

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 215

Introduced by Quandahl, 31

Read first time January 10, 2003

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to installment sales and loans; to amend
2 section 45-341, Reissue Revised Statutes of Nebraska, and
3 section 45-1024, Revised Statutes Supplement, 2002; to
4 authorize certain fees as prescribed; and to repeal the
5 original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 45-341, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 45-341. (1) An installment contract may provide and the
4 holder thereof may collect, in addition to any time-price
5 differential, a delinquency charge on each installment in default
6 for a period of not less than fifteen days, if provided for in the
7 contract, not in excess of five percent of each installment or
8 twenty-five dollars, whichever is less, or, in lieu thereof,
9 interest after maturity on each such installment not exceeding the
10 highest permissible contract rate. If the time-price differential
11 is computed by application of the rate charged to the unpaid
12 principal balance for the number of days actually elapsed, such
13 delinquency charge may not exceed five percent of each installment
14 or twenty-five dollars, whichever is less. If any installment
15 payment is made by a check, draft, or similar signed order which is
16 not honored because of insufficient funds, no account, or any other
17 reason except an error of a third party to the contract, the holder
18 may charge and collect a fee of not more than fifteen dollars. The
19 delinquency charge and such fee may be collected when due or at any
20 time thereafter.

21 (2) When an installment contract is for a commercial or
22 business purpose ~~(1)~~ (a) a delinquency charge not to exceed five
23 percent of each unpaid installment may be contracted for and
24 received and ~~(2)~~ (b) the holder of any check or draft or similar
25 order which is not honored for any reason, except for error of a
26 third party, may charge and collect a fee as stated in the
27 contract. As used in this section, commercial or business purpose
28 means primarily for a purpose other than a personal, family, or

1 household purpose.

2 (3) A seller may charge and collect a five-dollar charge
3 per payment when a buyer, as a result of an occurrence preventing
4 the buyer from making a payment in the manner regularly made by the
5 buyer, authorizes a seller to write a check or process a payment
6 through the use of automated procedures on the buyer's checking
7 account.

8 Sec. 2. Section 45-1024, Revised Statutes Supplement,
9 2002, is amended to read:

10 45-1024. (1) Except as provided in section 45-1025 and
11 subsection (6) of this section, every licensee may make loans and
12 may contract for and receive on such loans charges at a rate not
13 exceeding twenty-four percent per annum on that part of the unpaid
14 principal balance on any loan not in excess of one thousand
15 dollars, and twenty-one percent per annum on any remainder of such
16 unpaid principal balance. Charges on loans made under the Nebraska
17 Installment Loan Act shall not be paid, deducted, or received in
18 advance. The contracting for, charging of, or receiving of charges
19 as provided for in subsection (2) of this section shall not be
20 deemed to be the payment, deduction, or receipt of such charges in
21 advance.

22 (2) When the loan contract requires repayment in
23 substantially equal and consecutive monthly installments of
24 principal and charges combined, the licensee may, at the time the
25 loan is made, precompute the charges at the agreed rate on
26 scheduled unpaid principal balances according to the terms of the
27 contract and add such charges to the principal of the loan. Every
28 payment may be applied to the combined total of principal and

1 precomputed charges until the contract is fully paid. All payments
2 made on account of any loan except for default and deferment
3 charges shall be deemed to be applied to the unpaid installments in
4 the order in which they are due. The portion of the precomputed
5 charges applicable to any particular month of the contract, as
6 originally scheduled or following a deferment, shall be that
7 proportion of such precomputed charges, excluding any adjustment
8 made for a first installment period of more than one month and any
9 adjustment made for deferment, which the balance of the contract
10 scheduled to be outstanding during such month bears to the sum of
11 all monthly balances originally scheduled to be outstanding by the
12 contract. This section shall not limit or restrict the manner of
13 calculating charges, whether by way of add-on, single annual rate,
14 or otherwise, if the rate of charges does not exceed that permitted
15 by this section. Charges may be contracted for and earned at a
16 single annual rate, except that the total charges from such rate
17 shall not be greater than the total charges from the several rates
18 otherwise applicable to the different portions of the unpaid
19 balance according to subsection (1) of this section. All loan
20 contracts made pursuant to this subsection are subject to the
21 following adjustments:

22 (a) Notwithstanding the requirement for substantially
23 equal and consecutive monthly installments, the first installment
24 period may exceed one month by as much as fifteen days and the
25 charges for each day exceeding one month shall be one-thirtieth of
26 the charges which would be applicable to a first installment period
27 of one month. The charge for extra days in the first installment
28 period may be added to the first installment and such charges for

1 such extra days shall be excluded in computing any rebate;

2 (b) If prepayment in full by cash, a new loan, or
3 otherwise occurs before the first installment due date, the charges
4 shall be recomputed at the rate of charges contracted for in
5 accordance with subsection (1) or (2) of this section upon the
6 actual unpaid principal balances of the loan for the actual time
7 outstanding by applying the payment, or payments, first to charges
8 at the agreed rate and the remainder to the principal. The amount
9 of charges so computed shall be retained in lieu of all precomputed
10 charges;

