

LEGISLATIVE BILL 349

Approved by the Governor May 13, 1975

Introduced by F. Lewis, 45

AN ACT to amend sections 45-102 and 45-105, Reissue Revised Statutes of Nebraska, 1943, relating to interest; to define terms; to change the interest rates as prescribed; to provide exceptions; and to repeal the original sections, and also section 45-101, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. As used in this act, unless the context otherwise requires:

(1) Interest shall mean the compensation agreed upon or allowed by law upon any loan or forbearance of money, goods, or things in action but shall not include loan service costs;

(2) Loan service costs shall mean reasonable and necessary costs and charges incurred in connection with the making, closing, disbursing, servicing, extending, transferring, or renewing of a loan, including but not limited to (a) prepayment charges, (b) late charges, (c) premiums for hazard, private mortgage, disability, life, or title insurance, (d) fees for escrow, appraisal, abstracting, title examination, surveys, inspections, credit reports, and recording of documents, (e) origination fees, (f) interest on interest after default, and (g) costs and charges incurred for determining qualification for the loan proceeds and disbursement of the loan proceeds; and

(3) Discount points shall mean any charges except actual loan service costs whether or not actually denominated as discount points paid to a lender which directly or indirectly affect the ability of the borrower to secure a loan. For the purpose of determining the rate of interest on any loan, discount points, if any, shall be amortized over the original term of the loan.

Sec. 2. Except as provided in section 3 of this act, any rate of interest which may be agreed upon, not exceeding eleven per cent per annum on the unpaid principal balance, shall be valid upon any loan or forbearance of money, goods, or things in action and may be taken yearly, for any shorter period, or in advance, if so expressly agreed.

Sec. 3. The limitation on the rate of interest provided in section 2 of this act shall not apply to:

(1) Loans made by any licensee or permittee operating under a license or permit duly issued by the Department of Banking pursuant to sections 8-319, 8-401 to 8-417, 8-815 to 8-823, 8-825 to 8-829, 21-1760 to 21-1764, 21-1766 to 21-1796, 21-1799 to 21-17,108, 21-17,110 to 21-17,119, 45-114, 45-116 to 45-140, or 45-142 to 45-155;

(2) Loans made to any corporation, partnership, or trust;

(3) The guarantor or surety of any loan to a corporation, partnership, or trust;

(4) Loans made when the principal amount of the indebtedness is one hundred thousand dollars or more;

(5) Loans insured, guaranteed, sponsored, or participated in, either in whole or part, by any agency, department, or program of the United States or state government; or

(6) Loans or advances of money, repayable on demand, which are made solely upon securities, as defined in subdivision (11) of section 8-1101, pledged as collateral for such repayment and in which such loans or advances are used by the borrower only for the purchase of securities as so defined. It shall be lawful to contract for and receive any rate of interest on such transaction as the parties thereto may expressly agree.

Sec. 4. That section 45-102, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-102. Interest upon the loan or forbearance of money, goods or things in action shall be at the rate of six dollars per year upon one hundred dollars per cent per annum on the unpaid principal balance, unless a greater rate, not exceeding nine per cent per annum, the rate of interest provided in section 2 of this act, be contracted for by the parties. ~~;---Provided,---the limitations on the rate of interest herein fixed shall not apply to loans made under subsection (4) of section 8-349 nor to loans made by any licensees or permittees operating under any license or permit issued by the Department of Banking pursuant to (1) sections 45-114 to 45-155; (2) sections 8-401 to 8-417; (3) sections 8-815 to 8-829; or (4) sections 21-1760 to 21-17,119; and provided further, that corporations, domestic or foreign,~~

~~may by an agreement in writing which clearly spells out either the amount or the rate of interest charged on any stock agreement or combination thereof, and not otherwise, agree to pay any rate of interest in excess of the legal rate provided in this section, and in such instances where the rate is above such legal rate, the defense of usury is prohibited.~~

Sec. 5. That section 45-105, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-105. If a greater rate of interest than is allowed in section ~~45-104~~ 2 of this act shall be contracted for or received or reserved, the contract shall not on that account be void, but if in any action on such contract, proof be made that illegal interest has been directly or indirectly contracted for, or taken, or reserved, the plaintiff shall recover only the principal, without interest, and the defendant shall recover costs; and if interest shall have been paid thereon, judgment shall be for the principal, deducting interest paid; Provided, the acts and dealings of an agent in loaning money shall bind the principal, and in all cases where there is illegal interest by the transaction of the agent, the principal will be held thereby as if he had done the same in person. Where the same person acts as agent for the borrower who obtains the money from the lender, he shall be deemed to be the agent of the lender also.

Sec. 6. That original sections 45-102 and 45-105, Reissue Revised Statutes of Nebraska, 1943, and also section 45-101, Reissue Revised Statutes of Nebraska, 1943, are repealed.