

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 124

FINAL READING

Introduced by Banking, Commerce and Insurance Committee: Pahls, 31,
Chairperson; Carlson, 38; Christensen, 44; Gay, 14;
Hansen, 42; Langemeier, 23; Pankonin, 2; Pirsch, 4;
Mines, 18

Read first time January 8, 2007

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to banking and finance; to amend sections
2 8-108, 8-149, 8-915, 8-2107, 21-17,112, 45-191.01,
3 45-191.04, 45-334, 45-340, 45-344, 45-347, 45-351,
4 45-352, 45-353, 45-708, 45-710, 45-715, 45-716, 45-920,
5 45-927, 45-1014, 45-1017, 52-1301, 52-1302, 52-1307,
6 52-1308, 52-1313, 52-1314, 52-1315, 52-1317, 52-1318, and
7 52-1602, Reissue Revised Statutes of Nebraska, sections
8 8-113, 8-124, 8-148.04, 8-1,140, 8-355, 8-601, 8-602,
9 8-1901, 8-2312, 8-2504, 21-17,115, 30-3805, 30-3846,
10 30-3848, 30-3849, 30-3851, 30-3867, 30-38,110, 45-346,
11 45-701, 45-702, 45-705, 45-706, 45-711, 45-714, 45-1013,

1 45-1033, and 52-1312, Revised Statutes Cumulative
2 Supplement, 2006, and sections 9-315, 9-320, 9-529,
3 and 9-531, Uniform Commercial Code, Revised Statutes
4 Cumulative Supplement, 2006; to change and eliminate
5 provisions relating to the unauthorized use of the
6 word bank, bank boards of directors, bank investments
7 in bank premises, premiums on demand deposits,
8 community development investments, financial institution
9 assessments, the Nebraska Installment Sales Act, the
10 Mortgage Bankers Registration and Licensing Act, the
11 Delayed Deposit Services Licensing Act, and the Nebraska
12 Installment Loan Act; to revise powers of state-chartered
13 banks, building and loan associations, and credit
14 unions; to regulate trust company names; to change
15 provisions relating to the Nebraska Uniform Trust Code,
16 loan brokerage agreements, and farm product security
17 interests; to harmonize provisions; to provide operative
18 dates; to repeal the original sections; to outright
19 repeal sections 8-1,123 and 21-1739, Reissue Revised
20 Statutes of Nebraska; and to declare an emergency.

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

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

3 8-108 The director, his or her deputy, or any duly
4 appointed examiner shall have power to make a thorough examination
5 into all the books, papers, and affairs of any bank or other
6 institution in Nebraska subject to the department's jurisdiction,
7 or its holding company, if any, and in so doing to administer
8 oaths and affirmations, to examine on oath or affirmation the
9 officers, agents, and clerks of such institution or its holding
10 company, if any, touching the matter which they may be authorized
11 and directed to inquire into and examine, and to subpoena the
12 attendance of any person or persons in this state to testify
13 under oath or affirmation in relation to the affairs of such
14 institution or its holding company, if any. Such powers shall
15 include, but not be limited to, the authority to examine and
16 monitor by electronic means the books, papers, and affairs of
17 any financial institution or the holding company of a financial
18 institution. The examination may be in the presence of at least
19 two members of the board of directors of the institution or
20 its holding company, if any, undergoing such examination, and
21 it shall be the duty of the examiner to incorporate in his or
22 her report the names of the directors in whose presence the
23 examination was made. The director may accept any examination or
24 report from the Federal Deposit Insurance Corporation, the Federal
25 Reserve Board, the Comptroller of the Currency, or a foreign state

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

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

14 8-113 No individual, firm, company, corporation, or
15 association doing business in the State of Nebraska, unless
16 organized as a bank under the Nebraska Banking Act or the authority
17 of the federal government, or as a building and loan association,
18 savings and loan association, or savings bank under Chapter 8,
19 article 3, or the authority of the federal government, shall use
20 the word bank or any derivative thereof as any part of a title or
21 description of any business activity. This section does not apply
22 to: (1) Banks, ~~(1) banks,~~ building and loan associations, savings
23 and loan associations, or savings banks chartered and supervised
24 by a foreign state agency; 7 (2) bank holding companies registered
25 pursuant to section 8-913 if the term holding company is also used

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

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

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

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

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

25 (b) The bank's aggregate investment under this subsection

1 does not exceed ~~ten~~ fifteen percent of its capital and surplus. If
2 the bank's investment in any one entity will exceed five percent
3 of its capital and surplus, the prior written approval of the
4 department must be obtained. ~~and~~

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

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

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

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

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

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

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

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

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

9 (c) Parking facilities that are used by customers
10 or employees of the bank, its branches, or its consolidated
11 subsidiaries;

12 (d) Residential property for the use of officers
13 or employees of the bank, its branches, or its consolidated
14 subsidiaries who are:

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

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

19 (e) Property for the use of officers, employees,
20 or customers of the bank, its branches, and its consolidated
21 subsidiaries or for the temporary lodging of such persons in areas
22 where suitable commercial lodging is not readily available, if the
23 purchase and operation of the property qualifies as a deductible
24 business expense for federal tax purposes.

25 Sec. 6. Section 8-1,140, Revised Statutes Cumulative

1 Supplement, 2006, is amended to read:

2 8-1,140 Notwithstanding any of the other provisions of
3 the Nebraska Banking Act or any other Nebraska statute, any bank
4 incorporated under the laws of this state and organized under
5 the provisions of the act, or under the laws of this state as
6 they existed prior to May 9, 1933, shall directly, or indirectly
7 through a subsidiary or subsidiaries, have all the rights, powers,
8 privileges, benefits, and immunities which may be exercised as of
9 ~~April 7, 2006,~~ the operative date of this section, by a federally
10 chartered bank doing business in Nebraska, including the exercise
11 of all powers and activities that are permitted for a financial
12 subsidiary of a federally chartered bank. Such rights, powers,
13 privileges, benefits, and immunities shall not relieve such bank
14 from payment of state taxes assessed under any applicable laws of
15 this state.

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

18 8-355 Notwithstanding any of the provisions of Chapter
19 8, article 3, or any other Nebraska statute, except as provided
20 in section 8-345.02, any association incorporated under the laws
21 of the State of Nebraska and organized under the provisions
22 of such article shall have all the rights, powers, privileges,
23 benefits, and immunities which may be exercised as of ~~April 7,~~
24 ~~2006,~~ the operative date of this section, by a federal savings
25 and loan association doing business in Nebraska. Such rights,

1 powers, privileges, benefits, and immunities shall not relieve
2 such association from payment of state taxes assessed under any
3 applicable laws of this state.

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

6 8-601 The Director of Banking and Finance may employ
7 deputies, examiners, attorneys, and other assistants as may be
8 necessary for the administration of the provisions and purposes
9 of Chapter 8, articles 1, 2, 3, 5, 6, 7, 8, 9, 10, 13, 14,
10 15, 16, 19, 20, 21, 23, 24, and 25; Chapter 21, article 17; and
11 Chapter 45, articles 1, 2, 3, 7, 9, and 10. The director may levy
12 upon financial institutions, namely, the banks, trust companies,
13 building and loan associations, savings and loan associations,
14 savings banks, and credit unions, organized under the laws of
15 this state, and holding companies, if any, of such financial
16 institutions, an assessment each year based upon the asset size
17 of the financial institution, except that in determining the asset
18 size of a holding company, the assets of any financial institution
19 or holding company otherwise assessed pursuant to this section
20 and the assets of any nationally chartered financial institution
21 shall be excluded. The assessment shall be a sum determined by the
22 director in accordance with section 13 of this act and approved by
23 the Governor.

24 ~~(1) To pay the salary and necessary expense of examiners~~
25 ~~and examiners' helpers and such sum, if any, as may be required,~~

1 in excess of the sum appropriated for the Department of Banking
2 and Finance, for the payment of the salaries of the Director
3 of Banking and Finance, his or her deputies, attorneys, and
4 assistants, there shall be levied upon the banks, organized under
5 the laws of this state, and trust companies, building and loan
6 associations, credit unions, and holding companies, if any, of such
7 institutions, organized under the laws of this state or authorized
8 to do business in this state, an assessment each year based upon
9 two factors: (a) A single assessment fee based upon the asset
10 size of the institution, except that in determining the asset
11 size of a holding company, the assets of any financial institution
12 or holding company otherwise assessed pursuant to this section
13 and the assets of any nationally chartered financial institution
14 shall be excluded; and (b) an assessment based upon the number
15 of hours spent on the examination. The assessment shall be a sum
16 determined by the director and approved by the Governor as set
17 forth in this subsection and subject to the additional assessments
18 and adjustments referred to in subsection (3) of this section.

