.

LINDA HOWARTH MACKAY
Secretary of the Senate

Approved May 11, 1981

ROBERT D. RAY
Governor