

## LEGISLATIVE BILL 851

Approved by the Governor March 19, 2008

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

FOR AN ACT relating to banking and finance; to amend sections 8-224, 8-374, 8-2106, 25-202, and 64-214, Reissue Revised Statutes of Nebraska, sections 8-115.01, 8-116, 8-120, 8-122, 8-143.01, 8-157, 8-223, 8-234, 8-910, 8-1510, 8-2102, 45-703, 45-704, 45-907, 45-922, and 45-1006, Revised Statutes Cumulative Supplement, 2006, sections 8-1,140, 8-355, 21-17,115, 45-702, and 45-722, Revised Statutes Supplement, 2007, section 9-506, Uniform Commercial Code, Reissue Revised Statutes of Nebraska, and section 9-324, Uniform Commercial Code, Revised Statutes Cumulative Supplement, 2006; to change provisions relating to bank charters, undivided profits, and trust companies and trust departments; to change certain notice requirements with respect to bank charter and branching applications; to change provisions relating to loans to executive officers of banks; to change provisions relating to actions for the recovery of title or possession of real estate or foreclosure of mortgages; to provide for the foreclosure of deeds of trust; to allow bank employees and agents to perform acknowledgments of written instruments and administer oaths as prescribed; to revise powers of state-chartered banks, building and loan associations, and credit unions; to change provisions relating to bank holding company ownership limitations, interstate mergers, and interstate branching by merger; to change provisions relating to the Mortgage Bankers Registration and Licensing Act, the Delayed Deposit Services Licensing Act, and the Nebraska Installment Loan Act; to change provisions relating to priority of purchase-money security interests and the effect of errors and omissions in a financing statement; to eliminate provisions relating to the investment of funds by fiduciaries; to provide operative dates; to repeal the original sections; to outright repeal section 30-3206, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. Section 8-115.01, Revised Statutes Cumulative Supplement, 2006, is amended to read:

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

(1) Except as provided for in subdivision (2) of this section, when application is made for a new bank charter, a public hearing shall be held on each application. Notice of the filing of the application shall be published by the department for three weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the bank. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after filing the application has been accepted for filing by the director as substantially complete unless the applicant agrees to a later date. Notice of the filing of the application shall be sent by the department to all financial institutions located in the county where the applicant proposes to operate;

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

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

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

(b) Whether the length of time that the applicant or a majority

of the applicant's officers, directors, and shareholders have been involved in the business of banking in this state has been for a minimum of five consecutive years; and

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

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

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

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

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

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

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

Sec. 2. Section 8-116, Revised Statutes Cumulative Supplement, 2006, is amended to read:

8-116 (1) A charter for a bank hereafter organized shall not be issued unless the corporation applying therefor shall have a surplus of not less than fifty seventy thousand dollars or fifty seventy percent of its paid-up capital stock, whichever is greater, and a paid-up capital stock as follows: In villages or counties of less than one thousand inhabitants, one hundred thousand dollars; in cities, villages, or counties of one thousand or more and less than twenty-five thousand inhabitants, not less than one hundred fifty thousand dollars; in cities or counties of twenty-five thousand or more and less than one hundred thousand inhabitants, not less than two hundred thousand dollars; and in cities or counties of one hundred thousand or more

inhabitants, not less than five hundred thousand dollars. ~~Such corporation shall also have minimum paid-in undivided profits of not less than twenty percent of its paid-up capital stock.~~

(2) Notwithstanding subsection (1) of this section, the department shall have the authority to determine the minimum amount of paid-up capital stock, ~~and surplus, and paid-in undivided profits~~ required for any corporation applying for a bank charter, which amounts shall not be less than the amounts provided in subsection (1) of this section.

(3) For purposes of this section, population shall be determined by the most recent federal decennial census.

