

LEGISLATIVE BILL 137

Approved by the Governor June 10, 1997

Introduced by Landis, 46

AN ACT relating to banking and finance; to amend sections 8-149, 8-166, 8-822, 45-101.02, 45-114, 45-130, and 45-707, Reissue Revised Statutes of Nebraska, and sections 8-101, 8-112, 8-126, 8-143.01, 8-157, 8-1134, 8-224, 21-1738, 21-1739, 21-1740, 21-1741, 21-17,102, 21-17,106, 21-17,109, 21-17,112, 45-351, and 45-921, Revised Statutes Supplement, 1996; to change provisions relating to banks and banking, bank director qualifications, loans to certain bank officials and shareholders, bank trust departments, personal loans, credit unions, interest on loans, installment loans, the Nebraska Installment Sales Act, the Mortgage Bankers Registration and Licensing Act, and the Delayed Deposit Services Licensing Act; to provide powers for the Department of Banking and Finance; to provide for administrative fines, examination costs, and liens for unpaid amounts; to change provisions relating to fees; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 8-101, Revised Statutes Supplement, 1996, is amended to read:

8-101. For purposes of sections 8-101 to 8-1,129, unless the context otherwise requires:

(1) Bank subsidiary corporation means a corporation which has a bank as a shareholder and which is organized for purposes of engaging in activities which are part of the business of banking or incidental to such business except for the receipt of deposits. A bank subsidiary corporation is not to be considered a branch of its bank shareholder;

(2) Capital or capital stock means capital stock;

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

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

(5) Bank or banking corporation means any incorporated banking institution which was incorporated under the laws of this state as they existed prior to May 9, 1933, and any corporation duly organized under the laws of this state for the purpose of conducting a bank within this state under sections 8-101 to 8-1,129. Bank means any such banking institution which is, in addition to the exercise of other powers, following the practice of repaying deposits upon check, draft, or order and of making loans;

(6) Order includes orders transmitted by electronic transmission;

(7) Automatic teller machine means a machine established and located off the premises of a financial institution which has a main chartered office or approved branch office located in the State of Nebraska, whether attended or unattended, which utilizes electronic, sound, or mechanical signals or impulses, or any combination thereof, and from which electronic funds transfers may be initiated. An unattended automatic teller machine shall not be deemed to be an office operated by a financial institution;

(8) Data processing center means a facility, wherever located, at which electronic impulses or other indicia of a transaction originating at an automatic teller machine or point-of-sale terminal are received and either authorized or routed to a switch or other data processing center in order to enable the automatic teller machine or point-of-sale terminal to perform any function for which it is designed;

(9) Point-of-sale terminal means an information processing terminal which utilizes electronic, sound, or mechanical signals or impulses, or any combination thereof, which are transmitted to a financial institution or which are recorded for later transmission to effectuate electronic funds transfer transactions for the purchase or payment of goods and services and which are initiated by an access device in conjunction with a personal identification number. A point-of-sale terminal is not an office operated by a financial institution. Any terminal owned or operated by a seller of goods and services shall be connected directly or indirectly to an acquiring financial institution;

(10) Making loans includes advances or credits that are initiated by means of credit card or other transaction card. Transaction card and other transactions, including transactions made pursuant to prior agreements, may be brought about and transmitted by means of an electronic impulse. Such loan

transactions including transactions made pursuant to prior agreements shall be subject to sections 8-815 to 8-829 and shall be deemed loans made at the place of business of the financial institution;

(11) Financial institution means a bank, savings bank, building and loan association, savings and loan association, industrial loan and investment company, credit union, trust company, or other institution offering automatic teller machines;

(12) Financial institution employees includes parent holding company and affiliate employees;

(13) Switch means any facility where electronic impulses or other indicia of a transaction originating at an automatic teller machine or point-of-sale terminal are received and are routed and transmitted to a financial institution, data processing center, or other switch, wherever located. A switch may also be a data processing center;

(14) Impulse means an electronic, sound, or mechanical impulse, or any combination thereof;

(15) Insolvent means a condition in which (a) the actual cash market value of the assets of a bank is insufficient to pay its liabilities to its depositors, (b) a bank is unable to meet the demands of its creditors in the usual and customary manner, (c) a bank, after demand in writing by the director, fails to make good any deficiency in its reserves as required by law, or (d) the stockholders of a bank, after written demand by the director, fail to make good an impairment of its capital or surplus; and

(16) Foreign state agency means any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created under the laws of any other state, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands or which is operating under the code of law for the District of Columbia.

Sec. 2. Section 8-112, Revised Statutes Supplement, 1996, is amended to read:

8-112. (1) The director shall keep, as records of his or her office, proper books showing all acts, matters, and things done under the jurisdiction of the department. Neither the director nor anyone connected with the department shall in any instance disclose the name of any depositor or debtor of any financial institution or other entity regulated by the department or the amount of his or her deposit or debt to anyone, except insofar as may be necessary in the performance of his or her official duty, except that the department may maintain a record of borrowers from the financial institutions in this state and may give information concerning the total liabilities of any such borrowers to any financial institution owning obligations of such borrowers.

(2) Examination reports, investigation reports, and documents and information relating to such reports are confidential records of the department and may be released or disclosed only (a) insofar as is necessary in the performance of the official duty of the department or (b) pursuant to a properly issued subpoena. ~~The department, in its discretion, may obtain the and upon~~ entry of a protective order from a court of competent jurisdiction to protect and keep confidential the names of borrowers or depositors or to protect the public interest.

Sec. 3. Section 8-126, Revised Statutes Supplement, 1996, is amended to read:

8-126. A majority of the members of the board of directors of any bank transacting business under sections 8-101 to 8-1,121 shall have their residences in this state or within twenty-five miles of the main office of the bank. Reasonable efforts shall be made to acquire members of such board of directors from the county in which such bank is located. ~~Each director shall be the owner in his or her own name and right of at least one share of the paid-up capital stock of the bank of which he or she is a director or of its holding company, if any.~~ Directors of banks shall be persons of good moral character, known integrity, business experience, and responsibility. No person shall act as a member of the board of directors of any bank until such bank applies for and obtains approval from the Department of Banking and Finance.

