

## LEGISLATIVE BILL 131

Approved by the Governor March 3, 2003

Introduced by Landis, 46

AN ACT relating to banks and banking; to amend sections 8-1,139, 8-1501, 8-1505, 8-1506.01, 8-1901, 18-2707, 21-20,138, 45-1,112, 45-345, 64-215, 69-1301, and 77-2366, Reissue Revised Statutes of Nebraska, and sections 8-101, 8-102, 8-103, 8-157.01, 8-345.01, 8-601, 8-602, 8-1110, 8-1401, 8-1502, 8-1504, 8-1516, 9-1,104, 12-1102, 12-1107, 21-20,162, 28-612, 45-101.04, 45-190, 45-702, 45-1002, 45-1003, 62-301, 76-2221, 77-2387, and 77-3801, Revised Statutes Supplement, 2002; to eliminate references to industrial loan and investment companies; to eliminate the Nebraska Depository Institution Guaranty Corporation Act; to redefine terms; to change powers and duties of the Director of Banking and Finance; to harmonize provisions; to repeal the original sections; and to outright repeal sections 8-401 to 8-404.02, 8-406 to 8-410, 8-410.02 to 8-417.01, 8-435 to 8-450, 21-17,127 to 21-17,130, and 21-17,132 to 21-17,145, Reissue Revised Statutes of Nebraska, and section 21-17,131, Revised Statutes Supplement, 2002.

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

Section 1. Section 8-101, Revised Statutes Supplement, 2002, is amended to read:

8-101. For purposes of the Nebraska Banking Act, 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 the act. 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 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 a branch operated by a financial institution;

(8) Automatic teller machine surcharge means a fee that an operator of an automatic teller machine imposes upon a consumer for an electronic funds transfer, if such operator is not the financial institution that holds an account of such consumer from which the electronic funds transfer is to be made;

(9) 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;

(10) 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 a branch 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;

(11) 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;

(12) Financial institution means a bank, savings bank, building and loan association, savings and loan association, ~~industrial loan and investment company,~~ credit union, or trust company;

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

(14) 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;

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

(16) 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

(17) 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 8-102, Revised Statutes Supplement, 2002, is amended to read:

8-102. The department shall, under the laws of this state specifically made applicable to each, have general supervision and control over banks, trust companies, ~~industrial loan and investment companies,~~ credit unions, and building and loan associations; all of which are hereby declared to be quasi-public in nature and subject to regulation and control by the state.

Sec. 3. Section 8-103, Revised Statutes Supplement, 2002, is amended to read:

8-103. (1) The director shall have charge of and full supervision over the examination of banks and the enforcement of compliance with the statutes by banks and their holding companies in their business and functions and shall constructively aid and assist banks in maintaining proper banking standards and efficiency. The director shall also have charge of and full supervision over the examination of and the enforcement of compliance with the statutes by trust companies, building and loan associations, ~~industrial loan and investment companies,~~ and credit unions in their business and functions and shall constructively aid and assist trust companies, building and loan associations, and ~~industrial loan and investment companies~~ credit unions in maintaining proper standards and efficiency.

(2) If the director is financially interested directly or indirectly in any financial institution doing business in Nebraska, subject to his or her jurisdiction, the financial institution shall be under the direct supervision of the Governor, and as to such financial institution, the Governor shall exercise all the supervisory powers otherwise vested in the Director of Banking and Finance by the laws of this state, and reports of examination by state bank examiners, foreign state bank examiners, examiners of the Federal Reserve Board, examiners of the Office of the Comptroller of the Currency, and examiners for the Federal Deposit Insurance Corporation shall be transmitted to the Governor.

(3) (a) No person employed by the department shall be permitted to borrow money from any financial institution doing business in Nebraska subject to the jurisdiction of the department, except that persons employed by the department may borrow money in the normal course of business from the Nebraska State Employees Credit Union.

(b) In the event a loan to a person employed by the department is sold or otherwise transferred to a financial institution doing business in Nebraska and subject to the jurisdiction of the department, no violation of

this section occurs if (i) the person employed by the department did not solicit the sale or transfer of the loan and (ii) the person employed by the department gives notice to the director of such sale or transfer. The director, in his or her discretion, may require such person to make all reasonable efforts to seek another lender.

(4) Any 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.

Sec. 4. Section 8-157.01, Revised Statutes Supplement, 2002, is amended to read:

8-157.01. (1) Upon prior written notice to the director, any financial institution which has a main chartered office or approved branch located in the State of Nebraska may establish and maintain any number of automatic teller machines at which all banking transactions, defined as receiving deposits of every kind and nature and crediting such to customer accounts, cashing checks and cash withdrawals, transfer of funds from checking accounts to savings accounts, transfer of funds from savings accounts to checking accounts, transfer of funds from either checking accounts and savings accounts to accounts of other customers, payment transfers from customer accounts into accounts maintained by other customers of the financial institution or the financial institution, including preauthorized draft authority, preauthorized loans, and credit transactions, receiving payments payable at the financial institution or otherwise, and account balance inquiry, may be conducted. Any other transaction incidental to the business of the financial institution or which will provide a benefit to the financial institution's customers or the general public may be conducted at an automatic teller machine upon thirty days' prior written notice to the director if the director does not object to the proposed other transaction within the thirty-day notice period. Neither such automatic teller machines nor the transactions conducted thereat shall be construed as the establishment of a branch or as branch banking. Such automatic teller machines shall be made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution. It shall not be deemed discrimination if an automatic teller machine does not offer the same transaction services as other automatic teller machines or if there are no fees charged between affiliate financial institutions for the use of automatic teller machines.

(2) Any financial institution may become a user financial institution by agreeing to pay the establishing financial institution its automatic teller machine usage fee. Such agreement shall be implied by the use of such automatic teller machines. Nothing in this subsection shall prohibit a user financial institution from agreeing to responsibilities and benefits which might be contained in a standardized agreement. The establishing financial institution or its designated data processing center shall be responsible for transmitting transactions originating from its automatic teller machine to a switch, but nothing contained in this section shall be construed to require routing of all transactions to a switch. All automatic teller machines must be made available on a nondiscriminating basis, for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution, through methods, fees, and processes that the establishing financial institution has provided for switching transactions. The director, upon notice and after a hearing, may terminate or suspend the use of any automatic teller machine if he or she determines that it is not available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution or that transactions originated by customers of user financial institutions are not being routed to a switch or other data processing centers. Nothing in this section may be construed to prohibit nonbank employees from assisting in transactions originated at the automatic teller machines, and such assistance shall not be deemed to be engaging in the business of banking. Such nonbank employees may be trained in the use of the automatic teller machines by financial institution employees.

(3) An establishing financial institution shall not be deemed to make an automatic teller machine available on a nondiscriminating basis if, through personnel services offered, advertising on or off the automatic teller machine's premises, or otherwise, it discriminates in the use of the automatic teller machine against any user financial institution which has a main chartered office or approved branch located in the State of Nebraska.

(4) (a) On and after August 1, 2000, any consumer initiating an

electronic funds transfer at an automatic teller machine for which an automatic teller machine surcharge will be imposed shall receive notice in accordance with the provisions of 15 U.S.C. 1693b(d)(3)(A) and (B), as such section existed on July 20, 2002. Such notice shall (i) be posted in a prominent and conspicuous location on or at the automatic teller machine at which the electronic funds transfer is initiated by the consumer and (ii) appear on the screen of the automatic teller machine or appear on a paper notice issued from such machine after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(b) Subdivision (a)(ii) of this subsection shall not apply until January 1, 2005, to any automatic teller machine that lacks the technical capability to disclose the notice on the screen or to issue a paper notice after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(5) A point-of-sale terminal may be established at any point within this state. A financial institution may contract with a seller of goods and services or any other third party for the operation of point-of-sale terminals. A point-of-sale terminal shall be made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution. Nothing in this subsection shall prohibit payment of fees to a financial institution which issues an access device used to initiate electronic funds transfer transactions at a point-of-sale terminal.

(6) A seller of goods and services or any other third party on whose premises one or more point-of-sale terminals are established shall not be, solely by virtue of such establishment, a financial institution and shall not be subject to the laws governing, or other requirements imposed on, financial institutions, except for the requirement that it faithfully perform its obligations in connection with any transaction originated at any point-of-sale terminal on its premises. The acquiring financial institution shall be responsible for compliance with all applicable standards, rules, and regulations governing point-of-sale transactions.

(7) Any financial institution, upon a request of the director, shall file with the director a current listing of all point-of-sale terminals established by the financial institution within this state. For purposes of this subsection, point-of-sale terminal shall include a group of one or more of such terminals established at a single business location. Such listing shall contain any reasonable descriptive information pertaining to the point-of-sale terminal as required by the director. Neither the establishment of such point-of-sale terminal nor any transactions conducted thereat shall be construed as the establishment of a branch or as branch banking. Following establishment of a point-of-sale terminal, the director, upon notice and after a hearing, may terminate or suspend the use of such point-of-sale terminal if he or she determines that it is not made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution, that the necessary information is not on file with the director, or that transactions originated by customers of user financial institutions are not being routed to a switch or other data processing center. Nothing in this section shall be construed to prohibit nonbank employees from assisting in transactions originated at the point-of-sale terminals, and such assistance shall not be deemed to be engaging in the business of banking.

