

LEGISLATIVE BILL 681

Approved by the Governor May 4, 1989

Introduced by Lindsay, 9

AN ACT relating to rental agreements; to amend sections 45-335 and 69-1601, Reissue Revised Statutes of Nebraska, 1943, and section 1-201, Uniform Commercial Code; to adopt the Consumer Rental Purchase Agreement Act; to redefine terms; to provide severability; to provide an operative date; to repeal the original sections; and to declare an emergency.

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

Section 1. Sections 1 to 15 of this act shall be known and may be cited as the Consumer Rental Purchase Agreement Act.

Sec. 2. The Legislature finds that a significant number of consumers have sought to acquire ownership of personal property through consumer rental purchase agreements. Often consumer rental purchase agreements have been offered without adequate cost disclosures. It is the purpose of the Consumer Rental Purchase Agreement Act to assure meaningful disclosure of the terms of consumer rental purchase agreements, to make consumers aware of the total cost attendant with such agreements, to inform the consumer when ownership will transfer, and to assure accurate disclosures of rental purchase terms in advertising.

Sec. 3. For purposes of the Consumer Rental Purchase Agreement Act:

(1) Advertisement shall mean a commercial message in any medium that aids, promotes, or assists directly or indirectly a consumer rental purchase agreement;

(2) Cash price shall mean the price at which the lessor would have sold the property to the consumer for cash on the date of the consumer rental purchase agreement for the property;

(3) Consumer shall mean a natural person who rents property under a consumer rental purchase agreement;

(4) Consumer rental purchase agreement shall mean an agreement which is for the use of property by a consumer primarily for personal, family, or household purposes, which is for an initial period of four months

or less, whether or not there is any obligation beyond the initial period, which is automatically renewable with each payment, and which permits the consumer to become the owner of the property. A consumer rental purchase agreement in compliance with the act shall not be construed to be a lease or agreement which constitutes a credit sale as defined in 12 C.F.R. 226.2(a)(16) and section 1602(g) of the Truth in Lending Act, 15 U.S.C. 1601 et seq., or a lease which constitutes a consumer lease as defined in 12 C.F.R. 213.2(a)(6). Consumer rental purchase agreement shall not include:

(a) Any lease for agricultural, business, or commercial purposes;

(b) Any lease made to an organization;

(c) A lease or agreement which constitutes an installment sale or installment contract as defined in section 45-335;

(d) A security interest as defined in section 1-201, Uniform Commercial Code; and

(e) A home solicitation sale as defined in section 69-1601;

(5) Consummation shall mean the occurrence of an event which causes a consumer to become contractually obligated on a consumer rental purchase agreement;

(6) Department shall mean the Department of Banking and Finance;

(7) Lessor shall mean a person who in the ordinary course of business regularly leases, offers to lease, or arranges for the leasing of property under a consumer rental purchase agreement; and

(8) Property shall mean any property that is not real property under the laws of this state when made available for a consumer rental purchase agreement.

Sec. 4. (1) Before entering into any consumer rental purchase agreement, the lessor shall disclose to the consumer the following items as applicable:

(a) A brief description of the leased property sufficient to identify the property to the consumer and lessor;

(b) The number, amount, and timing of all lease payments necessary to acquire ownership of the property;

(c) The total amount of all initial and periodic payments and other charges to acquire ownership of the property pursuant to the ownership provisions of the consumer rental purchase agreement;

(d) A statement that the consumer will not own the property until the consumer has made the stated

number of payments and the total dollar amount of payments necessary to acquire ownership;

(e) A statement that the total of payments does not include other charges such as late fees and that the consumer should see the contract for an explanation of these charges;

(f) A statement that the consumer is responsible for the fair market value of the property if it is lost, stolen, damaged, or destroyed;

(g) A statement indicating whether the property is new or used. A statement that indicates that new property is used shall not be a violation of the Consumer Rental Purchase Agreement Act;

(h) A statement of the cash price of the property. When the agreement involves a lease for two or more items, a statement of the aggregate cash price of all items shall satisfy the requirement of this subdivision;

(i) The total of initial payments required to be paid before consummation of the agreement or delivery of the property, whichever occurs later;

(j) A statement clearly summarizing the terms of the consumer's options to purchase, including a statement that at any time after the first periodic payment is made the consumer may acquire ownership of the property by tendering fifty-five percent of the difference between the total of payments necessary to acquire ownership and the total of lease payments the consumer has paid on the property at that time;

(k) A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility and a statement that if any part of a manufacturer's warranty covers the leased property at the time the consumer acquires ownership of the property, such warranty shall be transferred to the consumer if allowed by the terms of the warranty; and

(1) The date of the transaction and the names of the lessor and the consumer.

