

LEGISLATIVE BILL 217

Approved by the Governor March 3, 2003

Introduced by Banking, Commerce and Insurance Committee:

Quandahl, 31, Chairperson; Foley, 29; Johnson, 37; Mines, 18;
Redfield, 12; Tyson, 19

AN ACT relating to banking and finance; to amend sections 8-116.01, 8-133, 8-148, 8-1,118, 8-373, 8-378, 8-701, 8-916, 8-1013, 8-1503, 8-1510, 8-1731, 21-17,102, 45-335, 45-343, 45-345, 59-1701.01, 59-1703, 59-1749, 59-1758.01, and 76-2,123, Reissue Revised Statutes of Nebraska, and sections 8-101, 8-115.01, 8-132, 8-157, 8-1,140, 8-234, 8-355, 8-602, 8-815, 8-1001, 8-1003, 8-1015, 8-1103, 8-1120, 8-1507, 8-1603, 21-1725.01, 21-17,115, 45-191.02, 45-902, 45-1002, 45-1003, and 45-1018, Revised Statutes Supplement, 2002; to change and eliminate provisions relating to financial institutions; to revise powers of state-chartered banks, building and loan associations, and credit unions; to change provisions relating to personal loans; to define and redefine terms; to change and provide powers for the Director of Banking and Finance; to eliminate an obsolete securities fee refund; to provide and change fees; to change provisions relating to rules and regulations of the Department of Banking and Finance, the credit of certain fees, delayed deposits, and seller-assisted marketing plans; to harmonize provisions; to provide operative dates; to repeal the original sections; to outright repeal section 8-131, Reissue Revised Statutes of Nebraska, and section 8-1103.01, Revised Statutes Supplement, 2002; and to declare an emergency.

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

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

8-101. For purposes of the Nebraska Banking Act, unless the context otherwise requires:

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

(2) Capital or capital stock means capital stock;

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

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

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

(6) Order includes orders transmitted by electronic transmission;

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

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

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

(10) Point-of-sale terminal means an information processing terminal which utilizes electronic, sound, or mechanical signals or impulses, or any

combination thereof, which are transmitted to a financial institution or which are recorded for later transmission to effectuate electronic funds transfer transactions for the purchase or payment of goods and services and which are initiated by an access device in conjunction with a personal identification number. A point-of-sale terminal is not a branch operated by a financial institution. Any terminal owned or operated by a seller of goods and services shall be connected directly or indirectly to an acquiring financial institution;

(11) Making loans includes advances or credits that are initiated by means of credit card or other transaction card. Transaction card and other transactions, including transactions made pursuant to prior agreements, may be brought about and transmitted by means of an electronic impulse. Such loan transactions including transactions made pursuant to prior agreements shall be subject to sections 8-815 to 8-829 and shall be deemed loans made at the place of business of the financial institution;

(12) Financial institution means a bank, savings bank, building and loan association, savings and loan association, industrial loan and investment company, or credit union, whether chartered by the United States, the department, or a foreign state agency; any other similar organization which is covered by federal deposit insurance; or a trust company;

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

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

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

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

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

Sec. 2. Section 8-115.01, Revised Statutes Supplement, 2002, is amended to read:

8-115.01. When an application required by section 8-120 is made by a corporation, the following procedures shall be followed:

(1) Except as provided for in subdivision (2) of this section, when application is made for a new bank charter, a public hearing shall be held on each application. Notice of the filing of the application shall be published by the department for three weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the bank. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after filing the application unless the applicant agrees to a later date. Notice of the filing of the application shall be sent by the department by certified mail to all financial institutions located in the county where the applicant proposes to operate;

(2) When application is made for a new bank charter and the director determines, in his or her discretion, that the conditions of subdivision (3) of this section are met, then the public hearing requirement of subdivision (1) of this section shall only be required if, (a) after publishing a notice of the proposed application in a newspaper of general circulation in the county where the main office of the applicant is to be located and (b) after giving notice by certified mail to all financial institutions located within such county, the director receives a substantive objection to the application within fifteen days after the first day of publication;

(3) The director shall consider the following in each application before the public hearing requirement of subdivision (1) of this section may be waived:

(a) Whether the experience, character, and general fitness of the applicant and of the applicant's officers and directors is such as to warrant belief that the applicant will operate the business honestly, fairly, and

efficiently;

(b) Whether the length of time that the applicant or a majority of the applicant's officers, directors, and shareholders have been involved in the business of banking in this state has been for a minimum of five consecutive years; and

(c) Whether the condition of financial institutions currently owned by the applicant, the applicant's holding company, if any, or the applicant's officers, directors, or shareholders is such as to indicate that a hearing on the current application would not be necessary;

(4) When application is made for transfer of a bank charter and move of the main office of a bank to any location other than within the corporate limits of the city or village of its original charter or, if such bank charter is not located in a city or village, then for transfer outside the county in which it is located, the director shall hold a hearing on the matter if he or she determines, in his or her discretion, that the condition of the applicant warrants a hearing. If the director determines that the condition of the applicant does not warrant a hearing, the director shall (a) publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed main office and charter of the applicant would be located and (b) give notice of such application by certified mail to all financial institutions located within the county where the proposed main office and charter would be located and to such other interested parties as the director may determine. If the director receives any substantive objection to the proposed relocation within fifteen days after the first day of publication, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subdivision shall be published for two consecutive weeks in a newspaper of general circulation in the county where the main office would be located. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after the filing of the application unless the applicant agrees to a later date. When the persons making application for transfer of a main office and charter are officers or directors of the bank, there is a rebuttable presumption that such persons are parties of integrity and responsibility;

(5) When application is made for a move of any bank's main office within the city, village, or county, if not chartered within a city or village, of its original charter, the director shall publish notice of the proposed move in a newspaper of general circulation in the county where the main office of the applicant is located and shall give notice of such intended move by certified mail to all financial institutions located within the county where such bank is located. If the director receives a substantive objection to such move within fifteen days after publishing and mailing such notice, he or she shall publish an additional notice and hold a hearing as provided in subdivision (1) of this section;

(6) The expense of any publication and certified mailing required by this section shall be paid by the applicant; and

(7) Notwithstanding any provision of this section, the director shall take immediate action on any charter application or applications concerned without the benefit of a hearing in the case of an emergency so declared by the Governor, the Secretary of State, and the director.

Sec. 3. Section 8-116.01, Reissue Revised Statutes of Nebraska, is amended to read:

8-116.01. With the approval of the ~~Director of Banking and Finance~~ director, any banking institution as defined in section 8-701 may at any time, through action of its board of directors and without requiring any action of its stockholders, issue and sell its capital notes or debentures. Such capital notes or debentures shall be subordinate and subject to the claims of depositors and may be subordinated and subjected to the claims of other creditors. The capital stock of any bank or trust company as such term capital stock is used respectively in sections 8-116, 8-118, 8-127, and 8-205, the capital of any corporation transacting a banking business as the term capital is used in section 8-187, the capital of a bank as the term capital is used in section 8-132, and the capital stock of any trust company as the term capital stock is used in sections 8-218 to 8-221, shall be deemed to be unimpaired when the amount of such capital notes and debentures as represented by cash or sound assets exceeds the impairment as found by the ~~Department of Banking and Finance~~ department. Before any such capital notes or debentures are retired or paid by the banking institution, any existing deficiency of its capital, disregarding the notes or debentures to be retired, must be paid in, in cash, to the end that the sound capital assets shall at least equal the capital or capital stock of the respective institutions named above in the sense such terms capital and capital stock are used in the respective sections

named. Such capital notes or debentures shall in no case be subject to any assessment. The holders of such capital notes or debentures shall not be held individually responsible as such holders for any debts, contracts, or engagements of such institution, and shall not be held liable for assessments to restore impairments in the capital of such institution.

