

LEGISLATIVE BILL 999

Approved by the Governor April 15, 2004

Introduced by Banking, Commerce and Insurance Committee:

Quandahl, 31, Chairperson; Foley, 29; Jensen, 20; Johnson, 37;
Louden, 49; Mines, 18; Redfield, 12; Tyson, 19

AN ACT relating to banking and finance; to amend sections 8-1009, 8-1512, 8-1513, 9-701, 25-1530, 30-2734, 43-3334, 45-206, 45-342, 45-346, 45-921, 72-1262, 76-1006, 76-1009, 76-1010, 76-1012, 77-2365.01, 77-2366, and 77-2387, Reissue Revised Statutes of Nebraska, sections 8-113, 8-910, 8-1006, 8-1008, 8-1010, 8-1511, 45-205, 45-351, 45-1017, and 45-1065, Revised Statutes Supplement, 2002, and sections 8-157.01, 8-1,140, 8-355, 8-602, 8-1001, 8-1003, 8-1012.01, 21-17,115, 30-3811, 30-3837, 30-3854, 30-3855, 30-3867, 30-38,110, 45-101.04, 45-1018, 45-1024, and 45-1025, Revised Statutes Supplement, 2003; to change provisions relating to bank names, electronic terminals, fees, the Nebraska Sale of Checks and Funds Transmission Act, acquisition of credit card banks, gift enterprises, foreclosure of mortgages, uniform transfer on death security registration, the Nebraska Uniform Trust Code, the bank match system used for support orders, interest and loans, revolving charge agreements, the Nebraska Installment Sales Act, the Delayed Deposit Services Licensing Act, the Nebraska Installment Loan Act, deposit and investment of public funds, and the Nebraska Trust Deeds Act; to revise powers of state-chartered banks, savings and loan associations, and credit unions; to provide for credit card banks; to define and redefine terms; to eliminate obsolete language; to eliminate currency transaction reporting provisions; to harmonize provisions; to provide operative dates; to repeal the original sections; to outright repeal sections 8-1801 to 8-1807, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. Section 8-113, Revised Statutes Supplement, 2002, is amended to read:

8-113. No individual, firm, company, corporation, or association doing business in the State of Nebraska, unless organized as a bank under the Nebraska Banking Act or the authority of the federal government, or as a building and loan association, savings and loan association, or savings bank under Chapter 8, article 3, or the authority of the federal government, shall use the word bank or any derivative thereof as any part of a title or descriptive description of any business activity. This section does not apply to (1) organizations described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 and exempt from taxation under section 501(a) of the code, (2) trade associations which are exempt from taxation under section 501(c)(6) of the code which represent a segment of the banking or savings and loan industries, and any affiliate or subsidiary thereof, except corporations complying with the terms of the Nebraska Banking Act and (3) such other firms, companies, corporations, or associations as have been in existence and doing business for a period of ten years or more prior to October 19, 1963, under a name composed in part of the word bank or some derivative thereof. Any violation of this section shall be a Class V misdemeanor.

Sec. 2. Section 8-157.01, Revised Statutes Supplement, 2003, is amended to read:

8-157.01. (1) ~~Upon prior written notice to the director, any~~ 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~~ 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~~ January 1, 2004. 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 ~~§ 1,135 to § 1,138~~ 8-1,134 to 8-1,139 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, or credit union, or a subsidiary of any such entity;

(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. 3. Section 8-1,140, Revised Statutes Supplement, 2003, is amended to read:

8-1,140. Notwithstanding any of the other provisions of the Nebraska Banking Act or any other Nebraska statute, any bank incorporated under the laws of this state and organized under the provisions of the act, or under the laws of this state as they existed prior to May 9, 1933, shall directly, or indirectly through a subsidiary or subsidiaries, have all the rights, powers, privileges, benefits, and immunities which may be exercised as of ~~March 4, 2003~~ the operative date of this section, by a federally chartered bank doing business in Nebraska, including the exercise of all powers and activities that are permitted for a financial subsidiary of a federally chartered bank. Such rights, powers, privileges, benefits, and immunities shall not relieve such bank from payment of state taxes assessed under any applicable laws of this state.

Sec. 4. Section 8-355, Revised Statutes Supplement, 2003, is amended to read:

8-355. Notwithstanding any of the provisions of Chapter 8, article 3, or any other Nebraska statute, except as provided in section 8-345.02, any association incorporated under the laws of the State of Nebraska and organized under the provisions of such article shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of ~~March 4, 2003~~ the operative date of this section, by a federal savings and loan association doing business in Nebraska. Such rights, powers, privileges, benefits, and immunities shall not relieve such association from payment of state taxes assessed under any applicable laws of this state.

Sec. 5. Section 8-602, Revised Statutes Supplement, 2003, 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, articles of 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, articles of association, and bylaws, except credit unions, fifty dollars, and for credit unions, fifteen dollars;

(3) For issuing to banks, credit card banks, trust companies, and building and loan associations 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 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 and section 18 of this act of two thousand five hundred dollars, (b) section 8-331 of two thousand dollars, and (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) For the handling of pledged securities as provided in section 8-210, at the time of the initial deposit of such securities, one dollar and fifty cents for each thousand dollars of securities deposited and a like amount on or before January 15 each year thereafter. The fees shall be paid by 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 pledging the securities;

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

~~(17) (16) 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) (17) For investigating an application or a notice to establish a branch trust office, five hundred dollars;~~

~~(19) (18) For investigating an application or a notice to establish a representative trust office, five hundred dollars; and~~

~~(20) (19) For investigating an application to establish a credit union branch under section 21-1725.01, two hundred fifty dollars; and~~

(20) For investigating an applicant under section 8-1513, five thousand 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. 6. Section 8-910, Revised Statutes Supplement, 2002, is amended to read:

8-910. (1) It shall be unlawful, except as provided in this section, for:

(a) Any action to be taken that causes any company to become a bank holding company;

(b) Any action to be taken that causes a bank to become a subsidiary of a bank holding company;

(c) Any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than twenty-five percent of the voting shares of such bank;

(d) Any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank; or

(e) Any bank holding company to merge or consolidate with any other bank holding company.

(2) The prohibition set forth in subsection (1) of this section

shall not apply if:

(a) (i) The bank holding company is registered with the department as of September 29, 1995, as a bank holding company for any bank or banks; or (ii) the bank holding company registers with the department in accordance with the provisions of section 8-913 as a bank holding company;

(b) The bank holding company does not have a name deceptively similar to an existing unaffiliated bank or bank holding company located in Nebraska;

(c) Upon any action referred to in subsection (1) of this section and subject to subsection (3) of this section, the bank or banks so owned or controlled would have deposits in Nebraska in an amount no greater than twenty-two percent of the total deposits of all banks in Nebraska plus the total deposits, savings accounts, passbook accounts, and shares in savings and loan associations and building and loan associations in Nebraska as determined by the director on the basis of the most recent midyear reports, except as provided in subsections (4) and (5) of this section;

(d) The bank holding company is adequately capitalized and adequately managed;

(e) The bank holding company complies with sections 8-1501 to 8-1505 if the bank or banks to be acquired are chartered in this state under the Nebraska Banking Act; and

(f) The bank holding company, if an out-of-state bank holding company, complies with the limitations of section 8-911.

(3) If any person, association, partnership, limited liability company, or corporation owns or controls twenty-five percent or more of the voting stock of any bank holding company acquiring a bank and any such person, association, partnership, limited liability company, or corporation owns or controls twenty-five percent or more of the voting stock of any other bank or bank holding company in Nebraska, then the total deposits of such other bank or banks and of all banks in Nebraska owned or controlled by such bank holding company shall be included in the computation of the total deposits of a bank holding company acquiring a bank.

(4) A bank or bank holding company which acquires and holds all or substantially all of the voting stock of one ~~newly established credit card~~ bank under sections 8-1512 and 8-1513 shall not have such acquisition count against the limitations set forth in subdivision (2)(c) of this section.

(5) A bank holding company which acquired an institution or which formed a bank which acquired an institution under sections 8-1506 to 8-1510 or which acquired any assets and liabilities from the Resolution Trust Corporation or the Federal Deposit Insurance Corporation prior to January 1, 1994, shall not have such acquisition or formation count against the limitations set forth in subdivision (2)(c) of this section.

Sec. 7. Section 8-1001, Revised Statutes Supplement, 2003, is amended to read:

8-1001. For purposes of the Nebraska Sale of Checks and Funds Transmission Act, unless the context otherwise requires:

(1) Person means any individual, partnership, limited liability company, association, joint-stock association, trust, or corporation, but does not include the United States Government or the government of the State of Nebraska;

(2) Licensee means any person duly licensed pursuant to the act;

(3) Check means any check, draft, money order, personal money order, or other instrument, order, or instruction for the transmission or payment of money;

(4) Personal money order means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his or her agent for the receipt, transmission, or handling of money, whether such instrument is signed by the seller, by the purchaser or remitter, or by some other person;

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

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

(7) Transmission means a transfer by oral, written, or electronic means or instruction.

