

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 964**

Introduced by Pahls, 31.

Read first time January 11, 2012

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to finance; to amend section 8-602, Revised  
2 Statutes Supplement, 2011; to adopt the Nebraska Money  
3 Transmitters Act; to provide penalties; to eliminate the  
4 Nebraska Sale of Checks and Funds Transmission Act; to  
5 harmonize provisions; to provide an operative date; to  
6 repeal the original section; and to outright repeal  
7 sections 8-1002, 8-1003, 8-1004, 8-1005, 8-1006, 8-1007,  
8 8-1008, 8-1009, 8-1010, 8-1011, 8-1012, 8-1012.01,  
9 8-1013, 8-1014, 8-1016, and 8-1017, Reissue Revised  
10 Statutes of Nebraska, and sections 8-1001, 8-1001.01,  
11 8-1018, and 8-1019, Revised Statutes Cumulative  
12 Supplement, 2010.

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

1           Section 1. Sections 1 to 44 of this act shall be known  
2 and may be cited as the Nebraska Money Transmitters Act.

3           Sec. 2. For purposes of the Nebraska Money Transmitters  
4 Act, the definitions found in sections 3 to 21 shall be used.

5           Sec. 3. Applicant means a person filing an application  
6 for a license under the Nebraska Money Transmitters Act.

7           Sec. 4. Authorized delegate means an entity designated by  
8 the licensee or an exempt entity under the act to engage in the  
9 business of money transmission on behalf of the licensee or exempt  
10 entity.

11           Sec. 5. Control means the power, directly or indirectly,  
12 to direct the management or policies of a licensee, whether through  
13 ownership of securities, by contract, or otherwise. Any person who  
14 (a) has the power to elect a majority of executive officers,  
15 managers, directors, trustees, or other persons exercising managerial  
16 authority of a licensee or any person in control of a licensee, (b)  
17 directly or indirectly has the right to vote ten percent or more of a  
18 class of stock or directly or indirectly has the power to sell or  
19 direct the sale of ten percent or more of a class of stock, (c) in  
20 the case of a limited liability company, is a managing member, or (d)  
21 in the case of a partnership, has the right to receive, upon  
22 dissolution, or has contributed, ten percent or more of the capital,  
23 is presumed to control that licensee.

24           Sec. 6. Controlling person means any person in control of  
25 a licensee or authorized delegate.

1           Sec. 7. Department means the Department of Banking and  
2 Finance.

3           Sec. 8. Director means the Director of Banking and  
4 Finance.

5           Sec. 9. Electronic instrument means a card or other  
6 tangible object for the transmission or payment of money that  
7 contains a microprocessor chip, magnetic strip, or other means for  
8 the storage of information, that is prefunded, and the value of which  
9 is decremented upon each use. Electronic instrument does not include  
10 a card or other tangible object that is redeemable by the issuer for  
11 goods or services.

12           Sec. 10. Executive officer means the president,  
13 chairperson of the executive committee, senior officer responsible  
14 for business decisions, chief financial officer, and any other person  
15 who performs similar functions for a licensee.

16           Sec. 11. Key shareholder means any person or group of  
17 persons acting in concert owning ten percent or more of any voting  
18 class of an applicant's stock.

19           Sec. 12. Licensee means a person licensed pursuant to the  
20 Nebraska Money Transmitters Act.

21           Sec. 13. Material litigation means any litigation that,  
22 according to generally accepted accounting principles, is deemed  
23 significant to an applicant's or licensee's financial health and  
24 would be required to be referenced in an applicant's or licensee's  
25 annual audited financial statements, report to shareholders, or

1 similar documents.

2           Sec. 14. Monetary value means a medium of exchange,  
3 whether or not redeemable in money.

4           Sec. 15. Money transmission means the business of the  
5 sale or issuance of payment instruments or stored value or of  
6 receiving money or monetary value for transmission to a location  
7 within or outside the United States by any and all means, including  
8 wire, facsimile, or electronic transfer. Notwithstanding any other  
9 provision of law, money transmission also includes bill payment  
10 services not limited to the right to receive payment of any claim for  
11 another.

12           Sec. 16. Outstanding payment instrument means any payment  
13 instrument issued by a licensee which has been sold in the United  
14 States directly by the licensee or any payment instrument issued by a  
15 licensee which has been sold by an authorized delegate of the  
16 licensee in the United States, which has been reported to the  
17 licensee as having been sold, and which has not yet been paid by or  
18 for the licensee.

19           Sec. 17. Payment instrument means any electronic or  
20 written check, draft, money order, travelers check, or other  
21 electronic or written instrument or order for the transmission or  
22 payment of money, sold or issued to one or more persons, whether or  
23 not such instrument is negotiable. Payment instrument does not  
24 include any credit card, any voucher, any letter of credit, or any  
25 instrument that is redeemable by the issuer for goods or services.