Sec. 4. Section 8-132, Revised Statutes Supplement, 2002, is amended to read:

8-132. The available funds ~~referred to in section 8-131~~ of a bank shall consist of cash on hand and balances due from other solvent banks approved by the ~~Department of Banking and Finance~~ department. Cash shall include lawful money of the United States and exchange for any clearinghouse association. Whenever the available funds or any reserve of any bank ~~fall below the required reserve~~ are deemed deficient by the department, such bank shall not make any new loans or discount otherwise than by discounting or purchasing bills of exchange payable at sight or make any dividends of its profits until it has on hand ~~the available funds required by section 8-131 and reserve deemed sufficient for operation by the department.~~ The department shall notify any bank, in case its available funds or reserves ~~fall below the amount required~~ are deemed deficient or its capital is impaired, to make good such ~~reserve~~ available funds, reserves, or capital within such time as the department may direct, and any failure of such bank to make good any deficiency in the amount of its available funds, reserve, or its capital within the time directed shall be cause for the director to take possession of such bank, declare it insolvent, and liquidate it as provided in the Nebraska Banking Act.

Sec. 5. Section 8-133, Reissue Revised Statutes of Nebraska, is amended to read:

8-133. (1) ~~Except as provided in subsection (2) of this section, no bank shall, directly or indirectly, pay any interest on deposits at a greater rate than the director by regulation provides, except that when authorized by the United States Government and approved by the director, no bank shall be prohibited from paying interest on any type of United States treasury tax and loan deposits or similar type of United States accounts. A state-chartered bank may pay interest at any rate on any deposits made or retained in the bank.~~

(2) Any officer, director, stockholder, or employee of a bank or any other person who directly or indirectly, either personally or for the bank, pays any money, gives any consideration of value, or pledges any assets, except as provided by law, as an inducement, in addition to the legal interest, for making or retaining a deposit in the bank shall be guilty of a Class IV felony. Any depositor who accepts any such inducement shall be guilty of a Class IV felony. Deposits made in violation of this section shall not be entitled to priority of payment from the assets of the bank. In determining the maximum interest that may be paid on deposits, the ~~director~~ bank shall consider generally recognized sound banking principles, the financial soundness of banks, competitive conditions, and general economic conditions.

(3) A bank may secure deposits made by a trustee under 11 U.S.C. 101 et seq. by pledge of the assets of the bank or by furnishing a surety bond as provided in 11 U.S.C. 345. A bank may also secure deposits made by the United States Secretary of the Interior on behalf of any individual Indian or any Indian tribe under 25 U.S.C. 162a by a pledge of the assets of the bank or by furnishing an acceptable bond as provided in 25 U.S.C. 162a.

~~(2)~~ (4) Nothing in this section shall prohibit a bank or any officer, director, stockholder, or employee thereof from providing to a depositor a guaranty bond which provides coverage for the deposits of the depositor which are in excess of the amounts insured by the Federal Deposit Insurance Corporation.

Sec. 6. Section 8-148, Reissue Revised Statutes of Nebraska, is amended to read:

8-148. (1) Except as provided in subsection (2) or (3) of this section, a bank shall not make any loan or discount on the security of the shares of its own capital stock or, ~~after August 30, 1987,~~ the capital stock of its holding company, if any, be the purchaser or holder of any such shares, or purchase any securities convertible into stock or, except as provided in this section, and sections 8-148.01, 8-148.02, 8-148.04, and 8-149, the shares of any corporation, unless such security or purchase ~~shall be~~ is necessary to prevent loss upon a debt previously contracted in good faith. Such stock so purchased or acquired shall, within six months from the time of its purchase, be sold or disposed of at public or private sale, or in default thereof, a receiver may be appointed to close up the business of the bank, except that such stock, if shares of another bank or a bank holding company, shall be ~~se~~ sold or disposed of as ~~the Director of Banking and Finance shall require~~

required by the director. In no case shall the amount of stock so held at any one time exceed ten percent of the paid-up capital of such bank.

(2) Any bank may subscribe to, invest, purchase, and own shares of investment companies registered under the Investment Company Act of 1940 when the investment companies' assets consist of and are limited to obligations that are eligible for investment by the bank. The department may adopt and promulgate rules and regulations governing the amounts, terms, and conditions of such subscriptions, investments, purchases, and ownership.

(3) Any bank may subscribe to, invest, purchase, and own Student Loan Marketing Association stock, Government National Mortgage Association stock, Federal National Mortgage Association stock, Federal Agricultural Mortgage Corporation stock, Federal Home Loan Mortgage Corporation stock, or stock issued by any authorized agency of the United States Government, including any corporation or enterprise wholly owned directly or indirectly by the United States, or with the authority to borrow directly from the United States treasury, which the department has approved by rule and regulation or order. The department may further adopt and promulgate rules and regulations governing the amounts, terms, and conditions of such subscriptions, investments, purchases, and ownerships, except that a bank shall not obligate more than five percent of its capital, surplus, undivided profits, and unencumbered reserves for such stock.

Sec. 7. Section 8-157, Revised Statutes Supplement, 2002, is amended to read:

8-157. (1) Except as otherwise provided in this section and section 8-2104, the general business of every bank shall be transacted at the place of business specified in its charter.

(2)(a)(i) Except as provided in subdivision (2)(a)(ii) of this section, with the approval of the director, any bank located in this state may establish and maintain in this state an unlimited number of branches at which all banking transactions allowed by law may be made.

(ii) Any bank that owns or controls more than twenty-two percent of the total deposits in Nebraska, as described in subdivision (2)(c) of section 8-910 and computed in accordance with subsection (3) of section 8-910, or any bank that is a subsidiary of a bank holding company that owns or controls more than twenty-two percent of the total deposits in Nebraska, as described in subdivision (2)(c) of section 8-910 and computed in accordance with subsection (3) of section 8-910, shall not establish and maintain an unlimited number of branches as provided in subdivision (2)(a)(i) of this section. With the approval of the director, a bank as described in this subdivision may establish and maintain in the county in which such bank is located an unlimited number of branches at which all banking transactions allowed by law may be made, except that if such bank is located in a Class I or Class III county, such bank may establish and maintain in Class I and Class III counties an unlimited number of branches at which all banking transactions allowed by law may be made.

(iii) Any bank which establishes and maintains branches pursuant to subdivision (2)(a)(i) of this section and which subsequently becomes a bank as described in subdivision (2)(a)(ii) of this section shall not be subject to the limitations as to location of branches contained in subdivision (2)(a)(ii) of this section with regard to any such established branch, and shall continue to be entitled to maintain any such established branch as if such bank had not become a bank as described in subdivision (2)(a)(ii) of this section.

(b) With the approval of the director, any bank or any branch may establish and maintain a mobile branch at which all banking transactions allowed by law may be made. Such mobile branch may consist of one or more vehicles which may transact business only within the county in which such bank or such branch is located and within counties in this state which adjoin such county.

(c) For purposes of this subsection:

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

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

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

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

(3) With the approval of the director, a bank may establish and

maintain branches acquired pursuant to section 8-1506 or 8-1516, and all banking transactions allowed by law may be made at such branches.

(4) With the approval of the director, a bank may acquire the assets and assume the deposits of a branch of another financial institution in Nebraska if the acquired branch is converted to a branch of the acquiring bank. All banking transactions allowed by law may be made at a branch acquired pursuant to this subsection.

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

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

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

(8) Upon receiving an application for a branch to be established pursuant to subdivision (2)(a) of this section, to establish a mobile branch pursuant to subdivision (2)(b) of this section, to acquire a branch of another financial institution pursuant to subsection (4) of this section, or to move the location of an established branch, ~~within the corporate limits of the same city,~~ the director shall hold a public hearing on the matter if he or she determines, in his or her discretion, that the condition of the applicant bank warrants a hearing. If the director determines that the condition of the bank does not warrant a hearing, the director shall (a) publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed branch or mobile branch would be located, the expense of which shall be paid by the applicant bank, and (b) give notice of such application by certified mail to all financial institutions located within the county where the proposed branch or mobile branch would be located, and to such other interested parties as the director may determine. If the director receives any substantive objection to the proposed branch or mobile branch within fifteen days after publication or mailing of such notice, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subsection shall be published for two consecutive weeks in a newspaper of general circulation in the county where the proposed branch or mobile branch would be located. The date for hearing the application shall not be more than ninety days after the filing of the application and not less than thirty days after the last publication of notice of hearing. The expense of any publication and certified mailing required by this section shall be paid by the applicant.

