

LEGISLATIVE BILL 533

Approved by the Governor March 22, 2005

Introduced by Banking, Commerce and Insurance Committee: Mines, 18,
Chairperson; Flood, 19; Johnson, 37; Langemeier, 23; Louden, 49;
Pahls, 31; Redfield, 12

AN ACT relating to banking and finance; to amend sections 8-135, 8-318, 8-320, 8-702, 45-346, 45-348, 45-350, 45-703 to 45-707, 45-711, 45-910, 45-1001, 45-1005, 45-1006, 45-1013, 45-1024, 45-1032, 45-1033, and 45-1055, Reissue Revised Statutes of Nebraska, and sections 8-113, 8-115.01, 8-116.01, 8-120, 8-124, 8-143.01, 8-148, 8-157, 8-183.04, 8-1,140, 8-206, 8-213, 8-234, 8-305, 8-331, 8-355, 8-602, 8-701, 8-1006, 8-2401, 21-1725.01, 21-17,102, 21-17,115, 30-3116, 30-3117, 30-3803, 30-3805, 30-3810, 30-3822, 30-3836, 30-3837, 30-3849, 30-3855, 30-3867, 30-3878, and 30-3879, Revised Statutes Supplement, 2004; to change and eliminate provisions relating to banking, trust companies, and building and loan associations; to change credit report requirements of licensed executive officers; to revise powers of state-chartered banks, building and loan associations, and credit unions; to change and provide fees; to restrict third-party use of financial institution trademarks and tradenames for marketing purposes as prescribed; to change provisions relating to deposit insurance, accounts of minors, state-federal cooperation, sales of checks, credit card banks, credit unions, installment sales, mortgage bankers, delayed deposit services, and installment loans; to provide for administrative fines; to authorize total return trusts as prescribed; to change provisions relating to the Nebraska Uniform Trust Code; to harmonize provisions; to provide a duty for the Revisor of Statutes; to provide operative dates; to repeal the original sections; to outright repeal section 8-385, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. Section 8-113, Revised Statutes Supplement, 2004, is amended to read:

8-113. No individual, firm, company, corporation, or association doing business in the State of Nebraska, unless organized as a bank under the Nebraska Banking Act or the authority of the federal government, or as a building and loan association, savings and loan association, or savings bank under Chapter 8, article 3, or the authority of the federal government, shall use the word bank or any derivative thereof as any part of a title or description of any business activity. This section does not apply to (1) banks, building and loan associations, savings and loan associations, or savings banks chartered and supervised by a foreign state agency, (2) bank holding companies registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative bank is used, (3) mortgage bankers licensed or registered under the Mortgage Bankers Registration and Licensing Act, if the word mortgage immediately precedes the word bank or its derivative, (4) organizations described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 and exempt from taxation under section 501(a) of the code, ~~(2)~~ (5) trade associations which are exempt from taxation under section 501(c)(6) of the code which represent a segment of the banking or savings and loan industries, and any affiliate or subsidiary thereof, and ~~(3)~~ (6) such other firms, companies, corporations, or associations as have been in existence and doing business for a period of ten years or more prior to October 19, 1963, under a name composed in part of the word bank or some derivative thereof. Any violation of this section shall be a Class V misdemeanor.

Sec. 2. Section 8-115.01, Revised Statutes Supplement, 2004, is amended to read:

8-115.01. When an application required by section 8-120 is made by a corporation, the following procedures shall be followed:

(1) Except as provided for in subdivision (2) of this section, when application is made for a new bank charter, a public hearing shall be held on each application. Notice of the filing of the application shall be published by the department for three weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the bank. The date for hearing the application shall be not less than thirty days

after the last publication of notice of hearing and not more than ninety days after filing the application unless the applicant agrees to a later date. Notice of the filing of the application shall be sent by the department ~~by certified mail~~ to all financial institutions located in the county where the applicant proposes to operate;

(2) When application is made for a new bank charter and the director determines, in his or her discretion, that the conditions of subdivision (3) of this section are met, then the public hearing requirement of subdivision (1) of this section shall only be required if, (a) after publishing a notice of the proposed application in a newspaper of general circulation in the county where the main office of the applicant is to be located and (b) after giving notice ~~by certified mail~~ to all financial institutions located within such county, the director receives a substantive objection to the application within fifteen days after the first day of publication;

(3) The director shall consider the following in each application before the public hearing requirement of subdivision (1) of this section may be waived:

(a) Whether the experience, character, and general fitness of the applicant and of the applicant's officers and directors is such as to warrant belief that the applicant will operate the business honestly, fairly, and efficiently;

(b) Whether the length of time that the applicant or a majority of the applicant's officers, directors, and shareholders have been involved in the business of banking in this state has been for a minimum of five consecutive years; and

(c) Whether the condition of financial institutions currently owned by the applicant, the applicant's holding company, if any, or the applicant's officers, directors, or shareholders is such as to indicate that a hearing on the current application would not be necessary;

(4) ~~When~~ Except as provided in subdivision (6) of this section, when application is made for transfer of a bank charter and move of the main office of a bank to any location other than within the corporate limits of the city or village of its original charter or, if such bank charter is not located in a city or village, then for transfer outside the county in which it is located, the director shall hold a hearing on the matter if he or she determines, in his or her discretion, that the condition of the applicant warrants a hearing. If the director determines that the condition of the applicant does not warrant a hearing, the director shall (a) publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed main office and charter of the applicant would be located and (b) give notice of such application ~~by certified mail~~ to all financial institutions located within the county where the proposed main office and charter would be located and to such other interested parties as the director may determine. If the director receives any substantive objection to the proposed relocation within fifteen days after the first day of publication, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subdivision shall be published for two consecutive weeks in a newspaper of general circulation in the county where the main office would be located. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after the filing of the application unless the applicant agrees to a later date. When the persons making application for transfer of a main office and charter are officers or directors of the bank, there is a rebuttable presumption that such persons are parties of integrity and responsibility;

(5) ~~When~~ Except as provided in subdivision (6) of this section, when application is made for a move of any bank's main office within the city, village, or county, if not chartered within a city or village, of its original charter, the director shall publish notice of the proposed move in a newspaper of general circulation in the county where the main office of the applicant is located and shall give notice of such intended move ~~by certified mail~~ to all financial institutions located within the county where such bank is located. If the director receives a substantive objection to such move within fifteen days after publishing ~~and mailing~~ such notice, he or she shall publish an additional notice and hold a hearing as provided in subdivision (1) of this section;

(6) With the approval of the director, a bank may move its main office and charter to the location of a branch of the bank without public notice or hearing as long as (a) the condition of the bank, in the discretion of the director, does not warrant a hearing and (b) the branch (i) is located in Nebraska, (ii) has been in operation for at least one year as a branch of the bank or was acquired by the bank pursuant to section 8-1506 or 8-1516, and

(iii) is simultaneously relocated to the original main office location;

(7) The director shall send any notice to financial institutions required by this section by certified mail or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail;

(8) The expense of any publication and certified mailing required by this section shall be paid by the applicant; and

~~(7)~~ (9) Notwithstanding any provision of this section, the director shall take immediate action on any charter application or applications concerned without the benefit of a hearing in the case of an emergency so declared by the Governor, the Secretary of State, and the director.

Sec. 3. Section 8-116.01, Revised Statutes Supplement, 2004, is amended to read:

8-116.01. With the approval of the director, any ~~banking institution as defined in section 8-701~~ bank may at any time, through action of its board of directors and without requiring any action of its stockholders, issue and sell its capital notes or debentures. Such capital notes or debentures shall be subordinate and subject to the claims of depositors and may be subordinated and subjected to the claims of other creditors. The capital stock of any bank ~~or trust company~~ as such term capital stock is used respectively in sections 8-116, 8-118, and 8-127, ~~and 8-205,~~ the capital of any corporation transacting a banking business as the term capital is used in section 8-187, and the capital of a bank as the term capital is used in section 8-132, ~~and the capital stock of any trust company as the term capital stock is used in sections 8-218 to 8-221,~~ shall be deemed to be unimpaired when the amount of such capital notes and debentures as represented by cash or sound assets exceeds the impairment as found by the department. Before any such capital notes or debentures are retired or paid by the ~~banking institution~~ bank, any existing deficiency of its capital, disregarding the notes or debentures to be retired, must be paid in, in cash, to the end that the sound capital assets shall at least equal the capital or capital stock of the ~~respective institutions named above~~ bank in the sense such terms capital and capital stock are used in the respective sections named. Such capital notes or debentures shall in no case be subject to any assessment. The holders of such capital notes or debentures shall not be held individually responsible as such holders for any debts, contracts, or engagements of such ~~institution~~ bank and shall not be held liable for assessments to restore impairments in the capital of such ~~institution~~ bank.

Sec. 4. Section 8-120, Revised Statutes Supplement, 2004, is amended to read:

8-120. (1) Every corporation organized for and desiring to conduct a bank or to conduct a bank for purposes of a merger with an existing bank, shall make under oath and transmit to the department a complete detailed application, giving ~~(1)~~ (a) the name of the proposed bank; ~~(2)~~ (b) a certified copy of the articles of incorporation; ~~(3)~~ (c) the names of the stockholders; ~~(4)~~ (d) the county, city, or village and the exact location therein in which such bank is proposed to be located; ~~(5)~~ (e) the nature of the proposed banking business; ~~(6)~~ (f) the proposed amounts of paid-up capital stock, surplus, and undivided profits, and the items of actual cash and property, as reported and approved at a meeting of the stockholders, to be included in such amounts; and ~~(7)~~ (g) a statement that at least twenty percent of the amounts stated in subdivision ~~(6)~~ of this section (f) of this subsection have in fact been paid in to the corporation by its stockholders.

(2) In the case of a merger, the existing bank which is to be merged into shall complete an application and meet the requirements of this section.

(3) This section also applies when application is made for transfer of a bank charter and move of a bank's main office to any location other than (a) within the corporate limits of the city or village of its original charter, (b) within the county in which it is located ~~or~~, if such bank charter is not located in a city or village, ~~then for transfer outside the county in which it is located~~ or (c) as provided in subdivision (6) of section 8-115.01.

Sec. 5. Section 8-124, Revised Statutes Supplement, 2004, is amended to read:

8-124. The affairs and business of any bank chartered after September 2, 1973, or which has had transfer of twenty-five percent or more of voting shares after September 2, 1973, shall be managed or controlled by a board of directors of not less than five and not more than fifteen members, who shall be selected ~~from the stockholders~~ at such time and in such manner as may be provided by the articles of incorporation of the corporation and in conformity with the Nebraska Banking Act. Any bank chartered before September 2, 1973, may have a minimum of three directors and not more than fifteen directors so long as it does not have transfer of twenty-five percent or more

voting shares, with such directors selected as provided in this section. Any vacancy on the board shall be filled within ninety days by appointment by the remaining directors, and any director so appointed shall serve until the next election of directors, except that if the vacancy created leaves a minimum of five directors, appointment shall be optional. The board shall select from among its number the president and secretary and shall select a cashier. Such officers shall hold their office at the pleasure of the board of directors. The board of directors shall hold at least one regular meeting in each calendar quarter, and at one of such meetings in each year a thorough examination of the books, records, funds, and securities held by the bank shall be made and recorded in detail upon its record book. In lieu of the one annual examination required, the board of directors may accept one annual audit by an accountant or accounting firm approved by the Director of Banking and Finance.

Sec. 6. Section 8-135, Reissue Revised Statutes of Nebraska, is amended to read:

8-135. ~~Any bank deposit, whether demand or time, made in the name of a minor, except by a court-appointed fiduciary, may, in the absence of an agreement to the contrary made between the bank and the depositor at the time the account is opened, be paid to the minor or upon the order of the minor by check or otherwise, and the receipt, acquittance, or order of payment of such minor shall be a valid and sufficient release and discharge for such deposit or any part thereof to the bank. Any minor shall have legal capacity to endorse a check payable to his order for the purpose of depositing the proceeds in a bank deposit in his name. Nothing in this section shall affect the legal relationships between the minor and any person other than the bank~~
(1) All persons, regardless of age, may become depositors in any bank and shall be subject to the same duties and liabilities respecting their deposits. Whenever a deposit is accepted by any bank in the name of any person, regardless of age, the deposit may be withdrawn by the depositor by any of the following methods:

(a) Check or other instrument in writing. The check or other instrument in writing constitutes a receipt or acquittance if the check or other instrument in writing is signed by the depositor and constitutes a valid release and discharge to the bank for all payments so made; or

(b) Electronic means through:

(i) Preauthorized direct withdrawal;

(ii) An automatic teller machine;

(iii) A debit card;

(iv) A transfer by telephone;

(v) A network, including the Internet; or

(vi) Any electronic terminal, computer, magnetic tape, or other electronic means.

(2) This section shall not be construed to affect the rights, liabilities, or responsibilities of participants in an electronic fund transfer under the federal Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., as it existed on the operative date of this section, and shall not affect the legal relationships between a minor and any person other than the bank.

Sec. 7. Section 8-143.01, Revised Statutes Supplement, 2004, is amended to read:

8-143.01. (1) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds the higher of twenty-five thousand dollars or five percent of the bank's unimpaired capital and unimpaired surplus unless (a) the extension of credit has been approved in advance by a majority vote of the entire board of directors of the bank, a record of which shall be made and kept as a part of the records of such bank, and (b) the interested party has abstained from participating directly or indirectly in such vote.

