

## LEGISLATIVE BILL 555

Approved by the Governor June 9, 1997

Introduced by Landis, 46

AN ACT relating to installment loans; to amend sections 44-1703, 45-114, 45-116 to 45-120, 45-123, 45-128, 45-129, 45-130, 45-132 to 45-134, 45-139, 45-145 to 45-147, 45-150, 45-155, 45-197, and 45-1,110, Reissue Revised Statutes of Nebraska, and sections 8-319, 45-126, 45-137, 45-138, and 45-1,116, Revised Statutes Supplement, 1996; to change provisions relating to charges and penalties; to provide powers for the Department of Banking and Finance; to provide for an administrative fine; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 8-319, Revised Statutes Supplement, 1996, is amended to read:

8-319. (1) No loan shall be made by such association except to its own members, and no loan shall be made to any member for any sum in excess of the par value of his or her stock. The borrower shall pledge to the association, as security for the loan, shares of a maturity value equal to the principal of the loan and, except as otherwise provided in this section, ample security by mortgage or deeds of trust on real estate. For purposes of this section, real property and real estate shall include a leasehold or subleasehold estate in real property under a lease or sublease the term of which does not expire, or which is renewable automatically or at the option of the holder or of the association so as not to expire for at least five years beyond the maturity of the debt. Loans made upon improved real estate, except as otherwise provided in this section, shall not exceed ninety-five percent of the reasonable normal cash value thereof, and all loans made on any other real estate shall not exceed three-fourths of the reasonable normal cash value thereof.

(2) An association may make a loan or loans in an amount exceeding ninety-five percent of the reasonable normal cash value of the real estate security (a) if such loan or loans are made to a veteran in accord with the provisions of 38 U.S.C., as now existing or as hereafter amended, (b) if the proceeds of the loan or loans are to be used in purchasing residential property or in constructing a dwelling on unimproved property owned by such veteran to be occupied as his or her home, used for the purpose of making repairs, alterations, or improvements in or paying delinquent indebtedness, taxes, or special assessments on residential property owned by the veteran and used by him or her as his or her home, or used in purchasing any land and buildings to be used by the applicant in pursuing a gainful occupation other than farming, and (c) if the Secretary of Veterans Affairs guarantees that portion of such loan or loans in excess of ninety-five percent of the reasonable normal cash value of the real estate security.

(3) An association is authorized to obtain insurance of its loans by the Federal Housing Administrator under Title II of the National Housing Act, as amended, and such loans so made upon improved real estate and so insured shall not be subject to the restrictions set forth in this section with reference to the maximum authorized amount of a loan.

(4) An association may make unsecured loans to its members if such loans (a) are insured under Title I and Title II of the National Housing Act, as amended, or (b) are for property alterations, repair, or improvements. The aggregate amount of loans made under subdivisions (a) and (b) of this subsection shall not at any time exceed twenty percent of the association's assets. Each loan made under subdivision (b) of this subsection shall be repayable in regular monthly installments within a period of twenty years and shall be supported by a written property statement on forms to be prescribed by the Department of Banking and Finance. An association may make secured loans to its members and may make loans under 38 U.S.C., as amended, under Chapter V, subchapter C of the Home Owners Loan Act of 1933, as amended (12 U.S.C.), and on the security of mobile homes.

(5) The stock of such association may be accepted as security for a loan of the amount of the withdrawal value of such stock without other security.

(6) An association when so licensed may make loans to its own members upon the terms and security set forth in sections 45-114 to 45-155 45-158.

(7) Any provisions of this section to the contrary notwithstanding, an association may make any loan that a federal savings and loan association doing business in this state is or may be authorized to make.

(8) An association may invest in loans, obligations, and advances of credit, all of which are referred to in this subsection as loans, made for the payment of expenses of business school, technical training school, college, or university education, but no association shall make any investment in loans under this subsection if the principal amount of its investment in such loans, exclusive of any investment which is or which at the time of its making was otherwise authorized, would thereupon exceed five percent of its assets. Such loans may be secured, partly secured, or unsecured, and the association may require a comaker or comakers, insurance, guaranty under a governmental student loan guarantee plan, or other protection against contingencies. The borrower shall certify to the association that the proceeds of the loan are to be used by a full-time student solely for the payment of expenses of business, technical training school, college, or university education.

