

**45-1001**

***Act, how cited.***

Sections 45-1001 to 45-1069 shall be known and may be cited as the Nebraska Installment Loan Act.

**Last amended:**

Laws 2005, LB 533, § 57

~ Revised Statutes Supplement 2005

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**45-1002**

***Terms, defined; act; applicability.***

(1) For purposes of the Nebraska Installment Loan Act:

(a) Applicant means a person applying for a license under the act;

(b) Department means the Department of Banking and Finance;

(c) Director means the Director of Banking and Finance;

(d) Financial institution has the same meaning as in section 8-101;

(e) Licensee means any person who obtains a license under the act; and

(f) Person means individual, partnership, limited liability company, association, financial institution, trust, corporation, and any other legal entity.

(2) Except as provided in subsection (3) of section 45-1017, no revenue arising under the act shall inure to any school fund of the State of Nebraska or any of its governmental subdivisions.

(3) Loan, when used in the Nebraska Installment Loan Act, does not include any loan made by a person who is not a licensee on which the interest does not exceed the maximum rate permitted by section 45-101.03.

(4) Nothing in the Nebraska Installment Loan Act applies to any loan made by a person who is not a licensee if the interest on the loan does not exceed the maximum rate permitted by section 45-101.03.

**Last amended:**

Laws 2003, LB 131, § 30

Laws 2003, LB 217, § 38

~ Reissue Revised Statutes of Nebraska

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**45-1003**

***Installment loans; financial institution ineligible.***

No financial institution is eligible for a license or to make loans under the Nebraska Installment Loan Act.

**Last amended:**

Laws 2003, LB 131, § 31

Laws 2003, LB 217, § 39

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**45-1004**

***Installment loans; authority of licensee; affiliate of licensee; how treated.***

(1) Any person may, after procuring a license from the department, engage or continue in the business of making loans of money and charge, contract for, and receive the maximum for interest and other charges in accordance with the authorization and requirements of the Nebraska Installment Loan Act.

(2)(a) A license is not required for an affiliate of a licensee if the activities of the affiliate in this state are limited solely to the securitization of loans made by the licensee and the servicing rights to the loans are retained by the licensee or assigned or otherwise transferred to a financial institution, licensee, or permittee.

(b) For purposes of this subsection:

(i) Affiliate means an entity that controls, is controlled by, or is under common control with another entity;

(ii) Control means to own directly or indirectly or to control in any manner twenty-five percent of the voting shares of an entity or to control in any manner the election of the majority of directors of any entity; and

(iii) Securitization means the placing of individual installment loans made by licensees into a commingled or pooled security that is subsequently sold or otherwise transferred to

another entity.

(c) Nothing in this subsection shall be construed to exempt a licensee or affiliate from the Securities Act of Nebraska.

**Last amended:**

Laws 2001, LB 53, § 32

**Cross References:**

Securities Act of Nebraska, see section 8-1123.

~ Reissue Revised Statutes of Nebraska

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**45-1005**

***Installment loans; license; application; fee.***

Any person who desires to obtain an original license to engage in the business of lending money under the terms and conditions of the Nebraska Installment Loan Act shall apply to the department for the license under oath, on forms prescribed by the department, and pay an original license fee of five hundred dollars. If the applicant is an individual, the application shall include the applicant's social security number.

**Last amended:**

Laws 2005, LB 533, § 58

~ Revised Statutes Supplement 2005

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**45-1006**

***Installment loans; application hearing; protest; procedure.***

(1) Except as provided in subsection (2) of this section, a hearing shall be held on every application for an original license under the Nebraska Installment Loan Act. The hearing shall be held not less than thirty days after the filing of the application, and notice of the filing of the application shall be published by the department three successive weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the business of lending money. Written protest against the issuance of the license may be filed with the department by any person not less than five days before the date set for hearing. The director, in his or her discretion, may grant a continuance. The director may reject any application for license after hearing. The director shall, in his or her discretion, make examination and inspection concerning the propriety of the issuance of a license to any applicant. The cost of such examination and inspection shall be paid by the

applicant.

(2) The director may waive the hearing requirements of subsection (1) of this section if (a) the applicant has held, and operated under, a license to engage in the business of lending money in Nebraska pursuant to the act for at least one calendar year immediately prior to the filing of the application, (b) no written protest against the issuance of the license has been filed with the department within fifteen days after publication of a notice of the filing of the application one time in a newspaper of general circulation in the county where the applicant proposes to operate the business of lending money, and (c) in the judgment of the director, the experience, character, and general fitness of the applicant warrant the belief that the applicant will comply with the act.

(3) The expense of any publication made pursuant to this section shall be paid by the applicant.

**Last amended:**

Laws 2005, LB 533, § 59

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**45-1007**

***Installment loans; license; bond.***

(1) Except as otherwise provided in this section, a license shall not be issued until the applicant gives to the department a bond in the penal sum of fifty thousand dollars to be executed by the applicant and a surety company authorized to do business in the State of Nebraska, conditioned for the faithful performance by the applicant, as a licensee, of the duties and obligations pertaining to the business of lending money and the prompt payment of any judgment recovered against the applicant, as a licensee, under the Nebraska Installment Loan Act.

(2) A person licensed prior to August 31, 2003, shall maintain a bond as set forth in subsection (1) of this section, except that the penal sum of such bond shall be two thousand dollars until March 1, 2004, at which time the penal sum shall be fifty thousand dollars.

(3) The bond or a substitute bond shall remain in effect or the licensee shall immediately cease making loans and the license shall be canceled by the director.

**Last amended:**

Laws 2003, LB 218, § 13

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**45-1008**

***License; issuance; requirements.***

Upon the filing of an application under the Nebraska Installment Loan Act, the payment of the license fee, and the approval of the required bond, the director shall investigate the facts regarding the applicant. If the director finds that (1) the experience, character, and general fitness of the applicant, of the applicant's partners or members if the applicant is a partnership, limited liability company, or association, and of the applicant's officers and directors if the applicant is a corporation, are such as to warrant belief that the applicant will operate the business honestly, fairly, and efficiently within the purposes of the act, and (2) allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted, the department shall issue and deliver an original license to the applicant to make loans at the location specified in the application, in accordance with the act. The license shall remain in full force and effect until the following March 1 and from year to year thereafter, if and when renewed under the act, until it is surrendered by the licensee or canceled, suspended, or revoked under the act.

**Last amended:**

Laws 2001, LB 53, § 36

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**45-1009**

***License; application; grant or denial; time allowed.***

The department shall approve or deny every application for license under section 45-1008 within ninety days after the filing of an application, if the application is substantially complete and is accompanied by the required fees and the approved bond.

**Last amended:**

Laws 2001, LB 53, § 37

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**45-1010**

***Installment loans; licenses; limitations as to business and persons.***

Not more than one place of business shall be maintained under the same license, but more than one license may be issued to the same licensee upon compliance with all provisions of the Nebraska Installment Loan Act governing the issuance of an original license, for each such new license.

