

## LEGISLATIVE BILL 53

Approved by the Governor March 1, 2001

Introduced by Landis, 46

AN ACT relating to finance; to amend sections 8-208, 8-319, 8-330, 8-820.01, 8-1001 to 8-1004, 8-1006 to 8-1008, 8-1010, 8-1012, 8-1014, 8-1015, 8-1101, 8-1108.01, 8-1109.02, 8-1110, 8-1735, 21-17,103, 44-1703, 45-114, 45-115, 45-117, 45-119, 45-120, 45-122 to 45-124, 45-126 to 45-129, 45-131 to 45-136, 45-138 to 45-140, 45-142 to 45-145, 45-148 to 45-150, 45-153 to 45-155, 45-156 to 45-158, 45-173 to 45-183, 45-185 to 45-188, 45-190, 45-191.02, 45-191.04, 45-191.09, 45-194 to 45-196, 45-198 to 45-1,103, 45-1,110, 45-1,116, 45-902, 45-906, 45-910, 45-922, 45-923, 59-1722, 59-1725.01, 59-1733, and 69-2117, Reissue Revised Statutes of Nebraska, and sections 8-143.01, 8-1,140, 8-355, 8-1103, 21-17,115, 45-101.04, 45-116, 45-118, 45-121, 45-130, 45-137, 45-184, and 45-717, Revised Statutes Supplement, 2000; to change provisions relating to banks and banking, trust companies, securities, credit unions, loan brokers, delayed deposit services licensing, seller-assisted marketing plans, hearing procedures for the Department of Banking and Finance, and fees; to revise powers of state-chartered banks, savings and loan associations, and credit unions; to rename the Nebraska Sale of Checks Act; to change and eliminate provisions relating to installment loans; to name the Nebraska Installment Loan Act; to harmonize provisions; to provide operative dates; to repeal the original sections; to outright repeal sections 45-146, 45-147, 45-188.01, and 45-197, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. Section 8-143.01, Revised Statutes Supplement, 2000, 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 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, make 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 or indebtedness, the security therefor, and the purpose for which the proceeds have been or are to be used.

(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. ~~or 12 U.S.C. 84, whichever is less.~~

(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. 2. Section 8-1,140, Revised Statutes Supplement, 2000, 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 14, 2000~~ 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. 3. Section 8-208, Reissue Revised Statutes of Nebraska, is amended to read:

8-208. All conveyance of or other instruments affecting real estate owned or held in trust by a trust company shall be authorized, prior to or within ninety days after the conveyance or execution of an instrument affecting real estate owned or held in trust, by a resolution of the board of directors or a committee appointed by the board of directors and signed in the name of the trust company by its president or vice president.

Sec. 4. Section 8-319, Reissue Revised Statutes of Nebraska, is amended to read:

8-319. (1) No loan shall be made by such association except to its own members, and no loan shall be made to any member for any sum in excess of the par value of his or her stock. The borrower shall pledge to the association, as security for the loan, shares of a maturity value equal to the principal of the loan and, except as otherwise provided in this section, ample security by mortgage or deeds of trust on real estate. For purposes of this section, real property and real estate shall include a leasehold or subleasehold estate in real property under a lease or sublease the term of which does not expire, or which is renewable automatically or at the option of the holder or of the association so as not to expire for at least five years beyond the maturity of the debt. Loans made upon improved real estate, except as otherwise provided in this section, shall not exceed ninety-five percent of the reasonable normal cash value thereof, and all loans made on any other real estate shall not exceed three-fourths of the reasonable normal cash value thereof.

(2) An association may make a loan or loans in an amount exceeding ninety-five percent of the reasonable normal cash value of the real estate security (a) if such loan or loans are made to a veteran in accord with the provisions of 38 U.S.C., as now existing or as hereafter amended, (b) if the proceeds of the loan or loans are to be used in purchasing residential property or in constructing a dwelling on unimproved property owned by such veteran to be occupied as his or her home, used for the purpose of making repairs, alterations, or improvements in or paying delinquent indebtedness, taxes, or special assessments on residential property owned by the veteran and used by him or her as his or her home, or used in purchasing any land and buildings to be used by the applicant in pursuing a gainful occupation other than farming, and (c) if the Secretary of Veterans Affairs guarantees that portion of such loan or loans in excess of ninety-five percent of the reasonable normal cash value of the real estate security.

(3) An association is authorized to obtain insurance of its loans by the Federal Housing Administrator under Title II of the National Housing Act, as amended, and such loans so made upon improved real estate and so insured shall not be subject to the restrictions set forth in this section with reference to the maximum authorized amount of a loan.

(4) An association may make unsecured loans to its members if such loans (a) are insured under Title I and Title II of the National Housing Act, as amended, or (b) are for property alterations, repair, or improvements. The aggregate amount of loans made under subdivisions (a) and (b) of this subsection shall not at any time exceed twenty percent of the association's assets. Each loan made under subdivision (b) of this subsection shall be repayable in regular monthly installments within a period of twenty years and shall be supported by a written property statement on forms to be prescribed by the Department of Banking and Finance. An association may make secured loans to its members and may make loans under 38 U.S.C., as amended, under Chapter V, subchapter C of the Home ~~Owners~~ Owners' Loan Act of 1933, as amended (12 U.S.C.), and on the security of mobile homes.

(5) The stock of such association may be accepted as security for a loan of the amount of the withdrawal value of such stock without other

security.

(6) An association when so licensed may make loans to its own members upon the terms and security set forth in ~~sections 45-114 to 45-158~~ the Nebraska Installment Loan Act.

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

(8) An association may invest in loans, obligations, and advances of credit, all of which are referred to in this subsection as loans, made for the payment of expenses of business school, technical training school, college, or university education, but no association shall make any investment in loans under this subsection if the principal amount of its investment in such loans, exclusive of any investment which is or which at the time of its making was otherwise authorized, would thereupon exceed five percent of its assets. Such loans may be secured, partly secured, or unsecured, and the association may require a comaker or comakers, insurance, guaranty under a governmental student loan guarantee plan, or other protection against contingencies. The borrower shall certify to the association that the proceeds of the loan are to be used by a full-time student solely for the payment of expenses of business, technical training school, college, or university education.

(9) An association may participate with other lenders in making loans of any type that an association may otherwise make if (a) each of the lenders is either an instrumentality of the United States Government or is insured by the Federal Deposit Insurance Corporation or, in the case of another lender, the interest of the association in such loan is superior to the participating interests of the other participants and (b) an association whose accounts are insured by the Federal Deposit Insurance Corporation which may be a federal association or an association chartered by this state, or another association chartered by this state which is not so insured, has otherwise complied with subsection (1) of this section with respect to loans to members.

(10) An association may sell to or purchase from any institution which is a savings association chartered by this state or the accounts of which are insured by the Federal Deposit Insurance Corporation a participating interest in any loan, whether or not, in the case of a purchase, the security is located within the association's regular lending area.

Sec. 5. Section 8-330, Reissue Revised Statutes of Nebraska, is amended to read:

8-330. Every association may require borrowing members to pay all reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of real estate loans. Such expenses may include abstract, recording, and registration fees, title examinations, survey, escrow services, and taxes or charges imposed upon or in connection with the making and recording of any mortgage. Such reasonable charges may be collected by the association from the borrower and shall not be considered interest or a charge for the use of the money loaned. A charge not exceeding one percent or that allowed a federally chartered association for the premature prepayment may be made. The rate of interest on any loan of money shall be determined and computed upon the assumption that the debt will be paid according to the agreed terms and in the event the loan is paid or collected by court action prior to the term of the loan, any payment charged, received, or taken as an advance or forbearance which is in the nature of and taken into account in the calculation of interest, shall be spread over the stated term of the loan for the purpose of determining the rate of interest. Any amounts paid or contracted to be paid by persons other than the borrower shall not be considered interest and shall not be taken into account in the calculation of interest. Interest may be paid on escrow accounts held for the payment of taxes, insurance, and similar payments, if agreed to in writing by the borrower and association. Loans may be made by an association under a license granted it pursuant to ~~sections 45-114 to 45-158~~ the Nebraska Installment Loan Act, to borrowing members whose loans are secured by real estate, to the same extent and in the same amount as such loans may lawfully be made to nonborrowing members. The association shall furnish a loan settlement statement to each borrower, indicating in detail the charges and fees such borrower has paid or obligated himself or herself to pay to the association or to any other person in connection with such loan. A copy of such statement shall be retained in the records of the association.

An association may charge and receive interest, on property improvement loans including loans made under Title I of the National Housing Act, as amended, and unsecured loans authorized in section 5(c) of the Home Owners' Loan Act, as amended.

Sec. 6. Section 8-355, Revised Statutes Supplement, 2000, 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 14, 2000 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. 7. Section 8-820.01, Reissue Revised Statutes of Nebraska, is amended to read:

8-820.01. It is hereby declared to be the public policy of the State of Nebraska that for ~~the purpose~~ purposes of applying the federal most-favored-lender doctrine, the bank credit card rate contained in section 8-820 is not comparable or analogous to the small loan rate found in sections ~~45-137 and 45-138~~ 52 and 53 of this act. The Legislature finds that the institutions making small loans and the institutions administering a bank credit card are categorically different. The transactions carried on by these institutions are categorically different. The Legislature finds that small loan borrowers and bank credit card users are not synonymous or comparable. In establishing a small loan rate, the Legislature has recognized a risk factor that is different and greater than other financial transactions and therefor justifies the charging of a higher interest rate than installment loans, personal loans, retail revolving credit plans, or bank credit card interest rates.

Sec. 8. Section 8-1001, Reissue Revised Statutes of Nebraska, is amended to read:

8-1001. For purposes of the Nebraska Sale of Checks and Funds Transmission Act, unless the context otherwise requires:

(1) Person shall mean any individual, partnership, limited liability company, association, joint-stock association, trust, or corporation, but shall not include the United States Government or the government of the State of Nebraska;

(2) Licensee shall mean any person duly licensed pursuant to the act;

(3) Check shall mean any check, draft, money order, personal money order, or other instrument for the transmission or payment of money;

(4) Personal money order shall mean any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his or her agent for the receipt, transmission, or handling of money, whether such instrument is signed by the seller, by the purchaser or remitter, or by some other person; and

(5) Director shall mean the Director of Banking and Finance.

Sec. 9. Section 8-1002, Reissue Revised Statutes of Nebraska, is amended to read:

8-1002. No person shall engage in the business of selling checks, as a service or for a fee or other consideration, without having first obtained a license under the Nebraska Sale of Checks and Funds Transmission Act.

Sec. 10. Section 8-1003, Reissue Revised Statutes of Nebraska, is amended to read:

8-1003. (1) Nothing in the Nebraska Sale of Checks and Funds Transmission Act shall apply to the sale or issuance of checks by:

(a) Banks, trust companies, building and loan associations, savings and loan associations, and credit unions organized under the laws of this state or of the United States; or

(b) Departments or agencies of the United States or of any state or municipal government.

(2) The act shall not apply to the receipt of money by an incorporated telegraph company at any office of such company for immediate transmission by telegraph.

Sec. 11. Section 8-1004, Reissue Revised Statutes of Nebraska, is amended to read:

8-1004. To qualify for a license under ~~sections 8-1001 to 8-1015~~ the Nebraska Sale of Checks and Funds Transmission Act, an applicant shall meet the following requirements:

(1) The applicant shall have a net worth of at least fifty thousand dollars computed according to generally accepted accounting principles; and

(2) The financing responsibility, financial condition, business experience, character, and general fitness of the applicant shall be such as

reasonably to warrant the belief that applicant's business will be conducted honestly, carefully, and efficiently. To the extent deemed advisable by him or her, the director may investigate and consider the qualifications of officers and directors of an applicant in determining whether this qualification has been met.

Sec. 12. Section 8-1006, Reissue Revised Statutes of Nebraska, is amended to read:

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

(1) An investigation fee of one hundred 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) Financial statements, reasonably satisfactory to the director, showing that the applicant's net worth exceeds fifty thousand dollars; and

(3) A surety bond issued by a bonding company or insurance company authorized to do business in this state, in the principal sum of fifty 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 one hundred fifty thousand dollars. If the bond accompanying the application be in a principal sum of less than one hundred fifty thousand dollars, the application shall also be accompanied by a list of the locations, including agencies, in this state where the business is to be conducted. 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. In lieu of such corporate surety bond or bonds, or of any portion of the principal thereof as required by this 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. So long as the licensee so depositing shall continue solvent, and is not in violation of ~~any provision of sections 8-1001 to 8-1015~~ 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 ~~deposited with him~~ 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. 13. Section 8-1007, Reissue Revised Statutes of Nebraska, is amended to read:

8-1007. Upon the filing of an application in due form, accompanied by the fee and documents mentioned in section 8-1006, the director shall investigate to ascertain whether the qualifications prescribed by section 8-1004 have been met. If ~~he~~ the director approves such documents and finds that the bond is in the prescribed amount, he or she shall issue to the applicant a license to engage in the business of selling checks in this state pursuant to the ~~provisions of sections 8-1001 to 8-1015~~ Nebraska Sale of Checks and Funds Transmission Act.

Sec. 14. Section 8-1008, Reissue Revised Statutes of Nebraska, is amended to read:

8-1008. After a license has been granted, the licensee shall maintain the bond or securities in the amount prescribed by section 8-1006, as follows:

(1) Each licensee who does not have on file or deposit a bond or securities in the undiminished sum of one hundred fifty thousand dollars, shall file semiannual reports with the director setting forth the locations at which ~~he~~ the licensee sells checks in this state as of January 1 and July 1 in each year with the report for each such date being due on or before the fifteenth day thereafter. The licensee shall not be required to list on such reports those agents which are exempted by the provisions of section 8-1003. Within ten days following the filing of such reports, the principal sum of the bond or securities shall be increased to reflect any increase in the number of locations and may be decreased to reflect any decrease in the number of locations; and

(2) If the director shall find at any time that any bond required by the ~~provisions of sections 8-1001 to 8-1015~~ Nebraska Sale of Checks and Funds Transmission Act is insecure, insufficient, or exhausted, an additional bond to be approved by the director shall be filed by the licensee within ten days after written demand therefor by the director.

