

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 965**

Final Reading

Introduced by Pahls, 31; McCoy, 39.

Read first time January 11, 2012

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to finance; to amend sections 45-334, 45-345,  
2 45-346, 45-346.01, 45-348, 45-351, 45-701, 45-702,  
3 45-703, 45-706, 45-729, 45-731, 45-734, and 45-736,  
4 Reissue Revised Statutes of Nebraska, and sections  
5 45-335, 45-742, and 45-1002, Revised Statutes Supplement,  
6 2011; to change provisions relating to the Nebraska  
7 Installment Sales Act, the Residential Mortgage Licensing  
8 Act, and the Nebraska Installment Loan Act; to harmonize  
9 provisions; and to repeal the original sections.

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

1           Section 1. Section 45-334, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           45-334 Sections 45-334 to 45-353 and sections 8 and 9 of  
4 this act shall be known and may be cited as the Nebraska Installment  
5 Sales Act.

6           Sec. 2. Section 45-335, Revised Statutes Supplement,  
7 2011, is amended to read:

8           45-335 For purposes of the Nebraska Installment Sales  
9 Act, unless the context otherwise requires:

10           (1) Goods means all personal property, except money or  
11 things in action, and includes goods which, at the time of sale or  
12 subsequently, are so affixed to realty as to become part thereof  
13 whether or not severable therefrom;

14           (2) Services means work, labor, and services of any kind  
15 performed in conjunction with an installment sale but does not  
16 include services for which the prices charged are required by law to  
17 be established and regulated by the government of the United States  
18 or any state;

19           (3) Buyer means a person who buys goods or obtains  
20 services from a seller in an installment sale;

21           (4) Seller means a person who sells goods or furnishes  
22 services to a buyer under an installment sale;

23           (5) Installment sale means any transaction, whether or  
24 not involving the creation or retention of a security interest, in  
25 which a buyer acquires goods or services from a seller pursuant to an

1 agreement which provides for a time-price differential and under  
2 which the buyer agrees to pay all or part of the time-sale price in  
3 one or more installments and within one hundred forty-five months,  
4 except that installment contracts for the purchase of mobile homes  
5 may exceed such one-hundred-forty-five-month limitation. Installment  
6 sale does not include a consumer rental purchase agreement defined in  
7 and regulated by the Consumer Rental Purchase Agreement Act;

8 (6) Installment contract means an agreement entered into  
9 in this state evidencing an installment sale except those otherwise  
10 provided for in separate acts;

11 (7) Cash price or cash sale price means the price stated  
12 in an installment contract for which the seller would have sold or  
13 furnished to the buyer and the buyer would have bought or acquired  
14 from the seller goods or services which are the subject matter of the  
15 contract if such sale had been a sale for cash instead of an  
16 installment sale. It may include the cash price of accessories or  
17 services related to the sale such as delivery, installation,  
18 alterations, modifications, and improvements and may include taxes to  
19 the extent imposed on the cash sale;

20 (8) Basic time price means the cash sale price of the  
21 goods or services which are the subject matter of an installment  
22 contract plus the amount included therein, if a separate identified  
23 charge is made therefor and stated in the contract, for insurance,  
24 registration, certificate of title, debt cancellation contract, debt  
25 suspension contract, electronic title and lien services, guaranteed

1 asset protection waiver, and license fees, filing fees, an  
2 origination fee, and fees and charges prescribed by law which  
3 actually are or will be paid to public officials for determining the  
4 existence of or for perfecting, releasing, or satisfying any security  
5 related to the credit transaction or any charge for nonfiling  
6 insurance if such charge does not exceed the amount of fees and  
7 charges prescribed by law which would have been paid to public  
8 officials for filing, perfecting, releasing, and satisfying any  
9 security related to the credit transaction and less the amount of the  
10 buyer's downpayment in money or goods or both;

11 (9) Time-price differential, however denominated or  
12 expressed, means the amount, as limited in the Nebraska Installment  
13 Sales Act, to be added to the basic time price;

14 (10) Time-sale price means the total of the basic time  
15 price of the goods or services, the amount of the buyer's downpayment  
16 in money or goods or both, and the time-price differential;

17 (11) Sales finance company means a person purchasing one  
18 or more installment contracts from one or more sellers. Sales finance  
19 company includes, but is not limited to, a financial institution or  
20 installment loan licensee, if so engaged;

21 (12) Department means the Department of Banking and  
22 Finance;

23 ~~(12)~~(13) Director means the Director of Banking and  
24 Finance;

25 ~~(13)~~(14) Financial institution has the same meaning as

1 in section 8-101;

2 ~~(14)~~(15) Debt cancellation contract means a loan term or  
3 contractual arrangement modifying loan terms under which a financial  
4 institution or licensee agrees to cancel all or part of a buyer's  
5 obligation to repay an extension of credit from the financial  
6 institution or licensee upon the occurrence of a specified event. The  
7 debt cancellation contract may be separate from or a part of other  
8 loan documents. The term debt cancellation contract does not include  
9 loan payment deferral arrangements in which the triggering event is  
10 the buyer's unilateral election to defer repayment or the financial  
11 institution's or licensee's unilateral decision to allow a deferral  
12 of repayment;

13 ~~(15)~~(16) Debt suspension contract means a loan term or  
14 contractual arrangement modifying loan terms under which a financial  
15 institution or licensee agrees to suspend all or part of a buyer's  
16 obligation to repay an extension of credit from the financial  
17 institution or licensee upon the occurrence of a specified event. The  
18 debt suspension contract may be separate from or a part of other loan  
19 documents. The term debt suspension contract does not include loan  
20 payment deferral arrangements in which the triggering event is the  
21 buyer's unilateral election to defer repayment or the financial  
22 institution's or licensee's unilateral decision to allow a deferral  
23 of repayment;

24 ~~(16)~~(17) Guaranteed asset protection waiver means a  
25 waiver that is offered, sold, or provided in accordance with the

1     Guaranteed Asset Protection Waiver Act; ~~and~~

2                     ~~(17)~~(18) Licensee means any person who obtains a license  
3     under the Nebraska Installment Sales Act; -

4                     (19) Person means individual, partnership, limited  
5     liability company, association, financial institution, trust,  
6     corporation, and any other legal entity;

7                     (20) Breach of security of the system means unauthorized  
8     acquisition of data that compromises the security, confidentiality,  
9     or integrity of the information maintained by the Nationwide Mortgage  
10    Licensing System and Registry, its affiliates, or its subsidiaries;  
11    and

12                    (21) Nationwide Mortgage Licensing System and Registry  
13    means a licensing system developed and maintained by the Conference  
14    of State Bank Supervisors and the American Association of Residential  
15    Mortgage Regulators for the licensing and registration of mortgage  
16    loan originators, mortgage bankers, installment loan companies, and  
17    other state-regulated financial services entities and industries.

18                    Sec. 3. Section 45-345, Reissue Revised Statutes of  
19    Nebraska, is amended to read:

20                    45-345 (1) No person shall act as a sales finance company  
21    in this state without obtaining a license therefor from the  
22    ~~Department of Banking and Finance~~department as provided in the  
23    Nebraska Installment Sales Act whether or not such person maintains  
24    an office, place of doing business, or agent in this state, unless  
25    such person meets the requirements of section 45-340.

1                   (2) No financial institution or installment loan licensee  
2 authorized to do business in this state shall be required to obtain a  
3 license under the act but shall comply with all of the other  
4 provisions of the act.