Sec. 8. Section 8-1003, Revised Statutes Supplement, 2003, is amended to read:

8-1003. (1) Nothing in the Nebraska Sale of Checks and Funds Transmission Act shall apply to the sale or issuance of checks or the transmission of money by:

(a) Departments or agencies of the United States or of any state or municipal government; or

(b) Financial institutions.

(2) The act shall not apply to the receipt of money by an incorporated telegraph company as described in section 86-601 at any office of such company for immediate transmission by telegraph if the business of such company is not limited solely to the transmission of money.

Sec. 9. Section 8-1006, Revised Statutes Supplement, 2002, is amended to read:

8-1006. Each application for a license shall be accompanied by:

(1) An ~~investigation~~ application fee of one ~~hundred~~ fifty one thousand dollars which shall not be subject to refund but which, if the license be granted, shall constitute the license fee for the first license year or part thereof;

(2) Financial statements, reasonably satisfactory to the director, showing that the applicant's net worth exceeds fifty thousand dollars; and

(3) A surety bond issued by a bonding company or insurance company authorized to do business in this state, in the principal sum of ~~fifty one hundred~~ fifty one thousand dollars and in an additional principal sum of five thousand dollars for each location, in excess of one, at which the applicant proposes to sell checks in this state, but in no event shall the bond be required to be in excess of ~~one two~~ one hundred fifty thousand dollars. ~~If the bond accompanying the application be in a principal sum of less than one hundred fifty thousand dollars, the application shall also be accompanied by a list of the locations, including agencies, in this state where the business is to be conducted.~~ The bond shall be in form satisfactory to the director and shall run to the state for the benefit of any claimants against the applicant or its agents to secure the faithful performance of the obligations of the applicant and its agents with respect to the receipt, handling, transmission, and payment of money in connection with the sale of checks. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. The bond shall remain in force and effect until the surety is released from liability by the director or until the bond is canceled by the surety, which cancellation may be had only upon thirty days' written notice to the director. Such cancellation shall not affect any liability incurred or accrued prior to the termination of the thirty-day period. In lieu of such corporate surety bond or bonds, or of any portion of the principal thereof as required by this subdivision, the applicant may deposit, with the director or with such state banks or trust companies or national banks in this state as such applicant may designate and the director may approve, interest-bearing stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, village, school district, or instrumentality of this state, or guaranteed by this state, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required corporate surety bond or portion thereof. The securities shall be deposited and held to secure the same obligations as would the surety bond. The depositor shall have the right, with the approval of the director, to substitute other securities for those deposited, and shall be required to do so on written order of the director made for good cause shown. So long as the licensee so depositing shall continue solvent, and is not in violation of the Nebraska Sale of Checks and Funds Transmission Act, such licensee shall be permitted to receive the interest or dividends on such deposit. The director shall provide for custody of such securities by a qualified trust company or bank located in the State of Nebraska or by any federal reserve bank. The compensation, if any, of the custodian for acting as such under the provisions of this section shall be paid by the depositing licensee. All such securities shall be subject to sale and transfer and to the disposal of the proceeds by the director only on the order of a court of competent jurisdiction.

Sec. 10. Section 8-1008, Revised Statutes Supplement, 2002, is amended to read:

8-1008. (1) After a license has been granted, the licensee shall maintain the bond or securities in the amount prescribed by section 8-1006, as follows:

~~(1)~~ (a) Each licensee who does not have on file or deposit a bond or securities in the undiminished sum of ~~one two~~ one hundred fifty thousand dollars, shall file semiannual reports with the director setting forth the locations at which the licensee sells checks in this state as of January 1 and July 1 in each year with the report for each such date being due on or before the fifteenth day thereafter. The licensee shall not be required to list on such reports those agents which are exempted by the provisions of section 8-1003. Within ten days following the filing of such reports, the principal sum of the bond or securities shall be increased to reflect any increase in the number of locations and may be decreased to reflect any decrease in the number of locations; and

~~(2)~~ (b) If the director ~~shall find~~ finds at any time that any bond

required by the Nebraska Sale of Checks and Funds Transmission Act is insecure, insufficient, or exhausted, an additional bond to be approved by the director shall be filed by the licensee within ten days after written demand therefor by the director.

(2) Until July 1, 2005, a licensee licensed prior to the operative date of this section may maintain the bond or securities amount such licensee was originally licensed under.

Sec. 11. Section 8-1009, Reissue Revised Statutes of Nebraska, is amended to read:

8-1009. Each licensee shall, annually on or before July 1 of each year, file a license renewal application and pay to the director ~~annually on or before July 1 of each year~~ a license fee of ~~one~~ two hundred fifty dollars.

Sec. 12. Section 8-1010, Revised Statutes Supplement, 2002, is amended to read:

8-1010. Each licensee may conduct business at one or more locations within this state and through or by means of such employees, agents, or representatives as the licensee may designate and appoint from time to time. In addition to any reports which may be required by subdivision (1)(a) of section 8-1008, each licensee shall notify the Department of Banking and Finance annually on or before July 1 of each year of all such locations except for agents which are exempted under section 8-1003. No license under the Nebraska Sale of Checks and Funds Transmission Act shall be required of any employee, agent, or representative who is acting for or in behalf of a licensee in the sale of checks of which the licensee is the issuer.

Sec. 13. Section 8-1012.01, Revised Statutes Supplement, 2003, is amended to read:

8-1012.01. (1) The director may examine the books, accounts, and records of each licensee.

(2) The director may contract with other state or federal regulatory agencies to conduct examinations of licensees if the licensee's principal place of business is outside of the State of Nebraska.

(3) The director may enter into cooperative, coordinating, and information-sharing agreements with any other governmental agency that has similar supervision in this or any other state.

(4) The director may enter into joint examinations or joint enforcement actions with any other governmental agency that has similar supervision in this or any other state over any licensee.

(5) The director may, at any time, take such actions independently if he or she deems such actions to be necessary or appropriate to carry out his or her responsibilities under the Nebraska Sale of Checks and Funds Transmission Act or to ensure compliance with Nebraska law.

(6) The cost of any examination conducted under this section shall be paid by the licensee.

(7) The director may request information from a licensee regarding the conduct of its business or matters incidental to the business. A licensee receiving such a request for information has twenty-one calendar days from receipt of such request in which to submit a response. The director may assess a penalty up to one thousand dollars per day for each day a licensee fails to respond.

Sec. 14. Section 8-1511, Revised Statutes Supplement, 2002, is amended to read:

8-1511. For purposes of sections 8-1511 to 8-1513, unless the context otherwise requires:

(1) Affiliated bank or thrift institution shall mean means (a) if the bank or thrift institution is a subsidiary of a state bank, national banking association, or thrift institution, the parent bank or thrift institution as the case may be and (b) if the bank or thrift institution is a subsidiary of a bank or thrift institution holding company, the principal subsidiary of the holding company which is a bank or thrift institution as the case may be;

(2) Association of banks or thrift institutions shall mean means two or more banks or thrift institutions formed for the purpose of acquiring and holding all or substantially all of the voting stock of one ~~newly established credit card bank~~ pursuant to sections 8-1512 and 8-1513;

(3) Bank or banking corporation shall mean means the principal office of (a) any national bank doing business in this state, (b) any corporation which is chartered to conduct a bank in this state as provided in the Nebraska Banking Act, (c) any association of banks, (d) a bank holding company as defined in the Nebraska Bank Holding Company Act of 1995, or (e) an out-of-state bank holding company as defined in the Nebraska Bank Holding Company Act of 1995;

(4) Qualifying association shall mean means an association,

corporation, partnership, limited liability company, or other entity which at all times maintains an office in this state at which it employs at least fifty persons in this state and which pursuant to contract or otherwise offers at least the following services to banks: (a) The distribution, as agent for a bank, of credit cards or transaction cards; (b) the preparation of periodic statements of amounts due under such account; (c) the receipt from credit card or transaction card holders of amounts paid on or with respect to such accounts; and (d) the maintenance of financial records reflecting the status of such accounts from time to time;

(5) Thrift institution ~~shall mean~~ means (a) any corporation which is chartered as a building and loan association, savings and loan association, savings bank, or credit union under the laws of the United States, any other state, or the District of Columbia and whose operations are principally conducted outside of Nebraska, (b) any holding company of a thrift institution with subsidiaries whose operations are principally conducted outside of Nebraska, or (c) any association of thrift institutions; and

(6) Transaction card ~~shall mean~~ means a device or means used to access a prearranged revolving credit plan account.

Sec. 15. Section 8-1512, Reissue Revised Statutes of Nebraska, is amended to read:

8-1512. (1) Notwithstanding any other provisions of law and subject to the provisions of this section and to the approval of the Director of Banking and Finance, any bank or thrift institution, ~~as defined in section 8-1511,~~ may acquire and hold all or substantially all of the voting stock of one newly established credit card bank located in this state when and so long as the following credit card bank meets the conditions set forth in section 17 of this act.

(2) Sections 8-1511 to 8-1513 and sections 17 to 19 of this act shall not be construed so as to limit the acquisition or ownership of a credit card bank to banks or thrift institutions. are satisfied.

