



Ninety-Eighth Legislature - First Session - 2003  
**Introducer's Statement of Intent**  
**LB 218**

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**Chairperson:** Mark Quandahl  
**Committee:** Banking, Commerce and Insurance  
**Date of Hearing:** January 27, 2003

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 218 was introduced at the request of the Nebraska Department of Banking and Finance ("Department"). The bill amends the Mortgage Bankers Registration and Licensing Act ("Mortgage Bankers Act"), the Nebraska Installment Loan Act ("NILA"), and additional statutes related to mortgages and trust deeds. LB 218 is intended to prohibit predatory practices in the mortgage loan industry and to increase the authority of the Department to take action against persons engaged in predatory lending practices.

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

**MORTGAGE BANKERS**

Section 1: Amends § 45-702, which is the definitional section of the Mortgage Bankers Registration and Licensing Act ("Mortgage Bankers Act"), to remove installment loan licensees from the definition of "financial institution."

Section 2: Amends § 45-704 to provide that registrations under the Mortgage Bankers Act will expire on the next March 1; to allow for a renewal of registrations; and to provide for a renewal fee of fifty dollars. Currently registrations under the Act do not expire. A grace period for those registrants is set until March 1, 2004.

Section 3: Amends § 45-705 which relates to licensing under the Mortgage Bankers Act. The amendments include installment loan licensees under the Act; and require additional license application information relating to applicant insiders.

Section 4: Amends § 45-706, which also relates to licensing under the Mortgage Bankers Act, to remove obsolete language relating to temporary licenses; change the placement of language related to filing of a required bond; and provide that renewals are permissive and not mandatory. A new subsection (4) is added to provide that the Director of the Department of Banking and Finance ("Department") may require a licensee to maintain a minimum net worth, and to prove that net worth through a certified audit. Standards for invoking this provision are included.

Section 5: Amends § 45-707 of the Mortgage Bankers Act which governs administrative actions (license suspension or revocation and imposition of fines) by the Department. The proposed amendments include the following:

- Language relating to notice and hearing has been moved to subsections (2) and (3), so that the Director will have the authority to suspend a license without a prior hearing. Right to a post-suspension hearing is provided.
- Language regarding fines has been added to this section to coordinate with § 45-717.01.
- Language has been added to provide that voluntary surrender of a license does not affect liability for any fines which may be levied against a licensee or any of its officers, directors, shareholders, partners, or members for acts committed before surrender. (Current law provides that voluntary surrender does not affect civil or criminal liability of the licensee.)
- Additional prohibited actions which can result in administrative action:
  - Violation of orders.
  - Violation of consent or compliance agreements.
  - Filing of misleading, incorrect, or false documents with the Department.
  - Failure to permit an examination by the Department.
  - Failure to maintain records required by the Department.
  - Knowingly employing an individual or maintaining a contractual relationship with an agent if the person was convicted of or plead guilty to a misdemeanor involving dishonesty, fraud or any aspect of certain businesses, or any felony, whether at the state or federal level.
  - Violations of restrictions placed on a license.
  - Revocation of a similar license in any other jurisdiction.
  - Failure to reasonably supervise any officer, employee, or agent for compliance with the Mortgage Bankers Act or other applicable law.

Section 6: Amends § 45-709, which requires a surety bond for Mortgage Bankers Act licensees. A new subsection (2) has been added to authorize the Director of the Department to require a new or supplemental bond, not to exceed one million dollars, for licensees or applicants for licenses, if the Director determines that the bond is exhausted or inadequate.

Section 7: Amends § 45-710 to expand the authority of the Director of the Department to examine all documents and records of a Mortgage Bankers Act licensee. Current law limits examination authority to complaints. The amendment would also clearly provide that the Department may investigate allegations of violations of the Act against any persons, not just licensees, and clarifies that notices of investigations do not have to be to any person or licensee.

Section 8: Amends § 45-711, which is the section setting forth affirmative duties for a Mortgage Bankers Act licensee. The amendments include:

- Clarification that certain information must be provided to a borrower without charge.
- Authorization for a nominal charge for repeated requests for payoff information.
- Maintenance of documents and records for a three-year period.
- Notification to the Department of material developments, including:

- Bankruptcy.
- Reorganization.
- Suspension or revocation proceedings in another jurisdiction.
- Criminal indictment or information against the licensee or insiders.
- Conviction, guilty or nolo contendere plea to certain misdemeanors or any felony.