5                   (3) A seller who does not otherwise act as a sales  
6 finance company shall not be required to obtain a license under the  
7 act but shall comply with all of the other provisions of the act in  
8 order to charge the time-price differential allowed by section  
9 45-338.

10                   Sec. 4. Section 45-346, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12                   45-346 (1) ~~Each place of business operating under a A~~  
13 license issued under the Nebraska Installment Sales Act ~~shall have~~  
14 ~~and properly display therein a is~~ nontransferable and nonassignable.  
15 ~~license.~~ The same person may obtain additional licenses for each  
16 place of business operating as a sales finance company in this state  
17 upon compliance with the act as to each license.

18                   (2) Application for a license shall be on a form  
19 prescribed and furnished by the director and shall include audited  
20 financial statements showing a minimum net worth of one hundred  
21 thousand dollars. If the applicant is an individual or a sole  
22 proprietorship, the application shall include the applicant's social  
23 security number.

24                   (3) An applicant for a license shall file with the  
25 ~~Department of Banking and Finance~~ department a surety bond in the

1 amount of fifty thousand dollars, furnished by a surety company  
2 authorized to do business in this state. The bond shall be for the  
3 use of the State of Nebraska and any Nebraska resident who may have  
4 claims or causes of action against the applicant. The surety may  
5 cancel the bond only upon thirty days' written notice to the  
6 director.

7 (4) A license fee of one hundred fifty dollars and any  
8 processing fee allowed under subsection (2) of section 8 of this act  
9 shall be submitted along with each application.

10 (5) ~~The license year shall begin on October 1 of each~~  
11 ~~year.~~ An initial license issued prior to October 1, 2012, shall  
12 remain in full force and effect until the next succeeding October 1.  
13 An initial license issued on or after October 1, 2012, and on or  
14 before December 31, 2012, shall remain in full force and effect until  
15 December 31, 2013. An initial license issued on or after January 1,  
16 2013, shall remain in full force and effect until the next succeeding  
17 December 31. Each license shall remain in force until revoked,  
18 suspended, canceled, expired, or surrendered.

19 (6) The director shall, after an application has been  
20 filed for a license under the act, investigate the facts, and if he  
21 or she finds that the experience, character, and general fitness of  
22 the applicant, of the members thereof if the applicant is a  
23 corporation or association, and of the officers and directors thereof  
24 if the applicant is a corporation, are such as to warrant belief that  
25 the business will be operated honestly, fairly, and efficiently

1 within the purpose of the act, the director shall issue and deliver a  
2 license to the applicant to do business as a sales finance company in  
3 accordance with the license and the act. The director shall have the  
4 power to reject for cause any application for a license.

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

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

18 Sec. 5. Section 45-346.01, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 45-346.01 (1) A licensee may move its place of business  
21 from one place to another ~~within a county~~ without obtaining a new  
22 license if the licensee gives written notice thereof to the director  
23 at least ~~ten~~ thirty days prior to such move.

24 (2) A licensee shall maintain the minimum net worth as  
25 required by section 45-346 while a license issued under the Nebraska

1 Installment Sales Act is in effect. The minimum net worth shall be  
2 proven by an annual audit conducted by a certified public accountant.  
3 A licensee shall submit a copy of the annual audit to the director as  
4 required by section 45-348 or upon written request of the director.  
5 If a licensee fails to maintain the required minimum net worth, the  
6 ~~Department of Banking and Finance~~ department may issue a notice of  
7 cancellation of the license in lieu of revocation proceedings.

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

16 ~~(4) Until October 1, 2008, a licensee licensed prior to~~  
17 ~~September 1, 2007, may operate with no net worth or bonding~~  
18 ~~requirement as provided for at the time such licensee was originally~~  
19 ~~licensed.~~

20 Sec. 6. Section 45-348, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22 45-348 (1) ~~Every~~ Except as provided in subsection (2) of  
23 this section, every licensee shall, on or before the first day of  
24 October, pay to the director ~~the sum~~ a fee of one hundred fifty  
25 dollars for each license held as a license fee for the succeeding

1 year and any processing fee allowed under subsection (2) of section 8  
2 of this act and submit such information as the director may require  
3 to indicate any material change in the information contained in the  
4 original application or succeeding renewal applications, including a  
5 copy of the licensee's most recent annual audit. Failure to pay such  
6 license fee within the time prescribed shall automatically revoke  
7 such license.

8 (2) Licenses which expire on October 1, 2012, shall be  
9 renewed until December 31, 2013, upon compliance with subsection (1)  
10 of this section. For such renewals, the fee shall be one and three-  
11 twelfths of the fees required under subsection (1) of this section. A  
12 license renewed on or after January 1, 2013, shall remain in full  
13 force and effect until the next succeeding December 31.

14 (2)-(3) A licensee may voluntarily surrender a license at  
15 any time by delivering to the director written notice of the  
16 surrender. The Department of Banking and Finance department shall  
17 issue a notice of cancellation of the license following such  
18 surrender.

19 (3)-(4) If a licensee fails to renew its license and does  
20 not voluntarily surrender the license pursuant to this section, the  
21 department may issue a notice of expiration of the license to the  
22 licensee in lieu of revocation proceedings.

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

25 45-351 (1) The Department of Banking and Finance

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

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

16           (3) The expenses of the director incurred in the  
17 examination of the books and records of licensees shall be charged to  
18 the licensees as set forth in sections 8-605 and 8-606. The director  
19 may charge the costs of an investigation of a nonlicensed person to  
20 such person, and such costs shall be paid within thirty days after  
21 receipt of billing.

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

1 constitute a separate violation.

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

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

1 separate violation of the Nebraska Installment Sales Act.

2           Sec. 8. (1) Effective January 1, 2013, or within one  
3 hundred eighty days after the Nationwide Mortgage Licensing System  
4 and Registry is capable of accepting licenses issued under the  
5 Nebraska Installment Sales Act, whichever is later, the department  
6 shall require such licensees under the act to be licensed and  
7 registered through the Nationwide Mortgage Licensing System and  
8 Registry. In order to carry out this requirement, the department is  
9 authorized to participate in the Nationwide Mortgage Licensing System  
10 and Registry. For this purpose, the department may establish, by  
11 adopting and promulgating rules and regulations or by order,  
12 requirements as necessary. The requirements may include, but not be  
13 limited to:

14           (a) Background checks of applicants and licensees,  
15 including, but not limited to:

16           (i) Criminal history through fingerprint or other data  
17 bases;

18           (ii) Civil or administrative records;

19           (iii) Credit history; or

20           (iv) Any other information as deemed necessary by the  
21 Nationwide Mortgage Licensing System and Registry;

22           (b) The payment of fees to apply for or renew a license  
23 through the Nationwide Mortgage Licensing System and Registry;

24           (c) Compliance with prelicensure education and testing  
25 and continuing education;

1           (d) The setting or resetting, as necessary, of renewal  
2 processing or reporting dates; and

3           (e) Amending or surrendering a license or any other such  
4 activities as the director deems necessary for participation in the  
5 Nationwide Mortgage Licensing System and Registry.

6           (2) In order to fulfill the purposes of the Nebraska  
7 Installment Sales Act, the department is authorized to establish  
8 relationships or contracts with the Nationwide Mortgage Licensing  
9 System and Registry or other entities designated by the Nationwide  
10 Mortgage Licensing System and Registry to collect and maintain  
11 records and process transaction fees or other fees related to  
12 licensees or other persons subject to the act. The department may  
13 allow such system to collect licensing fees on behalf of the  
14 department and allow such system to collect a processing fee for the  
15 services of the system directly from each licensee or applicant for a  
16 license.