(8) Transactions at point-of-sale terminals may include:

- (a) Check guarantees;
- (b) Account balance inquiries;
- (c) Transfers of funds from a customer's account for payment to a seller's account for goods and services on whose premises the point-of-sale terminal is located in payment for the goods and services;
- (d) Cash withdrawals by a customer from the customer's account or accounts;
- (e) Transfers between accounts of the same customers at the same financial institution; and
- (f) Such other transactions as the director, upon application, notice, and hearing, may approve.

(9)(a) Automatic teller machines may be established and maintained by a financial institution which has a main chartered office or approved branch located in the State of Nebraska, by a group of two or more of such financial institutions, or by a combination of such financial institution or financial institutions and a third party.

(b) Point-of-sale terminals may be established and maintained by a

financial institution which has a main chartered office or approved branch located in the State of Nebraska, by a group of two or more of such financial institutions, or by a combination of such financial institutions and a third party. No one, through personnel services offered, advertising on or off the point-of-sale terminal premises, or otherwise, may discriminate in the use of the point-of-sale terminal against any other user financial institution.

(10) All financial institutions shall be given an equal opportunity for the use of and access to a switch, and no discrimination shall exist or preferential treatment be given in either the operation of such switch or the charges for use thereof. The operation of such switch shall be with the approval of the director. Approval of such switch shall be given by the director when he or she determines that its design and operation are such as to provide access thereto and use thereof by any financial institution without discrimination as to access or cost of its use. Any switch established in Nebraska and approved by the director prior to January 1, 1993, shall be deemed to be approved for purposes of this section.

(11) Use of an automatic teller machine or a point-of-sale terminal through access to a switch and use of any switch shall be made available on a nondiscriminating basis to any financial institution. A financial institution shall only be permitted use of the switch if the financial institution conforms to reasonable technical operating standards which have been established by the switch.

(12) To assure maximum safety and security against malfunction, fraud, theft, and other accidents or abuses and to assure that all such access devices will have the capability of activating all automatic teller machines and point-of-sale terminals established in this state, no automatic teller machine or point-of-sale terminal shall accept an access device which does not conform to such specifications as are generally accepted. No automatic teller machine or point-of-sale terminal shall be established or operated which does not accept an access device which conforms with such specifications.

An automatic teller machine shall bear a logo type or other identification symbol designed to advise customers that the automatic teller machine may be activated by any access device which complies with the generally accepted specifications. A point-of-sale terminal shall either bear or the premises on which the point-of-sale terminal is established shall contain a visible logo type or other identification symbol designed to advise customers that the point-of-sale terminal may be activated by any access device which complies with the generally accepted specifications. An automatic teller machine or point-of-sale terminal may also bear, at the option of the establishing or acquiring financial institution, any of the following:

(a) The names of all individual financial institutions using such automatic teller machines or point-of-sale terminals in alphabetical order, except that the establishing or acquiring financial institution may be listed first, and in a uniform typeface, size, and color; or

(b) The logo type or symbol of any association, corporation, or other entity or organization formed by one or more of the financial institutions using such automatic teller machines or point-of-sale terminals.

(13) If the director, upon notice and hearing, determines at any time that the design or operation of a switch or provision for use thereof does discriminate against any financial institution in providing access thereto and use thereof either through access thereto or by virtue of the cost of its use, he or she may revoke his or her approval of such switch operation and immediately order the discontinuance of the operation of such switch.

(14) If it is determined by the director, after notice and hearing, that discrimination against any financial institution has taken place, that one financial institution has been preferred over another, or that any financial institution or person has not complied with any of the provisions of this section, he or she shall immediately issue a cease and desist order or an order for compliance within ten days after the date of the order, and upon noncompliance with such order, the offending financial institution shall be subject to sections 8-1,135 to 8-1,138 and to having the privileges granted in this section revoked.

(15) For purposes of this section:

(a) Access means the ability to utilize an automatic teller machine or a point-of-sale terminal to conduct permitted banking transactions or purchase goods and services electronically;

(b) Access device means a code, a transaction card, or any other means of access to a customer's account, or any combination thereof, that may be used by a customer for the purpose of initiating an electronic funds transfer at an automatic teller machine or a point-of-sale terminal;

(c) Account means a checking account, a savings account, a share

account, or any other customer asset account held by a financial institution. Such an account may also include a line of credit which a financial institution has agreed to extend to its customer;

(d) Acquiring financial institution means any financial institution establishing a point-of-sale terminal;

(e) Affiliate financial institution means any financial institution which is a subsidiary of the same bank holding company;

(f) Electronic funds transfer means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through a point-of-sale terminal, an automatic teller machine, or a personal terminal for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account;

(g) Establishing financial institution means any financial institution establishing an automatic teller machine which has a main chartered office or approved branch located in the State of Nebraska;

(h) Financial institution means a state-chartered or federally chartered bank, savings bank, building and loan association, savings and loan association, ~~industrial loan and investment company~~, or credit union;

(i) Personal identification number means a combination of numerals or letters selected for a customer of a financial institution, a merchant, or any other third party which is used in conjunction with an access device to initiate an electronic funds transfer transaction;

(j) Personal terminal means a personal computer and telephone, wherever located, operated by a customer of a financial institution for the purpose of initiating a transaction affecting an account of the customer; and

(k) User financial institution means any financial institution which desires to avail itself of and provide its customers with automatic teller machine or point-of-sale terminal services.

(16) Nothing in this section prohibits ordinary clearinghouse transactions between financial institutions.

(17) Nothing in this section requires any federally chartered establishing financial institution to obtain the approval of the director for the establishment of any automatic teller machine.

(18) Nothing in this section shall prevent any financial institution which has a main chartered office or an approved branch located in the State of Nebraska from participating in a national automatic teller machine program to allow its customers to use automatic teller machines located outside of the State of Nebraska which are established by out-of-state financial institutions or to allow customers of out-of-state financial institutions to use its automatic teller machines located in the State of Nebraska. Such participation and any automatic teller machine usage fees charged or received pursuant to the national automatic teller machine program shall not be considered for purposes of determining if an automatic teller machine located in the State of Nebraska has been made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution.

Sec. 5. Section 8-1,139, Reissue Revised Statutes of Nebraska, is amended to read:

8-1,139. An officer, director, agent, or employee of a bank, trust company, building and loan association, ~~industrial loan and investment company~~, cooperative credit union, credit union, or other similar entity which is licensed, regulated, or examined by the Department of Banking and Finance who willfully misapplies any of the money, funds, or credits of any such entity or any money, funds, assets, or securities entrusted to the care or custody of such entity or the custody or care of any such officer, director, agent, or employee shall be guilty of a Class IV felony.

Sec. 6. Section 8-345.01, Revised Statutes Supplement, 2002, is amended to read:

8-345.01. Nothing in section 8-157 shall prohibit building and loan associations as defined in sections 8-301 to 8-340.01 from establishing and operating new automatic teller machines for the purpose of transmitting savings and loan transactions. ~~or industrial loan and investment companies as defined in sections 8-401 to 8-450 from establishing and operating new automatic teller machines for the purpose of transmitting industrial loan and investment company transactions.~~

Sec. 7. Section 8-601, Revised Statutes Supplement, 2002, is amended to read:

8-601. (1) To pay the salary and necessary expense of examiners and examiners' helpers and such sum, if any, as may be required, in excess of the sum appropriated for the Department of Banking and Finance, for the payment of the salaries of the Director of Banking and Finance, his or her deputies,

attorneys, and assistants, there shall be levied upon the banks, organized under the laws of this state, and trust companies, building and loan associations, ~~industrial loan and investment companies~~, credit unions, and holding companies, if any, of such institutions, organized under the laws of this state or authorized to do business in this state, an assessment each year based upon two factors: (a) A single assessment fee based upon the asset size of the institution, except that in determining the asset size of a holding company, the assets of any financial institution or holding company otherwise assessed pursuant to this section and the assets of any nationally chartered financial institution shall be excluded; and (b) an assessment based upon the number of hours spent on the examination. The assessment shall be a sum determined by the director and approved by the Governor as set forth in this subsection and subject to the additional assessments and adjustments referred to in subsection (3) of this section.