1           Sec. 18. Permissible investments means:

2           (1) Cash;

3           (2) Certificates of deposit or other debt obligations of  
4 a financial institution, either domestic or foreign;

5           (3) Bills of exchange or time drafts drawn on and  
6 accepted by a commercial bank, otherwise known as bankers'  
7 acceptances, which are eligible for purchase by member banks of the  
8 federal reserve system;

9           (4) Any investment bearing a rating of one of the three  
10 highest grades as defined by a nationally recognized organization  
11 that rates such securities;

12           (5) Investment securities that are obligations of the  
13 United States or its agencies or instrumentalities, obligations that  
14 are guaranteed fully as to principal and interest by the United  
15 States, or any obligations of any state or political subdivision  
16 thereof;

17           (6) Shares in a money market mutual fund, interest-  
18 bearing bills or notes or bonds, debentures or stock traded on any  
19 national securities exchange or on a national over-the-counter  
20 market, or mutual funds primarily composed of such securities or a  
21 fund composed of one of more permissible investments as set forth in  
22 this section;

23           (7) Any demand borrowing agreement or agreements made to  
24 a corporation or a subsidiary of a corporation whose capital stock is  
25 listed on a national exchange;

1           (8) Receivables that are due to a licensee from its  
2 authorized delegates pursuant to a contract described in section 35  
3 of this act which are not past due or doubtful of collection; or

4           (9) Any other investment or similar security approved by  
5 the director.

6           Sec. 19. Person means any individual, partnership,  
7 limited liability company, association, joint-stock association,  
8 trust, or corporation. Person does not include the United States or  
9 the State of Nebraska.

10           Sec. 20. Remit, except as used in section 43 of this act,  
11 means either to make direct payment of the funds to a licensee or its  
12 representatives authorized to receive those funds or to deposit the  
13 funds in a bank, credit union, or savings and loan association or  
14 other similar financial institution in an account specified by a  
15 licensee.

16           Sec. 21. Stored value means monetary value that is  
17 evidenced by an electronic record.

18           Sec. 22. (1) The requirement for a license under the  
19 Nebraska Money Transmitters Act does not apply to:

20           (a) The United States or any department, agency, or  
21 instrumentality thereof;

22           (b) Any post office of the United States Postal Service;

23           (c) A state or any political subdivision thereof;

24           (d)(i) Banks, credit unions, building and loan  
25 associations, savings and loan associations, savings banks, or mutual

1 banks organized under the laws of any state or the United States;

2 (ii) Subsidiaries of the institutions listed in  
3 subdivision (d)(i) of this subsection;

4 (iii) Bank holding companies which have a banking  
5 subsidiary located in Nebraska and whose debt securities have an  
6 investment grade rating by a national rating agency; or

7 (iv) Authorized delegates of the institutions and  
8 entities listed in subdivision (d)(i), (ii), or (iii) of this  
9 subsection, provided that authorized delegates that are not banks,  
10 credit unions, building and loan associations, savings and loan  
11 associations, savings banks, mutual banks, subsidiaries of any of the  
12 foregoing, or bank holding companies comply with all requirements  
13 imposed upon authorized delegates under the act;

14 (e) The provision of electronic transfer of government  
15 benefits for any federal, state, or county governmental agency, as  
16 defined in Federal Reserve Board Regulation E, 12 C.F.R. 205, as such  
17 regulation existed on January 1, 2012, by a contractor for and on  
18 behalf of the United States or any department, agency, or  
19 instrumentality thereof or any state or any political subdivision  
20 thereof; or

21 (f) An operator of a payment system only to the extent  
22 that the payment system provides processing, clearing, or settlement  
23 services between or among persons who are all exempt under this  
24 section in connection with wire transfers, credit card transactions,  
25 debit card transactions, automated clearinghouse transfers, or

1 similar fund transfers.

2 (2) An authorized delegate of a licensee or of an exempt  
3 entity, acting within the scope of its authority conferred by a  
4 written contract as described in section 35 of this act, is not  
5 required to obtain a license under the Nebraska Money Transmitters  
6 Act, except that such an authorized delegate shall comply with the  
7 other provisions of the act which apply to money transmission  
8 transactions.

9 Sec. 23. (1) Except as otherwise provided in section 22  
10 of this act, a person shall not engage in money transmission without  
11 a license issued pursuant to the Nebraska Money Transmitters Act.

12 (2) A person is engaged in money transmission if the  
13 person provides money transmission services to any resident of this  
14 state even if the person providing money transmission services has no  
15 physical presence in this state.

16 (3) If a licensee has a physical presence in this state,  
17 the licensee may conduct its business at one or more locations,  
18 directly or indirectly owned, or through one or more authorized  
19 delegates, or both, pursuant to the single license granted to the  
20 licensee.

21 (4) A license issued pursuant to the act is not  
22 transferable or assignable.

23 Sec. 24. To qualify for a license under the Nebraska  
24 Money Transmitters Act, an applicant, at the time of filing for a  
25 license, and a licensee at all times after a license is issued, shall

1 satisfy the following requirements:

2 (1) Each applicant or licensee must have a net worth of  
3 not less than fifty thousand dollars, calculated in accordance with  
4 generally accepted accounting principles;

5 (2) The financial condition and responsibility, financial  
6 and business experience, and character and general fitness of the  
7 applicant or licensee must reasonably warrant the belief that the  
8 applicant's or licensee's business will be conducted honestly,  
9 fairly, and in a manner commanding the confidence and trust of the  
10 community. In determining whether this requirement is met and for  
11 purposes of investigating compliance with the act, the director may  
12 review and consider the relevant business records and capital  
13 adequacy of the applicant or licensee;

14 (3) Each corporate applicant or licensee must be in good  
15 standing in the state of its incorporation; and

16 (4) Each applicant or licensee must be registered or  
17 qualified to do business in the state.

