

AMENDMENTS TO LB 571

Introduced by Banking, Commerce and Insurance.

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Sections 1 to 6 of this act shall be known and
4 may be cited as the Guaranteed Asset Protection Waiver Act.

5 Sec. 2. (1) The purpose of the Guaranteed Asset
6 Protection Waiver Act is to provide a framework within which
7 guaranteed asset protection waivers are offered, sold, and provided
8 in this state.

9 (2) The act does not apply to:

10 (a) An insurance policy offered by an insurer under the
11 insurance laws of this state;

12 (b) A debt cancellation or debt suspension contract being
13 offered in compliance with 12 C.F.R. part 37 or 12 C.F.R. part 721
14 or other federal law as such part or law existed on the effective
15 date of this act; or

16 (c) Guaranteed asset protection waivers offered, sold, or
17 provided to borrowers by a financial institution.

18 (3) Guaranteed asset protection waivers governed under
19 the Guaranteed Asset Protection Waiver Act are not insurance
20 and are exempt from the insurance laws of this state. Persons
21 marketing, selling, or offering to sell guaranteed asset protection
22 waivers to borrowers that comply with the act are exempt from this
23 state's insurance licensing requirements.

1 Sec. 3. For purposes of the Guaranteed Asset Protection
2 Waiver Act:

3 (1) Borrower means a debtor, retail buyer, or lessee,
4 under a finance agreement;

5 (2) Creditor means:

6 (a) The lender in a loan or credit transaction involving
7 a motor vehicle;

8 (b) The lessor in a lease transaction involving a motor
9 vehicle;

10 (c) Any retail seller of motor vehicles that provides
11 credit to retail buyers of such motor vehicles, if such entities
12 comply with the provisions of this section; or

13 (d) The assignees of any of the foregoing to whom the
14 credit obligation is payable;

15 (3) Creditor's designee means a person other than the
16 creditor that performs administrative or operational functions
17 pursuant to a guaranteed asset protection waiver program;

18 (4) Finance agreement means a loan, credit transaction,
19 lease, or retail installment sales contract for the purchase or
20 lease of a motor vehicle;

21 (5) Financial institution has the same meaning as in
22 section 8-101;

23 (6) Free-look period means the period of time from the
24 effective date of the guaranteed asset protection waiver until the
25 date the borrower may cancel the contract without penalty, fees, or
26 costs to the borrower. This period of time must not be shorter than
27 thirty days;

1 (7) Guaranteed asset protection waiver means a
2 contractual agreement wherein a creditor or the creditor's designee
3 agrees, for a separate charge, to cancel or waive all or part of
4 amounts due on a borrower's finance agreement in the event of a
5 total physical damage loss as determined by the insurer issuing the
6 motor vehicle insurance policy subject to the terms of the waiver
7 or unrecovered theft as determined by the insurer issuing the motor
8 vehicle insurance policy subject to the terms of the waiver of
9 the motor vehicle, which agreement must be part of, or a separate
10 addendum to, the finance agreement. If a borrower does not have
11 motor vehicle insurance, the creditor or the creditor's designee
12 will accept a report prepared pursuant to insurance industry
13 standards by a qualified inspector declaring the motor vehicle a
14 total loss or a law enforcement report declaring the motor vehicle
15 an unrecovered theft. Nothing in the act shall be construed to
16 require the waiver to pay more than the amount that would have
17 been paid if the borrower had motor vehicle insurance at the time
18 of loss;

19 (8) Motor vehicle means self-propelled or towed vehicles
20 designed for personal or commercial use, including, but not limited
21 to, automobiles, trucks, motorcycles, recreational vehicles, all
22 terrain vehicles, snowmobiles, campers, boats, personal watercraft,
23 and motorcycle, boat, camper, and personal watercraft trailers; and

24 (9) Person includes an individual, company, association,
25 organization, partnership, business trust, corporation, and every
26 form of legal entity.

27 Sec. 4. (1) Guaranteed asset protection waivers offered,

1 sold, or provided to borrowers under the terms of the Guaranteed
2 Asset Protection Waiver Act are not insurance and are exempt from
3 the insurance laws of this state. Persons marketing, selling, or
4 offering to sell guaranteed asset protection waivers to borrowers
5 that comply with the act are exempt from this state's insurance
6 licensing requirements.