(2) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds five hundred thousand dollars except by complying with the requirements of subdivisions (1)(a) and (b) of this section.

(3) No bank shall extend credit to any of its executive officers licensed pursuant to section 8-139, and no such executive officer shall borrow from or otherwise become indebted to his or her bank, except in the amounts and for the purposes set forth in subsection (4) of this section.

(4) A bank shall be authorized to extend credit to any of its

executive officers licensed pursuant to section 8-139:

(a) In any amount to finance the education of such executive officer's children;

(b) (i) In any amount to finance or refinance the purchase, construction, maintenance, or improvement of a residence of such executive officer if the extension of credit is secured by a first lien on the residence and the residence is owned or is expected to be owned after the extension of credit by the executive officer and (ii) in the case of a refinancing, only the amount of the refinancing used to repay the original extension of credit, together with the closing costs of the refinancing, and any additional amount thereof used for any of the purposes enumerated in this subdivision are included within this category of credit;

(c) In any amount if the extension of credit is (i) secured by a perfected security interest in bonds, notes, certificates of indebtedness, or Treasury Bills of the United States or in other such obligations fully guaranteed as to principal and interest by the United States, (ii) secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States, or (iii) secured by a perfected security interest in a segregated deposit account in the lending bank; or

(d) For any other purpose not specified in subdivisions (a), (b), and (c) of this subsection if the aggregate amount of such other extensions of credit to such executive officer does not exceed, at any one time, the greater of two and one-half percent of the bank's unimpaired capital and unimpaired surplus or twenty-five thousand dollars, but in no event greater than one hundred thousand dollars or the amount of the bank's lending limit as prescribed in section 8-141, whichever is less.

~~(5) Any (5) (a) Except as provided in subdivision (b) or (c) of this subsection, any executive officer licensed pursuant to section 8-139, unless such officer is excluded by a resolution of the board of directors or by the bylaws of the bank from participating in the major policymaking functions of the bank and does not actually participate in the major policymaking functions of the bank, who becomes indebted to any other financial institution or institutions shall, by the next regularly scheduled meeting of the board of directors, shall make, on an annual basis, a written report to the board of directors of the bank of which he or she is an executive officer stating the date and amount of such loan all loans or indebtedness on which he or she is a borrower, cosigner, or guarantor, and the security therefor, and the purpose for which the proceeds have been or are to be used.~~

(b) Except as provided in subdivision (c) of this subsection, in lieu of the reports required by subdivision (a) of this subsection, the board of directors of a bank may obtain a credit report from a recognized credit agency, on an annual basis, for any or all of its executive officers licensed pursuant to section 8-139.

(c) Subdivisions (a) and (b) of this subsection do not apply to any executive officer licensed pursuant to section 8-139 if such officer is excluded by a resolution of the board of directors or by the bylaws of the bank from participating in the major policymaking functions of the bank and does not actually participate in the major policymaking functions of the bank.

(6) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds the lending limit of the bank as prescribed in section 8-141.

(7) (a) Except as provided in subdivision (b) of this subsection, no bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons unless the extension of credit (i) is made on substantially the same terms, including interest rates and collateral, as, and following credit-underwriting procedures that are not less stringent than, those prevailing at the time for comparable transactions by the bank with other persons that are not covered by this section and who are not employed by the bank and (ii) does not involve more than the normal risk of repayment or present other unfavorable features.

(b) Nothing in subdivision (a) of this subsection shall prohibit any extension of credit made by a bank pursuant to a benefit or compensation program under the provisions of 12 C.F.R. 215.4(a)(2).

(8) For purposes of this section:

(a) Executive officer shall mean a person who participates or has authority to participate, other than in the capacity of director, in the major policymaking functions of the bank, whether or not the officer has an official

title, the title designates such officer as an assistant, or such officer is serving without salary or other compensation. Executive officer shall include the chairperson of the board of directors, the president, all vice presidents, the cashier, the corporate secretary, and the treasurer, unless the executive officer is excluded by a resolution of the board of directors or by the bylaws of the bank from participating, other than in the capacity of director, in the major policymaking functions of the bank, and the executive officer does not actually participate in such functions. A manager or assistant manager of a branch of a bank shall not be considered to be an executive officer unless such individual participates or is authorized to participate in the major policymaking functions of the bank; and

(b) Unimpaired capital and unimpaired surplus shall mean the sum of:

(i) The total equity capital of the bank reported on its most recent consolidated report of condition filed under section 8-166;

(ii) Any subordinated notes and debentures approved as an addition to the bank's capital structure by the appropriate federal banking agency; and

(iii) Any valuation reserves created by charges to the bank's income reported on its most recent consolidated report of condition filed under section 8-166.

(9) Any executive officer, director, or principal shareholder of a bank or any other person who intentionally violates this section or who aids, abets, or assists in a violation of this section shall be guilty of a Class IV felony.

(10) The Director of Banking and Finance shall have authority to adopt and promulgate rules and regulations to implement this section, including rules or regulations defining or further defining terms used in this section, consistent with the provisions of 12 U.S.C. 84 and implementing Regulation O.

Sec. 8. Section 8-148, Revised Statutes Supplement, 2004, is amended to read:

8-148. (1) Except as provided in subsection (2) or (3) of this section, a bank shall not make any loan or discount on the security of the shares of its own capital stock or the capital stock of its holding company, if any, be the purchaser or holder of any such shares, or purchase any securities convertible into stock or, except as provided in this section and sections 8-148.01, 8-148.02, 8-148.04, ~~and~~ 8-148.06, 8-149, and 21-2109, the shares of any corporation, unless such security or purchase is necessary to prevent loss upon a debt previously contracted in good faith. Such stock so purchased or acquired shall, within six months ~~from~~ after the time of its purchase unless written approval of a longer holding period is obtained from the director, be sold or disposed of at public or private sale, or in default thereof, a receiver may be appointed to close up the business of the bank, except that such stock, if shares of another bank or a bank holding company, shall be sold or disposed of as required by the director. In no case shall the amount of stock so held at any one time exceed ten percent of the paid-up capital of such bank.

(2) Any bank may subscribe to, invest, purchase, and own shares of investment companies registered under the Investment Company Act of 1940 when the investment companies' assets consist of and are limited to obligations that are eligible for investment by the bank. The department may adopt and promulgate rules and regulations governing the amounts, terms, and conditions of such subscriptions, investments, purchases, and ownership.

(3) Any bank may subscribe to, invest, purchase, and own Student Loan Marketing Association stock, Government National Mortgage Association stock, Federal National Mortgage Association stock, Federal Agricultural Mortgage Corporation stock, Federal Home Loan Mortgage Corporation stock, or stock issued by any authorized agency of the United States Government, including any corporation or enterprise wholly owned directly or indirectly by the United States, or with the authority to borrow directly from the United States treasury, which the department has approved by rule and regulation or order. The department may further adopt and promulgate rules and regulations governing the amounts, terms, and conditions of such subscriptions, investments, purchases, and ownerships, except that a bank shall not obligate more than five percent of its capital, surplus, undivided profits, and unencumbered reserves for such stock.

Sec. 9. Section 8-157, Revised Statutes Supplement, 2004, is amended to read:

8-157. (1) Except as otherwise provided in this section and section 8-2104, the general business of every bank shall be transacted at the place of business specified in its charter.

(2) (a) (i) Except as provided in subdivision (2) (a) (ii) of this section, with the approval of the director, any bank located in this state may

establish and maintain in this state an unlimited number of branches at which all banking transactions allowed by law may be made.

(ii) Any bank that owns or controls more than twenty-two percent of the total deposits in Nebraska, as described in subdivision (2)(c) of section 8-910 and computed in accordance with subsection (3) of section 8-910, or any bank that is a subsidiary of a bank holding company that owns or controls more than twenty-two percent of the total deposits in Nebraska, as described in subdivision (2)(c) of section 8-910 and computed in accordance with subsection (3) of section 8-910, shall not establish and maintain an unlimited number of branches as provided in subdivision (2)(a)(i) of this section. With the approval of the director, a bank as described in this subdivision may establish and maintain in the county in which such bank is located an unlimited number of branches at which all banking transactions allowed by law may be made, except that if such bank is located in a Class I or Class III county, such bank may establish and maintain in Class I and Class III counties an unlimited number of branches at which all banking transactions allowed by law may be made.

(iii) Any bank which establishes and maintains branches pursuant to subdivision (2)(a)(i) of this section and which subsequently becomes a bank as described in subdivision (2)(a)(ii) of this section shall not be subject to the limitations as to location of branches contained in subdivision (2)(a)(ii) of this section with regard to any such established branch, and shall continue to be entitled to maintain any such established branch as if such bank had not become a bank as described in subdivision (2)(a)(ii) of this section.

(b) With the approval of the director, any bank or any branch may establish and maintain a mobile branch at which all banking transactions allowed by law may be made. Such mobile branch may consist of one or more vehicles which may transact business only within the county in which such bank or such branch is located and within counties in this state which adjoin such county.

(c) For purposes of this subsection:

(i) Class I county means 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 means 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 means 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 means 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 establish and maintain branches acquired pursuant to section 8-1506 or 8-1516. All ~~and all~~ banking transactions allowed by law may be made at such branches.

(4) With the approval of the director, a bank may acquire the assets and assume the deposits of a branch of another financial institution in Nebraska if the acquired branch is converted to a branch of the acquiring bank. All banking transactions allowed by law may be made at a branch acquired pursuant to this subsection.

(5) With the approval of the director, a bank may establish a branch pursuant to subdivision (6) of section 8-115.01. All banking transactions allowed by law may be made at such branch.

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

~~(6)~~ (7) A bank which has a main chartered office or an approved branch 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 branch thereof.

~~(7)~~ (8) A bank which has a main chartered office or approved branch 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, that has students who reside in the same city or village as the main chartered office or branch of the bank, or, if the main office of the bank is located in an unincorporated area of a county, at any school that has students who reside 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.

~~(8)~~ (9) Upon receiving an application for a branch to be established pursuant to subdivision (2)(a) of this section, to establish a mobile branch pursuant to subdivision (2)(b) of this section, to acquire a branch of another financial institution pursuant to subsection (4) of this section, or to move the location of an established branch other than a move made pursuant to subdivision (6) of section 8-115.01, the director shall hold a public hearing on the matter if he or she determines, in his or her discretion, that the condition of the applicant bank warrants a hearing. If the director determines that the condition of the bank does not warrant a hearing, the director shall (a) publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed branch or mobile branch would be located, the expense of which shall be paid by the applicant bank, and (b) give notice of such application ~~by certified mail~~ to all financial institutions located within the county where the proposed branch or mobile branch would be located, and to such other interested parties as the director may determine. The director shall send the notice to financial institutions by certified mail or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail. If the director receives any substantive objection to the proposed branch or mobile branch within fifteen days after publication ~~or mailing~~ of such notice, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subsection shall be published for two consecutive weeks in a newspaper of general circulation in the county where the proposed branch or mobile branch would be located. The date for hearing the application shall not be more than ninety days after the filing of the application and not less than thirty days after the last publication of notice of hearing. The expense of any publication and certified mailing required by this section shall be paid by the applicant.

Sec. 10. Section 8-183.04, Revised Statutes Supplement, 2004, is amended to read:

8-183.04. Notwithstanding any other provision of the Nebraska Banking Act or any other Nebraska law, a state or federal savings association which was formed and in operation as a mutual savings association as of July 15, 1998, may elect to retain its mutual form of corporate organization upon conversion to a state bank. All references to shareholders or stockholders for state banks shall be deemed to be references to members for such a converted savings association. The director shall have the power to adopt and promulgate rules and regulations governing such converted mutual savings associations. In adopting and promulgating such rules and regulations, the director may consider the provisions of sections 8-301 to ~~8-385~~ 8-384 governing savings associations in mutual form of corporate organization.

Sec. 11. Section 8-1,140, Revised Statutes Supplement, 2004, is amended to read:

8-1,140. Notwithstanding any of the other provisions of the Nebraska Banking Act or any other Nebraska statute, any bank incorporated under the laws of this state and organized under the provisions of the act, or under the laws of this state as they existed prior to May 9, 1933, shall directly, or indirectly through a subsidiary or subsidiaries, have all the rights, powers, privileges, benefits, and immunities which may be exercised as of ~~April 16, 2004~~ the operative date of this section, by a federally chartered bank doing business in Nebraska, including the exercise of all powers and activities that are permitted for a financial subsidiary of a federally chartered bank. Such rights, powers, privileges, benefits, and immunities shall not relieve such bank from payment of state taxes assessed under any applicable laws of this state.