**Last amended:**

Laws 2001, LB 53, § 38

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**45-1011**

***Installment loans; place of business; separate office required; exceptions; enforcement.***

No licensee shall conduct the business of making loans under the Nebraska Installment Loan Act within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction with any other business, if the director finds that the other business is of such nature that the conducting of such other business tends to conceal evasion of the act or of the rules and regulations adopted and promulgated under the act. In such case, the director shall order such licensee in writing to cease and desist from such conduct.

**Last amended:**

Laws 2001, LB 53, § 39

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**45-1012**

***Licensee; service of process.***

Obtaining a license constitutes sufficient contact with this state for the exercise of personal jurisdiction over the licensee in any action arising out of the licensee's activity in this state.

**Last amended:**

Laws 2001, LB 53, § 40

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**45-1013**

***Installment loans; license; renewal; fees.***

For the annual renewal of an original license under the Nebraska Installment Loan Act, the licensee shall file with the department a fee of two hundred fifty dollars and a renewal application containing such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications.

**Last amended:**

Laws 2005, LB 533, § 60

~ Revised Statutes Supplement 2005

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**45-1014**

***Installment loans; fees; disposition.***

All original license fees and annual renewal fees shall be collected by the department and remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund pursuant to sections 8-601 and 8-602. All investigation and examination fees, charges, and costs collected by or paid to the department shall likewise be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund pursuant to sections 8-601 and 8-602 and shall be available for the uses and purposes of the fund.

**Last amended:**

Laws 2001, LB 53, § 42

~ Reissue Revised Statutes of Nebraska

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**45-1015**

***Installment loans; doing business without license; penalty.***

Any person who, by any device, subterfuge, or pretense whatsoever, engages in or continues any of the kinds of business or enterprise permitted to licensees by the Nebraska Installment Loan Act without having obtained the license required by the act, with intent to evade the provisions of the act, is guilty of a Class I misdemeanor.

**Last amended:**

Laws 2001, LB 53, § 43

~ Reissue Revised Statutes of Nebraska

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**45-1016**

***Installment loans; rules and regulations; power of Department of Banking and Finance.***

The director may adopt and promulgate rules and regulations and issue orders, rulings, demands, and findings to carry out the purposes of the Nebraska Installment Loan Act.

**Last amended:**

Laws 2001, LB 53, § 44

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**45-1017**

***Licensees; business, records, and accounts; inspection; expenses; fines; lien.***

(1) The department shall inspect the business, records, and accounts of all persons that lend money subject to the Nebraska Installment Loan Act. The department may examine or investigate complaints about or reports of alleged violations by a licensee made to the department. The department may inspect and investigate the business, records, and accounts of all persons in the public business of lending money contrary to the act and who do not have a license under the act. The director may appoint examiners who shall, under his or her direction, investigate the loans and business and examine the books and records of licensees annually and more often as determined by the director. The expenses incurred by the department in examining the books and records of licensees and in administering the act during each calendar year shall be charged annually to each licensee by the department as soon as reasonably possible after the examination. Such expenses shall be charged in proportion to the number of days required to examine and supervise the books and records of the respective licensees.

(2) Upon receipt by a licensee of a notice of investigation or inquiry request for information from the department, the licensee shall respond within twenty-one calendar days. Each day a licensee fails to respond as required by this subsection constitutes a separate violation.

(3) If the director finds, after notice and opportunity for hearing in accordance with the Administrative Procedure Act, that any person has willfully and intentionally violated any provision of the Nebraska Installment Loan Act, any rule or regulation adopted and promulgated under the act, or any order issued under the act, the director may order such person to pay (a) an administrative fine of not more than one thousand dollars for each separate violation and (b) the costs of investigation. All fines collected by the department pursuant to this subsection shall be remitted to the State Treasurer for credit to the

permanent school fund.

(4) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection (3) of this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs constitutes a separate violation of the act.

**Last amended:**

Laws 2004, LB 999, § 38

**Cross References:**

Administrative Procedure Act, see section 84-920.

~ Reissue Revised Statutes of Nebraska

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**45-1018**

***Licensees; annual reports.***

A licensee shall on or before March 1 of each year file with the department a report of the licensee's earnings and operations for the preceding calendar year, and its assets at the end of the year, and giving such other relevant information as the department may reasonably require. The report shall be made under oath and shall be in the form and manner prescribed by the department.

**Last amended:**

Laws 2004, LB 999, § 39

~ Reissue Revised Statutes of Nebraska

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**45-1019**

***Licensees; unfair practices; enforcement.***

The director shall, upon ten days' notice to the licensee or other person stating the contemplated action and in general the grounds for the action, and upon reasonable opportunity to be heard, order any licensee or other person to cease and desist from any practice which the director finds is in violation of the

Nebraska Installment Loan Act or the rules and regulations adopted and promulgated under the act.

**Last amended:**

Laws 2001, LB 53, § 47

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**45-1020**

***Misleading advertising prohibited; enforcement.***

No licensee or other person subject to the Nebraska Installment Loan Act shall advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast in any manner whatsoever any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action. The director may order any licensee to cease and desist from any conduct which he or she finds to be a violation of this section. The director may require that rates of charge, if stated by a licensee, be stated fully and clearly in such manner as the director deems necessary to prevent misunderstanding by prospective borrowers.

**Last amended:**

Laws 2001, LB 53, § 48

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**45-1021**

***Installment loans; interest, defined.***

The payment in money, credit, goods, or things in action, as consideration for any sale or assignment of, or order for, the payment of wages, salary, commission, or other compensation for services, whether earned or to be earned, shall, for purposes of regulation under the Nebraska Installment Loan Act, be deemed a loan secured by such assignment, and the amount by which the assigned compensation exceeds the amount of the consideration actually paid, shall, for the purposes of regulation under the act, be deemed interest or charges upon the loan from the date of payment to the date the compensation is payable. Such transaction shall be governed by and be subject to the act.

**Last amended:**

Laws 2001, LB 53, § 49

~ Reissue Revised Statutes of Nebraska

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**45-1022**

***Installment loans; payment in advance; application of payments.***

Every licensee shall permit payment to be made in advance in any amount equal to one or more full installments on any loan contract at any time during regular business hours, but the licensee may apply such payment first to all accrued charges in full up to the date of such payment.

**Last amended:**

Laws 2001, LB 53, § 50

~ Reissue Revised Statutes of Nebraska

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**45-1023**

***Installment loans; false statement to secure; penalty.***

Any person who makes a false statement to secure a loan is guilty of a Class III misdemeanor. The punishment shall not be exacted, however, when such a loan is made after the licensee is aware of the falsity of the statement.

**Last amended:**

Laws 2001, LB 53, § 51

~ Reissue Revised Statutes of Nebraska

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**45-1024**

***Installment loans; interest rate authorized; charges permitted; computation; application of payments; violations; restrictions.***

(1) Except as provided in section 45-1025 and subsection (6) of this section, every licensee may make loans and may contract for and receive on such loans charges at a rate not exceeding twenty-four percent per annum on that part of the unpaid principal balance on any loan not in excess of one thousand dollars, and twenty-one percent per annum on any remainder of such unpaid principal balance. Except for loans secured by mobile homes, a licensee may not make loans for a period in excess of one hundred forty-five months if the amount of the loan is greater than three thousand dollars but less than twenty-five thousand dollars. Charges on loans made under the Nebraska Installment Loan Act shall not be paid, deducted, or received in advance. The contracting for, charging of, or receiving of charges as provided

for in subsection (2) of this section shall not be deemed to be the payment, deduction, or receipt of such charges in advance.