Sec. 15. Section 8-1010, Reissue Revised Statutes of Nebraska, is amended to read:

8-1010. Each licensee may conduct business at one or more locations within this state and through or by means of such employees, agents, or representatives as the licensee may designate and appoint from time to time. No license under the ~~provisions of sections 8-1001 to 8-1015~~ Nebraska Sale of Checks and Funds Transmission Act shall be required of any employee, agent, or representative who is acting for or in behalf of a licensee in the sale of checks of which the licensee is the issuer.

Sec. 16. Section 8-1012, Reissue Revised Statutes of Nebraska, is amended to read:

8-1012. The director may revoke a license on any ground on which he ~~or she~~ may refuse to grant a license or for violation of the ~~provisions of sections 8-1001 to 8-1015~~ Nebraska Sale of Checks and Funds Transmission Act, ~~or~~ for failure to pay an annual fee, or for the failure or refusal of a licensee to comply with any order, decision, or finding of the director made pursuant to the ~~provisions of sections 8-1001 to 8-1015~~ act. In furtherance of the provisions of this section, the director, if he ~~or she~~ has reasonable cause to believe that the grounds for revocation exist, may investigate the business, books, and records of the licensee.

Sec. 17. Section 8-1014, Reissue Revised Statutes of Nebraska, is amended to read:

8-1014. If any person to whom ~~sections 8-1001 to 8-1015~~ the Nebraska Sale of Checks and Funds Transmission Act applies, or any agent or representative of such person, violates any ~~of the provisions of sections 8-1001 to 8-1015~~ provision of the act or attempts to transact the business of selling or issuing checks without having first obtained a license from the director pursuant to the ~~provisions of sections 8-1001 to 8-1015~~ act, such person and each such agent or representative shall be guilty of a Class III misdemeanor. Each transaction in violation of ~~sections 8-1001 to 8-1015~~ the act and each day that a violation continues shall be a separate offense.

Sec. 18. Section 8-1015, Reissue Revised Statutes of Nebraska, is amended to read:

8-1015. Sections 8-1001 to 8-1015 shall be known and may be cited as the Nebraska Sale of Checks and Funds Transmission Act.

Sec. 19. Section 8-1101, Reissue Revised Statutes of Nebraska, is amended to read:

8-1101. For purposes of the Securities Act of Nebraska, unless the context otherwise requires:

(1) Agent means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but agent does not include an individual who represents (a) an issuer in (i) effecting a transaction in a security exempted by subdivision (6), (7), or (8) ~~or (7)~~ of section 8-1110, (ii) effecting certain transactions exempted by section 8-1111, (iii) effecting transactions in a federal covered security as described in section 18(b)(3) of the Securities Act of 1933, or (iv) effecting transactions with existing employees, limited liability company members, partners, or directors of the issuer or any of its subsidiaries if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state or (b) a broker-dealer in effecting transactions described in section 15(h)(2) of the Securities Exchange Act of 1934. A partner, limited liability company member, officer, or director of a broker-dealer is an agent only if he or she otherwise comes within this definition;

(2) Broker-dealer means any person engaged in the business of effecting transactions in securities for the account of others or for his or

her own account. Broker-dealer does not include (a) an issuer-dealer, agent, bank, savings institution, or trust company, (b) an issuer effecting a transaction in its own security exempted by subdivision (5) of section 8-1110 or which qualifies as a federal covered security pursuant to section 18(b)(1) of the Securities Act of 1933, (c) a person who has no place of business in this state if he or she effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (d) a person who has no place of business in this state if during any period of twelve consecutive months he or she does not direct more than five offers to sell or to buy into this state in any manner to persons other than those specified in subdivision (2)(c) of this section;

(3) Director means the Director of Banking and Finance of the State of Nebraska except as further provided in section 8-1120;

(4) Federal covered adviser means a person who is (a) registered under section 203 of the Investment Advisers Act of 1940 or (b) is excluded from the definition of investment adviser under section 202 of the Investment Advisers Act of 1940;

(5) Federal covered security means any security described as a covered security under section 18(b) of the Securities Act of 1933 or rules and regulations promulgated thereunder;

(6) Guaranteed means guaranteed as to payment of principal, interest, or dividends;

(7) Investment adviser means any person who for compensation engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who for compensation and as a part of a regular business issues or promulgates analyses or reports concerning securities. Investment adviser also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. Investment adviser does not include (a) an investment adviser representative, (b) a bank, savings institution, or trust company, (c) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession, (d) a broker-dealer or its agent whose performance of these services is solely incidental to its business as a broker-dealer and who receives no special compensation for them, (e) an issuer-dealer, (f) a publisher of any bona fide newspaper, news column, news letter, news magazine, or business or financial publication or service, whether communicated in hard copy form, by electronic means, or otherwise which does not consist of the rendering of advice on the basis of the specific investment situation of each client, (g) a person who has no place of business in this state if (i) his or her only clients in this state are other investment advisers, federal covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (ii) during the preceding twelve-month period, he or she has had five or fewer clients who are residents of this state other than those persons specified in subdivision (g)(i) of this subdivision, (h) any person that is a federal covered adviser, or (i) such other persons not within the intent of this subdivision as the director may by rule, regulation, or order designate;

(8) Investment adviser representative means any partner, limited liability company member, officer, or director or any person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is registered or required to be registered under the Securities Act of Nebraska or who has a place of business located in this state and is employed by or associated with a federal covered adviser, and who (a) makes any recommendations or otherwise renders advice regarding securities, (b) manages accounts or portfolios of clients, (c) determines which recommendation or advice regarding securities should be given, (d) solicits, offers, or negotiates for the sale of or sells investment advisory services, or (e) supervises employees who perform any of the foregoing;

(9) Issuer means any person who issues or proposes to issue any



security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued;

(10) Issuer-dealer means (a) any issuer located in the State of Nebraska or (b) any issuer which registered its securities by qualification who proposes to sell to the public of the State of Nebraska the securities that it issues without the benefit of another registered broker-dealer. Such securities shall have been approved for sale in the State of Nebraska pursuant to section 8-1104;

(11) Nonissuer means not directly or indirectly for the benefit of the issuer;

(12) Person means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

(13) Sale or sell includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value. Offer or offer to sell includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock shall be considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, shall be considered to include an offer of the other security;

(14) Securities Act of 1933, Securities Exchange Act of 1934, Public Utility Holding Company Act of 1935, Investment Advisers Act of 1940, Investment Company Act of 1940, and Commodity Exchange Act means the federal statutes of those names as amended on or before ~~July 31, 1997~~ December 31, 2000;

(15) Security means any note, stock, treasury stock, bond, debenture, units of beneficial interest in a real estate trust, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, membership interest in any limited liability company organized under Nebraska law or any other jurisdiction unless otherwise excluded from this definition, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, in general any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. Security does not include any insurance or endowment policy or annuity contract issued by an insurance company. Security also does not include a membership interest in a limited liability company when all of the following exist: (a) The member enters into a written commitment to be engaged actively and directly in the management of the limited liability company; and (b) all members of the limited liability company are actively engaged in the management of the limited liability company; and

(16) State means any state, territory, or possession of the United States as well as the District of Columbia and Puerto Rico.

Sec. 20. Section 8-1103, Revised Statutes Supplement, 2000, is amended to read:

8-1103. (1) It shall be unlawful for any person to transact business in this state as a broker-dealer, issuer-dealer, or agent, except in certain transactions exempt under section 8-1111, unless he or she is registered under the Securities Act of Nebraska. It shall be unlawful for any broker-dealer to employ an agent for purposes of effecting or attempting to effect transactions in this state unless the agent is registered. It shall be unlawful for an issuer to employ an agent unless the issuer is registered as an issuer-dealer and unless the agent is registered. The registration of an agent shall not be effective unless the agent is employed by a broker-dealer

or issuer-dealer registered under the act. When the agent begins or terminates employment with a registered broker-dealer or issuer-dealer, the broker-dealer or issuer-dealer shall promptly notify the director.

(2)(a) It shall be unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless he or she is registered under the act.

(b) Except with respect to federal covered advisers whose only clients are those described in subdivision (7)(g)(i) of section 8-1101, it shall be unlawful for any federal covered adviser to conduct advisory business in this state unless such person files with the director the documents which are filed with the Securities and Exchange Commission, as the director may by rule and regulation or order require, a consent to service of process, and a two-hundred-dollar filing fee prior to acting as a federal covered adviser in this state.

(c)(i) It shall be unlawful for any investment adviser required to be registered under the Securities Act of Nebraska to employ an investment adviser representative unless the investment adviser representative is registered under the act.

(ii) It shall be unlawful for any federal covered adviser to employ, supervise, or associate with an investment adviser representative having a place of business located in this state unless such investment adviser representative is registered under the Securities Act of Nebraska or is exempt from registration.

(d) The registration of an investment adviser representative shall not be effective unless the investment adviser representative is employed by a registered investment adviser or a federal covered adviser. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser shall promptly notify the director. When an investment adviser representative begins or terminates employment with a federal covered adviser, the investment adviser representative shall promptly notify the director.

(3) A broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative may apply for registration by filing with the director an application and payment of the fee prescribed in subsection (6) of this section. If the applicant is an individual, the application shall include the applicant's social security number. Registration of a broker-dealer or issuer-dealer shall automatically constitute registration of all partners, limited liability company members, officers, or directors of such broker-dealer or issuer-dealer as agents, except any partner, limited liability company member, officer, or director whose registration as an agent is denied, suspended, or revoked under subsection (9) of this section, without the filing of applications for registration as agents or the payment of fees for registration as agents. The application shall contain whatever information the director requires concerning such matters as:

(a) The applicant's form and place of organization;

(b) The applicant's proposed method of doing business;

(c) The qualifications and business history of the applicant and, in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, limited liability company member, officer, director, person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or person directly or indirectly controlling the broker-dealer or investment adviser;

(d) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(e) The applicant's financial condition and history; and

(f) Information to be furnished or disseminated to any client or prospective client if the applicant is an investment adviser.

(4)(a) If no denial order is in effect and no proceeding is pending under subsection (9) of this section, registration shall become effective at noon of the thirtieth day after an application is filed, complete with all amendments. The director may specify an earlier effective date.

(b) The director shall require as conditions of registration:

(i) That the applicant, except for renewal, and, in the case of a corporation, partnership, or limited liability company, the officers, directors, partners, or limited liability company members pass such examination or examinations as the director may prescribe as evidence of knowledge of the securities business;

(ii) That an issuer-dealer and its agents pass an examination prescribed and administered by the Department of Banking and Finance. Such examination shall be administered upon request and upon payment of an examination fee of five dollars. Any applicant for issuer-dealer registration

who has satisfactorily passed any other examination approved by the director shall be exempted from this requirement upon furnishing evidence of satisfactory completion of such examination to the director;

(iii) That an issuer-dealer have a minimum net capital of twenty-five thousand dollars. In lieu of a minimum net capital requirement of twenty-five thousand dollars, the director may require an issuer-dealer to post a corporate surety bond with surety licensed to do business in Nebraska in an amount equal to such capital requirements. When the director finds that a surety bond with a surety company would cause an undue burden on an issuer-dealer, the director may require the issuer-dealer to post a signature bond. Every such surety bond shall run in favor of Nebraska, shall provide for suit thereon by any person who has a cause of action under section 8-1118, and shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118;

(iv) That a broker-dealer have such minimum net capital as the director may by rule and regulation or order require, subject to the limitations provided in section 15 of the Securities Exchange Act of 1934. In lieu of any such minimum net capital requirement, the director may by rule and regulation or order require a broker-dealer to post a corporate surety bond with surety licensed to do business in Nebraska in an amount equal to such capital requirement, subject to the limitations of section 15 of the Securities Exchange Act of 1934. Every such surety bond shall run in favor of Nebraska, shall provide for suit thereon by any person who has a cause of action under section 8-1118, and shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118; and

(v) That an investment adviser have such minimum net capital as the director may by rule and regulation or order require, subject to the limitations of section 222 of the Investment Advisers Act of 1940, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over such funds or securities and those investment advisers who do not. In lieu of any such minimum net capital requirement, the director may require by rule and regulation or order an investment adviser to post a corporate surety bond with surety licensed to do business in Nebraska in an amount equal to such capital requirement, subject to the limitations of section 222 of the Investment Advisers Act of 1940. Every such surety bond shall run in favor of Nebraska, shall provide for suit thereon by any person who has a cause of action under section 8-1118, and shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118.

(c) The director may waive the requirement of an examination for any applicant who by reason of prior experience can demonstrate his or her knowledge of the securities business. Registration of a broker-dealer, ~~and agent, investment adviser, and investment adviser representative~~ shall be effective for a period of not more than one year and shall expire on December 31 unless renewed. Registration of an issuer-dealer, ~~investment adviser, or investment adviser representative~~ shall be effective for a period of not more than one year and may be renewed as provided in this section. Notice filings by a federal covered adviser shall be effective for a period of not more than one year and ~~may be renewed as provided in this section~~ shall expire on December 31 unless renewed.

(d) The director may restrict or limit an applicant as to any function or activity in this state for which registration is required under the Securities Act of Nebraska.

(5) Registration of a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative may be renewed by filing with the director or with a registration depository designated by the director prior to the expiration thereof ~~an application containing data~~ such information as the director by rule, regulation, or order may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative ~~previously filed with the director by the applicant, and payment of the prescribed fee. 7 and, in the case of a broker-dealer, issuer-dealer, or investment adviser, a financial statement showing the financial condition of such broker-dealer, issuer-dealer, or investment adviser as of a date within ninety days.~~ A federal covered adviser may renew its notice filing by filing with the director prior to the expiration thereof the documents filed with the Securities and Exchange Commission, as the director by rule or regulation may require, a consent to service of process, and the prescribed fee.

(6) The fee for initial or renewal registration shall be two hundred

fifty dollars for a broker-dealer, two hundred dollars for an investment adviser, one hundred dollars for an issuer-dealer, forty dollars for an agent, and forty dollars for an investment adviser representative. The fee for initial or renewal filings for a federal covered adviser shall be two hundred dollars. When an application is denied or withdrawn, the director shall retain all of the fee.

