

LEGISLATIVE BILL 124

Approved by the Governor March 19, 2007

Introduced by Banking, Commerce and Insurance Committee: Pahls, 31, Chairperson; Carlson, 38; Christensen, 44; Gay, 14; Hansen, 42; Langemeier, 23; Pankonin, 2; Pirsch, 4; Mines, 18

FOR AN ACT relating to banking and finance; to amend sections 8-108, 8-149, 8-915, 8-2107, 21-17,112, 45-191.01, 45-191.04, 45-334, 45-340, 45-344, 45-347, 45-351, 45-352, 45-353, 45-708, 45-710, 45-715, 45-716, 45-920, 45-927, 45-1014, 45-1017, 52-1301, 52-1302, 52-1307, 52-1308, 52-1313, 52-1314, 52-1315, 52-1317, 52-1318, and 52-1602, Reissue Revised Statutes of Nebraska, sections 8-113, 8-124, 8-148.04, 8-1,140, 8-355, 8-601, 8-602, 8-1901, 8-2312, 8-2504, 21-17,115, 30-3805, 30-3846, 30-3848, 30-3849, 30-3851, 30-3867, 30-38,110, 45-346, 45-701, 45-702, 45-705, 45-706, 45-711, 45-714, 45-1013, 45-1033, and 52-1312, Revised Statutes Cumulative Supplement, 2006, and sections 9-315, 9-320, 9-529, and 9-531, Uniform Commercial Code, Revised Statutes Cumulative Supplement, 2006; to change and eliminate provisions relating to the unauthorized use of the word bank, bank boards of directors, bank investments in bank premises, premiums on demand deposits, community development investments, financial institution assessments, the Nebraska Installment Sales Act, the Mortgage Bankers Registration and Licensing Act, the Delayed Deposit Services Licensing Act, and the Nebraska Installment Loan Act; to revise powers of state-chartered banks, building and loan associations, and credit unions; to regulate trust company names; to change provisions relating to the Nebraska Uniform Trust Code, loan brokerage agreements, and farm product security interests; to harmonize provisions; to provide operative dates; to repeal the original sections; to outright repeal sections 8-1,123 and 21-1739, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. Section 8-108, Reissue Revised Statutes of Nebraska, is amended to read:

8-108 The director, his or her deputy, or any duly appointed examiner shall have power to make a thorough examination into all the books, papers, and affairs of any bank or other institution in Nebraska subject to the department's jurisdiction, or its holding company, if any, and in so doing to administer oaths and affirmations, to examine on oath or affirmation the officers, agents, and clerks of such institution or its holding company, if any, touching the matter which they may be authorized and directed to inquire into and examine, and to subpoena the attendance of any person or persons in this state to testify under oath or affirmation in relation to the affairs of such institution or its holding company, if any. Such powers shall include, but not be limited to, the authority to examine and monitor by electronic means the books, papers, and affairs of any financial institution or the holding company of a financial institution. The examination may be in the presence of at least two members of the board of directors of the institution or its holding company, if any, undergoing such examination, and it shall be the duty of the examiner to incorporate in his or her report the names of the directors in whose presence the examination was made. The director may accept any examination or report from the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, or a foreign state agency. The director may provide any such examination or report to the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, or a foreign state agency. The department shall have power to examine the books, papers, and affairs of any electronic data processing center which has contracted with a financial institution to conduct the financial institution's electronic data processing business. The department may charge the electronic data processing center for the time spent by examiners in such examination at the rate set forth in section ~~8-601~~ 13 of this act for examiners' time spent in examinations of financial institutions.

Sec. 2. Section 8-113, Revised Statutes Cumulative Supplement, 2006, is amended to read:

8-113 No individual, firm, company, corporation, or association doing business in the State of Nebraska, unless organized as a bank under the Nebraska Banking Act or the authority of the federal government, or as a building and loan association, savings and loan association, or savings

bank under Chapter 8, article 3, or the authority of the federal government, shall use the word bank or any derivative thereof as any part of a title or description of any business activity. This section does not apply to: (1) Banks, ~~(1) banks,~~ building and loan associations, savings and loan associations, or savings banks chartered and supervised by a foreign state agency; (2) bank holding companies registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative bank is used; (3) affiliates or subsidiaries of (a) a bank organized under the Nebraska Banking Act or the authority of the federal government or chartered and supervised by a foreign state agency, (b) a building and loan association, savings and loan association, or savings bank organized under Chapter 8, article 3, or the authority of the federal government or chartered and supervised by a foreign state agency, or (c) a bank holding company registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative bank is used; (4) organizations substantially owned by (a) a bank organized under the Nebraska Banking Act or the authority of the federal government or chartered and supervised by a foreign state agency, (b) a building and loan association, savings and loan association, or savings bank organized under Chapter 8, article 3, or the authority of the federal government or chartered and supervised by a foreign state agency, (c) a bank holding company registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative bank is used, or (d) any combination of entities listed in subdivisions (a) through (c) of this subdivision; (5) mortgage bankers licensed or registered under the Mortgage Bankers Registration and Licensing Act, if the word mortgage immediately precedes the word bank or its derivative; (6) ~~(4)~~ organizations described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 and exempt from taxation under section 501(a) of the code; (7) ~~(5)~~ trade associations which are exempt from taxation under section 501(c)(6) of the code which represent a segment of the banking or savings and loan industries, and any affiliate or subsidiary thereof; and ~~(6)~~ (8) such other firms, companies, corporations, or associations as have been in existence and doing business for a period of ten years or more prior to October 19, 1963, December 1, 1975, under a name composed in part of the word bank or some derivative thereof. Any violation of this section shall be a Class V misdemeanor.

Sec. 3. Section 8-124, Revised Statutes Cumulative Supplement, 2006, is amended to read:

8-124 The affairs and business of any bank chartered after September 2, 1973, or which has had transfer of twenty-five percent or more of voting shares after September 2, 1973, shall be managed or controlled by a board of directors of not less than five and not more than fifteen members, who shall be selected at such time and in such manner as may be provided by the articles of incorporation of the corporation and in conformity with the Nebraska Banking Act. Any bank chartered before September 2, 1973, may have a minimum of three directors and not more than fifteen directors so long as it does not have transfer of twenty-five percent or more voting shares, with such directors selected as provided in this section. Any vacancy on the board shall be filled within ninety days by appointment by the remaining directors, and any director so appointed shall serve until the next election of directors, except that if the vacancy created leaves a minimum of five directors, appointment shall be optional. The board shall ~~select from among its number the president and secretary and shall select a cashier.~~ appoint a secretary and, from among its own members, select a president. Such officers shall hold their office at the pleasure of the board of directors. The board of directors shall hold at least one regular meeting in each calendar quarter, and at one of such meetings in each year a thorough examination of the books, records, funds, and securities held by the bank shall be made and recorded in detail upon its record book. In lieu of the one annual examination required, the board of directors may accept one annual audit by an accountant or accounting firm approved by the Director of Banking and Finance.

Sec. 4. Section 8-148.04, Revised Statutes Cumulative Supplement, 2006, is amended to read:

8-148.04 (1) Any bank may make a community development investment or investments either directly or through purchasing an equity interest in or an evidence of indebtedness of an entity primarily engaged in making community development investments, if the following conditions are satisfied:

(a) An investment under this subsection does not expose the bank to unlimited liability; and

(b) The bank's aggregate investment under this subsection does

not exceed ~~ten~~ fifteen percent of its capital and surplus. If the bank's investment in any one entity will exceed five percent of its capital and surplus, the prior written approval of the department must be obtained. ~~and~~

~~(c) All investments made under this subsection 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 made pursuant to subsection (1) of this section.

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

(4) For purposes of this section, community development investments means investments of a predominantly civic, community, or public nature and not merely private and entrepreneurial.

Sec. 5. Section 8-149, Reissue Revised Statutes of Nebraska, is amended to read:

8-149 (1) No bank shall, without the written approval of the director, ~~(1) (a) invest in bank premises,~~ or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank, or ~~(2) (b) make loans to or upon the security of the stock of any such corporation,~~ if the aggregate of all such investments and loans will exceed the paid-up capital stock, surplus, and capital notes and debentures of such bank. Stock held as authorized by this section shall not be subject to the provisions of section 8-148.

(2) Investments by a bank in bank premises necessary for the transaction of its business shall include, but not be limited to:

(a) Premises that are owned and occupied, or to be occupied if under construction, by the bank, its branches, or its consolidated subsidiaries;

(b) Real estate acquired and intended, in good faith, for use in future expansions;

(c) Parking facilities that are used by customers or employees of the bank, its branches, or its consolidated subsidiaries;

(d) Residential property for the use of officers or employees of the bank, its branches, or its consolidated subsidiaries who are:

(i) Located in areas where suitable housing at a reasonable price is not readily available; or

(ii) Temporarily assigned to a foreign country, including foreign nationals temporarily assigned to the United States; and

(e) Property for the use of officers, employees, or customers of the bank, its branches, and its consolidated subsidiaries or for the temporary lodging of such persons in areas where suitable commercial lodging is not readily available, if the purchase and operation of the property qualifies as a deductible business expense for federal tax purposes.

Sec. 6. Section 8-1,140, Revised Statutes Cumulative Supplement, 2006, is amended to read:

8-1,140 Notwithstanding any of the other provisions of the Nebraska Banking Act or any other Nebraska statute, any bank incorporated under the laws of this state and organized under the provisions of the act, or under the laws of this state as they existed prior to May 9, 1933, shall directly, or indirectly through a subsidiary or subsidiaries, have all the rights, powers, privileges, benefits, and immunities which may be exercised as of ~~April 7, 2006,~~ the operative date of this section, by a federally chartered bank doing business in Nebraska, including the exercise of all powers and activities that are permitted for a financial subsidiary of a federally chartered bank. Such rights, powers, privileges, benefits, and immunities shall not relieve such bank from payment of state taxes assessed under any applicable laws of this state.

Sec. 7. Section 8-355, Revised Statutes Cumulative Supplement, 2006, is amended to read:

8-355 Notwithstanding any of the provisions of Chapter 8, article 3, or any other Nebraska statute, except as provided in section 8-345.02, any association incorporated under the laws of the State of Nebraska and organized under the provisions of such article shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of ~~April 7, 2006,~~ the operative date of this section, by a federal savings and loan association doing business in Nebraska. Such rights, powers, privileges, benefits, and immunities shall not relieve such association from payment of state taxes assessed under any applicable laws of this state.

Sec. 8. Section 8-601, Revised Statutes Cumulative Supplement, 2006, is amended to read:

8-601 The Director of Banking and Finance may employ deputies, examiners, attorneys, and other assistants as may be necessary for the administration of the provisions and purposes of Chapter 8, articles 1, 2, 3,

5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 19, 20, 21, 23, 24, and 25; Chapter 21, article 17; and Chapter 45, articles 1, 2, 3, 7, 9, and 10. The director may levy upon financial institutions, namely, the banks, trust companies, building and loan associations, savings and loan associations, savings banks, and credit unions, organized under the laws of this state, and holding companies, if any, of such financial institutions, an assessment each year based upon the asset size of the financial institution, except that in determining the asset size of a holding company, the assets of any financial institution or holding company otherwise assessed pursuant to this section and the assets of any nationally chartered financial institution shall be excluded. The assessment shall be a sum determined by the director in accordance with section 13 of this act and approved by the Governor.

(1) To pay the salary and necessary expense of examiners and examiners' helpers and such sum, if any, as may be required, in excess of the sum appropriated for the Department of Banking and Finance, for the payment of the salaries of the Director of Banking and Finance, his or her deputies, attorneys, and assistants, there shall be levied upon the banks, organized under the laws of this state, and trust companies, building and loan associations, credit unions, and holding companies, if any, of such institutions, organized under the laws of this state or authorized to do business in this state, an assessment each year based upon two factors: (a) A single assessment fee based upon the asset size of the institution, except that in determining the asset size of a holding company, the assets of any financial institution or holding company otherwise assessed pursuant to this section and the assets of any nationally chartered financial institution shall be excluded; and (b) an assessment based upon the number of hours spent on the examination. The assessment shall be a sum determined by the director and approved by the Governor as set forth in this subsection and subject to the additional assessments and adjustments referred to in subsection (3) of this section.

