

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 384

Introduced by Lindstrom, 18.

Read first time January 13, 2017

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to the Nebraska Installment Loan Act; to amend
- 2 section 45-1024, Revised Statutes Cumulative Supplement, 2016; to
- 3 change the rate of interest to be charged on installment loans; to
- 4 harmonize provisions; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 45-1024, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 45-1024 (1) Except as provided in section 45-1025 and subsection (6)
4 of this section, every licensee may make loans and may contract for and
5 receive on such loans charges at a rate not exceeding twenty-nine ~~twenty-~~
6 ~~four~~ percent per annum ~~on that part of the unpaid principal balance on~~
7 ~~any loan not in excess of one thousand dollars, and twenty-one percent~~
8 ~~per annum on any remainder of such unpaid principal balance.~~ Except for
9 loans secured by mobile homes, a licensee may not make loans for a period
10 in excess of one hundred forty-five months if the amount of the loan is
11 greater than three thousand dollars but less than twenty-five thousand
12 dollars. Charges on loans made under the Nebraska Installment Loan Act
13 shall not be paid, deducted, or received in advance. The contracting for,
14 charging of, or receiving of charges as provided for in subsection (2) of
15 this section shall not be deemed to be the payment, deduction, or receipt
16 of such charges in advance.

17 (2) When the loan contract requires repayment in substantially equal
18 and consecutive monthly installments of principal and charges combined,
19 the licensee may, at the time the loan is made, precompute the charges at
20 the agreed rate on scheduled unpaid principal balances according to the
21 terms of the contract and add such charges to the principal of the loan.
22 Every payment may be applied to the combined total of principal and
23 precomputed charges until the contract is fully paid. All payments made
24 on account of any loan except for default and deferment charges shall be
25 deemed to be applied to the unpaid installments in the order in which
26 they are due. The portion of the precomputed charges applicable to any
27 particular month of the contract, as originally scheduled or following a
28 deferment, shall be that proportion of such precomputed charges,
29 excluding any adjustment made for a first installment period of more than
30 one month and any adjustment made for deferment, which the balance of the
31 contract scheduled to be outstanding during such month bears to the sum

1 of all monthly balances originally scheduled to be outstanding by the
2 contract. This section shall not limit or restrict the manner of
3 calculating charges, whether by way of add-on, single annual rate, or
4 otherwise, if the rate of charges does not exceed that permitted by this
5 section. Charges may be contracted for and earned at a single annual
6 rate, except that the total charges from such rate shall not be greater
7 than the total charges from the rate ~~several rates~~ otherwise provided for
8 in ~~applicable to the different portions of the unpaid balance according~~
9 ~~to~~ subsection (1) of this section. All loan contracts made pursuant to
10 this subsection are subject to the following adjustments:

11 (a) Notwithstanding the requirement for substantially equal and
12 consecutive monthly installments, the first installment period may not
13 exceed one month by more than twenty-one days and may not fall short of
14 one month by more than eleven days. The charges for each day exceeding
15 one month shall be one-thirtieth of the charges which would be applicable
16 to a first installment period of one month. The charge for extra days in
17 the first installment period may be added to the first installment and
18 such charges for such extra days shall be excluded in computing any
19 rebate;

20 (b) If prepayment in full by cash, a new loan, or otherwise occurs
21 before the first installment due date, the charges shall be recomputed at
22 the rate of charges contracted for in accordance with subsection (1) or
23 (2) of this section upon the actual unpaid principal balances of the loan
24 for the actual time outstanding by applying the payment, or payments,
25 first to charges at the agreed rate and the remainder to the principal.
26 The amount of charges so computed shall be retained in lieu of all
27 precomputed charges;

28 (c) If a contract is prepaid in full by cash, a new loan, or
29 otherwise after the first installment due date, the borrower shall
30 receive a rebate of an amount which is not less than the amount obtained
31 by applying to the unpaid principal balances as originally scheduled or,

1 if deferred, as deferred, for the period following prepayment, according
2 to the actuarial method, the rate of charge contracted for in accordance
3 with subsection (1) or (2) of this section. The licensee may round the
4 rate of charge to the nearest one-half of one percent if such procedure
5 is not consistently used to obtain a greater yield than would otherwise
6 be permitted. Any default and deferment charges which are due and unpaid
7 may be deducted from any rebate. No rebate shall be required for any
8 partial prepayment. No rebate of less than one dollar need be made.
9 Acceleration of the maturity of the contract shall not in itself require
10 a rebate. If judgment is obtained before the final installment date, the
11 contract balance shall be reduced by the rebate which would be required
12 for prepayment in full as of the date judgment is obtained;

