

LEGISLATIVE BILL 702

Approved by the Governor March 19, 1982

Introduced by Clark, 47

AN ACT to amend sections 45-137 and 45-138, Revised Statutes Supplement, 1980, relating to interest; to change provisions relating to loan charges as prescribed; to harmonize provisions; to change provisions relating to maturity dates and payment schedules; to provide for severability; 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 45-137, Revised Statutes Supplement, 1980, be amended to read as follows:

45-137. (1) Every For the period commencing on the effective date of this act through September 30, 1985, except as provided in section 45-138 every licensee hereunder may make loans, not exceeding seven thousand dollars in principal amount, and may contract for and receive thereon charges at a rate not exceeding twenty-four per cent per annum on that part of the principal balance on any loan not in excess of one thousand dollars, eighteen per cent per annum on that part of the principal balance on any loan in excess of one thousand dollars and not in excess of five thousand dollars, and sixteen and twenty-three per cent per annum on any remainder of such unpaid principal balance. On and after October 1, 1985, except as provided in section 45-138 every licensee hereunder may make loans, not exceeding seven thousand dollars in principal amount, and may contract for and receive thereon charges at a rate not exceeding twenty-four per cent per annum on that part of the principal balance on any loan not in excess of one thousand dollars, eighteen per cent per annum on that part of the principal balance on any loan in excess of one thousand dollars and not in excess of five thousand dollars, and sixteen per cent per annum on any remainder of such unpaid principal balance. Any interest rate contracted for on or after the effective date of this act and prior to October 1, 1985, shall remain in effect and be enforceable on and after October 1, 1985. Charges on loans made under sections 45-114 to 45-155, shall not be paid, deducted, or received in advance; Provided, that the contracting for, charging, 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 annual or monthly 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. 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 agreed rate 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) of this section. 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;

(d) If any installment is unpaid in full for five 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 the portion-of-precomputed-charges-applicable-to-the-final installment-period-and-a-similar-amount--may--be--charged and-collected-for-each-succeeding-full--month--from--such due-date-that-such-installment-remains-wholly-unpaid-and outstanding five per cent 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 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; Provided, 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; Provided, that the charging, collecting, and receiving charges as provided in subsection (2) of this section shall not be deemed compounding; and provided further, 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, (b) be so expressed in every obligation signed by the borrower, and (c) 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}--No--licensee--shall--induce--or--permit--any person, nor any husband and wife, jointly or severally, to become obligated, directly or contingently or both, under more than one contract of loan at the same time, for the purpose of obtaining a higher rate of charge than would otherwise be permitted by this section.~~

{5} ~~{4}~~ Except as provided in subsection ~~{6}~~ {5} of this section, in addition to that provided for under sections 45-114 to 45-155, 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.

~~{6}~~ {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. 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 per cent of that part of the original principal balance of any loan not in excess of two thousand dollars and five per cent 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.

Sec. 2. That section 45-138, Revised Statutes Supplement, 1980, be amended to read as follows:

45-138. (1) ~~No licensee shall directly or indirectly licensees may charge, contract for, or receive a greater any amount, rate of interest, or charge or exercise any powers than the maximum rate 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, in excess of seven thousand dollars. On and after October 1, 1985, licensees may charge, contract for, or receive any amount, rate of interest, or charge or exercise any powers permitted by section 45-101.03, 45-101.04, or 45-137 upon any loan or upon all or any part of any aggregate indebtedness of the same person.~~

~~{2} The prohibition contained in subsection (1) of this section shall also apply to any licensee who permits any person, as borrower or as endorser, guarantor, or surety for any borrower, or otherwise, or any husband and wife jointly or severally, to owe directly, contingently, or both to the licensee at any time a sum of more than seven thousand dollars for principal; Provided, that if a licensee shall acquire, directly or indirectly, by purchase or discount, bona fide obligations for goods or services owed by the person who received such goods or services, then the amount of such purchased or discounted indebtedness to the licensee shall not be included in computing the aggregate indebtedness of such borrower to the licensee for the purpose of the foregoing prohibitions; and provided further, that if the proceeds of any loan of seven thousand dollars or less are used to discharge a preexisting debt of the borrower for goods or services owed directly to the person who provided such goods or services, the licensee may accept from such person a guaranty of payment of the principal of such loan, with interest at a rate not exceeding that which the licensee could lawfully charge if he were not licensed hereunder. The acceptance of one or more of such guarantees in any aggregate amount shall not affect the rights of such licensee to make the charges against the borrower authorized by section 45-137.~~

{3} (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 45-155, 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. ~~Except as provided in section 45-137-(2)-(a), no licensee shall enter into any contract under sections 45-114 to 45-155, under which any borrower agrees to make any payment of principal more than sixty calendar months from the date of making such contract when the principal balance is more than three thousand dollars if such contract is not secured by a bona fide duly recorded mortgage on real estate owned by the borrower.~~ 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, a debtor, whose principal source of income is from agriculture, stock raising, or school teaching, the payment schedule may reduce or omit installment payments, ~~if at least one-half of the credit is to be repaid within the first half of the applicable maximum maturity and if the other payments are increased in such manner that they will be substantially equal or declining in amount and sufficient in the aggregate to retire the loan in the period agreed upon for repayment, as provided for in this subsection.~~ 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. 3. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

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Sec. 4. That original sections 45-137 and 45-138, Revised Statutes Supplement, 1980, are repealed.

Sec. 5. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.