(2) When the loan contract requires repayment in substantially equal and consecutive monthly installments of principal and charges combined, the licensee may, at the time the loan is made, precompute the charges at the agreed rate on scheduled unpaid principal balances according to the terms of the contract and add such charges to the principal of the loan. Every payment may be applied to the combined total of principal and precomputed charges until the contract is fully paid. All payments made on account of any loan except for default and deferment charges shall be deemed to be applied to the unpaid installments in the order in which they are due. The portion of the precomputed charges applicable to any particular month of the contract, as originally scheduled or following a deferment, shall be that proportion of such precomputed charges, excluding any adjustment made for a first installment period of more than one month and any adjustment made for deferment, which the balance of the contract scheduled to be outstanding during such month bears to the sum of all monthly balances originally scheduled to be outstanding by the contract. This section shall not limit or restrict the manner of calculating charges, whether by way of add-on, single annual rate, or otherwise, if the rate of charges does not exceed that permitted by this section. Charges may be contracted for and earned at a single annual rate, except that the total charges from such rate shall not be greater than the total charges from the several rates otherwise applicable to the different portions of the unpaid balance according to subsection (1) of this section. All loan contracts made pursuant to this subsection are subject to the following adjustments:

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

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

(c) If a contract is prepaid in full by cash, a new loan, or

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

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

(e) If, as of an installment due date, the payment date of all wholly unpaid installments is deferred one or more full months and the maturity of the contract is extended for a corresponding period, the licensee may charge and collect a deferment charge not exceeding the charge applicable to the first of the installments deferred, multiplied by the number of months in the deferment period. The deferment period is that period during which no payment is made or required by reason of such deferment. The deferment charge may be collected at the time of deferment or at any time thereafter. The portion of the precomputed charges applicable to each deferred balance and installment period following the deferment period shall remain the same as that applicable to such balance and periods under the original loan contract. No installment on which a default charge has been collected, or on account of which any partial payment has been made, shall be deferred or included in the computation of the deferment charge unless such default charge or partial payment is refunded to the borrower or credited to the deferment charge. Any payment received at the time of deferment may be applied first to the deferment charge and the remainder, if any, applied to the unpaid balance of the contract, except that if such payment is sufficient to pay, in addition to the appropriate deferment charge, any installment which is in default and the applicable

default charge, it shall be first so applied and any such installment shall not be deferred or subject to the deferment charge. If a loan is prepaid in full during the deferment period, the borrower shall receive, in addition to the required rebate, a rebate of that portion of the deferment charge applicable to any unexpired full month or months of such deferment period; and

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

(3) The charges, as referred to in subsection (1) of this section, shall not be compounded. The charging, collecting, and receiving of charges as provided in subsection (2) of this section shall not be deemed compounding. If part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under such loan contract may include any unpaid charges on the prior loan which have accrued within sixty days before the making of such loan contract and may include the balance remaining after giving the rebate required by subsection (2) of this section. Except as provided in subsection (2) of this section, charges shall (a) be computed and paid only as a percentage per month of the unpaid principal balance or portions thereof and (b) be computed on the basis of the number of days actually elapsed. For purposes of computing charges, whether at the maximum rate or less, a month shall be that period of time from any date in a month to the corresponding date in the next month but if there is no such corresponding date then to the last day of the next month, and a day shall be considered one-thirtieth of a month when computation is made for a fraction of a month.

(4) Except as provided in subsections (5) and (6) of this section, in addition to that provided for under the Nebraska Installment Loan Act, no further or other amount whatsoever shall be directly or indirectly charged, contracted for, or received. If any amount, in excess of the charges permitted, is charged, contracted for, or received, the loan contract shall not on that account be void, but the licensee shall have no right to collect or receive any interest or other charges whatsoever. If such interest or other charges have been collected or contracted for, the licensee shall refund to the borrower all interest and other charges collected and shall not collect any interest or other charges contracted for and thereafter due on the loan involved, as liquidated damages, and the licensee or its assignee, if found liable, shall pay the costs of any action relating thereto,

including reasonable attorney's fees. No licensee shall be found liable under this subsection if the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

(5) A borrower may be required to pay all reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of loans. Such expenses may include abstracting, recording, releasing, and registration fees, premiums paid for nonfiling insurance, premiums paid on insurance policies covering tangible personal property securing the loan, title examinations, credit reports, survey, and taxes or charges imposed upon or in connection with the making and recording or releasing of any mortgage. Except as provided in subsection (6) of this section, a borrower may also be required to pay a nonrefundable loan origination fee not to exceed the lesser of five hundred dollars or an amount equal to seven percent of that part of the original principal balance of any loan not in excess of two thousand dollars and five percent on that part of the original principal balance in excess of two thousand dollars, if the licensee has not made another loan to the borrower within the previous twelve months. If the licensee has made another loan to the borrower within the previous twelve months, a nonrefundable loan origination fee may only be charged on new funds advanced on each successive loan. Such reasonable initial charges may be collected from the borrower or included in the principal balance of the loan at the time the loan is made and shall not be considered interest or a charge for the use of the money loaned.

(6) (a) Loans secured solely by real property that are not made pursuant to subdivision (11) of section 45-101.04 on real property, as that term is defined in section 45-702, shall not be subject to the limitations on the rate of interest provided in subsection (1) of this section or the limitations on the nonrefundable loan origination fee under subsection (5) of this section if (i) the principal amount of the loan is seven thousand five hundred dollars or more and (ii) the sum of the principal amount of the loan and the balances of all other liens against the property do not exceed one hundred percent of the appraised value of the property. Acceptable methods of determining appraised value shall be made by the department pursuant to rule, regulation, or order.

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

(c) A prepayment penalty on such loan shall be permitted only if (i) the maximum amount of the penalty to be assessed is stated

in writing at the time the loan is made, (ii) the loan is prepaid in full within two years from the date of the loan, and (iii) the loan is prepaid with money other than the proceeds of another loan made by the same licensee. Such prepayment penalty shall not exceed six months interest on eighty percent of the original principal balance computed at the agreed rate of interest on the loan.

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

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

**Last amended:**

Laws 2005, LB 533, § 61

~ Revised Statutes Supplement 2005

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**45-1025**

***Installment loans; additional charges authorized; loan period; violation; effect.***

(1) Licensees may charge, contract for, or receive any amount or rate of interest permitted by section 45-101.03, 45-101.04, or 45-1024 upon any loan or upon any part or all of any aggregate indebtedness of the same person. Except as provided in subsection (2) of this section, the charging, contracting for, or receiving of a rate of interest permitted by section 45-101.04 does not exempt the licensee from compliance with the Nebraska Installment Loan Act.

