

Banking, Commerce and Insurance Committee

**One Hundred First Legislature
First Session – 2009**

SUMMARY OF 2009 LEGISLATION

Committee Members

Senator Rich Pahls, *Chairperson*

Senator Pete Pirsch, *Vice Chairperson*

Senator Mark Christensen

Senator Mike Gloor

Senator Chris Langemeier

Senator Beau McCoy

Senator Dave Pankonin

Senator Dennis Utter

Committee Staff

William Marienau, *Committee Counsel*

Janice Foster, *Committee Clerk*

MEMORANDUM

TO: Members of the Legislature and
Other Interested Persons

FROM: Senator Rich Pahls, Chairperson
Banking, Commerce and Insurance Committee

DATE: July 15, 2009

RE: Summary of 2009 Session Legislation

I am pleased to present, for your reference, the following summary of the provisions and disposition of all 2009 bills referenced to and considered by the Banking, Commerce and Insurance Committee.

I hope you find this summary helpful as you review our work as of the conclusion of the 2009 session. If you have questions or need additional information, please contact me or our committee staff: Bill Marienau, Legal Counsel, and Janice Foster, Committee Clerk.

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ACCOUNTANTS

LB 31 (Pahls) Change Public Accountancy Act provisions

Enacted/Operative September 1, 2010

OVERVIEW

This bill amends the Public Accountancy Act to allow for greater mobility of CPAs from other states and accountants from other countries into Nebraska, but also enhances regulation by Nebraska over such persons.

The bill allows non-Nebraska CPAs to exercise practice privileges in Nebraska immediately without the need to obtain licensure by reciprocity, to register, or to pay a fee. The bill also allows the Nebraska State Board of Public Accountancy to grant foreign accountants temporary practice privileges incident to their regular practice and in conformity with the rules and regulations of the board. The bill requires the board to charge foreign accountants who are granted temporary practice privileges a fee not to exceed fifty dollars.

The bill strengthens the board's regulatory authority by providing that a non-Nebraska CPA exercising the practice privilege or a foreign accountant exercising the temporary practice privilege consents, along with his or her firm, to the jurisdiction and disciplinary authority of the board. The bill provides that any non-Nebraska CPA exercising the practice privilege or foreign accountant exercising the temporary practice privilege who performs attestation services for a Nebraska entity may do only through a firm which holds a Nebraska permit.

The bill makes a Nebraska CPA subject to discipline in this state for acts committed in other states.

The bill also amends sections throughout the Public Accountancy Act to make updating and clean-up changes. Among these, the bill provides that the annual register of permit holders and board members shall be made available by the board to the permit holders instead of printed and mailed to them. The bill changes the name of the board's cash fund from "Public Accountancy Fund" to "Certified Public Accountancy Fund." The bill eliminates obsolete provisions throughout the act including those regarding "public accountants," who were, as a group, grandfathered under the act in 1957 and of whom, the last one retired in 2006.

SUMMARY

The bill provides, section by section, as follows:

Section 1 amends section 1-105 of the Public Accountancy Act to provide that new sections 12, 13, and 23 of the bill shall be assigned within the act.

Section 2 amends section 1-106 of the Public Accountancy Act to provide for two new definitions: “practice privilege” (the privilege of an accountant to practice public accountancy or hold himself or herself out as a certified public accountant in this state in accordance with section 12 of the bill) and “temporary practice privilege” (the privilege of a foreign accountant to temporarily practice accountancy in this state in accordance with section 13 of the bill).

Section 3 amends section 1-109 of the Public Accountancy Act to provide that the Nebraska State Board of Public Accountancy shall “make available” rather than “have printed and published” an annual register of the names of permitholders and board members.

Section 4 amends section 1-110 of the Public Accountancy Act to change the name of the Public Accountants Fund to the “Certified” Public Accountants Fund.

Section 5 amends section 1-111 of the Public Accountancy Act to change the name of the Public Accountants Fund to the “Certified” Public Accountants Fund and to update provisions regarding the disposition of fines imposed by the Nebraska State Board of Public Accountancy.

Section 6 amends section 1-114 of the Public Accountancy Act to clarify provisions regarding issuance of certificates.

Section 7 amends section 1-116 of the Public Accountancy Act to clarify provisions regarding eligibility to take the CPA examination and to eliminate obsolete provisions.

Section 8 amends section 1-118 of the Public Accountancy Act to eliminate obsolete provisions.

Section 9 amends section 1-119 of the Public Accountancy Act to clarify provisions and to eliminate obsolete provisions.

Section 10 amends section 1-120 of the Public Accountancy Act to clarify provisions and to eliminate obsolete provisions.

Section 11 amends section 1-122 of the Public Accountancy Act to eliminate obsolete provisions regarding public accountants.

Section 12 enacts a new section in the Public Accountancy Act to provide that a person who does not hold a Nebraska certificate or permit and who possesses an active CPA permit, certificate, or license in another state and whose principal place of business is outside Nebraska shall have all the practice privileges of a person who holds a Nebraska permit. This section provides that a person of another state exercising the practice privilege and his or her employing partnership, limited liability company, or other entity thereby consent to the jurisdiction and disciplinary authority of the Nebraska State Board of Public Accountancy. This section provides that any person who exercises the practice

privilege and who, for any entity in this state, performs attestation services, may do so only through a firm or affiliated entity which holds a Nebraska permit.

Section 13 enacts a new section in the Public Accountancy Act to provide that the Nebraska State Board of Public Accountancy may grant a person who holds a public accountancy certificate, degree, or license in a foreign country, and who does not hold a certificate or permit issued by any state and whose principal place of business is outside this state, the privilege to temporarily practice in this state incident to his or her regular practice outside of this state, if such temporary practice is conducted in conformity with the rules and regulations of the board. This section provides that any person of another country exercising the temporary practice privilege and his or her employing partnership, limited liability company, or other entity thereby consent to the jurisdiction and disciplinary authority of the board. This section provides that any person granted the temporary practice privilege and who, for any entity in this state, performs attestation services, may do so only through a firm or affiliated entity which holds a Nebraska permit. This section provides that any person granted the temporary practice privilege shall use only the title under which he or she is generally known in his or her own country, followed by the name of the foreign country. This section provides that the board shall charge each person granted the temporary practice privilege a fee not to exceed fifty dollars.

Section 14 amends section 1-126 of the Public Accountancy Act to harmonize an internal reference.

Section 15 amends section 1-134 of the Public Accountancy Act to eliminate obsolete provisions regarding public accountants and to harmonize an internal reference.

Section 16 amends section 1-135 of the Public Accountancy Act to eliminate obsolete provisions regarding public accountants and foreign accountants.

Section 17 amends section 1-136 of the Public Accountancy Act to eliminate obsolete provisions regarding foreign accountants and public accountants and to harmonize an internal reference.

Section 18 amends section 1-136.01 of the Public Accountancy Act to harmonize an internal reference.

Section 19 amends section 1-136.02 of the Public Accountancy Act to eliminate obsolete provisions regarding public accountants.

Section 20 amends section 1-136.04 of the Public Accountancy Act to eliminate obsolete provisions.

Section 21 amends section 1-137 of the Public Accountancy Act to insert references to the practice privilege and the temporary practice privilege.

Section 22 amends section 1-138 of the Public Accountancy Act to insert references to the practice privilege and the temporary practice privilege and to eliminate obsolete provisions regarding public accountants.

Section 23 enacts a new section in the Public Accountancy Act to provide that the holder of a Nebraska certificate or permit who offers or renders services in another state shall be subject to disciplinary action in this state for such an act committed in either state for which he or she would be subject to discipline for such an act committed in this state.

Section 24 amends section 1-148 of the Public Accountancy Act to insert references to the practice privilege and the temporary practice privilege.

Section 25 amends section 1-151 of the Public Accountancy Act to eliminate obsolete provisions regarding foreign accountants.

Section 26 amends section 1-152 of the Public Accountancy Act to prohibit unauthorized use of the title or designation “public accountant” and to harmonize an internal reference.

Section 27 amends section 1-155 of the Public Accountancy Act to prohibit use of the title or designation enrolled agent or E.A. except by a person so designated by the Internal Revenue Service, to prohibit unauthorized use of the title or designation “public accountant,” and to eliminate obsolete provisions regarding public accountants and foreign accountants.

Section 28 amends section 1-156 of the Public Accountancy Act to eliminate obsolete provisions regarding public accountants, to harmonize an internal reference, and to prohibit unauthorized use of the title or designation “public accountant.”

Section 29 amends section 1-157 of the Public Accountancy Act to harmonize an internal reference.

Section 30 amends section 1-158 of the Public Accountancy Act to harmonize an internal reference.

Section 31 amends section 1-159 of the Public Accountancy Act to harmonize an internal reference and to eliminate obsolete provisions.

Section 32 amends section 1-161 of the Public Accountancy Act to eliminate obsolete provisions.

Section 33 amends section 1-162 of the Public Accountancy Act to eliminate obsolete provisions regarding public accountants, to insert a reference to the temporary practice privilege, and to harmonize an internal reference.

Section 34 amends section 1-162.01 of the Public Accountancy act to eliminate obsolete provisions regarding public accountants.

Section 35 amends section 1-164.01 of the Public Accountancy Act to harmonize an internal reference.

Section 36 amends section 1-164.02 of the Public Accountancy Act to clarify provisions regarding certificates.

Section 37 amends section 1-167 of the Public Accountancy Act to eliminate obsolete provisions regarding public accountants.

Section 38 amends section 1-168 of the Public Accountancy Act to eliminate obsolete provisions regarding public accountants.

Section 39 amends section 1-170 of the Public Accountancy Act to eliminate obsolete provisions regarding public accountants, to harmonize an internal reference, and to insert a reference to the practice privilege and the temporary practice privilege.

