

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 571

FINAL READING

Introduced by Pahls, 31; Lathrop, 12.

Read first time January 21, 2009

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to consumer protection; to amend sections
2 45-335, 45-336, and 60-1411.02, Revised Statutes
3 Cumulative Supplement, 2008, and sections 45-1002 and
4 45-1024, Revised Statutes Supplement, 2009; to adopt
5 the Guaranteed Asset Protection Waiver Act; to change
6 provisions relating to installment sales, installment
7 loans, and regulation of the motor vehicle industry;
8 to harmonize provisions; and to repeal the original
9 sections.

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

1 Section 1. Sections 1 to 7 of this act shall be known and
2 may be cited as the Guaranteed Asset Protection Waiver Act.

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

7 (2) The act does not apply to:

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

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

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

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

22 Sec. 3. For purposes of the Guaranteed Asset Protection
23 Waiver Act:

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

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(2) Creditor means:

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(a) The lender in a loan or credit transaction involving

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a motor vehicle;

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(b) The lessor in a lease transaction involving a motor

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vehicle;

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(c) Any retail seller of motor vehicles that provides

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credit to retail buyers of such motor vehicles if such entities

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comply with the provisions of the act; or

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(d) The assignees of any of the foregoing to whom the

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credit obligation is payable;

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(3) Creditor's designee means a person other than the

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creditor that performs administrative or operational functions

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pursuant to a guaranteed asset protection waiver program;

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(4) Finance agreement means a loan, credit transaction,

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lease, or retail installment sales contract for the purchase or

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lease of a motor vehicle;

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(5) Financial institution has the same meaning as in

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section 8-101;

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(6) Free-look period means the period of time from the

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effective date of the guaranteed asset protection waiver until the

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date the borrower may cancel the contract without penalty, fees, or

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costs to the borrower. This period of time must not be shorter than

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thirty days;

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(7) Guaranteed asset protection waiver means a

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contractual agreement wherein a creditor or the creditor's designee

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

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

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

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

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

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

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

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

25 (6) Persons marketing, selling, or offering to sell

1 guaranteed asset protection waivers to a borrower shall not
2 market such guaranteed asset protection waivers to any borrower or
3 potential borrowers as being insured under a contractual liability
4 or other insurance policy issued by an insurer.

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

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

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

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

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

25 (5) Whether or not the guaranteed asset protection waiver

1 is cancelable after the free-look period and the conditions under
2 which it may be canceled or terminated including the procedures for
3 requesting any refund due;

4 (6) That in order to receive any refund due in the event
5 of a borrower's cancellation of the guaranteed asset protection
6 waiver agreement or early termination of the finance agreement
7 after the free-look period of the guaranteed asset protection
8 waiver, the borrower, in accordance with terms of the waiver,
9 shall provide a written request to cancel to the creditor or the
10 creditor's designee within ninety days after the occurrence of the
11 event terminating the finance agreement;

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

16 (8) That neither the extension of credit, the terms of
17 the credit, nor the terms of the related motor vehicle sale or
18 lease shall be conditioned upon the purchase of the guaranteed
19 asset protection waiver;

20 (9) That a guaranteed asset protection waiver is not
21 insurance and is not regulated by the Department of Insurance and
22 that the guaranteed asset protection waiver remains a part of the
23 finance agreement upon the assignment, sale, or transfer of such
24 finance agreement by the creditor or the creditor's designee; and

25 (10) The events or losses to which the guaranteed asset

1 protection waiver does not apply.

2 Sec. 6. (1) Guaranteed asset protection waiver agreements
3 may be cancelable or noncancelable after the free-look period.
4 A creditor or the creditor's designee may offer a borrower a
5 waiver that does not provide for a refund if the creditor or the
6 creditor's designee also offers the borrower a bona fide option to
7 purchase a comparable waiver that provides for a refund. Guaranteed
8 asset protection waivers shall provide that if a borrower cancels a
9 waiver within the free-look period, the borrower will be entitled
10 to a full refund of the purchase price, so long as no benefits
11 have been provided. In the event benefits have been provided, the
12 borrower may receive a full or partial refund pursuant to the terms
13 of the waiver.

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

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

8 (4) Any cancellation refund under this section may be
9 applied by the creditor or the creditor's designee as a reduction
10 of the amount owed under the finance agreement unless the borrower
11 can show that the finance agreement has been paid in full.

12 Sec. 7. The creditor or the creditor's designee shall
13 not offer a guaranteed asset protection waiver when the guaranteed
14 asset protection waiver contains terms that allow the creditor or
15 the creditor's designee to modify, unilaterally, the guaranteed
16 asset protection waiver, unless (1) the modification is favorable
17 to the borrower and is made without any additional charge to
18 the borrower or (2) the borrower is notified of the proposed
19 modification and has the option to cancel the guaranteed asset
20 protection waiver without penalty.