(2)(a) Loans made by a licensee pursuant to subdivision (4) of section 45-101.04 are not subject to the Nebraska Installment Loan Act if such loans are not made on real property, as that term is defined in section 45-702.

(b) Loans made by a licensee pursuant to subdivision (11) of section 45-101.04 on real property, as that term is defined in section 45-702, are not subject to the Nebraska Installment Loan Act. A licensee making such loans shall comply with and be subject to the Mortgage Bankers Registration and Licensing Act with respect to such loans, except that the licensee shall not be required to obtain a license under the Mortgage Bankers Registration and Licensing Act.

(3) Except as provided in subdivision (2)(a) of section 45-1024, no licensee shall enter into any loan contract under the Nebraska Installment Loan Act under which the borrower agrees to make any payment of principal more than thirty-six calendar months from the date of making such contract when the principal balance is not more than three thousand dollars. Every loan contract precomputed pursuant to subsection (2) of section 45-1024 shall provide for repayment of principal and charges in installments which shall be payable at approximately equal periodic intervals of time and so arranged that no installment is substantially greater in amount than any preceding installment. When necessary in order to facilitate payment in accordance with the borrower's principal source of income or when the loan contract is not precomputed pursuant to subsection (2) of section 45-1024, the payment schedule may reduce or omit installment payments. Any loan contract made in violation of this section, either knowingly or without the exercise of due care to prevent the violation, shall not on that account be void, but the licensee has no right to collect or receive any interest or charges on such loan. If any interest or other charges have been collected or contracted for, the licensee shall refund to the borrower all interest and other charges collected and shall not collect thereafter any interest or other charges contracted for and thereafter due on the loan involved, as liquidated damages, and the licensee or its assignee, if found liable, shall pay the costs of any action relating thereto, including reasonable attorney's fees. No licensee shall be found liable under this subsection if the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

**Last amended:**

Laws 2004, LB 999, § 41

**Cross References:**

Mortgage Bankers Registration and Licensing Act, see section 45-701.

~ Reissue Revised Statutes of Nebraska

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**45-1026**

***Installment loans; insurance upon security; licensee may require; restrictions; refunds; when.***

(1) The following types of insurance or one or more of the following types of insurance may be written in connection with loans made by licensees under the Nebraska Installment Loan Act:

(a) Fire, theft, windstorm, or comprehensive, including fire,

theft, and windstorm, fifty dollars or more deductible collision, and bodily injury liability and property damage liability upon motor vehicles;

(b) Fire and extended-coverage insurance upon real property;

(c) Fire and extended-coverage insurance upon tangible personal property, limited to the principal amount of the loan;

(d) Involuntary unemployment or job protection insurance. In the event of a renewal of a loan contract, this type of insurance shall be canceled and a refund of the unearned premium credited or made before new insurance of this type may be rewritten. Such insurance shall not be required as a condition precedent to the making of such loan; and

(e) Life, health, and accident insurance or any of them, except that the amount of such insurance shall not exceed the total amount to be repaid under the loan contract and the term shall not extend beyond the final maturity date of the loan contract. In the event of a renewal of a loan contract, this type of insurance shall be canceled and a refund of the unearned premium credited or made before new insurance of this type may be written in connection with such loan. Such insurance shall not be required as a condition precedent to the making of such loan.

(2) In addition to the types of insurance written under subsection (1) of this section by licensees under the act, any other type of insurance may be written for a licensee's borrower or the borrower's immediate family whether or not in connection with a loan, except that such insurance shall not be required as a condition precedent to the making of any loan. Nothing in this subsection alters or eliminates any insurance licensing requirements.

(3) Notwithstanding sections 45-1024 and 45-1025, any gain or advantage, in the form of commission or otherwise, to the licensee or to any employee, affiliate, or associate of the licensee from such insurance or its sale shall not be deemed to be an additional or further charge in connection with the loan contract. The insurance premium for such insurance may be collected from the borrower or included in the loan contract at the time the loan is made.

(4) Insurance permitted under this section shall be obtained through a duly licensed insurance agent, agency, or broker. Premiums shall not exceed those fixed by law or current applicable manual rates. Insurance written, as authorized by this section, may contain a mortgage clause or other appropriate provision to protect the insurable interest of the licensee.

(5) In the event of a renewal of a loan contract, any insurance sold pursuant to this section shall be canceled and (a) a refund of the unearned premium credited or made before new insurance of the same type as that being canceled may be rewritten or (b) the holder of the loan contract shall send notice to the buyer within fifteen business days after cancellation of the name, address, and telephone number of the insurance company which issued the insurance contract or the party responsible for any refund and notice that the buyer may be eligible for a refund. A copy of such notice shall be retained by the holder of the loan contract.

(6) If any insurance sold pursuant to this section is canceled or the premium adjusted during the term of the loan contract, any refund of the insurance premium plus the unearned interest thereon received by the holder shall be credited by the holder to the loan contract or otherwise refunded, except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder or either of them.

(7) If any insurance sold pursuant to this section is canceled due to the payment of all sums for which the buyer is liable under a loan contract, the holder of the loan contract shall, upon receipt of payment of all sums due, send notice to the buyer within fifteen business days after payment of the sums due of the name, address, and telephone number of the insurance company which issued the insurance contract or the party responsible for any refund and notice that the buyer may be eligible for a refund. A copy of such notice shall be retained by the holder of the loan contract. This subsection does not apply if the holder of the loan contract previously credited the refund of the insurance premium to the loan contract or otherwise refunded the insurance premium to the buyer.

**Last amended:**

Laws 2002, LB 957, § 23

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**45-1027**

***Installment loans; insurance procured through licensee; statement.***

The licensee shall, at the time the loan is made, give to the borrower, or if more than one, to one of them, a statement concerning any insurance procured by or through the licensee, which includes the amount of any premium which the borrower has paid or is obligated to pay, the amount, the expiration date of the policy, and a concise description of the risks insured. If a borrower procures insurance by or through a licensee, the licensee shall deliver to the borrower within fifteen days after the making of the loan an executed copy of the insurance policy

or certificate of insurance.

**Last amended:**

Laws 2001, LB 53, § 55

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**45-1028**

***Installment loans; assignments of wages or security agreement in blank; prohibited.***

No licensee shall receive any security agreement or assignment of salary or wages signed in blank. All blank spaces shall be filled in with ink or typewritten or printed with the proper names and amounts showing the name of the person by whom the individual making the conveyance or assignment is employed. No assignment or order for wages is valid if it contains an amount in excess of the sum borrowed together with the interest and charges as provided in the Nebraska Installment Loan Act.

**Last amended:**

Laws 2001, LB 53, § 56

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**45-1029**

***Installment loans; power of attorney and instruments with blanks prohibited.***

No licensee shall take a power of attorney, or any instrument signed by an attorney in fact and not personally, or any instrument signed in which blanks are left to be filled after execution.

**Last amended:**

Laws 2001, LB 53, § 57

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**45-1030**

***Installment loans; assignment of wages; consent of spouse necessary.***

No assignment of or order for wages to secure a loan or advancement is valid when made by a married man or woman unless the written consent of the wife or husband to the making of such loan is attached thereto.