11 (c) If a contract is prepaid in full by cash, a new loan,
12 or otherwise after the first installment due date, the borrower
13 shall receive a rebate of an amount which is not less than the
14 amount obtained by applying to the unpaid principal balances as
15 originally scheduled or, if deferred, as deferred, for the period
16 following prepayment, according to the actuarial method, the rate
17 of charge contracted for in accordance with subsection (1) or (2)
18 of this section. The licensee may round the rate of charge to the
19 nearest one-half of one percent if such procedure is not
20 consistently used to obtain a greater yield than would otherwise be
21 permitted. Any default and deferment charges which are due and
22 unpaid may be deducted from any rebate. No rebate shall be
23 required for any partial prepayment. No rebate of less than one
24 dollar need be made. Acceleration of the maturity of the contract
25 shall not in itself require a rebate. If judgment is obtained
26 before the final installment date, the contract balance shall be
27 reduced by the rebate which would be required for prepayment in
28 full as of the date judgment is obtained;

1 (d) If any installment on a precomputed or interest
2 bearing loan is unpaid in full for ten or more consecutive days,
3 Sundays and holidays included, after it is due, the licensee may
4 charge and collect a default charge not exceeding an amount equal
5 to five percent of such installment. If any installment payment is
6 made by a check, draft, or similar signed order which is not
7 honored because of insufficient funds, no account, or any other
8 reason except an error of a third party to the loan contract, the
9 licensee may charge and collect a fifteen-dollar bad check charge.
10 Such default or bad check charges may be collected when due or at
11 any time thereafter;

12 (e) If, as of an installment due date, the payment date
13 of all wholly unpaid installments is deferred one or more full
14 months and the maturity of the contract is extended for a
15 corresponding period, the licensee may charge and collect a
16 deferment charge not exceeding the charge applicable to the first
17 of the installments deferred, multiplied by the number of months in
18 the deferment period. The deferment period is that period during
19 which no payment is made or required by reason of such deferment.
20 The deferment charge may be collected at the time of deferment or
21 at any time thereafter. The portion of the precomputed charges
22 applicable to each deferred balance and installment period
23 following the deferment period shall remain the same as that
24 applicable to such balance and periods under the original loan
25 contract. No installment on which a default charge has been
26 collected, or on account of which any partial payment has been
27 made, shall be deferred or included in the computation of the
28 deferment charge unless such default charge or partial payment is

1 refunded to the borrower or credited to the deferment charge. Any
2 payment received at the time of deferment may be applied first to
3 the deferment charge and the remainder, if any, applied to the
4 unpaid balance of the contract, except that if such payment is
5 sufficient to pay, in addition to the appropriate deferment charge,
6 any installment which is in default and the applicable default
7 charge, it shall be first so applied and any such installment shall
8 not be deferred or subject to the deferment charge. If a loan is
9 prepaid in full during the deferment period, the borrower shall
10 receive, in addition to the required rebate, a rebate of that
11 portion of the deferment charge applicable to any unexpired full
12 month or months of such deferment period; and

13 (f) If two or more full installments are in default for
14 one full month or more at any installment date and if the contract
15 so provides, the licensee may reduce the contract balance by the
16 rebate which would be required for prepayment in full as of such
17 installment date and the amount remaining unpaid shall be deemed to
18 be the unpaid principal balance and thereafter in lieu of charging,
19 collecting, receiving, and applying charges as provided in this
20 subsection, charges may be charged, collected, received, and
21 applied at the agreed rate as otherwise provided by this section
22 until the loan is fully paid.

23 (3) The charges, as referred to in subsection (1) of this
24 section, shall not be compounded. The charging, collecting, and
25 receiving of charges as provided in subsection (2) of this section
26 shall not be deemed compounding. If part or all of the
27 consideration for a loan contract is the unpaid principal balance
28 of a prior loan, then the principal amount payable under such loan

1 contract may include any unpaid charges on the prior loan which
2 have accrued within sixty days before the making of such loan
3 contract and may include the balance remaining after giving the
4 rebate required by subsection (2) of this section. Except as
5 provided in subsection (2) of this section, charges shall (a) be
6 computed and paid only as a percentage per month of the unpaid
7 principal balance or portions thereof and (b) be computed on the
8 basis of the number of days actually elapsed. For purposes of
9 computing charges, whether at the maximum rate or less, a month
10 shall be that period of time from any date in a month to the
11 corresponding date in the next month but if there is no such
12 corresponding date then to the last day of the next month, and a
13 day shall be considered one-thirtieth of a month when computation
14 is made for a fraction of a month.