19 (2) The assessment referred to in subsection (1) of
20 this section and the additional assessments provided for by
21 subsection (3) of this section shall be paid by such banks,
22 trust companies, building and loan associations, credit unions,
23 and holding companies, if any, of such institutions on the order
24 of the director to the State Treasurer who shall place the
25 same in the Financial Institution Assessment Cash Fund, which is

1 hereby created and which shall be used solely for the purposes
2 hereinafter specified. The amount of the assessment shall be the
3 sum estimated by the director as necessary for the fiscal year to
4 pay the following items: (a) Salaries of examiners and examiners'
5 helpers; (b) the necessary expenses incurred by examiners and
6 examiners' helpers in the discharge of their duties incident to
7 the examination of the institutions enumerated in this section;
8 and (c) such sum, if any, as may be required, in excess of the
9 sum appropriated for the department, for the payment of the salary
10 and expenses of the director, his or her deputies, attorneys,
11 and assistants, and in addition there shall be included in the
12 assessment to be paid by banks organized under the laws of this
13 state, the salaries and expenses of examiners and examiners'
14 helpers attending a school for examiners. As soon as reasonably
15 possible after June 30 of each year, the director shall estimate
16 the total sum required for the above purposes. The director shall
17 also estimate the total number of days to be used by examiners
18 and examiners' helpers in the examination and supervision of the
19 institutions enumerated in this section during the fiscal year,
20 taking into account the experience of the preceding year. The
21 total estimated fund shall be divided by the total number of days
22 estimated, as above specified, and the quotient shall be the unit
23 of assessment against the individual institutions, which unit is
24 hereinafter referred to as the per diem unit. The assessment upon
25 each institution shall be based upon a percentage fee of total

1 assets in each institution and a per diem fee for the number
2 of hours spent in examination as determined by the director. The
3 director shall set the per diem fee based on (i) the number of
4 per diem units required to examine the respective institutions
5 during the fiscal year for which the estimate is made, taking into
6 account the experience of the previous year, and (ii) in case of
7 institutions organized under the laws of the states other than
8 the State of Nebraska, the estimated traveling expense involved in
9 making the examination. If the estimated sum levied and collected
10 is insufficient to defray the expenditures, as provided in this
11 section, for the fiscal year for which it was made, a special
12 assessment may be levied and collected in like manner for the
13 balance of the fiscal year.

14 (3) At the end of the fiscal year for which the
15 assessment is made, the director shall forward to each of such
16 institutions subject to such an assessment, as provided for by
17 subsections (1) and (2) of this section, a statement for as
18 many per diem units as the days actually used in the examination
19 of the institution exceeds that which was estimated, under the
20 provisions of subsection (2) of this section, which shall be
21 paid on the demand of the director in the same manner as the
22 original assessment. If the number of days actually used is less
23 than that estimated for any such institution, the difference shall
24 stand to the credit of such institution for a subsequent year's
25 assessment. In case an extra examination of any institution should

1 ~~become necessary and be made, the reasonable cost thereof shall be~~
2 ~~determined and shall be paid by the institution so examined.~~

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

5 8-602 The Director of Banking and Finance shall charge
6 and collect fees for certain services rendered by the Department of
7 Banking and Finance according to the following schedule:

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

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

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

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

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

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

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

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

9 (9) For investigating the applications required by
10 sections 8-120 and 8-331 and the documents required by section
11 8-201, the cost of such examination, investigation, and inspection,
12 including all legal expenses and the cost of any hearing
13 transcript, with a minimum fee under (a) sections 8-120 and 8-2402
14 of two thousand five hundred dollars, (b) section 8-331 of two
15 thousand dollars, and (c) section 8-201 of one thousand dollars.
16 The department may require the applicant to procure and give
17 a surety bond in such principal amount as the department may
18 determine and conditioned for the payment of the fees provided in
19 this subdivision;

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

23 (11) For the handling of pledged securities as provided
24 in sections 8-210 and 8-1006, at the time of the initial deposit
25 of such securities, one dollar and fifty cents for each thousand

1 dollars of securities deposited and a like amount on or before
2 January 15 each year thereafter. The fees shall be paid by the
3 company, national bank, federal savings association, federally
4 chartered trust company, out-of-state trust company authorized
5 under the Interstate Trust Company Office Act, or state-chartered
6 bank pledging the securities;

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

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

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

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

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

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

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

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

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

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

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

17 Sec. 10. The assessments referred to in sections 12 and
18 13 of this act, examination fees, investigation fees, filing fees,
19 registration fees, licensing fees, and all other fees and money,
20 except fines, collected by or paid to the Director of Banking and
21 Finance under any of the laws specified in section 8-601, shall
22 be remitted to the State Treasurer for credit to the Financial
23 Institution Assessment Cash Fund.

24 Sec. 11. (1) The Financial Institution Assessment Cash
25 Fund is hereby created. The fund shall be used solely for the

1 purposes of administering and enforcing the laws specified in
2 section 8-601.

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

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

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

24 (3) The director shall have the authority to prorate the
25 assessment for any financial institution or entity which surrenders

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

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

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

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

23 (3) In the case of a financial institution or entity
24 organized under the law of a state other than this state or
25 a financial institution or entity organized under the law of

1 this state but which maintains an office in another state or
2 states, travel expenses involved in conducting an examination or
3 investigation may also be billed to the financial institution or
4 entity, if the examination or investigation involves travel outside
5 this state.

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

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

22 (3) The Director of Banking and Finance may, in his or
23 her discretion and for good cause shown, permit the payment of any
24 annual assessment, special assessment, examination fee, examination
25 cost, investigation fee, investigation cost, travel expense, or

1 fine, in installments.

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

4 8-915 The director may make examinations of any bank
5 holding company with one or more state-chartered bank subsidiaries
6 and each state-chartered bank subsidiary thereof, the cost of
7 which shall be assessed, in the manner set forth in ~~section~~
8 ~~8-601,~~ sections 12 and 13 of this act, against and paid for by
9 such bank holding company. The director may accept reports of
10 examination made by the Federal Reserve Board, the Comptroller
11 of the Currency, the Federal Deposit Insurance Corporation, or
12 a foreign state agency in lieu of making an examination by
13 the department. The director may provide reports of examination
14 conducted by the department or other confidential information to
15 any of such regulatory entities. The director may contract with
16 any of such regulatory entities to conduct and pay for such an
17 examination for the department. The director may contract with any
18 of such regulatory entities to conduct and receive payment for such
19 an examination for any of such regulatory entities. The director
20 may enter into cooperative agreements with any or all of such
21 regulatory entities to foster the purposes of the Nebraska Bank
22 Holding Company Act of 1995.

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

25 8-1901 For purposes of sections 8-1901 to 8-1903, unless

1 the context otherwise requires:

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

4 (2) Financial institution means:

5 (a) A state-chartered or federally chartered bank,
6 savings bank, building and loan association, savings and loan
7 association, ~~or~~ credit union, or trust company;

8 (b) A subsidiary of a bank holding company or
9 out-of-state bank holding company; or

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

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

14 8-2107 (1) The director may make such examinations of any
15 branch established and maintained in this state by an out-of-state
16 state chartered bank as the director may deem necessary to
17 determine whether the branch is being operated in compliance
18 with the laws of this state and in accordance with safe and sound
19 banking practices.

20 (2) The director may prescribe requirements for periodic
21 reports regarding any out-of-state bank that operates a branch in
22 Nebraska pursuant to the Interstate Branching By Merger Act of
23 1997. Any reporting requirements prescribed by the director under
24 this subsection shall be consistent with the reporting requirements
25 applicable to Nebraska state banks and appropriate for the purpose

1 of enabling the director to carry out his or her responsibilities
2 under the act.

3 (3) The director may enter into cooperative,
4 coordinating, and information-sharing agreements with any
5 other bank supervisory agencies or any organization affiliated with
6 or representing one or more bank supervisory agencies with respect
7 to the periodic examination or other supervision of any branch in
8 Nebraska of an out-of-state state chartered bank or any branch of a
9 Nebraska state chartered bank in a host state, and the director may
10 accept such reports of examination and reports of investigation in
11 lieu of conducting his or her own examinations or investigations.

12 (4) The director may enter into contracts with any bank
13 supervisory agencies that have concurrent jurisdiction over a
14 Nebraska state chartered bank or an out-of-state state chartered
15 bank operating a branch in this state to engage the services of
16 such agencies' examiners or to provide the services of department
17 examiners to such agency.

18 (5) The director may enter into joint examinations or
19 joint enforcement actions with other bank supervisory agencies
20 having concurrent jurisdiction over any branch in Nebraska of an
21 out-of-state state chartered bank or any branch of a Nebraska
22 state chartered bank in any host state. The director may, at any
23 time, take such actions independently if he or she deems such
24 actions to be necessary or appropriate to carry out his or her
25 responsibilities under the act or to ensure compliance with the

1 laws of this state. In the case of an out-of-state state chartered
2 bank, the director shall recognize the exclusive authority of the
3 home state regulator over corporate government matters and the
4 primary responsibility of the home state regulator with respect to
5 safety and soundness matters.

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

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

12 8-2312 (1) The director may examine any branch trust
13 office or representative trust office established and maintained in
14 this state by any out-of-state state trust company as he or she
15 deems necessary to determine whether the branch trust office or
16 representative trust office is being operated in compliance with
17 Nebraska law and in accordance with safe and sound practices.