Sec. 12. Section 8-206, Revised Statutes Supplement, 2004, is amended to read:

8-206. A trust company created under the Nebraska Trust Company Act shall have power:

(1) To receive trust funds for investment or in trust upon such terms and conditions as may be agreed upon and to purchase, hold, and lease fireproof and burglar-proof and other vaults and safes from which revenue may be derived;

(2) To accept and execute all such trusts as may be committed to it by any corporation, person, or persons, act as assignee, receiver, trustee, and depositor, and accept and execute all such trusts as may be committed or referred to it by order, judgment, or decree of any court of record;

(3) To take, accept, and hold by the order, judgment, or decree of any such court or by gift, grant, assignment, transfer, devise, or bequest any real or personal property in trust, to care for, manage, and convey the same in accordance with such trusts, and to execute and perform any and all such

trusts;

(4) To act as attorney in fact for any person or corporation, public or private;

(5) To act either by itself or jointly with any natural person or persons or with any other trust company or state or national bank doing business in this state as administrator of the estate of any deceased person, as personal representative, or as conservator or guardian of the estate of any incapacitated person;

(6) To act as trustee for any person or of the estate of any deceased person under the appointment of any court of record having jurisdiction of the estate of such person;

(7) To act as agent or in an agency capacity for any person or entity, public or private;

(8) To loan money upon real estate and upon collateral security when the collateral would of itself be a legal investment for such corporation;

(9) To buy, hold, own, and sell securities issued or guaranteed by the United States Government or any authorized agency thereof, including any corporation or enterprise wholly owned directly or indirectly by the United States, or with the authority to borrow directly from the United States treasury, or securities secured by obligations of any of the foregoing, securities of any state or political subdivision thereof which possesses general powers of taxation, stock, warrants, bills of exchange, notes, mortgages, banker's acceptances, certificates of deposit in institutions whose accounts are insured by the Federal Deposit Insurance Corporation, securities issued pursuant to the Nebraska Business Development Corporation Act, and other investment securities, negotiable and nonnegotiable, except stock or other securities of any corporation organized under the Nebraska Trust Company Act;

(10) To purchase, own, or rent real estate needed in the conduct of the business and to erect thereon buildings deemed expedient and necessary, the cost of such real estate and buildings not to exceed one hundred percent of the paid-up capital stock, and to purchase, own, and improve such other real estate as it may be required to bid in under foreclosure or in payment of other debts;

(11) To borrow money, to execute and issue its notes payable at a future date, and to pledge its real estate, mortgages, or other securities therefor. With the approval of the Director of Banking and Finance, any trust company may at any time, through action of its board of directors and without requiring any action of its stockholders, issue and sell its capital notes or debentures. Such capital notes or debentures shall be subordinate and subject to the claims of trustors and beneficiaries of estates and trusts and may be subordinated and subject to the claims of other creditors. The holders of such capital notes or debentures shall not be held individually responsible as such holders for any debts, contracts, or engagements of the trust company and shall not be held liable for assessments to restore impairments in the capital of the trust company as may be from time to time determined by the director; and

(12) To perform all acts and exercise all powers connected with, belonging to or incident to, or necessary for the full and complete exercise and discharge of the rights, powers, and responsibilities granted in the Nebraska Trust Company Act, and all provisions of the act shall be liberally construed. None of the powers hereby granted shall extend to or be construed to authorize any such corporation to accept deposits or conduct the business of banking as defined in the Nebraska Banking Act.

Sec. 13. Section 8-213, Revised Statutes Supplement, 2004, is amended to read:

8-213. In the case of national banks and federal savings associations doing business as trust companies, trust companies, federally chartered trust companies, and out-of-state trust companies authorized under the Interstate Trust Company Office Act which upon insolvency are not liquidated by the Department of Banking and Finance, upon the appointment of a receiver, trustee in bankruptcy, or other liquidating agent, the department shall turn over to the receiver, trustee in bankruptcy, or other liquidating agent any securities pledged to it by the national bank, federal savings association, trust company, federally chartered trust company, or out-of-state trust company authorized under the Interstate Trust Company Office Act upon: ~~a proper showing as follows:~~

(1) The entry of an order by a court having jurisdiction over a ~~That~~ ~~all trust liabilities known to the receiver, trustee in bankruptcy, or other liquidating agent and reasonably ascertainable from the records of the national bank, federal savings association, trust company, federally chartered trust company, or out-of-state trust company authorized under the Interstate~~

Trust Company Office Act ~~have been discharged,~~ ordering the department to turn over to a receiver, trustee in bankruptcy, or other liquidating agent the securities pledged to the department; and

(2) The publication of a That notice has been given for three successive weeks in some legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county in which the principal place of business of the national bank, federal savings association, trust company, federally chartered trust company, or out-of-state trust company authorized under the Interstate Trust Company Office Act is located that all claims for the trust liabilities must be filed with the receiver, referee trustee in bankruptcy, or other liquidating agent within thirty days. In the case of national banks the notice provided for in 12 U.S.C. 193, and in the case of trust companies liquidated in bankruptcy court, the notice provided for in 11 U.S.C. 94(b), shall be sufficient without further notice being given and shall be in lieu of the notice required in this subdivision. In the case of out-of-state trust companies authorized under the Interstate Trust Company Office Act, an additional notice shall be published in each county in Nebraska where the out-of-state trust company maintains an office or maintained an office within one year prior to the insolvency. + and

~~(3) That after the notice and thirty days have elapsed, all claims, if any, have been discharged.~~

Sec. 14. Section 8-234, Revised Statutes Supplement, 2004, is amended to read:

8-234. (1) With the approval of the Director of Banking and Finance, a corporation organized to do business as a trust company under the Nebraska Trust Company Act may establish and maintain branch trust offices within this state and in any other state pursuant to section 8-2303.

(2) A corporation organized to do business as a trust company under the Nebraska Trust Company Act, in order to establish a branch trust office in Nebraska pursuant to subsection (1) of this section, shall apply to the Director of Banking and Finance on a form prescribed by the director. Upon receipt of a substantially complete application, the director shall hold a public hearing on the matter if he or she determines, in his or her discretion, that the condition of the corporation organized to do business as a trust company warrants a hearing. If the director determines that the condition of the corporation organized to do business as a trust company does not warrant a hearing, the director shall (a) publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed branch trust office would be located, the expense of which shall be paid by the corporation organized to do business as a trust company, and (b) give notice of such application for a branch trust office ~~by certified mail~~ to all financial institutions within the county where the proposed branch trust office would be located and to such other interested parties as the director may determine. The director shall send the notice to financial institutions by certified mail or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail. If the director receives a substantive objection to the proposed branch trust office within fifteen days after publication ~~or mailing~~ of such notice, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subsection shall be published for two consecutive weeks in a newspaper of general circulation in the county where the proposed branch trust office would be located. The expense of any publication and certified mailing required by this section shall be paid by the applicant. The date for hearing the application shall not be more than ninety days after the filing of the application and not less than thirty-one days after the last publication of notice of hearing. The costs of the hearing shall be assessed in accordance with the rules and regulations of the Department of Banking and Finance.

(3) The director shall approve the application for a branch trust office if he or she finds that (a) the establishment of the branch trust office would not adversely affect the financial condition of the corporation organized to do business as a trust company, (b) there is a need in the community for the branch trust office, and (c) establishment of the branch trust office would be in the public interest.

(4) With the approval of the director, a state-chartered bank authorized to conduct a trust business pursuant to sections 8-159 to 8-162 may establish and maintain branch trust offices within this state and in any other state pursuant to section 8-2303. The procedure for the establishment of any branch trust office under this subsection shall be the same as provided in subsections (2) and (3) of this section. The activities at the branch trust office shall be limited to the activities permitted by the Nebraska Trust Company Act, and the general business of banking shall not be conducted at the

branch trust office. Nothing in this subsection is intended to prohibit the establishment of a branch pursuant to section 8-157 at which trust business may be conducted.

(5) A branch trust office of a corporation organized to do business as a trust company or of a state-chartered bank shall not be closed without the prior written approval of the director.

Sec. 15. Section 8-305, Revised Statutes Supplement, 2004, is amended to read:

8-305. The words loan and building association, building association, building and loan association, savings and loan association, or loan and savings association, shall form part of the corporate name of every such corporation. No individual, firm, company, corporation, or association operating in the State of Nebraska, unless (1) organized under authority of the federal government, (2) organized as a building and loan association under the authority of any foreign state and complying with the provisions of the Nebraska statutes, (3) organized and incorporated under and in accordance with the provisions of sections 8-301 to ~~8-385~~ 8-384, or (4) having been in existence and doing business in Nebraska under its present name for a period of ten years prior to January 1, 1949, shall, after August 27, 1949, use in its name the words loan and building association, building and loan association, savings and loan association, loan and savings association, loan and building, building and loan, savings and loan, loan and savings, building and savings, or savings and building, in combination with any other word or words. Any person, firm, company, corporation, or association violating this section shall be guilty of a Class V misdemeanor for each offense. Each day such person, firm, or corporation shall use any such prohibited words shall be deemed a separate and distinct offense in violation of this section.

Sec. 16. Section 8-318, Reissue Revised Statutes of Nebraska, is amended to read:

8-318. ~~(1)~~ (1)(a) Shares of stock in any association, or in any federal savings and loan association incorporated under the provisions of the federal Home Owners' Loan Act of 1933, with its principal office and place of business in this state, may be subscribed for, held, transferred, surrendered, withdrawn, and forfeited and payments thereon received and receipted for by any ~~minor~~ person, regardless of age, in the same manner and with the same binding effect as though such person were of ~~full age~~ the age of majority, except that ~~the~~ a minor or his or her estate shall not be bound on his or her subscription to a stock except to the extent of payments actually made thereon.

(b) Whenever a share account is accepted by any building and loan association in the name of any person, regardless of age, the deposit may be withdrawn by the shareholder by any of the following methods:

(i) Check or other instrument in writing. The check or other instrument in writing constitutes a receipt or acquittance if the check or other instrument in writing is signed by the shareholder and constitutes a valid release in discharge to the building and loan association for all payments so made; or

(ii) Electronic means through:

(A) Preauthorized direct withdrawal;

(B) An automatic teller machine;

(C) A debit card;

(D) A transfer by telephone;

(E) A network, including the Internet; or

(F) Any electronic terminal, computer, magnetic tape, or other electronic means.

(c) This section shall not be construed to affect the rights, liabilities, or responsibilities of participants in an electronic fund transfer under the federal Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., as it existed on the operative date of this section, and shall not affect the legal relationships between a minor and any person other than the building and loan association.

(2) All trustees, guardians, personal representatives, administrators, and conservators appointed by the courts of this state may invest and reinvest in, acquire, make withdrawals in whole or in part, hold, transfer, or make new or additional investments in or transfers of shares of stock in any (a) building and loan association organized under the laws of the State of Nebraska or (b) federal savings and loan association incorporated under the provisions of the federal Home Owners' Loan Act of 1933, having its principal office and place of business in this state, without an order of approval from any court.

(3) Trustees created solely by the terms of a trust instrument may invest in, acquire, hold, and transfer such shares, and make withdrawals, in whole or in part, therefrom, without any order of court, unless expressly

limited, restricted, or prohibited therefrom by the terms of such trust instrument.

(4) All building and loan associations referred to in this section are qualified to act as trustee or custodian within the provisions of the federal Self-Employed Individuals Tax Retirement Act of 1962, as amended, or under the terms and provisions of section 408(a) of the Internal Revenue Code, if the provisions of such retirement plan require the funds of such trust or custodianship to be invested exclusively in shares or accounts in the association or in other associations. If any such retirement plan, within the judgment of the association, constitutes a qualified plan under the federal Self-Employed Individuals Tax Retirement Act of 1962, or under the terms and provisions of section 408(a) of the Internal Revenue Code, and the regulations promulgated thereunder at the time the trust was established and accepted by the association, is subsequently determined not to be such a qualified plan or subsequently ceases to be such a qualified plan, in whole or in part, the association may continue to act as trustee of any deposits theretofore made under such plan and to dispose of the same in accordance with the directions of the member and beneficiaries thereof. No association, in respect to savings made under this section, shall be required to segregate such savings from other assets of the association. The association shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this section.

Sec. 17. Section 8-320, Reissue Revised Statutes of Nebraska, is amended to read:

8-320. Any association may invest its reserve fund for the payment of contingent losses, any reserve fund created to protect against any other contingency, and any portion of its idle funds, not immediately needed to carry on its proper functions, as follows:

(1) In bonds, notes, warrants, or other direct obligations of the United States or of any city, village, county, township, or school, road, water, sewer, paving, drainage, or sanitary and improvement district or any other political subdivision of the State of Nebraska;

(2) In any securities and obligations issued by the Federal Home Loan Bank, the Federal National Mortgage Association, or successor corporations, bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration, and securities of any other federal agency corporation; and

(3) In securities issued pursuant to the Nebraska Business Development Corporation Act.

Any provision of this section to the contrary notwithstanding, an association may make any investment that a federal savings and loan association doing business in this state is or may be authorized to make.

Any association may deposit its funds, or any part thereof, in any national or state bank insured by the Federal Deposit Insurance Corporation or any corporation successor thereto and receive therefor certificates of time or savings deposit or the usual bank passbook credit subject to check or in share accounts of any state or federal savings and loan association the accounts of which are insured by the Federal Deposit Insurance Corporation or any corporation successor thereto.

Sec. 18. Section 8-331, Revised Statutes Supplement, 2004, is amended to read:

8-331. Every association shall adopt articles of incorporation and bylaws. A copy of the articles of incorporation and bylaws of every such association shall be filed in the office of the Department of Banking and Finance, together with an application for a certificate of approval and payment of the examination fee prescribed by section 8-602. The application shall furnish and set forth facts and information desired by the Department of Banking and Finance. The department, upon completion of its investigations and its examination of the articles, bylaws, and application for certificate of approval, shall issue a certificate of approval of the association and articles of incorporation and bylaws, but no such certificate of approval shall be issued unless and until the department has determined:

(1) That the articles of incorporation and bylaws conform to the requirements of sections 8-301 to ~~8-385~~ 8-384 and contain a just and equitable plan for the management of the association's business;

(2) That the persons organizing the association are of good character and responsibility;

(3) That in its judgment a need exists for such an institution in the community to be served;

(4) That there is a reasonable probability of its usefulness and success; and

(5) That the same can be established without undue injury to properly conducted existing local building and loan associations.

