

One Hundred Second Legislature - Second Session - 2012

Introducer's Statement of Intent

LB965

Chairperson: Senator Rich Pahls

Committee: Banking, Commerce and Insurance

Date of Hearing: January 30, 2012

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 965 is a bill introduced at the request of the Nebraska Department of Banking and Finance (Department). Its purpose is to amend and update the Nebraska Installment Sales Act (NISA) to provide efficiencies in the licensing process; to amend and update the Residential Mortgage Licensing Act (RMLA) to coordinate with federal regulations and to improve the enforcement authority of the Department; and to provide a coordinating definitional amendment to the Nebraska Installment Loan Act (NILA).

INSTALLMENT SALES

Sections 1 to 9 amend the NISA. This Act governs transactions in which a buyer acquires goods or services pursuant to a contract that permits payment over time. Companies which purchase these contracts from the seller of the goods or services are known as installment sales companies or sales finance companies and are required to be licensed with the Department. LB 965 proposes to transition the current manual licensing process for installment sales companies onto the electronic Nationwide Mortgage Licensing System and Registry (NMLSR) in 2013. The NMLSR is expanding to provide the states with the means to license other financial services entities and industries.

Section 1 amends Section 45-334 to add new Sections 8 and 9 to the NISA.

Section 2 amends Section 45-335, which is the definitional statute for the NISA, by adding and defining the general terms, "Department" and "person," and two terms necessary to the transition: the "Nationwide Mortgage Licensing System and Registry" and "breach of security of the system" relating to the unauthorized acquisition of data maintained by the NMLSR. These are modeled on the current definitional sections of the RMLA and the NILA. The proposed definition of the "Nationwide Mortgage Licensing System and Registry"

contains language addressing the expansion of the system. Sections 11 and 21 provide the coordinating definitional amendments for the RMLA and the NILA.

Section 3 amends Section 45-345 to coordinate with the definition of “Department” added to Section 2 of the bill.

Section 4 amends Section 45-346 to provide transitional procedures for installment sales licensees onto the NMLSR, including a change in the annual license renewal date from October 1 to December 31, and to allow a processing fee payable to the NMLSR.

Section 5 updates Section 45-346.01 to allow a licensee to move its place of business anywhere without having to apply for a new license. The law currently provides that a move outside a county requires re-licensure. The current ten-day prior notice period required for such move would be increased to thirty days.

Section 6 amends Section 45-348 to allow for license renewal fees and processing fees to be collected by the NMLSR and to provide that licenses which expire on October 1, 2012, shall be renewed until December 31, 2013. These are necessary transitional procedures and comport with the amendments contained in Section 4 of the bill.

Section 7 amends Section 45-351 to update language relating to the disposition of fines to the State Treasurer.

Section 8 is a new section providing authority for the Department to participate in the NMLSR for purposes of the NISA and establishing the requirement that installment sales companies be licensed through the NMLSR. The requirements of this section mirror Section 45-748 of the RMLA and Section 45-1033.01 of the NILA.

Section 9 is a new section setting out guidelines for confidentiality of information and supervisory information-sharing through the NMLSR. The requirements of this section mirror Section 45-749 of the RMLA and Section 45-1033.02 of the NILA.

RESIDENTIAL MORTGAGE LICENSING

Sections 10 to 20 propose amendments to the RMLA, to address rules released in 2011 by the United States Department of Housing and Urban Development (HUD) relating to mortgage bankers and mortgage loan originators, and to adopt emergency license suspension provisions that the Department believes necessary for better enforcement of the Act.

Section 10 amends Section 45-701 to add new Sections 13 and 20 to the RMLA.

Section 11 amends Section 45-702, the definitional section of the RMLA, to include a definition of “purchase-money mortgage” and to update the definition of the "Nationwide Mortgage Licensing System and Registry" in coordination with Sections 2 and 21 of the bill.

Section 12 amends Section 45-703, the exemptions section of the RMLA, to update the exemptions for attorneys and individuals conducting an isolated transaction (subdivisions (1)(d) and (1)(k), respectively). Section 12 proposes new exemptions for governmental entities; the Nebraska Investment Finance Authority; individuals who are government or NIFA employees who act as mortgage loan originators or loan processors or underwriters only pursuant to his or her official duties; and certain nonprofit organizations and specified employees (subdivisions (1)(m) through (1)(q), respectively). These amendments result from the 2011 HUD amendments.

Section 13 is a new section authorizing the Director of the Department to grant a certificate of exemption to a nonprofit organization which promotes affordable housing or provides homeownership education or similar services, and meets requirements that include providing or identifying residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government assistance programs. The section also sets out the right to an appeal hearing if a certificate is denied, and the authority of the Department to examine the organization's records, revoke a certificate, and to rely on certain reports. This section is based on the 2011 HUD amendments.

Section 14 amends Section 45-706 to authorize the Department to place a mortgage banker licensee that is a sole proprietorship on inactive status for a period of up to twelve months, and to provide standards for renewal, reactivation, and cancellation of an inactive mortgage banker license.

Section 15 amends Section 45-729 to authorize the Director to issue a mortgage loan originator license to a person who has had certain misdemeanors or any felony expunged from the record. Currently, unless a person has been pardoned, the application cannot be granted. The amendment allows the Director to consider the underlying crime, facts, and circumstances of a pardoned or expunged conviction in determining eligibility for a license. A third amendment provides that the Department may consider a mortgage loan originator license application abandoned if the applicant fails to respond to a notice from the Department to correct deficiencies after 120 days.

Section 16 amends Section 45-731 to provide that an applicant for a mortgage loan originator license may take the written qualifying test three times, rather than retaking the test three times. This amendment is to comport with the 2011 HUD Rules.

Section 17 amends Section 45-734 to add language which authorizes the Department to determine if an inactive mortgage loan originator licensee meets the conditions for licensing in effect at the time a reactivation notice is received.

Section 18 amends Section 45-736 to require mortgage banker licensees to include their unique identifier on all forms and advertisements. Mortgage loan originator licensees currently have this obligation.

Section 19 amends Section 45-742 to include a cross-reference to new Section 20 of the bill.

Section 20 is a new section which authorizes the Director to issue an emergency order to suspend, limit, or restrict the license of any mortgage banker or mortgage loan originator without notice or hearing if the licensee: fails to file a report of condition or reports required as a condition of the license; fails to increase its surety bond as required; is in an unsafe financial condition; has been indicted, charged with, or found guilty of offenses involving fraud; had its license suspended or revoked in any state for offenses involving fraud; or refused to permit a regulatory examination. Section 20 establishes notification requirements, appeal rights, and emergency hearing provisions, and provides that if an emergency hearing has not been requested and the emergency order remains in effect sixty days after issuance, the Director must initiate additional proceedings against the licensee unless the license was surrendered or expired during the interim.

INSTALLMENT LOANS

Section 21 would amend Section 45-1002 of the NILA to include other state-regulated financial services entities and industries in the definition of “Nationwide Mortgage Licensing System and Registry,” to coordinate with the amendments in Sections 2 and 11 of the bill.

MISCELLANEOUS PROVISIONS

Section 22 contains the amendatory repeal provisions for the bill.

Principal Introducer: _____

Senator Rich Pahls