(7)(a) Every registered broker-dealer, issuer-dealer, and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the director prescribes by rule and regulation or order, except as provided by section 15 of the Securities Exchange Act of 1934, in connection with broker-dealers, and section 222 of the Investment Advisers Act of 1940, in connection with investment advisers. All records so required shall be preserved for such period as the director prescribes by rule and regulation or order.

(b) All the records of a registered broker-dealer, issuer-dealer, or investment adviser shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the director, within or without this state, as the director deems necessary or appropriate in the public interest or for the protection of investors and advisory clients. For the purpose of avoiding unnecessary duplication of examinations, the director, insofar as he or she deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934. Costs of such examinations shall be borne by the registrant.

(c) Every registered broker-dealer, except as provided in section 15 of the Securities Exchange Act of 1934, and investment adviser, except as provided by section 222 of the Investment Advisers Act of 1940, shall file such financial reports as the director may prescribe by rule and regulation or order.

(d) If any information contained in any document filed with the director is or becomes inaccurate or incomplete in any material respect, a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative shall promptly file a correcting amendment or a federal covered adviser shall file a correcting amendment when such amendment is required to be filed with the Securities and Exchange Commission.

(8) With respect to investment advisers, the director may require that certain information be furnished or disseminated to clients as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the director in his or her discretion, information furnished to clients of an investment adviser that would be in compliance with the Investment Advisers Act of 1940 and the rules and regulations under such act may be used in whole or in part to satisfy the information requirement prescribed in this subsection.

(9)(a) The director may by order deny, suspend, or revoke registration of any broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative or bar, censure, or impose a fine pursuant to subsection (4) of section 8-1108.01 on any registrant or any partner, limited liability company member, officer, director, or person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director for a registrant from employment with any broker-dealer, issuer-dealer, or investment adviser if he or she finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer, issuer-dealer, or investment adviser, any partner, limited liability company member, officer, director, person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or person directly or indirectly controlling the broker-dealer, issuer-dealer, or investment adviser:

(i) Has filed an application for registration under this section which, as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(ii) Has willfully violated or willfully failed to comply with any provision of the Securities Act of Nebraska or a predecessor act or any rule, regulation, or order adopted and promulgated pursuant to the act or a predecessor act;

(iii) Has been convicted, within the past ten years, of any misdemeanor involving a security or commodity or any aspect of the securities or commodities business or any felony;

(iv) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities or commodities business;

(v) Is the subject of an order of the director denying, suspending, or revoking registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative;

(vi) Is the subject of an adjudication or determination, after notice and opportunity for hearing, within the past ten years by a securities or commodities agency or administrator of another state or a court of competent jurisdiction that the person has willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the securities or commodities law of any other state;

(vii) Has engaged in dishonest or unethical practices in the securities or commodities business;

(viii) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature, but the director may not enter an order against a broker-dealer, issuer-dealer, or investment adviser under this subdivision without a finding of insolvency as to the broker-dealer, issuer-dealer, or investment adviser;

(ix) Has not complied with a condition imposed by the director under subsection (4) of this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

(x) Has failed to pay the proper filing fee, but the director may enter only a denial order under this subdivision, and he or she shall vacate any such order when the deficiency has been corrected;

(xi) Has failed to reasonably supervise his or her agents or employees, if he or she is a broker-dealer or issuer-dealer, or his or her investment adviser representatives or employees, if he or she is an investment adviser, to assure their compliance with the Securities Act of Nebraska; or

(xii) Has been denied the right to do business in the securities industry, or the person's respective authority to do business in an investment-related industry has been revoked by any other state, federal, or foreign governmental agency or self-regulatory organization for cause, or the person has been the subject of a final order in a criminal, civil, injunctive, or administrative action for securities, commodities, or fraud-related violations of the law of any state, federal, or foreign governmental unit.

(b)(i) The director may not institute a proceeding under this section on the basis of a final judicial or administrative order made known to him or her by the applicant prior to the effective date of the registration unless the proceeding is instituted within the next ninety days following registration. For purposes of this subdivision, a final judicial or administrative order does not include an order that is stayed or subject to further review or appeal. This subdivision shall not apply to renewed registrations.

(ii) The director may by order summarily postpone or suspend registration pending final determination of any proceeding under this subsection. Upon the entry of the order, the director shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, that it has been entered and of the reasons therefor and that within fifteen business days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. No order may be entered under this section denying or revoking registration without appropriate prior notice to the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, and opportunity for hearing.

(c) If the director finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative, is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the director may by order cancel the registration or application.

(d) Withdrawal from registration as a broker-dealer, issuer-dealer,

agent, investment adviser, or investment adviser representative shall become effective thirty days after receipt of an application to withdraw or within a shorter period of time as the director may determine unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a revocation or suspension proceeding is pending or instituted, withdrawal shall become effective at such time and upon such conditions as the director shall order.

Sec. 21. Section 8-1108.01, Reissue Revised Statutes of Nebraska, is amended to read:

8-1108.01. (1) Whenever it appears to the director that the sale of any security is subject to registration under the Securities Act of Nebraska and is being offered or has been offered for sale without such registration, he or she may order the issuer or offerer of such security to cease and desist from the further offer or sale of such security unless and until it has been registered under the act.

(2) Whenever it appears to the director that any person is acting as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative without registration as such or acting as a federal covered adviser without making a notice filing under the act, he or she may order such person to cease and desist from such activity unless and until he or she has been registered as such or has made the required notice filing under the act.

(3) Whenever it appears to the director that any person is violating section 8-1102, he or she may order the person to cease and desist from such activity.

(4) The director may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed twenty-five thousand dollars per violation, in addition to costs of the investigation, upon a person found to have engaged in any act or practice which would constitute a violation of the act or any rule, regulation, or order issued under the act. The fine and costs shall be in addition to all other penalties imposed by the laws of this state, shall be collected by the director, and shall be remitted to the State Treasurer. Costs shall be credited to the Securities Act Cash Fund, and fines shall be credited to the permanent school fund. Imposition of any fine and payment of costs under this subsection may be appealed pursuant to section 8-1119. If a person fails to pay the fine or costs of the investigation referred to in this subsection, a lien in the amount of the fine and costs shall be imposed upon all of the assets and property of such person in this state and may be recovered by suit by the director and remitted to the State Treasurer. Costs shall be credited to the Securities Act Cash Fund, and fines shall be credited to the permanent school fund. Failure of the person to pay a fine and costs shall also constitute a forfeiture of his or her right to do business in this state under the Securities Act of Nebraska.

(5) After such an order has been made under subsection (1), (2), (3), or (4) of this section, if a request for a hearing is filed in writing within fifteen business days of the issuance of the order by the person to whom such order was directed, a hearing shall be held by the director within ~~fifteen~~ thirty business days after receipt of the request, unless both parties consent to a later date or the hearing officer sets a later date for good cause. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order.

Sec. 22. Section 8-1109.02, Reissue Revised Statutes of Nebraska, is amended to read:

8-1109.02. Upon the entry of an order denying effectiveness to or suspending or revoking the effectiveness of a registration statement to register securities under any part of section 8-1109 or 8-1109.01, the director shall promptly notify the issuer of the securities and the applicant or registrant that the order has been entered and of the reasons therefor and that any person to whom the order is directed may request a hearing within fifteen business days after the issuance of the order. Upon receipt of a written request the matter will be set down for hearing to commence within thirty business days after the receipt unless the parties consent to a later date or the hearing officer sets a later date for good cause. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final

order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to the issuer and to the applicant or registrant, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. The director may modify or vacate a stop order if he or she finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

Sec. 23. Section 8-1110, Reissue Revised Statutes of Nebraska, is amended to read:

8-1110. Sections 8-1104 to 8-1109 shall not apply to any of the following securities:

(1) Any security, including a revenue obligation, issued or guaranteed by the State of Nebraska, any political subdivision, or any agency or corporate or other instrumentality thereof or any certificate of deposit for any of the foregoing;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) Any security issued or guaranteed by any federal credit union, or any credit union, industrial loan and investment company, or similar association organized and supervised under the laws of this state;

(4) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is: (a) Subject to the jurisdiction of the Interstate Commerce Commission; (b) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act; (c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or (d) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(5)(a) Any security listed on the Chicago Stock Exchange, the Chicago Board Options Exchange, Tier I of the Pacific Stock Exchange, Tier I of the Philadelphia Stock Exchange, or any other stock exchange or market system approved by the director, if, in each case, quotations have been available and public trading has taken place for such class of security prior to the offer or sale of that security in reliance on the exemption; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing or to any security listed on the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers Automated Quotation National Market System.

(b) The issuer of any security which has been approved for listing or designation on notice of issuance on such exchanges or market systems, and for which no quotations have been available and no public trading has taken place for any of such issuer's securities, may rely upon the exemption stated in subdivision (5)(a) of this section, if a notice is filed with the director, together with a filing fee of two hundred dollars, prior to first use of a disclosure document covering such securities in this state; except that failure to file such notice in a timely manner may be cured by the director in his or her discretion.

(c) The director may adopt and promulgate rules and regulations which, after notice to such exchange or market system and an opportunity to be heard, remove any such exchange or market system from the exemption stated in subdivision (5)(a) of this section if the director finds that the listing requirements or market surveillance of such exchange or market system is such that the continued availability of such exemption for such exchange or market system is not in the public interest and that removal is necessary for the protection of investors;

(6) Any security which meets all of the following conditions:

(a) ~~If the~~ The issuer is ~~not~~ organized under the laws of the United States or a state, ~~it~~ or has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus;

(b) A class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been so registered for the three years immediately preceding the offering date;

(c) Neither the issuer nor a significant subsidiary has had a

material default during the last seven years, or during the issuer's existence if such existence is less than seven years, in the payment of (i) principal, interest, dividends, or sinking-fund installments on preferred stock or indebtedness for borrowed money or (ii) rentals under leases with terms of three or more years;

(d) ~~Except as provided in subdivision (6)(g) of this section, the~~ The issuer has had consolidated net income, without taking into account extraordinary items and the cumulative effect of accounting changes, of at least one million dollars in four of its last five fiscal years, including its last fiscal year, and if the offering is of interest-bearing securities the issuer has had for its last fiscal year net income before deduction for income taxes and depreciation of at least one and one-half times the issuer's annual interest expense, taking into account the proposed offering and the intended use of the proceeds. However, if the issuer of the securities is a finance company which has liquid assets of at least one hundred five percent of its liabilities, other than deferred income taxes, deferred investment tax credit, capital stock, and surplus, at the end of its last five fiscal years, the net income requirement before deduction for interest expense shall be one and one-fourth times its annual interest expense. For purposes of this subdivision: (i) ~~Last~~ Last fiscal year means the most recent year for which audited financial statements are available, if such statements cover a fiscal period ending not more than fifteen months from the commencement of the offering; (ii) finance company means a company engaged primarily in the business of wholesale, retail, installment, mortgage, commercial, industrial, or consumer financing, banking, or factoring; and (iii) liquid assets means (A) cash, (B) receivables payable on demand or not more than twelve months following the close of the company's last fiscal year less applicable reserves and unearned income, and (C) readily marketable securities less applicable reserves and unearned income;

(e) If the offering is of stock or shares other than preferred stock or shares, such securities have voting rights which include (i) the right to have at least as many votes per share and (ii) the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law; and

(f) If the offering is of stock or shares other than preferred stock or shares, such securities are owned beneficially or of record on any date within six months prior to the commencement of the offering by at least one thousand two hundred persons, and on such date there are at least seven hundred fifty thousand such shares outstanding with an aggregate market value of at least three million seven hundred fifty thousand dollars based on the average bid price for such day. When determining the number of persons who are beneficial owners of the stock or shares of an issuer, for purposes of this subdivision, the issuer or broker-dealer may rely in good faith upon written information furnished by the record owners;

~~(g) If the issuer of the securities is a finance company which has liquid assets of at least one hundred five percent of its liabilities, other than deferred income taxes, deferred investment tax credit, capital stock, and surplus, at the end of its last five fiscal years, the net income requirement of subdivision (6)(d) of this section before deduction for interest expense shall be one and one-fourth times its annual interest expense. For purposes of this subdivision, (i) finance company means a company engaged primarily in the business of wholesale, retail, installment, mortgage, commercial, industrial, or consumer financing, banking, or factoring and (ii) liquid assets means (A) cash receivables payable on demand or not more than twelve years following the close of the company's last fiscal year less applicable reserves and unearned income and (B) readily marketable securities less applicable reserves and unearned income; and~~

~~(h) (7) Any security issued or guaranteed as to both principal and interest by an international bank of which the United States is a member; shall be exempt from registration under this section; or~~

~~(7) (8) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, as a chamber of commerce, or as a trade or professional association.~~

Sec. 24. Section 8-1735, Reissue Revised Statutes of Nebraska, is amended to read:

8-1735. (1) The director shall commence an administrative proceeding under the Commodity Code by entering either a notice of intent to do a contemplated act or a summary order. The notice of intent or summary order may be entered without notice, without opportunity for hearing, and need not be supported by findings of fact or conclusions of law, but shall be in writing.



(2) Upon entry of a notice of intent or summary order, the director shall promptly notify all interested parties that the notice or summary order has been entered and the reasons therefor. If the proceeding is pursuant to a notice of intent, the director shall inform all interested parties of the date, time, and place set for the hearing on the notice. If the proceeding is pursuant to a summary order, the director shall inform all interested parties that they have ~~thirty~~ fifteen business days from the entry of the order to file a written request for a hearing on the matter with the director and that the hearing will be scheduled to commence within thirty business days after the receipt of the written request, unless the parties consent to a later date or the hearing officer sets a later date for good cause.

(3) If the proceeding is pursuant to a summary order, the director, whether or not a written request for a hearing is received from any interested party, may set the matter down for hearing on the director's own motion.

(4) If no hearing is requested and none is ordered by the director, the summary order shall automatically become a final order after thirty business days.

