

## LEGISLATIVE BILL 599

Approved by the Governor April 26, 1995

Introduced by Landis, 46

AN ACT relating to banking and finance; to amend sections 8-124.01, 8-178, 8-1502, 8-1504, 8-1505, 45-126, 45-190, 45-191.10, 45-347, 59-1703, 59-1728, 59-1732, and 59-1733, Reissue Revised Statutes of Nebraska, and sections 8-157, 8-602, 8-1501, 45-127, 45-716, 45-927, and 59-1735, Revised Statutes Supplement, 1994; to change provisions relating to boards of directors, branch banking, hearings, fees, funds, acquisition and merger, loan brokers, mortgage bankers, and the Seller-Assisted Marketing Plan Act; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 8-124.01, Reissue Revised Statutes of Nebraska, is amended to read:

8-124.01. At any time that a vacancy on the board of directors of a bank shall occur ~~occurs~~, the bank shall, within ~~ten~~ thirty days, notify the ~~Department of Banking and Finance~~ department of such the vacancy. Vacancies shall be filled within ninety days by appointment by the remaining directors, except that if the vacancy created leaves a minimum of five directors, appointment shall be optional. ~~At such time as~~ When the vacancy has been filled, the bank shall notify the ~~Department of Banking and Finance~~ department that the vacancy has been filled and include in ~~such~~ the notice the name, address, and occupation of the director ~~so~~ appointed.

Sec. 2. Section 8-157, Revised Statutes Supplement, 1994, is amended to read:

8-157. (1) Except as provided in subsections (2) through ~~(9)~~ (10) of this section and section 8-122.01, the general business of every bank shall be transacted at the place of business specified in its charter.

(2)(a) With the approval of the director, any bank may maintain an attached branch bank if such branch bank is physically connected by a pneumatic tube or tubes or a walkway, a tunnel, or any other electronic, mechanical, or structural connection or attachment for the public use of the bank and is within two hundred feet of the building containing the premises specified as its place of business in its charter or any adjacent connected building housing a continuation of the operations of the bank's main office.

(b) With the approval of the director, any bank located in a Class I or Class III county may establish and maintain in Class I and Class III counties an unlimited number of detached branch banks at which all banking transactions allowed by law may be made.

(c) With the approval of the director, any bank located in a Class II county may establish and maintain not more than nine detached branch banks at which all banking transactions allowed by law may be made. Such detached branch banks shall be within the corporate limits of the city in which such bank is located, or if the bank is located within the zoning jurisdiction of a city of the primary class or is located within an unincorporated city or unincorporated area in a county which contains a city of the primary class, such detached branch banks may also be within the corporate limits of such city.

(d) With the approval of the director, any bank located in a Class IV county may establish and maintain not more than six detached branch banks at which all banking transactions allowed by law may be made. Such detached branch banks shall be within the corporate limits of the city in which such bank is located.

(e) Any detached branch bank established and maintained by a bank pursuant to an acquisition or merger under sections 8-1506 to 8-1510 or an acquisition under section 8-1515 shall not count against the number of locations of detached branch banks permitted under this subsection.

(f) For purposes of this section:

(i) Class I county shall mean a county in this state with a population of three hundred thousand or more as determined by the most recent federal decennial census;

(ii) Class II county shall mean a county in this state with a population of at least two hundred thousand and less than three hundred thousand as determined by the most recent federal decennial census;

(iii) Class III county shall mean a county in this state with a population of at least one hundred thousand and less than two hundred thousand

as determined by the most recent federal decennial census; and

(iv) Class IV county shall mean a county in this state with a population of less than one hundred thousand as determined by the most recent federal decennial census.