17           (3) The director is required to regularly report  
18 enforcement actions and other relevant information to the Nationwide  
19 Mortgage Licensing System and Registry subject to the provisions  
20 contained in section 9 of this act.

21           (4) The director shall establish a process whereby  
22 applicants and licensees may challenge information entered into the  
23 Nationwide Mortgage Licensing System and Registry by the director.

24           (5) The department shall ensure that the Nationwide  
25 Mortgage Licensing System and Registry adopts a privacy, data

1 security, and breach of security of the system notification policy.  
2 The director shall make available upon written request a copy of the  
3 contract between the department and the Nationwide Mortgage Licensing  
4 System and Registry pertaining to the breach of security of the  
5 system provisions.

6 (6) The department shall upon written request provide the  
7 most recently available audited financial report of the Nationwide  
8 Mortgage Licensing System and Registry.

9 Sec. 9. (1) In order to promote more effective regulation  
10 and reduce the regulatory burden through supervisory information  
11 sharing:

12 (a) Except as otherwise provided in this section, the  
13 requirements under any federal or state law regarding the privacy or  
14 confidentiality of any information or material provided to the  
15 Nationwide Mortgage Licensing System and Registry, and any privilege  
16 arising under federal or state law, including the rules of any  
17 federal or state court, with respect to such information or material,  
18 shall continue to apply to such information or material after the  
19 information or material has been disclosed to the Nationwide Mortgage  
20 Licensing System and Registry. Such information and material may be  
21 shared with all federal and state regulatory officials with mortgage  
22 industry oversight authority without the loss of privilege or the  
23 loss of confidentiality protections provided by federal or state law;

24 (b) Information or material that is subject to privilege  
25 or confidentiality under subdivision (a) of this subsection shall not

1 be subject to:

2 (i) Disclosure under any federal or state law governing  
3 the disclosure to the public of information held by an officer or an  
4 agency of the federal government or the respective state; or

5 (ii) Subpoena or discovery or admission into evidence in  
6 any private civil action or administrative process unless, with  
7 respect to any privilege held by the Nationwide Mortgage Licensing  
8 System and Registry with respect to such information or material, the  
9 person to whom such information or material pertains waives, in whole  
10 or in part, in the discretion of such person, that privilege;

11 (c) Any state statute relating to the disclosure of  
12 confidential supervisory information or any information or material  
13 described in subdivision (a) of this subsection that is inconsistent  
14 with such subdivision shall be superseded by the requirements of this  
15 section; and

16 (d) This section shall not apply with respect to the  
17 information or material relating to the employment history of, and  
18 publicly adjudicated disciplinary and enforcement actions against,  
19 applicants and licensees that is included in the Nationwide Mortgage  
20 Licensing System and Registry for access by the public.

21 (2) For these purposes, the director is authorized to  
22 enter into agreements or sharing arrangements with other governmental  
23 agencies, the Conference of State Bank Supervisors, the American  
24 Association of Residential Mortgage Regulators, or other associations  
25 representing governmental agencies as established by adopting and

1 promulgating rules and regulations or an order of the director.

2           Sec. 10. Section 45-701, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           45-701 Sections 45-701 to 45-754 and sections 13 and 20  
5 of this act shall be known and may be cited as the Residential  
6 Mortgage Licensing Act.

7           Sec. 11. Section 45-702, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9           45-702 For purposes of the Residential Mortgage Licensing  
10 Act:

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

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

21           (3) Breach of security of the system means unauthorized  
22 acquisition of data that compromises the security, confidentiality,  
23 or integrity of the information maintained by the Nationwide Mortgage  
24 Licensing System and Registry, its affiliates, or its subsidiaries;

25           (4) Clerical or support duties means tasks which occur

1 subsequent to the receipt of a residential mortgage loan application  
2 including (a) the receipt, collection, distribution, and analysis of  
3 information common for the processing or underwriting of a  
4 residential mortgage loan or (b) communication with a consumer to  
5 obtain the information necessary for the processing or underwriting  
6 of a residential mortgage loan, to the extent that such communication  
7 does not include offering or negotiating loan rates or terms or  
8 counseling consumers about residential mortgage loan rates or terms;

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

24 (6) Department means the Department of Banking and  
25 Finance;

1           (7) Depository institution means any person (a) organized  
2 or chartered under the laws of this state, any other state, or the  
3 United States relating to banks, savings institutions, trust  
4 companies, savings and loan associations, credit unions, or  
5 industrial banks or similar depository institutions which the Board  
6 of Directors of the Federal Deposit Insurance Corporation finds to be  
7 operating substantially in the same manner as an industrial bank and  
8 (b) engaged in the business of receiving deposits other than funds  
9 held in a fiduciary capacity, including, but not limited to, funds  
10 held as trustee, executor, administrator, guardian, or agent;

11           (8) Director means the Director of Banking and Finance;

12           (9) Dwelling means a residential structure located or  
13 intended to be located in this state that contains one to four units,  
14 whether or not that structure is attached to real property, including  
15 an individual condominium unit, cooperative unit, mobile home, or  
16 trailer, if it is used as a residence;

17           (10) Federal banking agencies means the Board of  
18 Governors of the Federal Reserve System, the Comptroller of the  
19 Currency, the Director of the Office of Thrift Supervision, the  
20 National Credit Union Administration, and the Federal Deposit  
21 Insurance Corporation;

22           (11) Immediate family member means a spouse, child,  
23 sibling, parent, grandparent, or grandchild, including stepparents,  
24 stepchildren, stepsiblings, and adoptive relationships;

25           (12) Installment loan company means any person licensed

1 pursuant to the Nebraska Installment Loan Act;

2 (13) Licensee means any person licensed under the  
3 Residential Mortgage Licensing Act as either a mortgage banker or  
4 mortgage loan originator;

5 (14) Loan processor or underwriter means an individual  
6 who (a) performs clerical or support duties as an employee at the  
7 direction of and subject to the supervision and instruction of a  
8 person licensed, or exempt from licensing, under the Residential  
9 Mortgage Licensing Act or Nebraska Installment Loan Act and (b) does  
10 not represent to the public, through advertising or other means of  
11 communicating or providing information including the use of business  
12 cards, stationery, brochures, signs, rate lists, or other promotional  
13 items, that such individual can or will perform any of the activities  
14 of a mortgage loan originator;

15 (15) Mortgage banker or mortgage banking business means  
16 any person (a) other than (i) a person exempt under section 45-703,  
17 (ii) an individual who is a loan processor or underwriter, or (iii)  
18 an individual who is licensed in this state as a mortgage loan  
19 originator and (b) who, for compensation or gain or in the  
20 expectation of compensation or gain, directly or indirectly makes,  
21 originates, services, negotiates, acquires, sells, arranges for, or  
22 offers to make, originate, service, negotiate, acquire, sell, or  
23 arrange for a residential mortgage loan;

24 (16)(a) Mortgage loan originator means an individual who  
25 for compensation or gain or in the expectation of compensation or

1 gain (i) takes a residential mortgage loan application or (ii) offers  
2 or negotiates terms of a residential mortgage loan.

