

## LEGISLATIVE BILL 979

Approved by the Governor April 4, 1994

Introduced by Landis, 46; Hartnett, 45

AN ACT relating to banking and finance; to amend sections 8-133, 8-147, 8-152, 8-164, 45-137, 45-138, 45-156, 45-334, 45-336, and 45-351, Reissue Revised Statutes of Nebraska, 1943, and sections 8-141, 8-148.04, and 45-101.04, Revised Statutes Supplement, 1993; to provide for deposit coverage by guaranty bond as prescribed; to change provisions relating to the determination of lending limits; to provide powers for banks as prescribed; to change the investment percentage for banks investing in community development corporations; to eliminate a provision relating to real estate loan limitations; to change provisions relating to bank dividends; to provide exceptions to limitations on interest rates; to provide requirements for loans secured solely by real estate; to require the return and cancellation of copies of loan and installment sales documents; to provide requirements for such copies; to provide for inspections, investigation, and examinations of businesses, records, and accounts of sales finance companies; to provide for extensions and deferments under a retail installment contract and fees for such extensions and deferments as prescribed; to harmonize provisions; to provide operative dates; 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 8-133, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-133. No (1) Except as provided in subsection (2) of this section, no bank shall, directly or indirectly, pay any interest on deposits at a greater rate than the director by regulation provides, except that when authorized by the United States Government and approved by the director, no bank shall be prohibited from paying interest on any type of United States treasury tax and loan deposits or similar type of United States accounts. Any officer, director, stockholder, or employee of a bank or any other person who directly or indirectly, either personally or for the bank, pays any money, gives any consideration of value, or pledges any assets, except as provided by law, as an inducement, in addition to the legal interest, for making or retaining a deposit in the bank shall be guilty of a Class IV felony. Any depositor who accepts any such inducement shall be guilty of a Class IV felony. Deposits made in violation of this section shall not be entitled to priority of payment from the assets of the bank. In determining the maximum interest that may be paid on deposits, the director shall consider generally recognized sound banking principles, the financial soundness of banks, competitive conditions, and general economic conditions. A bank may secure deposits made by a trustee under 11 U.S.C. 101 et seq. by pledge of the assets of the bank or by furnishing a surety bond as provided in 11 U.S.C. 345.

(2) Nothing in this section shall prohibit a bank or any officer, director, stockholder, or employee thereof from providing to a depositor a guaranty bond which provides coverage for the deposits of the depositor which are in excess of the amounts insured by the Federal Deposit Insurance Corporation.

Sec. 2. That section 8-141, Revised Statutes Supplement, 1993, be amended to read as follows:

8-141. (1) No bank shall directly or indirectly loan to any single corporation, limited liability company, firm, or individual, including in such loans all loans made to the several members or shareholders of such firm, limited liability company, or corporation, for the use and benefit of such corporation, limited liability company, firm, or individual, more than twenty-five percent of the paid-up capital, surplus, and capital notes and debentures of such bank. Such limitation of twenty-five percent shall be subject to the following exceptions:

(a) Obligations of any person, partnership, limited liability company, association, or corporation in the form of notes or drafts secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock, when the market value of the livestock securing the obligation is not at any time less than one hundred fifteen percent of the face amount of the notes covered by such documents,

shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures, in addition to such twenty-five percent of such capital and surplus;

(b) Obligations of any person, partnership, limited liability company, association, or corporation secured by not less than a like amount of bonds or notes of the United States issued since April 24, 1917, or certificates of indebtedness of the United States, treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures, in addition to such twenty-five percent of such capital and surplus; or

(c) Obligations of any person, partnership, limited liability company, association, or corporation which are secured by negotiable warehouse receipts in an amount not less than one hundred fifteen percent of the face amount of the note or notes secured by such documents shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures, in addition to such twenty-five percent of such capital and surplus.