13 (d) If any installment on a precomputed or interest bearing loan is
14 unpaid in full for ten or more consecutive days, Sundays and holidays
15 included, after it is due, the licensee may charge and collect a default
16 charge not exceeding an amount equal to five percent of such installment.
17 If any installment payment is made by a check, draft, or similar signed
18 order which is not honored because of insufficient funds, no account, or
19 any other reason except an error of a third party to the loan contract,
20 the licensee may charge and collect a fifteen-dollar bad check charge.
21 Such default or bad check charges may be collected when due or at any
22 time thereafter;

23 (e) If, as of an installment due date, the payment date of all
24 wholly unpaid installments is deferred one or more full months and the
25 maturity of the contract is extended for a corresponding period, the
26 licensee may charge and collect a deferment charge not exceeding the
27 charge applicable to the first of the installments deferred, multiplied
28 by the number of months in the deferment period. The deferment period is
29 that period during which no payment is made or required by reason of such
30 deferment. The deferment charge may be collected at the time of deferment
31 or at any time thereafter. The portion of the precomputed charges

1 applicable to each deferred balance and installment period following the
2 deferment period shall remain the same as that applicable to such balance
3 and periods under the original loan contract. No installment on which a
4 default charge has been collected, or on account of which any partial
5 payment has been made, shall be deferred or included in the computation
6 of the deferment charge unless such default charge or partial payment is
7 refunded to the borrower or credited to the deferment charge. Any payment
8 received at the time of deferment may be applied first to the deferment
9 charge and the remainder, if any, applied to the unpaid balance of the
10 contract, except that if such payment is sufficient to pay, in addition
11 to the appropriate deferment charge, any installment which is in default
12 and the applicable default charge, it shall be first so applied and any
13 such installment shall not be deferred or subject to the deferment
14 charge. If a loan is prepaid in full during the deferment period, the
15 borrower shall receive, in addition to the required rebate, a rebate of
16 that portion of the deferment charge applicable to any unexpired full
17 month or months of such deferment period; and

18 (f) If two or more full installments are in default for one full
19 month or more at any installment date and if the contract so provides,
20 the licensee may reduce the contract balance by the rebate which would be
21 required for prepayment in full as of such installment date and the
22 amount remaining unpaid shall be deemed to be the unpaid principal
23 balance and thereafter in lieu of charging, collecting, receiving, and
24 applying charges as provided in this subsection, charges may be charged,
25 collected, received, and applied at the agreed rate as otherwise provided
26 by this section until the loan is fully paid.

27 (3) The charges, as referred to in subsection (1) of this section,
28 shall not be compounded. The charging, collecting, and receiving of
29 charges as provided in subsection (2) of this section shall not be deemed
30 compounding. If part or all of the consideration for a loan contract is
31 the unpaid principal balance of a prior loan, then the principal amount

1 payable under such loan contract may include any unpaid charges on the
2 prior loan which have accrued within sixty days before the making of such
3 loan contract and may include the balance remaining after giving the
4 rebate required by subsection (2) of this section. Except as provided in
5 subsection (2) of this section, charges shall (a) be computed and paid
6 only as a percentage per month of the unpaid principal balance or
7 portions thereof and (b) be computed on the basis of the number of days
8 actually elapsed. For purposes of computing charges, whether at the
9 maximum rate or less, a month shall be that period of time from any date
10 in a month to the corresponding date in the next month but if there is no
11 such corresponding date then to the last day of the next month, and a day
12 shall be considered one-thirtieth of a month when computation is made for
13 a fraction of a month.

14 (4) Except as provided in subsections (5) and (6) of this section,
15 in addition to that provided for under the Nebraska Installment Loan Act,
16 no further or other amount whatsoever shall be directly or indirectly
17 charged, contracted for, or received. If any amount, in excess of the
18 charges permitted, is charged, contracted for, or received, the loan
19 contract shall not on that account be void, but the licensee shall have
20 no right to collect or receive any interest or other charges whatsoever.
21 If such interest or other charges have been collected or contracted for,
22 the licensee shall refund to the borrower all interest and other charges
23 collected and shall not collect any interest or other charges contracted
24 for and thereafter due on the loan involved, as liquidated damages, and
25 the licensee or its assignee, if found liable, shall pay the costs of any
26 action relating thereto, including reasonable attorney's fees. No
27 licensee shall be found liable under this subsection if the licensee
28 shows by a preponderance of the evidence that the violation was not
29 intentional and resulted from a bona fide error notwithstanding the
30 maintenance of procedures reasonably adopted to avoid any such error.