(3) With the approval of the director, a bank may acquire another bank in Nebraska as the result of a purchase or merger so long as the acquired bank has been chartered for more than eighteen months and the acquired institution and its detached branch banks are converted to detached branch banks of the acquiring bank. Such branch banks shall not count against the number of locations of detached branch banks permitted under subdivisions (2)(c) and (2)(d) of this section. If the acquired institution is in a Class I county or in a Class III county, following a purchase or merger pursuant to this subsection the acquiring bank may establish and maintain detached branch banks to the same extent that the acquired institution could have established and maintained detached branch banks as provided in subdivision (2)(b) of this section if the purchase or merger had not occurred. If the acquired institution is in a Class II county and it has not established nine detached branch banks as permitted by subdivision (2)(c) of this section, following a purchase or merger pursuant to this subsection the acquiring bank may establish and maintain detached branch banks to the same extent that the acquired institution could have established and maintained detached branch banks as provided in subdivision (2)(c) of this section if the purchase or merger had not occurred. If the acquired institution is in a Class IV county and it has not established six detached branch banks as permitted by subdivision (2)(d) of this section, following a purchase or merger pursuant to this subsection the acquiring bank may establish and maintain detached branch banks to the same extent that the acquired institution could have established and maintained detached branch banks as provided in subdivision (2)(d) of this section if the purchase or merger had not occurred.

(4) With the approval of the director, a bank may acquire the assets and assume the deposits of a detached branch bank of another bank in Nebraska if:

(a) The acquired detached branch bank has been approved for more than eighteen months;

(b) The acquired detached branch bank is converted to a detached branch bank of the acquiring bank; and

(c) The bank from which the detached branch bank is acquired and the acquiring bank are subsidiaries of the same bank holding company or the detached branch bank to be acquired was chartered as a bank prior to becoming a detached branch bank.

All banking transactions allowed by law may be made at a detached branch bank acquired pursuant to this subsection. Such detached branch banks shall not count against the number of locations of detached branch banks permitted under subdivisions (2)(c) and (2)(d) of this section. The restrictions contained in this subsection shall not limit the authority of a bank to acquire another bank and to continue to operate all of the detached branch banks of the acquired bank as detached branch banks of the acquiring bank.

(5) With the approval of the director, a bank may acquire the assets and assume the deposits of a detached branch bank of another bank in Nebraska or acquire the assets and assume the deposits of an eligible savings association acquired by another bank in Nebraska pursuant to section 8-1515 if:

(a) The acquired detached branch bank or eligible savings association is converted to a detached branch bank of the acquiring bank; and

(b) The detached branch bank or the eligible savings association to be acquired was operated, established, and maintained as an eligible savings association at its existing location prior to August 9, 1989, and was maintained at such location on such date.

All banking transactions allowed by law may be made at a detached branch bank acquired pursuant to this subsection. Such detached branch banks shall not count against the number of locations of detached branch banks permitted under subdivisions (2)(c) and (2)(d) of this section. The restrictions contained in this subsection shall not limit the authority of a bank to acquire another bank and to continue to operate all of the detached branch banks of the acquired bank as detached branch banks of the acquiring bank.

(6) With the approval of the director, a bank may acquire a branch of a savings association which is a successor to an eligible savings association if such acquisition occurs within ninety days of the date the successor savings association acquired the eligible savings association and the branch is converted to a detached branch bank of the acquiring bank.

(7) With the approval of the director and subject to the limitations specified in this subsection, a single bank may establish one detached branch bank within the corporate limits of any municipality in which a financial institution has closed and ceased doing business within the preceding two years if no other financial institution operates an office within such municipality. If thirty days or less have elapsed since the financial institution ceased operation, the director shall only approve the establishment of a detached branch bank by a bank which has its place of business, as specified in its charter, in the same county as or in a contiguous county to the county in which such municipality is located. If more than thirty days have elapsed since the financial institution ceased operation, the director may approve the establishment of a detached branch bank by any bank located within Nebraska.

For purposes of this subsection:

(a) An unattended automatic teller machine shall not be deemed to be an office operated by a financial institution; and

(b) Financial institution shall mean a bank, savings bank, building and loan association, savings and loan association, industrial loan and investment company, credit union, or other institution offering automatic teller machine transactions.

(8) The name given to any detached branch bank established and maintained pursuant to this section shall not be substantially similar to the name of any existing bank or branch bank which is unaffiliated with the newly created detached branch bank and is located in the same municipality. The name of such newly created detached branch bank shall be approved by the director.

(9) A bank which has a main chartered office or approved branch bank located in the State of Nebraska may, through any of its executive officers, including executive officers licensed as such pursuant to section 8-139, or designated agents, conduct a loan closing at a location other than the place of business specified in the bank's charter or any detached branch thereof. The director may adopt and promulgate rules and regulations to implement the provisions of this section.