Sec. 8. Section 8-1,118, Reissue Revised Statutes of Nebraska, is amended to read:

8-1,118. If the director, with a view to restoring the solvency of any bank which the department has taken charge of pursuant to law, shall approve a contract or plan whereby the bank is permitted to receive deposits and pay checks and do a limited banking business, entered into between the unsecured depositors and unsecured creditors representing eighty-five percent or more of the total amount of deposits and unsecured claims of such bank on the one hand and the bank or its board of directors on the other, all other depositors and unsecured creditors shall be held subject to such agreement to the same extent and with the same effect as if they had joined in the execution thereof, and their claims shall be treated in all other respects as if they had joined in the execution of such agreement in the event such bank is permitted to reopen for business as limited by such contract. All deposits received after the adoption of such plan and the assets of the bank created thereby, and before the restoration of ~~said~~ the bank to solvency, shall be a trust fund for the security and the repayment of the deposits so received and shall not be subject to the payment of any deposit, debt, claim, or demand of the bank ~~theretofore~~ previously created. Such money and assets shall be kept and invested in the manner directed by the director. ~~Sections 8-131 and Section 8-138 shall~~ does not apply to banks operating under this section. Any

county, city, village, township, or school district through its governing body, and the state through the Governor, may enter into such contract except ~~where~~ when the funds of such county, city, village, township, or school district are adequately secured. Whenever a bank is permitted to operate under the provisions of this section, such bank shall pay all costs incurred by the department in the approval of such plan, including examiners' expenses, attorneys' fees, and clerk hire, and incurred in special examinations required by the director.

Sec. 9. Section 8-1,140, Revised Statutes Supplement, 2002, is amended to read:

8-1,140. Notwithstanding any of the other provisions of the Nebraska Banking Act or any other Nebraska statute, any bank incorporated under the laws of this state and organized under the provisions of the act, or under the laws of this state as they existed prior to May 9, 1933, shall directly, or indirectly through a subsidiary or subsidiaries, have all the rights, powers, privileges, benefits, and immunities which may be exercised as of ~~April 20, 2002~~ the operative date of this section, by a federally chartered bank doing business in Nebraska, including the exercise of all powers and activities that are permitted for a financial subsidiary of a federally chartered bank. Such rights, powers, privileges, benefits, and immunities shall not relieve such bank from payment of state taxes assessed under any applicable laws of this state.

Sec. 10. Section 8-234, Revised Statutes Supplement, 2002, is amended to read:

8-234. (1) With the approval of the Director of Banking and Finance, a corporation organized to do business as a trust company under the Nebraska Trust Company Act may establish and maintain branch trust offices within this state and in any other state pursuant to section 8-2303.

(2) A corporation organized to do business as a trust company under the Nebraska Trust Company Act, in order to establish a branch trust office in Nebraska pursuant to subsection (1) of this section, shall apply to the Director of Banking and Finance on a form prescribed by the director. Upon receipt of a substantially complete application, the director shall hold a public hearing on the matter if he or she determines, in his or her discretion, that the condition of the corporation organized to do business as a trust company warrants a hearing. If the director determines that the condition of the corporation organized to do business as a trust company does not warrant a hearing, the director shall (a) publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed branch trust office would be located, the expense of which shall be paid by the corporation organized to do business as a trust company, and (b) give notice of such application for a branch trust office by certified mail to all financial institutions within the county where the proposed branch trust office would be located and to such other interested parties as the director may determine. If the director receives a substantive objection to the proposed branch trust office within fifteen days after publication or mailing of such notice, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subsection shall be published for two consecutive weeks in a newspaper of general circulation in the county where the proposed branch trust office would be located. The expense of any publication and certified mailing required by this section shall be paid by the applicant. ~~the expense of which shall be paid by the trust company.~~ The date for hearing the application shall not be more than ninety days after the filing of the application and not less than thirty-one days after the last publication of notice of hearing. The costs of the hearing shall be assessed in accordance with the rules and regulations of the Department of Banking and Finance.

(3) The director shall approve the application for a branch trust office if he or she finds that (a) the establishment of the branch trust office would not adversely affect the financial condition of the corporation organized to do business as a trust company, (b) there is a need in the community for the branch trust office, and (c) establishment of the branch trust office would be in the public interest.

(4) With the approval of the director, a state-chartered bank authorized to conduct a trust business pursuant to sections 8-159 to 8-162 may establish and maintain branch trust offices within this state and in any other state pursuant to section 8-2303. The procedure for the establishment of any branch trust office under this subsection shall be the same as provided in subsections (2) and (3) of this section. The activities at the branch trust office shall be limited to the activities permitted by the Nebraska Trust Company Act, and the general business of banking shall not be conducted at the branch trust office. Nothing in this subsection is intended to prohibit the

establishment of a branch pursuant to section 8-157 at which trust business may be conducted.

(5) A branch trust office of a corporation organized to do business as a trust company or of a state-chartered bank shall not be closed without the prior written approval of the director.

Sec. 11. Section 8-355, Revised Statutes Supplement, 2002, is amended to read:

8-355. Notwithstanding any of the provisions of Chapter 8, article 3, or any other Nebraska statute, except as provided in section 8-345.02, any association incorporated under the laws of the State of Nebraska and organized under the provisions of such article shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of ~~April 20, 2002~~ the operative date of this section, by a federal savings and loan association doing business in Nebraska. Such rights, powers, privileges, benefits, and immunities shall not relieve such association from payment of state taxes assessed under any applicable laws of this state.

Sec. 12. Section 8-373, Reissue Revised Statutes of Nebraska, is amended to read:

8-373. A copy of the articles of incorporation and bylaws of every association applying under section 8-372 shall be filed with the department together with an application for a certificate of approval and payment of the examination fee prescribed by section 8-602. The application shall furnish and set forth information as may be required by the department's rules and regulations and the information required by sections 8-356 to 8-384.

Sec. 13. Section 8-378, Reissue Revised Statutes of Nebraska, is amended to read:

8-378. (1) Any state or federal mutual association, if substantial business benefit to the applicant will result, and if otherwise permitted by federal law and regulations, may apply to convert to a state or federal capital stock association, in accordance with the provisions set forth in sections 8-356 to 8-384 and in ~~the~~ any rules and regulations ~~of that may be adopted or promulgated by~~ the Department of Banking and Finance.

(2) Any applicant subject to subsection (1) of this section seeking to convert its corporate form pursuant to this section shall first obtain approval of a plan of conversion by resolution adopted by not less than a two-thirds majority vote of the total number of directors authorized.

(3) Upon approval of a plan of conversion by the board of directors, such plan and the resolution approving it shall be submitted to the department. The department may approve or disapprove the plan of conversion in its discretion, but shall not approve the plan unless a finding is made, after appropriate examination, that substantial business benefit to the applicant will result, that the plan of conversion is fair and equitable, that the interests of the applicant, its members or stockholders, its savings account holders and the public are adequately protected, and that the converting applicant has complied with the requirements of this section. If the department approves the plan of conversion, the approval, which shall be in writing and sent to the home office of the converting applicant, may prescribe terms and conditions to be fulfilled either before or after the conversion to cause the applicant to conform with the requirements of sections 8-356 to 8-384. If the department disapproves the plan of conversion, the objections shall be stated in writing and sent to the home office of the converting applicant, and the applicant afforded an opportunity to amend and resubmit the plan within a reasonable time as prescribed by the department. In the event that the department disapproves the plan after such resubmission, written notice of such final disapproval shall be sent by certified mail to the applicant's home office.

