

# **Banking, Commerce and Insurance Committee**

**One Hundred Fifth Legislature  
First Session – 2017**

## **SUMMARY OF 2017 LEGISLATION**

### *Committee Members*

**Senator Brett Lindstrom, Chairperson  
Senator Matt Williams, Vice Chairperson  
Senator Roy Baker  
Senator Tom Brewer  
Senator Joni Craighead  
Senator Mark Kolterman  
Senator John McCollister  
Senator Paul Schumacher**

### *Committee Staff:*

**William Marienau, Committee Counsel  
Janice Foster, Committee Clerk**

## MEMORANDUM

TO: Members of the Legislature and  
Other Interested Persons

FROM: Senator Brett Lindstrom, Chairman  
Banking, Commerce and Insurance Committee

DATE: June 30, 2017

RE: Summary of 2017 Session Legislation

I am pleased to present, for your reference, the following summary of the provisions and disposition of all 2017 bills referenced to and considered by the Banking, Commerce and Insurance Committee.

I hope you find this summary helpful as you review our work as of the conclusion of the 2017 session. If you have questions or need additional information, please contact me or our committee staff: Bill Marienau, Legal Counsel or Janice Foster, Committee Clerk.

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## **ABSTRACTERS**

### **LB345 (Craighead) Eliminate an experience requirement for abstracters**

#### **Pending on General File**

This bill would amend sections 76-542 and 76-546 of the Abstracters Act to eliminate a requirement of one year of land title-related experience for issuance of a certificate of registration or a temporary certificate of registration.

## **BONDS**

### **LB72 (Schumacher) Change provisions relating to cities and villages filing for bankruptcy**

**Enacted**

**Effective August 24, 2017**

**Committee Priority Bill**

This bill amends section 13-402 to provide that the authority of a political subdivision to file Chapter 9 bankruptcy shall not apply to a city or village that has its defined benefit retirement plan with a funded ratio of the actuarial value of assets less than a specified amount that begins at 51.65 percent on January 1, 2020 and increases in 3-year increments until it reaches 90 percent on January 1, 2038.

The bill further amends section 13-402 to provide that a city or village that does not have a defined benefit retirement plan may by ordinance declare that its general obligation bonds shall be secured by a statutory lien on all ad valorem taxes levied by the city or village. Bonds so secured shall have a first priority lien on such ad valorem taxes and shall have priority against all parties having claims of contract or tort or otherwise against the city or village.

The bill passed 41-4-4 on May 18, 2017 and was approved by the Governor on May 23, 2017.

## **BURIAL PRE-NEED SALES**

### **LB239 (Baker) Change provisions relating to trust funds under the Burial Pre-Need Sale Act**

**Enacted**  
**Effective August 24, 2017**

This bill, introduced at the request of the Director of Insurance, amends sections 12-1113 and 12-1114 of the Burial Pre-Need Sale Act to change the distribution of excess income in a master trust. The bill eliminates the requirement for an annual income distribution and instead allows a seller to accumulate interest and distribute later, however the income must be sufficient to fulfill required cost-of-living adjustments to the principal before an income distribution is made to a pre-need seller.

Section 1 amends section 12-1113 to eliminate the requirement in subsection (1) that income in a pre-need trust be distributed annually. New language is added to allow distribution to occur at the pre-need seller's request after making the calculations required by section 12-1114. Additionally, original subsection (3) of section 12-1113 provides that a pre-need seller may elect to allow income held in trust to accumulate and become principal in lieu of making a cost of living adjustment and distributing income. Because the requirement of an annual adjustment is deleted, this subsection is no longer needed and is repealed.

Section 2 amends section 12-1114, which relates to cost-of-living adjustments to pre-need master trusts. The section is amended to ensure that cost of living adjustments are then considered part of the trust's principal, and that if income in a year is insufficient to provide a cost-of-living adjustment, any excess income in future years must first be utilized to recoup any previous years' shortage before an income distribution is made to a pre-need seller.

Section 3 provides for repeal of the amendatory sections.

The bill passed 48-0-1 on May 4, 2017 and was approved by the Governor on May 10, 2017.

## **BUSINESS ENTITIES**

### **LB35 (Harr) Change provisions relating to the Nebraska Model Business Corporation Act**

**Enacted**

**Effective August 24, 2017**

**Speaker Priority Bill**

This bill amends various sections of the Nebraska Model Business Corporation Act in order to enact recent updates in the Model Business Corporation Act (on which the Nebraska act is based) as approved and promulgated by the Committee on Corporate Laws of the Section of Business Law of the American Bar Association. The bill makes eight revisions as follows:

1. Sections 1 and 11 amend section 21-201 and enact a new section to provide for judicial review of corporate elections, shareholder votes, and other corporate governance disputes. New section 11 provides subject matter jurisdiction to the specified court to resolve certain corporate governance disputes and establishes an expedited procedure for doing so. The purpose of such a proceeding is to prevent a corporation from being immobilized by controversies with respect to the identity of its directors or officers, the members of any committee of its board of directors, or the results or validity of shareholder votes. This section specifies the types of disputes that come within its coverage (subsection (a)), the persons who may initiate such proceedings (subsection (b)), the persons who must be named as defendants to such proceedings (subsections (c) and (g)), how service may be effectuated on the required defendants (subsection (d)), what notice must be provided to the required defendants (subsection (e)), and the remedial powers available to the court in connection with such a proceeding (subsection (f)). This section does not displace or alter any preexisting remedies and is not intended to be the exclusive remedy for disputes of the type covered by this section.

2. Sections 2, 5, 6, 8, 11 to 13, 19, 21 to 24, and 26 amend sections 21-214, 21-254, 21-255, 21-265, 21-275, 21-283, 21-2,123, 21-2,171 to 21-2,173, 21-2,197, and 21-2,222 to unify and harmonize provisions relating to beneficial owners. There had been inconsistencies throughout the act in the treatment of “beneficial owners” and “beneficial shareholders,” with those terms sometimes used interchangeably or with differences. Accordingly, these amendments update definitions of “shareholder,” “record shareholder,” and “beneficial shareholder,” and revise various sections of the act where the foregoing terms are used.

3. Sections 3, 4, 15, 18, and 20 amend sections 21-217, 21-220, 21-2,103, 21-2,120, and 21-2,124 relating to business opportunities. The amendments permit corporations to include in their articles of incorporation a provision that limits or eliminates a director’s or an officer’s duty to present a business opportunity to the corporation. The authorization could apply to officers but only if accompanied by action of qualified directors, incorporating the procedures used elsewhere in the act.

4. Section 7 amends section 21-264 relating to proxies. The amendments clarify that, unless it otherwise provides, an appointment of an irrevocable proxy does not terminate upon transfer of

the shares, except that a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when acquiring the shares and the existence of the irrevocable appointment was not noted on the certificate representing the shares or contained in the information statement for uncertified shares.

5. Sections 7, 9 to 11, and 19 amend sections 21-264, 21-266, 21-271, and 21-2,123 relating to inspectors of election. Section 21-271 deals with the role of inspectors of elections in the shareholder voting process. That process and the role of inspectors of election have changed in recent years, at least in the case of public corporations, with the increase in “street name” holdings, the use of a securities depository system and involvement of intermediaries, and the resulting increased role of vote tabulators. The amendments are intended to update the provisions on inspectors of election to reflect what inspectors of election in fact do under the current shareholder voting system. Section 21-266, dealing with acceptance of votes and other instruments relating to shareholder voting, is amended to better conform to and coordinate with section 21-271. Section 21-264, dealing with proxies, is amended to more accurately reflect the term of proxy appointments, including irrevocable proxy appointments.

6. Section 14 amends section 21-285 relating to qualifications for directors and nominees for directors. The ABA Model Business Corporation Act historically has provided that qualifications for directors may be set forth in the articles of incorporation and bylaws, but standards for content and timing of application of qualifications have not been meaningfully addressed. Qualifications as amended are in the nature of eligibility requirements. The amendments provide that qualifications must be reasonable as applied to the corporation and lawful. Qualifications based on action or expression of an opinion that would restrict a director’s ability to discharge his or her duties as a director would not be permissible. The amendments also add provisions with respect to the timing of application of qualifications.

7. Sections 16 and 17 amend sections 21-2,113 and 21-2,114 relating to advances for expenses. The amendments to section 21-2,113 address the prerequisites for advancing expenses to directors and officers. The amendments eliminate the requirement that a director or officer seeking advancement provide a written affirmation that he or she has met the applicable standards for indemnification under the act, or, in the case of a director, that the proceeding involves conduct for which liability has been eliminated under the articles of incorporation. The amendments do not, however, eliminate a corporation’s ability to require such an affirmation. Section 21-2,113 will continue to require that a director or officer seeking advancement provide a written undertaking to repay funds advanced if it is ultimately determined that such individual is not entitled to indemnification.

8. Section 25 amends section 21-2,201 relating to election to purchase in lieu of dissolution. Section 21-2,201 provides that when a shareholder petitions for court-ordered dissolution, the corporation and the other shareholders have the option to purchase the petitioner’s shares with the value to be determined by agreement of the parties or by the court. Subsection (g) had provided that when the court determines the value of the petitioner’s shares, the corporation retains the option to dissolve rather than consummate the purchase. The amendment eliminates this option. Giving the corporation the option to purchase and then to reverse course and

dissolve is perceived as unfair to any petitioning shareholder, which, in turn, may discourage shareholders from exercising their statutory right to seek court-ordered dissolution.

The bill passed 48-0-1 on April 24, 2017 and was approved by the Governor on April 27, 2017.

**LB99 (Stinner) Change provisions relating to the conversion of unincorporated entities, corporations, partnerships, limited partnerships, and limited liability partnerships into other business entities**

**Enacted**

**Effective August 24, 2017**

This bill requires business entities engaging in redomestications or conversions to notify holders of security interests in their collateral of such actions.

Sections 1 to 5 amend sections 21-2,129, 21-2,130, 21-2,135, 21-2,140, and 21,2,146 of the Nebraska Business Corporation to provide that a foreign business corporation becoming a domestic business corporation, a domestic business corporation becoming domesticated in a foreign jurisdiction, a domestic business corporation converting into a domestic nonprofit corporation, a foreign nonprofit corporation converting into a domestic business corporation, and a domestic business corporation converting into a domestic unincorporated entity (general partnership, limited liability company, limited partnership, business trust, joint stock association, and unincorporated nonprofit association) shall send written notice to the last-known address of any holder of a security interest in collateral of such foreign business corporation, domestic business corporation, foreign nonprofit corporation, or converting entity.

Sections 6 and 7 amend sections 67-447 and 67-448 of the Uniform Partnership Act of 1998 to provide that a partnership converting to a limited partnership and a limited partnership converting into a partnership shall send written notice to the last-known address of any holder of a security interest in collateral of such partnership or limited partnership.

Sections 8 and 9 amend sections 61-448.01 and 67-448.02 of Uniform Partnership Act of 1998 to harmonize provisions.

Section 10 provides for repeal of the amendatory sections.

The bill passed 48-0-1 on March 23, 2017 and was approved by the Governor on March 29, 2017.

## **LB292 (Larson) Authorize series limited liability companies under the Nebraska Uniform Limited Liability Company Act**

### **Pending in Committee**

This bill would add six new sections to the Nebraska Uniform Limited Liability Company (LLC) Act to authorize formation of Series LLC's.

A Series LLC would be a single LLC that has multiple "series" of membership interests, each of which may have separate members, managers, assets and liabilities, and business interests, and all of which would be separate for liability purposes.

Section 1 would amend section 21-101 of the Nebraska Uniform Limited Liability Company Act to provide for assignment of the new sections of the bill within the act.

Section 2 would provide for series of transferable interests.

Section 3 would provide for management of a series.

Section 4 would provide for series distributions.

Section 5 would provide for dissociation from a series.

Section 6 would provide for termination of a series.

Section 7 would provide for foreign series.

## **LB476 (Hilgers) Change provisions relating to domestication of foreign corporations and the effect on original incorporation dates**

### **Enacted**

**Effective August 24, 2017**

This bill amends section 21-19,163 of the Nebraska Nonprofit Corporation Act to provide that the original incorporation date of a foreign nonprofit corporation which has domesticated in Nebraska shall not be affected by such domestication. The bill further provides that the domesticated nonprofit corporation shall be the same corporation as the one that existed under the laws of the state in which it was previously domiciled, and that upon domesticating in Nebraska, the nonprofit corporation shall continue to exist without interruption and shall maintain its same liabilities and obligations.

The bill passed 46-0-3 on May 8, 2017 and was approved by the Governor on May 15, 2017.

**LB594 (Groene) Require a limited liability company seeking a tax benefit to file an amended certificate of organization**

**Pending in Committee**

This bill would amend section 21-118 of the Nebraska Uniform Limited Liability Company Act to provide that prior to applying for tax benefits under a tax credit, tax abatement, or tax incentive plan, a limited liability company (LLC) shall file an amended certificate of organization which shall state the name of the LLC, the date of filing of its certificate of authority, and the names of the members of the LLC.

## **DELAYED DEPOSIT SERVICES**

### **LB194 (Vargas) Change provisions of the Credit Services Organization Act, Delayed Deposit Services Licensing Act, and Nebraska Installment Loan Act**

#### **Pending in Committee**

#### OVERVIEW

This bill would substantially amend the Delayed Deposit Services Licensing Act to change the manner in which the business of payday loans is conducted and is regulated by the Nebraska Department of Banking and Finance.

The bill would provide that a licensee, in connection with a delayed deposit loan, may receive only: interest of no more than thirty-six percent per annum; a monthly maintenance fee of the lesser of five percent of the loan amount or twenty dollars; and charges for presentation of nonnegotiable instruments not to exceed fifteen dollars, court costs, and attorney's fees, and the attorney's fees may not exceed the loan amount.

The bill would provide that a licensee shall not lend an amount greater than five hundred dollars, plus allowable fees and interest, to any borrower.

The bill would provide that delayed deposit loans shall be precomputed loans, payable in equal installments of principal, fees, interest, and charges combined. The bill would provide that a total monthly payment shall not exceed the greater of five percent of a borrower's gross, pretax monthly income or six percent of the borrower's net, posttax monthly income.

The bill would amend the Nebraska Installment Loan Act to provide that the minimum term of an installment loan shall be six months.

#### SUMMARY

The bill would provide, section by section, as follows:

Section 1 would amend section 45-804 of the Credit Services Organization Act to provide that a credit services organization shall not charge any fees in connection with a loan governed by the Nebraska Installment Loan Act.

Section 2 would amend section 45-901 of the Delayed Deposit Services Licensing Act to provide for assignment of new sections within the act.

Section 3 would amend section 45-902 of the Delayed Deposit Services Licensing Act to provide for definitions. This section would amend the definition of: "delayed deposit services business" (a person who engages in the practice of offering or providing a delayed deposit loan, who arranges a delayed deposit loan for a third party, or who acts as an agent for a third party rather than a person who for a fee accepts a check dated subsequent to the date it was written or accepts a check dated on the date it was written and holds the check for a period of days prior to deposit

or presentment pursuant to agreement). This section would enact new definitions of: “annual percentage rate;” “borrower;” “default;” “delayed deposit loan” (a consumer loan whereby a licensee, for a fee or charge, accepts a dated instrument from the borrower as sole security, agrees to hold the instrument for a period of time prior to deposit or negotiation, and pays to the borrower, credits the borrower’s account, or pays to another person on the borrower’s behalf the amount of the instrument, less charges permitted under the act); “department;” “instrument” (a check, draft, or authorization to transfer or withdraw funds from an account); and “loan amount” (the amount financed as calculated pursuant to Regulation Z of the federal Truth and Lending Act.

Section 4 would amend section 45-904 of the Delayed Deposit Services Licensing Act to provide that any delayed deposit loan made by a person required to be licensed but is not licensed is void, and such person has no right to collect, receive, or retain any principal, interest, or fees.

Section 5 would amend section 45-906 of the Delayed Deposit Services Licensing Act to increase the fee for the application for a license from “five hundred” dollars to “one thousand” dollars.

Section 6 would amend section 45-907 of the Delayed Deposit Services Licensing Act to harmonize terminology.

Section 7 would amend section 45-908 of the Delayed Deposit Services Licensing Act to provide that the Director of Banking and Finance shall issue a license to an applicant if the director determines, among other things, that the applicant has assets of at least “fifty thousand” dollars rather than “twenty-five” thousand dollars available for operating the delayed deposit services business.

Section 8 would amend section 45-910 of the Delayed Deposit Services Licensing Act to increase the annual license renewal fee from “five hundred” dollars to “five hundred fifty” dollars for the main office location and for each branch office location.

Section 9 would amend section 45-911 of the Delayed Deposit Services Licensing Act to harmonize terminology.

Section 10 would amend section 45-915 of the Delayed Services Licensing Act to increase the fee from “one hundred fifty” dollars to “five hundred” dollars for each request by a licensee to the Director of Banking and Finance for approval to change the location of a designated principal place of business, to establish a branch office, or to change the location of a branch office.

Section 11 would amend section 45-915.01 of the Delayed Deposit Services Licensing Act to harmonize terminology.

Section 12 would amend section 45-917 of the Delayed Deposit Services Licensing Act to provide that each delayed deposit loan transaction shall be documented by a written agreement, including disclosures, signed by both the licensee and the borrower.

Section 13 would enact a new section in the Delayed Deposit Services Licensing Act to provide that every licensee shall conspicuously display a schedule of all finance charges, fees, interest, other charges, and penalties for services provided by the licensee, and that the notice shall be posted at every office of the licensee.

Section 14 would amend section 45-918 of the Delayed Deposit Services Licensing Act to provide that delayed deposit loans shall be precomputed loans, payable in substantially equal installments of principal, fees, interest, and charges combined, and that the total monthly payment shall not exceed the greater of five percent of a borrower's gross, pretax monthly income or six percent of the borrower's net, posttax monthly income.

Section 15 would enact a new section in the Delayed Deposit Services Licensing Act to provide that licensees may charge, collect, and receive only: interest of no more than thirty-six percent per annum; a monthly maintenance fee of the lesser of five percent of the loan amount or twenty dollars (such fees shall not be charged to individuals on active military duty or their spouses or dependents); and charges permitted for the presentation of nonnegotiable instruments. This section would provide that a licensee shall not charge, collect, or receive a total amount of fees, interest, and charges that exceeds fifty percent of the original loan amount. This section would provide that no licensee shall charge, collect, or receive any finance charges, fees, or interest for loan brokerage, insurance, or any other ancillary products.