(10) A bank which has a main chartered office or approved branch office located in the State of Nebraska may, upon notification to the department, establish savings account programs at any elementary or secondary school, whether public or private, located in the same city or village as the main chartered office or branch office of the bank, or, if the main office of the bank is located in an unincorporated area of a county, at any school located in the same unincorporated area. The savings account programs shall be limited to the establishment of individual student accounts and the receipt of deposits for such accounts.

Sec. 3. Section 8-178, Reissue Revised Statutes of Nebraska, is amended to read:

8-178. Any national banking association located and doing business within the State of Nebraska, which follows the procedure prescribed by the laws of the United States, may convert into a state bank, or merge or consolidate with a state bank upon a vote of the holders of at least two-thirds of the capital stock of such state bank, when the resulting state bank meets the requirements of the state law as to the formation of a new state bank.

The public hearing requirement of section 8-115.01 shall only be required if (1) after publishing a notice of the proposed conversion in a newspaper of general circulation in the county where the main office of the national bank is located, the director receives an objection to the conversion within fifteen days after such publication, or (2) in the discretion of the director, the condition of the bank warrants a hearing.

Sec. 4. Section 8-602, Revised Statutes Supplement, 1994, is amended to read:

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

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

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

(3) For issuing to banks, trust companies, building and loan associations, and industrial loan and investment companies a charter,

authority, or license to do business in this state, a sum which shall be determined on the basis of one dollar and fifty cents for each one thousand dollars of authorized capital, except that the minimum fee in each case shall be two hundred twenty-five dollars, and all foreign building and loan associations shall pay annually a fee of two hundred dollars;

(4) For issuing to cooperative credit associations a charter, authority, or license to do business in this state, twenty-five dollars;

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

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

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

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

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

(10) For investigating the applications required by sections 8-120, 8-331, and 8-403 and the documents required by sections 8-201, 21-1312, and 21-1313, the cost of such examination, investigation, and inspection, including all legal expenses and the cost of any hearing transcript, with a minimum fee under (a) section 8-120 of two thousand five hundred dollars, (b) section 8-331 of two thousand dollars, (c) section 8-403 of two thousand five hundred dollars, and (d) sections 8-201, 21-1312, and 21-1313 of one thousand dollars. The department may require the applicant to procure and give a surety bond in such principal amount as the department may determine and conditioned for the payment of the fees herein provided in this subdivision;

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

(12) To meet the expense of safekeeping securities as provided in section 8-210, the company, national bank, or federal savings association shall, at the time of the initial deposit of such securities, pay one dollar and fifty cents for each thousand dollars of securities deposited and a like amount on or before January 15 each year thereafter;

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

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

(15) For investigating an application for approval of an automatic teller machine, fifteen dollars;

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

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

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

(19) For investigating an application for a purchase of an eligible savings association under section 8-1515, five hundred dollars.

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

Sec. 5. Section 8-1501, Revised Statutes Supplement, 1994, is amended to read:

8-1501. For purposes of sections 8-1501 to 8-1505, unless the context otherwise requires:

(1) Person ~~shall mean~~ means an individual, corporation, partnership, limited liability company, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or other form of entity not specifically listed in this subdivision; and

(2) Control shall mean means to own directly or indirectly or to control in any manner twenty-five percent or more of the voting shares of any bank, trust company, industrial loan and investment company, or holding company or to control in any manner the election of the majority of directors of any bank, trust company, industrial loan and investment company, or holding company.

Sec. 6. Section 8-1502, Reissue Revised Statutes of Nebraska, is amended to read:

8-1502. (1) Except as provided in subsection (2) of this section, no person acting personally or as agent shall acquire control of any state-chartered bank, trust company, or industrial loan and investment company without first giving sixty days' notice to the Department of Banking and Finance on forms provided by the department of such proposed acquisition.

The Director of Banking and Finance, upon receipt of such notice, shall act upon it within thirty days, and, unless he or she disapproves the proposed acquisition within that period of time, it may become effective on the sixty-first day after receipt without his or her approval, except that the director may extend the thirty-day period an additional thirty days if in his or her judgment any material information submitted is substantially inaccurate or the acquiring party has not furnished all the information required by sections 8-1501 to 8-1505 or by the director.