3 (b) Mortgage loan originator does not include (i) an  
4 individual engaged solely as a loan processor or underwriter except  
5 as otherwise provided in section 45-727, (ii) a person or entity that  
6 only performs real estate brokerage activities and is licensed or  
7 registered in accordance with Nebraska law, unless the person or  
8 entity is compensated by a lender, a mortgage broker, or other  
9 mortgage loan originator or by any agent of such lender, mortgage  
10 broker, or other mortgage loan originator, and (iii) a person solely  
11 involved in extensions of credit relating to time-share programs as  
12 defined in section 76-1702;

13 (17) Nationwide Mortgage Licensing System and Registry  
14 means a ~~mortgage~~-licensing system developed and maintained by the  
15 Conference of State Bank Supervisors and the American Association of  
16 Residential Mortgage Regulators for the licensing and registration of  
17 mortgage loan originators, mortgage bankers, ~~and~~-installment loan  
18 companies, and other state-regulated financial services entities and  
19 industries;

20 (18) Nontraditional mortgage product means any  
21 residential mortgage loan product other than a thirty-year fixed rate  
22 residential mortgage loan;

23 (19) Offer means every attempt to provide, offer to  
24 provide, or solicitation to provide a residential mortgage loan or  
25 any form of mortgage banking business. Offer includes, but is not

1 limited to, all general and public advertising, whether made in  
2 print, through electronic media, or by the Internet;

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

7 (21) Purchase-money mortgage means a mortgage issued to  
8 the borrower by the seller of the property as part of the purchase  
9 transaction;

10 ~~(21)~~ (22) Real estate brokerage activity means any  
11 activity that involves offering or providing real estate brokerage  
12 services to the public, including (a) acting as a real estate  
13 salesperson or real estate broker for a buyer, seller, lessor, or  
14 lessee of real property, (b) bringing together parties interested in  
15 the sale, purchase, lease, rental, or exchange of real property, (c)  
16 negotiating, on behalf of any party, any portion of a contract  
17 relating to the sale, purchase, lease, rental, or exchange of real  
18 property, other than in connection with providing financing with  
19 respect to any such transaction, (d) engaging in any activity for  
20 which a person engaged in the activity is required to be registered  
21 or licensed as a real estate salesperson or real estate broker under  
22 any applicable law, and (e) offering to engage in any activity or act  
23 in any capacity described in subdivision (a), (b), (c), or (d) of  
24 this subdivision;

25 ~~(22)~~ (23) Registered bank holding company means any bank

1 holding company registered with the department pursuant to the  
2 Nebraska Bank Holding Company Act of 1995;

3 ~~(23)~~ (24) Registered mortgage loan originator means any  
4 individual who (a) meets the definition of mortgage loan originator  
5 and is an employee of (i) a depository institution, (ii) a subsidiary  
6 that is (A) wholly owned and controlled by a depository institution  
7 and (B) regulated by a federal banking agency, or (iii) an  
8 institution regulated by the Farm Credit Administration and (b) is  
9 registered with, and maintains a unique identifier through, the  
10 Nationwide Mortgage Licensing System and Registry;

11 ~~(24)~~ (25) Registrant means a person registered pursuant  
12 to section 45-704;

13 ~~(25)~~ (26) Residential mortgage loan means any loan or  
14 extension of credit, including a refinancing of a contract of sale or  
15 an assumption or refinancing of a prior loan or extension of credit,  
16 which is primarily for personal, family, or household use and is  
17 secured by a mortgage, trust deed, or other equivalent consensual  
18 security interest on a dwelling or residential real estate upon which  
19 is constructed or intended to be constructed a dwelling;

20 ~~(26)~~ (27) Residential real estate means any real property  
21 located in this state upon which is constructed or intended to be  
22 constructed a dwelling;

23 ~~(27)~~ (28) Reverse-mortgage loan means a loan made by a  
24 licensee which (a) is secured by residential real estate, (b) is  
25 nonrecourse to the borrower except in the event of fraud by the

1 borrower or waste to the residential real estate given as security  
2 for the loan, (c) provides cash advances to the borrower based upon  
3 the equity in the borrower's owner-occupied principal residence, (d)  
4 requires no payment of principal or interest until the entire loan  
5 becomes due and payable, and (e) otherwise complies with the terms of  
6 section 45-702.01;

7 ~~(28)~~(29) Service means accepting payments or maintenance  
8 of escrow accounts in the regular course of business in connection  
9 with a residential mortgage loan;

10 ~~(29)~~(30) State means any state of the United States, the  
11 District of Columbia, any territory of the United States, Puerto  
12 Rico, Guam, American Samoa, the Trust Territory of the Pacific  
13 Islands, the Virgin Islands, or the Northern Mariana Islands; and

14 ~~(30)~~(31) Unique identifier means a number or other  
15 identifier assigned by protocols established by the Nationwide  
16 Mortgage Licensing System and Registry.

17 Sec. 12. Section 45-703, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19 45-703 (1) Except as provided in section 45-704, the  
20 following shall be exempt from the Residential Mortgage Licensing  
21 Act:

22 (a) Any depository institution or wholly owned subsidiary  
23 thereof;

24 (b) Any registered bank holding company;

25 (c) Any insurance company that is subject to regulation

1 by the Department of Insurance and is either (i) organized or  
2 chartered under the laws of Nebraska or (ii) organized or chartered  
3 under the laws of any other state if such insurance company has a  
4 place of business in Nebraska;

5 (d) Any person licensed to practice law in this state ~~who~~  
6 ~~negotiates the terms of a residential mortgage loan on behalf of a~~  
7 ~~client as an ancillary matter to the attorney's representation of the~~  
8 ~~client unless the attorney is compensated by a lender, a mortgage~~  
9 ~~broker, or other mortgage loan originator or by any agent of such~~  
10 ~~lender, mortgage broker, or other mortgage loan originator; in~~  
11 ~~connection with activities that are (i) considered the practice of~~  
12 ~~law by the Supreme Court, (ii) carried out within an attorney-client~~  
13 ~~relationship, and (iii) accomplished by the attorney in compliance~~  
14 ~~with all applicable laws, rules, ethics, and standards;~~

15 (e) Any person licensed in this state as a real estate  
16 broker or real estate salesperson pursuant to section 81-885.02 who  
17 is engaging in real estate brokerage activities unless such person is  
18 compensated by a lender, a mortgage broker, or other mortgage loan  
19 originator or by any agent of such lender, mortgage broker, or other  
20 mortgage loan originator;

21 (f) Any registered mortgage loan originator when acting  
22 for an entity described in subdivision ~~(23)(a)(i), (24)(a)(i),~~ (ii),  
23 or (iii) of section 45-702;

24 (g) Any sales finance company licensed pursuant to the  
25 Nebraska Installment Sales Act if such sales finance company does not

1 engage in mortgage banking business in any capacity other than as a  
2 purchaser or servicer of an installment contract, as defined in  
3 section 45-335, which is secured by a mobile home or trailer;

4 (h) Any trust company chartered pursuant to the Nebraska  
5 Trust Company Act;

6 (i) Any wholly owned subsidiary of an organization listed  
7 in subdivisions (b) and (c) of this subsection if the listed  
8 organization maintains a place of business in Nebraska;

9 (j) Any individual who offers or negotiates terms of a  
10 residential mortgage loan with or on behalf of an immediate family  
11 member of the individual;

12 (k) Any individual who ~~offers or negotiates terms of a~~  
13 ~~residential mortgage loan secured by a dwelling that served as the~~  
14 ~~individual's residence; and~~ does not repetitively and habitually  
15 engage in the business of a mortgage banker, a mortgage loan  
16 originator, or a loan processor or underwriter, either inside or  
17 outside of this state, who (i) makes a residential mortgage loan with  
18 his or her own funds for his or her own investment, (ii) makes a  
19 purchase-money mortgage, or (iii) finances the sale of a dwelling or  
20 residential real estate owned by such individual without the intent  
21 to resell the residential mortgage loan;