18 Sec. 25. (1)(a) Each applicant shall submit, with the  
19 application, a surety bond issued by a bonding company or insurance  
20 company authorized to do business in this state and acceptable to the  
21 director in the principal sum of one hundred thousand dollars and in  
22 an additional principal sum of five thousand dollars for each  
23 location or authorized delegate, in excess of one, at which the  
24 applicant proposes to sell and issue payment instruments or engage in  
25 money transmission in this state, up to a maximum of two hundred

1 fifty thousand dollars. The director may increase the amount of the  
2 bond to a maximum of two hundred fifty thousand dollars for good  
3 cause. The bond shall be in a form satisfactory to the director and  
4 shall run to the state for the benefit of any claimants against the  
5 licensee to secure the faithful performance of the obligations of the  
6 licensee with respect to the receipt, handling, transmission, and  
7 payment of money in connection with money transmission. In the case  
8 of a bond, the aggregate liability of the surety shall not exceed the  
9 principal sum of the bond. Any claimant against the licensee may  
10 bring suit directly on the bond or the director may bring suit on  
11 behalf of any claimant, either in one action or in successive  
12 actions.

13 (b) The director may at any time require the filing of a  
14 new or supplemental bond in the form as provided in subsection (a) of  
15 this section if he or she determines that the bond filed under this  
16 section is exhausted or is inadequate for any reason, including, but  
17 not limited to, the financial condition of a licensee or an applicant  
18 for a license or violations of the Nebraska Money Transmitters Act,  
19 any rule, regulation, or order thereunder, or any state or federal  
20 law applicable to a licensee or an applicant for a license. The new  
21 or supplemental bond shall not exceed five hundred thousand dollars.

22 (2) In lieu of the corporate surety bond or bonds  
23 required by subsection (1) of this section or of any portion of the  
24 principal thereof as required by such subsection, the applicant or  
25 licensee may deposit, with the director or with such banks or trust

1 companies located in this state or with any federal reserve bank as  
2 the applicant or licensee may designate and the director may approve,  
3 interest-bearing stocks and bonds, notes, debentures or other  
4 obligations of the United States or any agency or instrumentality  
5 thereof, or guaranteed by the United States, or of this state, or of  
6 a city, county, village, school district, or instrumentality of this  
7 state, or guaranteed by this state, to an aggregate amount, based  
8 upon principal amount or market value, whichever is lower, of not  
9 less than the amount of the required corporate surety bond or portion  
10 thereof. The securities shall be deposited and held to secure the  
11 same obligations as would the surety bond. The licensee shall have  
12 the right, with the approval of the director, to substitute other  
13 securities for those deposited and shall be required to do so on  
14 written order of the director made for good cause shown. The licensee  
15 shall pay the fees prescribed in section 8-602 for pledging and  
16 substitution of securities. So long as the licensee so depositing  
17 shall continue solvent, and is not in violation of the Nebraska Money  
18 Transmitters Act, such licensee shall be permitted to receive the  
19 interest or dividends on such deposit. The safekeeping of such  
20 securities and all other expenses incidental to the pledging of such  
21 securities shall be paid by the licensee. All such securities shall  
22 be subject to sale and transfer and to the disposal of the proceeds  
23 by the director only on the order of a court of competent  
24 jurisdiction.

25 (3) The surety bond shall remain in effect until

1 cancellation, which may occur only after thirty days' written notice  
2 to the director. Cancellation shall not affect any liability incurred  
3 or accrued during the period the surety bond was in effect.

4 (4) The surety bond shall remain in place for at least  
5 five years after the licensee ceases money transmission in this  
6 state, except that the director may permit the surety bond to be  
7 reduced or eliminated before that time to the extent that the amount  
8 of the licensee's payment instruments outstanding in this state are  
9 reduced. The director may also permit a licensee to substitute a  
10 letter of credit or such other form of security acceptable to the  
11 director for the surety bond in place at the time the licensee ceases  
12 money transmission in the state.

13 Sec. 26. (1) Each licensee shall at all times possess  
14 permissible investments having an aggregate market value, calculated  
15 in accordance with generally accepted accounting principles, of not  
16 less than the aggregate face amount of all outstanding payment  
17 instruments and stored value issued or sold by the licensee in the  
18 United States. This requirement may be waived by the director if the  
19 dollar volume of a licensee's outstanding payment instruments and  
20 stored value does not exceed the bond or other security posted by the  
21 licensee pursuant to section 25 of this act.

22 (2) Permissible investments, even if commingled with  
23 other assets of the licensee, are deemed by operation of law to be  
24 held in trust for the benefit of the purchasers and holders of the  
25 licensee's outstanding payment instruments in the event of the

1 bankruptcy of the licensee.

