

AMENDMENTS TO LB 124

Introduced by Banking, Commerce and Insurance

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Section 8-108, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 8-108 The director, his or her deputy, or any duly
6 appointed examiner shall have power to make a thorough examination
7 into all the books, papers, and affairs of any bank or other
8 institution in Nebraska subject to the department's jurisdiction,
9 or its holding company, if any, and in so doing to administer
10 oaths and affirmations, to examine on oath or affirmation the
11 officers, agents, and clerks of such institution or its holding
12 company, if any, touching the matter which they may be authorized
13 and directed to inquire into and examine, and to subpoena the
14 attendance of any person or persons in this state to testify
15 under oath or affirmation in relation to the affairs of such
16 institution or its holding company, if any. Such powers shall
17 include, but not be limited to, the authority to examine and
18 monitor by electronic means the books, papers, and affairs of
19 any financial institution or the holding company of a financial
20 institution. The examination may be in the presence of at least
21 two members of the board of directors of the institution or
22 its holding company, if any, undergoing such examination, and
23 it shall be the duty of the examiner to incorporate in his or

1 her report the names of the directors in whose presence the
2 examination was made. The director may accept any examination or
3 report from the Federal Deposit Insurance Corporation, the Federal
4 Reserve Board, the Comptroller of the Currency, or a foreign state
5 agency. The director may provide any such examination or report
6 to the Federal Deposit Insurance Corporation, the Federal Reserve
7 Board, the Comptroller of the Currency, or a foreign state agency.
8 The department shall have power to examine the books, papers,
9 and affairs of any electronic data processing center which has
10 contracted with a financial institution to conduct the financial
11 institution's electronic data processing business. The department
12 may charge the electronic data processing center for the time spent
13 by examiners in such examination at the rate set forth in section
14 ~~8-601~~ 13 of this act for examiners' time spent in examinations of
15 financial institutions.

16 Sec. 2. Section 8-113, Revised Statutes Cumulative
17 Supplement, 2006, is amended to read:

18 8-113 No individual, firm, company, corporation, or
19 association doing business in the State of Nebraska, unless
20 organized as a bank under the Nebraska Banking Act or the authority
21 of the federal government, or as a building and loan association,
22 savings and loan association, or savings bank under Chapter 8,
23 article 3, or the authority of the federal government, shall use
24 the word bank or any derivative thereof as any part of a title or
25 description of any business activity. This section does not apply
26 to: (1) Banks, ~~(1) banks~~, building and loan associations, savings
27 and loan associations, or savings banks chartered and supervised

1 by a foreign state agency; ~~7~~ (2) bank holding companies registered
2 pursuant to section 8-913 if the term holding company is also used
3 as any part of the title or description of any business activity or
4 if the derivative banc is used; ~~7~~ (3) affiliates or subsidiaries of
5 (i) a bank organized under the Nebraska Banking Act, the authority
6 of the federal government, or chartered and supervised by a foreign
7 state agency, (ii) a building and loan association, savings and
8 loan association, or savings bank organized under Chapter 8,
9 article 3, the authority of the federal government, or chartered
10 and supervised by a foreign state agency, or (iii) a bank holding
11 company registered pursuant to section 8-913 if the term holding
12 company is also used as any part of the title or description
13 of any business activity or if the derivative banc is used; (4)
14 organizations substantially owned by (i) a bank organized under
15 the Nebraska Banking Act, the authority of the federal government,
16 or chartered and supervised by a foreign state agency, (ii) a
17 building and loan association, savings and loan association, or
18 savings bank organized under Chapter 8, article 3, the authority of
19 the federal government, or chartered and supervised by a foreign
20 state agency, (iii) a bank holding company registered pursuant to
21 section 8-913 if the term holding company is also used as any
22 part of the title or description of any business activity or if
23 the derivative banc is used, or (iv) any combination of entities
24 listed in subdivisions (i) through (iii) of this subdivision; (5)
25 mortgage bankers licensed or registered under the Mortgage Bankers
26 Registration and Licensing Act, if the word mortgage immediately
27 precedes the word bank or its derivative; (6) ~~7~~ ~~(4)~~ organizations

1 described in section 501(c)(3) of the Internal Revenue Code as
2 defined in section 49-801.01 and exempt from taxation under section
3 501(a) of the code; (7) ~~(5)~~ trade associations which are exempt
4 from taxation under section 501(c)(6) of the code which represent
5 a segment of the banking or savings and loan industries, and any
6 affiliate or subsidiary thereof; and ~~(6)~~ (8) such other firms,
7 companies, corporations, or associations as have been in existence
8 and doing business ~~for a period of ten years or more~~ prior to
9 ~~October 19, 1963,~~ December 1, 1975, under a name composed in part
10 of the word bank or some derivative thereof. Any violation of this
11 section shall be a Class V misdemeanor.

12 Sec. 3. Section 8-124, Revised Statutes Cumulative
13 Supplement, 2006, is amended to read:

14 8-124 The affairs and business of any bank chartered
15 after September 2, 1973, or which has had transfer of twenty-five
16 percent or more of voting shares after September 2, 1973, shall
17 be managed or controlled by a board of directors of not less than
18 five and not more than fifteen members, who shall be selected at
19 such time and in such manner as may be provided by the articles
20 of incorporation of the corporation and in conformity with the
21 Nebraska Banking Act. Any bank chartered before September 2, 1973,
22 may have a minimum of three directors and not more than fifteen
23 directors so long as it does not have transfer of twenty-five
24 percent or more voting shares, with such directors selected as
25 provided in this section. Any vacancy on the board shall be filled
26 within ninety days by appointment by the remaining directors, and
27 any director so appointed shall serve until the next election of

1 directors, except that if the vacancy created leaves a minimum
2 of five directors, appointment shall be optional. The board shall
3 ~~select from among its number the president and secretary and shall~~
4 ~~select a cashier.~~ appoint a secretary and, from among its own
5 members, select a president. Such officers shall hold their office
6 at the pleasure of the board of directors. The board of directors
7 shall hold at least one regular meeting in each calendar quarter,
8 and at one of such meetings in each year a thorough examination of
9 the books, records, funds, and securities held by the bank shall be
10 made and recorded in detail upon its record book. In lieu of the
11 one annual examination required, the board of directors may accept
12 one annual audit by an accountant or accounting firm approved by
13 the Director of Banking and Finance.

14 Sec. 4. Section 8-148.04, Revised Statutes Cumulative
15 Supplement, 2006, is amended to read:

16 8-148.04 (1) Any bank may make a community development
17 investment or investments either directly or through purchasing an
18 equity interest in or an evidence of indebtedness of an entity
19 primarily engaged in making community development investments, if
20 the following conditions are satisfied:

21 (a) An investment under this subsection does not expose
22 the bank to unlimited liability; and

23 (b) The bank's aggregate investment under this subsection
24 does not exceed ~~ten~~ fifteen percent of its capital and surplus. If
25 the bank's investment in any one entity will exceed five percent
26 of its capital and surplus, the prior written approval of the
27 department must be obtained. ÷ and

1 ~~(c) All investments made under this subsection are~~
2 ~~accounted for on the bank's books under "Other Assets".~~

3 (2) Nothing in this section shall prevent a bank from
4 charging off as a contribution an investment made pursuant to
5 subsection (1) of this section.

6 (3) Such subscription, investment, possession, or
7 ownership shall not be subject to sections 8-148, 8-149, and 8-150.

8 (4) For purposes of this section, community development
9 investments means investments of a predominantly civic, community,
10 or public nature and not merely private and entrepreneurial.

11 Sec. 5. Section 8-149, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 8-149 (1) No bank shall, without the written approval of
14 the director, ~~(1)~~ (a) invest in bank premises, or in the stock,
15 bonds, debentures, or other such obligations of any corporation
16 holding the premises of such bank, or ~~(2)~~ (b) make loans to or
17 upon the security of the stock of any such corporation, if the
18 aggregate of all such investments and loans will exceed the paid-up
19 capital stock, surplus, and capital notes and debentures of such
20 bank. Stock held as authorized by this section shall not be subject
21 to the provisions of section 8-148.

22 (2) Investments by a bank in bank premises necessary for
23 the transaction of its business shall include, but not be limited
24 to:

25 (a) Premises that are owned and occupied, or to be
26 occupied if under construction, by the bank, its branches, or its
27 consolidated subsidiaries;

1 (b) Real estate acquired and intended, in good faith, for
2 use in future expansions;

3 (c) Parking facilities that are used by customers
4 or employees of the bank, its branches, or its consolidated
5 subsidiaries;

6 (d) Residential property for the use of officers
7 or employees of the bank, its branches, or its consolidated
8 subsidiaries who are:

9 (i) Located in areas where suitable housing at a
10 reasonable price is not readily available; or

11 (ii) Temporarily assigned to a foreign country, including
12 foreign nationals temporarily assigned to the United States; and

13 (e) Property for the use of officers, employees,
14 or customers of the bank, its branches, and its consolidated
15 subsidiaries or for the temporary lodging of such persons in areas
16 where suitable commercial lodging is not readily available, if the
17 purchase and operation of the property qualifies as a deductible
18 business expense for federal tax purposes.

19 Sec. 6. Section 8-1,140, Revised Statutes Cumulative
20 Supplement, 2006, is amended to read:

21 8-1,140 Notwithstanding any of the other provisions of
22 the Nebraska Banking Act or any other Nebraska statute, any bank
23 incorporated under the laws of this state and organized under
24 the provisions of the act, or under the laws of this state as
25 they existed prior to May 9, 1933, shall directly, or indirectly
26 through a subsidiary or subsidiaries, have all the rights, powers,
27 privileges, benefits, and immunities which may be exercised as of

1 ~~April 7, 2006, the operative date of this section,~~ by a federally
2 chartered bank doing business in Nebraska, including the exercise
3 of all powers and activities that are permitted for a financial
4 subsidiary of a federally chartered bank. Such rights, powers,
5 privileges, benefits, and immunities shall not relieve such bank
6 from payment of state taxes assessed under any applicable laws of
7 this state.

8 Sec. 7. Section 8-355, Revised Statutes Cumulative
9 Supplement, 2006, is amended to read:

10 8-355 Notwithstanding any of the provisions of Chapter
11 8, article 3, or any other Nebraska statute, except as provided
12 in section 8-345.02, any association incorporated under the laws
13 of the State of Nebraska and organized under the provisions
14 of such article shall have all the rights, powers, privileges,
15 benefits, and immunities which may be exercised as of ~~April 7,~~
16 ~~2006, the operative date of this section,~~ by a federal savings
17 and loan association doing business in Nebraska. Such rights,
18 powers, privileges, benefits, and immunities shall not relieve
19 such association from payment of state taxes assessed under any
20 applicable laws of this state.

21 Sec. 8. Section 8-601, Revised Statutes Cumulative
22 Supplement, 2006, is amended to read:

23 8-601 (1) The Director of Banking and Finance may employ
24 deputies, examiners, attorneys, and other assistants as may be
25 necessary for the administration of the provisions and purposes
26 of Chapter 8, articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14,
27 15, 16, 19, 20, 21, 23, 24, and 25; Chapter 21, article 17; and

1 Chapter 45, articles 1, 2, 3, 7, 9, and 10. The director may levy
2 upon financial institutions, namely, the banks, trust companies,
3 building and loan associations, savings and loan associations,
4 savings banks, and credit unions, organized under the laws of
5 this state, and holding companies, if any, of such financial
6 institutions, an assessment each year based upon the asset size
7 of the financial institution, except that in determining the asset
8 size of a holding company, the assets of any financial institution
9 or holding company otherwise assessed pursuant to this section
10 and the assets of any nationally chartered financial institution
11 shall be excluded. The assessment shall be a sum determined by the
12 director in accordance with section 13 of this act and approved by
13 the Governor.

14 ~~(1) To pay the salary and necessary expense of examiners~~
15 ~~and examiners' helpers and such sum, if any, as may be required,~~
16 ~~in excess of the sum appropriated for the Department of Banking~~
17 ~~and Finance, for the payment of the salaries of the Director~~
18 ~~of Banking and Finance, his or her deputies, attorneys, and~~
19 ~~assistants, there shall be levied upon the banks, organized under~~
20 ~~the laws of this state, and trust companies, building and loan~~
21 ~~associations, credit unions, and holding companies, if any, of such~~
22 ~~institutions, organized under the laws of this state or authorized~~
23 ~~to do business in this state, an assessment each year based upon~~
24 ~~two factors: (a) A single assessment fee based upon the asset~~
25 ~~size of the institution, except that in determining the asset~~
26 ~~size of a holding company, the assets of any financial institution~~
27 ~~or holding company otherwise assessed pursuant to this section~~

1 and the assets of any nationally chartered financial institution
2 shall be excluded; and (b) an assessment based upon the number
3 of hours spent on the examination. The assessment shall be a sum
4 determined by the director and approved by the Governor as set
5 forth in this subsection and subject to the additional assessments
6 and adjustments referred to in subsection (3) of this section.

7 (2) The assessment referred to in subsection (1) of
8 this section and the additional assessments provided for by
9 subsection (3) of this section shall be paid by such banks,
10 trust companies, building and loan associations, credit unions,
11 and holding companies, if any, of such institutions on the order
12 of the director to the State Treasurer who shall place the
13 same in the Financial Institution Assessment Cash Fund, which is
14 hereby created and which shall be used solely for the purposes
15 hereinafter specified. The amount of the assessment shall be the
16 sum estimated by the director as necessary for the fiscal year to
17 pay the following items: (a) Salaries of examiners and examiners'
18 helpers; (b) the necessary expenses incurred by examiners and
19 examiners' helpers in the discharge of their duties incident to
20 the examination of the institutions enumerated in this section;
21 and (c) such sum, if any, as may be required, in excess of the
22 sum appropriated for the department, for the payment of the salary
23 and expenses of the director, his or her deputies, attorneys,
24 and assistants, and in addition there shall be included in the
25 assessment to be paid by banks organized under the laws of this
26 state, the salaries and expenses of examiners and examiners'
27 helpers attending a school for examiners. As soon as reasonably

1 possible after June 30 of each year, the director shall estimate
2 the total sum required for the above purposes. The director shall
3 also estimate the total number of days to be used by examiners
4 and examiners' helpers in the examination and supervision of the
5 institutions enumerated in this section during the fiscal year,
6 taking into account the experience of the preceding year. The
7 total estimated fund shall be divided by the total number of days
8 estimated, as above specified, and the quotient shall be the unit
9 of assessment against the individual institutions, which unit is
10 hereinafter referred to as the per diem unit. The assessment upon
11 each institution shall be based upon a percentage fee of total
12 assets in each institution and a per diem fee for the number
13 of hours spent in examination as determined by the director. The
14 director shall set the per diem fee based on (i) the number of
15 per diem units required to examine the respective institutions
16 during the fiscal year for which the estimate is made, taking into
17 account the experience of the previous year, and (ii) in case of
18 institutions organized under the laws of the states other than
19 the State of Nebraska, the estimated traveling expense involved in
20 making the examination. If the estimated sum levied and collected
21 is insufficient to defray the expenditures, as provided in this
22 section, for the fiscal year for which it was made, a special
23 assessment may be levied and collected in like manner for the
24 balance of the fiscal year.