(2) For purposes of this section, the discounting of bills of exchange, drawn in good faith against actually existing values, and the discounting of commercial paper actually owned by the persons negotiating the same shall not be considered as the lending of money. Loans or obligations shall not be subject to any limitation under this section, based upon such capital stock and surplus, to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase the same, made by any federal reserve bank or by the United States Government or any authorized agency thereof, including any corporation wholly owned directly or indirectly by the United States, or general obligations of any state of the United States or any political subdivision thereof. The phrase general obligation of any state or any political subdivision thereof shall mean an obligation supported by the full faith and credit of an obligor possessing general powers of taxation, including property taxation, but shall not include municipal revenue bonds and sanitary and improvement district warrants which shall be subject to the limitations set forth in this section. Any bank may subscribe to, invest in, purchase, and own single-family mortgages secured by the Federal Housing Administration or the United States Department of Veterans Affairs and mortgage-backed certificates of the Government National Mortgage Association which are guaranteed as to payment of principal and interest by the Government National Mortgage Association. Such mortgages and certificates shall not be subject under this section to any limitation based upon such capital and surplus. Obligations representing loans to any national banking association or to any banking institution organized under the laws of any state, when such loans are approved by the Director of Banking and Finance by regulation or otherwise, shall not be subject under this section to any limitation based upon such capital and surplus. Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject under this section to any limitation based on such capital and surplus. The department may adopt and promulgate rules and regulations governing the terms and conditions of such security interest and segregated deposit account. For the purpose of determining lending limits, partnerships shall not be treated as separate entities. Each individual shall be charged with his or her personal debt plus the debt of every partnership in which he or she is a partner, except that for purposes of this section, no (a) an individual shall only be charged with the debt of any limited partnership in which he or she is a partner if to the extent that the terms of the limited partnership agreement provide that such individual is not to be held liable for the debts or actions of such limited partnership and (b) no individual shall be charged with the debt of any general partnership in which he or she is a partner beyond the extent to which (i) his or her liability for such partnership debt is limited by the terms of a contract or other written agreement between the bank and such individual and (ii) any personal debt of such individual is incurred for the use and benefit of such general partnership.

(3) A loan made within lending limits at the initial time the loan was made may be renewed, extended, or serviced without regard to changes in the lending limit of a bank following the initial extension of the loan if (a) the renewal, extension, or servicing of the loan does not result in the extension of funds beyond the initial amount of the loan or (b) the accrued interest on the loan is not added to the original amount of the loan in the process of renewal, extension, or servicing.

(4) Any bank may purchase or take an interest in life insurance

contracts for any purpose incidental to the business of banking. A bank's purchase of any life insurance contract, as measured by its cash surrender value, from any one life insurance company shall not at any time exceed twenty-five percent of the paid-up capital, surplus, and capital notes and debentures of such bank or fifteen percent of the paid-up capital, surplus, undivided profits, and capital notes and debentures of such bank, whichever is greater. A bank's purchase of life insurance contracts, as measured by their cash surrender values, in the aggregate from all life insurance companies shall not at any time exceed thirty-five percent of the paid-up capital, surplus, undivided profits, and capital notes and debentures of such bank. The limitations under this subsection on a bank's purchase of life insurance contracts, in the aggregate from all life insurance companies, shall not apply to any contract purchased prior to the operative date of this section.

Sec. 3. That section 8-147, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-147. Except as provided in this section, the aggregate amount of direct borrowing of any bank shall at no time exceed the amount of its paid-up capital, surplus, undivided profits, capital reserves, capital notes, and debentures, nor shall any bank at any time permit its loans and investments, exclusive of its cash reserve, banking house, fixtures, direct or indirect obligations of the United States Government, and obligations guaranteed by agencies of the United States Government, to exceed in the aggregate fifteen times the amount of its paid-up capital, surplus, undivided profits, capital reserves, capital notes, and debentures. Any bank may borrow money on its bills payable secured by direct or indirect obligations of the United States Government or secured by obligations guaranteed by agencies of the United States Government in an amount in excess of its paid-up capital and surplus. Any bank may, with the written consent of the director, rediscount paper in an amount in excess of its paid-up capital stock and surplus. Any transfer of assets of a bank in violation of this section shall be void as against the creditors of such bank. Any officer or employee of such bank who does, or permits to be done, any act in violation of this section, and any other person who knowingly assists in the violation of this section, shall be guilty of a Class IV felony. Any bank becoming a member of the federal reserve system may have the same privileges as to rediscounts and bills payable with the federal reserve banks, and may incur liabilities to such banks, to the same extent as national banks. Any bank becoming a member of the Federal Home Loan Bank System may have the same privileges as to rediscounts and bills payable with the Federal Home Loan Banks, and may incur liabilities to such banks, to the same extent as national banks. Any bank may have the same privileges as to rediscounts and bills payable with the federal intermediate credit banks, and may incur liabilities to such banks, to the same extent as national banks.