Section 40 amends section 1-171 of the Public Accountancy Act to insert a reference to the practice privilege and the temporary practice privilege.

Section 41 provides that the bill becomes operative on September 1, 2010.

Section 42 provides for repealers of amendatory sections.

Section 43 provides for the outright repeal of obsolete sections of the Public Accountancy Act: sections 1-123, 1-125, 1-133, 1-136.03, 1-153, 1-154, and 1-163.

The bill passed 44-0-5 on February 6, 2009 and was signed by the Governor on February 12, 2009.

BANKING AND FINANCE

LB 32e (Pahls) Change provisions relating to unauthorized use of the word bank

Enacted/Effective March 6, 2009

This bill amends section 8-113 of the Nebraska Banking Act, which provides that no individual, firm, company, corporation, or association, other than a bank, building and loan association, savings and loan association, or savings bank, shall use the word "bank" or any derivative thereof as any part of a title or description of any business activity. The bill expands this section's list of entities to which this prohibition does not apply to include firms, companies, corporations, or associations which sponsor incentive-based solid waste recycling programs which issue reward points or credits to persons for their participation in such a program.

The bill carries the emergency clause.

The bill passed 48-0-1 on February 27, 2009 with the emergency clause and was signed by the Governor on March 5, 2009.

NOTE: LR 129 (Pahls) calls for the Banking, Commerce and Insurance Committee to conduct an interim study to examine updating statutory provisions which restrict the unauthorized use of the word bank.

LB 74e (Pirsch) Authorize pledging of Federal Home Loan Bank of Topeka letters of credit as security for private deposits

Enacted/Effective March 6, 2009

This bill amends section 8-133 of the Nebraska Banking Act to provide that a state-chartered bank shall not be prohibited from providing to a depositor an irrevocable, nontransferable, unconditional standby letter of credit issued by the Federal Home Loan Bank of Topeka, which provides coverage for deposits in excess of amounts insured by the Federal Deposit Insurance Corporation. The bill provides that any bank which offers such letters of credit to depositors shall post a notice in the lobby of each office of the bank stating that such letters of credit may be available to depositors.

The bill carries the emergency clause.

The bill passed 49-0-0 on February 27, 2009 with the emergency clause and was signed by the Governor on March 5, 2009.

LB 75e (Pirsch) Change provisions relating to automatic teller machine usage and fees

Enacted/Effective February 27, 2009

This bill amends section 8-157.01 of the Nebraska Banking Act to clarify the ability of financial institutions with a main chartered office or branch located in Nebraska to impose automatic teller machine (ATM) charges against customers of foreign (outside the United States) financial institutions. Section 8-157.01 provides that a financial institution with a main chartered office or branch located in Nebraska may participate in a national ATM program to allow its customers to use ATMs located outside of Nebraska which are established by out-of-state financial institutions and to allow customers of out-of-state financial institutions to use its ATMs located in Nebraska. The bill expands these provisions in order to treat foreign financial institutions in the same manner as out-of-state financial institutions. (NOTE: Section 8-157.01 was further amended by section 4 of LB 327e.)

The bill carries the emergency clause.

The bill passed 40-0-9 on February 20, 2009 with the emergency clause and was signed by the Governor on February 26, 2009.

LB 88 (Pahls) Change provisions relating to unauthorized use of the word bank

Pending on Select File

This bill would amend section 8-113 of the Nebraska Banking Act, which currently provides that no individual, firm, company, corporation, or association, other than a bank, building and loan association, savings and loan association, or savings bank, shall use the word "bank" or any derivative thereof as any part of a title or description of any business activity. Section 8-113 contains a list of entities to which this prohibition does not apply, including organizations which are described in section 501(c)(3) of the Internal Revenue Code. The bill would narrow this section 501(c)(3) exception to food banks and blood banks.

NOTE: LR 129 (Pahls) calls for the Banking, Commerce and Insurance Committee to conduct an interim study to examine updating statutory provisions which restrict the unauthorized use of the word bank.

LB 177 (Lathrop) Change security freeze provisions relating to credit reports

Enacted/Effective August 30, 2009

This bill amends sections 8-2602, 8-2607, and 8-2609 of the Credit Report Protection Act. The bill provides, section by section, as follows:

Section 1 amends section 8-2602 of the Credit Report Protection Act to provide for a definition of "minor": a person under nineteen years of age. (The Credit Report Protection Act allows a minor, at the request of a parent or custodial parent or guardian, to seek a security freeze. The act also provides that a consumer reporting agency may not charge a fee for placing a security freeze if the consumer is a minor.)

Section 2 amends section 8-2607 of the Credit Report Protection Act to repeal the provisions which require a consumer reporting agency to remove a security freeze seven years after it was put in place unless earlier removed pursuant to a request by the consumer.

Section 3 amends section 8-2609 of the Credit Report Protection Act to provide that a consumer reporting agency may charge a fee of three dollars for placing, temporarily lifting, or removing a security freeze (rather than a fee of fifteen dollars for placing a security freeze and no fee for temporarily lifting or removing a security freeze).

Section 4 provides for repealers of amendatory sections.

The bill passed 45-0-4 on April 3, 2009 and was signed by the Governor on April 8, 2009.

LB 297 (Dubas) Adopt the Nebraska Beginning Farmer and Small Business Linked Deposit Loan Act

Pending on General File

OVERVIEW

This bill would enact the Nebraska Beginning Farmer and Small Business Linked Deposit Loan Act to create a linked deposit loan program, administered by the State Treasurer, for the purpose of providing linked deposit loans of funds available for investment by the state investment officer to eligible beginning farmers and eligible small businesses. The bill, as introduced, would provide that no single linked deposit loan shall exceed two hundred fifty thousand dollars and the total aggregate amount of linked deposit loans shall not exceed twenty million dollars.

SUMMARY

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

Section 1 would enact a new section to provide for a named act: the Nebraska Beginning Farmer and Small Business Linked Deposit Loan Act.

Section 2 would enact a new section to provide definitions for "eligible beginning farmer" (a beginning farmer or livestock producer who is a resident individual, who has entered or is seeking entry into farming or livestock production, who intends to farm or raise crops or livestock on land within Nebraska, and who meets eligibility guidelines established in section 3 of the bill), "eligible lending institution," "eligible small business" (an individual or business entity headquartered in Nebraska that employs fewer than ten employees doing business in a municipality, county, unincorporated area, or census tract that has an unemployment rate which exceeds the statewide average, a per capita income below the statewide average, or had a population decrease between the two most recent federal decennial censuses), "linked deposit," and "linked deposit loan package."

Section 3 would enact a new section to provide that an eligible beginning farmer shall be an individual who, along with spouse and dependents, has a net worth of not more than five hundred thousand dollars, provides the majority of the day-to-day physical labor and management, has adequate experience or knowledge, demonstrates a profit potential, and demonstrates a need for assistance.

Section 4 would enact a new section to provide that the State Treasurer is authorized to administer the linked deposit loan program for the purpose of providing incentives for making loans from linked deposits, through eligible lending institutions, to eligible beginning farmers and eligible small businesses. This section would provide that the State Treasurer shall submit an annual report on the program to the Governor and the Legislature.

Section 5 would enact a new section to provide that a linked deposit loan application shall be completed by an eligible beginning farmer or eligible small business and returned to the State Treasurer who shall forward the application to an eligible lending institution for consideration subject to its usual and prudent lending standards and practices to determine credit worthiness. This section would provide that no single linked deposit loan shall exceed two hundred fifty thousand dollars and the total aggregate amount of linked deposit loans shall not exceed twenty million dollars.

Sections 6 and 7 would enact new sections to provide that only one eligible linked deposit loan shall be made at any one time to any eligible beginning farmer or eligible small business. These sections would provide that no eligible linked deposit loan shall be extended for more than five years or amortized for greater than fifteen years. These sections would provide that a linked deposit loan shall be used exclusively for: inventory; rent, utilities, insurance, or taxes; equipment purchase, rental, or lease; renovations, repairs, and maintenance of equipment and facilities; or purchase of land and buildings.

Section 8 would enact a new section to provide that an eligible lending institution shall forward an approved linked deposit loan application to the State Treasurer for his or her final approval.

Section 9 would enact a new section to provide that the State Treasurer shall certify to the state investment officer the amount required for an approved linked deposit loan and the state investment officer shall place a linked deposit in the amount certified by the State Treasurer with the eligible lending institution at an interest rate two percent below the judgment interest rate provided in section 45-103 (the judgment rate in section 45-103 is two percent above the T-bill rate). This section would provide that such interest rate shall be recalculated on the first business day of January, April, July, and October. This section would require that an eligible lending institution shall enter into a linked deposit loan agreement with the State Treasurer which shall include a requirement that the eligible lending institution shall make a linked deposit loan at an interest rate not more than two percent above the judgment interest rate provided in section 45-103. This section would provide that such interest rate shall be recalculated on the first business day of January, April, July, and October.

Section 10 would enact a new section to provide that the State Treasurer may adopt and promulgate rules and regulations to implement the act.

Section 11 would enact a new section to provide that the state or the State Treasurer shall not be liable to any eligible lending institution for payment of the principal or interest on a linked deposit loan. This section would provide that any delay in payments or default on a linked deposit loan shall not affect the linked deposit loan agreement between an eligible lending institution and the State Treasurer.

Section 12 would provide that the act becomes operative on January 1, 2010.

EXPLANATION OF COMMITTEE AMENDMENTS

1. The committee amendments (AM424) would amend that part of section 5 of the bill which provides that the total aggregate amount of linked deposit loans shall not exceed twenty million dollars. The committee amendments would reduce that total aggregate amount to two million dollars for the first two years (FY2009-10 and FY2010-11) and then would increase it by two million dollars every two years thereafter until it reaches ten million dollars (FY2017-18 and FY2018-19).