If the department, upon investigation, determines that any director of a bank is conducting the business of the bank in an unsafe or unauthorized manner or is endangering the interests of the stockholders or depositors, the department shall have authority, following notice and opportunity for hearing, to revoke such approval to act as a member of the board of directors. The department may adopt and promulgate rules and regulations and prescribe forms to carry out this section.

Sec. 4. Section 8-143.01, Revised Statutes Supplement, 1996, is

amended to read:

8-143.01.

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

(2) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds five hundred thousand dollars except by complying with the requirements of subdivisions (1)(a) and (b) of this section.

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

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

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

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

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

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

(5) Any executive officer licensed pursuant to section 8-139 who becomes indebted to any other financial institution or institutions shall, by the next regularly scheduled meeting of the board of directors, make a written report to the board of directors of the bank of which he or she is an executive officer stating the date and amount of such loan or indebtedness, the security therefor, and the purpose for which the proceeds have been or are to be used.

(6) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds the lending limit of the bank as prescribed in section 8-141 or 12 U.S.C. 84, whichever is less.

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

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

(8) For purposes of this section:

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

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

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

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

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

~~(8)~~ (9) Any executive officer, director, or principal shareholder of a bank or any other person who intentionally violates this section or who aids, abets, or assists in a violation of this section shall be guilty of a Class IV felony.

~~(9)~~ (10) The Director of Banking and Finance shall have authority to adopt and promulgate rules and regulations to implement this section, including rules or regulations defining or further defining terms used in this section, consistent with the provisions of 12 U.S.C. 84 and implementing Regulation O.

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

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

Sec. 6. Section 8-157, Revised Statutes Supplement, 1996, is amended to read:

8-157. (1) Except as provided in subsections (2) through ~~(10)~~ (11) of this section and section 8-122.01, the general business of every bank shall be transacted at the place of business specified in its charter.

(2)(a) With the approval of the director, any bank may maintain an attached branch bank if such branch bank is physically connected by a pneumatic tube or tubes or a walkway, a tunnel, or any other electronic, mechanical, or structural connection or attachment for the public use of the bank and is within two hundred feet of the building containing the premises specified as its place of business in its charter or any adjacent connected building housing a continuation of the operations of the bank's main office.

(b) With the approval of the director, any bank located in a Class I or Class III county may establish and maintain in Class I and Class III counties an unlimited number of detached branch banks at which all banking transactions allowed by law may be made.

(c) With the approval of the director, any bank located in a Class II county may establish and maintain not more than nine detached branch banks at which all banking transactions allowed by law may be made. If the bank is located within the corporate limits of a city, such detached branch banks shall be within the corporate limits of the city. If the bank is located within the zoning jurisdiction of a city of the primary class or is located within an unincorporated city or unincorporated area in a county which contains a city of the primary class, such detached branch banks may also be within the corporate limits of such city if the bank was in existence at such location prior to April 4, 1996.

(d) With the approval of the director, any bank located in a Class

IV county may establish and maintain not more than six detached branch banks at which all banking transactions allowed by law may be made. Such detached branch banks shall be within the corporate limits of the city in which such bank is located.

(e) Any detached branch bank established and maintained by a bank pursuant to an acquisition or merger under sections 8-1506 to 8-1510 or an acquisition under section 8-1515 shall not count against the be subject to the limitations as to location and number of locations of detached branch banks permitted under this subsection contained in subdivisions (b), (c), and (d) of this subsection.

(f) For purposes of this section:

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

(ii) Class II county shall mean means a county in this state with a population of at least two hundred thousand and less than three hundred thousand as determined by the most recent federal decennial census;

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

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

(3) With the approval of the director, a bank may acquire another financial institution in Nebraska as the result of a purchase or merger pursuant to section 8-1516. Any detached branch banks established and maintained by a bank pursuant to a purchase or merger under section 8-1516 shall not count against the be subject to the limitations as to location and number of locations of detached branch banks permitted under contained in subdivisions (2)(b), (2)(c), and (2)(d) of this section. If the acquired institution is in a Class I county or in a Class III county, following a purchase or merger pursuant to this subsection the acquiring bank may establish and maintain detached branches to the same extent that the acquired institution could have established and maintained detached branches as provided in subdivision (2)(b) of this section or section 8-345.02 if the purchase or merger had not occurred. If the acquired institution is in a Class II county and it has not established nine detached branches as permitted by subdivision (2)(c) of this section or section 8-345.02, following a purchase or merger pursuant to this subsection the acquiring bank may establish and maintain detached branch banks to the same extent that the acquired institution could have established and maintained detached branches as provided in subdivision (2)(c) of this section or section 8-345.02 if the purchase or merger had not occurred. If the acquired institution is in a Class IV county and it has not established six detached branches as permitted by subdivision (2)(d) of this section or section 8-345.02, following a purchase or merger pursuant to this subsection the acquiring bank may establish and maintain detached branches to the same extent that the acquired institution could have established and maintained detached branches as provided in subdivision (2)(d) of this section or section 8-345.02 if the purchase or merger had not occurred. Regardless of the date of acquisition of such financial institution or whether the acquired financial institution was state-chartered or federally chartered, the acquired institution shall be deemed for purposes of this subsection to have been permitted to establish and maintain detached branches solely to the extent permitted to state-chartered financial institutions under subsection (2) of this section or under section 8-345.02 at the time of establishment of a new detached branch. For purposes of this subsection, financial institution or institution means a bank, savings bank, building and loan association, or savings and loan association organized under the laws of this state or organized under the laws of the United States to do business in this state.

(4) With the approval of the director, a bank may acquire the assets and assume the deposits of a detached branch of another financial institution in Nebraska if:

(a) The acquired detached branch has been established, maintained, and operated for more than eighteen months; and

(b) The acquired detached branch is converted to a detached branch bank of the acquiring bank.

All banking transactions allowed by law may be made at a detached branch acquired pursuant to this subsection. Such detached branches shall not count against the be subject to the limitations as to location and number of locations of detached branch banks permitted under contained in subdivisions (2)(b), (2)(c), and (2)(d) of this section. The restrictions contained in

this subsection shall not limit the authority of a bank to acquire another bank and to continue to operate all of the detached branch banks of the acquired bank as detached branch banks of the acquiring bank.