Section 16 would enact a new section in the Delayed Deposit Services Licensing Act to provide that if an instrument held by a licensee is returned unpaid to the licensee due to insufficient funds, a closed account, a stop-payment order, or other reason, the licensee may exercise all civil means to collect the face value of the instrument. This section would provide that a licensee may contract for and collect one returned instrument charge for each delayed deposit loan, not to exceed fifteen dollars, plus court costs and attorney's fees, and that attorney's fees may not exceed the loan amount.

Section 17 would enact a new section in the Delayed Deposit Services Licensing Act to provide that a licensee shall accept prepayment from a borrower without charging a penalty, and that upon prepayment, the licensee shall refund a prorated portion of all interest and fees.

Section 18 would enact a new section in the Delayed Deposit Services Licensing Act to provide that a licensee shall not lend an amount greater than five hundred dollars, plus allowable fees and interest, to any borrower.

Section 19 would enact a new section in the Delayed Deposit Services Licensing Act to provide that a borrower has the right to rescind a delayed deposit loan, and that a borrower has the right to redeem an instrument.

Section 20 would enact a new section in the Delayed Deposit Services Licensing Act to provide that deferred presentment shall be permitted only for instruments with an amount of five hundred dollars or less, plus allowable fees and interest. This section would provide that a licensee may pay the proceeds from a delayed deposit loan to the borrower in the form of a check, money

order, cash, stored value card, internet transfer, or authorized automated clearinghouse transaction.

Section 21 would amend section 45-919 of the Delayed Deposit Services Licensing Act to provide that no licensee shall enter into more than one delayed deposit loan with the same borrower at any one time (rather than no licensee shall at any one time hold from any one maker more than two checks). This section would provide that no licensee shall at any one time hold from any one borrower an instrument or instruments in an aggregate amount of more than five hundred dollars, plus allowable fees and interest (rather than no licensee shall at any one time hold from any one maker a check or checks in the aggregate face amount of more than five hundred dollars). This section would provide that a licensee may hold an instrument and delay completion of a delayed deposit loan beyond the due date, but the licensee shall not charge any additional charges or fees for doing so. This section would provide that no licensee shall engage, in connection with a delayed deposit loan, in unfair or deceptive trade practices under the Uniform Deceptive Trade Practices Act.

Section 22 would amend section 45-921 of the Delayed Deposit Services Licensing Act to update provisions regarding disposition of administrative fines collected by the Department of Banking and Finance.

Section 23 would amend section 45-922 of the Delayed Deposit Services Licensing Act to harmonize terminology.

Section 24 would amend section 45-923 of the Delayed Deposit Services Licensing Act to provide that the Director of Banking and Finance may issue a cease and desist order to prohibit a licensee in violation of the act from making additional delayed deposit loans.

Section 25 would amend section 45-925 of the Delayed Deposit Services Licensing Act to harmonize terminology.

Section 26 would enact a new section in the Delayed Deposit Services Licensing Act to provide that licensees shall annually provide information specified in this section to the Director of Banking and Finance who shall annually report it and the total number of licensees to the Banking, Commerce and Insurance Committee of the Legislature.

Section 27 would enact a new section in the Delayed Deposit Services Licensing Act to provide for acceleration of the entire unpaid loan balance for a delayed deposit loan in default.

Section 28 would enact a new section in the Delayed Deposit Services Licensing Act to provide that a licensee shall provide notice to a borrower prior to the licensee's attempt to collect on a borrower's account and that a licensee shall not attempt to deposit or negotiate an instrument after two consecutive failed collection attempts unless the licensee has obtained a new, written payment authorization from the borrower.

Section 29 would amend section 45-927 of the Delayed Deposit Services Licensing Act to increase the amount of each annual renewal fee for a main office and for a branch office from

“three hundred fifty” dollars to “four hundred” dollars credited to the Financial Literacy Cash Fund.

Section 30 would amend section 45-1001 of the Nebraska Installment Loan Act to provide for assignment of section 31 within the act.

Section 31 would enact a new section in the Nebraska Installment Loan Act to provide that the minimum term of a loan contract for a loan governed by the act shall be six months from the loan transaction date.

Section 32 would provide for an operative date of January 1, 2018.

Section 33 would provide for repeal of the amendatory sections.

## **LB286 (Craighead) Adopt the Nebraska Flexible Loan Act and change provisions of the Delayed Deposit Services Licensing Act**

### **Pending in Committee**

#### OVERVIEW

This bill would enact 21 new sections to be known as the Nebraska Flexible Loan Act. The bill would provide for a new type of license under which licensees – flexible credit lenders – would make flexible credit loans. Such a loan would be defined as one in which all of the following are applicable: (1) the debt is incurred for a personal, family, or household purpose; (2) the debt is not more than \$2,500; (3) the debt is unsecured; and (4) the debt is subject to prepayment in whole or in part at any time without penalty. A flexible credit lender would be allowed to charge a finance charge on a flexible credit loan at a rate not to exceed 18 percent per month on the outstanding principal loan amount. For closed-end credit, the term of a flexible credit loan may not exceed 24 months. Flexible credit lenders would be licensed and regulated by the Department of Banking and Finance.

#### SUMMARY

The bill would provide, section by section, as follows:

Section 1 would enact a new section to provide for a named act: the Nebraska Flexible Loan Act.

Section 2 would enact a new section to provide for definitions: (1) annual percentage rate; (2) consumer; (3) director; (4) Federal Truth in Lending Act; (5) finance charge; (6) flexible credit lender; (7) flexible credit loan; (8) licensee; (9) regularly engaged in the business.

Section 3 would enact a new section to provide that the Nebraska Flexible Loan Act does not apply to regulated financial institutions, insurance companies, or delayed deposit services businesses.

Section 4 would enact a new section to require a license to engage in the business of making flexible credit loans. This section would provide for application to the Director of Banking and Finance for a license.

Section 5 would enact a new section to provide for denial of a license application by the Director of Banking and Finance.

Section 6 would enact a new section to provide for issuance of a license.

Section 7 would enact a new section to provide that a licensee shall designate its principal place of business and may obtain branch office licenses.

Section 8 would enact a new section to provide for annual renewal of licenses.

Section 9 would enact a new section to provide for denial of renewal of a license or suspension or revocation of a license by the Director of Banking and Finance.

Section 10 would enact a new section to provide that a licensee shall keep books, accounts, and records subject to examination by the Director of Banking and Finance.

Section 11 would enact a new section to provide that licensees shall submit annual reports to the Director of Banking and Finance that include a licensee's average annual percentage rate and average loan amount. This information shall be compiled and disseminated annually by the director.

Section 12 would enact a new section to provide for surrender of a license by a licensee to the Director of Banking and Finance.

Section 13 would enact a new section to provide the revocation, suspension, surrender, expiration, or alteration of a license shall not impair or affect obligations and rights under a flexible credit loan under the act.

Section 14 would enact a new section to provide that a licensee shall not advertise false, misleading, or deceptive statements with regard to the rates, terms, or conditions of a flexible credit loan. This section would provide that a licensee shall not provide a flexible credit loan to a consumer with more than one outstanding flexible credit loan provided under the act at any one time. This section would provide that a licensee shall not provide a flexible credit loan with an annual percentage rate greater than that specified in federal statute to a member of the United States armed forces on active duty, a person on active National Guard or reserve duty, or a military dependent. This section would provide that a licensee shall not condition a flexible credit loan upon a consumer's agreement to repay the loan by recurring automatic electronic fund transfers, except this does not preclude the consumer from providing authorization to repay a loan by recurring automatic electronic fund transfers if the licensee offers such a repayment option.

Section 15 would enact a new section to provide that a flexible credit loan provided by a person who is required to be but is not licensed is void and unenforceable.

Section 16 would enact a new section to provide that a licensee shall conspicuously display specified disclosures at its licensed office and branch offices.

Section 17 would enact a new section to provide that a licensee may charge a finance charge on a flexible credit loan at a rate not to exceed eighteen percent per month on the outstanding principal loan amount.

Section 18 would enact a new section to provide that a licensee may collect: (a) delinquency charges if an installment is not paid within seven days after it is due, equal to five percent of the amount of the installment; (b) court costs and attorney's fees if a flexible credit loan is referred for collection; and (c) dishonored check service fees.

Section 19 would enact a new section to provide that for closed-end credit, the term of the flexible credit loan may not exceed twenty-four months. This section would provide for loans to be repayable in installments.

Section 20 would enact a new section to provide for disposition of fees and civil penalties.

Section 21 would enact a new section to provide the Director of Banking and Finance with rule and regulation authority.

Section 22 would amend section 45-902 of the Delayed Deposit Services Licensing Act to expand the definition of "check" to include authorization to debit an account electronically.

Section 23 would amend section 45-915 of the Delayed Deposit Services Licensing Act to provide that a licensee may offer a delayed deposit services business only at an office "or offices" designated in its license application, and would eliminate provisions which provide that a licensee may operate branch offices only in the same county in which the licensee's designated principal place of business is located.

Section 24 would provide for repeal of the amendatory sections.

### **LB386 (Lindstrom) Change time period a licensee under the Delayed Deposit Services Licensing Act may hold a check**

#### **Pending in Committee**

This bill would amend section 45-919 of the Delayed Deposit Services Licensing Act to provide that a licensee shall not hold or agree to hold a check for more than "forty" days rather than "thirty-four" days.

## **ECONOMIC DEVELOPMENT**

### **LB96 (Crawford) Provide an eligible activity for assistance from the Site and Building Development Fund as prescribed**

#### **Pending on General File**

This bill would amend section 81-12,147 of the Site and Building Development Act which provides that the Department of Economic Development shall use the Site and Building Development Fund to finance loans, grants, subsidies, credit enhancements, and other financial assistance for industrial site and building development.

The bill would expand the enumerated list of activities that are eligible for assistance from the fund to include public and private sector initiatives that will improve the military value of military installations by making necessary improvements to buildings and infrastructure.

### **LB641 (Morfeld) Create a Bioscience Innovation Program and the Nebraska Economic Development Task Force**

#### **Enacted**

**Effective August 24, 2017 (Passed on Final Reading with the Emergency Clause Stricken)  
Contains provisions of LB230  
Senator Priority Bill (Morfeld)**

#### **OVERVIEW**

This bill is directed toward two economic development purposes:

First, the bill amends the Business Innovation Act to create the Bioscience Innovation Program within the Department of Economic Development.

Second, the bill creates the Nebraska Economic Development Task Force composed of members of the Legislature, which shall collaborate with the Department of Economic Development and the Department of Labor to discuss issues on economic development and issue annual reports.

#### **SUMMARY**

Section 1 enacts a new section in the Business Innovation Act to provide for the creation of the Bioscience Innovation Cash Fund to be administered by the Department of Economic Development (DED) to provide financial assistance to bioscience-related businesses applying for financial assistance under the act. The State Treasurer shall credit to the cash fund money received by DED as repayments of loans from the Nebraska Progress Loan Fund as authorized by the federal State Small Business Credit Initiative Act of 2010. Money in the cash fund shall be expended by DED to carry out the Bioscience Innovation Program. The cash fund shall terminate on exhaustion of its funds following receipt of the final loan repayment.

Section 2 enacts a new section in the Business Innovation Act to set forth the purposes of the Bioscience Innovation Program. A bioscience business or enterprise receiving financial assistance shall provide a match of one hundred percent for such assistance. The program shall terminate when the cash fund terminates.

Section 3 amends section 81-12,152 of the Business Innovation Act to provide for sections 1 and 2 to be assigned within the act.

Section 4 amends section 81-12,154 of the Business Innovation Act to provide a new legislative finding that the act will establish a financial assistance program for innovation in bioscience.

Section 5 enacts a new section to provide for creation of the Nebraska Economic Development Task Force, composed of members of the Legislature, to collaborate with the Department of Economic Development and the Department of Labor to gather input on issues pertaining to economic development and discuss proactive approaches on economic development. The task force shall be composed of three members of the Legislature, appointed by the Executive Board, one from each congressional district, and the chairpersons of Appropriations, Banking, Commerce and Insurance, Business and Labor, Education, Revenue, Planning, and Urban Affairs committees, or designees of the chairpersons. The task force shall meet not less than every three months, and submit a report to the Legislature every December 31. The task force shall terminate on January 1, 2021.

Section 6 provides for operative dates. (Inapplicable because the bill passed with the Emergency Clause stricken.)

Section 7 provides for repeal of the amendatory sections.

The bill passed 31-5-13 with the Emergency Clause stricken on April 24, 2017 and was approved by the Governor on April 27, 2017.

## **LB641A (Morfeld) Appropriation Bill**

**Enacted**

**Effective August 24, 2017**

This bill appropriates \$1,492,000 for FY2017-18 and \$961,000 for FY2018-19 from the Bioscience Innovation Cash Fund to the Department of Economic Development to carry out LB641.

## **ELECTRONIC PAYMENT TRANSACTIONS**

### **LB559 (Schumacher) Prohibit the collection of interchange fees on specified taxes and fees relating to electronic payment transactions**

#### **Pending in Committee**

This bill would enact seven new sections to prohibit the collection of interchange fees on certain taxes or fees in the case of electronic payment transactions initiated by debit card or credit card. The bill would provide that the amount of any state or local tax or fee that is calculated as a percentage of an electronic payment transaction amount and listed separately on the invoice or the amount of any motor fuel taxes shall be excluded from the amount of the interchange fee charged for that electronic payment transaction.

The bill would provide the Attorney General with enforcement authority. Intentional violations would be subject to court-imposed civil penalties of not less than one thousand dollars nor more than five thousand dollars per violation. The court would be authorized to order equitable relief. Persons paying interchange fees in violation of the bill would be allowed to seek actual damages.

The bill would provide that if it were held invalid with regard to a federally chartered financial institution, then the bill shall be equally invalid with regard to a financial institution licensed by or operating in this state. The bill would provide that it is not severable.

The bill would provide that it shall be applicable to electronic payment transactions processed on or after October 1, 2017.

## FINANCIAL INSTITUTIONS

**LB140e (Williams) Change provisions relating to the Nebraska Banking Act, Department of Banking and Finance powers and duties, and other financial institution regulation**

**Enacted**

**Operative March 30, 2017 (effective date of the bill), except sections 1 to 129, 131 to 133, 135 to 148, 150 to 159, 161, and 163 become operative August 24, 2017 (three calendar months after the adjournment of the legislative session)**

**Contains the provisions of LB196, LB341, and LB454**

### OVERVIEW

This bill is the result of LR430 (Scheer) (2016), which called upon the Banking, Commerce and Insurance Committee to study whether the Nebraska Banking Act (“Act”) should be updated. The bill contains a number of substantive changes to the Act and to related laws contained throughout the Nebraska Statutes, as well as many changes that better harmonize the language in the Act but are not substantive in nature. References to “department” mean the Department of Banking and Finance and references to “director” mean the Director of Banking and Finance.

### SUMMARY

The bill provides, section by section, as follows:

#### Banks

Section 1 amends section 8-101.01, to provide for assignment of new sections 1, 2, 37, and 51 within the Nebraska Banking Act.

Section 2 amends section 8-101 to re-arrange the definitions used in the Nebraska Banking Act into alphabetical order. No changes are made to the definitions.

Section 3 amends section 8-102 to add “savings and loan association” to the list of financial institutions supervised by the department to reflect the long-standing authority granted to the department under Chapter 8, article 3.

Section 4 amends section 8-103, which provides for the examination authority of the department and restrictions on department employees, to add the term “savings and loan association” to the list of financial institutions supervised by the department to reflect the long-standing authority granted to the department under Chapter 8, article 3. Non-substantive changes to this section include updates to the language identifying institutions subject to the jurisdiction of the department and insertion of subdivision letters to improve this section’s readability.

Section 5 amends section 8-104, which requires the director to take an oath of office, with non-substantive changes to improve sentence structure.

Section 6 amends section 8-105, which relates to the hiring of department employees, as follows:

In subsection (1), the current prohibition against the employment of any relative of any employee of the department is changed to a provision that provides that the employment of anyone working for the department is subject to section 49-1499.07 of Nebraska Political Accountability and Disclosure Act, which is the state's nepotism statute. Subsection (1) is further amended to clarify that the director may hire legal counsel;

In subsection (2), obsolete language related to at-will employees of the department is removed; and

In subsection (3), counsels are added to the list of department employees who shall be bonded under section 11-201.

Section 7 amends section 8-106, which gives the director the authority to adopt and promulgate rules and regulations for the governance of banks, to clarify that the authority is discretionary, and to update gender references.

Section 8 amends section 8-107, which relates to the department setting standards for the keeping of bank books and records, to change the term "power" to "authority."

Section 9 amends section 8-108, which relates to regulatory examinations of financial institutions, as follows:

Subdivision (1)(a), which had been subsection (1), is amended to correctly place language that had been contained in what had been subsection (3) of this section authorizing the department to provide examinations or reports to federal and state financial institution regulatory agencies; and

Subdivision (1)(b), which had been subsection (2), is amended to clarify that the director may accept an examination or report from another state or federal financial institution regulator in lieu of an examination or report required under the Nebraska Banking Act. This subdivision is further amended to provide: that any examination or report received from another regulator remains the confidential property of that regulator; that an examination or report received from another regulator cannot be obtained by a subpoena to the department; and that any request or subpoena for the examination or report must be directed to the originating regulator.

Subsection (3) becomes redundant and is repealed.

Non-substantive changes in section 8-108 include the updating of references to "power" and to institutions under the jurisdiction of the department.

Section 10 amends section 8-109, which provides duties and penalties for department examiners who have knowledge of the insolvency or unsafe condition of a state-chartered bank, by changing references to "bank" to "financial institution" to accurately reflect the scope of the department's jurisdiction. Gender references are also be updated. There changes are non-substantive.

Section 11 amends section 8-110, which requires a state-bank to obtain a fidelity bond and file an executed copy of the bond with the department, to provide that the director may authorize the

electronic filing of the bond with the department. Non-substantive language updates, including gender references and references to the department, are also be made.

Section 12 amends section 8-111, which provides for conveyance of real estate that is vested in the name of the department, to remove the full name of the department due to the definition found in section 8-101(9). This change is non-substantive.