No such association shall transact any business, except the execution of its articles of incorporation, the adoption of bylaws, and the election of directors and officers, until it has procured a certificate of approval under this section. No amendment of the articles of incorporation or bylaws of any such association shall become operative until a copy of the amendment has been filed and a certificate of approval obtained under this section in regard to the original articles of incorporation and bylaws.

Sec. 19. Section 8-355, Revised Statutes Supplement, 2004, is amended to read:

8-355. Notwithstanding any of the provisions of Chapter 8, article 3, or any other Nebraska statute, except as provided in section 8-345.02, any association incorporated under the laws of the State of Nebraska and organized under the provisions of such article shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of ~~April 16, 2004~~ the operative date of this section, by a federal savings and loan association doing business in Nebraska. Such rights, powers, privileges, benefits, and immunities shall not relieve such association from payment of state taxes assessed under any applicable laws of this state.

Sec. 20. Section 8-602, Revised Statutes Supplement, 2004, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) For investigating an application under subdivision (6) of

section 8-115.01, five hundred dollars;

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

~~(14)~~ (15) For investigating a notice of acquisition of control under subsection (1) of section 8-1502, five hundred dollars;

~~(15)~~ (16) For investigating an application for a cross-industry merger under section 8-1510, five hundred dollars;

~~(16)~~ (17) For investigating an application for a merger of two state banks or a merger of a state bank and a national bank in which the state bank is the surviving entity, five hundred dollars;

~~(17)~~ (18) For investigating an application or a notice to establish a branch trust office, five hundred dollars;

~~(18)~~ (19) For investigating an application or a notice to establish a representative trust office, five hundred dollars;

~~(19)~~ (20) For investigating an application to establish a credit union branch under section 21-1725.01, two hundred fifty dollars; and

~~(20)~~ (21) For investigating an applicant under section 8-1513, five thousand dollars.

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

Sec. 21. Section 8-701, Revised Statutes Supplement, 2004, is amended to read:

8-701. ~~The term~~ For purposes of sections 8-701 to 8-709, banking institution, as used in sections 8-701 to 8-709 shall be construed to mean any bank, trust company, stock savings bank, or mutual savings bank, building and loan association, or savings and loan association, which is now or may hereafter be organized under the laws of this state.

Sec. 22. Section 8-702, Reissue Revised Statutes of Nebraska, is amended to read:

8-702. (1) ~~Any~~ Except as provided in subsection (2) of this section, any banking institution hereafter organized under the laws of this state shall, (a), before a charter may be issued, enter into such contracts, incur such obligations, and generally do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to obtain membership in the Federal Deposit Insurance Corporation and provide for insurance of deposits in the banking institution. Any banking institution may take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights, or privileges which may at any time be available or inure to banking institutions or to their depositors, creditors, stockholders, conservators, receivers, or liquidators by virtue of those provisions of section 8 of the Federal Banking Act of 1933 (section 12B of the Federal Reserve Act, as amended) which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits or of any other provisions of that or of any other act or resolution of Congress to aid, regulate, or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor. Any, also, such banking institution may also subscribe for and acquire any stock, debentures, bonds, or other types of securities of the Federal Deposit Insurance Corporation and comply with the lawful regulations and requirements from time to time issued or made by such corporation. or (b), after a charter is issued and upon commencing its operations, provide the notice and advertisement specified in subsection (3) of this section.

~~(2) Any banking institution to which a charter has been issued prior to March 13, 1984, and which is not a member of the Federal Deposit Insurance Corporation shall, within six months of March 13, 1984, obtain membership in such corporation and the insurance of its deposits and file proof of compliance with the Department of Banking and Finance or provide the notice and advertisement specified in subsection (3) of this section.~~

~~(3) (2) A banking institution which has not complied with subsection (1) of this section and which was in operation on the operative date of this section may commence operation or continue to operate if it provides notice to depositors and holders of savings certificates, certificates of indebtedness, or other similar instruments that such deposits or instruments are not insured. Such notice shall be given (a) by October 1, 1984, to all depositors and holders of such instruments created before October 1, 1984, (b) on the~~

date any such deposit, savings certificate, certificate of indebtedness, or similar instrument is created for deposits made and instruments created on or after October 1, 1984, and ~~(e)~~ (b) annually on October 1 thereafter as follows: AS PROVIDED BY THE LAWS OF THE STATE OF NEBRASKA YOU ARE HEREBY NOTIFIED THAT YOUR DEPOSIT, SAVINGS CERTIFICATE, CERTIFICATE OF INDEBTEDNESS, OR OTHER SIMILAR INSTRUMENT IS NOT INSURED. Any advertising conducted by such banking institution shall in each case state: THE DEPOSITS, SAVINGS CERTIFICATES, CERTIFICATES OF INDEBTEDNESS, OR SIMILAR INSTRUMENTS OF THIS INSTITUTION ARE NOT INSURED. The banking institution shall also display such notice in one or more prominent places in all facilities in which the institution operates. All such notices and statements shall be given in large or contrasting type in such a manner that such notices shall be conspicuous. Each willful failure to give the notice prescribed in this subsection shall constitute a Class II misdemeanor. All officers and directors of any such banking institution shall be jointly and severally responsible for the issuance of the notices described in this subsection in the form and manner described.

~~(4)~~ A The banking institution shall annually by November 1 file proof of compliance with this subsection ~~(1) or (2) of this section~~ with the Department of Banking and Finance.

~~(5)~~ (3) The charter of any banking institution which fails to comply with the provisions of this section shall be automatically forfeited and such banking institution shall be liquidated and dissolved, either voluntarily by its board of directors under the supervision of the ~~Department of Banking and Finance~~ department or involuntarily by the department as in cases of insolvency. Any banking institution whose charter is automatically forfeited under the provisions of this subsection which continues to engage in the business ~~of banking~~ for which it had been chartered after such forfeiture, as well as the directors and officers thereof, shall be subject to the penalties provided by law for illegally engaging in the business of banking.

Sec. 23. Section 8-1006, Revised Statutes Supplement, 2004, is amended to read:

8-1006. (1) Each application for a license shall be accompanied by:

~~(1)~~ (a) An application fee of one thousand dollars which shall not be subject to refund but which, if the license be granted, shall constitute the license fee for the first license year or part thereof;

~~(2)~~ (b) Financial statements, reasonably satisfactory to the director, showing that the applicant's net worth exceeds fifty thousand dollars; and

~~(3)~~ A (c) Except as otherwise provided in subsection (2) of this section, a surety bond issued by a bonding company or insurance company authorized to do business in this state, in the principal sum of one hundred thousand dollars and in an additional principal sum of five thousand dollars for each location, in excess of one, at which the applicant proposes to sell checks in this state, but in no event shall the bond be required to be in excess of two hundred fifty thousand dollars. The bond shall be in form satisfactory to the director and shall run to the state for the benefit of any claimants against the applicant or its agents to secure the faithful performance of the obligations of the applicant and its agents with respect to the receipt, handling, transmission, and payment of money in connection with the sale of checks. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. The bond shall remain in force and effect until the surety is released from liability by the director or until the bond is canceled by the surety, which cancellation may be had only upon thirty days' written notice to the director. Such cancellation shall not affect any liability incurred or accrued prior to the termination of the thirty-day period.

(2) In lieu of ~~such~~ the corporate surety bond or bonds required by subdivision (1)(c) of this section, or of any portion of the principal thereof as required by ~~this~~ such subdivision, the applicant may deposit, with the director or with such state banks or trust companies or national banks in this state as such applicant may designate and the director may approve, interest-bearing stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, village, school district, or instrumentality of this state, or guaranteed by this state, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required corporate surety bond or portion thereof. The securities shall be deposited and held to secure the same obligations as would the surety bond. The depositor shall have the right, with the approval of the director, to substitute other securities for those deposited, and shall be required to do so on written order of the

director made for good cause shown. The depositor shall pay the fees prescribed in section 8-602 for pledging and substitution of securities. So long as the licensee so depositing shall continue solvent, and is not in violation of the Nebraska Sale of Checks and Funds Transmission Act, such licensee shall be permitted to receive the interest or dividends on such deposit. The director shall provide for custody of such securities by a qualified trust company or bank located in the State of Nebraska or by any federal reserve bank. The compensation, if any, of the custodian for acting as such under the provisions of this section shall be paid by the depositing licensee. All such securities shall be subject to sale and transfer and to the disposal of the proceeds by the director only on the order of a court of competent jurisdiction.

Sec. 24. Section 8-2401, Revised Statutes Supplement, 2004, is amended to read:

8-2401. A credit card bank may be formed under the Nebraska Banking Act if all of the following conditions are met:

(1) A credit card bank shall not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties;

(2) A credit card bank may not accept any savings or time deposits of less than one hundred thousand dollars, except that savings or time deposits of any amount may be accepted from affiliated financial institutions;

(3) The services of a credit card bank shall be limited to the solicitation, processing, and making of loans instituted by credit card or transaction card and matters relating or incidental thereto;

(4) A credit card bank shall not make commercial loans;

(5) A credit card bank shall, on the date of commencement of banking business in this state, have a minimum capital stock and paid-in surplus of two million five hundred thousand dollars;

(6) A credit card bank shall (a) employ on the date of commencement of its banking business in this state or within one year after such date not less than fifty persons in this state in its business or (b) contract with a qualifying association as defined in subdivision (4) of section 8-1511 to provide for the processing of its credit card or transaction card operations;

(7) A credit card bank shall maintain only one office that accepts deposits;

(8) A credit card bank may maintain one or more processing centers in this state;

(9) A credit card bank shall operate in a manner and at a location that is not likely to attract customers from the general public in this state to the substantial detriment of existing financial institutions as defined in section 8-101 located in this state; and

(10) A credit card bank shall provide for the insurance of deposits as described in ~~subdivision (1)(a)~~ subsection (1) of section 8-702.

Sec. 25. (1) Except as provided in section 27 of this act, no person shall include the name, trade name, logo, or symbol of a financial institution in a written solicitation for financial products or services directed to a consumer who has obtained a loan from the financial institution without the consent of the financial institution, unless the solicitation clearly and conspicuously states that the person is not sponsored by or affiliated with the financial institution and that the solicitation is not authorized by the financial institution, which shall be identified by name. The statement shall be made in close proximity to, and in the same or larger font size as, the first and most prominent use or uses of the name, trade name, logo, or symbol in the statement, including on an envelope or through an envelope window containing the statement.

(2) No person shall use the name of a financial institution or a name similar to that of a financial institution in a written solicitation for financial products or services directed to consumers, if that use could cause a reasonable person to be confused, mistaken, or deceived initially or otherwise as to either of the following:

(a) The financial institution's sponsorship, affiliation, connection, or association with the person using the name; or

(b) The financial institution's approval or endorsement of the person using the name or the person's products or services.

Sec. 26. Except as provided in section 27 of this act, no person shall include a consumer's loan number, loan amount, or other specific loan information, whether or not publicly available, in a written solicitation for products or services without the consent of the consumer, unless the solicitation clearly and conspicuously states, when applicable, that the person is not sponsored by or affiliated with the financial institution, that the statement is not authorized by the financial institution, and that the

consumer's loan information was not provided to that person by the financial institution. The statement shall be made in close proximity to, and in the same or larger font as, the first and the most prominent use or uses of the consumer's loan information in the statement, including on an envelope or through an envelope window containing the statement. The prohibition in this section does not apply to communications by a financial institution or any of its affiliates, subsidiaries, or agents with a current customer of the financial institution or with a person who has been a customer of the financial institution.

Sec. 27. It is not a violation of section 25 or 26 of this act for a person in an advertisement or written solicitation for products or services to use the name, trade name, logo, or symbol of a financial institution without the statement described in section 25 or 26 of this act, if that use is exclusively part of a comparison of like products or services in which the person clearly and conspicuously identifies itself. Nothing in section 25 or 26 of this act shall be deemed or interpreted to alter or modify the trade name and trademark laws of this state.

Sec. 28. (1) The Department of Banking and Finance may order any person to cease and desist whenever the Director of Banking and Finance determines that such person has violated section 25 or 26 of this act. Upon entry of a cease and desist order, the director shall promptly notify the affected person that such order has been entered and provide opportunity for hearing in accordance with the Administrative Procedure Act.

(2) If a person violates section 25 or 26 of this act after receiving such cease and desist order, the director may, following notice and opportunity for hearing in accordance with the Administrative Procedure Act, impose a fine of up to one thousand dollars for each violation, plus the costs of investigation. Each instance in which a violation of section 25 or 26 of this act takes place after receiving a cease and desist order constitutes a separate violation.

(3) The director shall remit all fines collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. All costs collected shall be remitted to the Financial Institution Assessment Cash Fund pursuant to sections 8-601 and 8-602.

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

Sec. 29. For purposes of sections 25 to 28 of this act, financial institution means a state or federally chartered bank, savings and loan association, savings bank, or credit union or any affiliate, subsidiary, or agent thereof.