(1) ~~The bank whose stock is to be acquired is a newly established bank that shall be limited to one banking office and the bank may not acquire, establish, share, or maintain any additional banking office or remote service unit in this state whether by merger, consolidation, or otherwise, and the services of the bank shall be limited to the solicitation, processing, and matters relating to the making of loans instituted by credit card or transaction card;~~

(2) ~~The bank whose stock is to be acquired is limited to accepting deposits only from affiliated banks or thrift institutions not domiciled in the State of Nebraska and has or will have on the date of commencement of banking business in this state a minimum capital stock and paid-in surplus of two million five hundred thousand dollars;~~

(3) ~~The bank whose stock is to be acquired (a) employs on the date of commencement of its banking business in this state or will employ within one year of such date not less than fifty persons in this state in its business or (b) has contracted with a qualifying association to provide for the processing of its credit card or transaction card operations; and~~

(4) ~~The bank whose stock is to be acquired is operating in a manner and at a location that is not likely to attract customers from the general public in this state to the substantial detriment of existing banking institutions located in this state, except that the bank to be acquired may be operated in a manner likely to attract and retain customers with whom such bank, the acquiring bank or thrift institution, or the subsidiary of the acquiring bank or thrift institution has or has had business relations.~~

Sec. 16. Section 8-1513, Reissue Revised Statutes of Nebraska, is amended to read:

8-1513. (1) Any bank or thrift institution, ~~as defined in section 8-1511,~~ proposing any acquisition pursuant to section 8-1512 shall file an application with the ~~Director~~ Department of Banking and Finance for approval to make the acquisition. The application shall contain such information as the ~~director~~ Director of Banking and Finance may by regulation require and shall specifically acknowledge the applicant's agreement to be bound by the conditions set forth in section ~~8-1512~~ 17 of this act. In addition, the application shall designate a resident of this state as the applicant's agent for the service of any paper, notice, or legal process upon the applicant in connection with the matters arising out of the laws of this state and shall be accompanied by a the filing fee in the amount of five thousand dollars for the use of this state provided in section 8-602.

(2) In determining whether to approve an acquisition by a bank or thrift institution, ~~as defined in section 8-1511,~~ of any voting stock of a newly established credit card bank located in this state, the director shall consider: (a) The financial and managerial resources of such bank or thrift

institution; (b) whether the acquisition may result in undue concentration of resources or substantial lessening of competition; and (c) whether the convenience and benefit to the public outweigh any adverse competitive effects.

(3) Any approval granted to a bank or thrift institution, ~~as defined in section 8-1511,~~ by the director is subject to such reasonable conditions as the director deems necessary and to the director's continuing authority to ascertain such financial institution's compliance with the provisions of the laws of this state and the conditions of approval.

(4) Whenever the director determines after notice and hearing that any bank or thrift institution, ~~as defined in section 8-1511,~~ is not in compliance with the laws of this state or the conditions of approval, the director shall order such bank or thrift institution to divest itself of all stock of the credit card bank acquired pursuant to ~~sections~~ section 8-1512 and 8-1513, and such bank or thrift institution shall be liable for a penalty of ten thousand dollars per day from the date such divestiture is ordered until it is completed.

Sec. 17. A credit card bank may be formed under the Nebraska Banking Act if all of the following conditions are met:

(1) A credit card bank shall not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties;

(2) A credit card bank may not accept any savings or time deposits of less than one hundred thousand dollars, except that savings or time deposits of any amount may be accepted from affiliated financial institutions;

(3) The services of a credit card bank shall be limited to the solicitation, processing, and making of loans instituted by credit card or transaction card and matters relating or incidental thereto;

(4) A credit card bank shall not make commercial loans;

(5) A credit card bank shall, on the date of commencement of banking business in this state, have a minimum capital stock and paid-in surplus of two million five hundred thousand dollars;

(6) A credit card bank shall (a) employ on the date of commencement of its banking business in this state or within one year after such date not less than fifty persons in this state in its business or (b) contract with a qualifying association as defined in subdivision (4) of section 8-1511 to provide for the processing of its credit card or transaction card operations;

(7) A credit card bank shall maintain only one office that accepts deposits;

(8) A credit card bank may maintain one or more processing centers in this state;

(9) A credit card bank shall operate in a manner and at a location that is not likely to attract customers from the general public in this state to the substantial detriment of existing financial institutions as defined in section 8-101 located in this state; and

(10) A credit card bank shall provide for the insurance of deposits as described in subdivision (1) (a) of section 8-702.

Sec. 18. The Department of Banking and Finance may grant a charter to transact the business of a credit card bank if the Director of Banking and Finance is satisfied that the applicant has met the conditions set forth in section 17 of this act and the Nebraska Banking Act as to the formation of a new bank.

Sec. 19. A credit card bank shall be subject to the Interstate Branching By Merger Act of 1997, the Nebraska Bank Holding Company Act of 1995, the Nebraska Banking Act, and Chapter 8, articles 5, 6, 7, 8, 13, 14, 15, 16, 19, and 20, unless otherwise limited or excluded or the context otherwise requires.

Sec. 20. Section 9-701, Reissue Revised Statutes of Nebraska, is amended to read:

9-701. (1) For purposes of this section:

(a) Gift enterprise ~~shall mean~~ means a contest, game of chance, or game promotion which is conducted within the state or throughout the state and other states in connection with the sale of consumer or trade products or services solely as business promotions and in which the elements of chance and prize are present. Gift enterprise ~~shall~~ does not include any scheme using the game of bingo or keno; any non-telecommunication-related, player-activated electronic or electromechanical facsimile of any game of chance; or any slot machine of any kind. A gift enterprise shall not utilize pickle cards as defined in section 9-315. Promotional game tickets may be utilized subject to the following:

(i) The tickets utilized shall be manufactured or imprinted with the name of the operator on each ticket;

(ii) The tickets utilized shall not be manufactured with a cost per play printed on them; and

(iii) The tickets utilized shall not be substantially similar to any type of pickle card approved by the Department of Revenue pursuant to section 9-332.01; and

(b) Operator ~~shall mean~~ means any person, firm, corporation, association, governmental entity, or agent or employee thereof who promotes, operates, or conducts a gift enterprise. Operator ~~shall~~ does not include any nonprofit organization or any agent or employee thereof, except that operator includes any credit union chartered under state or federal law or any agent or employee thereof who promotes, operates, or conducts a gift enterprise.

(2) Any operator may conduct a gift enterprise within this state in accordance with this section.

(3) An operator shall not:

(a) Design, engage in, promote, or conduct a gift enterprise in connection with the promotion or sale of consumer products or services in which the winner may be unfairly predetermined or the game may be manipulated or rigged;

(b) Arbitrarily remove, disqualify, disallow, or reject any entry;

(c) Fail to award prizes offered;

(d) Print, publish, or circulate literature or advertising material used in connection with such gift enterprise which is false, deceptive, or misleading; or

(e) Require an entry fee, a payment or promise of payment of any valuable consideration, or any other consideration as a condition of entering a gift enterprise or winning a prize from the gift enterprise, except that a contest, game of chance, or business promotion may require, as a condition of participation, evidence of the purchase of a product or service as long as the purchase price charged for such product or service is not greater than it would have been without the contest, game of chance, or business promotion. For purposes of this section, consideration shall not include (i) filling out an entry blank, (ii) entering by mail with the purchase of postage at a cost no greater than the cost of postage for a first-class letter weighing one ounce or less, or (iii) entering by a telephone call to the operator of or for the gift enterprise at a cost no greater than the cost of postage for a first-class letter weighing one ounce or less. When the only method of entry is by telephone, the cost to the entrant of the telephone call shall not exceed the cost of postage for a first-class letter weighing one ounce or less for any reason, including (A) whether any communication occurred during the call which was not related to the gift enterprise or (B) the fact that the cost of the call to the operator was greater than the cost to the entrant allowed under this section.

(4) (a) The Department of Revenue may adopt and promulgate rules and regulations necessary to carry out the operation of gift enterprises.

(b) Whenever the department has reason to believe that a gift enterprise is being operated in violation of this section or the department's rules and regulations, it may bring an action in the district court of Lancaster County in the name of and on behalf of the people of the State of Nebraska against the operator of the gift enterprise to enjoin the continued operation of such gift enterprise anywhere in the state.

(5) (a) Any person, firm, corporation, association, or agent or employee thereof who engages in any unlawful acts or practices pursuant to this section or violates any of the rules and regulations promulgated pursuant to this section shall be guilty of a Class II misdemeanor.

(b) Any person, firm, corporation, association, or agent or employee thereof who violates any provision of this section or any of the rules and regulations promulgated pursuant to this section shall be liable to pay a civil penalty of not more than one thousand dollars imposed by the district court of Lancaster County for each such violation which shall accrue to the permanent school fund. Each day of continued violation shall constitute a separate offense or violation for purposes of this section.

(6) In all proceedings initiated in any court or otherwise under this section, the Attorney General or appropriate county attorney shall prosecute and defend all such proceedings.

(7) This section shall not apply to any activity authorized and regulated under the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, or the Nebraska Small Lottery and Raffle Act.