Section 13 amends section 8-112, which requires department employees to keep confidential the names of depositors and debtors in the financial institutions and entities regulated by the department, to change the reference to “depositors and debtors” to “customers,” and to add “beneficiary, member, or account holder” to the list of protected persons. This change more accurately reflects the types of accounts held in the various financial institutions and entities, along with amendments changing the term “borrower” to “debtor.”

Section 14 amends section 8-113, which controls the use of the word “bank” and derivatives of the word “bank,” to change the term “shall be” to “is” regarding the criminal penalty for violation of this section. This change is non-substantive.

Section 15 amends section 8-114, which provides that a bank must have corporate status and comply with the Nebraska Banking Act prior to operating as a bank, to change the term “shall be” to “is” as the term relates to violations of this section and the criminal penalty imposed. This change is non-substantive.

Section 16 amends section 8-116, which requires surplus and paid-up capital as a condition precedent to the issuance of a bank charter, to change a reference from “department” to “director.” This change is non-substantive.

Section 17 amends section 8-116.01, which allows banks to sell its capital notes and debentures, to remove obsolete references to other sections in the Nebraska Banking Act.

Section 18 amends section 8-117, which authorizes the issuance of a conditional bank charter, to change references from “department” to “director.” This change is non-substantive and is found in subsections (6), (7), (8), and (9).

Section 19 amends section 8-118, which governs the sale of bank stock, to insert subsection numbers and subdivision letters. These amendments are non-substantive.

Section 20 amends section 8-119, which requires a sworn statement from a representative of a bank applicant that no remuneration has been paid or promised to individuals selling the corporate stock charter of such corporation, prior to the issuance of the charter, to remove obsolete references to section 8-121 which is outright repealed by section 163.

Section 21 amends section 8-120, which provides the required elements of a bank charter application, to change the requirement that a certified copy of the bank’s articles of incorporation be filed as part of the application, to a requirement that a copy of the proposed articles of

incorporation be filed, for the reason that the articles of incorporation cannot be filed with, or certified by, the Nebraska Secretary of State until the department issues the charter.

Section 22 amends section 8-122, which sets the standards and conditions for granting a bank charter, to clarify certain references to the “Director of Banking and Finance” to eliminate confusion with other references in this section to directors of banks.

Section 23 amends section 8-124, which relates to the composition of the board of directors of a bank. The amendments: authorize an increase in the maximum number of directors from fifteen members to twenty-five members; provide that the board shall select a bank president, who shall be a member of the board (at the time of selection or subsequently); remove the requirement that the board shall appoint a secretary; remove obsolete language related to a minimum number of directors; and remove language related to filling vacancies on the board that is moved to section 8-124.01 for more appropriate placement and remove additional language that is duplicative of language in section 8-124.01.

Section 24 amends section 8-124.01, which sets procedures for when a vacancy occurs on a bank’s board of directors, to include language that had been contained in section 8-124 relating to the term of service for a board member appointed to fill a vacancy, and to clarify that any such person appointed must be approved as a director by the department.

Section 25 amends section 8-125, which relates to records of the proceedings of a bank’s board of directors, to update the term “spread upon” as it relates to the required contents of the minutes of board of directors’ meetings.

Section 26 amends section 8-126, which sets the qualifications for bank directors, to change the requirement that a bank make reasonable efforts to acquire members from the county where the bank is located to a requirement that members be from the county where the bank’s main office is located or in a county where a branch is located. This will allow a bank to add board members from more of the communities where it has offices. Additional non-substantive amendments update references to the “department” and the “director.”

Section 27 amends section 8-127, which relates to a bank’s stockholders, to change the requirement for specified bank officers to keep a list of all stockholders, to a requirement that the bank keep the list. This change is non-substantive.

Section 28 amends section 8-128, which sets requirements for a proposed change in a bank’s capital stock, by providing that the stockholders may authorize an officer of the bank to notify the department of the proposed change rather than the requirement that the president or cashier of the bank must be the person so authorized. This section is further amended to clarify that publication of a notice of reduction in a bank’s capital stock is to be in the county where the main office of the bank is located.

Section 29 amends section 8-129, which gives the director authority to call a meeting of a bank's stockholders, by updating the term "mailing" to "sending" as it relates to giving notice of the meeting. This change allows for electronic notice. This section is also amended to remove unnecessary descriptive language related to banks and to update gender references.

Section 30 amends section 8-130, which allows state-chartered banks and trust companies to become members of the Federal Reserve System, with non-substantive language updates.

Section 31 amends section 8-132, which defines a bank's available funds and sets restrictions if such funds are deficient, to remove an outdated requirement that the department approve "solvent banks" as holders of balances due. New subsection (2) establishes when a bank's capital is deemed unimpaired.

Section 32 amends section 8-133, which governs the payment of interest on bank deposits and restricts the pledging of bank assets to secure deposits. The amendments are as follows:

New subdivision (1)(b) prohibits the payment of a higher rate of interest to bank insiders than the interest rate paid to non-insider depositors of the bank for the same type of depository instrument, and provides that a violation of this section is a Class IV felony. This subdivision essentially mirrors a federal restriction on national bank insiders;

Subsection (2) is amended to remove obsolete language related to inducements for establishing a deposit account and to remove language for determining the maximum rate of interest that could be paid. The language related to a restriction on the amount of interest that could be paid which was removed from the statute years ago;

New subsection (5) provides, as an exception to the prohibition on the pledge of assets, that a bank may secure a public deposit pursuant to the Nebraska Public Funds Deposit Security Act. This is not a new authority, but is added to provide notice of the exception within the governing statute;

Subsection (6) is amended to clarify that a bank's authority to provide a deposit guaranty bond to a depositor is for amounts that are in excess of federal depository insurance coverage;

Subsection (7), which authorizes a bank to provide a depositor a standby letter of credit from the Federal Home Loan Bank of Topeka as security for deposits in excess of federal deposit insurance coverage, is amended to remove a notice requirement; and

New Subsection (8) defines "principal shareholder," as the term is used in subsections (1) and (2), as a person owning ten percent or more a bank's voting shares.

Section 33 amends section 8-135, which authorizes minors to establish deposit accounts, to add new subsection (2) to authorize minors to enter into safe deposit box contracts. In addition, renumbered subsection (3) is amended to update a reference to the federal Electronic Fund Transfer Act as it existed on January 1, 2017.

Section 34 amends section 8-137, which relates to certification of bank checks, to make grammatical changes.

Section 35 amends section 8-138, which prohibits a bank from accepting deposits when it is insolvent, to make grammatical changes.

Section 36 amends section 8-139, which has provided that no person shall act as an active executive officer until the person has been issued a license to do so from the department. This section has further provided that if the department, upon investigation, is satisfied that an active executive officer is conducting business in an unsafe or unauthorized manner or is endangering the interests of stockholders or depositors, the department may revoke the license of the active executive officer. The amendments provide that, in the alternative, the department may suspend the ability of such active executive officer to continue to act as an active executive officer. The amendments further provide that as part of an order of revocation or suspension, the director may levy a civil penalty in an amount not to exceed \$10,000, which amount shall not be paid out of the assets of the bank. The amendments further provide that a bank may elect for its active executive officers to be exempt from the requirement to apply for and obtain a license from the department.

Section 37 is a new section the provisions of which are transferred from section 8-702(2)(b) (see section 139) and which require that banks that employ “mortgage loan originators” must register them with the Nationwide Mortgage Licensing System. Placement of these provisions within the Nebraska Banking Act provides more notice to banks of this requirement.

Section 38 amends section 8-141, which set limits for loans made by banks, to make grammatical changes and insert subdivision letters. These changes are non-substantive.

Section 39 amends section 8-143, which sets out the ramifications of a violation of section 8-141, to make grammatical and clarifying changes. These changes are non-substantive.

Section 40 amends section 8-143.01, which governs loans to bank insiders, to provide, within subsection (10), that this section’s existing reference to 12 USC 84 and its implementing federal Regulation O are to such law and regulation as they existed on January 1, 2017. Non-substantive grammatical changes are also made throughout this section.

Section 41 amends section 8-144, which provides for liability for violations of sections 8-141 to 8-143.01, to make grammatical changes.

Section 42 amends section 8-145, which provides a criminal penalty for loan inducements, to update gender references and make grammatical changes.

Section 43 amends section 8-147, which sets limits on bank investments, to make grammatical changes.

Section 44 amends section 8-148, which governs bank investments, to change “department” to “director” with respect to the promulgation of rules and regulations.

Section 45 amends section 8-148.01, which authorizes bank investment in a computer center, to update a reference to the “director” and make a grammatical change.

Section 46 amends section 8-148.02, which authorizes bank investment in an agricultural credit corporation or a livestock loan company, to make grammatical changes.

Section 47 amends section 8-148.04, which authorizes bank investment in a community development corporation, to make a grammatical change and to change a reference to the “department.”

Section 48 amends section 8-148.05, which authorizes bank investment in qualified Canadian government obligations, to make grammatical changes.

Section 49 amends section 8-148.07, relating to bank investments in subsidiary corporations, to update a reference to the definition of “bank subsidiary corporation” that is moved as the result of the alphabetizing of the definitions in the Nebraska Banking Act by section 2. Section 8-148.07 is also amended to clarify that a bank subsidiary corporation may have multiple shareholders.

Section 50 amends section 8-148.08, relating to examinations of bank subsidiary corporations, to clarify that a bank subsidiary corporation may have multiple shareholders.

Section 51 is a new section that:

Allows a bank to acquire the stock of another financial institution if the transaction is part of the merger, consolidation, or acquisition of assets of the other institution, and if: the merger, consolidation or assets acquisition occurs on the same day that the stock is acquired; the other financial institution will not be operated as a separate entity; and the prior approval of the director is received.

Allows a bank to acquire the stock of a company controlling another financial institution if the transaction is part of the merger or consolidation of the company controlling the other financial institution with the bank’s controlling company, or part of an acquisition of assets of the other controlling company, and the bank merges or consolidates with or acquires the assets of the other institution, and if: the merger, consolidation, or assets acquisition occurs on the same day that the merger, consolidation, or asset acquisition of the controlling companies occurs; neither the other financial institution or the other controlling company will be operated as a separate entity; and the prior approval of the director is received, provided that the transactions authorized by the section will not cause the bank acquiring the stock to be deemed a bank holding company under the Nebraska Bank Holding Company Act of 1995.

Defines “financial institution” for purposes of this section.

Section 52 amends section 8-150, which sets restrictions on a bank’s purchase and holding of real estate, to make grammatical and stylistic changes and update a reference to the “department.”

Section 53 amends section 8-152, which relates to loans secured by real estate, to clarify a reference to financial institutions and to the time when a loan participation may occur. These changes are not substantive in nature.

Section 54 amends section 8-153, which requires the magnetic encoding of checks, to remove an unnecessary description of banks covered under the law.

Section 55 amends section 8-157, which authorizes bank branches, to clarify within subdivision (2)(a)(ii), that references to the location of banks mean the main office of the bank.

Section 56 amends section 8-157.01, which governs automated teller machines (ATMs) and electronic switches, to update a reference within subsection (4) to the federal Electronic Fund Transfer Act as it existed on January 1, 2017.

Section 57 amends section 8-158 to update language related to the authority of a bank to act as personal representatives and administrators of estates of deceased persons, and to specify which officers are authorized to make an oath on behalf of the bank related to the bank's appointment as a personal representative or special administrator.

Section 58 amends section 8-160, which authorizes the director to grant trust charters to banks, to make a grammatical change.

Section 59 amends section 8-161, which sets the conditions for granting a trust charter to a bank, to remove the required finding by the director that the directors and stockholders of the bank are persons of integrity and responsibility, for the reason that such determinations would have previously been made. The amendment requires that the director determine that the trust department will be operated by officers of integrity and responsibility.

Section 60 amends section 8-162.02, which allows banks with trust departments to collateralize certain funds, to remove references to the term "state-chartered" as it is an unnecessary descriptive for the banks covered by this section.

Section 61 amends section 8-163, which relates to bank dividends, to insert subsection numbers.

Section 62 amends section 8-164, which sets the conditions for declaration of dividends, to clarify that the board of directors of a bank has the authority to require that bad debts of the bank be charged off.

Section 63 amends section 8-166, which relates to required bank reports, to insert subsection numbers.

Section 64 amends section 8-167, which relates to publication of bank reports, to clarify that references to a bank's location are references to the main office of the bank and to change a reference to "department" to "director." These changes are non-substantive.

Section 65 amends section 8-167.01, which provides an exception to the publication requirements of section 8-167, to update a reference to 12 CFR part 350 as the regulation existed on January 1, 2017.

Section 66 amends section 8-168, which provides for the filing of special reports on the condition of a bank, to make grammatical changes and to change a reference to “department” to “director.”

Section 67 amends section 8-160, which sets a penalty for failure to file reports or published statements with the department, to make grammatical changes and to change a reference to “department” to “director.”

Section 68 amends section 8-170, which is the bank records retention statute, to provide that copies of records and files must be retained for the same time period as the records and files, and to add, within new subsection (3), a requirement that such records, files, or copies of records and files be readable or legible.

Section 69 amends section 8-171, which governs liability for destruction of bank records, to make grammatical changes.

Section 70 amends section 8-173, which relates to the statute of limitations for claims based on a bank’s book entries, to make a grammatical change.

Section 71 amends section 8-174, which provides for limited applicability of the records retention statutes to national banks, to make a grammatical change.

Section 72 amends section 8-175, which provides a criminal penalty for false statements or entries in the books of a bank, to make a grammatical change.

Section 73 amends section 8-177, which sets standards for banks winding up their business in order to consolidate with another bank, to provide that this section applies when a bank consolidates with any type of financial institution, and to provide that the bank may transfer resources to the financial institution with which it is merging. This section updates a gender reference and changes a reference to “department” to “director.”

Section 74 amends section 8-178, which provides for the conversion of a national bank to a state charter, to update the term “national banking association” to “national bank,” and to insert subsection numbers. These changes are non-substantive.

Section 75 amends section 8-179, which sets the procedures for a national bank conversion to a state charter, to eliminate a reference to section 8-121 which is outright repealed in 163, to remove obsolete language regarding a certificate issued prior to chartering, and to add a clarifying cross-reference to section 8-178.

Section 76 amends section 8-180, which provides authority for a state bank to convert into or merge with a national bank, to update the term “national banking association” to “national bank.”

Section 77 amends section 8-182 to clarify that the rights of dissenting shareholders in the conversion of a state bank to a national bank are the same as the rights accorded dissenting shareholders in a merger or consolidation of a state bank into a national bank.

Section 78 amends section 8-183, which relates to the valuation of assets of a national bank which has converted to a state charter, to add a clarifying cross-reference to section 8-181 and to change a reference to “department” to “director.”

Section 79 amends section 8-183.04, which authorizes a mutual savings association to convert to a state bank charter and retain its mutual form, to update a reference to 12 CFR part 567 as such regulation existed on January 1, 2017, and to change a reference to the “department” to “director.”

Section 80 amends section 8-183.05, which provides for the vesting of property rights in a savings association converted to a state bank by operation of law, to add a clarifying reference to “savings” association.

Section 81 amends section 8-184, which relates to voluntary liquidation of a bank, to change a reference to “department” to “director.”

Section 82 amends section 8-185, which provides procedures for a voluntary bank liquidation, to replace obsolete language regarding a certificate of authority with a reference to the bank’s charter, and to change a reference to “department” to “director.”

Section 83 amends section 8-186, which provides procedures for a bank to place itself under the control of the department, to update a reference to “bank examiner” to “financial institution examiner.”

Section 84 amends section 8-187, which provides the conditions which will result in the insolvency of a bank and the procedures upon insolvency, to make grammatical changes, change references to “department” to “director,” and to insert subdivision numbers.

Section 85 amends section 8-188 to add “counsel” to the list of individuals who can be authorized by the director to take possession of an insolvent bank.

Section 86 amends section 8-189, which provides a criminal penalty for any bank insider who attempts to prevent the department from taking possession of an insolvent bank, to make grammatical changes.

Section 87 amends section 8-190 to clarify that the county of the main office of the bank is used for purposes of court filings if an insolvent bank refuses to turn possession over to the department, and to change the term “forthwith” to “immediately.”

Section 88 amends section 8-191 to change the method of notice the department must use to give notice that it has taken possession of an insolvent bank from a telegram to electronic mail, to add a reference to trust companies, and to change the term “forthwith” to “immediately.”

Section 89 amends section 8-192, which requires an inventory of an insolvent bank and provides for places where the inventory is to be filed, to clarify that one of the filings is to be made in the district court of the county where the main office of the bank is located, and to make grammatical changes.

Section 90 amends section 8-193, which provides for a limited return of possession of an insolvent bank to the bank's insiders, to make a grammatical change and to change a reference to "department" to "director."

Section 91 amends section 8-194, which requires the filing of a declaration of insolvency of a bank with the district court, to include the bank's stockholders as the persons responsible for restoring solvency, and to clarify that the county of the main office of the bank is the proper place of filing.

Section 92 amends section 8-195, which provides for an action to enjoin the department taking possession of an insolvent bank, to clarify that the county of the main office of the bank is used for purposes of certain court filings, to update gender references, to distinguish between the "Director of Banking and Finance" and "directors" of the insolvent bank, and to make grammatical changes.

Section 93 amends section 8-196, which relates to the giving of bonds in an appeal of a decision under section 8-195, to provide a clarifying cross-reference to section 8-195, and to make grammatical changes.

Section 94 amends section 8-197, which provides for the appointment of a receiver or liquidating agent for an insolvent bank, to provide a clarifying cross-reference to section 8-195, to make grammatical changes, and to insert subsection numbers.

Section 95 amends section 8-198, which provides for the appointment of the department as receiver or liquidating agent, to update references related to the department's jurisdiction.

Section 96 amends section 8-199, which relates to the authority of the department when it has been appointed receiver, to update and clarify references to the department's jurisdiction, owners of financial institutions, and the district court.

Section 97 amends section 8-1,100, which authorizes the director to employ personnel to assist in bank liquidation, to clarify that the county of the main office of the bank is used for purposes of court filings, and to update gender references.

Section 98 amends section 8-1,101 to provide that the district court rather than the Governor is to approve the bonds or similar insurance policies for individuals who liquidate a financial institution chartered by the department.