25 (3) At the end of the fiscal year for which the
26 assessment is made, the director shall forward to each of such
27 institutions subject to such an assessment, as provided for by

1 subsections (1) and (2) of this section, a statement for as
2 many per diem units as the days actually used in the examination
3 of the institution exceeds that which was estimated, under the
4 provisions of subsection (2) of this section, which shall be
5 paid on the demand of the director in the same manner as the
6 original assessment. If the number of days actually used is less
7 than that estimated for any such institution, the difference shall
8 stand to the credit of such institution for a subsequent year's
9 assessment. In case an extra examination of any institution should
10 become necessary and be made, the reasonable cost thereof shall be
11 determined and shall be paid by the institution so examined.

12 Sec. 9. Section 8-602, Revised Statutes Cumulative
13 Supplement, 2006, is amended to read:

14 8-602 The Director of Banking and Finance shall charge
15 and collect fees for certain services rendered by the Department of
16 Banking and Finance according to the following schedule:

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

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

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

1 in each case shall be two hundred twenty-five dollars;

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

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

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

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

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

16 (9) For investigating the applications required by
17 sections 8-120 and 8-331 and the documents required by section
18 8-201, the cost of such examination, investigation, and inspection,
19 including all legal expenses and the cost of any hearing
20 transcript, with a minimum fee under (a) sections 8-120 and 8-2402
21 of two thousand five hundred dollars, (b) section 8-331 of two
22 thousand dollars, and (c) section 8-201 of one thousand dollars.
23 The department may require the applicant to procure and give
24 a surety bond in such principal amount as the department may
25 determine and conditioned for the payment of the fees provided in
26 this subdivision;

27 (10) For registering a statement of intention to engage

1 in the business of making personal loans pursuant to section 8-816,
2 fifty dollars;

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

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

16 (13) For investigating an application under subdivision
17 (6) of section 8-115.01, five hundred dollars;

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

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

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

26 (17) For investigating an application for a merger of two
27 state banks or a merger of a state bank and a national bank in

1 which the state bank is the surviving entity, five hundred dollars;

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

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

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

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

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

20 Sec. 10. The assessments referred to in sections 12 and
21 13 of this act, examination fees, investigation fees, filing fees,
22 registration fees, licensing fees, and all other fees and money,
23 except fines, collected by or paid to the Director of Banking and
24 Finance under any of the laws specified in section 8-601, shall
25 be remitted to the State Treasurer for credit to the Financial
26 Institution Assessment Cash Fund.

27 Sec. 11. (1) The Financial Institution Assessment Cash

1 Fund is hereby created. The fund shall be used solely for the
2 purposes of administering and enforcing the laws specified in
3 section 8-601.

4 (2) Any money in the fund available for investment
5 shall be invested by the state investment officer pursuant to
6 the Nebraska Capital Expansion Act and the Nebraska State Funds
7 Investment Act.

8 Sec. 12. (1) As soon as reasonably possible after June 30
9 of each year, the Director of Banking and Finance shall estimate
10 the total sum required for the purposes set forth in section 11 of
11 this act for the succeeding fiscal year. The director shall also
12 estimate the total sum expected to be collected pursuant to section
13 10 of this act. The director shall use the difference between the
14 estimate of the total sum required and the estimate of the total
15 sum to be collected as the basis for the assessment to be levied.

16 (2) The assessment upon each financial institution shall
17 be based upon the total assets of each financial institution,
18 as reported in each financial institution's report of condition
19 prepared for the period ending June 30 of each year, and,
20 after June 30, 2009, may further be based upon the total
21 amount of fiduciary and related assets and the total amount
22 of off-balance-sheet receivables as reported in each financial
23 institution's report of condition prepared for the period ending
24 June 30 of each year.

25 (3) The director shall have the authority to prorate the
26 assessment for any financial institution or entity which surrenders
27 its charter or license or receives its charter or license during

1 the assessment period. Proration shall be based on the number of
2 months the financial institution held its charter or license. Any
3 portion of a month shall be counted as one month.

4 (4) If the estimated sum levied and collected is
5 insufficient to defray the expenditures for the fiscal year for
6 which it was made, a special assessment may be levied and collected
7 in like manner for the balance of the fiscal year.

8 Sec. 13. (1) As soon as reasonably possible following
9 the examination of a financial institution or entity pursuant to
10 the laws specified in section 8-601, the Department of Banking
11 and Finance shall bill the financial institution or entity the
12 costs of the examination. Such costs may include an hourly fee
13 for examiner time, which shall be determined once each year by the
14 director, with the approval of the Governor, and which shall take
15 into consideration whether the financial institution or entity is
16 subject to the assessment.

17 (2) In case an extra examination or an investigation of
18 any financial institution or entity becomes necessary and is made
19 pursuant to the laws specified in section 8-601, the costs thereof
20 shall be paid by the financial institution or entity examined or
21 investigated.

22 (3) In the case of a financial institution or entity
23 organized under the law of a state other than this state or
24 a financial institution or entity organized under the law of
25 this state but which maintains an office in another state or
26 states, travel expenses involved in conducting an examination or
27 investigation may also be billed to the financial institution or

1 entity, if the examination or investigation involves travel outside
2 this state.

3 Sec. 14. (1) If a financial institution or entity fails
4 to pay an annual assessment, special assessment, examination fee,
5 examination cost, investigation fee, investigation cost, or travel
6 expense by a date specified by the Department of Banking and
7 Finance, which shall be not less than thirty days from the date
8 of billing, the department may, following notice and opportunity
9 for hearing pursuant to the Administrative Procedure Act, impose a
10 fine in accordance with section 8-1,134 for each day the financial
11 institution or entity is in arrears.

12 (2) If the financial institution or entity is in arrears
13 for sixty days or more, the department may, in addition to any
14 fine imposed under this section, following notice and opportunity
15 for hearing pursuant to the Administrative Procedure Act, suspend
16 or revoke the charter or license of any financial institution or
17 entity or the license or authority of any person responsible for
18 such failure.

19 (3) The director may, in his or her discretion
20 and for good cause shown, permit the payment of any annual
21 assessment, special assessment, examination fee, examination cost,
22 investigation fee, investigation cost, travel expense, or fine, in
23 installments.

24 Sec. 15. Section 8-915, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 8-915 The director may make examinations of any bank
27 holding company with one or more state-chartered bank subsidiaries

1 and each state-chartered bank subsidiary thereof, the cost of
2 which shall be assessed, in the manner set forth in ~~section~~
3 ~~8-601,~~ sections 12 and 13 of this act, against and paid for by
4 such bank holding company. The director may accept reports of
5 examination made by the Federal Reserve Board, the Comptroller
6 of the Currency, the Federal Deposit Insurance Corporation, or
7 a foreign state agency in lieu of making an examination by
8 the department. The director may provide reports of examination
9 conducted by the department or other confidential information to
10 any of such regulatory entities. The director may contract with
11 any of such regulatory entities to conduct and pay for such an
12 examination for the department. The director may contract with any
13 of such regulatory entities to conduct and receive payment for such
14 an examination for any of such regulatory entities. The director
15 may enter into cooperative agreements with any or all of such
16 regulatory entities to foster the purposes of the Nebraska Bank
17 Holding Company Act of 1995.

18 Sec. 16. Section 8-1901, Revised Statutes Cumulative
19 Supplement, 2006, is amended to read:

20 8-1901 For purposes of sections 8-1901 to 8-1903, unless
21 the context otherwise requires:

22 (1) Department means the Department of Banking and
23 Finance; and

24 (2) Financial institution means:

25 (a) A state-chartered or federally chartered bank,
26 savings bank, building and loan association, savings and loan
27 association, ~~or credit union,~~ or trust company;

1 (b) A subsidiary of a bank holding company or
2 out-of-state bank holding company; or

3 (c) A branch of a financial institution described in
4 subdivision (a) or (b) of this subdivision.

5 Sec. 17. Section 8-2107, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 8-2107 (1) The director may make such examinations of any
8 branch established and maintained in this state by an out-of-state
9 state chartered bank as the director may deem necessary to
10 determine whether the branch is being operated in compliance
11 with the laws of this state and in accordance with safe and sound
12 banking practices.

13 (2) The director may prescribe requirements for periodic
14 reports regarding any out-of-state bank that operates a branch in
15 Nebraska pursuant to the Interstate Branching By Merger Act of
16 1997. Any reporting requirements prescribed by the director under
17 this subsection shall be consistent with the reporting requirements
18 applicable to Nebraska state banks and appropriate for the purpose
19 of enabling the director to carry out his or her responsibilities
20 under the act.

21 (3) The director may enter into cooperative,
22 coordinating, and information-sharing agreements with any
23 other bank supervisory agencies or any organization affiliated with
24 or representing one or more bank supervisory agencies with respect
25 to the periodic examination or other supervision of any branch in
26 Nebraska of an out-of-state state chartered bank or any branch of a
27 Nebraska state chartered bank in a host state, and the director may

1 accept such reports of examination and reports of investigation in
2 lieu of conducting his or her own examinations or investigations.

3 (4) The director may enter into contracts with any bank
4 supervisory agencies that have concurrent jurisdiction over a
5 Nebraska state chartered bank or an out-of-state state chartered
6 bank operating a branch in this state to engage the services of
7 such agencies' examiners or to provide the services of department
8 examiners to such agency.

9 (5) The director may enter into joint examinations or
10 joint enforcement actions with other bank supervisory agencies
11 having concurrent jurisdiction over any branch in Nebraska of an
12 out-of-state state chartered bank or any branch of a Nebraska
13 state chartered bank in any host state. The director may, at any
14 time, take such actions independently if he or she deems such
15 actions to be necessary or appropriate to carry out his or her
16 responsibilities under the act or to ensure compliance with the
17 laws of this state. In the case of an out-of-state state chartered
18 bank, the director shall recognize the exclusive authority of the
19 home state regulator over corporate government matters and the
20 primary responsibility of the home state regulator with respect to
21 safety and soundness matters.

22 (6) The cost of any examination conducted under this
23 section shall be assessed against such out-of-state state chartered
24 bank in the manner set forth in ~~section 8-601~~ sections 12 and 13 of
25 this act and paid for by such out-of-state state chartered bank.

26 Sec. 18. Section 8-2312, Revised Statutes Cumulative
27 Supplement, 2006, is amended to read:

1 8-2312 (1) The director may examine any branch trust
2 office or representative trust office established and maintained in
3 this state by any out-of-state state trust company as he or she
4 deems necessary to determine whether the branch trust office or
5 representative trust office is being operated in compliance with
6 Nebraska law and in accordance with safe and sound practices.

7 (2) The director may prescribe requirements for periodic
8 reports by an out-of-state trust company that operates branch trust
9 offices or representative trust offices pursuant to the Interstate
10 Trust Company Office Act. Any such reporting requirements shall be
11 consistent with the reporting requirements applicable to Nebraska
12 trust companies and appropriate for the purpose of enabling the
13 director to carry out his or her responsibilities under the act.

14 (3) The director may enter into cooperative,
15 coordinating, and information-sharing agreements with any
16 other trust company supervisory agency that has concurrent
17 jurisdiction over a Nebraska state-chartered trust company or an
18 out-of-state state trust company operating a branch trust office or
19 representative trust office in this state to engage the services of
20 such supervisory agency's examiners or to provide the services of
21 department examiners to such supervisory agency.

22 (4) The director may enter into joint examinations or
23 joint enforcement actions with other trust company supervisory
24 agencies having concurrent jurisdiction over any branch trust
25 office or representative trust office of an out-of-state state
26 trust company or any branch trust office or representative
27 trust office of a Nebraska state-chartered trust company in any

1 host state. The director may, at any time, take such actions
2 independently if he or she deems such actions to be necessary or
3 appropriate to carry out his or her responsibilities under the
4 act or to ensure compliance with Nebraska law. In the case of an
5 out-of-state state trust company, the director shall recognize the
6 exclusive jurisdiction of the home state regulator over corporate
7 government matters and the primary responsibility of the home state
8 regulator with respect to safety and soundness matters.

9 (5) The cost of any examination conducted under this
10 section shall be assessed against the out-of-state state trust
11 company in the manner set forth in ~~section 8-601~~ sections 12 and 13
12 of this act and paid for by the out-of-state state trust company.

13 Sec. 19. Section 8-2504, Revised Statutes Cumulative
14 Supplement, 2006, is amended to read:

15 8-2504 (1) The Department of Banking and Finance may
16 order any person to cease and desist whenever the Director of
17 Banking and Finance determines that such person has violated
18 section 8-2501 or 8-2502. Upon entry of a cease and desist order,
19 the director shall promptly notify the affected person that such
20 order has been entered and provide opportunity for hearing in
21 accordance with the Administrative Procedure Act.

22 (2) If a person violates section 8-2501 or 8-2502
23 after receiving such cease and desist order, the director may,
24 following notice and opportunity for hearing in accordance with the
25 Administrative Procedure Act, impose a fine of up to one thousand
26 dollars for each violation, plus the costs of investigation. Each
27 instance in which a violation of section 8-2501 or 8-2502 takes

1 place after receiving a cease and desist order constitutes a
2 separate violation.