(2) With respect to matters specifically governed by the Consumer Credit Protection Act, 15 U.S.C.A. 1635 et seq., compliance with such act shall satisfy the requirements of this section.

(3) Subsection (1) of this section shall not apply to a lessor who complies with the disclosure requirements of the Consumer Credit Protection Act, 15 U.S.C.A. 1667a, with respect to a consumer rental purchase agreement entered into with a consumer.

Sec. 5. (1) In a consumer rental purchase

agreement involving more than one consumer, a lessor need disclose the items required by the Consumer Rental Purchase Agreement Act to only one of the consumers who is primarily obligated. In a consumer rental purchase agreement involving more than one lessor, only one lessor need make the required disclosures.

(2) The disclosures required under the act shall be made at or before consummation of the consumer rental purchase agreement.

(3) The disclosures shall be made using words and phrases of common meaning in a form that the consumer may keep. The required disclosures shall be set forth clearly and conspicuously. The disclosures shall be placed all together on the front side of the consumer rental purchase agreement or on a separate form. The form setting forth the required disclosures shall contain spaces for the consumer's signature and the date appearing immediately below the disclosures. The requirements of this section shall not have been complied with unless the consumer signs the statement and receives at the time the disclosures are made a legible copy of the signed statement. The inclusion in the required disclosures of a statement that the consumer received a legible copy of those disclosures shall create a rebuttable presumption of receipt.

(4) Information required to be disclosed may be given in the form of estimates. Estimates shall be identified as such.

(5) If a disclosure becomes inaccurate as the result of any act, occurrence, or agreement after delivery of the required disclosures, the resulting inaccuracy shall not be a violation of the act.

(6) Information in addition to that required by section 4 of this act may be disclosed if the additional information is not stated, utilized, or placed in a manner which will contradict, obscure, or detract attention from the required information.

(7) The department shall adopt and promulgate rules and regulations establishing requirements for the order, acknowledgment by initialing, and conspicuous placement of the disclosures set forth in section 4 of this act. Such rules and regulations may allow the disclosures to be made in accordance with model forms prepared by the department.

(8) The terms of the consumer rental purchase agreement, except as otherwise provided in the Consumer Rental Purchase Agreement Act, shall be set forth in not less than eight-point standard type or such similar type as prescribed in rules and regulations adopted and

promulgated by the department.

(9) Every consumer rental purchase agreement shall contain, immediately above or adjacent to the place for the signature of the consumer, a clear, conspicuous, printed or typewritten notice, in boldface, ten-point type, in substantially the following language:

NOTICE TO CONSUMER - READ BEFORE SIGNING

a. DO NOT SIGN THIS BEFORE YOU READ THE ENTIRE AGREEMENT, INCLUDING ANY WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED.

b. DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.

c. YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.

Sec. 6. The lessor shall furnish the consumer upon request with an itemized written receipt for payment in cash or any other method of payment which itself does not provide evidence of payment.

Sec. 7. A consumer rental purchase agreement may not contain a provision:

(1) Requiring a confession of judgment;

(2) Requiring a garnishment of wages;

(3) Granting authorization to the lessor or a person acting on the lessor's behalf to enter unlawfully upon the consumer's premises or to commit any breach of the peace in the repossession of property;

(4) Requiring the consumer to waive any defense, counterclaim, or right of action against the lessor or a person acting on the lessor's behalf in collection of payment under the consumer rental purchase agreement or in the repossession of property; or

(5) Requiring purchase of insurance from the lessor to cover the property.

Sec. 8. Each consumer rental purchase agreement shall:

(1) Provide that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property upon expiration of any lease term; and

(2) Contain a provision for reinstatement which shall include, but not be limited to:

(a) Permitting a consumer who fails to make a timely rental payment to reinstate the agreement without losing any rights or options which exist under the agreement by the payment of all past-due rental charges, the reasonable costs of pickup, redelivery, and any refurbishing, and any applicable late fee within five business days of the renewal date of the agreement if the consumer pays monthly or within three business days

of the renewal date of the agreement if the consumer pays more frequently than monthly;

(b) Permitting the consumer to reinstate the agreement during a period of not less than thirty days after the date of the return of the property if the consumer promptly returns or voluntarily surrenders the property upon request by the lessor or its agent. In the event the consumer has paid not less than sixty percent and not more than eighty percent of the amount called for under the contract to obtain ownership, the reinstatement period shall be extended to a total of ninety days after the date of the return of the property. In the event the consumer has paid eighty percent or more of the amount called for under the contract to obtain ownership, the reinstatement period shall be extended to a total of one hundred eighty days after the date of the return of the property.