**Last amended:**

Laws 2001, LB 53, § 58

**Cross References:**

For other provisions for execution of assignments of wages, see section 36-213.

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**45-1031**

***Installment loans; statement to borrower; contents.***

Every licensee shall, at the time any loan is made, give to the borrower, or if there are two or more borrowers, to one of them, a statement in the English language disclosing in clear and distinct terms the information required to be disclosed under the federal Consumer Credit Protection Act.

**Last amended:**

Laws 2001, LB 53, § 59

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**45-1032**

***Surrender of license; effect.***

A licensee may voluntarily surrender a license by delivering to the director written notice of the surrender. Surrender of a license (1) shall not affect civil or criminal liability for acts committed before the surrender or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to section 45-1033 for acts committed before the surrender and (2) shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower. The department shall issue a notice of cancellation of the license following such surrender.

**Last amended:**

Laws 2005, LB 533, § 62

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**45-1033**

***License; administrative fine; disciplinary actions; failure to renew.***

(1) The director may, following a hearing under the

Administrative Procedure Act, suspend or revoke any license issued pursuant to the Nebraska Installment Loan Act. The director may also impose an administrative fine on the licensee for each separate violation of the act. The director may take one or more of these actions if the director finds:

(a) The licensee has materially violated or demonstrated a continuing pattern of violating the Nebraska Installment Loan Act or rules and regulations adopted and promulgated under the act, any order issued under the act, or any other state or federal law applicable to the conduct of its business;

(b) A fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the director to deny the application;

(c) The licensee has violated a voluntary consent or compliance agreement which had been entered into with the director;

(d) The licensee has knowingly provided or caused to be provided to the director any false or fraudulent representation of a material fact or any false or fraudulent financial statement or suppressed or withheld from the director any information which, if submitted by the licensee, would have resulted in denial of the license application;

(e) The licensee has refused to permit an examination by the director of the licensee's business, records, and accounts pursuant to subsection (1) of section 45-1017 or refused or failed to comply with subsection (2) of section 45-1017 or failed to make any report required under section 45-1018. Each day the licensee continues in violation of this subdivision constitutes a separate violation;

(f) The licensee has failed to maintain records as required by the director following written notice. Each day the licensee continues in violation of this subdivision constitutes a separate violation;

(g) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual has been convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (ii) any felony under state or federal law;

(h) The licensee has violated the written restrictions or conditions under which the license was issued; or

(i) The licensee, or if the licensee is a business entity, one of the officers, directors, members, partners, or controlling shareholders, was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (ii) any felony under state or federal law.

(2) Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing in accordance with the Administrative Procedure Act.

(3) (a) If a licensee fails to renew its license as required by section 45-1013 and does not voluntarily surrender the license pursuant to section 45-1032, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) If a licensee fails to maintain a surety bond as required by section 45-1007, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(4) Revocation, suspension, cancellation, or expiration of a license shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.

(5) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for any fines which may be imposed against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to this section or section 64 of this act for acts committed before the surrender.

**Last amended:**

Laws 2005, LB 533, § 63

**Cross References:**

Administrative Procedure Act, see section 84-920.

Mortgage Bankers Registration and Licensing Act, see section 45-701.

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**45-1034**

***License; revocation; new license; court order required.***

Whenever, for any cause, a license is revoked, the department shall not issue another license to the licensee unless the department is otherwise ordered by a court of competent jurisdiction to do so.

**Last amended:**

Laws 2001, LB 53, § 62

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**45-1035**

***License; revocation; record of proceedings.***

At the request of the licensee or any other aggrieved person, the department shall prepare a written record which includes a transcript of the evidence, the findings with respect to the evidence, the order, and the reasons supporting the suspension, revocation, or denial of a license, and shall, after being paid for the cost of the written record, deliver to the licensee or other aggrieved person a copy of the written record in person or by certified or registered mail.

**Last amended:**

Laws 2001, LB 53, § 63

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**45-1036**

***Appeal; procedure.***

In addition to any other remedy he, she, or it may have, any licensee or any other person considering himself, herself, or itself aggrieved by any action of the department under the Nebraska Installment Loan Act may appeal the action, and the appeal shall be in accordance with the Administrative Procedure Act.

**Last amended:**

Laws 2001, LB 53, § 64

**Cross References:**

Administrative Procedure Act, see section 84-920.

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**45-1037**

***Violations; penalty.***

Any person violating sections 45-1025 to 45-1031 is guilty of a Class II misdemeanor.

**Last amended:**

Laws 2001, LB 53, § 65

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**45-1038**

***Licensees; loan provisions; violations; effect.***

If, in the making of, or collection on, any loan contract, any act is done which constitutes a Class II misdemeanor under section 45-1037, that loan shall not be void, but the licensee shall have no right to collect or receive any interest or charges whatsoever. If any interest or other charges have been collected, the licensee shall forfeit and refund to the borrower all interest and other charges collected on the loan involved.

**Last amended:**

Laws 2001, LB 53, § 66

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**45-1039**

***Licensees; violations; effect.***

Violation of the Nebraska Installment Loan Act, except as provided by section 45-1058 in connection with any indebtedness, however acquired, shall not render such indebtedness void and uncollectible. If however, any interest or other charges have been collected or contracted for on such indebtedness, the licensee shall refund to the borrower all interest and other charges which have been collected, and shall not collect thereafter any interest or other charges contracted for and thereafter due on the loan involved, as liquidated damages, and the licensee or its assignee, if found liable, shall pay the costs of any action relating thereto, including reasonable attorney's fees. No licensee shall be found liable under this section if the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

**Last amended:**

Laws 2001, LB 53, § 67

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**45-1040*****Repayment of loan; licensee; duties.***

Upon repayment of the loan in full, the licensee shall mark plainly every obligation or copy of the obligation and security or copy of the security signed by any obligor with the word Paid or Canceled and shall release any mortgage, trust deed, or lien, restore any pledge, and cancel and return any note or copy of the note and any assignment or copy of the assignment given to the licensee. For purposes of this section, a copy shall meet the requirements of section 25-12,112.

**Last amended:**

Laws 2001, LB 53, § 68

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**45-1041*****Installment loans; enforcement.***

Whenever the director has reasonable cause to believe that any person is violating or is threatening to or intends to violate section 45-1024 or 45-1025, the director may, in addition to all actions provided for in the Nebraska Installment Loan Act, and without prejudice thereto, enter an order requiring such person to cease and desist or to refrain from such violation. An action may also be brought, on the relation of the Attorney General and the director, to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance of such violation. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court, in which such action is brought, has power and jurisdiction to impound and appoint a receiver for the property and business of the defendant, including books, papers, documents, and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of the act through or by means of the use of such property and business. Such receiver, when so appointed and qualified, has such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as shall, from time to time, be conferred upon the receiver by the court.