21 Sec. 8. Section 45-335, Revised Statutes Cumulative
22 Supplement, 2008, is amended to read:

23 45-335 For purposes of the Nebraska Installment Sales
24 Act, unless the context otherwise requires:

25 (1) Goods means all personal property, except money or

1 things in action, and includes goods which, at the time of sale or
2 subsequently, are so affixed to realty as to become part thereof
3 whether or not severable therefrom;

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

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

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

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

24 (6) Installment contract means an agreement entered into
25 in this state evidencing an installment sale except those otherwise

1 provided for in separate acts;

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

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

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

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

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

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

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

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

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

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

15 Sec. 9. Section 45-336, Revised Statutes Cumulative
16 Supplement, 2008, is amended to read:

17 45-336 (1) Each retail installment contract shall be in
18 writing, shall be signed by both the buyer and the seller, and
19 shall contain the following items and a copy thereof shall be
20 delivered to the buyer at the time the instrument is signed,
21 except for contracts made in conformance with section 45-340: (a)
22 The cash sale price; (b) the amount of the buyer's downpayment,
23 and whether made in money or goods, or partly in money and
24 partly in goods, including a brief description of any goods traded
25 in; (c) the difference between subdivisions (a) and (b) of this

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

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

23 (3) The items listed in subsection (1) of this section
24 need not be stated in the sequence or order set forth in such
25 subsection. Additional items may be included to explain the

1 computations made in determining the amount to be paid by the
2 buyer. No installment contract shall be signed by the buyer or
3 proffered by seller when it contains blank spaces to be filled in
4 after execution, except that if delivery of the goods or services
5 is not made at the time of the execution of the contract, the
6 identifying numbers or marks of the goods, or similar information,
7 and the due date of the first installment may be inserted in the
8 contract after its execution.

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

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

1 (6) After payment of all sums for which the buyer is
2 obligated under a contract, the holder shall deliver or mail to
3 the buyer at his or her last-known address one or more good and
4 sufficient instruments or copies thereof to acknowledge payment in
5 full and shall release all security in the goods and mark canceled
6 and return to the buyer the original agreement or copy thereof or
7 instruments or copies thereof signed by the buyer. For purposes
8 of this section, a copy shall meet the requirements of section
9 25-12,112.

10 Sec. 10. Section 45-1002, Revised Statutes Supplement,
11 2009, is amended to read:

12 45-1002 (1) For purposes of the Nebraska Installment Loan
13 Act:

14 (a) Applicant means a person applying for a license under
15 the act;

16 (b) Breach of security of the system means unauthorized
17 acquisition of data that compromises the security, confidentiality,
18 or integrity of the information maintained by the Nationwide
19 Mortgage Licensing System and Registry, its affiliates, or its
20 subsidiaries;

21 (c) Department means the Department of Banking and
22 Finance;

23 (d) Debt cancellation contract means a loan term
24 or contractual arrangement modifying loan terms under which a
25 financial institution agrees to cancel all or part of a borrower's

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

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

19 (f) Director means the Director of Banking and Finance;

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

22 (h) Guaranteed asset protection waiver means a waiver
23 that is offered, sold, or provided in accordance with the
24 Guaranteed Asset Protection Waiver Act;

25 ~~(h)~~ (i) Licensee means any person who obtains a license

1 under the ~~act~~, Nebraska Installment Loan Act;

2 ~~(i)-(i)~~ (j)(i) Mortgage loan originator means an
3 individual who for compensation or gain (A) takes a residential
4 mortgage loan application or (B) offers or negotiates terms of a
5 residential mortgage loan.

6 (ii) Mortgage loan originator does not include (A) any
7 individual who is not otherwise described in subdivision (i)(A)
8 of this subdivision and who performs purely administrative or
9 clerical tasks on behalf of a person who is described in any
10 such clause, (B) a person or entity that only performs real
11 estate brokerage activities and is licensed or registered in
12 accordance with applicable state law, unless the person or entity
13 is compensated by a lender, a mortgage broker, or other mortgage
14 loan originator or by any agent of such lender, mortgage broker, or
15 other mortgage loan originator, or (C) a person or entity solely
16 involved in extensions of credit relating to time-share programs as
17 defined in section 76-1702;

18 ~~(j)~~ (k) Nationwide Mortgage Licensing System and Registry
19 means a mortgage licensing system developed and maintained
20 by the Conference of State Bank Supervisors and the American
21 Association of Residential Mortgage Regulators for the licensing
22 and registration of mortgage loan originators, mortgage bankers,
23 and installment loan companies;

24 ~~(k)~~ (l) Person means individual, partnership, limited
25 liability company, association, financial institution, trust,

1 corporation, and any other legal entity; and

2 ~~(l)~~ (m) Real property means an owner-occupied
3 single-family, two-family, three-family, or four-family dwelling
4 which is located in this state, which is occupied, used, or
5 intended to be occupied or used for residential purposes, and which
6 is, or is intended to be, permanently affixed to the land.