(2) The assessment referred to in subsection (1) of this section and the additional assessments provided for by subsection (3) of this section shall be paid by such banks, trust companies, building and loan associations, credit unions, and holding companies, if any, of such institutions on the order of the director to the State Treasurer who shall place the same in the Financial Institution Assessment Cash Fund, which is hereby created and which shall be used solely for the purposes hereinafter specified. The amount of the assessment shall be the sum estimated by the director as necessary for the fiscal year to pay the following items: (a) Salaries of examiners and examiners' helpers; (b) the necessary expenses incurred by examiners and examiners' helpers in the discharge of their duties incident to the examination of the institutions enumerated in this section; and (c) such sum, if any, as may be required, in excess of the sum appropriated for the department, for the payment of the salary and expenses of the director, his or her deputies, attorneys, and assistants, and in addition there shall be included in the assessment to be paid by banks organized under the laws of this state, the salaries and expenses of examiners and examiners' helpers attending a school for examiners. As soon as reasonably possible after June 30 of each year, the director shall estimate the total sum required for the above purposes. The director shall also estimate the total number of days to be used by examiners and examiners' helpers in the examination and supervision of the institutions enumerated in this section during the fiscal year, taking into account the experience of the preceding year. The total estimated fund shall be divided by the total number of days estimated, as above specified, and the quotient shall be the unit of assessment against the individual institutions, which unit is hereinafter referred to as the per diem unit. The assessment upon each institution shall be based upon a percentage fee of total assets in each institution and a per diem fee for the number of hours spent in examination as determined by the director. The director shall set the per diem fee based on (i) the number of per diem units required to examine the respective institutions during the fiscal year for which the estimate is made, taking into account the experience of the previous year, and (ii) in case of institutions organized under the laws of the states other than the State of Nebraska, the estimated traveling expense involved in making the examination. If the estimated sum levied and collected is insufficient to defray the expenditures, as provided in this section, for the fiscal year for which it was made, a special assessment may be levied and collected in like manner for the balance of the fiscal year.

(3) At the end of the fiscal year for which the assessment is made, the director shall forward to each of such institutions subject to such an assessment, as provided for by subsections (1) and (2) of this section, a statement for as many per diem units as the days actually used in the

examination of the institution exceeds that which was estimated, under the provisions of subsection (2) of this section, which shall be paid on the demand of the director in the same manner as the original assessment. If the number of days actually used is less than that estimated for any such institution, the difference shall stand to the credit of such institution for a subsequent year's assessment. In case an extra examination of any institution should become necessary and be made, the reasonable cost thereof shall be determined and shall be paid by the institution so examined.

Sec. 9. Section 8-602, Revised Statutes Cumulative Supplement, 2006, is amended to read:

8-602 The Director of Banking and Finance shall charge and collect fees for certain services rendered by the Department of Banking and Finance according to the following schedule:

(1) For filing and examining articles of incorporation, articles of association, and bylaws, except credit unions, one hundred dollars, and for credit unions, fifty dollars;

(2) For filing and examining an amendment to articles of incorporation, articles of association, and bylaws, except credit unions, fifty dollars, and for credit unions, fifteen dollars;

(3) For issuing to banks, credit card banks, trust companies, and building and loan associations a charter, authority, or license to do business in this state, a sum which shall be determined on the basis of one dollar and fifty cents for each one thousand dollars of authorized capital, except that the minimum fee in each case shall be two hundred twenty-five dollars;

(4) For issuing an executive officer's or loan officer's license, fifty dollars at the time of the initial license and fifteen dollars on or before January 15 each year thereafter, except credit unions for which the fee shall be twenty-five dollars at the time of the initial license and fifteen dollars on or before January 15 each year thereafter;

(5) For affixing certificate and seal, five dollars;

(6) For making a photostatic copy of instruments, documents, or any other departmental records and for providing a computer-generated document, one dollar and fifty cents per page;

(7) For making substitution of securities held by it and issuing a receipt, fifteen dollars;

(8) For issuing a certificate of approval to a credit union, ten dollars;

(9) For investigating the applications required by sections 8-120 and 8-331 and the documents required by section 8-201, the cost of such examination, investigation, and inspection, including all legal expenses and the cost of any hearing transcript, with a minimum fee under (a) sections 8-120 and 8-2402 of two thousand five hundred dollars, (b) section 8-331 of two thousand dollars, and (c) section 8-201 of one thousand dollars. The department may require the applicant to procure and give a surety bond in such principal amount as the department may determine and conditioned for the payment of the fees provided in this subdivision;

(10) For registering a statement of intention to engage in the business of making personal loans pursuant to section 8-816, fifty dollars;

(11) For the handling of pledged securities as provided in sections 8-210 and 8-1006, at the time of the initial deposit of such securities, one dollar and fifty cents for each thousand dollars of securities deposited and a like amount on or before January 15 each year thereafter. The fees shall be paid by the company, national bank, federal savings association, federally chartered trust company, out-of-state trust company authorized under the Interstate Trust Company Office Act, or state-chartered bank pledging the securities;

(12) For investigating an application to move its location within the city or village limits of its original license or charter for banks, trust companies, and building and loan associations, two hundred fifty dollars;

(13) For investigating an application under subdivision (6) of section 8-115.01, five hundred dollars;

(14) For investigating an application for approval to establish or acquire a branch or to establish a mobile branch pursuant to section 8-157, two hundred fifty dollars;

(15) For investigating a notice of acquisition of control under subsection (1) of section 8-1502, five hundred dollars;

(16) For investigating an application for a cross-industry merger under section 8-1510, five hundred dollars;

(17) For investigating an application for a merger of two state banks or a merger of a state bank and a national bank in which the state bank is the surviving entity, five hundred dollars;

(18) For investigating an application or a notice to establish a

branch trust office, five hundred dollars;

(19) For investigating an application or a notice to establish a representative trust office, five hundred dollars;

(20) For investigating an application to establish a credit union branch under section 21-1725.01, two hundred fifty dollars; and

(21) For investigating an applicant under section 8-1513, five thousand dollars.

All fees and money collected by or paid to the department under any of the provisions of Chapter 8, 21, or 45 or any other law shall, if and when specifically appropriated by the Legislature during any biennium, constitute the Financial Institution Assessment Cash Fund for the use of the department during any biennium in administering the provisions of such chapters and any duties imposed upon the department by any other law, and all of such money when appropriated shall be appropriated for the purposes expressed in this section.

Sec. 10. The assessments referred to in sections 12 and 13 of this act, examination fees, investigation fees, filing fees, registration fees, licensing fees, and all other fees and money, except fines, collected by or paid to the Director of Banking and Finance under any of the laws specified in section 8-601, shall be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund.

Sec. 11. (1) The Financial Institution Assessment Cash Fund is hereby created. The fund shall be used solely for the purposes of administering and enforcing the laws specified in section 8-601.

(2) Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 12. (1) As soon as reasonably possible after June 30 of each year, the Director of Banking and Finance shall estimate the total sum required for the purposes set forth in section 11 of this act for the succeeding fiscal year. The director shall also estimate the total sum expected to be collected pursuant to section 10 of this act. The director shall use the difference between the estimate of the total sum required and the estimate of the total sum to be collected as the basis for the assessment to be levied.

(2) The assessment upon each financial institution shall be based upon the total assets of each financial institution, as reported in each financial institution's report of condition prepared for the period ending June 30 of each year, and, after June 30, 2009, may further be based upon the total amount of fiduciary and related assets and the total amount of off-balance-sheet receivables as reported in each financial institution's report of condition prepared for the period ending June 30 of each year.

(3) The director shall have the authority to prorate the assessment for any financial institution or entity which surrenders its charter or license or receives its charter or license during the assessment period. Proration shall be based on the number of months the financial institution held its charter or license. Any portion of a month shall be counted as one month.

(4) If the estimated sum levied and collected is insufficient to defray the expenditures for the fiscal year for which it was made, a special assessment may be levied and collected in like manner for the balance of the fiscal year.

Sec. 13. (1) As soon as reasonably possible following the examination of a financial institution or entity pursuant to the laws specified in section 8-601, the Department of Banking and Finance shall bill the financial institution or entity the costs of the examination. Such costs may include an hourly fee for examiner time, which shall be determined once each year by the Director of Banking and Finance, with the approval of the Governor, and which shall take into consideration whether the financial institution or entity is subject to the assessment.

(2) In case an extra examination or an investigation of any financial institution or entity becomes necessary and is made pursuant to the laws specified in section 8-601, the costs thereof shall be paid by the financial institution or entity examined or investigated.

(3) In the case of a financial institution or entity organized under the law of a state other than this state or a financial institution or entity organized under the law of this state but which maintains an office in another state or states, travel expenses involved in conducting an examination or investigation may also be billed to the financial institution or entity, if the examination or investigation involves travel outside this state.

Sec. 14. (1) If a financial institution or entity fails to pay an annual assessment, special assessment, examination fee, examination cost,

investigation fee, investigation cost, or travel expense by a date specified by the Department of Banking and Finance, which shall be not less than thirty days from the date of billing, the department may, following notice and opportunity for hearing pursuant to the Administrative Procedure Act, impose a fine in accordance with section 8-1,134 for each day the financial institution or entity is in arrears.

(2) If the financial institution or entity is in arrears for sixty days or more, the department may, in addition to any fine imposed under this section, following notice and opportunity for hearing pursuant to the Administrative Procedure Act, suspend or revoke the charter or license of any financial institution or entity or the license or authority of any person responsible for such failure.

(3) The Director of Banking and Finance may, in his or her discretion and for good cause shown, permit the payment of any annual assessment, special assessment, examination fee, examination cost, investigation fee, investigation cost, travel expense, or fine, in installments.

Sec. 15. Section 8-915, Reissue Revised Statutes of Nebraska, is amended to read:

8-915 The director may make examinations of any bank holding company with one or more state-chartered bank subsidiaries and each state-chartered bank subsidiary thereof, the cost of which shall be assessed, in the manner set forth in ~~section 8-601,~~ sections 12 and 13 of this act, against and paid for by such bank holding company. The director may accept reports of examination made by the Federal Reserve Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or a foreign state agency in lieu of making an examination by the department. The director may provide reports of examination conducted by the department or other confidential information to any of such regulatory entities. The director may contract with any of such regulatory entities to conduct and pay for such an examination for the department. The director may contract with any of such regulatory entities to conduct and receive payment for such an examination for any of such regulatory entities. The director may enter into cooperative agreements with any or all of such regulatory entities to foster the purposes of the Nebraska Bank Holding Company Act of 1995.

Sec. 16. Section 8-1901, Revised Statutes Cumulative Supplement, 2006, is amended to read:

8-1901 For purposes of sections 8-1901 to 8-1903, unless the context otherwise requires:

(1) Department means the Department of Banking and Finance; and

(2) Financial institution means:

(a) A state-chartered or federally chartered bank, savings bank, building and loan association, savings and loan association, ~~or credit union,~~ or trust company;

(b) A subsidiary of a bank holding company or out-of-state bank holding company; or

(c) A branch of a financial institution described in subdivision (a) or (b) of this subdivision.

Sec. 17. Section 8-2107, Reissue Revised Statutes of Nebraska, is amended to read:

8-2107 (1) The director may make such examinations of any branch established and maintained in this state by an out-of-state state chartered bank as the director may deem necessary to determine whether the branch is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices.

(2) The director may prescribe requirements for periodic reports regarding any out-of-state bank that operates a branch in Nebraska pursuant to the Interstate Branching By Merger Act of 1997. Any reporting requirements prescribed by the director under this subsection shall be consistent with the reporting requirements applicable to Nebraska state banks and appropriate for the purpose of enabling the director to carry out his or her responsibilities under the act.

(3) The director may enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in Nebraska of an out-of-state state chartered bank or any branch of a Nebraska state chartered bank in a host state, and the director may accept such reports of examination and reports of investigation in lieu of conducting his or her own examinations or investigations.