18 (2) The director may prescribe requirements for periodic
19 reports by an out-of-state trust company that operates branch trust
20 offices or representative trust offices pursuant to the Interstate
21 Trust Company Office Act. Any such reporting requirements shall be
22 consistent with the reporting requirements applicable to Nebraska
23 trust companies and appropriate for the purpose of enabling the
24 director to carry out his or her responsibilities under the act.

25 (3) The director may enter into cooperative,

1 coordinating, and information-sharing agreements with any
2 other trust company supervisory agency that has concurrent
3 jurisdiction over a Nebraska state-chartered trust company or an
4 out-of-state state trust company operating a branch trust office or
5 representative trust office in this state to engage the services of
6 such supervisory agency's examiners or to provide the services of
7 department examiners to such supervisory agency.

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

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

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

3 8-2504 (1) The Department of Banking and Finance may
4 order any person to cease and desist whenever the Director of
5 Banking and Finance determines that such person has violated
6 section 8-2501 or 8-2502. Upon entry of a cease and desist order,
7 the director shall promptly notify the affected person that such
8 order has been entered and provide opportunity for hearing in
9 accordance with the Administrative Procedure Act.

10 (2) If a person violates section 8-2501 or 8-2502
11 after receiving such cease and desist order, the director may,
12 following notice and opportunity for hearing in accordance with the
13 Administrative Procedure Act, impose a fine of up to one thousand
14 dollars for each violation, plus the costs of investigation. Each
15 instance in which a violation of section 8-2501 or 8-2502 takes
16 place after receiving a cease and desist order constitutes a
17 separate violation.

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

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

25 Sec. 20. Section 21-17,112, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 21-17,112 (1) A federal credit union organized under the
3 Federal Credit Union Act, 12 U.S.C. 1753 et seq., and meeting all
4 the requirements to become a state credit union organized under the
5 Credit Union Act may, with the approval of the department and in
6 compliance with the applicable law under which it was organized,
7 be converted into a state credit union organized under the Credit
8 Union Act. The required articles of association may be executed
9 by a majority of the board of directors of the converting credit
10 union and presented to the department for appropriate examination
11 and approval. A majority of the directors, after executing the
12 articles of association in duplicate, may execute all other papers,
13 including the adoption of bylaws for the general government of the
14 credit union consistent with the Credit Union Act, and do whatever
15 may be required to complete its conversion.

16 (2) The board of directors of the converting credit union
17 may continue to be directors of the credit union. If the director
18 approves the articles of association as presented by the board
19 of directors, the director shall notify the board of directors
20 of his or her decision and shall immediately issue a certificate
21 of approval attached to the duplicate articles of association and
22 return it to the credit union. The certificate shall indicate that
23 the laws of this state have been complied with and that the credit
24 union and all its members, officials, and employees shall have
25 the same rights, powers, and privileges and shall be subject to

1 the same duties, liabilities, and obligations in all respects, as
2 shall be applicable to credit unions originally organized under the
3 Credit Union Act.

4 (3) The approval of the department shall be based on
5 an examination of the credit union and the proceedings had by
6 its board of directors and members with respect to conversion.
7 A conversion shall not be made to defeat or defraud any of the
8 creditors of the credit union. The expenses of an examination,
9 which shall be computed in accordance with ~~section 8-601,~~ sections
10 12 and 13 of this act, shall be paid by the credit union.

11 (4) When the conversion becomes effective, all property
12 of the converted credit union, including all its right, title,
13 and interest in and to all property of whatsoever kind, whether
14 real, personal, or mixed, and things in action, and every right,
15 privilege, interest, and asset of any conceivable value or benefit
16 then existing, belonging, or pertaining to it, or which would inure
17 to it, shall immediately by act of law and without any conveyance
18 or transfer, and without any further act or deed, be vested in
19 and remain the property of the converted credit union, which shall
20 have, hold, and enjoy the property in its own right as fully and
21 to the same extent as the property was previously possessed, held,
22 and enjoyed by it. The converted credit union shall be deemed to
23 be a continuation of the same entity. All the rights, obligations,
24 and relations of the credit union to or in respect to any person,
25 estate, creditor, member, trustee, or beneficiary of any trust

1 or fiduciary function shall remain unimpaired. The credit union
2 shall continue to hold all the rights, obligations, relations, and
3 trusts, and the duties and liabilities connected therewith, and
4 shall execute and perform every trust and relation in the same
5 manner as if it had after the conversion assumed the trust or
6 relation and obligation and liabilities connected with the trust or
7 relation.

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

10 21-17,115 Notwithstanding any of the other provisions of
11 the Credit Union Act or any other Nebraska statute, any credit
12 union incorporated under the laws of the State of Nebraska and
13 organized under the provisions of the act shall have all the
14 rights, powers, privileges, benefits, and immunities which may
15 be exercised as of ~~April 7, 2006~~, the operative date of this
16 section, by a federal credit union doing business in Nebraska on
17 the condition that such rights, powers, privileges, benefits, and
18 immunities shall not relieve such credit union from payment of
19 state taxes assessed under any applicable laws of this state.

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

22 30-3805 (UTC 105) (a) Except as otherwise provided in the
23 terms of the trust, the Nebraska Uniform Trust Code governs the
24 duties and powers of a trustee, relations among trustees, and the
25 rights and interests of a beneficiary.

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

3 (1) the requirements for creating a trust;

4 (2) the duty of a trustee to act in good faith and
5 in accordance with the terms and purposes of the trust and the
6 interests of the beneficiaries;

7 (3) the requirement that a trust and its terms be for the
8 benefit of its beneficiaries, and that the trust have a purpose
9 that is lawful, not contrary to public policy, and possible to
10 achieve;

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

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

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

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

21 (8) the duty under subsection (a) of section 30-3878 to
22 keep the qualified beneficiaries of the trust reasonably informed
23 about the administration of the trust and of the material facts
24 necessary for them to protect their interests, and to respond to
25 the request of a qualified beneficiary of an irrevocable trust for

1 trustee's reports and other information reasonably related to the
2 administration of a trust;

3 (9) the effect of an exculpatory term under section
4 30-3897;

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

7 (11) periods of limitation for commencing a judicial
8 proceeding;

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

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

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

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

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

21 30-3846 (UTC 501) To the extent a beneficiary's interest
22 is not ~~protected by~~ subject to a spendthrift provision, the
23 court may authorize a creditor or assignee of the beneficiary
24 to reach the beneficiary's interest by attachment of present or
25 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.

1 (c) A claimant against which a spendthrift provision
2 cannot be enforced may obtain from a court an order attaching
3 present or future distributions to or for the benefit of the
4 beneficiary. The court may limit the award to such relief as is
5 appropriate under the circumstances.

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

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

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

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

17 (2) the trustee has abused the discretion.

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

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

24 (2) the court shall direct the trustee to pay to the
25 child, spouse, or former spouse such amount as is equitable under

1 the circumstances but not more than the amount the trustee would
2 have been required to distribute to or for the benefit of the
3 beneficiary had the trustee complied with the standard or not
4 abused the discretion.

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

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

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

21 30-3851 (UTC 506) (a) In this section, "mandatory
22 distribution" means a distribution of income or principal which the
23 trustee is required to make to a beneficiary under the terms of the
24 trust, including a distribution upon termination of the trust. The
25 term does not include a distribution subject to the exercise of

1 the trustee's discretion even if (1) the discretion is expressed
2 in the form of a standard of distribution or (2) the terms of the
3 trust authorizing a distribution couple language of discretion with
4 language of direction.

5 **(b)** Whether or not a trust contains a spendthrift
6 provision, a creditor or assignee of a beneficiary may reach
7 a mandatory distribution of income or principal, including a
8 distribution upon termination of the trust, if the trustee has not
9 made the distribution to the beneficiary within a reasonable time
10 after the designated distribution date.

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

13 30-3867 (UTC 802) (a) A trustee shall administer the
14 trust solely in the interests of the beneficiaries.

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

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

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

25 (3) the beneficiary did not commence a judicial

1 proceeding within the time allowed by section 30-3894;

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

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

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

12 (1) the trustee's spouse;

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

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

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

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

25 (e)(1) The following transactions shall not be presumed

1 to be affected by a conflict between the personal and fiduciary
2 interests of a trustee, if the transaction and any investment made
3 pursuant to the transaction complies with the prudent investor
4 rule set forth in sections 30-3883 to 30-3889 and is in the best
5 interests of the beneficiaries:

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

9 (B) the placing of securities transactions by a trustee
10 through a securities broker that is part of the same company as
11 the trustee, is owned by the trustee, or is affiliated with the
12 trustee.

13 (2) In addition to the trustee's fees charged to the
14 trust, the trustee, its affiliate, or its associated entity may
15 be reasonably compensated for any transaction or provision of
16 services described in this subsection performed by the trustee,
17 its affiliate, or its associated entity. However, with respect to
18 any investment in securities of an investment company or investment
19 trust to which the trustee or its affiliate provides investment
20 advisory or investment management services, the trustee shall, at
21 least annually, notify the persons entitled under section 30-3878
22 to receive a copy of the trustee's annual report of the rate and
23 method by which the compensation was determined.