7 (2) Guaranteed asset protection waivers may, at the
8 option of the creditor, be sold for a single payment or may be
9 offered with a monthly or periodic payment option.

10 (3) Notwithstanding any other provision of law, any cost
11 to the borrower for a guaranteed asset protection waiver entered
12 into in compliance with the federal Truth in Lending Act, 15 U.S.C.
13 1601 et seq. and its implementing regulations, as such act and
14 regulations existed on the effective date of this act, shall be
15 separately stated and is not to be considered a finance charge or
16 interest.

17 (4) The guaranteed asset protection waiver remains a part
18 of the finance agreement upon the assignment, sale, or transfer of
19 such finance agreement by the creditor.

20 (5) Neither the extension of credit, the terms of the
21 credit, nor the terms of the related motor vehicle sale or
22 lease may be conditioned upon the purchase of a guaranteed asset
23 protection waiver.

24 (6) Persons marketing, selling, or offering to sell
25 guaranteed asset protection waivers to a borrower shall not
26 market such guaranteed asset protection waivers to any borrower or
27 potential borrowers as being insured under a contractual liability

1 or other insurance policy issued by an insurer.

2 Sec. 5. Guaranteed asset protection waivers shall
3 disclose, as applicable, in writing and in clear, understandable
4 language that is easy to read, the following:

5 (1) The name and address of the initial creditor or the
6 creditor's designee and the borrower at the time of sale;

7 (2) The purchase price and the terms of the guaranteed
8 asset protection waiver, including the requirements for protection,
9 conditions, or exclusions associated with the guaranteed asset
10 protection waiver;

11 (3) That the borrower may cancel the guaranteed asset
12 protection waiver within the free-look period as specified in the
13 waiver, and will be entitled to a full refund of the purchase
14 price, so long as no benefits have been provided. In the event
15 benefits have been provided during the free-look period, the
16 borrower may receive a full refund less any benefits provided under
17 the waiver;

18 (4) The procedure the borrower shall follow, if any, to
19 obtain guaranteed asset protection waiver benefits under the terms
20 and conditions of the waiver, including a telephone number and
21 address where the borrower may apply for waiver benefits;

22 (5) Whether or not the guaranteed asset protection waiver
23 is cancellable after the free-look period and the conditions under
24 which it may be cancelled or terminated including the procedures
25 for requesting any refund due;

26 (6) That in order to receive any refund due in the event
27 of a borrower's cancellation of the guaranteed asset protection

1 waiver agreement or early termination of the finance agreement
2 after the free-look period of the guaranteed asset protection
3 waiver, the borrower, in accordance with terms of the waiver,
4 shall provide a written request to cancel to the creditor or the
5 creditor's designee within ninety days of the occurrence of the
6 event terminating the finance agreement;

7 (7) The methodology for calculating any refund of the
8 unearned purchase price of the guaranteed asset protection waiver
9 due, in the event of cancellation of the guaranteed asset
10 protection waiver or early termination of the finance agreement;

11 (8) That neither the extension of credit, the terms of
12 the credit, nor the terms of the related motor vehicle sale or
13 lease shall be conditioned upon the purchase of the guaranteed
14 asset protection waiver;

15 (9) That a guaranteed asset protection waiver is not
16 insurance, is not regulated by the Department of Insurance, and
17 that the guaranteed asset protection waiver remains a part of the
18 finance agreement upon the assignment, sale, or transfer of such
19 finance agreement by the creditor or the creditor's designee; and

20 (10) The events or losses to which the guaranteed asset
21 protection waiver does not apply.

22 Sec. 6. (1) Guaranteed asset protection waiver agreements
23 may be cancellable or noncancellable after the free-look period.
24 A creditor or the creditor's designee may offer a borrower a
25 waiver that does not provide for a refund if the creditor or the
26 creditor's designee also offers the borrower a bona fide option to
27 purchase a comparable waiver that provides for a refund. Guaranteed

1 asset protection waivers shall provide that if a borrower cancels a
2 waiver within the free-look period, the borrower will be entitled
3 to a full refund of the purchase price, so long as no benefits
4 have been provided. In the event benefits have been provided, the
5 borrower may receive a full or partial refund pursuant to the terms
6 of the waiver.