(4) The director may enter into contracts with any bank supervisory agencies that have concurrent jurisdiction over a Nebraska state chartered

bank or an out-of-state state chartered bank operating a branch in this state to engage the services of such agencies' examiners or to provide the services of department examiners to such agency.

(5) The director may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in Nebraska of an out-of-state state chartered bank or any branch of a Nebraska state chartered bank in any host state. The director may, at any time, take such actions independently if he or she deems such actions to be necessary or appropriate to carry out his or her responsibilities under the act or to ensure compliance with the laws of this state. In the case of an out-of-state state chartered bank, the director shall recognize the exclusive authority of the home state regulator over corporate government matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(6) The cost of any examination conducted under this section shall be assessed against such out-of-state state chartered bank in the manner set forth in ~~section 8-601~~ sections 12 and 13 of this act and paid for by such out-of-state state chartered bank.

Sec. 18. Section 8-2312, Revised Statutes Cumulative Supplement, 2006, is amended to read:

8-2312 (1) The director may examine any branch trust office or representative trust office established and maintained in this state by any out-of-state state trust company as he or she deems necessary to determine whether the branch trust office or representative trust office is being operated in compliance with Nebraska law and in accordance with safe and sound practices.

(2) The director may prescribe requirements for periodic reports by an out-of-state trust company that operates branch trust offices or representative trust offices pursuant to the Interstate Trust Company Office Act. Any such reporting requirements shall be consistent with the reporting requirements applicable to Nebraska trust companies and appropriate for the purpose of enabling the director to carry out his or her responsibilities under the act.

(3) The director may enter into cooperative, coordinating, and information-sharing agreements with any other trust company supervisory agency that has concurrent jurisdiction over a Nebraska state-chartered trust company or an out-of-state state trust company operating a branch trust office or representative trust office in this state to engage the services of such supervisory agency's examiners or to provide the services of department examiners to such supervisory agency.

(4) The director may enter into joint examinations or joint enforcement actions with other trust company supervisory agencies having concurrent jurisdiction over any branch trust office or representative trust office of an out-of-state state trust company or any branch trust office or representative trust office of a Nebraska state-chartered trust company in any host state. The director may, at any time, take such actions independently if he or she deems such actions to be necessary or appropriate to carry out his or her responsibilities under the act or to ensure compliance with Nebraska law. In the case of an out-of-state state trust company, the director shall recognize the exclusive jurisdiction of the home state regulator over corporate government matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(5) The cost of any examination conducted under this section shall be assessed against the out-of-state state trust company in the manner set forth in ~~section 8-601~~ sections 12 and 13 of this act and paid for by the out-of-state state trust company.

Sec. 19. Section 8-2504, Revised Statutes Cumulative Supplement, 2006, is amended to read:

8-2504 (1) The Department of Banking and Finance may order any person to cease and desist whenever the Director of Banking and Finance determines that such person has violated section 8-2501 or 8-2502. Upon entry of a cease and desist order, the director shall promptly notify the affected person that such order has been entered and provide opportunity for hearing in accordance with the Administrative Procedure Act.

(2) If a person violates section 8-2501 or 8-2502 after receiving such cease and desist order, the director may, following notice and opportunity for hearing in accordance with the Administrative Procedure Act, impose a fine of up to one thousand dollars for each violation, plus the costs of investigation. Each instance in which a violation of section 8-2501 or 8-2502 takes place after receiving a cease and desist order constitutes a separate violation.

(3) The director shall remit all fines collected under this section

to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. All costs collected shall be remitted to the Financial Institution Assessment Cash Fund, pursuant to sections 8-601 and 8-602.

(4) This section does not affect the availability of any remedies otherwise available to a financial institution.

Sec. 20. Section 21-17,112, Reissue Revised Statutes of Nebraska, is amended to read:

21-17,112 (1) A federal credit union organized under the Federal Credit Union Act, 12 U.S.C. 1753 et seq., and meeting all the requirements to become a state credit union organized under the Credit Union Act may, with the approval of the department and in compliance with the applicable law under which it was organized, be converted into a state credit union organized under the Credit Union Act. The required articles of association may be executed by a majority of the board of directors of the converting credit union and presented to the department for appropriate examination and approval. A majority of the directors, after executing the articles of association in duplicate, may execute all other papers, including the adoption of bylaws for the general government of the credit union consistent with the Credit Union Act, and do whatever may be required to complete its conversion.

(2) The board of directors of the converting credit union may continue to be directors of the credit union. If the director approves the articles of association as presented by the board of directors, the director shall notify the board of directors of his or her decision and shall immediately issue a certificate of approval attached to the duplicate articles of association and return it to the credit union. The certificate shall indicate that the laws of this state have been complied with and that the credit union and all its members, officials, and employees shall have the same rights, powers, and privileges and shall be subject to the same duties, liabilities, and obligations in all respects, as shall be applicable to credit unions originally organized under the Credit Union Act.

(3) The approval of the department shall be based on an examination of the credit union and the proceedings had by its board of directors and members with respect to conversion. A conversion shall not be made to defeat or defraud any of the creditors of the credit union. The expenses of an examination, which shall be computed in accordance with ~~section 8-601,~~ sections 12 and 13 of this act, shall be paid by the credit union.

(4) When the conversion becomes effective, all property of the converted credit union, including all its right, title, and interest in and to all property of whatsoever kind, whether real, personal, or mixed, and things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, belonging, or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and remain the property of the converted credit union, which shall have, hold, and enjoy the property in its own right as fully and to the same extent as the property was previously possessed, held, and enjoyed by it. The converted credit union shall be deemed to be a continuation of the same entity. All the rights, obligations, and relations of the credit union to or in respect to any person, estate, creditor, member, trustee, or beneficiary of any trust or fiduciary function shall remain unimpaired. The credit union shall continue to hold all the rights, obligations, relations, and trusts, and the duties and liabilities connected therewith, and shall execute and perform every trust and relation in the same manner as if it had after the conversion assumed the trust or relation and obligation and liabilities connected with the trust or relation.

Sec. 21. Section 21-17,115, Revised Statutes Cumulative Supplement, 2006, is amended to read:

21-17,115 Notwithstanding any of the other provisions of the Credit Union Act or any other Nebraska statute, any credit union incorporated under the laws of the State of Nebraska and organized under the provisions of the act shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of ~~April 7, 2006,~~ the operative date of this section, by a federal credit union doing business in Nebraska on the condition that such rights, powers, privileges, benefits, and immunities shall not relieve such credit union from payment of state taxes assessed under any applicable laws of this state.

Sec. 22. Section 30-3805, Revised Statutes Cumulative Supplement, 2006, is amended to read:

30-3805 (UTC 105) (a) Except as otherwise provided in the terms of the trust, the Nebraska Uniform Trust Code governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of the code except:

- (1) the requirements for creating a trust;
- (2) the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;
- (3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;
- (4) the power of the court to modify or terminate a trust under sections 30-3836 to 30-3842;
- (5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in sections 30-3846 to 30-3852;
- (6) the power of the court under section 30-3858 to require, dispense with, or modify or terminate a bond;
- (7) the power of the court under subsection (b) of section 30-3864 to adjust a trustee's compensation specified in the terms of the trust;
- (8) the duty under subsection (a) of section 30-3878 to keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests, and to respond to the request of a qualified beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust;
- (9) the effect of an exculpatory term under section 30-3897;
- (10) the rights under sections 30-3899 to 30-38,107 of a person other than a trustee or beneficiary;
- (11) periods of limitation for commencing a judicial proceeding;
- (12) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice;
- (13) the subject matter jurisdiction of the court and venue for commencing a proceeding as provided in sections 30-3814 and 30-3815;
- (14) the power of a court under subdivision (a)(1) of section 30-3807; and
- (15) the power of a court to review the action or the proposed action of the trustee for an abuse of discretion.

Sec. 23. Section 30-3846, Revised Statutes Cumulative Supplement, 2006, is amended to read:

30-3846 (UTC 501) To the extent a beneficiary's interest is not ~~protected by~~ subject to a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

Sec. 24. Section 30-3848, Revised Statutes Cumulative Supplement, 2006, is amended to read:

30-3848 (UTC 503) (a) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

~~(b) Even if a trust contains a spendthrift provision, a beneficiary's child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust, may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.~~

~~(c) A spendthrift provision is unenforceable against a claim of this state or the United States to the extent a statute of this state or federal law so provides.~~

(b) A spendthrift provision is unenforceable against:

- (1) a beneficiary's child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance;
- (2) a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust; and
- (3) a claim of this state or the United States to the extent a statute of this state or federal law so provides.

(c) A claimant against which a spendthrift provision cannot be enforced may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances.

Sec. 25. Section 30-3849, Revised Statutes Cumulative Supplement, 2006, is amended to read:

30-3849 (UTC 504) (a) In this section, "child" includes any person

for whom an order or judgment for child support has been entered in this or another state.

(b) Except as otherwise provided in subsection (c) of this section, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:

(1) the discretion is expressed in the form of a standard of distribution; or

(2) the trustee has abused the discretion.

(c) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:

(1) a distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child, spouse, or former spouse; and

(2) the court shall direct the trustee to pay to the child, spouse, or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

(d) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

~~(e) If the trustee's or cotrustee's discretion to make distributions for the trustee's or cotrustee's own benefit is limited by an ascertainable standard, a creditor may not reach or compel distribution of the beneficial interest except to the extent the interest would be subject to the creditor's claim were the beneficiary not acting as trustee or cotrustee. A creditor may not reach the interest of a beneficiary who is also a trustee or cotrustee, or otherwise compel a distribution, if the trustee's discretion to make distributions for the trustee's own benefit is limited by an ascertainable standard.~~

Sec. 26. Section 30-3851, Revised Statutes Cumulative Supplement, 2006, is amended to read:

30-3851 (UTC 506) (a) In this section, "mandatory distribution" means a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term does not include a distribution subject to the exercise of the trustee's discretion even if (1) the discretion is expressed in the form of a standard of distribution or (2) the terms of the trust authorizing a distribution couple language of discretion with language of direction.

(b) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

Sec. 27. Section 30-3867, Revised Statutes Cumulative Supplement, 2006, is amended to read:

30-3867 (UTC 802) (a) A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in section 30-38,101, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(1) the transaction was authorized by the terms of the trust;

(2) the transaction was approved by the court;

(3) the beneficiary did not commence a judicial proceeding within the time allowed by section 30-3894;

(4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 30-3898; or

(5) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(c) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(1) the trustee's spouse;

(2) the trustee's descendants, siblings, parents, or their spouses;

(3) an agent or attorney of the trustee; or

(4) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(d) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(e)(1) The following transactions shall not be presumed to be affected by a conflict between the personal and fiduciary interests of a trustee, if the transaction and any investment made pursuant to the transaction complies with the prudent investor rule set forth in sections 30-3883 to 30-3889 and is in the best interests of the beneficiaries:

(A) an investment by a trustee in securities of an investment company or investment trust to which the trustee or its affiliate provides services in a capacity other than as trustee; or

(B) the placing of securities transactions by a trustee through a securities broker that is part of the same company as the trustee, is owned by the trustee, or is affiliated with the trustee.

(2) In addition to the trustee's fees charged to the trust, the trustee, its affiliate, or its associated entity may be reasonably compensated for any transaction or provision of services described in this subsection performed by the trustee, its affiliate, or its associated entity. However, with respect to any investment in securities of an investment company or investment trust to which the trustee or its affiliate provides investment advisory or investment management services, the trustee shall, at least annually, notify the persons entitled under section 30-3878 to receive a copy of the trustee's annual report of the rate and method by which the compensation was determined.

~~(e) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule set forth in sections 30-3883 to 30-3889. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee shall at least annually notify the persons entitled under section 30-3878 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.~~

(f) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(g) This section does not preclude the following transactions, if fair to the beneficiaries:

(1) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(2) payment of reasonable compensation to the trustee;

(3) a transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(4) a deposit of trust money in a regulated financial-service institution operated by the trustee; or

(5) an advance by the trustee of money for the protection of the trust.