**Last amended:**

Laws 2001, LB 53, § 69

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**45-1042**

***Loans made outside of state; enforcement in this state.***

No loan, made outside this state, in the amount or of the value of three thousand dollars or less, for which a greater rate of interest, consideration, or charges than is permitted by section 45-1025 has been charged, contracted for, or received, shall be enforced in this state. Every person participating in such loan in this state is subject to the Nebraska Installment Loan Act, except that the act shall not apply to loans legally made in any state under and in accordance with a regulatory small loan law similar in principle to such act.

**Last amended:**

Laws 2001, LB 53, § 70

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**45-1043**

***Borrower's obligation; licensee; contacts limitation.***

Except as otherwise provided by the Nebraska Installment Loan Act or other law, a licensee shall not contact any individual who is not living, residing, or present in the household of the borrower regarding the borrower's obligation to pay a debt, other than the borrower's spouse, the borrower's attorney, another creditor, or a credit reporting agency.

**Last amended:**

Laws 2001, LB 53, § 71

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**45-1044**

***Borrower's obligation; contact; limitation; waiver.***

The borrower may waive the benefits of section 45-1043 at any time by giving consent if such consent is given at a time subsequent to the date the debt arises.

**Last amended:**

Laws 2001, LB 53, § 72

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**45-1045**

***Licensee; contacts permitted without borrower's consent.***

The licensee may contact any person without the borrower's consent:

(1) To ascertain information relating to a borrower's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the borrower's eligibility for credit or insurance if such contacts are not designed to collect a delinquent debt; or

(2) To locate the borrower when the licensee has reason to believe the borrower has changed his or her employment or has moved from his or her last-known address.

**Last amended:**

Laws 2001, LB 53, § 73

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**45-1046**

***Borrower; default; notice to licensee; effect.***

If the borrower has defaulted on his or her promise to pay and if he or she has given specific notice in writing, by registered or certified mail, instructing the licensee to cease further contacts with the borrower in regard to the indebtedness, the licensee shall, after such notice, except as provided in sections 45-1047 and 45-1048, limit contacts to one notice per month by mail. No notice shall be designed to threaten action not otherwise permitted by law.

**Last amended:**

Laws 2001, LB 53, § 74

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**45-1047**

***Licensee; actions; permitted; prohibited.***

(1) Sections 45-1043 to 45-1046 shall not prohibit the licensee from:

(a) Contacting any person in order to discover property belonging to the borrower that may be seized to satisfy a debt that has been reduced to judgment;

(b) Making amicable demand and filing suit on the debt; or

(c) Contacting persons related to the borrower if permission is specifically given in writing at the time the debt arises or at any time after such debt arises.

(2) In connection with the collection of any loan, a licensee may not:

(a) Use or threaten to use violence;

(b) Use obscene or profane language;

(c) Cause a telephone to ring or engage a person in telephone conversation at times known to be inconvenient to the borrower;

(d) Falsely represent the character, amount, or legal status of any debt;

(e) Falsely represent that an individual is an attorney when he or she is not;

(f) Falsely represent that nonpayment of any debt will result in the arrest or imprisonment of the borrower or any member of the borrower's household;

(g) Threaten to take any action that the licensee knows cannot legally be taken at the time the threat is made;

(h) Falsely represent that the borrower committed any crime when he or she did not;

(i) Communicate or threaten to communicate to any person credit information which is known to be false;

(j) Use or distribute any written communication which falsely represents that it is a document authorized, issued, or approved by any court, official, or agency of the United States or any state;

(k) Charge or collect any fees, charges, or expenses, incidental to the collection of any loan, unless such amount is expressly authorized by the loan agreement or permitted by law;

(l) Accept from any person a check or other payment instrument postdated by more than five days unless such person is notified in writing of the licensee's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit;

(m) Solicit any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;

(n) Deposit or threaten to deposit any postdated check prior to the date on such check;

(o) Cause charges to be made to any person for communications by concealment of the true purpose of the communication, including, but not limited to, collect telephone calls and telegram fees;

(p) Communicate with a borrower regarding a debt by postcard;  
or

(q) Communicate with a borrower at the borrower's place of employment if the licensee has received actual notice that the borrower's employer prohibits the borrower from receiving such communication.

**Last amended:**

Laws 2001, LB 53, § 75

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**45-1048**

***Borrower; right to action; licensee; judgment; effect.***

Nothing in sections 45-1043 and 45-1046 shall limit a borrower's right to bring an action for damages. When the licensee has filed suit and obtained judgment, the licensee shall be permitted to resume contacts with the borrower against whom judgment has been obtained.

**Last amended:**

Laws 2001, LB 53, § 76

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**45-1049**

***Borrower; default; agreement; extent of enforceability.***

An agreement of the parties to a loan, with respect to default on the part of the borrower, is enforceable only to the extent that:

(1) The borrower fails to make a payment on the loan or other charges required by the agreement; or

(2) The prospect of payment, performance, or realization of collateral is significantly impaired. The burden of establishing the prospect of significant impairment is on the licensee.

**Last amended:**

Laws 2001, LB 53, § 77

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**45-1050**

***Borrower; loan; default; licensee; notice; contents.***

(1) With respect to a loan, after a borrower has been in default for ten days for failure to make a required payment, a licensee may give the borrower the notice described in this section. A licensee gives notice to the borrower under this section when the licensee delivers the notice to the borrower or delivers or mails the notice to the last-known address of the borrower's residence.

(2) The notice shall be in writing and shall conspicuously state: The name, address, and telephone number of the licensee to which payment is to be made, a brief identification of the loan, the borrower's right to cure the default, the amount of payment and date by which payment must be made to cure the default, and that any credit insurance issued in connection with the loan contract may be canceled unless the borrower cures the default. The department shall prescribe the form of such notice.

**Last amended:**

Laws 2001, LB 53, § 78

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**45-1051**

***Borrower; loan; default; right to cure; procedure.***

(1) With respect to a loan, after a default consisting only of the borrower's failure to make a required payment, a licensee may neither accelerate maturity of the unpaid balance of the obligation nor take possession of collateral, except voluntarily surrendered collateral, because of such default until twenty days after a notice of the borrower's right to cure is given. The borrower shall have twenty days after the notice is given to cure any default consisting of a failure to make the required payment by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid charges. Cure restores the borrower to his or her rights under the agreement as though the default had not occurred.

(2) With respect to defaults on the same obligation after a licensee has once given a notice of borrower's right to cure, the borrower shall have no further right to cure and the licensee has no obligation to proceed against the borrower or the collateral.

**Last amended:**

Laws 2001, LB 53, § 79

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**45-1052**

***Borrower; loan; default; licensee; possession of collateral; restrictions.***

Upon default by a borrower with respect to a loan, unless the borrower voluntarily surrenders possession of the collateral to the licensee, the licensee may take possession of the collateral without judicial process only if possession can be taken without entry into a dwelling or a locked, unoccupied motor vehicle, and without the use of force or other breach of the peace.

