

STATE OF NEW YORK

9585

IN ASSEMBLY

March 21, 2024

Introduced by M. of A. WEINSTEIN -- read once and referred to the Committee on Banks

AN ACT to amend the general obligations law and the banking law, in relation to limitations of rates of interest for financing arrangements and the extension of consumer credit; to amend the penal law, in relation to criminal usury; and to amend the personal property law, in relation to certain functions of the attorney general

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivisions 1, 2, 4, 4-a, 6 and 7 of section 5-501 of the
2 general obligations law, subdivisions 1, 2 and 4 as amended by chapter
3 883 of the laws of 1980, subdivision 2 as further amended by section 104
4 of part A of chapter 62 of the laws of 2011, subdivision 4-a as added by
5 chapter 721 of the laws of 1976, subdivision 6 as amended by chapter 369
6 of the laws of 1980 and subdivision 7 as added by chapter 296 of the
7 laws of 1983, are amended and two new subdivisions 1-a and 8 are added
8 to read as follows:

9 1. The rate of interest, as computed pursuant to this title, [~~upon the~~
10 ~~loan or forbearance of any money, goods, or things in action~~] in
11 connection with any financing arrangement, except as provided in subdi-
12 visions five and six of this section [~~or as otherwise provided by law~~],
13 shall be six per centum per annum unless a different rate is prescribed
14 in section fourteen-a of the banking law.

15 1-a. Financing arrangement is defined to include loans, forbearance of
16 any money, goods or things in action, and all other transactions that
17 involve the lending or advancing of money, goods or things in action for
18 an amount charged, taken or received, and all transactions that operate
19 as substitutes for such products, including but not limited to retail
20 installment contracts, merchant cash advances, invoice financing, reven-
21 ue-based financing, earned wage access or similar wage advance trans-
22 actions, lease- or rent-to-own arrangements, rental-purchase agreements
23 as defined in subdivision six of section five hundred of the personal
24 property law, buy-now pay-later transactions, financing for litigation

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 or legal settlements, income-sharing agreements and financing for educa-
2 tion.

3 2. ~~[No]~~ Notwithstanding any other New York statute, regulation or
4 rule, no person or corporation shall, directly or indirectly, charge,
5 take or receive any money, goods or things in action as interest ~~[on the~~
6 ~~loan or forbearance of any money, goods or things in action]~~ in
7 connection with a financing arrangement at a rate exceeding the rate
8 above prescribed. The amount charged, taken or received as interest
9 shall include any and all amounts paid or payable, directly or indirect-
10 ly, voluntary or otherwise, by any person, to or for the account of the
11 lender, including any discount applied to any amounts advanced, in
12 ~~[consideration for making the loan or forbearance]~~ connection with the
13 financing arrangement as defined by the superintendent of financial
14 services pursuant to subdivision three of section fourteen-a of the
15 banking law, including fees, charges, tips, renewal charges, credit
16 insurance premiums, debt suspension or similar products, any ancillary
17 product sold with any extension of consumer credit, and any other amount
18 paid or payable, except such fee as may be fixed by the commissioner of
19 taxation and finance as the cost of servicing loans made by the property
20 and liability insurance security fund.

21 4. Except as otherwise provided by law, interest shall not be charged,
22 taken or received on any ~~[loan or forbearance]~~ financing arrangement at
23 a rate exceeding such rate of interest as may be authorized by law at
24 the time the ~~[loan or forbearance]~~ financing arrangement is made, wheth-
25 er or not the ~~[loan or forbearance]~~ financing arrangement is made pursu-
26 ant to a prior contract or commitment providing for a greater rate of
27 interest, provided, however, that no change in the rate of interest
28 prescribed in section fourteen-a of the banking law shall affect (a) the
29 validity of a ~~[loan or forbearance]~~ financing arrangement made before
30 the date such rate becomes effective, or (b) the enforceability of such
31 ~~[loan or forbearance]~~ financing arrangement in accordance with its
32 terms, except that if any ~~[loan or forbearance]~~ financing arrangement
33 provides for an increase in the rate of interest during the term of such
34 ~~[loan or forbearance]~~ financing arrangement, the increased rate shall
35 not exceed such rate of interest as may have been authorized by law at
36 the time such ~~[loan or forbearance]~~ financing arrangement was made.