24 ~~(e) An investment by a trustee in securities of an~~
25 ~~investment company or investment trust to which the trustee, or its~~

1 affiliate, provides services in a capacity other than as trustee
2 is not presumed to be affected by a conflict between personal and
3 fiduciary interests if the investment otherwise complies with the
4 prudent investor rule set forth in sections 30-3883 to 30-3889. In
5 addition to its compensation for acting as trustee, the trustee
6 may be compensated by the investment company or investment trust
7 for providing those services out of fees charged to the trust. If
8 the trustee receives compensation from the investment company or
9 investment trust for providing investment advisory or investment
10 management services, the trustee shall at least annually notify
11 the persons entitled under section 30-3878 to receive a copy of
12 the trustee's annual report of the rate and method by which that
13 compensation was determined.

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

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

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

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

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

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

6 (5) an advance by the trustee of money for the protection
7 of the trust.

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

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

13 30-38,110 (UTC 1106) (a) Except as otherwise provided in
14 the Nebraska Uniform Trust Code, on January 1, 2005:

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

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

19 (3) the code applies to judicial proceedings concerning
20 trusts commenced before January 1, 2005, unless the court finds
21 that application of a particular provision of the code would
22 substantially interfere with the effective conduct of the judicial
23 proceedings or prejudice the rights of the parties, in which
24 case the particular provision of the code does not apply and the
25 superseded law applies; and

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

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

8 (c) Any reference to the powers authorized under the
9 Nebraska Trustees' Powers Act as such act existed prior to January
10 1, 2005, is deemed to be a reference to the powers authorized under
11 the Nebraska Uniform Trust Code.

12 (d) Subsection (a) of section 30-3838, section 30-3839,
13 ~~subsection (b) of~~ section 30-3848, subsection (c) of section
14 30-3849, and subdivision (b)(1) of section 30-3879 apply only to
15 trusts which become irrevocable on or after January 1, 2005.

16 Sec. 29. Section 45-191.01, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 45-191.01 (1) At least forty-eight hours before the
19 borrower signs a loan brokerage agreement, the loan broker shall
20 give the borrower a written disclosure statement. The cover sheet
21 of the disclosure statement shall have printed, in at least
22 ten-point boldface capital letters, the title DISCLOSURES REQUIRED
23 BY NEBRASKA LAW. The following statement, printed in at least
24 ten-point type, shall appear under the title:

25 THE STATE OF NEBRASKA HAS NOT REVIEWED AND DOES NOT

1 APPROVE, RECOMMEND, ENDORSE, OR SPONSOR ANY LOAN BROKERAGE
2 AGREEMENT. THE INFORMATION CONTAINED IN THIS DISCLOSURE DOCUMENT
3 HAS NOT BEEN VERIFIED BY THE STATE. IF YOU HAVE QUESTIONS, SEEK
4 LEGAL ADVICE BEFORE YOU SIGN A LOAN BROKERAGE AGREEMENT.

5 Only the title and the statement shall appear on the
6 cover sheet.

7 (2) The body of the disclosure statement shall contain
8 the following information:

9 (a) The name, and street address, and telephone number of
10 the loan broker, the names under which the loan broker does, has
11 done, or intends to do business, and the name and street address
12 of any parent or affiliated company, and the electronic mail and
13 Internet address of the loan broker, if any;

14 (b) A statement as to whether the loan broker does
15 business as an individual, partnership, corporation, or other
16 organizational form, including identification of the state of
17 incorporation or formation;

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

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

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

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

25 (g) The conditions under which the borrower is obligated

1 to pay the loan broker. This disclosure shall be in boldface type;

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

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

8 (i) Has been convicted of a felony or misdemeanor or
9 pleaded nolo contendere to a felony or misdemeanor charge if
10 such felony or misdemeanor involved fraud, embezzlement, fraudulent
11 conversion, or misappropriation of property;

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

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

23 (j) Any other information the director requires.

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

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

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

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

13 (a) The terms and conditions of payment;

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

17 (c) The loan broker's principal business address,
18 telephone number, and electronic mail and Internet address, if any,
19 and the name, and address, telephone number, and electronic mail
20 and Internet address, if any, of its agent in the State of Nebraska
21 authorized to receive service of process;

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

25 (e) The following notice of the borrower's right to

1 cancel the loan brokerage agreement pursuant to this section:

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

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

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

21 45-334 Sections 45-334 to 45-353 and section 35 of this
22 act shall be known and may be cited as the Nebraska Installment
23 Sales Act.

24 Sec. 32. Section 45-340, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 45-340 Installment contracts negotiated and entered into
2 by mail without personal solicitation by salesmen or other
3 representatives of the seller and based upon the catalog of
4 the seller or other printed solicitation of business, which is
5 distributed and made available generally to the public, if such
6 catalog or other printed solicitation clearly sets forth the
7 cash and time-sale prices and other terms of sales to be made
8 through such medium, may be made as provided in this section. All
9 provisions of ~~sections 45-334 to 45-353~~ the Nebraska Installment
10 Sales Act shall apply to such sales except that the seller shall
11 not be required to deliver a copy of the contract to the buyer as
12 provided in section 45-336 and if the contract when received by
13 the seller contains any blank spaces the seller may insert in the
14 appropriate blank space the amounts of money and other terms which
15 are set forth in the seller's catalog or other printed solicitation
16 which is then in effect. In lieu of sending the buyer a copy of the
17 contract as provided in section 45-336, the seller shall furnish to
18 the buyer a written statement of any items inserted in the blank
19 spaces in the contract received from the buyer.

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

22 45-344 If any seller or sales finance company, in the
23 making or collection of an installment contract, shall, directly
24 or indirectly, contract for, take, or receive charges in excess
25 of those authorized by ~~sections 45-334 to 45-353~~ the Nebraska

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

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

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

24 (2) Application for a license shall be on a form
25 prescribed and furnished by the director and shall include audited

1 financial statements showing a minimum net worth of one hundred
2 thousand dollars. If the applicant is an individual or a sole
3 proprietorship, the application shall include the applicant's
4 social security number.

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

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

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

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

21 ~~(4)~~ (6) The director shall, after an application has been
22 filed for a license under the act, investigate the facts, and
23 if he or she finds that the experience, character, and general
24 fitness of the applicant, of the members thereof if the applicant
25 is a corporation or association, and of the officers and directors

1 thereof if the applicant is a corporation, are such as to warrant
2 belief that the business will be operated honestly, fairly, and
3 efficiently within the purpose of the act, the director shall issue
4 and deliver a license to the applicant to do business as a sales
5 finance company in accordance with the license and the act. The
6 director shall have the power to reject for cause any application
7 for a license.

8 ~~(5)~~ (7) The director shall, within his or her discretion,
9 make an examination and inspection concerning the propriety of
10 the issuance of a license to any applicant. The cost of such
11 examination and inspection shall be borne by the applicant.

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

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

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

5 (2) A licensee shall maintain the minimum net worth
6 as required by section 45-346 while a license issued under the
7 Nebraska Installment Sales Act is in effect. The minimum net
8 worth shall be proven by an annual audit conducted by a certified
9 public accountant. A licensee shall submit a copy of the annual
10 audit to the director within forty-five days after the audit is
11 completed. If a licensee fails to maintain the required minimum net
12 worth, the Department of Banking and Finance may issue a notice of
13 cancellation of the license in lieu of revocation proceedings.

14 (3) The surety bond or a substitute bond as required by
15 section 45-346 shall remain in effect while a license issued under
16 the Nebraska Installment Sales Act is in effect. If a licensee
17 fails to maintain a surety bond or substitute bond, the licensee
18 shall immediately cease doing business and surrender the license
19 to the department. If the licensee does not surrender the license,
20 the department may issue a notice of cancellation of the license in
21 lieu of revocation proceedings.

22 (4) Until October 1, 2008, a licensee licensed prior to
23 the operative date of this section may operate with no net worth or
24 bonding requirement as provided for at the time such licensee was
25 originally licensed.

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

3 45-347 All money collected under the authority of the
4 Nebraska Installment Sales Act shall be remitted to the State
5 Treasurer for credit to the Financial Institution Assessment Cash
6 Fund. ~~pursuant to sections 8-601 and 8-602.~~

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

9 45-351 (1) The Department of Banking and Finance shall
10 be charged with the duty of inspecting the business, records, and
11 accounts of all persons who engage in the business of a sales
12 finance company subject to the Nebraska Installment Sales Act.
13 The director shall have the power to appoint examiners who shall,
14 under his or her direction, investigate the installment contracts
15 and business and examine the books and records of licensees when
16 the director shall so determine. Such examinations shall not be
17 conducted more often than annually except as provided in subsection
18 (2) of this section.