Sec. 4. That section 8-148.04, Revised Statutes Supplement, 1993, be amended to read as follows:

8-148.04. (1) Any bank may subscribe to, invest, buy, and own stock in any community development corporation wherein the bank will receive an equity interest in or evidence of indebtedness of the community development corporation and carry the investment as an asset if:

(a) The community development corporation shall be of a predominantly civic, community, or public nature and not merely private and entrepreneurial;

(b) The bank's investment in any one community development corporation does not exceed two five percent of its capital and surplus and its aggregate investment in all such community development corporations does not exceed five ten percent of its capital and surplus; and

(c) Such investments are accounted for on the bank's books under "Other Assets".

(2) Nothing in this section shall prevent a bank from charging off as a contribution an investment in a community development corporation made pursuant to subsection (1) of this section.

(3) Such subscription, investment, possession, or ownership shall not be subject to the provisions of sections 8-148, 8-149, and 8-150.

Sec. 5. That section 8-152, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-152. A bank may make loans secured by real estate or may participate with other institutions in such loans whether such participation occurs at the inception of the loan or at any time thereafter.

The aggregate limitation of all loans made under this section shall be the greater of one hundred percent of paid-in capital, surplus, undivided profits, capital reserves, capital notes, and debentures, or seventy percent of the total of savings and time deposits, or twenty percent of the total deposits of such bank.

Sec. 6. That section 8-164, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-164. The board of directors of any bank may ~~quarterly or semiannually~~ declare a dividend dividends on its capital stock, but only under the following conditions:

(1) All bad debts, required to be charged off by either the directors or the department, shall first have been charged off. All debts due any bank on which interest is past due and unpaid for a period of six months, unless such debts are well secured or in the process of collection, shall be considered bad debts within the meaning of this section; and

(2) Twenty percent of the net profits accumulated since the preceding dividend shall first have been carried to the surplus fund unless such surplus fund equals or exceeds the amount of the paid-up capital stock.

Sec. 7. That section 45-101.04, Revised Statutes Supplement, 1993, be amended to read as follows:

45-101.04. The limitation on the rate of interest provided in section 45-101.03 shall not apply to:

(1) Other rates of interest authorized for loans made by any licensee or permittee operating under a license or permit duly issued by the Department of Banking and Finance pursuant to the Credit Union Act, subsection (4) of section 8-319, or sections 8-401 to 8-417, 8-815 to 8-829, or 45-114 to 45-155 ~~45-158~~;

(2) Loans made to any corporation, partnership, limited liability company, or trust;

(3) The guarantor or surety of any loan to a corporation, partnership, limited liability company, or trust;

(4) Loans made when the aggregate principal amount of the indebtedness is twenty-five thousand dollars or more of the borrower to any one financial institution, licensee, or permittee;

(5) Loans insured, guaranteed, sponsored, or participated in, either in whole or part, by any agency, department, or program of the United States or state government;

(6) Loans or advances of money, repayable on demand, which are made solely upon securities, as defined in subdivision (13) of section 8-1101, pledged as collateral for such repayment and in which such loans or advances are used by the borrower only for the purchase of securities as so defined. It shall be lawful to contract for and receive any rate of interest on such transaction as the parties thereto may expressly agree;

(7) Interest charges made on open credit accounts by a person who sells goods or services on credit when the interest charges do not exceed one and one-third percent per month for any charges which remain unpaid for more than thirty days following rendition of the statement of account;

(8) A minimum charge of ten dollars per loan which may be charged by the lender in lieu of all interest charges;

(9) Loans described in subsection (4) of section 8-319 made by a state or federal savings and loan association at a rate not to exceed nineteen percent per annum;

(10) Loans made primarily for business or agricultural purposes or loans secured by real estate when such loans are made (a) by a licensee, registrant, or permittee operating under a license, registration, or permit duly issued by the Department of Banking and Finance except for licensees operating under sections 45-114 to 45-158, (b) by any bank or savings and loan association chartered by the United States, or (c) by any insurance company organized under the laws of this state and subject to regulation by the Department of Insurance; or