(2) The assessment referred to in subsection (1) of this section and the additional assessments provided for by subsection (3) of this section shall be paid by such banks, trust companies, building and loan associations, ~~industrial loan and investment companies~~, credit unions, and holding companies, if any, of such institutions on the order of the director to the State Treasurer who shall place the same in the Financial Institution Assessment Cash Fund, which is hereby created and which shall be used solely for the purposes hereinafter specified. The amount of the assessment shall be the sum estimated by the director as necessary for the fiscal year to pay the following items: (a) Salaries of examiners and examiners' helpers; (b) the necessary expenses incurred by examiners and examiners' helpers in the discharge of their duties incident to the examination of the institutions enumerated in this section; and (c) such sum, if any, as may be required, in excess of the sum appropriated for the department, for the payment of the salary and expenses of the director, his or her deputies, attorneys, and assistants, and in addition there shall be included in the assessment to be paid by banks organized under the laws of this state, the salaries and expenses of examiners and examiners' helpers attending a school for examiners. As soon as reasonably possible after June 30 of each year, the director shall estimate the total sum required for the above purposes. The director shall also estimate the total number of days to be used by examiners and examiners' helpers in the examination and supervision of the institutions enumerated in this section during the fiscal year, taking into account the experience of the preceding year. The total estimated fund shall be divided by the total number of days estimated, as above specified, and the quotient shall be the unit of assessment against the individual institutions, which unit is hereinafter referred to as the per diem unit. The assessment upon each institution shall be based upon a percentage fee of total assets in each institution and a per diem fee for the number of hours spent in examination as determined by the director. The director shall set the per diem fee based on (i) the number of per diem units required to examine the respective institutions during the fiscal year for which the estimate is made, taking into account the experience of the previous year, and (ii) in case of institutions organized under the laws of the states other than the State of Nebraska, the estimated traveling expense involved in making the examination. If the estimated sum levied and collected is insufficient to defray the expenditures, as provided in this section, for the fiscal year for which it was made, a special assessment may be levied and collected in like manner for the balance of the fiscal year.

(3) At the end of the fiscal year for which the assessment is made, the director shall forward to each of such institutions subject to such an assessment, as provided for by subsections (1) and (2) of this section, a statement for as many per diem units as the days actually used in the examination of the institution exceeds that which was estimated, under the provisions of subsection (2) of this section, which shall be paid on the demand of the director in the same manner as the original assessment. If the number of days actually used is less than that estimated for any such institution, the difference shall stand to the credit of such institution for a subsequent year's assessment. In case an extra examination of any institution should become necessary and be made, the reasonable cost thereof shall be determined and shall be paid by the institution so examined.

Sec. 8. Section 8-602, Revised Statutes Supplement, 2002, is amended to read:

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

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

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

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

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

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

(6) For making a photostatic copy of instruments, documents, or any other departmental records and for providing a computer-generated document, one dollar and fifty cents per page;

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

(8) For issuing a certificate of approval to a credit union, ten dollars;

(9) For investigating the applications required by sections 8-120, ~~and 8-331, and 8-403~~ and the documents required by section 8-201, the cost of such examination, investigation, and inspection, including all legal expenses and the cost of any hearing transcript, with a minimum fee under (a) section 8-120 of two thousand five hundred dollars, (b) section 8-331 of two thousand dollars, ~~(c) section 8-403 of two thousand five hundred dollars,~~ and ~~(d)~~ (c) section 8-201 of one thousand dollars. The department may require the applicant to procure and give a surety bond in such principal amount as the department may determine and conditioned for the payment of the fees provided in this subdivision;

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

(11) To meet the expense of safekeeping securities as provided in section 8-210, the company, national bank, federal savings association, federally chartered trust company, out-of-state trust company authorized under the Interstate Trust Company Office Act, or state-chartered bank shall, at the time of the initial deposit of such securities, pay one dollar and fifty cents for each thousand dollars of securities deposited and a like amount on or before January 15 each year thereafter;

(12) For investigating an application to move its location within the city or village limits of its original license or charter for banks, trust companies, and building and loan associations, ~~and industrial loan and investment companies,~~ two hundred fifty dollars;

(13) For investigating an application for approval to establish or acquire a branch or to establish a mobile branch pursuant to section 8-157, two hundred fifty dollars;

(14) For filing a notice to establish an automatic teller machine, fifteen dollars;

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

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

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

(18) For investigating an application or a notice to establish a branch trust office, five hundred dollars; and

(19) For investigating an application or a notice to establish a representative trust office, five hundred dollars.

All fees and money collected by or paid to the department under any of the provisions of Chapter 8, 21, or 45 or any other law shall, if and when specifically appropriated by the Legislature during any biennium, constitute the Financial Institution Assessment Cash Fund for the use of the department during any biennium in administering the provisions of such chapters and any duties imposed upon the department by any other law, and all of such money when appropriated shall be appropriated for the purposes expressed in this section.

Sec. 9. Section 8-1110, Revised Statutes Supplement, 2002, is amended to read:

8-1110. Sections 8-1104 to 8-1109 shall not apply to any of the



following securities:

(1) Any security, including a revenue obligation, issued or guaranteed by the State of Nebraska, any political subdivision, or any agency or corporate or other instrumentality thereof or any certificate of deposit for any of the foregoing;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) Any security issued or guaranteed by any federal credit union, or any credit union, ~~industrial loan and investment company~~, or similar association organized and supervised under the laws of this state;

(4) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is: (a) Subject to the jurisdiction of the Interstate Commerce Commission; (b) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act; (c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or (d) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(5) (a) Any security listed on the Chicago Stock Exchange, the Chicago Board Options Exchange, Tier I of the Pacific Stock Exchange, Tier I of the Philadelphia Stock Exchange, or any other stock exchange or market system approved by the director, if, in each case, quotations have been available and public trading has taken place for such class of security prior to the offer or sale of that security in reliance on the exemption; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing or to any security listed on the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers Automated Quotation National Market System.

(b) The issuer of any security which has been approved for listing or designation on notice of issuance on such exchanges or market systems, and for which no quotations have been available and no public trading has taken place for any of such issuer's securities, may rely upon the exemption stated in subdivision (5) (a) of this section, if a notice is filed with the director, together with a filing fee of two hundred dollars, prior to first use of a disclosure document covering such securities in this state, + except that failure to file such notice in a timely manner may be cured by the director in his or her discretion.

(c) The director may adopt and promulgate rules and regulations which, after notice to such exchange or market system and an opportunity to be heard, remove any such exchange or market system from the exemption stated in subdivision (5) (a) of this section if the director finds that the listing requirements or market surveillance of such exchange or market system is such that the continued availability of such exemption for such exchange or market system is not in the public interest and that removal is necessary for the protection of investors;

(6) Any security which meets all of the following conditions:

(a) The issuer is organized under the laws of the United States or a state or has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus;

(b) A class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been so registered for the three years immediately preceding the offering date;

(c) Neither the issuer nor a significant subsidiary has had a material default during the last seven years, or during the issuer's existence if such existence is less than seven years, in the payment of (i) principal, interest, dividends, or sinking-fund installments on preferred stock or indebtedness for borrowed money or (ii) rentals under leases with terms of three or more years;

(d) The issuer has had consolidated net income, without taking into account extraordinary items and the cumulative effect of accounting changes, of at least one million dollars in four of its last five fiscal years, including its last fiscal year, and if the offering is of interest-bearing securities the issuer has had for its last fiscal year net income before

deduction for income taxes and depreciation of at least one and one-half times the issuer's annual interest expense, taking into account the proposed offering and the intended use of the proceeds. However, if the issuer of the securities is a finance company which has liquid assets of at least one hundred five percent of its liabilities, other than deferred income taxes, deferred investment tax credit, capital stock, and surplus, at the end of its last five fiscal years, the net income requirement before deduction for interest expense shall be one and one-fourth times its annual interest expense. For purposes of this subdivision: (i) Last fiscal year means the most recent year for which audited financial statements are available, if such statements cover a fiscal period ending not more than fifteen months from the commencement of the offering; (ii) finance company means a company engaged primarily in the business of wholesale, retail, installment, mortgage, commercial, industrial, or consumer financing, banking, or factoring; and (iii) liquid assets means (A) cash, (B) receivables payable on demand or not more than twelve months following the close of the company's last fiscal year less applicable reserves and unearned income, and (C) readily marketable securities less applicable reserves and unearned income;

(e) If the offering is of stock or shares other than preferred stock or shares, such securities have voting rights which include (i) the right to have at least as many votes per share and (ii) the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law; and

(f) If the offering is of stock or shares other than preferred stock or shares, such securities are owned beneficially or of record on any date within six months prior to the commencement of the offering by at least one thousand two hundred persons, and on such date there are at least seven hundred fifty thousand such shares outstanding with an aggregate market value of at least three million seven hundred fifty thousand dollars based on the average bid price for such day. When determining the number of persons who are beneficial owners of the stock or shares of an issuer, for purposes of this subdivision, the issuer or broker-dealer may rely in good faith upon written information furnished by the record owners;

(7) Any security issued or guaranteed as to both principal and interest by an international bank of which the United States is a member; or

(8) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, as a chamber of commerce, or as a trade or professional association.