37 4-a. Notwithstanding the provisions of subdivision four of this
38 section, a ~~[loan or forbearance]~~ financing arrangement repayable on
39 demand may provide for changes, reflecting variations in lending rates,
40 from time to time in the rate of interest payable on such ~~[loan or~~
41 ~~forbearance]~~ financing arrangement up to the rate of interest authorized
42 by law at the time of such change and in such case the rate of interest
43 may be so changed in accordance with the terms of the contract or loan
44 commitment relating thereto; provided, however, that the rate of inter-
45 est charged, taken or received on such a ~~[loan or forbearance]~~ financing
46 arrangement shall not exceed the rate of interest authorized by law as
47 it may subsequently be reduced from time to time; and further provided,
48 however, that in no event shall such a ~~[loan or forbearance by]~~ financ-
49 ing arrangement be subject to an authorized rate of interest less than
50 that applicable at the time such ~~[loan or forbearance]~~ financing
51 arrangement was made. The provisions of this subdivision shall apply
52 only to a ~~[loan or forbearance]~~ financing arrangement repayable on
53 demand which has an initial principal of more than five thousand dollars
54 and which the borrower has the right to repay at any time in whole or in
55 part, together with accrued interest on the principal so repaid, without
56 any penalty. With respect to a ~~[loan or forbearance]~~ financing arrange-

1 ment covered by this subdivision, the lender shall disclose to the
2 borrower in writing not less often than annually the amount of interest
3 accrued or payable as of the date of such disclosure and the manner by
4 which such amount was computed.

5 6. a. No law regulating the maximum rate of interest which may be
6 charged, taken or received, except section 190.40 and section 190.42 of
7 the penal law, shall apply to any [~~loan or forbearance~~] financing
8 arrangement in the amount of two hundred fifty thousand dollars or more,
9 other than a [~~loan or a forbearance~~] financing arrangement secured
10 primarily by an interest in real property improved by a one or two fami-
11 ly residence. A [~~loan~~] financing arrangement of two hundred fifty thou-
12 sand dollars or more which is to be advanced in installments pursuant to
13 a written agreement by a lender shall be deemed to be a single [~~loan~~]
14 financing arrangement for the total amount which the lender has agreed
15 to advance pursuant to such agreement on the terms and conditions
16 provided therein.

17 b. No law regulating the maximum rate of interest which may be
18 charged, taken or received, including section 190.40 and section 190.42
19 of the penal law, shall apply to any [~~loan or forbearance~~] financing
20 arrangement in the amount of two million five hundred thousand dollars
21 or more. [~~Loans or forbearances~~] Financing arrangements aggregating two
22 million five hundred thousand dollars or more which are to be made or
23 advanced to any one borrower in one or more installments pursuant to a
24 written agreement by one or more lenders shall be deemed to be a single
25 [~~loan or forbearance~~] financing arrangement for the total amount which
26 the lender or lenders have agreed to advance or make pursuant to such
27 agreement on the terms and conditions provided therein.

28 7. Except as otherwise expressly provided by law, in the event of
29 prepayment in full of a [~~loan~~] financing arrangement, any refund of
30 unearned interest to which the borrower may be entitled may not be
31 computed by a sum of the balances or similar method but must be deter-
32 mined according to a generally accepted actuarial method.

33 8. The attorney general is hereby empowered to adopt, promulgate,
34 amend, and repeal rules, as such term is defined in paragraph (a) of
35 subdivision two of section one hundred two of the state administrative
36 procedure act, and issue guidance as may be necessary to interpret
37 financing arrangements as such term is defined in subdivision one-a of
38 this section and to effectuate and enforce that provision.

39 § 2. Subdivision 1 of section 5-511 of the general obligations law,
40 as amended by chapter 1072 of the laws of 1968, is amended to read as
41 follows:

42 1. All bonds, bills, notes, assurances, conveyances, all other
43 contracts or securities whatsoever, except bottomry and respondentia
44 bonds and contracts, and all deposits of goods or other things whatsoev-
45 er, whereupon or whereby there shall be reserved or taken, or secured or
46 agreed to be reserved or taken, any greater sum, or greater value, for
47 the [~~loan or forbearance of any money, goods or other things in action~~]
48 financing arrangement, than is prescribed in section 5-501, shall be
49 void, except that the knowingly taking, receiving, reserving or charging
50 such a greater sum or greater value by a savings bank, a savings and
51 loan association or a federal savings and loan association shall only be
52 held and adjudged a forfeiture of the entire interest which the [~~loan or~~
53 obligation] financing arrangement carries with it or which has been
54 agreed to be paid thereon. If a greater sum or greater value has been
55 paid, the person paying the same or his legal representative may recover
56 from the savings bank, the savings and loan association or the federal

1 savings and loan association twice the entire amount of the interest
2 thus paid.