For purposes of this subsection, financial institution means a bank, savings bank, building and loan association, or savings and loan association organized under the laws of this state or organized under the laws of the United States to do business in this state.

(5) With the approval of the director, a bank may acquire the assets and assume the deposits of a detached branch bank of another bank in Nebraska or acquire the assets and assume the deposits of an eligible savings association acquired by another bank in Nebraska pursuant to section 8-1515 if:

(a) The acquired detached branch bank or eligible savings association is converted to a detached branch bank of the acquiring bank; and

(b) The detached branch bank or the eligible savings association to be acquired was operated, established, and maintained as an eligible savings association at its existing location prior to August 9, 1989, and was maintained at such location on such date.

All banking transactions allowed by law may be made at a detached branch bank acquired pursuant to this subsection. Such detached branch banks shall not ~~count against the~~ be subject to the limitations as to location and number of locations of detached branch banks permitted under contained in subdivisions (2)(b), (2)(c), and (2)(d) of this section. The restrictions contained in this subsection shall not limit the authority of a bank to acquire another bank and to continue to operate all of the detached branch banks of the acquired bank as detached branch banks of the acquiring bank. The detached branch bank or eligible savings association acquired as a detached branch bank under this subsection and section 8-1515 shall continue to be entitled to establish and maintain such branches as it could have established and maintained if such acquisition had not occurred. Regardless of the date of acquisition of such detached branch bank or eligible savings association or whether the acquired detached branch bank or eligible savings association was state-chartered or federally chartered, the acquired detached branch bank or eligible savings association shall be deemed for purposes of this subsection to have been permitted to establish and maintain detached branches solely to the extent permitted to state-chartered financial institutions under subsection (2) of this section or under section 8-345.02 at the time of establishment of a new detached branch.

(6) With the approval of the director, a bank may acquire a branch of a savings association which is a successor to an eligible savings association if such acquisition occurs within ninety days of the date the successor savings association acquired the eligible savings association and the branch is converted to a detached branch bank of the acquiring bank. The detached branch of an eligible savings association acquired as a detached branch bank under this subsection and section 8-1515 shall continue to be entitled to establish and maintain such branches as it could have established and maintained if such acquisition had not occurred. Regardless of the date of acquisition of such detached branch of an eligible savings association or whether the acquired detached branch of an eligible savings association was state-chartered or federally chartered, the acquired detached branch of an eligible savings association shall be deemed for purposes of this subsection to have been permitted to establish and maintain detached branches solely to the extent permitted to state-chartered financial institutions under section 8-345.02 at the time of establishment of a new detached branch.

(7) With the approval of the director and subject to the limitations specified in this subsection, a single bank may establish one detached branch bank within the corporate limits of any municipality in which a financial institution has closed and ceased doing business within the preceding two years if no other financial institution operates an office within such municipality. If thirty days or less have elapsed since the financial institution ceased operation, the director shall only approve the establishment of a detached branch bank by a bank which has its place of business, as specified in its charter, in the same county as or in a contiguous county to the county in which such municipality is located. If more than thirty days have elapsed since the financial institution ceased operation, the director may approve the establishment of a detached branch bank by any bank located within Nebraska.

For purposes of this subsection:

(a) An unattended automatic teller machine shall not be deemed to be an office operated by a financial institution; and

(b) Financial institution ~~shall mean~~ means a bank, savings bank, building and loan association, savings and loan association, industrial loan

and investment company, credit union, trust company, or other institution offering automatic teller machine transactions.

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

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

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

(11) Upon receiving an application for a detached branch bank to be established pursuant to subdivision (2)(b), (2)(c), or (2)(d) of this section, the director shall hold a public hearing on the matter if he or she determines, in his or her discretion, that the condition of the applicant bank warrants a hearing. If the director determines that the condition of the bank does not warrant a hearing, the director shall (a) publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed branch would be located, the expense of which shall be paid by the applicant bank, and (b) give notice of such application for a detached branch bank by certified mail to all financial institutions located within the county where the proposed detached branch bank would be located, and to such other interested parties as the director may determine. If the director receives any substantive objection to the proposed detached branch bank within fifteen days after publication or mailing of such notice, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subsection shall be published for two consecutive weeks in a newspaper of general circulation in the county where the proposed branch would be located. The date for hearing the application shall not be more than ninety days after the filing of the application and not less than thirty days after the last publication of notice of hearing.

Sec. 7. Section 8-166, Reissue Revised Statutes of Nebraska, is amended to read:

8-166. Every bank shall make to the department not less than two reports during each year according to the form which may be prescribed by the department, which report shall be certified as correct, in the manner prescribed by the department, by the president, vice president, cashier, or assistant cashier and in addition by two members of the board of directors. The director may waive the requirements of this section if a bank files its reports electronically with the Federal Deposit Insurance Corporation, the Federal Reserve Board, or an electronic collection agent of the Federal Deposit Insurance Corporation or the Federal Reserve Board.

Sec. 8. Section 8-1,134, Revised Statutes Supplement, 1996, is amended to read:

8-1,134. (1) Whenever the Director of Banking and Finance has reason to believe that a violation of any provision of Chapter 8 or of the Credit Union Act or any rule, regulation, or order of the Department of Banking and Finance has occurred, he or she may cause a written complaint to be served upon the alleged violator. The complaint shall specify the statutory provision or rule, regulation, or order alleged to have been violated and the facts alleged to constitute a violation thereof, and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final as to any person named in the order unless such person requests, in writing, a hearing before the director no later than ten days after the date such order is served. In lieu of such order, the director may require that the alleged violator appear before the director at a time and place specified in the notice and answer the charge complained of. The notice shall be delivered to the alleged violator or violators in accordance with subsection (4) of this section not less than

ten days before the time set for the hearing.