Sec. 10. Section 8-1401, Revised Statutes Supplement, 2002, is amended to read:

8-1401. (1) No person or corporation or association organized under the Business Corporation Act, the Credit Union Act, the Nebraska Banking Act, ~~the Nebraska Depository Institution Guaranty Corporation Act,~~ the Nebraska Industrial Development Corporation Act, the Nebraska Nonprofit Corporation Act, the Nebraska Professional Corporation Act, the Nebraska Trust Company Act, or Chapter 8, article 3, ~~or 4,~~ or otherwise authorized to conduct business in Nebraska or organized under the laws of the United States, shall be required to disclose any records or information, financial or otherwise, that it deems confidential concerning its affairs or the affairs of any person or corporation with which it is doing business to any person, party, agency, or organization, unless (a) the disclosure relates to a lawyers trust account and is required to be made to the Counsel for Discipline of the Nebraska Supreme Court pursuant to a rule adopted by the Nebraska Supreme Court or (b) there is presented to such person, corporation, or association a court order of a court of competent jurisdiction setting forth the exact nature and limits of such required disclosure and a showing that all persons or organizations to be affected by such order have had reasonable notice and an opportunity to be heard upon the merits of such order. The requesting party shall pay the costs of providing such records or information pursuant to section 8-1402. This section shall not apply to any duly constituted supervisory regulatory agency of such person, corporation, or association, to the production of records pursuant to a written demand of the Tax Commissioner under section 77-375, to disclosures governed by rules for discovery adopted and promulgated pursuant to section 25-1273.01, or to such cases for which specific disclosures are specifically required by other sections of the statutes heretofore or hereafter enacted, except that the Department of Banking and Finance shall be subject to the payment of cost provision of this section when making inquiries that are beyond those normally made in conducting examinations and inquiries for the purpose of determining the safety and soundness of a financial institution, but shall not be subject to the disclosure and reasonable notice provisions of this section when making reasonable inquiries of any person,

corporation, or association for the purpose of enforcing any of the laws over which the department has jurisdiction.

(2) Any person, corporation, or association which makes a disclosure of records or information as required by subsection (1) of this section shall not be held civilly or criminally liable for such disclosure in the absence of malice, bad faith, intent to deceive, or gross negligence.

Sec. 11. Section 8-1501, Reissue Revised Statutes of Nebraska, is amended to read:

8-1501. For purposes of sections 8-1501 to 8-1505, unless the context otherwise requires:

(1) Person means an individual, corporation, partnership, limited liability company, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or other form of entity not specifically listed in this subdivision; and

(2) Control means to own directly or indirectly or to control in any manner twenty-five percent or more of the voting shares of any bank, trust company, ~~industrial loan and investment company~~, or holding company or to control in any manner the election of the majority of directors of any bank, trust company, ~~industrial loan and investment company~~, or holding company.

Sec. 12. Section 8-1502, Revised Statutes Supplement, 2002, is amended to read:

8-1502. (1) Except as provided in subsection (2) of this section, no person acting personally or as agent shall acquire control of any state-chartered bank, or trust company, ~~or industrial loan and investment company~~ without first giving sixty days' notice to the Department of Banking and Finance on forms provided by the department of such proposed acquisition.

The Director of Banking and Finance, upon receipt of such notice, shall act upon it within thirty days, and, unless he or she disapproves the proposed acquisition within that period of time, it may become effective on the sixty-first day after receipt without his or her approval, except that the director may extend the thirty-day period an additional thirty days if in his or her judgment any material information submitted is substantially inaccurate or the acquiring party has not furnished all the information required by sections 8-1501 to 8-1505 or by the director.

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

Within three days after his or her decision to disapprove any proposed acquisition, the director shall notify the acquiring party in writing of the disapproval. The notice shall provide a statement of the basis for the disapproval.

(2) The notice requirements of subsection (1) of this section shall not apply when:

(a) Shares of a state-chartered bank, or trust company, ~~or industrial loan and investment company~~ are acquired by a person in the regular course of securing or collecting a debt previously contracted in good faith or through inheritance or a bona fide gift if notice of such acquisition is given to the department, on forms provided by the department, within ten days after the acquisition; or

(b) The director, the Governor, and the Secretary of State jointly determine that an emergency exists which requires expeditious action or that the department must act immediately to prevent probable failure of the institution to be acquired.

Sec. 13. Section 8-1504, Revised Statutes Supplement, 2002, is amended to read:

8-1504. Except as otherwise provided by rule and regulation of the department, a notice filed pursuant to section 8-1502 shall contain the following information:

(1) The identity, personal history, business background, and experience of each person by whom or on whose behalf the acquisition is to be made, including his or her material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which he or she is a party and any criminal indictment or conviction of such person by a state or federal court;

(2) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year immediately preceding the date of the notice;

(3) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made;

(4) The identity, source, and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise

obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons;

(5) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank, or trust company, ~~or industrial loan and investment company,~~ to sell its assets or merge it with any company, or to make any other major change in its business or corporate structure or management;

(6) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on his or her behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of such employment, retainer, or arrangement for compensation;

(7) Copies of all invitations, tenders, or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition; and

(8) Any additional relevant information in such form as the Director of Banking and Finance may require by rule and regulation or by specific request in connection with any particular notice.

Sec. 14. Section 8-1505, Reissue Revised Statutes of Nebraska, is amended to read:

8-1505. The Director of Banking and Finance may disapprove any proposed acquisition if:

(1) The financial condition of any acquiring person is such as might jeopardize the financial stability of the bank, or trust company, ~~or industrial loan and investment company~~ or prejudice the interests of the depositors of the bank, or trust company, ~~or industrial loan and investment company;~~

(2) The competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or trust company, ~~or industrial loan and investment company~~ or in the interest of the public to permit such person to control the bank, or trust company, ~~or industrial loan and investment company;~~ or

(3) Any acquiring person neglects, fails, or refuses to furnish the Director of Banking and Finance all the information required by him or her.

Sec. 15. Section 8-1506.01, Reissue Revised Statutes of Nebraska, is amended to read:

8-1506.01. For purposes of sections 8-1506 to 8-1510, financial institution shall mean a bank, savings bank, savings and loan association, building and loan association, trust company, ~~industrial loan and investment company,~~ or credit union, organized under the laws of this state or organized under the laws of the United States to do business in this state.

Sec. 16. Section 8-1516, Revised Statutes Supplement, 2002, is amended to read:

8-1516. (1)(a) With the approval of the director, a bank may only acquire another bank in Nebraska as a result of a purchase or merger if the acquired bank and its branches are converted to branches of the acquiring bank.

(b) With the approval of the director, a financial institution may only acquire another financial institution in Nebraska as a result of a cross-industry merger or acquisition under section 8-1510 if (i) the acquired financial institution and its branches are converted to branches of the acquiring financial institution and (ii) section 8-1510 has been satisfied.

(2) For purposes of this section:

(a) Bank means a bank organized under the laws of this state or organized under the laws of the United States to do business in this state; and

(b) Financial institution means a bank, savings bank, savings and loan association, building and loan association, trust company, ~~industrial loan and investment company,~~ or credit union, organized under the laws of this state or organized under the laws of the United States to do business in this state.

Sec. 17. Section 8-1901, Reissue Revised Statutes of Nebraska, is amended to read:

8-1901. For purposes of sections 8-1901 to 8-1903, unless the context otherwise requires:

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

(2) Financial institution means:

(a) A state-chartered or federally chartered bank, savings bank, building and loan association, savings and loan association, ~~industrial loan and investment association,~~ or credit union;

(b) A subsidiary of a bank holding company or out-of-state bank holding company; or

(c) A branch of a financial institution described in subdivision (a) or (b) of this subdivision.

Sec. 18. Section 9-1,104, Revised Statutes Supplement, 2002, is amended to read:

9-1,104. (1) Any person applying for or holding a contract or license (a) as a distributor, gaming manager, or manufacturer pursuant to the Nebraska Bingo Act, (b) as a distributor, manufacturer, pickle card operator, or sales agent pursuant to the Nebraska Pickle Card Lottery Act, (c) as a lottery operator, lottery worker who is designated as a keno manager or who has authority over the verification of winning number selection by an electrically operated blower machine, manufacturer-distributor, or sales outlet location pursuant to the Nebraska County and City Lottery Act, or (d) pursuant to the State Lottery Act shall be subject to fingerprinting and a check of his or her criminal history record information maintained by the Identification Division of the Federal Bureau of Investigation through the Nebraska State Patrol for the purpose of determining whether the Department of Revenue has a basis to deny the contract or license application or to suspend, cancel, revoke, or terminate the person's contract or license. Each applicant for or party holding a license as a manufacturer, distributor, manufacturer-distributor, or lottery operator shall also submit a personal history report to the department on a form provided by the department and may be subject to a background investigation, an inspection of the applicant's or licensee's facilities, or both. If the applicant is an individual, the application shall also include the applicant's social security number.