3 § 3. Section 5-513 of the general obligations law, as amended by chap-
4 ter 1072 of the laws of 1968, is amended to read as follows:

5 § 5-513. Recovery of excess. Every person who, for any such [~~loan or~~
6 ~~forbearance~~] financing arrangement, shall pay or deliver any greater sum
7 or value than is allowed to be received pursuant to section 5-501, and
8 his personal representatives, may recover in an action against the
9 person who shall have taken or received the same, and his personal
10 representatives, the amount of the money so paid or value delivered,
11 above the rate aforesaid.

12 § 4. Section 5-517 of the general obligations law is amended to read
13 as follows:

14 § 5-517. Transfer of cause of action for usury. A cause of action to
15 cancel, or otherwise affect, an instrument executed, or an act done, as
16 security for a usurious [~~loan or forbearance~~] financing arrangement, can
17 be transferred, where the instrument or act creates a specific charge
18 upon property, which is also transferred in disaffirmance thereof, and
19 not otherwise; but, in that case, the transferee does not succeed to the
20 right, conferred by statute upon the borrower, to procure relief, with-
21 out paying, or offering to pay, any part of the sum or thing loaned.

22 § 5. Section 5-524 of the general obligations law, as amended by chap-
23 ter 349 of the laws of 1968 and as further amended by section 104 of
24 part A of chapter 62 of the laws of 2011, is amended as follows:

25 § 5-524. Taking security upon certain property for usurious [~~loans~~]
26 financing arrangements. A person who takes security, upon any household
27 furniture, sewing machines, plate or silverware in actual use, tools or
28 implements of trade, wearing apparel or jewelry, for a [~~loan or forbear-~~
29 ~~ance of money~~] financing arrangement, or for the use or sale of his
30 personal credit, conditioned upon the payment of a greater rate than the
31 rate prescribed by the superintendent of financial services pursuant to
32 section fourteen-a of the banking law, or, if no rate has been so
33 prescribed, six per centum per annum, or who as security for such [~~loan~~]
34 financing arrangement, use or sale of personal credit as aforesaid,
35 makes a pretended purchase of such property from any person, upon the
36 like condition, and permits the pledgor to retain the possession thereof
37 is guilty of a misdemeanor.

38 § 6. Subdivision 2 of section 14-a of the banking law, as amended by
39 chapter 155 of the laws of 2012, is amended and a new subdivision 2-a is
40 added to read as follows:

41 2. The rate of interest as so prescribed under this section shall
42 include as interest any and all amounts paid or payable, directly or
43 indirectly, voluntary or otherwise, by any person, to or for the account
44 of the lender, including any discount applied to any amounts advanced,
45 in [~~consideration for the making of a loan or forbearance~~] connection
46 with a financing arrangement as defined by the superintendent pursuant
47 to subdivision three of this section, including fees, service charges,
48 credit service charges, tips, renewal charges, credit insurance premi-
49 ums, debt suspension or similar products, any ancillary product sold
50 with any extension of consumer credit, and any other amount paid or
51 payable.

52 2-a. The rate of interest for any financing arrangement shall be
53 calculated as described in section 600.3 of title twenty-three of the
54 New York codes, rules and regulations; provided, however, that the rate
55 of interest will include as finance charges all amounts described in
56 subdivision two of this section.

§ 7. Section 340 of the banking law, as amended by chapter 22 of the laws of 1990, is amended to read as follows:

§ 340. Doing business without license prohibited. 1. No person or other entity shall engage in the business of ~~making loans~~ entering into financing arrangements as defined in subdivision one-a of section 5-501 of the general obligations law in the principal amount of twenty-five thousand dollars or less for any ~~loan~~ financing arrangement to an individual for personal, family, household, or investment purposes and in a principal amount of fifty thousand dollars or less for business and commercial ~~loans~~ financing arrangements, and charge, contract for, or receive a greater rate of interest than the ~~lender~~ person or other entity would be permitted by law to charge if ~~he~~ it were not a licensee hereunder except as authorized by this article and without first obtaining a license from the superintendent.