22 (l) Any employee or independent agent of a mortgage  
23 banker licensed or registered pursuant to the Residential Mortgage  
24 Licensing Act or exempt from the act if such employee or independent  
25 agent does not conduct the activities of a mortgage loan originator

1 or loan processor or underwriter; -

2 (m) The United States of America; the State of Nebraska;  
3 any other state, district, territory, commonwealth, or possession of  
4 the United States of America; any city, county, or other political  
5 subdivision; and any agency or division of any of the foregoing;

6 (n) The Nebraska Investment Finance Authority;

7 (o) Any individual who is an employee of an entity  
8 described in subdivision (m) or (n) of this subsection and who acts  
9 as a mortgage loan originator or loan processor or underwriter only  
10 pursuant to his or her official duties as an employee of such entity;

11 (p) A bona fide nonprofit organization which has received  
12 a certificate of exemption pursuant to section 13 of this act; and

13 (q) Any employee of a bona fide nonprofit organization  
14 which has received a certificate of exemption pursuant to section 13  
15 of this act if such employee acts as a mortgage loan originator or  
16 mortgage loan processor or underwriter (i) only with respect to his  
17 or her work duties for the nonprofit organization and (ii) only with  
18 respect to residential mortgage loans with terms that are favorable  
19 to the borrower.

20 (2) It shall not be necessary to negate any of the  
21 exemptions provided in this section in any complaint, information,  
22 indictment, or other writ or proceedings brought under the ~~act~~,  
23 Residential Mortgage Licensing Act, and the burden of establishing  
24 the right to any exemption shall be upon the person claiming the  
25 benefit of such exemption.

1           Sec. 13. (1) A nonprofit organization may apply to the  
2 director for a certificate of exemption on a form as prescribed by  
3 the department. The director shall grant such certificate if the  
4 director finds that the nonprofit organization is a bona fide  
5 nonprofit organization. In order for a nonprofit organization to  
6 qualify as a bona fide nonprofit organization, the director shall  
7 find that it meets the following:

8                   (a) Has the status of a tax exempt organization under  
9 section 501(c) of the Internal Revenue Code of 1986;

10                   (b) Promotes affordable housing or provides homeownership  
11 education or similar services;

12                   (c) Conducts its activities in a manner that serves  
13 public or charitable purposes rather than commercial purposes;

14                   (d) Receives funding and revenue and charges fees in a  
15 manner that does not incentivize it or its employees to act other  
16 than in the best interests of its clients;

17                   (e) Compensates its employees in a manner that does not  
18 incentivize employees to act other than in the best interests of its  
19 clients; and

20                   (f) Provides or identifies for the borrower residential  
21 mortgage loans with terms favorable to the borrower and comparable to  
22 mortgage loans and housing assistance provided under government  
23 assistance programs.

24                   (2) For residential mortgage loans to have terms that are  
25 favorable to the borrower, the director shall determine that terms

1 are consistent with loan origination in a public or charitable  
2 context rather than in a commercial context.

3 (3) If the director determines that the application for a  
4 certificate of exemption should be denied, the director shall notify  
5 the applicant in writing of the denial and of the reasons for the  
6 denial. A decision of the director denying an application for a  
7 certificate of exemption pursuant to the Residential Mortgage  
8 Licensing Act may be appealed. The appeal shall be in accordance with  
9 the Administrative Procedure Act and rules and regulations adopted  
10 and promulgated by the department.

11 (4) The department has the authority to examine the books  
12 and activities of an organization it determines is a bona fide  
13 nonprofit organization. The director may, following a hearing under  
14 the Administrative Procedure Act, revoke the certificate of exemption  
15 granted to a bona fide nonprofit organization if he or she determines  
16 that such nonprofit organization fails to meet the requirements of  
17 subsection (1) of this section.

18 (5) In making its determinations and examinations under  
19 subsections (1), (2), and (4) of this section, the department may  
20 rely on its receipt and review of:

21 (a) Reports filed with federal, state, or local housing  
22 agencies and authorities; or

23 (b) Reports and attestations required by the department.

24 Sec. 14. Section 45-706, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1                   45-706 (1) Upon the filing of an application for a  
2 license as a mortgage banker, if the director finds that the  
3 character and general fitness of the applicant, the members thereof  
4 if the applicant is a partnership, limited liability company,  
5 association, or other organization, and the officers, directors, and  
6 principal employees if the applicant is a corporation are such that  
7 the business will be operated honestly, soundly, and efficiently in  
8 the public interest consistent with the purposes of the Residential  
9 Mortgage Licensing Act, the director shall issue a license as a  
10 mortgage banker to the applicant. The director shall approve or deny  
11 an application for a license within ninety days after (a) acceptance  
12 of the application; (b) delivery of the bond required under section  
13 45-724; and (c) payment of the required fee.

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

1 application for a mortgage banker license application if (a) he or  
2 she determines that the applicant does not meet the conditions of  
3 subsection (1) of this section or (b) an officer, director,  
4 shareholder owning five percent or more of the voting shares of the  
5 applicant, partner, or member was convicted of, pleaded guilty to, or  
6 was found guilty after a plea of nolo contendere to (i) a misdemeanor  
7 under any state or federal law which involves dishonesty or fraud or  
8 which involves any aspect of the mortgage banking business,  
9 depository institution business, or installment loan company business  
10 or (ii) any felony under state or federal law.

11 (3)(a) All initial licenses shall remain in full force  
12 and effect until the next succeeding December 31. Mortgage banker  
13 licenses may be renewed annually by submitting to the director a  
14 request for renewal and any supplemental material as required by the  
15 director. The mortgage banker licensee shall certify that the  
16 information contained in the license application, as subsequently  
17 amended, that is on file with the department and the information  
18 contained in any supplemental material previously provided to the  
19 department remains true and correct.

20 (b) For the annual renewal of a license to conduct a  
21 mortgage banking business under the Residential Mortgage Licensing  
22 Act, the fee shall be two hundred dollars plus seventy-five dollars  
23 for each branch office, if applicable, and any processing fee allowed  
24 under subsection (2) of section 45-748.

25 (4)(a) The department may place a mortgage banker

1 licensee that is a sole proprietorship on inactive status for a  
2 period of up to twelve months upon receipt of a request from the  
3 licensee for inactive status. The request shall include notice that  
4 the licensee has temporarily suspended business, is not acting as a  
5 mortgage banker in this state, and has no pending customer  
6 complaints. The department shall notify the licensee within ten  
7 business days as to whether the request has been granted and, if  
8 granted, of the date of expiration of the inactive status.

9 (b) If a mortgage banker license becomes inactive under  
10 this section, the license shall remain inactive until the license  
11 expires, is cancelled, is surrendered, is suspended, is revoked, or  
12 is reactivated pursuant to subdivision (d) of this subsection.

13 (c) An inactive mortgage banker licensee may renew such  
14 inactive license if the licensee remains otherwise eligible for  
15 renewal pursuant to subdivision (3)(a) of this section, except for  
16 being covered by a surety bond pursuant to section 45-724. Such  
17 renewal shall not reactivate the license.

18 (d) The department has the authority to reactivate an  
19 inactive mortgage banker license following the department's receipt  
20 of a request from the inactive licensee that the licensee intends to  
21 resume business as a mortgage banker in this state if the inactive  
22 mortgage banker licensee meets the conditions for licensing at the  
23 time reactivation is requested, including, but not limited to,  
24 coverage by a surety bond pursuant to section 45-724.