(2) (a) If the applicant, party to the contract, or licensee is a corporation, the persons subject to such requirements shall include any officer or director of the corporation, his or her spouse, any person or entity directly or indirectly associated with such corporation in a consulting or other capacity which may impair the security, honesty, or integrity of the operation or conduct of the activities for which the application is made or contract or license is held, and, if applicable, any person or entity holding in the aggregate ten percent or more of the debt or equity of the corporation. If any person or entity holding ten percent or more of the debt or equity of the applicant, contractor, or licensee corporation is a corporation, partnership, or limited liability company, every partner of such partnership, every member of such limited liability company, every officer or director of such corporation or partnership, every person or entity holding ten percent or more of the debt or equity of such corporation, partnership, or limited liability company, and every person or entity directly or indirectly associated with such corporation, partnership, or limited liability company in a consulting or other capacity which may impair the security, honesty, or integrity of the operation or conduct of the activities for which the application is made or contract or license is held may also be subject to such requirements. If the applicant, party to the contract, or licensee is a partnership, the persons subject to such requirements shall include any partner, his or her spouse, any officer or director of the partnership, or any person or entity directly or indirectly associated with such partnership in a consulting or other capacity which may impair the security, honesty, or integrity of the operation or conduct of the activities for which the application is made or contract or license is held. If the applicant, party to the contract, or licensee is a limited liability company, the persons subject to such requirement shall include any member and his or her spouse. If the applicant, party to the contract, or licensee is a nonprofit organization or nonprofit corporation, the person subject to such requirement shall be the person designated by such nonprofit organization or nonprofit corporation as the manager.

(b) Notwithstanding the provisions of this section, background investigations shall not be required of any debt holder which is a financial institution organized or chartered under the laws of this state, any other state, or the United States relating to banks, savings institutions, trust companies, savings and loan associations, credit unions, ~~industrial loan and investment companies~~, installment loan licensees, or similar associations organized under the laws of this state and subject to supervision by the Department of Banking and Finance.

(c) Notwithstanding the provisions of this section, if an applicant for or party holding a license as a pickle card operator, sales agent, gaming manager, lottery operator, lottery worker, or sales outlet location is issued a license by the Nebraska Liquor Control Commission, the Department of Revenue may waive the fingerprinting requirements for criminal history record investigation purposes.

(3) (a) The applicant, party to the contract, or licensee shall pay the actual cost of any fingerprinting or check of his or her criminal history record information.

(b) The Department of Revenue may require an applicant or licensee subjected to a background investigation, a facilities inspection, or both to pay the actual costs incurred by the department in conducting the investigation or inspection. The department may require payment of the estimated costs in advance of beginning the investigation or inspection. If an applicant does not wish to pay the estimated costs, it may withdraw its application and its application fee will be refunded. After completion of the investigation or inspection, the department shall refund any overpayment or shall charge and collect an amount sufficient to reimburse the department for any underpayment of actual costs. The department may establish by rule and regulation the conditions and procedures for payment of the costs.

(4) Refusal to comply with this section by any person contracted with, licensed, or seeking a contract or license under the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Pickle Card Lottery Act, or the State Lottery Act shall be a violation of the act under which such person is contracted with, licensed, or seeking a contract or license.

Sec. 19. Section 12-1102, Revised Statutes Supplement, 2002, is amended to read:

12-1102. For purposes of the Burial Pre-Need Sale Act, unless the context otherwise requires:

(1) Agent shall mean any person who acts for or on behalf of a pre-need seller in making pre-need sales;

(2) Burial or funeral merchandise or services shall mean all items of real or personal property or a combination of both or services, sold or offered for sale to the general public by any pre-need seller, which may be used in any manner in connection with a funeral or the interment, entombment, inurnment, or other alternate disposition of human remains. Such term shall not include a lot or grave space or a crypt or niche located in a mausoleum, columbarium, or lawn crypt upon which construction has been substantially completed;

(3) Columbarium shall mean an aboveground structure or building which is used or intended to be used for the inurnment of human remains in a niche. A columbarium may be combined with a mausoleum;

(4) Crypt or niche shall mean a chamber in a lawn crypt, columbarium, or mausoleum of sufficient size to inter or entomb cremated or noncremated human remains;

(5) Delivery shall mean the act of performing the service required by or the act of placing the item purchased in the physical possession of the pre-need purchaser, including, but not limited to, the installing or depositing of the item sold on or in real property owned by or designated by the person entitled to receive such item, except that (a) the pre-need burial of a vault shall constitute delivery only if the burial is with the consent of the pre-need purchaser and the pre-need seller has made other pre-need vault burials prior to January 1, 1986, and (b) delivery of a crypt or niche in a mausoleum, lawn crypt, or columbarium or a marker or monument may be accomplished by delivery of a document of title;

(6) Department shall mean the Department of Insurance;

(7) Director shall mean the Director of Insurance;

(8) Document of title shall mean a deed, bill of sale, warehouse receipt, or any other document which meets the following requirements:

(a) The effect of the document is to immediately vest the ownership of the item described in the person purchasing the item;

(b) The document states the exact location of such item; and

(c) The document gives assurances that the item described exists in substantially completed form and is subject to delivery upon request;

(9) Human remains shall mean the body of a deceased person;

(10) Lawn crypt shall mean an inground burial receptacle of single or multiple depth, installed in multiples of ten or more in a large mass excavation, usually constructed of concrete and installed on gravel or other drainage underlayment and which acts as an outer container for the interment of human remains;

(11) Letter of credit shall mean an irrevocable undertaking issued by any financial institution which qualifies as a trustee under the Burial Pre-Need Sale Act, given to a pre-need seller and naming the director as the beneficiary, in which the issuer agrees to honor drafts or other demands for payment by the beneficiary up to a specified amount;

(12) Lot or grave space shall mean a space in a cemetery intended to be used for the inground interment of human remains;

(13) Marker, monument, or lettering shall mean an object or method

used to memorialize, locate, and identify human remains;

(14) Master trust agreement shall mean an agreement between a pre-need seller and a trustee, a copy of which has been filed with the department, under which proceeds from pre-need sales may be deposited by the pre-need seller;

(15) Mausoleum shall mean an aboveground structure or building which is used or intended to be used for the entombment of human remains in a crypt. A mausoleum may be combined with a columbarium;

(16) Pre-need purchaser shall mean a member of the general public purchasing burial or funeral merchandise or services or a marker, monument, or lettering from a pre-need seller for personal use;

(17) Pre-need sale shall mean any sale by any pre-need seller to a pre-need purchaser of:

(a) Any items of burial or funeral merchandise or services which are not purchased for the immediate use in a funeral or burial of human remains;

(b) Any unspecified items of burial or funeral merchandise or services which items will be specified either at death or at a later date; or

(c) A marker, monument, or lettering which will not be delivered within six months of the date of the sale;

(18) Pre-need seller shall mean any person, partnership, limited liability company, corporation, or association on whose behalf pre-need sales are made to the general public;

(19) Substantially completed shall mean that time when the mausoleum, columbarium, or lawn crypt being constructed is then ready for the interment, entombment, or inurnment of human remains;

(20) Surety bond shall mean an undertaking given by an incorporated surety company naming the director as the beneficiary and conditioned upon the faithful performance of a contract for the construction of a mausoleum, columbarium, or lawn crypt by a pre-need seller;

(21) Trust account shall mean either a separate trust account established pursuant to the Burial Pre-Need Sale Act for a specific pre-need purchaser by a pre-need seller or multiple accounts held under a master trust agreement when it is required by the act that all or some portion of the proceeds of such pre-need sale be placed in trust by the pre-need seller;

(22) Trustee shall mean a bank, trust company, building and loan association, ~~industrial loan and investment company~~, or credit union within the state whose deposits or accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund;

(23) Trust principal shall mean all deposits, including amounts retained as required by section 12-1114, made to a trust account by a pre-need seller less all withdrawals occasioned by delivery or cancellation; and

(24) Vault shall mean an item of burial or funeral merchandise or services which is an inground burial receptacle installed individually, as opposed to lawn crypts, which is constructed of concrete, steel, or any other material, and which acts as an outer container for the interment of human remains.

Sec. 20. Section 12-1107, Revised Statutes Supplement, 2002, is amended to read:

12-1107. (1) Banks which do not have a separate trust department and building and loan associations, ~~industrial loan and investment companies~~, and credit unions acting as trustees under the Burial Pre-Need Sale Act shall accept trust funds only to the extent that the full amount of all of such funds is insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

(2) Banks with a separate trust department and trust companies acting as trustees under the Burial Pre-Need Sale Act when investing or reinvesting trust funds shall have the power to deal with such funds as a prudent trustee would deal with the funds and shall have all of the powers granted to a trustee by the Nebraska Trustees' Powers Act, but the Uniform Principal and Income Act shall not be applicable and all income, whether from interest, dividends, capital gains, or any other source, shall be considered as income.

Sec. 21. Section 18-2707, Reissue Revised Statutes of Nebraska, is amended to read:

18-2707. Financial institution shall mean a state or federally chartered bank, a capital stock state building and loan association, a capital stock federal savings and loan association, a capital stock federal savings bank, a ~~federally insured capital stock industrial loan and investment company~~, and a capital stock state savings bank.