Within three days after his or her decision to disapprove any proposed acquisition, the director shall notify the acquiring party in writing of the disapproval. Such The notice shall provide a statement of the basis for the disapproval.

(2) The notice requirements of subsection (1) of this section shall not apply when:

(a) Shares of a state-chartered bank, trust company, or industrial loan and investment company are acquired by a person in the regular course of securing or collecting a debt previously contracted in good faith or through inheritance or a bona fide gift if notice of such acquisition is given to the department, on forms provided by the department, within ten days after the acquisition; or

(b) The director, the Governor, and the Secretary of State jointly determine that an emergency exists which requires expeditious action or that the department must act immediately to prevent probable failure of the institution to be acquired.

Sec. 7. Section 8-1504, Reissue Revised Statutes of Nebraska, is amended to read:

8-1504. Except as otherwise provided by rule and regulation of the department, a notice filed pursuant to section 8-1502 shall contain the following information:

(1) The identity, personal history, business background, and experience of each person by whom or on whose behalf the acquisition is to be made, including his or her material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which he or she is a party and any criminal indictment or conviction of such person by a state or federal court;

(2) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five years immediately preceding the date of the notice, together with related statements of income, source, and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each such person, together with related statements of income, source, and application of funds as of a date not more than ninety days prior to the date of the filing of the notice;

(3) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made;

(4) The identity, source, and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons;

(5) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank, trust company, or industrial loan and investment company, to sell its assets or merge it with any company, or to make any other major change in its business or corporate structure or management;

(6) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on his or her behalf, to

make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of such employment, retainer, or arrangement for compensation;

(7) Copies of all invitations, tenders, or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition; and

(8) Any additional relevant information in such form as the Director of Banking and Finance may require by rule and regulation or by specific request in connection with any particular notice.

Sec. 8. Section 8-1505, Reissue Revised Statutes of Nebraska, is amended to read:

8-1505. The Director of Banking and Finance may disapprove any proposed acquisition if:

(1) The financial condition of any acquiring person is such as might jeopardize the financial stability of the bank, trust company, or industrial loan and investment company or prejudice the interests of the depositors of the bank, trust company, or industrial loan and investment company;

(2) The competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, trust company, or industrial loan and investment company; or in the interest of the public to permit such person to control the bank, trust company, or industrial loan and investment company; or

(3) Any acquiring person neglects, fails, or refuses to furnish the Director of Banking and Finance all the information required by him or her.

Sec. 9. Section 45-126, Reissue Revised Statutes of Nebraska, is amended to read:

45-126. For the annual renewal of an original license to lend money under the provisions of sections 45-114 to 45-155, the fee shall be one hundred dollars; ~~PROVIDED, if no publication of the notice of filing application for the annual renewal license shall be is required as in the case of filing an application for an original license. The money paid under the terms of said sections 45-114 to 45-155 to the Department of Banking and Finance for original licenses, for renewal licenses, for investigation fees, for examination fees, or from any other source, shall be credited to and kept in the Loan Act Fund, established under section 45-127 remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund pursuant to sections 8-601 and 8-602.~~

Sec. 10. Section 45-127, Revised Statutes Supplement, 1994, is amended to read:

45-127. All original license fees and annual renewal fees shall be collected by the Department of Banking and Finance and ~~remitted to deposited with the State Treasurer and shall be credited for credit to the Loan Act Fund, Department of Banking and Finance, State of Nebraska, which, during any biennium, shall be used exclusively for the administration and enforcement of the Delayed Deposit Services Licensing Act, the Nebraska Installment Sales Act, and sections 45-114 to 45-155; if and when specifically appropriated by the Legislature for that purpose~~ Financial Institution Assessment Cash Fund pursuant to sections 8-601 and 8-602. All investigation and examination fees, charges, and costs collected by or paid to the Department of Banking and Finance under any of the provisions of such acts and sections, shall likewise be deposited and credited ~~remitted for credit to the Loan Act Fund~~ Financial Institution Assessment Cash Fund pursuant to sections 8-601 and 8-602 and shall be available for the uses and purposes of the fund. Any money in the Loan Act Fund on the effective date of this act shall be transferred to the Financial Institution Assessment Cash Fund on such date. It is not the intention of the legislature that any revenue arising hereunder shall inure to any school fund of the State of Nebraska in any of its governmental subdivisions. Any money in the Loan Act Fund available for investment shall be invested by the state investment officer pursuant to the provisions of sections 72-1237 to 72-1276.

