Banking, Commerce and Insurance Committee

One Hundred Third Legislature
First Session – 2013

SUMMARY OF 2013 LEGISLATION

Committee Members
Senator Mike Gloor, Chairperson
Senator Mark Christensen, Vice Chairperson
Senator Kathy Campbell
Senator Tom Carlson
Senator Sue Crawford
Senator Sara Howard
Senator Pete Pirsch
Senator Paul Schumacher

C*ommittee Staff:*
William Marienau, Committee Counsel
Janice Foster, Committee Clerk

MEMORANDUM

TO: Members of the Legislature and
Other Interested Persons

FROM: Senator Mike Gloor, Chairperson
Banking, Commerce and Insurance Committee

DATE: July 24, 2013

RE: Summary of 2013 Session Legislation

I am pleased to present, for your reference, the following summary of the provisions and disposition of all 2013 bills referenced to and considered by the Banking, Commerce and Insurance Committee.

I hope you find this summary helpful as you review our work as of the conclusion of the 2013 session. If you have questions or need additional information, please contact me or our committee staff: Bill Marienau, Legal Counsel or Janice Foster, Committee Clerk.

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Enacted
Effective September 6, 2013

This bill amends section 1-136.02 of the Public Accountancy Act to specify and update experience requirements for the holder of a certificate or reciprocal certificate to be issued a permit by the Nebraska State Board of Public Accountancy.

The bill provides that the board shall issue a permit to the holder of a certificate who has had (a) two years of accounting experience satisfactory to the board, in any state, in employment as an accountant in a business entity authorized in any state to engage in the practice of public accountancy under the supervision of an active certified public accountant who is the holder of a permit or the equivalent issued by another state or (b) three years of accounting experience satisfactory to the board, in any state, in employment as (i) an accountant in government or business under the supervision of an active certified public accountant who is the holder of a permit or the equivalent issued by another state or (ii) faculty at a college or university under the supervision of an active certified public accountant who is the holder of a permit or the equivalent issued by another state.

The bill also provides that the board shall issue a permit to the holder of a reciprocal certificate who meets all requirements for issuance of a permit and who meets the experience requirements described in (a) or (b) above.

The bill passed 45-0-4 on March 14, 2013 and was approved by the Governor on March 20, 2013.

BANKING AND FINANCE

LB100e (Watermeier) Eliminate a notice requirement with respect to automatic teller machines

Enacted
Effective February 16, 2013

This bill amends section 8-157.01 of the Nebraska Banking Act which governs automatic teller machines (ATMs) and point-of-sale terminals.

The bill provides that a consumer initiating a transaction at an ATM for which a surcharge will be imposed shall receive notice in accordance with applicable federal statutory provisions as they existed on January 1, 2013 rather than on January 1, 2004. The bill repeals provisions which provide that such notice shall "be posted in a prominent and conspicuous location on or at the automatic teller machine at which the electronic funds transfer is initiated by the consumer." Identical provisions had been part of the applicable federal statutory provisions, but were repealed by Congress in 2012. Notice provisions identical to unrepealed federal notice provisions remain in section 8-157.01.

The bill also repeals obsolete provisions in section 8-157.01.

The bill passed 47-0-2 with the emergency clause on February 11, 2013 and was approved by the Governor on February 15, 2013.

LB213e (Gloor) Change provisions relating to financial institutions

Enacted
Effective March 8, 2013

This bill, introduced at the request of the Department of Banking and Finance, amends various sections relating to financial institutions. The bill provides, section by section, as follows:

BANKS

Section 1 amends section 8-103 of the Nebraska Banking Act as follows:
Within subsection (2), by updating the requirement that whenever the Director of Banking and Finance has a financial interest in any financial institution doing business in Nebraska, reports of examination conducted by the Department of Banking and Finance or other financial institution regulators are to be transmitted to the Governor, to include the Consumer Financial Protection Bureau as one of the federal regulators whose reports would be transmitted; and within subsection (3), to provide that department employees, who are permitted to borrow at the Nebraska State Employees Credit Union (NSECU), will be able to continue borrowing at a successor institution if NSECU merged with another state-chartered credit union.

Section 2 amends section 8-108 of the Nebraska Banking Act to authorize the Director of Banking and Finance to share examination reports and other confidential information with the Consumer Financial Protection Bureau.

Section 3 amends section 8-135 of the Nebraska Banking Act to adopt a January 1, 2013 rather than a September 4, 2005 internal reference date to the Federal Electronic Fund Transfer Act.

Section 4 amends section 8-167.01 of the Nebraska Banking Act to adopt a January 1, 2013 internal reference date to 12 C.F.R. part 350, and to eliminate an obsolete internal reference to 12 C.F.R. section 208.17.

Section 5 amends section 8-1,140 of the Nebraska Banking Act, which is the "wild-card" statute for state-chartered banks. This section is amended to provide that a state-chartered bank shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2013 rather than January 1, 2012, by a federally chartered bank doing business in Nebraska. Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually.

TRUST COMPANIES

Section 6 amends section 8-204 of the Nebraska Trust Company Act to remove the requirement that members of the board of directors of a trust company shall own at least one share of stock of the trust company and to remove the requirement that board members shall be selected from the shareholders.

Section 7 amends section 8-213 of the Nebraska Trust Company Act to update an internal reference to the notice requirements for trust companies liquidated in bankruptcy court from 11 U.S.C. 94(b) to 11 U.S.C. 342.

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Section 8 amends section 8-355, which is the "wild-card" statute for state-chartered savings and loan associations. This section is amended to provide that a state-chartered savings and loan association shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2013 rather than January 1, 2012, by a federal savings and loan doing business in Nebraska. Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually.

BANKS

Section 9 amends section 8-702 to repeal an obsolete reference to the July 31, 2010 start date for registration of financial institution mortgage loan originators.

Section 10 amends section 8-705 to authorize the Department of Banking and Finance to accept examination reports of banks and savings institutions prepared by the Consumer Financial Protection Bureau in lieu of conducting its own examination, and to accept reports of condition obtained by the Consumer Financial Protection Bureau in lieu of reports of condition to be submitted by banking institutions.

Section 11 amends section 8-706 to authorize the Department of Banking and Finance to furnish examination reports it has prepared of banks and savings institutions to the Consumer Financial Protection Bureau, and to provide other confidential information the department has obtained to the Consumer Financial Protection Bureau.

BANK HOLDING COMPANIES

Section 12 amends section 8-915 of the Nebraska Bank Holding Company Act of 1995 to authorize the Department of Banking and Finance to share examination reports of bank holding companies with the Consumer Financial Protection Bureau.

CREDIT UNIONS

Section 13 amends section 21-17,115 of the Nebraska Credit Union Act, which is the "wild-card" statute for state-chartered credit unions. This section is amended to provide that a state-chartered credit union shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of Janaury 1, 2013 rather than Janaury 1, 2012, by a federal credit union doing business in Nebraska. Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually.

MISCELLANEOUS PROVISIONS

Section 14 provides for repealers of amendatory sections.

Section 15 provides for the emergency clause.

The bill passed 46-0-3 with the emergency clause on March 1, 2013 and was approved by the Governor on March 7, 2013.

LB616 (Schumacher) Adopt the Nebraska Money Transmitters Act and eliminate Nebraska Sale of Checks and Funds Transmission Act and provide penalties

Enacted
Operative January 1, 2014

This bill, introduced at the request of the Department of Banking and Finance, enact 48 new sections to be known as the Nebraska Money Transmitters Act (NMTA) and outright repeals sections 8-1001 to 8-1019, the Nebraska Sale of Checks and Funds Transmission Act (NSCA). The bill provides, section by section, as follows:

Section 1 provides for a named act: the Nebraska Money Transmitters Act (NMTA).

Section 2 provides that the definitions in sections 3 to 23 of the bill shall be used for purposes of the NMTA.

Section 3 defines "applicant" as a person filing an application for a money transmitter license.

Section 4 defines "authorized delegate" as an entity designated by a licensee or an exempt entity to engage in the business of money transmission on behalf of the licensee or exempt entity.

Section 5 defines "breach of security of the system" as an unauthorized acquisition of data that compromises the information entered into the Nationwide Mortgage Licensing System and Registry (NMLSR). The term is necessary to facilitate the adoption of section 30, 31, 32, and 34 of the bill, which allow the transition of the licensing process under this act to the NMLSR.

Section 6 defines "control" as the power, directly or indirectly, to direct the management or policies of a licensee, whether through ownership of securities, by contract, or otherwise, and provides that certain persons will be deemed to have control of a licensee.

Section 7 defines "controlling person" as any person in control of a licensee.

Section 8 defines "department" as the Department of Banking and Finance.

Section 9 defines "director" as the Director of Banking and Finance.

Section 10 defines "electronic instrument" as a card or other tangible object for the transmission or payment of money that contains a means for the storage of information, that is prefunded, and the value of which is decremented upon each use. The defined term does not include a card or other tangible object that is redeemable by the issuer or its affiliates in goods or services of the issuer or its affiliates.

Section 11 defines "executive officer" as a licensee's president, chairperson of the executive committee, senior officer responsible for business decisions, chief financial officer, and any other person who performs similar functions for a licensee.

Section 12 defines "key shareholder" as any person or group of persons acting in concert owning ten percent or more of any voting class of an applicant's stock.

Section 13 defines "licensee" as a person licensed pursuant to the NMTA.

Section 14 defines "material litigation" as litigation that is significant to an applicant's or licensee's financial health and would be required to be referenced in annual audited financial statements, reports to shareholders, or similar documents, in accordance with generally accepted accounting principles.

Section 15 defines "monetary value" as a medium of exchange, whether or not redeemable in money.

Section 16 defines "money transmission" as a business for the sale or issuance of payment instruments or stored value; as the receiving of money or monetary value for transmission to another location by any means; and as certain bill payment services, except for those in which an agent of a payee receives money or value on behalf of the payee.

Section 17 defines "Nationwide Mortgage Licensing System and Registry" (NMLSR) as the licensing system developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The term is necessary to facilitate the adoption of sections 30, 31, 32, and 34 of the bill, which allow the transition of the licensing process under this act to the NMLSR.

Section 18 defines "outstanding payment instrument" as any payment instrument issued and sold by a licensee or issued by a licensee and sold by its authorized delegate, which is reported as having been sold, and which has not yet been paid by or for the licensee.

Section 19 defines "payment instrument" as any electronic or written check, draft, money order, travelers check, or other electronic or written instrument or order for the transmission or payment of money, which has been sold or issued. The defined term does not include any credit card, voucher, letter of credit, or instrument that is redeemable by the issuer or its affiliates in goods or services of the issuer or its affiliates.

Section 20 defines "permissible investments" as cash, certificates of deposit, bankers' acceptances, rated investments, government securities, and the like, with authority for the Director of Banking and Finance to authorize other securities or investments as permissible.