(9) An association may participate with other lenders in making loans of any type that an association may otherwise make if (a) each of the lenders is either an instrumentality of the United States Government or is insured by the Federal Deposit Insurance Corporation or, in the case of another lender, the interest of the association in such loan is superior to the participating interests of the other participants and (b) an association whose accounts are insured by the Federal Deposit Insurance Corporation which may be a federal association or an association chartered by this state, or another association chartered by this state which is not so insured, has otherwise complied with subsection (1) of this section with respect to loans to members.

(10) An association may sell to or purchase from any institution which is a savings association chartered by this state or the accounts of which are insured by the Federal Deposit Insurance Corporation a participating interest in any loan, whether or not, in the case of a purchase, the security is located within the association's regular lending area.

Sec. 2. Section 44-1703, Reissue Revised Statutes of Nebraska, is amended to read:

44-1703. All life insurance and all accident and health insurance sold in connection with loans or other credit transactions shall be subject to sections 44-1701 to 44-1713 except such insurance sold in connection with a loan or other credit transaction of more than ten years duration or fifteen years duration when made by licensees under sections 45-114 to 45-155 ~~45-158~~. No insurance shall be subject to sections 44-1701 to 44-1713 when the issuance of such insurance is an isolated transaction on the part of the insurer and not related to an agreement or a plan for insuring debtors of the creditor.

Sec. 3. Section 45-114, Reissue Revised Statutes of Nebraska, is amended to read:

45-114. The word person, when used in sections 45-114 to 45-155 ~~45-158~~, means individuals, partnerships, limited liability companies, associations, banks, trust companies, savings banks, building and loan associations, trusts, corporations, and all other legal entities. The word department, when used in such sections, means the Department of Banking and Finance. The word license, when used in such sections, means permit.

It is not the intention of the Legislature that any revenue arising hereunder shall inure to any school fund of the State of Nebraska or any of its governmental subdivisions.

Loan, when used in sections 45-114 to 45-155 ~~45-158~~ and 45-173 to 45-188 shall not include any loan made by a person who is not a licensee on which the interest does not exceed the maximum rate permitted by section 45-101.03.

Nothing in sections 45-114 to 45-155 ~~45-158~~ and 45-173 to 45-188 shall apply to any loan made by a person who is not a licensee if the interest on the loan does not exceed the maximum rate permitted by section 45-101.03.

Sec. 4. Section 45-116, Reissue Revised Statutes of Nebraska, is amended to read:

45-116. Any person may after procuring a license from the Department of Banking and Finance engage or continue in the business of making loans of money, and charge, contract for, and receive the maximum for interest and other charges in accordance with the authorization and requirements of sections 45-116 to 45-155 ~~45-114 to 45-158~~.

Sec. 5. Section 45-117, Reissue Revised Statutes of Nebraska, is amended to read:

45-117. Any person who desires to obtain an original license to engage in the business of lending money under the terms and conditions of sections 45-114 to 45-155 ~~45-158~~ and sections 45-173 to 45-188 shall apply

therefor under oath, on forms prescribed by the Department of Banking and Finance, to the department, and shall pay an original license fee in the sum of one hundred fifty dollars, and, if the application is approved, a license as herein provided shall be issued. If such application is not approved, the department shall return to the applicant ~~said~~ the sum of one hundred fifty dollars less any part of the investigation, inspection and publication costs provided for by section 45-118, which shall not have been paid by the applicant.

Sec. 6. Section 45-118, Reissue Revised Statutes of Nebraska, is amended to read:

45-118. Every application for an original license under sections 45-114 to ~~45-155~~ ~~45-158~~ shall be filed not less than thirty days prior to the date of hearing thereon. Notice of the filing of the application shall be published by the Department of Banking and Finance three successive weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the business of lending money. The expense of the publication shall be paid by the applicant. Written protest against the issuance of the license may be filed with the department by any person not less than five days before the date set for hearing. The department, in its discretion, may grant a continuance. The Director of Banking and Finance shall have the power to reject any application for license after hearing. He or she shall, within his or her discretion, make examination and inspection concerning the propriety of the issuance of a license to any applicant. The cost of such examination and inspection shall be borne by the applicant.

