

LEGISLATIVE BILL 778

Approved by the Governor March 09, 2016

Introduced by Williams, 36.

A BILL FOR AN ACT relating to banking and finance; to amend sections 8-2701, 8-2734, 45-334, 45-335, 45-346, and 45-348, Revised Statutes Cumulative Supplement, 2014; to change provisions relating to the Nebraska Money Transmitters Act and the Nebraska Installment Sales Act; to eliminate obsolete provisions; to define a term; to change provisions relating to change in control; to harmonize provisions; to repeal the original sections; and to outright repeal section 8-2748, Revised Statutes Cumulative Supplement, 2014.

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

Section 1. Section 8-2701, Revised Statutes Cumulative Supplement, 2014, is amended to read:

8-2701 Sections 8-2701 to ~~8-2747~~ 8-2748 shall be known and may be cited as the Nebraska Money Transmitters Act.

Sec. 2. Section 8-2734, Revised Statutes Cumulative Supplement, 2014, is amended to read:

8-2734 (1) ~~Initial~~ (1)(a) ~~All initial licenses shall remain in full force and effect until the next succeeding July 1. Beginning July 1, 2014, initial licenses shall remain in full force and effect until the next succeeding December 31. Each~~ Thereafter, each licensee shall, annually on or before December 31 of each year, file a license renewal application and pay to the director a license fee of two hundred fifty dollars and any processing fee allowed under subsection (2) of section 8-2730, both of which shall not be subject to refund.

~~(b) Licenses which expire on July 1, 2014, may be renewed until December 31, 2014, upon submission of a license renewal application and compliance with subsection (2) of this section. For such renewals, the department shall prorate the license fee provided in subdivision (1)(a) of this section using a factor of six-twelfths.~~

(2) The renewal application and license fee shall be accompanied by a report, in a form prescribed by the director, which shall include:

(a) A copy of the licensee's most recent audited consolidated annual financial statement including balance sheet, statement of income or loss, statement of changes in shareholders' equity, and statement of changes in financial position, or, if a licensee is a wholly owned subsidiary of another corporation, the consolidated audited annual financial statement of the parent corporation may be filed in lieu of the licensee's audited annual financial statement;

(b) The number of payment instruments sold by the licensee in the state, the dollar amount of those instruments, and the dollar amount of payment instruments currently outstanding, for the most recent quarter for which data is available before the date of the filing of the renewal application, but in no event more than one hundred twenty days before the renewal date;

(c) Any material changes to any of the information submitted by the licensee on its original application which have not previously been reported to the director on any other report required to be filed under the Nebraska Money Transmitters Act;

(d) A list of the licensee's permissible investments; and

(e) A list of the locations, if any, within this state at which money transmission is being conducted by either the licensee or its authorized delegates.

Sec. 3. Section 45-334, Revised Statutes Cumulative Supplement, 2014, is amended to read:

45-334 Sections 45-334 to 45-355 and section 7 of this act shall be known and may be cited as the Nebraska Installment Sales Act.

Sec. 4. Section 45-335, Revised Statutes Cumulative Supplement, 2014, is amended to read:

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

(1) Goods means all personal property, except money or things in action, and includes 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 means work, labor, and services of any kind performed in conjunction with an installment sale but does not 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 means a person who buys goods or obtains services from a seller in an installment sale;

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

(5) Installment sale means 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 does not include a consumer rental purchase agreement defined in and regulated by the Consumer Rental Purchase Agreement Act;

(6) Installment contract means 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 means 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 means 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, debt cancellation contract, debt suspension contract, electronic title and lien services, guaranteed asset protection waiver, 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, means the amount, as limited in the Nebraska Installment Sales Act, to be added to the basic time price;

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

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

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

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

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

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

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

(18) Licensee means any person who obtains a license under the Nebraska Installment Sales Act;

(19) Person means individual, partnership, limited liability company, association, financial institution, trust, corporation, and any other legal entity;

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

(21) Nationwide Mortgage Licensing System and Registry means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, installment loan companies, and other state-regulated financial services entities and industries; ~~and -~~

(22)(a) Control in the case of a corporation means (i) direct or indirect ownership of or the right to control twenty-five percent or more of the voting

shares of the corporation or (ii) the ability of a person or group acting in concert to elect a majority of the directors or otherwise effect a change in policy.

(b) Control in the case of any other entity means (i) the power, directly or indirectly, to direct the management or policies of the entity, (ii) the contribution of twenty-five percent or more of the capital of the entity, or (iii) the right to receive, upon dissolution, twenty-five percent or more of the capital of the entity.

Sec. 5. Section 45-346, Revised Statutes Cumulative Supplement, 2014, is amended to read:

45-346 (1) A license issued under the Nebraska Installment Sales Act is nontransferable and nonassignable. The same person may obtain additional licenses for each place of business operating as a sales finance company in this state upon compliance with the act as to each license.

