

AMENDMENTS TO LB 641

1           1.     Strike section 3 and insert the following new  
2 sections:

3           "Section 1. Section 69-2103, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           69-2103. For purposes of the Consumer Rental Purchase  
6 Agreement Act:

7           (1) Advertisement shall mean a commercial message in any  
8 medium that aids, promotes, or assists directly or indirectly a  
9 consumer rental purchase agreement but shall not include in-store  
10 merchandising aids such as window signs and ceiling banners;

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

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

16           (4) Consumer rental purchase agreement shall mean an  
17 agreement which is for the use of property by a consumer primarily  
18 for personal, family, or household purposes, which is for an  
19 initial period of four months or less, whether or not there is any  
20 obligation beyond the initial period, which is automatically  
21 renewable with each payment, and which permits the consumer to  
22 become the owner of the property. A consumer rental purchase  
23 agreement in compliance with the act shall not be construed to be a  
24 lease or agreement which constitutes a credit sale as defined in 12

1 C.F.R. 226.2(a)(16) and section 1602(g) of the Truth in Lending  
2 Act, 15 U.S.C. 1601 et seq., or a lease which constitutes a  
3 consumer lease as defined in 12 C.F.R. 213.2(a)(6). Consumer  
4 rental purchase agreement shall not include:

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

7 (b) Any lease made to an organization;

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

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

12 (e) A home solicitation sale as defined in section  
13 69-1601;

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

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

19 (7) Lease payment shall mean a payment to be made by the  
20 consumer for the right of possession and use of the property for a  
21 specific lease period but shall not include taxes imposed on such  
22 payment;

23 (8) Lease period shall mean a week, month, or other  
24 specific period of time, during which the consumer has the right to  
25 possess and use the property after paying the lease payment and  
26 applicable taxes for such period;

27 (9) Lessor shall mean a person who in the ordinary course

1 of business operates a commercial outlet which regularly leases,  
2 offers to lease, or arranges for the leasing of property under a  
3 consumer rental purchase agreement; ~~and~~

4 ~~(8)~~ (10) Property shall mean any property that is not  
5 real property under the laws of this state when made available for  
6 a consumer rental purchase agreement; and

7 (11) Total of payments to acquire ownership shall mean  
8 the total of all charges imposed by the lessor and payable by the  
9 consumer as a condition of acquiring ownership of the property.  
10 Total of payments to acquire ownership shall include lease payments  
11 and any initial nonrefundable administrative fee or required  
12 delivery charge but shall not include taxes, late charges,  
13 reinstatement fees, or charges for optional products or services.

14 Sec. 2. Section 69-2104, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 69-2104. (1) Before entering into any consumer rental  
17 purchase agreement, the lessor shall disclose to the consumer the  
18 following items as applicable:

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

21 (b) The number, amount, and timing of all ~~lease~~ payments  
22 ~~necessary~~ included in the total of payments to acquire ownership;  
23 ~~of the property;~~

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

1           (d) A statement that the consumer will not own the  
2 property until the consumer has paid made the stated number of  
3 payments and the total dollar amount of payments necessary to  
4 acquire ownership plus applicable taxes;

5           (e) A statement that the total of payments to acquire  
6 ownership does not include other charges such as late fees taxes,  
7 late charges, reinstatement fees, or charges for optional products  
8 or services the consumer may have elected to purchase and that the  
9 consumer should see the ~~contract~~ rental purchase agreement for an  
10 explanation of these charges;

11           (f) A statement that the consumer is responsible for the  
12 fair market value, remaining rent, early purchase option amount, or  
13 cost of repair of the property, whichever is less, if it is lost,  
14 stolen, damaged, or destroyed;

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

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

22           (i) The total amount of the ~~of~~ initial payments required  
23 to be paid before consummation of the agreement or delivery of the  
24 property, whichever occurs later, and an itemization of the  
25 components of the initial payment, including any initial  
26 nonrefundable administrative fee or delivery charge, lease payment,  
27 taxes, or fee or charge for optional products or services;

1           (j) A statement clearly summarizing the terms of the  
2 consumer's options to purchase, including a statement that at any  
3 time after the first periodic payment is made the consumer may  
4 acquire ownership of the property by tendering an amount which may  
5 not exceed fifty-five percent of the difference between the total  
6 of payments ~~necessary~~ to acquire ownership and the total of lease  
7 payments the consumer has paid on the property at that time;

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

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

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

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

24           Sec. 3. Section 69-2105, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

26           69-2105. (1) In a consumer rental purchase agreement  
27 involving more than one consumer, a lessor need disclose the items

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

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

8 (3) The disclosures shall be made using words and phrases  
9 of common meaning in a form that the consumer may keep. For  
10 purposes of satisfying the disclosure requirements of the act, the  
11 terms lease and rent shall be considered synonymous. The required  
12 disclosures shall be set forth clearly and conspicuously. The  
13 disclosures shall be placed all together on the front side of the  
14 consumer rental purchase agreement or on a separate form. The form  
15 setting forth the required disclosures shall contain spaces for the  
16 consumer's signature and the date appearing immediately below the  
17 disclosures. If the disclosures are made on more than one page,  
18 each page shall be signed by the consumer. The requirements of  
19 this section shall not have been complied with unless the consumer  
20 signs the statement and receives at the time the disclosures are  
21 made a legible copy of the signed statement. The inclusion in the  
22 required disclosures of a statement that the consumer received a  
23 legible copy of those disclosures shall create a rebuttable  
24 presumption of receipt.