Sec. 22. Section 21-20,138, Reissue Revised Statutes of Nebraska, is amended to read:

21-20,138. (1) A shareholder shall be entitled to dissent from, and

obtain payment of the fair value of his or her shares in the event of, any of the following corporate actions:

(a) Consummation of a plan of merger to which the corporation is a party:

(i) If shareholder approval is required for the merger by section 21-20,130 or the articles of incorporation and the shareholder is entitled to vote on the merger; or

(ii) If the corporation is a subsidiary that is merged with its parent under section 21-20,131;

(b) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;

(c) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;

(d) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it:

(i) Alters or abolishes a preferential right of the shares;

(ii) Creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase of the shares;

(iii) Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

(iv) Excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or

(v) Reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under section 21-2038; or

(e) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, the bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(2) A shareholder entitled to dissent and obtain payment for his or her shares under sections 21-20,137 to 21-20,150 may not challenge the corporate action creating his or her entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

(3) The right to dissent and obtain payment under sections 21-20,137 to 21-20,150 shall not apply to the shareholders of a bank, trust company, stock-owned savings and loan association, ~~industrial loan and investment company,~~ or the holding company of any such bank, trust company, or stock-owned savings and loan association. ~~or industrial loan and investment company.~~

Sec. 23. Section 21-20,162, Revised Statutes Supplement, 2002, is amended to read:

21-20,162. Except as provided in subdivision (2)(b) of this section, the court may dissolve a corporation:

(1) In a proceeding by the Attorney General if it is established that:

(a) The corporation obtained its articles of incorporation through fraud; or

(b) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2)(a) In a proceeding by a shareholder if it is established that:

(i) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock;

(ii) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(iii) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(iv) The corporate assets are being misapplied or wasted.

(b) The right to bring a proceeding under this subdivision does not apply to shareholders of a bank, trust company, or stock-owned savings and



loan association; ~~or industrial loan and investment company;~~

(3) In a proceeding by a creditor if it is established that:

(a) The creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied, and the corporation is insolvent; or

(b) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

Sec. 24. Section 28-612, Revised Statutes Supplement, 2002, is amended to read:

28-612. (1) A person commits a Class IV felony if he or she:

(a) Willfully and knowingly subscribes to, makes, or causes to be made any false statement or entry in the books of an organization; or

(b) Knowingly subscribes to or exhibits false papers with the intent to deceive any person or persons authorized to examine into the affairs of any such organization; or

(c) Makes, states, or publishes any false statement of the amount of the assets or liabilities of any such organization; or

(d) Fails to make true and correct entry in the books and records of such organization of its business and transactions in the manner and form prescribed by the Department of Banking and Finance; or

(e) Mutilates, alters, destroys, secretes, or removes any of the books or records of such organization, without the consent of the Director of Banking and Finance.

(2) As used in this section, organization means:

(a) Any trust company transacting a business under the Nebraska Trust Company Act;

(b) Any association organized for the purpose set forth in section 8-302;

(c) Any bank as defined in section 8-101; or

(d) ~~Any industrial loan and investment company as defined in section 8-401, or~~

~~(e) Any credit union transacting business in this state under the Credit Union Act.~~

Sec. 25. Section 45-101.04, Revised Statutes Supplement, 2002, is amended to read:

45-101.04. The limitation on the rate of interest provided in section 45-101.03 shall not apply to:

(1) Other rates of interest authorized for loans made by any licensee or permittee operating under a license or permit duly issued by the Department of Banking and Finance pursuant to the Credit Union Act, the Nebraska Installment Loan Act, subsection (4) of section 8-319, or sections ~~8-401 to 8-417 or~~ 8-815 to 8-829;

(2) Loans made to any corporation, partnership, limited liability company, or trust;

(3) The guarantor or surety of any loan to a corporation, partnership, limited liability company, or trust;

(4) Loans made when the aggregate principal amount of the indebtedness is twenty-five thousand dollars or more of the borrower to any one financial institution, licensee, or permittee;

(5) Loans insured, guaranteed, sponsored, or participated in, either in whole or part, by any agency, department, or program of the United States or state government;

(6) Loans or advances of money, repayable on demand, which are made solely upon securities, as defined in subdivision (15) of section 8-1101, pledged as collateral for such repayment and in which such loans or advances are used by the borrower only for the purchase of securities as so defined. It shall be lawful to contract for and receive any rate of interest on such transaction as the parties thereto may expressly agree;

(7) Interest charges made on open credit accounts by a person who sells goods or services on credit when the interest charges do not exceed one and one-third percent per month for any charges which remain unpaid for more than thirty days following rendition of the statement of account;

(8) A minimum charge of ten dollars per loan which may be charged by the lender in lieu of all interest charges;

(9) Loans described in subsection (4) of section 8-319 made by a state or federal savings and loan association at a rate not to exceed nineteen percent per annum;

(10) Loans made primarily for business or agricultural purposes or secured by real estate when such loans are made (a) by a licensee, registrant, or permittee operating under a license, registration, or permit duly issued by

the Department of Banking and Finance except for licensees operating under the Nebraska Installment Loan Act, (b) by any financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, or (c) by any insurance company organized under the laws of this state and subject to regulation by the Department of Insurance;

(11) Loans secured solely by real estate when such loans are (a) made by licensees operating under the Nebraska Installment Loan Act and (b) made to finance or refinance the purchase of the property or construction on or improvements to the property, if the Department of Banking and Finance has the authority to examine such loans for compliance with sections 45-101.02 and 45-101.03. A licensee making a loan pursuant to this subdivision may obtain an interest in any fixtures attached to such real estate and any insurance proceeds payable in connection with such real estate or the loan;

(12) Loans secured by a reverse mortgage pursuant to section 45-1068;

(13) Interest charges made on any goods or services sold under an installment contract pursuant to the Nebraska Installment Sales Act. Subject to section 45-338, it shall be lawful to contract for and receive any rate of interest on such contract as the parties may expressly agree to in writing; or

(14) Fees which may be charged by a licensee for services pursuant to the Delayed Deposit Services Licensing Act.

Sec. 26. Section 45-190, Revised Statutes Supplement, 2002, is amended to read:

45-190. For purposes of sections 45-189 to 45-191.11, unless the context otherwise requires:

(1) Advance fee means any fee, deposit, or consideration which is assessed or collected, prior to the closing of a loan, by a loan broker and includes, but is not limited to, any money assessed or collected for processing, appraisals, credit checks, consultations, or expenses;

(2) Borrower means a person obtaining or desiring to obtain a loan of money;

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

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

(5) Loan broker means any person, except any bank, trust company, savings and loan association or subsidiary of a savings and loan association, building and loan association, credit union, ~~industrial loan company~~, licensed or registered mortgage banker, Federal Housing Administration or United States Department of Veterans Affairs approved lender as long as the loan of money made by the Federal Housing Administration or the United States Department of Veterans Affairs approved lender is secured or covered by guarantees or commitments or agreements to purchase or take over the same by the Federal Housing Administration or the United States Department of Veterans Affairs, credit card company, installment loan licensee, or insurance company which is subject to regulation or supervision under the laws of the United States or this state, who:

(a) For or in expectation of consideration, procures, attempts to procure, arranges, or attempts to arrange a loan of money for a borrower;

(b) For or in expectation of consideration, assists a borrower in making an application to obtain a loan of money;

(c) Is employed as an agent for the purpose of soliciting borrowers as clients of the employer; or

(d) Holds himself or herself out, through advertising, signs, or other means, as a loan broker;

(6) Loan brokerage agreement means any agreement for services between a loan broker and a borrower; and

(7) Person means natural persons, corporations, trusts, unincorporated associations, joint ventures, partnerships, and limited liability companies.

Sec. 27. Section 45-1,112, Reissue Revised Statutes of Nebraska, is amended to read:

45-1,112. For purposes of sections 45-1,112 to 45-1,115:

(1) (a) Credit agreement ~~shall mean~~ means:

(i) A contract, promise, undertaking, offer, or commitment to loan money or to grant or extend credit; or

(ii) A contract, promise, undertaking, or offer to forebear repayment of money or to make any other financial accommodation in connection with a loan of money or grant or extension of credit, or any amendment of, cancellation of, waiver of, or substitution for any or all of the terms or provisions of any instrument or document executed in connection with a loan of money or grant or extension of credit, except for loans of money or grants or extensions of credit which are:

(A) Not in excess of twenty-five thousand dollars and used primarily

for personal, family, or household purposes of the debtor or debtors; or

(B) Used for the purchase of and secured solely by the principal residence of the debtor or debtors.

(b) Credit agreement ~~shall~~ does not include (i) letters of credit or (ii) promissory notes, real estate mortgages, trust deeds, security agreements, financing statements, guarantee agreements, pledge agreements, or other similar documents or instruments evidencing an obligation to repay indebtedness or securing the repayment of indebtedness;

(2) Creditor ~~shall mean~~ means any financial institution which makes a credit agreement with a debtor;

(3) Debtor ~~shall mean~~ means a person or entity which obtains credit from a creditor, seeks a credit agreement with a creditor, or owes money to a creditor; and

(4) Financial institution ~~shall mean~~ means a state-chartered or federally chartered bank, savings bank, building and loan association, credit union, ~~industrial loan and investment company~~, or savings and loan association or a holding company or affiliate or subsidiary of such an institution.