Sec. 3. Section 8-120, Revised Statutes Cumulative Supplement, 2006, is amended to read:

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

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

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

Sec. 4. Section 8-122, Revised Statutes Cumulative Supplement, 2006, is amended to read:

8-122 (1) After the examination and approval by the department of the application required by section 8-120, if the department upon investigation and after any public hearing on the application held pursuant to section 8-115.01 shall be satisfied that the stockholders and officers of the corporation applying for such charter are parties of integrity and responsibility, that the requirements of section 8-702 have been met, and that the public necessity, convenience, and advantage will be promoted by permitting such corporation to engage in business as a bank, the department shall, upon the payment of the required fees, and, upon the filing with the department of a statement, under oath, of the president, secretary, or treasurer, that the paid-up capital stock, ~~and surplus, and undivided profits~~ have been paid in, as determined by the department in accordance with section 8-116, issue to such corporation a charter to transact the business of a bank in this state provided for in its articles of incorporation. In the case of a bank organized to merge with an existing bank, there shall be a rebuttable presumption that the public necessity, convenience, and advantage will be met by the merger of the two banks, except that such presumption shall not apply when the new bank that is formed by the merger is at a different location than that of the former existing bank. Any application for merger under this subsection shall be subject to section 8-1516.

(2) On payment of the required fees and the receipt of the charter, such corporation may begin to conduct a bank.

Sec. 5. Section 8-143.01, Revised Statutes Cumulative Supplement, 2006, is amended to read:

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

(2) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests

of that person, exceeds five hundred thousand dollars except by complying with the requirements of subdivisions (1)(a) and (b) of this section.

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

(4) A bank shall be authorized to extend credit to any of its executive officers; ~~licensed pursuant to section 8-139.~~

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

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

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

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

(5)(a) Except as provided in subdivision (b) or (c) of this subsection, any executive officer ~~licensed pursuant to section 8-139~~ shall make, on an annual basis, a written report to the board of directors of the bank of which he or she is an executive officer stating the date and amount of all loans or indebtedness on which he or she is a borrower, cosigner, or guarantor, the security therefor, and the purpose for which the proceeds have been or are to be used.

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

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

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

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

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

(8) For purposes of this section:

(a) Executive officer shall mean a person who participates or has

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

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

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

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

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

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

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

Sec. 6. Section 8-157, Revised Statutes Cumulative Supplement, 2006, is amended to read:

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

(2)(a)(i) Except as provided in subdivision (2)(a)(ii) of this section, with the approval of the director, any bank located in this state may establish and maintain in this state an unlimited number of branches at which all banking transactions allowed by law may be made.

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

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

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

(c) For purposes of this subsection:

(i) Class I county means a county in this state with a population of three hundred thousand or more as determined by the most recent federal decennial census;

(ii) Class II county means a county in this state with a population

of at least two hundred thousand and less than three hundred thousand as determined by the most recent federal decennial census;

(iii) Class III county means a county in this state with a population of at least one hundred thousand and less than two hundred thousand as determined by the most recent federal decennial census; and

(iv) Class IV county means a county in this state with a population of less than one hundred thousand as determined by the most recent federal decennial census.

(3) With the approval of the director, a bank may establish and maintain branches acquired pursuant to section 8-1506 or 8-1516. All banking transactions allowed by law may be made at such branches.

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

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

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

(7) A bank which has a main chartered office or an approved branch located in the State of Nebraska may, through any of its executive officers, including executive officers licensed as such pursuant to section 8-139, or designated agents, conduct a loan closing at a location other than the place of business specified in the bank's charter or any branch thereof.

(8) A bank which has a main chartered office or approved branch located in the State of Nebraska may, upon notification to the department, establish savings account programs at any elementary or secondary school, whether public or private, that has students who reside in the same city or village as the main chartered office or branch of the bank, or, if the main office of the bank is located in an unincorporated area of a county, at any school that has students who reside in the same unincorporated area. The savings account programs shall be limited to the establishment of individual student accounts and the receipt of deposits for such accounts.

