

Personal Loans by Banks and Trust Companies
Chapter 8, Article 8
§§ 8-815 to 8-829

8-815

Terms, defined.

As used in sections 8-815 to 8-829, unless the context otherwise requires:

(1) Department shall mean the Department of Banking and Finance;

(2) Bank shall mean the banks and trust companies organized under the laws of this state, and national banking associations doing business in this state and shall include national banking associations;

(3) Registered bank shall mean any bank which has in effect a registration under section 8-816;

(4) Unregistered bank shall mean any bank which has not registered under section 8-816 or the registration of which is not in effect because of action taken under section 8-827;

(5) Personal loan shall mean a loan, and the contract evidencing the same, which is repayable, pursuant to a contract or understanding, in two or more equal or unequal installments, and within one hundred forty-five months, but shall not include any loan on which the interest does not exceed sixteen percent per annum. Personal loan shall include loans for the purchase of mobile homes even though the loan is not repayable within one hundred forty-five months. Personal loan shall include loans or advances initiated by credit card or other type of transaction card, including, but not limited to, those loan transactions initiated through electronic impulse; and

(6) Transaction card shall mean a device or means used to access a prearranged revolving credit plan account.

Last amended:

Laws 2003, LB 217, § 16

~ Revised Statutes Cumulative Supplement, 2006

8-816

Personal loans; registration by bank; payment of fee.

Any bank which has registered with the department a statement of intention to engage in the business of making personal loans and has paid the fee prescribed in section 8-602

may exercise, subject to sections 8-815 to 8-829, the privileges conferred by section 8-820. Such registration shall be in form prescribed by the department and shall contain an agreement to comply with the provisions and accept the conditions of sections 8-815 to 8-829.

Last amended:

Laws 1987, LB 642, § 2

~ Reissue Revised Statutes of Nebraska

8-817

Transferred to section 45-115.

~ Reissue Revised Statutes of Nebraska

8-818

Personal loans; rate of interest allowed.

Except as provided in section 8-820, no bank shall contract for or receive on or in connection with any personal loan a higher rate of interest than would otherwise be permitted by law, whether such rate is obtained by making charges on discounts without due allowance for partial repayments of principal, by taking deposits in lieu of repayments or by imposing fees or charges pretended to be for investigation, brokerage, service, other subterfuge or by any other device or means.

Last amended:

Laws 1965, c. 31, § 4, p. 214

~ Reissue Revised Statutes of Nebraska

8-819

Personal loans; unregistered banks; costs of suit; attorney's fees.

If, in any court proceeding involving or arising out of a personal loan made after May 24, 1965, by any unregistered bank, the party alleged or purported to be obligated on account of the loan is the prevailing party in asserting any right or defense relating to such loan, he shall be entitled to recover from the opposing party, in addition to taxable costs and expenses to which he would otherwise be entitled, all other costs of litigation, including attorney's fees, actually paid or incurred in asserting or defending his rights on the issues with respect to which he was the prevailing party in whatever amounts the court may find to be reasonable, to be taxed as costs.

Last amended:

Laws 1965, c. 31, § 5, p. 214

~ Reissue Revised Statutes of Nebraska

8-820

Personal loans; credit cards; interest; service fee; fee in lieu of interest.

Subject to the provisions of sections 8-815 to 8-829, any registered bank may contract for and receive, on any personal loan, charges at a rate not exceeding nineteen percent simple interest per year. In the case of loans initiated by credit card or other type of transaction card, the rate may be any amount agreed to by the parties. Any registered bank or bank acquired pursuant to sections 8-1512 and 8-1513 may also charge commercially reasonable fees for service and use of a credit card or other type of transaction card on a per transaction and monthly or annual basis. For purposes of this section, section 85 of the National Bank Act, 12 U.S.C. 85, and sections 521 and 522 of the Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U.S.C. 1730g and 1831d, all interest, charges, fees, and other amounts permitted under sections 8-815 to 8-829 for loans initiated by credit card or other type of transaction card shall be deemed to be, and may be charged and collected as, interest by the bank, and all other terms and conditions of the agreement between the bank and the borrower that are not prohibited by such sections shall be deemed material to the determination of interest. Notwithstanding the provisions of this section, in the case of loans not initiated by credit card or other type of transaction card, a bank may charge a minimum fee of up to seven dollars and fifty cents in lieu of interest on personal loans and reasonable loan service costs as defined in subdivision (2) of section 45-101.02. Such loan service costs shall not be construed as interest.