2. The committee amendments would insert a new section 12 to provide that no new linked deposit loans shall be made after June 30, 2019.

LB 327e (Pahls, McCoy) Change regulatory provisions regarding financial institutions and entities

Committee Priority Bill (Banking, Commerce and Insurance Committee)

Enacted/Operative April 9, 2009 (effective date of the bill), except sections 1 to 3, 7, 8, 10 to 14, 16 to 19, and 21 operative August 30, 2009 (three calendar months after adjournment of the legislative session)

This bill, introduced at the request of the Director of Banking and Finance, would amend various sections regarding banking and finance. The bill provides, section by section, as follows:

Section 1 amends section 8-101.01 of the Nebraska Banking Act to provide that new section 2 of the bill shall be assigned within the act.

Section 2 enacts a new section in the Nebraska Banking Act to provide that state-chartered banks which hold fiduciary accounts shall pledge collateral to secure amounts in those accounts which exceed the insurance or guaranty coverage provided by the Federal Deposit Insurance Corporation. Subsection (1) states the authority to hold such accounts; subsection (2) requires the collateral pledge; subsection (3) provides for acceptable types of collateral; subsection (4) provides for deposits with affiliates of the bank and the authority of the depositing bank to collateralize those deposits; and subsection (5) exempts public funds deposits from the requirements of this section, as those funds are subject to collateral requirements under other statutes. This section tracks federal law, 12 CFR 9.10(b).

Section 3 amends section 8-112 of the Nebraska Banking Act to provide that examination reports, investigation reports, and documents and information relating to such reports remain confidential records of the Department of Banking and Finance, even if such reports and documents and information are transmitted to a financial institution or other entity regulated by the department which is the subject of such reports or documents and information, and may not be otherwise released or disclosed by any such financial institution or other entity regulated by the department. These amendments further provide that these restrictions also apply to any representative or agent of the financial institution or other entity regulated by the department.

Section 4 amends section 8-157.01 of the Nebraska Banking Act to provide that an agreement to operate or share an automatic teller machine (ATM) may not prohibit, limit, or restrict the right of the operator or owner of the ATM to charge a customer conducting a transaction using an account from a foreign financial institution an access fee or surcharge not otherwise prohibited under state or federal law. (NOTE: section 8-157.01 was also amended by section 1 of LB 75e.)

Section 5 amends section 8-163 of the Nebraska Banking Act to provide that the Director of Banking and Finance shall have the authority to allow a state-chartered bank to pay dividends even though it previously had losses that equaled or exceeded the undivided profits on hand. This section, before these amendments, had provided that banks cannot pay dividends under these circumstances. These amendments address situations where the bank improves its financial condition.

Section 6 amends section 8-1,140 of the Nebraska Banking Act, which is the "wild-card statute for state-chartered banks. This section is amended to give state-chartered banks the same rights, powers, privileges, benefits, and immunities which may be exercised by a federally chartered bank doing business in Nebraska as of the operative date of this

section. Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually.

TRUST COMPANIES

Section 7 amends section 8-209 of the Nebraska Trust Company Act to change the amount of pledged securities that trust companies and trust departments of banks must pledge with the Department of Banking and Finance. This section had provided that these institutions must maintain a pledge of \$100,000 in par value of approved securities. New subsection (2) of this section provides a sliding scale pursuant to which the amount of securities to be pledged will be based on the market value of trust assets held by the institution. Trust companies with trust assets with a market value of less than \$25,000,000 shall pledge securities of \$100,000 in par value. Trust companies with trust assets with a market value of at least \$25,000,000 but less than \$250,000,000 shall pledge securities of \$200,000 in par value. Trust companies with trust assets with a market value of at least \$250,000,000 but less than \$2,500,000,000 shall pledge securities of \$300,000 in par value. Trust companies with trust assets with a market value of at least \$2,500,000,000 but less than \$5,000,000,000 shall pledge securities of \$400,000 in par value. Trust companies with trust assets with a market value of \$5,000,000,000 or more shall pledge securities of \$500,000 in par value. New subsection (3) of this section requires a trust company to determine the market value of its trust assets at the end of each calendar quarter, and, if the current pledge of securities is less than what is required by this section, increase the amount of the pledge within fifteen days following the end of the calendar quarter.

Section 8 amends section 8-210 of the Nebraska Trust Company Act to clarify provisions regarding the requirements to pledge securities pursuant to section 8-209 (section 7 of the bill).

BUILDING AND LOAN ASSOCIATIONS

Section 9 amends section 8-355, which is the "wild-card" statute for state-chartered building and loan associations. This section is amended to give state-chartered building and loan associations the same rights, powers, privileges, benefits, and immunities which may be exercised by a federal savings and loan association doing business in Nebraska as of the operative date of this section. Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually.

FEES

Section 10 amends section 8-602 of the Department of Banking and Finance assessments and fees statutes by repealing subdivision (6), which provides for a one dollar and fifty cents per page charge for copying documents. With this repeal, copying charges will be governed by subdivision (3)(b) of section 84-712, which provides that copying charges for public records shall be the actual cost of making copies available.

SALE OF CHECKS AND FUNDS TRANSMISSION

Section 11 amends section 8-1001 of the Nebraska Sale of Checks and Funds Transmission Act to provide a definition of "control" for purposes of the act: the power,

directly or indirectly, to direct the management or policies of a licensee, whether through ownership of securities, by contract, or otherwise.

Section 12 amends section 8-1001.01 of the Nebraska Sale of Checks and Funds Transmission Act to provide that new sections 13 and 14 of the bill shall be assigned within the act.

Section 13 enacts a new section in the Nebraska Sale of Checks and Funds Transmission Act. Subsection (1) provides that no person acting personally or as an agent shall acquire control of a licensee without first giving thirty days' notice to the Director of Banking and Finance. Subsection (2) provides that the director shall act upon a notice of acquisition within 30 days and, unless he or she disapproves within that period, the acquisition becomes effective on the thirty-first day, without the director's approval, except that the director may extend the period an additional thirty days. Subsection (3) provides that an acquisition may be made within the disapproval period if the director issues written notice of his or her intent not to disapprove. Subdivision (4)(a) provides grounds for disapproval. Subdivision (4)(b) provides that the director shall notify the acquiring person in writing of disapproval. Subdivision (4)(c) provides that, within fifteen business days after receipt of a written notice of disapproval, the acquiring person may request a hearing, and that, after the hearing, the director shall issue an order on the basis of the record at the hearing.

Section 14 enacts a new section in the Nebraska Sale of Checks and Funds Transmission Act to: (1) provide that a licensee shall file a notice with the Director of Banking and Finance within thirty calendar days of any material change in the information provided in the licensee's license application; and (2) provide that a licensee shall file a report with the director within five business days after the licensee has reason to know of (a) the filing of a bankruptcy petition by or against the licensee, (b) the filing of a receivership petition by or against the licensee, the commencement of dissolution or reorganization proceedings, or the making of a general assignment for the benefit of creditors, (c) the commencement of license revocation or suspension proceedings in another jurisdiction, (d) the cancellation or impairment of the licensee's bond, (e) a charge or conviction of the licensee or of an executive officer, manager, or director of, or person in control of, the licensee for a felony, or (f) a charge or conviction of an authorized agent for a felony.

CREDIT UNIONS

Section 15 amends section 21-17,115 of the Credit Union Act, which is the "wild-card" statute for state-chartered credit unions. This section is amended to give state-chartered credit unions the same rights, powers, privileges, benefits, and immunities which may be exercised by a federal credit union doing business in Nebraska as of the operative date of this section. Due to state constitutional restrictions on delegation of legislative authority, this section is amended annually.

LOAN BROKERS

Section 16 amends section 45-190 of the loan broker statutes to narrow the definition of "loan broker" so that it means a person, not otherwise excepted, who, among other things, procures or arranges a loan or assists in making an application for a loan for or in expectation of "an advance fee from a borrower" rather than for or in expectation of "consideration." The definition, before these amendments, had included a person who receives a fee from any source, including a lender.

INSTALLMENT SALES

Sections 17 and 18 amend sections 45-346.01 and 45-348 of the Nebraska Installment Sales Act to provide that, on or before each October 1, an installment sales licensee shall submit to the Director of Banking and Finance information to indicate any material change in the information contained in the original license application or succeeding renewal applications, including a copy of the licensee's most recent annual CPA audit. These sections provide that a licensee shall submit a copy of the annual audit to the director upon written request of the director. Before these amendments, a licensee was required to submit a copy of the annual CPA audit to the director within forty-five days after the audit is completed.

DELAYED DEPOSIT SERVICES

Section 19 amends section 45-922 of the Delayed Deposit Services Licensing Act to provide that the Director of Banking and Finance may suspend or revoke a delayed deposit services license if the licensee has abandoned its place of business for "thirty" days or more rather than for "sixty" days or more.

MISCELLANEOUS PROVISIONS

Section 20 provides for operative dates. Sections 4 to 6, 9, 15, 20, and 22 become operative on April 9, 2009 (the effective date of the act) and sections 1 to 3, 7 and 8, 10 to 14, 16 to 19, and 21 become operative on August 30, 2009 (three calendar months after the adjournment of the legislative session).

Section 21 provides for repealers of amendatory sections not subject to the emergency clause.

Section 22 provides for repealers of amendatory sections subject to the emergency clause.

Section 23 provides for the emergency clause.

The bill carries the emergency clause.

The bill passed 47-0-2 on April 3, 2009 with the emergency clause and was signed by the Governor on April 8, 2009.