Sec. 21. Section 21-17,115, Revised Statutes Supplement, 2003, is amended to read:

21-17,115. Notwithstanding any of the other provisions of the Credit Union Act or any other Nebraska statute, any credit union incorporated

under the laws of the State of Nebraska and organized under the provisions of the act shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of ~~March 4, 2003~~ the operative date of this section, by a federal credit union doing business in Nebraska on the condition that such rights, powers, privileges, benefits, and immunities shall not relieve such credit union from payment of state taxes assessed under any applicable laws of this state.

Sec. 22. Section 25-1530, Reissue Revised Statutes of Nebraska, is amended to read:

25-1530. (1) The owners of any real estate against which a decree of foreclosure has been rendered in any court of record, or any real estate levied upon to satisfy any judgment or decree of any kind, may redeem the same from the lien of such decree or levy at any time before the sale of the same shall be confirmed by a court of competent jurisdiction by paying into court the amount of such decree or judgment together with all interests and costs. If such ~~+~~ and in case the said real estate has been sold to any person not a party plaintiff to the suit, the person so redeeming the same shall pay to ~~said~~ such purchaser twelve percent interest on the amount of the purchase price from the date of the sale to the date of redemption, or deposit the same with the clerk of the court where the decree or judgment was rendered.

(2) Subject to the right of redemption under subsection (1) of this section and the confirmation of the sale under section 25-1531, all right, title, interest, and claim of the mortgagor and his or her successors in interest, and of all persons claiming by, through, and under the mortgagor and his or her successors in interest, in and to the property sold, including all such right, title, interest, and claim in and to such property acquired by the mortgagor or his or her successors in interest subsequent to the execution of the mortgage, shall be deemed terminated as of the time the sheriff or master commissioner accepts the highest bid at the sale.

Sec. 23. Section 30-2734, Reissue Revised Statutes of Nebraska, is amended to read:

30-2734. In sections 30-2734 to 30-2745:

(1) Beneficiary form means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) Register, including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(3) Registering entity means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(4) Security means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

(5) Security account means (i) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death, ~~or~~ (ii) an investment management or custody account with a trust company or a trust department of a bank with trust powers, including the securities in the account, a cash balance in the account, and cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death, or (iii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(6) The words transfer on death or the abbreviation TOD and the words pay on death or the abbreviation POD are used without regard for whether the subject is a money claim against an insurer, such as its own note or bond for money loaned, or is a claim to securities evidenced by conventional title documentation.

Sec. 24. Section 30-3811, Revised Statutes Supplement, 2003, is amended to read:

30-3811. (UTC 111) (a) For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

(b) Except as otherwise provided in subsection (c) of this section,

interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(c) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under the Nebraska Uniform Trust Code or other applicable law. A spendthrift provision in the terms of the trust is presumed to constitute a material purpose of the trust.

(d) Matters that may be resolved by a nonjudicial settlement agreement include:

- (1) the interpretation or construction of the terms of the trust;
- (2) the approval of a trustee's report or accounting;
- (3) direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;
- (4) the resignation or appointment of a trustee and the determination of a trustee's compensation;
- (5) transfer of a trust's principal place of administration; and
- (6) liability of a trustee for an action relating to the trust.

(e) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in sections 30-3822 to 30-3826 was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

Sec. 25. Section 30-3837, Revised Statutes Supplement, 2003, is amended to read:

30-3837. (UTC 411) (a) A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

(b) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

(c) A spendthrift provision in the terms of the trust is ~~not~~ presumed to constitute a material purpose of the trust.

(d) Upon termination of a trust under subsection (a) or (b) of this section, the trustee shall distribute the trust property as agreed by the beneficiaries.

(e) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b) of this section, the modification or termination may be approved by the court if the court is satisfied that:

- (1) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and
- (2) the interests of a beneficiary who does not consent will be adequately protected.

Sec. 26. Section 30-3854, Revised Statutes Supplement, 2003, is amended to read:

30-3854. (UTC 602) (a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before January 1, 2005.

(b) If a revocable trust is created or funded by more than one settlor:

(1) to the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses; ~~and~~

(2) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and

(3) upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

(c) The settlor may revoke or amend a written revocable trust:

(1) by substantial compliance with a method provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(B) an instrument evidencing an intent to amend or revoke the trust signed by the settlor, or in the settlor's name by some other individual in the presence of and by the direction of the settlor. The instrument must have an indication of the date of the writing or signing and, in the absence of such indication of the date, be the only such writing or contain no inconsistency with any other like writing or permit determination of such date of writing or signing from the content of such writing, from extrinsic circumstances, or from any other evidence.

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(e) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

(f) A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

(g) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken in reliance on the terms of the trust.

Sec. 27. Section 30-3855, Revised Statutes Supplement, 2003, is amended to read:

30-3855. (UTC 603) (a) While a trust is revocable and the settlor has capacity to revoke the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor. A settlor's power to revoke the trust is not terminated by the settlor's incapacity. If the power to revoke the trust may instead be exercised by an agent under a power of attorney as authorized under subsection (e) of section 30-3854 or by a conservator or guardian as authorized under subsection (f) of section 30-3854 or if such agent, conservator, or guardian holds a power of withdrawal on behalf of the settlor, then the duties of the trustee remain owed exclusively to the settlor.

~~(b) If a revocable trust has more than one settlor, the duties of the trustee are owed to all of the settlors having capacity to revoke the trust.~~

~~(c) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.~~

Sec. 28. Section 30-3867, Revised Statutes Supplement, 2003, is amended to read:

30-3867. (UTC 802) (a) A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in section 30-38,101, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(1) the transaction was authorized by the terms of the trust;

(2) the transaction was approved by the court;

(3) the beneficiary did not commence a judicial proceeding within the time allowed by section 30-3894;

(4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 30-3898; or

(5) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(c) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(1) the trustee's spouse;

(2) the trustee's descendants, siblings, parents, or their spouses;

(3) an agent or attorney of the trustee; or

(4) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(d) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(e) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule set forth in sections 30-3883 to 30-3889. The In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, if the trustee shall at least annually ~~notifies~~ notify the persons entitled under section 30-3878 to receive a copy of the trustee's annual report of the rate and method by which ~~the~~ that compensation was determined.

(f) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(g) This section does not preclude the following transactions, if fair to the beneficiaries:

(1) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(2) payment of reasonable compensation to the trustee;

(3) a transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(4) a deposit of trust money in a regulated financial-service institution operated by the trustee; or

(5) an advance by the trustee of money for the protection of the trust.

(h) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

Sec. 29. Section 30-38,110, Revised Statutes Supplement, 2003, is amended to read:

30-38,110. (UTC 1106) (a) Except as otherwise provided in the Nebraska Uniform Trust Code, on January 1, 2005:

(1) the code applies to all trusts created before, on, or after January 1, 2005;

(2) the code applies to all judicial proceedings concerning trusts commenced on or after January 1, 2005;

(3) the code applies to judicial proceedings concerning trusts commenced before January 1, 2005, unless the court finds that application of a particular provision of the code would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of the code does not apply and the superseded law applies; and

(4) ~~any rule of construction or presumption provided in the code applies to trust instruments executed before January 1, 2005, unless there is a clear indication of a contrary intent in the terms of the trust, and~~

~~(5) an act done before January 1, 2005, is not affected by the code.~~

(b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2005, that statute continues to apply to the right even if it has been repealed or superseded.

(c) Any reference to the powers authorized under the Nebraska Trustees' Powers Act as such act existed prior to January 1, 2005, is deemed to be a reference to the powers authorized under the Nebraska Uniform Trust Code.

(d) Subsection (a) of section 30-3838, section 30-3839, subsection (b) of section 30-3848, subsection (c) of section 30-3849, and subdivision (b)(1) of section 30-3879 apply only to trusts which become irrevocable on or after the operative date of this section.

Sec. 30. Section 43-3334, Reissue Revised Statutes of Nebraska, is amended to read:

43-3334. (1) The director may send a payor an order to withhold and deliver specifically identified property of any kind due, owing, or belonging to an obligor if (a) the director has reason to and does believe that there is in the possession of the payor property which is due, owing, or belonging to an obligor, (b) payment on a support order is in arrears, (c) the director sent a notice of arrearage to the obligor pursuant to section 43-3333 at least thirty days prior to sending the notice to withhold and deliver, and (d) no hearing was requested or after a hearing the department determined that an arrearage did exist or that there was no mistake of fact.

(2) The order to withhold and deliver shall state that notice has been mailed to the obligor in accordance with the requirements of subdivision (1)(c) of this section and that the obligor has not requested a hearing or, after a hearing, the department has determined that an arrearage exists or that there was no mistake of fact, the amount in arrears, the social security number of the obligor, the court or agency to which the property is to be delivered, instructions for transmitting the property, and information regarding the requirements found in subsection (3) of this section. The order shall include written questions regarding the property of every description, including whether or not any other person has an ownership interest in the property, and the credits of the obligor which are in the possession or under the control of the payor at the time the order is received.