Last amended:

Laws 1993, LB 423, § 4

~ Reissue Revised Statutes of Nebraska

8-820.01

Bank credit cards; federal most-favored-lender doctrine; public policy declaration.

It is hereby declared to be the public policy of the State of Nebraska that for purposes of applying the federal most-favored-lender doctrine, the bank credit card rate contained in section 8-820 is not comparable or analogous to the small loan rate found in sections 45-1024 and 45-1025. The Legislature finds that the institutions making small loans and the institutions administering a bank credit card are categorically different. The transactions carried on by these institutions are categorically different. The Legislature finds that small loan borrowers and bank credit card users are not synonymous or comparable. In establishing a small loan rate, the Legislature has recognized a risk factor

that is different and greater than other financial transactions and therefor justifies the charging of a higher interest rate than installment loans, personal loans, retail revolving credit plans, or bank credit card interest rates.

Last amended:

Laws 1981, LB 150, § 2

Laws 2001, LB 53, § 7

~ Revised Statutes Cumulative Supplement, 2006

8-821

Personal loans; additional charges.

In addition to the charges permitted by section 8-820, no further amount or exaction shall be directly or indirectly contracted for or received, except:

(1) Lawful fees actually and necessarily paid to a public officer for filing, recording, or releasing an instrument securing the loan;

(2) Taxable costs to which the bank is adjudged to be entitled in judicial proceedings instituted to collect the loan;

(3) Premiums paid for insurance policies covering tangible personal property securing the loan. Such insurance shall be only in such amount and nature as is customary and reasonable, having regard to all the circumstances of the loan, and the premium shall not exceed standard rates. If insurance is procured by or through the bank, an executed copy of the insurance policy or certificate of insurance shall be delivered to the borrower within fifteen days;

(4) Premiums paid for insurance policies covering tangible personal property acquired, in whole or in part, with the proceeds of the loan;

(5) The actual costs of nonfiling insurance;

(6) Premiums paid for credit life, health, disability, sickness and accident, or involuntary unemployment or job protection insurance policies or any one or more of them;

(7) Charges permitted by section 8-822;

(8) Fees agreed to by the parties for loan service costs for exceeding authorized limits, replacing lost cards, returning checks, or delinquency on the account; and

(9) In the case of loans initiated by credit card or other type of transaction card, any other fees agreed to by the parties.

Last amended:

Laws 2000, LB 1125, § 1

~ Revised Statutes Cumulative Supplement, 2006

8-822

Personal loans; method of computation; prepayment; refunds; rebates; delinquency charges.

(1) Charges under section 8-820 shall be computed by application of the rate charged to the outstanding principal balance for the number of days actually elapsed without adding any additional charges, except that at the time the loan is made charges may be computed as a percentage per month of unpaid principal balances for the number of days elapsed on the assumption that the unpaid principal balance will be reduced, as provided in the loan contract, and such charges may be included in the scheduled installments. In the case of loans initiated by credit card or other type of transaction card, charges may be computed in any other manner agreed to by the parties and may include compounding of fees and charges.

(2) For any loan contract entered into prior to October 1, 1981, the provisions of this subsection may be used or the provisions of subsection (3) of this section may be used. If the loan is repaid in whole or in part prior to the due date unearned charges shall be refunded or credited to the borrower in full, but such refund need not be made until final payment of the loan contract. Such refund shall be at least as great a proportion of the total charges as the sum of the remaining monthly balances of the principal and interest combined scheduled to follow the date of prepayment bears to the sum of all the monthly balances of principal and interest combined originally scheduled by the contract. For the purpose of computing the refund, any prepayment in full made on or before the fifteenth day following an installment date shall be deemed to have been made on the installment date immediately preceding the date of prepayment in full, and any prepayment in full made after such fifteenth day shall be deemed to have been made on the installment date immediately following the date of prepayment in full. No refund shall be required for any partial prepayment. No refund of less than one dollar need be made.