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

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

10 Sec. 20. Section 21-17,112, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 21-17,112 (1) A federal credit union organized under the
13 Federal Credit Union Act, 12 U.S.C. 1753 et seq., and meeting all
14 the requirements to become a state credit union organized under the
15 Credit Union Act may, with the approval of the department and in
16 compliance with the applicable law under which it was organized,
17 be converted into a state credit union organized under the Credit
18 Union Act. The required articles of association may be executed
19 by a majority of the board of directors of the converting credit
20 union and presented to the department for appropriate examination
21 and approval. A majority of the directors, after executing the
22 articles of association in duplicate, may execute all other papers,
23 including the adoption of bylaws for the general government of the
24 credit union consistent with the Credit Union Act, and do whatever
25 may be required to complete its conversion.

26 (2) The board of directors of the converting credit union
27 may continue to be directors of the credit union. If the director

1 approves the articles of association as presented by the board
2 of directors, the director shall notify the board of directors
3 of his or her decision and shall immediately issue a certificate
4 of approval attached to the duplicate articles of association and
5 return it to the credit union. The certificate shall indicate that
6 the laws of this state have been complied with and that the credit
7 union and all its members, officials, and employees shall have
8 the same rights, powers, and privileges and shall be subject to
9 the same duties, liabilities, and obligations in all respects, as
10 shall be applicable to credit unions originally organized under the
11 Credit Union Act.

12 (3) The approval of the department shall be based on
13 an examination of the credit union and the proceedings had by
14 its board of directors and members with respect to conversion.
15 A conversion shall not be made to defeat or defraud any of the
16 creditors of the credit union. The expenses of an examination,
17 which shall be computed in accordance with ~~section 8-601~~, sections
18 12 and 13 of this act, shall be paid by the credit union.

19 (4) When the conversion becomes effective, all property
20 of the converted credit union, including all its right, title,
21 and interest in and to all property of whatsoever kind, whether
22 real, personal, or mixed, and things in action, and every right,
23 privilege, interest, and asset of any conceivable value or benefit
24 then existing, belonging, or pertaining to it, or which would inure
25 to it, shall immediately by act of law and without any conveyance
26 or transfer, and without any further act or deed, be vested in
27 and remain the property of the converted credit union, which shall

1 have, hold, and enjoy the property in its own right as fully and
2 to the same extent as the property was previously possessed, held,
3 and enjoyed by it. The converted credit union shall be deemed to
4 be a continuation of the same entity. All the rights, obligations,
5 and relations of the credit union to or in respect to any person,
6 estate, creditor, member, trustee, or beneficiary of any trust
7 or fiduciary function shall remain unimpaired. The credit union
8 shall continue to hold all the rights, obligations, relations, and
9 trusts, and the duties and liabilities connected therewith, and
10 shall execute and perform every trust and relation in the same
11 manner as if it had after the conversion assumed the trust or
12 relation and obligation and liabilities connected with the trust or
13 relation.

14 Sec. 21. Section 21-17,115, Revised Statutes Cumulative
15 Supplement, 2006, is amended to read:

16 21-17,115 Notwithstanding any of the other provisions of
17 the Credit Union Act or any other Nebraska statute, any credit
18 union incorporated under the laws of the State of Nebraska and
19 organized under the provisions of the act shall have all the
20 rights, powers, privileges, benefits, and immunities which may
21 be exercised as of ~~April 7, 2006~~, the operative date of this
22 section, by a federal credit union doing business in Nebraska on
23 the condition that such rights, powers, privileges, benefits, and
24 immunities shall not relieve such credit union from payment of
25 state taxes assessed under any applicable laws of this state.

26 Sec. 22. Section 30-3805, Revised Statutes Cumulative
27 Supplement, 2006, is amended to read:

1 30-3805 (UTC 105) (a) Except as otherwise provided in the
2 terms of the trust, the Nebraska Uniform Trust Code governs the
3 duties and powers of a trustee, relations among trustees, and the
4 rights and interests of a beneficiary.

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

7 (1) the requirements for creating a trust;

8 (2) the duty of a trustee to act in good faith and
9 in accordance with the terms and purposes of the trust and the
10 interests of the beneficiaries;

11 (3) the requirement that a trust and its terms be for the
12 benefit of its beneficiaries, and that the trust have a purpose
13 that is lawful, not contrary to public policy, and possible to
14 achieve;

15 (4) the power of the court to modify or terminate a trust
16 under sections 30-3836 to 30-3842;

17 (5) the effect of a spendthrift provision and the rights
18 of certain creditors and assignees to reach a trust as provided in
19 sections 30-3846 to 30-3852;

20 (6) the power of the court under section 30-3858 to
21 require, dispense with, or modify or terminate a bond;

22 (7) the power of the court under subsection (b) of
23 section 30-3864 to adjust a trustee's compensation specified in the
24 terms of the trust;

25 (8) the duty under subsection (a) of section 30-3878 to
26 keep the qualified beneficiaries of the trust reasonably informed
27 about the administration of the trust and of the material facts

1 necessary for them to protect their interests, and to respond to
2 the request of a qualified beneficiary of an irrevocable trust for
3 trustee's reports and other information reasonably related to the
4 administration of a trust;

5 (9) the effect of an exculpatory term under section
6 30-3897;

7 (10) the rights under sections 30-3899 to 30-38,107 of a
8 person other than a trustee or beneficiary;

9 (11) periods of limitation for commencing a judicial
10 proceeding;

11 (12) the power of the court to take such action and
12 exercise such jurisdiction as may be necessary in the interests of
13 justice;

14 (13) the subject matter jurisdiction of the court and
15 venue for commencing a proceeding as provided in sections 30-3814
16 and 30-3815;

17 (14) the power of a court under subdivision (a)(1) of
18 section 30-3807; and

19 (15) the power of a court to review the action or the
20 proposed action of the trustee for an abuse of discretion.

21 Sec. 23. Section 30-3846, Revised Statutes Cumulative
22 Supplement, 2006, is amended to read:

23 30-3846 (UTC 501) To the extent a beneficiary's interest
24 is not ~~protected by~~ subject to a spendthrift provision, the
25 court may authorize a creditor or assignee of the beneficiary
26 to reach the beneficiary's interest by attachment of present or
27 future distributions to or for the benefit of the beneficiary or

1 other means. The court may limit the award to such relief as is
2 appropriate under the circumstances.

3 Sec. 24. Section 30-3848, Revised Statutes Cumulative
4 Supplement, 2006, is amended to read:

5 30-3848 (UTC 503) (a) In this section, "child" includes
6 any person for whom an order or judgment for child support has been
7 entered in this or another state.

8 ~~(b) Even if a trust contains a spendthrift provision, a~~
9 ~~beneficiary's child, spouse, or former spouse who has a judgment or~~
10 ~~court order against the beneficiary for support or maintenance, or~~
11 ~~a judgment creditor who has provided services for the protection~~
12 ~~of a beneficiary's interest in the trust, may obtain from a court~~
13 ~~an order attaching present or future distributions to or for the~~
14 ~~benefit of the beneficiary.~~

15 ~~(c) A spendthrift provision is unenforceable against a~~
16 ~~claim of this state or the United States to the extent a statute of~~
17 ~~this state or federal law so provides.~~

18 (b) A spendthrift provision is unenforceable against:

19 (1) a beneficiary's child, spouse, or former spouse who
20 has a judgment or court order against the beneficiary for support
21 or maintenance;

22 (2) a judgment creditor who has provided services for the
23 protection of a beneficiary's interest in the trust; and

24 (3) a claim of this state or the United States to the
25 extent a statute of this state or federal law so provides.

26 (c) A claimant against which a spendthrift provision
27 cannot be enforced may obtain from a court an order attaching

1 present or future distributions to or for the benefit of the
2 beneficiary. The court may limit the award to such relief as is
3 appropriate under the circumstances.

4 Sec. 25. Section 30-3849, Revised Statutes Cumulative
5 Supplement, 2006, is amended to read:

6 30-3849 (UTC 504) (a) In this section, "child" includes
7 any person for whom an order or judgment for child support has been
8 entered in this or another state.

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

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

15 (2) the trustee has abused the discretion.

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

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

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

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

5 (e) If the trustee's or cotrustee's discretion to make
6 distributions for the trustee's or cotrustee's own benefit is
7 limited by an ascertainable standard, a creditor may not reach
8 or compel distribution of the beneficial interest except to the
9 extent the interest would be subject to the creditor's claim were
10 the beneficiary not acting as trustee or cotrustee. A creditor may
11 not reach the interest of a beneficiary who is also a trustee or
12 cotrustee, or otherwise compel a distribution, if the trustee's
13 discretion to make distributions for the trustee's own benefit is
14 limited by an ascertainable standard.

15 Sec. 26. Section 30-3851, Revised Statutes Cumulative
16 Supplement, 2006, is amended to read:

17 30-3851 (UTC 506) (a) In this section, "mandatory
18 distribution" means a distribution of income or principal which the
19 trustee is required to make to a beneficiary under the terms of the
20 trust, including a distribution upon termination of the trust. The
21 term does not include a distribution subject to the exercise of
22 the trustee's discretion even if (1) the discretion is expressed
23 in the form of a standard of distribution or (2) the terms of the
24 trust authorizing a distribution couple language of discretion with
25 language of direction.

26 (b) Whether or not a trust contains a spendthrift
27 provision, a creditor or assignee of a beneficiary may reach

1 a mandatory distribution of income or principal, including a
2 distribution upon termination of the trust, if the trustee has not
3 made the distribution to the beneficiary within a reasonable time
4 after the designated distribution date.

5 Sec. 27. Section 30-3867, Revised Statutes Cumulative
6 Supplement, 2006, is amended to read:

7 30-3867 (UTC 802) (a) A trustee shall administer the
8 trust solely in the interests of the beneficiaries.

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

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

18 (2) the transaction was approved by the court;

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

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

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

27 (c) A sale, encumbrance, or other transaction involving

1 the investment or management of trust property is presumed to be
2 affected by a conflict between personal and fiduciary interests if
3 it is entered into by the trustee with:

4 (1) the trustee's spouse;

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

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

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

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

17 (e) (1) The following transactions shall not be presumed
18 to be affected by a conflict between the personal and fiduciary
19 interests of a trustee, if the transaction and any investment made
20 pursuant to the transaction complies with the prudent investor
21 rule set forth in sections 30-3883 to 30-3889 and is in the best
22 interests of the beneficiaries:

23 (A) an investment by a trustee in securities of an
24 investment company or investment trust to which the trustee or its
25 affiliate provides services in a capacity other than as trustee; or

26 (B) the placing of securities transactions by a trustee
27 through a securities broker that is part of the same company as

1 the trustee, is owned by the trustee, or is affiliated with the
2 trustee.

3 (2) In addition to the trustee's fees charged to the
4 trust, the trustee, its affiliate, or its associated entity may
5 be reasonably compensated for any transaction or provision of
6 services described in this subsection performed by the trustee,
7 its affiliate, or its associated entity. However, with respect to
8 any investment in securities of an investment company or investment
9 trust to which the trustee or its affiliate provides investment
10 advisory or investment management services, the trustee shall, at
11 least annually, notify the persons entitled under section 30-3878
12 to receive a copy of the trustee's annual report of the rate and
13 method by which the compensation was determined.

14 (e) An investment by a trustee in securities of an
15 investment company or investment trust to which the trustee, or its
16 affiliate, provides services in a capacity other than as trustee
17 is not presumed to be affected by a conflict between personal and
18 fiduciary interests if the investment otherwise complies with the
19 prudent investor rule set forth in sections 30-3883 to 30-3889. In
20 addition to its compensation for acting as trustee, the trustee
21 may be compensated by the investment company or investment trust
22 for providing those services out of fees charged to the trust. If
23 the trustee receives compensation from the investment company or
24 investment trust for providing investment advisory or investment
25 management services, the trustee shall at least annually notify
26 the persons entitled under section 30-3878 to receive a copy of
27 the trustee's annual report of the rate and method by which that

1 ~~compensation was determined.~~

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

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

11 (1) an agreement between a trustee and a beneficiary
12 relating to the appointment or compensation of the trustee;

13 (2) payment of reasonable compensation to the trustee;

14 (3) a transaction between a trust and another trust,
15 decedent's estate, or conservatorship of which the trustee is a
16 fiduciary or in which a beneficiary has an interest;

17 (4) a deposit of trust money in a regulated
18 financial-service institution operated by the trustee; or

19 (5) an advance by the trustee of money for the protection
20 of the trust.

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

24 Sec. 28. Section 30-38,110, Revised Statutes Cumulative
25 Supplement, 2006, is amended to read:

26 30-38,110 (UTC 1106) (a) Except as otherwise provided in
27 the Nebraska Uniform Trust Code, on January 1, 2005:

1 (1) the code applies to all trusts created before, on, or
2 after January 1, 2005;

3 (2) the code applies to all judicial proceedings
4 concerning trusts commenced on or after January 1, 2005;

5 (3) the code applies to judicial proceedings concerning
6 trusts commenced before January 1, 2005, unless the court finds
7 that application of a particular provision of the code would
8 substantially interfere with the effective conduct of the judicial
9 proceedings or prejudice the rights of the parties, in which
10 case the particular provision of the code does not apply and the
11 superseded law applies; and

12 (4) an act done before January 1, 2005, is not affected
13 by the code.

14 (b) If a right is acquired, extinguished, or barred
15 upon the expiration of a prescribed period that has commenced to
16 run under any other statute before January 1, 2005, that statute
17 continues to apply to the right even if it has been repealed or
18 superseded.

19 (c) Any reference to the powers authorized under the
20 Nebraska Trustees' Powers Act as such act existed prior to January
21 1, 2005, is deemed to be a reference to the powers authorized under
22 the Nebraska Uniform Trust Code.

23 (d) Subsection (a) of section 30-3838, section 30-3839,
24 ~~subsection (b) of section 30-3848,~~ subsection (c) of section
25 30-3849, and subdivision (b)(1) of section 30-3879 apply only to
26 trusts which become irrevocable on or after January 1, 2005.