Sec. 14. Section 8-602, Revised Statutes Supplement, 2002, is amended to read:

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

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

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

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

be two hundred twenty-five dollars;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 15. Section 8-701, Reissue Revised Statutes of Nebraska, is amended to read:

8-701. The term banking institution, as used in sections 8-701 to ~~8-710~~ 8-709 shall be construed to mean any bank, trust company, ~~bank and trust company,~~ stock savings bank, or mutual savings bank, which is now or may

hereafter be organized under the laws of this state.

Sec. 16. Section 8-815, Revised Statutes Supplement, 2002, is amended to read:

8-815. As used in sections 8-815 to 8-829, unless the context otherwise requires:

- (1) Department shall mean the Department of Banking and Finance;
- (2) Bank shall mean the banks and trust companies organized under the laws of this state, and national banking associations doing business in this state and shall include national banking associations;
- (3) Registered bank shall mean any bank which has in effect a registration under ~~sections 8-816 and 45-1003~~ section 8-816;
- (4) Unregistered bank shall mean any bank which has not registered under ~~sections 8-816 and 45-1003~~ section 8-816 or the registration of which is not in effect because of action taken under section 8-827;
- (5) Personal loan shall mean a loan, and the contract evidencing the same, which is repayable, pursuant to a contract or understanding, in two or more equal or unequal installments, and within one hundred forty-five months, but shall not include any loan on which the interest does not exceed sixteen percent per annum. Personal loan shall include loans for the purchase of mobile homes even though the loan is not repayable within one hundred forty-five months. Personal loan shall include loans or advances initiated by credit card or other type of transaction card, including, but not limited to, those loan transactions initiated through electronic impulse; and
- (6) Transaction card shall mean a device or means used to access a prearranged revolving credit plan account.

Sec. 17. Section 8-916, Reissue Revised Statutes of Nebraska, is amended to read:

8-916. (1) Any bank subsidiary of a bank holding company may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations as an agent for a depository institution ~~affiliate~~ without regard to the location of the depository institution. ~~affiliate.~~

(2) Notwithstanding any other provision of law, a bank acting as an agent in accordance with this section for ~~a~~ another depository institution ~~affiliate~~ shall not be considered to be a branch of the ~~affiliate~~ other depository institution.

(3) A depository institution shall not:

(a) Conduct any activity as an agent under subsection (1) or (6) of this section which such institution is prohibited from conducting as a principal under any applicable law; or

(b) As a principal, have an agent conduct any activity under subsection (1) or (6) of this section which the institution is prohibited from conducting under any applicable law.

(4) No provision of this section shall be construed as affecting:

(a) The authority of any depository institution to act as an agent on behalf of any other depository institution under any other provision of law; or

(b) Whether a depository institution which conducts any activity as an agent on behalf of any other depository institution under any other provision of law shall be considered to be a branch of such other depository institution.

(5) An agency relationship between depository institutions under subsection (1) or (6) of this section shall be on terms that are consistent with safe and sound banking practices and all applicable rules and regulations of the department, any appropriate federal banking regulatory agency, and, if applicable, any foreign state agency.

(6) A savings association insured by the Federal Deposit Insurance Corporation which was an affiliate of a bank on or before July 1, 1994, may conduct activities as an agent on behalf of such bank in the same manner as an insured bank affiliate of such bank may act as an agent for such bank under this section to the extent such activities are conducted only in:

(a) Nebraska or any foreign state in which:

(i) The bank is not prohibited from operating a branch under any provision of law; and

(ii) The savings association maintained an office or branch and conducted business on or before July 1, 1994; or

(b) Nebraska or any foreign state in which:

(i) The bank is not expressly prohibited from operating a branch under applicable Nebraska or foreign state law; and

(ii) The savings association maintained a main office and conducted business on or before July 1, 1994.

(7) For purposes of this section:

(a) Bank means any bank, in addition to those defined in section 8-909, chartered by the United States or by any foreign state agency, and insured by the Federal Deposit Insurance Corporation;

(b) Savings institution means any savings and loan association, building and loan association, capital stock savings association, savings bank, or similar entity, chartered under Chapter 8, article 3, chartered by the United States, or chartered by any foreign state agency and insured by the Federal Deposit Insurance Corporation;

(c) Depository institution means either a bank as defined in subdivision (a) of this subsection or a savings institution as defined in subdivision (b) of this subsection;

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

(e) Control means to own directly or indirectly or to control in any manner twenty-five percent of the voting shares of any bank, savings institution, or holding company or to control in any manner the election of the majority of directors of any bank, savings institution, or holding company.

Sec. 18. Section 8-1001, Revised Statutes Supplement, 2002, is amended to read:

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

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

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

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

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

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

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

Sec. 19. Section 8-1015, Revised Statutes Supplement, 2002, is amended to read:

~~8-1015.~~ Sections 8-1001 to ~~8-1015~~ 8-1014 and sections 19 and 21 of this act shall be known and may be cited as the Nebraska Sale of Checks and Funds Transmission Act.

Sec. 20. Section 8-1003, Revised Statutes Supplement, 2002, is amended to read:

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

(a) ~~Banks, trust companies, building and loan associations, savings and loan associations, and credit unions organized under the laws of this state or of the United States, or~~

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

(b) Financial institutions.

(2) The act shall not apply to the receipt of money by an incorporated telegraph company at any office of such company for immediate transmission by telegraph.

Sec. 21. (1) The director may examine the books, accounts, and records of each licensee.

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

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

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

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

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

Sec. 22. Section 8-1013, Reissue Revised Statutes of Nebraska, is amended to read:

8-1013. No license shall be denied or revoked except on twenty days' notice to the applicant or licensee setting forth in writing the reasons therefor. Within five days of receipt of the notice, the applicant or licensee may make written demand for hearing. The director shall, with reasonable promptness, grant a hearing to any such applicant or licensee making written demand therefor and shall give the applicant or licensee at least twenty days' written notice of the time and place of such hearing by registered or certified mail addressed to the principal place of business of such applicant or licensee. The director's decision thereon shall be rendered in writing ~~within ten days~~ after the close of the hearing and may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 23. Section 8-1103, Revised Statutes Supplement, 2002, is amended to read:

8-1103. (1) It shall be unlawful for any person to transact business in this state as a broker-dealer, issuer-dealer, or agent, except in certain transactions exempt under section 8-1111, unless he or she is registered under the Securities Act of Nebraska. It shall be unlawful for any broker-dealer to employ an agent for purposes of effecting or attempting to effect transactions in this state unless the agent is registered. It shall be unlawful for an issuer to employ an agent unless the issuer is registered as an issuer-dealer and unless the agent is registered. The registration of an agent shall not be effective unless the agent is employed by a broker-dealer or issuer-dealer registered under the act. When the agent begins or terminates employment with a registered broker-dealer or issuer-dealer, the broker-dealer or issuer-dealer shall promptly notify the director.

(2)(a) It shall be unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless he or she is registered under the act.

(b) Except with respect to federal covered advisers whose only clients are those described in subdivision (7)(g)(i) of section 8-1101, it shall be unlawful for any federal covered adviser to conduct advisory business in this state unless such person files with the director the documents which are filed with the Securities and Exchange Commission, as the director may by rule and regulation or order require, a consent to service of process, and a two-hundred-dollar filing fee prior to acting as a federal covered adviser in this state.

(c)(i) It shall be unlawful for any investment adviser required to be registered under the Securities Act of Nebraska to employ an investment adviser representative unless the investment adviser representative is registered under the act.

(ii) It shall be unlawful for any federal covered adviser to employ, supervise, or associate with an investment adviser representative having a place of business located in this state unless such investment adviser representative is registered under the Securities Act of Nebraska or is exempt from registration.

(d) The registration of an investment adviser representative shall not be effective unless the investment adviser representative is employed by a registered investment adviser or a federal covered adviser. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser shall promptly notify the director. When an investment adviser representative begins or terminates employment with a federal covered adviser, the investment adviser representative shall promptly notify the director.