19 (2) The director or his or her duly authorized
20 representative shall have the power to make such investigations as
21 he or she shall deem necessary, and to the extent necessary for
22 this purpose, he or she may examine such licensee or any other
23 person and shall have the power to compel the production of all
24 relevant books, records, accounts, and documents.

25 (3) The expenses of the director incurred in the

1 examination of the books and records of licensees, including
2 the expenses of travel incurred in the examination of books and
3 records of licensees located outside Nebraska, shall be charged to
4 the licensees so examined by the director as soon as reasonably
5 possible. Each licensee shall be billed by the director for the
6 amount so charged to such licensee. If such charge is not paid
7 within thirty days after the mailing of such bill, the license of
8 such licensee may be suspended or revoked, as set forth in sections
9 12 and 13 of this act. The director may charge the costs of an
10 investigation of a nonlicensed person to such person, and such
11 costs shall be paid within thirty days after receipt of billing.

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

17 (5) If the director finds, after notice and opportunity
18 for hearing in accordance with the Administrative Procedure Act,
19 that any person has willfully and intentionally violated any
20 provision of the Nebraska Installment Sales Act, any rule or
21 regulation adopted and promulgated under the act, or any order
22 issued by the director under the act, the director may order such
23 person to pay (a) an administrative fine of not more than one
24 thousand dollars for each separate violation and (b) the costs of
25 investigation. All fines collected by the department pursuant to

1 this subsection shall be remitted to the State Treasurer for credit
2 to the permanent school fund.

3 (6) If a person fails to pay an administrative fine and
4 the costs of investigation ordered pursuant to subsection (5) of
5 this section, a lien in the amount of such fine and costs may be
6 imposed upon all assets and property of such person in this state
7 and may be recovered in a civil action by the director. The lien
8 shall attach to the real property of such person when notice of the
9 lien is filed and indexed against the real property in the office
10 of the register of deeds in the county where the real property is
11 located. The lien shall attach to any other property of such person
12 when notice of the lien is filed against the property in the manner
13 prescribed by law. Failure of the person to pay such fine and costs
14 shall constitute a separate violation of the Nebraska Installment
15 Sales Act.

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

18 45-352 The director shall have the power to make such
19 general rules and regulations and specific rulings, demands, and
20 findings as may be necessary for the proper conduct of the business
21 licensed under ~~sections 45-334 to 45-353,~~ the Nebraska Installment
22 Sales Act, and the enforcement of ~~sections 45-334 to 45-353,~~ the
23 act, in addition thereto and not inconsistent therewith.

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

1 45-353 (1) Whenever the director has reasonable cause
2 to believe that any person is violating or is threatening to or
3 intends to violate any of the provisions of ~~sections 45-334 to~~
4 ~~45-353,~~ the Nebraska Installment Sales Act, he or she may, in
5 addition to all actions provided for in ~~sections 45-334 to 45-353~~
6 the act and without prejudice thereto, enter an order requiring
7 such person to desist or to refrain from such violation. An action
8 may also be brought, on the relation of the Attorney General or the
9 director, to enjoin such person from engaging in or continuing such
10 violation or from doing any act or acts in furtherance thereof.

11 (2) In any such action an order or judgment may be
12 entered awarding such preliminary or final injunction as may be
13 deemed proper. In addition to all other means provided by law
14 for the enforcement of a restraining order or injunction, the
15 court, in which such action is brought, shall have power and
16 jurisdiction to impound and appoint a receiver for the property
17 and business of the defendant, including books, papers, documents,
18 and records pertaining thereto or so much thereof as the court
19 may deem reasonably necessary to prevent violations of ~~sections~~
20 ~~45-334 to 45-353~~ the Nebraska Installment Sales Act through or by
21 means of the use of such property and business. Such receiver, when
22 so appointed and qualified, shall have such powers and duties as
23 to custody, collection, administration, winding up and liquidation
24 of such property and business as shall, from time to time, be
25 conferred upon him or her by the court.

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

3 45-701 Sections 45-701 to 45-721 and sections 49 and 50
4 of this act shall be known and may be cited as the Mortgage Bankers
5 Registration and Licensing Act.

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

8 45-702 For purposes of the Mortgage Bankers Registration
9 and Licensing Act:

10 (1) Borrower means the mortgagor or mortgagors under a
11 real estate mortgage or the trustor or trustors under a deed of
12 trust;

13 (2) Branch office means any location at which the
14 business of a mortgage banker is to be conducted, including (a) any
15 offices physically located in Nebraska, (b) any offices that, while
16 not physically located in this state, intend to transact business
17 with Nebraska residents, and (c) any third-party or home-based
18 locations that agents and representatives intend to use to transact
19 business with Nebraska residents;

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

24 (4) Control means the power, directly or indirectly,
25 to direct the management or policies of a mortgage banking

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

14 ~~(2)~~ (5) Department means the Department of Banking and
15 Finance;

16 ~~(3)~~ (6) Director means the Director of Banking and
17 Finance;

18 ~~(4)~~ (7) Financial institution means any person organized
19 or chartered under the laws of this state, any other state,
20 or the United States relating to banks, savings institutions,
21 trust companies, savings and loan associations, or credit unions.
22 Financial institution also means an industrial loan and investment
23 company chartered under the laws of any other state and subject to
24 similar supervision and regulation as a bank chartered under the
25 laws of this state;

1 ~~(5)~~ (8) Licensee means any person licensed under the act;

2 ~~(6)~~ (9) Mortgage banker means any person not exempt under
3 section 45-703 who, for compensation or gain or in the expectation
4 of compensation or gain, directly or indirectly makes, originates,
5 services, negotiates, acquires, sells, arranges for, or offers to
6 make, originate, service, negotiate, acquire, sell, or arrange for
7 ten or more mortgage loans in a calendar year;

8 ~~(7)~~ (10) Mortgage banking business means any person who
9 employs a mortgage banker or mortgage bankers or who directly or
10 indirectly makes, negotiates, acquires, sells, arranges for, or
11 offers to make, originate, service, negotiate, acquire, sell, or
12 arrange for ten or more mortgage loans in a calendar year for
13 compensation or gain or in the expectation of compensation or gain;

14 ~~(8)~~ (11) Mortgage loan means any loan or extension of
15 credit secured by a lien on real property, including a refinancing
16 of a contract of sale or an assumption or refinancing of a prior
17 loan or extension of credit;

18 (12) Multistate licensing and application system means
19 a residential real estate mortgage licensing system data base of
20 which the department is a member;

21 ~~(9)~~ (13) Offer means every attempt to provide, offer to
22 provide, or solicitation to provide a mortgage loan or any form of
23 mortgage banking business. Offer includes, but is not limited to,
24 all general and public advertising, whether made in print, through
25 electronic media, or by the Internet;

1 ~~(10)~~ (14) Person means an association, joint venture,
2 joint-stock company, partnership, limited partnership, limited
3 liability company, business corporation, nonprofit corporation,
4 individual, or any group of individuals however organized;

5 ~~(11)~~ (15) Real property means an owner-occupied
6 single-family, two-family, three-family, or four-family dwelling
7 which is located in this state, which is occupied, used, or
8 intended to be occupied or used for residential purposes, and which
9 is, or is intended to be, permanently affixed to the land;

10 ~~(12)~~ (16) Registered bank holding company means any bank
11 holding company registered with the department pursuant to the
12 Nebraska Bank Holding Company Act of 1995;

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

15 ~~(14)~~ (18) Service means accepting payments or maintenance
16 of escrow accounts in the regular course of business in connection
17 with a mortgage loan.

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

20 45-705 (1) No person shall act as a mortgage banker or
21 use the title mortgage banker in this state unless he, she, or it
22 is licensed or has registered with the department as provided in
23 the Mortgage Bankers Registration and Licensing Act or is licensed
24 under the Nebraska Installment Loan Act.

25 (2) Applicants for a license as a mortgage banker

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

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

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

25 (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

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

13 (2) If the director determines that the license should be
14 denied, the director shall notify the applicant in writing of the
15 denial and of the reasons for the denial. The director shall not
16 deny an application for a license because of the failure to submit
17 information required under the act or rules and regulations adopted
18 and promulgated under the act without first giving the applicant
19 an opportunity to correct the deficiency by supplying the missing
20 information. A decision of the director denying a license pursuant
21 to the act may be appealed, and the appeal shall be in accordance
22 with the Administrative Procedure Act. The director may deny an
23 application for a license if an officer, director, shareholder
24 owning five percent or more of the voting shares of the applicant,
25 partner, or member was convicted of, pleaded guilty to, or was

1 found guilty after a plea of nolo contendere to (a) a misdemeanor
2 under any state or federal law which involves dishonesty or fraud
3 or which involves any aspect of the mortgage banking business,
4 financial institution business, or installment loan business or (b)
5 any felony under state or federal law.