27 Sec. 29. Section 45-191.01, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 45-191.01 (1) At least forty-eight hours before the
3 borrower signs a loan brokerage agreement, the loan broker shall
4 give the borrower a written disclosure statement. The cover sheet
5 of the disclosure statement shall have printed, in at least
6 ten-point boldface capital letters, the title DISCLOSURES REQUIRED
7 BY NEBRASKA LAW. The following statement, printed in at least
8 ten-point type, shall appear under the title:

9 THE STATE OF NEBRASKA HAS NOT REVIEWED AND DOES NOT
10 APPROVE, RECOMMEND, ENDORSE, OR SPONSOR ANY LOAN BROKERAGE
11 AGREEMENT. THE INFORMATION CONTAINED IN THIS DISCLOSURE DOCUMENT
12 HAS NOT BEEN VERIFIED BY THE STATE. IF YOU HAVE QUESTIONS, SEEK
13 LEGAL ADVICE BEFORE YOU SIGN A LOAN BROKERAGE AGREEMENT.

14 Only the title and the statement shall appear on the
15 cover sheet.

16 (2) The body of the disclosure statement shall contain
17 the following information:

18 (a) The name, and street address, and telephone number of
19 the loan broker, the names under which the loan broker does, has
20 done, or intends to do business, and the name and street address
21 of any parent or affiliated company, and the electronic mail and
22 Internet address of the loan broker, if any;

23 (b) A statement as to whether the loan broker does
24 business as an individual, partnership, corporation, or other
25 organizational form, including identification of the state of
26 incorporation or formation;

27 (c) How long the loan broker has done business;

1 (d) The number of loan brokerage agreements the loan
2 broker has entered into in the previous twelve months;

3 (e) The number of loans the loan broker has obtained for
4 borrowers in the previous twelve months;

5 (f) A description of the services the loan broker agrees
6 to perform for the borrower;

7 (g) The conditions under which the borrower is obligated
8 to pay the loan broker. This disclosure shall be in boldface type;

9 (h) The names, titles, and principal occupations for
10 the past five years of all officers, directors, or persons
11 occupying similar positions responsible for the loan broker's
12 business activities;

13 (i) A statement whether the loan broker or any person
14 identified in subdivision (h) of this subsection:

15 (i) Has been convicted of a felony or misdemeanor or
16 pleaded nolo contendere to a felony or misdemeanor charge if
17 such felony or misdemeanor involved fraud, embezzlement, fraudulent
18 conversion, or misappropriation of property;

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

26 (iii) Is subject to any currently effective injunction or
27 restrictive order relating to business activity as the result of an

1 action brought by a public agency or department including, but not
2 limited to, action affecting any vocational license; and

3 (j) Any other information the director requires.

4 Sec. 30. Section 45-191.04, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 45-191.04 (1) A loan brokerage agreement shall be in
7 writing and shall be signed by the loan broker and the borrower.
8 The loan broker shall furnish the borrower a copy of such signed
9 loan brokerage agreement at the time the borrower signs it.

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

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

18 (a) The terms and conditions of payment;

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

22 (c) The loan broker's principal business address,
23 telephone number, and electronic mail and Internet address, if any,
24 and the name, and address, telephone number, and electronic mail
25 and Internet address, if any, of its agent in the State of Nebraska
26 authorized to receive service of process;

27 (d) The business form of the loan broker, whether a

1 corporation, partnership, limited liability company, or otherwise;
2 and

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

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

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

22 Sec. 31. Section 45-334, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 45-334 Sections 45-334 to 45-353 and section 35 of this
25 act shall be known and may be cited as the Nebraska Installment
26 Sales Act.

27 Sec. 32. Section 45-340, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 45-340 Installment contracts negotiated and entered into
3 by mail without personal solicitation by salesmen or other
4 representatives of the seller and based upon the catalog of
5 the seller or other printed solicitation of business, which is
6 distributed and made available generally to the public, if such
7 catalog or other printed solicitation clearly sets forth the
8 cash and time-sale prices and other terms of sales to be made
9 through such medium, may be made as provided in this section. All
10 provisions of ~~sections 45-334 to 45-353~~ the Nebraska Installment
11 Sales Act shall apply to such sales except that the seller shall
12 not be required to deliver a copy of the contract to the buyer as
13 provided in section 45-336 and if the contract when received by
14 the seller contains any blank spaces the seller may insert in the
15 appropriate blank space the amounts of money and other terms which
16 are set forth in the seller's catalog or other printed solicitation
17 which is then in effect. In lieu of sending the buyer a copy of the
18 contract as provided in section 45-336, the seller shall furnish to
19 the buyer a written statement of any items inserted in the blank
20 spaces in the contract received from the buyer.

21 Sec. 33. Section 45-344, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 45-344 If any seller or sales finance company, in the
24 making or collection of an installment contract, shall, directly
25 or indirectly, contract for, take, or receive charges in excess
26 of those authorized by ~~sections 45-334 to 45-353~~ the Nebraska
27 Installment Sales Act except as a result of an accidental and bona

1 fide error such contract shall be void and uncollectible as to
2 (1) all of the excessive portion of the time-price differential,
3 (2) the first one thousand dollars of the time-price differential
4 authorized by section 45-338, and (3) the first four thousand
5 dollars of the principal of the contract. If any seller or sales
6 finance company violates any provision of ~~sections 45-334 to~~
7 ~~45-353,~~ the act, other than the violations described above, except
8 as a result of an accidental and bona fide error, such installment
9 contract shall be void and uncollectible as to the first five
10 hundred dollars of the time-price differential and the first one
11 thousand dollars of the principal of such contract. If any of such
12 money has been paid by the buyer, such buyer or his or her assignee
13 may recover under ~~sections 45-334 to 45-353~~ the act in a civil
14 suit brought within one year after the due date, or any extension
15 thereof, of the last installment of the contract.

16 Sec. 34. Section 45-346, Revised Statutes Cumulative
17 Supplement, 2006, is amended to read:

18 45-346 (1) Each place of business operating under a
19 license under the Nebraska Installment Sales Act shall have
20 and properly display therein a nontransferable and nonassignable
21 license. The same person may obtain additional licenses upon
22 compliance with the act as to each license.

23 (2) Application for a license shall be on a form
24 prescribed and furnished by the director and shall include audited
25 financial statements showing a minimum net worth of one hundred
26 thousand dollars. If the applicant is an individual or a sole
27 proprietorship, the application shall include the applicant's

1 social security number.

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

6 (3) An applicant for a license shall file with the
7 Department of Banking and Finance a surety bond in the amount of
8 fifty thousand dollars, furnished by a surety company authorized to
9 do business in this state. The bond shall be for the use of the
10 State of Nebraska and any Nebraska resident who may have claims or
11 causes of action against the applicant. The surety may cancel the
12 bond only upon thirty days' written notice to the director.

13 (4) A license fee of one hundred fifty dollars shall be
14 submitted along with each application.

15 (5) The license year shall begin on October 1 of each
16 year. Each license shall remain in force until revoked, suspended,
17 canceled, expired, or surrendered.

18 ~~(4)~~ (6) The director shall, after an application has been
19 filed for a license under the act, investigate the facts, and
20 if he or she finds that the experience, character, and general
21 fitness of the applicant, of the members thereof if the applicant
22 is a corporation or association, and of the officers and directors
23 thereof if the applicant is a corporation, are such as to warrant
24 belief that the business will be operated honestly, fairly, and
25 efficiently within the purpose of the act, the director shall issue
26 and deliver a license to the applicant to do business as a sales
27 finance company in accordance with the license and the act. The

1 director shall have the power to reject for cause any application
2 for a license.

3 ~~(5)~~ (7) The director shall, within his or her discretion,
4 make an examination and inspection concerning the propriety of
5 the issuance of a license to any applicant. The cost of such
6 examination and inspection shall be borne by the applicant.

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

11 ~~(7)~~ (8) If a change of control of a licensee is proposed,
12 a new application for a license shall be submitted to the
13 Department of Banking and Finance, department. Control in the
14 case of a corporation means (a) direct or indirect ownership of
15 or the right to control twenty-five percent or more of the voting
16 shares of the corporation or (b) the ability of a person or group
17 acting in concert to elect a majority of the directors or otherwise
18 effect a change in policy. Control in the case of any other entity
19 means any change in the principals of the organization, whether
20 active or passive.

21 Sec. 35. (1) A licensee may move its place of business
22 from one place to another within a county without obtaining a
23 new license, if the licensee gives written notice thereof to the
24 director at least ten days prior to such move.

25 (2) A licensee shall maintain the minimum net worth
26 as required by section 45-346 while a license issued under the
27 Nebraska Installment Sales Act is in effect. The minimum net

1 worth shall be proven by an annual audit conducted by a certified
2 public accountant. A licensee shall submit a copy of the annual
3 audit to the director within forty-five days after the audit is
4 completed. If a licensee fails to maintain the required minimum net
5 worth, the Department of Banking and Finance may issue a notice of
6 cancellation of the license in lieu of revocation proceedings.

7 (3) The surety bond or a substitute bond as required by
8 section 45-346 shall remain in effect while a license issued under
9 the Nebraska Installment Sales Act is in effect. If a licensee
10 fails to maintain a surety bond or substitute bond, the licensee
11 shall immediately cease doing business and surrender the license
12 to the department. If the licensee does not surrender the license,
13 the department may issue a notice of cancellation of the license in
14 lieu of revocation proceedings.

15 (4) Until October 1, 2008, a licensee licensed prior to
16 the effective date of this act may operate with no net worth or
17 bonding requirement as provided for at the time such licensee was
18 originally licensed.

19 Sec. 36. Section 45-347, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 45-347 All money collected under the authority of the
22 Nebraska Installment Sales Act shall be remitted to the State
23 Treasurer for credit to the Financial Institution Assessment Cash
24 Fund. ~~pursuant to sections 8-601 and 8-602.~~

25 Sec. 37. Section 45-351, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 45-351 (1) The Department of Banking and Finance shall

1 be charged with the duty of inspecting the business, records, and
2 accounts of all persons who engage in the business of a sales
3 finance company subject to the Nebraska Installment Sales Act.
4 The director shall have the power to appoint examiners who shall,
5 under his or her direction, investigate the installment contracts
6 and business and examine the books and records of licensees when
7 the director shall so determine. Such examinations shall not be
8 conducted more often than annually except as provided in subsection
9 (2) of this section.

10 (2) The director or his or her duly authorized
11 representative shall have the power to make such investigations as
12 he or she shall deem necessary, and to the extent necessary for
13 this purpose, he or she may examine such licensee or any other
14 person and shall have the power to compel the production of all
15 relevant books, records, accounts, and documents.

16 (3) The expenses of the director incurred in the
17 examination of the books and records of licensees, ~~including~~
18 ~~the expenses of travel incurred in the examination of books and~~
19 ~~records of licensees located outside Nebraska,~~ shall be charged to
20 the licensees ~~so examined by the director as soon as reasonably~~
21 ~~possible. Each licensee shall be billed by the director for the~~
22 ~~amount so charged to such licensee. If such charge is not paid~~
23 ~~within thirty days after the mailing of such bill, the license of~~
24 ~~such licensee may be suspended or revoked. as set forth in sections~~
25 12 and 13 of this act. The director may charge the costs of an
26 investigation of a nonlicensed person to such person, and such
27 costs shall be paid within thirty days after receipt of billing.

1 (4) Upon receipt by a licensee of a notice of
2 investigation or inquiry request for information from the
3 department, the licensee shall respond within twenty-one calendar
4 days. Each day a licensee fails to respond as required by this
5 subsection shall constitute a separate violation.

6 (5) If the director finds, after notice and opportunity
7 for hearing in accordance with the Administrative Procedure Act,
8 that any person has willfully and intentionally violated any
9 provision of the Nebraska Installment Sales Act, any rule or
10 regulation adopted and promulgated under the act, or any order
11 issued by the director under the act, the director may order such
12 person to pay (a) an administrative fine of not more than one
13 thousand dollars for each separate violation and (b) the costs of
14 investigation. All fines collected by the department pursuant to
15 this subsection shall be remitted to the State Treasurer for credit
16 to the permanent school fund.

17 (6) If a person fails to pay an administrative fine and
18 the costs of investigation ordered pursuant to subsection (5) of
19 this section, a lien in the amount of such fine and costs may be
20 imposed upon all assets and property of such person in this state
21 and may be recovered in a civil action by the director. The lien
22 shall attach to the real property of such person when notice of the
23 lien is filed and indexed against the real property in the office
24 of the register of deeds in the county where the real property is
25 located. The lien shall attach to any other property of such person
26 when notice of the lien is filed against the property in the manner
27 prescribed by law. Failure of the person to pay such fine and costs

1 shall constitute a separate violation of the Nebraska Installment
2 Sales Act.

3 Sec. 38. Section 45-352, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 45-352 The director shall have the power to make such
6 general rules and regulations and specific rulings, demands, and
7 findings as may be necessary for the proper conduct of the business
8 licensed under ~~sections 45-334 to 45-353,~~ the Nebraska Installment
9 Sales Act, and the enforcement of ~~sections 45-334 to 45-353,~~ the
10 act, in addition thereto and not inconsistent therewith.

11 Sec. 39. Section 45-353, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 45-353 (1) Whenever the director has reasonable cause
14 to believe that any person is violating or is threatening to or
15 intends to violate any of the provisions of ~~sections 45-334 to~~
16 ~~45-353,~~ the Nebraska Installment Sales Act, he or she may, in
17 addition to all actions provided for in ~~sections 45-334 to 45-353~~
18 the act and without prejudice thereto, enter an order requiring
19 such person to desist or to refrain from such violation. An action
20 may also be brought, on the relation of the Attorney General or the
21 director, to enjoin such person from engaging in or continuing such
22 violation or from doing any act or acts in furtherance thereof.

23 (2) In any such action an order or judgment may be
24 entered awarding such preliminary or final injunction as may be
25 deemed proper. In addition to all other means provided by law for
26 the enforcement of a restraining order or injunction, the court,
27 in which such action is brought, shall have power and jurisdiction

1 to impound and appoint a receiver for the property and business
2 of the defendant, including books, papers, documents, and records
3 pertaining thereto or so much thereof as the court may deem
4 reasonably necessary to prevent violations of ~~sections 45-334 to~~
5 ~~45-353~~ the act through or by means of the use of such property
6 and business. Such receiver, when so appointed and qualified,
7 shall have such powers and duties as to custody, collection,
8 administration, winding up and liquidation of such property and
9 business as shall, from time to time, be conferred upon him or her
10 by the court.