25 (e) The department shall issue a notice of cancellation

1 of an inactive mortgage banker license following the expiration of  
2 the period of inactive status set by the department pursuant to  
3 subdivision (a) of this subsection if the inactive mortgage banker  
4 licensee fails to request reactivation of the license prior to the  
5 date of expiration.

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

11 Sec. 15. Section 45-729, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 45-729 (1) The director shall not issue a mortgage loan  
14 originator license unless the director makes at a minimum the  
15 following findings:

16 (a) The applicant has never had a mortgage loan  
17 originator license revoked in any governmental jurisdiction, except  
18 that a subsequent formal vacation of such revocation shall not be  
19 deemed a revocation;

20 (b) The applicant has not been convicted of, or pleaded  
21 guilty or nolo contendere or its equivalent to, in a domestic,  
22 foreign, or military court:

23 (i) A misdemeanor under any state or federal law which  
24 involves dishonesty or fraud or which involves any aspect of the  
25 business of a mortgage banker, depository institution, or installment

1 loan company unless such individual has received a pardon for such  
2 conviction or such conviction has been expunged, except that the  
3 director may consider the underlying crime, facts, and circumstances  
4 of a pardoned or expunged conviction in determining the applicant's  
5 eligibility for a license pursuant to subdivision (c) of this  
6 subsection; or

7 (ii) Any felony under state or federal law unless such  
8 individual has received a pardon for such conviction or such  
9 conviction has been expunged, except that the director may consider  
10 the underlying crime, facts, and circumstances of a pardoned or  
11 expunged conviction in determining the applicant's eligibility for a  
12 license pursuant to subdivision (c) of this subsection;

13 (c) The applicant has demonstrated financial  
14 responsibility, character, and general fitness such as to command the  
15 confidence of the community and to warrant a determination that the  
16 mortgage loan originator will operate honestly, fairly, and  
17 efficiently within the purposes of the Residential Mortgage Licensing  
18 Act. For purposes of this subsection, an individual has shown that he  
19 or she is not financially responsible when he or she has shown a  
20 disregard in the management of his or her own financial condition.  
21 The director may consider the following factors in making a  
22 determination as to financial responsibility:

23 (i) The applicant's current outstanding judgments except  
24 judgments solely as a result of medical expenses;

25 (ii) The applicant's current outstanding tax liens or

1 other government liens and filings;

2 (iii) The applicant's foreclosures within the past three  
3 years; and

4 (iv) A pattern of seriously delinquent accounts within  
5 the past three years by the applicant;

6 (d) The applicant has completed the prelicensing  
7 education requirements described in section 45-730;

8 (e) The applicant has passed a written test that meets  
9 the test requirement described in section 45-731; and

10 (f) The applicant is covered by a surety bond as required  
11 pursuant to section 45-724 or a supplemental surety bond as required  
12 pursuant to section 45-1007.

13 ~~(2)~~ (2)(a) If the director determines that a mortgage  
14 loan originator license application should be denied, the director  
15 shall notify the applicant in writing of the denial and of the  
16 reasons for the denial.

17 (b) The director shall not deny an application for a  
18 mortgage loan originator license because of the failure to submit  
19 information required under the act or rules and regulations adopted  
20 and promulgated under the act without first giving the applicant an  
21 opportunity to correct the deficiency by supplying the missing  
22 information.

23 (c) If an applicant for a mortgage loan originator  
24 license does not complete his or her license application and fails to  
25 respond to a notice or notices from the department to correct the

1 deficiency or deficiencies for a period of one hundred twenty days or  
2 more after mailing of the initial notice after initial filing of the  
3 application, the department may deem the application as abandoned and  
4 may issue a notice of abandonment of the application to the applicant  
5 in lieu of proceedings to deny the application.

6 (d) A decision of the director denying a mortgage loan  
7 originator license application pursuant to the ~~act~~ Residential  
8 Mortgage Licensing Act may be appealed. The appeal shall be in  
9 accordance with the Administrative Procedure Act and rules and  
10 regulations adopted and promulgated by the department, ~~under the act.~~

11 (3) A mortgage loan originator license shall not be  
12 assignable.

13 Sec. 16. Section 45-731, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15 45-731 (1) In order to meet the written test requirement  
16 referred to in subdivision (1)(e) of section 45-729, an individual  
17 shall pass, in accordance with the standards established under this  
18 section, a qualified written test developed by the Nationwide  
19 Mortgage Licensing System and Registry and administered by a test  
20 provider approved by the Nationwide Mortgage Licensing System and  
21 Registry based upon reasonable standards.

22 (2) A written test shall not be treated as a qualified  
23 written test for purposes of subsection (1) of this section unless  
24 the test adequately measures the applicant's knowledge and  
25 comprehension in appropriate subject areas, including the following:

- 1                   (a) Ethics;
- 2                   (b) Federal laws and regulations pertaining to mortgage  
3 origination;
- 4                   (c) State laws and regulations pertaining to mortgage  
5 origination; and
- 6                   (d) Federal and state laws and regulations, including  
7 instruction on fraud, consumer protection, the nontraditional  
8 mortgage marketplace, and fair lending issues.
- 9                   (3) Nothing in this section shall prohibit a test  
10 provider approved by the Nationwide Mortgage Licensing System and  
11 Registry from providing a test at the location of the employer of the  
12 applicant, the location of any subsidiary or affiliate of the  
13 employer of the applicant, or the location of any entity with which  
14 the applicant holds an exclusive arrangement to conduct the business  
15 of a mortgage loan originator.
- 16                   (4)(a) An individual shall not be considered to have  
17 passed a qualified written test unless the individual achieves a test  
18 score of not less than seventy-five percent correct answers to  
19 questions.
- 20                   (b) An individual may ~~retake~~take a test three  
21 consecutive times with each consecutive taking occurring at least  
22 thirty days after the preceding test.
- 23                   (c) After failing three consecutive tests, an individual  
24 shall wait at least six months before taking the test again.
- 25                   (d) A licensed mortgage loan originator who fails to

1 maintain a valid license for a period of five years or longer shall  
2 retake the test, not taking into account any time during which such  
3 individual is a registered mortgage loan originator.

4 Sec. 17. Section 45-734, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 45-734 (1) A mortgage loan originator whose license is  
7 placed on inactive status under this section shall not act as a  
8 mortgage loan originator in this state until such time as the license  
9 is reactivated.

10 (2) The department shall place a mortgage loan originator  
11 license on inactive status upon the occurrence of one of the  
12 following:

13 (a) Upon receipt of a notice from either the licensed  
14 mortgage banker, registrant, installment loan company, or mortgage  
15 loan originator that the mortgage loan originator's relationship as  
16 an employee or independent agent of a licensed mortgage banker or  
17 installment loan company has been terminated;

18 (b) Upon the cancellation of the employing licensed  
19 mortgage banker's license pursuant to section 45-742 or upon the  
20 cancellation of the employing installment loan company's license  
21 pursuant to subdivision (3)(b) of section 45-1033 for failure to  
22 maintain the required surety bond;

23 (c) Upon the voluntary surrender of the employing  
24 licensed mortgage banker's license pursuant to section 45-742 or upon  
25 the voluntary surrender of the employing installment loan company's

1 license pursuant to section 45-1032;

2 (d) Upon the expiration of the employing licensed  
3 mortgage banker's license pursuant to section 45-742 or upon the  
4 expiration of the employing installment loan company's license  
5 pursuant to subdivision (3)(a) of section 45-1033 if such mortgage  
6 loan originator has renewed his or her license pursuant to section  
7 45-732;

8 (e) Upon the revocation or suspension of the employing  
9 licensed mortgage banker's license pursuant to section 45-742 or upon  
10 the revocation or suspension of the employing installment loan  
11 company's license pursuant to subsection (1) of section 45-1033; or

12 (f) Upon the cancellation, surrender, or expiration of  
13 the employing registrant's registration with the department.