(2) The director shall provide an opportunity for a fair hearing to the alleged violator at the time and place specified in the notice or any modification of the notice. On the basis of the evidence produced at the hearing, the director or hearing officer shall make findings of fact and conclusions of law and enter such order as in his or her opinion will best further the purposes of Chapter 8 or the Credit Union Act and the rules, regulations, and orders of the department. Written notice of such order shall be given to the alleged violator and to any other person who appeared at the hearing and made written request for notice of the order. If the hearing is held before any person other than the director, such person shall transmit a record of the hearing together with findings of fact and conclusions of law to the director. The director, prior to entering his or her order on the basis of such record, shall provide opportunity to the parties to submit for his or her consideration exceptions to the findings or conclusions and supporting reasons for such exceptions. The order of the director shall become final and binding on all parties unless appealed to the district court of Lancaster County as provided in section 8-1,135. As part of such order, the director may impose a fine, in addition to the costs of the investigation, upon a person found to have violated any provision of Chapter 8, the Credit Union Act, or the rules, regulations, or orders of the department. The fine shall not exceed ten thousand dollars per violation for the first offense and twenty-five thousand dollars per violation for a second or subsequent offense involving a violation of the same provision of Chapter 8, the Credit Union Act, the rules and regulations of the department, or the same order of the department. The fines and costs shall be in addition to all other penalties imposed by the laws of this state, shall be collected by the director, and shall be remitted to the State Treasurer. Costs shall be credited to the Financial Institution Assessment Cash Fund, and fines shall be credited to the permanent school fund. If a person fails to pay the fine or costs of the investigation, a lien in the amount of the fine and costs shall be imposed upon all of the assets and property of such person in this state and may be recovered by suit by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law.

(3) Whenever the director finds that an emergency exists requiring immediate action to protect the safety and soundness of the institutions under the supervision and control of the department, the director may, without notice or hearing, issue an order reciting the existence of an emergency and requiring that such action be taken as the director deems necessary to meet the emergency. Notwithstanding the provisions of subsection (2) of this section, the order shall be effective immediately. Any person to whom such order is directed shall comply immediately, but on application to the director shall be afforded a hearing as soon as possible and not later than ten days after such application by the affected person. On the basis of the hearing, the director shall continue the order in effect, revoke it, or modify it. This subsection shall not apply to a determination of necessary acquisition made by the department pursuant to sections 8-1506 to 8-1510.

(4) Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the director shall be served on any person affected thereby either personally or by certified mail, return receipt requested. Proof of service shall be filed in the office of the director.

Every certificate or affidavit of service made and filed as provided in this subsection shall be prima facie evidence of the facts stated in the certificate or affidavit, and a certified copy shall have the same force and effect as the original.

(5) ~~The~~ Any hearing provided for in this section may be conducted by the director, or by any member of the department acting in his or her behalf, or the director may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the director at any time and place. A verbatim record of the proceedings of such hearings shall be taken and filed with the director, together with findings of fact and conclusions of law made by the director or hearing officer. The director may subpoena witnesses, and any witness who is subpoenaed shall receive the same fees as in civil actions in the district court and mileage as provided in section 81-1176, ~~for state employees.~~ In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the district court of Lancaster County shall have jurisdiction, upon application of the director, to

issue an order requiring such person to appear and testify or produce evidence as the case may require. Failure to obey such order of the court may be punished by such court as contempt.

If requested to do so by any party concerned with such hearing, the full stenographic notes, or tapes of an electronic transcribing device, of the testimony presented at such hearing shall be taken and filed. The stenographer shall, upon the payment of the stenographer's fee allowed by the court, furnish a certified transcript of all or any part of the stenographer's notes to any party to the action requiring and requesting such notes.

(6) The director may close to the public the hearing, or any portion of the hearing, provided for in this section when he or she finds that the closure is (a) necessary to protect any person, or any financial institution or entity under the department's jurisdiction, against unwarranted injury or (b) in the public interest. The director shall close no more of the public hearing than is necessary to attain the objectives of this subsection.

Sec. 9. Section 8-224, Revised Statutes Supplement, 1996, is amended to read:

8-224. The reports required by section 8-223 shall be verified by one of the managing officers, and a summary of the annual report, in a form prescribed by the Department of Banking and Finance, shall, within thirty days after the filing of the statement with the department, be published in a newspaper of general circulation in the county where the trust company is chartered. The publication required by this section shall not apply to reports of the trust department of a bank.

Sec. 10. Section 8-822, Reissue Revised Statutes of Nebraska, is amended to read:

8-822. (1) Charges under section 8-820 shall be computed by application of the rate charged to the outstanding principal balance for the number of days actually elapsed without adding any additional charges, except that at the time the loan is made charges may be computed as a percentage per month of unpaid principal balances for the number of days elapsed on the assumption that the unpaid principal balance will be reduced, as provided in the loan contract, and such charges may be included in the scheduled installments.

(2) For any loan contract entered into prior to October 1, 1981, the provisions of this subsection may be used or the provisions of subsection (3) of this section may be used. If the loan is repaid in whole or in part prior to the due date unearned charges shall be refunded or credited to the borrower in full, but such refund need not be made until final payment of the loan contract. Such refund shall be at least as great a proportion of the total charges as the sum of the remaining monthly balances of the principal and interest combined scheduled to follow the date of prepayment bears to the sum of all the monthly balances of principal and interest combined originally scheduled by the contract. For the purpose of computing the refund, any prepayment in full made on or before the fifteenth day following an installment date shall be deemed to have been made on the installment date immediately preceding the date of prepayment in full, and any prepayment in full made after such fifteenth day shall be deemed to have been made on the installment date immediately following the date of prepayment in full. No refund shall be required for any partial prepayment. No refund of less than one dollar need be made.

(3) For any loan contract entered into on or after October 1, 1981, the provisions of this subsection shall apply. If the loan is prepaid in full by cash, a new loan, or otherwise after the first installment due date, the borrower shall receive a rebate of an amount which shall be not less than the amount obtained by applying to the unpaid principal balances as originally scheduled or, if deferred, as deferred, for the period following prepayment, according to the actuarial method, the annual percentage rate previously stated to the borrower pursuant to the ~~Federal~~ Federal Consumer Credit Protection Act. The licensee may round the annual percentage rate to the nearest one-half of one percent if such procedure is not consistently used to obtain a greater yield than would otherwise be permitted. Any default and deferment charges which are due and unpaid may be deducted from any rebate. No rebate shall be required for any partial prepayment. No rebate of less than one dollar need be made. Acceleration of the maturity of the contract shall not in itself require a rebate. If judgment is obtained before the final installment date the contract balance shall be reduced by the rebate which would be required for prepayment in full as of the date judgment is obtained.