Section 21 defines "person" as any individual, partnership, limited liability company, association, joint-stock association, trust, or corporation. The defined term does not include the United States or the State of Nebraska.

Section 22 defines "remit," for purposes of a licensee, as direct payment of funds to the licensee or deposit of funds to a designated financial institution.

Section 23 defines "stored value" as monetary value that is evidenced by an electronic record.

Section 24 provides that the licensing requirements of the NMTA do not apply to federal and state governments, political subdivisions, governmental agencies, the US Post Office, financial institutions and their subsidiaries, bank holding companies which have a bank subsidiary in Nebraska, authorized delegates of financial institutions, financial institution subsidiaries and holding companies that are also financial institutions, financial institution subsidiaries and holding companies, contractors providing governmental electronic benefits transfers, and operators of specified limited payment processing systems. Other authorized delegates are excluded from the licensing requirements, but have to comply with the provisions of the NMTA which apply to money transmission transactions.

Section 25 sets forth the licensing requirement for money transmitters that provide services to Nebraska residents, whether or not the money transmitter has a physical location in the state. This section provides that these licenses are not transferable or assignable. This section also provides that money transmitters may conduct business through authorized delegates.

Section 26 provides the requirements that must be met in order for the Department of Banking and Finance to issue a money transmitter license. The standards include a net worth of fifty thousand dollars, proof that the business will be conducted honestly and fairly based on financial condition, financial and business experience, and the character and general fitness of the applicant.

Section 27 requires applicants and licensees to obtain and maintain a surety bond in an amount based upon the number of locations at which it offers its services in Nebraska, up to a maximum amount of two hundred fifty thousand dollars. This section allows for a pledge of securities to the Department of Banking and Finance in lieu of the surety bond requirement, and provides authority to the department to require an increase to the bond amount for good cause.

Section 28 requires licensees to hold permissible investments having an aggregate market value at least equal to the aggregate face amount of all outstanding payment instruments and stored value issued or sold by the licensee in the United States. This section also provides the Director of Banking and Finance with limited authority to waive the requirement, and deems these investments to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in the event the licensee becomes bankrupt.

Section 29 provides that applications for a license are to be on forms created by the Director of Banking and Finance. Information required includes the applicant's business activities, list of authorized delegates, corporate/organizational documents, employment history for executive officers and key shareholders, and financial information.

Section 30 provides that, effective July 1, 2014, licensing of money transmitters will be through the

NMLSR. This section authorizes the Department of Banking and Finance to establish requirements for licensing through the system by rule, regulation, or order. These requirements may include criminal history background checks through fingerprint or other data basis, except that executive officers or directors of publicly traded companies or their wholly-owned subsidiaries are excluded from fingerprinting; credit history; and information regarding authorized delegates. This section provides for the payment of licensing fees through the NMLSR and allows the system to collect a processing fee directly from an application. This section requires the Director of Banking and Finance to regularly report enforcement actions to the NMLSR and to ensure that the NMLSR adopts a privacy, data security, and breach of security notice policy.

Section 31 provides guidelines for confidentiality of information and supervisory information-sharing through the NMLSR.

Section 32 provides for a non-refundable application fee of one thousand dollars, and cross-references the NMLSR processing fee authorized in section 30 of the bill.

Section 33 provides the Department of Banking and Finance with the responsibility of investigating license applications, allows for onsite investigations of an applicant, and reiterates the conditions for licensure found in sections 26 and 27 of the bill. This section provides for a post-denial hearing in accordance with the Administrative Procedure Act.

Section 34 establishes the renewal requirements for a license, provides for transitional procedures for these licensees onto the NMLSR, including a change in the annual license renewal date from July 1 to December 31, and allows a renewal processing fee payable to the system. This section requires completion of a license renewal application, a fee of two hundred fifty dollars, bond information, and a list of locations where the business is conducted. This section also requires the filing of audited financial statements, a list of authorized delegates, and information on the licensee's investments, payment instruments sold in the state, and business changes.

Section 35 provides that a licensee shall (1) file notice with the Department of Banking and Finance within thirty calendar days of any material changes in information provided in a licensee's application, and (2) file a report within five business days of certain specified events.

Section 36 provides for change of control procedures for licensees.

Section 37 provides authority for the Department of Banking and Finance to conduct annual onsite examinations of licensees upon reasonable written notice, and to conduct examinations of licensees and authorized delegates without prior notice if the Director of Banking and Finance has a reasonable basis to believe that the licensee is in noncompliance with the NMTA. This section authorizes the department to conduct an examination with another state, and to accept another state’s examination or a report from an independent accountant in lieu of an onsite examination. This section requires licensees to pay examination expenses.

Section 38 provides record-keeping standards for licensees, and includes the requirement to maintain records for a period of five years, the authority for photographic or electronic record-keeping, and for storage of records outside of Nebraska.

Section 39 sets forth conditions that must be included in the written contract between a licensee and each of its authorized delegates, and provides that neither a licensee nor an authorized delegate may authorize subdelegates without the written consent of the Director of Banking and Finance.

Section 40 sets forth conduct standards for authorized delegates, including adherence to a licensee's written procedures and the handling and remission of money owed to the licensee. This section provides authority to the Department of Banking and Finance to cancel an authorized delegate's contract and take other disciplinary action against those entities.

Section 41 provides authority to the Department of Banking and Finance to suspend or revoke a license in accordance with the Administrative Procedure Act. This section provides additional events which the Director of Banking and Finance may consider as cause to institute these proceedings against a licensee, including unsafe and unsound practices, failure to pay its obligations, and refusal to permit an examination. This section also contains provisions regarding surrender, expiration, and cancellation of a license.

Section 42 provides for the suspension or revocation of authorized delegates by the Department of Banking and Finance in accordance with the Administrative Procedure Act, if the entity violates the NMTA, does not cooperate with an examination or investigation, engages in fraud, other bad acts or unsafe or unsound practices, or is convicted of money laundering.

Section 43 provides authority to the Department of Banking and Finance to issue cease and desist orders upon a determination that a violation of the NMTA has occurred. This section provides authority to order a licensee to cease and desist its business with an authorized delegate who is subject to a departmental order issued under section 42 of the bill.

Section 44 provides authority to the Department of Banking and Finance to impose administrative fines up to $5,000.00 per violation for violations of the NMTA or departmental rules or orders.

Section 45 provides for criminal penalties for three categories of offenses. Subsection (1) provides that violations of the act, rules, regulations, or orders constitute Class III misdemeanors. Subsection (2) provides that the intentional making of false statements, certifications, or entries in records required to be kept under the NMTA constitutes a Class I misdemeanor. Subsection (3) provides that the knowing engagement in unlicensed money transmission business constitutes a Class I misdemeanor.

Section 46 provides authority to the Department of Banking and Finance to adopt and issue rules and regulations, orders, findings and demands under the NMTA.

Section 47 provides that the fees, charges, and costs collected by the Department of Banking and Finance pursuant to the NMTA will be credited to the Financial Institution Assessment Cash Fund, while fines will be distributed per the Nebraska Constitution, Article VII, section 5.

Section 48 provides for savings and transitional provisions for entities licensed under the NSCA.

Sections 49 and 50 amend sections 8-601 and 8-602 to update internal references.

Section 51 provides for a delayed operative date of January 1, 2014.

Sections 52 provides for repealers of amendatory sections.

Section 53 provides for outright repeal of sections 8-1001 to 8-1019, the Nebraska Sale of Checks and Funds Transmission Act.

The bill passed 45-0-4 on March 14, 2013 and was approved by the Governor on March 20, 2013.

SECURITIES

LB205 (Schumacher) Change provisions relating to application of the Securities Act of Nebrska

Enacted
Effective September 6, 2013
Banking, Commerce and Insurance Committee Priority Bill

This bill amends sections 8-1108.01, 8-1111, and 8-1118 of the Securities Act of Nebraska to provide for a transactional exemption and limitation of liability in the case of specific smaller offerings in Nebraska.

Section 1 amends section 8-1108.01 which allows the Director of Banking and Finance to impose a fine of up to $25,000 for securities law violation. The amendments to this section provide that, in connection with a transaction exempted from registration by the amendments to section 8-1111 in section 2 of the bill, no fine shall be imposed for any statement of a material fact made or for an omission of a material fact required to be stated or necessary to make the statement made not misleading unless such statement or omission was made with the intent to defraud or mislead.

Section 2 amends section 8-1111 to provide an exemption from registration for a transaction in this state by a Nebraska issuer selling solely to Nebraska residents when:

(a) the proceeds in any two-year period do not exceed $250,000 and at least 80 percent of the proceeds are used in Nebraska;

(b) no commission is paid except to a registered agent of a registered broker-dealer;

(c) the issuer or a connected individual has not engaged in state or federal securities law violations;

(d) the issuer files a notice with required information with the Director of Banking and Finance;

(e) the offeree receives a disclosure statement with required information;

(f) the purchaser signs a subscription agreement with required information; and

(g) the issuer files a statement with required information with the director.

Section 3 amends section 8-1118 which provides that a person who sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made in light of the circumstances under which they are made not misleading may be liable to a buyer in a civil action to recover the consideration, interest, and attorys fees. The amendments to this section provide that, in connection with a transaction exempted from registration by the amendments to section 8-1111 in section 2 of the bill, no person shall be liable for any statement of a material fact made or for an omission of a material fact required to be stated or necessary to make the statement made not misleading unless such statement or omission was made with the intent to defraud or mislead, with the burden of proof on the claimant.

The bill passed 41-0-8 on May 2, 2013 and was approved by the Governor on May 8, 2013.

LB214 (Gloor) Change provisions relating to securities and seller-assisted marketing plans

Enacted
Effective September 6, 2013

This bill, introduced at the request of the Department of Banking and Finance, amends various sections relating to the Securities Act of Nebraska and provides for coordinating amendments in the Seller-Assisted Marketing Plan Act, and in funds transfer statutes. The bill provides, section by section, as follows:

SECURITIES

Section 1 amends section 8-1101(14) of the Securities Act of Nebraska to adopt a January 1, 2013 rather than a January 1, 2011 internal reference date to the following federal laws: the Securities Act of 1933; the Securities Exchange Act of 1934; the Investment Advisers Act of 1940; the Investment Company Act of 1940; and the Commodity Exchange Act.

Section 2 amends section 8-1104 of the Securities Act of Nebraska to eliminate a reference to the registration of securities by notification under section 8-1105, because section 8-1105 is outright repealed by the bill.

Section 3 amends section 8-1108 of the Securities Act of Nebraska to eliminate references to the registration of securities by notification under section 8-1105, because section 8-1105 is outright repealed by the bill.

Section 4 amends section 8-1108.02 of the Securities Act of Nebraska as follows: within subsection (2), to update an internal reference relating to notices filed by issuers of federal covered securities from section 18(b)(4)(D) to section 18(b)(4)(E) of the Securities Act of 1933; within subsection (3), to provide an updated exception relating to documents required to be filed by issuers of certain federal covered securities; and within subsection (7), to update an internal reference relating to the offer and sale of federal covered securities from section 18(b)(4)(D) to section 18(b)(4)(E) of the Securities Act of 1933.

