

LEGISLATIVE BILL 87

Approved by the Governor April 30, 1979

Introduced by Banking, Commerce and Insurance Committee,
DeCamp, 40, Chmn.: Merz, 1; Fitzgerald, 14;
Lewis, 45; Murphy, 17

AN ACT to amend sections 45-114, 45-117, 45-137, 45-138, and 45-155, Reissue Revised Statutes of Nebraska, 1943, relating to installment loans; to change interest rates; to increase the maximum of loans that may be made; to regulate collection procedures; to provide severability; and to repeal the original sections.

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

Section 1. That section 45-114, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-114. The word person, when used in sections 45-114 to 45-155, means individuals, partnerships, associations, banks, trust companies, savings banks, building and loan associations, trusts, corporations, and all other legal entities. The word department, when used in said sections, means the Department of Banking and Finance of the State of Nebraska. The word license, when used in said sections, means permit. It is not the intention of the Legislature that any revenue arising hereunder shall inure to any school fund of the State of Nebraska or any of its governmental subdivisions. Loan, when used in sections 45-114 to 45-155, shall not include any loan made by a person who is not a licensee on which the interest does not exceed nine-per-cent-per-annum the maximum rate permitted by section 45-101.03, Revised Statutes Supplement, 1978, and nothing in sections 45-114 to 45-155 shall apply to any loan made by a person who is not a licensee if the interest on the loan does not exceed nine-per-cent-per-annum the maximum rate permitted by section 45-101.03, Revised Statutes Supplement, 1978.

Sec. 2. That section 45-117, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-117. Any person who desires to obtain an original license to engage in the business of lending money under the terms and conditions of sections 45-114 to 45-155 and sections 6 to 21 of this act shall apply therefor under oath, on forms prescribed by the Department of Banking and Finance, to the department, and

shall pay an original license fee in the sum of one hundred fifty dollars, and, if the application is approved, a license as herein provided shall be issued. If such application is not approved, the department shall return to the applicant said sum of one hundred fifty dollars less any part of the investigation, inspection and publication costs provided for by section 45-118, which shall not have been paid by the applicant.

Sec. 3. That section 45-137, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-137. (1) Every licensee hereunder may make loans, not exceeding ~~three~~ seven thousand dollars in principal amount, and may contract for and receive thereon charges at a rate not exceeding ~~thirty-per-cent per-annum-on-that-part-of-the-unpaid-principal-balance-on any-loan-not-in-excess-of-three-hundred-dollars;~~ twenty-four per cent per annum on that part of the principal balance on any loan in excess of three-hundred dollars and not in excess of five-hundred one-thousand dollars, eighteen per cent per annum on that part of the principal balance on any loan in excess of five-hundred dollars and not in excess of one-thousand-dollars, and twelve-per-cent-per-annum on that part of the principal balance on any loan in excess of one thousand dollars and not in excess of five thousand dollars, and fifteen per cent per annum on any remainder of such unpaid principal balance. Charges on loans made under sections 45-114 to 45-155, shall not be paid, deducted, or received in advance; Provided, that the contracting for, charging 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) Where the contract of loan 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 annual or monthly 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. All loan contracts made pursuant to this subsection shall be subject to the following adjustments:

(a) Notwithstanding the requirement for substantially equal and consecutive monthly installments, the first installment period may exceed one month by as much as fifteen days and 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 agreed rate 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 the contract is prepaid in full by cash, a new loan, or otherwise after the first installment due date but before the final installment due date, the borrower shall receive a rebate of an amount which shall be not less than that portion of the precomputed charges, excluding any adjustment for a first installment period of more than one month and any default and deferment charges, applicable to the installment periods scheduled to follow the installment date nearest the date of the prepayment in full. For the purpose of computing the rebate, any prepayment in full made on or before the fifteenth day following an installment date shall be deemed to have been made on the installment date immediately preceding the date of prepayment in full and any prepayment in full made after such fifteenth day shall be deemed to have been made on the installment date immediately following the date of prepayment in full. 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 shall not be 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 annual~~

percentage rate previously stated to the borrower pursuant to the Federal Consumer Credit Protection Act. The licensee may round the annual percentage rate to the nearest one half of one per cent 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 ~~such 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 is unpaid in full for five 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 the portion of precomputed charges applicable to the final installment period and a similar amount may be charged and collected for each succeeding full month from such due date that such installment remains wholly unpaid and outstanding. Such default 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 contract of loan. 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; provided, 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; Provided, that the charging, collecting, and receiving charges as provided in subsection (2) of this section shall not be deemed compounding; and provided further, 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, (b) be so expressed in every obligation signed by the borrower, and (c) be computed on the basis of the number of days actually elapsed. For the purpose 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) No licensee shall induce or permit any person, nor any husband and wife, jointly or severally, to become obligated, directly or contingently or both, under more than one contract of loan at the same time, for the purpose of obtaining a higher rate of charge than

would otherwise be permitted by this section.