Sec. 30. Section 21-1725.01, Revised Statutes Supplement, 2004, is amended to read:

21-1725.01. (1) Upon receiving an application to establish a new credit union, a public hearing shall be held on each application. Notice of the filing of the application shall be published by the department for three weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the credit union. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after filing the application unless the applicant agrees to a later date. Notice of the filing of the application shall be sent by the department ~~by certified mail~~ to all financial institutions located in the county where the applicant proposes to operate. ~~The expense of any publication and certified mailing required by this subsection shall be paid by the applicant.~~

(2) When application is made to establish a branch of a credit union, the director shall hold a hearing on the matter if he or she determines, in his or her discretion, that the condition of the applicant credit union warrants a hearing. If the director determines that the condition of the credit union does not warrant a hearing, the director shall (a) publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed branch would be located and (b) give notice of such application ~~by certified mail~~ to all financial institutions located within the county where the proposed credit union branch would be located and to such other interested parties as the director may determine. If the director receives any substantive objection to the proposed credit union branch within fifteen days after publication ~~or mailing~~ of such notice, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subsection shall be published for two consecutive weeks in a newspaper of general circulation in the county where the proposed branch would be located. ~~The expense of any publication and certified mailing required by this subsection shall be paid by the applicant.~~

The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after the filing of the application unless the applicant agrees to a later date.

(3) The director may, in his or her discretion, hold a public hearing on amendments to a credit union's articles of association or bylaws which are brought before the department.

(4) The director shall send any notice to financial institutions required by this section by certified mail or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail.

(5) The expense of any publication and certified mailing required by this section shall be paid by the applicant.

Sec. 31. Section 21-17,102, Revised Statutes Supplement, 2004, is amended to read:

21-17,102. (1) Funds not used in loans to members may be invested:

(a) In securities, obligations, or other instruments of or issued by or fully guaranteed as to principal and interest by the United States of America or any agency or instrumentality thereof or in any trust or trusts established for investing directly or collectively in the same;

(b) In securities, obligations, or other instruments of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the several territories organized by Congress or any political subdivision thereof;

(c) In deposits, obligations, or other accounts of financial institutions organized under state or federal law;

(d) In loans to or in share accounts of other credit unions or corporate central credit unions;

(e) In obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, or any corporation designated in 31 U.S.C. 9101 as a wholly owned government corporation; in obligations, participation certificates, or other instruments of or insured by or fully guaranteed as to principal and interest by the Federal National Mortgage Association or the Government National Mortgage Association; in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1454 et seq.; in obligations or other instruments or securities of the Student Loan Marketing Association; or in obligations, participation, securities, or other instruments of or issued by or fully guaranteed as to principal and interest by any other agency of the United States. A state credit union may issue and sell securities which are guaranteed pursuant to section 306(g) of the National Housing Act, 12 U.S.C. 1721(g);

(f) In participation certificates evidencing a beneficial interest in obligations or in a right to receive interest and principal collections therefrom, which obligations have been subjected by one or more government agencies to a trust or trusts for which any executive department, agency, or instrumentality of the United States or administrator thereof has been named to act as trustee;

(g) In share accounts or deposit accounts of any corporate central credit union in which such investments are specifically authorized by the board of directors of the credit union making the investment;

(h) In the shares, stock, or other obligations of any other organization, not to exceed ten percent of the credit union's capital and not to exceed five percent of the credit union's capital in any one corporation's stock, bonds, or other obligations, unless otherwise approved by the director. Such authority shall not include the power to acquire control, directly or indirectly, of another financial institution, nor invest in shares, stocks, or obligations of any insurance company or trade association except as otherwise expressly provided for or approved by the director;

(i) In the capital stock of the National Credit Union Administration Central Liquidity Facility;

(j) In obligations of or issued by any state or political subdivision thereof, including any agency, corporation, or instrumentality of a state or political subdivision, except that no credit union may invest more than ten percent of its capital in the obligations of any one issuer, exclusive of general obligations of the issuer; ~~and~~

(k) In securities issued pursuant to the Nebraska Business Development Corporation Act; and

(l) In participation loans with other credit unions, credit union organizations, or other organizations.

(2) In addition to investments expressly permitted by the Credit

Union Act, a credit union may make any other type of investment approved by the department by rule, regulation, or order.

Sec. 32. Section 21-17,115, Revised Statutes Supplement, 2004, is amended to read:

21-17,115. Notwithstanding any of the other provisions of the Credit Union Act or any other Nebraska statute, any credit union incorporated under the laws of the State of Nebraska and organized under the provisions of the act shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of ~~April 16, 2004~~ the operative date of this section, by a federal credit union doing business in Nebraska on the condition that such rights, powers, privileges, benefits, and immunities shall not relieve such credit union from payment of state taxes assessed under any applicable laws of this state.

Sec. 33. Section 30-3116, Revised Statutes Supplement, 2004, is amended to read:

30-3116. Sections 30-3116 to 30-3149 and section 35 of this act shall be known and may be cited as the Uniform Principal and Income Act.

Sec. 34. Section 30-3117, Revised Statutes Supplement, 2004, is amended to read:

30-3117. For purposes of the Uniform Principal and Income Act:

(1) Accounting period means a calendar year unless another twelve-month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve-month period that begins when an income interest begins or ends when an income interest ends.

(2) Beneficiary includes, in the case of a decedent's estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

(3) Fiduciary means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

(4) Income means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in sections 30-3127 to 30-3141.

(5) Income beneficiary means a person to whom net income of a trust is or may be payable.

(6) Income interest means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

(7) Mandatory income interest means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(8) Net income means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under the act to or from income during the period.

(9) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(10) Principal means property held in trust for distribution to a remainder beneficiary when the trust terminates.

(11) Qualified beneficiary has the same meaning as in section 30-3803;

(12) Remainder beneficiary means a person entitled to receive principal when an income interest ends.

~~(12)~~ (13) Terms of a trust means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

~~(13)~~ (14) Total return trust means a trust that is converted to a total return trust pursuant to section 35 of this act or a trust the terms of which manifest the settlor's intent that the trustee will administer the trust in accordance with subsection (4) of section 35 of this act.

(15) Trustee includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

Sec. 35. (1) Unless expressly prohibited by a trust, a trustee may release the power to adjust described in section 30-3119 and convert a trust to a total return trust as described in this section if all of the following apply:

(a) The trustee determines that the conversion will enable the trustee to better carry out the intent of the settlor and the purpose of the trust;

(b) The trustee sends written notice of the trustee's decision to convert the trust to a total return trust specifying a prospective effective date for the conversion which shall not be sooner than sixty days after the notice is sent and which shall include a copy of this section of law and shall specifically recite the time period within which a timely objection may be made. Such notice shall be sent to the qualified beneficiaries determined as of the date the notice is sent and assuming nonexercise of all powers of appointment;

(c) There are one or more legally competent beneficiaries who are currently eligible to receive income from the trust and one or more legally competent beneficiaries who would receive a distribution of principal if the trust were to terminate immediately before the notice is given; and

(d) No beneficiary has objected in writing to the conversion to a total return trust and delivered such objection to the trustee within sixty days after the notice was sent.

(2) Conversion to a total return trust or reconversion to an income trust may be made by agreement between the trustee and all qualified beneficiaries of the trust. The trustee and all qualified beneficiaries of the trust may also agree to modify the distribution percentage, except that the trustee and the qualified beneficiaries may not agree to a distribution percentage of less than three percent or greater than five percent. The agreement may include any other actions a court could properly order pursuant to subsection (7) of this section.

(3) (a) The trustee may, for any reason, elect to petition the court to order conversion to a total return trust including, without limitation, the reason that conversion under subsection (1) of this section is unavailable because:

(i) A beneficiary timely objects to the conversion to a total return trust;

(ii) There are no legally competent beneficiaries who are currently eligible to receive income from the trust; or

(iii) There are no legally competent beneficiaries who would receive a distribution of principal if the trust were to terminate immediately.

(b) A beneficiary may request the trustee to convert to a total return trust or adjust the distribution percentage pursuant to this subsection. If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the conversion or adjustment.

(c) The trustee may petition the court prospectively to reconvert from a total return trust or to adjust the distribution percentage if the trustee determines that the reconversion or adjustment will enable the trustee to better carry out the purposes of the trust. A beneficiary may request the trustee to petition the court prospectively to reconvert from a total return trust or adjust the distribution percentage. If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the reconversion or adjustment.

(d) (i) In a judicial proceeding instituted under this subsection, the trustee may present opinions and reasons concerning:

(A) The trustee's support for or opposition to a conversion to a total return trust, a reconversion from a total return trust, or an adjustment of the distribution percentage of a total return trust, including whether the trustee believes conversion, reconversion, or adjustment of the distribution percentage would enable the trustee to better carry out the purposes of the trust; and

(B) Any other matter relevant to the proposed conversion, reconversion, or adjustment of the distribution percentage.

(ii) A trustee's actions undertaken in accordance with this subsection shall not be deemed improper or inconsistent with the trustee's duty of impartiality unless the court finds from all the evidence that the trustee acted in bad faith.

(e) The court shall order conversion to a total return trust, reconversion prospectively from a total return trust, or adjustment of the distribution percentage of a total return trust if the court determines that the conversion, reconversion, or adjustment of the distribution percentage will enable the trustee to better carry out the purposes of the trust.

(f) If a conversion to a total return trust is made pursuant to a court order, the trustee may reconvert the trust to an income trust only:

(i) Pursuant to a subsequent court order; or

(ii) By filing with the court an agreement made pursuant to subsection (2) of this section to reconvert to an income trust.

(g) Upon a reconversion the power to adjust, as described in section 30-3119 and as it existed before the conversion, shall be revived.

(h) An action may be taken under this subsection no more frequently than every two years, unless a court for good cause orders otherwise.

(4) (a) During the time that a trust is a total return trust, the trustee shall administer the trust in accordance with the provisions of this subsection as follows, unless otherwise expressly provided by the terms of the trust:

(i) The trustee shall invest the trust assets seeking a total return without regard to whether the return is from income or appreciation of principal;

(ii) The trustee shall make income distributions in accordance with the trust subject to the provisions of this section;

(iii) The distribution percentage for any trust converted to a total return trust by a trustee in accordance with subsection (1) of this section shall be four percent, unless a different percentage has been determined in an agreement made pursuant to subsection (2) of this section or ordered by the court pursuant to subsection (3) of this section; and

(iv) (A) The trustee shall pay to a beneficiary in the case of an underpayment within a reasonable time and shall recover from a beneficiary in the case of an overpayment either by repayment by the beneficiary or by withholding from future distributions to the beneficiary:

(I) An amount equal to the difference between the amount properly payable and the amount actually paid; and

(II) Interest compounded annually at a rate per annum equal to the distribution percentage in the year or years during which the underpayment or overpayment occurs.

(B) For purposes of subdivision (4) (a) (iv) of this section, accrual of interest may not commence until the beginning of the trust year following the year in which the underpayment or overpayment occurs.

(b) For purposes of this subsection:

(i) Distribution amount means an annual amount equal to the distribution percentage multiplied by the average net fair market value of the trust's assets. The average net fair market value of the trust's assets shall be the net fair market value of the trust's assets averaged over the lesser of:

(A) The three preceding years; or

(B) The period during which the trust has been in existence; and

(ii) Income, as that term appears in the governing instrument, means the distribution amount.

(5) The trustee may determine any of the following matters in administering a total return trust as the trustee deems necessary or helpful for the proper functioning of the trust:

(a) The effective date of a conversion to a total return trust pursuant to subsection (1) of this section;

(b) The manner of prorating the distribution amount for a short year in which a beneficiary's interest commences or ceases, or, if the trust is a total return trust for only part of the year or the trustee may elect to treat the trust year as two separate years, the first of which ends at the close of the day on which the conversion or reconversion occurs, and the second of which ends at the close of the trust year;

(c) Whether distributions are made in cash or in kind;

(d) The manner of adjusting valuations and calculations of the distribution amount to account for other payments from, or contributions to, the trust;

(e) Whether to value the trust's assets annually or more frequently;

(f) Which valuation dates to use and how many valuation dates to use;

(g) Valuation decisions concerning any asset for which there is no readily available market value, including:

(i) How frequently to value such an asset;

(ii) Whether and how often to engage a professional appraiser to value such an asset; and

(iii) Whether to exclude the value of such an asset from the net fair market value of the trust's assets for purposes of determining the distribution amount. For purposes of this section, any such asset so excluded shall be referred to as an excluded asset and the trustee shall distribute any net income received from the excluded asset as provided for in the governing instrument, subject to the following principles:

(A) The trustee shall treat each asset for which there is no readily

available market value as an excluded asset unless the trustee determines that there are compelling reasons not to do so and the trustee considers all relevant factors including the best interests of the beneficiaries;

(B) If tangible personal property or real property is possessed or occupied by a beneficiary, the trustee may not limit or restrict any right of the beneficiary to use the property in accordance with the governing instrument regardless of whether the trustee treats the property as an excluded asset; and

(C) By way of example and not by way of limitation, assets for which there is a readily available market value include cash and cash equivalents; stocks, bonds, and other securities and instruments for which there is an established market on a stock exchange, in an over-the-counter market, or otherwise; and any other property that can reasonably be expected to be sold within one week of the decision to sell without extraordinary efforts by the seller. By way of example and not by way of limitation, assets for which there is no readily available market value include stocks, bonds, and other securities and instruments for which there is no established market on a stock exchange, in an over-the-counter market, or otherwise; real property; tangible personal property; and artwork and other collectibles; and

(h) Any other administrative matter that the trustee determines is necessary or helpful for the proper functioning of the total return trust.