(11) Loans secured solely by real estate when such loans are (a) made by licensees operating under sections 45-114 to 45-158 and (b) made to finance or refinance the purchase of the property or construction or improvements to the property, provided the Department of Banking and Finance has the authority to examine such loans for compliance with sections 45-101.02 and 45-101.03. A licensee making a loan pursuant to this subdivision may obtain an interest in any fixtures attached to such real estate and any insurance proceeds payable in connection with such real estate or the loan; or

(12) Interest charges made on any goods or services sold under an installment contract pursuant to the Nebraska Installment Sales Act. Subject to section 45-338, it shall be lawful to contract for and receive any rate of interest on such contract as the parties may expressly agree to in writing.

Sec. 8. That section 45-137, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-137. (1) Except as provided in section 45-138 and subsection (6) of this section, every licensee hereunder may make loans and may contract for and receive thereon charges at a rate not exceeding twenty-four percent per

annum on that part of the unpaid principal balance on any loan not in excess of one thousand dollars and twenty-one percent per annum on any remainder of such unpaid principal balance. Charges on loans made under sections 45-114 to 45-155 ~~45-158~~ shall not be paid, deducted, or received in advance. The contracting for, charging of, 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 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. This section shall not limit or restrict the manner of calculating charges, whether by way of add-on, single annual rate, or otherwise, if the rate of charges does not exceed that permitted by this section. Charges may be contracted for and earned at a single annual rate, except that the total charges from such rate shall not be greater than the total charges from the several rates otherwise applicable to the different portions of the unpaid balance according to subsection (1) of this section. 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 rate of charges contracted for in accordance with subsection (1) or (2) of this section 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) or (2) of this section. The licensee may round the rate of charge to the nearest one-half of one percent 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 five percent 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, except 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. The charging, collecting, and receiving of charges as provided in subsection (2) of this section shall not be deemed compounding. 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 and (b) 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) Except as provided in ~~subsection (5)~~ subsections (5) and (6) of this section, in addition to that provided for under sections 45-114 to 45-155 45-158, 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.

(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. Except as provided in subsection (6) of this section, 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 percent of that part of the original principal balance of any loan not in excess of two thousand dollars and five percent 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.

(6)(a) Loans secured solely by real estate shall not be subject to the limitations on the rate of interest provided in subsection (1) of this section or the limitations on the nonrefundable loan origination fee under subsection (5) of this section if (i) the principal amount of the loan is seven thousand five hundred dollars or more and (ii) the sum of the principal amount of the loan and the balances of all other liens against the property do not exceed ninety percent of the appraised value of the property.

(b) An origination fee on such loan shall be computed only on the principal amount of the loan reduced by any portion of the principal that consists of the amount required to pay off another loan made by the same licensee.

(c) A prepayment penalty on such loan shall be permitted only if (1) the actual amount of the penalty to be assessed is stated in writing at the time the loan is made, (ii) the loan is prepaid in full within two years from the date of the loan, and (iii) the loan is prepaid with money other than the proceeds of another loan made by the same licensee. Such prepayment penalty shall not exceed six months interest on eighty percent of the original principal balance computed at the agreed rate of interest on the loan.

(d) A licensee making a loan pursuant to this subsection may obtain an interest in any fixtures attached to such real estate and any insurance proceeds payable in connection with such real estate or the loan.

Sec. 9. That section 45-138, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-138. (1) Licensees may charge, contract for, or receive any amount, or 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 any part or all of any aggregate indebtedness of the same person. The charging, contracting for, or receiving of a rate of interest permitted by section 45-101.04 shall not exempt the licensee from compliance with any of the provisions of sections 45-114 to 45-158, except for loans made pursuant to subdivision (1) of section 45-101.04.

(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 45-158, 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. 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, the payment schedule may reduce or omit installment payments. 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. 10. That section 45-156, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-156. Upon repayment of the loan in full, the licensee shall mark plainly every obligation or copy thereof and security or copy thereof signed by any obligor with the word Paid or Canceled, and shall release any mortgage,

restore any pledge, and cancel and return any note or copy thereof and any assignment or copy thereof given to the licensee. For purposes of this section, a copy shall meet the requirements of section 25-12,112.

Sec. 11. That section 45-334, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-334. Sections 45-334 to 45-353 and section 14 of this act shall be known and may be cited as the Nebraska Installment Sales Act.

