

LEGISLATIVE BILL 214

Approved by the Governor March 6, 1981

Introduced by Hefner, 19

AN ACT to amend section 8-823, Reissue Revised Statutes of Nebraska, 1943, and sections 8-440, 8-446, 8-815, 8-822, and 45-342, Revised Statutes Supplement, 1980, relating to loans; to redefine a term; to change limitations; to provide for the computation of certain charges in case of prepayment of certain contracts as prescribed; to provide an exception; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 8-440, Revised Statutes Supplement, 1980, be amended to read as follows:

8-440. (1) All charges based upon due performance of the loan contract and computed as provided in section 8-435 may be included in the amount of any installments scheduled to be repaid by the borrower.

(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 charges have been precomputed and included in the scheduled installments, and if the contract is prepaid in full by cash, a new loan, or otherwise after the first installment due date but before the final installment due date, the refund shall be at least as great a proportion of the total charges as the sum of the remaining monthly balances of the principal and interest combined scheduled to follow the date of prepayment bears to the sum of all the monthly balances of principal and interest combined originally scheduled by the contract. For the purpose of computing the refund, any prepayment in full made on or before the fifteenth day following an installment date shall be deemed to have been made on the installment date immediately preceding the date of prepayment in full and any prepayment in full made after such fifteenth day shall be deemed to have been made on the installment date immediately following the date of prepayment in full. No refund shall be required for any partial prepayment. No refund of less than one dollar need be made. The charges retained may be increased to the extent that delinquency charges on any scheduled installment or portion thereof, if contracted for, may be taken not in excess of five per

cent of each installment or five dollars, whichever is less, or in lieu thereof interest after maturity on each such installment not exceeding the highest permissible contract rate as provided in section 8-435. If judgment is obtained before the final installment due date, the contract balance shall be reduced by the refund amount which would be required for prepayment in full as of the date judgment is obtained.

(3) For any contract entered into on or after October 1, 1981, the provisions of this subsection shall apply. If the 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 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 previously stated to the borrower pursuant to the Federal Consumer Credit Protection Act. The licensee may round the annual percentage rate to the nearest one half of one per cent 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. 2. That section 8-446, Revised Statutes Supplement, 1980, be amended to read as follows:

8-446. Every loan made under the provisions of sections 8-435 to 8-450 shall be repayable within a period of one hundred ~~forty-four~~ forty-five months or less in approximately two or more equal or declining unequal installments of principal and interest at approximately equal intervals, except that the loan may be for a longer period than one hundred ~~forty-four~~ forty-five months when a federal loan guarantee program authorizes such longer period. When appropriate, in order to facilitate payment in accordance with the borrower's source of income, the payment schedule may reduce or omit installment payments over any period or periods, totaling not more than twelve months in any such period, if the other payments are increased in such a manner that they will be ~~substantially equal or declining in amount and~~ sufficient in the aggregate to retire the

loan within a period of one hundred ~~forty-four~~ forty-five months or a longer period authorized by a federal loan guarantee program.

Sec. 3. That section 8-815, Revised Statutes Supplement, 1980, be amended to read as follows:

8-815. As used in sections 8-815 to 8-829, unless the context otherwise requires:

(1) Department shall mean the Department of Banking and Finance of the State of Nebraska;

(2) Bank shall mean the banks, trust companies, and cooperative credit associations, organized under the laws of this state and national banking associations doing business in this state and shall include national banking associations;

(3) Registered bank shall mean any bank which has in effect a registration under sections 8-816 and 8-817;

(4) Unregistered bank shall mean any bank which has not registered under sections 8-816 and 8-817, or the registration of which is not in effect because of action taken under section 8-827; and

(5) Personal loan shall mean a loan, and the contract evidencing the same, which is repayable, pursuant to a contract or understanding, in two or more equal or unequal installments, and within one hundred twenty-one forty-five months, but shall not include any loan on which the interest does not exceed sixteen per cent per annum. Personal loan shall include loans for the purchase of mobile homes even though the loan is not repayable within one hundred forty-five months. Personal loan shall include loans or advances initiated by credit card or other type of transaction card, including but not limited to those loan transactions initiated through electronic impulse.

Sec. 4. That section 8-822, Revised Statutes Supplement, 1980, be amended to read as follows:

8-822. (1) Charges under section 8-820 shall be computed by application of the rate charged to the outstanding principal balance for the number of days actually elapsed without adding any additional charges, except that at the time the loan is made charges may be computed as a percentage per month of unpaid principal balances for the number of days elapsed on the assumption that the unpaid principal balance will be reduced, as provided in the loan contract, and such charges may be

included in the scheduled installments. ~~;-Provided;-that~~
if

(2) For any loan 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 the loan is repaid in whole or in part prior to the due date unearned charges shall be refunded or credited to the borrower in full, but such refund need not be made until final payment of the loan contract. Such refund shall be at least as great a proportion of the total charges as the sum of the remaining monthly balances of the principal and interest combined scheduled to follow the date of prepayment bears to the sum of all the monthly balances of principal and interest combined originally scheduled by the contract. For the purpose of computing the refund, any prepayment in full made on or before the fifteenth day following an installment date shall be deemed to have been made on the installment date immediately preceding the date of prepayment in full, and any prepayment in full made after such fifteenth day shall be deemed to have been made on the installment date immediately following the date of prepayment in full. No refund shall be required for any partial prepayment. No refund of less than one dollar need be made.

(3) For any loan contract entered into on or after October 1, 1981, the provisions of this subsection shall apply. If the loan 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 previously stated to the borrower pursuant to the Federal Consumer Credit Protection Act. The licensee may round the annual percentage rate to the nearest one half of one per cent 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.

(4) The charges retained by the bank may be increased to the extent that delinquency charges are

computed on earned charges in accordance with the next succeeding sentence. Delinquency charges on any scheduled installment or portion thereof, if contracted for, may be taken not in excess of five per cent on each installment or five dollars, whichever is less, or in lieu thereof interest after maturity on each such installment not exceeding the highest permissible interest rate.

Sec. 5. That section 8-823, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-823. The following provisions shall apply to loans made under section 8-820:

(1) Every With the exception of loans for mobile homes, every such loan shall be repayable within a period of one hundred twenty-one forty-five months in approximately--equal---or---declining---installments---of principal--or--of--principal--and--charges--combined,--at approximately--equal--intervals and may be prepaid in whole or in part at any time. One or more of the periodic installments may be accelerated or deferred when the borrower's chief source of income makes such arrangement necessary, if the note or contract so provides and approximately (a) one half of the entire amount be payable in the first half of the full period of the loan and (b) approximately one half of the entire amount be payable in the last half of the full period of the loan;

(2) The bank shall give the borrower a receipt showing the date and amount of each payment made on account of any such loan; and

(3) No bank shall take, in connection with any such loan, any confession of judgment, power of attorney to confess judgment, power of attorney to appear for a borrower in a judicial proceeding, or agreement to pay the costs of collection or the attorney's fees.

Sec. 6. That section 45-342, Revised Statutes Supplement, 1980, 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, and-if

(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 previously stated to the borrower pursuant to the Federal Consumer Credit Protection Act. The licensee may round the annual percentage rate to the nearest one half of one per cent 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. 7. That original section 8-823, Reissue Revised Statutes of Nebraska, 1943, and sections 8-440, 8-446, 8-815, 8-822, and 45-342, Revised Statutes Supplement, 1980, are repealed.

Sec. 8. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.