

Act 203 (HB 726 June 18, 1981)

The purpose of this bill is to increase the ceiling on loans to homestead lessees for the construction of homes and related improvements from \$35,000 to \$50,000, and for the repair of existing homes from \$10,000 to \$15,000.

Section 213(a)(5) was amended by Act 203 by increasing the amount of a home repair loan that may be made available to a lessee, from \$10,000 to \$15,000.

Also, §214(b)(2) was amended by increasing the maximum amount that the department may loan or guarantee repayment from \$35,000 to \$50,000. In §215, the outstanding amount of loans made to a lessee or a successor at any one time for purposes of repair, maintenance, purchase, erection of dwelling or related permanent improvements was raised from \$35,000 to \$50,000.

ACT 203

SECTION 5. This Act shall take effect upon its approval.

(Approved June 18, 1981.)

ACT 203

H.B. NO. 726

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as Amended.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 213, Hawaiian Homes Commission Act, 1920, is amended by amending subsection (a) to read:

"(a) There are established in the treasury of the State seven revolving funds, to be known respectively as the Hawaiian home loan fund, the additional receipts loan fund, the Hawaiian home general loan fund, the Hawaiian home replacement loan fund, the Hawaiian home repair loan fund, the Hawaiian home farm loan fund, and the Hawaiian home operating fund.

(1) Hawaiian home loan fund. Thirty per cent of the state receipts derived from the leasing of cultivated sugarcane lands under any other provision of law or from water licenses shall be deposited into this fund. The aggregate amount of this fund including:

(A) The outstanding principal of all loans, advances, and transfers which have been made to other funds for which this fund has not been or need not be reimbursed; and

(B) The instalments of principal paid by the lessees upon loans made to them from this fund, or payments representing reimbursements, on account of advances, but not including interest on such loans or advances.

shall not exceed \$5,000,000. The moneys in this fund shall be available for the purposes enumerated in section 214 of this Act.

That portion of the thirty per cent of the state receipts derived from the leasing of cultivated sugarcane lands under any other provision of law or from water licenses, in excess of the present ceiling in the Hawaiian home loan fund of \$5,000,000, which amount is called "additional receipts," shall be transferred to the Hawaiian home development fund, to the additional receipts loan fund, and the Hawaiian home education fund as follows: fifteen per cent to the additional receipts loan fund; thirteen per cent to the Hawaiian home development fund; and seventy-two per cent to the Hawaiian home education fund; provided that until June 30, 1979, the aggregate amount so transferred shall not exceed the maximum amount of \$5,000,000 which maximum amount shall be increased to \$5,000,000 from and after July 1, 1979.

(2) Additional receipts loan fund. Moneys transferred to this fund, instalments of principal paid by the lessees upon loans made to them from this fund, or as payments representing reimbursement on account of advances, but not including interest on such loans or advances, shall be

used for the purposes enumerated in section 214 of this Act.

- (3) Hawaiian home general loan fund. Moneys appropriated by the legislature for the construction of homes but not otherwise set aside for a particular fund, excluding moneys appropriated for construction of replacement homes; moneys transferred from the Hawaiian loan interest fund and instalments of principal paid by the lessees upon loans made to them from this fund, or as payments representing reimbursements on account of advances, but not including interest on such loans or advances; shall be deposited to this fund. The moneys in the fund shall be used for purposes enumerated in section 214 of this Act.
- (4) Hawaiian home replacement loan fund. The moneys in this fund shall be used to make loans to lessees to construct replacement homes upon their residence lots. Moneys appropriated by the legislature for replacement home construction loans; moneys transferred from the Hawaiian loan interest fund; instalments of principal paid by the lessees upon loans made to them from this fund; and moneys transferred from other funds or accounts by legislative authorization shall be deposited into this fund.
- (5) Hawaiian home repair loan fund. Moneys appropriated to this fund by the legislature; moneys transferred from the Hawaiian loan interest fund; and instalments of principal paid by the lessees upon loans made to them from this fund shall be deposited to this fund. The moneys in this fund shall be used to make loans in amounts not in excess of \$15,000 to lessees for repairs to their existing homes and for additions to such homes.
- (6) Hawaiian home farm loan fund. Moneys appropriated to this fund by the legislature; moneys transferred from the Hawaiian loan interest fund; and instalments of principal paid by the lessees upon loans made to them from this fund shall be deposited to this fund. The moneys in this fund shall be used to make loans not in excess of \$35,000 to lessees of agricultural tracts leased under section 207 of this Act.
- (7) Hawaiian home operating fund. The interest transferred from the Hawaiian home loan fund, all fees received by the department from any other source, and moneys transferred from the Hawaiian loan interest fund, except moneys received by the Hawaiian home administration account shall be directly deposited into the Hawaiian home operating fund. The moneys in this fund shall be available:
 - (A) For construction and reconstruction of revenue-producing improvements intended to principally serve occupants of Hawaiian home lands, including acquisition or lease thereof of real property and interests therein, such as water rights or other interests;
 - (B) For payment into the treasury of the State of such amounts as are necessary to meet the interest and principal charges for state bonds issued for such revenue-producing improvements;
 - (C) For operation and maintenance of such improvements constructed from such funds or other funds;
 - (D) For the purchase of water or other utilities, goods, commodities, supplies, or equipment needed for services, or to be resold, rented, or furnished on a charge basis to occupants of Hawaiian home