Sec. 11. Section 45-190, Reissue Revised Statutes of Nebraska, is amended to read:

45-190. For purposes of sections 45-189 to 45-191.11, unless the context otherwise requires:

(1) Advance fee ~~shall mean means~~ any fee, deposit, or consideration which is assessed or collected, prior to the closing of a loan, by a loan broker and ~~shall include includes~~, but is not be limited to, any money assessed or collected for processing, appraisals, credit checks, consultations, or expenses;

(2) Borrower ~~shall mean means~~ a person obtaining or desiring to obtain a loan of money;

(3) Department ~~shall mean means~~ the Department of Banking and Finance;

(4) Director ~~shall mean means~~ the Director of Banking and Finance;

(5) Loan broker ~~shall mean means~~ any person, except any bank, trust company, savings and loan association or subsidiary of a savings and loan association, building and loan association, credit union, industrial loan company, ~~securities broker-dealer~~, licensed or registered mortgage banker, ~~real estate broker or salesperson~~, attorney, Federal Housing Administration or United States Department of Veterans Affairs approved lender as long as the loan of money made by the Federal Housing Administration or the United States Department of Veterans Affairs approved lender is secured or covered by guarantees or commitments or agreements to purchase or take over the same by the Federal Housing Administration or the United States Department of Veterans Affairs, credit card company, installment loan licensee, or insurance company which is subject to regulation or supervision under the laws of the United States or this state, who:

(a) For or in expectation of consideration, procures, attempts to procure, arranges, or attempts to arrange a loan of money for a borrower;

(b) For or in expectation of consideration, assists, consults, or advises a borrower in obtaining or attempting to obtain a loan of money;

(c) Is employed as an agent for the purpose of soliciting borrowers as clients of the employer; or

(d) Holds himself or herself out, through advertising, signs, or other means, as a loan broker;

(6) Loan brokerage agreement ~~shall mean means~~ any agreement for services between a loan broker and a borrower; and

(7) Person ~~shall mean means~~ natural persons, corporations, trusts, unincorporated associations, joint ventures, partnerships, and limited liability companies.

Sec. 12. Section 45-191.10, Reissue Revised Statutes of Nebraska, is amended to read:

45-191.10. The following persons ~~shall be~~ are exempt from sections 45-189 to 45-191.11 if such person does not hold himself or herself out, through advertising, signs, or other means, as a loan broker: Securities broker-dealer, real estate broker or salesperson, attorney, accountant, or investment adviser.

Sec. 13. Section 45-347, Reissue Revised Statutes of Nebraska, is amended to read:

45-347. All money collected under the authority of ~~sections 45-324 to 45-353~~ the Nebraska Installment Sales Act shall be ~~paid into the state treasury by the director and shall be credited by the State Treasurer to the Loan Act Fund established under section 45-127~~ remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund pursuant to sections 8-601 and 8-602.

Sec. 14. Section 45-716, Revised Statutes Supplement, 1994, is amended to read:

45-716. ~~The Mortgage Bankers Cash Fund is hereby created. All fees, charges, and fines costs collected by the department pursuant to the Mortgage Bankers Registration and Licensing Act shall be remitted to the State Treasurer for credit to the fund. The fund shall be used for the purpose of administering and enforcing the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.~~ Financial Institution Assessment Cash Fund pursuant to sections 8-601 and 8-602. Any money in the Mortgage Bankers Cash Fund on the effective date of this act shall be transferred to the Financial Institution Assessment Cash Fund on such date.

Sec. 15. Section 45-927, Revised Statutes Supplement, 1994, is amended to read:

45-927. All fees, charges, costs, and fines collected by the director under the Delayed Deposit Services Licensing Act shall be remitted to the State Treasurer. Fees, charges, and costs shall be credited to the ~~Loan Act Fund established under section 45-127~~ Financial Institution Assessment Cash Fund pursuant to sections 8-601 and 8-602, and fines shall be credited to the permanent school fund.