(3) Upon receipt of an order to withhold and deliver, a payor shall:

(a) Hold property that is subject to the order and that is in the possession or under the control of the payor at the time the order to withhold and deliver was received, to the extent of the amount of the arrearage stated in the order until the payor receives further notice from the director;

(b) Answer all of the questions asked of the payor in the order, supply the name and address of any person that has an ownership interest in the property sought to be reached, and return such information to the director within five business days after receiving the order; and

(c) Upon further notice from the director, deliver any property which may be subject to the order to the court or agency designated in the order or release such property or portion thereof.

(4) An order to withhold and deliver shall have the same priority as a garnishment for the support of a person pursuant to subsection (4) of section 25-1056.

(5) If the payor is a financial institution, such financial institution may deduct and retain a processing fee from any amounts turned over to the department under this section. The processing fee shall not exceed ten dollars for each account turned over to the department.

Sec. 31. Section 45-101.04, Revised Statutes Supplement, 2003, 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 8-815 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~~ property 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~~ property 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~~ property and any insurance proceeds payable in connection with such real ~~estate~~ property 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. 32. Section 45-205, Revised Statutes Supplement, 2002, is amended to read:

45-205. Every revolving charge agreement shall be in writing and shall be signed by the buyer. Such requirements may be met when disclosure of the revolving charge credit terms has been made to the buyer in conformity with the requirements of the federal Consumer Credit Protection Act before the first extension of credit to the buyer under the revolving charge agreement, and the buyer has signed an application for the revolving charge credit or the buyer signs a sales slip in connection with such extension of credit if the application has been solicited by telephone with disclosure of the periodic rate of the time-price differential by the seller at the time of the telephone solicitation. A copy of any such agreement ~~executed on or after May 24, 1965,~~ shall be delivered or mailed to the buyer by the seller prior to the date on which the first payment is due thereunder. All agreements executed on or after such date shall state the amount or rate of the time-price differential to be charged and paid pursuant thereto. If a seller proffers a revolving charge agreement as part of a transaction which delays or cancels, or promises to delay or cancel, the payment of the time-price differential on the revolving charge agreement, if the buyer pays the basic time price, cash price, or cash sale price within a certain period of time, the seller shall, in clear and conspicuous writing, either within the revolving charge agreement or in a separate document or, in lieu thereof, within a statement sent by the seller to the buyer no later than thirty-five days after the buyer's purchase of goods or services, or in the case of special order goods which are not available for immediate delivery no later than thirty-five days after the buyer's receipt of goods, inform the buyer of the exact date by which the buyer must pay the basic time price, cash price, or cash sale price in order to delay or cancel the payment of the time-price differential. The seller or any subsequent purchaser of the revolving charge agreement shall not be allowed to change such date. In addition to the sale price of the goods or services and the time-price differential provided for in sections 45-204 to 45-208, no further or other amount whatsoever shall be directly or indirectly charged, contracted for, or received, except that a seller may (1) contract for and receive fees for participation in a card system which offers services other than revolving charges and (2) impose delinquency charges on each payment in default for a period of not less than ten days not to exceed five percent of the amount due or five dollars, whichever is greater. A delinquency charge under this section may be collected only once on each payment due, however long it remains in default. A delinquency charge may be collected at the time it accrues or at any time afterward.

Sec. 33. Section 45-206, Reissue Revised Statutes of Nebraska, is amended to read:

45-206. (1) The seller under a revolving charge agreement shall promptly supply the buyer under such agreement with a statement as of the end of each monthly period, which need not be a calendar month, or other regular period agreed upon by the seller and the buyer, in which there is any unpaid balance thereunder, which shall recite the following: ~~(1)~~ (a) The unpaid balance under the revolving charge agreement at the beginning and end of the period; ~~(2)~~ (b) unless otherwise furnished by the seller to the buyer by sales slip, memorandum, or otherwise, a description or identification of the goods or services purchased, the cash price, and the date of each purchase; ~~(3)~~ (c) the payments made by the buyer to the seller and any other credits to the buyer during the period; ~~(4)~~ (d) the amount of the time-price differential, if any; and ~~(5)~~ (e) a legend to the effect that the buyer may at any time pay the total balance or any portion thereof. The items need not be stated in the sequence or order set forth ~~above~~ in this subsection and additional items may be included to explain the computations made in determining the amount to be paid by the buyer. Compliance with the applicable disclosure requirements of the federal regulations which implement the federal Consumer Credit Protection Act shall be deemed compliance with this section.

(2) If the amount owed under a revolving charge agreement has been paid in full and has been inactive for at least twenty-four months, the seller shall mark the revolving charge agreement as closed or paid in full. The seller shall give written notice to the buyer of the closed or paid-in-full status of the revolving charge agreement within forty-five days after the seller has so marked the revolving charge agreement.

Sec. 34. Section 45-342, Reissue Revised Statutes of Nebraska, is amended to read:

45-342. (1) Notwithstanding the provisions of any contract to the contrary, any buyer may prepay in full at any time before maturity the obligation of any contract.

(2) ~~For any contract entered into prior to October 1, 1981, the provisions of this subsection may be used or the provisions of subsection (3) of this section may be used. If such obligation is so prepaid, any unearned charges shall be refunded. The amount of such refund shall represent at least as great a proportion of the time-price differential as the sum of the monthly time balances after the month prepayment is made bears to the sum of all the monthly time balances under the schedule of payments in the contract. When the amount of credit is less than one dollar no refund need be made.~~

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

Sec. 35. Section 45-346, Reissue Revised Statutes of Nebraska, is amended to read:

45-346. ~~Within sixty days after May 24, 1965, each~~ (1) Each place of business operating under a license under ~~sections 45-334 to 45-353~~ the Nebraska Installment Sales Act shall have and properly display therein a nontransferable and nonassignable license. The same person may obtain additional licenses upon compliance with ~~sections 45-334 to 45-353~~ the act as to each license.

(2) Application for a license shall be on a form prescribed and furnished by the director and shall include audited financial statements. If the applicant is an individual or a sole proprietorship, the application shall include the applicant's social security number.

(3) A licensee may move ~~his or her~~ the place of business from one place to another within a county without obtaining a new license if ~~he or she has given~~ the licensee gives written notice thereof to the director at least ten days prior to such ~~removal~~ move.

(4) The director shall, after an application has been filed for a license under ~~sections 45-334 to 45-353~~ the act, investigate the facts, and,

if he or she ~~shall find~~ finds that the experience, character, and general fitness of the applicant, ~~and~~ of the members thereof if the applicant ~~be~~ is a corporation or association, and of the officers and directors thereof if the applicant ~~be~~ is a corporation, are such as to warrant belief that the business will be operated honestly, fairly, and efficiently within the purpose of ~~sections 45-334 to 45-353~~ the act, the director shall issue and deliver a license to the applicant to do business as a sales finance company in accordance with the license and the ~~provisions of sections 45-334 to 45-353~~ act. The director shall have the power to reject for cause any application for a license.

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

(6) Submitted with each application shall be one hundred fifty dollars as a license fee. The license year shall begin on October 1 of each year. Each license shall remain in force until surrendered.

(7) If a change of control of a licensee is proposed, a new application for a license shall be submitted to the Department of Banking and Finance. Control in the case of a corporation means (a) direct or indirect ownership of or the right to control twenty-five percent or more of the voting shares of the corporation or (b) the ability of a person or group acting in concert to elect a majority of the directors or otherwise effect a change in policy. Control in the case of any other entity means any change in the principals of the organization, whether active or passive.

Sec. 36. Section 45-351, Revised Statutes Supplement, 2002, is amended to read:

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

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

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

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

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

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

law. Failure of the person to pay such fine and costs shall constitute a separate violation of the Nebraska Installment Sales Act.

Sec. 37. Section 45-921, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

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

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

Sec. 38. Section 45-1017, Revised Statutes Supplement, 2002, is amended to read:

45-1017. (1) The department shall inspect the business, records, and accounts of all persons that lend money subject to the Nebraska Installment Loan Act. The department may examine or investigate complaints about or reports of alleged violations by a licensee made to the department. The department may inspect and investigate the business, records, and accounts of all persons in the public business of lending money contrary to the act and who do not have a license under the act. The director may appoint examiners who shall, under his or her direction, investigate the loans and business and examine the books and records of licensees annually and more often as determined by the director. The expenses incurred by the department in examining the books and records of licensees and in administering the act during each calendar year shall be charged annually to each licensee by the department as soon as reasonably possible after the examination. Such expenses shall be charged in proportion to the number of days required to examine and supervise the books and records of the respective licensees.

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

(3) If the director finds, after notice and opportunity for hearing in accordance with the Administrative Procedure Act, that any person has willfully and intentionally violated any provision of the Nebraska Installment Loan Act, any rule or regulation adopted and promulgated under the act, or any order issued under the act, the director may order such person to pay (a) an

administrative fine of not more than one thousand dollars for each separate violation and (b) the costs of investigation. All fines collected by the department pursuant to this subsection shall be remitted to the State Treasurer for credit to the permanent school fund.

(4) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection (3) of this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs constitutes a separate violation of the act.