(5) If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

(6) No final order or order after hearing may be returned without (a) appropriate notice to all interested persons, (b) opportunity for hearing by all interested persons, and (c) entry of written findings of fact and conclusions of law.

(7) Every hearing in an administrative proceeding under the Commodity Code shall be public unless the director grants a request joined in by all the respondents that the hearing be conducted privately.

Sec. 25. Section 21-17,103, Reissue Revised Statutes of Nebraska, is amended to read:

21-17,103. (1) Immediately before the payment of each dividend, the gross earnings of the credit union shall be determined. From this amount there shall be set aside as a regular reserve account for contingencies an amount as set forth in 12 C.F.R. 702. ~~determined by the following schedule:~~

~~(1) A credit union in operation for five years or more and having assets of five hundred thousand dollars or more shall set aside ten percent of its gross income until the regular reserve account equals four percent of the total of the outstanding loans and risk assets and then five percent of its gross income until the regular reserve account equals six percent of the total of outstanding loans and risk assets;~~

~~(2) A credit union in operation for less than five years or having assets of less than five hundred thousand dollars shall set aside ten percent of its gross income until the regular reserve account equals seven and one-half percent of the total of the outstanding loans and risk assets, then five percent of its gross income until the regular reserve account equals ten percent of the total of outstanding loans and risk assets; and~~

~~(3) A credit union shall replenish the regular reserve account by regular contributions in such amounts as may be needed to maintain the stated reserve goals whenever the regular reserve account falls below the stated percent of the total of loans, outstanding loans, and risk assets~~

(2) The director may at any time require the credit union to increase the amount set aside in a regular reserve account pursuant to subsection (1) of this section or to establish a special reserve account if, in the judgment of the director, the financial condition of the credit union warrants such action.

Sec. 26. Section 21-17,115, Revised Statutes Supplement, 2000, 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 14, 2000 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. 27. Section 44-1703, Reissue Revised Statutes of Nebraska, is amended to read:

44-1703. All life insurance and all accident and health insurance sold in connection with loans or other credit transactions shall be subject to sections 44-1701 to 44-1713 except such insurance sold in connection with a loan or other credit transaction of more than ten years duration or fifteen years duration when made by licensees under ~~sections 45-114 to 45-158 the~~

Nebraska Installment Loan Act. No insurance shall be subject to sections 44-1701 to 44-1713 when the issuance of such insurance is an isolated transaction on the part of the insurer and not related to an agreement or a plan for insuring debtors of the creditor.

Sec. 28. Section 45-101.04, Revised Statutes Supplement, 2000, is amended to read:

45-101.04. The limitation on the rate of interest provided in section 45-101.03 shall not apply to:

(1) Other rates of interest authorized for loans made by any licensee or permittee operating under a license or permit duly issued by the Department of Banking and Finance pursuant to the Credit Union Act, the Nebraska Installment Loan Act, subsection (4) of section 8-319, or sections 8-401 to 8-417, or 8-815 to 8-829; ~~7 or 45-114 to 45-158;~~

(2) Loans made to any corporation, partnership, limited liability company, or trust;

(3) The guarantor or surety of any loan to a corporation, partnership, limited liability company, or trust;

(4) Loans made when the aggregate principal amount of the indebtedness is twenty-five thousand dollars or more of the borrower to any one financial institution, licensee, or permittee;

(5) Loans insured, guaranteed, sponsored, or participated in, either in whole or part, by any agency, department, or program of the United States or state government;

(6) Loans or advances of money, repayable on demand, which are made solely upon securities, as defined in subdivision (15) of section 8-1101, pledged as collateral for such repayment and in which such loans or advances are used by the borrower only for the purchase of securities as so defined. It shall be lawful to contract for and receive any rate of interest on such transaction as the parties thereto may expressly agree;

(7) Interest charges made on open credit accounts by a person who sells goods or services on credit when the interest charges do not exceed one and one-third percent per month for any charges which remain unpaid for more than thirty days following rendition of the statement of account;

(8) A minimum charge of ten dollars per loan which may be charged by the lender in lieu of all interest charges;

(9) Loans described in subsection (4) of section 8-319 made by a state or federal savings and loan association at a rate not to exceed nineteen percent per annum;

(10) Loans made primarily for business or agricultural purposes or secured by real estate when such loans are made (a) by a licensee, registrant, or permittee operating under a license, registration, or permit duly issued by the Department of Banking and Finance except for licensees operating under ~~sections 45-114 to 45-158~~ the Nebraska Installment Loan Act, (b) by any financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, or (c) by any insurance company organized under the laws of this state and subject to regulation by the Department of Insurance;

(11) Loans secured solely by real estate when such loans are (a) made by licensees operating under ~~sections 45-114 to 45-158~~ the Nebraska Installment Loan Act and (b) made to finance or refinance the purchase of the property or construction on or improvements to the property, if the Department of Banking and Finance has the authority to examine such loans for compliance with sections 45-101.02 and 45-101.03. A licensee making a loan pursuant to this subdivision may obtain an interest in any fixtures attached to such real estate and any insurance proceeds payable in connection with such real estate or the loan;

(12) Loans secured by a reverse mortgage pursuant to section ~~45-1,116~~ 101 of this act;

(13) Interest charges made on any goods or services sold under an installment contract pursuant to the Nebraska Installment Sales Act. Subject to section 45-338, it shall be lawful to contract for and receive any rate of interest on such contract as the parties may expressly agree to in writing; or

(14) Fees which may be charged by a licensee for services pursuant to the Delayed Deposit Services Licensing Act.

Sec. 29. Sections 29 to 86, 91 to 99, and 101 of this act shall be known and may be cited as the Nebraska Installment Loan Act.

Sec. 30. Section 45-114, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-114. The word person, when used in sections 45-114 to 45-158, means individuals, partnerships, limited liability companies, associations, banks, trust companies, savings banks, building and loan associations, trusts, corporations, and all other legal entities. The word department, when used in~~

~~such sections, means the Department of Banking and Finance. The word license, when used in such sections, means permit.~~ (1) For purposes of the Nebraska Installment Loan Act:

- (a) Applicant means a person applying for a license under the act;
- (b) Department means the Department of Banking and Finance;
- (c) Director means the Director of Banking and Finance;
- (d) Licensee means any person who obtains a license under the act;

and

(e) Person means individual, partnership, limited liability company, association, bank, trust company, savings bank, building and loan association, credit union, industrial loan and investment company, trust, corporation, and any other legal entity.

(2) Except as provided in subsection (3) of section 45-130 45 of this act, it is not the intention of the Legislature that any no revenue arising hereunder under the act shall inure to any school fund of the State of Nebraska or any of its governmental subdivisions.

(3) Loan, when used in sections 45-114 to 45-158 and 45-173 to 45-188 shall the Nebraska Installment Loan Act, does not include any loan made by a person who is not a licensee on which the interest does not exceed the maximum rate permitted by section 45-101.03.

(4) Nothing in sections 45-114 to 45-158 and 45-173 to 45-188 shall apply the Nebraska Installment Loan Act applies to any loan made by a person who is not a licensee if the interest on the loan does not exceed the maximum rate permitted by section 45-101.03.

Sec. 31. Section 45-115, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-115. No bank, or trust company, credit union, or industrial loan and investment company shall be~~ is eligible for a license or to make loans under sections 45-114 to 45-158 the Nebraska Installment Loan Act.

Sec. 32. Section 45-116, Revised Statutes Supplement, 2000, is amended to read:

~~45-116. (1) Any person may, after procuring a license from the Department of Banking and Finance department,~~ engage or continue in the business of making loans of money, and charge, contract for, and receive the maximum for interest and other charges in accordance with the authorization and requirements of sections 45-114 to 45-158 the Nebraska Installment Loan Act.

(2)(a) A license ~~shall not be~~ is not required for an affiliate of a licensee if the activities of the affiliate in this state are limited solely to the securitization of loans made by the licensee and the servicing rights to the loans are retained by the licensee or assigned or otherwise transferred to a financial institution, licensee, or permittee.

(b) For purposes of this subsection:

(i) Affiliate means an entity that controls, is controlled by, or is under common control with another entity;

(ii) Control means to own directly or indirectly or to control in any manner twenty-five percent of the voting shares of an entity or to control in any manner the election of the majority of directors of any entity; and

(iii) Securitization means the placing of individual installment loans made by licensees into a commingled or pooled security that is subsequently sold or otherwise transferred to another entity.

(c) Nothing in this subsection shall be construed to exempt a licensee or affiliate from the provisions of the Securities Act of Nebraska.

Sec. 33. Section 45-117, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-117. Any person who desires to obtain an original license to engage in the business of lending money under the terms and conditions of sections 45-114 to 45-158 and sections 45-173 to 45-188 the Nebraska Installment Loan Act shall apply therefor to the department for the license under oath, on forms prescribed by the Department of Banking and Finance, to the department, and shall pay an original license fee in the sum of one hundred fifty dollars. 7 and, if the application is approved, a license as herein provided shall be issued. If such application is not approved, the department shall return to the applicant the sum of one hundred fifty dollars less any part of the investigation, inspection, and publication costs provided for by section 45-118, which shall not have been paid by the applicant. If the applicant is an individual, the application shall include the applicant's social security number.~~

Sec. 34. Section 45-118, Revised Statutes Supplement, 2000, is amended to read:

~~45-118. (1) Except as provided in subsection (2) of this section, a hearing shall be held on every application for an original license under~~

~~sections 45-114 to 45-158, every application for an original license shall be filed the Nebraska Installment Loan Act. The hearing shall be held not less than thirty days prior to the date of hearing 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 department director, in its his or her discretion, may grant a continuance. The Director of Banking and Finance shall have director may the power to reject any application for license after hearing. He or she The director shall, within 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 borne 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 ~~sections 45-114 to 45-158 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 ~~sections 45-114 to 45-158 the act.~~

Sec. 35. Section 45-119, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-119. Such A license shall not be issued until the licensee applicant gives to the Director of Banking and Finance for the Department of Banking and Finance department a bond in the penal sum of two thousand dollars to be executed by the licensee applicant and a surety company approved by the director, for the department, conditioned for the faithful performance by the applicant, as a licensee, of the duties and obligations pertaining to the business of moneylending so licensed lending money and the prompt payment of any judgment recovered against him or her, the licensee, or for which any one of the licensees may be liable the applicant, as a licensee, under the provisions of sections 45-114 to 45-158 Nebraska Installment Loan Act. The required bond shall be renewed and refiled annually on or before March 1 of each year or the licensed person, firm, association, or corporation licensee shall, within thirty days thereafter, immediately cease doing business making loans, and his, her, their, or its the license shall be revoked canceled by the Director of Banking and Finance director. The bond, until renewed and refiled, shall remain in full force and effect. The requirements of this section for the licensee to give bond to the Director of Banking and Finance shall not apply to licensees that are banks, trust companies, cooperative credit associations, building and loan associations, or industrial loan and investment companies.~~

Sec. 36. Section 45-120, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-120. Upon the filing of such an application under the Nebraska Installment Loan Act, the payment of the license fee, and the approval of the required bond, the Director of Banking and Finance director shall investigate the facts, and, if he or she regarding the applicant. If the director finds that (1) the experience, character, and general fitness of the applicant, and of the applicant's partners or members thereof if the applicant is a partnership, limited liability company, or association, and of the applicant's officers and directors thereof if the applicant is a corporation, are such as to warrant belief that the business will be operated applicant will operate the business honestly, fairly, and efficiently within the purposes of sections 45-114 to 45-158 the act, and (2) allowing such the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted, the Department of Banking and Finance department shall issue and deliver an original license to the applicant to make loans at the location specified in the application, in accordance with the sections, which act. The license shall remain in full force and effect until the following March 1 next thereafter and from year to year thereafter, if and when renewed, under the sections act, until it is surrendered by the licensee or canceled, suspended, or revoked as herein provided under the act.~~

Sec. 37. Section 45-121, Revised Statutes Supplement, 2000, is amended to read:

~~45-121.~~ The department shall approve or deny every application for license under section ~~45-120~~ 36 of this act within ninety days after the filing ~~thereof of an application~~, if ~~such filing the application~~ is substantially complete and is accompanied by the required fees and the approved bond.

Sec. 38. Section 45-122, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-122.~~ Not more than one place of business shall be maintained under the same license, but more than one license may be issued to the same licensee upon compliance with all ~~of the~~ provisions of the law Nebraska Installment Loan Act governing the issuance of an original license, for each such new license.

Sec. 39. Section 45-123, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-123.~~ No licensee shall conduct the business of making loans under ~~sections 45-114 to 45-158~~ the Nebraska Installment Loan Act within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction ~~therewith~~ with any other business, if the ~~Director of Banking and Finance shall find~~ director finds that the other business is of such nature that the conducting ~~thereof of such other business~~ tends to conceal evasion of the ~~provisions of sections 45-114 to 45-158~~ act or of the rules and regulations ~~lawfully made hereunder~~ adopted and promulgated under the act. In such case, the director shall order such licensee in writing to cease and desist from such conduct.

Sec. 40. Section 45-124, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-124.~~ Obtaining a license ~~shall constitute~~ constitutes sufficient contact with this state for the exercise of personal jurisdiction over ~~such the~~ licensee in any action arising out of the licensee's activity in this state.

Sec. 41. Section 45-126, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-126.~~ For the annual renewal of an original license ~~to lend money~~ under ~~sections 45-114 to 45-158~~ the Nebraska Installment Loan Act, the fee ~~shall be~~ is one hundred dollars 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 ~~terms of sections 45-114 to 45-158~~ to the Department of Banking and Finance ~~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. 42. Section 45-127, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-127.~~ All original license fees and annual renewal fees shall be collected by the ~~Department of Banking and Finance~~ department and remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund pursuant to sections 8-601 and 8-602. All investigation and examination fees, charges, and costs collected by or paid to the ~~Department of Banking and Finance~~ department shall likewise be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash Fund pursuant to sections 8-601 and 8-602 and shall be available for the uses and purposes of the fund. ~~Any money in the Loan Act Fund on September 9, 1995, shall be transferred to the Financial Institution Assessment Cash Fund on such date.~~

Sec. 43. Section 45-128, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-128.~~ Any ~~firm or individual members thereof, partnership or individual members thereof, limited liability company or individual members thereof, association or individual members thereof, or corporation or officers thereof, or person,~~ who, by any device, subterfuge, or pretense whatsoever, engages in or continues any of the kinds of business or enterprise permitted to licensees by ~~sections 45-114 to 45-158~~ the Nebraska Installment Loan Act without having obtained the license required by such sections ~~the act~~, with intent to evade the provisions of such sections ~~the act~~, shall be is guilty of a Class I misdemeanor.