Section 9: Amends § 45-714 to set forth actions that are prohibited to a Mortgage Bankers Act licensee or its insiders against a borrower or applicant for a loan. The only restriction in current law is a prohibition against a licensee assessing late charges in certain circumstances. The prohibited actions will include:

- Delay closings to increase fees to the lender.
- Misrepresentations or concealment of material facts, terms, or conditions of a loan.
- Engaging in practices that are not in good faith or which operate as a fraud.
- Receiving compensation for acting as a mortgage banker if the licensee also acts as a real estate broker in the same transaction and does not give written disclosure to the borrower.
- False or misleading advertisements or solicitations.
- Recording liens if the funds are not available for immediate disbursement unless the borrower agrees to the delay or the delay is required by law.
- Failure to account for personal property obtained in connection with the mortgage transaction.
- Failure to disburse funds in accordance with any agreements.
- Collection of charges in loan flipping situations (a new loan to a current borrower of the licensee within 12 months after a previous mortgage loan was made.)
- Assessment of fees that are not reasonable and necessary.
- Financing of single premium insurance.
- Falsification of documents.
- Recommending or encouraging loan default.

The prohibited acts will carry a criminal Class III misdemeanor penalty (Max: 3 months, or \$500, or both; Min: none.), and allow for civil damages, including court costs and attorney fees.

Section 10: Amends § 45-715 to provide that the Department may send notices and copies of proposed rules and regulations under the Mortgage Bankers Act to licensees using electronic methods.

Section 11: Amends § 45-716 to remove an obsolete reference to a fund transfer.

Section 12: Amends § 45-717.01 relating to administrative fines under the Mortgage Bankers Act. The amendment coordinates the section with new provisions added in Section 45-707, and provides the Department with the authority to impose fines on officers, directors, shareholders, partners, or members of a licensee, following a hearing under the Administrative

Procedure Act, if the person knowingly participated in, or had knowledge of, any act prohibited by sections 45-707, 45-711 and 45-714, or otherwise violated the Mortgage Bankers Act.

#### INSTALLMENT LOANS

Section 13: Amends § 45-1007 of the Nebraska Installment Loan Act. The amendment requires an increase in the bond for an installment loan license from \$2,000 to \$50,000; changes language related to acceptable sureties; provides a grace period for current licensees to increase their existing bonds until March 1, 2004; and allows the filing of a continuous bond, instead of the current required annual renewal and re-filing of the bond.

Section 14: Amends § 45-1024 of the Nebraska Installment Loan Act to remove requirements for installment loan licensees making mortgage loans that are identical to provisions in the Mortgage Bankers Act (specified sections of § 45-711; toll-free telephone numbers). The deleted sections will be part of the new requirements in Section 15.

Section 15: Amends § 45-1025 of the Nebraska Installment Loan Act to provide that an installment loan licensee which makes loans pursuant to § 45-101.04 (11) that meet the definition of a mortgage loan under the Mortgage Bankers Act is subject to all the provisions of the Mortgage Bankers Act, with the exception of the licensing requirements.

Section 16: Amends § 45-1033 of the Nebraska Installment Loan Act, which governs administrative actions (license suspension or revocation) by the Department. The proposed amendments mirror amendments contained in Section 5 which add a number of prohibited actions that can result in administrative action:

- Violation of orders.
- Violation of consent or compliance agreements.
- Filing of misleading, incorrect, or false documents with the Department.
- Failure to permit an examination by the Department.
- Failure to maintain records required by the Department.
- Knowingly employing an individual or maintaining a contractual relationship with an agent if the person was convicted of or plead guilty to a misdemeanor involving dishonesty, fraud or any aspect of certain businesses, or any felony, whether at the state or federal level.
- Violations of restrictions placed on a license.
- The licensee or any insider was convicted of or plead guilty to a misdemeanor involving dishonesty, fraud or any aspect of certain businesses, or any felony, whether at the state or federal level.

The above provisions will apply to loans that are not mortgage loans defined under the Mortgage Bankers Act. Language has also been added to update the examination provisions and to provide that certain violations carry a daily penalty.

Section 17: Amends § 45-1066 to coordinate with renumbered subsections of certain cross-referenced statutes.

## MORTGAGES

Section 18: Amends § 76-252 to provide for an increase in the civil penalty for failure to release a mortgage (from \$1,000 to \$5,000), and to update language relating to the recovery of court costs. This section applies to all holders of mortgages, whether or not they are covered under the Mortgage Bankers Act or the Nebraska Installment Loan Act.

## TRUST DEEDS

Section 19: Amends § 76-1014.01 to provide for an increase in the civil penalty for failure to release a trust deed (from \$1,000 to \$5,000), and to update language relating to the recovery of court costs. This section applies to all holders of trust deeds.

## MISCELLANEOUS PROVISIONS

Section 20: This section repeals the amendatory sections in the bill.

**Principal Introducer:**

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**Mark Quandahl, Chairperson**  
**Committee on Banking, Commerce and Insurance**