7 (2) In the event of a borrower's cancellation of the
8 guaranteed asset protection waiver or early termination of the
9 finance agreement, after the agreement has been in effect beyond
10 the free-look period, the borrower may be entitled to a refund of
11 any unearned portion of the purchase price of the waiver unless
12 the waiver provides otherwise. The creditor or the creditor's
13 designee shall calculate the amount of the refund using a method
14 at least as favorable to the borrower as the actuarial method. In
15 order to receive a refund, the borrower, in accordance with any
16 applicable terms of the waiver, must provide a written request to
17 the creditor or the creditor's designee within ninety days of the
18 event terminating the waiver or finance agreement.

19 (3) If the cancellation of a guaranteed asset protection
20 waiver occurs as a result of a default under the finance agreement
21 or the repossession of the motor vehicle associated with the
22 finance agreement, or any other termination of the finance
23 agreement, any refund due may be paid directly to the creditor
24 or the creditor's designee and applied as set forth in subsection
25 (4) of this section.

26 (4) Any cancellation refund under this section may be
27 applied by the creditor or the creditor's designee as a reduction

1 of the amount owed under the finance agreement, unless the borrower
2 can show that the finance agreement has been paid in full.

3 Sec. 7. Section 45-335, Revised Statutes Cumulative
4 Supplement, 2008, is amended to read:

5 45-335 For purposes of the Nebraska Installment Sales
6 Act, unless the context otherwise requires:

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

11 (2) Services means work, labor, and services of any kind
12 performed in conjunction with an installment sale but does not
13 include services for which the prices charged are required by law
14 to be established and regulated by the government of the United
15 States or any state;

16 (3) Buyer means a person who buys goods or obtains
17 services from a seller in an installment sale;

18 (4) Seller means a person who sells goods or furnishes
19 services to a buyer under an installment sale;

20 (5) Installment sale means any transaction, whether or
21 not involving the creation or retention of a security interest, in
22 which a buyer acquires goods or services from a seller pursuant to
23 an agreement which provides for a time-price differential and under
24 which the buyer agrees to pay all or part of the time-sale price in
25 one or more installments and within one hundred forty-five months,
26 except that installment contracts for the purchase of mobile
27 homes may exceed such one-hundred-forty-five-month limitation.

1 Installment sale does not include a consumer rental purchase
2 agreement defined in and regulated by the Consumer Rental Purchase
3 Agreement Act;

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

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

16 (8) Basic time price means the cash sale price of the
17 goods or services which are the subject matter of an installment
18 contract plus the amount included therein, if a separate identified
19 charge is made therefor and stated in the contract, for insurance,
20 registration, certificate of title, guaranteed asset protection
21 waiver, and license fees, filing fees, an origination fee, and
22 fees and charges prescribed by law which actually are or will be
23 paid to public officials for determining the existence of or for
24 perfecting, releasing, or satisfying any security related to the
25 credit transaction or any charge for nonfiling insurance if such
26 charge does not exceed the amount of fees and charges prescribed
27 by law which would have been paid to public officials for filing,

1 perfecting, releasing, and satisfying any security related to the
2 credit transaction and less the amount of the buyer's downpayment
3 in money or goods or both;

4 (9) Time-price differential, however denominated or
5 expressed, means the amount, as limited in the Nebraska Installment
6 Sales Act, to be added to the basic time price;

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

11 (11) Sales finance company means a person purchasing one
12 or more installment contracts from one or more sellers. Sales
13 finance company includes, but is not limited to, a financial
14 institution or installment loan licensee, if so engaged;

15 (12) Director means the Director of Banking and Finance;

16 (13) Financial institution has the same meaning as in
17 section 8-101;

18 (14) Debt cancellation contract means a loan term
19 or contractual arrangement modifying loan terms under which a
20 financial institution agrees to cancel all or part of a buyer's
21 obligation to repay an extension of credit from the financial
22 institution upon the occurrence of a specified event. The debt
23 cancellation contract may be separate from or a part of other loan
24 documents. The term debt cancellation contract does not include
25 loan payment deferral arrangements in which the triggering event is
26 the buyer's unilateral election to defer repayment or the financial
27 institution's unilateral decision to allow a deferral of repayment;

1 ~~and~~

2 (15) Debt suspension contract means a loan term or
3 contractual arrangement modifying loan terms under which a
4 financial institution agrees to suspend all or part of a buyer's
5 obligation to repay an extension of credit from the financial
6 institution upon the occurrence of a specified event. The debt
7 suspension contract may be separate from or a part of other loan
8 documents. The term debt suspension contract does not include loan
9 payment deferral arrangements in which the triggering event is the
10 buyer's unilateral election to defer repayment or the financial
11 institution's unilateral decision to allow a deferral of repayment;
12 and-

13 (16) Guaranteed asset protection waiver means a waiver
14 that is offered, sold, or provided in accordance with the
15 Guaranteed Asset Protection Waiver Act.