Sec. 16. Section 59-1703, Reissue Revised Statutes of Nebraska, is amended to read:

59-1703. Seller-assisted marketing plan shall mean the sale or lease or offer for sale or lease of any product, equipment, supplies, services, license, or any combination thereof which will be used by or on behalf of the purchaser to begin or maintain a business when:

(1) The seller of the plan has advertised or in other manner

solicited the purchase or lease of the plan;

(2) The purchaser makes or will become obligated to make a total initial payment of an amount exceeding five hundred dollars; and

(3) The seller has represented directly or indirectly or orally or in writing that:

(a) The seller or a person recommended or specified by the seller will provide the purchaser with or assist the purchaser in finding locations for the use or operation of vending machines, vending routes, display racks, display cases, or other similar devices on premises neither owned nor leased by the seller or the purchaser;

(b) The seller or a person recommended or specified by the seller will provide the purchaser with or will assist the purchaser in finding outlets or accounts for the purchaser's products or services;

(c) The seller or a person specified by the seller will or is likely to purchase any or all of the products made, produced, fabricated, grown, bred, or modified by the purchaser using, in whole or in part, the product, supplies, equipment, or services which were initially sold or leased or offered for sale or lease to the purchaser by the seller;

(d) The purchaser will, is likely to, or can derive income from the business which exceeds the initial payment paid by the purchaser for participation in the plan;

(e) There is a market for the product, equipment, supplies, or services which were initially sold or leased or offered for sale or lease to the purchaser by the seller;

(f) The seller will refund all or part of the initial payment paid to the seller or will repurchase any of the products, equipment, or supplies provided by the seller or a person recommended or specified by the seller, if the purchaser is dissatisfied with the business; or

(g) The seller or a person recommended or specified by the seller will provide advice or training pertaining to the sale of any products, equipment, supplies, or services or use of any licensed material and the advice or training includes, but is not limited to, preparing or providing (i) promotional literature, brochures, pamphlets, or advertising materials, (ii) training regarding the promotion, operation, or management of the seller-assisted marketing plan, or (iii) operational, managerial, technical, or financial guidelines or assistance.

Sec. 17. Section 59-1728, Reissue Revised Statutes of Nebraska, is amended to read:

59-1728. In selling, leasing, or offering to sell or lease a seller-assisted marketing plan in this state, sellers of such plans shall not represent that a purchaser's initial payment is secured in any manner or to any degree or that the seller provides a buy-back arrangement unless the seller has, in conformity with subdivision (2) of section 59-1726 and section 59-1727 ~~section 59-1751~~, either obtained a surety bond issued by a surety company admitted to do business in this state or established a trust account.

Sec. 18. Section 59-1732, Reissue Revised Statutes of Nebraska, is amended to read:

59-1732. In the first in-person communication with a potential purchaser or in the first written response to an inquiry by a potential purchaser wherein the seller-assisted marketing plan is described, the seller shall provide the prospective purchaser a written disclosure document which either contains the disclosure information required by sections 59-1733 to 59-1740, or which has been prepared pursuant to the Federal Trade Commission rule, 16 C.F.R. 436, or the guidelines adopted by the North American Securities Administrators Association. Such disclosure document shall contain a cover sheet entitled in at least sixteen-point boldface capital letters DISCLOSURE REQUIRED BY NEBRASKA LAW. Under the title shall appear, in boldface of at least ten-point type, the statement: The State of Nebraska has not reviewed and does not approve, recommend, endorse, or sponsor any seller-assisted marketing plan. The information contained in this disclosure has not been checked by the state. If you have any questions about this purchase, see an attorney or other financial advisor before you sign a contract or agreement.

Nothing shall appear on the cover sheet except the title and the statement required by this section. A disclosure document prepared pursuant to sections 59-1733 to 59-1740 shall include a statement which either positively or negatively responds to each disclosure item required by sections 59-1733 and 59-1735 by use of a statement which fully incorporates the information required by the item. This disclosure document shall be given to the potential purchaser and held by the potential purchaser for at least forty-eight hours prior to the execution of a seller-assisted marketing contract or at least forty-eight hours prior to the receipt of any



consideration.