(5) In addition to that provided for under sections 45-114 to 45-155, 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, ~~except as the result of an accidental and bona fide error,~~ the contract of loan 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 ~~forfeit and 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 a reasonable attorney's fee. No licensee shall be found liable under the provisions of 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.

Sec. 4. That section 45-138, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-138. (1) No licensee shall directly or indirectly charge, contract for, or receive a greater rate of interest than ~~nine per cent per annum~~ the maximum rate permitted by section 45-101.03, Revised Statutes Supplement, 1978, upon any loan, or upon any part or all of any aggregate indebtedness of the same person, in excess of three seven thousand dollars.

(2) The prohibition contained in subsection (1) of this section shall also apply to any licensee who permits any person, as borrower or as endorser, guarantor, or surety for any borrower, or otherwise, or any husband and wife jointly or severally, to owe directly, contingently, or both to the licensee at any time a sum of more than three seven thousand dollars for principal; provided, that if a licensee shall acquire, directly or indirectly, by purchase or discount, bona fide obligations for goods or services owed by the person who received such goods or services, then the amount of such purchased or discounted indebtedness to the licensee shall not be included in computing the aggregate indebtedness of such borrower to the licensee for the purpose of the foregoing prohibitions; and provided

further, that if the proceeds of any loan of three seven thousand dollars or less are used to discharge a preexisting debt of the borrower for goods or services owed directly to the person who provided such goods or services, the licensee may accept from such person a guaranty of payment of the principal of such loan, with interest at a rate not exceeding that which the licensee could lawfully charge if he were not licensed hereunder. The acceptance of one or more of such guarantees in any aggregate amount shall not affect the rights of such licensee to make the charges against the borrower authorized by section 45-137.

(3) No Except as provided in subdivision (2) (a) of section 45-137, no licensee shall enter into any contract of loan under sections 45-114 to 45-155, 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. Except as provided in section 45-137 (2) (a), no licensee shall enter into any contract under sections 45-114 to 45-155, under which any borrower agrees to make any payment of principal more than sixty calendar months from the date of making such contract when the principal balance is more than three thousand dollars if such contract is not secured by a bona fide duly recorded mortgage on real estate owned by the borrower. Every loan contract 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 debtor's principal source of income, a debtor, whose principal source of income is from agriculture, stock raising, or school teaching, the payment schedule may reduce or omit installment payments, if at least one half of the credit is to be repaid within the first half of the applicable maximum maturity and if the other payments are increased in such manner that they will be substantially equal or declining in amount and sufficient in the aggregate to retire the loan in the period agreed upon for repayment, as provided for in this subsection. Any contract of loan made in violation of this section, either knowingly or without the exercise of due care to prevent the same, shall not on that account be void, but the licensee shall have 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 forfeit and 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 a reasonable attorney's fee. No licensee shall be found liable under the provisions of 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.

Sec. 5. That section 45-155, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-155. Violation of sections 45-114 to 45-155, except as provided by section 21 of this act 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 ~~shall be forfeited and refunded 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 a reasonable attorney's fee. No licensee shall be found liable under the provisions of 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.

Sec. 6. Except as otherwise provided by law and this act, a licensee shall not contact any person, 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.

Sec. 7. The borrower may waive the benefits of section 6 of this act at any time by giving consent, if such consent is given at a time subsequent to the date the debt arises.

Sec. 8. 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.

Sec. 9. 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 10 and 11 of this act, limit contacts to one notice per month by mail. No notice shall be designed to threaten action not otherwise permitted by law.

Sec. 10. (1) Sections 6 to 9 of this act 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 debtor 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.

Sec. 11. Nothing in sections 6 and 9 of this act 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.

Sec. 12. 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.

Sec. 13. (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 he 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 cancelled unless the borrower cures the default. The Department of Banking and Finance shall prescribe the form of such notice.

Sec. 14. (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.

Sec. 15. 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.

Sec. 16. (1) No natural person, 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 person 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 of Banking and Finance.

(3) A person 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 person entitled to the notice.

Sec. 17. (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 as governed by the provisions on disposition of collateral, Article 9, Part 5 of the 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.

Sec. 18. 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.

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.

Sec. 19. 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.

Sec. 20. 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.

Sec. 21. Any violation of sections 6 to 20 of this act 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.

Sec. 22. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 23. That original sections 45-114, 45-117, 45-137, 45-138, and 45-155, Reissue Revised Statutes of Nebraska, 1943, are repealed.