Sec. 28. Section 45-345, Reissue Revised Statutes of Nebraska, is amended to read:

45-345. No person shall engage in the business of a sales finance company in this state without obtaining a license therefor from the Department of Banking and Finance as provided in the Nebraska Installment Sales Act whether or not such person maintains an office, place of doing business, or agent in this state, unless such person meets the requirements of section 45-340. No bank, trust company, ~~industrial loan and investment company~~, building and loan association, or installment loan licensee authorized to do business in this state shall be required to obtain a license under the act but shall comply with all of the other provisions of the act.

Sec. 29. Section 45-702, Revised Statutes Supplement, 2002, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(11) Registered bank holding company means any bank holding company registered with the department pursuant to the Nebraska Bank Holding Company

Act of 1995;

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

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

Sec. 30. Section 45-1002, Revised Statutes Supplement, 2002, is amended to read:

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

(a) Applicant means a person applying for a license under the act;

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

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

(d) Licensee means any person who obtains a license under the act;

and

(e) Person means individual, partnership, limited liability company, association, bank, trust company, savings bank, building and loan association, credit union, ~~industrial loan and investment company~~, trust, corporation, and any other legal entity.

(2) Except as provided in subsection (3) of section 45-1017, no revenue arising under the act shall inure to any school fund of the State of Nebraska or any of its governmental subdivisions.

(3) Loan, when used in the Nebraska Installment Loan Act, does 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.

(4) Nothing in the Nebraska Installment Loan Act applies 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. 31. Section 45-1003, Revised Statutes Supplement, 2002, is amended to read:

45-1003. No bank, trust company, or credit union, ~~or industrial loan and investment company~~ is eligible for a license or to make loans under the Nebraska Installment Loan Act.

Sec. 32. Section 62-301, Revised Statutes Supplement, 2002, is amended to read:

62-301. (1) For the purposes of the Uniform Commercial Code and section 62-301.01, the following days shall be holidays: New Year's Day, January 1; Birthday of Martin Luther King, Jr., the third Monday in January; President's Day, the third Monday in February; Arbor Day, the last Friday in April; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Columbus Day, the second Monday in October; Veterans Day, November 11, and the federally recognized holiday therefor, or either of them; Thanksgiving Day, the fourth Thursday in November; the day after Thanksgiving; and Christmas Day, December 25. If any such holiday falls on Sunday, the following Monday shall be a holiday. If the date designated by the state for observance of any legal holiday enumerated in this section, except Veterans Day, is different from the date of observance of such holiday pursuant to a federal holiday schedule, the federal holiday schedule shall be observed.

(2) Any bank doing business in this state may, by a brief written notice at, on, or near its front door, fully dispense with or restrict, to such extent as it may determine, the hours within which it will be open for business.

(3) Any bank may close on Saturday if it states such fact by a brief written notice at, on, or near its front door. When such bank will, in observance of such a notice, not be open for general business, such day shall, with respect to the particular bank, be the equivalent of a holiday as fully as if such day were listed in subsection (1) of this section, and any act authorized, required, or permitted to be performed at, by, or with respect to such bank which will, in observance of such notice, not be open for general business, acting in its own behalf or in any capacity whatever, may be performed on the next succeeding business day and no liability or loss of rights on the part of any person shall result from such delay.

(4) Any bank which, by the notice provided for by subsection (3) of this section, has created the holiday for such bank may, without destroying the legal effect of the holiday for it and solely for the convenience of its customers, remain open all or part of such day in a limited fashion by treating every transaction with its customers on such day as though the transaction had taken place immediately upon the opening of such bank on the first following business day.

(5) Whenever the word bank is used in this section it ~~includes shall include industrial loan and investment company~~, building and loan association, savings and loan association, credit union, savings bank, trust company, investment company, and any other type of financial institution.

Sec. 33. Section 64-215, Reissue Revised Statutes of Nebraska, is amended to read:

64-215. It ~~shall be~~ is lawful for any shareholder, director, employee, agent, or any elected or appointed officer of a savings and loan association, ~~or industrial loan and investment company,~~ who is a notary public, (1) to take the acknowledgment of any person to any written instrument given to or by the savings and loan association ~~or industrial loan and investment company~~ and (2) to administer an oath to any other shareholder, director, officer, employee, or agent of the savings and loan association. ~~or industrial loan and investment company.~~ Acknowledgments heretofore taken of any person to any written instrument given to or by a savings and loan association, ~~or industrial loan and investment company,~~ or any oath administered to any shareholder, director, employee, agent, or elected or appointed officer of a savings and loan association ~~or industrial loan and investment company~~ by any notary public who was a shareholder, director, employee, agent, or any elected or appointed officer of the savings and loan association, ~~or industrial loan and investment company,~~ shall be deemed to be lawful, valid, and binding.

Sec. 34. Section 69-1301, Reissue Revised Statutes of Nebraska, is amended to read:

69-1301. As used in the Uniform Disposition of Unclaimed Property Act unless the context otherwise requires:

(a) Banking organization means any bank, trust company, savings bank, ~~or industrial bank, land bank, or safe deposit company.~~ ~~or a private banker engaged in business in this state.~~

(b) Business association means any corporation (other than a public corporation), joint-stock company, business trust, partnership, limited liability company, or association for business purposes of two or more individuals.

(c) Financial organization means any savings and loan association, building and loan association, ~~industrial loan and investment company,~~ credit union, ~~or cooperative bank,~~ ~~or investment company,~~ engaged in business in this state.

(d) Holder means any person in possession of property subject to the act belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to the act.

(e) Life insurance corporation means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

(f) Owner means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to the act, or his or her legal representative.

(g) Person means any individual, business association, governmental or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(h) Utility means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

Sec. 35. Section 76-2221, Revised Statutes Supplement, 2002, is amended to read:

76-2221. The Real Estate Appraiser Act shall not apply to:

(1) Any real estate appraiser who is a salaried employee of (a) the federal government, (b) any agency of the state government or a political subdivision which appraises real estate, (c) any insurance company authorized to do business in this state, or (d) any bank, savings bank, savings and loan association, building and loan association, credit union, ~~industrial loan and investment company,~~ or small loan company licensed by the state or supervised or regulated by or through federal enactments covering financial institutions, except that any employee of the entities listed in subdivisions (a) through (d) of this subdivision who also practices as an independent real estate appraiser for others shall be subject to the act and shall be credentialed prior to engaging in such other appraising;

(2) A person licensed under the Nebraska Real Estate License Act who, in the ordinary course of his or her business, gives a broker's price opinion or comparative market analysis, except that such opinion or analysis shall not be referred to as an appraisal. No compensation, fee, or other consideration shall be charged for such opinion or analysis other than a real estate commission or brokerage fee charged or paid for brokerage services

rendered in connection with the sale of the real estate involved unless the opinion or analysis is in writing and carries the following disclosure in bold fourteen-point type: This opinion or analysis is not an appraisal. It is intended only for the benefit of the addressee for the purpose of assisting buyers or sellers or prospective buyers or sellers in deciding the listing, offering, or sale price of the real property and not for any other purpose, including, but not limited to, lending purposes. This opinion or analysis is not governed by the Real Estate Appraiser Act, but is subject to enforcement through the Nebraska Real Estate License Act;

(3) Any person who provides assistance (a) in obtaining the data upon which an appraisal is based, (b) in the physical preparation of an appraisal report, such as taking photographs, preparing charts, maps, or graphs, or typing or printing the report, or (c) that does not directly involve the exercise of judgment in arriving at the analyses, opinions, or conclusions concerning real estate or real property set forth in the appraisal report;

(4) An appraiser trainee;

(5) Any owner of real estate, employee of the owner, or attorney licensed to practice law in the State of Nebraska representing the owner who renders an estimate or opinion of value of the real estate or any interest in the real estate when such estimate or opinion is for the purpose of real estate taxation, or any other person who renders such an estimate or opinion of value when that estimate or opinion requires a specialized knowledge that a real estate appraiser would not have, except that a real estate appraiser or a person licensed under the Nebraska Real Estate License Act is not exempt under this subdivision;

(6) Any owner of real estate, employee of the owner, or attorney licensed to practice law in the State of Nebraska representing the owner who renders an estimate or opinion of value of real estate or any interest in real estate or damages thereto when such estimate or opinion is offered as testimony in any condemnation proceeding, or any other person who renders such an estimate or opinion when that estimate or opinion requires a specialized knowledge that a real estate appraiser would not have, except that a real estate appraiser or a person licensed under the Nebraska Real Estate License Act is not exempt under this subdivision; or

(7) Any owner of real estate, employee of the owner, or attorney licensed to practice law in the State of Nebraska representing the owner who renders an estimate or opinion of value of the real estate or any interest in the real estate when such estimate or opinion is offered in connection with a legal matter involving real property.