Nothing in this section shall prevent a lessor from attempting to repossess property during the reinstatement period, but such repossession shall not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same property or substitute property of comparable quality and condition.

Sec. 9. A lessor shall not:

(1) Charge a penalty for early termination of a consumer rental purchase agreement or for the return of an item at any point except for those charges authorized by section 10 of this act; or

(2) Require payment by a cosigner of the consumer rental purchase agreement of any fees or charges which could not be imposed upon the consumer as part of the consumer rental purchase agreement.

Sec. 10. (1) The lessor may contract for and receive an initial nonrefundable administrative fee of not more than ten dollars. If a security deposit is required by the lessor, the amount of the deposit and the conditions under which all or a part of the deposit will be returned shall be disclosed with the disclosures required by sections 4 and 5 of this act.

(2) The lessor may contract for and receive a delivery charge of not more than ten dollars or, in the case of a consumer rental purchase agreement covering more than five items, a delivery charge of not more than twenty-five dollars. A delivery charge may be assessed only if the lessor actually delivers the items to the place designated by the consumer and the delivery charge is disclosed with the disclosures required by sections 4 and 5 of this act. The delivery fee may be assessed in

lieu of and not in addition to the administrative fee in subsection (1) of this section.

(3) The parties may contract for late fees as follows:

(a) For consumer rental purchase agreements with monthly renewal dates, a late fee of not more than five dollars may be assessed on any payment not made within five business days after the payment is due; and

(b) For consumer rental purchase agreements with weekly or biweekly renewal dates, a late fee of not more than three dollars may be assessed on any payment not made within three business days after payment is due.

A late fee on a consumer rental purchase agreement may be collected only once on any accrued payment no matter how long such payment remains unpaid, may be collected at the time it accrues or at any time thereafter, and shall not be assessed against a payment that is timely made even though an earlier late fee has not been paid in full.

Sec. 11. (1) A renegotiation shall be deemed to occur when an existing consumer rental purchase agreement is satisfied and replaced by a new agreement undertaken by the same consumer. A renegotiation shall be considered a new agreement requiring new disclosures. Renegotiation shall not include:

(a) The addition or return of property in a multiple-item agreement or the substitution of leased property if in either case the average payment allocable to a payment period is not changed by more than twenty-five percent;

(b) Deferral or extension of one or more periodic payments or portions of a periodic payment;

(c) A reduction in charges in the agreement;

(d) An agreement involving a court proceeding;

and

(e) Any other event described in rules and regulations adopted and promulgated by the department.

(2) No disclosures shall be required for any extension of a consumer rental purchase agreement.

Sec. 12. (1) Any advertisement for a consumer rental purchase agreement which refers to or states the amount of any payment or the right to acquire ownership for any specific item shall also state clearly and conspicuously the following if applicable:

(a) That the transaction advertised is a consumer rental purchase agreement;

(b) The total dollar amount of payments necessary to acquire ownership; and

(c) That the consumer acquires no ownership rights if the total dollar amount necessary to acquire ownership is not paid.

(2) Any owner or employee of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

(3) Subsection (1) of this section shall not apply to an advertisement which does not refer to a specific item of property, which does not refer to or state the amount of any payment, or which is published in the yellow pages of a telephone directory or any similar directory of business.

(4) With respect to matters specifically governed by the Consumer Credit Protection Act, 15 U.S.C.A. 1635 et seq., compliance with such act shall satisfy the requirements of this section.

Sec. 13. (1) A lessor who fails to comply with the requirements of sections 4 to 10 of this act with respect to a consumer shall be liable to the consumer in an amount equal to the greater of:

(a) The actual damages sustained by the consumer as a result of the violation or, in the case of an individual action, twenty-five percent of the total of payments necessary to acquire ownership but not less than one hundred dollars nor more than one thousand dollars; and

(b) The costs of the action and reasonable attorney's fees.

(2) In the case of an advertisement, any lessor who fails to comply with the requirements of section 12 of this act with regard to any person shall be liable to that person for actual damages suffered from the violation, the costs of the action, and reasonable attorney's fees.