6 ~~(3)~~ (3) (a) All initial licenses shall remain in full
7 force and effect until the next succeeding March 1. Beginning
8 January 1, 2008, initial licenses shall remain in full force and
9 effect until the next succeeding December 31. Thereafter, licenses
10 may be renewed annually by filing with the director an application
11 for renewal containing such information as the director may require
12 to indicate any material change in the information contained
13 in the original application or succeeding renewal applications,
14 including the information required by subsection (3) of section
15 45-705. For the annual renewal of an original license to conduct
16 mortgage banking business under the Mortgage Bankers Registration
17 and Licensing Act, the fee shall be two hundred dollars.

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

24 (c) Licenses which expire on March 1, 2008, shall be
25 renewed until December 31, 2008, upon compliance with subdivision

1 (3) (a) of this section. For such renewals, the department shall
2 prorate the fees provided in subdivision (3) (b) of this section
3 using a factor of ten-twelfths.

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

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

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

19 (2) Any individual who has been convicted of, pleaded
20 guilty to, or been found guilty after a plea of nolo contendere
21 to (a) a misdemeanor under any state or federal law which involves
22 dishonesty or fraud or which involves any aspect of the mortgage
23 banking business, financial institution business, or installment
24 loan business or (b) any felony under state or federal law, and is
25 employed by or maintains a contractual relationship as an agent of,

1 any person required to be licensed or registered under the Mortgage
2 Bankers Registration and Licensing Act, is guilty of a Class I
3 misdemeanor.

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

6 45-710 (1) The director may examine documents and records
7 maintained by a licensee. The director may investigate complaints
8 about a licensee. The director may investigate reports of alleged
9 violations of the Mortgage Bankers Registration and Licensing Act
10 or any rule, regulation, or order of the director under the act.

11 (2) Upon receipt by a licensee of the director's notice
12 of investigation or inquiry request for information, the licensee
13 shall respond within twenty-one calendar days. Each day beyond that
14 time a licensee fails to respond as required by this subsection
15 shall constitute a separate violation of the Mortgage Bankers
16 Registration and Licensing Act. This subsection shall not be
17 construed to require the director to send a notice of investigation
18 to a licensee or any person.

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

23 (a) The United States Department of Housing and Urban
24 Development;

25 (b) The Federal Housing Administration;

- 1 (c) The Federal National Mortgage Association;
2 (d) The Government National Mortgage Association;
3 (e) The Federal Home Loan Mortgage Corporation; or
4 (f) The United States Department of Veterans Affairs.

5 (4) If the director receives a complaint or other
6 information concerning noncompliance with the Mortgage Bankers
7 Registration and Licensing Act by an exempt person, the director
8 shall inform the agency having supervisory authority over the
9 exempt person of the complaint.

10 (5) The total charge for an examination or investigation
11 shall be paid by the licensee ~~to the director within thirty days~~
12 ~~after the director has requested payment.~~ The amount of the fee
13 shall be based on the actual cost of the examination, including
14 travel expenses, as determined by the director. The director may
15 adopt and promulgate rules and regulations which provide for a
16 charge for late payment of the fee not to exceed fifty dollars per
17 day, as set forth in sections 12 and 13 of this act.

18 (6) Examination reports shall not be deemed public
19 records and may be withheld from the public pursuant to section
20 84-712.05.

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

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

24 45-711 A licensee shall:

25 (1) Disburse required funds paid by the borrower and held

1 in escrow for the payment of insurance payments no later than the
2 date upon which the premium is due under the insurance policy;

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

6 (3) Pay any penalty incurred by the borrower because
7 of the failure of the licensee to make the payments required
8 in subdivisions (1) and (2) of this section unless the licensee
9 establishes that the failure to timely make the payments was due
10 solely to the fact that the borrower was sent a written notice of
11 the amount due more than fifteen calendar days before the due date
12 to the borrower's last-known address and failed to timely remit the
13 amount due to the licensee;

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

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

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

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

25 (i) The balance of the escrow account at the beginning of

1 the year;

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

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

6 (A) Payments applied to loan principal;

7 (B) Payments applied to interest;

8 (C) Payments applied to real estate taxes;

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

10 (E) All other withdrawals; and

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

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

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

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

18 (5) Establish and maintain a toll-free telephone number
19 or accept collect telephone calls to respond to inquiries from
20 borrowers, if the licensee services mortgage loans. If a licensee
21 ceases to service mortgage loans, it shall continue to maintain
22 a toll-free telephone number or accept collect telephone calls
23 to respond to inquiries from borrowers for a period of twelve
24 months after the date the licensee ceased to service mortgage
25 loans. A telephonic messaging service which does not permit the

1 borrower an option of personal contact with an employee, agent,
2 or contractor of the licensee shall not satisfy the conditions of
3 this section. Each day such licensee fails to comply with this
4 subdivision shall constitute a separate violation of the Mortgage
5 Bankers Registration and Licensing Act;

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

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

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

24 (9) Notify the director in writing within thirty days
25 after the occurrence of any material development, including, but

1 not limited to:

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

4 (b) Business reorganization;

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

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

10 (e) The licensee or any of the licensee's officers,
11 directors, shareholders, partners, members, employees, or agents
12 was convicted of, pleaded guilty to, or was found guilty after a
13 plea of nolo contendere to (i) a misdemeanor under state or federal
14 law which involves dishonesty or fraud or which involves any aspect
15 of the mortgage banking business, financial institution business,
16 or installment loan business or (ii) any felony under state or
17 federal law;

18 (f) A change of name, trade name, doing business as
19 designation, or main office address; ~~or~~

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

24 (h) The closing of a branch office.

25 Sec. 47. Section 45-714, Revised Statutes Cumulative

1 Supplement, 2006, is amended to read:

2 45-714 (1) A licensee, an officer, an employee, or an
3 agent of the licensee shall not:

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

7 (b) Delay closing of a mortgage loan for the purpose
8 of increasing interest, costs, fees, or charges payable by the
9 borrower;

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

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

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

21 (f) Receive compensation for acting as a mortgage banker
22 if the licensee has otherwise acted as a real estate broker
23 or agent in connection with the sale of the real estate which
24 secures the mortgage loan unless the licensee has provided written
25 disclosure to the person from whom compensation is collected

1 that the licensee is receiving compensation both for acting as a
2 mortgage banker and for acting as a real estate broker or agent;

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

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

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

23 (j) Fail to disburse, without just cause, any funds in
24 accordance with any agreement connected with the mortgage banking
25 business;

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

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

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

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

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

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

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

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

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

24 (3) Any person who violates any provision of subsection
25 (1) of this section is liable to the applicant for a mortgage

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

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

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

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

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

1 a license, and allow such system to process and maintain records on
2 behalf of the department, including information collected pursuant
3 to subsection (5) of section 45-705.

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

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

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

22 (4)(a) The director may disapprove any proposed
23 acquisition if:

24 (i) The financial condition of any acquiring person is
25 such as might jeopardize the financial stability of the acquired

1 mortgage banking business;

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

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

8 (b) The director shall notify the acquiring party in
9 writing of disapproval of the acquisition. The notice shall provide
10 a statement of the basis for the disapproval.

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

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

1 (2) Except for the department, no person shall be
2 authorized to obtain information from a multistate licensing and
3 application system data base or initiate any civil action based
4 on information obtained from such data base, if such information
5 is not currently available to such person under section 8-112 or
6 45-710.

7 (3) The department shall ensure that a multistate
8 licensing and application system adopts a privacy, data security,
9 and security breach notification policy. The director shall make
10 available upon written request a copy of the contract between
11 the department and a multistate licensing and application system
12 pertaining to the breach of security of the system provisions.

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

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

18 45-716 (1) All fees, charges, and costs collected by
19 the department pursuant to the Mortgage Bankers Registration and
20 Licensing Act shall be remitted to the State Treasurer for credit
21 to the Financial Institution Assessment Cash Fund, ~~pursuant to~~
22 ~~sections 8-601 and 8-602.~~

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

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

3 45-920 The director shall examine the books, accounts,
4 and records of each licensee no more often than annually, except
5 as provided in section 45-921. The costs of the director incurred
6 in an examination shall be paid by the licensee as set forth in
7 sections 12 and 13 of this act.

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

10 45-927 All fees, charges, costs, and fines collected by
11 the director under the Delayed Deposit Services Licensing Act shall
12 be remitted to the State Treasurer. Fees, charges, and costs shall
13 be credited to the Financial Institution Assessment Cash Fund,
14 ~~pursuant to sections 8-601 and 8-602,~~ and fines shall be credited
15 to the permanent school fund.

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

18 45-1013 (1) For the annual renewal of an original
19 license under the Nebraska Installment Loan Act, the licensee
20 shall file with the department a fee of two hundred fifty dollars
21 and a renewal application containing such information as the
22 director may require to indicate any material change in the
23 information contained in the original application or succeeding
24 renewal applications.

25 (2) For the relocation of its place of business, a

1 licensee shall file with the department a fee of one hundred
2 fifty dollars and an application containing such information as the
3 director may require to determine whether the relocation should be
4 approved. Upon receipt of the fee and application, the director
5 shall publish a notice of the filing of the application in a
6 newspaper of general circulation in the county where the licensee
7 proposes to relocate. If the director receives any substantive
8 objection to the proposed relocation within fifteen days after
9 publication of such notice, he or she shall hold a hearing on the
10 application in accordance with the Administrative Procedure Act.
11 The expense of any publication required by this section shall be
12 paid by the applicant licensee.

