

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 128**

Introduced By: Pahls, 31; Carlson, 38; Christensen, 44; Gay, 14; Hansen, 42; Langemeier, 23; Pankonin, 2; Pirsch, 4

Read first time: January 8, 2007

Committee: Banking, Commerce and Insurance

A BILL

1       FOR AN ACT relating to interest, loans, and debt; to amend  
2               sections 45-334, 45-340, 45-344, 45-352, and 45-353, Reissue  
3               Revised Statutes of Nebraska, and section 45-346, Revised  
4               Statutes Cumulative Supplement, 2006; to change provisions  
5               relating to the Nebraska Installment Sales Act; to harmonize  
6               provisions; and to repeal the original sections.  
7       Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 45-334, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           45-334. Sections 45-334 to 45-353 and section 5 of this act  
4 shall be known and may be cited as the Nebraska Installment Sales  
5 Act.

6           Sec. 2. Section 45-340, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8           45-340. Installment contracts negotiated and entered into by  
9 mail without personal solicitation by salesmen or other  
10 representatives of the seller and based upon the catalog of the seller  
11 or other printed solicitation of business, which is distributed and  
12 made available generally to the public, if such catalog or other  
13 printed solicitation clearly sets forth the cash and time-sale prices  
14 and other terms of sales to be made through such medium, may be made  
15 as provided in this section. All provisions of ~~sections 45-334 to~~  
16 ~~45-353~~ the Nebraska Installment Sales Act shall apply to such sales  
17 except that the seller shall not be required to deliver a copy of the  
18 contract to the buyer as provided in section 45-336 and if the  
19 contract when received by the seller contains any blank spaces the  
20 seller may insert in the appropriate blank space the amounts of money  
21 and other terms which are set forth in the seller's catalog or other  
22 printed solicitation which is then in effect. In lieu of sending the  
23 buyer a copy of the contract as provided in section 45-336, the seller  
24 shall furnish to the buyer a written statement of any items inserted  
25 in the blank spaces in the contract received from the buyer.

26           Sec. 3. Section 45-344, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

1           45-344. If any seller or sales finance company, in the  
2 making or collection of an installment contract, shall, directly or  
3 indirectly, contract for, take, or receive charges in excess of those  
4 authorized by ~~sections 45-334 to 45-353~~ the Nebraska Installment  
5 Sales Act except as a result of an accidental and bona fide error  
6 such contract shall be void and uncollectible as to (1) all of the  
7 excessive portion of the time-price differential, (2) the first one  
8 thousand dollars of the time-price differential authorized by section  
9 45-338, and (3) the first four thousand dollars of the principal of  
10 the contract. If any seller or sales finance company violates any  
11 provision of ~~sections 45-334 to 45-353,~~the act, other than the  
12 violations described above, except as a result of an accidental and  
13 bona fide error, such installment contract shall be void and  
14 uncollectible as to the first five hundred dollars of the time-price  
15 differential and the first one thousand dollars of the principal of  
16 such contract. If any of such money has been paid by the buyer, such  
17 buyer or his or her assignee may recover under ~~sections 45-334 to~~  
18 ~~45-353~~ the act in a civil suit brought within one year after the  
19 due date, or any extension thereof, of the last installment of the  
20 contract.

21           Sec. 4. Section 45-346, Revised Statutes Cumulative  
22 Supplement, 2006, is amended to read:

23           45-346. (1) Each place of business operating under a license  
24 under the Nebraska Installment Sales Act shall have and properly  
25 display therein a nontransferable and nonassignable license. The same  
26 person may obtain additional licenses upon compliance with the act as  
27 to each license.

1           (2) Application for a license shall be on a form prescribed  
2 and furnished by the director and shall include audited financial  
3 statements showing a minimum net worth of one hundred thousand  
4 dollars. If the applicant is an individual or a sole proprietorship,  
5 the application shall include the applicant's social security number.

6           ~~(3) A licensee may move the place of business from one~~  
7 ~~place to another within a county without obtaining a new license if~~  
8 ~~the licensee gives written notice thereof to the director at least~~  
9 ~~ten days prior to such move.~~

10           (3) An applicant for a license shall file with the  
11 Department of Banking and Finance a surety bond in the amount of fifty  
12 thousand dollars, furnished by a surety company authorized to do  
13 business in this state. The bond shall be for the use of the State of  
14 Nebraska and any Nebraska resident who may have claims or causes of  
15 action against the applicant. The surety may cancel the bond only  
16 upon thirty days' written notice to the director.

17           (4) A license fee of one hundred fifty dollars shall be  
18 submitted along with each application.

19           (5) The license year shall begin on October 1 of each year.  
20 Each license shall remain in force until revoked, suspended, canceled,  
21 expired, or surrendered.

