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PETITION—MAXIMUM RATE OF INTEREST—SERVICE CHARGE—LENDING MONEY—DEFICIENCY JUDGMENTS—LICENSES—DIFFERENCES BETWEEN TEXT AND SUMMARY—PETITION NOT CERTIFIED—SEE OPINION 190, FEBRUARY 23, 1939.

COLUMBUS, OHIO, February 21, 1939.

MR. LESLIE H. SNYDER, *2640 Kemper Lane, Apt. No. 3, Cincinnati, Ohio.*

DEAR SIR: You have submitted for my examination a written petition signed by one hundred qualified electors of this state containing a proposed law and a summary of the same under section 4785-175, General Code. The proposed law and summary read as follows:

“SUMMARY. It is proposed to submit the following Statute establishing a maximum rate of interest of four (4) percent per annum on all transactions except those involving persons

holding special licenses from the State of Ohio, in which latter case it is proposed to permit a rate of five (5) percent per annum. These latter cases shall also permit a one dollar (\$1.00) service charge, but no more. It is also proposed to limit the Courts in rendering deficiency judgments on mortgage loans.

Section 6346-5. MAXIMUM CHARGE ALLOWED INCLUDING INTEREST; INSPECTION FEE: PERSONS TO WHOM ACT DOES NOT APPLY.

No such licensee or licensees under this chapter shall make a loan or purchase or furnish guaranty, or security, as hereinbefore provided at a greater total charge, including interest, than (5) percent per annum, except that an inspection fee of not to exceed one dollar (\$1.00) may be collected at the time the loan is made, when such loan is made for a period of not less than four months; and such inspection fee shall not be imposed upon the same borrower for any new or additional loan made within four months after such charge has been imposed. Said five percent per annum shall not be paid in advance and shall be computed on unpaid monthly balances, without compounding interest or charges. No bonus, fees, expenses, or demands of any nature whatsoever, other than said inspection fee and said total charge of five percent per annum (which shall include interest) as hereinbefore provided, shall be made, paid, or received directly or indirectly, for such loans, purchases or furnishing guaranty or security, wage assignments or advancements except court costs upon the actual foreclosure of the security or upon the entry of judgment. No charge or fee shall be made unless the loan is actually made. A copy of this Section shall be furnished each borrower at the time the loan is made.

Section 6346-5a. RATE OF INTEREST AND CHARGE PRESCRIBED; PENALTY FOR VIOLATION.

Provided, however, that upon the amount in excess of three hundred dollars (\$300.00) for principal owing to the licensee for any such loan, purchases or furnishing guaranty or security, no licensee shall directly or indirectly charge, contract for or receive any interest or consideration greater than at the rate of four percent per annum, which shall include all charges, shall not be paid in advance and shall be computed on unpaid monthly balances, without compounding interest or charges. The foregoing four percent per annum limitation of rate herein made shall also apply to any licensee who permits any person, as

borrower, or as endorser, guarantor, surety for, or as spouse of any borrower, to owe directly or contingently, or both, to the licensee at any time the sum of more than three hundred dollars (\$300.00) for principal.

If interest, consideration or charges in excess of those permitted by this act shall be charged, contracted for or received, the contract and all the papers in connection therewith shall be void and the licensee shall have no right to collect or receive any principal, interest or charges whatsoever.

**8303 MAXIMUM RATE OF INTEREST:** The parties to a bond, bill, promissory note or other instrument of writing for the forbearance or payment of money at any future time, may stipulate therein for the payment of interest upon the amount thereof at any rate not exceeding four percent per annum, payable annually.

**8304 RATE UPON JUDGMENTS OR INSTRUMENTS CONTAINING STIPULATIONS:** Upon all judgments, decrees or orders rendered on any bond, bill, note or other instrument of writing containing stipulations for the payment of interest in accordance with the provisions of the next preceding Section, interest shall be computed till payment at the rate specified in such instrument.”

**8305 RATE WHEN NO STIPULATION AND IN OTHER CASES:** In cases other than those provided for in the next two preceding Sections, when money becomes due and payable upon any bond, bill, note or other instrument of writing, upon any book account or settlement between parties upon all verbal contracts entered into, and upon all judgments, decrees and order of any judicial tribunal for the payment of money arising out of a contract, or other transaction, the creditor shall be entitled to interest at the rate of four percent per annum and no more.

**11599-1.** On and after \_\_\_\_\_, no Court shall grant a deficiency judgment in any suit for the foreclosure of any mortgage on any real or chattel property, but the replevin or return of the property mortgaged shall be considered full compensation and payment of any loan thereon.

The duties of the Attorney General with respect to proposed initiative petitions are set forth in section 4785-175, General Code, which is in part as follows:

“Whoever seeks to propose a law or constitutional amendment by initiative petition or to file a referendum petition against any law, section, or item in any law, shall by a written petition signed by one hundred qualified electors submit such proposed law, constitutional amendments or measure to be referred, and a summary of same to the attorney general for examination. If, in the opinion of the attorney general the summary is a fair and truthful statement of the proposed law, constitutional amendment or measure to be referred, he shall so certify.”

An examination of the petition submitted shows several material differences between the text and summary. As examples thereof, the following portions of the text have been entirely ignored in the summary :

“\* \* \* such inspection fee shall not be imposed upon the same borrower for any new or additional loan made within four months after such charge has been imposed.”

“Said five percent per annum shall not be *paid in advance* and shall be computed on unpaid monthly balances, *without compounding* interest or charges.” (Italics the writer’s.)

“No bonus, fees, expenses, or demands of any nature whatsoever, other than said inspection fee.”

“No charge or fee shall be made unless the loan is actually made.”

In proposed section 6346-5a, it is provided that interest on any amount in excess of \$300.00 shall not exceed four percentum per annum. This proposed section also contains the following :

“If interest, consideration or charges in excess of those permitted by this act shall be charged, contracted for or received, the contract and all the papers in connection therewith shall be void and the licensee shall have no right to collect or receive any principal, interest or charges whatsoever.”

Said proposed section 8304 provides upon all judgments, decrees or orders, interest shall be computed till payment at the rate specified in such instrument.

In proposed section 11599-1, the effective date has been omitted, and courts prohibited from granting any “deficiency judgment”, and further, that the replevin or return of the property mortgaged shall be considered full compensation and payment of any loan thereon.” The provision contained in the summary is that courts shall be limited in rendering deficiency judgments.

The foregoing differences between text and summary are sufficient,

in my opinion, to prevent my certifying that "the summary is a fair and truthful statement of the proposed law."

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*