lands; and

- (E) For appraisals, studies, consultants (architects, engineers), or any other staff services including those in section 202(b) required to implement, develop, and operate these projects. The moneys in this fund may be supplemented by other funds available for, or appropriated by the legislature for, the same purposes. In addition to such moneys, this fund, with the approval of the governor, may be supplemented by transfers, made on a loan basis from the Hawaiian home loan fund for a period not exceeding ten years; provided that the aggregated amount of such transfers outstanding at any one time shall not exceed \$500,000."

SECTION 2. Section 214, Hawaiian Homes Commission Act, 1920, is amended by amending subsection (b) to read:

"(b) In addition the department may:

- (1) Use moneys in the development and operating funds, with the prior approval of the governor, to match federal, state, or county funds available for the same purposes and to that end, enter into such undertaking, agree to such conditions, transfer funds therein available for such expenditure, and do and perform such other acts and things, as may be necessary or required, as a condition to securing matching funds for such projects or works;
- (2) Loan or guarantee the repayment of or otherwise underwrite any authorized loan or portion thereof, up to a maximum of \$50,000 to lessees in accordance with section 215;
- (3) Loan or guarantee the repayment of or otherwise underwrite any authorized loan or portion thereof to a cooperative association in accordance with section 215;
- (4) Permit and approve loans made to lessees by government agencies or private lending institutions, where the department assures the payment of such loans; provided that upon receipt of notice of default in the payment of such assured loans, the department may, upon failure of the lessee to cure the default within sixty days, cancel the lease and pay the outstanding balance in full or may permit the new lessee to assume the outstanding debt; and provided further that the department shall reserve the following rights: the right of succession to the lessee's interest and assumption of the contract of loan; the right to require that written notice be given to the department immediately upon default or delinquency of the lessee; and any other rights enumerated at the time of assurance necessary to protect the monetary and other interests of the department;
- (5) Secure, pledge, or otherwise guarantee the repayment of moneys borrowed by the department from government agencies or private lending institutions and pay the interim interest or advances required for loans; provided that the State's liability, contingent or otherwise, either on moneys borrowed by the department or on departmental guarantees of loans made to lessees under this paragraph and paragraphs (2), (3), and (4) of this section, shall at no time exceed \$21,000,000;
- (6) Use available loan fund moneys or other funds specifically available for

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such purposes as cash guarantees when required by lending agencies;

- (7) Exercise the functions and reserved rights of a lender of money or mortgagee of residential property in all direct loans made by government agencies or by private lending institutions to lessees the repayment of which is assured by the department. The functions and reserved rights shall include but not be limited to, the purchasing, repurchasing, servicing, selling, foreclosing, buying upon foreclosure, guaranteeing the repayment, or otherwise underwriting, of any loan, the protecting of security interest, and after foreclosures, the repairing, renovating, or modernization and sale of property covered by the loan and mortgage."

SECTION 3. Section 215, Hawaiian Homes Commission Act, 1920, is amended to read:

"§215. Conditions of loans. Except as otherwise provided in section 213(a)(5), each contract of loan with the lessee or any successor or successors to his interest in the tract or with any agricultural or mercantile cooperative association composed entirely of lessees shall be held subject to the following conditions whether or not stipulated in the contract loan:

- (1) At any one time, the outstanding amount of loans made to any lessee, or successor or successors in interest, for the repair, maintenance, purchase, and erection of a dwelling and related permanent improvements shall not exceed \$50,000, for the development and operation of a farm or a ranch shall not exceed \$35,000, except that when loans are made to an agricultural cooperative association for the purposes stated in section 214(a)(4), the loan limit shall be determined by the department on the basis of the proposed operations and the available security of the association, and for the development and operation of a mercantile establishment shall not exceed the loan limit determined by the department on the basis of the proposed operations and the available security of the lessee or of the organization formed and controlled by lessees; provided that upon the death of a lessee leaving no relative qualified to be a lessee of Hawaiian home lands, or the cancellation of a lease by the department, or the surrender of a lease by the lessee, the department shall make the payment provided for by section 209(1), the amount of any such payment made to the legal representative of the deceased lessee, or to the previous lessee, as the case may be, shall be considered as part or all, as the case may be, of any such loan to the successor or successors, without limitation as to the above maximum amounts; provided further that in case of the death of a lessee, or cancellation of a lease by the department, or the surrender of a lease by the lessee, the successor or successors to the tract shall assume any outstanding loan or loans thereon, if any, without limitation as to the above maximum amounts but subject to paragraph (3).
- (2) The loans shall be repaid in periodic installments, such installments to be monthly, quarterly, semiannual, or annual as may be determined by the department; in each case. The term of any loan shall not exceed thirty years. Payments of any sum in addition to the required installments, or payment of the entire amount of the loan, may be made at any time within