7 (2) Except as provided in subsection (3) of section
8 45-1017, no revenue arising under the act Nebraska Installment Loan
9 Act shall inure to any school fund of the State of Nebraska or any
10 of its governmental subdivisions.

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

15 (4) Nothing in the Nebraska Installment Loan Act applies
16 to any loan made by a person who is not a licensee if the interest
17 on the loan does not exceed the maximum rate permitted by section
18 45-101.03.

19 Sec. 11. Section 45-1024, Revised Statutes Supplement,
20 2009, is amended to read:

21 45-1024 (1) Except as provided in section 45-1025 and
22 subsection (6) of this section, every licensee may make loans and
23 may contract for and receive on such loans charges at a rate
24 not exceeding twenty-four percent per annum on that part of the
25 unpaid principal balance on any loan not in excess of one thousand

1 dollars, and twenty-one percent per annum on any remainder of
2 such unpaid principal balance. Except for loans secured by mobile
3 homes, a licensee may not make loans for a period in excess of
4 one hundred forty-five months if the amount of the loan is greater
5 than three thousand dollars but less than twenty-five thousand
6 dollars. Charges on loans made under the Nebraska Installment Loan
7 Act shall not be paid, deducted, or received in advance. The
8 contracting for, charging of, or receiving of charges as provided
9 for in subsection (2) of this section shall not be deemed to be the
10 payment, deduction, or receipt of such charges in advance.

11 (2) When the loan contract requires repayment in
12 substantially equal and consecutive monthly installments of
13 principal and charges combined, the licensee may, at the time
14 the loan is made, precompute the charges at the agreed rate on
15 scheduled unpaid principal balances according to the terms of the
16 contract and add such charges to the principal of the loan. Every
17 payment may be applied to the combined total of principal and
18 precomputed charges until the contract is fully paid. All payments
19 made on account of any loan except for default and deferment
20 charges shall be deemed to be applied to the unpaid installments in
21 the order in which they are due. The portion of the precomputed
22 charges applicable to any particular month of the contract, as
23 originally scheduled or following a deferment, shall be that
24 proportion of such precomputed charges, excluding any adjustment
25 made for a first installment period of more than one month and any

1 adjustment made for deferment, which the balance of the contract
2 scheduled to be outstanding during such month bears to the sum
3 of all monthly balances originally scheduled to be outstanding
4 by the contract. This section shall not limit or restrict the
5 manner of calculating charges, whether by way of add-on, single
6 annual rate, or otherwise, if the rate of charges does not exceed
7 that permitted by this section. Charges may be contracted for and
8 earned at a single annual rate, except that the total charges from
9 such rate shall not be greater than the total charges from the
10 several rates otherwise applicable to the different portions of the
11 unpaid balance according to subsection (1) of this section. All
12 loan contracts made pursuant to this subsection are subject to the
13 following adjustments:

14 (a) Notwithstanding the requirement for substantially
15 equal and consecutive monthly installments, the first installment
16 period may not exceed one month by more than twenty-one days and
17 may not fall short of one month by more than eleven days. The
18 charges for each day exceeding one month shall be one-thirtieth of
19 the charges which would be applicable to a first installment period
20 of one month. The charge for extra days in the first installment
21 period may be added to the first installment and such charges for
22 such extra days shall be excluded in computing any rebate;

23 (b) If prepayment in full by cash, a new loan, or
24 otherwise occurs before the first installment due date, the charges
25 shall be recomputed at the rate of charges contracted for in

1 accordance with subsection (1) or (2) of this section upon the
2 actual unpaid principal balances of the loan for the actual time
3 outstanding by applying the payment, or payments, first to charges
4 at the agreed rate and the remainder to the principal. The amount
5 of charges so computed shall be retained in lieu of all precomputed
6 charges;

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

25 (d) If any installment on a precomputed or interest

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

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

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

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

25 (3) The charges, as referred to in subsection (1) of

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

20 (4) Except as provided in subsections (5) and (6) of
21 this section, in addition to that provided for under the Nebraska
22 Installment Loan Act, no further or other amount whatsoever shall
23 be directly or indirectly charged, contracted for, or received.
24 If any amount, in excess of the charges permitted, is charged,
25 contracted for, or received, the loan contract shall not on

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

15 (5) A borrower may be required to pay all reasonable
16 expenses incurred in connection with the making, closing,
17 disbursing, extending, readjusting, or renewing of loans. Such
18 expenses may include abstracting, recording, releasing, and
19 registration fees; premiums paid for nonfiling insurance; premiums
20 paid on insurance policies covering tangible personal property
21 securing the loan; amounts charged for a debt cancellation contract
22 or a debt suspension contract, as agreed upon by the parties,
23 if the debt cancellation contract or debt suspension contract is
24 a contract of a financial institution and such contract is sold
25 directly by such financial institution or by an unaffiliated,

