

Nebraska Legislature Proposes Unsecured Consumer Loan Licensing Act

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On January 15, 2019, a Nebraska legislator introduced Legislative Bill 265 to create a new lending license applicable to certain unsecured consumer loans.

Does the Bill Apply to Me?

The bill requires any "unsecured consumer loan business" to obtain a license. The term "unsecured consumer loan business" means any person who offers a loan:

- of \$1,000 or less with loan payments not exceeding 9% of gross monthly income;
- in which the lender holds the borrower's check or checks for a specified period, or receives an ACH authorization to debit the borrower's account for a specific period before the lender offers the checks for deposit or attempts to debit the account, other than as a result of default;
- that does not take a security interest in any property of the borrower; and
- which is payable according to the agreement between the licensee and consumer.

The bill also prohibits loans for a term of less than 180 days.

What Interest Rate Can a Licensee Charge?

Under the bill, no licensee may charge a fee in excess of:

- 20% of the first \$300; and
- 7.5% on amounts over \$300.

The fee is fully earned at the date of the transaction and not subject to refund upon prepayment.

Additionally, the licensee may charge a monthly maintenance fee not to exceed \$11.25 per \$100 loaned. That maintenance fee may be charged beginning with the first month. The maintenance fee is refundable on a pro rata basis upon prepayment.

Although certain portions of the bill could be read to only permit the licensee to charge the fees stated above, the section on disclosures suggests the licensee could also charge a bad-check fee of up to \$15. Hopefully, future drafts of the bill will clarify this issue.

What Substantive Requirements Does the Bill Contain?

In addition to the licensing requirement described above, the bill requires a licensee to provide a borrower certain written disclosures and proscribes certain required loan terms.

In addition to requiring that loans have a term of 180 days or longer, the bill also prohibits refinancing, renewing, rolling over or otherwise extending an unsecured consumer loan, and prohibits entering into another unsecured consumer loan transaction with the same borrower on the day of completing the prior transaction without previously disclosing the transaction to the Department of Banking and Finance.

The bill also requires certain statutory language be included in each contract, including a 1-day right to rescission and warnings that the product should only be used to meet short-term cash needs.

Does This License Replace Nebraska's Delayed Deposit Services Licensing Act or Installment Loan Act Licenses?

No.

The bill expressly provides that an individual can hold both a license under the bill and licenses under the Delayed Deposit Services Licensing Act or the Installment Loan Act. The bill also amends those acts to similarly provide that nothing in those acts prevents a licensee from holding a license under the bill. The bill exempts only financial institutions from licensing. As a result, this bill has no effect on the licensing requirements under the other Acts and requires an additional license for the loans covered by the bill.

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