Sec. 7. Section 45-119, Reissue Revised Statutes of Nebraska, is amended to read:

45-119. Such license shall not be issued until the licensee gives to the Director of Banking and Finance for the Department of Banking and Finance a bond in the penal sum of two thousand dollars to be executed by the licensee and a surety company approved by the director for the department, conditioned for the faithful performance by the licensee of the duties and obligations pertaining to the business of moneylending so licensed and the prompt payment of any judgment recovered against him or her, the licensee, or for which any one of the licensees may be liable under the provisions of sections 45-114 to ~~45-155~~ ~~45-158~~. The required bond shall be renewed and refiled annually on or before March 1 of each year or the licensed person, firm, association, or corporation shall, within thirty days thereafter, cease doing business, and his, her, their, or its license shall be revoked by the Director of Banking and Finance. ~~The~~ ~~7~~ ~~PROVIDED,~~ ~~said~~ bond, until renewed and refiled, shall remain in full force and effect. The requirements of this section for the licensee to give bond to the Director of Banking and Finance shall not apply to licensees that are banks, trust companies, cooperative credit associations, building and loan associations, or industrial loan and investment companies.

Sec. 8. Section 45-120, Reissue Revised Statutes of Nebraska, is amended to read:

45-120. Upon the filing of such application, the payment of the license fee and the approval of the required bond, the Director of Banking and Finance shall investigate the facts, and, if he or she finds that (1) the experience, character, and general fitness of the applicant and of the members thereof if the applicant is a partnership, limited liability company, or association, and of the officers and directors thereof if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of sections 45-114 to ~~45-155~~ ~~45-158~~, and (2) allowing such applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted, the Department of Banking and Finance shall issue and deliver an original license to the applicant to make loans at the location specified in the application, in accordance with the sections, which license shall remain in full force and effect until March 1 next thereafter and from year to year thereafter, if and when renewed, under the sections, until it is surrendered by the licensee or revoked as herein provided.

Sec. 9. Section 45-123, Reissue Revised Statutes of Nebraska, is amended to read:

45-123. No licensee shall conduct the business of making loans under sections 45-114 to ~~45-155~~ ~~45-158~~ within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, if the Director of Banking and Finance shall find that the other business is of such nature that the conducting thereof tends to conceal evasion of the provisions of sections 45-114 to ~~45-155~~ ~~45-158~~ or of the rules and regulations lawfully made hereunder. In

such case, the director shall order such licensee in writing to desist from such conduct.

Sec. 10. Section 45-126, Revised Statutes Supplement, 1996, is amended to read:

45-126. For the annual renewal of an original license to lend money under sections 45-114 to 45-155 ~~45-158~~, the fee shall be one hundred dollars if no publication of the notice of filing an application for the annual renewal license is required as in the case of filing an application for an original license. The money paid under the terms of sections 45-114 to ~~45-155 45-158~~ to the Department of Banking and Finance for original licenses, for renewal licenses, for investigation fees, for examination fees, or from any other source, shall be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund pursuant to sections 8-601 and 8-602.

Sec. 11. Section 45-128, Reissue Revised Statutes of Nebraska, is amended to read:

45-128. Any firm or individual members thereof, partnership or individual members thereof, limited liability company or individual members thereof, association or individual members thereof, or corporation or officers thereof, or person, who by any device, subterfuge, or pretense whatsoever engages in or continues any of the kinds of business or enterprise permitted to licensees by sections 45-114 to 45-155 ~~45-158~~ without having obtained the license required by such sections, with intent to evade the provisions of such sections, shall be guilty of a Class I misdemeanor.

Sec. 12. Section 45-129, Reissue Revised Statutes of Nebraska, is amended to read:

45-129. The Department of Banking and Finance is hereby authorized and empowered to make such general rules and regulations and specific rulings, demands, and findings as may be necessary for the proper conduct of the business licensed under sections 45-114 to 45-155 ~~45-158~~, and the enforcement of ~~said such~~ sections, in addition thereto and not inconsistent therewith.

Sec. 13. Section 45-130, Reissue Revised Statutes of Nebraska, is amended to read:

45-130. The Department of Banking and Finance is hereby charged with the duty of inspecting the business, records, and accounts of all persons that lend money subject to the provisions of sections 45-114 to 45-155 ~~45-158~~. The department is hereby empowered to inspect and investigate the business, records, and accounts of all persons in the public business of lending money contrary to the provisions of ~~said such~~ sections, and who do not have a license under ~~said such~~ sections. The Director of Banking and Finance is hereby empowered to appoint examiners who shall, under his or her direction, investigate the loans and business, and examine the books and records of licensees semiannually, and more often when the director shall so determine. The expenses of the Department of Banking and Finance, incurred in the examination of the books and records of licensees, and fully to administer the provisions of the law during each calendar year, shall be charged semiannually to each licensee by the department as soon as reasonably possible after June 30 and December 31 of each year, in proportion to the number of days required to examine and supervise the books and records of the respective licensees.