Section 5 amends section 8-1109 of the Securities Act of Nebraska to eliminate references to the registration of securities by notification under section 8-1105, because section 8-1105 is outright repealed by the bill.

Section 6 amends section 8-1111(8) of the Securities Act of Nebraska which provides an exemption from the registration provisions of the Securities Act of Nebraska for sales to institutional and accredited investors, to update the definition of "accredited investor" to reflect the change made in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) which excludes the value of an investor's principal residence from the calculation of net worth.

Section 7 amends section 8-1114 of the Securities Act of Nebraska to eliminate a reference to a registration statement filed under section 8-1105, because section 8-1105 is outright repealed by the bill.

Section 8 amends section 8-1120 of the Securities Act of Nebraska as follows: within subsection (2), to

authorize the Department of Banking and Finance to enter into agreements or relationships with other government officials, including foreign state securities administrators, the federal Securities and Exchange Commission, and securities self-regulatory organizations, to share resources, standardized or uniform methods and procedures, and confidential documents, records, and information, and to authorize the department to accept and rely on examination and investigation reports made by other government officials and securities self-regulatory organizations; and within subsection (6), to eliminate obsolete provisions relating to transfer of funds in 2000 and 2001 from the Securities Act Cash Fund to the Affordable Housing Trust Fund.

AFFORDABLE HOUSING

Section 9 amends section 58-703 to eliminate obsolete provisions relating to transfer of funds in 2000 and 2001 from the Securities Act Cash Fund to the Affordable Housing Trust Fund.

Section 10 amends section 58-711 to eliminate obsolete provisions relating to transfer of funds in 2000 and 2001 from the Securities Act Cash Fund to the Affordable Housing Trust Fund.

SELLER-ASSISTED MARKETING PLANS

Section 11 amends section 59-1722 of the Seller-Assisted Marketing Plan Act to update references to the title of a federal rule relating to the offer and sale of franchise opportunities in Nebraska. The title has changed from "Disclosure Requirements and Prohibition Concerning Franchises and Business Opportunity Ventures" to "Disclosure Requirements and Prohibitions Concerning Franchising." Section 11 also corrects the reference to the "North American Securities Administrators Association," which had been incorrectly referenced in this section as the "North American Securities Administration Association."

MISCELLANEOUS PROVISIONS

Section 12 provides for repealers of amendatory sections.

Section 13 outright repeals section 8-1105 of the Securities Act of Nebraska relating to the registration of securities by notification.

The bill passed 47-0-2 on March 1, 2013 and was approved by the Governor on March 7, 2013.

CORPORATIONS AND OTHER COMPANIES

LB168 (Larson) Authorize series limited liability companies

Pending in Committee

This bill would add six new sections to the Nebraska Uniform Limited Liability Company (LLC) Act to authorize formation of Series LLCs.

A Series LLC would be a single LLC that has multiple "series" of membership interests, each of which may have separate members, managers, assets and liabilities, and business interests, and all of which would be separate for liability purposes.

Section 1 would amend section 21-101 of the Nebraska Uniform Limited Liability Company Act to provide for assignment of the new sections of the bill within the act.

Section 2 would provide for series of transferable interests.

Section 3 would provide for management of a series.

Section 4 would provide for series distributions.

Section 5 would provide for dissociation from a series.

Section 6 would provide for termination of a series.

Section 7 would provide for foreign series.

LB283 (Conrad) Eliminate the Limited Liability Company Act

Enacted
Effective September 6, 2013

This bill repeals from the statutes the provisions of Limited Liability Company Act, sections 21-2601 to 21-2654, which terminated on January 1, 2013.

Limited Liability companies are now governed exclusively by the Nebraska Uniform Limited Liability Company Act, sections 21-101 to 21-197, which was enacted in 2010. The current act became operative on January 1, 2011 and applies to all LLCs as of January 1, 2013.

The bill amends various sections in Chapters 9, 67, 70, 77, and 84 of the statutes to repeal references to the terminated act.

The bill passed 44-1-4 on March 14, 2013 and was approved by the Governor on March 20, 2013.

TRUSTS

LB38 (Wightman) Change provisions relating to testamentary powers

Enacted
Operative January 1, 2014

This bill amends the Nebraska Uniform Trust Code.

The bill amends section 30-3823 to provide that "the holder of a" power of appointment "or other power to terminate an interest" may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

The bill amends section 30-3855 to provide that "while the trust is irrevocable and during" the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust "and the duties of the trustee are owed exclusively to the holder of the power." The bill further amends this section to provide that "while the trust is irrevocable and during the period the interest of any beneficiary not having a present interest may be terminated by the exercise of a power of appointment or other power, the duties of the trustee are owed exclusively to the holder of the power."

The bill provides that it becomes operative on January 1, 2014.

The bill passed 45-0-4 on March 14, 2013 and was approved by the Governor on March 20, 2013.

INSURANCE

LB59 (Larson) Change a presumption relating to rebates to insurance agents

Enacted
Effective September 6, 2013

This bill amends section 44-361.01 of the insurance statutes which provides that an agent, whose commissions on business written upon the property, life, health, or liability of himself, his relatives, and his employer or employees exceed ten percent of the agent's total commissions in a year, shall be presumed to have obtained or renewed a license primarily to circumvent the enforcement of the anti-rebating provisions of section 44-361. Section 44-361.01 further provides that an agent, whose commissions on such business exceed thirty percent of the agent's total commissions in a year, shall be conclusively presumed to have obtained or renewed a license primarily to circumvent the enforcement of the anti-rebating provisions of section 44-361.

The bill amends section 44-361.01 by, only in the case of a licensed agent soliciting crop insurance, increasing the percentages of the agent's total commission in a year that would trigger the presumptions described above, from ten percent to thirty percent and from thirty percent to fifty percent, respectively.

The bill also inserts feminine pronouns where needed. Section 44-361.01 was first enacted in 1955 and had remained unchanged until amended by this bill.

The bill passed 41-0-8 on May 2, 2013 and was approved by the Governor on May 7, 2013.

LB71 (Karpisek) Require insurance coverage for cochlear implants

Pending in Committee

This bill would enact a new section to provide that individual and group sickness and accident insurance policies, certificates, and subscriber contracts; hospital, medical, or surgical expense-incurred policies; and self-funded employee benefit plans to the extent not preempted by federal law shall provide coverage for single or bilateral cochlear implants for persons diagnosed with severe to profound hearing impairment.

LB80 (Schumacher) Change motor vehicle liability insurance and financial responsibility requirements

Pending in Committee

This bill would increase the current required minimum limits of motor vehicle insurance coverage (1) for bodily injury to or death of other persons and (2) for damage to property of others. The bill would provide, section by section, as follows:

UNINSURED AND UNDERINSURED COVERAGE

Section 1 would amend section 44-6408 of the Uninsured and Underinsured Motorist Insurance Coverage Act to increase the minimum limits (1) from $25,000 to $50,000 for injury to or death of one person in one accident and (2) from $50,000 to $100,000 for injury to or death of two or more persons in one accident. (There are no statutory requirements for uninsured and underinsured coverage of injury to or destruction of property of other persons.)

LIABILITY COVERAGE

Sections 2 to 6 would amend the following sections to increase the minimum liability limits (1) from $25,000 to $50,000 for injury to or death of one person in one accident, (2) from $50,000 to $100,000 for injury to or death of two or more persons in one accident, and (3) from $25,000 to $50,000 for injury to or destruction of property of other persons in one accident:

Section 60-310 of the Motor Vehicle Registration Act (definition of "automobile liability policy" for purposes of motor vehicle registration requirements) (section 2 of the bill);

Section 60-346 of the Motor Vehicle Registration Act (definition of "proof of financial responsibility" for purposes of motor vehicle registration requirements) (section 3 of the bill);

Section 60-501 of the Motor Vehicle Safety Responsibility Act (definition of "proof of financial responsibility") (section 4 of the bill);

Section 60-509 of the Motor Vehicle Safety Responsibility Act (requirements for an automobile liability policy or bond) (section 5 of the bill); and

Section 60-534 of the Motor Vehicle Safety Responsibility Act (requirements for a certified SR22 motor vehicle liability policy) (section 6 of the bill).

Section 7 would amend section 60-549 of the Motor Vehicle Safety Responsibility Act to increase the minimum amount of cash or securities deposited with the State Treasurer necessary to evidence proof of financial responsibility from $75,000 to $150,000 - historically this amount has been the sum of the minimum limit for bodily injury to or death of two or more persons plus the minimum limit for injury to or destruction of property to other persons. This section would express this amount by means of an internal reference to subdivisions (13)(b) and (c) of section 60-501.

MISCELLANEOUS PROVISIONS

Section 8 would provide for an operative date of January 1, 2014.

Section 9 would provide for the repealers of the amendatory sections.

Minimum limits requirements were first enacted in 1949 and have been increased three times thereafter, as follows:

1949	LB493	$5,000/$10,000/$1,000
1959	LB628	$10,000/$20,000/$5,000
1973	LB365	$15,000/$30,000/$10,000
1983	LB253	$25,000/$50,000/$25,000 (current)

LB92 (Karpisek) Prohibit use of credit information for insurance and repeal a model act

Pending in Committee

This bill would enact a new section to provide that (1) an insurer shall not use credit information in connection with the issuance, underwriting, renewal, cancellation, or denial of or any other action related to insurance and (2) an insurer shall not use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the consumer as a factor.

The bill would provide definitions for "consumer," "credit information," "credit report," "insurance score," and "insurer."

The bill would provide that it becomes operative on January 1, 2014.

The bill would outright repeal sections 44-7701 to 44-7712, the Model Act Regarding Use of Credit Information in Personal Insurance.

LB133 (Hadley) Provide priority of insurance coverage relating to motor vehicle dealer loaner vehicles

Enacted
Effective September 6, 2013

This bill adds a new section to the Motor Vehicle Industry Regulation Act to provide that when a customer is operating a loaner vehicle provided by a dealer while the customer's vehicle is being serviced and the policies covering the customer's vehicle and the dealer's loaner vehicle have mutually repugnant clauses regarding primary coverage, the customer's policy shall provide primary coverage and the dealer's policy shall provide secondary coverage.

The bill passed 43-0-6 on March 28, 2013 and was approved by the Governor on April 3, 2013.

LB147 (Gloor) Adopt the Health Carrier External Review Act

Enacted
Effective September 6, 2013

This bill, introduced at the request of the Director of Insurance, enacts the Health Carrier External Review Act and amends various sections of the Health Carrier Grievance Procedure Act to harmonize provisions. The bill provides, section by section, as follows:

HEALTH CARRIER EXTERNAL REVIEW ACT

Section 1 (Named Act) enacts a new section to provide for a named act: the Health Carrier External Review Act.