16 Sec. 8. Section 45-336, Revised Statutes Cumulative
17 Supplement, 2008, is amended to read:

18 45-336 (1) Each retail installment contract shall be in
19 writing, shall be signed by both the buyer and the seller, and
20 shall contain the following items and a copy thereof shall be
21 delivered to the buyer at the time the instrument is signed,
22 except for contracts made in conformance with section 45-340: (a)
23 The cash sale price; (b) the amount of the buyer's downpayment,
24 and whether made in money or goods, or partly in money and
25 partly in goods, including a brief description of any goods traded
26 in; (c) the difference between subdivisions (a) and (b) of this
27 subsection; (d) the amount included for insurance if a separate

1 charge is made therefor, specifying the types of coverages; (e)
2 the amount included for a debt cancellation contract or a debt
3 suspension contract if the debt cancellation contract or debt
4 suspension contract is a contract of a financial institution, such
5 contract is sold directly by such financial institution or by an
6 unaffiliated, nonexclusive agent of such financial institution in
7 accordance with 12 C.F.R. part 37, as such part existed on January
8 1, 2006, and the financial institution is responsible for the
9 unaffiliated, nonexclusive agent's compliance with such part, and a
10 separate charge is made therefor; (f) the basic time price, which
11 is the sum of subdivisions (c) and (d) of this subsection; (g) the
12 time-price differential; (h) the amount of the time-price balance,
13 which is the sum of subdivisions (f) and (g) of this subsection,
14 payable in installments by the buyer to the seller; (i) the number,
15 amount, and due date or period of each installment; and (j) the
16 time-sales price; and (k) the amount included for a guaranteed
17 asset protection waiver.

18 (2) The contract shall contain substantially the
19 following notice: NOTICE TO THE BUYER. DO NOT SIGN THIS CONTRACT
20 BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED
21 TO A COPY OF THE CONTRACT YOU SIGN.

22 (3) The items listed in subsection (1) of this section
23 need not be stated in the sequence or order set forth in such
24 subsection. Additional items may be included to explain the
25 computations made in determining the amount to be paid by the
26 buyer. No installment contract shall be signed by the buyer or
27 proffered by seller when it contains blank spaces to be filled in

1 after execution, except that if delivery of the goods or services
2 is not made at the time of the execution of the contract, the
3 identifying numbers or marks of the goods, or similar information,
4 and the due date of the first installment may be inserted in the
5 contract after its execution.

6 (4) If a seller proffers an installment contract as part
7 of a transaction which delays or cancels, or promises to delay or
8 cancel, the payment of the time-price differential on the contract
9 if the buyer pays the basic time price, cash price, or cash sale
10 price within a certain period of time, the seller shall, in clear
11 and conspicuous writing, either within the installment contract or
12 in a separate document, inform the buyer of the exact date by
13 which the buyer must pay the basic time price, cash price, or
14 cash sale price in order to delay or cancel the payment of the
15 time-price differential. The seller or any subsequent purchaser of
16 the installment contract, including a sales finance company, shall
17 not be allowed to change such date.

18 (5) Upon written request from the buyer, the holder of an
19 installment contract shall give or forward to the buyer a written
20 statement of the dates and amounts of payments and the total
21 amount unpaid under such contract. A buyer shall be given a written
22 receipt for any payment when made in cash.

23 (6) After payment of all sums for which the buyer is
24 obligated under a contract, the holder shall deliver or mail to
25 the buyer at his or her last-known address one or more good and
26 sufficient instruments or copies thereof to acknowledge payment in
27 full and shall release all security in the goods and mark canceled

1 and return to the buyer the original agreement or copy thereof or
2 instruments or copies thereof signed by the buyer. For purposes
3 of this section, a copy shall meet the requirements of section
4 25-12,112.