Sec. 14. Section 45-132, Reissue Revised Statutes of Nebraska, is amended to read:

45-132. The Department of Banking and Finance shall, upon ten days' notice to the licensee stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard, order any licensee to desist from any practice which it shall find does not conform to the requirements set forth in sections 45-114 to 45-155 ~~45-158~~, or the lawful rules and regulations of the department thereunder.

Sec. 15. Section 45-133, Reissue Revised Statutes of Nebraska, is amended to read:

45-133. No licensee or other person, firm, partnership, limited liability company, association, or corporation subject to sections 45-114 to 45-155 ~~45-158~~ shall advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast in any manner whatsoever any statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action which is false, misleading, or deceptive. The Department of Banking and Finance may order any licensee to desist from any conduct which it shall find to be a violation of this section. The department may require that rates of charge, if stated by a licensee, be stated fully and clearly in such manner as it may deem necessary to prevent misunderstanding thereof by prospective borrowers.

Sec. 16. Section 45-134, Reissue Revised Statutes of Nebraska, is

amended to read:

45-134. The payment in money, credit, goods, or things in action, as consideration for any sale or assignment of, or order for, the payment of wages, salary, commission, or other compensation for services, whether earned or to be earned, shall, for the purposes of regulation under sections 45-114 to 45-155 ~~45-158~~, be deemed a loan secured by such assignment, and the amount by which the assigned compensation exceeds the amount of the consideration actually paid, shall, for the purposes of regulation under ~~said~~ such sections, be deemed interest or charges upon the loan from the date of payment to the date the compensation is payable. Such transaction shall be governed by and be subject to the provisions of ~~said~~ such sections.

Sec. 17. Section 45-137, Revised Statutes Supplement, 1996, is amended to read:

45-137. (1) Except as provided in section 45-138 and subsection (6) of this section, every licensee hereunder may make loans and may contract for and receive thereon charges at a rate not exceeding twenty-four percent per annum on that part of the unpaid principal balance on any loan not in excess of one thousand dollars and twenty-one percent per annum on any remainder of such unpaid principal balance. Charges on loans made under sections 45-114 to 45-158 shall not be paid, deducted, or received in advance. The contracting for, charging of, or receiving of charges as provided for in subsection (2) of this section shall not be deemed to be the payment, deduction, or receipt of such charges in advance.

(2) Where the contract of loan requires repayment in substantially equal and consecutive monthly installments of principal and charges combined, the licensee may, at the time the loan is made, precompute the charges at the agreed rate on scheduled unpaid principal balances according to the terms of the contract and add such charges to the principal of the loan. Every payment may be applied to the combined total of principal and precomputed charges until the contract is fully paid. All payments made on account of any loan except for default and deferment charges shall be deemed to be applied to the unpaid installments in the order in which they are due. The portion of the precomputed charges applicable to any particular month of the contract, as originally scheduled or following a deferment, shall be that proportion of such precomputed charges, excluding any adjustment made for a first installment period of more than one month and any adjustment made for deferment, which the balance of the contract scheduled to be outstanding during such month bears to the sum of all monthly balances originally scheduled to be outstanding by the contract. This section shall not limit or restrict the manner of calculating charges, whether by way of add-on, single annual rate, or otherwise, if the rate of charges does not exceed that permitted by this section. Charges may be contracted for and earned at a single annual rate, except that the total charges from such rate shall not be greater than the total charges from the several rates otherwise applicable to the different portions of the unpaid balance according to subsection (1) of this section. All loan contracts made pursuant to this subsection shall be subject to the following adjustments:

(a) Notwithstanding the requirement for substantially equal and consecutive monthly installments, the first installment period may exceed one month by as much as fifteen days and the charges for each day exceeding one month shall be one-thirtieth of the charges which would be applicable to a first installment period of one month. The charge for extra days in the first installment period may be added to the first installment and such charges for such extra days shall be excluded in computing any rebate;