(4) The charges retained by the bank may be increased to the extent that delinquency charges are computed on earned charges in accordance with the next succeeding sentence. Delinquency charges on any scheduled installment or

portion thereof, if contracted for, may be taken, not in excess of five percent on each installment or five dollars, whichever is less, or in lieu thereof, interest after maturity on each such installment not exceeding the highest permissible interest rate.

Sec. 11. Section 21-1738, Revised Statutes Supplement, 1996, is amended to read:

21-1738. A credit union shall report to the department annually on or before the first day of February on forms supplied by the department for that purpose. The chairperson of the board of directors and the president of the credit union shall sign the report or reports certifying that such report or reports are correct according to their best knowledge and belief. The director may require additional reports as he or she deems appropriate and necessary. An additional fee of five fifty dollars shall be levied for each day a credit union fails to provide a required report unless the delay is excused for cause.

Sec. 12. Section 21-1739, Revised Statutes Supplement, 1996, is amended to read:

21-1739. A credit union shall pay a fee for the cost of examination pursuant to section 8-602 8-601.

Sec. 13. Section 21-1740, Revised Statutes Supplement, 1996, is amended to read:

21-1740. (1) A credit union shall have all the powers specified in this section and all the powers specified by any other provision of the Credit Union Act.

(2) A credit union may make contracts.

(3) A credit union may sue and be sued.

(4) A credit union may adopt a seal and alter the same.

(5) A credit union may purchase, lease, or otherwise acquire and hold tangible personal property necessary or incidental to its operations. A credit union shall depreciate or appreciate such personal property in the manner and at the rates the director may prescribe by rule or order from time to time.

(6) A credit union may, in whole or part, sell, lease, assign, pledge, hypothecate, or otherwise dispose of its tangible personal property, including such property obtained as a result of defaults under obligations owing to it.

(7) A credit union may incur and pay necessary and incidental operating expenses.

(8) A credit union may receive, from a member, from another credit union, from an officer, or from an employee, payments representing equity on (a) share accounts which may be issued at varying dividend rates, (b) share account certificates which may be issued at varying dividend rates and maturities, and (c) share draft accounts, subject to such terms, rates, and conditions as may be established by the board of directors, within limitations prescribed by the department. A credit union shall provide for the transfer and withdrawal of funds from accounts by the means and through the payment system that the board of directors determines best serves the convenience and needs of members.

(9) A credit union may lend its funds to its members as provided in the Credit Union Act.

(10) A credit union may borrow from any source in an amount not exceeding fifty percent of its capital and deposits.

(11) A credit union may provide debt counseling and other financial counseling services to its members.

(12) A credit union may, in whole or in part, discount, sell, assign, pledge, hypothecate, or otherwise dispose of its intangible personal property. The approval of the director shall be required before a credit union may discount, sell, assign, pledge, hypothecate, or otherwise dispose of twenty percent or more of its intangible personal property within one month unless the credit union is in liquidation.

(13) A credit union may purchase any of the assets of another credit union or assume any of the liabilities of another credit union with the approval of the director. A credit union may also purchase any of the assets of a credit union which is in liquidation or receivership.

(14) A credit union may make deposits in or loans to banks, savings banks, savings and loan associations, and trust companies, purchase shares in mutual savings and loan associations, and make deposits in or loans to or purchase shares of other credit unions, including corporate central credit unions, if such institutions are either insured by an agency of the federal government or are eligible under the laws of the United States to apply for such insurance and invest funds as otherwise provided in sections 21-17,100 to 21-17,102.

(15) A credit union may make deposits in, make loans to, or purchase shares of any federal reserve bank or central liquidity facility established under state or federal law.

(16) A credit union may hold membership in associations and organizations controlled by or fostering the interests of credit unions, including a central liquidity facility organized under state or federal law.

(17) A credit union may engage in activities and programs of the federal government, any state, or any agency or political subdivision thereof when approved by the board of directors and not inconsistent with the Credit Union Act.

(18) A credit union may receive funds either as shares or deposits from other credit unions.

(19) A credit union may lease tangible personal property to its members if the credit union acquires no interest in the property prior to its selection by the member.

(20) A credit union may, in whole or in part, purchase, sell, pledge, discount, or otherwise acquire and dispose of obligations of its members in accordance with the rules and regulations promulgated by the director. This subsection shall not apply to participation loans originated pursuant to section 21-1794.

(21) A credit union may, at its own expense, purchase insurance for its members in connection with its members' shares, loans, and other accounts.

(22) A credit union may establish, operate, participate in, and hold membership in systems that allow the transfer of credit union funds and funds of its members by electronic or other means, including, but not limited to, clearinghouse associations, data processing and other electronic networks, the federal reserve system, or any other government payment or liquidity program.

(23) A credit union may issue credit cards and debit cards to allow members to obtain access to their shares and extensions of credit if such issuance is not inconsistent with the rules of the department. The department may by rule or regulation allow the use of devices similar to credit cards and debit cards to allow members to access their shares and extensions of credit.

(24) A credit union may service the loans it sells, in whole or in part, to a third party.

(25) In addition to loan and investment powers otherwise authorized by the Credit Union Act, a credit union may organize, invest in, and make loans to corporations or other organizations (a) which engage in activities incidental to the conduct of a credit union or in activities which further or facilitate the purposes of a credit union or (b) which furnish services to credit unions. The director shall determine by rule, regulation, or order the activities and services which fall within the meaning of this subsection. A credit union shall notify the director of any such investment or loan if it would cause the aggregate of such investments and loans to exceed two percent of the credit union's capital and deposits. Such investments and loans may not, in the aggregate, exceed five percent of the capital and deposits of the credit union.

