

Sec. 2. Section 535.8, subsection 5, unnumbered paragraph 2, is amended by striking the unnumbered paragraph.

Approved April 28, 1981

CHAPTER 177
REAL PROPERTY LOANS

S. F. 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.

Approved May 11, 1981

CHAPTER 178

INDUSTRIAL LOAN GUARANTEE FUND LIABILITY REPEAL

S. F. 177

AN ACT relating to the liability of the industrial loan guaranty* fund for acts and omissions of the auditor of state.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 536B.27, Code 1981, is repealed.

Sec. 2. This Act, being deemed of immediate importance, takes effect from and after its publication in The Cedar Rapids Gazette, a newspaper published in Cedar Rapids, Iowa, and in the Marshalltown Times-Republican, a newspaper published in Marshalltown, Iowa.

Approved February 27, 1981

I hereby certify that the foregoing Act, Senate File 177, was published in The Cedar Rapids Gazette, Cedar Rapids, Iowa on March 6, 1981, and in the Marshalltown-Times Republican, Marshalltown, Iowa on March 16, 1981.

MARY JANE ODELL, *Secretary of State*

*According to enrolled Act