

LEGISLATIVE BILL 1199

Approved by the Governor March 12, 1990

Introduced by Landis, 46

AN ACT relating to credit agreements; to amend sections 45-1,112 to 45-1,115, Revised Statutes Supplement, 1989; to define and redefine terms; to change a notice provision; to provide an exemption; to change a provision relating to implied agreements; to provide for applicability; and to repeal the original sections.

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

Section 1. That section 45-1,112, Revised Statutes Supplement, 1989, be amended to read as follows:

45-1,112. For purposes of sections 45-1,112 to 45-1,115:

(1)(a) Credit agreement shall mean:

{a} (i) A contract, promise, undertaking, offer, or commitment to loan money or to grant or extend credit; or

{b} (ii) A contract, promise, undertaking, or offer to forebear repayment of money or to make any other financial accommodation in connection with a loan of money or grant or extension of credit, or any amendment of, cancellation of, waiver of, or substitution for any or all of the terms or provisions of any instrument or document executed in connection with a loan of money or grant or extension of credit, except for loans of money or grants or extensions of credit which are:

{+} (A) Not in excess of twenty-five thousand dollars and used primarily for personal, family, or household purposes of the debtor or debtors; or

{++} (B) Used for the purchase of and secured solely by the principal residence of the debtor or debtors.

(b) Credit agreement shall not include (i) letters of credit or (ii) promissory notes, real estate mortgages, trust deeds, security agreements, financing statements, guarantee agreements, pledge agreements, or other similar documents or instruments evidencing an obligation to repay indebtedness or securing the repayment of indebtedness;

(2) Creditor shall mean any bank or banking corporation as defined in section 8-101; and financial institution which makes a credit agreement with a debtor;

(3) Debtor shall mean a person or entity which obtains credit from a creditor, seeks a credit agreement with a creditor, or owes money to a creditor; and

(4) Financial institution shall mean a state-chartered or federally chartered bank, savings bank, building and loan association, credit union, industrial loan and investment company, or savings and loan association or a holding company or affiliate or subsidiary of such an institution.

Sec. 2. That section 45-1,113, Revised Statutes Supplement, 1989, be amended to read as follows:

45-1,113. (1) A debtor or a creditor may not maintain an action or assert a defense in an action based on a credit agreement unless the credit agreement is in writing, expresses consideration, sets forth the relevant terms and conditions of the credit agreement, and is signed by the creditor and by the debtor.

(2) Subsection (1) of this section shall not apply to (a) credit extended on an account as defined in section 4-104, Uniform Commercial Code, (b) loans initiated by credit card or other type of transaction card, or (c) credit agreements as defined in subdivision (1)(a)(ii) ~~(b)~~ of section 45-1,112 unless the creditor, at the time of the initial loan of money or grant or extension of credit, has given to the debtor a written notice, signed or initialed by the debtor, which contains substantially the following language: A credit agreement must be in writing to be enforceable under Nebraska law. To protect you and us from any misunderstandings or disappointments, any contract, promise, undertaking, or offer to forebear repayment of money or to make any other financial accommodation in connection with this loan of money or grant or extension of credit, or any amendment of, cancellation of, waiver of, or substitution for any or all of the terms or provisions of any instrument or document executed in connection with this loan of money or grant or extension of credit, must be in writing to be effective.

(3) This section shall not be construed to limit or bar the recovery of money owed or collateral securing a loan in any way.

Sec. 3. That section 45-1,114, Revised Statutes Supplement, 1989, be amended to read as follows:

45-1,114. (1) The following actions shall not give rise to a claim that a new credit agreement is created unless the requirements of subsection (1) of section 45-1,113 are met:

(a) The rendering of financial advice by a creditor to a debtor;

(b) Consultation by a creditor with a debtor;

or  
(c) Any amendment of, cancellation of, waiver of, or substitution for any or all of the terms or provisions of any credit agreement;

(2) A credit agreement shall not be implied under any circumstances from (1) the relationship, fiduciary or otherwise, of the creditor and the debtor, (2) the rendering of financial advice by a creditor to a debtor, or (3) consultation by a creditor with a debtor.

Sec. 4. That section 45-1,115, Revised Statutes Supplement, 1989, be amended to read as follows:

45-1,115. Sections 45-1,112 to 45-1,115 shall apply to credit agreements entered into on or after January 1, 1990 the effective date of this act.

Sec. 5. That original sections 45-1,112 to 45-1,115, Revised Statutes Supplement, 1989, are repealed.