

LEGISLATIVE BILL 269

Approved by the Governor February 18, 1992

Introduced by Haberman, 44

AN ACT relating to installment sales; to amend sections 45-338 and 45-342, Reissue Revised Statutes of Nebraska, 1943, and section 45-335, Revised Statutes Supplement, 1990; to redefine a term; to permit an origination fee; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 45-335, Revised Statutes Supplement, 1990, be amended to read as follows:

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

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

(2) Services shall mean work, labor, and services of any kind performed in conjunction with an installment sale, but shall not including service include services for which the prices charged are required by law to be established and regulated by the government of the United States or any state;

(3) Buyer shall mean a person who buys goods or obtains services from a seller in an installment sale;

(4) Seller shall mean a person who sells goods or furnishes services to a buyer under an installment sale;

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

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

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

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

(8) Basic time price shall mean the cash sale price of the goods or services which are the subject matter of an installment contract plus the amount included therein, if a separate identified charge is made therefor and stated in the contract, for insurance, registration, certificate of title, and license fees, filing fees, an origination fee, and fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying any security related to the credit transaction or any charge for nonfiling insurance if such charge does not exceed the amount of fees and charges prescribed by law which would have been paid to public officials for filing, perfecting, releasing, and satisfying any security related to the credit transaction and less the amount of the buyer's downpayment in money or goods or both;

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

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

(11) Sales finance company shall mean a person engaged, in whole or in part, in the business of purchasing installment contracts from one or more sellers. Sales finance company shall include, but not be limited to, a bank, trust company, investment company, savings and loan association, or installment

loan licensee, if so engaged; and

(12) Director shall mean the Director of Banking and Finance.

Sec. 2. That section 45-338, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-338. (1) Notwithstanding the provisions of any other law, the time-price differential for any goods or services sold under an installment contract shall be stated as a fixed or variable annual percentage rate and shall be at a rate agreed to in writing, not to exceed eighteen percent per annum, except that a minimum time-price differential of ten dollars may be charged on any installment contract and a buyer may be required to pay an origination fee of not to exceed ten dollars upon the execution of the installment contract. The origination fee shall be refundable if the installment contract is canceled during the first thirty days. The origination fee may be collected from the buyer or included in the principal balance of the installment contract at the time the contract is made and shall not be considered interest or a time-price differential. Nothing in the Nebraska Installment Sales Act sections 45-334 to 45-353 shall prohibit a seller or holder of an installment contract from contracting for, computing, and charging a time-price differential based upon the application of the rate charged to the unpaid principal balance for the number of days actually elapsed, and the charges so computed shall be used for the purpose of calculating the time-price differential, the time-price balance, the amount of each installment, and the time-sale price. When the installment contract is payable in substantially equal and consecutive monthly installments, the time-price differential shall be computed on the basic time price of each contract, as determined under the provisions of section 45-336, from the date of the contract until the due date of the final installment, notwithstanding that the time-price balance is required to be paid in installments.

(2) When an installment contract provides for payment other than in substantially equal and consecutive monthly installments, the time-price differential may be at a rate which will provide the same return as is permitted on substantially equal monthly payment contracts under subsection (1) of this section, having due regard for the schedule of payments.

(3) Every contract payable in two or more installments shall provide for payment of such installments by stating the date and amount of each

installment or the method by which any variable rate or installment shall be determined.

Sec. 3. That section 45-342, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-342. (1) Notwithstanding the provisions of any contract to the contrary, any buyer may prepay in full at any time before maturity the obligation of any contract.

(2) For any contract entered into prior to October 1, 1981, the provisions of this subsection may be used or the provisions of subsection (3) of this section may be used. If such obligation is so prepaid, any unearned charges shall be refunded. The amount of such refund shall represent at least as great a proportion of the time-price differential as the sum of the monthly time balances after the month prepayment is made bears to the sum of all the monthly time balances under the schedule of payments in the contract. Where the amount of credit is less than one dollar no refund need be made.

(3) For any contract entered into on or after October 1, 1981, the provisions of this subsection shall apply. If such obligation 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 be not 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 annual percentage rate of the time-price differential previously stated to the borrower, pursuant to the federal Consumer Credit Protection Act. The licensee may round the annual percentage rate of the time-price differential 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.

Sec. 4. That original sections 45-338 and 45-342, Reissue Revised Statutes of Nebraska, 1943, and

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section 45-335, Revised Statutes Supplement, 1990, are repealed.