Sec. 39. Section 45-1018, Revised Statutes Supplement, 2003, is amended to read:

45-1018. A licensee shall on or before ~~February 15~~ March 1 of each year file with the department a report of the licensee's earnings and operations for the preceding calendar year, and its assets at the end of the year, and giving such other relevant information as the department may reasonably require. The report shall be made under oath and shall be in the form and manner prescribed by the department.

Sec. 40. Section 45-1024, Revised Statutes Supplement, 2003, is amended to read:

45-1024. (1) Except as provided in section 45-1025 and subsection (6) of this section, every licensee may make loans and may contract for and receive on such loans charges at a rate not exceeding twenty-four percent per annum on that part of the unpaid principal balance on any loan not in excess of one thousand dollars, and twenty-one percent per annum on any remainder of such unpaid principal balance. Charges on loans made under the Nebraska Installment Loan Act shall not be paid, deducted, or received in advance. The contracting for, charging of, or receiving of charges as provided for in subsection (2) of this section shall not be deemed to be the payment, deduction, or receipt of such charges in advance.

(2) When the loan contract requires repayment in substantially equal and consecutive monthly installments of principal and charges combined, the licensee may, at the time the loan is made, precompute the charges at the agreed rate on scheduled unpaid principal balances according to the terms of the contract and add such charges to the principal of the loan. Every payment may be applied to the combined total of principal and precomputed charges until the contract is fully paid. All payments made on account of any loan except for default and deferment charges shall be deemed to be applied to the unpaid installments in the order in which they are due. The portion of the precomputed charges applicable to any particular month of the contract, as originally scheduled or following a deferment, shall be that proportion of such precomputed charges, excluding any adjustment made for a first installment period of more than one month and any adjustment made for deferment, which the balance of the contract scheduled to be outstanding during such month bears to the sum of all monthly balances originally scheduled to be outstanding by the contract. This section shall not limit or restrict the manner of calculating charges, whether by way of add-on, single annual rate, or otherwise, if the rate of charges does not exceed that permitted by this section. Charges may be contracted for and earned at a single annual rate, except that the total charges from such rate shall not be greater than the total charges from the several rates otherwise applicable to the different portions of the unpaid balance according to subsection (1) of this section. All loan contracts made pursuant to this subsection are subject to the following adjustments:

(a) Notwithstanding the requirement for substantially equal and consecutive monthly installments, the first installment period may not exceed one month by ~~as much as fifteen days and the more than twenty-one days~~ and may not fall short of one month by more than eleven days. The charges for each day exceeding one month shall be one-thirtieth of the charges which would be applicable to a first installment period of one month. The charge for extra days in the first installment period may be added to the first installment and such charges for such extra days shall be excluded in computing any rebate;

(b) If prepayment in full by cash, a new loan, or otherwise occurs before the first installment due date, the charges shall be recomputed at the rate of charges contracted for in accordance with subsection (1) or (2) of this section upon the actual unpaid principal balances of the loan for the actual time outstanding by applying the payment, or payments, first to charges

at the agreed rate and the remainder to the principal. The amount of charges so computed shall be retained in lieu of all precomputed charges;

(c) If a contract is prepaid in full by cash, a new loan, or otherwise after the first installment due date, the borrower shall receive a rebate of an amount which is not less than the amount obtained by applying to the unpaid principal balances as originally scheduled or, if deferred, as deferred, for the period following prepayment, according to the actuarial method, the rate of charge contracted for in accordance with subsection (1) or (2) of this section. The licensee may round the rate of charge to the nearest one-half of one percent if such procedure is not consistently used to obtain a greater yield than would otherwise be permitted. Any default and deferment charges which are due and unpaid may be deducted from any rebate. No rebate shall be required for any partial prepayment. No rebate of less than one dollar need be made. Acceleration of the maturity of the contract shall not in itself require a rebate. If judgment is obtained before the final installment date, the contract balance shall be reduced by the rebate which would be required for prepayment in full as of the date judgment is obtained;

(d) If any installment on a precomputed or interest bearing loan is unpaid in full for ten or more consecutive days, Sundays and holidays included, after it is due, the licensee may charge and collect a default charge not exceeding an amount equal to five percent of such installment. If any installment payment is made by a check, draft, or similar signed order which is not honored because of insufficient funds, no account, or any other reason except an error of a third party to the loan contract, the licensee may charge and collect a fifteen-dollar bad check charge. Such default or bad check charges may be collected when due or at any time thereafter;

(e) If, as of an installment due date, the payment date of all wholly unpaid installments is deferred one or more full months and the maturity of the contract is extended for a corresponding period, the licensee may charge and collect a deferment charge not exceeding the charge applicable to the first of the installments deferred, multiplied by the number of months in the deferment period. The deferment period is that period during which no payment is made or required by reason of such deferment. The deferment charge may be collected at the time of deferment or at any time thereafter. The portion of the precomputed charges applicable to each deferred balance and installment period following the deferment period shall remain the same as that applicable to such balance and periods under the original loan contract. No installment on which a default charge has been collected, or on account of which any partial payment has been made, shall be deferred or included in the computation of the deferment charge unless such default charge or partial payment is refunded to the borrower or credited to the deferment charge. Any payment received at the time of deferment may be applied first to the deferment charge and the remainder, if any, applied to the unpaid balance of the contract, except that if such payment is sufficient to pay, in addition to the appropriate deferment charge, any installment which is in default and the applicable default charge, it shall be first so applied and any such installment shall not be deferred or subject to the deferment charge. If a loan is prepaid in full during the deferment period, the borrower shall receive, in addition to the required rebate, a rebate of that portion of the deferment charge applicable to any unexpired full month or months of such deferment period; and

(f) If two or more full installments are in default for one full month or more at any installment date and if the contract so provides, the licensee may reduce the contract balance by the rebate which would be required for prepayment in full as of such installment date and the amount remaining unpaid shall be deemed to be the unpaid principal balance and thereafter in lieu of charging, collecting, receiving, and applying charges as provided in this subsection, charges may be charged, collected, received, and applied at the agreed rate as otherwise provided by this section until the loan is fully paid.

(3) The charges, as referred to in subsection (1) of this section, shall not be compounded. The charging, collecting, and receiving of charges as provided in subsection (2) of this section shall not be deemed compounding. If part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under such loan contract may include any unpaid charges on the prior loan which have accrued within sixty days before the making of such loan contract and may include the balance remaining after giving the rebate required by subsection (2) of this section. Except as provided in subsection (2) of this section, charges shall (a) be computed and paid only as a percentage per month of the unpaid principal balance or portions thereof and (b) be computed on the basis of the number of days actually elapsed. For purposes of computing charges,

whether at the maximum rate or less, a month shall be that period of time from any date in a month to the corresponding date in the next month but if there is no such corresponding date then to the last day of the next month, and a day shall be considered one-thirtieth of a month when computation is made for a fraction of a month.

(4) Except as provided in subsections (5) and (6) of this section, in addition to that provided for under the Nebraska Installment Loan Act, no further or other amount whatsoever shall be directly or indirectly charged, contracted for, or received. If any amount, in excess of the charges permitted, is charged, contracted for, or received, the loan contract shall not on that account be void, but the licensee shall have no right to collect or receive any interest or other charges whatsoever. If such interest or other charges have been collected or contracted for, the licensee shall refund to the borrower all interest and other charges collected and shall not collect any interest or other charges contracted for and thereafter due on the loan involved, as liquidated damages, and the licensee or its assignee, if found liable, shall pay the costs of any action relating thereto, including reasonable attorney's fees. No licensee shall be found liable under this subsection if the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

(5) A borrower may be required to pay all reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of loans. Such expenses may include abstracting, recording, releasing, and registration fees, premiums paid for nonfiling insurance, premiums paid on insurance policies covering tangible personal property securing the loan, title examinations, credit reports, survey, and taxes or charges imposed upon or in connection with the making and recording or releasing of any mortgage. Except as provided in subsection (6) of this section, a borrower may also be required to pay a nonrefundable loan origination fee not to exceed the lesser of five hundred dollars or an amount equal to seven percent of that part of the original principal balance of any loan not in excess of two thousand dollars and five percent on that part of the original principal balance in excess of two thousand dollars. Such reasonable initial charges may be collected from the borrower or included in the principal balance of the loan at the time the loan is made and shall not be considered interest or a charge for the use of the money loaned.

(6) (a) Loans secured solely by real estate property that are not mortgage loans, as made pursuant to subdivision (11) of section 45-101.04 on real property, as that term is defined in section 45-702, shall not be subject to the limitations on the rate of interest provided in subsection (1) of this section or the limitations on the nonrefundable loan origination fee under subsection (5) of this section if (i) the principal amount of the loan is seven thousand five hundred dollars or more and (ii) the sum of the principal amount of the loan and the balances of all other liens against the property do not exceed one hundred percent of the appraised value of the property. Acceptable methods of determining appraised value shall be made by the department pursuant to rule, regulation, or order.

(b) An origination fee on such loan shall be computed only on the principal amount of the loan reduced by any portion of the principal that consists of the amount required to pay off another loan made under this subsection by the same licensee.