11 Sec. 40. Section 45-701, Revised Statutes Cumulative
12 Supplement, 2006, is amended to read:

13 45-701 Sections 45-701 to 45-721 and sections 49 and 50
14 of this act shall be known and may be cited as the Mortgage Bankers
15 Registration and Licensing Act.

16 Sec. 41. Section 45-702, Revised Statutes Cumulative
17 Supplement, 2006, is amended to read:

18 45-702 For purposes of the Mortgage Bankers Registration
19 and Licensing Act:

20 (1) Borrower means the mortgagor or mortgagors under a
21 real estate mortgage or the trustor or trustors under a deed of
22 trust;

23 (2) Branch office means any location at which the
24 business of a mortgage banker is to be conducted, including (a) any
25 offices physically located in Nebraska, (b) any offices that, while
26 not physically located in this state, intend to transact business
27 with Nebraska residents, and (c) any third-party or home-based

1 locations that agents and representatives intend to use to transact
2 business with Nebraska residents;

3 (3) Breach of security of the system means unauthorized
4 acquisition of data that compromises the security, confidentiality,
5 or integrity of the information maintained by a multistate
6 licensing and application system, its affiliates, or subsidiaries;

7 (4) Control means the power, directly or indirectly,
8 to direct the management or policies of a mortgage banking
9 business, whether through ownership of securities, by contract,
10 or otherwise. Any person who (a) is a director, a general partner,
11 or an executive officer, including the president, chief executive
12 officer, chief financial officer, chief operating officer, chief
13 legal officer, chief compliance officer, and any individual with
14 similar status and function; (b) directly or indirectly has the
15 right to vote ten percent or more of a class of voting security
16 or has the power to sell or direct the sale of ten percent or
17 more of a class of voting securities; (c) in the case of a limited
18 liability company, is a managing member; or (d) in the case of a
19 partnership, has the right to receive, upon dissolution, or has
20 contributed, ten percent or more of the capital, is presumed to
21 control that mortgage banking business;

22 ~~(2)~~ (5) Department means the Department of Banking and
23 Finance;

24 ~~(3)~~ (6) Director means the Director of Banking and
25 Finance;

26 ~~(4)~~ (7) Financial institution means any person organized
27 or chartered under the laws of this state, any other state,

1 or the United States relating to banks, savings institutions,
2 trust companies, savings and loan associations, or credit unions.
3 Financial institution also means an industrial loan and investment
4 company chartered under the laws of any other state and subject to
5 similar supervision and regulation as a bank chartered under the
6 laws of this state;

7 ~~(5)~~ (8) Licensee means any person licensed under the act;

8 ~~(6)~~ (9) Mortgage banker means any person not exempt under
9 section 45-703 who, for compensation or gain or in the expectation
10 of compensation or gain, directly or indirectly makes, originates,
11 services, negotiates, acquires, sells, arranges for, or offers to
12 make, originate, service, negotiate, acquire, sell, or arrange for
13 ten or more mortgage loans in a calendar year;

14 ~~(7)~~ (10) Mortgage banking business means any person who
15 employs a mortgage banker or mortgage bankers or who directly or
16 indirectly makes, negotiates, acquires, sells, arranges for, or
17 offers to make, originate, service, negotiate, acquire, sell, or
18 arrange for ten or more mortgage loans in a calendar year for
19 compensation or gain or in the expectation of compensation or gain;

20 ~~(8)~~ (11) Mortgage loan means any loan or extension of
21 credit secured by a lien on real property, including a refinancing
22 of a contract of sale or an assumption or refinancing of a prior
23 loan or extension of credit;

24 (12) Multistate licensing and application system means
25 a residential real estate mortgage licensing system data base of
26 which the department is a member;

27 ~~(9)~~ (13) Offer means every attempt to provide, offer to

1 provide, or solicitation to provide a mortgage loan or any form of
2 mortgage banking business. Offer includes, but is not limited to,
3 all general and public advertising, whether made in print, through
4 electronic media, or by the Internet;

5 ~~(10)~~ (14) Person means an association, joint venture,
6 joint-stock company, partnership, limited partnership, limited
7 liability company, business corporation, nonprofit corporation,
8 individual, or any group of individuals however organized;

9 ~~(11)~~ (15) Real property means an owner-occupied
10 single-family, two-family, three-family, or four-family dwelling
11 which is located in this state, which is occupied, used, or
12 intended to be occupied or used for residential purposes, and which
13 is, or is intended to be, permanently affixed to the land;

14 ~~(12)~~ (16) Registered bank holding company means any bank
15 holding company registered with the department pursuant to the
16 Nebraska Bank Holding Company Act of 1995;

17 ~~(13)~~ (17) Registrant means a person registered pursuant
18 to section 45-704; and

19 ~~(14)~~ (18) Service means accepting payments or maintenance
20 of escrow accounts in the regular course of business in connection
21 with a mortgage loan.

22 Sec. 42. Section 45-705, Revised Statutes Cumulative
23 Supplement, 2006, is amended to read:

24 45-705 (1) No person shall act as a mortgage banker or
25 use the title mortgage banker in this state unless he, she, or it
26 is licensed or has registered with the department as provided in
27 the Mortgage Bankers Registration and Licensing Act or is licensed

1 under the Nebraska Installment Loan Act.

2 (2) Applicants for a license as a mortgage banker
3 shall submit to the department an application on forms ~~provided~~
4 prescribed by the department. The application shall include, but
5 not be limited to, (a) the applicant's corporate name and no
6 more than one trade name or doing business as designation, if
7 applicable, (b) the applicant's main office address, (c) all branch
8 office addresses at which business is to be conducted, ~~(e)~~ (d)
9 the names and titles of each director and principal officer of
10 the applicant, ~~(d)~~ (e) the names of all shareholders, partners, or
11 members of the applicant, ~~(e)~~ (f) a description of the activities
12 of the applicant in such detail as the department may require,
13 and ~~(f)~~ (g) if the applicant is an individual, his or her social
14 security number.

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

21 (4) The application ~~required by this section~~ for
22 a license as a mortgage banker shall be accompanied by an
23 application fee of four hundred dollars and, if applicable, a
24 seventy-five-dollar fee for each branch office listed in the
25 application and any processing fee allowed under subsection (3) of
26 section 45-715.

27 (5) The director may prescribe that the application for

1 a license as a mortgage banker include or be accompanied by, in
2 a manner as prescribed by the director, a background investigation
3 of each applicant by means of fingerprints and a check of his or
4 her criminal history record information maintained by the Federal
5 Bureau of Investigation through the Nebraska State Patrol. If the
6 applicant is a partnership, association, corporation, or other
7 form of business organization, the director may require a criminal
8 history record information check on each member, director, or
9 principal officer of each applicant or any individual acting
10 in the capacity of the manager of an office location. The
11 applicant shall be responsible for the direct costs associated
12 with criminal history record information checks performed. The
13 information obtained thereby may be used by the director to
14 determine the applicant's eligibility for licensing under this
15 section. Except as authorized pursuant to subsection (3) of section
16 45-715, receipt of criminal history record information by a private
17 person or entity is prohibited.

18 ~~(5)~~ (6) A license granted under the Mortgage Bankers
19 Registration and Licensing Act shall not be assignable.

20 (7) An application is deemed filed when accepted as
21 substantially complete by the director.

22 Sec. 43. Section 45-706, Revised Statutes Cumulative
23 Supplement, 2006, is amended to read:

24 45-706 (1) Upon the filing of an application for a
25 license, if the director finds that the character and general
26 fitness of the applicant, the members thereof if the applicant
27 is a partnership, limited liability company, association, or other

1 organization, and the officers, directors, and principal employees
2 if the applicant is a corporation are such that the business
3 will be operated honestly, soundly, and efficiently in the public
4 interest consistent with the purposes of the Mortgage Bankers
5 Registration and Licensing Act, the director shall issue a license
6 as a mortgage banker to the applicant. The director shall approve
7 or deny an application for a license within ninety days after ~~the~~
8 ~~filing of~~ (a) acceptance of the application; (b) and delivery of
9 the bond required under section 45-709; and (c) payment of the
10 required fee.

11 (2) If the director determines that the license should be
12 denied, the director shall notify the applicant in writing of the
13 denial and of the reasons for the denial. The director shall not
14 deny an application for a license because of the failure to submit
15 information required under the act or rules and regulations adopted
16 and promulgated under the act without first giving the applicant
17 an opportunity to correct the deficiency by supplying the missing
18 information. A decision of the director denying a license pursuant
19 to the act may be appealed, and the appeal shall be in accordance
20 with the Administrative Procedure Act. The director may deny an
21 application for a license if an officer, director, shareholder
22 owning five percent or more of the voting shares of the applicant,
23 partner, or member was convicted of, pleaded guilty to, or was
24 found guilty after a plea of nolo contendere to (a) a misdemeanor
25 under any state or federal law which involves dishonesty or fraud
26 or which involves any aspect of the mortgage banking business,
27 financial institution business, or installment loan business or (b)

1 any felony under state or federal law.

2 ~~(3)~~ (3)(a) All initial licenses shall remain in full
3 force and effect until the next succeeding March 1. Beginning
4 January 1, 2008, initial licenses shall remain in full force and
5 effect until the next succeeding December 31. Thereafter, licenses
6 may be renewed annually by filing with the director an application
7 for renewal containing such information as the director may require
8 to indicate any material change in the information contained
9 in the original application or succeeding renewal applications,
10 including the information required by subsection (3) of section
11 45-705. ~~For the annual renewal of an original license to conduct~~
12 ~~mortgage banking business under the Mortgage Bankers Registration~~
13 ~~and Licensing Act,~~ the fee shall be two hundred dollars.

14 (b) Except as provided in subdivision (3)(c) of this
15 section, for the annual renewal of a license to conduct a
16 mortgage banking business under the Mortgage Bankers Registration
17 and Licensing Act, the fee shall be two hundred dollars plus
18 seventy-five dollars for each branch office, if applicable, and any
19 processing fee allowed under subsection (3) of section 45-715.

20 (c) Licenses which expire on March 1, 2008, shall be
21 renewed until December 31, 2008, upon compliance with subdivision
22 (3)(a) of this section. For such renewals, the department shall
23 prorate the fees provided in subdivision (3)(b) of this section
24 using a factor of ten-twelfths.

25 (4) The director may require a licensee to maintain a
26 minimum net worth, proven by an audit conducted by a certified
27 public accountant, if the director determines that the financial

1 condition of the licensee warrants such a requirement or that the
2 requirement is in the public interest.

3 Sec. 44. Section 45-708, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 45-708 (1) Any person required to be licensed or
6 registered under the Mortgage Bankers Registration and Licensing
7 Act who, without first obtaining a license or registration under
8 the act or while such license is suspended, revoked, canceled, or
9 expired by the director, engages in the business of or occupation
10 of, advertises or holds himself or herself out as, claims to be, or
11 temporarily acts as a mortgage banker in this state is guilty of a
12 Class II misdemeanor.

13 (2) Any individual who has been convicted of, pleaded
14 guilty to, or found guilty after a plea of nolo contendere to
15 (a) a misdemeanor under any state or federal law which involves
16 dishonesty or fraud or which involves any aspect of the mortgage
17 banking business, financial institution business, or installment
18 loan business or (b) any felony under state or federal law, and is
19 employed by or maintains a contractual relationship as an agent of,
20 any person required to be licensed or registered under the Mortgage
21 Bankers Registration and Licensing Act, is guilty of a Class I
22 misdemeanor.

23 Sec. 45. Section 45-710, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 45-710 (1) The director may examine documents and records
26 maintained by a licensee. The director may investigate complaints
27 about a licensee. The director may investigate reports of alleged

1 violations of the Mortgage Bankers Registration and Licensing Act
2 or any rule, regulation, or order of the director under the act.

3 (2) Upon receipt by a licensee of the director's notice
4 of investigation or inquiry request for information, the licensee
5 shall respond within twenty-one calendar days. Each day beyond that
6 time a licensee fails to respond as required by this subsection
7 shall constitute a separate violation of the Mortgage Bankers
8 Registration and Licensing Act. This subsection shall not be
9 construed to require the director to send a notice of investigation
10 to a licensee or any person.

11 (3) In conducting an examination under this section, the
12 director may rely on reports made by the licensee which have
13 been prepared within the preceding twelve months for the following
14 federal agencies or federally related entities:

15 (a) The United States Department of Housing and Urban
16 Development;

17 (b) The Federal Housing Administration;

18 (c) The Federal National Mortgage Association;

19 (d) The Government National Mortgage Association;

20 (e) The Federal Home Loan Mortgage Corporation; or

21 (f) The United States Department of Veterans Affairs.

22 (4) If the director receives a complaint or other
23 information concerning noncompliance with the Mortgage Bankers
24 Registration and Licensing Act by an exempt person, the director
25 shall inform the agency having supervisory authority over the
26 exempt person of the complaint.

27 (5) The total charge for an examination or investigation

1 shall be paid by the licensee to the director within thirty days
2 after the director has requested payment. The amount of the fee
3 shall be based on the actual cost of the examination, including
4 travel expenses, as determined by the director. The director may
5 adopt and promulgate rules and regulations which provide for a
6 charge for late payment of the fee not to exceed fifty dollars per
7 day. as set forth in sections 12 and 13 of this act.

8 (6) Examination reports shall not be deemed public
9 records and may be withheld from the public pursuant to section
10 84-712.05.

11 (7) Complaint files shall be deemed public records.

12 Sec. 46. Section 45-711, Revised Statutes Cumulative
13 Supplement, 2006, is amended to read:

14 45-711 A licensee shall:

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

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

21 (3) Pay any penalty incurred by the borrower because
22 of the failure of the licensee to make the payments required
23 in subdivisions (1) and (2) of this section unless the licensee
24 establishes that the failure to timely make the payments was due
25 solely to the fact that the borrower was sent a written notice of
26 the amount due more than fifteen calendar days before the due date
27 to the borrower's last-known address and failed to timely remit the

1 amount due to the licensee;

2 (4) At least annually perform a complete escrow analysis.