(3) A broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative may apply for registration by filing with the director an application and payment of the fee prescribed in subsection (6) of this section. If the applicant is an individual, the application shall include the applicant's social security number. Registration of a broker-dealer or issuer-dealer shall automatically constitute registration of all partners, limited liability company members, officers, or directors of such broker-dealer or issuer-dealer as agents, except any partner, limited liability company member, officer, or director whose registration as an agent is denied, suspended, or revoked under subsection (9) of this section, without the filing of applications for registration as agents or the payment of fees for registration as agents. The application shall contain whatever information the director requires concerning such matters as:

- (a) The applicant's form and place of organization;
- (b) The applicant's proposed method of doing business;

(c) The qualifications and business history of the applicant and, in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, limited liability company member, officer, director, person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or person directly or indirectly controlling the broker-dealer or investment adviser;

(d) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(e) The applicant's financial condition and history; and

(f) Information to be furnished or disseminated to any client or prospective client if the applicant is an investment adviser.

(4)(a) If no denial order is in effect and no proceeding is pending under subsection (9) of this section, registration shall become effective at noon of the thirtieth day after an application is filed, complete with all amendments. The director may specify an earlier effective date.

(b) The director shall require as conditions of registration:

(i) That the applicant, except for renewal, and, in the case of a corporation, partnership, or limited liability company, the officers, directors, partners, or limited liability company members pass such examination or examinations as the director may prescribe as evidence of knowledge of the securities business;

(ii) That an issuer-dealer and its agents pass an examination prescribed and administered by the Department of Banking and Finance. Such examination shall be administered upon request and upon payment of an examination fee of five dollars. Any applicant for issuer-dealer registration who has satisfactorily passed any other examination approved by the director shall be exempted from this requirement upon furnishing evidence of satisfactory completion of such examination to the director;

(iii) That an issuer-dealer have a minimum net capital of twenty-five thousand dollars. In lieu of a minimum net capital requirement of twenty-five thousand dollars, the director may require an issuer-dealer to post a corporate surety bond with surety licensed to do business in Nebraska in an amount equal to such capital requirements. When the director finds that a surety bond with a surety company would cause an undue burden on an issuer-dealer, the director may require the issuer-dealer to post a signature bond. Every such surety bond shall run in favor of Nebraska, shall provide for suit thereon by any person who has a cause of action under section 8-1118, and shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118;

(iv) That a broker-dealer have such minimum net capital as the director may by rule and regulation or order require, subject to the limitations provided in section 15 of the Securities Exchange Act of 1934. In lieu of any such minimum net capital requirement, the director may by rule and regulation or order require a broker-dealer to post a corporate surety bond with surety licensed to do business in Nebraska in an amount equal to such capital requirement, subject to the limitations of section 15 of the Securities Exchange Act of 1934. Every such surety bond shall run in favor of Nebraska, shall provide for suit thereon by any person who has a cause of action under section 8-1118, and shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118; and

(v) That an investment adviser have such minimum net capital as the director may by rule and regulation or order require, subject to the limitations of section 222 of the Investment Advisers Act of 1940, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over such funds or securities and those investment advisers who do not. In lieu of any such minimum net capital requirement, the director may require by rule and regulation or order an investment adviser to post a corporate surety bond with surety licensed to do business in Nebraska in an amount equal to such capital requirement, subject to the limitations of section 222 of the Investment Advisers Act of 1940. Every such surety bond shall run in favor of Nebraska, shall provide for suit thereon by any person who has a cause of action under section 8-1118, and shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118.

(c) The director may waive the requirement of an examination for any applicant who by reason of prior experience can demonstrate his or her knowledge of the securities business. Registration of a broker-dealer, agent, investment adviser, and investment adviser representative shall be effective for a period of not more than one year and shall expire on December 31 unless

renewed. Registration of an issuer-dealer shall be effective for a period of not more than one year and may be renewed as provided in this section. Notice filings by a federal covered adviser shall be effective for a period of not more than one year and shall expire on December 31 unless renewed.

(d) The director may restrict or limit an applicant as to any function or activity in this state for which registration is required under the Securities Act of Nebraska.

(5) Registration of a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative may be renewed by filing with the director or with a registration depository designated by the director prior to the expiration date such information as the director by rule, regulation, or order may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative previously filed with the director by the applicant, and payment of the prescribed fee. A federal covered adviser may renew its notice filing by filing with the director prior to the expiration thereof the documents filed with the Securities and Exchange Commission, as the director by rule or regulation may require, a consent to service of process, and the prescribed fee.

(6) The fee for initial or renewal registration shall be two hundred fifty dollars for a broker-dealer, two hundred dollars for an investment adviser, one hundred dollars for an issuer-dealer, forty dollars for an agent, and forty dollars for an investment adviser representative. The fee for initial or renewal filings for a federal covered adviser shall be two hundred dollars. When an application is denied or withdrawn, the director shall retain all of the fee.

(7) (a) Every registered broker-dealer, issuer-dealer, and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the director prescribes by rule and regulation or order, except as provided by section 15 of the Securities Exchange Act of 1934, in connection with broker-dealers, and section 222 of the Investment Advisers Act of 1940, in connection with investment advisers. All records so required shall be preserved for such period as the director prescribes by rule and regulation or order.

(b) All the records of a registered broker-dealer, issuer-dealer, or investment adviser shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the director, within or without this state, as the director deems necessary or appropriate in the public interest or for the protection of investors and advisory clients. For the purpose of avoiding unnecessary duplication of examinations, the director, insofar as he or she deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934. Costs of such examinations shall be borne by the registrant.

(c) Every registered broker-dealer, except as provided in section 15 of the Securities Exchange Act of 1934, and investment adviser, except as provided by section 222 of the Investment Advisers Act of 1940, shall file such financial reports as the director may prescribe by rule and regulation or order.

(d) If any information contained in any document filed with the director is or becomes inaccurate or incomplete in any material respect, a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative shall promptly file a correcting amendment or a federal covered adviser shall file a correcting amendment when such amendment is required to be filed with the Securities and Exchange Commission.

(8) With respect to investment advisers, the director may require that certain information be furnished or disseminated to clients as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the director in his or her discretion, information furnished to clients of an investment adviser that would be in compliance with the Investment Advisers Act of 1940 and the rules and regulations under such act may be used in whole or in part to satisfy the information requirement prescribed in this subsection.

(9) (a) The director may by order deny, suspend, or revoke registration of any broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative or bar, censure, or impose a fine pursuant to subsection (4) of section 8-1108.01 on any registrant or any partner, limited liability company member, officer, director, or person occupying a similar status or performing similar functions of a partner,

limited liability company member, officer, or director for a registrant from employment with any broker-dealer, issuer-dealer, or investment adviser if he or she finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer, issuer-dealer, or investment adviser, any partner, limited liability company member, officer, director, person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or person directly or indirectly controlling the broker-dealer, issuer-dealer, or investment adviser:

(i) Has filed an application for registration under this section which, as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(ii) Has willfully violated or willfully failed to comply with any provision of the Securities Act of Nebraska or a predecessor act or any rule, regulation, or order adopted and promulgated pursuant to the act or a predecessor act;

(iii) Has been convicted, within the past ten years, of any misdemeanor involving a security or commodity or any aspect of the securities or commodities business or any felony;

(iv) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities or commodities business;

(v) Is the subject of an order of the director denying, suspending, or revoking registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative;

(vi) Is the subject of an adjudication or determination, after notice and opportunity for hearing, within the past ten years by a securities or commodities agency or administrator of another state or a court of competent jurisdiction that the person has willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the securities or commodities law of any other state;

(vii) Has engaged in dishonest or unethical practices in the securities or commodities business;

(viii) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature, but the director may not enter an order against a broker-dealer, issuer-dealer, or investment adviser under this subdivision without a finding of insolvency as to the broker-dealer, issuer-dealer, or investment adviser;

(ix) Has not complied with a condition imposed by the director under subsection (4) of this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

(x) Has failed to pay the proper filing fee, but the director may enter only a denial order under this subdivision, and he or she shall vacate any such order when the deficiency has been corrected;

(xi) Has failed to reasonably supervise his or her agents or employees, if he or she is a broker-dealer or issuer-dealer, or his or her investment adviser representatives or employees, if he or she is an investment adviser, to assure their compliance with the Securities Act of Nebraska; or

(xii) Has been denied the right to do business in the securities industry, or the person's respective authority to do business in an investment-related industry has been revoked by any other state, federal, or foreign governmental agency or self-regulatory organization for cause, or the person has been the subject of a final order in a criminal, civil, injunctive, or administrative action for securities, commodities, or fraud-related violations of the law of any state, federal, or foreign governmental unit.