(3) For any loan contract entered into on or after October 1, 1981, the provisions of this subsection shall apply. If the loan 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 be not 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 annual percentage rate previously stated to the borrower pursuant to the federal Consumer Credit Protection Act. The licensee may round the annual percentage rate 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.

(4) The charges retained by the bank may be increased to the extent that delinquency charges are computed on earned charges in accordance with the next succeeding sentence. Delinquency charges on any scheduled installment or portion thereof, if contracted for, may be taken, or in lieu thereof, interest after maturity on each such installment not exceeding the highest permissible interest rate.

Last amended:

Laws 2000, LB 1125, § 2

~ Revised Statutes Cumulative Supplement, 2006

8-823

Personal loans; when repayable; exception; confession of judgment, power of attorney, and agreements; prohibited.

The following provisions shall apply to loans made under section 8-820:

(1) With the exception of loans for mobile homes, every such loan shall be repayable within a period of one hundred forty-five months and may be prepaid in whole or in part at any time. One or more of the installments may be accelerated or deferred when the borrower's chief source of income makes such arrangement necessary, if the note or contract so provides;

(2) The bank shall give the borrower a receipt showing the date and amount of each payment made on account of any such loan; and

(3) No bank shall take, in connection with any such loan, any confession of judgment, power of attorney to confess judgment, power of attorney to appear for a borrower in a judicial proceeding, or agreement to pay the costs of collection or the attorney's fees.

Last amended:

Laws 1982, LB 779, § 4

~ Reissue Revised Statutes of Nebraska

8-824

Repealed. Laws 1969, c. 45, s. 3.

~ Reissue Revised Statutes of Nebraska

8-825

Repealed. Laws 1978, LB 641, s. 4.

~ Reissue Revised Statutes of Nebraska

8-826

Personal loans; duties of department.

The department shall:

(1) Be responsible for obtaining proper administration of sections 8-815 to 8-829 and take or cause to be taken such lawful steps as may be necessary and appropriate for the enforcement thereof;

(2) Have authority to make regulations, in addition to and not inconsistent with the provisions of sections 8-815 to 8-829, for the administration thereof and obtaining compliance therewith; and

(3) Arrange for investigation and examination of the papers and records, pertaining to loans made under section 8-820, for the purpose of discovering violations of sections 8-815 to 8-829 or securing information lawfully required under it.

Last amended:

Laws 1978, LB 641, § 3

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8-827

Violations; termination of registration.

If any registered bank persists in violating any of the provisions of sections 8-815 to 8-828, after having had prior violations thereof brought to its attention in writing by the department, the department shall, upon ten days' written notice stating the contemplated action and the grounds therefor and after reasonable opportunity to be heard, declare the registration of such bank to be terminated and no longer in effect, whereupon the authority of such bank to make loans under section 8-820 shall cease. Such bank may not reregister for thirty days after the first termination nor for six months after any subsequent termination. No termination shall impair the obligation of any preexisting lawful contract.

Last amended:

Laws 1965, c. 31, § 13, p. 218

~ Reissue Revised Statutes of Nebraska

8-828

Personal loans; registered bank; purchasing and discounting commercial, negotiable, or installment paper.

Nothing contained in sections 8-815 to 8-827 shall be construed as preventing a registered bank from purchasing or discounting from established business concerns any commercial, negotiable or installment paper, or as preventing any such bank from accepting from, or requiring such persons selling or offering to discount such instruments to execute, contracts guaranteeing the ultimate collection of all of such items so sold or discounted or requiring such persons to assume the burden of making collections of the individual items so sold as agent of the bank.

Last amended:

Laws 1965, c. 31, § 14, p. 218

~ Reissue Revised Statutes of Nebraska

8-829

Violations; penalty.

If a bank violates any provision of sections 8-820 to 8-823 in making or collecting any loan made under section 8-820, no charges of any kind shall be collected on such loan. If any charges have been collected, the bank shall forfeit to the borrower all interest collected on the loan involved and a sum equal thereto. The bank so offending shall be guilty of a Class V misdemeanor.

Last amended:

Laws 1977, LB 40, § 62

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