(26) A credit union may purchase, lease, construct, or otherwise acquire and hold land and buildings for the purpose of providing adequate facilities for the transaction of present and potential future business. A credit union may use such land and buildings for the principal office functions, service facilities, and any other activity in which it engages. A credit union may rent excess space as a source of income. A credit union shall depreciate or appreciate such buildings owned by it in the manner and at the rates the director may prescribe by rule, regulation, or order from time to time. A credit union's investment and contractual obligations, direct, indirect, or contingent, in land and buildings under this subsection shall not exceed seven percent of its capital and deposits without prior approval of the director. This subsection shall not affect the legality of investments in land and buildings made prior to October 1, 1996.

(27) A credit union may, in whole or in part, sell, lease, assign, mortgage, pledge, hypothecate, or otherwise dispose of its land and buildings, including land and buildings obtained as a result of defaults under obligations owing to it.

Sec. 14. Section 21-1741, Revised Statutes Supplement, 1996, is amended to read:

21-1741. (1) A credit union, by action of its board of directors, may, to the same extent as a bank organized under the laws of this state, operate a safety deposit box service for its members pursuant to sections 8-501 and 8-502.

(2) Before granting approval for a credit union to operate a safety deposit box service, the director shall consider the reserve position of the credit union, the performance qualifications of its management, the rules of

the credit union for the operation of its safety deposit box service, security measures, bonding and insurance, and the general safe and sound condition of the credit union.

(3) A credit union shall not spend more than twenty-five thousand dollars or ~~any~~ an amount equal to one percent of its capital, ~~and deposits,~~ whichever is greater, on the capital expenditures of its safety deposit box service.

Sec. 15. Section 21-17,102, Revised Statutes Supplement, 1996, is amended to read:

21-17,102. (1) Funds not used in loans to members may be invested:

(a) In securities, obligations, or other instruments of or issued by or fully guaranteed as to principal and interest by the United States of America or any agency or instrumentality thereof or in any trust or trusts established for investing directly or collectively in the same;

(b) In securities, obligations, or other instruments of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the several territories organized by Congress or any political subdivision thereof;

(c) In deposits, obligations, or other accounts of financial institutions organized under state or federal law;

(d) In loans to or in share accounts of other credit unions or corporate central credit unions;

(e) In obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, or any corporation designated in 31 U.S.C. 846 as a wholly owned government corporation; or in obligations, participation certificates, or other instruments of or insured by or fully guaranteed as to principal and interest by the Federal National Mortgage Association or the Government National Mortgage Association; or in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1454 et seq.; or in obligations or other instruments or securities of the Student Loan Marketing Association; or in obligations, participation, securities, or other instruments of or issued by or fully guaranteed as to principal and interest by any other agency of the United States. A state credit union may issue and sell securities which are guaranteed pursuant to section 306(g) of the National Housing Act, 12 U.S.C. 1721(g);

(f) In participation certificates evidencing a beneficial interest in obligations or in a right to receive interest and principal collections therefrom, which obligations have been subjected by one or more government agencies to a trust or trusts for which any executive department, agency, or instrumentality of the United States or administrator thereof has been named to act as trustee;

(g) In share accounts or deposit accounts of any corporate central credit union in which such investments are specifically authorized by the board of directors of the credit union making the investment;

(h) In the shares, stock, or other obligations of any other organization, not to exceed ten percent of the credit union's capital ~~and deposits~~ and not to exceed five percent of the credit union's capital ~~and deposits~~ in any one corporation's stock, bonds, or other obligations, unless otherwise approved by the director. Such authority shall not include the power to acquire control, directly or indirectly, of another financial institution, nor invest in shares, stocks, or obligations of any insurance company or trade association except as otherwise expressly provided for or approved by the director;

(i) In the capital stock of the National Credit Union Central Liquidity Facility;

(j) In obligations of or issued by any state or political subdivision thereof, including any agency, corporation, or instrumentality of a state or political subdivision, except that no credit union may invest more than ten percent of its capital ~~and deposits~~ in the obligations of any one issuer, exclusive of general obligations of the issuer; and

(k) In participation loans with other credit unions, credit union organizations, or other organizations.

(2) In addition to investments expressly permitted by the Credit Union Act, a credit union may make any other type of investment approved by the department by rule or regulation.

Sec. 16. Section 21-17,106, Revised Statutes Supplement, 1996, is amended to read:

21-17,106. (1) In addition to the regular reserve account, a special reserve account to protect the interest of the members shall be

established when required by rule or regulation or when found by the board of directors of the credit union or by the director, in any special case, to be necessary for that purpose.

(2) Any one-time or periodic membership fees established by the board of directors shall be added, after payment of organization expenses, to a special reserve account.

Sec. 17. Section 21-17,109, Revised Statutes Supplement, 1996, is amended to read:

21-17,109. (1) Any credit union organized under the Credit Union Act may, with the approval of the department, merge or consolidate with one or more other credit unions organized under the act or under the laws of the United States, if the credit unions merging or consolidating possess coinciding common bonds of association.

(2) When two or more credit unions merge or consolidate, one shall be designated as the continuing credit union or a totally new credit union shall be organized. If the latter procedure is followed, the new credit union shall be organized under the Credit Union Act or under the laws of the United States. All participating credit unions other than the continuing or new credit union shall be designated as merging credit unions.

(3) Any merger or consolidation of credit unions shall be done according to a plan of merger or consolidation. After approval by the boards of directors of all participating credit unions, the plan shall be submitted to the department for preliminary approval. If the plan includes the organization of a new credit union, all documents required pursuant to section 21-1724 shall be submitted as a part of the plan. In addition, each participating credit union shall submit the following information:

(a) The time and place of the meeting of the boards of directors at which the plan of merger or consolidation was agreed upon;

(b) The vote of the directors in favor of the adoption of the plan;

and
(c) A copy of a resolution or other action by which the plan was agreed upon.

The department shall grant preliminary approval if the plan has been approved properly by the boards of directors and if the documentation required to organize a new credit union, if any, complies with section 21-1724.

(4) After the department grants preliminary approval, each merging credit union shall, unless waived by the department, conduct a membership vote on its participation in the plan. The vote shall be conducted either at a special meeting called for that purpose or by mail ballot. If a majority of the members voting approve the plan, the credit union shall submit a record of that fact to the department indicating the vote by which the members approved the plan and either the time and place of the membership meeting or the mailing date and closing date of the mail ballot.