**Last amended:**

Laws 2001, LB 53, § 80

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**45-1053**

***Loan; third-party obligation; when.***

(1) No individual, other than the spouse of the borrower, is obligated as a cosigner, comaker, guarantor, endorser, surety, or similar party with respect to a loan, unless before or contemporaneously with signing any separate agreement of loan or

any writing setting forth the terms of the borrower's agreement, the individual receives a separate written notice that contains a completed identification of the loan he or she may have to pay and reasonably informs him or her of his or her obligation with respect to it.

(2) Such notice shall be in the form prescribed by the department.

(3) An individual entitled to notice under this section shall also be given a copy of any writing setting forth the terms of the borrower's agreement and of any separate agreement of obligation signed by the individual entitled to the notice.

**Last amended:**

Laws 2001, LB 53, § 81

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**45-1054**

***Borrower; deficiency; liability; how treated.***

(1) A borrower is not liable for a deficiency unless the licensee has disposed of the collateral in good faith and in a commercially reasonable manner.

(2) If the licensee takes possession or voluntarily accepts surrender of goods in which the licensee has a security interest to secure a loan and at the time thereof the unpaid balance due on the loan is three thousand dollars or less, the borrower is not personally liable to the licensee for the unpaid balance of the debt arising from the loan and the licensee's duty to dispose of the collateral is governed by the provisions on disposition of collateral, article 9, Uniform Commercial Code.

(3) The borrower may be liable in damages to the licensee if the borrower has wrongfully damaged the collateral if, after default, failure to cure, and demand, the borrower has wrongfully failed to make the collateral available to the licensee.

(4) If the licensee elects to bring an action against the borrower for a debt arising from a loan, when under this section the licensee would not be entitled to a deficiency judgment if the licensee took possession of the collateral, and obtains judgment (a) the licensee may not take possession of the collateral, and (b) the collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

**Last amended:**

Laws 2001, LB 53, § 82

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**45-1055**

***Writing evidencing borrower's obligation; form; copies; fee; licensee; duties.***

(1) The licensee shall give to the borrower a copy of any writing evidencing a loan if the writing requires or provides for the signature of the borrower. The writing evidencing the borrower's obligation to pay under a loan shall contain a clear and conspicuous notice in form and content substantially as follows:

NOTICE TO CONSUMER: 1. Do not sign this paper before you read it. 2. You are entitled to a copy of this paper. 3. You may prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned charges in accordance with law.

(2) Upon written request of a borrower, the licensee shall provide a written statement of the dates and amounts of payments made and the amounts of any default and deferment charges assessed preceding the month in which the request is received and the total amount unpaid as the end of the period covered by the statement and a copy of the loan agreement, security agreement, and a facsimile of any insurance certificate issued as part of the transaction, if applicable. The licensee may charge a reasonable fee for such copies, not to exceed fifty cents per page.

(3) The licensee shall answer in writing, within ten business days after receipt, any written request for payoff information from the borrower or the borrower's representative. This service shall be provided without charge to the borrower, except that when such information is provided upon request within sixty days after the fulfillment of a previous request, a processing fee of up to ten dollars may be charged.

**Last amended:**

Laws 2005, LB 533, § 65

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**45-1056**

***Licensee; discrimination prohibited.***

A licensee shall not refuse to enter into a loan or impose finance charges or other terms or conditions of credit more onerous than those regularly extended by that licensee to borrowers of similar economic backgrounds because of the age, color, creed, national origin, political affiliation, race, religion, sex, marital status, or disability of the borrower or because the borrower receives public assistance, social security benefits, pension benefits, or the like.

**Last amended:**

Laws 2001, LB 53, § 84

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**45-1057**

***Licensee; loan; former debt; how treated.***

No licensee shall, directly or indirectly, require a borrower as a condition of granting a loan to such borrower to reaffirm or otherwise obligate himself or herself to pay a former debt to the licensee which has been discharged in bankruptcy proceedings.

**Last amended:**

Laws 2001, LB 53, § 85

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**45-1058**

***Violation; loan transaction; licensee; liability.***

Any violation of sections 45-1043 to 45-1058 in connection with any loan transaction, however acquired, shall not render the indebtedness, any interest, or other charges void or uncollectible. In an action, other than a class action, the borrower may recover from the licensee violating such sections an award of liquidated damages in an amount determined by the court, but not less than five hundred dollars nor more than one thousand dollars. In any legal action brought pursuant to this section in which the licensee is found liable, the court shall award costs and reasonable attorneys' fees to the borrower. A licensee is not liable under this section if the licensee notifies the borrower of an error before the licensee receives from the borrower written notice of the error or before the borrower has brought an action under this section and the licensee corrects the error within thirty days after notifying the borrower. A licensee may not be held liable in any action brought under this section if the licensee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error

notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

**Last amended:**

Laws 2001, LB 53, § 86

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**45-1059**

***Preauthorized loans; definitions; where found.***

For purposes of sections 45-1059 to 45-1067, unless the context otherwise requires, the definitions found in sections 45-1060 and 45-1061 shall also be used.

**Last amended:**

Laws 2001, LB 53, § 91

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**45-1060**

***Billing cycle, defined.***

Billing cycle means the time interval between periodic billing dates. A billing cycle shall be considered monthly if the closing date of the cycle is the same date each month or does not vary by more than four days from such date.

**Last amended:**

Laws 2001, LB 53, § 92

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**45-1061**

***Preauthorized loan, defined.***

Preauthorized loan means a loan made by a licensee pursuant to an agreement between the licensee and the borrower whereby:

(1) The licensee may permit the borrower to obtain advances of money from the licensee from time to time or the licensee may advance money on behalf of the borrower from time to time as directed by the borrower;

(2) The amount of each advance and permitted charge and cost is

debited to the borrower's account and payments and other credits are credited to the same account;

(3) The charges are computed on the unpaid principal balance or balances of the account from time to time;

(4) The borrower has the privilege of paying the account in full at any time or, if the account is not in default, in monthly installments or fixed or determinable amounts as provided in the agreement; and

(5) The loan agreement expressly states that it covers preauthorized loans. Preauthorized loan does not mean a transaction, resulting in either a credit or a debit to the borrower's account, which is initiated by the use or application of a plastic, metal, or other type of credit or transaction card.

**Last amended:**

Laws 2001, LB 53, § 93

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**45-1062**

***Preauthorized loans; charges authorized; computation.***

A licensee may make preauthorized loans and may contract for and receive charges on such loans as set forth in subsection (1) of section 45-1024 as follows:

(1) A licensee shall not compound charges by adding any unpaid charges authorized by section 45-1024 or sections 45-1059 to 45-1067 to the unpaid principal balance of the borrower's account, except that the unpaid principal balance may include the additional charges authorized by section 45-1064;

(2) Charges authorized by section 45-1024 or sections 45-1059 to 45-1067 shall be deemed not to exceed the maximum charges permitted by such sections if such charges are computed in each billing cycle by any of the following methods:

(a) By converting each graduated monthly rate to a daily rate and multiplying such daily rate by the applicable portion of the daily unpaid principal balance of the account, in which case each daily rate is determined by multiplying the authorized monthly rate by twelve and dividing by three hundred sixty-five;

(b) By multiplying each graduated monthly rate by the applicable portion of the average daily unpaid principal balance of the account in the billing cycle, in which case the average

daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle; or

(c) By converting each graduated monthly rate to a daily rate and multiplying such daily rate by the applicable portion of the average daily unpaid principal balance of the account in the billing cycle, in which case each daily rate is determined by multiplying the authorized monthly rate by twelve and dividing by three hundred sixty-five, and the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle; and

(3) For each method of computation set forth in subdivision (2) of this section, the billing cycle shall be monthly and the unpaid principal balance on any day shall be determined by adding to any balance unpaid as of the beginning of that day all advances and other permissible amounts charged to the borrower and deducting all payments and other credits made or received that day.