1 nonexclusive agent of such financial institution in accordance
2 with 12 C.F.R. part 37, as such part existed on January 1, 2006,
3 and the financial institution is responsible for the unaffiliated,
4 nonexclusive agent's compliance with such part; title examinations;
5 credit reports; survey; ~~and~~ taxes or charges imposed upon or in
6 connection with the making and recording or releasing of any
7 mortgage; and amounts charged for a guaranteed asset protection
8 waiver. Except as provided in subsection (6) of this section,
9 a borrower may also be required to pay a nonrefundable loan
10 origination fee not to exceed the lesser of five hundred dollars
11 or an amount equal to seven percent of that part of the original
12 principal balance of any loan not in excess of two thousand dollars
13 and five percent on that part of the original principal balance
14 in excess of two thousand dollars, if the licensee has not made
15 another loan to the borrower within the previous twelve months.
16 If the licensee has made another loan to the borrower within the
17 previous twelve months, a nonrefundable loan origination fee may
18 only be charged on new funds advanced on each successive loan. Such
19 reasonable initial charges may be collected from the borrower or
20 included in the principal balance of the loan at the time the loan
21 is made and shall not be considered interest or a charge for the
22 use of the money loaned.

23 (6)(a) Loans secured solely by real property that are
24 not made pursuant to subdivision (11) of section 45-101.04 on
25 real property shall not be subject to the limitations on the

1 rate of interest provided in subsection (1) of this section or
2 the limitations on the nonrefundable loan origination fee under
3 subsection (5) of this section if (i) the principal amount of
4 the loan is seven thousand five hundred dollars or more and (ii)
5 the sum of the principal amount of the loan and the balances of
6 all other liens against the property do not exceed one hundred
7 percent of the appraised value of the property. Acceptable methods
8 of determining appraised value shall be made by the department
9 pursuant to rule, regulation, or order.

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

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

23 (d) A licensee making a loan pursuant to this subsection
24 may obtain an interest in any fixtures attached to such real
25 property and any insurance proceeds payable in connection with such

1 real property or the loan.

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

8 Sec. 12. Section 60-1411.02, Revised Statutes Cumulative
9 Supplement, 2008, is amended to read:

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

1 company member or any person having any financial interest in the
2 violator, applicant, registrant, or licensee:

3 (1) Has had any license issued under Chapter 60, article
4 14, revoked or suspended and, if the license has been suspended,
5 has not complied with the terms of suspension;

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

8 (3) Has failed to provide and maintain an established
9 place of business;

10 (4) Has been found guilty of any felony which has not
11 been pardoned, has been found guilty of any misdemeanor concerning
12 fraud or conversion, or has suffered any judgment in any civil
13 action involving fraud, misrepresentation, or conversion. In the
14 event felony charges are pending against an applicant, the board
15 may refuse to issue a license to the applicant until there has been
16 a final determination of the charges;

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

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

22 (7) Has made a fraudulent sale, transaction, or
23 repossession, or created a fraudulent security interest as defined
24 in the Uniform Commercial Code, in a motor vehicle, trailer, or
25 motorcycle;

1 (8) Has failed to notify the board of a change in the
2 location of his or her established place or places of business and
3 in the case of a salesperson has failed to notify the board of any
4 change in his or her employment;

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

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

12 (11) Has failed to comply with Chapter 60, article 14,
13 and any orders, rules, or regulations of the board adopted and
14 promulgated under Chapter 60, article 14;

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

17 (13) Has failed to comply with any provisions of
18 the Motor Vehicle Certificate of Title Act, the Motor Vehicle
19 Registration Act, Chapter 60, article 14, or the rules or
20 regulations adopted and promulgated by the board pursuant to
21 Chapter 60, article 14;

22 (14) Has failed to comply with any provision of Chapter
23 71, article 46, or with any code, standard, rule, or regulation
24 adopted or made under the authority of or pursuant to Chapter 71,
25 article 46;

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

3 (16) Has employed any unlicensed salesperson or
4 salespersons;

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

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

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

12 (20) Has violated the Guaranteed Asset Protection Waiver
13 Act.

14 If the violator, applicant, registrant, or licensee is a
15 publicly held corporation, the board's authority shall extend only
16 to the corporation and its managing officers and directors.

17 Sec. 13. Original sections 45-335, 45-336, and
18 60-1411.02, Revised Statutes Cumulative Supplement, 2008, and
19 sections 45-1002 and 45-1024, Revised Statutes Supplement, 2009,
20 are repealed.