3 If there is a change in the amount of the periodic payments, the
4 licensee shall mail written notice of such change to the borrower
5 at least twenty calendar days before the effective date of the
6 change in payment. The following information shall be provided to
7 the borrower, without charge, in one or more reports, at least
8 annually:

9 (a) The name and address of the licensee;

10 (b) The name and address of the borrower;

11 (c) A summary of the escrow account activity during the
12 year which includes all of the following:

13 (i) The balance of the escrow account at the beginning of
14 the year;

15 (ii) The aggregate amount of deposits to the escrow
16 account during the year; and

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

19 (A) Payments applied to loan principal;

20 (B) Payments applied to interest;

21 (C) Payments applied to real estate taxes;

22 (D) Payments for real property insurance premiums; and

23 (E) All other withdrawals; and

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

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

27 (ii) The aggregate amount of payments applied to

1 principal during the year; and

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

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

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

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

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

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

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

13 (b) Business reorganization;

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

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

19 (e) The licensee or any of the licensee's officers,
20 directors, shareholders, partners, members, employees, or agents
21 was convicted of, pleaded guilty to, or was found guilty after a
22 plea of nolo contendere to (i) a misdemeanor under state or federal
23 law which involves dishonesty or fraud or which involves any aspect
24 of the mortgage banking business, financial institution business,
25 or installment loan business or (ii) any felony under state or
26 federal law;

27 (f) A change of name, trade name, doing business as

1 designation, or main office address; ~~or~~

2 (g) The establishment ~~or closing~~ of a branch office.
3 located in Nebraska. Notice of such establishment shall be on
4 forms prescribed by the department and accompanied by a fee of
5 seventy-five dollars for each branch office; or

6 (h) The closing of a branch office.

7 Sec. 47. Section 45-714, Revised Statutes Cumulative
8 Supplement, 2006, is amended to read:

9 45-714 (1) A licensee, an officer, an employee, or an
10 agent of the licensee shall not:

11 (a) Assess a late charge if all payments due are received
12 before the date upon which late charges are authorized in the
13 underlying mortgage or deed of trust or other loan documents;

14 (b) Delay closing of a mortgage loan for the purpose
15 of increasing interest, costs, fees, or charges payable by the
16 borrower;

17 (c) Misrepresent or conceal material facts or make false
18 promises intended to influence, persuade, or induce an applicant
19 for a mortgage loan or a borrower to take a mortgage loan or cause
20 or contribute to such a misrepresentation by any person acting on a
21 licensee's or any other lender's behalf;

22 (d) Misrepresent to, or conceal from, an applicant for a
23 mortgage loan or a borrower material facts, terms, or conditions of
24 a mortgage loan to which the licensee is a party;

25 (e) Engage in any transaction, practice, or business
26 conduct that is not in good faith or that operates a fraud upon any
27 person in connection with the making of any mortgage loan;

1 (f) Receive compensation for acting as a mortgage banker
2 if the licensee has otherwise acted as a real estate broker
3 or agent in connection with the sale of the real estate which
4 secures the mortgage loan unless the licensee has provided written
5 disclosure to the person from whom compensation is collected
6 that the licensee is receiving compensation both for acting as a
7 mortgage banker and for acting as a real estate broker or agent;

8 (g) Advertise, display, distribute, broadcast, televise,
9 or cause or permit to be advertised, displayed, distributed,
10 broadcasted, or televised, in any manner, including by the
11 Internet, any false, misleading, or deceptive statement or
12 representation with regard to rates, terms, or conditions for a
13 mortgage loan or any false, misleading, or deceptive statement
14 regarding the qualifications of the licensee or of any officer,
15 employee, or agent thereof;

16 (h) Record a lien on real property if money is not
17 available for the immediate disbursement to the borrower unless,
18 before that recording, the licensee (i) informs the borrower in
19 writing of the reason for the delay and of a definite date by which
20 disbursement shall be made and (ii) obtains the borrower's written
21 permission for the delay unless the delay is required by any other
22 state or federal law;

23 (i) Fail to account for or deliver to any person personal
24 property obtained in connection with the mortgage banking business,
25 including, but not limited to, money, funds, deposits, checks,
26 drafts, mortgages, or other documents or things of value which the
27 licensee was not entitled to retain;

1 (j) Fail to disburse, without just cause, any funds in
2 accordance with any agreement connected with the mortgage banking
3 business;

4 (k) Collect fees and charges on funds other than new
5 funds if the licensee makes a mortgage loan to refinance an
6 existing mortgage loan to a current borrower of the licensee
7 within twelve months after the previous mortgage loan made by the
8 licensee;

9 (l) Assess any fees against the borrower other than
10 those which are reasonable and necessary, including actual charges
11 incurred in connection with the making, closing, disbursing,
12 servicing, extending, transferring, or renewing of a loan,
13 including, but not limited to, (i) prepayment charges, (ii)
14 delinquency charges, (iii) premiums for hazard, private mortgage,
15 disability, life, or title insurance, (iv) fees for escrow
16 services, appraisal services, abstracting services, title services,
17 surveys, inspections, credit reports, notary services, and
18 recording of documents, (v) origination fees, (vi) interest on
19 interest after default, and (vii) costs and charges incurred for
20 determining qualification for the loan proceeds and disbursement
21 of the loan proceeds;

22 (m) Allow the borrower to finance, directly or
23 indirectly, (i) any credit life, credit accident, credit health,
24 credit personal property, or credit loss-of-income insurance or
25 debt suspension coverage or debt cancellation coverage, whether or
26 not such coverage is insurance under applicable law, that provides
27 for cancellation of all or part of a borrower's liability in the

1 event of loss of life, health, personal property, or income or in
2 the case of accident written in connection with a mortgage loan
3 or (ii) any life, accident, health, or loss-of-income insurance
4 without regard to the identity of the ultimate beneficiary of such
5 insurance. For purposes of this section, any premiums or charges
6 calculated and paid on a periodic basis that are not added to the
7 principal of the loan shall not be considered financed directly or
8 indirectly by the creditor;

9 (n) Falsify any documentation relating to a mortgage loan
10 or a mortgage loan application;

11 (o) Recommend or encourage default on an existing loan or
12 other debt prior to and in connection with the closing or planned
13 closing of a mortgage loan that refinances all or any portion of
14 such existing loan or debt; ~~or~~

15 (p) Borrow money from, personally loan money to, or
16 guarantee any loan made to any customer or applicant for a mortgage
17 loan; or -

18 (q) Obtain a signature on a document required to be
19 notarized in connection with a mortgage loan or a mortgage loan
20 application unless the qualified notary public performing the
21 notarization is physically present at the time the signature is
22 obtained.

23 (2) Any person who violates any provision of subsection
24 (1) of this section is guilty of a Class III misdemeanor.

25 (3) Any person who violates any provision of subsection
26 (1) of this section is liable to the applicant for a mortgage
27 loan or to the borrower for the fees, costs, and charges incurred

1 in connection with obtaining or attempting to obtain the mortgage
2 loan, damages resulting from such violation, interest on the
3 damage from the date of the violation, and court costs, including
4 reasonable attorney's fees.

5 Sec. 48. Section 45-715, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 45-715 (1) The department shall be responsible for the
8 administration and enforcement of the Mortgage Bankers Registration
9 and Licensing Act.

10 (2) The department may adopt and promulgate such rules
11 and regulations as it may deem necessary in the administration of
12 the act and not inconsistent with the act. The department shall
13 make a good faith effort to provide a copy of the notice of hearing
14 as required by section 84-907 in a timely manner to all licensees.
15 Such notice may be sent electronically to licensees.

16 (3) The department may participate in a multistate
17 licensing and application system for mortgage lenders and mortgage
18 bankers involving one or more states, the District of Columbia, or
19 the Commonwealth of Puerto Rico. The system shall be established to
20 facilitate the sharing of regulatory information and the licensing
21 and application processes, by electronic or other means. The
22 department may allow such system to collect licensing fees on
23 behalf of the department, allow such system to collect a processing
24 fee for the services of the system directly from each applicant for
25 a license, and allow such system to process and maintain records on
26 behalf of the department, including information collected pursuant
27 to subsection (5) of section 45-705.

1 Sec. 49. (1) No person acting personally or as an agent
2 shall acquire control of any mortgage banking business required to
3 be licensed under the Mortgage Bankers Registration and Licensing
4 Act without first giving sixty days' notice to the department on
5 forms prescribed by the department of such proposed acquisition and
6 paying a filing fee of two hundred dollars.

7 (2) The director, upon receipt of such notice, shall act
8 upon it within thirty days and, unless he or she disapproves the
9 proposed acquisition within that period of time, the acquisition
10 shall become effective on the sixty-first day after receipt without
11 the director's approval, except that the director may extend
12 the thirty-day period an additional thirty days if, in his or
13 her judgment, any material information submitted is substantially
14 inaccurate or the acquiring party has not furnished all the
15 information required by the department.

16 (3) An acquisition may be made prior to the expiration of
17 the disapproval period if the director issues written notice of his
18 or her intent not to disapprove the action.

19 (4) (a) The director may disapprove any proposed
20 acquisition if:

21 (i) The financial condition of any acquiring person is
22 such as might jeopardize the financial stability of the acquired
23 mortgage banking business;

24 (ii) The character and general fitness of any acquiring
25 person or of any of the proposed management personnel indicates
26 that the acquired mortgage banking business would not be operated
27 honestly, soundly, or efficiently in the public interest; or

1 (iii) Any acquiring person neglects, fails, or refuses to
2 furnish all information required by the department.

3 (b) The director shall notify the acquiring party in
4 writing of disapproval of the acquisition. The notice shall provide
5 a statement of the basis for the disapproval.

6 (c) Within fifteen business days after receipt of written
7 notice of disapproval, the acquiring party may request a hearing
8 on the proposed acquisition in accordance with the Administrative
9 Procedure Act. At the conclusion of such hearing, the director
10 shall, by order, approve or disapprove the proposed acquisition on
11 the basis of the record made at the hearing.

12 Sec. 50. (1) The department may require that a mortgage
13 banker supply all or part of the information that must be provided
14 to obtain a license pursuant to a multistate licensing and
15 application system data base consistent with, and in compliance
16 with, the Mortgage Bankers Registration and Licensing Act. Nothing
17 in this subsection shall authorize the director to require any
18 person exempt from licensure under the act or the employees or
19 agents of any such person to submit information to or participate
20 in the multistate licensing and application system.

21 (2) Except for the department, no person shall be
22 authorized to obtain information from a multistate licensing and
23 application system data base or initiate any civil action based
24 on information obtained from such data base, if such information
25 is not currently available to such person under section 8-112 or
26 45-710.

27 (3) The department shall ensure that a multistate

1 licensing and application system adopts a privacy, data security,
2 and security breach notification policy. The director shall make
3 available upon written request a copy of the contract between
4 the department and a multistate licensing and application system
5 pertaining to the breach of security of the system provisions.

6 (4) The department shall upon written request provide the
7 most recently available audited financial report of the multistate
8 licensing and application system.

9 Sec. 51. Section 45-716, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 45-716 (1) All fees, charges, and costs collected by
12 the department pursuant to the Mortgage Bankers Registration and
13 Licensing Act shall be remitted to the State Treasurer for credit
14 to the Financial Institution Assessment Cash Fund, ~~pursuant to~~
15 ~~sections 8-601 and 8-602.~~

16 (2) All fines collected by the department pursuant to the
17 Mortgage Bankers Registration and Licensing Act shall be remitted
18 to the State Treasurer for credit to the permanent school fund.

19 Sec. 52. Section 45-920, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 45-920 The director shall examine the books, accounts,
22 and records of each licensee no more often than annually, except
23 as provided in section 45-921. The costs of the director incurred
24 in an examination shall be paid by the licensee as set forth in
25 sections 12 and 13 of this act.

26 Sec. 53. Section 45-927, Reissue Revised Statutes of
27 Nebraska, is amended to read:

1 45-927 All fees, charges, costs, and fines collected
2 by the director under the Delayed Deposit Services Licensing Act
3 shall be remitted to the State Treasurer. Fees, charges, and costs
4 shall be credited to the Financial Institution Assessment Cash Fund
5 ~~pursuant to sections 8-601 and 8-602,~~ and fines shall be credited
6 to the permanent school fund.

7 Sec. 54. Section 45-1013, Revised Statutes Cumulative
8 Supplement, 2006, is amended to read:

9 45-1013 (1) For the annual renewal of an original
10 license under the Nebraska Installment Loan Act, the licensee
11 shall file with the department a fee of two hundred fifty dollars
12 and a renewal application containing such information as the
13 director may require to indicate any material change in the
14 information contained in the original application or succeeding
15 renewal applications.

16 (2) For the relocation of its place of business, a
17 licensee shall file with the department a fee of one hundred
18 fifty dollars and an application containing such information as the
19 director may require to determine whether the relocation should be
20 approved. Upon receipt of the fee and application, the director
21 shall publish a notice of the filing of the application in a
22 newspaper of general circulation in the county where the licensee
23 proposes to relocate. If the director receives any substantive
24 objection to the proposed relocation within fifteen days after
25 publication of such notice, he or she shall hold a hearing on the
26 application in accordance with the Administrative Procedure Act.
27 The expense of any publication required by this section shall be

1 paid by the applicant licensee.

2 Sec. 55. Section 45-1014, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 45-1014 All original license fees and annual renewal fees
5 shall be collected by the department and remitted to the State
6 Treasurer for credit to the Financial Institution Assessment Cash
7 Fund, ~~pursuant to sections 8-601 and 8-602.~~ All investigation and
8 examination fees, charges, and costs collected by or paid to the
9 department shall likewise be remitted to the State Treasurer for
10 credit to the Financial Institution Assessment Cash Fund pursuant
11 to sections 8-601 and 8-602 and shall be available for the uses and
12 purposes of the fund.

13 Sec. 56. Section 45-1017, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 45-1017 (1) The department shall inspect the business,
16 records, and accounts of all persons that lend money subject to
17 the Nebraska Installment Loan Act. The department may examine or
18 investigate complaints about or reports of alleged violations by
19 a licensee made to the department. The department may inspect and
20 investigate the business, records, and accounts of all persons in
21 the public business of lending money contrary to the act and who
22 do not have a license under the act. The director may appoint
23 examiners who shall, under his or her direction, investigate the
24 loans and business and examine the books and records of licensees
25 annually and more often as determined by the director. The expenses
26 incurred by the department in examining the books and records of
27 licensees and in administering the act during each calendar year

1 shall be charged annually to each licensee by the department as
2 soon as reasonably possible after the examination. Such expenses
3 shall be charged in proportion to the number of days required
4 to examine and supervise the books and records of the respective
5 licensees. paid by the licensee as set forth in sections 12 and 13
6 of this act.