2. For the purposes of this section, a person or entity shall be considered as engaging in the business of ~~making loans~~ entering into financing arrangements in New York, and subject to the licensing and other requirements of this article, if it solicits ~~loans~~ financing arrangements in the amounts prescribed by this section within this state and, in connection with such solicitation, ~~makes loans to~~ enters into financing arrangements with individuals then resident in this state, except that no person or entity shall be considered as engaging in the business of ~~making loans~~ entering into financing arrangements in this state on the basis of isolated, incidental or occasional transactions which otherwise meet the requirements of this section.

3. Nothing in this article shall apply to licensed collateral loan brokers.

§ 8. Subdivision 1 of section 351 of the banking law, as amended by chapter 22 of the laws of 1990, is amended to read as follows:

1. Every licensee hereunder may ~~loan~~ enter into financing arrangements as defined in subdivision one-a of section 5-501 of the general obligations law for any sum of money not exceeding the maximum principal amounts prescribed in section three hundred forty of this article, and may charge, contract for, and receive thereon interest at the rate or rates agreed to by the licensee and the borrower, subject to sections 190.40 and 190.42 of the penal law. Such interest may either ~~be~~ (a) ~~be~~ calculated on the actual unpaid principal balances of the ~~loan~~ financing arrangement or in the case of a ~~loan~~ financing arrangement commitment from the date of each advance thereunder for the actual time outstanding, according to a generally accepted actuarial method at a fixed or variable rate and in accordance with the provisions of the evidence of the indebtedness or (b) precomputed under subdivision five of this section.

§ 9. Section 190.40 of the penal law, as amended by chapter 424 of the laws of 1976, is amended to read as follows:

§ 190.40 Criminal usury in the second degree.

A person is guilty of criminal usury in the second degree when, not being authorized or permitted by law to do so, he knowingly charges, takes or receives any money or other property as interest ~~[on the loan or forbearance of any money or other property]~~, whether paid voluntarily or otherwise, in connection with a financing arrangement as defined in subdivision one-a of section 5-501 of the general obligations law, at a rate exceeding twenty-five per centum per annum or the equivalent rate for a longer or shorter period. The rate of interest shall be calculated as provided in section fourteen-a of the banking law, as amended.

Criminal usury in the second degree is a class E felony.

1 § 10. Section 190.42 of the penal law, as added by chapter 424 of the
2 laws of 1976, is amended to read as follows:

3 § 190.42 Criminal usury in the first degree.

4 A person is guilty of criminal usury in the first degree when, not
5 being authorized or permitted by law to do so, he knowingly charges,
6 takes or receives any money or other property as interest ~~[on the loan
7 or forbearance of any money or other property]~~, whether paid voluntarily
8 or otherwise, in connection with a financing arrangement as defined in
9 subdivision one-a of section 5-501 of the general obligations law, at a
10 rate exceeding twenty-five per centum per annum or the equivalent rate
11 for a longer or shorter period and either the actor had previously been
12 convicted of the crime of criminal usury or of the attempt to commit
13 such crime, or the actor's conduct was part of a scheme or business of
14 making or collecting usurious ~~[loans]~~ financing arrangements. The rate
15 of interest shall be calculated as provided in section fourteen-a of the
16 banking law, as amended.

17 Criminal usury in the first degree is a class C felony.

18 § 11. Section 508 of the personal property law, as added by chapter
19 309 of the laws of 2010, is amended to read as follows:

20 § 508. Administration by the attorney general. The attorney general
21 may make rules and regulations necessary for the administration of this
22 article~~[, provided, however, that such rules and regulations shall not
23 attempt to regulate or characterize rental purchase agreements as a
24 security interest, credit sale, retail installment sale, conditional
25 sale or any other form of consumer credit that imputes to a rental pur-
26 chase agreement the creation of a debt or extension of credit, nor shall
27 such rules and regulations require the disclosure of a percentage rate
28 calculation, including a time price differential, an annual percentage
29 rate, or an effective annual percentage rate]~~.

30 § 12. Severability. If any clause, sentence, paragraph, subdivi-
31 sion, section or part of this act shall be adjudged by any court of
32 competent jurisdiction to be invalid, such judgment shall not affect,
33 impair, or invalidate the remainder thereof, but shall be confined in
34 its operation to the clause, sentence, paragraph, subdivision, section
35 or part thereof directly involved in the controversy in which
36 such judgment shall have been rendered. It is hereby declared to be the
37 intent of the legislature that this act would have been enacted even if
38 such invalid provisions had not been included herein.

39 § 13. This act shall take effect immediately.