(h) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

Sec. 28. Section 30-38,110, Revised Statutes Cumulative Supplement, 2006, is amended to read:

30-38,110 (UTC 1106) (a) Except as otherwise provided in the Nebraska Uniform Trust Code, on January 1, 2005:

(1) the code applies to all trusts created before, on, or after January 1, 2005;

(2) the code applies to all judicial proceedings concerning trusts commenced on or after January 1, 2005;

(3) the code applies to judicial proceedings concerning trusts commenced before January 1, 2005, unless the court finds that application

of a particular provision of the code would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of the code does not apply and the superseded law applies; and

(4) an act done before January 1, 2005, is not affected by the code.

(b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2005, that statute continues to apply to the right even if it has been repealed or superseded.

(c) Any reference to the powers authorized under the Nebraska Trustees' Powers Act as such act existed prior to January 1, 2005, is deemed to be a reference to the powers authorized under the Nebraska Uniform Trust Code.

(d) Subsection (a) of section 30-3838, section 30-3839, ~~subsection (b) of~~ section 30-3848, subsection (c) of section 30-3849, and subdivision (b) (1) of section 30-3879 apply only to trusts which become irrevocable on or after January 1, 2005.

Sec. 29. Section 45-191.01, Reissue Revised Statutes of Nebraska, is amended to read:

45-191.01 (1) At least forty-eight hours before the borrower signs a loan brokerage agreement, the loan broker shall give the borrower a written disclosure statement. The cover sheet of the disclosure statement shall have printed, in at least ten-point boldface capital letters, the title DISCLOSURES REQUIRED BY NEBRASKA LAW. The following statement, printed in at least ten-point type, shall appear under the title:

THE STATE OF NEBRASKA HAS NOT REVIEWED AND DOES NOT APPROVE, RECOMMEND, ENDORSE, OR SPONSOR ANY LOAN BROKERAGE AGREEMENT. THE INFORMATION CONTAINED IN THIS DISCLOSURE DOCUMENT HAS NOT BEEN VERIFIED BY THE STATE. IF YOU HAVE QUESTIONS, SEEK LEGAL ADVICE BEFORE YOU SIGN A LOAN BROKERAGE AGREEMENT.

Only the title and the statement shall appear on the cover sheet.

(2) The body of the disclosure statement shall contain the following information:

(a) The name, and street address, and telephone number of the loan broker, the names under which the loan broker does, has done, or intends to do business, and the name and street address of any parent or affiliated company, and the electronic mail and Internet address of the loan broker, if any;

(b) A statement as to whether the loan broker does business as an individual, partnership, corporation, or other organizational form, including identification of the state of incorporation or formation;

(c) How long the loan broker has done business;

(d) The number of loan brokerage agreements the loan broker has entered into in the previous twelve months;

(e) The number of loans the loan broker has obtained for borrowers in the previous twelve months;

(f) A description of the services the loan broker agrees to perform for the borrower;

(g) The conditions under which the borrower is obligated to pay the loan broker. This disclosure shall be in boldface type;

(h) The names, titles, and principal occupations for the past five years of all officers, directors, or persons occupying similar positions responsible for the loan broker's business activities;

(i) A statement whether the loan broker or any person identified in subdivision (h) of this subsection:

(i) Has been convicted of a felony or misdemeanor or pleaded nolo contendere to a felony or misdemeanor charge if such felony or misdemeanor involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(ii) Has been held liable in a civil action by final judgment or consented to the entry of a stipulated judgment if the civil action alleged fraud, embezzlement, fraudulent conversion, or misappropriation of property or the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property or the use of unfair, unlawful, or deceptive business practices; or

(iii) Is subject to any currently effective injunction or restrictive order relating to business activity as the result of an action brought by a public agency or department including, but not limited to, action affecting any vocational license; and

(j) Any other information the director requires.

Sec. 30. Section 45-191.04, Reissue Revised Statutes of Nebraska, is amended to read:

45-191.04 (1) A loan brokerage agreement shall be in writing and

shall be signed by the loan broker and the borrower. The loan broker shall furnish the borrower a copy of such signed loan brokerage agreement at the time the borrower signs it.

(2) The borrower has the right to cancel a loan brokerage agreement for any reason at any time within three business days after the date the parties sign the agreement. The loan brokerage agreement shall set forth the borrower's right to cancel and the procedures to be followed when an agreement is canceled.

(3) A loan brokerage agreement shall set forth in at least ten-point type, or handwriting of at least equivalent size, the following:

(a) The terms and conditions of payment;

(b) A full and detailed description of the acts or services the loan broker will undertake to perform for the borrower;

(c) The loan broker's principal business address, telephone number, and electronic mail and Internet address, if any, and the name, and address, telephone number, and electronic mail and Internet address, if any, of its agent in the State of Nebraska authorized to receive service of process;

(d) The business form of the loan broker, whether a corporation, partnership, limited liability company, or otherwise; and

(e) The following notice of the borrower's right to cancel the loan brokerage agreement pursuant to this section:

"You have three business days in which you may cancel this agreement for any reason by mailing or delivering written notice to the loan broker. The three business days shall expire on (last date to mail or deliver notice), and notice of cancellation should be mailed to (loan broker's name and business street address). If you choose to mail your notice, it must be placed in the United States mail properly addressed, first-class postage prepaid, and postmarked before midnight of the above date. If you choose to deliver your notice to the loan broker directly, it must be delivered to the loan broker by the end of the normal business day on the above date. Within five business days after receipt of the notice of cancellation, the loan broker shall return to you all sums paid by you to the loan broker pursuant to this agreement."

The notice shall be set forth immediately above the place at which the borrower signs the loan brokerage agreement.

Sec. 31. Section 45-334, Reissue Revised Statutes of Nebraska, is amended to read:

45-334 Sections 45-334 to 45-353 and section 35 of this act shall be known and may be cited as the Nebraska Installment Sales Act.

Sec. 32. Section 45-340, Reissue Revised Statutes of Nebraska, is amended to read:

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

Sec. 33. Section 45-344, Reissue Revised Statutes of Nebraska, is amended to read:

45-344 If any seller or sales finance company, in the making or collection of an installment contract, shall, directly or indirectly, contract for, take, or receive charges in excess of those authorized by ~~sections 45-334 to 45-353~~ the Nebraska Installment Sales Act except as a result of an accidental and bona fide error such contract shall be void and uncollectible as to (1) all of the excessive portion of the time-price differential, (2) the first one thousand dollars of the time-price differential authorized by section 45-338, and (3) the first four thousand dollars of the principal of the contract. If any seller or sales finance company violates any provision of ~~sections 45-334 to 45-353,~~ the act, other than the violations described above, except as a result of an accidental and bona fide error, such installment contract shall be void and uncollectible as to the first five hundred dollars of the time-price differential and the first one thousand dollars of the

principal of such contract. If any of such money has been paid by the buyer, such buyer or his or her assignee may recover under ~~sections 45-334 to 45-353~~ the act in a civil suit brought within one year after the due date, or any extension thereof, of the last installment of the contract.

Sec. 34. Section 45-346, Revised Statutes Cumulative Supplement, 2006, is amended to read:

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

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

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

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

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

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

~~(4)~~ (6) The director shall, after an application has been filed for a license under the act, investigate the facts, and if he or she finds that the experience, character, and general fitness of the applicant, of the members thereof if the applicant is a corporation or association, and of the officers and directors thereof if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly, fairly, and efficiently within the purpose of the act, the director shall issue and deliver a license to the applicant to do business as a sales finance company in accordance with the license and the act. The director shall have the power to reject for cause any application for a license.

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

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

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

Sec. 35. (1) A licensee may move its place of business from one place to another within a county without obtaining a new license if the licensee gives written notice thereof to the director at least ten days prior to such move.

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

(3) The surety bond or a substitute bond as required by section 45-346 shall remain in effect while a license issued under the Nebraska Installment Sales Act is in effect. If a licensee fails to maintain a surety bond or substitute bond, the licensee shall immediately cease doing business and surrender the license to the department. If the licensee does not

surrender the license, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

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

Sec. 36. Section 45-347, Reissue Revised Statutes of Nebraska, is amended to read:

45-347 All money collected under the authority of the Nebraska Installment Sales Act shall be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund, ~~pursuant to sections 8-601 and 8-602.~~

Sec. 37. Section 45-351, Reissue Revised Statutes of Nebraska, is amended to read:

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, as set forth in sections 12 and 13 of this act. 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 after receipt of billing.

(4) Upon receipt by a licensee of a notice of investigation or inquiry request for information from the department, the licensee shall respond within twenty-one calendar days. Each day a licensee fails to respond as required by this subsection shall constitute a separate violation.

(5) If the director finds, after notice and opportunity for hearing in accordance with the Administrative Procedure Act, that any person has willfully and intentionally violated any provision of the Nebraska Installment Sales Act, any rule or regulation adopted and promulgated under the act, or any order issued by the director under the act, the director may order such person to pay (a) an administrative fine of not more than one thousand dollars for each separate violation and (b) the costs of investigation. All fines collected by the department pursuant to this subsection shall be remitted to the State Treasurer for credit to the permanent school fund.

(6) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection (5) of this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs shall constitute a separate violation of the Nebraska Installment Sales Act.

Sec. 38. Section 45-352, Reissue Revised Statutes of Nebraska, is amended to read:

45-352 The director shall have the power to make such general rules and regulations and specific rulings, demands, and findings as may be necessary for the proper conduct of the business licensed under ~~sections 45-334 to 45-353,~~ the Nebraska Installment Sales Act, and the enforcement of ~~sections 45-334 to 45-353,~~ the act, in addition thereto and not inconsistent therewith.

Sec. 39. Section 45-353, Reissue Revised Statutes of Nebraska, is amended to read:

45-353 (1) Whenever the director has reasonable cause to believe

that any person is violating or is threatening to or intends to violate any of the provisions of ~~sections 45-334 to 45-353~~, the Nebraska Installment Sales Act, he or she may, in addition to all actions provided for in ~~sections 45-334 to 45-353~~ the act and without prejudice thereto, enter an order requiring such person to desist or to refrain from such violation. An action may also be brought, on the relation of the Attorney General or the director, to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof.

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

Sec. 40. Section 45-701, Revised Statutes Cumulative Supplement, 2006, is amended to read:

45-701 Sections 45-701 to 45-721 and sections 49 and 50 of this act shall be known and may be cited as the Mortgage Bankers Registration and Licensing Act.