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

(c) If a contract is prepaid in full by cash, a new loan, or otherwise after the first installment due date, the borrower shall receive a rebate of an amount which shall not be less than the amount obtained by applying to the unpaid principal balances as originally scheduled or, if deferred, as deferred, for the period following prepayment, according to the actuarial method, the rate of charge contracted for in accordance with subsection (1) or (2) of this section. The licensee may round the rate of charge to the nearest one-half of one percent if such procedure is not consistently used to obtain a greater yield than would otherwise be permitted. Any default and deferment charges which are due and unpaid may be deducted from any rebate. No rebate shall be required for any partial prepayment. No

rebate of less than one dollar need be made. Acceleration of the maturity of the contract shall not in itself require a rebate. If judgment is obtained before the final installment date the contract balance shall be reduced by the rebate which would be required for prepayment in full as of the date judgment is obtained;

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

(e) If, as of an installment due date, the payment date of all wholly unpaid installments is deferred one or more full months and the maturity of the contract is extended for a corresponding period, the licensee may charge and collect a deferment charge not exceeding the charge applicable to the first of the installments deferred, multiplied by the number of months in the deferment period. The deferment period is that period during which no payment is made or required by reason of such deferment. The deferment charge may be collected at the time of deferment or at any time thereafter. The portion of the precomputed charges applicable to each deferred balance and installment period following the deferment period shall remain the same as that applicable to such balance and periods under the original contract of loan. No installment on which a default charge has been collected, or on account of which any partial payment has been made, shall be deferred or included in the computation of the deferment charge unless such default charge or partial payment is refunded to the borrower or credited to the deferment charge. Any payment received at the time of deferment may be applied first to the deferment charge and the remainder, if any, applied to the unpaid balance of the contract, except that if such payment is sufficient to pay, in addition to the appropriate deferment charge, any installment which is in default and the applicable default charge, it shall be first so applied and any such installment shall not be deferred or subject to the deferment charge. If a loan is prepaid in full during the deferment period, the borrower shall receive, in addition to the required rebate, a rebate of that portion of the deferment charge applicable to any unexpired full month or months of such deferment period; and

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

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

(4) Except as provided in subsections (5) and (6) of this section, in addition to that provided for under sections 45-114 to 45-158, no further or other amount whatsoever shall be directly or indirectly charged, contracted for, or received. If any amount, in excess of the charges permitted, is charged, contracted for, or received, the contract of loan shall not on that account be void, but the licensee shall have no right to collect or receive

any interest or other charges whatsoever. If such interest or other charges have been collected or contracted for, the licensee shall refund to the borrower all interest and other charges collected and shall not collect any interest or other charges contracted for and thereafter due on the loan involved, as liquidated damages, and the licensee or its assignee, if found liable, shall pay the costs of any action relating thereto, including a reasonable attorney's fee. No licensee shall be found liable under the provisions of this subsection if the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

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

(6)(a) Loans secured solely by real estate shall not be subject to the limitations on the rate of interest provided in subsection (1) of this section or the limitations on the nonrefundable loan origination fee under subsection (5) of this section if (i) the principal amount of the loan is seven thousand five hundred dollars or more and (ii) the sum of the principal amount of the loan and the balances of all other liens against the property do not exceed ninety percent of the appraised value of the property.

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

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

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

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

Sec. 18. Section 45-138, Revised Statutes Supplement, 1996, is amended to read:

45-138. (1) Licensees may charge, contract for, or receive any amount or rate of interest permitted by section 45-101.03, 45-101.04, or 45-137 upon any loan or upon any part or all of any aggregate indebtedness of the same person. The charging, contracting for, or receiving of a rate of interest permitted by section 45-101.04 shall not exempt the licensee from compliance with any of the provisions of sections 45-114 to 45-158, except for loans made pursuant to subdivision subdivisions (4) and (11) of section 45-101.04.

(2) Except as provided in subdivision (2)(a) of section 45-137, no licensee shall enter into any contract of loan under sections 45-114 to 45-158, under which the borrower agrees to make any payment of principal more than thirty-six calendar months from the date of making such contract when the principal balance is not more than three thousand dollars. Every loan contract precomputed pursuant to subsection (2) of section 45-137 shall provide for repayment of principal and charges in installments which shall be

payable at approximately equal periodic intervals of time and so arranged that no installment is substantially greater in amount than any preceding installment. When necessary in order to facilitate payment in accordance with the debtor's principal source of income or when the loan contract is not precomputed pursuant to subsection (2) of section 45-137, the payment schedule may reduce or omit installment payments. Any contract of loan made in violation of this section, either knowingly or without the exercise of due care to prevent the same, shall not on that account be void, but the licensee shall have no right to collect or receive any interest or charges on such loan. If any interest or other charges have been collected or contracted for, the licensee shall refund to the borrower all interest and other charges collected and shall not collect thereafter any interest or other charges contracted for and thereafter due on the loan involved, as liquidated damages, and the licensee or its assignee, if found liable, shall pay the costs of any action relating thereto, including a reasonable attorney's fee. No licensee shall be found liable under the provisions of this subsection if the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