SECURITIES

LB 113e (Pankonin, Gloor, Pirsch) Change Securities Act of Nebraska provisions

Enacted/Effective May 27, 2009

This bill amends various sections in the Securities Act of Nebraska. The bill provides, section by section, as follows:

Section 1 amends section 8-1110 of the Securities Act of Nebraska to provide that an exception to registration would no longer apply to a security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is "subject to the jurisdiction of the Interstate Commerce Commission." This section also changes a reference to the "National Association of Securities Dealers Automated Quotation National Market System" to the "NASDAQ Global Market."

Section 2 enacts a new section in the Securities Act of Nebraska to provide that it is unlawful for any person with respect to any investigation or proceeding under the act to: alter, destroy, mutilate, or conceal; make a false entry or falsify; or remove from any place or withhold from investigators or officials any record, document, or electronic or physical evidence with the intent to impede, obstruct, avoid, evade, or influence the investigation or administration of any other proceeding under the act.

Section 3 amends section 8-1116 of the Securities Act of Nebraska to provide that, upon a showing by the Director of Banking and Finance, a court may issue an order of rescission, restitution, or disgorgement, an order freezing assets, an order requiring an accounting, or a writ of attachment or writ of general or specific execution, directed to any person who has engaged in or is engaging in any act constituting a violation of the Securities Act of Nebraska or any rule, regulation, or order thereunder.

Section 4 amends section 8-1123 of the Securities Act of Nebraska to provide that new section 2 of the act shall be assigned within the act.

Section 5 provides for repealers of amendatory sections.

Section 6 provides for the emergency clause.

The bill carries the emergency clause.

The bill passed 47-0-2 on May 20, 2009 with the emergency clause and was signed by the Governor on May 26, 2009.

BONDS

LB 377e (Pankonin) Adopt the Nebraska Governmental Unit Credit Facility Act

Enacted/Effective April 9, 2009

OVERVIEW

This bill enacts six new sections to be known as the Nebraska Governmental Unit Credit Facility Act to provide that any governmental unit (as defined) in the State of Nebraska may obtain credit support for its bonds by entering into or obtaining a credit facility (as defined) for any of its bonds from any United States governmental enterprise (as defined) or from any bank providing a credit facility confirmed or supported by a credit facility provided by a United States governmental enterprise. The bill provides that a credit facility may be obtained without complying with the restrictions or requirements of any other law of the State of Nebraska or without complying with the restrictions or requirements of home rule charters.

SUMMARY

The bill provides, section by section, as follows:

Section 1 enacts a new section to provide for a named act: the Nebraska Governmental Unit Credit Facility Act.

Section 2 enacts a new section to provide for legislative findings.

Section 3 enacts a new section to provide for definitions for purposes of the Nebraska Governmental Unit Credit Facility Act: "authorizing statute," "bank," "bond," "credit facility" (any agreement or instrument providing for a guarantee or arrangement providing assurance for payment of principal or interest or both principal and interest on any bond issued by a governmental unit, including a letter of credit, contract of guarantee, contract of insurance, or stand-by purchase contract), "governmental unit," "measure," "terms and conditions," and "United States governmental enterprise" (an agency or instrumentality of the United States Government, including the Federal Home Loan Banks, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation).

Section 4 enacts a new section to provide that any governmental unit in the State of Nebraska may obtain credit support for its bonds by entering into or obtaining a credit facility for any of its bonds from any United States governmental enterprise or from a bank providing a credit facility which is confirmed or otherwise supported by a credit facility provided by a United States governmental enterprise.

Section 5 enacts a new section to provide that a credit facility may provide for payment of amounts owing by the governmental unit from any resources of the governmental unit, including taxes and other revenue.

Section 6 enacts a new section to provide that a credit facility may be obtained under the act for any purpose authorized in the act even though other laws of the State of Nebraska or provisions of home rule charters may provide for the obtaining of a credit facility for the same or similar purposes, and that a credit facility may be obtained under the act without complying with the restrictions or requirements of any other law of the State of Nebraska, or without complying with restrictions or requirements of home rule charters.

Section 7 provides for severability.

Section 8 provides for the emergency clause.

The bill carries the emergency clause.

The bill passed 46-0-3 on April 3, 2009 with the emergency clause and was signed by the Governor on April 8, 2009.

CORPORATIONS

LB 528 (Fulton) Authorize electronic transmissions as a means of notice, delivery, and appointment under the Business Corporation Act

Enacted/Effective August 30, 2009

OVERVIEW

This bill amends the Business Corporation Act to amend provisions relating to notice, appointment of proxies, and delivery of documents and to authorize electronic transmission as a means of notice, delivery, and appointment.

SUMMARY

The bill provides, section by section, as follows:

Section 1 amends section 21-2003 of the Business Corporation Act to provide that documents delivered to the Secretary of State for filing may not be delivered by electronic transmission.

Section 2 amends section 21-2014 of the Business Corporation Act to provide that the definition of "deliver" includes, in addition to mail, delivery by hand, commercial delivery, and electronic transmission, and to provide a definition for a new term: "electronic transmission or electronically transmitted" ("any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient").

Section 3 amends section 21-2015 of the Business Corporation Act to provide for effective written notice to shareholders by electronic transmission.

Section 4 amends section 21-2060 of the Business Corporation Act to provide for shareholder appointment of a proxy by electronic transmission.

Section 5 amends section 21-20,186 of the Business Corporation Act to provide that a corporation may deliver the annual statement to shareholders by electronic transmission.

Section 6 provides for repealers of amendatory sections.

The bill passed 47-0-2 on May 20, 2009 and was signed by the Governor on May 26, 2009.

PRINCIPAL AND INCOME

LB 80e (Nelson) Change the Uniform Principal and Income Act

Enacted/Effective February 27, 2009

This bill amends sections 30-3116, 30-3135, and 30-3146 of Nebraska's version of the Uniform Principal and Income Act and enacts a new section within the act in order to adopt amendments to the act approved and recommended to the states by the National Conference of Commissioners on Uniform State Laws in July of 2008. The amendments were developed by the Uniform Law Commissioners in response to an IRS Revenue Ruling. The bill provides as follows:

Section 1 amends section 30-3116 of the Uniform Principal and Income Act to provide that new section 4 of the bill shall be assigned within the act.

Section 2 amends section 30-3135 of the Uniform Principal and Income Act [Section 409 of the official uniform text of the act] which regards allocation by a trustee of payments to income and principal in the case of deferred compensation, annuities, and similar payments. With regard to the amendments to this section, the official comments of the Uniform Law Commissioners provide, in part, as follows:

"When an IRA or other retirement arrangement (a "plan") is payable to a marital deduction trust, the IRS treats the plan as a separate property interest that itself must qualify for the marital deduction. IRS Revenue Ruling 2006-26 said that, as written, Section 409 does not cause a trust to qualify for the IRS' safe harbors. Revenue Ruling 2006-26 was limited in scope to certain situations involving IRAs and defined contribution retirement plans. Without necessarily agreeing with the IRS' position in that ruling, the revision to this section is designed to satisfy the IRS' safe harbor and to address concerns that might be raised for similar assets."

"Subsection (e) [subsection (f) in the bill] requires the trustee to demand certain distributions if the surviving spouse so requests. The safe harbor of Revenue Ruling 2006-26 requires that the surviving spouse be separately entitled to demand the fund's income (without regard to the income from the trust's other assets) and the income from the other assets (without regard to the fund's income). In any event, the surviving spouse is not required to demand that the trustee distribute all of the fund's income from the fund or from other trust assets."

"Subsection (e) [subsection (f) in the bill] also recognizes that the trustee might not control the payments that the trustee receives and provides a remedy to the surviving spouse if the distributions under subsection (d)(1) are insufficient."

"Subsection (f) [subsection (g) in the bill] addresses situations where, due to lack of information provided by the fund's administrator, the trustee is unable to determine the fund's actual income."

Section 3 amends section 30-3146 of the Uniform Principal and Income Act [Section 505 of the official uniform text of the act] which regards allocation by a trustee of taxes paid to income and principal. With regard to amendments to this section, the official comments of the Uniform Law Commissioners provide, in part, as follows:

"When a trust owns an interest in a pass-through entity, such as a partnership or S corporation, it must report its share of the entity's taxable income regardless of how much the entity distributes to the trust. Whether the entity distributes more or less than the trust's tax on its share of the entity's taxable income, the trust must pay the taxes and allocate them between income and principal."

"Subsection (c) requires the trust to pay the taxes on its share of an entity's taxable income from income or principal receipts to the extent that receipts from the entity are allocable to each. This assures the trust a source of cash to pay some or all of the taxes on its share of the entity's taxable income. Subsection 505(d) recognizes that, except in the case of an Electing Small Business Trust (ESBT), a trust normally receives a deduction of amounts distributed to a beneficiary. Accordingly, subsection 505(d) requires the trust to increase receipts payable to a beneficiary as determined under subsection (c) to the extent the trust's taxes are reduced by distributing those receipts to the beneficiary."

Section 4 enacts a new section in the Uniform Principal and Income Act to provide transition rules for amendments made to the act by this bill.

Section 5 provides for repealers of amendatory sections.

Section 6 provides for the emergency clause.

The bill carries the emergency clause.

The bill passed 43-0-6 on February 20, 2009 with the emergency clause and was signed by the Governor on February 26, 2009.

INSURANCE

LB 149 (Pankonin, McCoy, Nelson, Pirsch) Require insurance coverage for prosthetics as prescribed

Pending in Committee

This bill would enact a new section to provide that any individual or group sickness and accident insurance policy, certificate, or subscriber contract and any self-funded employee benefit plan to the extent not preempted by federal law shall include coverage for prosthetics that, at a minimum, equals the coverage provided under Medicare.