Section 99 amends section 8-1,102, which relates to the vesting of title of the assets of an insolvent bank in the department, to clarify that the county of the main office of the bank is used for purposes of court filings, and to make grammatical changes.

Section 100 amends section 8-1,103, which relates to the authority of the department to institute and defend lawsuits, to change references to “delinquent bank” to “insolvent bank,” to correctly identify the status of the closed bank, and to update references to legal actions.

Section 101 amend section 8-1,104, which provides the procedures for the collection of money due to an insolvent bank, to clarify that the county of the main office of the bank is used for purposes of court filings, to update the term “depository bond” to “guaranty bond,” and to make a grammatical change.

Section 102 amends section 8-1,105, which relates to the jurisdiction of district court judges in bank insolvency proceedings, to update a reference relating to the election of a judge and to update gender references.

Section 103 amends section 8-1,106, which sets out duties required of the director as receiver of an insolvent bank, to clarify that the county of the main office of the bank is used for purposes of court filings, and to update gender references.

Section 104 amends section 8-1,107, which relates the processing of claims filed against an insolvent bank, to change the word “justice” to “legality” as the term is used when the director reclassifies a claim, to clarify that the county of the main office of the bank is used for purposes of court filings, and to update gender references.

Section 105 amends section 8-1,108, which provides the process for appealing the director’s decision on the classification of a claim against the receivership of an insolvent bank, to update gender references and make grammatical changes.

Section 106 amends section 8-1,109, which authorizes the issuance of a certificate of indebtedness for allowed claims, to change the term “payment of any dividend” to “payment of any distribution” to correctly identify the action taken, and to make a grammatical change.

Section 107 amends section 8-1,110, which relates to the priority of claims of depositors in a receivership, to make clarifying language changes.

Section 108 amend section 8-1,111, which relates to the effect of FDIC insurance on the securing of deposits in an insolvent bank, to make clarifying language changes.

Section 109 amends section 8-1,112, which provides for payment of claims in a bank receivership, to change references to a “dividend” or “dividends” to a “distribution” or “distributions” to correctly identify the payments made, to update a gender reference, and to make a grammatical change.

Section 110 amends section 8-1,113, which relates to the allocation of expenses of liquidation if more than one bank is in liquidation, to make clarifying language changes.

Section 111 amends section 8-1,115, which requires the director to file liquidation reports with the court, to clarify that the county of the main office of the bank is used for purposes of these

court filings, to remove a reference to section 8-121 and a certificate referenced in that section as section 8-121 is outright repealed in section 163, and to update a gender reference.

Section 112 amends section 8-1,116, which relates to the reopening of a formerly insolvent bank, to change references to the “department” to “director” and to make clarifying language changes.

Section 113 amends section 8-1,117, which permits the stockholders and the board of directors of a bank whose capital is impaired to levy an assessment on the shareholders, to make clarifying language changes and to update gender references.

Section 114 amends section 8-1,118, which provides for an insolvent bank to reopen for a limited business, to make clarifying language changes.

Section 115 amends section 8-1,119, which provides a general penalty for violations of the Nebraska Banking Act, to make grammatical changes.

Section 116 amends section 8-1,124, to update the definitions used in sections 8-1,124 to 8-1,129 relating to emergencies. These sections are updated and expanded to include all financial institutions. As such, the definitions which had been found in section 8-1,124 are stricken. The definitions “emergency,” “office,” and “officers” are updated, and a definition of “financial institution” is added.

Section 117 amends section 8-1,125, which authorizes the director to allow a bank to close due to an emergency, as follows:

Within subsection (1), to change all references to “bank” to “financial institution;” and

Within new subsection (2), to provide:

That a financial institution that closes due to an emergency may obtain the approval of the director to open a temporary office where it may conduct its business for up to thirty months;

The criteria that the director must consider in approving a temporary office;

That a temporary office may be a mobile branch if the office closed due to the emergency was a branch office; and

That the opening of a temporary office may be approved by the director orally. Such approval is valid for four business days.

Section 118 amends section 8-1,126, which allows a bank officer to close a bank office for up to forty-eight hours without the approval of the department due to an emergency, to change all references to “bank” to “financial institution.”

Section 119 amends section 8-1,127, which relates to one day closures due to presidential or gubernatorial proclamation, to change references to “bank” to “financial institution.”

Section 120 amends section 8-1,128, which requires a bank to give prompt notice to the director of an emergency closing, to change a reference to “bank” to “financial institution” and to remove language regarding national banks.

Section 121 amends section 8-1,129, which accords legal holiday status to any day on which a bank has to close due to an emergency or proclamation and provides that no liability accrues to the bank or its insiders for closing, to change references to “bank” to “financial institution” and to make grammatical changes.

Section 122 amends section 8-1,131, which authorizes banks to act as trustees or custodians under the federal Self-Employed Individuals Tax Retirement Act of 1962 or for medical savings accounts under section 220 of the Internal Revenue Code, to remove unnecessary language related to the banks covered by the law.

Section 123 amends section 8-1,133, which relates to bank leasing of personal property, to clarify that the authority to adopt rules and regulations is discretionary and not mandatory, and to change a reference to “department” to “director.”

Section 124 amends section 8-1,134, which provides authority to the department to take administrative action for violations of a law under its jurisdiction, to change references to the “department” to “director,” to provide that fines collected by the director shall be credited by the State Treasurer in accordance with Article VII, section 5, of the Nebraska Constitution, and to remove unnecessary language related to the institutions covered under the law.

Section 125 amends section 8-1,135, which provides for an appeal of an administrative order, to change a reference to the “director.”

Section 126 amends section 8-1,136, which provides authority to the department to bring an injunctive action for violations of Chapter 8 or the Credit Union Act, to update references to the “director” and the “department.”

Section 127 amends section 8-1,137, which relates to referrals of violations to the Nebraska Attorney General or a county attorney, to clarify that any action taken as a result of a referral is discretionary with such offices, and to change a reference to the “director.”

Section 128 amends section 8-1,138, which provides for civil and criminal liability for violations of orders issued pursuant to section 8-1,134, to change references to the “director,” to insert subsection numbers, and to make a grammatical change.

Section 129 amends section 8-1,139, which provides a criminal penalty for insiders of financial institutions who misapply funds or other assets of the financial institutions, to add savings and loans as an institution covered under the law, to remove cooperative credit unions from the list of covered financial institutions, to change a reference to the “department,” and to make a grammatical change.

Section 130 amends section 8-1,140 of the Nebraska Banking Act, which is the “wild-card” statute for state-chartered banks. This section is amended to provide that a state-chartered bank shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2017, rather than January 1, 2016, by a federally chartered bank doing business in Nebraska. Due to state constitutional restrictions on delegation of legislative authority, this section is amended annually.

#### Trust Companies

Section 131 amends section 8-206 of the Nebraska Trust Company Act, which sets out the powers of a trust company, to provide, within subdivision (10), that the entity may request authority from the director to invest more than 100 percent of its paid-up capital stock to purchase, own, or hold real estate for operation of its business.

Section 132 amends section 8-207 of the Nebraska Trust Company Act, which relates to court appointments of trust companies, to change a reference to “administrator” to “special administrator.”

#### Building and Loan Associations

Section 133 amends section 8-318, which relates to customer accounts in building and loan associations, to update a reference to the federal Electronic Fund Transfer Act as of January 1, 2017.

Section 134 amends section 8-355, which is the “wild-card” statute for state-chartered savings and loan associations. This section is amended to provide that a state-chartered savings association shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2017, rather than January 1, 2016, by a federal savings and loan association doing business in Nebraska. Due to state constitutional restrictions on delegation of legislative authority, this section is amended annually.

#### Assessments and Fees

Section 135 amends section 8-601, which relates to the authority of the director, to identify statutes that are under the department’s jurisdiction by reference to named act rather than by chapter and article.

Section 136 amends section 8-602, which sets the department’s fees for reviewing various applications and providing certain services, to remove the fee provided in subdivision (9) for registering a statement of intent to make personal loans for the reason that the registration requirement contained in section 8-819 is outright repealed by section 163, and to renumber the remaining subdivisions.

Section 137 amends section 8-603, to provide that fines collected by the director under laws subject to the jurisdiction of the department shall be credited by the State Treasurer in accordance with Article VII, section 5, of the Nebraska Constitution.

### State-Federal Cooperation Acts

Section 138 amends section 8-701, which provides a definition of “financial institution” for purposes of sections 8-701 to 8-709, referred to generally as the State-Federal Cooperation Acts, to make a grammatical change.

Section 139 amends section 8-702, which requires federal depository insurance for financial institutions, by striking subdivision (2)(a) which had provided an exception to the requirement for institutions which did not have insurance and were in operation on September 4, 2005, for the reason that the sole institution which qualified for the exception merged into an insured bank in 2016. Subdivision (2)(b), which had required the registration of bank mortgage loan originators with the National Mortgage Licensing System and Registry, is also be struck as it is moved to section 37. Finally, section 139 updates language relating to the penalties for failing to maintain membership in the Federal Deposit Insurance Corporation.

### Personal Loans

Section 140 amends section 8-815, which defines terms used in sections 8-815 to 8-829, known as the personal loan statutes for banks, to strike the definitions of “registered bank” and “unregistered bank,” as the sections relating to those terms and the registration requirement, are outright repealed by section 163, to make clarifying changes, to renumber the remaining definitions, and to make grammatical changes.

Section 141 amends section 8-820, which sets the maximum interest rate and permissible charges for bank personal loans, to remove a reference to “registered bank” and an obsolete reference to a federal regulation.

Section 142 amends section 8-822, which relates to the computation of charges on personal loans, to remove obsolete language related to loans made prior to October 1, 1981.

Section 143 amends section 8-826 to update language related to the authority of the director to promulgate rules and regulations related to the personal loan statutes and to change the placement of such authority to a new subsection (2).

Section 144 amends section 8-828, which relates to bank purchase of commercial paper, to change a reference to “sections 8-815 to 8-827” to “sections 8-815 to 8-826” for the reason that section 8-827 is outright repealed by section 163, and to change a reference to “registered bank” to “bank.”

### Disclosure of Confidential Information

Section 145 amends section 8-1401, which governs the release of confidential records of financial institutions and other entities doing business in Nebraska, to add a new subsection (3) to allow disclosure of such records to a certified public accountant conducting an independent audit, when making a report required by statute, or in the course of regular business pursuant to a proposed purchase or sale of an entity subject to section 8-1401.

#### Credit Card Banks

Section 146 amends section 8-2401, which relates to the formation of a credit card bank, to change a reference within subdivision (9) to the definition of “financial institution,” as the definition is moved to section 2.

#### Gift Enterprises

Section 147 amends section 9-701, which relates to gift enterprises, to change a reference within subdivision (1)(a) to the definition of “financial institution,” as the definition is moved to section 2, and to make a grammatical change within subdivision (6)(a).

#### Credit Unions

Section 148 amends section 21-1770 of the Credit Union Act to provide that a credit union may opt out of the licensing of its loan officers by the department.

Section 149 amends section 21-17,115 of the Credit Union Act, which is the “wild-card” statute for state-chartered credit unions. This section is amended to provide that a state-chartered credit union shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2017, rather than January 1, 2016, by a federal credit union doing business in Nebraska. Due to State Constitutional restrictions on delegation of legislative authority, this section is amended annually.

#### Criminal Code

Section 150 amends section 28-612, which relates to financial crimes, to change a reference within subdivision (2) (c) to the definition of “bank,” as the definition is moved to section 2.

#### Probate Code

Section 151 amends section 30-2602.02, which relates to criminal history checks for persons to be appointed as guardians or conservators, to change a reference in subsection (1) to the definition of “financial institution,” as the definition is moved to section 2.

Section 152 amends section 30-2640, which relates to bonds for conservators, to change a reference to the definition of “financial institution,” as the definition is moved to section 2.

#### Installment Sales

Section 153 amends section 45-335, which is the definitional section of the Nebraska Installment Sales Act, to change a reference in subdivision (14) to the definition of “financial institution,” as the definition is moved to section 2.

#### Delayed Deposit Services

Section 154 amends section 45-902, which is the definitional section of the Delayed Deposit Services Licensing Act, to change a reference in subdivision (4) to the definition of “financial institution,” as the definition is moved to section 2.

Section 155 amends section 45-919, which relates to prohibited acts for delayed deposit services licensees, to change a reference in subsection (2) to the definition of “financial institution,” as the definition is moved to section 2.

### Installment Loans

Section 156 amends section 45-1002, which is the definitional section of the Nebraska Installment Loan Act, to change a reference in subdivision (1)(g) to the definition of “financial institution,” as the definition is moved to section 2.

### Guaranteed Asset Protection Waivers

Section 157 amends section 45-1103, which is the definitional section of the Guaranteed Asset Protection Waiver Act, to change a reference in subdivision (5) to the definition of “financial institution,” as the definition is moved to section 2.

### Accountability and Disclosure

Section 158 amends section 49-1497, which defines “financial institution” for purposes of section 49-1496, which enumerates the contents of a statement of financial interests filed with the Nebraska Accountability and Disclosure Commission, to change a reference within subdivision (1)(a) to the definition of “financial institution,” as the definition is moved to section 2.

### Miscellaneous Provisions

Section 159 is a savings clause stating that transactions validly entered into before the operative date of this section (August 24, 2017) remain effective as though this legislation had not occurred.

Section 160 provides for operative dates. Sections 130, 134, 149, 160, 162, and 164 become operative on their effective date (March 30, 2017) and the other sections become operative three calendar months after the adjournment of the legislative session (August 24, 2017).

Section 161 and 162 provide for repeal of the amendatory sections.

Section 163 provides for the outright repeal of the following sections:

Section 8-121, which had required the department to issue a certificate to an applicant for a bank charter stating that the applicant has complied with state laws and advising of any requirements which must be met, for the reason that the issuance of the certificate was made obsolete by the Administrative Procedure Act which requires the issuance of findings of fact, conclusions of law, and order with respect to such applications. Any conditions precedent to the issuance of a charter would be contained within such order.

Section 8-151, which had provided that a bank shall not increase the book value of property without obtaining the prior approval of the department, for the reason that such approval is unnecessary. Any increase that appears unwarranted would be noted during the course of an examination and justification required.

Section 8-1,120, which had authorized the department to offer and pay up to \$250 for the apprehension and conviction of any person violating the Nebraska Banking Act, for the reason that the amount is too low to be of any consequence and any increase would not be deemed an appropriate use of the Financial Institution Assessment Cash Fund.

Sections 8-816, 8-819, and 8-827, which related to the requirement of registration by banks of a statement of intention to make personal loans in order to charge an interest rate on such loans greater than usury, for the reasons that registration provides no additional protection to consumers and is unnecessary due to the level of regulation of banks.

The bill passed 48-0-1 with the Emergency Clause on March 23, 2017 and was approved by the Governor on March 29, 2017.

**LB185 (Lindstrom) Provide procedure and notice requirements and powers and duties for the Department of Banking and Finance with respect to certain abandoned license applications**

**Enacted**

**Effective August 24, 2017**

This bill, introduced at the request of the Nebraska Department of Banking and Finance, amends three consumer finance acts under the jurisdiction of the department relating to abandoned license applications. The bill provides, section by section, as follows:

Section 1 amends section 8-2733 of the Nebraska Money Transmitters Act to provide that applications of applicants for money transmitter licenses who fail to reply to deficiency notices from the department for 120 days or more after the first deficiency notice may be deemed abandoned, and to provide the department with the authority to issue notices of abandonment to those applicants in lieu of denial proceedings.

Section 2 amends section 45-346 of the Nebraska Installment Sales Act to provide that applications of applicants for installment sales licenses who fail to reply to deficiency notices from the department for 120 days or more after the first deficiency notice may be deemed abandoned, and to provide the department with the authority to issue notices of abandonment to those applicants in lieu of denial proceedings.

Section 3 amends section 45-1009 of the Nebraska Installment Loan Act to provide that applications of applicants for installment loan company licenses who fail to reply to deficiency notices from the department for 120 days or more after the first deficiency notice may be deemed abandoned, and to provide the department with the authority to issue notices of abandonment to those applicants in lieu of denial proceedings.

Section 4 provides for repeal of the amendatory sections.

The bill passed 44-0-5 on March 23, 2017 and was approved by the Governor on March 29, 2017.

**LB196 (Craighead) Revise powers of state-chartered banks, building and loan associations, and credit unions**

**Provisions amended into LB140e and Enacted  
Indefinitely Postponed on General File on a motion by the Speaker on May 23, 2017**

This bill, introduced at the request of the Director of Banking and Finance, would amend provisions relating to powers of state-chartered financial institutions.

The bill would amend section 8-1,140 of the Nebraska Banking Act, section 8-355 of the state-chartered savings and loan association statutes, and section 21-17,115 of the Nebraska Credit Union Act to provide that state-chartered banks, savings and loan associations, and credit unions shall have all the rights, powers, privileges, benefits, and immunities which may be exercised by their federal counterparts as of January 1, 2017, rather than January 1, 2016.

Due to state constitutional restrictions on delegation of legislative authority, these sections are amended annually.

The bill carries the emergency clause.

**LB341 (Lindstrom) Change provisions relating to executive bank officer license revocation and suspension**

**Provisions amended into LB140e and Enacted  
Indefinitely Postponed on General File on a motion by the Speaker on May 23, 2017**

This bill, introduced at the request of the Governor, would amend section 8-139 of the Nebraska Banking Act with regard to regulation of active executive officers of state-chartered banks by the Department of Banking and Finance.

Section 8-139 provides that no person shall act as an active executive officer until the person has been issued a license to do so from the department. Section 8-139 further provides that if the department, upon investigation, is satisfied that an active executive officer is conducting business in an unsafe or unauthorized manner or is endangering the interests of stockholders or depositors, the department may revoke the license of the active executive officer. The bill would provide that, in the alternative, the department may suspend the ability of such active executive officer to continue to act as an active executive officer. The bill would further provide that as part of an order of revocation or suspension, the Director of Banking and Finance may levy a civil penalty in an amount not to exceed \$10,000, which amount shall not be paid out of the assets of the bank. The bill would further provide that a bank may elect for its active executive officers to be exempt from the requirement to apply for and obtain a license from the department.