Sec. 19. Section 59-1733, Reissue Revised Statutes of Nebraska, is amended to read:

59-1733. A The disclosure document which does not comply with the Federal Trade Commission rule 16 C.F.R. 436, or the guidelines adopted by the North American Securities Administrators Association required by section 59-1732 shall contain the following information:

(1) The name of the seller, the name under which the seller is doing or intends to do business, the seller's principal business address, the seller's business form, including identification of the state under whose laws the seller is organized or incorporated, and the name, principal business address, and business form of any parent or affiliated company that will engage in business transactions with purchasers or accept responsibility for statements made by the seller;

(2) A statement of the initial payment charged or, when not known, a statement of approximate initial payment charged, and a statement of the amount of the initial payment to be paid to a person inducing, directly or indirectly, a purchaser to contract for the seller-assisted marketing plan;

(3) A full and detailed description of the actual services the seller will or may undertake to perform for the purchaser;

(4) The following legend shall be included in the disclosure document when the seller makes any statement concerning earnings or range of earnings that may be made through the seller-assisted marketing plan:

No guarantee of earnings or ranges of earnings can be made. The number of purchasers who have earned through this business an amount in excess of the amount of their initial payment is at least ....., which represents ..... percent of the total number of purchasers of this seller-assisted marketing plan;

(5) A complete description of any training provided by or through the seller or any person recommended or specified by the seller, including the length of the training and a statement of any costs associated with the training which the purchaser will be responsible for paying;

(6) A complete description of any services to be performed by the seller or any person recommended or specified by the seller in connection with the placement of the equipment, product, or supplies at a location from which they will be sold or used, the full nature of those services, including a statement identifying any third party the seller may hire for such services and the nature of any agreement between the seller and the third party, as well as the nature of the agreements to be made with the owner or manager of the location at which the purchaser's equipment, product, or supplies will be placed and any costs associated with such placement services which the purchaser will be responsible for paying;

(7) A statement completely and clearly disclosing the entire and precise nature of any arrangement (a) whereby the seller agrees to buy back the product, supplies, or equipment initially sold or (b) whereby the initial payment is secured, that the seller represented orally or in writing to exist when soliciting or offering for sale or lease or selling or leasing a seller-assisted marketing plan; and

(8) A statement setting forth (a) the total number of seller-assisted marketing plans, which are the same as the plan described in the disclosure document, that have been set up or organized by the seller, (b) the number of such seller-assisted marketing plans in existence at the end of the preceding year, (c) the names, addresses, and telephone numbers of the ten seller-assisted marketing plan purchasers nearest the prospective purchaser's intended location. If less than ten seller-assisted marketing plan purchasers exist, the total number of purchasers shall be used, and (d) the total number of seller-assisted marketing plans the seller intends to set up in Nebraska and across the nation within the next twelve months.

Sec. 20. Section 59-1735, Revised Statutes Supplement, 1994, is amended to read:

59-1735. The disclosure document required by section 59-1732 shall contain the following:

(1) The name of and the office held by the seller's officers, directors, trustees, general or limited partners, and limited liability company members, as the case may be, and the names of those individuals who have management responsibilities in connection with the seller's business activities;

(2) A statement whether the seller or any person identified in subdivision (1) of this section:

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

property;

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

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

(3) With respect to persons identified in subdivision (1) of this section:

(a) A description of their work experience for the past five years, including a list of principal occupations and employers during such time. Such five-year period shall run from the date of the disclosure filed with the Department of Banking and Finance; and

(b) A listing of each such person's educational background, including the names and addresses of schools attended, dates of attendance, and degrees received.

Sec. 21. Original sections 8-124.01, 8-178, 8-1502, 8-1504, 8-1505, 45-126, 45-190, 45-191.10, 45-347, 59-1703, 59-1728, 59-1732, and 59-1733, Reissue Revised Statutes of Nebraska, and sections 8-157, 8-602, 8-1501, 45-127, 45-716, 45-927, and 59-1735, Revised Statutes Supplement, 1994, are repealed.