the term of the loan. All unpaid balances of principal shall bear interest at the rate of two and one-half per cent a year for loans made directly from the Hawaiian home loan fund, or at the rate of two and one-half per cent or higher as established by law for other loans, payable periodically or upon demand by the department, as the department may determine. The payment of any installment due shall be postponed in whole or in part by the department for such reasons as it deems good and sufficient and until such later date as it deems advisable. Such postponed payments shall continue to bear interest on the unpaid principal at the rate established for the loan.

- (3) In the case of the death of a lessee the department shall, in any case, permit the successor or successors to the tract to assume the contract of loan subject to paragraph (1). In case of the cancellation of a lease by the department or the surrender of a lease by the lessee, the department may, at its option declare all installments upon the loan immediately due and payable, or permit the successor or successors to the tract to assume the contract of loan subject to paragraph (1). The department may, in such cases where the successor or successors to the tract assume the contract of loan, waive the payment, wholly or in part, of interest already due and delinquent upon the loan, or postpone the payment of any installment thereon, wholly or in part, until such later date as it deems advisable. Such postponed payments shall, however, continue to bear interest on the unpaid principal at the rate established for the loan. Further, the department may, if it deems it advisable and for the best interests of the lessees, write off and cancel, wholly or in part, the contract of loan of the deceased lessee, or previous lessee, as the case may be, where such loans are delinquent and deemed uncollectible. Such write off and cancellation shall be made only after an appraisal of all improvements and growing crops on the tract involved, such appraisal to be made in the manner and as provided for by section 209(1). In every case, the amount of such appraisal, or any part thereof, shall be considered as part or all, as the case may be, of any loan to such successor or successors, subject to paragraph (1).
- (4) No part of the moneys loaned shall be devoted to any purpose other than those for which the loan is made.
- (5) The borrower or the successor to his interest shall comply with such other conditions, not in conflict with any provision of this Act, as the department may stipulate in the contract of loan.
- (6) The borrower or the successor to his interest shall comply with the conditions enumerated in section 208, and with section 209 of this Act in respect to the lease of any tract.
- (7) Whenever the department shall determine that a borrower is delinquent in the payment of any indebtedness to the department, it may require such borrower to execute an assignment to it, not to exceed, however, the amount of the total indebtedness of such borrower, including the indebtedness to others the payment of which has been assured by the department of all moneys due or to become due to such borrower by

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reason of any agreement or contract, collective or otherwise, to which the borrower is a party. Failure to execute such an assignment when requested by the department shall be sufficient ground for cancellation of the borrower's lease or interest therein."

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 5. This Act shall take effect upon its approval.

(Approved June 18, 1981.)

ACT 204

H.B. NO. 1511

A Bill for an Act Relating to Interest and Usury.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 478-8, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The provisions of this chapter expressly limiting the rate or amount of interest, discount, charges, or other consideration which may be directly or indirectly taken, received, or reserved shall not apply to any:

- (1) Indebtedness which is secured by a first mortgage lien on real property, or by a first lien on stock in a residential cooperative housing corporation, and is agreed to or incurred after May 30, 1980; provided that for the purposes of this section a wraparound lien wherein the wraparound lender has committed to loan sufficient funds to pay off the principal amount of all prior liens shall be considered a first lien; or
- (2) Agreement of sale made after May 30, 1980 under which a vendor agrees to sell real property to a vendee but retains legal title to the real property and in which the rate of interest is clearly stated."

SECTION 2. Chapter 478, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"~~§478- Wraparound lien.~~ A wraparound lien is a lien arising from a purchase-money loan which:

- (1) Is secured by a lien (the wraparound lien) on residential real property on which there exists one or more prior liens securing prior indebtedness;
- (2) Matures no earlier than the latest maturity date of any prior indebtedness; and
- (3) Is evidenced by a note or bond which:
 - (A) In principal amount equals the aggregate of the outstanding prior indebtedness plus the additional funds advanced by the wrap-around lender;
 - (B) Requires payments by the wraparound borrower to the wrap-

*The text has been edited pursuant to HRS §230-16.5 authorizing omission of the brackets, bracketed material, and underscoring.