The bill would provide that such coverage may be limited to the most appropriate prosthetic deemed medically necessary by the treating physician, including repair or replacement. The bill would provide that a policy may require that prosthetics be furnished by a prosthetist with which the insurer has a contract, but the covered person shall have access to medically necessary clinical care, prosthetic services, and prosthetic components or technology from a nonparticipating prosthetist to the same extent the policy provides for out-of-network services for other covered benefits.

The bill would provide that it does not prevent application of deductible or copay provisions. The bill would provide that any copayment shall not exceed the copayment under Medicare and that providers shall be reimbursed no less than the amount under the Medicare reimbursement schedule. The bill would provide that there shall be no separate annual or lifetime dollar maximum on prosthetics coverage.

The bill would provide that "prosthetic" means artificial legs and arms and associated components.

LB 152 (Pahls) Change a provision relating to uninsured and underinsured motorist coverages

Enacted/Effective August 30, 2009

This bill amends section 44-6413 of the Uninsured and Underinsured Motorist Insurance Coverage Act to eliminate the basis in statute for two Nebraska Supreme Court cases which generated unintended results regarding the extent of uninsured motorist (UM) and underinsured motorist (UIM) coverages.

First, the bill inserts a new subsection (5) in section 44-6413 of the Uninsured and Underinsured Motorist Insurance Coverage Act to provide that no policy subject to the act shall define "insured," for purposes of UM and UIM coverages, so as to exclude any person occupying the insured vehicle with the express or implied permission of an insured. These amendments are intended to undo the basis for a holding in the case of

Jones v. Shelter Mutual Insurance Companies, 274 Neb. 186, 738 N.W.2d 840 (2007). According to the court in that case, in section 44-6408, persons insured for purposes of UM and UIM coverages are only those persons insured under the liability provisions of a motor vehicle liability policy. Thus, passengers who are not, for example, relatives, related household members, or additional listed insureds, might not have UM and UIM coverage unless they have it under another motor vehicle liability policy pursuant to which they would be persons insured. The bill is intended to change this result.

Second, the bill amends subdivision (1)(b) of section 44-6413 of the Uninsured and Underinsured Motorist Insurance Coverage Act to provide that UM and UIM coverages shall not apply to bodily injury, sickness, disease, or death of an insured while occupying a vehicle, instead of a "motor" vehicle, owned by, but not insured by, the named insured or a spouse or relative residing with the named insured. This amendment is intended to undo the basis for a holding in the case of Steffen v. Progressive Northern Insurance Company, 276 Neb. 378, 745 N.W.2d 730 (2008). According to the court in that case the owner of a farm tractor who sustained injuries while operating the tractor was entitled to UIM coverage under a motor vehicle liability policy on which he was the named insured even though the tractor was not listed on the declarations page of the policy. This result hinged on the court's examination of subsection (1) of section 44-6413 which sets out, in its subdivisions, circumstances of bodily injury, sickness, disease on death to which UM and UIM coverages shall not apply. The court pointed out that the exemption in subdivision (1)(b) of section 44-6413 is triggered by a "motor vehicle" which is owned by, but not insured by, the named insured or relative residing with the named insured. Section 44-6404 of the Uninsured and Underinsured Motorist Insurance Coverage Act provides definitions for the act, and for the definition of "motor vehicle" it incorporates by reference the definition of "motor vehicle" in section 60-501: any self-propelled vehicle which is designed for use upon a highway, except a list of vehicles including "farm tractors." Thus, the court concluded that, for purposes of the exemption in subdivision (1)(b) of section 44-6413, a farm tractor is not a motor vehicle and the exemption does not apply. As a result, the tractor had UIM coverage (and likely also UM coverage) in a motor vehicle liability policy on which it was not listed. Presumably, the same result could occur in the case of other vehicles excepted from the definition of motor vehicle in section 60-501. The bill is intended to change this result. Also, because of similarity in provisions, the bill also amends subdivision (1)(c) of section 44-6413 to provide that UM and UIM coverages shall not apply to bodily injury, sickness, disease, or death of an insured while occupying an owned vehicle, instead of an owned "motor" vehicle, which is used as a public or livery conveyance and which is not insured as such.

The bill passed 48-0-1 on May 20, 2009 and was signed by the Governor on May 26, 2009.

LB 157 (McCoy) Exempt state vehicles from carrying uninsured and underinsured motorist coverage

Indefinitely postponed in committee

This bill would provide that the State is not required to obtain uninsured and underinsured motorist insurance coverages in conjunction with liability coverages obtained for loss arising out of operation of vehicles by the state. The bill would provide as follows:

Section 1 would amend section 44-6408 of the Uninsured and Underinsured Motorist Insurance Coverage Act to provide that a motor vehicle liability insurance policy may be issued without uninsured and underinsured coverage if the named insured is the State of Nebraska or any of its agencies, boards, or commissions.

Section 2 would amend section 81-8,239.07 to provide that the state's Risk Manager is not required to purchase uninsured and underinsured motorist coverage in connection with obtaining liability protection for agencies and their employees and other persons against loss occasioned by negligent operation of vehicles.

LB 176 (Lathrop) Prohibit use of credit information for insurance purposes and repeal the model act

Pending in committee

This bill would enact a new section to provide that (1) an insurer shall not use credit information in connection with the issuance, underwriting, renewal, cancellation, or denial of or any other action related to insurance and (2) an insurer shall not use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the consumer as a factor.

The bill would provide definitions for "consumer," "credit information," "credit report," "insurance score," and "insurer."

The bill would provide that it becomes operative on January 1, 2010.

The bill would outright repeal sections 44-7701 to 44-7712, the Model Act Regarding Use of Credit Information in Personal Insurance.

NOTE: LR 188 (Lathrop) calls for the Banking, Commerce and Insurance Committee to conduct an interim study to review the practice of using credit information for insurance purposes.

LB 192 (Pahls) Change insurance provisions

Enacted/Effective August 30, 2009

This bill, introduced at the request of the Director of Insurance, amends various sections with regard to the subject of insurance. The bill provides, section by section, as follows:

BURIAL PRE-NEED SALE ACT

Section 1 amends section 12-1116 of the Burial Pre-Need Sale Act to provide that the Director of Insurance may deny, revoke, or suspend a license or levy an administrative fine of not more than one thousand dollars for the failure by a licensee to respond to a written inquiry from the Department of Insurance within fifteen business days.

TITLE INSURER RESERVE RELEASE SCHEDULE

Section 2 amends section 44-1988 of the Title Insurers Act to provide that a release of statutory or unearned premium reserves authorized under this section shall be made over the course of the year in twelve equal monthly amounts beginning July 1, instead of in one release every July 1. This section repeals statutory provisions setting forth outdated requirements for transitional reserve requirements.

REPORTING REQUIREMENTS FOR INSURANCE PRODUCERS

Section 3 amends section 44-4065 of the Insurance Producers Licensing Act to require an insurance producer to report to the Director of Insurance (1) any administrative action taken against the producer in another jurisdiction by a professional self-regulatory organization such as the Financial Industry Regulatory Authority or a similar organization, or (2) any obligation regarding insurance premiums or fiduciary funds owed to a company, within thirty days of the date of discharge or attempt to discharge such obligation in a personal or organizational bankruptcy proceeding. An administrative action, for purposes of this section, includes any arbitration or mediation award, disciplinary action, civil action, or sanction taken against or involving an insurance producer.

INSURERS INVESTMENTS

Section 4 amends section 44-5103 of the Insurers Investment Act to allow insurers to use federal home loan banks to hold securities owned by domestic insurers as a custodian. This section further amends section 44-5103 to change references from "United States banking regulators" to "the regulator charged with establishing such standards and assessing the solvency of" a national bank, state bank, federal home loan bank, or trust company.

SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT BONA FIDE GROUPS

Sections 5 and 6 amend sections 44-5223 and 44-5225 of the Small Employer Health Insurance Availability Act to provide that new section 7 of the bill shall be assigned within the act.

Section 7 enacts a new section within the Small Employer Health Insurance Availability Act to provide that a "bona fide association" shall be defined as an association that (1) has been actively in existence for at least five years, (2) has been formed and maintained in good faith for purposes other than obtaining insurance, (3) does not condition membership in the association on a health-status-related factor of an individual, (4) makes health insurance coverage offered through the association available to any member regardless of a health-status-related factor of the member or individual eligible for

coverage through a member, and (5) does not make available health insurance coverage offered through the association other than in connection with a member of the association.

Section 8 amends section 44-5260 of the Small Employer Health Insurance Availability Act to specify that the requirement that every small employer carrier shall actively offer to small employers all health benefit plans it actively markets does not apply to health benefit plans marketed only through a bona fide association.

INSURER EXAMINATION

Section 9 amends section 44-5904 of the Insurers Examination Act to provide that the Director of Insurance shall at a minimum conduct an examination of every domestic insurer not less frequently than once every "five" years instead of once every "four" years.

Section 10 amends section 44-5905 of the Insurers Examination Act to provide that companies and persons subject to the act shall retain financial records and market conduct records for "five" years instead of "four" years.

MISCELLANEOUS PROVISIONS

Section 11 provides for repealers of amendatory sections.

The bill passed 44-0-5 on February 20, 2009 and was signed by the Governor on February 26, 2009.

LB 326 (Rogert) Change provisions relating to the Comprehensive Health Insurance Pool Act

Indefinitely postponed in committee

This bill would amend section 44-4226 of the Comprehensive Health Insurance Pool (CHIP) Act to provide that pool coverage shall include coverage for biliopancreatic diversion with duodenal switch and Roux-en-Y gastric bypass.