7 (2) Upon receipt by a licensee of a notice of
8 investigation or inquiry request for information from the
9 department, the licensee shall respond within twenty-one calendar
10 days. Each day a licensee fails to respond as required by this
11 subsection constitutes a separate violation.

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

23 (4) If a person fails to pay an administrative fine and
24 the costs of investigation ordered pursuant to subsection (3) of
25 this section, a lien in the amount of such fine and costs may be
26 imposed upon all assets and property of such person in this state
27 and may be recovered in a civil action by the director. The lien

1 shall attach to the real property of such person when notice of the
2 lien is filed and indexed against the real property in the office
3 of the register of deeds in the county where the real property is
4 located. The lien shall attach to any other property of such person
5 when notice of the lien is filed against the property in the manner
6 prescribed by law. Failure of the person to pay such fine and costs
7 constitutes a separate violation of the act.

8 Sec. 57. Section 45-1033, Revised Statutes Cumulative
9 Supplement, 2006, is amended to read:

10 45-1033 (1) The director may, following a hearing under
11 the Administrative Procedure Act, suspend or revoke any license
12 issued pursuant to the Nebraska Installment Loan Act. The director
13 may also impose an administrative fine on the licensee for each
14 separate violation of the act. The director may take one or more of
15 these actions if the director finds:

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

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

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

26 (d) The licensee has knowingly provided or caused to be
27 provided to the director any false or fraudulent representation of

1 a material fact or any false or fraudulent financial statement or
2 suppressed or withheld from the director any information which, if
3 submitted by the licensee, would have resulted in denial of the
4 license application;

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

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

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

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

27 (i) The licensee, or if the licensee is a business

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

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

11 (3) (a) If a licensee fails to renew its license as
12 required by subsection (1) of section 45-1013 and does not
13 voluntarily surrender the license pursuant to section 45-1032,
14 the department may issue a notice of expiration of the license to
15 the licensee in lieu of revocation proceedings.

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

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

23 (5) Revocation, suspension, cancellation, or expiration
24 of a license shall not affect civil or criminal liability for
25 acts committed before the revocation, suspension, cancellation, or
26 expiration or liability for any fines which may be imposed against
27 the licensee or any of its officers, directors, shareholders,

1 partners, or members pursuant to this section or section 45-1069
2 for acts committed before the surrender.

3 Sec. 58. Section 52-1301, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 52-1301 It is the intent of the Legislature to adopt
6 a central filing system for security interests relating to farm
7 products pursuant to section 1324 of the Food Security Act of
8 1985, Public Law 99-198. It is also the intent of the Legislature
9 that upon the adoption of the central filing system that security
10 interest holders be encouraged to use such system in lieu of any
11 other notice provided by section 1324 for farm products ~~used or~~
12 produced or located in the State of Nebraska which are included in
13 the central filing system.

14 Sec. 59. Section 52-1302, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 52-1302 For purposes of sections 52-1301 to 52-1322 and
17 section 60 of this act, unless the context otherwise requires, the
18 definitions found in sections 52-1303 to 52-1311 and section 60 of
19 this act shall be used.

20 Sec. 60. Approved unique identifier means a number,
21 combination of numbers and letters, or other identifier selected by
22 the Secretary of State using a selection system or method approved
23 by the Secretary of the United States Department of Agriculture.

24 Sec. 61. Section 52-1307, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 52-1307 Effective financing statement means a statement
27 that:

1 (1) Is an original or reproduced copy thereof;

2 (2) Is ~~signed and~~ filed by the secured party in the
3 office of the Secretary of State;

4 (3) Is signed, authorized, or otherwise authenticated
5 by the debtor, unless filed electronically, in which case the
6 signature of the debtor shall not be required;

7 (4) Contains (a) the name and address of the secured
8 party, (b) the name and address of the debtor, (c) the social
9 security number or other approved unique identifier of the debtor
10 or, in the case of a debtor doing business other than as an
11 individual, the Internal Revenue Service taxpayer identification
12 number or other approved unique identifier of such debtor, (d) a
13 description of the farm products subject to the security interest,
14 (e) each county in Nebraska where the farm product is used ~~or~~
15 produced or ~~to be used or produced,~~ located, (f) crop year unless
16 every crop of the farm product in question, for the duration of the
17 effective financing statement, is to be subject to the particular
18 security interest, (g) further details of the farm product subject
19 to the security interest if needed to distinguish it from other
20 quantities of such product owned by the same person or persons but
21 not subject to the particular security interest, and (h) such other
22 information that the Secretary of State may require to comply with
23 section 1324 of the Food Security Act of 1985, Public Law 99-198,
24 or to more efficiently carry out his or her duties under sections
25 52-1301 to 52-1322 and section 60 of this act;

26 (5) Shall be amended in writing, within three months,
27 ~~similarly and~~ signed, authorized, or otherwise authenticated by the

1 debtor and filed, to reflect material changes. If the statement
2 is filed electronically, the signature of the debtor shall not be
3 required;

4 (6) Remains effective for a period of five years from
5 the date of filing, subject to extensions for additional periods
6 of five years each by refileing or filing a continuation statement
7 within six months before the expiration of the five-year period;

8 (7) Lapses on either the expiration of the effective
9 period of the statement or the filing of a notice signed by the
10 secured party that the statement is terminated, whichever occurs
11 first;

12 (8) Is accompanied by the requisite filing fee set by
13 section 52-1313; and

14 (9) Substantially complies with the requirements of this
15 section even though ~~it~~ the statement contains minor errors that are
16 not seriously misleading.

17 An effective financing statement may, for any given
18 debtor or debtors, cover more than one farm product located in more
19 than one county.

20 Any effective financing statement that is filed
21 electronically shall include an electronic signature of the secured
22 party which may consist of a signature recognized under section
23 86-611 or an access code or any other identifying word or number
24 assigned by the Secretary of State that is unique to a particular
25 filer.

26 Sec. 62. Section 52-1308, Reissue Revised Statutes of
27 Nebraska, is amended to read:

1 52-1308 Farm product shall mean an agricultural
2 commodity, a species of livestock used or produced in farming
3 operations, or a product of such crop or livestock in its
4 unmanufactured state, that is in the possession of a person engaged
5 in farming operations. Farm products shall include, but are not
6 limited to, apples, artichokes, asparagus, barley, bees, buffalo,
7 bull semen, cantaloupe, carrots, cattle and calves, chickens, corn,
8 cucumbers, dry beans, eggs, embryos or genetic products, emu,
9 fish, flax seed, ~~fur-bearing animals,~~ grapes, hay, hogs, honey,
10 honeydew melon, horses, legumes, milk, millet, muskmelon, oats,
11 onions, ostrich, popcorn, potatoes, pumpkins, raspberries, rye,
12 safflower, seed crops, sheep and lambs, silage, sorghum grain,
13 soybeans, squash, strawberries, sugar beets, sunflower seeds,
14 sweet corn, tomatoes, trees, triticale, turkeys, vetch, walnuts,
15 watermelon, wheat, and wool. The Secretary of State may, by rule
16 and regulation, add other farm products to the list specified in
17 this section if such products are covered by the general definition
18 provided by this section.

19 Sec. 63. Section 52-1312, Revised Statutes Cumulative
20 Supplement, 2006, is amended to read:

21 52-1312 The Secretary of State shall design and implement
22 a central filing system for effective financing statements. The
23 Secretary of State shall be the system operator. The system shall
24 provide a means for filing effective financing statements or
25 notices of such financing statements on a statewide basis. The
26 system shall include requirements:

- 27 (1) That an effective financing statement or notice of

1 such financing statement shall be filed in the office of the
2 Secretary of State. A debtor's residence shall be presumed to be
3 the residence shown on the filing. The showing of an improper
4 residence shall not affect the validity of the filing. The filing
5 officer shall mark the statement or notice with a consecutive
6 file number and with the date and hour of filing and shall hold
7 the statement or notice or a microfilm or other photographic copy
8 thereof for public inspection. In addition, the filing officer
9 shall index the statements and notices according to the name of the
10 debtor and shall note in the index the file number and the address
11 of the debtor given in the statement;

12 (2) That the Secretary of State compile information
13 from all effective financing statements or notices filed with the
14 Secretary of State into a master list (a) organized according
15 to farm product, (b) arranged within each such product (i) in
16 alphabetical order according to the last name of the individual
17 debtors or, in the case of debtors doing business other than as
18 individuals, the first word in the name of such debtors, (ii) in
19 numerical order according to the social security number or other
20 approved unique identifier of the individual debtors or, in the
21 case of debtors doing business other than as individuals, the
22 Internal Revenue Service taxpayer identification number or other
23 approved unique identifier of such debtors, (iii) geographically by
24 county, and (iv) by crop year, and (c) containing the information
25 referred to in subdivision (4) of section 52-1307;

26 (3) That the Secretary of State cause the information
27 on the master list to be published in lists (a) by farm product

1 arranged alphabetically by debtor and (b) by farm product arranged
2 numerically by the debtor's social security number or other
3 approved unique identifier for individual debtors or, in the
4 case of debtors doing business other than as individuals, the
5 Internal Revenue Service taxpayer identification number or other
6 approved unique identifier of such debtors. If a registered buyer
7 so requests, the list or lists for such buyer may be limited to
8 any county or group of counties where the farm product is ~~used or~~
9 produced or located or to any crop year or years or a combination
10 of such identifiers;

11 (4) That all buyers of farm products, commission
12 merchants, selling agents, and other persons may register with the
13 Secretary of State to receive lists described in subdivision (3)
14 of this section. Any buyer of farm products, commission merchant,
15 selling agent, or other person conducting business from multiple
16 locations shall be considered as one entity. Such registration
17 shall be on an annual basis. The Secretary of State shall provide
18 the form for registration which shall include the name and address
19 of the registrant and the list or lists described in subdivision
20 (3) of this section which such registrant desires to receive.
21 A registration shall not be completed until the form provided
22 is properly completed and received by the Secretary of State
23 accompanied by the proper registration fee. The fee for annual
24 registration shall be thirty dollars.

25 A registrant shall pay an additional annual fee to
26 receive quarterly lists described in subdivision (3) of this
27 section. For each farm product list provided on microfiche, the

1 annual fee shall be twenty-five dollars. For each farm product list
2 provided on paper, the annual fee shall be two hundred dollars. The
3 annual fee for a special list which is a list limited to fewer than
4 all counties or less than all crop years shall be one hundred fifty
5 dollars for each farm product.

6 The Secretary of State shall maintain a record of the
7 registrants and the lists and contents of the lists received by the
8 registrants for a period of five years;

9 (5) That the lists as identified pursuant to subdivision
10 (4) of this section be distributed by the Secretary of State on a
11 quarterly basis and be in written or printed form. A registrant may
12 choose in lieu of receiving a written or printed form to receive
13 statewide lists on microfiche. The Secretary of State may provide
14 for the distribution of the lists on any other medium and establish
15 reasonable charges therefor. The distribution shall be made by
16 either certified or registered mail, return receipt requested.

17 The Secretary of State shall, by rule and regulation,
18 establish the dates upon which the quarterly distributions will be
19 made, the dates after which a filing of an effective financing
20 statement will not be reflected on the next quarterly distribution
21 of lists, and the dates by which a registrant must complete a
22 registration to receive the next quarterly list; and

23 (6) That the Secretary of State remove lapsed and
24 terminated effective financing statements or notices of such
25 financing statements from the master list prior to preparation
26 of the lists required to be distributed by subdivision (5) of this
27 section.

1 Effective financing statements or any amendments or
2 continuations of effective financing statements originally filed
3 in the office of the county clerk that have been indexed and
4 entered on the Secretary of State's central filing system need not
5 be retained by the county filing office and may be disposed of or
6 destroyed.

7 The Secretary of State shall apply to the Secretary of
8 the United States Department of Agriculture for (a) certification
9 of the central filing system and (b) approval of the system or
10 method of selecting an approved unique identifier.

11 The Secretary of State shall deposit any funds received
12 pursuant to subdivision (4) of this section in the Uniform
13 Commercial Code Cash Fund.

14 Sec. 64. Section 52-1313, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 52-1313 (1) Presentation for filing of an effective
17 financing statement and the acceptance of the statement by the
18 Secretary of State constitutes filing under sections 52-1301 to
19 52-1322 and section 60 of this act.

20 (2) The fee for filing and indexing and for stamping a
21 copy furnished by the secured party to show the date and place
22 of filing of an effective financing statement, an amendment, or a
23 continuation statement shall be ten dollars. There shall be no fee
24 for the filing of a termination statement.

25 (3) The fee for attachments to all instruments submitted
26 for filing shall be fifty cents per page.

27 (4) The Secretary of State shall deposit any fees

1 received pursuant to this section in the Uniform Commercial Code
2 Cash Fund.

3 Sec. 65. Section 52-1314, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 52-1314 ~~(1)~~ A continuation statement may be filed by the
6 secured party within six months prior to the expiration of the
7 five-year period specified in subdivision (6) of section 52-1307.
8 Any such continuation statement shall be signed, authorized, or
9 otherwise authenticated by the secured party, identify the original
10 statement by file number, and state that the original statement is
11 still effective. Upon timely filing of the continuation statement,
12 the effectiveness of the original statement shall be continued for
13 five years after the last date to which the filing was effective
14 whereupon it shall lapse unless another continuation statement is
15 filed prior to such lapse. If an effective financing statement
16 exists at the time insolvency proceedings are commenced by or
17 against the debtor, the effective financing statement shall remain
18 effective until termination of the insolvency proceedings and
19 thereafter for a period of sixty days or until the expiration
20 of the five-year period, whichever occurs later. Succeeding
21 continuation statements may be filed in the same manner to continue
22 the effectiveness of the original statement.

23 (2) Any continuation statement that is filed
24 electronically shall include an electronic signature of the
25 secured party which may consist of a signature recognized under
26 section 86-611 or an access code or any other identifying word
27 or number assigned by the Secretary of State that is unique to a

1 particular filer.