Sec. 36. Section 77-2366, Reissue Revised Statutes of Nebraska, is amended to read:

77-2366. (1) Notwithstanding any other provision of law, any local ordinance or regulation, or any rule or regulation to the contrary, the funds of this state or any political subdivision of the state may be deposited, by the appropriate custodians of such funds, with capital stock financial institutions to the same extent and subject to the same terms, conditions, and limitations, including collateralization required, if any, as may be otherwise provided for the deposit of such funds in banks. Capital stock financial institutions shall include state and national banks, capital stock state building and loan associations, capital stock federal savings and loan associations, capital stock federal savings banks, ~~capital stock industrial loan and investment companies,~~ and capital stock state savings banks. To the extent any deposit in any bank is:

(a) Required to be subject to check or draft, then such deposit may be subject to order; and

(b) Required to be made, maintained, or otherwise dealt with by reference to the capital of any bank, then it may be so made, maintained, or dealt with by reference to the capital or net worth of such financial institution, and if by reference to the undivided profits, capital notes, debentures, or other capital items of any bank, then to any unimpaired reserves, capital notes, and debentures or comparable capital items of such other financial institution.

(2) To the extent the state or any political subdivision is or may ever be required by any law to deposit funds in any bank, the state or any such political subdivision shall, to the same extent and subject to the same terms, conditions, and limitations, including collateralization required, be required to make deposits in any capital stock financial institution on the same basis.

(3) This section shall be applied in a manner consistent with the intention of the Legislature which is to provide for the deposit of funds of the state and any political subdivision in capital stock financial

institutions.

Sec. 37. Section 77-2387, Revised Statutes Supplement, 2002, is amended to read:

77-2387. For purposes of the Public Funds Deposit Security Act, unless the context otherwise requires:

(1) Affiliate means any entity that controls, is controlled by, or is under common control with another entity;

(2) Bank means any state-chartered or federally chartered bank which has a main chartered office or branch in this state;

(3) Capital stock financial institution means a capital stock state building and loan association, a capital stock federal savings and loan association, a capital stock federal savings bank, a ~~capital stock industrial loan and investment company~~, and a capital stock state savings bank which has a main chartered office in this state;

(4) Control means to own directly or indirectly or to control in any manner twenty-five percent of the voting shares of any bank, capital stock financial institution, or holding company or to control in any manner the election of the majority of directors of any bank, capital stock financial institution, or holding company;

(5) Custodial official means an officer or an employee of the State of Nebraska or any political subdivision who, by law, is made custodian of or has control over public money or public funds subject to the act or the security for the deposit of public money or public funds subject to the act;

(6) Deposit guaranty bond means a bond underwritten by an insurance company authorized to do business in this state which provides coverage for deposits of a governing authority which are in excess of the amounts insured by the Federal Deposit Insurance Corporation;

(7) Event of default means the issuance of an order by a supervisory authority or a receiver which restrains a bank, capital stock financial institution, or qualifying mutual financial institution from paying its deposit liabilities;

(8) Governing authority means the official, or the governing board, council, or other body or group of officials, authorized to designate a bank, capital stock financial institution, or qualifying mutual financial institution as a depository of public money or public funds subject to the act;

(9) Governmental unit means the State of Nebraska or any political subdivision thereof;

(10) Qualifying mutual financial institution shall have the same meaning as in section 77-2365.01;

(11) Repurchase agreement means an agreement to purchase securities by the governing authority by which the counterparty bank, capital stock financial institution, or qualifying mutual financial institution will repurchase the securities on or before a specified date and for a specified amount and the counterparty bank, capital stock financial institution, or qualifying mutual financial institution will deliver the underlying securities to the governing authority by book entry, physical delivery, or third-party custodial agreement. The transfer of underlying securities to the counterparty bank's, capital stock financial institution's, or qualifying mutual financial institution's customer book entry account may be used for book entry delivery if the governing authority so chooses; and

(12) Securities means:

(a) Bonds or obligations fully and unconditionally guaranteed both as to principal and interest by the United States Government;

(b) United States Government notes, certificates of indebtedness, or treasury bills of any issue;

(c) United States Government bonds;

(d) United States Government guaranteed bonds or notes;

(e) Bonds or notes of United States Government agencies;

(f) Bonds of any state or political subdivision which are fully defeased as to principal and interest by any combination of bonds or notes authorized in subdivision (c), (d), or (e) of this subdivision;

(g) Bonds or obligations, including mortgage-backed obligations, issued by the Federal Home Loan Mortgage Corporation, the federal farm credit system, a Federal Home Loan Bank, or the Federal National Mortgage Association;

(h) Repurchase agreements the subject securities of which are any of the securities described in subdivisions (a) through (g) of this subdivision;

(i) Securities issued under the authority of the Federal Farm Loan Act;

(j) Loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of

## Agriculture;

(k) Guaranty agreements of the Small Business Administration of the United States Government;

(l) Bonds or obligations of any county, city, village, metropolitan utilities district, public power and irrigation district, sewer district, fire protection district, rural water district, or school district in this state which have been issued as required by law;

(m) Bonds of the State of Nebraska or of any other state which are purchased by the Board of Educational Lands and Funds of this state for investment in the permanent school fund or which are purchased by the state investment officer of this state for investment in the permanent school fund;

(n) Bonds or obligations of another state, or a political subdivision of another state, which are rated within the two highest classifications of prime by at least one of the standard rating services;

(o) Warrants of the State of Nebraska;

(p) Warrants of any county, city, village, local hospital district, or school district in this state; and

(q) Irrevocable, nontransferable, unconditional standby letters of credit issued by the Federal Home Loan Bank of Topeka.

Sec. 38. Section 77-3801, Revised Statutes Supplement, 2002, is amended to read:

77-3801. For purposes of sections 77-3801 to 77-3807, unless the context otherwise requires:

(1) All terms shall have the same meaning as provided in the Nebraska Revenue Act of 1967;

(2) Average deposits shall mean (a) for a financial institution on a calendar year, the total of the deposits held on the last day of the preceding year and the last day of each calendar quarter, divided by five or (b) for a financial institution on a fiscal year other than a calendar year, the total of the deposits held on the last day of the preceding fiscal year, the last day of each calendar quarter within the fiscal year, and the last day of the fiscal year, divided by the number of amounts added together;

(3) Deposits shall mean the amount of money placed in the custody of a financial institution for safety or convenience that may be withdrawn at the will of the depositor or under the rules or regulations agreed upon by the financial institution and the depositor. Deposits shall also include amounts for which a certificate may be issued and which are payable on demand, on certain notice, or at a fixed future date or time. Deposits shall not include any money placed in a fiduciary capacity in the custody of a trust department of any financial institution having trust powers granted by appropriate regulatory authority which is not placed by the trust department as a deposit in such financial institution;

(4) Financial institution shall mean:

(a) Any bank, building and loan association, credit union, ~~industrial loan and investment company~~, savings and loan association, or savings bank chartered or qualified to do business in this state, or any subsidiary of such financial institution; or

(b) Any bank, bank holding company or subsidiary of a bank holding company as defined in 12 U.S.C. 1841, as such section existed on July 20, 2002, affiliate of a bank holding company as defined in 12 U.S.C. 221a, as such section existed on July 20, 2002, building and loan association, credit union, industrial loan and investment company, savings and loan association, or savings bank which is not chartered to do business in this state but maintains a permanent place of business in this state and actively solicits deposits from residents of this state for an affiliate, regardless of whether the affiliate maintains an office in this state, in which event the deposits of the affiliate shall be deemed deposits of such institution;

(5) Net financial income shall mean the income of the financial institution, including its subsidiaries, after ordinary and necessary expenses but before income taxes and extraordinary gains or losses. Net financial income shall include, but not be limited to, income from fiduciary activities, interest, rent, or service charges. Ordinary and necessary expenses shall include, but not be limited to, fees, depreciation on furniture and equipment, interest, salaries and benefits, and supplies. Income and expenses shall be computed according to the regular books and records of the institution; and

(6) Subsidiary shall not include any bank, bank holding company, or savings and loan association which is owned fifty percent or more by a mutual savings and loan association and which does not actively solicit deposits from residents of this state.

Sec. 39. Original sections 8-1,139, 8-1501, 8-1505, 8-1506.01, 8-1901, 18-2707, 21-20,138, 45-1,112, 45-345, 64-215, 69-1301, and 77-2366, Reissue Revised Statutes of Nebraska, and sections 8-101, 8-102, 8-103,



8-157.01, 8-345.01, 8-601, 8-602, 8-1110, 8-1401, 8-1502, 8-1504, 8-1516, 9-1,104, 12-1102, 12-1107, 21-20,162, 28-612, 45-101.04, 45-190, 45-702, 45-1002, 45-1003, 62-301, 76-2221, 77-2387, and 77-3801, Revised Statutes Supplement, 2002.

Sec. 40. The following sections are outright repealed: Sections 8-401 to 8-404.02, 8-406 to 8-410, 8-410.02 to 8-417.01, 8-435 to 8-450, 21-17,127 to 21-17,130, and 21-17,132 to 21-17,145, Reissue Revised Statutes of Nebraska, and section 21-17,131, Revised Statutes Supplement, 2002.