Section 2 (Purpose and Intent) enacts a new section to declare that the purpose of the act is to provide standards for external review procedures that assure covered persons an independent review of an adverse determination.

Section 3 (Definitions) enacts a new section to define terms for the purposes of the act. This section defines "adverse determination" as a determination by a health carrier that a health care service does not meet the health carrier's requirements and so payment is denied, reduced, or terminated. This section defines "ambulatory review," "authorized representative," "benefits," "best evidence," "case-control study," "case management," "case-series," "certification," "clinical review criteria," "cohort study," "concurrent review," "covered person," "director," "discharge planning," "disclose," "emergency medical condition," "emergency services," "evidence-based standards," "expert opinion," and "facility." This section defines "final adverse determination" as an adverse determination upheld by the health carrier at completion of the internal grievance procedures. This section defines "health benefit plan," "health care professional," "health care provider," "health care services," "health carrier," "health information," "independent review organization," "medical or scientific evidence," "prospective review," "protected health information," "randomized clinical trial," "retrospective review," and "second opinion." This section defines "utilization review" as a set of formal techniques designed to monitor or evaluate health care services including ambulatory review, prospective review, second opinion, certification, concurrent review, case management, discharge planning, or retrospective review. This section defines "utilization review organization" as an entity conducting a utilization review other than a health carrier doing so on its own health benefit plans.

Section 4 (Applicability and Scope) enacts a new section to specify that the act applies to all health carriers, but the act does not apply to policies providing coverage for specified diseases, credit, dental, disability income, hospital indemnity, long term care insurance, vision care, or any other limited supplemental benefit, or to a Medicare supplement policy, coverage under Medicare, Medicaid, or the Federal Employees Health Benefits Program, coverage under Chapter 55 of Title 10 of the U.S. Code (coverage for members of the military), coverage supplemental to liability insurance, workers' compensation, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault.

Section 5 (Notice of Right to External Review) enacts a new section to require health carriers to notify covered persons of their right to request an external review when health carriers notify the covered person that the health carrier has completed an adverse determination or a final adverse determination and thereby denied a request for payment for a health care service. This section specifies the contents of the notice. This section also requires inclusion of information on a covered person's right to external review if the denial is based on a determination that the requested or recommended health care service or treatment is experimental or investigational. The notice must also include information on the right of the covered person to request an expedited external review if the covered person's treating physician certifies that the requested or recommended health care service or treatment would be significantly less effective if not promptly initiated.

Section 6 (Request for External Review) enacts a new section to require that non-expedited requests for external review be submitted to the Director of Insurance, who may adopt a form for the request by rule and regulation. This section specifies that either a covered person or the covered person's authorized representative may make the request for external review.

Section 7 (Exhustion of Internal Grievance Process) enacts a new section to require that, except for an expedited review, a covered person cannot request an external review until after the covered person has exhausted the health carrier's internal grievance process set forth in the Health Carrier Grievance Procedure Act, sections 44-7301 to 44-7315, unless the covered person has a medical condition for which completing the expedited internal grievance process would negatively impact the covered person's health and, at the same time, the covered person files the request for an expedited external review, the covered person files for an expedited internal grievance review; or the health carrier agrees to waive the exhaustion requirement. A covered person may be deemed to have exhausted the internal grievance process if the covered person has filed a grievance with the carrier under the internal grievance process, but has not received a decision on the grievance within thirty days after filing the grievance.

Section 8 (Standard External Review) enacts a new section to set forth the procedure and requirements for conducting non-expedited external reviews under the act. This section allows covered persons to file a request for external review within four months of an adverse determination or final adverse determination and requires the Director of Insurance to send a copy to the health carrier within one business day. Within five business days, the health carrier is required to complete a preliminary review determining coverage of the individual, coverage of the health care service, compliance with exhaustion requirements, and provision of all information, and provide notice to the covered person and the director within one business day. This determination is subject to appeal by the covered person to the director. This section requires the director to assign an independent review organization within one day and specify that the independent review organization is not bound by any decisions or conclusions reached during the health carrier's utilization review or internal grievance process. Covered persons are allowed to provide additional documentation to the independent review organization. Within five business days the health carrier is required to submit documentation to the independent review organization. This section allows the health carrier to reconsider its decision and terminate the external review. This section requires that the independent review organization consider the covered person's medical records, attending health care professional's recommendation, consulting reports, documents submitted, terms of coverage under the health benefit plan, appropriate practice guidelines, clinical review criteria, and the opinion of the independent review organization’s clinical reviewer. This section requires the independent review organization to make a determination within 45 days, and provide notice to the covered person, the health carrier, and the director. This section requires the notice to include a general description of the reason for review, dates of activities, reason and rationale for the decision and references to the evidence considered in reaching its decision. This section requires the director to assign independent review organizations on a random basis.

Section 9 (Expedited External Review) enacts a new section to set forth the procedures for conducting an expedited external external review under the act. An expedited external review can be made if the adverse determination involves a medical condition for which the time frame for the completion of an expedited internal review would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function. The Director of Insurance is required to send the notice to the health carrier immediately, and require an immediate determination of reviewability and notification of the determination by the health carrier; this determination is subject to appeal by the covered person and to being overturned by the director. Upon receipt of the notice, the director is required to immediately assign an independent review organization and notify the health carrier. This section specifies that the independent review organization is not bound by any decisions or conclusions reached during the health carrier's utilization review or internal grievance process. This

section requires that the independent review organization consider the covered person's medical records, attending health care professional's recommendation, consulting reports, documents submitted, terms of coverage under the health benefit plan, appropriate practice guidelines, clinical review criteria, and the opinion of the independent review organization's clinical reviewer. This section requires the independent review organization to make a determination as expeditiously as the covered person's medical condition requires, but no longer than 72 hours, and notify the covered person, the health carrier, and the director. This section requires the independent review organization within 48 hours to provide written confirmation of the decision, and include a general description of the reason for review, dates of activities, reason and rationale for the decision and references to the evidence considered in reaching its decision. This section specifies that an expedited external review may not be provided for a retrospective adverse or final adverse determination. This section requires the director to assign of independent review organizations on a random basis.

Section 10 (External Review of Experimental or Investigational Treatment Adverse Determinations) enacts a new section to set forth the procedures for conducting external reviews of an adverse determination denying coverage based on the grounds that the health care service is experimental or investigational. This section sets standards for such reviews on both an expedited and a non-expedited basis. This section allows covered persons to file a request for external review with the Director of Insurance within four months after receipt of a notice of an adverse determination or final adverse determination. Alternately, a covered person can request an expedited external review of a determination if the covered person's treating physician certifies that the health care service would be significantly less effective if not promptly initiated. Under an expedited review the director is required to send the notice to the health carrier immediately, and require an immediate determination of reviewability and notification of the determination by the health carrier; this determination would be subject to appeal by the covered person and to being overturned by the director. For an expedited review the director is required to immediately assign an independent review organization and notify the health carrier, which is required to send all necessary documents. For non-expedited reviews, this section requires the director to send a copy of the request to the health carrier within one business day. Within five business days, the health carrier is required to complete a preliminary review determining coverage of the individual, coverage of the health care service, non-exclusion of the benefit under the health benefit plan, certification by the treating physician that standard treatments are not effective or appropriate and there is no standard treatment more beneficial, and the recommendation of the treating physician compliance with exhaustion requirements, and provision of all necessary information. Within one business day the health carrier must inform the covered person and the director whether the request is complete and eligible for external review; this determination is subject to appeal by the covered person and to being overturned by the director. Once reviewability has been determined for a non-expedited review, this section requires the director to assign an independent review organization from the list of approved organizations within one day of this determination and notify covered persons that they may provide additional documentation to the independent review organization. Within one business day the assigned independent review organization is required to select clinical reviewers. Health carriers are required to submit the data on which their decision was based. If the information is not provided, the independent review organization may reverse the health carrier's decision. Clinical reviewers are required to review information submitted by the covered person and submit it to the health carrier. This section allows the health carrier to reconsider its decision and terminate the external review. Clinical reviewers are required to provide an opinion within 20 days of selection, or in the case of an expedited review as expeditiously as possible but within 5 days, and include the elements required in the section. This section requires the clinical reviewers to consider factors set forth in the

act for reaching a decision. This section requires the independent review organization to make a decision within 20 days, or in the case of an expedited review, 48 hours of receipt of the opinion of the clinical reviewer or reviewers. If a majority of clinical reviewers cannot agree on a decision, an additional clinical reviewer is selected. Once a decision is reached, the covered person is notified of the decision. This section requires that the assignment of independent review organizations by the director be made on a random basis.

Section 11 (Binding Nature of External Review Decision) enacts a new section to specify that an external review decision is binding on the health carrier and a covered person unless the health carrier has other remedies available under state law, and prohibits a covered person from refiling a request for external review involving the same adverse determination.

Section 12 (Approval of Independent Review Organizations) enacts a new section to require the Director of Insurance to approve independent review organizations under the act, under standards set forth in the section. Independent review organizations are required to be nationally accredited, unless there is no accrediting organization, and to submit an application form with a fee. Approval is effective for two years, unless it no longer meets the minimum requirements.

Section 13 (Minimum Qualifications for Independent Review Organizations) enacts a new section to adopt standards for independent review organizations and clinical reviewers. Independent review organizations are required to maintain policies and procedures to govern external review processes that include a quality assurance mechanism, a toll free telephone service, and data maintenance agreements, and to maintain written procedures to ensure that it is unbiased. Clinical reviewers are required to be physicians or other appropriate health care providers meeting qualifications set for in the act. This section prohibits ownership of an independent review organization by a health carrier, and prohibits an independent review organization from having a material conflict of interest with a health carrier subject to review, provider, hospital, or developer or manufacturer of a therapy at issue in the external review. This section presumes compliance by an independent review organization accredited by a nationally recognized private accrediting entity.

Section 14 (Hold Harmless for Independent Review Organizations) enacts a new section to shield independent review organizations, or their clinical reviewers, employees, agents, or contractors from liability in damages for opinions rendered or acts or omissions under the act unless the opinion or act was in bad faith or involved gross negligence.

Section 15 (External Review Reporting Requirements) enacts a new section to adopt standards for the collection and maintenance of data by independent review organizations on a state and health carrier basis. This section authorizes the Director of Insurance to require aggregate reports on the external reviews performed. Under the section, written records are required to be retained for at least three years.

Section 16 (Funding of External Review) enacts a new section to require that health carriers against which a request for external review is filed pay the cost of the independent review organization for conducting the external review.

Section 17 (Disclosure Requirements) enacts a new section to require health carriers to describe external review procedures in the evidence of coverage provided to covered persons in a format

prescribed by the Director of Insurance. The description must include a statement of the right to request an external review of an adverse determination or final adverse determination, and explain the external review is available to review specified issues. The statement must also inform the covered person that the covered person would be required to release required medical records.