## **LB375 (Schumacher) Change provisions of the Credit Union Act**

**Enacted**

**Effective August 24, 2017**

### **OVERVIEW**

This bill amends sections 21-1701, 21-1709, 21-1724, 21-1736, 21-1740, 21-1741, and 21-1782 of the Credit Union Act relating to applications to organize a credit union, examinations of credit unions by the Department of Banking and Finance, joint acquisition of personal property by credit unions, acquisition by a credit union of assets or liabilities of another financial institution, operation by a credit union of safe deposit box services, and joint ownership of credit union share accounts. The bill also outright repeals two obsolete sections, sections 21-1725 and 21-17,116.

### **SUMMARY**

The bill provides, section by section, as follows:

Section 1 amends section 21-1701 to provide for assignment of new section 2 within the Credit Union Act and to change the last cited section of the act to accommodate the outright repeal of section 21-17,116, an obsolete section.

Section 2 provides for a definition of “financial institution.”

Section 3 amends section 21-1709 to provide that the definition of “fixed asset” shall be “assets as prescribed in generally accepted accounting principles” instead of “a structure, land, furniture, fixture, or equipment, including computer hardware and software and heating and cooling equipment, affixed to premises.”

Section 4 amends section 21-1724 to provide that the Director of Banking and Finance shall notify applicants for a certificate of approval to organize a credit union of his or her decision on the application within one hundred twenty calendar days after his or her receipt of the articles of association and bylaws.

Section 5 amends section 21-1736 to provide that the members of the board of directors and the members of the supervisory “committee” and the credit “committee, if any,” shall meet to consider the matters contained in the report of the credit union’s examination by the Department of Banking and Finance.

Section 6 amends section 21-1740 to provide that a credit union may “individually or jointly with other credit unions” purchase, lease, or otherwise acquire and hold tangible personal property necessary or incidental to its operations. This section further provides that, with the approval of the Director of Banking and Finance, a credit union may purchase the assets or assume the liabilities of another “financial institution” instead of just another credit union, and further provides that a credit union may also purchase any of the assets of a “financial institution,” instead of just a credit union in liquidation or receivership.

Section 7 amends section 21-1741 to provide that a credit union may operate a safe deposit box service for its members to the same extent as a Nebraska state-chartered bank.

Section 8 amends section 21-1782 to provide that a credit union may designate a person or persons to own a share account under any form of joint ownership permitted by law “and allowed by the credit union.” This section repeals provisions which provided that “no co-owner, unless a member in his or her own right, shall be permitted to vote, obtain loans, or hold office.” This section repeals provisions which provided that “In the event of the death of the person who owns the share account, the share account funds and any dividends thereon shall be paid to the co-owner and shall not be maintained in a share account unless the co-owner is a member in his or her own right.” This section provides that “If more than one joint owner seeks credit union membership through a joint account, each prospective member must meet any membership requirements described in the credit union’s bylaws.”

Section 9 provides for repeal of the amendatory sections.

Section 10 outright repeals sections 21-1725 and 21-17,116 which provided transitional requirements for credit unions in existence on October 1, 1996 when the current Credit Union Act became operative.

The bill passed 47-0-2 on May 8, 2017 and was approved by the Governor on May 12, 2017.

### **LB384 (Lindstrom) Change the rate of interest to be charged on installment loans under the Nebraska Installment Loan Act**

#### **Pending on General File**

This bill would amend section 45-1024 of the Nebraska Installment Loan Act to provide that licensees may receive charges on loans not exceeding 29 percent per annum instead of 24 percent per annum on that part of the unpaid principal balance not in excess of \$1,000, and 21 percent per annum on any remainder of the unpaid principal balance.

### **LB454 (Lindstrom) Allow credit unions to opt out of licensing loan officers**

#### **Provisions amended into LB140e and Enacted**

#### **Indefinitely Postponed on General File on a motion by the Speaker on May 23, 2017**

This bill would amend section 21-1770 of the Credit Union Act to provide that a state-chartered credit union may opt out of the licensing of its loan officers by the Department of Banking and Finance.

**LB582 (McDonnell) Authorize membership in a credit union by geographic boundary**

**Pending in Committee**

This bill would amend section 21-1743 of the Credit Union Act which currently provides that credit union organization shall be limited to groups of both large and small membership having a “common bond of occupation or association,” including religious, social, or educational groups, employees of a common employer, or members of a fraternal, religious, labor, farm, or educational organization and the members of the immediate families of such persons. This bill would add to these groups “persons within a defined geographic boundary.”

## **HEALTH INSURANCE**

### **LB92 (Kolterman) Require health carriers to provide coverage for telehealth services and change telehealth provisions relating to children’s behavioral health**

#### **Enacted**

**Effective August 24, 2017**

**Senator Priority Bill (Kolterman)**

**Contains provisions of LB282**

Section 1 enacts a new section in the insurance statutes to provide that individual and group health policies, certificates, contracts, and plans shall not exclude a service from coverage solely because it is delivered through telehealth and is not provided through in-person consultation or contact between a provider and a patient.

Section 2 amends section 71-8509 to remove a Medicaid coverage restriction for telehealth services for children, if a child has access to comparable services within thirty miles of his or her place of residence.

Section 3 provides for assignment of section 1 to Chapter 44, article 7.

Section 4 provides for repeal of the amendatory section.

The bill passed 49-0-0 on April 24, 2017 and was approved by the Governor on April 27, 2017.

### **LB324 (Kolterman) Adopt the Pharmacy Benefit Fairness and Transparency Act**

#### **Pending Committee**

This bill would enact 15 new sections to be known as the Pharmacy Benefit Fairness and Transparency Act to provide for regulation of pharmacy benefit managers. The bill would provide, section by section, as follows:

Section 1 would provide for a named act: the Pharmacy Benefit Fairness and Transparency Act.

Section 2 would provide definitions: “clean claim” (a claim received by a pharmacy benefit manager which requires no further information, adjustment, or alteration to be processed and paid); “contracted pharmacy;” “covered entity” ( nonprofit hospital or medical services corporation, health insurer, managed care company, or health maintenance organization; health program administered by the state in the capacity of provider of health insurance coverage; or an employer, labor union, or other group that provides health insurance coverage); “covered individual;” “day;” “department;” “director;” “generic drug;” “insurer;” “pharmacist;” “pharmacy;” “pharmacy benefit manager” (a person or entity performing pharmacy benefits management services for a covered entity); “pharmacy benefits management” (administration or

management of prescription drug benefits provided by a covered entity under terms and conditions of the contract between the pharmacy benefit manager and the covered entity); “prescription;” “prescription drug;” and “reimbursement amount.”

Section 3 would provide that a pharmacy benefit manager doing business in this state shall obtain a certificate of authority as a third-party administrator and shall be subject to the Third-Party Administrator Act and the Pharmacy Benefit Fairness and Transparency Act. A pharmacy benefit manager shall pay a certification fee to the Director of Insurance not to exceed \$5,000. The director shall enforce the Pharmacy Benefit Fairness and Transparency Act. A violation of the act shall be an unfair trade practice subject to the Unfair Insurance Trade Practices Act.

Section 4 would provide that a pharmacy benefit manager shall exercise good faith and fair dealing in performing its duties under a contract with a covered entity or a contracted pharmacy.

Section 5 would provide that if a covered individual or pharmacist receives incorrect, misleading, or inaccurate information from a pharmacy benefit manager, the covered individual or pharmacist may request corrective actions or sanctions from the Director of Insurance against the pharmacy benefit manager.

Section 6 would provide that a pharmacy benefit manager shall not mandate to contracted pharmacies basic record keeping that is more stringent than that required by state or federal law or regulation. A pharmacy benefit manager shall adjust its payment to a contracted pharmacy consistent with a price increase or decrease within seven days after a price increase or decrease notification by a manufacturer, supplier, or nationally recognized source. A pharmacy benefit manager shall accept into its network any pharmacy or pharmacist licensed in good standing with the State of Nebraska. A pharmacy benefit manager shall not exclude a Nebraska pharmacy from participation in its specialty pharmacy network as long as the pharmacy is willing to accept the terms of the pharmacy benefit manager’s agreement with its specialty pharmacies. A pharmacy benefit manager shall not require a pharmacist or pharmacy to participate in one contract with a pharmacy benefit manager in order to participate in other contracts with the same pharmacy benefit manager. Covered individuals who use a mail-order pharmacy shall not be charged fees or higher copays to use a contracted pharmacy. A pharmacy benefit manager shall not mandate accreditation for a contracted pharmacy as a prerequisite to (a) mailing a prescription drug to a covered individual or reimbursing the contracted pharmacy for such drug or (b) participating in a network or plan.

Section 7 would provide that a pharmacy benefit manager shall make available to the Director of Insurance and to each contracted pharmacy information related to the pharmacy benefit manager’s pricing methodology and reimbursement amount for single-source and multiple-source prescription drugs and compounds and specialty drugs.

Section 8 would provide that all financial benefits a pharmacy benefit manager receives, including rebates, discounts, credits, fees, grants, chargebacks, shall be disclosed to the covered entity with which the pharmacy benefit manager contracts.

Section 9 would provide that a pharmacy benefit manager shall disclose to a covered entity and to a contracted pharmacy the method used to calculate total dispensing fees, the cost of the prescription drug, and administration fees.

Section 10 would provide that all benefits payable under a pharmacy management plan shall be paid as soon as feasible but no later than twenty days after receipt of a clean claim if the claim is submitted electronically or thirty days after receipt of a clean claim if the claim is submitted in paper format. Adjudication of a clean claim shall not be audited unless fraud is suspected.

Section 11 would provide for requirements by which an audit of a contracted pharmacy's records by a pharmacy benefit manager shall be conducted.

Section 12 would provide that a pharmacy benefit manager shall mail an explanation of benefits to a covered individual for each of the covered individual's pharmacy claims for a prescription drug that is covered or managed by the pharmacy benefit manager.

Section 13 would provide that a pharmacist or contracted pharmacy shall not be (a) prohibited from or (b) subject to penalties or removal from a network or plan for sharing information regarding the cost, price, or copayment of a prescription drug with a covered individual.

Section 14 would provide that a covered entity that contracts with a pharmacy benefit manager to perform pharmacy benefits management services shall require the pharmacy benefit manager to notify the Department of Insurance of detection of fraud including prescription drug diversion activity.

Section 15 would provide the Director of Insurance with rule and regulation authority.

#### **LB474 (Baker) Require insurance coverage for synchronizing prescription medications**

##### **Pending in Committee**

This bill would enact a new section in the insurance statutes to provide that individual and group health policies, certificates, contracts, and plans shall apply a prorated daily cost-sharing rate to prescriptions that are dispensed by a network pharmacy for a partial supply if the prescribing practitioner or pharmacist determines the fill or refill to be in the best interest of the patient and the patient requests or agrees to a partial supply for the purpose of synchronizing the patient's medications.

## **LB480 (McCollister) Provide requirements relating to health benefit plan coverage for insureds in jail custody**

### **Pending on General File**

This bill would provide that a health insurer may not deny reimbursement for any covered service or supply or cancel the coverage of an insured if: (a) the insured is in custody pending disposition of charges; (b) the insured receives publicly funded medical care while in custody; or (c) the care was provided to the insured by an employee or contractor of a political subdivision who meets the credentialing criteria of the health benefit plan.

The bill would provide that an insurer shall reimburse a political subdivision for the costs of covered services or supplies provided to an insured in custody, pending disposition of charges, in an amount that is not less than 115 percent of the Medicare rate for the service or supply.

The bill would provide that the insurer may: (a) deny coverage for the treatment of injuries resulting from a violation of law; (b) exclude covered services provided to an insured in custody from requirements for reporting quality outcomes or performance; (c) impose utilization controls; (d) impose requirements for billing and medical coding; (e) deny coverage of diagnostic tests or health evaluations required for all individuals in custody pending disposition of charges; (f) limit coverage of hospital and ambulatory surgical center services provided to an insured in custody to services provided by in-network hospitals and ambulatory surgical centers; and (g) reimburse an out-of-network renal dialysis facility at the in-network or out-of-network rate for dialysis provided to an insured in custody.

The bill would provide that an insurer may not refuse to credential a health care provider who is an employee or contractor of a political subdivision because the employee or contractor provides services in a facility operated by the political subdivision.

The bill would provide that it does not (a) impair any right of an employer to remove an employee from health benefit plan coverage, (b) release insurers from the requirement to coordinate benefits, and (c) limit an insurer's right to rescind coverage in accordance with law.

The bill would provide that a political subdivision may not pay health benefit plan premiums on behalf of a person in custody.

The bill would provide that it would apply to reimbursement claims on or after January 1, 2018.

### **PENDING COMMITTEE AMENDMENTS**

The committee amendments would restructure and clarify the bill. The amendments would add definitions for: (1) "health insurance policy;" (2) "jail;" (3) "pending disposition of charges," and (4) "temporary custody."

The committee amendments would provide that an insurer shall pay claims for covered services or supplies provided by an out-of-network health care provider to an insured who is in temporary

custody in an amount that is not less than “one hundred” percent instead of “one hundred fifteen” percent of the Medicare rate for such services or supplies.

The committee amendments would provide that an insurer may cancel coverage or deny coverage for services or supplies provided to an insured who is incarcerated after the disposition of charges.

## **LB550 (Lindstrom) Change provisions relating to the Comprehensive Health Insurance Pool**

### **Pending in Committee**

This bill would amend section 44-4227 of the Comprehensive Health Insurance Pool Act to repeal the requirement that the Comprehensive Health Insurance Pool (CHIP) shall annually determine the standard risk rate “with the assistance of an independent actuary.” The standard risk rate is a basis for establishing annual pool premium rates. It is a calculation of rates for individual health insurance in this state that anticipates risk experience and expenses for such coverage.

CHIP is Nebraska’s high-risk health insurance plan. At the present time there is a very small number of CHIP policyholders.

## **LB604 (Riepe) Adopt the Nebraska Right to Shop Act and place duties on insurance carriers**

### **Pending in Committee**

#### **OVERVIEW**

This bill would enact the Nebraska Right to Shop Act to provide that an insurance carrier may develop and implement a program that provides incentives for enrollees in a health plan who elect to receive shoppable health care services covered by the plan from health care providers that charge less than the average price paid by that carrier for that shoppable health care service.

#### **SUMMARY**

The bill would provide, section by section, as follows:

Section 1 would provide for a named act: the Nebraska Right to Shop Act.

Section 2 would provide for definitions: (1) “allowed amount” (the contractually agreed upon amount paid by an insurance carrier to a health care entity participating in its network or the amount the health plan is required to pay under the health plan policy or certificate for out-of-network covered benefits); (2) “dependents;” (3) “director;” (4) “health care entity” (a licensed facility, licensed professional, or licensed organization or association); (5) “insurance carrier” (an entity that provides health insurance, including an insurance company, fraternal benefit

society, health maintenance organization, and the State of Nebraska); (6) “program;” and (7) “shoppable health care service” (a health care service for which an insurance carrier offers a shared savings incentive payment under a program established by the insurance carrier, and includes physical and occupational therapy services, obstetrical and gynecological services, radiology and imaging services, laboratory services, infusion therapy, inpatient or outpatient surgical procedures, and outpatient nonsurgical diagnostic tests or procedures).

Section 3 would provide that the Nebraska Right to Shop Act shall apply to the State of Nebraska and any other insurance carrier that elects to be subject to the act.

Section 4 would provide that prior to a nonemergency admission, procedure, or service and upon request by a patient or prospective patient, a health care entity within the patient’s or prospective patient’s insurer network shall, within three days, disclose the amount allowed, and a health care entity outside the patient’s or prospective patient’s insurer network shall, within three days, disclose the amount that will be charged.

Section 5 would provide that an insurance carrier shall establish an interactive mechanism on its web site that enables an enrollee to request and obtain from the insurance carrier information on the payments made by the insurance carrier to network providers.

Section 6 would provide that within two working days of an enrollee’s request, an insurance carrier shall provide a good faith estimate of the amount the enrollee will be responsible to pay out-of-pocket for a proposed nonemergency procedure or service.

Section 7 would provide that an insurance carrier shall develop and implement a program that provides incentives for enrollees in a health plan who elect to receive shoppable health care services that are covered by the plan from providers that charge less than the average price paid by that insurance carrier for that shoppable health care service.

Section 8 would provide that an insurance carrier shall make the incentive program available as a component of health plans offered by the insurance carrier in this state.

Section 9 would provide that an insurance carrier shall file a description of the incentive program with the Department of Insurance so that the department may determine if the incentive program complies with the Nebraska Right to Shop Act.

Section 10 would provide that if an enrollee elects to receive a shoppable health care service from an out-of-network provider that results in a shared savings incentive payment, the insurance carrier shall apply the amount paid for the service toward the enrollee’s member cost sharing as if the health care services were provided by an in-network provider.

Section 11 would provide that a shared savings incentive payment made by an insurance carrier is not an administrative expense of the insurance carrier for rate development or rate filing purposes.

Section 12 would provide that each year each insurance carrier other than the State of Nebraska shall file specified information with the Department of Insurance and that each year the department shall submit an aggregate report to the Legislature for all insurance carriers filing information with the department.

Section 13 would provide the Department of Insurance with rule and regulation authority.

Section 14 would amend section 44-361 to provide that payments made pursuant to the Nebraska Right to Shop Act shall not be considered an illegal rebate of premium.

Section 15 would provide for repeal of the amendatory section.

## **INSURANCE INFORMATION PRIVACY**

**LB241 (Craighead) Provide an exception to the annual privacy notice requirement under the Privacy of Insurance Consumer Information Act**

**Enacted**

**Effective August 24, 2017**

This bill, introduced at the request of the Director of Insurance, amends the Privacy of Insurance Consumer Information Act to provide an exception to the annual privacy notice to consumers requirement for licensees of the Department of Insurance. The legislation is intended to match recent changes to the federal privacy rule.

Section 1 amends section 44-905 by adding an exception to the requirement for Department of Insurance licensees to provide an annual privacy notice to consumers for licensees who provide nonpublic information to nonaffiliated third parties only in accordance with existing law and if the licensee has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and procedures that were disclosed in the most recent disclosure sent to consumers.

Section 2 provides for repeal of the amendatory section.

The bill passed 48-0-1 on May 4, 2017 and was approved by the Governor on May 10, 2017.