(c) A prepayment penalty on such loan shall be permitted only if (i) the maximum amount of the penalty to be assessed is stated in writing at the time the loan is made, (ii) the loan is prepaid in full within two years from the date of the loan, and (iii) the loan is prepaid with money other than the proceeds of another loan made by the same licensee. Such prepayment penalty shall not exceed six months interest on eighty percent of the original principal balance computed at the agreed rate of interest on the loan.

(d) A licensee making a loan pursuant to this subsection may obtain an interest in any fixtures attached to such real estate property and any insurance proceeds payable in connection with such real estate property or the loan.

(e) For purposes of this subsection, principal amount of the loan means the total sum owed by the borrower including, but not limited to, insurance premiums, loan origination fees, or any other amount that is financed, except that for purposes of subdivision (6)(b) of this section, loan origination fees shall not be included in calculating the principal amount of the loan.

Sec. 41. Section 45-1025, Revised Statutes Supplement, 2003, is amended to read:

45-1025. (1) Licensees may charge, contract for, or receive any amount or rate of interest permitted by section 45-101.03, 45-101.04, or 45-1024 upon any loan or upon any part or all of any aggregate indebtedness of the same person. Except as provided in subsection (2) of this section, the charging, contracting for, or receiving of a rate of interest permitted by section 45-101.04 does not exempt the licensee from compliance with the Nebraska Installment Loan Act.

(2)(a) Loans made by a licensee pursuant to subdivision (4) of section 45-101.04 are not subject to the Nebraska Installment Loan Act if such loans are not ~~mortgage loans~~ made on real property, as that term is defined in section 45-702.

(b) Loans made by a licensee pursuant to subdivision (11) of section 45-101.04 ~~which are mortgage loans on real property~~, as that term is defined in section 45-702, are not subject to the Nebraska Installment Loan Act. A licensee making ~~mortgage such loans on real property~~, as that term is defined in section 45-702, shall comply with and be subject to the Mortgage Bankers Registration and Licensing Act with respect to such ~~mortgage~~ loans, except that the licensee shall not be required to obtain a license under the Mortgage Bankers Registration and Licensing Act.

(3) Except as provided in subdivision (2)(a) of section 45-1024, no licensee shall enter into any loan contract under the Nebraska Installment Loan Act under which the borrower agrees to make any payment of principal more than thirty-six calendar months from the date of making such contract when the principal balance is not more than three thousand dollars. Every loan contract precomputed pursuant to subsection (2) of section 45-1024 shall provide for repayment of principal and charges in installments which shall be payable at approximately equal periodic intervals of time and so arranged that no installment is substantially greater in amount than any preceding installment. When necessary in order to facilitate payment in accordance with the borrower's principal source of income or when the loan contract is not precomputed pursuant to subsection (2) of section 45-1024, the payment schedule may reduce or omit installment payments. Any loan contract made in violation of this section, either knowingly or without the exercise of due care to prevent the violation, shall not on that account be void, but the licensee has no right to collect or receive any interest or charges on such loan. If any interest or other charges have been collected or contracted for, the licensee shall refund to the borrower all interest and other charges collected and shall not collect thereafter any interest or other charges contracted for and thereafter due on the loan involved, as liquidated damages, and the licensee or its assignee, if found liable, shall pay the costs of any action relating thereto, including reasonable attorney's fees. No licensee shall be found liable under this subsection if the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

Sec. 42. Section 45-1065, Revised Statutes Supplement, 2002, is amended to read:

45-1065. A licensee may retain any security interest, including a mortgage on real ~~estate~~ property, until the preauthorized account is terminated.

Sec. 43. Section 72-1262, Reissue Revised Statutes of Nebraska, is amended to read:

72-1262. For purposes of the Nebraska Capital Expansion Act, unless the context otherwise requires:

(1) Bank means a state-chartered or federally chartered bank which has a main chartered office ~~or branch~~ in this state, any branch thereof in this state, or any branch in this state of a state-chartered or federally chartered bank which maintained a main chartered office in this state prior to becoming a branch of such state-chartered or federally chartered bank;

(2) 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, or a capital stock state savings bank, which has a main chartered office in this state, any branch thereof in this state, or any branch in this state of a capital stock financial institution which maintained a main chartered office in this state prior to becoming a branch of such capital stock financial institution;

(3) Time deposit open account means a bank account or a deposit with a capital stock financial institution or a qualifying mutual financial institution with respect to which there is in force a written contract which provides that neither the whole nor any part of such deposit may be withdrawn, by check or otherwise, prior to the date of maturity, which date shall be not less than thirty days after the date of the deposit, or prior to the

expiration of the period of notice which shall be given by the state investment officer in writing not less than thirty days in advance of withdrawal. The time deposit open account contract shall be uniform and shall be furnished by the state investment officer to each bank, capital stock financial institution, or qualifying mutual financial institution for execution;

(4) Funds available for investment means all funds over which the state investment officer has investment jurisdiction less those funds necessary for operations and except those funds which are eligible for long-term investment; and

(5) Qualifying mutual financial institution has the same meaning as in section 77-2365.01.

Sec. 44. Section 76-1006, Reissue Revised Statutes of Nebraska, is amended to read:

76-1006. The power of sale ~~herein~~ conferred in the Nebraska Trust Deeds Act upon the trustee shall not be exercised until:

(1) The trustee shall first file for record in the office of the register of deeds of each county wherein the trust property or some part or parcel thereof is situated a notice of default identifying the trust deed by stating the name of the trustor named therein and giving the book and page or computer system reference where the same is recorded and a description of the trust property, containing a statement that a breach of an obligation for which the trust property was conveyed as security has occurred, and setting forth the nature of such breach and of his or her election to sell or cause to be sold such property to satisfy the obligation;

(2) If the trust property is used in farming operations carried on by the trustor, not in any incorporated city or village, the notice of default also sets forth:

(a) A statement that the default may be cured within two months of the filing for record of the notice of default and the obligation and trust deed may be thereby reinstated as provided in section 76-1012;

(b) A statement of the amount of the entire unpaid principal sum secured by the trust deed, the amount of interest accrued thereon to and including the date the notice of default is filed for record signed by the trustee or the trustee's attorney, and the dollar amount of the per diem interest accruing from and after such date; and

(c) A statement of the amount of the unpaid principal which would not then be due had no default occurred; and

(3) After the lapse of not less than one month, or two months if the notice of default is subject to ~~subsection~~ subdivision (2) of this section, the trustee shall give notice of sale as provided in section 76-1007.

Sec. 45. Section 76-1009, Reissue Revised Statutes of Nebraska, is amended to read:

76-1009. On the date and at the time and place designated in the notice of sale, the trustee shall sell the property at public auction to the highest bidder. The attorney for the trustee may conduct the sale. Any person, including the beneficiary, may bid at the sale. Every bid shall be deemed an irrevocable offer. If ~~and if~~ the purchaser refuses to pay the amount bid by him or her for the property struck off to him or her at the sale, the trustee may again sell the property at any time to the highest bidder, except that notice of the sale shall be given again in the same manner as the original notice of sale was required to be given. The party refusing to pay shall be liable for any loss occasioned thereby, and the trustee may also, in his or her discretion, thereafter reject any other bid of such person.

The person conducting the sale may, for any cause he or she deems expedient, postpone the sale of all or any portion of the property from time to time until it ~~shall be~~ is completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale. No other notice of the postponed sale need be given unless the sale is postponed for longer than ~~one day~~ forty-five days beyond the day designated in the notice of sale in which event notice thereof shall be given in the same manner as the original notice of sale is required to be given.

Sec. 46. Section 76-1010, Reissue Revised Statutes of Nebraska, is amended to read:

76-1010. (1) The purchaser at the sale shall forthwith pay the price bid, and upon receipt of payment, the trustee shall execute and deliver his or her deed to such purchaser. The trustee's deed may contain recitals of compliance with the requirements of ~~sections 76-1001 to 76-1010~~ the Nebraska Trust Deeds Act relating to the exercise of the power of sale and sale of the property described therein, including recitals concerning any mailing,

personal delivery, and publication of the notice of default, any mailing and the publication and posting of notice of sale, and the conduct of sale. Such ~~and such~~ recitals shall constitute prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value and without notice.

(2) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest, and claim of the trustor and his or her successors in interest and of all persons claiming by, through, or under them, in and to the property sold, including all such right, title, interest, and claim in and to such property acquired by the trustor or his or her successors in interest subsequent to the execution of the trust deed. All right, title, interest, and claim of the trustor and his or her successors in interest, and of all persons claiming by, through, or under them, in and to the property sold, including all such right, title, interest, and claim in and to such property acquired by the trustor or his or her successors in interest subsequent to the execution of the trust deed, shall be deemed to be terminated as of the time the trustee or the attorney for the trustee accepts the highest bid at the time of the sale.