(3) When there is more than one lessor, liability shall be imposed only on the lessor who made the disclosures. When no disclosures have been made, liability shall be imposed jointly and severally on all lessors.

(4) When there is more than one consumer, there shall be only one recovery of damages under subsection (1) of this section for a violation of the Consumer Rental Purchase Agreement Act.

(5) Multiple violations in connection with a single consumer rental purchase agreement shall entitle the consumer to a single recovery under this section.

(6) A consumer shall not take any action to offset any amount for which a lessor is potentially liable under subsection (1) of this section against any

amount owed by the consumer unless the amount of the lessor's liability has been determined by judgment of a court of competent jurisdiction in an action to which the lessor was a party. This subsection shall not bar a consumer then in default on the obligation from asserting a violation of the act as an original action or as a defense or counterclaim to an action brought by the lessor to collect an amount owed by the consumer.

(7) In connection with any transaction covered under the act, the lessor shall preserve evidence of compliance with the provisions of the act for not less than two years from the date of consummation of the agreement.

Sec. 14. An action under the Consumer Rental Purchase Agreement Act may be brought in any court of competent jurisdiction within one year of the date of the occurrence of any violation or within six months of the time the consumer rental purchase agreement and any renewal or extension of the agreement cease to be in effect, whichever occurs later. Notwithstanding the provisions of this section, an action under the act may be maintained by way of recoupment or counterclaim in an action brought against the consumer by the lessor or the lessor's assignee.

Sec. 15. (1) A lessor shall not be liable for a violation under section 13 of this act if the lessor proves by a preponderance of the evidence that the violation was not intentional, that the violation resulted from a bona fide error, and that the lessor maintained procedures reasonably adapted to avoid such an error. A bona fide error shall include, but not be limited to, clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to requirements of the Consumer Rental Purchase Agreement Act shall not be considered a bona fide error.

(2) A lessor shall not be liable under the act for any act done or omitted in good faith in conformity with any rule, regulation, or interpretation issued, adopted, or promulgated by the Attorney General, by the department, or by an official duly authorized by the Attorney General or the department even if after the act or omission has occurred the rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

Sec. 16. That section 45-335, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-335. When used in sections 45-334 to 45-353 For purposes of the Nebraska Installment Sales Act, unless the context otherwise requires:

(1) Goods shall mean all personal property except money or things in action and shall include goods which, at the time of sale or subsequently, are so affixed to realty as to become part thereof whether or not severable therefrom;

(2) Services shall mean work, labor, and services of any kind performed in conjunction with an installment sale, but not including service for which the prices charged are required by law to be established and regulated by the government of the United States or any state;

(3) Buyer shall mean a person who buys goods or obtains services from a seller in an installment sale;

(4) Seller shall mean a person who sells goods or furnishes services to a buyer under an installment sale;

(5) Installment sale shall mean any transaction, whether or not involving the creation or retention of a security interest, in which a buyer acquires goods or services from a seller pursuant to an agreement which provides for a time-price differential and under which the buyer agrees to pay all or part of the time-sale price in one or more installments and within one hundred forty-five months, except that installment contracts for the purchase of mobile homes may exceed such one hundred forty-five month limitation. Installment sale shall not include a consumer rental purchase agreement defined in and regulated by the Consumer Rental Purchase Agreement Act;

(6) Installment contract shall mean an agreement entered into in this state evidencing an installment sale except those otherwise provided for in separate acts;

(7) Cash price or cash sale price shall mean the price stated in an installment contract for which the seller would have sold or furnished to the buyer and the buyer would have bought or acquired from the seller goods or services which are the subject matter of the contract; if such sale had been a sale for cash instead of an installment sale. It may include the cash price of accessories or services related to the sale such as delivery, installation, alterations, modifications, and improvements; and may include taxes to the extent imposed on the cash sale;

(8) Basic time price shall mean the cash sale

price of the goods or services which are the subject matter of an installment contract plus the amount included therein, if a separate identified charge is made therefor and stated in the contract, for insurance, registration, certificate of title and license fees, filing fees, and fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, ~~or~~ releasing, or satisfying any security related to the credit transaction and less the amount of the buyer's downpayment in money or goods or both;

(9) Time-price differential, however denominated or expressed, shall mean the amount, as limited in ~~sections 45-334 to 45-353~~ the Nebraska Installment Sales Act, to be added to the basic time price;

(10) Time-sale price shall mean the total of the basic time price of the goods or services, the amount of the buyer's downpayment in money or goods or both, and the time-price differential;

(11) Sales finance company shall mean a person engaged, in whole or in part, in the business of purchasing installment contracts from one or more sellers. ~~The term includes, but is not~~ Sales finance company shall include, but not be limited to, a bank, trust company, investment company, savings and loan association, or installment loan licensee, if so engaged; and

(12) Director shall mean the Director of Banking and Finance.