Sec. 19. Section 45-139, Reissue Revised Statutes of Nebraska, is amended to read:

45-139. (1) The following types of insurance or one or more of the same may be written in connection with loans made by licensees under sections 45-114 to 45-155 ~~45-158~~:

(a) Fire, theft, windstorm, or comprehensive, including fire, theft, and windstorm, fifty dollars or more deductible collision, and bodily injury liability and property damage liability upon motor vehicles;

(b) Fire and extended-coverage insurance upon real and tangible personal property;

(c) Involuntary unemployment or job protection insurance. In the event of a renewal of a loan contract, this type of insurance shall be canceled and a refund of the unearned premium credited or made before new insurance of this type may be rewritten. Such insurance shall not be required as a condition precedent to the making of such loan; and

(d) Life, health, and accident insurance or any of them, except that the amount of such insurance shall not exceed the total amount to be repaid under the loan contract and the term shall not extend beyond the final maturity date of the loan contract. In the event of a renewal of a loan contract, this type of insurance shall be canceled and a refund of the unearned premium credited or made before new insurance of this type may be written in connection with such loan. Such insurance shall not be required as a condition precedent to the making of such loan.

(2) In addition to the types of insurance written under subsection (1) of this section by licensees under sections 45-114 to 45-155 ~~45-158~~, any other type of insurance may be written for a licensee's borrower or the borrower's immediate family whether or not in connection with a loan, except that such insurance shall not be required as a condition precedent to the making of any loan. Nothing in this subsection shall alter or eliminate any insurance licensing requirements.

(3) Notwithstanding the provisions of sections 45-137 and 45-138, any gain or advantage, in the form of commission or otherwise, to the licensee or to any employee, affiliate, or associate of the licensee from such insurance or its sale shall not be deemed to be an additional or further charge in connection with the loan contract. The insurance premium for such insurance may be collected from the borrower or included in the loan contract at the time the loan is made.

(4) Insurance permitted under this section shall be obtained through a duly licensed insurance agent, agency, or broker. Premiums shall not exceed those fixed by law or current applicable manual rates. Insurance written, as authorized by this section, may contain a mortgage clause or other appropriate provision to protect the insurable interest of the licensee.

Sec. 20. Section 45-145, Reissue Revised Statutes of Nebraska, is amended to read:

45-145. Every person, firm, partnership, limited liability company, corporation, or association licensed as provided in sections 45-114 to 45-155 ~~45-158~~ shall, at the time any loan is made, give to the borrower or if there are two or more borrowers to one of them a statement in the English language disclosing in clear and distinct terms the information required to be disclosed under the federal Consumer Credit Protection Act.

Sec. 21. Section 45-146, Reissue Revised Statutes of Nebraska, is amended to read:

45-146. The Department of Banking and Finance may revoke any

license issued, if the licensee shall knowingly violate any of the provisions of sections 45-114 to 45-155 45-158, or any rule or regulation lawfully made by the department under and within the authority of ~~said~~ such sections; or if the licensee has failed to pay the original license fee, or the annual renewal license fee, or to maintain in effect the required bond; or if any fact or condition exists which, if it had existed at the time of the original application for such license, clearly would have warranted the department in refusing originally to issue such license.

Sec. 22. Section 45-147, Reissue Revised Statutes of Nebraska, is amended to read:

45-147. The Department of Banking and Finance shall revoke no license issued under sections 45-114 to ~~45-155~~ 45-158 unless it shall first serve upon the licensee a written notice which states in general the grounds therefor, together with the time and place of hearing, which shall not be less than ten days from the giving of such notice to licensee by either registered or certified mail. If the department shall revoke or suspend a license issued pursuant to ~~said~~ such sections, after such notice and hearing, or deny an application for license, it shall forthwith enter an order to that effect.