22           ~~(4)~~ (6) The director shall, after an application has  
23 been filed for a license under the act, investigate the facts, and if  
24 he or she finds that the experience, character, and general fitness of  
25 the applicant, of the members thereof if the applicant is a  
26 corporation or association, and of the officers and directors thereof  
27 if the applicant is a corporation, are such as to warrant belief that

1 the business will be operated honestly, fairly, and efficiently within  
2 the purpose of the act, the director shall issue and deliver a license  
3 to the applicant to do business as a sales finance company in  
4 accordance with the license and the act. The director shall have the  
5 power to reject for cause any application for a license.

6 ~~(5)~~ (7) The director shall, within his or her  
7 discretion, make an examination and inspection concerning the  
8 propriety of the issuance of a license to any applicant. The cost of  
9 such examination and inspection shall be borne by the applicant.

10 ~~(6) Submitted with each application shall be one hundred~~  
11 ~~fifty dollars as a license fee. The license year shall begin on~~  
12 ~~October 1 of each year. Each license shall remain in force until~~  
13 ~~revoked, suspended, canceled, expired, or surrendered.~~

14 ~~(7)~~ (8) If a change of control of a licensee is  
15 proposed, a new application for a license shall be submitted to the  
16 ~~Department of Banking and Finance.~~department. Control in the case  
17 of a corporation means (a) direct or indirect ownership of or the  
18 right to control twenty-five percent or more of the voting shares of  
19 the corporation or (b) the ability of a person or group acting in  
20 concert to elect a majority of the directors or otherwise effect a  
21 change in policy. Control in the case of any other entity means any  
22 change in the principals of the organization, whether active or  
23 passive.

24 Sec. 5. (1) A licensee may move its place of business from  
25 one place to another within a county without obtaining a new license,  
26 if the licensee gives written notice thereof to the director at least  
27 ten days prior to such move.

1           (2) A licensee shall maintain the minimum net worth as  
2 required by section 45-346 while a license issued under the Nebraska  
3 Installment Sales Act is in effect. The minimum net worth shall be  
4 proven by an annual audit conducted by a certified public accountant.  
5 A licensee shall submit a copy of the annual audit to the director  
6 within forty-five days after the audit is completed. If a licensee  
7 fails to maintain the required minimum net worth, the Department of  
8 Banking and Finance may issue a notice of cancellation of the license  
9 in lieu of revocation proceedings.

10           (3) The bond or a substitute bond as required by section  
11 45-346 shall remain in effect while a license issued under the  
12 Nebraska Installment Sales Act is in effect. If a licensee fails to  
13 maintain a surety bond or substitute bond, the licensee shall  
14 immediately cease doing business and surrender the license to the  
15 department. If the licensee does not surrender the license, the  
16 department may issue a notice of cancellation of the license in lieu  
17 of revocation proceedings.

18           (4) Until October 1, 2008, a licensee licensed prior to the  
19 effective date of this act may operate with no net worth or bonding  
20 requirement as provided for at the time such licensee was originally  
21 licensed.

22           Sec. 6. Section 45-352, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24           45-352. The director shall have the power to make such  
25 general rules and regulations and specific rulings, demands, and  
26 findings as may be necessary for the proper conduct of the business  
27 licensed under ~~sections 45-334 to 45-353,~~ the Nebraska Installment

1 Sales Act, and the enforcement of ~~sections 45-334 to 45-353,~~the  
2 act, in addition thereto and not inconsistent therewith

3 Sec. 7. Section 45-353, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5 45-353. (1) Whenever the director has reasonable cause to  
6 believe that any person is violating or is threatening to or intends  
7 to violate any of the provisions of ~~sections 45-334 to 45-353,~~the  
8 Nebraska Installment Sales Act, he or she may, in addition to all  
9 actions provided for in ~~sections 45-334 to 45-353~~ the act and  
10 without prejudice thereto, enter an order requiring such person to  
11 desist or to refrain from such violation. An action may also be  
12 brought, on the relation of the Attorney General or the director, to  
13 enjoin such person from engaging in or continuing such violation or  
14 from doing any act or acts in furtherance thereof.

15 (2) In any such action an order or judgment may be entered  
16 awarding such preliminary or final injunction as may be deemed proper.  
17 In addition to all other means provided by law for the enforcement of  
18 a restraining order or injunction, the court, in which such action is  
19 brought, shall have power and jurisdiction to impound and appoint a  
20 receiver for the property and business of the defendant, including  
21 books, papers, documents, and records pertaining thereto or so much  
22 thereof as the court may deem reasonably necessary to prevent  
23 violations of ~~sections 45-334 to 45-353~~ the act through or by  
24 means of the use of such property and business. Such receiver, when so  
25 appointed and qualified, shall have such powers and duties as to  
26 custody, collection, administration, winding up and liquidation of  
27 such property and business as shall, from time to time, be conferred

1 upon him or her by the court.

2 Sec. 8. Original sections 45-334, 45-340, 45-344, 45-352,  
3 and 45-353, Reissue Revised Statutes of Nebraska, and section 45-346,  
4 Revised Statutes Cumulative Supplement, 2006, are repealed.