5 Sec. 9. Section 45-1002, Revised Statutes Cumulative
6 Supplement, 2008, is amended to read:

7 45-1002 (1) For purposes of the Nebraska Installment Loan
8 Act:

9 (a) Applicant means a person applying for a license under
10 the act;

11 (b) Department means the Department of Banking and
12 Finance;

13 (c) Debt cancellation contract means a loan term
14 or contractual arrangement modifying loan terms under which a
15 financial institution agrees to cancel all or part of a borrower's
16 obligation to repay an extension of credit from the financial
17 institution upon the occurrence of a specified event. The debt
18 cancellation contract may be separate from or a part of other loan
19 documents. The term debt cancellation contract does not include
20 loan payment deferral arrangements in which the triggering event
21 is the borrower's unilateral election to defer repayment or the
22 financial institution's unilateral decision to allow a deferral of
23 repayment;

24 (d) Debt suspension contract means a loan term or
25 contractual arrangement modifying loan terms under which a
26 financial institution agrees to suspend all or part of a borrower's
27 obligation to repay an extension of credit from the financial

1 institution upon the occurrence of a specified event. The debt
2 suspension contract may be separate from or a part of other loan
3 documents. The term debt suspension contract does not include loan
4 payment deferral arrangements in which the triggering event is the
5 borrower's unilateral election to defer repayment or the financial
6 institution's unilateral decision to allow a deferral of repayment;

7 (e) Director means the Director of Banking and Finance;

8 (f) Financial institution has the same meaning as in
9 section 8-101;

10 (g) Guaranteed asset protection waiver means a waiver
11 that is offered, sold, or provided in accordance with the
12 Guaranteed Asset Protection Waiver Act;

13 ~~(g)~~ (h) Licensee means any person who obtains a license
14 under the act; and

15 ~~(h)~~ (i) Person means individual, partnership, limited
16 liability company, association, financial institution, trust,
17 corporation, and any other legal entity.

18 (2) Except as provided in subsection (3) of section
19 45-1017, no revenue arising under the act shall inure to any
20 school fund of the State of Nebraska or any of its governmental
21 subdivisions.

22 (3) Loan, when used in the Nebraska Installment Loan Act,
23 does not include any loan made by a person who is not a licensee
24 on which the interest does not exceed the maximum rate permitted by
25 section 45-101.03.

26 (4) Nothing in the Nebraska Installment Loan Act applies
27 to any loan made by a person who is not a licensee if the interest

1 on the loan does not exceed the maximum rate permitted by section
2 45-101.03.

3 Sec. 10. Section 45-1024, Revised Statutes Cumulative
4 Supplement, 2008, is amended to read:

5 45-1024 (1) Except as provided in section 45-1025 and
6 subsection (6) of this section, every licensee may make loans and
7 may contract for and receive on such loans charges at a rate
8 not exceeding twenty-four percent per annum on that part of the
9 unpaid principal balance on any loan not in excess of one thousand
10 dollars, and twenty-one percent per annum on any remainder of
11 such unpaid principal balance. Except for loans secured by mobile
12 homes, a licensee may not make loans for a period in excess of
13 one hundred forty-five months if the amount of the loan is greater
14 than three thousand dollars but less than twenty-five thousand
15 dollars. Charges on loans made under the Nebraska Installment Loan
16 Act shall not be paid, deducted, or received in advance. The
17 contracting for, charging of, or receiving of charges as provided
18 for in subsection (2) of this section shall not be deemed to be the
19 payment, deduction, or receipt of such charges in advance.

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

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

21 (a) Notwithstanding the requirement for substantially
22 equal and consecutive monthly installments, the first installment
23 period may not exceed one month by more than twenty-one days and
24 may not fall short of one month by more than eleven days. 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

1 period may be added to the first installment and such charges for
2 such extra days shall be excluded in computing any rebate;

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

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

1 the rebate which would be required for prepayment in full as of the
2 date judgment is obtained;

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

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

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

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

26 (3) The charges, as referred to in subsection (1) of
27 this section, shall not be compounded. The charging, collecting,

1 and receiving of charges as provided in subsection (2) of this
2 section shall not be deemed compounding. If part or all of the
3 consideration for a loan contract is the unpaid principal balance
4 of a prior loan, then the principal amount payable under such
5 loan contract may include any unpaid charges on the prior loan
6 which have accrued within sixty days before the making of such
7 loan contract and may include the balance remaining after giving
8 the rebate required by subsection (2) of this section. Except as
9 provided in subsection (2) of this section, charges shall (a) be
10 computed and paid only as a percentage per month of the unpaid
11 principal balance or portions thereof and (b) be computed on the
12 basis of the number of days actually elapsed. For purposes of
13 computing charges, whether at the maximum rate or less, a month
14 shall be that period of time from any date in a month to the
15 corresponding date in the next month but if there is no such
16 corresponding date then to the last day of the next month, and a
17 day shall be considered one-thirtieth of a month when computation
18 is made for a fraction of a month.