Sec. 41. Section 45-702, Revised Statutes Cumulative Supplement, 2006, is amended to read:

45-702 For purposes of the Mortgage Bankers Registration and Licensing Act:

(1) Borrower means the mortgagor or mortgagors under a real estate mortgage or the trustor or trustors under a deed of trust;

(2) Branch office means any location at which the business of a mortgage banker is to be conducted, including (a) any offices physically located in Nebraska, (b) any offices that, while not physically located in this state, intend to transact business with Nebraska residents, and (c) any third-party or home-based locations that agents and representatives intend to use to transact business with Nebraska residents;

(3) Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by a multistate licensing and application system, its affiliates, or subsidiaries;

(4) Control means the power, directly or indirectly, to direct the management or policies of a mortgage banking business, whether through ownership of securities, by contract, or otherwise. Any person who (a) is a director, a general partner, or an executive officer, including the president, chief executive officer, chief financial officer, chief operating officer, chief legal officer, chief compliance officer, and any individual with similar status and function, (b) directly or indirectly has the right to vote ten percent or more of a class of voting security or has the power to sell or direct the sale of ten percent or more of a class of voting securities, (c) in the case of a limited liability company, is a managing member, or (d) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, ten percent or more of the capital, is presumed to control that mortgage banking business;

~~(2)~~ (5) Department means the Department of Banking and Finance;

~~(3)~~ (6) Director means the Director of Banking and Finance;

~~(4)~~ (7) Financial institution means any person organized or chartered under the laws of this state, any other state, or the United States relating to banks, savings institutions, trust companies, savings and loan associations, or credit unions. Financial institution also means an industrial loan and investment company chartered under the laws of any other state and subject to similar supervision and regulation as a bank chartered under the laws of this state;

~~(5)~~ (8) Licensee means any person licensed under the act;

~~(6)~~ (9) Mortgage banker means any person not exempt under section 45-703 who, for compensation or gain or in the expectation of compensation or gain, directly or indirectly makes, originates, services, negotiates, acquires, sells, arranges for, or offers to make, originate, service, negotiate, acquire, sell, or arrange for ten or more mortgage loans in a calendar year;

~~(7)~~ (10) Mortgage banking business means any person who employs

a mortgage banker or mortgage bankers or who directly or indirectly makes, negotiates, acquires, sells, arranges for, or offers to make, originate, service, negotiate, acquire, sell, or arrange for ten or more mortgage loans in a calendar year for compensation or gain or in the expectation of compensation or gain;

~~(8)~~ (11) Mortgage loan means any loan or extension of credit secured by a lien on real property, including a refinancing of a contract of sale or an assumption or refinancing of a prior loan or extension of credit;

(12) Multistate licensing and application system means a residential real estate mortgage licensing system data base of which the department is a member;

~~(9)~~ (13) Offer means every attempt to provide, offer to provide, or solicitation to provide a mortgage loan or any form of mortgage banking business. Offer includes, but is not limited to, all general and public advertising, whether made in print, through electronic media, or by the Internet;

~~(10)~~ (14) Person means an association, joint venture, joint-stock company, partnership, limited partnership, limited liability company, business corporation, nonprofit corporation, individual, or any group of individuals however organized;

~~(11)~~ (15) Real property means an owner-occupied single-family, two-family, three-family, or four-family dwelling which is located in this state, which is occupied, used, or intended to be occupied or used for residential purposes, and which is, or is intended to be, permanently affixed to the land;

~~(12)~~ (16) Registered bank holding company means any bank holding company registered with the department pursuant to the Nebraska Bank Holding Company Act of 1995;

~~(13)~~ (17) Registrant means a person registered pursuant to section 45-704; and

~~(14)~~ (18) Service means accepting payments or maintenance of escrow accounts in the regular course of business in connection with a mortgage loan.

Sec. 42. Section 45-705, Revised Statutes Cumulative Supplement, 2006, is amended to read:

45-705 (1) No person shall act as a mortgage banker or use the title mortgage banker in this state unless he, she, or it is licensed or has registered with the department as provided in the Mortgage Bankers Registration and Licensing Act or is licensed under the Nebraska Installment Loan Act.

(2) Applicants for a license as a mortgage banker shall submit to the department an application on forms provided prescribed by the department. The application shall include, but not be limited to, (a) the applicant's corporate name and no more than one trade name or doing business as designation, if applicable, (b) the applicant's main office address, (c) all branch office addresses at which business is to be conducted, ~~(e)~~ (d) the names and titles of each director and principal officer of the applicant, ~~(d)~~ (e) the names of all shareholders, partners, or members of the applicant, ~~(e)~~ (f) a description of the activities of the applicant in such detail as the department may require, and ~~(f)~~ (g) if the applicant is an individual, his or her social security number.

(3) The application required by this section for a license as a mortgage banker shall include or be accompanied by, in a manner as prescribed by the director, (a) the name and street address in this state of a registered agent appointed by the licensee for receipt of service of process and (b) the written consent of the registered agent to the appointment.

(4) The application required by this section for a license as a mortgage banker shall be accompanied by an application fee of four hundred dollars and, if applicable, a seventy-five-dollar fee for each branch office listed in the application and any processing fee allowed under subsection (3) of section 45-715.

(5) The director may prescribe that the application for a license as a mortgage banker include or be accompanied by, in a manner as prescribed by the director, a background investigation of each applicant by means of fingerprints and a check of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nebraska State Patrol. If the applicant is a partnership, association, corporation, or other form of business organization, the director may require a criminal history record information check on each member, director, or principal officer of each applicant or any individual acting in the capacity of the manager of an office location. The applicant shall be responsible for the direct costs associated with criminal history record information checks performed. The information obtained thereby may be used by the director to determine the

applicant's eligibility for licensing under this section. Except as authorized pursuant to subsection (3) of section 45-715, receipt of criminal history record information by a private person or entity is prohibited.

~~(5)~~ (6) A license granted under the Mortgage Bankers Registration and Licensing Act shall not be assignable.

(7) An application is deemed filed when accepted as substantially complete by the director.

Sec. 43. Section 45-706, Revised Statutes Cumulative Supplement, 2006, is amended to read:

45-706 (1) Upon the filing of an application for a license, if the director finds that the character and general fitness of the applicant, the members thereof if the applicant is a partnership, limited liability company, association, or other organization, and the officers, directors, and principal employees if the applicant is a corporation are such that the business will be operated honestly, soundly, and efficiently in the public interest consistent with the purposes of the Mortgage Bankers Registration and Licensing Act, the director shall issue a license as a mortgage banker to the applicant. The director shall approve or deny an application for a license within ninety days after the filing of (a) acceptance of the application; (b) and delivery of the bond required under section 45-709; and (c) payment of the required fee.

(2) If the director determines that the license should be denied, the director shall notify the applicant in writing of the denial and of the reasons for the denial. The director shall not deny an application for a license because of the failure to submit information required under the act or rules and regulations adopted and promulgated under the act without first giving the applicant an opportunity to correct the deficiency by supplying the missing information. A decision of the director denying a license pursuant to the act may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act. The director may deny an application for a license if an officer, director, shareholder owning five percent or more of the voting shares of the applicant, partner, or member was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (a) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (b) any felony under state or federal law.

~~(3)~~ (3) (a) All initial licenses shall remain in full force and effect until the next succeeding March 1. Beginning January 1, 2008, initial licenses shall remain in full force and effect until the next succeeding December 31. Thereafter, licenses may be renewed annually by filing with the director an application for renewal containing such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications, including the information required by subsection (3) of section 45-705. For the annual renewal of an original license to conduct mortgage banking business under the Mortgage Bankers Registration and Licensing Act, the fee shall be two hundred dollars.

(b) Except as provided in subdivision (3)(c) of this section, for the annual renewal of a license to conduct a mortgage banking business under the Mortgage Bankers Registration and Licensing Act, the fee shall be two hundred dollars plus seventy-five dollars for each branch office, if applicable, and any processing fee allowed under subsection (3) of section 45-715.

(c) Licenses which expire on March 1, 2008, shall be renewed until December 31, 2008, upon compliance with subdivision (3)(a) of this section. For such renewals, the department shall prorate the fees provided in subdivision (3)(b) of this section using a factor of ten-twelfths.

(4) The director may require a licensee to maintain a minimum net worth, proven by an audit conducted by a certified public accountant, if the director determines that the financial condition of the licensee warrants such a requirement or that the requirement is in the public interest.

Sec. 44. Section 45-708, Reissue Revised Statutes of Nebraska, is amended to read:

45-708 (1) Any person required to be licensed or registered under the Mortgage Bankers Registration and Licensing Act who, without first obtaining a license or registration under the act or while such license is suspended, revoked, canceled, or expired by the director, engages in the business of or occupation of, advertises or holds himself or herself out as, claims to be, or temporarily acts as a mortgage banker in this state is guilty of a Class II misdemeanor.

(2) Any individual who has been convicted of, pleaded guilty to, or been found guilty after a plea of nolo contendere to (a) a misdemeanor under

any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (b) any felony under state or federal law, and is employed by or maintains a contractual relationship as an agent of, any person required to be licensed or registered under the Mortgage Bankers Registration and Licensing Act, is guilty of a Class I misdemeanor.

Sec. 45. Section 45-710, Reissue Revised Statutes of Nebraska, is amended to read:

45-710 (1) The director may examine documents and records maintained by a licensee. The director may investigate complaints about a licensee. The director may investigate reports of alleged violations of the Mortgage Bankers Registration and Licensing Act or any rule, regulation, or order of the director under the act.

(2) Upon receipt by a licensee of the director's notice of investigation or inquiry request for information, the licensee shall respond within twenty-one calendar days. Each day beyond that time a licensee fails to respond as required by this subsection shall constitute a separate violation of the Mortgage Bankers Registration and Licensing Act. This subsection shall not be construed to require the director to send a notice of investigation to a licensee or any person.

(3) In conducting an examination under this section, the director may rely on reports made by the licensee which have been prepared within the preceding twelve months for the following federal agencies or federally related entities:

- (a) The United States Department of Housing and Urban Development;
- (b) The Federal Housing Administration;
- (c) The Federal National Mortgage Association;
- (d) The Government National Mortgage Association;
- (e) The Federal Home Loan Mortgage Corporation; or
- (f) The United States Department of Veterans Affairs.

(4) If the director receives a complaint or other information concerning noncompliance with the Mortgage Bankers Registration and Licensing Act by an exempt person, the director shall inform the agency having supervisory authority over the exempt person of the complaint.

(5) ~~The total charge for an examination or investigation shall be paid by the licensee to the director within thirty days after the director has requested payment. The amount of the fee shall be based on the actual cost of the examination, including travel expenses, as determined by the director. The director may adopt and promulgate rules and regulations which provide for a charge for late payment of the fee not to exceed fifty dollars per day, as set forth in sections 12 and 13 of this act.~~

(6) Examination reports shall not be deemed public records and may be withheld from the public pursuant to section 84-712.05.

(7) Complaint files shall be deemed public records.

Sec. 46. Section 45-711, Revised Statutes Cumulative Supplement, 2006, is amended to read:

45-711 A licensee shall:

(1) Disburse required funds paid by the borrower and held in escrow for the payment of insurance payments no later than the date upon which the premium is due under the insurance policy;

(2) Disburse funds paid by the borrower and held in escrow for the payment of real estate taxes prior to the time such real estate taxes become delinquent;

(3) Pay any penalty incurred by the borrower because of the failure of the licensee to make the payments required in subdivisions (1) and (2) of this section unless the licensee establishes that the failure to timely make the payments was due solely to the fact that the borrower was sent a written notice of the amount due more than fifteen calendar days before the due date to the borrower's last-known address and failed to timely remit the amount due to the licensee;

(4) At least annually perform a complete escrow analysis. If there is a change in the amount of the periodic payments, the licensee shall mail written notice of such change to the borrower at least twenty calendar days before the effective date of the change in payment. The following information shall be provided to the borrower, without charge, in one or more reports, at least annually:

- (a) The name and address of the licensee;
- (b) The name and address of the borrower;
- (c) A summary of the escrow account activity during the year which includes all of the following:
 - (i) The balance of the escrow account at the beginning of the year;
 - (ii) The aggregate amount of deposits to the escrow account during

the year; and

(iii) The aggregate amount of withdrawals from the escrow account for each of the following categories:

- (A) Payments applied to loan principal;
- (B) Payments applied to interest;
- (C) Payments applied to real estate taxes;
- (D) Payments for real property insurance premiums; and
- (E) All other withdrawals; and

(d) A summary of loan principal for the year as follows:

(i) The amount of principal outstanding at the beginning of the year;

(ii) The aggregate amount of payments applied to principal during the year; and

(iii) The amount of principal outstanding at the end of the year;

(5) Establish and maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers, if the licensee services mortgage loans. If a licensee ceases to service mortgage loans, it shall continue to maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers for a period of twelve months after the date the licensee ceased to service mortgage loans. A telephonic messaging service which does not permit the borrower an option of personal contact with an employee, agent, or contractor of the licensee shall not satisfy the conditions of this section. Each day such licensee fails to comply with this subdivision shall constitute a separate violation of the Mortgage Bankers Registration and Licensing Act;

(6) Answer in writing, within ten business days after receipt, any written request for payoff information received from a borrower or a borrower's designated representative. This service shall be provided without charge to the borrower, except that when such information is provided upon request within sixty days after the fulfillment of a previous request, a processing fee of up to ten dollars may be charged;

(7) Execute and deliver a release of mortgage pursuant to the provisions of section 76-252 or, in the case of a trust deed, execute and deliver a reconveyance pursuant to the provisions of section 76-1014.01;

(8) Maintain a copy of all documents and records relating to each mortgage loan and application for a mortgage loan, including, but not limited to, loan applications, federal Truth in Lending Act statements, good faith estimates, appraisals, notes, rights of rescission, and mortgages or trust deeds for a period of two years after the date the mortgage loan is funded or the loan application is denied or withdrawn; and

(9) Notify the director in writing within thirty days after the occurrence of any material development, including, but not limited to:

(a) The filing of a voluntary petition in bankruptcy or notice of a filing of an involuntary petition in bankruptcy;

(b) Business reorganization;

(c) The institution of license suspension or revocation procedures by any other state or jurisdiction;

(d) The filing of a criminal indictment or information against the licensee or any of its officers, directors, shareholders, partners, members, employees, or agents;

(e) The licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (ii) any felony under state or federal law;

(f) A change of name, trade name, doing business as designation, or main office address; ~~or~~

(g) The establishment ~~or~~ closing of a branch office located in Nebraska. Notice of such establishment shall be on forms prescribed by the department and accompanied by a fee of seventy-five dollars for each branch office; or

(h) The closing of a branch office.