Section 18 (Applicability) enacts a new section to specify that the Health Carrier External Review Act applies to any claim submitted on and after January 1, 2014.

MISCELLANOUS PROVISIONS

Sections 19 to 22 amend sections 44-7306, 44-7308, 44-7310, and 44-7311 of the Health Carrier Grievance Procedure Act to harmonize provisions.

Senation 23 provides for the repealer of amendatory sections.

Section 24 outright repeals section 44-7309, which provides for second-level grievance review under the Health Carrier Grievance Procedure Act. Under the federal Patient Protection and Affordable Care Act, states are only allowed one level of internal grievance review, and so this second level is preempted under federal law.

The bill passed 46-0-3 on March 1, 2013 and was approved by the Governor March 7, 2013.

LB218 (Avery) Require insurance coverage for certain food formulas as prescribed

Pending in Committee

This bill would enact a new section to provide that individual and group sickness and accident insurance policies, certificates, and subscriber contracts; hospital, medical, or surgical expense-incurred policies; and self-funded employee benefit plans to the extent not preempted by federal law shall provide coverage for the provision of amino acid-based formulas for the treatment of an eosinophilic disorder or short bowel syndrome.

The bill would require such coverage for a patient born on or after January 1, 2012, who is less than five years of age and whose prescribing physician has issued an order stating that the formula is medically necessary and is the sole or primary source of nutrition.

LB228 (Nordquist) Provide requirements relating to copayments, coinsurance, and deductibles relating to certain services

Pending in Committee

This bill would enact a new section to provide that a health insurer shall not charge a copayment, coinsurance, or deductible for services by a physical therapist, occupational therapist, audiologist, or speech-language pathologist that is greater than the copayment, coinsurance, or deductible charged for the services of a primary care physician or an osteopath.

The bill would provide that it shall apply to health benefit plans delivered or issued for delivery or renewed on or after January 1, 2014.

LB239 (Wightman) Adopt the Nebraska All-Payer Patient-Centered Medical Home Act

Pending in Committee

This bill would enact the Nebraska All-Payer Patient-Centered Medical Home Act to require the Department of Insurance, with the input of the Medical Home Advisory Committee, to design and require patient-centered medical home care coverage to be provided by the three largest health insurers in Nebraska to their insureds or beneficiaries over a phased-in implementation schedule from 2015 to 2018.

The bill would provide, section by section, as follows:

Section 1 would provide for a named act: the Nebraska All-Payer Patient-Centered Medical Home Act.

Section 2 would provide legislative findings and would provide legislative intent of the bill to improve access to health care, improve the quality of health care, and contain costs through a model of primary care called patient-centered medical home care.

Section 3 would provide for definitions: advisory committee; department; director; health insurer (the top three health insurers in the Nebraska market); patient-centered medical home (a health care delivery model in which a patient establishes an ongoing relationship with a physician in a physician-directed team to provide comprehensive, accessible, and continuous evidence-based primary and preventive care and to coordinate the patient's health care needs across the health care system); and primary care physician.

Section 4 would provide for the Medical Home Advisory Committee. The members would consist of the Director of Insurance and the following members appointed by the Governor: one representative of each health insurer; three primary care physicians practicing in the areas of general and family medicine, internal medicine, and pediatrics; and one representative from a hospital. The advisory committee would also consist of two ex-officio nonvoting members: the Chairperson of the Legislature's Health and Human Services Committee and the Director of Public Health of the Division of Public Health of the Department of Health and Human Services.

Section 5 would provide for organization of the advisory committee. The members appointed by the Governor would be reimbursed for actual and necessary expenses. The Department of Insurance would provide administrative support to the advisory committee.

Section 6 would provide for removal of advisory committee members and filling of vacancies.

Section 7 would provide that the advisory committee would provide consultation to the Director of Insurance on all matters relating to rules and regulations, standards, and payment mechanisms. The advisory committee would (1) guide and assist the Department of Insurance in the design and

implementation of patient-centered medical home care and (2) promote the use of best practices to ensure access to patient-centered medical home care for insureds and beneficiaries.

Section 8 would provide that Director of Insurance shall convene to advisory committee as necessary. The advisory committee would propose: (1) consistent criteria for what qualifies as a patient-centered medical home; (2) consistent quality measures; and (3) consistent reporting and electronic record-keeping requirements. The Director of Insurance would be required to justify the reason for any departure from the guidance provided by the advisory committee.

Section 9 would provide that group health insurance plans of each health insurer shall include coverage for patient-centered medical home care on a phased-in implementation schedule of fifteen percent to seventy percent of insureds or beneficiaries over the period of 2015 to 2018. The Director of Insurance could order an insurer to participate in providing access to patient-centered medical home care or determine the insurer is in violation of the Unfair Insurance Trade Practices Act.

Section 10 would provide that the Director of Insurance shall direct the advisory committee to consider additional reforms to sickness and accident insurance that could be implemented to support patient-centered medical home care.

Section 11 would provide that the advisory committee shall make recommendations to the Director of Insurance regarding the designation of patient-centered medical home care to promote diversity in the size of practices designated and the geographic location of practices designated and ensure accessibility of the population throughout the state to patient-centered medical home care.

Sections 12 and 13 would provide for reports to the Legislature by the Director of Insurance.

Section 14 would provide that the act shall not preclude the development of payment mechanisms for persons who have other coverages.

Section 15 would provide the Director of Insurance with rule and regulation authority to carry out the act.

LB312 (Scheer) Designate certain acts as unfair insurance trade practices

Pending in Committee

This bill would amend section 44-1525 of the Unfair Insurance Trade Practices Act to provide that the following acts or practices by an insurer shall be unfair trade practices in the business of insurance:

Refusing to issue, refusing to renew, canceling, or limiting the amount of coverage on a property and casualty risk due to weather-related casualties to the risk;

Surcharging a policyholder for a property and casualty loss on which the insurer did not pay a claim; and

Surcharging a policyholder for a property and casualty loss due to weather-related casualties to a previously occupied or noncovered property.

LB316 (B. Harr) Redefine automobile liability policy

Enacted
Effective September 6, 2013

This bill amends section 60-310 of the Motor Vehicle Registration Act to provide that an automobile liability policy shall not "limit, reduce, or otherwise alter" as well as "exclude" liability coverage under the policy solely because an injured person making a claim is the named insured or residing in the household with the named insured.

The bill passed 44-0-5 on March 28, 2013 and was approved by the Governor on April 3, 2013.

LB336 (Carlson) Change sickness and accident insurance provisions for policies subject to the federal Patient Protection and Affordable Care Act

Enacted
Effective September 6, 2013

This bill amends section 44-710 to provide that premium rates for sickness and accident insurance policies subject to the federal Patient Protection and Affordable Care Act shall be approved by the Director of Insurance before they are used in Nebraska. Policies subject to the bill include any policy or certificate of sickness and accident insurance issued to or for associations not domiciled in Nebraska other than a certificate issued to an employee under an employee benefit plan of an employer headquartered in another state.

The bill passed 47-0-2 on March 1, 2013 and was approved by the Governor on March 7, 2013.

LB337e (Schumacher) Change provisions relating to the Nebraska Insurers Supervision, Rehabilition, and Liquidation Act

Enacted
Effective March 21, 2013

This bill amends the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act with regard to the status in a rehabilitation or liquidation of an insurance company of a pledge, security, credit, collateral, loan, advance, or reimbursement or guarantee agreement or arrangement to which a Federal Home Loan Bank is a party.

Federal Home Loan Banks provide low-interest financing to insurance companies as well as member banks and credit unions. The bill specifies the priority that Federal Home Loan Bank advances and collateral have under the Nebraska Insurer Supervision, Rehabilitation, and Liquidation Act and

provides that a Federal Home Loan Bank's position with regard to an insurance company's collateral is parallel to the position the Federal Home Loan Bank has regarding collateral pledged by a bank or credit union. The bill provides that security interests granted to the Federal Home Loan Bank are entitled to priority over the claims and rights of any party except the claims and rights of other secured parties entitled to priority by reason of actual perfected security interests and that the Federal Home Loan Bank's interests are valid and enforceable at any stage of a rehabilitation or liquidation proceeding.

The bill amends sections 44-4805 (regarding application by a receiver for injunctions and orders) and section 44-4815 (regarding the effect of rehabilitation) to provide that a Federal Home Loan Bank shall not be stayed, enjoined, or prohibited from exercising or enforcing any right or cause of action regarding collateral pledged under any security agreement, or any pledge, security, collateral or guarantee agreement relating to such Federal Home Loan Bank security agreement.

The bill amends section 44-4821 (regarding powers of a liquidator) to provide that a liquidator shall not have power to disavow, reject, or repudiate any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement relating to such Federal Home Loan Bank security agreement.

The bill amends section 44-4826 (regarding fraudulent transfers and obligations incurred prior to a petition) and section 44-4827 (regarding fraudulent transfers after a petition) to provide that a receiver may not avoid any transfer of, or any obligation to transfer, money or any other property arising under or in connection with any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement relating to such Federal Home Loan Bank security agreement. This section provides that such a transfer may be avoided if it was made with actual intent to hinder, delay, or defraud creditors.

The bill amends section 44-4828 (regarding preferences and liens) to provide that a liquidator or receiver shall not avoid any preference arising under or in connection with any Federal Home Loan Bank security agreement, or any pledge, security, collateral or guarantee agreement relating to such Federal Home Loan Bank security agreement.

The bill passed 45-0-4 with the emergency clause on March 14, 2013 and was approved by the Governor on March 20, 2013.

LB384e (Nordquist) Adopt the Nebraska Exchange Transparency Act

Enacted
Effective May 17, 2013
Speaker Priority Bill

OVERVIEW

This bill enacts the Nebraska Exchange Transparency Act to provide for state-based recommendations and transparency regarding the implementation and operation of an affordable insurance exchange, as required by the federal Patient Protection and Affordable Care Act, by creating the Nebraska Exchange Stakeholder Commission.

SUMMARY

The bill provides, section by section, as follows:

Section 1 provides for a named act: the Nebraska Exchange Transparency Act.

Section 2 provides for legislative purposes.

Section 3 provides for creation of the Nebraska Exchange Stakeholder Commission. This section provides that, for administrative and budgetary purposes only, the commission shall be housed with the Department of Insurance.

This section provides that the commission shall be composed of 11 members, nine of whom shall be appointed by the Governor and two of whom shall be ex officio, nonvoting.

This section provides that the voting members shall be:

(1) four members to represent the interests of consumers who will access health insurance in the exchange, with at least one of such members to represent the interests of rural consumers who will access health insurance in the exchange;

(2) one member to represent the interests of small businesses who are qualified to purchase health insurance in the exchange;

(3) two members to represent the interests of health care providers in the state;

(4) one member to represent the interests of health insurance carriers who are eligible to offer health plans in the exchange; and

(5) one member to represent the interests of health insurance agents, who is not a captive agent.