2           Sec. 27. Each application for a license under the  
3 Nebraska Money Transmitters Act shall be made in writing and in a  
4 form prescribed by the director. Each application shall state or  
5 contain:

6           (1) For all applicants:

7           (a) The exact name of the applicant, the applicant's  
8 principal address, any fictitious or trade name used by the applicant  
9 in the conduct of its business, and the location of the applicant's  
10 business records;

11           (b) The history of the applicant's criminal convictions  
12 and material litigation for the five-year period before the date of  
13 the application;

14           (c) A description of the activities conducted by the  
15 applicant and a history of operations;

16           (d) A description of the business activities in which the  
17 applicant seeks to be engaged in this state;

18           (e) A list identifying the applicant's proposed  
19 authorized delegates in this state, if any, at the time of the filing  
20 of the application;

21           (f) A sample authorized delegate contract, if applicable;

22           (g) A sample form of payment instrument, if applicable;

23           (h) The locations at which the applicant and its  
24 authorized delegates, if any, propose to conduct money transmission  
25 in this state; and

1           (i) The name and address of the clearing bank or banks on  
2 which the applicant's payment instruments will be drawn or through  
3 which the payment instruments will be payable;

4           (2) If the applicant is a corporation, the applicant  
5 shall also provide:

6           (a) The date of the applicant's incorporation and state  
7 of incorporation;

8           (b) A certificate of good standing from the state in  
9 which the applicant was incorporated;

10          (c) A certificate of authority from the Secretary of  
11 State to conduct business in this state;

12          (d) A description of the corporate structure of the  
13 applicant, including the identity of any parent or subsidiary of the  
14 applicant, and a disclosure of whether any parent or subsidiary is  
15 publicly traded on any stock exchange;

16          (e) The name, business and residence address, and  
17 employment history for the five-year period immediately before the  
18 date of the application of the applicant's executive officers and the  
19 officers or managers who will be in charge of the applicant's  
20 activities to be licensed hereunder;

21          (f) The name, business and residence address, and  
22 employment history for the five-year period immediately before the  
23 date of the application of any key shareholder of the applicant;

24          (g) The history of criminal convictions and material  
25 litigation for the five-year period immediately before the date of

1 the application of every executive officer or key shareholder of the  
2 applicant;

3 (h) A copy of the applicant's most recent audited  
4 financial statement including balance sheet, statement of income or  
5 loss, statement of changes in shareholder equity, and statement of  
6 changes in financial position and, if available, the applicant's  
7 audited financial statements for the immediately preceding two-year  
8 period. However, if the applicant is a wholly owned subsidiary of  
9 another corporation, the applicant may submit either the parent  
10 corporation's consolidated audited financial statements for the  
11 current year and for the immediately preceding two-year period or the  
12 parent corporation's Form 10-K reports filed with the United States  
13 Securities and Exchange Commission for the prior three years in lieu  
14 of the applicant's financial statements. If the applicant is a wholly  
15 owned subsidiary of a corporation having its principal place of  
16 business outside the United States, similar documentation filed with  
17 the parent corporation's non-United States regulator may be submitted  
18 to satisfy this subdivision; and

19 (i) Copies of all filings, if any, made by the applicant  
20 with the United States Securities and Exchange Commission or with a  
21 similar regulator in a country other than the United States, within  
22 the year preceding the date of filing of the application; and

23 (3) If the applicant is not a corporation, the applicant  
24 shall also provide:

25 (a) The name, business and residence address, personal

1 financial statement and employment history, for the five-year period  
2 immediately before the date of the application, of each principal of  
3 the applicant and the name, business and residence address, and  
4 employment history for the five-year period immediately before the  
5 date of the application of any other person or persons who will be in  
6 charge of the applicant's money transmission activities;

7 (b) A copy of the applicant's registration or  
8 qualification to do business in this state;

9 (c) The history of criminal convictions and material  
10 litigation for the five-year period immediately before the date of  
11 the application for each individual having any ownership interest in  
12 the applicant and each individual who exercises supervisory  
13 responsibility with respect to the applicant's activities; and

14 (d) Copies of the applicant's audited financial  
15 statements including balance sheet, statement of income or loss, and  
16 statement of changes in financial position for the current year and,  
17 if available, for the immediately preceding two-year period.

18 Sec. 28. Each applicant shall submit, with the  
19 application, an application fee of one thousand dollars which shall  
20 not be subject to refund but which, if the license is granted, shall  
21 constitute the license fee for the first license year or part  
22 thereof.

23 Sec. 29. (1) Upon the filing of a complete application  
24 under the Nebraska Money Transmitters Act, the director shall  
25 investigate the financial condition and responsibility, financial and

1 business experience, character, and general fitness of the applicant.  
2 The director may conduct an onsite investigation of the applicant,  
3 the reasonable cost of which shall be borne by the applicant. If the  
4 director finds that the applicant's business will be conducted  
5 honestly, fairly, and in a manner commanding the confidence and trust  
6 of the community and that the applicant has fulfilled the  
7 requirements imposed by the Nebraska Money Transmitters Act and has  
8 paid the required application or license fee, the director shall  
9 issue a license to the applicant authorizing the applicant to engage  
10 in money transmission in this state. If these requirements have not  
11 been met, the director shall deny the application in writing, setting  
12 forth the reasons for the denial.

13 (2) The director shall approve or deny every application  
14 for an original license within one hundred twenty days after the date  
15 a complete application is submitted, which period may be extended by  
16 the written consent of the applicant. The director shall notify the  
17 applicant of the date when the application is deemed complete.