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

15 45-1014 All original license fees and annual renewal fees
16 shall be collected by the department and remitted to the State
17 Treasurer for credit to the Financial Institution Assessment Cash
18 Fund. ~~pursuant to sections 8-601 and 8-602.~~ All investigation and
19 examination fees, charges, and costs collected by or paid to the
20 department shall likewise be remitted to the State Treasurer for
21 credit to the Financial Institution Assessment Cash Fund ~~pursuant~~
22 ~~to sections 8-601 and 8-602~~ and shall be available for the uses and
23 purposes of the fund.

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

1 45-1017 (1) The department shall inspect the business,
2 records, and accounts of all persons that lend money subject to
3 the Nebraska Installment Loan Act. The department may examine or
4 investigate complaints about or reports of alleged violations by
5 a licensee made to the department. The department may inspect and
6 investigate the business, records, and accounts of all persons in
7 the public business of lending money contrary to the act and who
8 do not have a license under the act. The director may appoint
9 examiners who shall, under his or her direction, investigate the
10 loans and business and examine the books and records of licensees
11 annually and more often as determined by the director. The expenses
12 incurred by the department in examining the books and records of
13 licensees and in administering the act during each calendar year
14 shall be charged annually to each licensee by the department as
15 soon as reasonably possible after the examination. Such expenses
16 shall be charged in proportion to the number of days required
17 to examine and supervise the books and records of the respective
18 licensees, paid by the licensee as set forth in sections 12 and 13
19 of this act.

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

25 (3) If the director finds, after notice and opportunity

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

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

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

25 45-1033 (1) The director may, following a hearing under

1 the Administrative Procedure Act, suspend or revoke any license
2 issued pursuant to the Nebraska Installment Loan Act. The director
3 may also impose an administrative fine on the licensee for each
4 separate violation of the act. The director may take one or more of
5 these actions if the director finds:

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

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

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

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

22 (e) The licensee has refused to permit an examination
23 by the director of the licensee's business, records, and accounts
24 pursuant to subsection (1) of section 45-1017 or refused or failed
25 to comply with subsection (2) of section 45-1017 or failed to make

1 any report required under section 45-1018. Each day the licensee
2 continues in violation of this subdivision constitutes a separate
3 violation;

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

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

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

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

1 law.

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

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

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

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

17 (5) Revocation, suspension, cancellation, or expiration
18 of a license shall not affect civil or criminal liability for
19 acts committed before the revocation, suspension, cancellation, or
20 expiration or liability for any fines which may be imposed against
21 the licensee or any of its officers, directors, shareholders,
22 partners, or members pursuant to this section or section 45-1069
23 for acts committed before the surrender.

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

1 52-1301 It is the intent of the Legislature to adopt
2 a central filing system for security interests relating to farm
3 products pursuant to section 1324 of the Food Security Act of
4 1985, Public Law 99-198. It is also the intent of the Legislature
5 that upon the adoption of the central filing system that security
6 interest holders be encouraged to use such system in lieu of any
7 other notice provided by section 1324 for farm products ~~used or~~
8 produced or located in the State of Nebraska which are included in
9 the central filing system.

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

12 52-1302 For purposes of sections 52-1301 to 52-1322 and
13 section 60 of this act, unless the context otherwise requires, the
14 definitions found in sections 52-1303 to 52-1311 and section 60 of
15 this act shall be used.

16 Sec. 60. Approved unique identifier means a number,
17 combination of numbers and letters, or other identifier selected by
18 the Secretary of State using a selection system or method approved
19 by the Secretary of the United States Department of Agriculture.

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

22 52-1307 Effective financing statement means a statement
23 that:

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

25 (2) Is ~~signed and~~ filed by the secured party in the

1 office of the Secretary of State;

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

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

24 (5) Shall be amended in writing, within three months,
25 ~~similarly~~ 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 refiling 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.

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

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

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

23 52-1312 The Secretary of State shall design and implement
24 a central filing system for effective financing statements. The
25 Secretary of State shall be the system operator. The system shall

1 provide a means for filing effective financing statements or
2 notices of such financing statements on a statewide basis. The
3 system shall include requirements:

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

16 (2) That the Secretary of State compile information
17 from all effective financing statements or notices filed with the
18 Secretary of State into a master list (a) organized according
19 to farm product, (b) arranged within each such product (i) in
20 alphabetical order according to the last name of the individual
21 debtors or, in the case of debtors doing business other than as
22 individuals, the first word in the name of such debtors, (ii) in
23 numerical order according to the social security number or other
24 approved unique identifier of the individual debtors or, in the
25 case of debtors doing business other than as individuals, the

1 Internal Revenue Service taxpayer identification number or other
2 approved unique identifier of such debtors, (iii) geographically by
3 county, and (iv) by crop year, and (c) containing the information
4 referred to in subdivision (4) of section 52-1307;

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

17 (4) That all buyers of farm products, commission
18 merchants, selling agents, and other persons may register with the
19 Secretary of State to receive lists described in subdivision (3)
20 of this section. Any buyer of farm products, commission merchant,
21 selling agent, or other person conducting business from multiple
22 locations shall be considered as one entity. Such registration
23 shall be on an annual basis. The Secretary of State shall provide
24 the form for registration which shall include the name and address
25 of the registrant and the list or lists described in subdivision

1 (3) of this section which such registrant desires to receive.
2 A registration shall not be completed until the form provided
3 is properly completed and received by the Secretary of State
4 accompanied by the proper registration fee. The fee for annual
5 registration shall be thirty dollars.

6 A registrant shall pay an additional annual fee to
7 receive quarterly lists described in subdivision (3) of this
8 section. For each farm product list provided on microfiche, the
9 annual fee shall be twenty-five dollars. For each farm product list
10 provided on paper, the annual fee shall be two hundred dollars. The
11 annual fee for a special list which is a list limited to fewer than
12 all counties or less than all crop years shall be one hundred fifty
13 dollars for each farm product.

14 The Secretary of State shall maintain a record of the
15 registrants and the lists and contents of the lists received by the
16 registrants for a period of five years;

17 (5) That the lists as identified pursuant to subdivision
18 (4) of this section be distributed by the Secretary of State on a
19 quarterly basis and be in written or printed form. A registrant may
20 choose in lieu of receiving a written or printed form to receive
21 statewide lists on microfiche. The Secretary of State may provide
22 for the distribution of the lists on any other medium and establish
23 reasonable charges therefor. The distribution shall be made by
24 either certified or registered mail, return receipt requested.

25 The Secretary of State shall, by rule and regulation,

1 establish the dates upon which the quarterly distributions will be
2 made, the dates after which a filing of an effective financing
3 statement will not be reflected on the next quarterly distribution
4 of lists, and the dates by which a registrant must complete a
5 registration to receive the next quarterly list; and

6 (6) That the Secretary of State remove lapsed and
7 terminated effective financing statements or notices of such
8 financing statements from the master list prior to preparation
9 of the lists required to be distributed by subdivision (5) of this
10 section.

11 Effective financing statements or any amendments or
12 continuations of effective financing statements originally filed
13 in the office of the county clerk that have been indexed and
14 entered on the Secretary of State's central filing system need not
15 be retained by the county filing office and may be disposed of or
16 destroyed.

17 The Secretary of State shall apply to the Secretary of
18 the United States Department of Agriculture for (a) certification
19 of the central filing system and (b) approval of the system or
20 method of selecting an approved unique identifier.

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

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

1 52-1313 (1) Presentation for filing of an effective
2 financing statement and the acceptance of the statement by the
3 Secretary of State constitutes filing under sections 52-1301 to
4 52-1322 and section 60 of this act.

5 (2) The fee for filing and indexing and for stamping a
6 copy furnished by the secured party to show the date and place
7 of filing of an effective financing statement, an amendment, or a
8 continuation statement shall be ten dollars. There shall be no fee
9 for the filing of a termination statement.

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

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

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

17 52-1314 (1) A continuation statement may be filed by the
18 secured party within six months prior to the expiration of the
19 five-year period specified in subdivision (6) of section 52-1307.
20 Any such continuation statement shall be signed, authorized, or
21 otherwise authenticated by the secured party, identify the original
22 statement by file number, and state that the original statement is
23 still effective. Upon timely filing of the continuation statement,
24 the effectiveness of the original statement shall be continued for
25 five years after the last date to which the filing was effective

1 whereupon it shall lapse unless another continuation statement is
2 filed prior to such lapse. If an effective financing statement
3 exists at the time insolvency proceedings are commenced by or
4 against the debtor, the effective financing statement shall remain
5 effective until termination of the insolvency proceedings and
6 thereafter for a period of sixty days or until the expiration
7 of the five-year period, whichever occurs later. Succeeding
8 continuation statements may be filed in the same manner to continue
9 the effectiveness of the original statement.