**Last amended:**

Laws 2001, LB 53, § 94

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**45-1063**

***Preauthorized loan; repayment; requirements.***

The borrower under a preauthorized loan may at any time pay all or any part of the unpaid balance in his or her account, or, if the account is not in default, the borrower may pay the unpaid principal balance in monthly installments. Minimum monthly payment requirements shall be determined by the licensee and set forth in the preauthorized loan agreement, except that the minimum monthly payment shall not be less than one and one-half percent of the average daily unpaid principal balance of an account having an average daily balance of more than three thousand dollars nor less than two percent of the average daily unpaid principal balance of an account having an average daily balance of three thousand dollars or less.

**Last amended:**

Laws 2001, LB 53, § 95

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**45-1064**

***Preauthorized loans; additional fees, costs, and expenses authorized; restrictions.***

In addition to the charges permitted under section 45-1062, a licensee may contract for and receive the fees, costs, and expenses permitted by the Nebraska Installment Loan Act on other loans, subject to all the conditions and restrictions set forth in the act with the following variations:

(1) If credit life or disability insurance is provided and if the insured dies or becomes disabled when there is an outstanding preauthorized loan indebtedness, the insurance shall be sufficient to pay the total balance of the loan due on the date of the borrower's death or the amount due as of the end of the previous billing cycle, whichever is less, in the case of credit life insurance, or all minimum payments which become due on the loan during the covered period of disability in the case of credit disability insurance. The additional charge for credit life insurance or credit disability insurance shall be calculated in each billing cycle by applying the current monthly premium rate for such insurance, as such rate may be determined by the Director of Insurance, to the unpaid balances in the borrower's account, using either of the methods specified in section 45-1062 for the calculation of loan charges;

(2) No credit life or disability insurance written in connection with a preauthorized loan shall be canceled by the licensee because of delinquency of the borrower in the making of the required minimum payments on the loan unless one or more of such payments is past due for a period of ninety days or more, and the licensee shall advance to the insurer the amounts required to keep the insurance in force during such period, which amounts may be debited to the borrower's account;

(3) The department may, by rule and regulation, require a statement of insurance that will be appropriate for preauthorized loans in lieu of that required by section 45-1027; and

(4) The amount, terms, and conditions of any insurance against loss or damage to property must be reasonable in relation to the character and value of the property insured and the maximum anticipated amount of credit to be extended.

**Last amended:**

Laws 2001, LB 53, § 96

**45-1065**

***Preauthorized loans; security interest authorized.***

A licensee may retain any security interest, including a mortgage on real property, until the preauthorized account is terminated.

**Last amended:**

Laws 2004, LB 999, § 42

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**45-1066**

***Preauthorized loans; sections not applicable.***

Subsection (3) of section 45-1025 and sections 45-1031 and 45-1040 shall not apply to preauthorized loans.

**Last amended:**

Laws 2003, LB 218, § 17

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**45-1067**

***Preauthorized loans; department; powers.***

The department may approve record-keeping systems for licensees and may prescribe policies and procedures necessary to the administration of sections 45-1059 to 45-1067.

**Last amended:**

Laws 2001, LB 53, § 99

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**45-1068**

***Reverse-mortgage loan; rules governing; how made or acquired; charges authorized; forfeiture by lender.***

(1) For purposes of this section, reverse-mortgage loan means a loan made by a licensee which (a) is secured by residential real property, (b) is nonrecourse to the borrower except in the event of fraud by the borrower or waste to the property given as security for the loan, (c) provides cash advances to the borrower based upon the equity in the borrower's owner-occupied principal

residence, (d) requires no payment of principal or interest until the entire loan becomes due and payable, and (e) otherwise complies with the terms of this section.

(2) Reverse-mortgage loans shall be governed by the following rules without regard to the requirements set out elsewhere for other types of mortgage transactions: (a) Payment in whole or in part is permitted without penalty at any time during the period of the loan; (b) an advance and interest on the advance have priority over a lien filed after the closing of a reverse-mortgage loan; (c) an interest rate may be fixed or adjustable and may also provide for interest that is contingent on appreciation in the value of the property; and (d) the advance shall not be reduced in amount or number based on an adjustment in the interest rate when a reverse-mortgage loan provides for periodic advances to a borrower.

(3) Reverse-mortgage loans may be made or acquired without regard to the following provisions for other types of mortgage transactions: (a) Limitations on the purpose and use of future advances or any other mortgage proceeds; (b) limitations on future advances to a term of years or limitations on the term of credit line advances; (c) limitations on the term during which future advances take priority over intervening advances; (d) requirements that a maximum mortgage amount be stated in the mortgage; (e) limitations on loan-to-value ratios; (f) prohibitions on balloon payments; (g) prohibitions on compounded interest and interest on interest; and (h) requirements that a percentage of the loan proceeds must be advanced prior to loan assignment.

(4) A licensee may, in connection with a reverse-mortgage loan, charge to the borrower (a) a nonrefundable loan origination fee which does not exceed two percent of the appraised value of the home at the time the loan is made, (b) a reasonable fee paid to third parties originating loans on behalf of the licensee, and (c) such other fees as are necessary and required for inspections, insurance, appraisals, and surveys.

(5) Licensees failing to make loan advances as required in the loan documents and failing to cure the default as required in the loan documents shall forfeit an amount equal to the greater of two hundred dollars or one percent of the amount of the loan advance the licensee failed to make.

**Last amended:**

Laws 2001, LB 53, § 101

**45-1069**

***Administrative fine; procedure; lien.***

(1) The director may, following a hearing under the Administrative Procedure Act, impose an administrative fine against any officer, director, shareholder, partner, or member of a licensee, if the director finds the licensee or any such person participated in or had knowledge of any act prohibited by the Nebraska Installment Loan Act or otherwise violated the act. Such administrative fine shall be in addition to or separate from any fine imposed against a licensee pursuant to section 45-1033.

(2) If the director finds, after notice and hearing in accordance with the Administrative Procedure Act, that any person has knowingly committed any act prohibited by section 45-1033 or otherwise violated the Nebraska Installment Loan Act or any rule and regulation or order adopted thereunder, the director may order such person to pay (a) an administrative fine of not more than one thousand dollars for each separate violation and (b) the costs of investigation.

(3) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs shall constitute a separate violation of the act.

**Last amended:**

Laws 2005, LB 533, § 64

**Cross References:**

Administrative Procedure Act, see section 84-920.

~ Revised Statutes Supplement 2005