19 (4) Except as provided in subsections (5) and (6) of
20 this section, in addition to that provided for under the Nebraska
21 Installment Loan Act, no further or other amount whatsoever shall
22 be directly or indirectly charged, contracted for, or received.
23 If any amount, in excess of the charges permitted, is charged,
24 contracted for, or received, the loan contract shall not on
25 that account be void, but the licensee shall have no right to
26 collect or receive any interest or other charges whatsoever. If
27 such interest or other charges have been collected or contracted

1 for, the licensee shall refund to the borrower all interest
2 and other charges collected and shall not collect any interest
3 or other charges contracted for and thereafter due on the loan
4 involved, as liquidated damages, and the licensee or its assignee,
5 if found liable, shall pay the costs of any action relating
6 thereto, including reasonable attorney's fees. No licensee shall
7 be found liable under this subsection if the licensee shows
8 by a preponderance of the evidence that the violation was not
9 intentional and resulted from a bona fide error notwithstanding
10 the maintenance of procedures reasonably adopted to avoid any such
11 error.

12 (5) A borrower may be required to pay all reasonable
13 expenses incurred in connection with the making, closing,
14 disbursing, extending, readjusting, or renewing of loans. Such
15 expenses may include abstracting, recording, releasing, and
16 registration fees; premiums paid for nonfiling insurance; premiums
17 paid on insurance policies covering tangible personal property
18 securing the loan; amounts charged for a debt cancellation contract
19 or a debt suspension contract, as agreed upon by the parties,
20 if the debt cancellation contract or debt suspension contract is
21 a contract of a financial institution and such contract is sold
22 directly by such financial institution or by an unaffiliated,
23 nonexclusive agent of such financial institution in accordance
24 with 12 C.F.R. part 37, as such part existed on January 1, 2006,
25 and the financial institution is responsible for the unaffiliated,
26 nonexclusive agent's compliance with such part; title examinations;
27 credit reports; survey; ~~and~~ taxes or charges imposed upon or in

1 connection with the making and recording or releasing of any
2 mortgage; and amounts charged for a guaranteed asset protection
3 waiver. Except as provided in subsection (6) of this section,
4 a borrower may also be required to pay a nonrefundable loan
5 origination fee not to exceed the lesser of five hundred dollars
6 or an amount equal to seven percent of that part of the original
7 principal balance of any loan not in excess of two thousand dollars
8 and five percent on that part of the original principal balance
9 in excess of two thousand dollars, if the licensee has not made
10 another loan to the borrower within the previous twelve months.
11 If the licensee has made another loan to the borrower within the
12 previous twelve months, a nonrefundable loan origination fee may
13 only be charged on new funds advanced on each successive loan. Such
14 reasonable initial charges may be collected from the borrower or
15 included in the principal balance of the loan at the time the loan
16 is made and shall not be considered interest or a charge for the
17 use of the money loaned.

18 (6) (a) Loans secured solely by real property that are
19 not made pursuant to subdivision (11) of section 45-101.04 on real
20 property, as that term is defined in section 45-702, shall not
21 be subject to the limitations on the rate of interest provided
22 in subsection (1) of this section or the limitations on the
23 nonrefundable loan origination fee under subsection (5) of this
24 section if (i) the principal amount of the loan is seven thousand
25 five hundred dollars or more and (ii) the sum of the principal
26 amount of the loan and the balances of all other liens against the
27 property do not exceed one hundred percent of the appraised value

1 of the property. Acceptable methods of determining appraised value
2 shall be made by the department pursuant to rule, regulation, or
3 order.