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

Sec. 7. Section 8-1,140, Revised Statutes Supplement, 2007, is amended to read:

8-1,140 Notwithstanding any of the other provisions of the Nebraska Banking Act or any other Nebraska statute, any bank incorporated under the laws of this state and organized under the provisions of the act, or under the laws of this state as they existed prior to May 9, 1933, shall directly, or

indirectly through a subsidiary or subsidiaries, have all the rights, powers, privileges, benefits, and immunities which may be exercised as of ~~March 20, 2007~~, the operative date of this section, by a federally chartered bank doing business in Nebraska, including the exercise of all powers and activities that are permitted for a financial subsidiary of a federally chartered bank. Such rights, powers, privileges, benefits, and immunities shall not relieve such bank from payment of state taxes assessed under any applicable laws of this state.

Sec. 8. Section 8-223, Revised Statutes Cumulative Supplement, 2006, is amended to read:

8-223 (1) The trust company shall file with the Department of Banking and Finance during the months of January and July of each year a statement under oath of the condition of the trust company on the last business day of the preceding December and June in the manner and form required by the department. For purposes of the Nebraska Trust Company Act, the trust company's annual report shall be deemed to be the report filed with the Department of Banking and Finance during the month of January.

(2) Any trust company that fails, neglects, or refuses to make or furnish any report or any published statement required by the Nebraska Trust Company Act shall pay to the department fifty dollars for each day such failure continues, unless the department extends the time for filing such report.

(3) The filing requirements of this section shall not apply to the trust department of a bank if the report of condition of the trust department is included in the reports of the bank required by the Nebraska Banking Act.

Sec. 9. Section 8-224, Reissue Revised Statutes of Nebraska, is amended to read:

8-224 (1) The reports required by section 8-223 shall be verified by one of the managing officers, and a summary of the annual report, in a form prescribed by the Department of Banking and Finance, shall, within thirty days after the filing of the statement with the department, be published in a newspaper of general circulation in the county where the trust company is chartered.

(2) The publication required by this section shall not apply to any trust company that makes an annual disclosure statement available to any member of the general public upon request in accordance with the following provisions:

(a) The annual disclosure statement shall be in a form prescribed by the department;

(b) In the lobby of its main office, in every branch trust office, and in every representative trust office, the trust company shall at all times display a notice that the annual disclosure statement may be obtained from the trust company;

(c) If the trust company maintains an Internet web site, the home page of the web site shall at all times contain a notice that the annual disclosure statement may be obtained from the trust company;

(d) The notice described in subdivisions (b) and (c) of this subsection shall include, at a minimum, an address and telephone number to which requests for an annual disclosure statement may be made;

(e) The first requested copy of the annual disclosure statement shall be provided to a requester free of charge; and

(f) A trust company shall make its annual disclosure statement available to the public beginning not later than the following March 31 or, if the trust company mails an annual disclosure statement to its shareholders, beginning not later than five days after the mailing of the disclosure statement, whichever occurs first. A trust company shall make its annual disclosure statement available continuously until (i) the annual disclosure statement for the succeeding year becomes available or (ii) a summary of its annual report is published for the succeeding year in accordance with this section.

(3) The publication required by this section shall not apply to reports of the trust department of a bank if the report of condition of the trust department is included in the reports of the bank required by the Nebraska Banking Act.

Sec. 10. Section 8-234, Revised Statutes Cumulative Supplement, 2006, is amended to read:

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

(2) A corporation organized to do business as a trust company under the Nebraska Trust Company Act, in order to establish a branch trust office

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

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

(4) With the approval of the director, a state-chartered bank authorized to conduct a trust business pursuant to sections 8-159 to 8-162 may establish and maintain branch trust offices within this state and in any other state pursuant to section 8-2303. The procedure for the establishment of any branch trust office under this subsection shall be the same as provided in subsections (2) and (3) of this section. The activities at the branch trust office shall be limited to the activities permitted by the Nebraska Trust Company Act, and the general business of banking shall not be conducted at the branch trust office. Nothing in this subsection is intended to prohibit the establishment of a branch pursuant to section 8-157 at which trust business may be conducted.

