

LEGISLATIVE BILL 606

Approved by the Governor May 4, 1989

Introduced by Landis, 46

AN ACT relating to banks and banking; to define terms; to limit actions and defenses based on and provide for credit agreements as prescribed; to provide for applicability of provisions; and to provide an operative date.

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

Section 1. For purposes of this act:

(1) Credit agreement shall mean:

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

(b) 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 except for loans of money or grants or extensions of credit which are:

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

(ii) Used for the purchase of and secured solely by the principal residence of the debtor or debtors;

(2) Creditor shall mean any bank or banking corporation as defined in section 8-101; and

(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.

Sec. 2. (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 agreement is in writing, expresses consideration, sets forth the relevant terms and conditions of the 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)(b) of section 1 of this act 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 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 must be in writing to be effective.

Sec. 3. (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 2 of this act 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 from the relationship, fiduciary or otherwise, of the creditor and the debtor.

Sec. 4. This act shall apply to credit agreements entered into on or after January 1, 1990.

Sec. 5. This act shall become operative on January 1, 1990.