The bill would provide that the CHIP board shall establish an independent review process to have medical professionals review CHIP coverage disputes and make decisions binding on the parties. The bill would provide that the Director of Insurance shall, by rule and regulation, establish standards for the selection of the independent reviewers and the operation of independent reviews.

LB 358 (Pahls) Change the Comprehensive Health Insurance Pool Act

Speaker Priority Bill

Enacted/Effective August 30, 2009

OVERVIEW

This bill, introduced at the request of the Director of Insurance, amends various sections of the Comprehensive Health Insurance Pool (CHIP) Act in order to slow the growth of the pool's net loss and keep it from exceeding the state subsidy of available premium tax dollars.

SUMMARY

The bill provides, section by section, as follows:

Section 1 amends section 44-4201 of the Comprehensive Health Insurance Pool Act to provide that new sections 2, 3, and 6 of the bill shall be assigned within the act.

Section 2 enacts a new section in the Comprehensive Health Insurance Pool Act to require the CHIP board of directors to annually review the operation of the pool and report to the Director of Insurance the board's recommendations for cost savings in the operation of the pool.

Section 3 enacts a new section in the Comprehensive Health Insurance Pool Act to require the CHIP board of directors to conduct an annual review of whether reimbursement rates are in excess of reasonable amounts and whether cost savings in the operation of the pool could be achieved by establishing the level of reimbursement rates as a multiplier of an objective standard. This section provides that if the board determines that cost savings in the operation of the pool could be achieved, the board may establish the level of reimbursement rates as a multiplier of an objective standard. This section further provides that a health care provider who provides covered services to a covered individual under pool coverage is deemed to have agreed to reimbursement according to reimbursement rates established pursuant to this section.

Section 4 amends section 44-4221 of the Comprehensive Health Insurance Pool Act to provide that if an individual who seeks CHIP coverage based upon eligibility other than that required by HIPAA shall be ineligible for CHIP coverage if he or she is eligible for group coverage. This section provides that an individual who seeks CHIP coverage based upon eligibility other than that required by HIPAA must first exhaust available continuation coverage under COBRA or under a similar program. This section repeals the exception to the requirement that individuals must exhaust COBRA as required for HIPAA-based eligibility if the individual was offered the option of continuation coverage under COBRA or under a similar program at a premium rate higher than that available from the pool.

Section 5 amends section 44-4222 of the Comprehensive Health Insurance Pool Act to provide that an individual is ineligible for CHIP coverage if the premium is paid for by a person other than: the individual; an individual related by blood, marriage, or adoption; or an entity operating under the federal Ryan White HIV/AIDS Treatment Modernization Act of 2006.

Section 6 enacts a new section in the Comprehensive Health Insurance Pool Act to prohibit an insurer, agent, broker, or third-party administrator from referring an individual employee to the pool or arranging for an individual employee to apply for pool coverage for the purpose of separating that individual employee from group health insurance coverage in connection with the individual employee's employment. This section provides that a violation of it would be an unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act.

Section 7 amends section 44-4226 of the Comprehensive Health Insurance Pool Act to provide that the Director of Insurance shall establish CHIP coverage as generally reflective of and commensurate with individual health insurance coverage provided by the "ten" largest, rather than the "five" largest, writers of individual health insurance coverage in this state.

Section 8 amends section 44-4227 of the Comprehensive Health Insurance Pool Act to provide that the pool shall determine the standard risk rate by calculating the average individual rate charged by the "ten" largest, rather than the "five" largest, writers of individual health insurance coverage in the state. This section increases the annual premium rate established for CHIP coverage from 135 percent of the standard risk rate to 150 percent of the standard risk rate in five percent increments over three years and provides that the premium rate shall be as so established or the previous year's rate adjusted by a trend factor reflecting medical economic factors, whichever is greater. This section also repeals the below-market rate established for CHIP coverage for individuals under eighteen years of age.

Section 9 provides for repealers of amendatory sections.

The bill passed 47-0-2 on May 20, 2009 and was signed by the Governor on May 26, 2009.

LB 378 (Gloor) Require insurance coverage of medical clinical trials

Pending in Committee

This bill would enact a new section to provide that any individual or group sickness and accident insurance policy, certificate, or subscriber contract and any self-funded employee benefit plan to the extent not preempted by federal law shall include coverage for routine patient care costs that a policyholder or certificate holder, or dependent, receives during enrollment in a clinical trial if: (1) the clinical trial is approved by an

institutional review board pursuant to 45 C.F.R. 46; (2) the patient care is provided by a certified, registered, or licensed health care provider practicing within the scope of his or her practice and the facility and personnel have the experience to provide the treatment in a competent manner; and (3) the patient has signed a statement of consent.

The bill would provide that coverage does not include: (1) any portion of the clinical trial paid for by a government or by a part of the biotechnical, pharmaceutical, or medical industry; (2) coverage paid for by the manufacturer, distributor, or provider of the drug or device; (3) extraneous expenses related to participation in the clinical trial; (4) an item or service provided solely for data collection or analysis; or (5) costs for management for research.

The bill would provide definitions for "clinical trial" and "routine patient care."

LB 445 (Fulton) Change the Health Insurance Access Act

Enacted/Effective August 30, 2009

This bill amends sections 44-5302, 44-5303, and 44-5305 to 44-5307 of the Health Insurance Access Act to eliminate provisions which establish income standards for eligibility and to provide that an uninsured access coverage policy or contract "may" include, instead of "shall" include, hospital-only and surgical-only benefits, and that an uninsured access coverage policy or contract may include prescription drug coverage and may include preventative health care coverage.

The bill passed 48-0-1 on May 20, 2009 and was signed by the Governor on May 26, 2009.

LB 484 (Stuthman) Provide for partial payment of insurance policy proceeds to a city or village by ordinance

Indefinitely postponed in committee

OVERVIEW

This bill would enact seven new sections to provide that cities and villages are authorized to adopt ordinances which would require that up to 15 percent of insurance proceeds for damage to or loss of a building or other structure caused by or arising out of any fire, explosion, windstorm, or other natural disaster would be withheld by the insurer and paid to the city or village to be used, if necessary, to demolish the building or other structure.

SUMMARY

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

Section 1 would provide that: (1) a city or village may adopt an ordinance to establish a procedure for the payment of not more than 15 percent of the proceeds of any insurance claim payment for damage or loss to a building or other structure caused by or arising out of any fire, explosion, windstorm, or other natural disaster, and the ordinance shall apply only to a claim payment which is in excess of 75 percent of the face value of the policy; (2) the insurer shall first pay all amounts due the first mortgage holder and then shall withhold from the proceeds a sum not to exceed the amount authorized by the ordinance and pay it to the city or village except as otherwise provided in section 3 of the bill; and (3) the city or village shall release the proceeds within 30 days unless the city or village has instituted proceedings to repair, rehabilitate, or demolish and remove the building or structure, and if the city or village has instituted such proceedings, all proceeds in excess of that necessary for removal shall be paid to the insured.

Section 2 would provide that every city or village that adopts an ordinance under section 1 of the bill shall notify the Department of Insurance which shall prepare and distribute a list of such cities and villages to all insurance companies that issue policies insuring buildings and other structures against loss by fire, explosion, windstorm, or other natural disaster, and that an insurance company so notified shall establish procedures for such cities and villages to carry out the act.

Section 3 would provide that if any city or village that has adopted an ordinance under section 1 of the bill is satisfied that the insured has or will remove debris and repair, rebuild, or otherwise make the premises safe and secure, the city or village shall issue a certificate to permit the proceeds to be paid to the insured without deduction.

Section 4 would provide that the act shall apply to fire, explosion, windstorm, or other natural disaster claims arising on all buildings or structures.

Section 5 would provide that the act shall not make any city or village a party to any insurance contract nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable.

Section 6 would provide that insurers complying or attempting in good faith to comply with the act shall be immune from civil and criminal liability and such actions shall not be deemed in violation of the Unfair Insurance Trade Practices Act.

Section 7 would provide that the Director of Insurance has rule and regulation authority to carry out the act.

NOTE: LR 132 (Stuthman) calls for the Banking, Commerce and Insurance Committee to examine updating statutes to provide for partial payment of insurance policy proceeds to a city or village for certain damages or losses.

LB 493 (Karpisek) Require insurance coverage for cochlear implants

Pending in committee

This bill would enact a new section to provide that individual and group sickness and accident insurance policies, certificates, and subscriber contracts; hospital, medical, or surgical expense-incurred policies; and self-funded employee benefit plans to the extent not preempted by federal law shall provide coverage for single or bilateral cochlear implants for persons diagnosed with severe to profound hearing impairment.

LB 551 (White) Extend the limiting age on sickness and accident insurance policies

Senator Priority Bill (McGill)

Enacted/Operative January 1, 2010

This bill amends the insurance statutes in order to extend the limiting age on health insurance policies and benefit plans.

Section 1 amends section 44-710.01, which provides that an individual sickness and accident insurance policy may, upon application, insure family members, including any children under a specified age not to exceed "twenty-three" years, increased by this bill to "thirty" years.

Section 2 amends section 44-761, which provides that a group sickness and accident insurance policy shall contain a provision that coverage may, upon application, include family members, including any children under a specified age not to exceed "twenty-three" years, increased by this bill to "thirty" years.

Section 3 enacts a new section to provide that a health benefit plan (individual or group sickness and accident insurance policy, health maintenance organization contract, subscriber contract, or self-funded employee benefit plan to the extent not preempted by federal law) that provides coverage for children shall provide optional continuing coverage for a child until he or she marries; ceases to be a resident of the state, unless under nineteen years of age or enrolled full-time in any college, university, or trade school; receives other coverage; or attains thirty years of age. This section provides that an additional premium may be required for such child and the employer shall not be required to contribute to any additional premium.