Sec. 44. Section 45-129, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-129.~~ The Department of Banking and Finance ~~is hereby authorized and empowered to make such general~~ director may adopt and promulgate rules and regulations and specific issue orders, rulings, demands, and findings ~~as may~~

be necessary for the proper conduct of the business licensed under sections 45-114 to 45-158, and the enforcement of such sections, in addition thereto and not inconsistent therewith to carry out the purposes of the Nebraska Installment Loan Act.

Sec. 45. Section 45-130, Revised Statutes Supplement, 2000, is amended to read:

~~45-130.~~ (1) The department ~~is hereby charged with the duty of inspecting~~ shall inspect the business, records, and accounts of all persons that lend money subject to the provisions of sections 45-114 to 45-158 Nebraska Installment Loan Act. The department may examine or investigate complaints about or reports of alleged violations by a licensee made to the department. The department ~~is hereby empowered to~~ may inspect and investigate the business, records, and accounts of all persons in the public business of lending money contrary to the provisions of such sections ~~act~~ and who do not have a license under such sections ~~the act~~. The ~~Director of Banking and Finance~~ director ~~is hereby empowered to~~ may appoint examiners who shall, under his or her direction, investigate the loans and business and examine the books and records of licensees annually and more often ~~when as determined by the director.~~ shall so determine. The expenses of the department, incurred by the department in the examination of examining the books and records of licensees, and fully to administer the provisions of and in administering the law act during each calendar year, shall be charged annually to each licensee by the department as soon as reasonably possible after the examination. Such expenses shall be charged 7 in proportion to the number of days required to examine and supervise the books and records of the respective licensees.

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

(3) If the director finds, after notice and opportunity for hearing in accordance with the Administrative Procedure Act, that any person has willfully and intentionally violated any provision of sections 45-114 to 45-158 the Nebraska Installment Loan Act, any rule or regulation adopted and promulgated under such sections ~~the act~~, or any order issued by the department under such sections ~~the act~~, the director may order such person to pay (a) an administrative fine of not more than one thousand dollars for each separate violation and (b) the costs of investigation. All fines collected by the department pursuant to this subsection shall be remitted to the State Treasurer for credit to the permanent school fund.

(4) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection (3) of this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs ~~shall constitute~~ constitutes a separate violation of sections 45-114 to 45-158 ~~the act~~.

Sec. 46. Section 45-131, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-131.~~ Each A licensee shall annually on or before February 15 of each year file with the Department of Banking and Finance department a report of ~~its~~ the licensee's earnings and operations for the preceding calendar year, and its assets and liabilities at the end of ~~said~~ the year, and giving such other relevant information as the department may reasonably require. ~~Such~~ The report shall be made under oath and shall be in the form prescribed by the department.

Sec. 47. Section 45-132, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-132.~~ The Department of Banking and Finance director shall, upon ten days' notice to the licensee or other person stating the contemplated action and in general the grounds ~~therefor~~ for the action, and upon reasonable opportunity to be heard, order any licensee or other person to cease and desist from any practice which the director finds is in violation of the Nebraska Installment Loan Act ~~it shall find does not conform to the requirements set forth in sections 45-114 to 45-158,~~ or the lawful rules and regulations of the department ~~thereunder~~ adopted and promulgated under the act.

Sec. 48. Section 45-133, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-133.~~ No licensee or other person, ~~firm, partnership, limited liability company, association, or corporation~~ subject to ~~sections 45-114 to 45-158~~ the Nebraska Installment Loan Act shall advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast in any manner whatsoever any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action. ~~which is false, misleading, or deceptive.~~ The ~~Department of Banking and Finance~~ director may order any licensee to cease and desist from any conduct which he or she finds it shall find to be a violation of this section. The ~~department~~ director may require that rates of charge, if stated by a licensee, be stated fully and clearly in such manner as the director deems it may deem necessary to prevent misunderstanding thereof by prospective borrowers.

Sec. 49. Section 45-134, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-134.~~ The payment in money, credit, goods, or things in action, as consideration for any sale or assignment of, or order for, the payment of wages, salary, commission, or other compensation for services, whether earned or to be earned, shall, for the purposes of regulation under ~~sections 45-114 to 45-158~~ the Nebraska Installment Loan Act, be deemed a loan secured by such assignment, and the amount by which the assigned compensation exceeds the amount of the consideration actually paid, shall, for the purposes of regulation under ~~such sections~~ the act, be deemed interest or charges upon the loan from the date of payment to the date the compensation is payable. Such transaction shall be governed by and be subject to the ~~provisions of such sections~~ act.

Sec. 50. Section 45-135, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-135.~~ Every licensee shall permit payment to be made in advance in any amount equal to one or more full installments on any loan contract ~~of loan~~ at any time during regular business hours, but the licensee may apply such payment first to all accrued charges in full up to the date of such payment.

Sec. 51. Section 45-136, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-136.~~ Any person ~~convicted of making~~ who makes a false statement to secure a loan ~~shall be~~ is guilty of a Class III misdemeanor. ~~The such~~ punishment shall not be exacted, however, when ~~where~~ such a loan is made after the ~~moneylender~~ licensee is aware of the falsity of the statement.

Sec. 52. Section 45-137, Revised Statutes Supplement, 2000, is amended to read:

~~45-137.~~ (1) Except as provided in section ~~45-138~~ 53 of this act and subsection (6) of this section, every licensee ~~hereunder~~ may make loans and may contract for and receive ~~thereon~~ 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. Charges on loans made under ~~sections 45-114 to 45-158~~ 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) ~~Where the contract of loan~~ 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 ~~shall be~~ are subject to the following adjustments:

(a) Notwithstanding the requirement for substantially equal and consecutive monthly installments, the first installment period may exceed one month by as much as fifteen days and 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 ~~shall not be~~ 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 ~~contract of~~ 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 ~~the purpose~~ 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 ~~sections 45-114 to 45-158~~ 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 ~~of loan~~ 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 a reasonable attorney's ~~fee~~ fees. No licensee shall be found liable under ~~the provisions of~~ 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. 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 estate 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.

(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 estate and any insurance proceeds payable in connection with such real estate 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.

(7)(a) A licensee making a mortgage loan as defined in subdivision (8) of section 45-702 on real property as defined in subdivision (10) of such section shall comply with subdivisions (1), (2), (3), (4), (6), and (7) of section 45-711.

(b) A licensee making a loan pursuant to this subsection shall, ~~not later than January 1, 2001,~~ 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 services mortgage loans, it shall continue to maintain a toll-free telephone number or accept collect calls to respond to inquiries from borrowers for a period of ninety days 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 subsection.

Sec. 53. Section 45-138, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-138.~~ (1) Licensees may charge, contract for, or receive any amount or rate of interest permitted by section 45-101.03, or 45-101.04, ~~or 45-137 section 52 of this act~~ upon any loan or upon any part or all of any aggregate indebtedness of the same person. The charging, contracting for, or receiving of a rate of interest permitted by section 45-101.04 ~~shall~~ does not exempt the licensee from compliance with ~~any of the provisions of sections 45-114 to 45-158~~ the Nebraska Installment Loan Act, except for loans made pursuant to subdivisions (4) and (11) of section 45-101.04.

(2) Except as provided in subdivision (2)(a) of section ~~45-137~~ 52 of this act, no licensee shall enter into any loan contract ~~of loan~~ under ~~sections 45-114 to 45-158, the act~~ under which the borrower agrees to make any payment of principal more than thirty-six calendar months from the date of making such contract when the principal balance is not more than three thousand dollars. Every loan contract precomputed pursuant to subsection (2) of section ~~45-137~~ 52 of this act shall provide for repayment of principal and charges in installments which shall be payable at approximately equal periodic intervals of time and so arranged that no installment is substantially greater in amount than any preceding installment. When necessary in order to facilitate payment in accordance with the ~~debtor's~~ borrower's principal source of income or when the loan contract is not precomputed pursuant to subsection (2) of section ~~45-137~~ 52 of this act, the payment schedule may reduce or omit installment payments. Any ~~contract of loan~~ loan contract made in violation of this section, either knowingly or without the exercise of due care to prevent the ~~same violation~~, shall not on that account be void, but the licensee ~~shall have~~ has no right to collect or receive any interest or charges on such loan. If any 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 thereafter 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 a reasonable attorney's ~~fee~~ fees. No licensee shall be found liable under ~~the provisions of~~ 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.

Sec. 54. Section 45-139, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-139.~~ (1) The following types of insurance or one or more of ~~the same~~ the following types of insurance may be written in connection with loans made by licensees under ~~sections 45-114 to 45-158~~ the Nebraska Installment Loan Act:

(a) Fire, theft, windstorm, or comprehensive, including fire, theft, and windstorm, fifty dollars or more deductible collision, and bodily injury liability and property damage liability upon motor vehicles;

(b) Fire and extended-coverage insurance upon real and tangible

personal property;

(c) Involuntary unemployment or job protection insurance. In the event of a renewal of a loan contract, this type of insurance shall be canceled and a refund of the unearned premium credited or made before new insurance of this type may be rewritten. Such insurance shall not be required as a condition precedent to the making of such loan; and

(d) Life, health, and accident insurance or any of them, except that the amount of such insurance shall not exceed the total amount to be repaid under the loan contract and the term shall not extend beyond the final maturity date of the loan contract. In the event of a renewal of a loan contract, this type of insurance shall be canceled and a refund of the unearned premium credited or made before new insurance of this type may be written in connection with such loan. Such insurance shall not be required as a condition precedent to the making of such loan.

(2) In addition to the types of insurance written under subsection (1) of this section by licensees under ~~sections 45-114 to 45-158~~ the act, any other type of insurance may be written for a licensee's borrower or the borrower's immediate family whether or not in connection with a loan, except that such insurance shall not be required as a condition precedent to the making of any loan. Nothing in this subsection ~~shall alter or eliminate~~ alters or eliminates any insurance licensing requirements.

(3) Notwithstanding ~~the provisions of sections 45-137 and 45-138~~ 52 and 53 of this act, any gain or advantage, in the form of commission or otherwise, to the licensee or to any employee, affiliate, or associate of the licensee from such insurance or its sale shall not be deemed to be an additional or further charge in connection with the loan contract. The insurance premium for such insurance may be collected from the borrower or included in the loan contract at the time the loan is made.

(4) Insurance permitted under this section shall be obtained through a duly licensed insurance agent, agency, or broker. Premiums shall not exceed those fixed by law or current applicable manual rates. Insurance written, as authorized by this section, may contain a mortgage clause or other appropriate provision to protect the insurable interest of the licensee.

Sec. 55. Section 45-140, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-140.~~ The licensee shall, at the time the loan is made, give to the borrower, or if more than one, to one of them, a statement concerning any insurance procured by or through the licensee, which ~~shall include~~ includes the amount of any premium which the borrower has paid or is obligated to pay, the amount, the expiration date of the policy, and a concise description of the risks insured. If a borrower procures insurance by or through a licensee, the licensee shall deliver to the borrower within fifteen days after the making of the loan an executed copy of the insurance policy or certificate of insurance.

Sec. 56. Section 45-142, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-142.~~ No ~~such person, firm, partnership, limited liability company, corporation, or association~~ so licensed licensee shall receive any security agreement or assignment of salary or wages signed in blank. ~~All~~ All ~~but all~~ blank spaces shall be filled in with ink or typewritten or printed with the proper names and amounts showing the name of the ~~person, firm, partnership, limited liability company, corporation, or association~~ by whom the ~~person~~ individual making the conveyance or assignment is employed. No assignment or order for wages ~~shall be~~ is valid ~~which if it~~ contains an amount in excess of the sum borrowed together with the interest and charges as provided ~~herein~~ in the Nebraska Installment Loan Act.

Sec. 57. Section 45-143, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-143.~~ No licensee shall take a power of attorney, or any instrument signed by an attorney in fact and not personally, or any instrument signed in which blanks are left to be filled after execution.

Sec. 58. Section 45-144, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-144.~~ No assignment of or order for wages to secure a loan or advancement ~~shall be~~ is valid when made by a married man or woman, unless the written consent of the wife or husband to the making of ~~said~~ such loan is attached thereto.

Sec. 59. Section 45-145, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-145.~~ Every ~~person, firm, partnership, limited liability company, corporation, or association~~ licensed as provided in sections 45-114 to 45-158 licensee shall, at the time any loan is made, give to the borrower, or if

there are two or more borrowers, to one of them, a statement in the English language disclosing in clear and distinct terms the information required to be disclosed under the federal Consumer Credit Protection Act.

Sec. 60. 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 and (2) shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.

Sec. 61. (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 if the director finds any of the following:

(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 or any other state or federal law applicable to the conduct of its business; or

(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.

(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 41 of this act and does not voluntarily surrender the license pursuant to section 60 of this act, 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 35 of this act, 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.

Sec. 62. Section 45-148, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-148.~~ Whenever, for any cause, such a license is revoked, the Department of Banking and Finance department shall not issue another license to the licensee, unless the department is otherwise ordered by a court of competent jurisdiction to do so.

Sec. 63. Section 45-149, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-149.~~ At the request of the party licensee or any other aggrieved person, the Department of Banking and Finance department shall prepare a written record which shall include includes a transcript of the evidence, the findings with respect thereto to the evidence, the order, and the reasons supporting the suspension, revocation, or suspension, or denial of a license, and shall, after being paid for the cost thereof of the written record, deliver to the licensee or other aggrieved person a copy thereof of the written record in person or by either certified or registered mail.