This section provides that the nonvoting, ex officio members shall be the Director of Insurance and the Director of the Division of Medicaid and Long-Term Care of the Department of Health and Human Services.

This section provides that the appointed members shall serve staggered four-year terms and may be reappointed.

This section provides that all appointments shall be subject to approval by the Legislature.

Section 4 provides for organization of the commission. This section provides that the commission shall hold at least four meetings annually. This section provides that members of the commission shall be reimbursed for their actual and necessary expenses.

Section 5 provides that the commission shall (1) work with state and federal agencies and policymakers to provide recommendations regarding implementation and operation of the exchange; (2) create technical and advisory groups; (3) assist the exchange in meeting stakeholder consultation requirements

established by federal rules; (4) identify challenges and problems in the implementation and operation of the exchange and prepare recommendations; and (5) provide a written report to the Governor and the Legislature each December 1.

Section 6 provides that the act terminates on July 1, 2017.
The bill passed 47-0-2 with the emergency clause on May 10, 2013 and was approved by the Governor on May 16, 2013.

LB384Ae (Nordquist) Appropriation Bill

Enacted
Effective May 17, 2013

This bill appropriates $5,760 for FY2013-14 and $5,760 for FY2014-15 from the Department of Insurance Cash Fund to the Department of Insurance to carry out LB384.

The bill passed 46-0-3 with the emergency clause on May 10, 2013 and was approved by the Governor on May 16, 2013.

LB397 (Conrad) Require insurance coverage for screening for amino acid-based formulas

Pending in Committee

This bill would enact a new section to provide that individual and group sickness and accident insurance policies, certificates, and subscriber contracts; hospital, medical, or surgical expense-incurred policies; and self-funded employee benefit plans to the extent not preempted by federal law shall include screening coverage for amino acid-based elemental formulas for the diagnosis and treatment of Immunoglobulin E and non-Immunoglobulin E mediated allergies to multiple food proteins, foot-protein-induced enterocolitis syndrome, eosinophilic disorders, and impaired absorption of nutrients caused by disorders affecting the absorptive surface, functional length, and motility of the gastrointestinal tract, when the ordering physician has issued a written order stating that the formula is medically necessary for the treatment of a disease or disorder.

LB426 (Howard) Change provisions relating to fraternal benefit societies

Enacted
Effective September 6, 2013

This bill amends section 44-6007.02 (definition of health organization), section 44-6008 (definition of insurer), section 44-6009 (definition of negative trend with respect to a life and health insurer), section 44-6015 (risk-based capital reports), and section 44-6016 (company action level event) of the Insurers and Health Organizations Risk-Based Capital Act in order to include fraternal benefit societies within the requirements of the act. (Sections 2 to 6 of the bill.) Before enactment of this bill, fraternal benefit

societies had been excepted from the act.

The bill also amends section 44-1090 of the fraternal benefit society statutes which before enactment of this bill had provided that if the reserves of a fraternal benefit become impaired, the society may require that each owner pay to the society the owner's equitable proportion of the deficiency. The bill provides that a domestic society may assess owners only after the assessment is filed with and approved by the Director of Insurance. The bill provides that the director may prohibit a foreign or alien society that has assessed its owners from issuing new contracts in this state.

The bill passed 45-0-4 on March 14, 2013 and was approved by the Governor on March 20, 2013.

LB479 (Lathrop) Prohibit policy and contract terms relating to contractual rights and insurance proceeds

Enacted
Effective September 6, 2013

This bill enacts a new section to provide that no individual or group health plan or self-funded employee benefit plan to the extent not preempted by federal law shall assert any contractual rights to the proceeds of any resources purchased by or on behalf of the policyholder, subscriber, certificate holder, or enrollee, including medical payments coverage under a motor vehicle insurance policy, uninsured or underinsured motorist coverage, accident or disability income coverage, specific disease or illness coverage, or hospital indemnity or other fixed indemnity coverage. This section also provides that it does not affect coordination of benefits or prevent application of the medical payments coverage under a motor vehicle insurance policy to items not covered by a health plan or self-funded employee benefit plan.

The bill amends section 44-710.04, which sets forth required sickness and accident insurance policy provisions, to allow policies to include alternative provisions which provide for non-duplication and coordination between two or more coverages based on rules and regulations adopted and promulgated by the Director of Insurance.

The bill passed 47-0-2 on May 29, 2013 and was approved by the Governor on June 4, 2013,

LB505 (Coash) Provide requirements for insurance coverage of autism spectrum disorders

Pending in Committee
Senator (Coash) Priority Bill

This bill would enact a new section to provide that individual and group sickness and accident insurance policies, certificates, and subscriber contracts; hospital, medical, or surgical expense-incurred policies; and self-funded employee benefit plans to the extent not preempted by federal law shall provide coverage for the screening, diagnosis, and treatment of an autism spectrum disorder in an individual under twenty-one years of age.

The bill would provide that, as of January 1, 2014, to the extent it requires benefits that exceed the essential health benefits required under the federal Patient Protection and Affordable Care Act, the specific benefits that exceed the required essential health benefits shall not be required of a qualified health plan offered in this state through an exchange.

The bill would provide that the required coverage shall not be subject to any limits on the number of visits for treatment, and that such coverage shall not be subject to dollar limits, deductibles, copayments, or coinsurance provisions that are less favorable than the equivalent provisions applicable to a general physical illness.
The bill would provide that the required coverage shall be subject to a maximum benefit of $70,000 per year for the first three years of treatment and $20,000 per year for each year of treatment thereafter until twenty-one years of age.

The bill would provide that, on or after January 1, 2015, the Director of Insurance shall annually adjust the maximum benefit for inflation by using the medical care component of the Consumer Price Index for All Urban Consumers.

The bill would provide that the Director of Insurance shall grant a small employer (at least two but not more than 50 employees) a waiver from the provisions of this bill if the small employer demonstrates by actual claims experience that compliance with this bill has increased premium costs over a year by two and one-half percent or greater.

LB523 (Christensen) Provide requirements for copayments, coinsurance, and deductibles relating to certain services

Pending in Committee

This bill would enact a new section to provide that a health insurer shall not charge a copayment, coinsurance, or deductible for services by a physical therapist, occupational therapist, audiologist, speech-language pathologist, chiropractor, or chiropractic physician that is greater than the copayment, coinsurance, or deductible charged for the services of a physician or an osteopathic physician.

The bill would provide that it shall apply to health benefit plans delivered or issued for delivery or renewal on or after January 1, 2014.

LB568e (B. Harr) Adopt the Health Insurance Exchange Navigator Registration Act

Enacted
Effective June 6, 2013
Banking, Commerce and Insurance Committee Priority Bill

OVERVIEW

This bill enacts eight new sections to provide for registration by the Director of Insurance of individuals and entities acting as navigators with regard to a health benefit exchange established pursuant to the federal Patient Protection and Affordable Care Act by the United States Department of

Health and Human Services.

SUMMARY

Section 1 provides for a named act: the Health Insurance Exchange Navigator Registration Act.

Section 2 provides for definitions of "director," "exchange," and "navigator."

Section 3 provides that no individual or entity shall perform or advertise services as a navigator unless registered as a navigator by the Director of Insurance. This section provides that a navigator shall not: engage in any activities that would require an insurance producer license; recommend or endorse a particular health plan; accept compensation dependent on whether a person enrolls in or purchases a qualified health plan; or fail to respond to an inquiry from the director.

Section 4 provides for application for issuance of individual and entity navigator registrations. This section provides for an initial individual navigator registration fee in an amount not to exceed twenty-five dollars as established by the director and an initial entity navigator registration fee in an amount not to exceed fifty dollars as established by the director. This section requires individual applicants for registration to have passed an examination prescribed by the exchange. This section requires registered entity navigators to periodically provide the director with a list of all individual navigators that it employs, supervises, or is affiliated with.

Section 5 provides for renewal of individual and entity navigator registrations. This section provides that individual and entity navigator registrations shall expire one year after the date of issuance. This section provides for an individual navigator registration renewal fee in an amount not to exceed twenty-five dollars and a late fee in an amount not to exceed fifty dollars as established by the director. This section provides for an entity navigator registration renewal fee in an amount not to exceed one fifty dollars and a late fee in an amount not to exceed fifty dollars as established by the director. This section provides that any failure to fulfill the federal ongoing training and continuing education requirements shall result in the expiration of the registration.

Section 6 provides that on contact with an individual who acknowledges having existing health insurance coverage obtained through a licensed producer, a navigator shall inform the individual that he or she may seek further assistance from that or another producer and that tax credits may not be available to offset the premium cost of plans marketed outside the exchange.

Section 7 provides for enforcement sanctions by the Director of Insurance. This section authorizes the director to examine and investigate the business affairs and records of a navigator.

Section 8 provides the Director of Insurance with rule and regulation authority to carry out the act.

Section 9 provides for severability.

Section 10 provides for the emergency clause.

The bill passed 49-0-0 with the emergency clause on June 4, 2013 and was approved by the Governor on June 5, 2013.

LB568Ae (B. Harr) Appropriation Bill

Enacted
Effective June 6, 2013
This bill appropriates $64,455 for FY2013-14 and $63,434 for FY2014-15 from the Department of Insurance Cash Fund to the Department of Insurance to carry out LB568.

The bill passed 49-0-0 with the emergency clause on June 4, 2013 and was approved by the Governor on June 5, 2013.

LB614 (Schumacher) Provide for withholding insurance proceeds for demolition costs

Pending in Committee

This bill would enact a new insurance section to provide for the withholding by a property and casualty insurer of insurance proceeds in a demolition cost reserve for the benefit of a city, village, or county if damaged real property is located within the city or village or within the county outside a city or village.

The new section would provide as follows:

Subsection (1) would provide that after an insurer makes payment to all mortgagees on a fire and casualty insurance policy on any real property covered by such policy, the insurer shall reserve ten thousand dollars or ten percent of the coverage limit, whichever is greater, to be held as a demolition cost reserve if (a) the real property is located within the limits of a city or village or within a county outside of a city or village, including within the zoning jurisdiction of such city or village, (b) the damage to the real property renders the property uninhabitable or unfit for its intended use without repair, and (c) proof of loss has been submitted by the policyholder to the insurer for a sum in excess of seventy-five percent of the face value of the policy.

Subsection (2) would provide that if the insurer receives proof of loss, it shall notify the clerk of the city, village, or county of the existence of the demolition cost reserve.

Subsection (3) would provide that the city, village, or county shall release all interest in the demolition cost reserve within 180 days of notice unless the city or village has instituted legal proceedings or issued a demolition order.

Subsection (4) would provide that a demolition cost reserve shall not be required if (a) the insurer has received notice from the insured and the city, village, or county that the real property has been replaced or rebuilt, repairs have been completed, or demolition has been completed, or (b) the city or village has failed to notify the insurer that it has instituted legal proceedings or issued a demolition order.

