

LEGISLATIVE BILL 18

Approved by the Governor January 29, 1971

Introduced by C. W. Holmquist, 16th District

AN ACT to amend section 45-138, Reissue Revised Statutes of Nebraska, 1943, relating to interest; to harmonize the provisions with previous legislation; and to repeal the original section.

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

Section 1. That section 45-138, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

45-138. (1) No licensee shall directly or indirectly charge, contract for, or receive a greater rate of interest than nine per cent per annum upon any loan, or upon any part or all of any aggregate indebtedness of the same person, in excess of three thousand dollars.

(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 three 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, ~~referred to in subsections (1) and (3) of this section,~~ 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 three thousand dollars or less, ~~referred to in subsections (1) and (3) of this section,~~ 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) No licensee shall enter into any contract of loan, ~~referred to in subsection (1) or (2) of this section,~~ 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, ~~referred to in subsection (1) or (2) of this section,~~ if such contract is not secured by a bona fide duly recorded mortgage on real estate owned by the borrower, ~~or under which the borrower agrees to make payment of principal more than thirty-six calendar months from the date of making such contract, if the contract of loan is secured by a bona fide duly recorded mortgage on real estate owned by the borrower.~~ Every loan contract 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, 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 of thirty-six months 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, the licensee shall forfeit and refund to the borrower all interest and other charges collected on the loan involved.

Sec. 2. That original section 45-138, Reissue Revised Statutes of Nebraska, 1943, is repealed.