Sec. 64. Section 45-150, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-150.~~ In addition to any other remedy he or she he, she, or it may have, any licensee or any other person considering himself or herself himself, herself, or itself aggrieved by any action of the Department of Banking and Finance department under sections 45-114 to 45-150 the Nebraska Installment Loan Act may appeal the action, and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 65. Section 45-153, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-153.~~ Any person, firm, partnership, limited liability company, corporation, or association or officer or employee thereof violating any of the provisions of sections 45-138 to 45-145 shall be 53 to 59 of this act is guilty of a Class II misdemeanor.

Sec. 66. Section 45-154, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-154.~~ Any contract of loan If, in the making of, or collection on, any loan contract, in the making or collection of which any act is done which constitutes a Class II misdemeanor under section 45-153 65 of this act, shall not on that account that loan shall not be void, but the lender licensee shall have no right to collect or receive any interest or charges whatsoever.

If any interest or other charges have been collected, the ~~lender~~ licensee shall forfeit and refund to the borrower all interest and other charges collected on the loan involved.

Sec. 67. Section 45-155, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-155.~~ Violation of ~~sections 45-114 to 45-158~~ the Nebraska Installment Loan Act, except as provided by section ~~45-188~~ 86 of this act in connection with any indebtedness, however acquired, shall not render such indebtedness void and uncollectible. If however, any interest or other charges have been collected or contracted for on such indebtedness, the licensee shall refund to the borrower all interest and other charges which have been collected, and shall not collect thereafter 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 a reasonable attorney's ~~fee~~ fees. No licensee shall be found liable under ~~the provisions~~ of this section 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.

Sec. 68. Section 45-156, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-156.~~ Upon repayment of the loan in full, the licensee shall mark plainly every obligation or copy ~~thereof~~ of the obligation and security or copy ~~thereof~~ of the security signed by any obligor with the word Paid or Canceled and shall release any mortgage, trust deed, or lien, restore any pledge, and cancel and return any note or copy ~~thereof~~ of the note and any assignment or copy ~~thereof~~ of the assignment given to the licensee. For purposes of this section, a copy shall meet the requirements of section 25-12,112.

Sec. 69. Section 45-157, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-157.~~ Whenever the Department of Banking and Finance director has reasonable cause to believe that any person is violating or is threatening to or intends to violate section ~~45-137 or 45-138~~ 52 or 53 of this act, ~~at the~~ director may, in addition to all actions provided for in ~~sections 45-114, 45-137, 45-138, 45-142 to 45-145, 45-153, 45-154, and 45-156 to 45-158~~ the Nebraska Installment Loan Act, and without prejudice thereto, enter an order requiring such person to cease and desist or to refrain from such violation. An action may also be brought, on the relation of the Attorney General and the ~~department~~ director, to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance ~~thereof~~ of such violation. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court, in which such action is brought, ~~shall have~~ has power and jurisdiction to impound and appoint a receiver for the property and business of the defendant, including books, papers, documents, and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of ~~sections 45-114, 45-137, 45-138, 45-142 to 45-145, 45-153, 45-154, and 45-156 to 45-158~~ the act through or by means of the use of ~~said~~ such property and business. Such receiver, when so appointed and qualified, ~~shall have~~ has such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as shall, from time to time, be conferred upon the ~~said~~ receiver by the court.

Sec. 70. Section 45-158, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-158.~~ No loan, made outside this state, in the amount or of the value of three thousand dollars or less, for which a greater rate of interest, consideration, or charges than is permitted by section ~~45-138~~ 53 of this act has been charged, contracted for, or received, shall be enforced in this state. Every person, ~~in anywise~~ participating therein in such loan in this state, ~~shall be~~ is subject to ~~the provisions of sections 45-114, 45-137, 45-138, 45-142 to 45-145, 45-153, 45-154, and 45-156 to 45-158,~~ PROVIDED, the Nebraska Installment Loan Act, except that the foregoing act shall not apply to loans legally made in any state under and in accordance with a regulatory small loan law similar in principle to such sections act.

Sec. 71. Section 45-173, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-173.~~ Except as otherwise provided by law and ~~sections 45-114, 45-117, 45-137, 45-138, 45-155, and 45-173 to 45-188~~ the Nebraska Installment Loan Act or other law, a licensee shall not contact any ~~person,~~ individual who

is not living, residing, or present in the household of the borrower regarding the borrower's obligation to pay a debt, other than the borrower's spouse, the borrower's attorney, another creditor, or a credit reporting agency.

Sec. 72. Section 45-174, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-174.~~ The borrower may waive the benefits of section ~~45-173~~ 71 of this act at any time by giving consent, if such consent is given at a time subsequent to the date the debt arises.

Sec. 73. Section 45-175, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-175.~~ The licensee may contact any person without the borrower's consent:

(1) To ascertain information relating to a borrower's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the borrower's eligibility for credit or insurance if such contacts are not designed to collect a delinquent debt; or

(2) To locate the borrower when the licensee has reason to believe the borrower has changed his or her employment or has moved from his or her last-known address.

Sec. 74. Section 45-176, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-176.~~ If the borrower has defaulted on his or her promise to pay and if he or she has given specific notice in writing, by registered or certified mail, instructing the licensee to cease further contacts with the borrower in regard to the indebtedness, the licensee shall, after such notice, except as provided in sections ~~45-177 and 45-178~~ 75 and 76 of this act, limit contacts to one notice per month by mail. No notice shall be designed to threaten action not otherwise permitted by law.

Sec. 75. Section 45-177, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-177.~~ (1) Sections ~~45-173 to 45-176~~ 71 to 74 of this act shall not prohibit the licensee from:

(a) Contacting any person in order to discover property belonging to the borrower that may be seized to satisfy a debt that has been reduced to judgment;

(b) Making amicable demand and filing suit on the debt; or

(c) Contacting persons related to the ~~debtor~~ borrower if permission is specifically given in writing at the time the debt arises or at any time after such debt arises.

(2) In connection with the collection of any loan, a licensee may not:

(a) Use or threaten to use violence;

(b) Use obscene or profane language;

(c) Cause a telephone to ring or engage a person in telephone conversation at times known to be inconvenient to the borrower;

(d) Falsely represent the character, amount, or legal status of any debt;

(e) Falsely represent that an individual is an attorney when he or she is not;

(f) Falsely represent that nonpayment of any debt will result in the arrest or imprisonment of the borrower or any member of the borrower's household;

(g) Threaten to take any action that the licensee knows cannot legally be taken at the time the threat is made;

(h) Falsely represent that the borrower committed any crime when he or she did not;

(i) Communicate or threaten to communicate to any person credit information which is known to be false;

(j) Use or distribute any written communication which falsely represents that it is a document authorized, issued, or approved by any court, official, or agency of the United States or any state;

(k) Charge or collect any fees, charges, or expenses, incidental to the collection of any loan, unless such amount is expressly authorized by the loan agreement or permitted by law;

(l) Accept from any person a check or other payment instrument postdated by more than five days unless such person is notified in writing of the licensee's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit;

(m) Solicit any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;

(n) Deposit or threaten to deposit any postdated check prior to the date on such check;

(o) Cause charges to be made to any person for communications by concealment of the true purpose of the communication, including, but not limited to, collect telephone calls and telegram fees;

(p) Communicate with a borrower regarding a debt by postcard; or

(q) Communicate with a borrower at the borrower's place of employment if the licensee has received actual notice that the borrower's employer prohibits the borrower from receiving such communication.

Sec. 76. Section 45-178, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-178.~~ Nothing in sections ~~45-173 and 45-176~~ 71 and 74 of this act shall limit a borrower's right to bring an action for damages. When the licensee has filed suit and obtained judgment, the licensee shall be permitted to resume contacts with the borrower against whom judgment has been obtained.

Sec. 77. Section 45-179, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-179.~~ An agreement of the parties to a loan, with respect to default on the part of the borrower, is enforceable only to the extent that:

(1) The borrower fails to make a payment on the loan or other charges required by the agreement; or

(2) The prospect of payment, performance, or realization of collateral is significantly impaired. The burden of establishing the prospect of significant impairment is on the licensee.

Sec. 78. Section 45-180, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-180.~~ (1) With respect to a loan, after a borrower has been in default for ten days for failure to make a required payment, a licensee may give the borrower the notice described in this section. A licensee gives notice to the borrower under this section when ~~he~~ the licensee delivers the notice to the borrower or delivers or mails the notice to the last-known address of the borrower's residence.

(2) The notice shall be in writing and shall conspicuously state: The name, address, and telephone number of the licensee to which payment is to be made, a brief identification of the loan, the borrower's right to cure the default, the amount of payment and date by which payment must be made to cure the default, and that any credit insurance issued in connection with the loan contract may be canceled unless the borrower cures the default. The ~~Department of Banking and Finance~~ department shall prescribe the form of such notice.

Sec. 79. Section 45-181, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-181.~~ (1) With respect to a loan, after a default consisting only of the borrower's failure to make a required payment, a licensee may neither accelerate maturity of the unpaid balance of the obligation nor take possession of collateral, except voluntarily surrendered collateral, because of such default until twenty days after a notice of the borrower's right to cure is given. The borrower shall have twenty days after the notice is given to cure any default consisting of a failure to make the required payment by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid charges. Cure restores the borrower to his or her rights under the agreement as though the default had not occurred.

(2) With respect to defaults on the same obligation after a licensee has once given a notice of borrower's right to cure, the borrower shall have no further right to cure and the licensee has no obligation to proceed against the borrower or the collateral.

Sec. 80. Section 45-182, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-182.~~ Upon default by a borrower with respect to a loan, unless the borrower voluntarily surrenders possession of the collateral to the licensee, the licensee may take possession of the collateral without judicial process only if possession can be taken without entry into a dwelling or a locked, unoccupied motor vehicle, and without the use of force or other breach of the peace.

Sec. 81. Section 45-183, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-183.~~ (1) No ~~natural person~~ individual, other than the spouse of the borrower, is obligated as a cosigner, comaker, guarantor, endorser, surety, or similar party with respect to a loan, unless before or contemporaneously with signing any separate agreement of loan or any writing setting forth the terms of the borrower's agreement, the ~~person~~ individual receives a separate written notice that contains a completed identification of

the loan he or she may have to pay and reasonably informs him or her of his or her obligation with respect to it.

(2) Such notice shall be in the form prescribed by the ~~Department of Banking and Finance~~ department.

(3) ~~A person~~ An individual entitled to notice under this section shall also be given a copy of any writing setting forth the terms of the borrower's agreement and of any separate agreement of obligation signed by the ~~person~~ individual entitled to the notice.

Sec. 82. Section 45-184, Revised Statutes Supplement, 2000, is amended to read:

~~45-184.~~ (1) A borrower is not liable for a deficiency unless the licensee has disposed of the collateral in good faith and in a commercially reasonable manner.

(2) If the licensee takes possession or voluntarily accepts surrender of goods in which the licensee has a security interest to secure a loan and at the time thereof the unpaid balance due on the loan is three thousand dollars or less, the borrower is not personally liable to the licensee for the unpaid balance of the debt arising from the loan and the licensee's duty to dispose of the collateral is governed by the provisions on disposition of collateral, article 9, Uniform Commercial Code.

(3) The borrower may be liable in damages to the licensee if the borrower has wrongfully damaged the collateral if, after default, failure to cure, and demand, the borrower has wrongfully failed to make the collateral available to the licensee.

(4) If the licensee elects to bring an action against the borrower for a debt arising from a loan, when under this section the licensee would not be entitled to a deficiency judgment if the licensee took possession of the collateral, and obtains judgment (a) the licensee may not take possession of the collateral, and (b) the collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

Sec. 83. Section 45-185, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-185.~~ 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.

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.

Sec. 84. Section 45-186, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-186.~~ A licensee shall not refuse to enter into a loan or impose finance charges or other terms or conditions of credit more onerous than those regularly extended by that licensee to borrowers of similar economic backgrounds because of the age, color, creed, national origin, political affiliation, race, religion, sex, marital status, or disability of the borrower, or because the borrower receives public assistance, social security benefits, pension benefits, or the like.

Sec. 85. Section 45-187, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-187.~~ No licensee shall, directly or indirectly, require a borrower as a condition of granting a loan to such borrower to reaffirm or otherwise obligate himself or herself to pay a former debt to the licensee which has been discharged in bankruptcy proceedings.

Sec. 86. Section 45-188, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-188.~~ Any violation of sections ~~45-173 to 45-188~~ 71 to 86 of this act in connection with any loan transaction, however acquired, shall not render the indebtedness, any interest, or other charges void or uncollectible. In an action, other than a class action, the borrower may recover from the licensee violating such sections an award of liquidated damages in an amount determined by the court, but not less than five hundred dollars nor more than



one thousand dollars. In any legal action brought pursuant to this section in which the licensee is found liable, the court shall award costs and reasonable attorneys' fees to the borrower. A licensee is not liable under this section if the licensee notifies the borrower of an error before the licensee receives from the borrower written notice of the error or before the borrower has brought an action under this section, and the licensee corrects the error within thirty days after notifying the borrower. A licensee may not be held liable in any action brought under this section if the licensee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

Sec. 87. Section 45-190, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

(4) Director means the Director of Banking and Finance;

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

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

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

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

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

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

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

Sec. 88. Section 45-191.02, Reissue Revised Statutes of Nebraska, is amended to read:

45-191.02. (1) Before advertising or making any oral or written representation or acting as a loan broker in this state a loan broker shall file with the department one copy of the disclosure statement and one copy of any loan brokerage agreement.

(2) The loan broker shall amend these filings no less than annually and shall also file any amendment to the disclosure statement within forty-five days after any material change in information required to be disclosed in the disclosure statement.

(3) The loan broker shall pay a one-hundred-fifty-dollar ~~fifty-dollar~~ filing fee upon filing the initial disclosure statement. The loan broker shall pay a twenty-five-dollar filing fee for each amendment filed. All funds collected by the department under this section shall be remitted to the State Treasurer for credit to the Securities Act Cash Fund.

(4) The information contained or filed under this section may be made available to the public under such rules and regulations as the department prescribes.