Subsection (5) would provide that if the city, village, or county has instituted legal proceedings, issued an order for demolition, undertaken emergency action, or is required to demolish the real property at its expense, the city, village, or county shall present to the insurer a report of demolition costs. Upon receipt of the report, the insurer shall compensate the city, village, or county up to the amount in the

demolition cost reserve. Any amount remaining shall be paid to the insured if the insured is entitled to it.

Subsection (6) would provide that the insurer is not liable for any demolition costs (a) not covered under the policy, (b) in excess of policy liability limits, or (c) to the extent the demolition cost reserve amount is needed to pay any interest of a mortgagee on the policy.

Subsection (7) would provide that an insurer and its agent that complies with this section shall be immune from any civil liability.

LB621 (Karpisek) Exempt certain information from disclosure under the Intergovernmental Risk Management Act

Pending in Committee

This bill would amend section 44-4318 of the Intergovernmental Risk Management Act to provide that proprietary or commercial information which belongs to or which has been provided to a risk management pool and which, if released, would give advantage to business competitors and serve no public purpose, shall be exempt from disclosure under the public records statutes.

The bill would provide that a risk management pool or provider of records desiring an exemption shall identify to the Director of Insurance any specific competitor which might gain an advantage from the disclosure and the nature of the advantage.

LB655 (Carlson) Permit collection of fees of insurance consultants

Pending in Committee

This bill would amend section 44-2629 of the insurance consultant statutes to provide that nothing in the statutes shall prohibit or restrict the right of a client with one hundred or more employees to request that a third party, including an insurance company issuing a policy to the client, collect from the client and remit to the consultant the fees charged by the consultant for services allowed by the insurance consultant statutes.

The bill carries the emergency clause.

INTEREST, LOANS, AND DEBT

LB279 (Pirsch) Change provisions relating to loan brokers, delayed deposit services, and installment loans

Enacted
Effective September 6, 2013

This bill, introduced at the request of the Department of Banking and Finance, amends various sections relating to loan brokers, delayed deposit services, and installment loans. The bill provides, section by section, as follows:

LOAN BROKERS

Section 1 amends section 45-190 to clarify the definition of "loan broker" by separating the exclusions from the body of the definition and placing the exclusions in a separate subdivision. The new subdivision also specifies the entities to which the phrase "subject to regulation or supervision under the laws of the United States or this state" is applicable.

Section 2 amends section 45-191.10, which provides for exemptions from the loan broker statutes, to narrow the exemption for an accountant to an exemption for a certified public accountant.

DELAYED DEPOSIT SERVICES

Section 3 amends section 45-920 of the Delayed Deposit Services Licensing Act to authorize the Department of Banking and Finance to share examination reports and other confidential information with the Consumer Financial Protection Bureau and regulators in other states and territories which have authority over delayed deposit services businesses, payday lenders, or similar entities.

INSTALLMENT LOANS

Sections 4 and 5 amend sections 45-1008 and 45-1013 of the Nebraska Installment Loan Act to repeal obsolete provisions regarding the 2010 start date for the transition of the licensing process for installment loan companies onto the Nationwide Mortgage Licensing System and Registry.

Section 6 amends section 45-1018 of the Nebraska Installment Loan Act to repeal obsolete provisions regarding the 2011 start date for licensee filings of mortgage reports of condition with the Nebraska Department of Banking and Finance.

REPEALS

Section 7 provides for repealers of the amendatory sections.

The bill passed 47-0-2 on March 1, 2013 and was approved by the Governor on March 7, 2013.

LB290 (Pirsch) Change provisions relating to the Residential Mortgage Licensing Act

Enacted
Effective September 6, 2013

This bill, introduced at the request of the Department of Banking and Finance, amends various sections of the Residential Mortgage Licensing Act. The bill provides, section by section, as follows:

Section 1 amends section 45-701 of the Residential Mortgage Licensing Act to provide that new section 5 of the bill shall be assigned within the act.

Section 2 amends section 45-727 of the Residential Mortgage Licensing Act to repeal an obsolete reference to the July 31, 2010 start date for mortgage loan originator licensing.

Section 3 amends section 45-729 of the Residential Mortgage Licensing Act to provide that the 120-day period for calculating abandonment of a license application runs from the date the Department of Banking and Finance sends the applicant electronic notice of the items that are deficient, rather than from the date that the deficiency notice was mailed.

Section 4 amends section 45-737 of the Residential Mortgage Licensing Act to provide that the duties listed in the law for licensees applies only to the entities licensed as mortgage bankers, rather than to both mortgage banker licensees and the individuals licensed as mortgage loan originators. This section also clarifies the types of orders and proceedings that mortgage banker licensees must report to the Department of Banking and Finance, and provides that such notices to the department may be sent electronically.

Section 5 enacts a new section in the Residential Mortgage Licensing Act to set out duties for the individuals licensed as mortgage loan originators, which includes notification to the Department of Banking and Finance within ten days of events such as bankruptcy, criminal indictments, and license suspension or revocation proceedings from another state; and notification to the department within thirty days of items such as change of employer and change of address. Duties for mortgage loan originators are otherwise combined with the duties of mortgage banker licensees in section 45-737.

Section 6 amends section 45-741 of the Residential Mortgage Licensing Act, which provides that as part of an investigation or examination of a licensee or registrant the Department of Banking and Finance may rely on reports prepared by the licensee or registrant for specified federal agencies or federally related entities. This section adds the Consumer Financial Protection Bureau as a specified federal agency.

Section 7 provides for repealers of amendatory sections.

The bill passed 47-0-2 on March 1, 2013 and was approved by the Governor March 7, 2013.

MONEY AND FINANCING

LB170 (Gloor) Rename and expand the purpose of the Nebraska Educational Finance Authority Act

Enacted
Effective September 6, 2013

This bill amends every section of the Nebraska Educational Finance Authority (NEFA) Act, sections 85-1701 to 85-1763, to expand its scope and re-name it the Nebraska Educational, Health, and Social Services Finance Authority Act.

NEFA, as constituted prior to enactment of this bill, helps Nebraska's private colleges and universities build, finance, and refinance capital improvement projects on their campuses by issuing tax-exempt bonds on behalf of private colleges and universities. Bond indebtedness is solely a liability of the private college or university and not an obligation of NEFA. NEFA also finances cash flow needs based on anticipated tuition revenues. NEFA is a body politic and corporate constituting a public instrumentality of the state of Nebraska created by the NEFA Act, and is authorized under the act to assist private colleges and universities in the state of Nebraska in the construction, financing, and refinancing of educational facilities, equipment, and structures. The authority consists of seven members appointed by the Governor.

The bill expands the scope of the authority to include projects of private health care institutions and private social services institutions as well as private institutions of higher education.

The bill amends every section of NEFA to strike all section numbers so the act may be re-codified in another chapter of the statutes and to update terminology. For example, the bill changes the term trust "agreement" to trust "indenture." The bill harmonizes provisions, including internal references.

Sections which contain more than technical changes are as follows:

Section 2 amends section 85-1702 to add provisions to the public policy and purpose declarations that refer to private health care institutions and private social services institutions.

Section 7 enacts a new section to provide a definition of "eligible institution" - a private institution of higher education, or private health care institution, or a private social services institution.

Section 8 enacts a new section to provide a definition of "private health care institution" - any private not-for-profit corporation or institution that (1) is licensed under the Health Care Facility Licensure Act, (2) is described in section 501(c)(3) of the Internal Revenue Code and is exempt from federal income tax under section 501(a) of the Internal Revenue Code, (3) is located within this state and is not owned or controlled by the state or any political subdivision, agency, instrumentality, district, or municipality thereof, and (4) does not violate any state or federal anti-discrimination laws.

Section 9 amends section 85-1707 to provide that "medicine" is an additional field for which a two-year degree program would qualify an institution to be eligible for assistance under the act.

Section 10 enacts a new section to provide a definition of "private social services institution" - any private not-for-profit corporation or institution that (1) provides health, safety, and welfare assistance, including emergency, social, housing, and related support services, to members of the general public in the state, (2) is described in section 501(c)(3) of the Internal Revenue Code and is exempt from federal income taxation under section 501(a) of the Internal Revenue Code, (3) is located within this state and is not owned or controlled by the state or any political subdivision, agency, instrumentality, district, or municipality thereof, and (4) does not violate any state or federal anti-discrimination law.

Section 11 amends section 85-1708 to expand the definition of "project" to include an assisted living facility, congregate care housing, emergency services facility, health care facility, health service institution, hospital, medical clinic, medical services facility, nursing or skilled nursing services facility, personal care services facility, senior, retirement, or home care services facility, and social services facility. This section further expands the definition of "project" to provide that it includes the financing of eligible swap termination payments.

Section 14 amends section 85-1711 to add two new categories of persons that must be appointed to the seven-member authority: (1) a trustee, director, officer, or employee of one or more private health care institutions in the state; and (2) a trustee, director, officer, or employee of one or more private social services institutions in the state. This section provides for the timing of the appointments.

Section 17 amends section 85-1714 to provide that members of the authority may participate in a regular or special meeting of the authority by telephone conference call or video conference if the chairperson or vice-chairperson conducts the meeting where the public is able to participate and the telephone conference call or video conference conforms to the requirements of subdivisions (2)(a) through (e) of section 84-1411.

Section 28 amends section 85-1725 to provide that the authority shall have no jurisdiction over rates, rents, fees and charges established by an institution for its patients, residents, clients, or other consumers, as well as its students, other than to require that such rates, rents, fees, and charges by an institution be sufficient to discharge its obligation to the authority.

Section 34 amends section 85-1731 to provide that the authority may issue bonds whenever the authority has received a written letter of intent to underwrite, place, or purchase the bonds from a financial institution having the powers of an investment bank, commercial bank, or trust company.

Section 40 amends section 85-1737 to add references to "trust indenture."

Section 41 amends section 85-1738 to provide for bonds to have variable rates and to be redeemed before maturity at a premium or discount. This section provides that the seal of the authority may be printed or impressed on the bond. This section provides that the resolution or trust indenture authorizing the bonds may provide that the bonds contain a recital that they are issued under the act, and such recital shall be deemed conclusive evidence of the validity of the bonds and the regularity of the issuance. This section provides that surplus bond proceeds may be applied in ways permitted by applicable federal income tax laws relating to the tax exemption of interest.

Section 42 amends section 85-1739 to expand a reference to bond resolution to include any issue of bonds and any trust indenture securing any bond. This section specifies that bond resolutions, issues of

bonds, and trust indentures may contain provisions that indicate the loan amount to be charged.

Section 43 amends section 85-1740 to provide that the trust indenture by which a pledge is created or an assignment made shall be filed in the records of the authority and not with the Secretary of State and the county in which a project is located.

Section 48 amends section 85-1745 to provide for loan payments by the institution.

Section 49 amends section 85-1746 to provide how the authority may deposit and invest money received by the authority.