(6) (a) Expenses, taxes, and other charges that would otherwise be deducted from income if the trust was not a total return trust may not be deducted from the distribution amount.

(b) Unless otherwise provided by the governing instrument, the distribution amount each year shall be deemed to be paid from the following sources for that year in the following order:

(i) Net income determined as if the trust was not a total return trust;

(ii) Other ordinary income as determined for federal income tax purposes;

(iii) Net realized short-term capital gains as determined for federal income tax purposes;

(iv) Net realized long-term capital gains as determined for federal income tax purposes;

(v) Trust principal comprising assets for which there is a readily available market value; and

(vi) Other trust principal.

(7) (a) The court may order any of the following actions in a proceeding brought by a trustee or a beneficiary pursuant to subdivision (a), (b), or (c) of subsection (3) of this section:

(i) Select a distribution percentage other than four percent, except that the court may not order a distribution percentage of less than three percent or greater than five percent;

(ii) Average the valuation of the trust's net assets over a period other than three years;

(iii) Reconvert prospectively from a total return trust or adjust the distribution percentage of a total return trust;

(iv) Direct the distribution of net income, determined as if the trust were not a total return trust, in excess of the distribution amount as to any or all trust assets if the distribution is necessary to preserve a tax benefit; or

(v) Change or direct any administrative procedure as the court determines is necessary or helpful for the proper functioning of the total return trust.

(b) Nothing in this subsection shall be construed to limit the equitable jurisdiction of the court to grant other relief as the court deems proper.

(8) (a) The distribution amount may not be less than the net income of the trust, determined without regard to the provisions of this section, either:

(i) For a trust for which an estate tax or a gift tax marital deduction was claimed or may be claimed, in whole or in part, but only during the lifetime of the spouse for whom the trust was created; or

(ii) For a trust that was exempt, in whole or in part, from generation-skipping transfer tax on the operative date of this section by reason of any effective date or transition rule.

(b) Conversion to a total return trust shall not affect any provision in the governing instrument:

(i) That directs or authorizes the trustee to distribute principal;

(ii) That directs or authorizes the trustee to distribute a fixed annuity or a fixed fraction of the value of trust assets;

(iii) That authorizes a beneficiary to withdraw a portion or all of the principal; or

(iv) That in any manner diminishes an amount permanently set aside for charitable purposes under the governing instrument unless both income and principal are set aside.

(9) If a particular trustee is also a beneficiary of the trust and conversion or failure to convert would enhance or diminish the beneficial interest of that trustee or, if possession or exercise of the conversion power by a particular trustee alone would cause any individual to be treated as owner of a part of the trust for federal income tax purposes or cause a part of the trust to be included in the gross estate of any individual for federal estate tax purposes, then that particular trustee may not participate as a trustee in the exercise of the conversion power, except that:

(a) The trustee may petition the court under subdivision (a) of subsection (3) of this section to order conversion in accordance with this section; and

(b) A cotrustee or cotrustees to whom this subsection does not apply may convert the trust to a total return trust in accordance with subsection (1) or (2) of this section.

(10) A trustee may irrevocably release the power granted by this section if the trustee reasonably believes the release is in the best interests of the trust and its beneficiaries. The release may be personal to the releasing trustee or it may apply generally to some or all subsequent trustees. The release may be for any specified period, including a period measured by the life of an individual.

(11) (a) A trustee who reasonably and in good faith takes any action or omits to take any action under this section is not liable to any person interested in the trust. A discretionary act or omission by a trustee under this section shall be presumed to be reasonable and undertaken in good faith unless the act or omission is determined by a court to have been an abuse of discretion.

(b) If a trustee reasonably and in good faith takes or omits to take any action under this section and a person interested in the trust opposes the act or omission, the person's exclusive remedy shall be to seek an order of the court directing the trustee to:

(i) Convert the trust to a total return trust;

(ii) Reconvert from a total return trust;

(iii) Change the distribution percentage; or

(iv) Order any administrative procedures the court determines are necessary or helpful for the proper functioning of the trust.

(c) A claim for relief under this subsection that is not barred by adjudication, consent, or limitation is nevertheless barred as to any beneficiary who has received a statement fully disclosing the matter unless a proceeding to assert the claim is commenced within six months after receipt of the statement. A beneficiary is deemed to have received a statement if it is received by the beneficiary or the beneficiary's representative in a manner described in section 30-2222 or 30-3121.

(12) A trustee has no duty to inform a beneficiary about the availability and provisions of this section. A trustee has no duty to review the trust to determine whether any action should be taken under this section unless the trustee is requested in writing by a qualified beneficiary to do so.

(13) (a) This section applies to trusts in existence on the operative date of this section and to trusts created on or after such date.

(b) This section shall be construed to apply to the administration of a trust that is administered in Nebraska under Nebraska law or that is governed by Nebraska law with respect to the meaning and effect of its terms unless:

(i) The trust is a trust described in the Internal Revenue Code of 1986, as amended, 26 U.S.C. section 170 (f) (2) (B), 664(d), 1361(d), 2702(a) (3), or 2702(b);

(ii) Conversion of a trust to a total return trust is clearly contrary to the manifestation of the settlor's intent as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding; or

(iii) The terms of a trust in existence on the operative date of this section incorporate provisions that operate as a total return trust. The trustee or a beneficiary of such a trust may proceed under section 30-3121 to adopt provisions in this section that do not contradict provisions in the governing instrument.

Sec. 36. Section 30-3803, Revised Statutes Supplement, 2004, is amended to read:

30-3803. (UTC 103) In the Nebraska Uniform Trust Code:

(1) "Action", with respect to an act of a trustee, includes a failure to act.

(2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as defined in section 49-801.01.

~~(2)~~ (3) "Beneficiary" means a person that:

(A) has a present or future beneficial interest in a trust, vested or contingent; or

(B) in a capacity other than that of trustee, holds a power of appointment over trust property.

~~(3)~~ (4) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in subsection (a) of section 30-3831.

~~(4)~~ (5) "Conservator" means a person appointed by the court to administer the estate of a minor or adult individual.

~~(5)~~ (6) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

~~(6)~~ (7) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

~~(7)~~ (8) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

~~(8)~~ (9) "Jurisdiction", with respect to a geographic area, includes a state or country.

~~(9)~~ (10) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

~~(10)~~ (11) "Power of withdrawal" means a presently exercisable general power of appointment other than a power: (A) which is exercisable by a trustee and limited by an ascertainable standard; or (B) which is exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

~~(11)~~ (12) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

~~(12)~~ (13) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

(A) is a distributee or permissible distributee of trust income or principal;

(B) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subdivision (A) of this subdivision terminated on that date without causing the trust to terminate; or

(C) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

~~(13)~~ (14) "Regulated financial-service institution" means a state-chartered or federally chartered financial institution in which the monetary deposits are insured by the Federal Deposit Insurance Corporation.

~~(14)~~ (15) "Revocable", as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

~~(15)~~ (16) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

~~(16)~~ (17) "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary's interest.

~~(17)~~ (18) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

~~(18)~~ (19) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

~~(19)~~ (20) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

~~(20)~~ (21) "Trustee" includes an original, additional, and successor trustee, and a cotrustee.

Sec. 37. Section 30-3805, Revised Statutes Supplement, 2004, is amended to read:

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

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

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

Sec. 38. Section 30-3810, Revised Statutes Supplement, 2004, is amended to read:

30-3810. (UTC 110) (a) Whenever notice to qualified beneficiaries of a trust is required under the Nebraska Uniform Trust Code, the trustee must also give notice to any other beneficiary who has sent the trustee a request for notice.

(b) A charitable organization expressly designated to receive distributions under the terms of a charitable trust ~~or a~~ has the rights of a qualified beneficiary under the code if the charitable organization, on the date the charitable organization's qualification is being determined:

- (1) is a distributee or permissible distributee of trust income or principal;
- (2) would be a distributee or permissible distributee of trust income or principal upon the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions; or
- (3) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(c) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 30-3834 or 30-3835 has the rights of a qualified beneficiary under the code.

~~(d)~~ (d) The Attorney General has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state.

Sec. 39. Section 30-3822, Revised Statutes Supplement, 2004, is amended to read:

30-3822. (UTC 301) (a) Notice to a person who may represent and bind another person under sections 30-3822 to 30-3826 has the same effect as if notice were given directly to the other person.

(b) The consent of a person who may represent and bind another person under sections 30-3822 to 30-3826 is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(c) Except as otherwise provided in sections 30-3837 and 30-3854, a person who under sections 30-3822 to 30-3826 may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

(d) A settlor may not represent and bind a beneficiary under sections 30-3822 to 30-3826 with respect to the termination or modification of a trust under subsection (a) of section 30-3837.

Sec. 40. Section 30-3836, Revised Statutes Supplement, 2004, is amended to read:

30-3836. (UTC 410) (a) In addition to the methods of termination prescribed by sections 30-3837 to 30-3840, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(b) A proceeding to approve or disapprove a proposed modification or termination under sections 30-3837 to 30-3842, or trust combination or division under section 30-3843, may be commenced by a trustee or beneficiary. ~~7 and a proceeding to approve or disapprove a proposed modification or termination under section 30-3837 may be commenced by the settlor.~~ The settlor of a charitable trust may maintain a proceeding to modify the trust under section 30-3839.

Sec. 41. Section 30-3837, Revised Statutes Supplement, 2004, is amended to read:

30-3837. (UTC 411) (a) ~~A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust.~~ If, upon petition, the court finds that the settlor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the court shall approve the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

(b) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

(c) A spendthrift provision in the terms of the trust is presumed to constitute a material purpose of the trust.

(d) Upon termination of a trust under subsection (a) or (b) of this section, the trustee shall distribute the trust property as agreed by the beneficiaries.

(e) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b) of this section, the modification or termination may be approved by the court if the court is satisfied that:

(1) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) the interests of a beneficiary who does not consent will be adequately protected.

Sec. 42. Section 30-3849, Revised Statutes Supplement, 2004, is amended to read:

30-3849. (UTC 504) (a) In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

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

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

(2) the trustee has abused the discretion.

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

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

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

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

(e) A creditor may not reach the interest of a beneficiary who is also a trustee or cotrustee, or otherwise compel a distribution, if the trustee's discretion to make distributions for the trustee's own benefit is limited by an ascertainable standard.

Sec. 43. Section 30-3855, Revised Statutes Supplement, 2004, is amended to read:

30-3855. (UTC 603) (a) While a trust is revocable, ~~and the settlor has capacity to revoke the trust,~~ rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor. ~~A settlor's power to revoke the trust is not terminated by the settlor's incapacity. If the power to revoke the trust may instead be exercised by an agent under a power of attorney as authorized under subsection (e) of section 30-3854 or by a conservator or guardian as authorized under subsection (f) of section 30-3854 or if such agent, conservator, or guardian holds a power of withdrawal on behalf of the settlor, then the duties of the trustee remain owed exclusively to the settlor.~~

(b) 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 under this section to the extent of the property subject to the power.

Sec. 44. Section 30-3867, Revised Statutes Supplement, 2004, is amended to read:

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

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

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

(2) the transaction was approved by the court;

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

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

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

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

(1) the trustee's spouse;

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

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

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

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

(e) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment

otherwise complies with the prudent investor rule set forth in sections 30-3883 to 30-3889. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee shall at least annually notify the persons entitled under section 30-3878 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.

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

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

- (1) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;
- (2) payment of reasonable compensation to the trustee;
- (3) a transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;
- (4) a deposit of trust money in a regulated financial-service institution operated by the trustee; or
- (5) an advance by the trustee of money for the protection of the trust.

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

Sec. 45. Section 30-3878, Revised Statutes Supplement, 2004, is amended to read:

30-3878. (UTC 813) (a) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

(b) A trustee:

- (1) upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust instrument;
- (2) within sixty days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;
- (3) within sixty days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection (c) of this section; and
- (4) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

(c) A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified or nonqualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

(d) A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

(e) The duties of a trustee specified in this section are subject to the provisions of section 30-3855.

(f) ~~The requirements of subdivisions~~ Subdivisions (b) (2) and (3) of this section apply only to trustees who accept a trusteeship on or after

~~January 1, 2005, and to trusts which become irrevocable on or after January 1, 2005 do not apply to a trustee who accepts a trusteeship before January 1, 2006, to an irrevocable trust created before January 1, 2006, or to a revocable trust that becomes irrevocable before January 1, 2006.~~

Sec. 46. Section 30-3879, Revised Statutes Supplement, 2004, is amended to read:

30-3879. (UTC 814) (a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute", "sole", or "uncontrolled", the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) Subject to subsection (d) of this section, and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

(1) a person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard; ~~and relating to the trustee's individual health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code as defined in section 49-801.01; and~~

(2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(c) A power whose exercise is limited or prohibited by subsection (b) of this section may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

(d) Subsection (b) of this section does not apply to:

(1) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or 2523(e) of the Internal Revenue Code as defined in section 49-801.01, was previously allowed;

(2) any trust during any period that the trust may be revoked or amended by its settlor; or

(3) a trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the Internal Revenue Code as defined in section 49-801.01.

Sec. 47. Section 45-346, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

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

(7) If a change of control of a licensee is proposed, a new application for a license shall be submitted to the Department of Banking and Finance. Control in the case of a corporation means (a) direct or indirect

ownership of or the right to control twenty-five percent or more of the voting shares of the corporation or (b) the ability of a person or group acting in concert to elect a majority of the directors or otherwise effect a change in policy. Control in the case of any other entity means any change in the principals of the organization, whether active or passive.