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

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

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

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

27 Sec. 11. Section 60-1411.02, Revised Statutes Cumulative

1 Supplement, 2008, is amended to read:

2 60-1411.02 The board may, upon its own motion, and shall,
3 upon a sworn complaint in writing of any person, investigate
4 the actions of any person acting, registered, or licensed under
5 Chapter 60, article 14, as a motor vehicle dealer, trailer dealer,
6 motor vehicle or trailer salesperson, dealer's agent, manufacturer,
7 factory branch, distributor, factory representative, distributor
8 representative, supplemental motor vehicle dealer, wrecker or
9 salvage dealer, finance company, motorcycle dealer, or motor
10 vehicle auction dealer or operating without a registration or
11 license when such registration or license is required. The board
12 may deny any application for a license, may revoke or suspend a
13 license, may place the licensee or registrant on probation, may
14 assess an administrative fine in an amount not to exceed five
15 thousand dollars per violation, or may take any combination of
16 such actions if the violator, applicant, registrant, or licensee
17 including any officer, stockholder, partner, or limited liability
18 company member or any person having any financial interest in the
19 violator, applicant, registrant, or licensee:

20 (1) Has had any license issued under Chapter 60, article
21 14, revoked or suspended and, if the license has been suspended,
22 has not complied with the terms of suspension;

23 (2) Has knowingly purchased, sold, or done business in
24 stolen motor vehicles, motorcycles, or trailers or parts therefor;

25 (3) Has failed to provide and maintain an established
26 place of business;

27 (4) Has been found guilty of any felony which has not

1 been pardoned, has been found guilty of any misdemeanor concerning
2 fraud or conversion, or has suffered any judgment in any civil
3 action involving fraud, misrepresentation, or conversion. In the
4 event felony charges are pending against an applicant, the board
5 may refuse to issue a license to the applicant until there has been
6 a final determination of the charges;

7 (5) Has made a false material statement in his or her
8 application or any data attached to the application or to any
9 investigator or employee of the board;

10 (6) Has willfully failed to perform any written agreement
11 with any consumer or retail buyer;

12 (7) Has made a fraudulent sale, transaction, or
13 repossession, or created a fraudulent security interest as defined
14 in the Uniform Commercial Code, in a motor vehicle, trailer, or
15 motorcycle;

16 (8) Has failed to notify the board of a change in the
17 location of his or her established place or places of business and
18 in the case of a salesperson has failed to notify the board of any
19 change in his or her employment;

20 (9) Has willfully failed to deliver to a purchaser a
21 proper certificate of ownership for a motor vehicle, trailer, or
22 motorcycle sold by the licensee or to refund the full purchase
23 price if the purchaser cannot legally obtain proper certification
24 of ownership within thirty days;

25 (10) Has forged the signature of the registered or legal
26 owner on a certificate of title;

27 (11) Has failed to comply with Chapter 60, article 14,

1 and any orders, rules, or regulations of the board adopted and
2 promulgated under Chapter 60, article 14;

3 (12) Has failed to comply with the advertising and
4 selling standards established in section 60-1411.03;

5 (13) Has failed to comply with any provisions of
6 the Motor Vehicle Certificate of Title Act, the Motor Vehicle
7 Registration Act, Chapter 60, article 14, or the rules or
8 regulations adopted and promulgated by the board pursuant to
9 Chapter 60, article 14;

10 (14) Has failed to comply with any provision of Chapter
11 71, article 46, or with any code, standard, rule, or regulation
12 adopted or made under the authority of or pursuant to Chapter 71,
13 article 46;

14 (15) Has willfully defrauded any retail buyer or other
15 person in the conduct of the licensee's business;

16 (16) Has employed any unlicensed salesperson or
17 salespersons;

18 (17) Has failed to comply with sections 60-190 to 60-196;

19 (18) Has engaged in any unfair methods of competition or
20 unfair or deceptive acts or practices prohibited under the Uniform
21 Deceptive Trade Practices Act; ~~or~~

22 (19) Has conspired, as defined in section 28-202, with
23 other persons to process certificates of title in violation of the
24 Motor Vehicle Certificate of Title Act; or-

25 (20) Has violated the Guaranteed Asset Protection Waiver
26 Act.

27 If the violator, applicant, registrant, or licensee is a

1 publicly held corporation, the board's authority shall extend only
2 to the corporation and its managing officers and directors.

3 Sec. 12. Original sections 45-335, 45-336, 45-1002,
4 45-1024, and 60-1411.02, Revised Statutes Cumulative Supplement,
5 2008, are repealed.