Section 4 provides for an operative date of January 1, 2010.

Section 5 provides for repealers of amendatory sections.

The bill passed 45-0-4 on May 7, 2009 and was signed by the Governor on May 13, 2009.

LB 637 (Mello) Require disclosure of information by certain group health carriers

Pending in committee

This bill would enact a new section in the insurance statutes to provide that an insurance company, fraternal benefit society, or health maintenance organization issuing a group health benefit plan to a group of fifty-one or more covered employees shall provide to the sponsor of the group health benefit plan or to an insurance producer authorized by the group sponsor, upon request by the group sponsor or the insurance producer, annually, but not more than three months prior to the renewal date, the total amount of actual claims identified as paid or incurred and paid by month, including claims experience for medical, dental, and pharmacy benefits, as applicable, the total number of covered employees on a monthly basis by coverage tier, the total number of covered employees that have reached deductible by tier, the major categories of expenses, and total premium paid by month. The bill would provide that the required information shall be provided for the immediately preceding thirty-six months or for the entire period of coverage, whichever is shorter.

The bill would provide that a violation shall be subject to the Unfair Insurance Trade Practices Act.

The bill would provide the Director of Insurance with rule and regulation authority.

INTEREST, LOANS, AND DEBT

LB 293 (Nantkes) Adopt the Short-Term Lenders Act and eliminate the Delayed Deposit Services Licensing Act

Indefinitely postponed in committee

OVERVIEW

This bill would enact the Short-Term Lenders Act to allow licensees under the act to make short-term loans of not more than five hundred dollars for not more than thirty-five days at not more than thirty-six percent annual interest. The act would require the Director of Banking and Finance to regulate licensees and also develop a statewide common data base accessible through the Internet for licensees to determine if a borrower is eligible for a short-term loan. The bill would provide for creation of the Financial Literacy Education Fund to be used to support adult financial literacy education programs to be developed or implemented by the Department of Banking and Finance. The bill would outright repeal all sections of the Delayed Deposit Services Licensing Act (sections 45-901 to 45-929).

SUMMARY

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

Section 1 would enact a new section to provide for a named act: the Short-Term Lenders Act.

Section 2 would enact a new section to provide definitions for "annual percentage rate," "department," "director," "interest," "licensee," and "short-term loan."

Section 3 would enact a new section to provide that (1) no person shall make a short-term loan to a borrower in Nebraska or assist a borrower in Nebraska to obtain a short-term loan without having obtained a license from the Director of Banking and Finance, (2) a person not located in Nebraska shall not make a short-term loan to a borrower in Nebraska, and (3) the act does not apply to a state-chartered or federally chartered financial institution.

Section 4 would enact a new section (1) to provide for license application, an investigation fee of two hundred dollars, an original and renewal license fee of five thousand dollars per location, with all such fees to be credited to the Financial Literacy Education Fund (created by section 21 of the bill), (2) to provide for background investigations of applicants by means of fingerprints and criminal history record information checks with costs borne by applicants and by means of civil history records information checks and to require an applicant to be financially sound and have net worth of at least one hundred thousand dollars, (3) to provide for denial of an application and appeal from a denial, and (4) to provide that a licensed person shall obtain and maintain a corporate surety bond in the penal sum of at least one hundred thousand dollars.

Section 5 would enact a new section to provide that a license issued by the Director of Banking and Finance shall state the address at which the business of making short-term loans is to be conducted and that not more than one place of business shall be maintained under the same license.

Section 6 would enact a new section to provide that a licensee may make a short-term loan if (1) the total amount of the short-term loan does not exceed five hundred dollars, (2) the duration of the short-term loan is not less than thirty-five days, (3) the short-term loan is made pursuant to written contract which contains disclosures set forth in this section, and (4) the contract offers the borrower an optional extended payment plan subject to requirements set forth in this section.

Section 7 would enact a new section to provide that a licensee may charge, collect, and receive (1) interest not exceeding an annual percentage rate greater than thirty-six percent and (2) one check collection charge per short-term loan not exceeding twenty dollars plus any amount passed on from other financial institutions for each negotiable instrument returned or dishonored.

Section 8 would enact a new section to provide for prohibited acts set forth in the 19 subdivisions of this section.

Section 9 would enact a new section (1) to provide grounds for the Director of Banking and Finance to suspend or revoke a license and (2) to provide for the director to make investigations and conduct hearings regarding violations of the act or rules and regulations adopted and promulgated under it.

Section 10 would enact a new section to provide that the Director of Banking and Finance may examine the records of a licensee at any time, but no less often than annually.

Section 11 would enact a new section to provide that (1) every licensee shall preserve books, accounts, records, and short-term loan documents for at least two years, and (2) each licensee shall file with the Department of Banking and Finance a report each year concerning the business and operation for each business location.

Section 12 would enact a new section to provide for civil remedies and criminal prosecutions.

Section 13 would enact a new section to provide that (1) the Director of Banking and Finance shall develop a statewide common data base accessible by Internet to all licensees for the purpose of determining if a borrower is eligible for a short-term loan, (2) the director shall adopt and promulgate rules and regulations to administer and enforce this section and to ensure that the data base is used by licensees in accordance with this section and rules and regulations containing requirements set forth in this section, (3) the data base operator shall be subject to requirements set forth in this section, (4) the licensee may rely on information in the data base as accurate, (5) the information in the

data base is not a public record, (6) the data base operator may impose a per transaction fee, if approved by the director, and which may not be charged to a short-term loan applicant or borrower, and (7) the records of a licensee and any electronic data base service shall be subject to review and examination by the Department of Banking and Finance.

Section 14 would enact a new section to provide that (1) licensees shall be subject to duties and standards of care set forth in this section, (2) an injured borrower may bring an action for recovery of damages, which shall be not less than all compensation paid to the licensee from any source, plus attorney's fees and costs, and (3) punitive damages may be awarded and remitted to the State in the manner of fines and penalties.

Section 15 would enact a new section to provide that the Director of Banking and Finance shall report semiannually to the Governor and the Legislature regarding enforcement actions and suspensions, revocations, or refusals to issue or renew licenses.

Section 16 would enact a new section to provide definitions for purposes of section 17 of the bill for "borrower," "communication," "consumer reporting agency," "debt collector," and "location information."

Section 17 would enact a new section to provide for prohibited debt collector communications and conduct as set forth in this section.

Section 18 would enact a new section to provide the Department of Banking and Finance with authority to adopt and promulgate rules and regulations to carry out the act.

Section 19 would enact a new section to provide that a violation of the act is a Class I misdemeanor (maximum: one year, or one thousand dollars, or both; minimum: none).

Section 20 would amend section 45-101.04 to provide that the general usury rate limitation (16 percent per annum) shall not apply to fees charged by a licensee pursuant to the Short-Term Lenders Act instead of the Delayed Deposit Services Licensing Act.

Section 21 would enact a new section to provide for creation of the Financial Literacy Education Fund to be used to support various adult financial literacy education programs developed or implemented by the Department of Banking and Finance. This section would provide intent that the initial appropriation shall be two hundred fifty thousand dollars. This section would provide that the department shall adopt and promulgate rules and regulations to require at least one-half of the programs offered to the public shall be presented by or available at community colleges or state institutions throughout the state. This section would provide that the department shall provide to the Governor and Legislature an annual report on each program.

Section 22 would provide a repealer for the amendatory section.

Section 23 would outright repeal sections 45-901 to 45-929, the Delayed Deposit Services Licensing Act.

LB 328e (Pahls) Change banking, mortgage bankers, and installment loan provisions

Committee Priority Bill (Banking, Commerce and Insurance Committee)

Enacted/Effective April 23, 2009

OVERVIEW

This bill implements the requirements mandated to the states by the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E.), enacted into law as Title V of P.L. 110-229. Pursuant to the bill, all mortgage loan originators must obtain a mortgage loan originator license prior to making a mortgage loan in Nebraska. Any individual who, for compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan application must be licensed or registered as a mortgage loan originator.

S.A.F.E. does not provide any exceptions to licensing for individuals conducting the above activities. Real estate brokerage, loan processing and loan underwriting activities are not covered.

All individuals intending to conduct mortgage loan origination activities in Nebraska must obtain a mortgage loan originator license prior to July 31, 2010.

Licensing Requirements

Mortgage loan originators must:

- Provide fingerprints for an FBI criminal history background check;
- Provide authorization for the Nationwide Mortgage Licensing System & Registry (NMLS&R) to obtain a credit report;
- Input and maintain their personal mortgage loan originator record in NMLS&R as their license in each state in which they wish to conduct loan origination activity;
- Pass a national mortgage test; and
- Take 20 hours of pre-licensure education courses approved by NMLS&R. The education must include:
 - 3 hours of federal law and regulation;

- 3 hours of ethics, which must include fraud, consumer protection, and fair lending; and
- 2 hours of standards on non-traditional mortgage lending.

Licensing Standards

All state-licensed mortgage loan originators must meet the following standards:

- Never had a loan originator license revoked;
- Never had a felony convictions;
- Never had a misdemeanor conviction involving fraud, dishonesty, or money in any aspect of the business of a mortgage banker, depository institution, or installment loan company;
- Demonstrate financial responsibility and general fitness;
- Score 75% or better on a national test created by NMLS&R. The test will include:
 - Ethics;
 - Federal law and regulation;
 - State law and regulation; and
 - Federal and state law and regulation pertaining to fraud, consumer protection, nontraditional mortgages, and fair lending;
- Take 8 hours of continuing education annually. The education must include:
 - 3 hours of federal law and regulations;
 - 2 hours of ethics, which must include fraud, consumer protection, and fair lending; and
 - 2 hours of standards on non-traditional mortgages lending; and
- Maintain licensure through NMLS&R.

