

LEGISLATIVE BILL 111

Approved by the Governor February 26, 1983

Introduced by V. Johnson, 8

AN ACT relating to consumer credit; to define terms; to provide consumer credit default procedures as prescribed; and to provide for applicability. Be it enacted by the people of the State of Nebraska,

Section 1. As used in this act, unless the context otherwise requires:

(1) Collateral shall mean the property subject to a security interest as defined by the Uniform Commercial Code;

(2) Consumer shall mean a natural person to whom credit is offered or extended by way of a transaction if the money, property, or services of the transaction are primarily for personal, family, or household purposes;

(3) Credit shall mean the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment;

(4) Creditor shall mean creditors who regularly extend, or arrange for the extension of, credit which is payable by agreement in more than four installments or for which payment of a finance charge is or may be required, whether in connection with loans, sale of property or services, or otherwise; and

(5) Default shall mean either of the following, if without justification under any law:

(a) The consumer fails to make a payment required by the agreement; or

(b) The prospect of payment, performance, or realization of collateral is significantly impaired. The burden of establishing the prospect of significant impairment shall be on the creditor.

Sec. 2. (1) With respect to a consumer credit transaction, after a consumer has been in default for ten days, a creditor may give the consumer the notice described in this section. A creditor gives notice to the consumer under this section when he or she delivers the notice to the consumer or delivers or mails the notice to the consumer's last-known residence address.

(2) The notice shall be in writing and shall conspicuously state: The name, address, and telephone number of the creditor to which payment is to be made; a brief identification of the credit transaction; the consumer's right to cure the default; and the amount of payment and date by which payment must be made to cure the default, or any other performance necessary to cure the default and the date by which such performance must be tendered.

Sec. 3. (1) With respect to a consumer credit transaction, after a default a creditor may neither accelerate maturity of the unpaid balance of the obligation nor take possession of collateral, except voluntarily surrendered collateral, because of such default until twenty days after a notice of the consumer's right to cure is given. The consumer shall have twenty days after the notice is given to cure any default by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid charges, or by tendering any other performance necessary to cure the default as specified in the notice of right to cure. Cure shall restore the consumer to his or her rights under the agreement as though the default had not occurred.

(2) With respect to defaults on the same obligation after a creditor has once given notice of the consumer's right to cure, the consumer shall have no further right to cure and the creditor has no obligation to proceed against the consumer or the collateral.

Sec. 4. Sections 1 to 3 of this act shall not prohibit a consumer from voluntarily surrendering possession of goods which are collateral and shall not prohibit the creditor from thereafter enforcing any security interest in the goods at any time after default.

Sec. 5. This act shall apply to all consumer credit transactions in this state subject to a security interest, as defined in subdivision (37) of section 1-201, Uniform Commercial Code, entered into, extended, or renewed on or after January 1, 1984.

Sec. 6. This act shall not apply to any licensee operating pursuant to sections 45-114 to 45-155 and 45-173 to 45-188.