18 (3) Any applicant aggrieved by a denial issued by the  
19 director under the act may, at any time within fifteen business days  
20 after the date of the denial, request a hearing before the director.  
21 The hearing shall be held in accordance with the Administrative  
22 Procedure Act and rules and regulations of the department.

23 Sec. 30. (1) Each licensee shall, annually on or before  
24 July 1 of each year, file a license renewal application and pay to  
25 the director a license fee of two hundred fifty dollars which is not

1 subject to refund.

2 (2) The renewal application and license fee shall be  
3 accompanied by a report, in a form prescribed by the director, which  
4 shall include:

5 (a) A copy of the licensee's most recent audited  
6 consolidated annual financial statement including balance sheet,  
7 statement of income or loss, statement of changes in shareholders'  
8 equity, and statement of changes in financial position, or, if a  
9 licensee is a wholly owned subsidiary of another corporation, the  
10 consolidated audited annual financial statement of the parent  
11 corporation may be filed in lieu of the licensee's audited annual  
12 financial statement;

13 (b) The number of payment instruments sold by the  
14 licensee in the state, the dollar amount of those instruments, and  
15 the dollar amount of payment instruments currently outstanding, for  
16 the most recent quarter for which data is available before the date  
17 of the filing of the renewal application, but in no event more than  
18 one hundred twenty days before the renewal date;

19 (c) Any material changes to any of the information  
20 submitted by the licensee on its original application which have not  
21 previously been reported to the director on any other report required  
22 to be filed under the Nebraska Money Transmitters Act;

23 (d) A list of the licensee's permissible investments; and

24 (e) A list of the locations, if any, within this state at  
25 which money transmission is being conducted by either the licensee or

1 its authorized delegates.

2           Sec. 31. (1) A licensee shall file notice with the  
3 director within thirty calendar days after any material change in  
4 information provided in a licensee's application as prescribed by the  
5 director.

6           (2) A licensee shall file a report with the director  
7 within five business days after the licensee has reason to know of  
8 the occurrence of any of the following events:

9           (a) The filing of a petition by or against the licensee  
10 under any bankruptcy law of the United States for liquidation or  
11 reorganization;

12           (b) The filing of a petition by or against the licensee  
13 for receivership, the commencement of any other judicial or  
14 administrative proceeding for its dissolution or reorganization, or  
15 the making of a general assignment for the benefit of its creditors;

16           (c) The filing of an action to revoke or suspend the  
17 licensee's license in a state or country in which the licensee  
18 engages in business or is licensed;

19           (d) The cancellation or other impairment of the  
20 licensee's bond or other security;

21           (e) A charge or conviction of the licensee or of an  
22 executive officer, manager, or director of, or controlling person,  
23 the licensee for a felony; or

24           (f) A charge or conviction of an authorized delegate for  
25 a felony.

1           Sec. 32. (1) No person acting personally or as an  
2 authorized delegate shall acquire control of any licensee under the  
3 Nebraska Money Transmitters Act without first giving thirty days'  
4 notice to the director on forms prescribed by the director of such  
5 proposed acquisition.

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

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

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

20           (i) The financial condition of any acquiring person is  
21 such as might jeopardize the financial stability of the acquired  
22 licensee;

23           (ii) The business experience, character, and general  
24 fitness of any acquiring person or of any of the proposed management  
25 personnel of the acquiring person indicate that the acquired licensee

1 would not be operated honestly, carefully, or efficiently; or

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

4 (b) The director may require that any acquiring person  
5 comply with the application requirements of section 27 of this act.

6 (c) The director shall notify the acquiring person in  
7 writing of disapproval of the acquisition. The notice shall provide a  
8 statement of the basis for the disapproval.

9 (d) Within fifteen business days after receipt of written  
10 notice of disapproval, the acquiring person may request a hearing on  
11 the proposed acquisition. The hearing shall be in accordance with the  
12 Administrative Procedure Act and rules and regulations of the  
13 department. Following such hearing, the director shall, by order,  
14 approve or disapprove the proposed acquisition on the basis of the  
15 record made at the hearing.

16 Sec. 33. (1) The director may conduct an annual onsite  
17 examination of a licensee upon reasonable written notice to the  
18 licensee. The director may examine a licensee without prior notice if  
19 the director has a reasonable basis to believe that the licensee is  
20 in noncompliance with the Nebraska Money Transmitters Act. If the  
21 director concludes that an onsite examination of a licensee is  
22 necessary, the licensee shall pay an examination fee and the director  
23 shall charge for the actual cost of the examination at an hourly rate  
24 set by the director which is sufficient to cover all reasonable  
25 expenses associated with the examination. The onsite examination may

1 be conducted in conjunction with examinations to be performed by  
2 representatives of agencies of another state or states. The director,  
3 in lieu of an onsite examination, may accept the examination report  
4 of an agency of another state or a report prepared by an independent  
5 accounting firm. Reports so accepted are considered for all purposes  
6 as an official report of the director. The licensee shall be  
7 responsible for the reasonable expenses incurred by the department,  
8 the agencies of another state, or an independent licensed or  
9 certified public accountant in making the examination or report.