~~(b)-(i)~~ (b) The director may by order bar any person from engaging in the securities business in this state if the director finds that the order is in the public interest and that the person has:

(i) Willfully violated or willfully failed to comply with any provision of the Securities Act of Nebraska or a predecessor act or any rule, regulation, or order adopted and promulgated pursuant to the act or a predecessor act; or

(ii) Engaged in dishonest or unethical practices in the securities business, which activity at the time was subject to regulation by the Securities Act of Nebraska.

(c) (i) The director may not institute a proceeding under this section on the basis of a final judicial or administrative order made known to him or her by the applicant prior to the effective date of the registration

unless the proceeding is instituted within the next ninety days following registration. For purposes of this subdivision, a final judicial or administrative order does not include an order that is stayed or subject to further review or appeal. This subdivision shall not apply to renewed registrations.

(ii) The director may by order summarily postpone or suspend registration pending final determination of any proceeding under this subsection. Upon the entry of the order, the director shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, that it has been entered and of the reasons therefor and that within fifteen business days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. No order may be entered under this section denying or revoking registration without appropriate prior notice to the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, and opportunity for hearing.

~~(e)~~ (d) If the director finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative, is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the director may by order cancel the registration or application.

~~(d)~~ (e) Withdrawal from registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative shall become effective thirty days after receipt of an application to withdraw or within a shorter period of time as the director may determine unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a revocation or suspension proceeding is pending or instituted, withdrawal shall become effective at such time and upon such conditions as the director shall order.

Sec. 24. Section 8-1120, Revised Statutes Supplement, 2002, is amended to read:

8-1120. (1) Except as otherwise provided in this section, the Securities Act of Nebraska shall be administered by the Director of Banking and Finance who may employ such assistants or counsel as may be reasonably necessary for the purpose thereof and who may designate one of such assistants as an assistant director. The director may delegate to such assistant director or counsel any powers, authority, and duties imposed upon or granted to the director under the act, such as may be lawfully delegated under the common law or the statutes of this state. The director may also employ special counsel with respect to any investigation conducted by him or her under the act or with respect to any litigation to which the director is a party under the act, except that security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company shall be registered, pursuant to the provisions of sections 8-1104 to 8-1109, with the Director of Insurance who shall as to such registrations administer and enforce the act, and as pertains to the administration and enforcement of such registration of such securities all references in the act to director shall mean the Director of Insurance.

(2) It shall be unlawful for the director or any of his or her officers or employees to use for personal benefit any information which is filed with or obtained by the director and which is not made public. No provision of the act shall authorize the director or any of his or her officers or employees to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under the act. No provision of the act shall either create or derogate from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the director or any of his or her officers or employees.

(3) The director may from time to time make, amend, and rescind such rules and forms as are necessary to carry out the act. No rule or form may be made unless the director finds that the action is necessary or appropriate in

the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the act.

In prescribing rules and forms the director may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of the Securities Act of Nebraska to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable. All rules and forms of the director shall be published and made available to any person upon request.

(4) No provision of the act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, form, or order of the director, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(5) Every hearing in an administrative proceeding shall be public unless the director in his or her discretion grants a request joined in by all the respondents that the hearing be conducted privately.

(6) The Securities Act Cash Fund is created. All filing fees, registration fees, and all other fees and all money collected by or paid to the director under any of the provisions of the act shall be remitted to the State Treasurer for credit to the fund, except that registration fees collected by or paid to the Director of Insurance pursuant to the provisions of the act shall be credited to the Department of Insurance Cash Fund. The Securities Act Cash Fund shall be used for the purpose of administering and enforcing the provisions of the act, except that transfers may be made to the General Fund at the direction of the Legislature and, for the calendar years of 2000 and 2001, two million dollars shall be transferred in each year to the Affordable Housing Trust Fund. All of such money is appropriated and shall be appropriated for such purposes. Any money in the Securities Act Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(7) A document is filed when it is received by the director. The director shall keep a register of all applications for registration and registration statements which are or have ever been effective under the Securities Act of Nebraska and all denial, suspension, or revocation orders which have ever been entered under the act. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such ~~rules~~ conditions as the director ~~shall~~ may prescribe.

(8) Upon request and at such reasonable charges as he or she shall prescribe, the director shall furnish to any person photostatic or other copies, certified under his or her seal of office if requested, of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under the act, any copy so certified shall be prima facie evidence of the contents of the entry or document certified.

(9) The director in his or her discretion may honor requests from interested persons for interpretative opinions.

Sec. 25. Section 8-1503, Reissue Revised Statutes of Nebraska, is amended to read:

8-1503. Within ten days ~~of~~ after receipt of notice of disapproval pursuant to section 8-1502, the acquiring party may request an agency hearing on the proposed acquisition. At such hearing, all issues shall be determined on the record pursuant to the administrative rules of procedure and the rules and regulations as may be issued by the ~~department~~ Department of Banking and Finance in accordance with the Administrative Procedure Act. At the conclusion of such hearing, the Director of Banking and Finance shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

Sec. 26. Section 8-1507, Revised Statutes Supplement, 2002, is amended to read:

8-1507. Pursuant to section 8-1506, the Department of Banking and Finance may permit cross-industry acquisition of any failing financial institution or permit acquisition and operation of such financial institution as a bank subsidiary by a bank holding company when the department determines the acquisition of any of the financial institutions is necessary because its capital is impaired, it is conducting its business in an unsafe or unauthorized manner, or it is endangering the interests of depositors or savers. If the acquiring institution is a bank, it may continue to operate such financial institution in its original form notwithstanding its denomination as a bank subsidiary. Acquisitions by any financial institution under sections 8-1506 to 8-1510 or section 8-1516 shall be deemed to be of the

same nature as an acquisition of a state-chartered bank and shall follow such rules or regulations as may be established by the Director of Banking and Finance for acquisition of state-chartered banks by a bank holding company.

Sec. 27. Section 8-1510, Reissue Revised Statutes of Nebraska, is amended to read:

8-1510. (1) The Director of Banking and Finance may permit cross-industry acquisition or merger of one or more financial institutions under its supervision upon the application of such institutions to the ~~department~~ Department of Banking and Finance. The application shall be made on forms prescribed by the department. ~~When~~

(2) Except as provided for in subsection (3) of this section, when an application is made for such an acquisition or merger, notice of the filing of the application shall be published by the Department of Banking and Finance department three weeks in a legal newspaper in or of general circulation in the county where the applicant proposes to operate the acquired or merged financial institution. The expense of the publication shall be paid by the applicant. A public hearing shall be held on each application. The date for hearing the application shall be not more than ninety days after the filing of the application and not less than thirty days after the last publication of notice after the examination and approval by the department of the application. If the department, upon investigation and after public hearing on the application, is satisfied that the stockholders and officers of the financial institution applying for such acquisition or merger are parties of integrity and responsibility, that the requirements of section 8-702 have been met or some alternate form of protection for depositors has been met, and that the public necessity, convenience, and advantage will be promoted by permitting such acquisition or merger, the department shall, upon payment of the required fees, issue to such institution an order of approval for the acquisition or merger. ~~In the case of an acquisition or merger of a financial institution into a bank or bank holding company, such acquisition or merger shall be subject to sections 8-1508 and 8-1509.~~

(3) When application is made for cross-industry acquisition or merger and the director determines, in his or her discretion, that the financial condition of the financial institution surviving the acquisition or merger is such as to indicate that a hearing on the application would not be necessary, then the hearing requirement of subsection (2) of this section shall only be required if, (a) after publishing a notice of the proposed application in a newspaper of general circulation in the county or counties where the offices of the financial institution to be merged or acquired are located and (b) after giving notice by certified mail to all financial institutions located within such county or counties, the director receives a substantive objection to the application within fifteen days after the first day of publication.