## **INSURANCE PRODUCERS**

### **LB231 (Kolterman) Authorize disciplinary action under the Insurance Producers Licensing Act for failing to maintain a license in good standing**

#### **Enacted**

**Effective August 24, 2017**

This bill, introduced at the request of the Director of Insurance, provides the statutory authority to the director to discipline a non-resident insurance producer if such producer fails to remain in good standing in his or her home state. A non-resident insurance producer is a licensed producer able to sell insurance in Nebraska, but who is located in a different state.

Section 1 amends section 44-4059 of the Insurance Producers Licensing Act by adding a new subsection to the list of causes for which the director may suspend, revoke, or refuse to issue or renew an insurance producer license or may levy an administrative fine to include “failing to maintain in good standing a resident license in the insurance producer’s home state.”

Section 2 provides for repeal of the amendatory section.

The bill passed 48-0-1 on May 4, 2017 and was approved by the Governor on May 10, 2017.

### **LB486 (Kolterman) Change continuing education requirements for insurance licensees**

#### **Pending on General File**

This bill would amend sections 44-3902, 44-3904, and 44-3905 of the insurance statutes governing continuing education for producer and consultant licensees to provide that “active participation” by a member in activities of a “professional insurance association” may be approved by the Director of Insurance for up to six hours of continuing education credit to be applied to the member licensee’s twenty-one-hour continuing education requirement for life, accident and health or sickness, property, casualty, and personal lines property and casualty insurance for each two-year license period.

The bill would define “active participation” as (a) attendance at a formal meeting of a professional insurance association where a business program is presented, (b) service on and involvement in the activities of the board of directors or a formal committee of a professional insurance association, (c) participation in industry, regulatory, or legislative meetings held by or on behalf of a professional insurance association, and (d) participation in other formal insurance business activities of a professional insurance association approved by the Director of Insurance.

The bill would define “professional insurance association” as a membership organization that offers courses, lectures, seminars, or other instructional programs approved by the Director of Insurance as continuing education activities, is organized for the express purpose of promoting

the interests of insurance licensees, and is based on paid membership renewable annually or biennially.

#### PENDING COMMITTEE AMENDMENTS

The committee amendments would amend the bill's definition of "active participation" to make clarifying changes, particularly by removing redundant provisions. As introduced, the definition of "active participation" would set out four categories of activities that could be approved for continuing education credit. The first category would be attendance at a formal meeting of a professional insurance association where a formal business program is presented and attendance is verified by the association. The committee amendments would amend these provisions to require attendance at formal "meetings" instead of a single formal "meeting." The committee amendments would further amend these provisions to eliminate the requirement that attendance be verified by the association because that requirement is covered in the bill by proposed subdivision (3)(b) in section 44-3904 (section 2). As introduced, the fourth category of activities would be participation in other formal insurance business activities of a professional insurance association approved by the Director of Insurance. The committee amendments would eliminate this fourth category in its entirety because it is overly broad and adds nothing to what is already in the other three categories.

## **LOAN BROKERS**

### **LB184 (Lindstrom) Change provisions relating to loan brokerage agreements, disclosure documents, and rights to cancel**

#### **Enacted**

**Effective August 24, 2017**

This bill, introduced at the request of the Nebraska Department of Banking and Finance, amends laws relating to loan brokers. The bill provides, section by section, as follows:

Section 1 amends section 45-190 to provide that bank holding companies are excluded from the definition of a loan broker.

Section 2 amends section 45-191.01 to change the requirement that a loan broker shall give a borrower a written disclosure statement forty-eight hours prior to the contract being signed to a simple prior notice requirement in order to comport with the amendment in section 3 which increases the time period in which a customer may cancel a loan brokerage agreement.

Section 3 amends section 45-191.04 to change from three business days to five business days the time period granted to a borrower to cancel a loan brokerage agreement for any reason.

Section 4 provides for repeal of the amendatory sections.

The bill passed 47-0-2 on March 23, 2017 and was approved by the Governor on March 29, 2017.

## **MONEY TRANSMITTERS**

### **LB186 (Lindstrom) Change provisions relating to licensee surety bonds under the Nebraska Money Transmitters Act**

#### **Enacted**

**Effective August 24, 2017**

This bill, introduced at the request of the Nebraska Department of Banking and Finance, amends the surety bond requirements of the Nebraska Money Transmitters Act. The bill provides, section by section, as follows:

Section 1 amends section 8-2727 to change the method of calculating the amount of a licensee's surety bond, over the base amount of \$100,000, from an amount based on the number of the licensee's physical locations in Nebraska to an amount based on the licensee's volume of money transmitter transactions in Nebraska. The amendment provides that a bond must be increased by \$50,000 for each increase in transaction volume of two million dollars, up to a maximum of a \$250,000 bond. The surety bond could also be reduced if there was a corresponding decrease in the volume of transactions. A licensee would be required to increase its surety bond upon thirty days' written notice from the department that the bond is deficient based on the licensee's reported volume of transactions.

Section 2 provides for repeal of the amendatory section.

The bill passed 47-0-2 on March 23, 2017 and was approved by the Governor on March 29, 2017.

## **PROBATE**

### **LB138e (Lindstrom) Provide for transfer of business interests under uniform transfer-on-death security registration**

#### **Enacted**

**Effective May 11, 2017**

This bill amends section 30-2734, the definition section for sections 30-2734 to 30-2745, the portion of the Nebraska Probate Code which contains a Nebraska version of the Uniform Transfer on Death (TOD) Security Registration Act. These sections allow the owner of securities to register the title in transfer-on-death (TOD) form. They then enable an issuer, transfer agent, broker, or other such intermediary to transfer the securities directly to the designated transferee on the owner's death.

Section 30-2734 defines a "security" as, among other things, a share, participation, or other interest in a "business." However, this section contains no definition of "business." LB138 adds one, as follows: "a corporation, partnership, limited liability company, limited partnership, limited liability partnership, or other legal or commercial entity."

The bill passed 48-0-1 with the Emergency Clause on May 4, 2017 and was approved by the Governor on May 10, 2017.

## **PROPERTY AND CASUALTY INSURANCE**

### **LB21 (Riepe) Change provisions relating to motor vehicle insurance coverage for loaned vehicles**

#### **Pending in Committee**

This bill would amend section 60-1439.01 of the Motor Vehicle Industry Regulation Act which currently provides that when an insured person is operating a motor vehicle provided by a motor vehicle dealer for use while the insured person's vehicle is being serviced, repaired, or inspected by the dealer, and both the insured person's and the dealer's motor vehicle insurance policies have mutually repugnant clauses regarding primary coverage, the insured person's policy shall provide primary coverage and the dealer's policy shall provide secondary coverage.

The bill would amend this section to provide that it shall treat a "garage" or "repair shop" in the same manner as a dealer.

### **LB66 (Hansen) Change provisions relating to stacking of coverage under the Uninsured and Underinsured Motorist Insurance Coverage Act**

#### **Pending in Committee**

This bill would amend sections 44-6410 and 44-6411 of the Uninsured and Underinsured Motorist Insurance Coverage Act to provide that the limits of liability for uninsured or underinsured motorist coverage for two or more motor vehicles insured under separate policies held by different policyholders who are not related persons residing in the same household may be stacked to determine the limit of coverage available to an injured person for any one accident.

### **LB116 (Harr) Redefine automobile liability policy and change coverage provisions**

#### **Pending in Committee**

This bill would amend section 60-310 of the Motor Vehicle Registration Act to provide that an automobile liability policy shall not exclude, limit, reduce, or otherwise alter liability coverage solely because the person driving the insured motor vehicle is not the named insured in the policy or a member of the named insured's household.

## **LB213 (Hansen) Add an unfair claims settlement practice under the Unfair Insurance Claims Settlement Practices Act**

### **Pending in Committee**

This bill would amend section 44-1540 of the Unfair Insurance Claims Settlement Practices Act to provide that it shall be an unfair claims settlement practice to fail to disclose to a claimant, prior to the settlement of a claim involving damage to or the total loss of a motor vehicle, any appraisal information used by the insurer in determining the value of such motor vehicle.

## **LB306 (Lindstrom) Change provisions relating to the scope of coverage of and notice required under the Portable Electronics Insurance Act**

### **Enacted**

**Effective August 24, 2017**

This bill amends sections 44-8502 and 44-8508 of the Portable Electronics Insurance Act. This act provides a regulatory framework for the offering and sale of insurance covering portable electronic devices such as cell phones and smart phones. Available coverage protects against loss, theft, damage, or other applicable perils. The act provides for issuance by the Director of Insurance of a limited lines insurance license that allows employees or authorized representatives of a vendor to offer coverage under a policy of portable electronics insurance to customers at each location at which the vendor engages in portable electronics transactions.

Section 1 amends section 44-8502 to update the definition of “portable electronics.”

This section provides that the new definition is “any nonstationary electronic equipment and its accessories capable of communications or data processing or utility including, but not limited to, a laptop, a tablet, a wearable computer, a personal communications device such as a cellular or mobile telephone, a hand-held smart phone, a media player, an e-reader, a personal digital assistant, devices used for data collection, global positioning, or monitoring, and other devices that may or may not incorporate wireless transmitters and receivers.”

The definition had been “a device that is personal, self-contained, easily carried by an individual, and battery-operated and includes devices used for electronic communication, viewing, listening, recording, computing, or global positioning.”

Section 2 amends section 44-8508 to provide that an insurer may terminate or change the terms and conditions of a policy of portable electronics insurance upon providing the vendor and enrolled customers at least “thirty” days instead of “sixty” days notice. This section had provided that if notice is required, it shall be in writing and may be mailed or delivered to a vendor or enrollee or notice shall be in electronic form. This section provides that disclosure of notice in electronic form to the enrolled customer shall be provided within thirty days after the purchase of the portable electronics.

The bill passed 48-0-1 on May 4, 2017 and was approved by the Governor on May 10, 2017.

**LB406 (Kolterman) Change provisions relating to notice of cancellation, nonrenewal, or nonpayment of a premium for automobile liability policies**

**Enacted**

**Effective August 24, 2017**

This bill amends section 44-516 regarding notice of cancellation of an automobile liability policy, section 44-522 regarding notice of cancellation or nonrenewal of a policy of property, marine, or liability insurance, and section 44-523 regarding notice of cancellation of a policy of automobile liability insurance for reasons other than nonpayment of premium or initiated by a premium finance company.

The bill provides that, in the cases of sections 44-516 and 44-523, these notices, in addition to being mailed by registered or certified mail, may be mailed by first-class mail using intelligent mail barcode or another similar tracking method used or approved by the United States Postal Service. The bill provides that, in the case of section 44-522, these notices, in addition to being mailed by registered mail, certified mail, or ordinary first-class mail, may be mailed by first-class mail using intelligent mail barcode or another similar tracking method used or approved by the United States Postal Service.

The bill passed 47-0-2 on May 8, 2017 and was approved by the Governor on May 12, 2017.

**LB643 (Krist) Change automobile liability insurance and financial responsibility requirements**

**Pending in Committee**

This bill would increase the current required minimum limits of motor vehicle insurance coverage (1) for bodily injury to or death of other persons and (2) for damage to property of others. The bill would provide, section by section, as follows:

**UNINSURED AND UNDERINSURED COVERAGE**

Section 1 would amend section 44-6408 of the Uninsured and Underinsured Motorist Insurance Coverage Act to increase the minimum limits (1) from \$25,000 to \$50,000 for injury to or death of one person in one accident and (2) from \$50,000 to \$100,000 for injury to or death of two or more persons in one accident. (There are no statutory requirements for uninsured and underinsured coverage of injury to or destruction of property of other persons.)

**LIABILITY COVERAGE**

Sections 2 to 6 would amend the following sections to increase the minimum liability limits (1) from \$25,000 to \$50,000 for injury to or death of one person in one accident, (2) from \$50,000 to

\$100,000 for injury to or death of two or more persons in one accident, and (3) from \$25,000 to \$50,000 for injury to or destruction of property of other persons in one accident:

Section 60-310 of the Motor Vehicle Registration Act (definition of "automobile liability policy" for purposes of motor vehicle registration requirements) (section 2 of the bill);

Section 60-346 of the Motor Vehicle Registration Act (definition of "proof of financial responsibility" for purposes of motor vehicle registration requirements) (section 3 of the bill);

Section 60-501 of the Motor Vehicle Safety Responsibility Act (definition of "proof of financial responsibility") (section 4 of the bill);

Section 60-509 of the Motor Vehicle Safety Responsibility Act (requirements for an automobile liability policy or bond) (section 5 of the bill); and

Section 60-534 of the Motor Vehicle Safety Responsibility Act (requirements for a certified SR22 motor vehicle liability policy) (section 6 of the bill).

Section 7 would amend section 60-549 of the Motor Vehicle Safety Responsibility Act to increase the minimum amount of cash or securities deposited with the State Treasurer necessary to evidence proof of financial responsibility from \$75,000 to \$150,000 - historically this amount has been the sum of the minimum limit for bodily injury to or death of two or more persons plus the minimum limit for injury to or destruction of property of other persons. This section would express this amount by means of an internal reference to subdivisions (13)(b) and (c) of section 60-501.

#### MISCELLANEOUS PROVISIONS

Section 8 would provide for an operative date of January 1, 2018.

Section 9 would provide for repeal of the amendatory sections.

Minimum limits requirements were first enacted in 1949 and have been increased three times thereafter, as follows:

1949	LB493	\$5,000/\$10,000/\$1,000
1959	LB628	\$10,000/\$20,000/\$5,000
1973	LB365	\$15,000/\$30,000/\$10,000
1983	LB253	\$25,000/\$50,000/\$25,000 (current)

## **PUBLIC ACCOUNTANCY**

### **LB56 (Morfeld) Change provisions relating to issuance of a permit under the Public Accountancy Act**

#### **Enacted**

**Effective August 24, 2017**

This bill amends section 1-136.02 of the Public Accountancy Act to provide that the Nebraska State Board of Public Accountancy shall issue a permit to a certificate holder who has, among other things, two years of accounting experience as an accountant in the office of the Auditor of Public Accounts or the Department of Revenue under the supervision of an active certified public accountant who is the holder of a Nebraska permit or the equivalent issued by another state.

The bill passed 46-0-3 on March 3, 2017 and was approved by the Governor on March 7, 2017.

## **REAL ESTATE**

### **LB16e (Craighead) Change provisions relating to licensing, trust accounts, and unfair trade practices under the Nebraska Real Estate License Act**

#### **Enacted**

**Operative March 30, 2017 (effective date of the bill), except sections 1, 2, 3, 5, and 8 are operative August 24, 2017 (three calendar months after the adjournment of the legislative session)**

**Contains provisions of LB549**

#### **OVERVIEW**

This bill amends sections 81-885.13, 81-885.17, 81-885.19, 81-885.21, and 81-885.24 of the Nebraska Real Estate License Act to amend provisions regarding applications for licenses; verification of licensure in other jurisdictions; form, custody, and display of licenses; verification of license status; trust account requirements; and earnest money restrictions.

#### **SUMMARY**

The bill provides, section by section, as follows:

Section 1 amends section 81-885.13 to provide that an applicant for an original broker's or salesperson's license can furnish fingerprints to a processing service selected by the State Real Estate Commission as an alternative to furnishing them to the Nebraska State Patrol.

Section 2 amends section 81-885.17 to provide that prior to issuance of any license to a nonresident, the applicant can provide verification of licensure by his or her resident regulatory jurisdiction as an alternative to filing with the State Real Estate Commission a duly certified copy of the license issued by his or her regulatory jurisdiction. This section further amends section 81-885.17 to provide that an applicant for an original nonresident broker's or salesperson's license can furnish fingerprints to a processing service selected by the State Real Estate Commission as an alternative to furnishing them to the Nebraska State Patrol.

Section 3 amends section 81-885.19 to provide that the State Real Estate Commission shall prescribe the forms of broker's and salespersons' licenses and to repeal specific provisions regarding delivery, mailing, custody, and display of licenses. This section would further amend section 81-885.19 to provide that the commission shall provide for verification of the current status of licenses electronically or by other means readily available to the public.

Section 4 amends subsection (1) and enacts a new subsection (7) in section 81-885.21 to provide the State Real Estate Commission with rule and regulation authority to exempt active brokers who have no trust account activity from trust account requirements of this section. This section further amends subsection (1) of section 81-885.21 which had provided that, among other things, trust accounts which real estate brokers must maintain for down payments and earnest money deposits may be either interest-bearing or non-interest-bearing, and had further provided that on and after July 1, 2017, such trust accounts shall only be non-interest-bearing. This section

repeals this sunset so that such trust accounts will continue to be either interest-bearing or non-interest-bearing. This section further amends section 81-885.21 by repealing subsection (6) to eliminate provisions regarding earnest money which are reconstituted in section 5.

Section 5 amends section 81-885.24 to provide that it is an unfair trade practice to charge or collect, as part of or all of a licensee's compensation or consideration, any part of the earnest money paid in connection with a real estate transaction until the transaction has been consummated or terminated, except that a payment for goods or services rendered by a third party on behalf of the client shall not be considered compensation or consideration if such payment does not include any profit, compensation, or payment for services rendered by the broker and the broker retains a record of the payment to the third party for such goods or services.

Section 6 provides for operative dates.

Sections 7 and 8 provide for repeal of the amendatory sections.

Section 9 provides for the emergency clause.

The bill passed 46-0-3 with the Emergency Clause on March 23, 2017 and was approved by the Governor on March 29, 2017.

## **LB208 (Lindstrom) Change provisions relating to broker trust accounts under the Nebraska Real Estate License Act**

### **Pending in Committee**

This bill would amend section 81-885.21 of the Nebraska Real Estate License Act to provide that the trust account which each real estate broker must maintain for down payments and earnest money deposits may be maintained in a "federally insured financial institution" and not just in a "bank, savings bank, building and loan association, or savings and loan association." This change would principally apply to financial institutions such as credit unions.

## **LB257 (Craighead) Provide for a statute of limitations for claims relating to real estate brokerage services**

### **Enacted**

**Effective August 24, 2017**

### **Speaker Priority**

Section 1 enacts a new section to provide that any action to recover damages based on any act or omission of a real estate licensee relating to real estate brokerage services shall be commenced within two years after whichever of the following occurs first: (a) a transaction is completed or

closed; (b) an agency agreement is terminated; or (c) an unconsummated transaction is terminated or expires.

Section 2 provides for assignment of section 1 to Chapter 25, article 2.

The bill passed 48-0-1 on May 3, 2017 and was approved by the Governor on May 9, 2017.