Sec. 47. Section 45-714, Revised Statutes Cumulative Supplement, 2006, is amended to read:

45-714 (1) A licensee, an officer, an employee, or an agent of the licensee shall not:

(a) Assess a late charge if all payments due are received before the date upon which late charges are authorized in the underlying mortgage or deed of trust or other loan documents;

(b) Delay closing of a mortgage loan for the purpose of increasing

interest, costs, fees, or charges payable by the borrower;

(c) Misrepresent or conceal material facts or make false promises intended to influence, persuade, or induce an applicant for a mortgage loan or a borrower to take a mortgage loan or cause or contribute to such a misrepresentation by any person acting on a licensee's or any other lender's behalf;

(d) Misrepresent to, or conceal from, an applicant for a mortgage loan or a borrower material facts, terms, or conditions of a mortgage loan to which the licensee is a party;

(e) Engage in any transaction, practice, or business conduct that is not in good faith or that operates a fraud upon any person in connection with the making of any mortgage loan;

(f) Receive compensation for acting as a mortgage banker if the licensee has otherwise acted as a real estate broker or agent in connection with the sale of the real estate which secures the mortgage loan unless the licensee has provided written disclosure to the person from whom compensation is collected that the licensee is receiving compensation both for acting as a mortgage banker and for acting as a real estate broker or agent;

(g) Advertise, display, distribute, broadcast, televise, or cause or permit to be advertised, displayed, distributed, broadcasted, or televised, in any manner, including by the Internet, any false, misleading, or deceptive statement or representation with regard to rates, terms, or conditions for a mortgage loan or any false, misleading, or deceptive statement regarding the qualifications of the licensee or of any officer, employee, or agent thereof;

(h) Record a lien on real property if money is not available for the immediate disbursement to the borrower unless, before that recording, the licensee (i) informs the borrower in writing of the reason for the delay and of a definite date by which disbursement shall be made and (ii) obtains the borrower's written permission for the delay unless the delay is required by any other state or federal law;

(i) Fail to account for or deliver to any person personal property obtained in connection with the mortgage banking business, including, but not limited to, money, funds, deposits, checks, drafts, mortgages, or other documents or things of value which the licensee was not entitled to retain;

(j) Fail to disburse, without just cause, any funds in accordance with any agreement connected with the mortgage banking business;

(k) Collect fees and charges on funds other than new funds if the licensee makes a mortgage loan to refinance an existing mortgage loan to a current borrower of the licensee within twelve months after the previous mortgage loan made by the licensee;

(l) Assess any fees against the borrower other than those which are reasonable and necessary, including actual charges incurred in connection with the making, closing, disbursing, servicing, extending, transferring, or renewing of a loan, including, but not limited to, (i) prepayment charges, (ii) delinquency charges, (iii) premiums for hazard, private mortgage, disability, life, or title insurance, (iv) fees for escrow services, appraisal services, abstracting services, title services, surveys, inspections, credit reports, notary services, and recording of documents, (v) origination fees, (vi) interest on interest after default, and (vii) costs and charges incurred for determining qualification for the loan proceeds and disbursement of the loan proceeds;

(m) Allow the borrower to finance, directly or indirectly, (i) any credit life, credit accident, credit health, credit personal property, or credit loss-of-income insurance or debt suspension coverage or debt cancellation coverage, whether or not such coverage is insurance under applicable law, that provides for cancellation of all or part of a borrower's liability in the event of loss of life, health, personal property, or income or in the case of accident written in connection with a mortgage loan or (ii) any life, accident, health, or loss-of-income insurance without regard to the identity of the ultimate beneficiary of such insurance. For purposes of this section, any premiums or charges calculated and paid on a periodic basis that are not added to the principal of the loan shall not be considered financed directly or indirectly by the creditor;

(n) Falsify any documentation relating to a mortgage loan or a mortgage loan application;

(o) Recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a mortgage loan that refinances all or any portion of such existing loan or debt; ~~or~~

(p) Borrow money from, personally loan money to, or guarantee any loan made to any customer or applicant for a mortgage loan; ~~or~~

(q) Obtain a signature on a document required to be notarized in connection with a mortgage loan or a mortgage loan application unless the

qualified notary public performing the notarization is physically present at the time the signature is obtained.

(2) Any person who violates any provision of subsection (1) of this section is guilty of a Class III misdemeanor.

(3) Any person who violates any provision of subsection (1) of this section is liable to the applicant for a mortgage loan or to the borrower for the fees, costs, and charges incurred in connection with obtaining or attempting to obtain the mortgage loan, damages resulting from such violation, interest on the damage from the date of the violation, and court costs, including reasonable attorney's fees.

Sec. 48. Section 45-715, Reissue Revised Statutes of Nebraska, is amended to read:

45-715 (1) The department shall be responsible for the administration and enforcement of the Mortgage Bankers Registration and Licensing Act.

(2) The department may adopt and promulgate such rules and regulations as it may deem necessary in the administration of the act and not inconsistent with the act. The department shall make a good faith effort to provide a copy of the notice of hearing as required by section 84-907 in a timely manner to all licensees. Such notice may be sent electronically to licensees.

(3) The department may participate in a multistate licensing and application system for mortgage lenders and mortgage bankers involving one or more states, the District of Columbia, or the Commonwealth of Puerto Rico. The system shall be established to facilitate the sharing of regulatory information and the licensing and application processes, by electronic or other means. The department may allow such system to collect licensing fees on behalf of the department, allow such system to collect a processing fee for the services of the system directly from each applicant for a license, and allow such system to process and maintain records on behalf of the department, including information collected pursuant to subsection (5) of section 45-705.

Sec. 49. (1) No person acting personally or as an agent shall acquire control of any mortgage banking business required to be licensed under the Mortgage Bankers Registration and Licensing Act without first giving sixty days' notice to the department on forms prescribed by the department of such proposed acquisition and paying a filing fee of two hundred dollars.

(2) The director, upon receipt of such notice, shall act upon it within thirty days and, unless he or she disapproves the proposed acquisition within that period of time, the acquisition shall become effective on the sixty-first day after receipt without the director's approval, except that the director may extend the thirty-day period an additional thirty days if, in his or her judgment, any material information submitted is substantially inaccurate or the acquiring party has not furnished all the information required by the department.

(3) An acquisition may be made prior to the expiration of the disapproval period if the director issues written notice of his or her intent not to disapprove the action.

(4) (a) The director may disapprove any proposed acquisition if:

(i) The financial condition of any acquiring person is such as might jeopardize the financial stability of the acquired mortgage banking business;

(ii) The character and general fitness of any acquiring person or of any of the proposed management personnel indicates that the acquired mortgage banking business would not be operated honestly, soundly, or efficiently in the public interest; or

(iii) Any acquiring person neglects, fails, or refuses to furnish all information required by the department.

(b) The director shall notify the acquiring party in writing of disapproval of the acquisition. The notice shall provide a statement of the basis for the disapproval.

(c) Within fifteen business days after receipt of written notice of disapproval, the acquiring party may request a hearing on the proposed acquisition in accordance with the Administrative Procedure Act. At the conclusion of such hearing, the director shall, by order, approve or disapprove the proposed acquisition on the basis of the record made at the hearing.

Sec. 50. (1) The department may require that a mortgage banker supply all or part of the information that must be provided to obtain a license pursuant to a multistate licensing and application system data base consistent with, and in compliance with, the Mortgage Bankers Registration and Licensing Act. Nothing in this subsection shall authorize the director to require any person exempt from licensure under the act or the employees or agents of any such person to submit information to or participate in the

multistate licensing and application system.

(2) Except for the department, no person shall be authorized to obtain information from a multistate licensing and application system data base or initiate any civil action based on information obtained from such data base, if such information is not currently available to such person under section 8-112 or 45-710.

(3) The department shall ensure that a multistate licensing and application system adopts a privacy, data security, and security breach notification policy. The director shall make available upon written request a copy of the contract between the department and a multistate licensing and application system pertaining to the breach of security of the system provisions.

(4) The department shall upon written request provide the most recently available audited financial report of the multistate licensing and application system.

Sec. 51. Section 45-716, Reissue Revised Statutes of Nebraska, is amended to read:

45-716 (1) All fees, charges, and costs collected by the department pursuant to the Mortgage Bankers Registration and Licensing Act shall be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund, ~~pursuant to sections 8-601 and 8-602.~~

(2) All fines collected by the department pursuant to the Mortgage Bankers Registration and Licensing Act shall be remitted to the State Treasurer for credit to the permanent school fund.

Sec. 52. Section 45-920, Reissue Revised Statutes of Nebraska, is amended to read:

45-920 The director shall examine the books, accounts, and records of each licensee no more often than annually, except as provided in section 45-921. The costs of the director incurred in an examination shall be paid by the licensee as set forth in sections 12 and 13 of this act.

Sec. 53. Section 45-927, Reissue Revised Statutes of Nebraska, is amended to read:

45-927 All fees, charges, costs, and fines collected by the director under the Delayed Deposit Services Licensing Act shall be remitted to the State Treasurer. Fees, charges, and costs shall be credited to the Financial Institution Assessment Cash Fund, ~~pursuant to sections 8-601 and 8-602,~~ and fines shall be credited to the permanent school fund.

Sec. 54. Section 45-1013, Revised Statutes Cumulative Supplement, 2006, is amended to read:

45-1013 (1) For the annual renewal of an original license under the Nebraska Installment Loan Act, the licensee shall file with the department a fee of two hundred fifty dollars and a renewal application containing such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications.

(2) For the relocation of its place of business, a licensee shall file with the department a fee of one hundred fifty dollars and an application containing such information as the director may require to determine whether the relocation should be approved. Upon receipt of the fee and application, the director shall publish a notice of the filing of the application in a newspaper of general circulation in the county where the licensee proposes to relocate. If the director receives any substantive objection to the proposed relocation within fifteen days after publication of such notice, he or she shall hold a hearing on the application in accordance with the Administrative Procedure Act. The expense of any publication required by this section shall be paid by the applicant licensee.

Sec. 55. Section 45-1014, Reissue Revised Statutes of Nebraska, is amended to read:

45-1014 All original license fees and annual renewal fees shall be collected by the department and remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund, ~~pursuant to sections 8-601 and 8-602.~~ All investigation and examination fees, charges, and costs collected by or paid to the department shall likewise be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund ~~pursuant to sections 8-601 and 8-602~~ and shall be available for the uses and purposes of the fund.

Sec. 56. Section 45-1017, Reissue Revised Statutes of Nebraska, is amended to read:

45-1017 (1) The department shall inspect the business, records, and accounts of all persons that lend money subject to the Nebraska Installment Loan Act. The department may examine or investigate complaints about or reports of alleged violations by a licensee made to the department. The

department may inspect and investigate the business, records, and accounts of all persons in the public business of lending money contrary to the act and who do not have a license under the act. The director may appoint examiners who shall, under his or her direction, investigate the loans and business and examine the books and records of licensees annually and more often as determined by the director. The expenses incurred by the department in examining the books and records of licensees and in administering the act during each calendar year shall be charged annually to each licensee by the department as soon as reasonably possible after the examination. Such expenses shall be charged in proportion to the number of days required to examine and supervise the books and records of the respective licensees, paid by the licensee as set forth in sections 12 and 13 of this act.