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

Sec. 11. Section 8-355, Revised Statutes Supplement, 2007, is amended to read:

8-355 Notwithstanding any of the provisions of Chapter 8, article 3, or any other Nebraska statute, except as provided in section 8-345.02, any association incorporated under the laws of the State of Nebraska and organized under the provisions of such article shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of ~~March 20, 2007,~~ the operative date of this section, by a federal savings and loan association doing business in Nebraska. Such rights, powers, privileges, benefits, and immunities shall not relieve such association from payment of state taxes assessed under any applicable laws of this state.

Sec. 12. Section 8-374, Reissue Revised Statutes of Nebraska, is amended to read:

8-374 Prior to issuing a certificate of approval, the department, upon receiving an application for a stock savings and loan association, shall publish notice of filing of the application for a period of three weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the savings and loan association. ~~The expense of the publication shall be paid by the applicant.~~ A public hearing shall be held on each application. The date for hearing the application shall be not more than ninety days after filing the application and not less than thirty days after the last publication of notice. Such hearing shall be held to determine:

(1) Whether the articles of incorporation and bylaws conform to the requirements of sections 8-356 to 8-384 and contain a just and equitable plan



for the management of the association's business;

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

(3) Whether in the department's judgment a need exists for such an institution in the community to be served;

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

(5) Whether the same can be established without undue injury to properly conducted existing local savings and loan associations, whether mutual or capital stock in formation.

The expense of any publication required by this section shall be paid by the applicant.

Sec. 13. Section 8-910, Revised Statutes Cumulative Supplement, 2006, is amended to read:

8-910 (1) It shall be unlawful, except as provided in this section, for:

(a) Any action to be taken that causes any company to become a bank holding company;

(b) Any action to be taken that causes a bank to become a subsidiary of a bank holding company;

(c) Any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than twenty-five percent of the voting shares of such bank;

(d) Any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank; or

(e) Any bank holding company to merge or consolidate with any other bank holding company.

(2) The prohibition set forth in subsection (1) of this section shall not apply if:

(a) (i) The bank holding company is registered with the department as of September 29, 1995, as a bank holding company for any bank or banks; or (ii) the bank holding company registers with the department in accordance with the provisions of section 8-913 as a bank holding company;

(b) The bank holding company does not have a name deceptively similar to an existing unaffiliated bank or bank holding company located in Nebraska;

(c) Upon any action referred to in subsection (1) of this section and subject to subsection (3) of this section, the bank or banks so owned or controlled would have deposits in Nebraska in an amount no greater than twenty-two percent of the total deposits of all banks in Nebraska plus the total deposits, savings accounts, passbook accounts, and shares in savings and loan associations and building and loan associations in Nebraska as determined by the director on the basis of the most recent midyear reports, except as provided in subsections (4), and (5), and (6) of this section;

(d) The bank holding company is adequately capitalized and adequately managed;

(e) The bank holding company complies with sections 8-1501 to 8-1505 if the bank or banks to be acquired are chartered in this state under the Nebraska Banking Act; and

(f) The bank holding company, if an out-of-state bank holding company, complies with the limitations of section 8-911.

(3) If any person, association, partnership, limited liability company, or corporation owns or controls twenty-five percent or more of the voting stock of any bank holding company acquiring a bank and any such person, association, partnership, limited liability company, or corporation owns or controls twenty-five percent or more of the voting stock of any other bank or bank holding company in Nebraska, then the total deposits of such other bank or banks and of all banks in Nebraska owned or controlled by such bank holding company shall be included in the computation of the total deposits of a bank holding company acquiring a bank.

(4) A bank or bank holding company which acquires and holds all or substantially all of the voting stock of one credit card bank under sections 8-1512 and 8-1513 shall not have such acquisition count against the limitations set forth in subdivision (2)(c) of this section.