(5) The department may waive any voting requirements described in the Credit Union Act for any credit union upon the determination that it is in the best interests of the membership or that the credit union is insolvent or in imminent danger of becoming insolvent.

(6) The director shall grant final approval of the plan of merger or consolidation after determining that the requirements of subsections (1) through (4) of this section have been met in the case of each merging credit union. If the plan of merger or consolidation includes the organization of a new credit union, the department must approve the organization of the new credit union under section 21-1724 as part of the approval of the plan of merger or consolidation. The department shall notify all participating credit unions of the plan.

(7) Upon final approval of the plan by the department, all property, property rights, and members' interests in each merging credit union shall vest in the continuing or new credit union as applicable without deed, obligations, and other instruments of transfer, and all debts, obligations, and liabilities of each merging credit union shall be deemed to have been assumed by the continuing or new credit union. The rights and privileges of the members of each participating credit union shall remain intact. If a person is a member of more than one of the participating credit unions, the person shall be entitled to only a single set of membership rights in the continuing or new credit union.

(8) Notwithstanding any other provision of law, the department may authorize a merger or consolidation of a credit union which is insolvent or which is in danger of insolvency with any other credit union or may authorize a credit union to purchase any of the assets of or assume any of the liabilities of any other credit union which is insolvent or which is in danger of insolvency, if the department is satisfied that:

(a) An emergency requiring expeditious action exists with respect to

such credit union;

(b) Other alternatives for such credit union are not reasonably available; and

(c) The credit unions merging or consolidating possess coinciding common bonds of association; and

(4) The public interest would best be served by the approval of such merger, consolidation, purchase, or assumption.

(9) Notwithstanding any other provision of law, the director may authorize an institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation or any derivative thereof, to purchase any assets of or assume any liabilities of a credit union which is insolvent or in danger of insolvency, except that prior to exercising this authority the director shall attempt to effect a merger or consolidation with, or purchase or assumption by, another credit union as provided in subsection (8) of this section.

(10) For purposes of the authority contained in subsection (9) of this section, insured share accounts of each credit union may, upon consummation of the purchase or assumption, be converted to insured deposits or other comparable accounts in the acquiring institution, and the department and the National Credit Union Share Insurance Fund shall be absolved of any liability to the credit union's members with respect to those accounts.

Sec. 18. Section 21-17,112, Revised Statutes Supplement, 1996, is amended to read:

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

(2) The board of directors of the converting credit union may continue to be directors of the credit union. If the director approves the articles of association as presented by the board of directors, the director shall notify the board of directors of his or her decision and shall immediately issue a certificate of approval attached to the duplicate articles of association and return it to the credit union. The certificate shall indicate that the laws of this state have been complied with and that the credit union and all its members, officials, and employees shall have the same rights, powers, and privileges and shall be subject to the same duties, liabilities, and obligations in all respects, as shall be applicable to credit unions originally organized under the Credit Union Act.

(3) The approval of the department shall be based on an examination of the credit union and the proceedings had by its board of directors and members with respect to conversion. A conversion shall not be made to defeat or defraud any of the creditors of the credit union. The expenses of an examination, which shall be computed in accordance with section 8-602 8-601, shall be paid by the credit union.

(4) When the conversion becomes effective, all property of the converted credit union, including all its right, title, and interest in and to all property of whatsoever kind, whether real, personal, or mixed, and things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, belonging, or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and remain the property of the converted credit union, which shall have, hold, and enjoy the property in its own right as fully and to the same extent as the property was previously possessed, held, and enjoyed by it. The converted credit union shall be deemed to be a continuation of the same entity. All the rights, obligations, and relations of the credit union to or in respect to any person, estate, creditor, member, trustee, or beneficiary of any trust or fiduciary function shall remain unimpaired. The credit union shall continue to hold all the rights, obligations, relations, and trusts, and the duties and liabilities connected therewith, and shall execute and perform every trust and relation in the same manner as if it had after the conversion assumed the trust or relation and obligation and liabilities connected with the trust or relation.

Sec. 19. Section 45-101.02, Reissue Revised Statutes of Nebraska, is amended to read:

45-101.02. As used in sections 45-101.02 to 45-101.04, 45-102, and 45-105, unless the context otherwise requires:

(1) Interest ~~shall mean means~~ the compensation agreed upon or allowed by law upon any loan or forbearance of money, goods, or things in action but ~~shall does~~ not include loan service costs;

(2) Loan service costs ~~shall mean means~~ reasonable and necessary costs and charges incurred in connection with the making, closing, disbursing, servicing, extending, transferring, or renewing of a loan, including but not limited to (a) prepayment charges, (b) late delinquency charges, (c) premiums for hazard, private mortgage, disability, life, or title insurance, (d) fees for escrow, appraisal, abstracting, title examination, surveys, inspections, credit reports, and recording of documents, (e) origination fees, (f) interest on interest after default, and (g) costs and charges incurred for determining qualification for the loan proceeds and disbursement of the loan proceeds; and

(3) Discount points ~~shall mean means~~ any charges except actual loan service costs whether or not actually denominated as discount points paid to a lender which directly or indirectly affect the ability of the borrower to secure a loan. For the purpose of determining the rate of interest on any loan, discount points, if any, shall be amortized over the original term of the loan.

Sec. 20. Section 45-114, Reissue Revised Statutes of Nebraska, is amended to read:

45-114. The word person, when used in sections 45-114 to 45-155 ~~45-158~~, means individuals, partnerships, limited liability companies, associations, banks, trust companies, savings banks, building and loan associations, trusts, corporations, and all other legal entities. The word department, when used in such sections, means the Department of Banking and Finance. The word license, when used in such sections, means permit.

~~It~~ Except as provided in subsection (3) of section 45-130, it is not the intention of the Legislature that any revenue arising hereunder shall inure to any school fund of the State of Nebraska or any of its governmental subdivisions.

Loan, when used in sections 45-114 to 45-155 ~~45-158~~ and 45-173 to 45-188 shall not include any loan made by a person who is not a licensee on which the interest does not exceed the maximum rate permitted by section 45-101.03.