14 (3) If a mortgage loan originator license becomes  
15 inactive under this section, the license shall remain inactive until  
16 the license expires, the licenseholder surrenders the license, the  
17 license is revoked or suspended pursuant to section 45-742, or the  
18 license is reactivated.

19 (4) A mortgage loan originator who holds an inactive  
20 mortgage loan originator license may renew such inactive license if  
21 he or she remains otherwise eligible for renewal pursuant to section  
22 45-732 except for being covered by a surety bond pursuant to  
23 subdivision (1)(f) of section 45-729. Such renewal shall not  
24 reactivate the license.

25 (5) The department ~~shall~~ has the authority to reactivate

1 a mortgage loan originator license upon receipt of a notice pursuant  
2 to section 45-735 that the mortgage loan originator licensee has been  
3 hired as a mortgage loan originator by a licensed mortgage banker,  
4 registrant, or installment loan company and if such mortgage loan  
5 originator ~~is covered~~ meets the conditions for licensing at the time  
6 the reactivation notice is received, including, but not limited to,  
7 coverage by a surety bond pursuant to subdivision (1)(f) of section  
8 45-729.

9           Sec. 18. Section 45-736, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           45-736 The unique identifier of any ~~individual licensee~~  
12 originating a residential mortgage loan shall be clearly shown on all  
13 residential mortgage loan application forms, solicitations, or  
14 advertisements, including business cards or web sites, and any other  
15 documents as established by rule, regulation, or order of the  
16 director.

17           Sec. 19. Section 45-742, Revised Statutes Supplement,  
18 2011, is amended to read:

19           45-742 (1) The director may, following a hearing under  
20 the Administrative Procedure Act and the rules and regulations  
21 adopted and promulgated under the act, suspend or revoke any license  
22 issued under the Residential Mortgage Licensing Act. The director may  
23 also impose an administrative fine for each separate violation of the  
24 act if the director finds:

25           (a) The licensee has materially violated or demonstrated

1 a continuing pattern of violating the act, rules and regulations  
2 adopted and promulgated under the act, any order, including a cease  
3 and desist order, issued under the act, or any other state or federal  
4 law applicable to the conduct of its business;

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

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

10 (d) The licensee has made or caused to be made, in any  
11 document filed with the director or in any proceeding under the act,  
12 any statement which was, at the time and in light of the  
13 circumstances under which it was made, false or misleading in any  
14 material respect or suppressed or withheld from the director any  
15 information which, if submitted by the licensee, would have resulted  
16 in denial of the license application;

17 (e) The licensee has refused to permit an examination by  
18 the director of the licensee's books and affairs pursuant to  
19 subsection (1) or (2) of section 45-741 or has refused or failed to  
20 comply with subsection (5) of section 45-741 after written notice of  
21 the violation by the director. Each day the licensee continues in  
22 violation of this subdivision after such written notice constitutes a  
23 separate violation;

24 (f) The licensee has failed to maintain records as  
25 required by subdivision (8) of section 45-737 or as otherwise

1 required following written notice of the violation by the director.  
2 Each day the licensee continues in violation of this subdivision  
3 after such written notice constitutes a separate violation;

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

13 (h) The licensee knowingly has employed any individual or  
14 knowingly has maintained a contractual relationship with any  
15 individual acting as an agent, if such individual (i) has had a  
16 mortgage loan originator license revoked in any state, unless such  
17 revocation was subsequently vacated, (ii) has a mortgage loan  
18 originator license which has been suspended by the director, or (iii)  
19 while previously associated in any other capacity with another  
20 licensee, was the subject of a complaint under the act and the  
21 complaint was not resolved at the time the individual became employed  
22 by, or began acting as an agent for, the licensee and the licensee  
23 with reasonable diligence could have discovered the existence of such  
24 complaint;

25 (i) The licensee knowingly has employed any individual or

1 knowingly has maintained a contractual relationship with any  
2 individual acting as an agent if such individual is conducting  
3 activities requiring a mortgage loan originator license in this state  
4 without first obtaining such license;

5 (j) The licensee has violated the written restrictions or  
6 conditions under which the license was issued;

7 (k) The licensee, or if the licensee is a business  
8 entity, one of the officers, directors, shareholders, partners, and  
9 members, was convicted of, pleaded guilty to, or was found guilty  
10 after a plea of nolo contendere to (i) a misdemeanor under any state  
11 or federal law which involves dishonesty or fraud or which involves  
12 any aspect of the mortgage banking business, depository institution  
13 business, or installment loan company business or (ii) any felony  
14 under state or federal law;

15 (l) The licensee has had a similar license revoked in any  
16 other jurisdiction; or

17 (m) The licensee has failed to reasonably supervise any  
18 officer, employee, or agent to assure his or her compliance with the  
19 act or with any state or federal law applicable to the mortgage  
20 banking business.

21 (2) Except as provided in this section and section 20 of  
22 this act, a license shall not be revoked or suspended except after  
23 notice and a hearing in accordance with the Administrative Procedure  
24 Act and the rules and regulations adopted and promulgated ~~under the~~  
25 act. by the department.

1           (3) A licensee may voluntarily surrender a license by  
2 delivering to the director written notice of the surrender, but a  
3 surrender shall not affect civil or criminal liability for acts  
4 committed before the surrender or liability for any fines which may  
5 be levied against the licensee or any of its officers, directors,  
6 shareholders, partners, or members pursuant to section 45-743 for  
7 acts committed before the surrender. The director's approval of such  
8 license surrender shall not be required unless the director has  
9 commenced an examination or investigation pursuant to section 45-741  
10 or has commenced a proceeding to revoke or suspend the licensee's  
11 license or impose an administrative fine pursuant to this section.

12           (4)(a) If a licensee fails to (i) renew its license as  
13 required by sections 45-706 and 45-732 and does not voluntarily  
14 surrender the license pursuant to this section or (ii) pay the  
15 required fee for renewal of the license, the department may issue a  
16 notice of expiration of the license to the licensee in lieu of  
17 revocation proceedings.

18           (b) The director may adopt by rule, regulation, or order  
19 procedures for the reinstatement of licenses for which a notice of  
20 expiration was issued in accordance with subdivision (a) of this  
21 subsection. Such procedures shall be consistent with standards  
22 established by the Nationwide Mortgage Licensing System and Registry.  
23 The fee for reinstatement shall be the same fee as the fee for the  
24 initial license application.

25           (c) If a licensee fails to maintain a surety bond as

1 required by section 45-724, the department may issue a notice of  
2 cancellation of the license in lieu of revocation proceedings.

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

7 (6) Revocation, suspension, cancellation, or expiration  
8 of a license shall not affect civil or criminal liability for acts  
9 committed before the revocation, suspension, cancellation, or  
10 expiration or liability for any fines which may be levied against the  
11 licensee or any of its officers, directors, shareholders, partners,  
12 or members pursuant to section 45-743 for acts committed before the  
13 revocation, suspension, cancellation, or expiration.