**LB549 (Lindstrom) Eliminate requirement under the Nebraska Real Estate License Act that broker trust accounts be non-interest-bearing**

**Provisions amended into LB16e and Enacted  
Indefinitely Postponed on General File on a motion by the Speaker on May 23, 2017**

This bill would amend section 81-885.21 of the Nebraska Real Estate License Act which provides that, among other things, trust accounts which real estate brokers must maintain for down payments and earnest money deposits may be either interest-bearing or non-interest-bearing, and further provides that on and after July 1, 2017, such trust accounts shall only be non-interest bearing. The bill would repeal this sunset so that such trust accounts would continue to be either interest-bearing or non-interest-bearing.

This section also provides that if a trust account is interest bearing, the interest may be distributed only to tax-exempt nonprofit organizations that promote housing in Nebraska.

The bill carries the emergency clause.

## **REAL PROPERTY APPRAISAL**

### **LB17 (Craighead) Change and eliminate provisions of the Real Property Appraiser Act and the Nebraska Appraisal Management Company Registration Act**

#### **Pending on General File**

The purpose of LB17 is to update the Nebraska Appraisal Management Company Registration Act (AMC Act) for compliance with: Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI); the AMC Final Rule adopted by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Consumer Financial Protection Bureau, and the Federal Housing Finance Agency; and the requirements of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC). The AMC Final Rule was adopted on June 9, 2015, with an effective date of August 10, 2015, to implement the minimum requirements in the Dodd-Frank Wall Street Reform and Consumer Protection Act, which added a new Section 1124 to Title XI, to be applied by participating states in the registration and supervision of appraisal management companies (AMC). The AMC Final Rule also implements the minimum requirements in the Dodd-Frank Act for AMCs that are subsidiaries owned and controlled by an insured depository institution and regulated by a Federal financial institutions regulatory agency, and implements the requirement for states to report to the ASC the information required by the ASC to administer the new national registry of AMCs. Participating states have until August 10, 2018 to implement these changes. This bill also includes minor changes to address administration of the AMC Act, and to harmonize the AMC Act with the Nebraska Real Property Appraiser Act (Appraiser Act). Finally, this bill includes one change to the Appraiser Act to maintain compliance with Title XI and the Real Property Appraiser Qualifications Criteria effective on July 1, 2016 as promulgated by The Appraisal Foundation, the source of appraisal standards and qualifications as authorized by the U.S. Congress. If the State of Nebraska is found to not be in compliance with Title XI by the Appraisal Subcommittee, the Appraisal Subcommittee may remove all Nebraska credentialed appraisers from the Federal Registry, resulting in no appraisers qualified to appraise real property in connection with federally related transactions, which is approximately 80 percent of all mortgage loan activity, or remove all Nebraska registered AMCs from the Federal Registry, which would halt all mortgage loan activity within the state in which AMCs are utilized. Nebraska currently has 695 certified or licensed real property appraisers, and 101 AMCs conducting business in the State.

The following AMC Act language changes are included in LB17:

Definitions are added for affiliate; appraisal management services; consumer credit; covered transaction; creditor; dwelling; federally regulated appraisal management company; independent contractor; and secondary mortgage market participant. These definitions mirror those found in the AMC Final Rule.

Definitions are added for AMC National Registry; AMC Final Rule; Appraisal Subcommittee; AMC appraiser; assignment; credential; contact person; Financial Institutions Reform, Recovery, and Enforcement Act of 1989; jurisdiction; and registration. These definitions clarify terms used throughout the AMC Act.

The definitions of appraisal management company and appraiser panel are changed to mirror the definitions used in the AMC Final Rule.

The definition of board is changed to reference the definition found in the Appraiser Act.

The definition of person is changed to reference the definition found in the Appraiser Act.

The definition of federal financial institutions regulatory agency is changed to federal agencies to reference only those federal agencies responsible for the AMC Final Rule, and prevent confusion with the Federal Financial Institutions Examination Council Regulatory Agencies.

The definition of valuation assignment is replaced with valuation services. The term valuation services is used throughout LB17, but valuation assignment is removed.

The definitions of Appraisal Foundation; appraisal review; appraisal services; appraiser; controlling person; federally related transaction; owned and controlled; quality control examination; real estate related financial transaction; and relocation management company are removed.

Section 4 modifies section 76-3203 to provide authority to the board to request the information necessary to administer and enforce the AMC Act in an application for registration or renewal of a registration; the specific individual application requirements are removed. Additional requirements are also placed on AMCs to safeguard the interests of the public, such as, an AMC shall have a good reputation for honesty, trustworthiness, integrity, and competence to perform appraisal management services, and not have had a final civil or criminal judgment entered against it for fraud, dishonesty, breach of trust, or misrepresentation involving real estate, financial services, or appraisal management services within a five-year period immediately preceding the date of application. Authority is also included in this section to allow the board to collect and transmit information required by Title XI, the AMC Final Rule, or any policy or rule established by the Appraisal Subcommittee. Finally, the renewal requirements for an AMC are better defined.

Section 5 defines the appraiser panel inclusion requirements for an AMC appraiser, and appraiser panel removal and notification requirements for both an AMC and AMC appraiser. Section 5 also establishes that an AMC appraiser shall be free from inappropriate influence and coercion as required by the appraisal independence standards established under section 129E of the federal Truth in Lending Act, as such section existed on January 1, 2017, including the requirements for payment of a reasonable and customary fee to AMC appraisers when the AMC is engaged in providing appraisal management services. This language was previously included as a certification under section 76-3203. Finally, an AMC shall select an AMC appraiser from its appraiser panel for an assignment who is independent of the transaction and who has the

requisite education, expertise, and experience necessary to competently complete the assignment for the particular market and property type.

Section 6 establishes the reporting requirements for federally regulated AMCs, and grants authority to the board to collect and transmit information and fees required by Title XI, the AMC Final Rule, or any policy or rule established by the Appraisal Subcommittee. Finally, this section includes clarification regarding application of the AMC Act to Federally Regulated AMCs.

Section 7 modifies section 76-3204 to establish that the AMC Act does not apply to a department or division of a person that provides Appraisal Management Services only to itself, or a person that provides appraisal management services, but does not meet the requirement established by subdivision (5)(c) of section 76-3202. Current subdivisions (1), (2), and (3) in this section are removed due to these issues being addressed within the definition of appraisal management company, appraisal management services, appraiser panel, and the newly added language to this section.

Section 9 grants the board authority to collect and transmit to the Appraisal Subcommittee any fees established by the Appraisal Subcommittee under Title XI, the AMC Final Rule, and any policy or rule established by the Appraisal Subcommittee required for inclusion on the AMC National Registry.

Section 10 clarifies the ownership requirements found in section 76-3207 to mirror the AMC Final Rule.

Section 11 removes subsections (1) and (2) of section 76-3208 as these issues are addressed within the added language in section 2 and section 4. Language is added in this section to ensure that AMCs only conduct business in this state under the legal or trade name included in the application as approved by the board for issuance or renewal of a registration, and added language also prevents an AMC from requiring an AMC appraiser to indemnify an AMC or hold an AMC harmless for any liability, damage, losses, or claims arising out of the appraisal management services provided by the AMC.

Section 12 modifies section 76-3210 for clarification as to whom the uniform standards of professional appraisal practice apply to under the AMC Act.

Section 13 modifies section 76-3212 to include the language found in the AMC Final Rule regarding the examination of books and records, and the requirement for an AMC to submit reports, information, and documents upon request, as part of the record keeping requirements for an AMC.

Section 16 modifies section 76-3215 to harmonize with the language changes throughout LB17. In addition, subsections (2), (3), (4), and (5) are removed as their subject is now addressed in Section 4.

Section 17 modifies section 76-3216 to clarify the board's authority to issue cease and desist orders for persons directly or indirectly engaging in or attempting to engage in business as

AMCs, or advertising as engaging in or conducting business as AMCs, without first obtaining registration issued by the board or by meeting the requirements as a federally regulated AMC. This language is modeled after language in the Appraiser Act. Finally, this section provides authority to the board to report any violation of appraisal related laws or rules and regulations, along with any disciplinary action taken against an AMC, to the Appraisal Subcommittee.

Section 18 modifies section 76-3217 to add language to ensure that costs incurred for administrative hearing, including fees of counsel, the hearing officer, court reports, investigators, and witnesses, shall be taxed as costs in such action as the board may direct. This language is the same as found in the Appraiser Act.

Sections 19 and 20 clarify the Attorney General's authority within the AMC Act.

Minor language changes are also made throughout the AMC Act to harmonize and clean up the language within the AMC Act, and to also harmonize the AMC Act with the Appraiser Act.

The following Appraiser Act language changes are included in LB17:

The Appraiser Qualifications Board of The Appraisal Foundation adopted changes to the three-year Supervisory Appraiser jurisdictional requirement found in the Real Property Appraiser Qualifications Criteria. Effective July 1, 2016, while Supervisory Appraisers must still be certified appraisers in good standing for a minimum of three years prior to supervising, they no longer need to be certified and in good standing in the jurisdiction in which the Trainee Real Property Appraiser practices for a minimum period of time. Section 1 amends section 76-2228.02 to ensure that a person credentialed as a certified real property appraiser in Nebraska or who holds the equivalent in another jurisdiction for a period of three years is eligible for approval as a supervisory appraiser.

## **LB551 (Walz) Change qualifications for certain real property appraiser credentials**

### **Pending in Committee**

#### **OVERVIEW**

This bill would amend sections 76-2228.01, 76-2230, 76-2231.01, and 76-2232 of the Real Property Appraiser Act to changes provisions regarding educational and experience requirements for credentialing as trainee real property appraisers, licensed residential real property appraisers, certified residential real property appraisers, and certified general real property appraisers.

#### **SUMMARY**

The bill would provide, section by section, as follows:

Section 1 would amend section 76-2228.01 regarding trainee real property appraisers to reduce educational requirements and harmonize internal references.

Section 2 would amend section 76-2230 regarding credentialing of licensed residential real property appraisers to reduce education requirements and reduce the experience requirement from “two” thousand hours to “one” thousand hours. This section would also repeal the requirement that the experience shall have occurred during a period of no fewer than twelve months.

Section 3 would amend section 76-2231.01 regarding credentialing of certified residential real property appraisers to reduce educational requirements and reduce the experience requirement from “two” thousand five hundred hours to “one” thousand five hundred hours. This section would also repeal the requirement that the experience shall have occurred during a period of no fewer than twenty-four months.

Section 4 would amend section 76-2232 regarding credentialing of certified general real property appraisers to reduce the experience from “three” thousand hours, of which one thousand “five hundred” hours shall be in nonresidential appraisal work to “two” thousand hours, of which one thousand hours shall be in nonresidential appraisal work. This section would also repeal the requirement that the experience shall have occurred during a period of no fewer than thirty months.

Section 5 would provide for repeal of the amendatory sections.

## **RESIDENTIAL CONTRACTORS**

### **LB220 (Harr) Amend the Insured Homeowners Protection Act**

#### **Pending on General File**

This bill would amend sections 44-8601 and 44-8602 of the Insured Homeowners Protection Act and enact three new sections to be assigned with such act in order to provide for more consumer protections regarding post-loss assignment of rights or benefits to residential contractors under property and casualty insurance policies insuring residential real estate.

The bill would provide, section by section, as follows:

Section 1 would amend section 44-8601 to provide for assignment of new sections 3 to 5 within the act.

Section 2 would amend section 44-8602 to expand the definition of “residential contractor” to include a person contracting to (1) arrange for, manage, or process the work of repair, replacement, reconstruction, or cleanup on residential real estate, and (2) serve as a representative, agent, or assignee of the owner or possessor of residential real estate.

Section 3 would enact a new section to provide that a post-loss assignment of rights or benefits to a residential contractor under a property and casualty insurance policy shall be subject to the following requirements. (1) The assignment shall only authorize a residential contractor to be named a copayee. (2) The assignment shall be provided to the insurer. (3) The assignment shall include an itemized description of the work, materials, labor, and fees, and the total itemized amount agreed to be paid. (4) The assignment shall include a statement that the residential contractor has made no assurances that the loss will be fully covered by an insurance contract. (5) The assignment shall not impair the interest of a mortgagee. (6) The assignment shall not prevent or inhibit an insurer from communicating with the named insured or mortgagee.

Section 4 would enact a new section to provide that a contract, repair estimate, or work order shall include a notice that it is a violation of insurance laws to rebate any portion of a deductible as an inducement to the insured to accept a residential contractor’s proposal to repair.

Section 5 would enact a new section to provide that a contract entered into with a residential contractor is void if the residential contractor violates the Insured Homeowners Protection Act.

Section 6 provides for repeal of the amendatory sections.

#### **PENDING COMMITTEE AMENDMENTS**

The committee amendments would become the bill. They would make structural and stylistic changes as well as substantive changes.

1. The amendments would provide that an assignment of rights or benefits to a residential contractor “may” rather than “shall only” authorize the contractor to be named as a copayee for payment of benefits under a property and casualty insurance policy.
2. The amendments would expand notice provisions in order to inform an insured homeowner that an assignment, the residential contractor shall be entitled to pursue any rights or remedies that the insured homeowner has under the insurance policy.
3. The amendments would provide that the required itemized description of the work, materials, labor, fees, and total amount to be paid shall be furnished to the insured and insurer prior to commencement of repair or replacement work. The amendments would further provide that the description shall not limit the insured or residential contractor from identifying other goods and services necessary to complete repairs or replacement.

## SECURITIES

### **LB148 (Schumacher) Change provisions of the Securities Act of Nebraska**

**Enacted**

**Effective August 24, 2017**

**Contains provisions of LB187**

#### OVERVIEW

This bill is the result of LR431 (Scheer) (2016), which called upon the Banking, Commerce and Insurance Committee to study whether the Securities Act of Nebraska (“Act”) should be updated. The bill contains a number of substantive changes to the Act as well as many changes that better harmonize the language in the Act but are non-substantive. References to “department” mean the Department of Banking and Finance and references to “director” mean the Director of Banking and Finance.

#### SUMMARY

The bill provides section by section as follows:

Section 1 amends section 8-1101 by amending the definitions of terms used throughout the Securities Act of Nebraska as follows:

Subdivision (2) defines “broker-dealer” and lists a number of exclusions from the definition. The exclusions portion of the definition are amended in these respects:

Current law excludes issuers effecting transactions in their own securities if the security is exempt under section 8-1110(5). The amendment updates the cross-reference to section 8-1110(5).

Current law excludes persons with no place of business in this state who effect transactions exclusively with other broker-dealers, specified types of financial institutions, and other institutional buyers. The bill adds credit unions to the list of entities to which sales could be made without triggering registration requirements.

A new exclusion is added for certain Canadian broker-dealers who have no office or physical presence in this state and whose activities are limited to effecting transactions with Canadian citizens temporarily in Nebraska or transactions with Canadian citizens in Nebraska, provided that such transactions are limited to Canadian self-directed, tax advantaged retirement plans.

Subdivision (3) is amended to include a definition of “department.”

Subdivision (14) is amended to update references to federal securities acts as the acts existed on January 1, 2017.

Subdivision (15) defines “security.” It is amended to provide that for the limited purposes of determining malpractice insurance premiums, a security issued through a transaction that is exempted pursuant to section 8-1111(23) which provides an exemption for transactions in this state not involving a public offering by Nebraska issuers selling solely to Nebraska residents.

Section 2 enacts a new section which provides that all references to federal rules or regulations adopted under the Investment Advisors Act of 1940 or the Securities Act of 1933 means those rules and regulations as they existed on January 1, 2017, with the exception of Rule 147 and Rule 147A adopted under the Securities Act of 1933. On October 26, 2016, the SEC unanimously adopted new Rule 147A and amended Rule 147. These rules became effective on April 20, 2017, thus this section references the date that the rules were published in the Federal Register, November 21, 2016.

Section 3 amends section 8-1102, which is the anti-fraud section in the Securities Act of Nebraska, to harmonize language relating to rules and regulations. These changes are non-substantive.

Section 4 amends section 8-1103, which is the principal registration section in the Securities Act of Nebraska for firms and individuals providing securities-related services and products, as follows:

Currently, subdivision (9)(a) provides authority to the director to deny, suspend, or revoke a registration of a broker-dealer, issuer-dealer, agent, investment adviser, or investment advisor representative, if the director finds that such person meets any one of twelve listed criteria. An additional criterion set out in new subdivision (9)(a)(xiii) clarifies the director’s authority to deny, suspend, or revoke a registration if the person has refused to cooperate with the department in an examination.

Subsection (9) is further amended to provide, within new subdivision (9)(c)(i), that the director may, by rule and regulation or order, determine that a violation of any provision of fair practices or ethical rules or standards adopted by the Securities and Exchange Commission or the Financial Industry Regulatory Authority will constitute a dishonest or unethical practice in the securities or commodities business.

A new subdivision(10)(b) is added to authorize the director to issue a notice of abandonment if an applicant for registration fails to respond to a notice or notices from the department to correct deficiencies in the application within one hundred twenty days.

Non-substantive changes to harmonize and update this section include: providing a cross-reference to the fees subsection; providing uniformity in references to bonds and legal actions; harmonizing language relating to rules and regulations; and removing an obsolete reference to predecessor acts.

Section 5 amends section 8-1106, which is the registration of securities by coordination section, to harmonize language relating to rules and regulations and numbering of subsections. These changes are non-substantive.

Section 6 amends section 8-1107, which governs the registration of securities by qualification, as follows:

By providing, within renumbered subdivision (2)(j), that an issuer which does not have articles of incorporation or bylaws, must file the substantial equivalent of such documents with the registration statement;

By providing, within new subdivision (2)(m), that an issuer seeking to register such securities with the department shall provide a signed consent of any accountant, engineer, appraiser, or other person who is named in the registration statement as having prepared or certified any report or valuation used in connection with the registration; and

By clarifying the information that must be included with the prospectus provided by the issuer to prospective investors through a reordering of the subdivisions in subsection (2).

Non-substantive changes in this section update gender references and a reference to federal securities rules.

Section 7 amends section 8-1108, which contains general requirements for the registration of securities, by removing obsolete language related to the predecessor act to the Securities Act of Nebraska and by removing a duplicative adjective relating to federal law. These changes are non-substantive.