10 (2) Any continuation statement that is filed
11 electronically shall include an electronic signature of the
12 secured party which may consist of a signature recognized under
13 section 86-611 or an access code or any other identifying word
14 or number assigned by the Secretary of State that is unique to a
15 particular filer.

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

18 52-1315 (1) Whenever there is no outstanding secured
19 obligation and no commitment to make advances, incur obligations,
20 or otherwise give value, the secured party shall notify the debtor
21 in writing of his or her right to have a notice of lapse of his
22 or her effective financing statement filed which shall lead to the
23 removal of his or her name from the files and lists compiled by the
24 Secretary of State. In lieu of such notice, the secured party may
25 acquire a waiver of the debtor of such right and a request by the

1 debtor that his or her effective financing statement be retained on
2 file. Such notice may be given or waiver acquired by the secured
3 party at any time prior to the time specified in this subsection
4 for giving the notice.

5 (2) If the secured party does not furnish the notice
6 or obtain the waiver specified in subsection (1) of this section,
7 the secured party shall, within ten days of final payment of all
8 secured obligations, provide the debtor with a written notification
9 of the debtor's right to have a notice of lapse filed. The secured
10 party shall on written demand by the debtor send the debtor a
11 notice of lapse to the effect that he or she no longer claims a
12 security interest under the effective financing statement, which
13 shall be identified by file number. The notice of lapse need only
14 be signed, authorized, or otherwise authenticated by the secured
15 party.

16 (3) If the affected secured party fails to send a
17 notice of lapse within ten days after proper demand, pursuant to
18 subsection (2) of this section, he or she shall be liable to the
19 debtor for any loss caused to the debtor by such failure.

20 (4) On presentation to the Secretary of State of a notice
21 of lapse, he or she shall treat it as a termination statement and
22 note it in the index. If he or she has received the notice of
23 lapse in duplicate, he or she shall return one copy of the notice
24 of lapse to the filing party stamped to show the time of receipt
25 thereof.

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

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

5 52-1317 In order to verify the existence or nonexistence
6 of a security interest, a buyer, commission merchant, or selling
7 agent may request a seller to disclose such seller's social
8 security number or approved unique identifier or, in the case of
9 a seller doing business other than as an individual, the Internal
10 Revenue Service taxpayer identification number or approved unique
11 identifier of such seller.

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

14 52-1318 (1) The State of Nebraska hereby adopts the
15 federal rules and regulations in effect on ~~November 21, 1986,~~
16 the operative date of this section, adopted and promulgated to
17 implement section 1324 of the Food Security Act of 1985, Public Law
18 99-198. If there is a conflict between such rules and regulations
19 and sections 52-1301 to 52-1322 and section 60 of this act, the
20 federal rules and regulations shall apply.

21 (2) The Secretary of State shall adopt and promulgate
22 rules and regulations necessary to implement sections 52-1301 to
23 52-1322 and section 60 of this act pursuant to the Administrative
24 Procedure Act. If necessary to obtain federal certification of the
25 central filing system, additional or alternative requirements made

1 in conformity with section 1324 of the Food Security Act of 1985,
2 Public Law 99-198, may be imposed by the Secretary of State by rule
3 and regulation.

4 (3) The Secretary of State shall prescribe all forms to
5 be used for filing effective financing statements and subsequent
6 actions.

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

9 52-1602 (1) The master lien list prescribed in section
10 52-1601 shall be distributed by the Secretary of State on a
11 quarterly basis corresponding to the date on which the lists
12 provided pursuant to sections 52-1301 to 52-1322 and section 60
13 of this act are distributed. Such master lien list may be mailed
14 with the list provided pursuant to sections 52-1301 to 52-1322 and
15 section 60 of this act. If mailed separately, the master lien list
16 shall be mailed by either certified or registered mail, return
17 receipt requested.

18 (2) Any person may register with the Secretary of State
19 to receive the master lien list prescribed in section 52-1601.
20 Such registration shall be on an annual basis. The Secretary of
21 State shall provide the form for registration. A registration shall
22 not be completed until the form provided is properly completed
23 and received by the Secretary of State accompanied by the proper
24 registration fee. The fee for annual registration shall be thirty
25 dollars, except that a registrant under sections 52-1301 to 52-1322

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

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

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

22 Sec. 70. Section 9-315, Uniform Commercial Code, Revised
23 Statutes Cumulative Supplement, 2006, is amended to read:

24 9-315 Secured party's rights on disposition of collateral
25 and in proceeds.

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

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

7 (B) a security interest attaches to any identifiable
8 proceeds of collateral.

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

25 (b) Proceeds that are commingled with other property are

1 identifiable proceeds:

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

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

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

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

15 (1) the following conditions are satisfied:

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

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

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

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

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

1 (e) If a filed financing statement covers the original
2 collateral, a security interest in proceeds which remains perfected
3 under subdivision (d) (1) becomes unperfected at the later of:

4 (1) when the effectiveness of the filed financing
5 statement lapses under section 9-515 or is terminated under section
6 9-513; or

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

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

11 9-320 Buyer of goods.

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

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

24 (1) without knowledge of the security interest;

25 (2) for value;

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

3 (4) before the filing of a financing statement covering
4 the goods.

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

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

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

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

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

21 9-529 Secretary of State; implementation of centralized
22 computer system.

23 (a) The Secretary of State shall implement and maintain a
24 centralized computer system for the accumulation and dissemination
25 of information relative to financing statements for any type of

1 collateral except collateral described in section 9-501(a)(1). Such
2 a system shall include the entry of information into the computer
3 system by the Secretary of State pursuant to section 9-530 and the
4 dissemination of such information by a computer system or systems,
5 telephone, mail, and such other means of communication as may be
6 deemed appropriate. Such system shall be an interactive system.

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

11 (c) The centralized computer system implemented and
12 maintained pursuant to this section shall include information
13 relative to effective financing statements as provided in sections
14 52-1301 to 52-1322 and section 60 of this act, Reissue Revised
15 Statutes of Nebraska, and statutory liens as provided in sections
16 52-1601 to 52-1605, Reissue Revised Statutes of Nebraska.

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

19 9-531 Uniform Commercial Code Cash Fund; created; use;
20 Secretary of State; duties; fees.

21 (a) There is created the Uniform Commercial Code Cash
22 Fund. Except as otherwise specifically provided, all funds received
23 pursuant to this part and sections 52-1312, 52-1313, 52-1316, and
24 52-1602, Reissue Revised Statutes of Nebraska, shall be placed in
25 the fund and used by the Secretary of State to carry out this part,

1 sections 52-1301 to 52-1322 and section 60 of this act, Reissue
2 Revised Statutes of Nebraska, and sections 52-1601 to 52-1605,
3 Reissue Revised Statutes of Nebraska, except that transfers from
4 the Uniform Commercial Code Cash Fund to the General Fund and the
5 Records Management Cash Fund may be made at the direction of the
6 Legislature.

7 (b) (1) The Secretary of State shall furnish each county
8 clerk with computer terminal hardware, including a printer,
9 compatible with the centralized computer system implemented and
10 maintained pursuant to section 9-529, for inquiries and searches
11 of information in such centralized computer system. The terminals
12 shall be readily and reasonably available and accessible to members
13 of the public for such inquiries and searches.

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

18 Sec. 74. Sections 1, 2, 8, 9, 10, 11, 12, 13, 14, 15, 16,
19 17, 18, 19, 20, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35,
20 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52,
21 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68,
22 69, 70, 71, 72, 73, 75, and 78 of this act become operative three
23 calendar months after the adjournment of this legislative session.
24 The other sections of this act become operative on their effective
25 date.

1 Sec. 75. Original sections 8-108, 8-915, 8-2107,
2 21-17,112, 45-191.01, 45-191.04, 45-334, 45-340, 45-344, 45-347,
3 45-351, 45-352, 45-353, 45-708, 45-710, 45-715, 45-716, 45-920,
4 45-927, 45-1014, 45-1017, 52-1301, 52-1302, 52-1307, 52-1308,
5 52-1313, 52-1314, 52-1315, 52-1317, 52-1318, and 52-1602, Reissue
6 Revised Statutes of Nebraska, sections 8-113, 8-601, 8-602,
7 8-1901, 8-2312, 8-2504, 30-3805, 30-3846, 30-3848, 30-3849,
8 30-3851, 30-38,110, 45-346, 45-701, 45-702, 45-705, 45-706, 45-711,
9 45-714, 45-1013, 45-1033, and 52-1312, Revised Statutes Cumulative
10 Supplement, 2006, and sections 9-315, 9-320, 9-529, and 9-531,
11 Uniform Commercial Code, Revised Statutes Cumulative Supplement,
12 2006, are repealed.

13 Sec. 76. Original section 8-149, Reissue Revised Statutes
14 of Nebraska, and sections 8-124, 8-148.04, 8-1,140, 8-355,
15 21-17,115, and 30-3867, Revised Statutes Cumulative Supplement,
16 2006, are repealed.

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

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

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