14 Sec. 20. (1) The director may enter an emergency order  
15 suspending, limiting, or restricting the license of any mortgage  
16 banker or mortgage loan originator without notice or hearing if it  
17 appears upon grounds satisfactory to the director that:

18 (a) The licensee has failed to file the report of  
19 condition as required by section 45-726;

20 (b) The licensee has failed to increase its surety bond  
21 to the amount required by subsection (2) of section 45-724;

22 (c) The licensee has failed to provide any report  
23 required by the director as a condition of issuing such person a  
24 mortgage banker or mortgage loan originator license;

25 (d) The licensee is in such financial condition that it

1 cannot continue in business safely with its customers;

2 (e) The licensee has been indicted, charged with, or  
3 found guilty of any act involving fraud, deception, theft, or breach  
4 of trust;

5 (f) The licensee has had its license suspended or revoked  
6 in any state based upon any act involving fraud, deception, theft, or  
7 breach of trust; or

8 (g) The licensee has refused to permit an examination by  
9 the director of the licensee's books and affairs pursuant to  
10 subsection (1) or (2) of section 45-741 or has refused or failed to  
11 comply with subsection (5) of section 45-741.

12 (2) An emergency order issued under this section becomes  
13 effective when signed by the director. Upon entry of an emergency  
14 order, the director shall promptly notify the affected person that  
15 such order has been entered, the reasons for such order, and the  
16 right to request an emergency hearing.

17 (3) A party aggrieved by an emergency order issued by the  
18 director under this section may request an emergency hearing. The  
19 request for hearing shall be filed with the director within ten  
20 business days after the date of the emergency order.

21 (4) Upon receipt of a written request for emergency  
22 hearing, the director shall conduct an emergency hearing within ten  
23 business days after the date of receipt of the request for hearing  
24 unless the parties agree to a later date or a hearing officer sets a  
25 later date for good cause shown.

1           (5) A person aggrieved by an emergency order of the  
2 director may obtain judicial review of the order in the manner  
3 prescribed in the Administrative Procedure Act and the rules and  
4 regulations adopted and promulgated by the department.

5           (6) The director may obtain an order from the district  
6 court of Lancaster County for the enforcement of the emergency order.

7           (7) The director may vacate or modify an emergency order  
8 if he or she finds that the conditions which caused its entry have  
9 changed or that it is otherwise in the public interest to do so.

10           (8) If an emergency hearing has not been requested  
11 pursuant to subsection (3) of this section and the emergency order  
12 remains in effect sixty days after issuance, the director shall  
13 initiate proceedings pursuant to section 45-742 unless the license  
14 was surrendered or expired during the sixty-day time period after  
15 issuance of the emergency order.

16           (9) An emergency order issued under this section shall  
17 remain in effect until it is vacated, modified, or superseded by an  
18 order of the director, superseded by a voluntary consent or  
19 compliance agreement between the director and the licensee, or until  
20 it is terminated by a court order.

21           Sec. 21. Section 45-1002, Revised Statutes Supplement,  
22 2011, is amended to read:

23           45-1002 (1) For purposes of the Nebraska Installment Loan  
24 Act:

25           (a) Applicant means a person applying for a license under

1 the act;

2 (b) Breach of security of the system means unauthorized  
3 acquisition of data that compromises the security, confidentiality,  
4 or integrity of the information maintained by the Nationwide Mortgage  
5 Licensing System and Registry, its affiliates, or its subsidiaries;

6 (c) Department means the Department of Banking and  
7 Finance;

8 (d) Debt cancellation contract means a loan term or  
9 contractual arrangement modifying loan terms under which a financial  
10 institution or licensee agrees to cancel all or part of a borrower's  
11 obligation to repay an extension of credit from the financial  
12 institution or licensee upon the occurrence of a specified event. The  
13 debt cancellation contract may be separate from or a part of other  
14 loan documents. The term debt cancellation contract does not include  
15 loan payment deferral arrangements in which the triggering event is  
16 the borrower's unilateral election to defer repayment or the  
17 financial institution's or licensee's unilateral decision to allow a  
18 deferral of repayment;

19 (e) Debt suspension contract means a loan term or  
20 contractual arrangement modifying loan terms under which a financial  
21 institution or licensee agrees to suspend all or part of a borrower's  
22 obligation to repay an extension of credit from the financial  
23 institution or licensee upon the occurrence of a specified event. The  
24 debt suspension contract may be separate from or a part of other loan  
25 documents. The term debt suspension contract does not include loan

1 payment deferral arrangements in which the triggering event is the  
2 borrower's unilateral election to defer repayment or the financial  
3 institution's or licensee's unilateral decision to allow a deferral  
4 of repayment;

5 (f) Director means the Director of Banking and Finance;

6 (g) Financial institution has the same meaning as in  
7 section 8-101;

8 (h) Guaranteed asset protection waiver means a waiver  
9 that is offered, sold, or provided in accordance with the Guaranteed  
10 Asset Protection Waiver Act;

11 (i) Licensee means any person who obtains a license under  
12 the Nebraska Installment Loan Act;

13 (j)(i) Mortgage loan originator means an individual who  
14 for compensation or gain (A) takes a residential mortgage loan  
15 application or (B) offers or negotiates terms of a residential  
16 mortgage loan.

17 (ii) Mortgage loan originator does not include (A) any  
18 individual who is not otherwise described in subdivision (i)(A) of  
19 this subdivision and who performs purely administrative or clerical  
20 tasks on behalf of a person who is described in subdivision (i) of  
21 this subdivision, (B) a person or entity that only performs real  
22 estate brokerage activities and is licensed or registered in  
23 accordance with applicable state law, unless the person or entity is  
24 compensated by a lender, a mortgage broker, or other mortgage loan  
25 originator or by any agent of such lender, mortgage broker, or other

1 mortgage loan originator, or (C) a person or entity solely involved  
2 in extensions of credit relating to time-share programs as defined in  
3 section 76-1702;

4 (k) Nationwide Mortgage Licensing System and Registry  
5 means a ~~mortgage~~-licensing system developed and maintained by the  
6 Conference of State Bank Supervisors and the American Association of  
7 Residential Mortgage Regulators for the licensing and registration of  
8 mortgage loan originators, mortgage bankers, ~~and~~-installment loan  
9 companies, and other state-regulated financial services entities and  
10 industries;

11 (l) Person means individual, partnership, limited  
12 liability company, association, financial institution, trust,  
13 corporation, and any other legal entity; and

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

19 (2) Except as provided in subsection (3) of section  
20 45-1017 and subsection (4) of section 45-1019, no revenue arising  
21 under the Nebraska Installment Loan Act shall inure to any school  
22 fund of the State of Nebraska or any of its governmental  
23 subdivisions.

24 (3) Loan, when used in the Nebraska Installment Loan Act,  
25 does not include any loan made by a person who is not a licensee on

1 which the interest does not exceed the maximum rate permitted by  
2 section 45-101.03.

3 (4) Nothing in the Nebraska Installment Loan Act applies  
4 to any loan made by a person who is not a licensee if the interest on  
5 the loan does not exceed the maximum rate permitted by section  
6 45-101.03.

7 Sec. 22. Original sections 45-334, 45-345, 45-346,  
8 45-346.01, 45-348, 45-351, 45-701, 45-702, 45-703, 45-706, 45-729,  
9 45-731, 45-734, and 45-736, Reissue Revised Statutes of Nebraska, and  
10 sections 45-335, 45-742, and 45-1002, Revised Statutes Supplement,  
11 2011, are repealed.