Nothing in sections 45-114 to 45-155 ~~45-158~~ and 45-173 to 45-188 shall apply to any loan made by a person who is not a licensee if the interest on the loan does not exceed the maximum rate permitted by section 45-101.03.

Sec. 21. Section 45-130, Reissue Revised Statutes of Nebraska, is amended to read:

45-130. (1) The Department of Banking and Finance is hereby charged with the duty of inspecting the business, records, and accounts of all persons that lend money subject to the provisions of sections 45-114 to 45-155 ~~45-158~~. The department may examine or investigate complaints about or reports of alleged violations by a licensee made to the department. The department is hereby empowered to inspect and investigate the business, records, and accounts of all persons in the public business of lending money contrary to the provisions of ~~said such~~ sections, and who do not have a license under ~~said such~~ sections. The Director of Banking and Finance is hereby empowered to appoint examiners who shall, under his or her direction, investigate the loans and business, and examine the books and records of licensees semiannually, and more often when the director shall so determine. The expenses of the Department of Banking and Finance, incurred in the examination of the books and records of licensees, and fully to administer the provisions of the law during each calendar year, shall be charged semiannually to each licensee by the department as soon as reasonably possible after June 30 and December 31 of each year, in proportion to the number of days required to examine and supervise the books and records of the respective licensees.

(2) Upon receipt by a licensee of a notice of investigation or inquiry request for information from the department, the licensee shall respond within thirty calendar days. Each day a licensee fails to respond as required by this subsection shall constitute a separate violation.

(3) If the director finds, after notice and opportunity for hearing in accordance with the Administrative Procedure Act, that any person has violated subsection (2) of this section, the director may order such person to pay (a) an administrative fine of not more than one thousand dollars for each separate violation and (b) the costs of investigation. All fines collected by the department pursuant to this subsection shall be remitted to the State Treasurer for credit to the permanent school fund.

(4) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection (3) of this section, a lien in

the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs shall constitute a separate violation of sections 45-114 to 45-156.

Sec. 22. Section 45-351, Revised Statutes Supplement, 1996, is amended to read:

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

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

(3) The expenses of the director incurred in the examination of the books and records of licensees, including the expenses of travel incurred in the examination of books and records of licensees located outside Nebraska, shall be charged to the licensees so examined by the director as soon as reasonably possible. Each licensee shall be billed by the director for the amount so charged to such licensee. If such charge is not paid within thirty days after the mailing of such bill, the license of such licensee may be suspended or revoked. The director may charge the costs of an investigation of a nonlicensed person to such person, and such costs shall be paid within thirty days from after receipt of billing.

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

(5) If the director finds, after notice and opportunity for hearing in accordance with the Administrative Procedure Act, that any person has violated subsection (4) of this section, the director may order such person to pay (a) an administrative fine of not more than one thousand dollars for each separate violation and (b) the costs of investigation. All fines collected by the department pursuant to this subsection shall be remitted to the State Treasurer for credit to the permanent school fund.

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

Sec. 23. Section 45-707, Reissue Revised Statutes of Nebraska, is amended to read:

45-707. (1) The director may, following a hearing under the Administrative Procedure Act, suspend or revoke any license issued pursuant to the Mortgage Bankers Registration and Licensing Act if the director finds any of the following:

(a) The licensee has materially violated or demonstrated a continuing pattern of violating the Mortgage Bankers Registration and Licensing Act or rules and regulations adopted and promulgated under the act or any other state or federal law applicable to the conduct of its business; or

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

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

Administrative Procedure Act.

(3) A licensee may voluntarily surrender a license by delivering to the director written notice of the surrender, but a surrender shall not affect civil or criminal liability for acts committed before the surrender.

(4) If a licensee fails to renew its license as required by section 45-796 and does not voluntarily surrender the license pursuant to subsection (3) of this section, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings. Expiration of a license shall not affect civil or criminal liability for acts committed before the expiration.

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

Sec. 24. Section 45-921, Revised Statutes Supplement, 1996, is amended to read:

45-921. (1) The director may examine or investigate complaints about or reports of alleged violations of the Delayed Deposit Services Licensing Act or any rule, regulation, or order of the director thereunder. The director may order the actual cost of such examination or investigation to be paid by the person who is the subject of the examination or investigation, whether the alleged violator is licensed or not.

(2) The director may publish information concerning any violation of the act or any rule, regulation, or order of the director under the act.

(3) For purposes of any investigation, examination, or proceeding under the act, the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the examination, investigation, or proceeding.

(4) In the case of contumacy by or refusal to obey a subpoena issued to any person, the district court of Lancaster County, upon application by the director, may issue an order requiring such person to appear before the director and to produce documentary evidence if so ordered to give evidence on the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as contempt.

(5) Upon receipt by a licensee of a notice of investigation or inquiry request for information from the department, the licensee shall respond within thirty calendar days. Each day a licensee fails to respond as required by this subsection shall constitute a separate violation.

(6) If the director finds, after notice and opportunity for hearing in accordance with the Administrative Procedure Act, that any person has violated subsection (5) of this section, the director may order such person to pay (a) an administrative fine of not more than one thousand dollars for each separate violation and (b) the costs of investigation. All fines collected by the department pursuant to this subsection shall be remitted to the State Treasurer for credit to the permanent school fund.

(7) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection (6) of this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs shall constitute a separate violation of the Delayed Deposit Services Licensing Act.

Sec. 25. Sections 3, 4, 9, 25, 27, and 28 of this act become operative on their effective date. The other sections of this act become operative three calendar months after adjournment of this legislative session.

Sec. 26. Original sections 8-149, 8-166, 8-822, 45-101.02, 45-114, 45-130, and 45-707, Reissue Revised Statutes of Nebraska, and sections 8-101, 8-112, 8-157, 8-1134, 21-1738, 21-1739, 21-1740, 21-1741, 21-17,102, 21-17,106, 21-17,109, 21-17,112, 45-351, and 45-921, Revised Statutes Supplement, 1996, are repealed.

Sec. 27. Original sections 8-126, 8-143.01, and 8-224, Revised Statutes Supplement, 1996, are repealed.

Sec. 28. Since an emergency exists, this act takes effect when passed and approved according to law.