Sec. 89. Section 45-191.04, Reissue Revised Statutes of Nebraska, is amended to read:

45-191.04. (1) A loan brokerage agreement shall be in writing and shall be signed by the loan broker and the borrower. The loan broker shall furnish the borrower a copy of such signed loan brokerage agreement at the

time the borrower signs it.

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

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

(a) The terms and conditions of payment;

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

(c) The loan broker's principal business address and the name and address of its agent in the State of Nebraska authorized to receive service of process;

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

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

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

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

Sec. 90. Section 45-191.09, Reissue Revised Statutes of Nebraska, is amended to read:

45-191.09. (1) The director may summarily order a loan broker to cease and desist from acting as a loan broker or from the use of certain forms or practices relating to the loan broker's activities if the order is in the public interest and the director finds:

(a) The disclosure statement on file is incomplete in any material respect or contains any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) The loan broker has willfully violated or willfully failed to comply with any provision of sections 45-189 to 45-191.11;

(c) There has been a substantial failure to comply with any of the provisions of such sections;

(d) The continued use of certain forms or practices relating to the loan broker's activity would constitute a misrepresentation, deceit, or fraud upon the consumer; or

(e) Any person identified in the required disclosure statement has been convicted of an offense described in subdivision (2)(i)(i) of section 45-191.01 or is subject to an order or has had a civil judgment entered against him or her as described in subdivision (2)(i)(ii) or (2)(i)(iii) of section 45-191.01 and the involvement of such person in the loan broker's business creates an unreasonable risk to prospective borrowers.

(2) If the director believes, whether or not based upon an investigation conducted under section 45-191.08, that any person or loan broker has engaged in or is about to engage in any act or practice constituting a violation of any provision of sections 45-189 to 45-191.11 or any rule, regulation, or order under such sections, the director may:

(a) Issue a cease and desist order;

(b) Impose a fine not to exceed one thousand dollars per violation, in addition to costs of the investigation; or

(c) Initiate an action in any court of competent jurisdiction to enjoin such acts or practices and to enforce compliance with such sections or any order under such sections.

(3) Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted. The director shall not be required to post a bond.

(4)(a) Any fine and costs imposed pursuant to this section shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the department and remitted to the State Treasurer. Costs

shall be credited to the Securities Act Cash Fund, and fines shall be credited to the permanent school fund.

(b) If a person fails to pay the fine or costs of the investigation referred to in this subsection, a lien in the amount of the fine and costs may be imposed upon all of the assets and property of such person in this state and may be recovered by suit by the department. Failure of the person to pay a fine and costs shall constitute a separate violation of sections 45-189 to 45-191.11.

(5) Upon entry of an order pursuant to this section, the director shall promptly notify all persons to whom such order is directed that it has been entered and of the reasons for such order and that any person to whom the order is directed may request a hearing in writing within fifteen business days of the issuance of the order. Upon receipt of a written request, the matter shall be set down for hearing to commence within ~~fifteen~~ thirty business days after the receipt unless the ~~person requesting the hearing consents~~ parties consent to a later date or the hearing officer sets a later date for good cause. If a hearing is not requested within fifteen business days from the issuance of the order and none is ordered by the director, the order shall automatically become final and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice and hearing, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order.

(6) The director may vacate or modify a cease and desist order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(7) Any person aggrieved by a final order of the director may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act.

Sec. 91. Section 45-194, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-194.~~ For purposes of sections ~~45-194 to 45-1,103~~ 91 to 99 of this act, unless the context otherwise requires, the definitions found in sections ~~45-195 to 45-197~~ 92 and 93 of this act shall also be used.

Sec. 92. Section 45-195, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-195.~~ Billing cycle ~~shall mean~~ means the time interval between periodic billing dates. A billing cycle shall be considered monthly if the closing date of the cycle is the same date each month or does not vary by more than four days from such date.

Sec. 93. Section 45-196, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-196.~~ Preauthorized loan ~~shall mean~~ means a loan made by a licensee pursuant to an agreement between the licensee and the borrower whereby:

(1) The licensee may permit the borrower to obtain advances of money from the licensee from time to time or the licensee may advance money on behalf of the borrower from time to time as directed by the borrower;

(2) The amount of each advance and permitted charge and cost is debited to the borrower's account and payments and other credits are credited to the same account;

(3) The charges are computed on the unpaid principal balance or balances of the account from time to time;

(4) The borrower has the privilege of paying the account in full at any time or, if the account is not in default, in monthly installments or fixed or determinable amounts as provided in the agreement; and

(5) The loan agreement expressly states that it covers preauthorized loans. Preauthorized loan ~~shall~~ does not mean a transaction, resulting in either a credit or a debit to the borrower's account, which is initiated by the use or application of a plastic, metal, or other type of credit or transaction card.

Sec. 94. Section 45-198, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-198.~~ A licensee may make preauthorized loans and may contract for and receive charges on such loans as set forth in subsection (1) of section ~~45-137~~ 52 of this act as follows:

(1) A licensee shall not compound charges by adding any unpaid charges authorized by section ~~45-137 or sections 45-194 to 45-1,103~~ 52 of this act or sections 91 to 99 of this act to the unpaid principal balance of the borrower's account, except that the unpaid principal balance may include the additional charges authorized by section ~~45-1,100.~~ 96 of this act;

(2) Charges authorized by section ~~45-137 or sections 45-194 to~~

~~45-1,103~~ 52 of this act or sections 91 to 99 of this act shall be deemed not to exceed the maximum charges permitted by such sections if such charges are computed in each billing cycle by any of the following methods:

(a) By converting each graduated monthly rate to a daily rate and multiplying such daily rate by the applicable portion of the daily unpaid principal balance of the account, in which case each daily rate is determined by multiplying the authorized monthly rate by twelve and dividing by three hundred sixty-five;

(b) By multiplying each graduated monthly rate by the applicable portion of the average daily unpaid principal balance of the account in the billing cycle, in which case the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle; or

(c) By converting each graduated monthly rate to a daily rate and multiplying such daily rate by the applicable portion of the average daily unpaid principal balance of the account in the billing cycle, in which case each daily rate is determined by multiplying the authorized monthly rate by twelve and dividing by three hundred sixty-five, and the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle; and -

(3) For each method of computation set forth in ~~subsection~~ subdivision (2) of this section, the billing cycle shall be monthly and the unpaid principal balance on any day shall be determined by adding to any balance unpaid as of the beginning of that day all advances and other permissible amounts charged to the borrower and deducting all payments and other credits made or received that day.

Sec. 95. Section 45-199, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-199.~~ The borrower under a preauthorized loan may at any time pay all or any part of the unpaid balance in his or her account, or, if the account is not in default, the borrower may pay the unpaid principal balance in monthly installments. Minimum monthly payment requirements shall be determined by the licensee and set forth in the preauthorized loan agreement, except that the minimum monthly payment shall not be less than one and one-half percent of the average daily unpaid principal balance of an account having an average daily balance of more than three thousand dollars nor less than two percent of the average daily unpaid principal balance of an account having an average daily balance of three thousand dollars or less.

Sec. 96. Section 45-1,100, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-1,100.~~ In addition to the charges permitted under section ~~45-198~~ 94 of this act, a licensee may contract for and receive the fees, costs, and expenses permitted by ~~sections 45-114 to 45-158~~ the Nebraska Installment Loan Act on other loans, subject to all the conditions and restrictions set forth in ~~such sections~~ the act with the following variations:

(1) If credit life or disability insurance is provided and if the insured dies or becomes disabled when there is an outstanding preauthorized loan indebtedness, the insurance shall be sufficient to pay the total balance of the loan due on the date of the borrower's death or the amount due as of the end of the previous billing cycle, whichever is less, in the case of credit life insurance, or all minimum payments which become due on the loan during the covered period of disability in the case of credit disability insurance. The additional charge for credit life insurance or credit disability insurance shall be calculated in each billing cycle by applying the current monthly premium rate for such insurance, as such rate may be determined by the Director of Insurance, to the unpaid balances in the borrower's account, using either of the methods specified in section ~~45-198~~ 94 of this act for the calculation of loan charges;

(2) No credit life or disability insurance written in connection with a preauthorized loan shall be canceled by the ~~lender~~ licensee because of delinquency of the borrower in the making of the required minimum payments on the loan unless one or more of such payments is past due for a period of ninety days or more, and the ~~lender~~ licensee shall advance to the insurer the amounts required to keep the insurance in force during such period, which amounts may be debited to the borrower's account;

(3) The ~~Department of Banking and Finance~~ department may, by rule and regulation, require a statement of insurance that will be appropriate for preauthorized loans in lieu of that required by section ~~45-140~~ 55 of this act; and

(4) The amount, terms, and conditions of any insurance against loss or damage to property must be reasonable in relation to the character and value of the property insured and the maximum anticipated amount of credit to

be extended.

Sec. 97. Section 45-1,101, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-1,101.~~ A licensee may retain any security interest, including a mortgage on real estate, until the preauthorized account is terminated.

Sec. 98. Section 45-1,102, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-1,102.~~ Subsection (2) of section ~~45-138~~ 53 of this act and sections ~~45-145 and 45-156~~ 59 and 68 of this act shall not apply to preauthorized loans.

Sec. 99. Section 45-1,103, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-1,103.~~ The ~~Department of Banking and Finance~~ department may approve record-keeping systems for licensees and may prescribe policies and procedures necessary to the administration of sections ~~45-194 to 45-1,103~~ 91 to 99 of this act.

Sec. 100. Section 45-1,110, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-1,110.~~ Sections 45-1,105 to 45-1,110 shall not apply to any licensee operating ~~pursuant to sections 45-114 to 45-158 and 45-173 to 45-188~~ under the Nebraska Installment Loan Act.

Sec. 101. Section 45-1,116, Reissue Revised Statutes of Nebraska, is amended to read:

~~45-1,116.~~ (1) ~~Reverse mortgage~~ For purposes of this section, reverse-mortgage loan means a loan made by a lender authorized to engage in business as a licensee operating under a license duly issued by the Department of Banking and Finance under sections ~~45-114 to 45-158~~ which (a) is secured by residential real property, (b) is nonrecourse to the borrower except in the event of fraud by the borrower or waste to the property given as security for the loan, (c) provides cash advances to the borrower based upon the equity in the borrower's owner-occupied principal residence, (d) requires no payment of principal or interest until the entire loan becomes due and payable, and (e) otherwise complies with the terms of this section.

(2) ~~Reverse mortgage~~ Reverse-mortgage loans shall be governed by the following rules without regard to the requirements set out elsewhere for other types of mortgage transactions: (a) Payment in whole or in part is permitted without penalty at any time during the period of the loan; (b) an advance and interest on the advance have priority over a lien filed after the closing of a ~~reverse mortgage~~ reverse-mortgage loan; (c) an interest rate may be fixed or adjustable and may also provide for interest that is contingent on appreciation in the value of the property; and (d) the advance shall not be reduced in amount or number based on an adjustment in the interest rate when a ~~reverse mortgage~~ reverse-mortgage loan provides for periodic advances to a borrower.

(3) ~~Reverse mortgage~~ Reverse-mortgage loans may be made or acquired without regard to the following provisions for other types of mortgage transactions: (a) Limitations on the purpose and use of future advances or any other mortgage proceeds; (b) limitations on future advances to a term of years or limitations on the term of credit line advances; (c) limitations on the term during which future advances take priority over intervening advances; (d) requirements that a maximum mortgage amount be stated in the mortgage; (e) limitations on loan-to-value ratios; (f) prohibitions on balloon payments; (g) prohibitions on compounded interest and interest on interest; and (h) requirements that a percentage of the loan proceeds must be advanced prior to loan assignment.

(4) A ~~lender licensee~~ may, in connection with a ~~reverse mortgage~~ reverse-mortgage loan, charge to the borrower (a) a nonrefundable loan origination fee which does not exceed two percent of the appraised value of the home at the time the loan is made, (b) a reasonable fee paid to third parties originating loans on behalf of the ~~lender licensee~~, and (c) such other fees as are necessary and required for inspections, insurance, appraisals, and surveys.

(5) ~~Lenders~~ Licensees failing to make loan advances as required in the loan documents and failing to cure the default as required in the loan documents shall forfeit an amount equal to the greater of two hundred dollars or one percent of the amount of the loan advance the ~~lender licensee~~ failed to make.

~~(6) Nothing in this section shall be construed to limit the department's authority to examine, audit, or inspect reverse mortgage loans for compliance with requirements for loans made by a licensee operating under sections 45-114 to 45-158.~~

Sec. 102. Section 45-717, Revised Statutes Supplement, 2000, is

amended to read:

45-717. (1) The department may order any person to cease and desist whenever the department determines that the person has violated any provision of the Mortgage Bankers Registration and Licensing Act. Upon entry of a cease and desist order, the director shall promptly notify the affected person that such order has been entered, of the reasons for such order, and that upon receipt within ~~ten~~ fifteen business days after the date of the order of written request from the affected person a hearing will be scheduled within ~~ten~~ thirty business days after the date of receipt of the written request unless the ~~person consents~~ parties consent to a later date or the hearing officer sets a later date for good cause. If a hearing is not requested and none is ordered by the director, the order shall remain in effect until it is modified or vacated.

(2) The director may vacate or modify a cease and desist order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(3) For the purpose of any investigation or proceeding under the act, the director or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry. If any person refuses to comply with a subpoena issued under this section or to testify with respect to any matter relevant to the proceeding, the district court of Lancaster County may, on application of the director, issue an order requiring the person to comply with the subpoena and to testify. Failure to obey an order of the court to comply with the subpoena may be punished by the court as a civil contempt.

(4) A person aggrieved by a cease and desist order of the director may obtain judicial review of the order in the manner prescribed in the Administrative Procedure Act. The director may obtain an order from the district court of Lancaster County for the enforcement of the cease and desist order.

(5) A person who violates a cease and desist order of the director may, after notice and hearing and upon further order of the director, be subject to a penalty of not more than five thousand dollars for each act in violation of the cease and desist order.

(6) The director may request the Attorney General to enforce the Mortgage Bankers Registration and Licensing Act. A civil enforcement action by the Attorney General may be filed in Lancaster County. A civil enforcement action by the Attorney General may seek temporary and permanent injunctive relief, restitution for a borrower aggrieved by a violation of the act, and costs for the investigation and prosecution of the enforcement action.