Sec. 23. Section 45-150, Reissue Revised Statutes of Nebraska, is amended to read:

45-150. In addition to any other remedy he or she may have, any licensee or any person considering himself or herself aggrieved by any action of the Department of Banking and Finance under sections 45-114 to 45-155 45-158 may appeal the action, and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 24. Section 45-155, Reissue Revised Statutes of Nebraska, is amended to read:

45-155. Violation of sections 45-114 to 45-155 45-158, except as provided by section 45-188 in connection with any indebtedness, however acquired, shall not render such indebtedness void and uncollectible. If however, any interest or other charges have been collected or contracted for on such indebtedness, the licensee shall refund to the borrower all interest and other charges which have been collected, and shall not collect thereafter any interest or other charges contracted for and thereafter due on the loan involved, as liquidated damages, and the licensee or its assignee, if found liable, shall pay the costs of any action relating thereto, including a reasonable attorney's fee. No licensee shall be found liable under the provisions of this section if the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

Sec. 25. Section 45-197, Reissue Revised Statutes of Nebraska, is amended to read:

45-197. Licensee shall mean any person who obtains a license pursuant to sections 45-114 to 45-155 45-158.

Sec. 26. Section 45-1,110, Reissue Revised Statutes of Nebraska, is amended to read:

45-1,110. Sections 45-1,105 to 45-1,110 shall not apply to any licensee operating pursuant to sections 45-114 to 45-155 45-158 and 45-173 to 45-188.

Sec. 27. Section 45-1,116, Revised Statutes Supplement, 1996, is amended to read:

45-1,116. (1) Reverse mortgage means a loan made by a lender authorized to engage in business as a licensee operating under a license duly issued by the Department of Banking and Finance under sections 45-114 to 45-155 45-158 which (a) is secured by residential real property, (b) is nonrecourse to the borrower except in the event of fraud by the borrower or waste to the property given as security for the loan, (c) provides cash advances to the borrower based upon the equity in the borrower's owner-occupied principal residence, (d) requires no payment of principal or interest until the entire loan becomes due and payable, and (e) otherwise complies with the terms of this section.

(2) Reverse mortgage loans shall be governed by the following rules without regard to the requirements set out elsewhere for other types of mortgage transactions: (a) Payment in whole or in part is permitted without penalty at any time during the period of the loan; (b) an advance and interest on the advance have priority over a lien filed after the closing of a reverse mortgage; (c) an interest rate may be fixed or adjustable and may also provide for interest that is contingent on appreciation in the value of the property; and (d) the advance shall not be reduced in amount or number based on an adjustment in the interest rate when a reverse mortgage provides for periodic advances to a borrower.

(3) Reverse mortgage loans may be made or acquired without regard to the following provisions for other types of mortgage transactions: (a) Limitations on the purpose and use of future advances or any other mortgage proceeds; (b) limitations on future advances to a term of years or limitations on the term of credit line advances; (c) limitations on the term during which future advances take priority over intervening advances; (d) requirements that a maximum mortgage amount be stated in the mortgage; (e) limitations on loan-to-value ratios; (f) prohibitions on balloon payments; (g) prohibitions on compounded interest and interest on interest; and (h) requirements that a percentage of the loan proceeds must be advanced prior to loan assignment.

(4) A lender may, in connection with a reverse mortgage loan, charge to the borrower (a) a nonrefundable loan origination fee which does not exceed two percent of the appraised value of the home at the time the loan is made, (b) a reasonable fee paid to third parties originating loans on behalf of the lender, and (c) such other fees as are necessary and required for inspections, insurance, appraisals, and surveys.

(5) Lenders failing to make loan advances as required in the loan documents and failing to cure the default as required in the loan documents shall forfeit an amount equal to the greater of two hundred dollars or one percent of the amount of the loan advance the lender failed to make.

(6) Nothing in this section shall be construed to limit the department's authority to examine, audit, or inspect reverse mortgage loans for compliance with requirements for loans made by a licensee operating under sections 45-114 to 45-155 ~~45-158~~.

Sec. 28. Original sections 44-1703, 45-114, 45-116 to 45-120, 45-123, 45-128, 45-129, 45-130, 45-132 to 45-134, 45-139, 45-145 to 45-147, 45-150, 45-155, 45-197, and 45-1,110, Reissue Revised Statutes of Nebraska, and sections 8-319, 45-126, 45-137, 45-138, and 45-1,116, Revised Statutes Supplement, 1996, are repealed.