



## Interest Rates and Billing Fees

Perhaps no area of law is more confusing than the regulation of interest charges. Interest is defined as the charge on a loan or for the forbearance of money. *Earnes v Barber*, 192 Mich 1; 158 NW 218 (1916). The general rule is that a person may not charge more than 5% interest per year. MCLA 438.31; MSA 19.15(1). However, if both parties agree in writing, up to 7% interest per year may be charged. *Id.* This interest is simple interest and may not be compounded monthly. *See id.* If these general interest rates are exceeded, then *the seller/lender is barred from the recovery of interest, collection charges, attorney fees, and court costs.* MCLA 438.32; MSA 19.15(2). Also, the borrower/buyer is entitled to recover *his attorney fees and court costs from the seller/lender.* *Id.* Furthermore, if one were to charge an interest rate in excess of 25% per year, then that person is guilty of criminal usury and may be imprisoned for up to five years and fined up to \$10,000.00.

There are several exceptions to the general usury rule, however, this article will only discuss the exceptions that may be applicable to the veterinarian. One exception to the general rule is when one enters into an agreement with a business entity. If there is a written agreement between the veterinarian and a business entity, then that agreement may provide for interest up to 15% per year. MCLA 438.61; *Krause v Griffis*, 178 Mich App 111, 443 NW2d 444 (1989).

Another exception to the general rule can be found in the Retail Installment Sales Act (RISA), which was amended in 1996. Where goods or services are purchased primarily for personal, family or household use, then a time price differential may be charged and collected in an amount of interest not exceeded by the Credit Reform Act. MCLA 445.857. The credit reform act permits an interest charge of up to 25% per year. Interest may only be calculated on the unpaid balance. MCLA 445.1854; MSA 23.1300(54). On revolving charge accounts, a rate not exceeding 1.7% per month is permitted. A person that violates RISA is barred from recovering any time price differential and is liable for the other party's attorney fees and court costs if the violation is not the result of a bona fide error. MCLA 445.868. An error in legal judgment is not a bona fide error. MCLA 445.871a. Compliance with the Federal Truth in Lending Act (FTLA) is compliance with the Retail Installment Sales Act. MCLA 445.871a; MSA 19.416(121a). Furthermore, one must comply with

the requirements of the Federal Truth in Lending Act if, pursuant to a written agreement payable in more than four installments, the creditor extended credit at least 25 times in the preceding or current calendar year. 12 CFR 226.2(a)(17).

Finally, what if a veterinarian wants to charge late fees or re-billing fees on unpaid bills above and beyond interest? Would this violate usury laws? Michigan law is currently unclear on this point. However, Michigan does have some case law and an attorney general opinion that appear to state that late charges and re-billing fees would not violate usury laws as long as the fees were reasonably approximate to the additional costs occasioned by the late payments. *See State Mutual Rodded Fire Ins Co v Randall*, 232 Mich 210, 205 NW 165 (1925); MICH ATT'Y GEN BIENNIAL REP at 54 (1977-78).

Considering the complexity of usury law, it is critical that a veterinarian consult an attorney before charging late fees, re-billing fees, or interest of any kind. There are several risks and a veterinarian should be informed before making a decision to charge such fees. Finally, if a veterinarian elects to use RISA or the FTLA, the veterinarian should have an attorney draft the financing document to make sure it complies with the technical requirements of the law.

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