Section 8 amends section 8-1108.01, which provides authority to the director to take certain administrative action, to make non-substantive changes, including clarifying that the director (in addition to a hearing officer) may extend the time for a hearing, and updating a reference to rules and regulations and a reference to legal action.

Section 9 amends section 8-1109, relating to stop orders, by harmonizing language relating to rules and regulations. This change is non-substantive.

Section 10 amends section 8-1109.01, which governs administrative orders relating to securities registration statements, to provide that violation of a department rule and regulation may be grounds for such an order.

Section 11 amends section 8-1109.02, which provides for a hearing on administrative orders relating to securities registration statements, to clarify that the director may extend the time for a hearing. Prior law had provided that a hearing officer may do so. This change is non-substantive.

Section 12 amends section 8-1110, which provides for exemptions from the registration of securities, by updating the exchange exemption in section 8-1110(5). The amendment provides:

An exemption for any security that is a federal covered security under Section 18(b)(1) of the Securities Act of 1933, which are securities issued by issuers who have securities listed on an exchange approved by the Securities & Exchange Commission (“SEC”);

Authorization for the director to approve additional exchanges by rule and regulation or order;

Clarification that the exemption applies to put or call option contracts, warrants, and subscription rights with respect to such exempt securities; and

An exemption for certain options or derivative securities designated by the SEC under the Securities Exchange Act of 1934.

Section 13 amends section 8-1111, which provides for transactional exemptions from registration (securities, broker-dealer, agent) under the Securities Act of Nebraska, as follows:

Subdivision (2) contains two amendments:

Subdivision (2)(a)(v) is amended to remove a reference to a class of equity securities designated for trading on the National Association of Securities Dealers Automated Quotation System as it is now a registered securities exchange.

Language at the end of section 8-1111 is moved to the end of subdivision (2), which is a more appropriate placement as it refers only to subdivision (2).

Subdivision (5) is amended to update a reference to the Interstate Land Sales Full Disclosure Act as that act existed on January 1, 2017.

Subdivision (8) is amended to expand the exemption for accredited investors to: further exempt from registration sales to corporations, business trusts, partnerships and trusts with assets over five million dollars, provided that the entity was not formed for the specific purpose of acquiring the securities being offered; further exempt from registration sales to an entity in which all of the equity owners are individual accredited investors; and give the director the authority to exempt additional institutional buyers by rule and regulation or order.

Subdivision (15) is amended to expand the scope of the agricultural cooperative exemption to an exemption for any cooperative formed as a corporation under section 21-1301 or 21-1401 or a limited cooperative association formed under the Nebraska Limited Cooperative Association Act.

Subdivision (16) contains a non-substantive amendment to harmonize language relating to rules and regulations.

Subdivision (17) is amended to clarify the scope of the exemption for securities issued in connection with employee benefit plans and to align Nebraska's exemption with federal exemption in SEC Rule 701. The amendments provide that the exemption: applies to offers and sales to directors, general partners, trustees of a business trust, officers, consultants, or advisors; is available if the individual was an employee at the time that securities were offered, even if the employee leaves employment; and applies to offers and sales to insurance agents who are exclusive insurance agents of the issuer, the issuer's subsidiary or parents, or those who derive more than fifty percent of their annual income from those organizations.

Subdivision (20) contains a non-substantive amendment to harmonize language relating to rules and regulations.

Subdivision (22), which relates to viatical settlement contracts, is amended to provide that the director may by order require additional information from an issuer.

Subdivision (23), which provides for an intrastate exemption, is amended to increase the maximum amount of securities that can be offered pursuant to this exemption from \$250,000.00 to \$750,000.00 or such greater amount as from time to time may be set by the director in accordance with the Consumer Price Index. Non-substantive harmonizing references are also included.

Subdivision (24) is amended to authorize issuers to choose to comply with either SEC Rule 147 or with SEC Rule 147A, which was approved by the SEC on October 26, 2016. This amendment allows issuers conducting an intrastate crowdfunding offering to utilize Rule 147A which is designed to facilitate intrastate crowdfunding, most importantly by loosening the restrictions on advertising of an intrastate offering. Non-substantive amendments include updated references to the “department” and removal of federal citations for named federal acts.

Section 14 amends section 8-1115 to harmonize language relating to rules and regulations and forms. These changes are non-substantive.

Section 15 amends section 8-1116 to clarify that the director shall not be required to post bond in a civil proceeding under the Securities Act of Nebraska, and to harmonize language relating to rules and regulations and orders.

Section 16 amends section 8-1117 to harmonize language relating to rules and regulations. These changes are non-substantive.

Section 17 amends section 8-1118 to update language relating to legal actions and rules and regulations. These changes are non-substantive.

Section 18 amends section 8-1120, which relates to the department’s administration of the Securities Act of Nebraska, as follows:

To update staff position titles of persons the director may appoint to carry out the mandates of the Act;

To incorporate the state’s prohibition against nepotism into the Act;

To delete obsolete language related to fund transfers from the Securities Act Cash Fund;

To authorize the director to authorize or mandate electronic or other filing systems; and

To include harmonizing language relating to rules and regulations and to remove references to officers of the department.

Section 19 amends section 8-1122.01 to add the descriptive “federal” to a reference to the Philanthropy Protection Act of 1995. This change is non-substantive.

Section 20 amends section 8-1123 to provide for assignment of new section 2 within the Securities Act of Nebraska.

Section 21 provides for repeal of the amendatory sections.

The bill passed 49-0-0 on April 24, 2017 and was approved by the Governor on April 27, 2017.

**LB187 (Schumacher) Increase a dollar threshold for transactions exempt from registration under the Securities Act of Nebraska, provide for an annual adjustment to such amount, and provide for the effect of exempt sales on malpractice premiums**

**Provisions amended into LB148 and Enacted  
Indefinitely Postponed on General File on a motion by the Speaker on May 23, 2017**

This bill would amend subdivision (23) of section 8-1111(23) of the Securities Act of Nebraska which provides a registration exemption for a transaction in this state not involving a public offering by a Nebraska issuer selling solely to Nebraska residents when, among other things, the proceeds from all sales of securities by the issuer in any two-year period do not exceed \$250,000 and at least 80 percent of the proceeds are used in Nebraska. The bill would raise the \$250,000 maximum to \$750,000 or such greater amount as from time to time may be set in accordance with rules and regulations of the Director of Banking and Finance. The bill would further provide that a security issued through a transaction exempted pursuant to these provisions shall not be considered a security for purposes of determining professional malpractice insurance premiums.

## SECURITY INTERESTS AND LIENS

### **LB142e (Williams) Redefine effective financing statement and change provisions relating to the master lien list with respect to farm product security interests**

#### **Enacted**

**Effective May 11, 2017**

This bill amends section 52-1307 of sections 52-1301 to 52-1322 which establish a central filing system with the Secretary of State for security interests relating to farm products, and the bill amends section 52-1603 of sections 52-1601 to 52-1605 which provide for compilation by the Secretary of State of information relative to certain statutory agricultural liens into a Master Lien List.

The bill amends section 52-1307 which defines “effective financing statement” as a statement filed with the Secretary of State that, among other things, contains required information about the secured party, the debtor, and farm products subject to a security interest, and that shall be amended to reflect material changes. The bill amends this section to provide that a change in the name or address of the secured party shall not constitute a material change.

The bill amends section 52-1603 which provides that a buyer of farm products who is registered to receive or obtain the master lien list and who, in the ordinary course of business, buys farm products from a seller engaged in farming operations shall take free of specified agricultural liens if the lien is not on the most recent master lien list received or obtained by the buyer. This section further provides that “received or obtained by the buyer” means the first date upon which delivery or publication of the master lien list is attempted by a carrier or, in the case of electronic publication, the first date upon which the Secretary of State made the most current master lien list available electronically, and in all cases a buyer shall be presumed to have received or obtained the master lien list ten days after it was mailed or published by the Secretary of State. The bill amends the foregoing to provide that “received or obtained by the buyer” means the first date upon which “delivery” (instead of “delivery or publication”) of the master lien list is attempted by a carrier or, in the case of electronic publication, the first date upon which the Secretary of State made the most current master lien list available electronically, and in all cases “in which delivery of the master lien list is involved” a buyer shall be presumed to have “received” (instead of “received or obtained”) the master lien list ten days after it was “mailed” (instead of “mailed or published”) by the Secretary of State.

The bill passed 48-0-1 with the Emergency Clause on May 4, 2017 and was approved by the Governor on May 10, 2017.

## UNCLAIMED PROPERTY

### **LB137 (Lindstrom) Adopt the Unclaimed Life Insurance Benefits Act**

**Enacted**

**Operative January 1, 2018**

**Speaker Priority Bill**

#### OVERVIEW

This bill, introduced at the request of the Director of Insurance, enacts six new sections to be known as the Unclaimed Life Insurance Benefits Act. The act requires life insurers to perform a comparison of its insureds' in-force policies and retained asset accounts against the Death Master File of the United States Social Security Administration, or similar database, to identify possible matches of insureds and determine whether or not benefits are due.

#### SUMMARY

The bill provides, section by section, as follows:

Section 1 provides for a named act: the Unclaimed Life Insurance Benefits Act.

Section 2 provides for definitions of "beneficiary;" "death master file;" "death master file match;" "policy;" "record-keeping services;" and "retained asset account."

Section 3 provides duties for insurers. First, an insurer is required to perform semi-annual comparison of its insureds' in-force policies and retained asset accounts against a death master file to search for potential matches. Any potential match requires the insurer to make a good faith effort to confirm death and determine whether or not benefits are due. The section also clarifies duties related to group life insurance. Additionally, this section requires insurers to establish procedures to account for commonly used but inexact personal identifiers, authorizes the insurers to disclose minimally necessary personal information of an insured to a possible beneficiary, and prohibits the insurer from charging beneficiaries for the search and investigation. This section also provides that it shall not be construed to limit the ability of the insurer to request a valid death certificate.

Section 4 establishes the required conduct of an insurer once it determines that benefits are due to a beneficiary. If a beneficiary cannot be found, this section provides that the insurer shall comply with the section 69-1303, which relates to unclaimed property, and, once the funds are presumed abandoned, inform the State Treasurer.

Section 5 provides that the Director of Insurance may limit death master file comparisons to electronic files, exempt or limit a death master file comparison due to hardship on an insurer, and allow a phase in of compliance with the act.

Section 6 provides that a failure to meet any requirement of the act shall be an unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act.

Section 7 provides for an operative date of January 1, 2018.

The bill passed 49-0-0 on April 24, 2017 and was approved by the Governor on April 27, 2017.

## **LB141 (Williams) Adopt the Revised Uniform Unclaimed Property Act**

### **Pending in Committee**

This bill would enact 94 new sections to be known as the Revised Uniform Unclaimed Property Act and would repeal the Uniform Disposition of Unclaimed Property Act, sections 69-1301 to 69-1329. The act would provide for when personal property, generally intangible, is presumed to be abandoned by its owner and is required to be reported by its holder to the custody of the State Treasurer.

#### GENERAL PROVISIONS

Section 1. Named act.

Section 2. Definitions.

Section 3. Inapplicability to foreign transactions.

Section 4. Rulemaking.

#### PRESUMPTION OF ABANDONMENT

Section 5. When property presumed abandoned.

Section 6. When tax-deferred retirement account presumed abandoned.

Section 7. When other tax-deferred account presumed abandoned.

Section 8. When custodial account for minor presumed abandoned.

Section 9. When contents of safe-deposit box presumed abandoned.

Section 10. When stored-value card presumed abandoned.

Section 11. When gift certificate or gift card presumed abandoned.

Section 12. When security presumed abandoned.

Section 13. When related property presumed abandoned.

Section 14. Indication of apparent owner interest in property.

Section 15. Knowledge of death of insured or annuitant.

Section 16. Deposit account for proceeds of insurance policy or annuity contract.

#### RULES FOR TAKING CUSTODY OF PROPERTY PRESUMED ABANDONED

Section 17. Address of apparent owner to establish priority.

Section 18. Address of apparent owner in this state.

Section 19. If records show multiple addresses of apparent owner.

Section 20. Holder domiciled in this state.

Section 21. Custody if transaction took place in this state.

Section 22. Traveler's check, money order, or similar instrument.

Section 23. Burden of proof to establish State Treasurer's right to custody.

#### REPORT BY HOLDER

Section 24. Report required by holder.

Section 25. Content of report.

Section 26. When report to be filed.

Section 27. Retention of records by holder.

Section 28. Property reportable and payable or deliverable absent owner demand.

#### NOTICE TO APPARENT OWNER OF PROPERTY PRESUMED ABANDONED

Section 29. Notice to apparent owner by holder.

Section 30. Contents of notice by holder.

Section 31. Notice by State Treasurer.

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#### TAKING CUSTODY OF PROPERTY BY STATE TREASURER

Section 33. Definition of good faith.

Section 34. Dormancy charge.

Section 35. Payment or delivery of property to State Treasurer.

Section 36. Effect of payment or delivery of property to State Treasurer.

Section 37. Recovery of property by holder from State Treasurer.

Section 38. Property removed from safe-deposit box.

Section 39. Crediting income or gain to owner's account.

Section 40. State Treasurer's options as to custody.

Section 41. Disposition of property having no substantial value; immunity from liability.

Section 42. Periods of limitation and repose.

#### SALE OF PROPERTY BY STATE TREASURER

Section 43. Public sale of property.

Section 44. Disposal of securities.

Section 45. Recovery of securities or value by owner.

Section 46. Purchaser owns property after sale.

Section 47. Military medal or decoration.

#### ADMINISTRATION OF PROPERTY

Section 48. Deposit of funds by State Treasurer.

Section 49. State Treasurer to retain records of property.

Section 50. Expenses and service charges of State Treasurer.

Section 51. State Treasurer holds property as custodian for owner.

#### CLAIM TO RECOVER PROPERTY FROM STATE TREASURER

Section 52. Claim of another state to recover property.

Section 53. When property subject to recovery by another state.

Section 54. Claim for property by person claiming to be owner.

Section 55. When State Treasurer must honor claim for property.

Section 56. Allowance of claim for property.

Section 57. Action by person whose claim is denied.

## VERIFIED REPORT OF PROPERTY; EXAMINATION OF RECORDS

Section 58. Verified report of property.

Section 59. Examination of records to determine compliance.

Section 60. Rules for conducting examination.

Section 61. Records obtained in examination.

Section 62. Evidence of unpaid debt or undischarged obligation.

Section 63. Failure of person examined to retain records.

Section 64. Report to person whose records were examined.

Section 65. Complaint to State Treasurer about conduct of person conducting examination.

Section 66. State Treasurer's contract with another to conduct examination.

Section 67. Limit on future employment.

Section 68. Report by State Treasurer to state official.

Section 69. Determination of liability for unreported reportable property.

## DETERMINATION OF LIABILITY; PUTATIVE HOLDER REMEDIES

Section 70. Informal conference.

Section 71. Review of State Treasurer's determination.

Section 72. Administrative review.

Section 73. Judicial remedy.

## ENFORCEMENT BY STATE TREASURER

Section 74. Judicial action to enforce liability.

Section 75. Interstate and international agreement; cooperation.

Section 76. Action involving another state or foreign country.

Section 77. Interest and penalty for failure to act in timely manner.

Section 78. Other civil penalties.

Section 79. Waiver of interest and penalty.

#### AGREEMENT TO LOCATE PROPERTY OF APPARENT OWNER HELD BY STATE TREASURER

Section 80. When agreement to locate property enforceable.

Section 81. When agreement to locate property void.

Section 82. Right of agent of apparent owner to recover property held by State Treasurer.

#### CONFIDENTIALITY AND SECURITY OF INFORMATION

Section 83. Definitions; applicability.

Section 84. Confidential information.

Section 85. When confidential information may be disclosed.

Section 86. Confidentiality agreement.

Section 87. No confidential information in notice.

Section 88. Security of information.

Section 89. Security breach.

Section 90. Indemnification for breach.

Section 91. Escheat of United States Savings Bond (non-uniform section).

#### MISCELLANEOUS PROVISIONS

Section 92. Uniformity of application and construction.

Section 93. Relation to electronic signatures in global and national commerce act.

Section 94. Transitional provision.

Sections 95 to 113. Amendments to sections 2-1223, 8-170, 9-645, 21-2,202, 21-1737, 21-19,145, 23-2315, 24-345, 24-708, 25-2717, 43-3344, 44-4845, 69-2304, 69-2308, 79-932, 79-956, 81-2025, 84-617, and 84-1317 to harmonize internal references to the act.

Section 114. Operative date July 1, 2018.

Section 115. Severability.

Section 116. Repealers of amendatory sections.

Section 117. Outright repealers of sections 69-1301 to 69-1329, the Uniform Disposition of Unclaimed Property Act (current Nebraska act).

**INTERIM STUDY RESOLUTIONS  
2017**

LR158 (Williams) Interim study to examine whether the unclaimed property laws of Nebraska should be updated

LR184 (Walz, Lindstrom) Interim study to examine whether the Real Property Appraiser Act should be amended



ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION  
LEGISLATIVE RESOLUTION 158

Introduced by Williams, 36.

PURPOSE: The purpose of this resolution is to study whether the unclaimed property laws of this state should be updated. The study should include an examination of LB141, One Hundred Fifth Legislature, First Session, 2017, which proposes replacing the current Uniform Disposition of Unclaimed Property Act, sections 69-1301 to 69-1329 of the Nebraska Revised Statutes, with the Revised Uniform Unclaimed Property Act (2016) drafted by the National Conference of Commissioners on Uniform State Laws. In order to carry out the purpose of this resolution, the committee should seek the assistance of the State Treasurer, members of the National Conference of Commissioners on Uniform State Laws, and interested persons as the committee deems necessary and appropriate.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED FIFTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Banking, Commerce and Insurance Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.
2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION  
LEGISLATIVE RESOLUTION 184

Introduced by Walz, 15; Lindstrom, 18.

PURPOSE: The purpose of this resolution is to study whether the Real Property Appraiser Act should be amended. The study should include an examination of issues raised during consideration of LB 551, which is currently pending in the Banking, Commerce and Insurance Committee of the Legislature, regarding changes in qualifications for real property appraiser credentials. In order to carry out the purpose of this resolution, the study committee should consider the input of interested individuals, public officials, and such entities as the committee deems necessary and beneficial.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED FIFTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Banking, Commerce and Insurance Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.
2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.