(2) Upon receipt by a licensee of a notice of investigation or inquiry request for information from the department, the licensee shall respond within twenty-one calendar days. Each day a licensee fails to respond as required by this subsection constitutes a separate violation.

(3) If the director finds, after notice and opportunity for hearing in accordance with the Administrative Procedure Act, that any person has willfully and intentionally violated any provision of the Nebraska Installment Loan Act, any rule or regulation adopted and promulgated under the act, or any order issued under the act, the director may order such person to pay (a) an administrative fine of not more than one thousand dollars for each separate violation and (b) the costs of investigation. All fines collected by the department pursuant to this subsection shall be remitted to the State Treasurer for credit to the permanent school fund.

(4) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection (3) of this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs constitutes a separate violation of the act.

Sec. 57. Section 45-1033, Revised Statutes Cumulative Supplement, 2006, is amended to read:

45-1033 (1) The director may, following a hearing under the Administrative Procedure Act, suspend or revoke any license issued pursuant to the Nebraska Installment Loan Act. The director may also impose an administrative fine on the licensee for each separate violation of the act. The director may take one or more of these actions if the director finds:

(a) The licensee has materially violated or demonstrated a continuing pattern of violating the Nebraska Installment Loan Act or rules and regulations adopted and promulgated under the act, any order issued under the act, or any other state or federal law applicable to the conduct of its business;

(b) A fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the director to deny the application;

(c) The licensee has violated a voluntary consent or compliance agreement which had been entered into with the director;

(d) The licensee has knowingly provided or caused to be provided to the director any false or fraudulent representation of a material fact or any false or fraudulent financial statement or suppressed or withheld from the director any information which, if submitted by the licensee, would have resulted in denial of the license application;

(e) The licensee has refused to permit an examination by the director of the licensee's business, records, and accounts pursuant to subsection (1) of section 45-1017 or refused or failed to comply with subsection (2) of section 45-1017 or failed to make any report required under section 45-1018. Each day the licensee continues in violation of this subdivision constitutes a separate violation;

(f) The licensee has failed to maintain records as required by the director following written notice. Each day the licensee continues in violation of this subdivision constitutes a separate violation;

(g) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual has been convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any

aspect of the mortgage banking business, financial institution business, or installment loan business or (ii) any felony under state or federal law;

(h) The licensee has violated the written restrictions or conditions under which the license was issued; or

(i) The licensee, or if the licensee is a business entity, one of the officers, directors, members, partners, or controlling shareholders, was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (ii) any felony under state or federal law.

(2) Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing in accordance with the Administrative Procedure Act.

(3) (a) If a licensee fails to renew its license as required by subsection (1) of section 45-1013 and does not voluntarily surrender the license pursuant to section 45-1032, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) If a licensee fails to maintain a surety bond as required by section 45-1007, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(4) Revocation, suspension, cancellation, or expiration of a license shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.

(5) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for any fines which may be imposed against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to this section or section 45-1069 for acts committed before the surrender.

Sec. 58. Section 52-1301, Reissue Revised Statutes of Nebraska, is amended to read:

52-1301 It is the intent of the Legislature to adopt a central filing system for security interests relating to farm products pursuant to section 1324 of the Food Security Act of 1985, Public Law 99-198. It is also the intent of the Legislature that upon the adoption of the central filing system that security interest holders be encouraged to use such system in lieu of any other notice provided by section 1324 for farm products ~~used or~~ produced or located in the State of Nebraska which are included in the central filing system.

Sec. 59. Section 52-1302, Reissue Revised Statutes of Nebraska, is amended to read:

52-1302 For purposes of sections 52-1301 to 52-1322 and section 60 of this act, unless the context otherwise requires, the definitions found in sections 52-1303 to 52-1311 and section 60 of this act shall be used.

Sec. 60. Approved unique identifier means a number, combination of numbers and letters, or other identifier selected by the Secretary of State using a selection system or method approved by the Secretary of the United States Department of Agriculture.

Sec. 61. Section 52-1307, Reissue Revised Statutes of Nebraska, is amended to read:

52-1307 Effective financing statement means a statement that:

(1) Is an original or reproduced copy thereof;

(2) Is ~~signed and~~ filed by the secured party in the office of the Secretary of State;

(3) Is signed, authorized, or otherwise authenticated by the debtor, unless filed electronically, in which case the signature of the debtor shall not be required;

(4) Contains (a) the name and address of the secured party, (b) the name and address of the debtor, (c) the social security number or other approved unique identifier of the debtor or, in the case of a debtor doing business other than as an individual, the Internal Revenue Service taxpayer identification number or other approved unique identifier of such debtor, (d) a description of the farm products subject to the security interest, (e) each county in Nebraska where the farm product is ~~used or~~ produced or to be used or produced, located, (f) crop year unless every crop of the farm product in question, for the duration of the effective financing statement, is to be subject to the particular security interest, (g) further details of the farm product subject to the security interest if needed to distinguish it from other quantities of such product owned by the same person or persons but not subject to the particular security interest, and (h) such other information that the Secretary of State may require to comply with section 1324 of the Food Security Act of 1985, Public Law 99-198, or to more efficiently carry out

his or her duties under sections 52-1301 to 52-1322 and section 60 of this act;

(5) Shall be amended in writing, within three months, similarly and signed, authorized, or otherwise authenticated by the debtor and filed, to reflect material changes. If the statement is filed electronically, the signature of the debtor shall not be required;

(6) Remains effective for a period of five years from the date of filing, subject to extensions for additional periods of five years each by refileing or filing a continuation statement within six months before the expiration of the five-year period;

(7) Lapses on either the expiration of the effective period of the statement or the filing of a notice signed by the secured party that the statement is terminated, whichever occurs first;

(8) Is accompanied by the requisite filing fee set by section 52-1313; and

(9) Substantially complies with the requirements of this section even though ~~it~~ the statement contains minor errors that are not seriously misleading.

An effective financing statement may, for any given debtor or debtors, cover more than one farm product located in more than one county.

~~Any effective financing statement that is filed electronically shall include an electronic signature of the secured party which may consist of a signature recognized under section 86-611 or an access code or any other identifying word or number assigned by the Secretary of State that is unique to a particular filer.~~

Sec. 62. Section 52-1308, Reissue Revised Statutes of Nebraska, is amended to read:

52-1308 Farm product shall mean an agricultural commodity, a species of livestock used or produced in farming operations, or a product of such crop or livestock in its unmanufactured state, that is in the possession of a person engaged in farming operations. Farm products shall include, but are not limited to, apples, artichokes, asparagus, barley, bees, buffalo, bull semen, cantaloupe, carrots, cattle and calves, chickens, corn, cucumbers, dry beans, eggs, embryos or genetic products, emu, fish, flax seed, ~~fur-bearing animals,~~ grapes, hay, hogs, honey, honeydew melon, horses, legumes, milk, millet, muskmelon, oats, onions, ostrich, popcorn, potatoes, pumpkins, raspberries, rye, safflower, seed crops, sheep and lambs, silage, sorghum grain, soybeans, squash, strawberries, sugar beets, sunflower seeds, sweet corn, tomatoes, trees, triticale, turkeys, vetch, walnuts, watermelon, wheat, and wool. The Secretary of State may, by rule and regulation, add other farm products to the list specified in this section if such products are covered by the general definition provided by this section.

Sec. 63. Section 52-1312, Revised Statutes Cumulative Supplement, 2006, is amended to read:

52-1312 The Secretary of State shall design and implement a central filing system for effective financing statements. The Secretary of State shall be the system operator. The system shall provide a means for filing effective financing statements or notices of such financing statements on a statewide basis. The system shall include requirements:

(1) That an effective financing statement or notice of such financing statement shall be filed in the office of the Secretary of State. A debtor's residence shall be presumed to be the residence shown on the filing. The showing of an improper residence shall not affect the validity of the filing. The filing officer shall mark the statement or notice with a consecutive file number and with the date and hour of filing and shall hold the statement or notice or a microfilm or other photographic copy thereof for public inspection. In addition, the filing officer shall index the statements and notices according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement;

(2) That the Secretary of State compile information from all effective financing statements or notices filed with the Secretary of State into a master list (a) organized according to farm product, (b) arranged within each such product (i) in alphabetical order according to the last name of the individual debtors or, in the case of debtors doing business other than as individuals, the first word in the name of such debtors, (ii) in numerical order according to the social security number or other approved unique identifier of the individual debtors or, in the case of debtors doing business other than as individuals, the Internal Revenue Service taxpayer identification number or other approved unique identifier of such debtors, (iii) geographically by county, and (iv) by crop year, and (c) containing the information referred to in subdivision (4) of section 52-1307;

(3) That the Secretary of State cause the information on the master

list to be published in lists (a) by farm product arranged alphabetically by debtor and (b) by farm product arranged numerically by the debtor's social security number or other approved unique identifier for individual debtors or, in the case of debtors doing business other than as individuals, the Internal Revenue Service taxpayer identification number or other approved unique identifier of such debtors. If a registered buyer so requests, the list or lists for such buyer may be limited to any county or group of counties where the farm product is ~~used or~~ produced or located or to any crop year or years or a combination of such identifiers;

(4) That all buyers of farm products, commission merchants, selling agents, and other persons may register with the Secretary of State to receive lists described in subdivision (3) of this section. Any buyer of farm products, commission merchant, selling agent, or other person conducting business from multiple locations shall be considered as one entity. Such registration shall be on an annual basis. The Secretary of State shall provide the form for registration which shall include the name and address of the registrant and the list or lists described in subdivision (3) of this section which such registrant desires to receive. A registration shall not be completed until the form provided is properly completed and received by the Secretary of State accompanied by the proper registration fee. The fee for annual registration shall be thirty dollars.

A registrant shall pay an additional annual fee to receive quarterly lists described in subdivision (3) of this section. For each farm product list provided on microfiche, the annual fee shall be twenty-five dollars. For each farm product list provided on paper, the annual fee shall be two hundred dollars. The annual fee for a special list which is a list limited to fewer than all counties or less than all crop years shall be one hundred fifty dollars for each farm product.

The Secretary of State shall maintain a record of the registrants and the lists and contents of the lists received by the registrants for a period of five years;

(5) That the lists as identified pursuant to subdivision (4) of this section be distributed by the Secretary of State on a quarterly basis and be in written or printed form. A registrant may choose in lieu of receiving a written or printed form to receive statewide lists on microfiche. The Secretary of State may provide for the distribution of the lists on any other medium and establish reasonable charges therefor. The distribution shall be made by either certified or registered mail, return receipt requested.

The Secretary of State shall, by rule and regulation, establish the dates upon which the quarterly distributions will be made, the dates after which a filing of an effective financing statement will not be reflected on the next quarterly distribution of lists, and the dates by which a registrant must complete a registration to receive the next quarterly list; and

(6) That the Secretary of State remove lapsed and terminated effective financing statements or notices of such financing statements from the master list prior to preparation of the lists required to be distributed by subdivision (5) of this section.

Effective financing statements or any amendments or continuations of effective financing statements originally filed in the office of the county clerk that have been indexed and entered on the Secretary of State's central filing system need not be retained by the county filing office and may be disposed of or destroyed.

The Secretary of State shall apply to the Secretary of the United States Department of Agriculture for (a) certification of the central filing system and (b) approval of the system or method of selecting an approved unique identifier.

The Secretary of State shall deposit any funds received pursuant to subdivision (4) of this section in the Uniform Commercial Code Cash Fund.

Sec. 64. Section 52-1313, Reissue Revised Statutes of Nebraska, is amended to read:

52-1313 (1) Presentation for filing of an effective financing statement and the acceptance of the statement by the Secretary of State constitutes filing under sections 52-1301 to 52-1322 and section 60 of this act.

(2) The fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing of an effective financing statement, an amendment, or a continuation statement shall be ten dollars. There shall be no fee for the filing of a termination statement.

(3) The fee for attachments to all instruments submitted for filing shall be fifty cents per page.

(4) The Secretary of State shall deposit any fees received pursuant

to this section in the Uniform Commercial Code Cash Fund.