Section 66 amends section 85-1763 to provide legislative intent that the changes made by this bill in the name of the act and in the name of the authority shall not affect or alter any rights, privileges, or obligations existing immediately prior to the effective date of the bill (September 6, 2013).

The bill passed 43-0-6 on March 28, 2013 and was approved by the Governor on April 3, 2013.

REAL PROPERTY

LB442 (Schumacher) Change provisions relating to homeowners' associations and the Nebraska Condominium Act

Enacted
Effective September 6, 2013

OVERVIEW

This bill amends provisions regarding liens for assessments and fines levied by homeowners' associations (section 52-2001) and condominium unit owners associations (sections 76-825, 76-842, 76-856, and 76-874 of the Nebraska Condominium Act).

FINES

The bill repeals provisions which provide for an association to have a lien on a member's real estate or on an owner's unit for fines imposed against the member or owner.

PRIORITY

The bill provides that a lien is prior to all other liens and encumbrances on real estate or on a unit except, among other things, a first mortgage or deed of trust recorded before the notice of the lien has been recorded for a delinquent assessment for which enforcement is sought (rather than a first mortgage or deed of trust recorded before the date on which the assessment sought to be enforced became delinquent).

The bill provides that an association declaration may not provide that a lien on a member's real estate or unit for any assessment levied against real estate or the unit relates back to the date of filing of the declaration or that such lien takes priority over any mortgage or deed of trust on real estate or the unit recorded subsequent to the filing of the declaration and prior to the recording by the association of the notice of lien.

DEFINITION

The bill amends section 52-2001 to provide that the definition of "homeowners' association" does not include a "co-owners association organized under the Condominium Property Act" (the 1963 condominium act) as well as does not include a unit owners association organized under the Nebraska Condominium Act (the 1983 condominium act).

ESCROW ACCOUNT

The bill amends section 52-2001 regarding homeowners' associations and adds a new section to the Nebraska Condominium Act to provide that an association may require an owner who purchases real estate or a unit on or after the effective date of the bill to make payments into an escrow account established by the association until the escrow account balance for that real estate or unit equals six months of assessments.

The bill provides that escrow payments shall be held in a non-interest-bearing checking account under terms that place the payments beyond the claim of creditors of the association.

The bill provides that the association may use escrow payments to offset unpaid assessments.

The bill provides that the association shall return escrow payments, together with any interest, to an owner when the owner sells the real estate or unit and the owner has fully paid all assessments.

The bill passed 46-0-3 on May 1, 2013 and was approved by the Governor on May 7, 2013.

PUBLIC FUNDS DEPOSIT

LB155 (Gloor) Change provisions relating to deposits of public funds in excess of insured or guaranteed amounts

Enacted
Effective September 6, 2013

This bill amends the Public Funds Deposit Security Act which sets forth the mechanisms by which financial institutions acting as depositories of public funds may satisfy their requirements to secure deposits in excess of amounts insured or guaranteed by the Federal Deposit Insurance Corporation. Generally, depositories give security by furnishing securities or providing a deposit guaranty bond.

The bill amends section 77-2387 of the Public Funds Deposit Security Act to expand the definition of "securities" to include mortgage-backed "securities and collateralized mortgage" obligations (rather than just "mortgage-backed obligations") that are "backed by collateral one hundred percent guaranteed by" (rather than only "issued" by) the Federal Home Loan Mortgage Corporation, the Federal Farm Credit System, a Federal Home Loan Bank, or the Federal National Mortgage Association. This section further expands the definition of "securities" to include a letter of credit issued by any Federal Home Loan Bank and not just the Federal Home Loan Bank of Topeka.

The bill amends section 77-2398 of the Public Funds Deposit Security Act which allows a depository to secure the deposits of one or more governmental units by depositing, pledging, or granting a security interest in a single pool of securities to secure repayment of all public funds deposited in the depository by such governmental units. This section provides that a "pool of securities" shall include shares of investment companies the assets of which are limited to obligations that are eligible for investment by the depository financial institution and are limited by their prospectuses to owning securities defined as "securities" for purposes of the Public Funds Deposit Security Act in section 77-2387.

The bill passed 48-0-1 on February 11, 2013 and was approved by the Governor on February 15, 2013.

ECONOMIC DEVELOPMENT

LB628 (Conrad) Change and extend the Small Business Innovation Act

Enacted
Effective September 6, 2013

This bill amends sections 81-12,138, 81-12,142, and 81-12,143 of the Small Business Innovation Act to (1) re-define "Nebraska-based growth business" as a business that, among other things, has "two" to fifty rather than "five" to fifty employees, (2) require the Department of Economic Development to present a report on the act to the Legislature by December 1, "2014" rather than December 1, "2013," and (3) provide that the act terminates on December 31, "2014" rather than December 31, "2013."

The bill passed 44-0-5 on March 14, 2013 and was approved by the Governor on March 20, 2013.

REAL ESTATE

LB72 (McCoy) Extend the authorization for interest-bearing trust accounts under the Nebraska Real Estate License Act

Enacted
Effective September 6, 2013

This bill amends section 81-885.21 of the Nebraska Real Estate License Act to provide that a real estate broker's trust account may continue to be either interest-bearing or non-interest-bearing until July 1, 2017 rather than until July 1, 2014. On and after July 1, 2017, the trust account must be non-interest-bearing. The bill provides that if a trust account is interest-bearing the interest may be distributed only to tax-exempt non-profit corporations that promote housing in Nebraska. Finally, the bill provides that a broker may use an interest-bearing trust account only if the use of such account to promote housing in Nebraska has been approved by all parties whose money will be deposited in the account.

The bill passed 49-0-0 on February 11, 2013 and was approved by the Governor on February 15, 2013.

TRADE PRACTICES

LB209 (B. Harr) Change provisions relating to publication of trade names

Enacted
Effective September 6, 2013

This bill amends sections 87-214 and 87-219 of the trade name statutes to repeal the requirement that a registrant of a trade name in the office of the Secretary of State shall file proof of newspaper publication of the trade name with the county clerk of the county where the principal office of the registrant is located. The bill makes no amendments in the provisions which require that proof of newspaper publication be filed in the office of the Secretary of State.

The bill passed 46-0-3 on March 1, 2013 and was approved by the Governor on March 7, 2013.

UNIFORM COMMERCIAL CODE

LB146e (Gloor) Change provisions relating to funds transfers under the Uniform Commercial Code

Enacted
Effective February 16, 2013

This bill amends Uniform Commercial Code (UCC) Section 4A-108 to close an unintended gap in the coverage of UCC Article 4A (Funds Transfers) created by an amendment Congress made in the federal Electronic Funds Transfer Act (EFTA) as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. There would exist legal uncertainty for a class of transactions governed by UCC Article 4A if UCC Section 4A-108 had not been amended as provided in this bill.

The Permanent Editorial Board for the Uniform Commercial Code has recommended this amendment of UCC Section 4A-108. Both the American Law Institute and the Uniform Law Commission have approved the amendment.

UCC Article 4A was originally drafted to govern transfers between commercial parties. At that time the EFTA governed only consumer wire transfers. UCC Section 4A-108 was drafted with that in mind. It provided that UCC Article 4A does not apply to a funds transfer any part of which is governed by the EFTA.

When the Dodd-Frank amendment to the EFTA goes into effect in 2013, the EFTA will govern "remittance transfers" (the electronic transfer of funds requested by a consumer to a person located in a foreign country that is initiated by a person or financial institution that provides remittance transfers for consumers in the normal course of its business), whether or not those remittance transfers are also "electronic fund transfers" as defined in the EFTA. Thus, when the Dodd-Frank amendment and its implementing regulation go into effect, the result of UCC Section 4A-108 in its unamended would have been that a fund transfer initiated by a remittance transfer would have been entirely outside the coverage of Article 4A, even if the remittance transfer is not an electronic fund transfer (not a consumer remittance transfer). Thus a number of important issues in those remittance transfers would have been governed neither by UCC Article 4A or the EFTA.

The amendment revises UCC Section 4A-108 to provide that UCC Article 4A does apply to a remittance transfer that is not an electronic funds transfer under the EFTA. The amendment then restates the rule of the supremacy clause that the federal statute will control in the case of any conflict between UCC Article 4A and the EFTA.

The bill passed 48-0-1 with the emergency clause on February 11, 2013 and was approved by the Governor on February 15, 2013.

LB210 (B. Harr) Provide remedies and procedures regarding unauthorized financing statement filings

Enacted
Effective September 6, 2013

This bill enacts a new section in Uniform Commercial Code Article 9 (Secured Transactions) to establish procedures by which an individual who is improperly identified as a debtor on a financing statement can file an affidavit with the filing office (usually the Secretary of State) seeking filing by the filing office of a termination statement with regard to the financing statement. The bill provides that no such affidavit may be filed with respect to a financing statement filed by or on behalf of a financial institution or an agricultural input supplier.

The bill also establishes procedures by which a secured party of record identified on the financing statement as to which a termination statement has been filed under the new provisions of the bill may bring an action in district court to challenge the termination statement.

The bill passed 46-0-3 on March 1, 2013 and was approved by the Governor on March 7, 2013.

BANKING, COMMERCE AND INSURANCE COMMITTEE
INTERIM STUDY RESOLUTIONS
2013

LR187	(B. Harr) Interim study to determine whether Nebraska's business entity statutes should be updated
LR188	(Gloor) Interim study to examine issues relating to the implementation of the federal Patient Protection and Affordable Care Act as it pertains to Nebraska
LR215	(Gloor) Interim study to examine issues relating to enforcement and servicing of real estate loans secured by a mortgage, trust deed, or other security instrument
LR216	(Gloor) Interim study to examine the provisions of the Nebraska Capital Expansion Act
LR233	(Harms) Interim study to review federal and state laws on the practice of businesses such as gas stations, hotels, or other businesses, placing holds on credit cards for more than the amount of the purchase
LR265	(Conrad) Interim study to examine insurance coverage of amino acid-based elemental formula
LR294	(Schilz) Interim study to examine a program which would maximize private health insurance so as to cover as many Nebraskans as possible and be implemented to qualify for federal approval and matching funds
LR315	(Conrad) Interim study to examine the development of a new type of corporate entity known as the benefit corporation
LR316	(Scheer) Interim study to examine unfair insurance trade practices

REPORT ON THE PRIORITIZING
OF INTERIM STUDY RESOLUTIONS
Pursuant to Rule 4, Section 3(c)

COMMITTEE: Banking, Commerce and Insurance DATE: May 30, 2013

The following resolutions were referred to the Committee on Banking, Commerce and Insurance. The committee has prioritized the resolutions in the following order:

Resolution No.	**Subject**
LR188	Patient Protection and Affordable Care Act
LR187	Update business entity statutes
LR316	Unfair insurance trade practices
LR216	NE Capital Expansion Act
LR315	Development of benefit corporations
LR215	Enforcement and servicing of real estate loans
LR294	Private health insurance
LR233	Placing holds on credit cards
LR265	Insurance coverage of amino acid-based elemental formula