Sec. 47. Section 76-1012, Reissue Revised Statutes of Nebraska, is amended to read:

76-1012. (1) Whenever all or a portion of the principal sum of any obligation secured by a trust deed has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust deed, including a default in the payment of interest or of any installment of principal, or by reason of failure of the trustor to pay, in accordance with the terms of such trust deed, taxes, assessments, premiums for insurance, or advances made by the beneficiary in accordance with terms of such obligation or of such trust deed, the trustor or his or her successor in interest in the trust property or any part thereof or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust deed, at any time within one month, or within two months if the notice of default is subject to ~~subsection~~ subdivision (2) of section 76-1006, of the filing for record of notice of default under such trust deed, if the power of sale is to be exercised, may pay to the beneficiary or his or her successor in interest the entire amount then due under the terms of such trust deed and the obligation secured thereby, including costs and expenses actually incurred in enforcing the terms of such obligation, or trust deed, and the trustee's fees actually incurred not exceeding in the aggregate fifty dollars or one-half of one percent of the entire unpaid principal sum secured, whichever is greater, other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default theretofore existing and thereupon all proceedings theretofore had or instituted shall be dismissed or discontinued, and the obligation and trust deed shall be reinstated and shall be and remain in force and effect the same as if no acceleration had occurred. If the default is cured and the trust deed reinstated in the manner ~~hereinafter~~ provided in this section, the beneficiary, or his or her assignee, shall, on demand of any person having an interest in the trust property, execute and deliver to him or her a request to the trustee that the trustee execute, acknowledge, and deliver a cancellation of the recorded notice of default under such trust deed, and any beneficiary under a trust deed, or his or her assignee, who, for a period of thirty days after such demand, refuses to request the trustee to execute and deliver such cancellation shall be liable to the person entitled to such request for all damages resulting from such refusal. A cancellation of recorded notice of default under a trust deed shall, when acknowledged, be entitled to be recorded and shall be sufficient if made and executed by the trustee in substantially the following form:

Cancellation of Notice of Default

The undersigned hereby cancels the notice of default filed for record, ~~19....~~ 20...., and recorded in book, page, (or computer system reference) Records of County, Nebraska, which notice of default refers to the trust deed executed by as trustor, in which is named as beneficiary and as trustee, and filed for record, ~~19....~~ 20...., and recorded in book, page, (or computer system reference) Records of County, Nebraska.

Signature of trustee

(2) Whenever all or a portion of the principal sum of any obligation secured by a trust deed has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust deed, including a

default in the payment of interest or of any installment of principal, or by reason of failure of the trustor to pay, in accordance with the terms of such trust deed, taxes, assessments, premiums for insurance, or advances made by the beneficiary in accordance with terms of such obligation or of such trust deed, in the event the trustor or his or her successor in interest or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust deed makes payment of the entire amount then due under the terms of such trust deed and the obligation secured thereby at any time subsequent to the breach or default and prior to the sale of the trust property under section 76-1010, the beneficiary shall be allowed to collect the costs and expenses actually incurred in enforcing the terms of such obligation, or trust deed, including the trustee's fees, costs, and expenses actually incurred, not to exceed the amount provided in the trust deed or the obligation secured thereby.

Sec. 48. Section 77-2365.01, Reissue Revised Statutes of Nebraska, is amended to read:

77-2365.01. (1) (a) Notwithstanding any other provision of law, any local ordinance, regulation, or resolution, 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 qualifying mutual 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 and capital stock financial institutions. In making such a deposit of public funds, it shall not be necessary for the state or any political subdivision to become an owner of any interest in the qualifying mutual financial institution or to acquire voting rights therein, and a qualifying mutual financial institution is authorized and empowered to receive public funds under these conditions. Qualifying mutual financial institution means a state or federal mutual building and loan association, ~~which has a main chartered office in this state,~~ a state or federal mutual savings and loan association, ~~which has a main chartered office in this state,~~ a state or federal mutual savings bank, ~~which has a main chartered office in this state,~~ or a state or federal mutual organized bank, which has a main chartered office in this state, any branch thereof in this state, or any branch in this state of a qualifying mutual financial institution which maintained a main chartered office in this state prior to becoming a branch of such qualifying mutual financial institution, which, by its charter and bylaws, restricts the rights of the state or a political subdivision as an account holder as follows:

(i) Interest in the qualifying mutual financial institution is limited to the withdrawal value of the state's or the political subdivision's account;

(ii) The state or the political subdivision has no voting rights in the qualifying mutual financial institution; and

(iii) The state or the political subdivision has no entitlement to any distribution of assets upon voluntary or involuntary liquidation, dissolution, or winding up of the affairs of the qualifying mutual financial institution.

(b) To the extent any deposit in any bank is:

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

(ii) 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 qualifying mutual 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 qualifying mutual financial institution.

(2) To the extent the state or a political subdivision is or may ever be required by law to deposit funds in a bank, the state or 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 a qualifying mutual financial institution on the same basis.

(3) The restriction in subdivision (1) (a) (iii) of this section shall not apply to the interest of the state or political subdivision in any security required by law to be furnished by the qualifying mutual financial institution.

(4) A qualifying mutual financial institution that amends its charter or bylaws in such a manner that it no longer meets the restrictions set forth in subdivisions (1) (a) (i) through (iii) of this section shall immediately give notice that it is no longer a qualifying mutual financial

institution to the custodial official, as that term is defined in section 77-2387, of every state and political subdivision depositor, and that the state or political subdivision must immediately withdraw its deposits.

(5) 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 or any political subdivision in qualifying mutual financial institutions.

Sec. 49. 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, and capital stock state savings banks, which have a main chartered office in this state, any branch thereof in this state, or any branch in this state of a capital stock financial institution which maintained a main chartered office in this state prior to becoming a branch of such capital stock financial institution. 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. 50. Section 77-2387, Reissue Revised Statutes of Nebraska, 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, any branch thereof in this state, or any branch in this state of a state-chartered or federally chartered bank which maintained a main chartered office in this state prior to becoming a branch of such state-chartered or federally chartered bank;

(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, and a capital stock state savings bank, which has a main chartered office in this state, any branch thereof in this state, or any branch in this state of a capital stock financial institution which maintained a main chartered office in this state prior to becoming a branch of such capital stock financial institution;

(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;

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

(r) Certificates of deposit fully insured by the Federal Deposit Insurance Corporation that are issued to a bank, capital stock financial institution, or qualifying mutual financial institution furnishing securities pursuant to the Public Funds Deposit Security Act.

Sec. 51. Notwithstanding any other provision of law, to the extent that the funds of this state or any political subdivision of this state may be

invested, by the appropriate custodian of such funds, in certificates of deposit or time deposits with banks, capital stock financial institutions, or qualifying mutual financial institutions, such authorization shall include the investment of funds in certificates of deposit and time deposits in accordance with the following conditions:

(1) The bank, capital stock financial institution, or qualifying mutual financial institution in this state through which the investment of funds is initially made arranges for the deposit of a portion or all of such funds in one or more certificates of deposit or time deposits with other banks, capital stock financial institutions, or qualifying mutual financial institutions located in the United States;

(2) Each such certificate of deposit or time deposit is fully insured by the Federal Deposit Insurance Corporation;

(3) The bank, capital stock financial institution, or qualifying mutual financial institution through which the investment of funds was initially made acts as a custodian for the state or political subdivision with respect to any such certificate of deposit or time deposit issued for the account of the state or political subdivision; and

(4) At the same time that the funds are deposited into and such certificates of deposit or time deposits are issued by other banks, capital stock financial institutions, or qualifying mutual financial institutions, the bank, capital stock financial institution, or qualifying mutual financial institution through which the investment of funds in certificates of deposit or time deposits was initially made receives an amount of deposits from customers of other banks, capital stock financial institutions, or qualifying mutual financial institutions located in the United States which is equal to or greater than the amount of the investment of funds in certificates of deposit or time deposits initially made by the state or political subdivision.

Sec. 52. Sections 1, 2, 5 to 20, 31 to 42, and 54 of this act become operative three calendar months after adjournment of this legislative session. Sections 24 to 29 and 55 of this act become operative on January 1, 2005. The other sections of this act become operative on their effective date.

Sec. 53. Original sections 25-1530, 30-2734, 43-3334, 72-1262, 76-1006, 76-1009, 76-1010, 76-1012, 77-2365.01, 77-2366, and 77-2387, Reissue Revised Statutes of Nebraska, and sections 8-1,140, 8-355, and 21-17,115, Revised Statutes Supplement, 2003, are repealed.

Sec. 54. Original sections 8-1009, 8-1512, 8-1513, 9-701, 45-206, 45-342, 45-346, and 45-921, Reissue Revised Statutes of Nebraska, sections 8-113, 8-910, 8-1006, 8-1008, 8-1010, 8-1511, 45-205, 45-351, 45-1017, and 45-1065, Revised Statutes Supplement, 2002, and sections 8-157.01, 8-602, 8-1001, 8-1003, 8-1012.01, 45-101.04, 45-1018, 45-1024, and 45-1025, Revised Statutes Supplement, 2003, are repealed.

Sec. 55. Original sections 30-3811, 30-3837, 30-3854, 30-3855, 30-3867, and 30-38,110, Revised Statutes Supplement, 2003, are repealed.

Sec. 56. The following sections are outright repealed: Sections 8-1801 to 8-1807, Reissue Revised Statutes of Nebraska.

Sec. 57. Since an emergency exists, this act takes effect when passed and approved according to law.