2 Sec. 66. Section 52-1315, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 52-1315 (1) Whenever there is no outstanding secured
5 obligation and no commitment to make advances, incur obligations,
6 or otherwise give value, the secured party shall notify the debtor
7 in writing of his or her right to have a notice of lapse of his
8 or her effective financing statement filed which shall lead to the
9 removal of his or her name from the files and lists compiled by the
10 Secretary of State. In lieu of such notice, the secured party may
11 acquire a waiver of the debtor of such right and a request by the
12 debtor that his or her effective financing statement be retained on
13 file. Such notice may be given or waiver acquired by the secured
14 party at any time prior to the time specified in this subsection
15 for giving the notice.

16 (2) If the secured party does not furnish the notice
17 or obtain the waiver specified in subsection (1) of this section,
18 the secured party shall, within ten days of final payment of all
19 secured obligations, provide the debtor with a written notification
20 of the debtor's right to have a notice of lapse filed. The secured
21 party shall on written demand by the debtor send the debtor a
22 notice of lapse to the effect that he or she no longer claims a
23 security interest under the effective financing statement, which
24 shall be identified by file number. The notice of lapse need only
25 be signed, authorized, or otherwise authenticated by the secured
26 party.

27 (3) If the affected secured party fails to send a

1 notice of lapse within ten days after proper demand, pursuant to
2 subsection (2) of this section, he or she shall be liable to the
3 debtor for any loss caused to the debtor by such failure.

4 (4) On presentation to the Secretary of State of a notice
5 of lapse, he or she shall treat it as a termination statement and
6 note it in the index. If he or she has received the notice of
7 lapse in duplicate, he or she shall return one copy of the notice
8 of lapse to the filing party stamped to show the time of receipt
9 thereof.

10 (5) There shall be no fee for filing a notice of lapse or
11 termination statement.

12 Sec. 67. Section 52-1317, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 52-1317 In order to verify the existence or nonexistence
15 of a security interest, a buyer, commission merchant, or selling
16 agent may request a seller to disclose such seller's social
17 security number or approved unique identifier or, in the case of
18 a seller doing business other than as an individual, the Internal
19 Revenue Service taxpayer identification number or approved unique
20 identifier of such seller.

21 Sec. 68. Section 52-1318, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 52-1318 (1) The State of Nebraska hereby adopts the
24 federal rules and regulations in effect on ~~November 21, 1986,~~
25 the operative date of this section, adopted and promulgated to
26 implement section 1324 of the Food Security Act of 1985, Public Law
27 99-198. If there is a conflict between such rules and regulations

1 and sections 52-1301 to 52-1322 and section 60 of this act, the
2 federal rules and regulations shall apply.

3 (2) The Secretary of State shall adopt and promulgate
4 rules and regulations necessary to implement sections 52-1301 to
5 52-1322 and section 60 of this act pursuant to the Administrative
6 Procedure Act. If necessary to obtain federal certification of the
7 central filing system, additional or alternative requirements made
8 in conformity with section 1324 of the Food Security Act of 1985,
9 Public Law 99-198, may be imposed by the Secretary of State by rule
10 and regulation.

11 (3) The Secretary of State shall prescribe all forms to
12 be used for filing effective financing statements and subsequent
13 actions.

14 Sec. 69. Section 52-1602, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 52-1602 (1) The master lien list prescribed in section
17 52-1601 shall be distributed by the Secretary of State on a
18 quarterly basis corresponding to the date on which the lists
19 provided pursuant to sections 52-1301 to 52-1322 and section 60
20 of this act are distributed. Such master lien list may be mailed
21 with the list provided pursuant to sections 52-1301 to 52-1322 and
22 section 60 of this act. If mailed separately, the master lien list
23 shall be mailed by either certified or registered mail, return
24 receipt requested.

25 (2) Any person may register with the Secretary of State
26 to receive the master lien list prescribed in section 52-1601.
27 Such registration shall be on an annual basis. The Secretary of

1 State shall provide the form for registration. A registration shall
2 not be completed until the form provided is properly completed
3 and received by the Secretary of State accompanied by the proper
4 registration fee. The fee for annual registration shall be thirty
5 dollars, except that a registrant under sections 52-1301 to 52-1322
6 and section 60 of this act shall not be required to pay the
7 registration fee provided by this section in addition to the
8 registration fee paid pursuant to sections 52-1301 to 52-1322 and
9 section 60 of this act for the same annual registration period.
10 Beginning for calendar year 1989, a registrant under sections
11 52-1601 to 52-1605 shall pay an additional annual fee to receive
12 quarterly master lien lists prescribed in section 52-1601. For each
13 master lien list provided on microfiche, the annual fee shall be
14 twenty-five dollars. For each master lien list provided on paper,
15 the annual fee shall be two hundred dollars. The Secretary of State
16 may provide for the distribution of master lien lists on any other
17 medium and may establish reasonable charges therefor.

18 (3) The Secretary of State, by rule and regulation,
19 shall establish the dates after which a filing of liens will not
20 be reflected on the next quarterly distribution of the master
21 lien list and the date by which a registrant shall complete a
22 registration in order to receive the next quarterly master lien
23 list.

24 (4) The Secretary of State shall deposit any funds
25 received pursuant to subsection (2) of this section in the Uniform
26 Commercial Code Cash Fund.

27 Sec. 70. Section 9-315, Uniform Commercial Code, Revised

1 Statutes Cumulative Supplement 2006, is amended to read:

2 9-315 Secured party's rights on disposition of collateral
3 and in proceeds.

4 (a) (1) Except as otherwise provided in this article and
5 in section 2-403(2):

6 (A) a security interest or agricultural lien continues
7 in collateral notwithstanding sale, lease, license, exchange, or
8 other disposition thereof unless the secured party authorized the
9 disposition free of the security interest or agricultural lien; and

10 (B) a security interest attaches to any identifiable
11 proceeds of collateral.

12 (2) Authorization to sell, lease, license, exchange,
13 or otherwise dispose of farm products shall not be implied or
14 otherwise result, nor shall a security interest in farm products
15 be considered to be waived, modified, released, or terminated if
16 such disposition is conditioned upon the secured party's receipt
17 of proceeds or from any course of conduct, course of performance,
18 or course of dealing between the parties or by any usage of
19 trade in any case in which (A) the secured party has filed an
20 effective financing statement in accordance with the provisions of
21 sections 52-1301 to 52-1322 and section 60 of this act, Reissue
22 Revised Statutes of Nebraska, or (B) the buyer of farm products
23 has received notice from the secured party or the seller of
24 farm products in accordance with the provisions of 7 U.S.C.
25 1631(e) (1) (A), unless the buyer has secured a waiver or release
26 of the security interest specified in such effective financing
27 statement or notice from the secured party.

1 (b) Proceeds that are commingled with other property are
2 identifiable proceeds:

3 (1) if the proceeds are goods, to the extent provided by
4 section 9-336; and

5 (2) if the proceeds are not goods, to the extent that
6 the secured party identifies the proceeds by a method of tracing,
7 including application of equitable principles, that is permitted
8 under law other than this article with respect to commingled
9 property of the type involved.

10 (c) A security interest in proceeds is a perfected
11 security interest if the security interest in the original
12 collateral was perfected.

13 (d) A perfected security interest in proceeds becomes
14 unperfected on the twenty-first day after the security interest
15 attaches to the proceeds unless:

16 (1) the following conditions are satisfied:

17 (A) a filed financing statement covers the original
18 collateral;

19 (B) the proceeds are collateral in which a security
20 interest may be perfected by filing in the office in which the
21 financing statement has been filed; and

22 (C) the proceeds are not acquired with cash proceeds;

23 (2) the proceeds are identifiable cash proceeds; or

24 (3) the security interest in the proceeds is perfected
25 other than under subsection (c) when the security interest attaches
26 to the proceeds or within twenty days thereafter.

27 (e) If a filed financing statement covers the original

1 collateral, a security interest in proceeds which remains perfected
2 under subdivision (d) (1) becomes unperfected at the later of:

3 (1) when the effectiveness of the filed financing
4 statement lapses under section 9-515 or is terminated under section
5 9-513; or

6 (2) the twenty-first day after the security interest
7 attaches to the proceeds.

8 Sec. 71. Section 9-320, Uniform Commercial Code, Revised
9 Statutes Cumulative Supplement 2006, is amended to read:

10 9-320 Buyer of goods.

11 (a) Except as otherwise provided in subsection (e), a
12 buyer in ordinary course of business, other than a person buying
13 farm products from a person engaged in farming operations, takes
14 free of a security interest created by the buyer's seller, even
15 if the security interest is perfected and the buyer knows of its
16 existence. A buyer of farm products may be subject to a security
17 interest under sections 52-1301 to 52-1322 and section 60 of this
18 act, Reissue Revised Statutes of Nebraska.

19 (b) Except as otherwise provided in subsection (e), a
20 buyer of goods from a person who used or bought the goods for use
21 primarily for personal, family, or household purposes takes free of
22 a security interest, even if perfected, if the buyer buys:

23 (1) without knowledge of the security interest;

24 (2) for value;

25 (3) primarily for the buyer's personal, family, or
26 household purposes; and

27 (4) before the filing of a financing statement covering

1 the goods.

2 (c) To the extent that it affects the priority of a
3 security interest over a buyer of goods under subsection (b), the
4 period of effectiveness of a filing made in the jurisdiction in
5 which the seller is located is governed by section 9-316(a) and
6 (b).

7 (d) A buyer in ordinary course of business buying oil,
8 gas, or other minerals at the wellhead or minehead or after
9 extraction takes free of an interest arising out of an encumbrance.

10 (e) Subsections (a) and (b) do not affect a security
11 interest in goods in the possession of the secured party under
12 section 9-313.

13 (f) No buyer shall be allowed to take advantage of and
14 apply the right of offset to defeat a priority established by any
15 lien or security interest.

16 Sec. 72. Section 9-529, Uniform Commercial Code, Revised
17 Statutes Cumulative Supplement 2006, is amended to read:

18 9-529 Secretary of State; implementation of centralized
19 computer system.

20 (a) The Secretary of State shall implement and maintain a
21 centralized computer system for the accumulation and dissemination
22 of information relative to financing statements for any type of
23 collateral except collateral described in section 9-501(a)(1). Such
24 a system shall include the entry of information into the computer
25 system by the Secretary of State pursuant to section 9-530 and the
26 dissemination of such information by a computer system or systems,
27 telephone, mail, and such other means of communication as may be

1 deemed appropriate. Such system shall be an interactive system.

2 (b) Computer access to information regarding obligations
3 of debtors shall be made available twenty-four hours a day on every
4 day of the year. The Secretary of State shall provide information
5 from the system by telephone during normal business hours.

6 (c) The centralized computer system implemented and
7 maintained pursuant to this section shall include information
8 relative to effective financing statements as provided in sections
9 52-1301 to 52-1322 and section 60 of this act, Reissue Revised
10 Statutes of Nebraska, and statutory liens as provided in sections
11 52-1601 to 52-1605, Reissue Revised Statutes of Nebraska.

12 Sec. 73. Section 9-531, Uniform Commercial Code, Revised
13 Statutes Cumulative Supplement 2006, is amended to read:

14 9-531 Uniform Commercial Code Cash Fund; created; use;
15 Secretary of State; duties; fees.

16 (a) There is created the Uniform Commercial Code Cash
17 Fund. Except as otherwise specifically provided, all funds received
18 pursuant to this part and sections 52-1312, 52-1313, 52-1316, and
19 52-1602, Reissue Revised Statutes of Nebraska, shall be placed in
20 the fund and used by the Secretary of State to carry out this part,
21 sections 52-1301 to 52-1322 and section 60 of this act, Reissue
22 Revised Statutes of Nebraska, and sections 52-1601 to 52-1605,
23 Reissue Revised Statutes of Nebraska, except that transfers from
24 the Uniform Commercial Code Cash Fund to the General Fund and the
25 Records Management Cash Fund may be made at the direction of the
26 Legislature.

27 (b) (1) The Secretary of State shall furnish each county

1 clerk with computer terminal hardware, including a printer,
2 compatible with the centralized computer system implemented and
3 maintained pursuant to section 9-529, for inquiries and searches
4 of information in such centralized computer system. The terminals
5 shall be readily and reasonably available and accessible to members
6 of the public for such inquiries and searches.

7 (2) The fees charged by county clerks for inquiries and
8 other services regarding information in the centralized computer
9 system shall be the same as set forth for filing offices in this
10 part.

11 Sec. 74. Sections 1, 2, 8, 9, 10, 11, 12, 13, 14, 15, 16,
12 17, 18, 19, 20, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35,
13 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52,
14 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68,
15 69, 70, 71, 72, 73, 75, and 78 of this act become operative three
16 calendar months after the adjournment of this legislative session.
17 The other sections of this act become operative on their effective
18 date.

19 Sec. 75. Original sections 8-108, 8-915, 8-2107,
20 21-17,112, 45-191.01, 45-191.04, 45-334, 45-340, 45-344, 45-347,
21 45-351, 45-352, 45-353, 45-708, 45-710, 45-715, 45-716, 45-920,
22 45-927, 45-1014, 45-1017, 52-1301, 52-1302, 52-1307, 52-1308,
23 52-1313, 52-1314, 52-1315, 52-1317, 52-1318, and 52-1602, Reissue
24 Revised Statutes of Nebraska, sections 8-113, 8-601, 8-602,
25 8-1901, 8-2312, 8-2504, 30-3805, 30-3846, 30-3848, 30-3849,
26 30-3851, 30-38,110, 45-346, 45-701, 45-702, 45-705, 45-706, 45-711,
27 45-714, 45-1013, 45-1033, and 52-1312, Revised Statutes Cumulative

1 Supplement, 2006, and sections 9-315, 9-320, 9-529, and 9-531,
2 Uniform Commercial Code, Revised Statutes Cumulative Supplement,
3 2006, are repealed.

4 Sec. 76. Original section 8-149, Reissue Revised Statutes
5 of Nebraska, and sections 8-124, 8-148.04, 8-1,140, 8-355,
6 21-17,115, and 30-3867, Revised Statutes Cumulative Supplement,
7 2006, are repealed.

8 Sec. 77. The following section is outright repealed:
9 Section 8-1,123, Reissue Revised Statutes of Nebraska.

10 Sec. 78. The following section is outright repealed:
11 Section 21-1739, Reissue Revised Statutes of Nebraska.

12 Sec. 79. Since an emergency exists, this act takes effect
13 when passed and approved according to law.