(5) A bank holding company which acquired an institution or which formed a bank which acquired an institution under sections 8-1506 to 8-1510 or which acquired any assets and liabilities from the Resolution Trust Corporation or the Federal Deposit Insurance Corporation prior to January 1, 1994, shall not have such acquisition or formation count against the limitations set forth in subdivision (2)(c) of this section.

(6) A bank which accepts deposits from nonresidents of Nebraska and

voluntarily segregates the reporting of such deposits in such a manner as to allow the director to determine the amounts of such deposits shall not have such deposits count against the limitations set forth in subdivision (2)(c) of this section. The bank shall report the amount of such deposits, if so segregated, to the director prior to October 1 of each year.

Sec. 14. Section 8-1510, Revised Statutes Cumulative Supplement, 2006, is amended to read:

8-1510 (1) The Director of Banking and Finance may permit cross-industry acquisition or merger of one or more financial institutions under its supervision upon the application of such institutions to the Department of Banking and Finance. The application shall be made on forms prescribed by the department.

(2) Except as provided for in subsection (3) of this section, when an application is made for such an acquisition or merger, notice of the filing of the application shall be published by the department three weeks in a legal newspaper in or of general circulation in the county where the applicant proposes to operate the acquired or merged financial institution. A public hearing shall be held on each application. The date for hearing the application shall be not more than ninety days after the filing of the application and not less than thirty days after the last publication of notice after the examination and approval by the department of the application. If the department, upon investigation and after public hearing on the application, is satisfied that the stockholders and officers of the financial institution applying for such acquisition or merger are parties of integrity and responsibility, that the requirements of section 8-702 have been met or some alternate form of protection for depositors has been met, and that the public necessity, convenience, and advantage will be promoted by permitting such acquisition or merger, the department shall, upon payment of the required fees, issue to such institution an order of approval for the acquisition or merger.

(3) When application is made for cross-industry acquisition or merger and the director determines, in his or her discretion, that the financial condition of the financial institution surviving the acquisition or merger is such as to indicate that a hearing on the application would not be necessary, then the hearing requirement of subsection (2) of this section shall only be required if, (a) after publishing a notice of the proposed application in a newspaper of general circulation in the county or counties where the offices of the financial institution to be merged or acquired are located and (b) after giving notice ~~by certified mail~~ to all financial institutions located within such county or counties, the director receives a substantive objection to the application within fifteen days after the first day of publication. The director shall send the notice to financial institutions by first-class mail, postage prepaid, or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail.

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

Sec. 15. Section 8-2102, Revised Statutes Cumulative Supplement, 2006, is amended to read:

8-2102 For purposes of the Interstate Branching By Merger Act of 1997, unless the context otherwise requires:

(1) Bank means a bank as defined in 12 U.S.C. 1813, as such section existed on the operative date of this section;

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

~~(2)~~ (3) Director means the Director of Banking and Finance;

~~(3)~~ (4) Home state means (a) with respect to a state chartered bank, the state in which the bank is chartered and (b) with respect to a national bank, the state in which the main office of the bank is located;

~~(4)~~ (5) Home state regulator means, with respect to an out-of-state state chartered bank, the bank supervisory agency of the state in which such bank is chartered;

~~(5)~~ (6) Host state means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain, a branch;

~~(6)~~ (7) Interstate merger transaction means a merger or consolidation of two or more banks, at least one of which is a Nebraska bank and at least one of which is an out-of-state bank, and the conversion of the main office and the branches of any bank involved in such merger or consolidation into branches of the resulting bank;

~~(7)~~ (8) Nebraska bank means a bank whose home state is Nebraska;

~~(8)~~ (9) Nebraska state chartered bank means a corporation which is chartered to conduct a bank in this state pursuant to the Nebraska Banking

Act;

~~(9)~~ (10) Out-of-state bank means a bank whose home state is a state other than Nebraska;