10 (2) The director may request financial data from a  
11 licensee in addition to that required under section 30 of this act or  
12 conduct an onsite examination of any authorized delegate or location  
13 of a licensee within this state without prior notice to the  
14 authorized delegate or licensee only if the director has a reasonable  
15 basis to believe that the licensee or authorized delegate is in  
16 noncompliance with the Nebraska Money Transmitters Act. When the  
17 director examines an authorized delegate's operations, the authorized  
18 delegate shall pay all reasonably incurred costs of such examination.  
19 When the director examines a licensee's location the licensee shall  
20 pay all reasonably incurred costs of such examination.

21 Sec. 34. (1) Each licensee shall make, keep, and preserve  
22 the following books, accounts, and other records for a period of five  
23 years which shall be open to inspection by the director:

24 (a) A record of each payment instrument and stored value  
25 sold;

1           (b) A general ledger containing all assets, liability,  
2 capital, income, and expense accounts, which general ledger shall be  
3 posted at least monthly;

4           (c) Settlement sheets received from authorized delegates;

5           (d) Bank statements and bank reconciliation records;

6           (e) Records of outstanding payment instruments and stored  
7 value;

8           (f) Records of each payment instrument and stored value  
9 paid;

10           (g) A list of the names and addresses of all of the  
11 licensee's authorized delegates; and

12           (h) Any other records the director reasonably requires by  
13 rule or regulation.

14           (2) Maintenance of such documents as are required by this  
15 section in a photographic, electronic, or other similar form  
16 constitutes compliance with this section.

17           (3) Records may be maintained at a location other than  
18 within this state so long as the records are made accessible to the  
19 director on seven business days' written notice.

20           Sec. 35. A licensee desiring to conduct money  
21 transmission through an authorized delegate shall authorize each  
22 authorized delegate to operate pursuant to an express written  
23 contract which, for contracts entered into on or after January 1,  
24 2013, shall provide the following:

25           (1) That the licensee appoints the person as its

1 authorized delegate with authority to engage in the sale and issue of  
2 payment instruments or engage in the business of money transmission  
3 on behalf of the licensee;

4 (2) That neither a licensee nor an authorized delegate  
5 may authorize subdelegates without the written consent of the  
6 director; and

7 (3) That the licensee is subject to supervision and  
8 regulation by the director.

9 Sec. 36. (1) An authorized delegate shall not make any  
10 fraudulent or false statement or misrepresentation to a licensee or  
11 to the director.

12 (2) An authorized delegate shall conduct all money  
13 transmission strictly in accordance with the licensee's written  
14 procedures provided to the authorized delegate.

15 (3) An authorized delegate shall remit all money owing to  
16 the licensee in accordance with the terms of the contract between the  
17 licensee and the authorized delegate.

18 (4) An authorized delegate is deemed to consent to the  
19 director's inspection with or without prior notice to the licensee or  
20 authorized delegate.

21 (5) An authorized delegate is under a duty to act only as  
22 authorized under the contract with the licensee and the Nebraska  
23 Money Transmitters Act. An authorized delegate who exceeds its  
24 authority is subject to cancellation of its contract and further  
25 disciplinary action by the director.

1           (6) All funds, less fees, received by an authorized  
2 delegate of a licensee from the sale or delivery of a payment  
3 instrument issued by a licensee or received by an authorized delegate  
4 for transmission shall, from the time such funds are received by such  
5 authorized delegate until such time when the funds or an equivalent  
6 amount are remitted by the authorized delegate to the licensee,  
7 constitute trust funds owned by and belonging to the licensee. If an  
8 authorized delegate commingles any such funds with any other funds or  
9 property owned or controlled by the authorized delegate, all  
10 commingled proceeds and other property is impressed with a trust in  
11 favor of the licensee in an amount equal to the amount of the  
12 proceeds due the licensee.

13           Sec. 37. (1) The director may, following a hearing in  
14 accordance with the Administrative Procedure Act, suspend or revoke  
15 any license issued pursuant to the Nebraska Money Transmitters Act if  
16 he or she finds:

17           (a) Any fact or condition exists that, if it had existed  
18 at the time when the licensee applied for its original or renewal  
19 license, would have been grounds for denying such application;

20           (b) The licensee's net worth has become inadequate and  
21 the licensee, after ten days' written notice from the director,  
22 failed to take such steps as the director deems necessary to remedy  
23 such deficiency;

24           (c) The licensee knowingly violated any material  
25 provision of the act or any rule or order validly adopted and

1 promulgated under the act;

2 (d) The licensee conducted money transmission in an  
3 unsafe or unsound manner;

4 (e) The licensee is insolvent;

5 (f) The licensee has suspended payment of its  
6 obligations, made an assignment for the benefit of its creditors, or  
7 admitted in writing its inability to pay its debts as they became  
8 due;

9 (g) The licensee filed for liquidation or reorganization  
10 under any bankruptcy law;

11 (h) The licensee refused to permit the director to make  
12 any examination authorized by the act; or

13 (i) The licensee willfully failed to make any report  
14 required by the act.