(7) Except when expressly authorized, there shall be no private cause of action for any violation of the act.

(8) Failure to comply with the Mortgage Bankers Registration and Licensing Act shall not affect the validity or enforceability of any mortgage loan. A person acquiring a mortgage loan or an interest in a mortgage loan is not required to ascertain the extent of compliance with the act.

(9) Nothing in the act shall limit any statutory or common-law right of any person to bring any action in any court for any act involved in the mortgage banking business or the right of the state to punish any person for any violation of law.

Sec. 103. Section 45-902, Reissue Revised Statutes of Nebraska, is amended to read:

45-902. For purposes of the Delayed Deposit Services Licensing Act:

(1) Check ~~shall mean~~ means any check, draft, or other instrument for the payment of money;

(2) Delayed deposit services business ~~shall mean~~ means any person who for a fee (a) accepts a check dated subsequent to the date it was written or (b) accepts a check dated on the date it was written and holds the check for a period of days prior to deposit or presentment pursuant to an agreement with or any representation made to the maker of the check, whether express or implied;

(3) Director ~~shall mean~~ means the Director of Banking and Finance or his or her designee;

(4) Licensee ~~shall mean~~ means any person licensed under the Delayed Deposit Services Licensing Act; and

(5) Person ~~shall mean~~ means an individual, proprietorship, association, joint venture, joint stock company, partnership, limited partnership, limited liability company, business corporation, nonprofit corporation, or any group of individuals however organized.

Sec. 104. Section 45-906, Reissue Revised Statutes of Nebraska, is

amended to read:

45-906. The application required by section 45-905 shall be accompanied by:

(1) A nonrefundable application fee of ~~three~~ five hundred dollars; and

(2) A surety bond in the sum of fifty thousand dollars to be executed by the licensee and a surety company authorized to do business in Nebraska and approved by the director conditioned for the faithful performance by the licensee of the duties and obligations pertaining to the delayed deposit services business so licensed and the prompt payment of any judgment recovered against the licensee. ~~The bond shall be renewed and refiled annually on or before May 1 of each year or a substitute bond shall remain in effect during all periods of licensing or the licensee shall, within thirty days thereafter, immediately~~ cease doing business and its license shall be surrendered to or ~~revoked~~  canceled by the department. A surety may cancel ~~such a~~ bond only upon thirty days' written notice to the director.

Sec. 105. Section 45-910, Reissue Revised Statutes of Nebraska, is amended to read:

45-910. A license issued pursuant to the Delayed Deposit Services Licensing Act shall be conspicuously posted at the licensee's place of business. 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. Licenses may be renewed annually by filing with the director a renewal fee of one hundred  fifty dollars and 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. 106. Section 45-922, Reissue Revised Statutes of Nebraska, is amended to read:

45-922. (1) The director may, following a ~~minimum ten days'~~  notice and a hearing in accordance with the Administrative Procedure Act, suspend or revoke any license issued pursuant to the Delayed Deposit Services Licensing Act if he or she finds:

~~(1)~~ (a) A licensee or any of its officers, directors, partners, or members has knowingly violated the act or any rule, regulation, or order of the director thereunder;

~~(2)~~ A licensee has failed to pay the original or annual renewal license fee or to maintain in effect the required bond;

~~(3)~~ (b) A fact or condition existing which, if it had existed at the time of the original application for such license, would have warranted the director to refuse to issue such license; or

~~(4)~~ (c) A licensee has abandoned its place of business for a period of sixty days or more.

(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 45-910 and does not voluntarily surrender the license pursuant to section 45-911, 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 45-906, 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 maker of a check.

(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.

Sec. 107. Section 45-923, Reissue Revised Statutes of Nebraska, is amended to read:

45-923. If the director believes that any person has engaged in or is about to engage in any act or practice constituting a violation of the Delayed Deposit Services Licensing Act or any rule, regulation, or order of the director, the director may issue a cease and desist order.

Upon entry of a cease and desist order the director shall promptly notify in writing all persons to whom the order is directed that it has been entered and of the reasons for the order. Any person to whom the order is directed may in writing request a hearing within fifteen business days after the date of the issuance of the order. Upon receipt of such written request, the matter shall be set for hearing within ~~fifteen~~ thirty business days after

receipt by the director, unless the ~~person requesting the hearing consents parties consent~~ to a later date or the hearing officer sets a later date for good cause. If a hearing is not requested within fifteen business days and none is ordered by the director, the order of the director shall automatically become final and shall remain in effect until modified or vacated by the director. If a hearing is requested or ordered, the director, after notice and hearing, shall issue his or her written findings of fact and conclusions of law and may affirm, vacate, or modify the order.

The director may vacate or modify an order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so. Any person aggrieved by a final order of the director may appeal the order, and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 108. Section 59-1722, Reissue Revised Statutes of Nebraska, is amended to read:

59-1722. (1) Any transaction in which the seller has complied with the Federal Trade Commission trade regulation rule titled Disclosure Requirements and Prohibition Concerning Franchises and Business Opportunity Ventures, 16 C.F.R. 436, shall be exempt from the Seller-Assisted Marketing Plan Act, except that such transactions shall be subject to subdivision (1)(d) of section 59-1757, those provisions regulating or prescribing the use of the phrase buy-back or secured investment or similar phrases as set forth in sections 59-1726 to 59-1728 and 59-1751, and all sections which provide for their enforcement. The exemption shall only apply if:

(a) The seller uses a disclosure document prepared in accordance with either the Federal Trade Commission trade regulation rule titled Disclosure Requirements and Prohibition Concerning Franchises and Business Opportunity Ventures, 16 C.F.R. 436, or the then current guidelines for the preparation of the Uniform Franchise Offering Circular adopted by the North American Securities Administration Association;

(b) Before placing any advertisement in a Nebraska-based publication, offering for sale to any prospective purchaser in Nebraska, or making any representations in connection with such offer or sale to any prospective purchaser in Nebraska, the seller files a notice with the Department of Banking and Finance which contains (i) the name, address, and telephone number of the seller and the name under which the seller intends to do business and (ii) a brief description of the plan offered by the seller; and

(c) The seller pays a filing fee of one hundred dollars.

~~(2) Any seller which offers its exempt plans for sale in Nebraska on September 9, 1993, shall file a notice with the department no later than November 1, 1993.~~

~~(3) (2)~~ (2) The department may request a copy of the disclosure document upon receipt of a written complaint or inquiry regarding the seller or upon a reasonable belief that a violation of the Seller-Assisted Marketing Plan Act has occurred or may occur. The seller shall provide such copy within ten business days of receipt of the request.

~~(4) (3)~~ (3) All funds collected by the department under this section shall be remitted to the State Treasurer for credit to the Securities Act Cash Fund.

(4) The Director of Banking and Finance may by order deny or revoke an exemption specified in this section with respect to a particular offering of one or more business opportunities if the director finds that such an order is in the public interest or is necessary for the protection of purchasers. An order shall not be entered without appropriate prior notice to all interested parties, an opportunity for hearing, and written findings of fact and conclusions of law. If the public interest or the protection of purchasers so requires, the director may by order summarily deny or revoke an exemption specified in this section pending final determination of any proceedings under this section. An order under this section shall not operate retroactively.

Sec. 109. Section 59-1725.01, Reissue Revised Statutes of Nebraska, is amended to read:

59-1725.01. (1) The Director of Banking and Finance may summarily order a seller or any officer, director, employee, or agent of such seller to cease and desist from the further offer or sale of any seller-assisted marketing plan by the seller if the director finds:

(a) There has been a substantial failure to comply with any of the provisions of the Seller-Assisted Marketing Plan Act;

(b) The offer or sale of the plan would constitute misrepresentation to or deceit or fraud upon the purchasers; or

(c) Any person identified in the required disclosure document has



been convicted of an offense described in subdivision (2)(a) of section 59-1735 or is subject to an order or has had a civil judgment entered against him or her as described in subdivision (2)(b) or (c) of section 59-1735, and the involvement of such person in the sale or management of the seller-assisted marketing plan creates an unreasonable risk to prospective purchasers.

(2) If the director believes, whether or not based upon an investigation conducted under section 59-1725, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of the Seller-Assisted Marketing Plan Act or any rule, regulation, or order of the director, the director may:

(a) Issue a cease and desist order;

(b) Impose a fine not to exceed five thousand dollars per violation, in addition to costs of the investigation; or

(c) Initiate an action in any court of competent jurisdiction to enjoin such acts or practices and to enforce compliance with the Seller-Assisted Marketing Plan Act or any order under the act.

(3) Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted. The director shall not be required to post a bond.

(4)(a) Any fine and costs imposed under this section shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the Department of Banking and Finance and remitted to the State Treasurer. Costs shall be credited to the Securities Act Cash Fund, and fines shall be credited to the permanent school fund.

(b) If a person fails to pay the administrative fine or investigation costs referred to in 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 by suit by the director. Failure of the person to pay such fine and costs shall constitute a separate violation of the act.

(5) Upon entry of an order pursuant to this section, the director shall, in writing, promptly notify all persons to whom such order is directed that it has been entered and of the reasons for such order and that any person to whom the order is directed may request a hearing in writing within fifteen business days after the issuance of the order. Upon receipt of such written request, the matter shall be set down for hearing to commence within ~~fifteen~~ thirty business days after the receipt unless the ~~person requesting the hearing consents~~ parties consent to a later date or the hearing officer sets a later date for good cause. If a hearing is not requested within fifteen business days and none is ordered by the director, the order shall automatically become final and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice and hearing, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order.

(6) The director may vacate or modify a cease and desist order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(7) Any person aggrieved by a final order of the director may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act.

Sec. 110. Section 59-1733, Reissue Revised Statutes of Nebraska, is amended to read:

59-1733. The disclosure document required by section 59-1732 shall contain the following information:

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

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

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

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

No guarantee of earnings or ranges of earnings can be made. The

number of purchasers who have earned through this business an amount in excess of the amount of their initial payment is at least ....., which represents ..... percent of the total number of purchasers of this seller-assisted marketing plan;

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

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

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

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

(9) Any other information which the Department of Banking and Finance may require by rule, regulation, or order, to be disclosed for the protection of purchasers.

Sec. 111. Section 69-2117, Reissue Revised Statutes of Nebraska, is amended to read:

69-2117. (1) The Director of Banking and Finance may summarily order a lessor to cease and desist from the use of certain forms or practices relating to consumer rental purchase agreements if he or she finds that (a) there has been a substantial failure to comply with any of the provisions of the Consumer Rental Purchase Agreement Act or (b) the continued use of certain forms or practices relating to consumer rental purchase agreements would constitute misrepresentation to or deceit or fraud on the consumer.

(2) If the director believes, whether or not based upon an investigation conducted under section 69-2116, that any person or lessor has engaged in or is about to engage in any act or practice constituting a violation of any provision of the Consumer Rental Purchase Agreement Act or any rule, regulation, or order under the act, the director may:

(a) Issue a cease and desist order;

(b) Impose a fine of not to exceed one thousand dollars per violation, in addition to costs of the investigation; or

(c) Initiate an action in any court of competent jurisdiction to enjoin such acts or practices and to enforce compliance with the act or any order under the act.

(3) Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted. The director shall not be required to post a bond.

(4) Any fine and costs imposed pursuant to this section shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the director and remitted to the State Treasurer. Costs shall be credited to the Securities Act Cash Fund, and fines shall be credited to the permanent school fund. If a person fails to pay the fine or costs of the investigation referred to in this subsection, a lien in the amount of the fine and costs shall be imposed upon all of the assets and property of such person in this state and may be recovered by suit by the director. Failure of the person to pay a fine and costs shall constitute a separate violation of the act.

(5) Upon entry of an order pursuant to this section, the director shall promptly notify all persons to whom such order is directed that it has

been entered and of the reasons for such order and that any person to whom the order is directed may request a hearing in writing within fifteen business days of the issuance of the order. Upon a receipt of a written request, the matter shall be set down for hearing to commence within ~~fifteen~~ thirty business days after the receipt unless the ~~person requesting the hearing consents~~ parties consent to a later date or the hearing officer sets a later date for good cause. If a hearing is not requested within fifteen business days and none is ordered by the director, the order shall automatically become final and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director after notice and hearing shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order.

(6) The director may vacate or modify a cease and desist order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(7) Any person aggrieved by a final order of the director may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act.

Sec. 112. Sections 4, 5, 7, 19 to 24, 27 to 86, 89 to 102, 108 to 111, 113, and 115 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. 113. Original sections 8-319, 8-330, 8-820.01, 8-1101, 8-1108.01, 8-1109.02, 8-1110, 8-1735, 44-1703, 45-114, 45-115, 45-117, 45-119, 45-120, 45-122 to 45-124, 45-126 to 45-129, 45-131 to 45-136, 45-138 to 45-140, 45-142 to 45-145, 45-148 to 45-150, 45-153 to 45-155, 45-156 to 45-158, 45-173 to 45-183, 45-185 to 45-188, 45-191.04, 45-191.09, 45-194 to 45-196, 45-198 to 45-1,103, 45-1,110, 45-1,116, 59-1722, 59-1725.01, 59-1733, and 69-2117, Reissue Revised Statutes of Nebraska, and sections 8-1103, 45-101.04, 45-116, 45-118, 45-121, 45-130, 45-137, 45-184, and 45-717, Revised Statutes Supplement, 2000, are repealed.

Sec. 114. Original sections 8-208, 8-1001 to 8-1004, 8-1006 to 8-1008, 8-1010, 8-1012, 8-1014, 8-1015, 21-17,103, 45-190, 45-191.02, 45-902, 45-906, 45-910, 45-922, and 45-923, Reissue Revised Statutes of Nebraska, and sections 8-143.01, 8-1,140, 8-355, and 21-17,115, Revised Statutes Supplement, 2000, are repealed.

Sec. 115. The following sections are outright repealed: Sections 45-146, 45-147, 45-188.01, and 45-197, Reissue Revised Statutes of Nebraska.

Sec. 116. Since an emergency exists, this act takes effect when passed and approved according to law.