Sec. 48. Section 45-348, Reissue Revised Statutes of Nebraska, is amended to read:

45-348. (1) Every licensee shall, on or before the first day of October, pay to the director the sum of one hundred fifty dollars for each license held as a license fee for the succeeding year. Failure to pay such license fee within the time prescribed shall automatically revoke such license.

(2) A licensee may voluntarily surrender a license at any time by delivering to the director written notice of the surrender. The Department of Banking and Finance shall issue a notice of cancellation of the license following such surrender.

(3) If a licensee fails to renew its license and does not voluntarily surrender the license pursuant to this section, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

Sec. 49. Section 45-350, Reissue Revised Statutes of Nebraska, is amended to read:

45-350. (1) Renewal of a license originally granted under the Nebraska Installment Sales Act may be denied or a license may be suspended or revoked by the director on the following grounds: (a) Material misstatement in the application for license; (b) willful failure to comply with any provision of the Nebraska Installment Sales Act relating to installment contracts; (c) defrauding any buyer to the buyer's damage; or (d) fraudulent misrepresentation, circumvention, or concealment by the licensee through whatever subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the buyer under the Nebraska Installment Sales Act.

(2) If a licensee is a partnership, limited liability company, association, or corporation, it shall be sufficient cause for the suspension or revocation of a license that any officer, director, or trustee of a licensed association or corporation or any member of a licensed partnership or limited liability company has so acted or failed to act as would be cause for suspending or revoking a license to such party as an individual.

(3) No license shall be denied, suspended, or revoked except after hearing ~~thereon~~ in accordance with the Administrative Procedure Act. The director shall give the licensee at least ten days' written notice, in the form of an order to show cause, of the time and place of such hearing by either registered or certified mail addressed to the principal place of business in this state of such licensee. Such notice shall contain the grounds of complaint against the licensee. Any order suspending or revoking such license shall recite the grounds upon which the same is based. The order shall be entered upon the records of the director and shall not be effective until after thirty days' written notice thereof given after such entry forwarded by either registered or certified mail to the licensee at such principal place of business.

(4) Revocation, ~~no revocation~~, suspension, cancellation, expiration, or surrender of any license shall not impair or affect the obligation of any lawful installment contract acquired previously thereto by the licensee.

~~(4)~~ (5) Revocation, suspension, cancellation, expiration, or surrender of any license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, expiration, or surrender or affect liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to the Nebraska Installment Sales Act for acts committed before the revocation, suspension, cancellation, expiration, or surrender.

(6) Any person, licensee, or applicant considering himself or herself aggrieved by an order of the director entered under the provisions of this section may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act.

Sec. 50. Section 45-703, Reissue Revised Statutes of Nebraska, is amended to read:

45-703. (1) Except as provided in section 45-704, the following shall be exempt from the Mortgage Bankers Registration and Licensing Act:

- (a) Any financial institution or wholly owned subsidiary thereof;
- (b) Any registered bank holding company;
- (c) Any insurance company organized under the laws of this state and subject to regulation by the Department of Insurance;

(d) Any person licensed to practice law in this state who is not actively and principally engaged in the business of negotiating mortgage loans when such person renders services in the regular course of his or her practice as an attorney at law;

(e) Any person licensed in this state as a real estate broker or real estate salesperson pursuant to section 81-885.02 who is not actively and principally engaged in the business of negotiating mortgage loans when such person renders services as a real estate broker or real estate salesperson;

(f) Any individual acting solely as an employee of a mortgage banker licensed or registered pursuant to the act or exempt from the act;

(g) Any individual acting solely as an agent of a mortgage banker licensed or registered pursuant to the act or exempt from the act if there is a written agency contract between the individual and the licensee which provides that, with respect to the mortgage banking business, the individual acts exclusively for the licensee as an agent;

(h) Any holding company of a financial institution other than a registered bank holding company;

(i) Any wholly owned subsidiary of an organization listed in subdivisions ~~(a) through~~ (b) and (c) of this subsection if the listed organization maintains a place of business in Nebraska; and

(j) Any insurance company organized or chartered under the laws of any other state if the insurance company has a place of business in Nebraska.

(2) It shall not be necessary to negate any of the exemptions provided in this section in any complaint, information, indictment, or other writ or proceedings brought under the act, and the burden of establishing the right to any exemption shall be upon the person claiming the benefit of such exemption.

Sec. 51. Section 45-704, Reissue Revised Statutes of Nebraska, is amended to read:

45-704. (1) Notwithstanding any other provision of the Mortgage Bankers Registration and Licensing Act, no person exempt from licensing under subdivisions (1)(h) through (1)(j) of section 45-703 shall act as a mortgage banker or engage in the mortgage banking business until such person has registered with the department.

(2) Any person required to register pursuant to subsection (1) of this section shall submit to the department a registration statement on forms provided by the department. The forms shall contain such information as the department may prescribe as necessary or appropriate, including, but not limited to, (a) all addresses at which business is to be conducted, (b) the names and titles of each director and principal officer of the business, and (c) a description of the activities of the applicant in such detail as the department may require.

(3) The registration statement required in subsection (2) of this section shall be accompanied by a registration fee of ~~fifty~~ two hundred dollars.

(4) The department shall acknowledge the registration by issuing to the registrant a receipt or other form of acknowledgment.

(5) A registration under this section shall not be assignable.

(6) After original registration, all registrations shall remain in full force and effect until the next succeeding March 1. Thereafter, a registration under this section may be renewed on an annual basis for a renewal fee of ~~fifty~~ one hundred dollars. ~~Registrations in effect on August 31, 2003, shall remain in effect until March 1, 2004.~~

(7) If a registrant fails to renew his, her, or its registration as required by this section and does not voluntarily surrender the registration by delivering to the director written notice of the surrender, the department may issue a notice of expiration of the registration.

Sec. 52. Section 45-705, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

such detail as the department may require, and ~~(e)~~ (f) if the applicant is an individual, his or her social security number.

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

(4) The application required by this section shall be accompanied by an application fee of ~~three~~ four hundred dollars.

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

Sec. 53. Section 45-706, Reissue Revised Statutes of Nebraska, is amended to read:

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

(2) If the director determines that the license should be denied, the director shall notify the applicant in writing of the denial and of the reasons for the denial. The director shall not deny an application for a license because of the failure to submit information required under the act or rules and regulations adopted and promulgated under the act without first giving the applicant an opportunity to correct the deficiency by supplying the missing information. A decision of the director denying a license pursuant to the act may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

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

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

Sec. 54. Section 45-707, Reissue Revised Statutes of Nebraska, is amended to read:

45-707. (1) The director may, following a hearing under the Administrative Procedure Act, suspend or revoke any license issued under the Mortgage Bankers Registration and Licensing Act. The director may also impose an administrative fine for each separate violation of the act if the director finds:

(a) The licensee has materially violated or demonstrated a continuing pattern of violating the Mortgage Bankers Registration and Licensing Act, rules and regulations adopted and promulgated under the act, any order, including a cease and desist order, issued under the act, or any other state or federal law applicable to the conduct of its business;

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

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

(d) The licensee has made or caused to be made, in any document filed with the director or in any proceeding under the Mortgage Bankers Registration and Licensing Act, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading in any material respect or suppressed or withheld from the director any information which, if submitted by the licensee, would have resulted in denial of the license application;

(e) The licensee has refused to permit an examination by the director of the licensee's books and affairs pursuant to subsection (1) of

section 45-710 or has refused or failed to comply with subsection (2) of section 45-710 after written notice of the violation by the director. Each day the licensee continues in violation of this subdivision after such written notice constitutes a separate violation;

(f) The licensee has failed to maintain records as required by subdivision (8) of section 45-711 or as otherwise required following written notice of the violation by the director. Each day the licensee continues in violation of this subdivision after such written notice constitutes a separate violation;

(g) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual has been convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (ii) any felony under state or federal law;

(h) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual, while previously associated in any other capacity with another licensee, was the subject of a complaint under the Mortgage Bankers Registration and Licensing Act and the complaint was not resolved at the time the individual became employed by, or began acting as an agent for, the licensee and the licensee with reasonable diligence could have discovered the existence of such complaint;

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

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

~~(j)~~ (k) The licensee has had a similar license revoked in any other jurisdiction; or

~~(k)~~ (l) The licensee has failed to reasonably supervise any officer, employee, or agent to assure his or her compliance with the ~~Mortgage Bankers Registration and Licensing Act~~ act or with any state or federal law applicable to the mortgage banking business.

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

(3) A licensee may voluntarily surrender a license by delivering to the director written notice of the surrender, but a surrender shall not affect civil or criminal liability for acts committed before the surrender or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to section 45-717.01 for acts committed before the surrender.

(4) (a) If a licensee fails to renew its license as required by section 45-706 and does not voluntarily surrender the license pursuant to this section, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) If a licensee fails to maintain a surety bond as required by section 45-709, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

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

(6) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration.

Sec. 55. Section 45-711, Reissue Revised Statutes of Nebraska, is amended to read:

45-711. A licensee shall:

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

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

(3) Pay any penalty incurred by the borrower because of the failure of the licensee to make the payments required in subdivisions (1) and (2) of

this section unless the licensee establishes that the failure to timely make the payments was due solely to the fact that the borrower was sent a written notice of the amount due more than fifteen calendar days before the due date to the borrower's last-known address and failed to timely remit the amount due to the licensee;

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

(a) The name and address of the licensee;
 (b) The name and address of the borrower;
 (c) A summary of the escrow account activity during the year which includes all of the following:

(i) The balance of the escrow account at the beginning of the year;
 (ii) The aggregate amount of deposits to the escrow account during the year; and

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

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

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

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

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

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

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

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

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

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

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

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

(b) Business reorganization;

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

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

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

institution business, or installment loan business or (ii) any felony under state or federal law;

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

(g) The establishment or closing of a branch office located in Nebraska.

Sec. 56. Section 45-910, Reissue Revised Statutes of Nebraska, is amended to read:

45-910. (1) A license issued pursuant to the Delayed Deposit Services Licensing Act shall be conspicuously posted at the licensee's place of business.

(2) All licenses shall remain in effect until the next succeeding May 1, unless earlier canceled, suspended, or revoked by the director pursuant to section 45-922 or surrendered by the licensee pursuant to section 45-911.

(3) Licenses may be renewed annually by filing with the director (a) a renewal fee consisting of one hundred fifty dollars for the main office location and one hundred dollars for each branch office location and (b) an application for renewal containing such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications.

Sec. 57. Section 45-1001, Reissue Revised Statutes of Nebraska, is amended to read:

45-1001. Sections 45-1001 to 45-1068 and section 64 of this act shall be known and may be cited as the Nebraska Installment Loan Act.

Sec. 58. Section 45-1005, Reissue Revised Statutes of Nebraska, is amended to read:

45-1005. Any person who desires to obtain an original license to engage in the business of lending money under the terms and conditions of the Nebraska Installment Loan Act shall apply to the department for the license under oath, on forms prescribed by the department, and pay an original license fee of ~~one hundred fifty~~ five hundred dollars. If the applicant is an individual, the application shall include the applicant's social security number.

Sec. 59. Section 45-1006, Reissue Revised Statutes of Nebraska, is amended to read:

45-1006. (1) Except as provided in subsection (2) of this section, a hearing shall be held on every application for an original license under the Nebraska Installment Loan Act. The hearing shall be held not less than thirty days after the filing of the application, and notice of the filing of the application shall be published by the department three successive weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the business of lending money. ~~The expense of the publication shall be paid by the applicant.~~ Written protest against the issuance of the license may be filed with the department by any person not less than five days before the date set for hearing. The director, in his or her discretion, may grant a continuance. The director may reject any application for license after hearing. The director shall, in his or her discretion, make examination and inspection concerning the propriety of the issuance of a license to any applicant. The cost of such examination and inspection shall be paid by the applicant.

(2) The director may waive the hearing requirements of subsection (1) of this section if (a) the applicant has held, and operated under, a license to engage in the business of lending money in Nebraska pursuant to the act for at least one calendar year immediately prior to the filing of the application, (b) no written protest against the issuance of the license has been filed with the department within fifteen days after publication of a notice of the filing of the application one time in a newspaper of general circulation in the county where the applicant proposes to operate the business of lending money, and (c) in the judgment of the director, the experience, character, and general fitness of the applicant warrant the belief that the applicant will comply with the act.

(3) The expense of any publication made pursuant to this section shall be paid by the applicant.

Sec. 60. Section 45-1013, Reissue Revised Statutes of Nebraska, is amended to read:

45-1013. For the annual renewal of an original license under the Nebraska Installment Loan Act, the licensee shall file with the department a fee is one hundred of two hundred fifty dollars and a renewal application containing such information as the director may require to indicate any material change in the information contained in the original application or succeeding renewal applications. if no publication of the notice of filing an application for the annual renewal license is required as in the case of

~~filing an application for an original license. The money paid under the act to the department for original licenses, for renewal licenses, for investigation fees, for examination fees, or from any other source, shall be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund pursuant to sections 8-601 and 8-602.~~

Sec. 61. Section 45-1024, Reissue Revised Statutes of Nebraska, is amended to read:

45-1024. (1) Except as provided in section 45-1025 and subsection (6) of this section, every licensee may make loans and may contract for and receive on such loans charges at a rate not exceeding twenty-four percent per annum on that part of the unpaid principal balance on any loan not in excess of one thousand dollars, and twenty-one percent per annum on any remainder of such unpaid principal balance. Except for loans secured by mobile homes, a licensee may not make loans for a period in excess of one hundred forty-five months if the amount of the loan is greater than three thousand dollars but less than twenty-five thousand dollars. Charges on loans made under the Nebraska Installment Loan Act shall not be paid, deducted, or received in advance. The contracting for, charging of, or receiving of charges as provided for in subsection (2) of this section shall not be deemed to be the payment, deduction, or receipt of such charges in advance.