Sec. 12. That section 45-336, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-336. (1) Each retail installment contract shall be in writing, shall be signed by both the buyer and the seller, and shall contain the following items and a copy thereof shall be delivered to the buyer at the time the instrument is signed, except for contracts made in conformance with section 45-340: (a) The cash sale price; (b) the amount of the buyer's downpayment, and whether made in money or goods, or partly in money and partly in goods, including a brief description of any goods traded in; (c) the difference between subdivisions (a) and (b) of this subsection; (d) the amount included for insurance if a separate charge is made therefor, specifying the types of coverages; (e) the basic time price, which is the sum of subdivisions (c) and (d) of this subsection; (f) the time-price differential; (g) the amount of the time-price balance, which is the sum of subdivisions (e) and (f) of this subsection, payable in installments by the buyer to the seller; (h) the number, amount, and due date or period of each installment; and (i) the time-sales price.

(2) The contract shall contain substantially the following notice: NOTICE TO THE BUYER. DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN.

(3) The items listed in subsection (1) of this section need not be stated in the sequence or order set forth in such subsection. Additional items may be included to explain the computations made in determining the amount to be paid by the buyer. No installment contract shall be signed by the buyer or proffered by seller when it contains blank spaces to be filled in after execution, except that if delivery of the goods or services is not made at the time of the execution of the contract, the identifying numbers or marks of the goods, or similar information, and the due date of the first installment may be inserted in the contract after its execution.

(4) Upon written request from the buyer, the holder of an installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

(5) After payment of all sums for which the buyer is obligated under a contract, the holder shall deliver or mail to the buyer at his or her last-known address one or more good and sufficient instruments or copies thereof to acknowledge payment in full and shall release all security in the goods and mark canceled and return to the buyer the original agreement or copy thereof or instruments or copies thereof signed by him the buyer. For purposes of this section, a copy shall meet the requirements of section 25-12,112.

Sec. 13. That section 45-351, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-351. (1) The Department of Banking and Finance shall be charged with the duty of inspecting the business, records, and accounts of all persons who engage in the business of a sales finance company subject to the Nebraska Installment Sales Act. The director shall have the power to appoint examiners who shall, under his or her direction, investigate the installment contracts and business and examine the books and records of licensees when the director shall so determine. Such examinations shall not be conducted more often than annually except as provided in subsection (2) of this section.

(2) The director or his or her duly authorized representative shall have the power to make such investigations as he or she shall deem necessary and, to the extent necessary for this purpose, he or she may examine such licensee or any other person and shall have the power to compel the production of all relevant books, records, accounts and documents.

(3) The expenses of the director incurred in the examination of the books and records of licensees, including the expenses of travel incurred in the examination of books and records of licensees located outside Nebraska, shall be charged to the licensees so examined by the director as soon as reasonably possible. Each licensee shall be billed by the director for the amount so charged to such licensee. If such charge is not paid within thirty days after the mailing of such bill, the license of such licensee may be suspended or revoked. The director may charge the costs of an investigation



of a nonlicensed person to such person, and such costs shall be paid within thirty days from receipt of billing.

Sec. 14. The holder of a retail installment contract may, upon agreement with the buyer:

(1) Extend the scheduled due date or defer the scheduled payment of any installment payment under the retail installment contract; and

(2) Charge and collect a reasonable flat service fee for such extension or deferment in addition to the time-price differential calculated for the period of such extension or deferment at the rate originally agreed upon in the retail installment contract on the outstanding balance.

Sec. 15. Sections 7 to 9, 13, and 17 of this act shall become operative on August 1, 1994. Sections 10, 12, and 18 of this act shall become operative three calendar months after the adjournment of this legislative session. The other sections of this act shall become operative on their effective date.

Sec. 16. That original sections 8-133, 8-147, 8-152, 8-164, and 45-334, Reissue Revised Statutes of Nebraska, 1943, and sections 8-141 and 8-148.04, Revised Statutes Supplement, 1993, are repealed.

Sec. 17. That original sections 45-137, 45-138, and 45-351, Reissue Revised Statutes of Nebraska, 1943, and section 45-101.04, Revised Statutes Supplement, 1993, are repealed.

Sec. 18. That original sections 45-156 and 45-336, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 19. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.