Sec. 65. Section 52-1314, Reissue Revised Statutes of Nebraska, is amended to read:

52-1314 (1) A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subdivision (6) of section 52-1307. Any such continuation statement shall be signed, authorized, or otherwise authenticated by the secured party, identify the original statement by file number, and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement shall be continued for five years after the last date to which the filing was effective whereupon it shall lapse unless another continuation statement is filed prior to such lapse. If an effective financing statement exists at the time insolvency proceedings are commenced by or against the debtor, the effective financing statement shall remain effective until termination of the insolvency proceedings and thereafter for a period of sixty days or until the expiration of the five-year period, whichever occurs later. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement.

(2) Any continuation statement that is filed electronically shall include an electronic signature of the secured party which may consist of a signature recognized under section 86-611 or an access code or any other identifying word or number assigned by the Secretary of State that is unique to a particular filer.

Sec. 66. Section 52-1315, Reissue Revised Statutes of Nebraska, is amended to read:

52-1315 (1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party shall notify the debtor in writing of his or her right to have a notice of lapse of his or her effective financing statement filed which shall lead to the removal of his or her name from the files and lists compiled by the Secretary of State. In lieu of such notice, the secured party may acquire a waiver of the debtor of such right and a request by the debtor that his or her effective financing statement be retained on file. Such notice may be given or waiver acquired by the secured party at any time prior to the time specified in this subsection for giving the notice.

(2) If the secured party does not furnish the notice or obtain the waiver specified in subsection (1) of this section, the secured party shall, within ten days of final payment of all secured obligations, provide the debtor with a written notification of the debtor's right to have a notice of lapse filed. The secured party shall on written demand by the debtor send the debtor a notice of lapse to the effect that he or she no longer claims a security interest under the effective financing statement, which shall be identified by file number. The notice of lapse need only be signed, authorized, or otherwise authenticated by the secured party.

(3) If the affected secured party fails to send a notice of lapse within ten days after proper demand, pursuant to subsection (2) of this section, he or she shall be liable to the debtor for any loss caused to the debtor by such failure.

(4) On presentation to the Secretary of State of a notice of lapse, he or she shall treat it as a termination statement and note it in the index. If he or she has received the notice of lapse in duplicate, he or she shall return one copy of the notice of lapse to the filing party stamped to show the time of receipt thereof.

(5) There shall be no fee for filing a notice of lapse or termination statement.

Sec. 67. Section 52-1317, Reissue Revised Statutes of Nebraska, is amended to read:

52-1317 In order to verify the existence or nonexistence of a security interest, a buyer, commission merchant, or selling agent may request a seller to disclose such seller's social security number or approved unique identifier or, in the case of a seller doing business other than as an individual, the Internal Revenue Service taxpayer identification number or approved unique identifier of such seller.

Sec. 68. Section 52-1318, Reissue Revised Statutes of Nebraska, is amended to read:

52-1318 (1) The State of Nebraska hereby adopts the federal rules and regulations in effect on ~~November 21, 1986~~, the operative date of this section, adopted and promulgated to implement section 1324 of the Food Security Act of 1985, Public Law 99-198. If there is a conflict between such rules and regulations and sections 52-1301 to 52-1322 and section 60 of this act, the federal rules and regulations shall apply.

(2) The Secretary of State shall adopt and promulgate rules and regulations necessary to implement sections 52-1301 to 52-1322 and section 60 of this act pursuant to the Administrative Procedure Act. If necessary to obtain federal certification of the central filing system, additional or alternative requirements made in conformity with section 1324 of the Food Security Act of 1985, Public Law 99-198, may be imposed by the Secretary of State by rule and regulation.

(3) The Secretary of State shall prescribe all forms to be used for filing effective financing statements and subsequent actions.

Sec. 69. Section 52-1602, Reissue Revised Statutes of Nebraska, is amended to read:

52-1602 (1) The master lien list prescribed in section 52-1601 shall be distributed by the Secretary of State on a quarterly basis corresponding to the date on which the lists provided pursuant to sections 52-1301 to 52-1322 and section 60 of this act are distributed. Such master lien list may be mailed with the list provided pursuant to sections 52-1301 to 52-1322 and section 60 of this act. If mailed separately, the master lien list shall be mailed by either certified or registered mail, return receipt requested.

(2) Any person may register with the Secretary of State to receive the master lien list prescribed in section 52-1601. Such registration shall be on an annual basis. The Secretary of State shall provide the form for registration. A registration shall not be completed until the form provided is properly completed and received by the Secretary of State accompanied by the proper registration fee. The fee for annual registration shall be thirty dollars, except that a registrant under sections 52-1301 to 52-1322 and section 60 of this act shall not be required to pay the registration fee provided by this section in addition to the registration fee paid pursuant to sections 52-1301 to 52-1322 and section 60 of this act for the same annual registration period. Beginning for calendar year 1989, a registrant under sections 52-1601 to 52-1605 shall pay an additional annual fee to receive quarterly master lien lists prescribed in section 52-1601. For each master lien list provided on microfiche, the annual fee shall be twenty-five dollars. For each master lien list provided on paper, the annual fee shall be two hundred dollars. The Secretary of State may provide for the distribution of master lien lists on any other medium and may establish reasonable charges therefor.

(3) The Secretary of State, by rule and regulation, shall establish the dates after which a filing of liens will not be reflected on the next quarterly distribution of the master lien list and the date by which a registrant shall complete a registration in order to receive the next quarterly master lien list.

(4) The Secretary of State shall deposit any funds received pursuant to subsection (2) of this section in the Uniform Commercial Code Cash Fund.

Sec. 70. Section 9-315, Uniform Commercial Code, Revised Statutes Cumulative Supplement, 2006, is amended to read:

9-315 Secured party's rights on disposition of collateral and in proceeds.

(a)(1) Except as otherwise provided in this article and in section 2-403(2):

(A) a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(B) a security interest attaches to any identifiable proceeds of collateral.

(2) Authorization to sell, lease, license, exchange, or otherwise dispose of farm products shall not be implied or otherwise result, nor shall a security interest in farm products be considered to be waived, modified, released, or terminated if such disposition is conditioned upon the secured party's receipt of proceeds or from any course of conduct, course of performance, or course of dealing between the parties or by any usage of trade in any case in which (A) the secured party has filed an effective financing statement in accordance with the provisions of sections 52-1301 to 52-1322 and section 60 of this act, Reissue Revised Statutes of Nebraska, or (B) the buyer of farm products has received notice from the secured party or the seller of farm products in accordance with the provisions of 7 U.S.C. 1631(e)(1)(A), unless the buyer has secured a waiver or release of the security interest specified in such effective financing statement or notice from the secured party.

(b) Proceeds that are commingled with other property are identifiable proceeds:

(1) if the proceeds are goods, to the extent provided by section

9-336; and

(2) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this article with respect to commingled property of the type involved.

(c) A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:

(1) the following conditions are satisfied:

(A) a filed financing statement covers the original collateral;

(B) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) the proceeds are not acquired with cash proceeds;

(2) the proceeds are identifiable cash proceeds; or

(3) the security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within twenty days thereafter.

(e) If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subdivision (d)(1) becomes unperfected at the later of:

(1) when the effectiveness of the filed financing statement lapses under section 9-515 or is terminated under section 9-513; or

(2) the twenty-first day after the security interest attaches to the proceeds.

Sec. 71. Section 9-320, Uniform Commercial Code, Revised Statutes Cumulative Supplement, 2006, is amended to read:

9-320 Buyer of goods.

(a) Except as otherwise provided in subsection (e), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence. A buyer of farm products may be subject to a security interest under sections 52-1301 to 52-1322 and section 60 of this act, Reissue Revised Statutes of Nebraska.

(b) Except as otherwise provided in subsection (e), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

(1) without knowledge of the security interest;

(2) for value;

(3) primarily for the buyer's personal, family, or household purposes; and

(4) before the filing of a financing statement covering the goods.

(c) To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by section 9-316(a) and (b).

(d) A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) Subsections (a) and (b) do not affect a security interest in goods in the possession of the secured party under section 9-313.

(f) No buyer shall be allowed to take advantage of and apply the right of offset to defeat a priority established by any lien or security interest.

Sec. 72. Section 9-529, Uniform Commercial Code, Revised Statutes Cumulative Supplement, 2006, is amended to read:

9-529 Secretary of State; implementation of centralized computer system.

(a) The Secretary of State shall implement and maintain a centralized computer system for the accumulation and dissemination of information relative to financing statements for any type of collateral except collateral described in section 9-501(a)(1). Such a system shall include the entry of information into the computer system by the Secretary of State pursuant to section 9-530 and the dissemination of such information by a computer system or systems, telephone, mail, and such other means of communication as may be deemed appropriate. Such system shall be an interactive system.

(b) Computer access to information regarding obligations of debtors

shall be made available twenty-four hours a day on every day of the year. The Secretary of State shall provide information from the system by telephone during normal business hours.

(c) The centralized computer system implemented and maintained pursuant to this section shall include information relative to effective financing statements as provided in sections 52-1301 to 52-1322 and section 60 of this act, Reissue Revised Statutes of Nebraska, and statutory liens as provided in sections 52-1601 to 52-1605, Reissue Revised Statutes of Nebraska.

Sec. 73. Section 9-531, Uniform Commercial Code, Revised Statutes Cumulative Supplement, 2006, is amended to read:

9-531 Uniform Commercial Code Cash Fund; created; use; Secretary of State; duties; fees.

(a) There is created the Uniform Commercial Code Cash Fund. Except as otherwise specifically provided, all funds received pursuant to this part and sections 52-1312, 52-1313, 52-1316, and 52-1602, Reissue Revised Statutes of Nebraska, shall be placed in the fund and used by the Secretary of State to carry out this part, sections 52-1301 to 52-1322 and section 60 of this act, Reissue Revised Statutes of Nebraska, and sections 52-1601 to 52-1605, Reissue Revised Statutes of Nebraska, except that transfers from the Uniform Commercial Code Cash Fund to the General Fund and the Records Management Cash Fund may be made at the direction of the Legislature.

(b)(1) The Secretary of State shall furnish each county clerk with computer terminal hardware, including a printer, compatible with the centralized computer system implemented and maintained pursuant to section 9-529, for inquiries and searches of information in such centralized computer system. The terminals shall be readily and reasonably available and accessible to members of the public for such inquiries and searches.

(2) The fees charged by county clerks for inquiries and other services regarding information in the centralized computer system shall be the same as set forth for filing offices in this part.

Sec. 74. Sections 1, 2, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 75, and 78 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 75. Original sections 8-108, 8-915, 8-2107, 21-17,112, 45-191.01, 45-191.04, 45-334, 45-340, 45-344, 45-347, 45-351, 45-352, 45-353, 45-708, 45-710, 45-715, 45-716, 45-920, 45-927, 45-1014, 45-1017, 52-1301, 52-1302, 52-1307, 52-1308, 52-1313, 52-1314, 52-1315, 52-1317, 52-1318, and 52-1602, Reissue Revised Statutes of Nebraska, sections 8-113, 8-601, 8-602, 8-1901, 8-2312, 8-2504, 30-3805, 30-3846, 30-3848, 30-3849, 30-3851, 30-38,110, 45-346, 45-701, 45-702, 45-705, 45-706, 45-711, 45-714, 45-1013, 45-1033, and 52-1312, Revised Statutes Cumulative Supplement, 2006, and sections 9-315, 9-320, 9-529, and 9-531, Uniform Commercial Code, Revised Statutes Cumulative Supplement, 2006, are repealed.

Sec. 76. Original section 8-149, Reissue Revised Statutes of Nebraska, and sections 8-124, 8-148.04, 8-1,140, 8-355, 21-17,115, and 30-3867, Revised Statutes Cumulative Supplement, 2006, are repealed.

Sec. 77. The following section is outright repealed: Section 8-1,123, Reissue Revised Statutes of Nebraska.

Sec. 78. The following section is outright repealed: Section 21-1739, Reissue Revised Statutes of Nebraska.

Sec. 79. Since an emergency exists, this act takes effect when passed and approved according to law.