~~(10)~~ (11) Out-of-state state chartered bank means a bank chartered under the laws of any state other than Nebraska;

~~(11)~~ (12) Resulting bank means a bank that has resulted from an interstate merger transaction under the Interstate Branching By Merger Act of 1997; and

~~(12)~~ (13) State means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

Sec. 16. Section 8-2106, Reissue Revised Statutes of Nebraska, is amended to read:

8-2106 An interstate merger transaction shall not be permitted if, upon consummation of such transaction, the resulting bank or its bank holding company would have direct or indirect ownership or control of deposits in Nebraska in excess of fourteen percent of the total deposits of all banks in Nebraska, plus the total deposits, savings accounts, passbook accounts, and share accounts in savings and loan associations and building and loan associations in Nebraska, as determined by the director on the basis of the most recent calendar-year-end reports, except as provided in subsection (4), ~~or (5), or (6)~~ of section 8-910.

Sec. 17. Section 21-17,115, Revised Statutes Supplement, 2007, is amended to read:

21-17,115 Notwithstanding any of the other provisions of the Credit Union Act or any other Nebraska statute, any credit union incorporated under the laws of the State of Nebraska and organized under the provisions of the act shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of ~~March 20, 2007,~~ the operative date of this section, by a federal credit union doing business in Nebraska on the condition that such rights, powers, privileges, benefits, and immunities shall not relieve such credit union from payment of state taxes assessed under any applicable laws of this state.

Sec. 18. Section 25-202, Reissue Revised Statutes of Nebraska, is amended to read:

25-202 (1) An action for the recovery of the title or possession of lands, tenements, or hereditaments, or for the foreclosure of mortgages or the foreclosure of deeds of trust as mortgages thereon, can only be brought within ten years after the cause of action accrues. No limitation shall apply to the time within which any county, city, town, village, other municipal corporation, public power and irrigation district, public power district, public irrigation district organized under Chapter 70, article 6, irrigation district organized under Chapter 46, article 1, or natural resources district may begin an action for the recovery of the title or possession of any public road, street, or alley, other public or political subdivision grounds or lands, or city or town lots.

(2) For the purposes of this section as relates only to the rights and interests of subsequent purchasers and encumbrancers for value:

(a) The cause of action for foreclosure of the mortgage or foreclosure of the deed of trust as a mortgage accrues on the last date of maturity of the debt or other obligation secured by the mortgage or deed of trust as the date is stated in or is ascertainable from the filed record of the mortgage or deed of trust or the filed record of an extension of the mortgage or deed of trust;

(b) If no date of maturity is stated or is ascertainable from the filed mortgage or deed of trust or the filed extension, the cause of action for foreclosure of the mortgage or foreclosure of the deed of trust as a mortgage accrues no later than ~~twenty~~ thirty years after the date of the mortgage or deed of trust; or

(c) If the mortgage creditor files an affidavit to the effect that the mortgage or deed of trust is unpaid and is still a valid lien, the affidavit is filed before the cause of action is barred under this section, and the affidavit is filed for record in the office of the register of deeds, ~~+~~ the cause of action is not barred until ten years after the date the affidavit is filed. The period of ten years shall not be extended by nonresidence, legal disability, partial payment, acknowledgment of debt, or promise to pay.

Sec. 19. Section 45-702, Revised Statutes Supplement, 2007, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 20. Section 45-703, Revised Statutes Cumulative Supplement, 2006, is amended to read:

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

- (a) Any financial institution or wholly owned subsidiary thereof;
- (b) Any registered bank holding company;
- (c) Any insurance company organized under the laws of this state and subject to regulation by the Department of Insurance;
- (d) Any person licensed to practice law in this state who is not actively and principally engaged in the business of negotiating mortgage loans when such person renders services in the regular course of his or her practice as an attorney at law;
- (e) Any person licensed in this state as a real estate broker or real estate salesperson pursuant to section 81-885.02 who is not actively and principally engaged in the business of negotiating mortgage loans when such person renders services as a real estate broker or real estate salesperson;
- (f) Any individual acting solely as an employee of a mortgage banker licensed or registered pursuant to the act or exempt from the act;
- (g) Any individual acting solely as an agent of a mortgage banker licensed or registered pursuant to the act or exempt from the act if there is a written agency contract between the individual and the licensee which provides that, with respect to the mortgage banking business, the individual acts exclusively for the licensee as an agent;
- (h) Any holding company of a financial institution other than a registered bank holding company;
- (i) Any wholly owned subsidiary of an organization listed in subdivisions (b) and (c) of this subsection if the listed organization maintains a place of business in Nebraska; ~~and~~
- (j) Any insurance company organized or chartered under the laws of any other state if the insurance company has a place of business in Nebraska; ~~and-~~

(k) Any individual who does not regularly engage in the mortgage banking business who (i) makes a mortgage loan with his or her own funds for his or her own investment, (ii) makes a purchase-money mortgage, or (iii) finances the sale of his or her own real property without the intent to resell the mortgage loan.

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

Sec. 21. Section 45-704, Revised Statutes Cumulative Supplement, 2006, is amended to read:

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

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

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

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

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

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

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

Sec. 22. Section 45-722, Revised Statutes Supplement, 2007, is

amended to read:

45-722 (1) No person acting personally or as an agent shall acquire control of any mortgage banking business required to be licensed under the Mortgage Bankers Registration and Licensing Act without first giving ~~sixty~~ thirty days' notice to the department on forms prescribed by the department of such proposed acquisition and paying a filing fee of two hundred dollars.

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

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

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

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

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

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

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

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

Sec. 23. Section 45-907, Revised Statutes Cumulative Supplement, 2006, is amended to read:

45-907 (1) When an application for a delayed deposit services business license has been accepted by the director as substantially complete, notice of the filing of the application shall be published by the director for three successive weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the delayed deposit services business. ~~The costs of the publication shall be paid by the applicant.~~ A public hearing shall be held on each application except as provided in subsection (2) of this section. The date for hearing shall not be less than thirty days after the last publication. Written protest against the issuance of the license may be filed with the Department of Banking and Finance by any person not less than five days before the date set for hearing. The director, in his or her discretion, may grant a continuance. The costs of the hearing shall be paid by the applicant. The director may investigate the propriety of the issuance of a license to the applicant. The costs of such investigation shall be paid by the applicant.

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

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

Sec. 24. Section 45-922, Revised Statutes Cumulative Supplement, 2006, is amended to read:

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

(a) A licensee or any of its officers, directors, partners, or

members has knowingly violated the act or any rule, regulation, or order of the director thereunder;

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

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

(d) A licensee or any of its officers, directors, partners, or members has knowingly subscribed to, made, or caused to be made any false statement or false entry in the books and records of any licensee, has knowingly subscribed to or exhibited false papers with the intent to deceive the Department of Banking and Finance, has failed to make a true and correct entry in the books and records of such licensee of its business and transactions in the manner and form prescribed by the department, or has mutilated, altered, destroyed, secreted, or removed any of the books or records of such licensee without the written approval of the department or as provided in section 45-925; ~~or-~~

(e) A licensee has knowingly violated a voluntary consent or compliance agreement which had been entered into with the director.

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

(3) (a) If a licensee fails to renew its license as required by section 45-910 and does not voluntarily surrender the license pursuant to section 45-911, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) If a licensee fails to maintain a surety bond as required by section 45-906, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

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

(5) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for fines levied against the licensee or any of its officers, directors, shareholders, partners, or members, pursuant to section 45-925, for acts committed before the revocation, suspension, cancellation, or expiration.

Sec. 25. Section 45-1006, Revised Statutes Cumulative Supplement, 2006, is amended to read:

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

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

(3) The expense of any publication made pursuant to this section

shall be paid by the applicant.