15 (4) Except as provided in subsections (5) and (6) of this
16 section, in addition to that provided for under the Nebraska
17 Installment Loan Act, no further or other amount whatsoever shall
18 be directly or indirectly charged, contracted for, or received. If
19 any amount, in excess of the charges permitted, is charged,
20 contracted for, or received, the loan contract shall not on that
21 account be void, but the licensee shall have no right to collect or
22 receive any interest or other charges whatsoever. If such interest
23 or other charges have been collected or contracted for, the
24 licensee shall refund to the borrower all interest and other
25 charges collected and shall not collect any interest or other
26 charges contracted for and thereafter due on the loan involved, as
27 liquidated damages, and the licensee or its assignee, if found
28 liable, shall pay the costs of any action relating thereto,

1 including reasonable attorney's fees. No licensee shall be found
2 liable under this subsection if the licensee shows by a
3 preponderance of the evidence that the violation was not
4 intentional and resulted from a bona fide error notwithstanding the
5 maintenance of procedures reasonably adopted to avoid any such
6 error.

7 (5) A borrower may be required to pay all reasonable
8 expenses incurred in connection with the making, closing,
9 disbursing, extending, readjusting, or renewing of loans. Such
10 expenses may include abstracting, recording, releasing, and
11 registration fees, premiums paid for nonfiling insurance, premiums
12 paid on insurance policies covering tangible personal property
13 securing the loan, title examinations, credit reports, survey, and
14 taxes or charges imposed upon or in connection with the making and
15 recording or releasing of any mortgage. Except as provided in
16 subsection (6) of this section, a borrower may also be required to
17 pay a nonrefundable loan origination fee not to exceed the lesser
18 of five hundred dollars or an amount equal to seven percent of that
19 part of the original principal balance of any loan not in excess of
20 two thousand dollars and five percent on that part of the original
21 principal balance in excess of two thousand dollars. Such
22 reasonable initial charges may be collected from the borrower or
23 included in the principal balance of the loan at the time the loan
24 is made and shall not be considered interest or a charge for the
25 use of the money loaned.

26 (6) (a) Loans secured solely by real estate shall not be
27 subject to the limitations on the rate of interest provided in
28 subsection (1) of this section or the limitations on the

1 nonrefundable loan origination fee under subsection (5) of this
2 section if (i) the principal amount of the loan is seven thousand
3 five hundred dollars or more and (ii) the sum of the principal
4 amount of the loan and the balances of all other liens against the
5 property do not exceed one hundred percent of the appraised value
6 of the property.

7 (b) An origination fee on such loan shall be computed
8 only on the principal amount of the loan reduced by any portion of
9 the principal that consists of the amount required to pay off
10 another loan made under this subsection by the same licensee.

11 (c) A prepayment penalty on such loan shall be permitted
12 only if (i) the maximum amount of the penalty to be assessed is
13 stated in writing at the time the loan is made, (ii) the loan is
14 prepaid in full within two years from the date of the loan, and
15 (iii) the loan is prepaid with money other than the proceeds of
16 another loan made by the same licensee. Such prepayment penalty
17 shall not exceed six months interest on eighty percent of the
18 original principal balance computed at the agreed rate of interest
19 on the loan.

20 (d) A licensee making a loan pursuant to this subsection
21 may obtain an interest in any fixtures attached to such real estate
22 and any insurance proceeds payable in connection with such real
23 estate or the loan.

24 (e) For purposes of this subsection, principal amount of
25 the loan means the total sum owed by the borrower including, but
26 not limited to, insurance premiums, loan origination fees, or any
27 other amount that is financed, except that for purposes of
28 subdivision (6) (b) of this section loan origination fees shall not

1 be included in calculating the principal amount of the loan.

2 (7) (a) A licensee making a mortgage loan as defined in
3 subdivision (8) of section 45-702 on real property as defined in
4 subdivision (10) of such section shall comply with subdivisions
5 (1), (2), (3), (4), (6), and (7) of section 45-711.

6 (b) A licensee making a loan pursuant to this subsection
7 shall establish and maintain a toll-free telephone number or accept
8 collect telephone calls to respond to inquiries from borrowers, if
9 the licensee services mortgage loans. If a licensee services
10 mortgage loans, it shall continue to maintain a toll-free telephone
11 number or accept collect calls to respond to inquiries from
12 borrowers for a period of ninety days after the date the licensee
13 ceased to service mortgage loans. A telephonic messaging service
14 which does not permit the borrower an option of personal contact
15 with an employee, agent, or contractor of the licensee shall not
16 satisfy the conditions of this subsection.

17 (8) A licensee may charge and collect a five-dollar
18 charge per payment when a borrower, as a result of an occurrence
19 preventing the borrower from making a payment in the manner
20 regularly made by the borrower, authorizes a licensee to write a
21 check or process a payment through the use of automated procedures
22 on the borrower's checking account.

23 Sec. 3. Original section 45-341, Reissue Revised
24 Statutes of Nebraska, and section 45-1024, Revised Statutes
25 Supplement, 2002, are repealed.