

LEGISLATIVE BILL 397

Approved by the Governor May 15, 1995

Introduced by Lindsay, 9

AN ACT relating to interest rates and loans; to amend section 45-101.04, Revised Statutes Supplement, 1994; to provide for reverse mortgage loans; and to repeal the original section.
Be it enacted by the people of the State of Nebraska,

Section 1. Section 45-101.04, Revised Statutes Supplement, 1994, is amended to read:

45-101.04. The limitation on the rate of interest provided in section 45-101.03 shall not apply to:

(1) Other rates of interest authorized for loans made by any licensee or permittee operating under a license or permit duly issued by the Department of Banking and Finance pursuant to the Credit Union Act, subsection (4) of section 8-319, or sections 8-401 to 8-417, 8-815 to 8-829, or 45-114 to 45-158;

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

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

(4) Loans made when the aggregate principal amount of the indebtedness is twenty-five thousand dollars or more of the borrower to any one financial institution, licensee, or permittee;

(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;

(6) Loans or advances of money, repayable on demand, which are made solely upon securities, as defined in subdivision (13) 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;

(7) Interest charges made on open credit accounts by a person who sells goods or services on credit when the interest charges do not exceed one and one-third percent per month for any charges which remain unpaid for more than thirty days following rendition of the statement of account;

(8) A minimum charge of ten dollars per loan which may be charged by the lender in lieu of all interest charges;

(9) Loans described in subsection (4) of section 8-319 made by a state or federal savings and loan association at a rate not to exceed nineteen percent per annum;

(10) Loans made primarily for business or agricultural purposes or secured by real estate when such loans are made (a) by a licensee, registrant, or permittee operating under a license, registration, or permit duly issued by the Department of Banking and Finance except for licensees operating under sections 45-114 to 45-158, (b) by any bank or savings and loan association chartered by the United States, or (c) by any insurance company organized under the laws of this state and subject to regulation by the Department of Insurance;

(11) Loans secured solely by real estate when such loans are (a) made by licensees operating under sections 45-114 to 45-158 and (b) made to finance or refinance the purchase of the property or construction on or improvements to the property, provided the Department of Banking and Finance has the authority to examine such loans for compliance with sections 45-101.02 and 45-101.03. A licensee making a loan pursuant to this subdivision may obtain an interest in any fixtures attached to such real estate and any insurance proceeds payable in connection with such real estate or the loan;

(12) Loans secured by a reverse mortgage pursuant to section 2 of this act.

~~(12)~~ (13) Interest charges made on any goods or services sold under an installment contract pursuant to the Nebraska Installment Sales Act. Subject to section 45-338, it shall be lawful to contract for and receive any rate of interest on such contract as the parties may expressly agree to in writing; or

~~(13)~~ (14) Fees which may be charged by a licensee for services pursuant to the Delayed Deposit Services Licensing Act.

Sec. 2. (1) Reverse mortgage means a loan made by a lender

authorized to engage in business as a licensee operating under a license duly issued by the Department of Banking and Finance under sections 45-114 to 45-155 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; (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 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 lender 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 lender, and (c) such other fees as are necessary and required for inspections, insurance, appraisals, and surveys.

(5) Lenders 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 lender failed to make.

(6) Nothing in this section shall be construed to limit the department's authority to examine, audit, or inspect reverse mortgage loans for compliance with requirements for loans made by a licensee operating under sections 45-114 to 45-155.

Sec. 3. Original section 45-101.04, Revised Statutes Supplement, 1994, is repealed.