(2) When the loan contract requires repayment in substantially equal and consecutive monthly installments of principal and charges combined, the licensee may, at the time the loan is made, precompute the charges at the agreed rate on scheduled unpaid principal balances according to the terms of the contract and add such charges to the principal of the loan. Every payment may be applied to the combined total of principal and precomputed charges until the contract is fully paid. All payments made on account of any loan except for default and deferment charges shall be deemed to be applied to the unpaid installments in the order in which they are due. The portion of the precomputed charges applicable to any particular month of the contract, as originally scheduled or following a deferment, shall be that proportion of such precomputed charges, excluding any adjustment made for a first installment period of more than one month and any adjustment made for deferment, which the balance of the contract scheduled to be outstanding during such month bears to the sum of all monthly balances originally scheduled to be outstanding by the contract. This section shall not limit or restrict the manner of calculating charges, whether by way of add-on, single annual rate, or otherwise, if the rate of charges does not exceed that permitted by this section. Charges may be contracted for and earned at a single annual rate, except that the total charges from such rate shall not be greater than the total charges from the several rates otherwise applicable to the different portions of the unpaid balance according to subsection (1) of this section. All loan contracts made pursuant to this subsection are subject to the following adjustments:

(a) Notwithstanding the requirement for substantially equal and consecutive monthly installments, the first installment period may not exceed one month by more than twenty-one days and may not fall short of one month by more than eleven days. The charges for each day exceeding one month shall be one-thirtieth of the charges which would be applicable to a first installment period of one month. The charge for extra days in the first installment period may be added to the first installment and such charges for such extra days shall be excluded in computing any rebate;

(b) If prepayment in full by cash, a new loan, or otherwise occurs before the first installment due date, the charges shall be recomputed at the rate of charges contracted for in accordance with subsection (1) or (2) of this section upon the actual unpaid principal balances of the loan for the actual time outstanding by applying the payment, or payments, first to charges at the agreed rate and the remainder to the principal. The amount of charges so computed shall be retained in lieu of all precomputed charges;

(c) If a contract is prepaid in full by cash, a new loan, or otherwise after the first installment due date, the borrower shall receive a rebate of an amount which is not less than the amount obtained by applying to the unpaid principal balances as originally scheduled or, if deferred, as deferred, for the period following prepayment, according to the actuarial method, the rate of charge contracted for in accordance with subsection (1) or (2) of this section. The licensee may round the rate of charge to the nearest one-half of one percent if such procedure is not consistently used to obtain a greater yield than would otherwise be permitted. Any default and deferment charges which are due and unpaid may be deducted from any rebate. No rebate shall be required for any partial prepayment. No rebate of less than one dollar need be made. Acceleration of the maturity of the contract shall not in itself require a rebate. If judgment is obtained before the final

installment date, the contract balance shall be reduced by the rebate which would be required for prepayment in full as of the date judgment is obtained;

(d) If any installment on a precomputed or interest bearing loan is unpaid in full for ten or more consecutive days, Sundays and holidays included, after it is due, the licensee may charge and collect a default charge not exceeding an amount equal to five percent of such installment. If any installment payment is made by a check, draft, or similar signed order which is not honored because of insufficient funds, no account, or any other reason except an error of a third party to the loan contract, the licensee may charge and collect a fifteen-dollar bad check charge. Such default or bad check charges may be collected when due or at any time thereafter;

(e) If, as of an installment due date, the payment date of all wholly unpaid installments is deferred one or more full months and the maturity of the contract is extended for a corresponding period, the licensee may charge and collect a deferment charge not exceeding the charge applicable to the first of the installments deferred, multiplied by the number of months in the deferment period. The deferment period is that period during which no payment is made or required by reason of such deferment. The deferment charge may be collected at the time of deferment or at any time thereafter. The portion of the precomputed charges applicable to each deferred balance and installment period following the deferment period shall remain the same as that applicable to such balance and periods under the original loan contract. No installment on which a default charge has been collected, or on account of which any partial payment has been made, shall be deferred or included in the computation of the deferment charge unless such default charge or partial payment is refunded to the borrower or credited to the deferment charge. Any payment received at the time of deferment may be applied first to the deferment charge and the remainder, if any, applied to the unpaid balance of the contract, except that if such payment is sufficient to pay, in addition to the appropriate deferment charge, any installment which is in default and the applicable default charge, it shall be first so applied and any such installment shall not be deferred or subject to the deferment charge. If a loan is prepaid in full during the deferment period, the borrower shall receive, in addition to the required rebate, a rebate of that portion of the deferment charge applicable to any unexpired full month or months of such deferment period; and

(f) If two or more full installments are in default for one full month or more at any installment date and if the contract so provides, the licensee may reduce the contract balance by the rebate which would be required for prepayment in full as of such installment date and the amount remaining unpaid shall be deemed to be the unpaid principal balance and thereafter in lieu of charging, collecting, receiving, and applying charges as provided in this subsection, charges may be charged, collected, received, and applied at the agreed rate as otherwise provided by this section until the loan is fully paid.

(3) The charges, as referred to in subsection (1) of this section, shall not be compounded. The charging, collecting, and receiving of charges as provided in subsection (2) of this section shall not be deemed compounding. If part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under such loan contract may include any unpaid charges on the prior loan which have accrued within sixty days before the making of such loan contract and may include the balance remaining after giving the rebate required by subsection (2) of this section. Except as provided in subsection (2) of this section, charges shall (a) be computed and paid only as a percentage per month of the unpaid principal balance or portions thereof and (b) be computed on the basis of the number of days actually elapsed. For purposes of computing charges, whether at the maximum rate or less, a month shall be that period of time from any date in a month to the corresponding date in the next month but if there is no such corresponding date then to the last day of the next month, and a day shall be considered one-thirtieth of a month when computation is made for a fraction of a month.

(4) Except as provided in subsections (5) and (6) of this section, in addition to that provided for under the Nebraska Installment Loan Act, no further or other amount whatsoever shall be directly or indirectly charged, contracted for, or received. If any amount, in excess of the charges permitted, is charged, contracted for, or received, the loan contract shall not on that account be void, but the licensee shall have no right to collect or receive any interest or other charges whatsoever. If such interest or other charges have been collected or contracted for, the licensee shall refund to the borrower all interest and other charges collected and shall not collect any interest or other charges contracted for and thereafter due on the loan

involved, as liquidated damages, and the licensee or its assignee, if found liable, shall pay the costs of any action relating thereto, including reasonable attorney's fees. No licensee shall be found liable under this subsection if the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

(5) A borrower may be required to pay all reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of loans. Such expenses may include abstracting, recording, releasing, and registration fees, premiums paid for nonfiling insurance, premiums paid on insurance policies covering tangible personal property securing the loan, title examinations, credit reports, survey, and taxes or charges imposed upon or in connection with the making and recording or releasing of any mortgage. Except as provided in subsection (6) of this section, a borrower may also be required to pay a nonrefundable loan origination fee not to exceed the lesser of five hundred dollars or an amount equal to seven percent of that part of the original principal balance of any loan not in excess of two thousand dollars and five percent on that part of the original principal balance in excess of two thousand dollars, if the licensee has not made another loan to the borrower within the previous twelve months. If the licensee has made another loan to the borrower within the previous twelve months, a nonrefundable loan origination fee may only be charged on new funds advanced on each successive loan. Such reasonable initial charges may be collected from the borrower or included in the principal balance of the loan at the time the loan is made and shall not be considered interest or a charge for the use of the money loaned.

(6) (a) Loans secured solely by real property that are not made pursuant to subdivision (11) of section 45-101.04 on real property, as that term is defined in section 45-702, shall not be subject to the limitations on the rate of interest provided in subsection (1) of this section or the limitations on the nonrefundable loan origination fee under subsection (5) of this section if (i) the principal amount of the loan is seven thousand five hundred dollars or more and (ii) the sum of the principal amount of the loan and the balances of all other liens against the property do not exceed one hundred percent of the appraised value of the property. Acceptable methods of determining appraised value shall be made by the department pursuant to rule, regulation, or order.

(b) An origination fee on such loan shall be computed only on the principal amount of the loan reduced by any portion of the principal that consists of the amount required to pay off another loan made under this subsection by the same licensee.

(c) A prepayment penalty on such loan shall be permitted only if (i) the maximum amount of the penalty to be assessed is stated in writing at the time the loan is made, (ii) the loan is prepaid in full within two years from the date of the loan, and (iii) the loan is prepaid with money other than the proceeds of another loan made by the same licensee. Such prepayment penalty shall not exceed six months interest on eighty percent of the original principal balance computed at the agreed rate of interest on the loan.

(d) A licensee making a loan pursuant to this subsection may obtain an interest in any fixtures attached to such real property and any insurance proceeds payable in connection with such real property or the loan.

(e) For purposes of this subsection, principal amount of the loan means the total sum owed by the borrower including, but not limited to, insurance premiums, loan origination fees, or any other amount that is financed, except that for purposes of subdivision (6)(b) of this section, loan origination fees shall not be included in calculating the principal amount of the loan.

Sec. 62. Section 45-1032, Reissue Revised Statutes of Nebraska, is amended to read:

45-1032. A licensee may voluntarily surrender a license by delivering to the director written notice of the surrender. Surrender of a license (1) shall not affect civil or criminal liability for acts committed before the surrender or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to section 45-1033 for acts committed before the surrender and (2) shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower. The department shall issue a notice of cancellation of the license following such surrender.

Sec. 63. Section 45-1033, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

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

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

(g) The licensee knowingly has employed any individual or knowingly has maintained a contractual relationship with any individual acting as an agent, if such individual has been convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under any state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, financial institution business, or installment loan business or (ii) any felony under state or federal law;

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

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

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

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

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

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

(5) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for any fines which may be imposed against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to this section or section 64 of this act for acts committed before the surrender.

Sec. 64. (1) The director may, following a hearing under the Administrative Procedure Act, impose an administrative fine against any officer, director, shareholder, partner, or member of a licensee, if the director finds the licensee or any such person participated in or had knowledge of any act prohibited by the Nebraska Installment Loan Act or otherwise violated the act. Such administrative fine shall be in addition to or separate from any fine imposed against a licensee pursuant to section 45-1033.

(2) If the director finds, after notice and hearing in accordance

with the Administrative Procedure Act, that any person has knowingly committed any act prohibited by section 45-1033 or otherwise violated the Nebraska Installment Loan Act or any rule and regulation or order adopted thereunder, the director may order such person to pay (a) an administrative fine of not more than one thousand dollars for each separate violation and (b) the costs of investigation.

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

Sec. 65. Section 45-1055, Reissue Revised Statutes of Nebraska, is amended to read:

45-1055. (1) The licensee shall give to the borrower a copy of any writing evidencing a loan if the writing requires or provides for the signature of the borrower. The writing evidencing the borrower's obligation to pay under a loan shall contain a clear and conspicuous notice in form and content substantially as follows:

NOTICE TO CONSUMER: 1. Do not sign this paper before you read it. 2. You are entitled to a copy of this paper. 3. You may prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned charges in accordance with law.

(2) Upon written request of a borrower, the licensee shall provide a written statement of the dates and amounts of payments made and the amounts of any default and deferment charges assessed preceding the month in which the request is received and the total amount unpaid as the end of the period covered by the statement and a copy of the loan agreement, security agreement, and a facsimile of any insurance certificate issued as part of the transaction, if applicable. The licensee may charge a reasonable fee for such copies, not to exceed fifty cents per page.

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

Sec. 66. The Revisor of Statutes shall assign sections 25 to 29 of this act to Chapter 8.

Sec. 67. Sections 1 to 10, 12, 14 to 18, 20 to 31, 33 to 35, 47 to 65, 69, and 70 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 68. Original sections 8-1,140, 8-213, 8-355, 21-17,115, 30-3803, 30-3805, 30-3810, 30-3822, 30-3836, 30-3837, 30-3849, 30-3855, 30-3867, 30-3878, and 30-3879, Revised Statutes Supplement, 2004, are repealed.

Sec. 69. Original sections 8-135, 8-318, 8-320, 8-702, 45-346, 45-348, 45-350, 45-703 to 45-707, 45-711, 45-910, 45-1001, 45-1005, 45-1006, 45-1013, 45-1024, 45-1032, 45-1033, and 45-1055, Reissue Revised Statutes of Nebraska, and sections 8-113, 8-115.01, 8-116.01, 8-120, 8-124, 8-143.01, 8-148, 8-157, 8-183.04, 8-206, 8-234, 8-305, 8-331, 8-602, 8-701, 8-1006, 8-2401, 21-1725.01, 21-17,102, 30-3116, and 30-3117, Revised Statutes Supplement, 2004, are repealed.

Sec. 70. The following section is outright repealed: Section 8-385, Reissue Revised Statutes of Nebraska.

Sec. 71. Since an emergency exists, this act takes effect when passed and approved according to law.