15 (2) In determining whether a licensee is engaging in an  
16 unsafe or unsound practice, the director may consider the size and  
17 condition of the licensee's money transmission, the magnitude of the  
18 loss, if any, the gravity of the violation of the act, and the  
19 previous conduct of the licensee.

20 (3) A licensee may voluntarily surrender a license by  
21 delivering to the director written notice of the surrender, but a  
22 surrender shall not affect civil or criminal liability for acts  
23 committed before the surrender or liability for any fines which may  
24 be levied against the licensee or any of its officers, directors, key  
25 shareholders, partners, or members for acts committed before the

1 surrender.

2 (4)(a) If a licensee fails to renew its license as  
3 required by section 30 of this act and does not voluntarily surrender  
4 the license pursuant to this section, the department may issue a  
5 notice of expiration of the license to the licensee in lieu of  
6 revocation proceedings.

7 (b) If a licensee fails to maintain a surety bond as  
8 required by section 25 of this act, the department may issue a notice  
9 of cancellation of the license in lieu of revocation proceedings.

10 (5) Revocation, suspension, surrender, cancellation, or  
11 expiration of a license shall not impair or affect the obligation of  
12 a preexisting lawful contract between the licensee and any person.

13 (6) Revocation, suspension, cancellation, or expiration  
14 of a license shall not affect civil or criminal liability for acts  
15 committed before the revocation, suspension, cancellation, or  
16 expiration or liability for any fines which may be levied against the  
17 licensee or any of its officers, directors, key shareholders,  
18 partners, or members for acts committed before the revocation,  
19 suspension, cancellation, or expiration.

20 Sec. 38. (1) The director may, following a hearing in  
21 accordance with the Administrative Procedure Act, issue an order  
22 suspending or revoking the designation of an authorized delegate if  
23 the director finds that:

24 (a) The authorized delegate violated the Nebraska Money  
25 Transmitters Act or a rule or regulation adopted and promulgated or

1 an order issued under the act;

2 (b) The authorized delegate did not cooperate with an  
3 examination or investigation by the director;

4 (c) The authorized delegate engaged in fraud, intentional  
5 misrepresentation, or gross negligence;

6 (d) The authorized delegate is convicted of a violation  
7 of a state or federal anti-money laundering statute;

8 (e) The competence, experience, character, or general  
9 fitness of the authorized delegate or a controlling person of the  
10 authorized delegate indicates that it is not in the public interest  
11 to permit the authorized delegate to engage in money transmission  
12 services; or

13 (f) The authorized delegate is engaged in an unsafe or  
14 unsound practice.

15 (2) In determining whether an authorized delegate is  
16 engaging in an unsafe or unsound practice, the director may consider  
17 the size and condition of the authorized delegate's money  
18 transmission, the magnitude of the loss, if any, the gravity of the  
19 violation of the act, and the previous conduct of the authorized  
20 delegate.

21 (3) Any authorized delegate to whom a final order is  
22 issued under this section may apply to the director to modify or  
23 rescind the order. The director shall not grant the application  
24 unless the director finds that (a) it is in the public interest to do  
25 so and (b) it is reasonable to believe that the person will comply

1 with the act and any rule, regulation, or order issued under the act  
2 if and when that person is permitted to resume being an authorized  
3 delegate of a licensee.

4           Sec. 39. (1) The department may order any person to cease  
5 and desist whenever the department determines that the person has  
6 violated the Nebraska Money Transmitters Act. Upon entry of a cease  
7 and desist order, the director shall promptly notify the affected  
8 person that such order has been entered, of the reasons for such  
9 order, and that upon receipt, within fifteen business days after the  
10 date of the order, of a written request from the affected person, a  
11 hearing will be scheduled within thirty business days after the date  
12 of receipt of the written request, unless the parties consent to a  
13 later date or the hearing officer sets a later date for good cause.  
14 The hearing shall be held in accordance with the Administrative  
15 Procedure Act and rules and regulations of the department. If a  
16 hearing is not requested and none is ordered by the director, the  
17 order shall remain in effect until it is modified or vacated.

18           (2) The director may issue an order against a licensee to  
19 cease and desist from engaging in money transmission through an  
20 authorized delegate that is the subject of a separate order pursuant  
21 to section 38 of this act.

22           (3) The director may vacate or modify a cease and desist  
23 order if he or she finds that the conditions which caused its entry  
24 have changed or that it is otherwise in the public interest to do so.

25           (4) A person aggrieved by a cease and desist order of the

1 department may obtain judicial review of the order. The review shall  
2 be in the manner prescribed in the Administrative Procedure Act. The  
3 director may obtain an order from the district court of Lancaster  
4 County for enforcement of the cease and desist order.

5           Sec. 40. If the director finds, after notice and hearing  
6 in accordance with the Administrative Procedure Act, that any person  
7 has violated the Nebraska Money Transmitters Act or any rule,  
8 regulation, or order of the director thereunder, the director may  
9 order such person to pay (1) an administrative fine of not more than  
10 five thousand dollars for each separate violation and (2) the costs  
11 of investigation.

12           Sec. 41. (1) A person who intentionally makes a false  
13 statement, misrepresentation, or false certification in a record  
14 filed or required to be maintained under the Nebraska Money  
15 Transmitters Act or who intentionally makes a false entry or omits a  
16 material entry in such a record is guilty of a Class III misdemeanor.

