STATE OF NEW YORK

9275

IN SENATE

May 8, 2024

Introduced by Sen. BROUK -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

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:

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

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

1-a. Financing arrangement is defined to include loans, forbearance of any money, goods or things in action, and all other transactions that involve the lending or advancing of money, goods or things in action for an amount charged, taken or received, and all transactions that operate as substitutes for such products, including but not limited to retail installment contracts, merchant cash advances, invoice financing, revenue-based financing, earned wage access or similar wage advance transactions, lease- or rent-to-own arrangements, rental-purchase agreements as defined in subdivision six of section five hundred of the personal 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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or legal settlements, income-sharing agreements and financing for education.

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

4. Except as otherwise provided by law, interest shall not be charged, taken or received on any [~~loan or forbearance~~] financing arrangement at a rate exceeding such rate of interest as may be authorized by law at the time the [~~loan or forbearance~~] financing arrangement is made, whether or not the [~~loan or forbearance~~] financing arrangement is made pursuant to a prior contract or commitment providing for a greater rate of interest, provided, however, that no change in the rate of interest prescribed in section fourteen-a of the banking law shall affect (a) the validity of a [~~loan or forbearance~~] financing arrangement made before the date such rate becomes effective, or (b) the enforceability of such [~~loan or forbearance~~] financing arrangement in accordance with its terms, except that if any [~~loan or forbearance~~] financing arrangement provides for an increase in the rate of interest during the term of such [~~loan or forbearance~~] financing arrangement, the increased rate shall not exceed such rate of interest as may have been authorized by law at the time such [~~loan or forbearance~~] financing arrangement was made.

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

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

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

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

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

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

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

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

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

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

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

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

§ 5-517. Transfer of cause of action for usury. A cause of action to cancel, or otherwise affect, an instrument executed, or an act done, as security for a usurious [~~loan or forbearance~~] financing arrangement, can be transferred, where the instrument or act creates a specific charge upon property, which is also transferred in disaffirmance thereof, and not otherwise; but, in that case, the transferee does not succeed to the right, conferred by statute upon the borrower, to procure relief, without paying, or offering to pay, any part of the sum or thing loaned.

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

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

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

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

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

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

§ 190.42 Criminal usury in the first degree.

A person is guilty of criminal usury in the first 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 and either the actor had previously been convicted of the crime of criminal usury or of the attempt to commit such crime, or the actor's conduct was part of a scheme or business of making or collecting usurious [~~loans~~] **financing arrangements**. **The rate of interest shall be calculated as provided in section fourteen-a of the banking law, as amended.**

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

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

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

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

§ 13. This act shall take effect immediately.