(4) The expense of any publication and certified mailing required by this section shall be paid by the applicant.

Sec. 28. Section 8-1603, Revised Statutes Supplement, 2002, is amended to read:

8-1603. A banker's bank shall be subject to the Nebraska Banking Act and ~~the~~ any rules and regulations adopted and promulgated by the department.

Sec. 29. Section 8-1731, Reissue Revised Statutes of Nebraska, is amended to read:

8-1731. (1) To encourage uniform application and interpretation of the Commodity Code and securities regulation and enforcement in general, the director and the employees of the director may cooperate, including bearing the expense of the cooperation, with the securities agencies or director of another jurisdiction, Canadian province, or territory or such other agencies administering its commodity code, the Commodity Futures Trading Commission, the Securities and Exchange Commission, any self-regulatory organization established under the Commodity Exchange Act or the Securities Exchange Act of 1934, any national or international organization of commodities or securities officials or agencies, and any governmental law enforcement agency.

(2) The cooperation authorized by subsection (1) of this section ~~shall~~ may include, but need not be limited to, the following:

- (a) Making joint examinations or investigations;
- (b) Holding joint administrative hearings;
- (c) Filing and prosecuting joint litigation;
- (d) Sharing and exchanging personnel;
- (e) Sharing and exchanging information and documents;
- (f) Formulating and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes, and releases; and
- (g) Issuing and enforcing subpoenas at the request of the agency

administering such code in another jurisdiction, the securities agency of another jurisdiction, the Commodity Futures Trading Commission, or the Securities and Exchange Commission if the information sought would also be subject to lawful subpoena for conduct occurring in this state.

Sec. 30. Section 21-1725.01, Revised Statutes Supplement, 2002, is amended to read:

21-1725.01. (1) Upon receiving an application to establish a new credit union, a public hearing shall be held on each application. Notice of the filing of the application shall be published by the department for three weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the credit union. ~~The expense of the publication shall be paid by the applicant.~~ The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after filing the application unless the applicant agrees to a later date. Notice of the filing of the application shall be sent by the department by certified mail to all financial institutions located in the county where the applicant proposes to operate. The expense of any publication and certified mailing required by this subsection shall be paid by the applicant.

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

(3) The director may, in his or her discretion, hold a public hearing on amendments to a credit union's articles of association or bylaws which are brought before the department.

Sec. 31. Section 21-17,102, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

(e) In obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, or any corporation designated in 31 U.S.C. ~~§46~~ 9101 as a wholly owned government corporation; ~~or~~ in obligations, participation certificates, or other instruments of or insured by or fully guaranteed as to principal and interest by the Federal National Mortgage Association or the Government National Mortgage Association; ~~or~~ in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1454 et seq.; ~~or~~ in obligations or other instruments or securities of the Student Loan Marketing Association; or in obligations, participation, securities, or other instruments of or issued by or fully guaranteed as to principal and interest by any other agency

of the United States. A state credit union may issue and sell securities which are guaranteed pursuant to section 306(g) of the National Housing Act, 12 U.S.C. 1721(g);

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

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

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

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

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

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

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

Sec. 32. Section 21-17,115, Revised Statutes Supplement, 2002, is amended to read:

21-17,115. Notwithstanding any of the other provisions of the Credit Union Act or any other Nebraska statute, any credit union incorporated under the laws of the State of Nebraska and organized under the provisions of the act shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of ~~April 20, 2002~~ the operative date of this section, by a federal credit union doing business in Nebraska on the condition that such rights, powers, privileges, benefits, and immunities shall not relieve such credit union from payment of state taxes assessed under any applicable laws of this state.

Sec. 33. Section 45-191.02, Revised Statutes Supplement, 2002, is amended to read:

45-191.02. (1) Before advertising or making any oral or written representation or acting as a loan broker in this state a loan broker shall file with the department one copy of the disclosure statement and one copy of any loan brokerage agreement.

(2) The loan broker shall ~~amend~~ renew these filings no less than annually and shall also file any amendment to the disclosure statement within forty-five days after any material change in information required to be disclosed in the disclosure statement.

(3) The loan broker shall pay a one-hundred-fifty-dollar filing fee upon filing the initial disclosure statement and a one-hundred-dollar filing fee upon the filing of a renewal of the disclosure statement. The loan broker shall pay a ~~twenty-five-dollar~~ fifty-dollar filing fee for each amendment filed. All funds collected by the department under this section shall be remitted to the State Treasurer for credit to the ~~Securities Act Cash Fund~~ Financial Institution Assessment Cash Fund.

(4) The information contained or filed under this section may be made available to the public under such rules and regulations as the department ~~prescribes~~ may prescribe.

Sec. 34. Section 45-335, Reissue Revised Statutes of Nebraska, is amended to read:

45-335. For purposes of the Nebraska Installment Sales Act, unless the context otherwise requires:

(1) Goods ~~shall mean~~ means all personal property, except money or things in action, and ~~shall include~~ includes goods which, at the time of sale or subsequently, are so affixed to realty as to become part thereof whether or not severable therefrom;

(2) Services ~~shall mean~~ means work, labor, and services of any kind

performed in conjunction with an installment sale but ~~shall~~ does not include services for which the prices charged are required by law to be established and regulated by the government of the United States or any state;

(3) Buyer ~~shall mean~~ means a person who buys goods or obtains services from a seller in an installment sale;

(4) Seller ~~shall mean~~ means a person who sells goods or furnishes services to a buyer under an installment sale;

(5) Installment sale ~~shall mean~~ means any transaction, whether or not involving the creation or retention of a security interest, in which a buyer acquires goods or services from a seller pursuant to an agreement which provides for a time-price differential and under which the buyer agrees to pay all or part of the time-sale price in one or more installments and within one hundred forty-five months, except that installment contracts for the purchase of mobile homes may exceed such one-hundred-forty-five-month limitation. Installment sale ~~shall~~ does not include a consumer rental purchase agreement defined in and regulated by the Consumer Rental Purchase Agreement Act;

(6) Installment contract ~~shall mean~~ means an agreement entered into in this state evidencing an installment sale except those otherwise provided for in separate acts;

(7) Cash price or cash sale price ~~shall mean~~ means the price stated in an installment contract for which the seller would have sold or furnished to the buyer and the buyer would have bought or acquired from the seller goods or services which are the subject matter of the contract if such sale had been a sale for cash instead of an installment sale. It may include the cash price of accessories or services related to the sale such as delivery, installation, alterations, modifications, and improvements and may include taxes to the extent imposed on the cash sale;

(8) Basic time price ~~shall mean~~ means the cash sale price of the goods or services which are the subject matter of an installment contract plus the amount included therein, if a separate identified charge is made therefor and stated in the contract, for insurance, registration, certificate of title, and license fees, filing fees, an origination fee, and fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying any security related to the credit transaction or any charge for nonfiling insurance if such charge does not exceed the amount of fees and charges prescribed by law which would have been paid to public officials for filing, perfecting, releasing, and satisfying any security related to the credit transaction and less the amount of the buyer's downpayment in money or goods or both;

(9) Time-price differential, however denominated or expressed, ~~shall mean~~ means the amount, as limited in the Nebraska Installment Sales Act, to be added to the basic time price;

(10) Time-sale price ~~shall mean~~ means the total of the basic time price of the goods or services, the amount of the buyer's downpayment in money or goods or both, and the time-price differential;

(11) Sales finance company ~~shall mean~~ means a person engaged, ~~in whole or in part, in the business of purchasing one or more installment contracts from one or more sellers. Sales finance company shall include~~ includes, but ~~is not be limited to, a bank, trust company, investment company, savings and loan association, financial institution or installment loan licensee, if so engaged; and~~

(12) Director ~~shall mean~~ means the Director of Banking and Finance; and

(13) Financial institution has the same meaning as in section 8-101.