31 (5) A borrower may be required to pay all reasonable expenses

1 incurred in connection with the making, closing, disbursing, extending,
2 readjusting, or renewing of loans. Such expenses may include abstracting,
3 recording, releasing, and registration fees; premiums paid for nonfiling
4 insurance; premiums paid on insurance policies covering tangible personal
5 property securing the loan; amounts charged for a debt cancellation
6 contract or a debt suspension contract, as agreed upon by the parties, if
7 the debt cancellation contract or debt suspension contract is a contract
8 of a financial institution or licensee and such contract is sold directly
9 by such financial institution or licensee or by an unaffiliated,
10 nonexclusive agent of such financial institution or licensee in
11 accordance with 12 C.F.R. part 37, as such part existed on January 1,
12 2011, and the financial institution or licensee is responsible for the
13 unaffiliated, nonexclusive agent's compliance with such part; title
14 examinations; credit reports; survey; taxes or charges imposed upon or in
15 connection with the making and recording or releasing of any mortgage;
16 amounts charged for a guaranteed asset protection waiver; and fees and
17 expenses charged for electronic title and lien services. Except as
18 provided in subsection (6) of this section, a borrower may also be
19 required to pay a nonrefundable loan origination fee not to exceed the
20 lesser of five hundred dollars or an amount equal to seven percent of
21 that part of the original principal balance of any loan not in excess of
22 two thousand dollars and five percent on that part of the original
23 principal balance in excess of two thousand dollars, if the licensee has
24 not made another loan to the borrower within the previous twelve months.
25 If the licensee has made another loan to the borrower within the previous
26 twelve months, a nonrefundable loan origination fee may only be charged
27 on new funds advanced on each successive loan. Such reasonable initial
28 charges may be collected from the borrower or included in the principal
29 balance of the loan at the time the loan is made and shall not be
30 considered interest or a charge for the use of the money loaned.

31 (6)(a) Loans secured solely by real property that are not made

1 pursuant to subdivision (11) of section 45-101.04 on real property shall
2 not be subject to the limitation ~~limitations~~ on the rate of interest
3 provided in subsection (1) of this section or the limitations on the
4 nonrefundable loan origination fee under subsection (5) of this section
5 if (i) the principal amount of the loan is seven thousand five hundred
6 dollars or more and (ii) the sum of the principal amount of the loan and
7 the balances of all other liens against the property do not exceed one
8 hundred percent of the appraised value of the property. Acceptable
9 methods of determining appraised value shall be made by the department
10 pursuant to rule, regulation, or order.

11 (b) An origination fee on such loan shall be computed only on the
12 principal amount of the loan reduced by any portion of the principal that
13 consists of the amount required to pay off another loan made under this
14 subsection by the same licensee.

15 (c) A prepayment penalty on such loan shall be permitted only if (i)
16 the maximum amount of the penalty to be assessed is stated in writing at
17 the time the loan is made, (ii) the loan is prepaid in full within two
18 years from the date of the loan, and (iii) the loan is prepaid with money
19 other than the proceeds of another loan made by the same licensee. Such
20 prepayment penalty shall not exceed six months interest on eighty percent
21 of the original principal balance computed at the agreed rate of interest
22 on the loan.

23 (d) A licensee making a loan pursuant to this subsection may obtain
24 an interest in any fixtures attached to such real property and any
25 insurance proceeds payable in connection with such real property or the
26 loan.

27 (e) For purposes of this subsection, principal amount of the loan
28 means the total sum owed by the borrower including, but not limited to,
29 insurance premiums, loan origination fees, or any other amount that is
30 financed, except that for purposes of subdivision (6)(b) of this section,
31 loan origination fees shall not be included in calculating the principal

1 amount of the loan.

2 Sec. 2. Original section 45-1024, Revised Statutes Cumulative

3 Supplement, 2016, is repealed.