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

27 (5) If a disclosure becomes inaccurate as the result of

1 any act, occurrence, or agreement after delivery of the required  
2 disclosures, the resulting inaccuracy shall not be a violation of  
3 the act.

4 (6) Information in addition to that required by section  
5 69-2104 may be disclosed if the additional information is not  
6 stated, utilized, or placed in a manner which will contradict,  
7 obscure, or detract attention from the required information.

8 (7) The department shall adopt and promulgate rules and  
9 regulations establishing requirements for the order, acknowledgment  
10 by initialing, and conspicuous placement of the disclosures set  
11 forth in section 69-2104. Such rules and regulations may allow the  
12 disclosures to be made in accordance with model forms prepared by  
13 the department.

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

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

24 NOTICE TO CONSUMER -- READ BEFORE SIGNING

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

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

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

4                   Sec. 4.       Section 69-2108, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6                   69-2108. Each consumer rental purchase agreement shall:

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

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

12                  (a) Permitting a consumer who fails to make a timely  
13 lease rental payment to reinstate the agreement without losing any  
14 rights or options which exist under the agreement by the payment of  
15 all past-due lease rental charges, the reasonable costs of pickup,  
16 redelivery, and any refurbishing, and any applicable late fee  
17 within five business days of the renewal date of the agreement if  
18 the consumer pays monthly or within three business days of the  
19 renewal date of the agreement if the consumer pays more frequently  
20 than monthly;

21                  (b) Permitting the consumer to reinstate the agreement  
22 during a period of not less than thirty days after the date of the  
23 return of the property if the consumer promptly returns or  
24 voluntarily surrenders the property upon request by the lessor or  
25 its agent. In the event the consumer has paid not less than sixty  
26 percent and not more than eighty percent of the ~~amount called for~~  
27 under the contract to obtain total of payments to acquire

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1 ownership, the reinstatement period shall be extended to a total of  
2 ninety days after the date of the return of the property. In the  
3 event the consumer has paid eighty percent or more of the ~~amount~~  
4 ~~called for under the contract to obtain~~ total of payments to  
5 acquire ownership, the reinstatement period shall be extended to a  
6 total of one hundred eighty days after the date of the return of  
7 the property.

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

14           Sec. 7. Section 69-2112, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16           69-2112. (1) Any advertisement for a consumer rental  
17 purchase agreement which refers to or states the amount of any  
18 payment or the right to acquire ownership for any specific item  
19 shall also state clearly and conspicuously the following if  
20 applicable:

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

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

25           (c) That the consumer acquires no ownership rights ~~if~~  
26 until the total of payments ~~dollar amount necessary~~ to acquire  
27 ownership is ~~not~~ paid.

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

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

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

12           Sec. 8. Section 69-2113, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14           69-2113. (1) A lessor who fails to comply with the  
15 requirements of sections 69-2104 to 69-2110 with respect to a  
16 consumer shall be liable to the consumer for:

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

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

24           (2) In the case of an advertisement, any lessor who fails  
25 to comply with the requirements of section 69-2112 with regard to  
26 any person shall be liable to that person for actual damages  
27 suffered from the violation, the costs of the action, and

1 reasonable attorney's fees.

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

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

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

12 (6) A consumer shall not take any action to offset any  
13 amount for which a lessor is potentially liable under subsection  
14 (1) of this section against any amount owed by the consumer unless  
15 the amount of the lessor's liability has been determined by  
16 judgment of a court of competent jurisdiction in an action to which  
17 the lessor was a party. This subsection shall not bar a consumer  
18 then in default on the obligation from asserting a violation of the  
19 act as an original action or as a defense or counterclaim to an  
20 action brought by the lessor to collect an amount owed by the  
21 consumer.

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

26 Sec. 9. Section 69-2115, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

1           69-2115.   (1) A lessor shall not be liable for a  
2 violation under section 69-2113 if the lessor proves by a  
3 preponderance of the evidence that the violation was not  
4 intentional, that the violation resulted from a bona fide error,  
5 and that the lessor maintained procedures reasonably adapted to  
6 avoid such an error. A bona fide error shall include, but not be  
7 limited to, clerical, calculation, computer malfunction and  
8 programming, and printing errors. An error of legal judgment with  
9 respect to requirements of the Consumer Rental Purchase Agreement  
10 Act shall not be considered a bona fide error.

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

19           (3) With respect to the dollar amount of any disclosure  
20 required by the act, a lessor shall not be liable if the dollar  
21 amount actually disclosed is greater than the dollar amount  
22 required to be disclosed by the act.

23           Sec. 10. Original sections 69-2103 to 69-2105, 69-2108  
24 to 69-2110, 69-2112, 69-2113, and 69-2115, Reissue Revised Statutes  
25 of Nebraska, are repealed."

26           2. On page 3, line 12, strike "weekly or biweekly", show  
27 as stricken, and insert "more frequent than monthly"; in line 27

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1 strike "premiums for insurance"; and in line 28 strike the  
2 underscored comma.

3           3. On page 4, lines 12 and 17, before "rental" insert  
4 "consumer".

5           4. Renumber the remaining sections accordingly.