Sec. 35. Section 45-343, Reissue Revised Statutes of Nebraska, is amended to read:

45-343. Any person who ~~shall violate~~ violates any provision of ~~sections 45-334 to 45-353 or engage in the business of~~ the Nebraska Installment Sales Act or acts as a sales finance company in this state without a license therefor as provided in ~~sections 45-334 to 45-353~~ the Nebraska Installment Sales Act shall be guilty of a Class II misdemeanor.

Sec. 36. Section 45-345, Reissue Revised Statutes of Nebraska, is amended to read:

45-345. (1) No person shall ~~engage in the business of~~ act as a sales finance company in this state without obtaining a license therefor from the Department of Banking and Finance as provided in the Nebraska Installment Sales Act whether or not such person maintains an office, place of doing business, or agent in this state, unless such person meets the requirements of section 45-340.

(2) No ~~bank, trust company, industrial loan and investment company, building and loan association,~~ financial institution or installment loan

licensee authorized to do business in this state shall be required to obtain a license under the act but shall comply with all of the other provisions of the act.

(3) A seller who does not otherwise act as a sales finance company shall not be required to obtain a license under the act but shall comply with all of the other provisions of the act in order to charge the time-price differential allowed by section 45-338.

Sec. 37. Section 45-902, Revised Statutes Supplement, 2002, is amended to read:

45-902. For purposes of the Delayed Deposit Services Licensing Act:

(1) Check means any check, draft, or other instrument for the payment of money;

(2) Delayed deposit services business means any person who for a fee (a) accepts a check dated subsequent to the date it was written or (b) 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 an agreement with or any representation made to the maker of the check, whether express or implied;

(3) Director means the Director of Banking and Finance or his or her designee;

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

(5) Licensee means any person licensed under the Delayed Deposit Services Licensing Act; and

~~(5)~~ (6) Person means an individual, proprietorship, association, joint venture, joint stock company, partnership, limited partnership, limited liability company, business corporation, nonprofit corporation, or any group of individuals however organized.

Sec. 38. Section 45-1002, Revised Statutes Supplement, 2002, is amended to read:

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

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

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

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

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

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

and

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

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

(3) Loan, when used in the Nebraska Installment Loan Act, does not include any loan made by a person who is not a licensee on which the interest does not exceed the maximum rate permitted by section 45-101.03.

(4) Nothing in the Nebraska Installment Loan Act applies to any loan made by a person who is not a licensee if the interest on the loan does not exceed the maximum rate permitted by section 45-101.03.

Sec. 39. Section 45-1003, Revised Statutes Supplement, 2002, is amended to read:

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

Sec. 40. Section 45-1018, Revised Statutes Supplement, 2002, is amended to read:

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

Sec. 41. Section 59-1701.01, Reissue Revised Statutes of Nebraska, is amended to read:

59-1701.01. Sections 59-1701 to 59-1762 and section 44 of this act shall be known and may be cited as the Seller-Assisted Marketing Plan Act.

Sec. 42. Section 59-1703, Reissue Revised Statutes of Nebraska, is amended to read:

59-1703. Seller-assisted marketing plan shall mean the sale or lease or offer for sale or lease of any product, equipment, supplies, services, license, or any combination thereof which will be used by or on behalf of the purchaser to begin or maintain a business when:

(1) The seller of the plan has advertised or in other manner

solicited the purchase or lease of the plan; and

(2) ~~The purchaser makes or will become obligated to make a total initial payment of an amount exceeding five hundred dollars; and~~

~~(3) The seller has represented directly or indirectly or orally or in writing that:~~

~~(a) The seller or a person recommended or specified by the seller will provide the purchaser with or assist the purchaser in finding locations for the use or operation of vending machines, vending routes, display racks, display cases, or other similar devices on premises neither owned nor leased by the seller or the purchaser;~~

~~(b) The seller or a person recommended or specified by the seller will provide the purchaser with or will assist the purchaser in finding outlets or accounts for the purchaser's products or services;~~

~~(c) The seller or a person specified by the seller will or is likely to purchase any or all of the products made, produced, fabricated, grown, bred, or modified by the purchaser using, in whole or in part, the product, supplies, equipment, or services which were initially sold or leased or offered for sale or lease to the purchaser by the seller;~~

~~(d) The purchaser will, is likely to, or can derive income from the business which exceeds the initial payment paid by the purchaser for participation in the plan;~~

~~(e) There is a market for the product, equipment, supplies, or services which were initially sold or leased or offered for sale or lease to the purchaser by the seller;~~

~~(f) The seller will refund all or part of the initial payment paid to the seller or will repurchase any of the products, equipment, or supplies provided by the seller or a person recommended or specified by the seller, if the purchaser is dissatisfied with the business; or~~

~~(g) The seller or a person recommended or specified by the seller will provide advice or training pertaining to the sale of any products, equipment, supplies, or services or use of any licensed material and the advice or training includes, but is not limited to, preparing or providing (i) promotional literature, brochures, pamphlets, or advertising materials, (ii) training regarding the promotion, operation, or management of the seller-assisted marketing plan, or (iii) operational, managerial, technical, or financial guidelines or assistance.~~

Sec. 43. Section 59-1749, Reissue Revised Statutes of Nebraska, is amended to read:

59-1749. Every seller subject to the Seller-Assisted Marketing Plan Act shall at all times keep and maintain a complete set of books, records, and accounts of seller-assisted marketing plan sales made by the seller. All documents relating to each specific seller-assisted marketing plan sold or leased shall be maintained for four years after the date of the seller-assisted marketing plan contract.

Sec. 44. Any transaction in which the purchaser makes or will become obligated to make a total initial payment of an amount not exceeding five hundred dollars shall be exempt from the Seller-Assisted Marketing Plan Act, except that such transactions shall be subject to section 59-1751, to subdivision (1)(d) of section 59-1757, and to those provisions in the act regulating or prescribing the use of the phrase buy-back or secured investment or similar phrases as set forth in sections 59-1726 to 59-1728.

Sec. 45. Section 59-1758.01, Reissue Revised Statutes of Nebraska, is amended to read:

59-1758.01. In any proceeding under the provisions of the Seller-Assisted Marketing Plan Act, the burden of proving an exemption or an exclusion from a definition or from the provisions of the act shall be upon the person claiming it.

Sec. 46. Section 76-2,123, Reissue Revised Statutes of Nebraska, is amended to read:

76-2,123. Each state regulating entity ~~shall~~ may adopt and promulgate rules and regulations and issue such orders as are necessary or desirable to carry out section 76-2,122. Each regulating entity may inspect, examine, and audit the books and records of real estate closing agents under its jurisdiction who conduct real estate closings. The regulating entity may require reimbursement from the real estate closing agent for the expenses of such inspection, examination, or audit.

Sec. 47. Sections 1 to 8, 10, 12 to 31, 33 to 46, 49, and 50 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 48. Original sections 8-1,140, 8-355, and 21-17,115, Revised Statutes Supplement, 2002, are repealed.

Sec. 49. Original sections 8-116.01, 8-133, 8-148, 8-1,118, 8-373, 8-378, 8-701, 8-916, 8-1013, 8-1503, 8-1510, 8-1731, 21-17,102, 45-335, 45-343, 45-345, 59-1701.01, 59-1703, 59-1749, 59-1758.01, and 76-2,123, Reissue Revised Statutes of Nebraska, and sections 8-101, 8-115.01, 8-132, 8-157, 8-234, 8-602, 8-815, 8-1001, 8-1003, 8-1015, 8-1103, 8-1120, 8-1507, 8-1603, 21-1725.01, 45-191.02, 45-902, 45-1002, 45-1003, and 45-1018, Revised Statutes Supplement, 2002, are repealed.

Sec. 50. The following sections are outright repealed: Section 8-131, Reissue Revised Statutes of Nebraska, and section 8-1103.01, Revised Statutes Supplement, 2002.

Sec. 51. Since an emergency exists, this act takes effect when passed and approved according to law.