Sec. 17. That section 69-1601, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

69-1601. For purposes of sections 69-1601 to 69-1607, unless the context otherwise requires:

(1) Home solicitation sale shall mean a sale, lease, or rental of consumer goods or services with a purchase price of twenty-five dollars or more, whether under a single or multiple contract, in which the seller or his or her representative personally solicits the sale, including those in response to or following the invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. The term home solicitation sale ~~does~~ shall not include a transaction:

(a) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for

sale on a continuing basis;

(b) In which the consumer is accorded the right to rescission by the provisions of the Consumer Credit Protection Act, {15 U.S.C.A. 1635 et seq., } or regulations issued pursuant thereto;

(c) In which the buyer has initiated the contact, and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days;

(d) Conducted and consummated entirely by mail or telephone, and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services;

(e) In which the buyer has initiated the contact and specifically requested the seller to visit his or her home for the purpose of repairing or performing maintenance upon the buyer's personal property. If, in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of these such additional goods or services would shall not fall within this exclusion; or

(f) Pertaining to the sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission; or

(g) Defined as a consumer rental purchase agreement in the Consumer Rental Purchase Agreement Act;

(2) Buyer shall mean both actual and prospective purchasers or lessees of any goods or services offered through home solicitation selling; and

(3) Seller shall mean a person or organization who advertises, offers, or deals in goods or services for the purpose of home solicitation selling or provides or exercises supervision, direction, or control over sales practices used in the home solicitation sale, but shall not include banks, savings and loan associations, insurance companies, public utilities, licensed motor vehicle dealers, or licensed real estate brokers or salesmen salespersons with respect to real estate listings or the sale or leasing of real estate, but the term seller shall include a supplier or distributor if:

(a) The seller is a subsidiary or affiliate of the supplier or distributor;

(b) The seller interchanges personnel or

maintains common or overlapping officers or directors with the supplier or distributor; or

(c) The supplier or distributor provides or exercises supervision, direction, or control over the selling practices of the seller.

Sec. 18. That section 1-201, Uniform Commercial Code, be amended to read as follows:

U1-201. General definitions.

Subject to additional definitions contained in the subsequent articles of this act which are applicable to specific articles or parts thereof, and unless the context otherwise requires, in this act:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this act (sections 1-205 and 2-208). Whether an agreement has legal consequences is determined by the provisions of this act, if applicable; otherwise by the law of contracts (section 1-103). (Compare "Contract".)

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air way bill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest of a third party

in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as, NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this act and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or

breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this act to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" means a person who is in possession of a document of title or an instrument or an investment security drawn, issued or indorsed to him or her or to his or her order or to bearer or in blank.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his or her debts in the ordinary course of business or cannot pay his or her debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

(25) A person has "notice" of a fact when

(a) he or she has actual knowledge of it; or

(b) he or she has received a notice or notification of it; or

(c) from all the facts and circumstances known to him or her at the time in question he or she has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he or she has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this act.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification

when

(a) it is duly delivered at the place of business through which the contract was made or at any other place held out by him or her as the place for receipt of such communications; or

(b) in the event notice or notification cannot be had pursuant to paragraph (a), it is published at least once in a legal newspaper published in or of general circulation in the county where the transaction has its situs; or

(c) it comes to his or her attention.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his or her attention if the organization had exercised due diligence.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this act.

(30) "Person" includes an individual or an organization (See section 1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or

performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper which is subject to article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under section 2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (section 2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security. "Security interest" does not include a consumer rental purchase agreement as defined in the Consumer Rental Purchase Agreement Act.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature or indorsement means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided

with respect to negotiable instruments and bank collections (sections 3-303, 4-208 and 4-209) a person gives "value" for rights if he or she acquires them

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a preexisting contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

Sec. 19. 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. 20. This act shall become operative on July 1, 1989.

Sec. 21. That original sections 45-335 and 69-1601, Reissue Revised Statutes of Nebraska, 1943, and section 1-201, Uniform Commercial Code, are repealed.

Sec. 22. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.