(2) Application for a license shall be on a form prescribed and furnished by the director and shall include audited financial statements showing a minimum net worth of one hundred thousand dollars. If the applicant is an individual or a sole proprietorship, the application shall include the applicant's social security number.

(3) An applicant for a license shall file with the department a surety bond in the amount of fifty thousand dollars, furnished by a surety company authorized to do business in this state. The bond shall be for the use of the State of Nebraska and any Nebraska resident who may have claims or causes of action against the applicant. The surety may cancel the bond only upon thirty days' written notice to the director.

(4) A license fee of one hundred fifty dollars and any processing fee allowed under subsection (2) of section 45-354 shall be submitted along with each application.

~~(5) An initial license issued prior to October 1, 2012, shall remain in full force and effect until the next succeeding October 1. An initial license issued on or after October 1, 2012, and on or before December 31, 2012, shall remain in full force and effect until December 31, 2013. An initial license issued on or after January 1, 2013, shall remain in full force and effect until the next succeeding December 31. Each license shall remain in force until revoked, suspended, canceled, expired, or surrendered.~~

(6) The director shall, after an application has been filed for a license under the act, investigate the facts, and if he or she finds that the experience, character, and general fitness of the applicant, of the members thereof if the applicant is a corporation 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 purpose of the act, the director shall issue and deliver a license to the applicant to do business as a sales finance company in accordance with the license and the act. The director shall have the power to reject for cause any application for a license.

(7) The director shall, within his or her discretion, make an 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.

~~(8) If a change of control of a licensee is proposed, a new application for a license shall be submitted to the department. Control in the case of a corporation means (a) direct or indirect ownership of or the right to control twenty-five percent or more of the voting shares of the corporation or (b) the ability of a person or group acting in concert to elect a majority of the directors or otherwise effect a change in policy. Control in the case of any other entity means any change in the principals of the organization, whether active or passive.~~

Sec. 6. Section 45-348, Revised Statutes Cumulative Supplement, 2014, is amended to read:

45-348 (1) An installment sales license may be renewed annually on or before December 31 by paying ~~Except as provided in subsection (2) of this section, every licensee shall, on or before the first day of October, pay to the director a fee of one hundred fifty dollars for each license held as a license fee for the succeeding year and any processing fee allowed under subsection (2) of section 45-354 and by submitting~~ submit such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications, including a copy of the licensee's most recent annual audit.

~~(2) Licenses which expire on October 1, 2012, shall be renewed until December 31, 2013, upon compliance with subsection (1) of this section. For such renewals, the fee shall be one and three twelfths of the fees required under subsection (1) of this section. A license renewed on or after January 1, 2013, shall remain in full force and effect until the next succeeding December 31.~~

~~(2 3)~~ A licensee may voluntarily surrender a license at any time by delivering to the director written notice of the surrender. The department shall issue a notice of cancellation of the license following such surrender.

~~(3 4)~~ If a licensee fails to renew its license and does not voluntarily surrender the license pursuant to this section, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

Sec. 7. (1) No person acting personally or as an agent shall acquire control of any licensee under the Nebraska Installment Sales Act without first

(a) giving thirty days' notice to the department on a form prescribed by the department of such proposed acquisition and (b) paying a filing fee of one hundred fifty dollars and any processing fee allowed under subsection (2) of section 45-354.

(2) The director, upon receipt of such notice, shall act upon the acquisition within thirty days, and unless he or she disapproves of the proposed acquisition within such period of time, the acquisition shall become effective on the thirty-first day after receipt without the director's approval, except that the director may extend the thirty-day period an additional thirty days if, in his or her judgment, any material information submitted is substantially inaccurate or the acquiring party has not furnished all the information required by the department.

(3) An acquisition may become effective prior to the expiration of the disapproval period if the director issues written notice of his or her intent not to disapprove the action.

(4)(a) The director may disapprove any proposed acquisition if:

(i) The financial condition of any acquiring person is such as might jeopardize the financial stability of the acquired licensee;

(ii) The character and general fitness of any acquiring person or of any of the proposed management personnel indicate that the acquired installment sales licensee would not be operated honestly, fairly, or efficiently within the purpose of the Nebraska Installment Sales Act; or

(iii) Any acquiring person neglects, fails, or refuses to furnish all information required by the department.

(b) The director shall notify the acquiring party in writing of disapproval of the acquisition. The notice shall provide a statement of the basis for the disapproval.

(c) Within fifteen business days after receipt of written notice of disapproval, the acquiring party may make a written request for a hearing on the proposed acquisition in accordance with the Administrative Procedure Act and rules and regulations adopted and promulgated by the department under the Administrative Procedure Act. The director shall, by order, approve or disapprove the proposed acquisition on the basis of the record made at the hearing.

Sec. 8. Original sections 8-2701, 8-2734, 45-334, 45-335, 45-346, and 45-348, Revised Statutes Cumulative Supplement, 2014, are repealed.

Sec. 9. The following section is outright repealed: Section 8-2748, Revised Statutes Cumulative Supplement, 2014.