17           (2) Any person violating the act or any rule, regulation,  
18 or order of the director made pursuant to the act or who engages in  
19 any act, practice, or transaction declared by the act to be unlawful  
20 is guilty of a Class III misdemeanor.

21           (3) An individual who knowingly engages in money  
22 transmission for which a license is required under the act without  
23 being licensed under the act is guilty of a Class III misdemeanor.

24           Sec. 42. The director may adopt and promulgate rules and  
25 regulations and issue orders, rulings, findings, and demands as may

1 be necessary to carry out the purposes of the Nebraska Money  
2 Transmitters Act.

3           Sec. 43. (1) The department shall remit all fees,  
4 charges, and costs collected by the department pursuant to the  
5 Nebraska Money Transmitters Act to the State Treasurer for credit to  
6 the Financial Institution Assessment Cash Fund.

7           (2) The department shall remit fines collected under the  
8 act to the State Treasurer for distribution in accordance with  
9 Article VII, section 5, of the Constitution of Nebraska.

10           Sec. 44. A license issued under the Nebraska Sale of  
11 Checks and Funds Transmission Act as it existed immediately before  
12 January 1, 2013, remains in force as a license under the Nebraska  
13 Money Transmitters Act until the license's expiration date.  
14 Thereafter, the licensee shall be treated as if the licensee had  
15 applied for and had received a license under the Nebraska Money  
16 Transmitters Act and shall be required to comply with the renewal  
17 requirements set forth in the Nebraska Money Transmitters Act.

18           Sec. 45. Section 8-602, Revised Statutes Supplement,  
19 2011, is amended to read:

20           8-602 The Director of Banking and Finance shall charge  
21 and collect fees for certain services rendered by the Department of  
22 Banking and Finance according to the following schedule:

23           (1) For filing and examining articles of incorporation,  
24 articles of association, and bylaws, except credit unions, one  
25 hundred dollars, and for credit unions, fifty dollars;

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

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

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

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

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

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

21           (8) For investigating the applications required by  
22 sections 8-117, 8-120, 8-331, and 8-2402 and the documents required  
23 by section 8-201, the cost of such examination, investigation, and  
24 inspection, including all legal expenses and the cost of any hearing  
25 transcript, with a minimum fee under (a) sections 8-117, 8-120, and

1 8-2402 of two thousand five hundred dollars, (b) section 8-331 of two  
2 thousand dollars, and (c) section 8-201 of one thousand dollars. The  
3 department may require the applicant to procure and give a surety  
4 bond in such principal amount as the department may determine and  
5 conditioned for the payment of the fees provided in this subdivision;

6 (9) For registering a statement of intention to engage in  
7 the business of making personal loans pursuant to section 8-816,  
8 fifty dollars;

9 (10) For the handling of pledged securities as provided  
10 in ~~sections~~ section 8-210 and 8-1006, and section 25 of this act, at  
11 the time of the initial deposit of such securities, one dollar and  
12 fifty cents for each thousand dollars of securities deposited and a  
13 like amount on or before January 15 each year thereafter. The fees  
14 shall be paid by the company, national bank, federal savings  
15 association, federally chartered trust company, out-of-state trust  
16 company authorized under the Interstate Trust Company Office Act, or  
17 state-chartered bank pledging the securities;

18 (11) For investigating an application to move its  
19 location within the city or village limits of its original license or  
20 charter for banks, trust companies, and building and loan  
21 associations, two hundred fifty dollars;

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

24 (13) For investigating an application for approval to  
25 establish or acquire a branch or to establish a mobile branch

1 pursuant to section 8-157, two hundred fifty dollars;

2 (14) For investigating a notice of acquisition of control  
3 under subsection (1) of section 8-1502, five hundred dollars;

4 (15) For investigating an application for a cross-  
5 industry merger under section 8-1510, five hundred dollars;

6 (16) For investigating an application for a merger of two  
7 state banks or a merger of a state bank and a national bank in which  
8 the state bank is the surviving entity, five hundred dollars;

9 (17) For investigating an application or a notice to  
10 establish a branch trust office, five hundred dollars;

11 (18) For investigating an application or a notice to  
12 establish a representative trust office, five hundred dollars;

13 (19) For investigating an application to establish a  
14 credit union branch under section 21-1725.01, two hundred fifty  
15 dollars;

16 (20) For investigating an applicant under section 8-1513,  
17 five thousand dollars; and

18 (21) For investigating a request to extend a conditional  
19 bank charter under section 8-117, one thousand dollars.

20 Sec. 46. This act becomes operative on January 1, 2013.

21 Sec. 47. Original section 8-602, Revised Statutes  
22 Supplement, 2011, is repealed.

23 Sec. 48. The following sections are outright repealed:  
24 Sections 8-1002, 8-1003, 8-1004, 8-1005, 8-1006, 8-1007, 8-1008,  
25 8-1009, 8-1010, 8-1011, 8-1012, 8-1012.01, 8-1013, 8-1014, 8-1016,

1 and 8-1017, Reissue Revised Statutes of Nebraska, and sections  
2 8-1001, 8-1001.01, 8-1018, and 8-1019, Revised Statutes Cumulative  
3 Supplement, 2010.