Sec. 26. Section 64-214, Reissue Revised Statutes of Nebraska, is amended to read:

64-214 (1) It ~~shall be~~ is lawful for any stockholder, ~~officer, or~~ director, officer, employee, or agent of a bank, who is a notary public, to take the acknowledgment of any person to any written instrument given to or by the bank and to administer an oath to any other stockholder, director, officer, employee, or agent of the bank.

(2) Acknowledgments heretofore taken of any person to any written instrument given to or by a bank or any oath administered to any stockholder, director, ~~or officer,~~ employee, or agent of a bank by any notary public who was a stockholder, director, ~~or officer,~~ employee, or agent of ~~said the~~ the bank shall be deemed to be lawful, valid, and binding.

Sec. 27. Section 9-324, Uniform Commercial Code, Revised Statutes Cumulative Supplement, 2006, is amended to read:

9-324 Priority of purchase-money security interests.

(a) Except as otherwise provided in subsection (g), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in section 9-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within thirty days thereafter.

(b) Subject to subsection (c) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in section 9-330, and, except as otherwise provided in section 9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) the purchase-money security interest is perfected when the debtor receives possession of the inventory;

(2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) Subdivisions (b)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing or possession under section 9-312(f), before the beginning of the twenty-day period thereunder.

~~(d)~~ (d)(1) Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in section 9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

~~(1)~~ (A) the purchase-money security interest is perfected when the debtor receives possession of the livestock;

~~(2)~~ (B) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

~~(3)~~ (C) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

~~(4)~~ (D) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(2) For purposes of this subsection, possession means (A) possession by the debtor or (B) possession by a third party on behalf of or at the direction of the debtor, including, but not limited to, possession by a bailee or an agent of the debtor.

(e) Subdivisions ~~(d)(2) through (4)~~ (d)(1)(B) through (D) apply only if the holder of the conflicting security interest had filed a financing



statement covering the same types of livestock:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing or possession under section 9-312(f), before the beginning of the twenty-day period thereunder.

(f) Except as otherwise provided in subsection (g), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in section 9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d), or (f):

(1) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) in all other cases, section 9-322(a) applies to the qualifying security interests.

Sec. 28. Section 9-506, Uniform Commercial Code, Reissue Revised Statutes of Nebraska, is amended to read:

9-506 Effect of errors or omissions.

(a) A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 9-503(a) is seriously misleading.

(c) If a search of the records of the filing office under the debtor's correct name, or, in the case of a debtor who is an individual, the debtor's correct last name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 9-503(a), the name provided does not make the financing statement seriously misleading.

(d) For purposes of section 9-508(b), the "debtor's correct name" in subsection (c) means the correct name of the new debtor.

Sec. 29. Sections 2, 3, 4, 8, 9, 19, 20, 21, 23, 24, 25, 28, and 30 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 30. Original section 8-224, Reissue Revised Statutes of Nebraska, sections 8-116, 8-120, 8-122, 8-223, 45-703, 45-704, 45-907, 45-922, and 45-1006, Revised Statutes Cumulative Supplement, 2006, section 45-702, Revised Statutes Supplement, 2007, and section 9-506, Uniform Commercial Code, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 31. Original sections 8-374, 8-2106, 25-202, and 64-214, Reissue Revised Statutes of Nebraska, sections 8-115.01, 8-143.01, 8-157, 8-234, 8-910, 8-1510, and 8-2102, Revised Statutes Cumulative Supplement, 2006, sections 8-1,140, 8-355, 21-17,115, and 45-722, Revised Statutes Supplement, 2007, and section 9-324, Uniform Commercial Code, Revised Statutes Cumulative Supplement, 2006, are repealed.

Sec. 32. The following section is outright repealed: Section 30-3206, Reissue Revised Statutes of Nebraska.

Sec. 33. Since an emergency exists, this act takes effect when passed and approved according to law.