SUMMARY

The bill provides, section by section, as follows:

Section 1 amends section 8-113 of the Nebraska Banking Act to change a reference from the Mortgage Bankers Registration and Licensing Act to the Residential Mortgage Licensing Act.

Section 2 amends section 8-702 of the State-Federal Cooperation Act to provide that, effective July 31, 2010, certain banking institutions that employ mortgage loan originators must register such employees with the Nationwide Mortgage Licensing System and Registry (NMLSR) by furnishing information concerning the employees' identity to the NMLSR, including fingerprints for a national criminal history background check, and personal history and experience. These provisions incorporate the registration requirement of S.A.F.E.

Section 3 amends section 45-701 of the Mortgage Bankers Registration and Licensing Act to change the name of the act to the Residential Mortgage Licensing Act to more accurately reflect the entities regulated by the act as amended by the bill.

Section 4 amends section 45-702 by adding and amending various terms and definitions to incorporate the requirements of S.A.F.E., as outlined below:

Subdivision (2) amends the term "branch office" to clarify that a branch office includes the place of business of a mortgage loan originator.

Subdivision (3) amends the term "breach of security of the system" to specifically refer to a breach of the NMLSR, rather than to a multi-state licensing and application system, to reflect the terminology used in S.A.F.E.

Subdivision (4) adds and defines the term "clerical or support duties" as tasks which occur subsequent to the receipt of a residential mortgage loan application including (a) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan or (b) limited communication with a consumer to obtain the information necessary for the processing or underwriting of a residential mortgage loan. This definition is consistent with the definition used in S.A.F.E.

Subdivision (7) replaces the term "financial institution" with "depository institution" and defines "depository institution" as any state or federally chartered bank, savings institution, trust company, savings and loan association, credit union, industrial bank, or similar depository institution engaged in the business of receiving deposits other than funds held in a fiduciary capacity. This revised definition is consistent with the definition in S.A.F.E.

Subdivision (9) adds and defines the term "dwelling" as a residential structure located or intended to be located Nebraska that contains one to four units, whether or not attached to real property, including an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence. This definition is based upon the definition in

S.A.F.E. and the interpretative guidance issued by the United States Department of Housing and Urban Development (HUD).

Subdivision (10) adds and defines the term "federal banking agencies" as the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Department of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation. This definition is the same as used in S.A.F.E.

Subdivision (11) adds and defines the term "immediate family member" as a spouse, child, sibling, parent, grandparent, or grandchild, including stepparents, stepchildren, stepsiblings, and adoptive relationships.

Subdivision (12) adds and defines the term "installment loan company" as any person licensed pursuant to the Nebraska Installment Loan Act.

Subdivision (13) updates and amends the definition of "licensee" to clarify that the term refers both to mortgage bankers and mortgage loan originators.

Subdivision (14) adds and defines the term "loan processor" as an individual who (a) performs clerical or support duties as an employee at the direction of a person licensed, or exempt from licensing, under the Residential Mortgage Licensing Act or Installment Loan Act and (b) does not represent to the public that such individual can or will perform any of the activities of a mortgage loan originator. This definition is based upon the S.A.F.E. definition.

Subdivision (15) updates and amends the definition of "mortgage banker" to "mortgage banker or mortgage banking business" to clarify that mortgage loan originators and loan processors and underwriters are not included in the definition of mortgage banker or mortgage banking business.

Subdivision (16) adds and defines the term "mortgage loan originator" as (a) an individual who for compensation or gain or in the expectation of compensation or gain (i) takes a residential mortgage loan application or (ii) offers or negotiates terms of a residential mortgage loan. Listed exceptions include certain loan processors, persons licensed or registered to perform real estate brokerage activities unless compensated by a lender, mortgage broker, or other mortgage loan originator or their agents, and persons solely involved in extensions of credit relating to time-share programs. This definition is based upon the S.A.F.E. definition.

Subdivision (17) adds and defines the term "Nationwide Mortgage Licensing System and Registry" as the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, and installment loan companies. This definition is the same as used in S.A.F.E.

Subdivision (18) adds and defines the term "nontraditional mortgage product" as any residential mortgage loan product other than a 30-year fixed rate residential mortgage loan. This definition is the same as used in S.A.F.E.

Subdivision (21) adds and defines the term "real estate brokerage activity" to include acting as a real estate salesperson or real estate broker; bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; or negotiating any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than financing). This definition is the same as used in S.A.F.E.

Subdivision (23) adds and defines the term "registered mortgage loan originator" as (a) a mortgage loan originator who is an employee of (i) a depository institution, (ii) a subsidiary that is (A) wholly owned and controlled by a depository institution, and (B) regulated by a federal banking agency, or (iii) an institution regulated by the Farm Credit Administration, and (b) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry. This definition is the same as used in S.A.F.E.

Subdivision (25) adds and defines the term "residential mortgage loan" as any loan or extension of credit, including refinancing, which is primarily for personal, family, or household use and is secured by a mortgage, trust deed, or other equivalent security interest on a dwelling or residential real estate. This definition is based upon the S.A.F.E. definition.

Subdivision (26) adds and defines the term "residential real estate" as any real property located in this state upon which is constructed or intended to be constructed a dwelling.

Subdivision (28) adds and defines the term "state" as any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands. This is definition is the same as used in S.A.F.E. and in the Federal Deposit Insurance Act.

Subdivision (29) adds and defines the term "unique identifier" as the number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry. This definition is the same as used in S.A.F.E.

This section also eliminates other terms and definitions because the addition of S.A.F.E. terminology makes them redundant. The terms that are deleted are "mortgage banking business" (former subdivision (10)), "mortgage loan" (former subdivision (11)), "multi-state licensing system" (former subdivision (12)), and "real property" (former subdivision (15), now defined in the Installment Loan Act).

Section 5 amends section 45-703 which provides exemptions from the Residential Mortgage Licensing Act, as follows:

Subdivision (1)(a) provides coordinating amendments to section 45-702(7) which changes the term "financial institution" to "depository institution."

Subdivision (1)(c) is amended to combine the exemptions for insurance companies found in former subdivisions (1)(c) and (j).

Subdivision (1)(d) is amended to change the language pertaining to the exemption for attorneys to the language approved by HUD. This language is mandated by HUD for states wishing to exempt attorneys from the requirements of S.A.F.E.

Subdivision (1)(e) is amended to use the new terminology "real estate brokerage activities" and to add a restriction to this exemption disallowing the exemption for a real estate salesperson or broker who is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator. This restriction on the exemption is mandated by S.A.F.E.

Subdivision (1)(f) is amended to repeal the exemption for individual employees of a mortgage banker, and replace it with a limited exemption for registered mortgage loan originators. This exemption is repealed as licensing of these individuals is now mandated by S.A.F.E.

Subdivision (1)(g) is amended to repeal the exemption for individuals who are acting as independent agents of a mortgage banker and to provide an exemption to any sales finance company licensed pursuant to the Nebraska Installment Sales Act if such sales finance company does not engage in mortgage banking business other than as a purchaser or servicer of an installment contract which is secured by a mobile home or trailer. This new exemption is necessary to retain current law, as sales finance companies are not required to obtain mortgage banker licenses. S.A.F.E. would otherwise include these companies in the definition of mortgage banker if they purchased installment contracts secured by a mobile home or trailer.

Subdivision (1)(h) is amended to provide for an exemption for any trust company chartered pursuant to the Nebraska Trust Company Act. Under prior law these entities were exempt as they were "financial institutions." However, the new term "depository institution" used in S.A.F.E. and the Residential Mortgage Licensing Act, does not include these trust companies as they do not accept customer deposits. This exemption maintains prior Nebraska law.

Subdivision (1)(i) provides an exemption for any wholly owned subsidiary of a registered bank holding company or insurance company. As a result of the changes to the exemptions for insurance companies, wholly-owned subsidiaries of out-of-state insurance companies with locations in Nebraska will now be exempt from the act.

Subdivision (1)(j) provides for an exemption for any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of

the individual. These provisions are mandated by HUD for any state that wishes to exempt these transactions from the requirements of S.A.F.E.

Subdivision (1)(k) amends the exemption for certain individual loan transactions by limiting the exemption to any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence. These provisions are mandated by HUD for any state that wishes to exempt these transactions from the requirements of S.A.F.E.

Subdivision (1)(l) is added to provide an exemption for any employee or independent agent of a mortgage banker licensed or registered pursuant to the Residential Mortgage Licensing Act or exempt from the act, if such employee or independent agent does not conduct the activities of a mortgage loan originator or loan processor or underwriter.

Section 6 amends section 45-704 to provide for registration of exempt companies which employ or engage as an independent contractor any individual who is required to obtain a mortgage loan originator license. The registration of these exempt entities is necessary as S.A.F.E. mandates that any entity employing a mortgage loan originator must submit a report of condition, and all mortgage loan originators employed by these entities need to be covered by a surety bond. The registration in this system provides a mechanism for the Department of Banking and Finance to ensure that such companies are complying with these mandates. Further, the amendments to this section provide that the department may cancel the registration of any entity that fails to maintain a surety bond in the same manner that it currently uses when a licensed mortgage banker fails to maintain its surety bond requirement.

Section 7 amends section 45-705 to clarify that this section applies to mortgage bankers, not to mortgage loan originators.

Section 8 amends section 45-706 to clarify that this section applies to mortgage bankers, not to mortgage loan originators.

Section 9 moves and amends section 45-709 to set forth new surety bond requirements for a mortgage banker licensee or registrant, and to provide that a mortgage banker licensee must increase/decrease its surety bond to reflect the total dollar amount of the closed residential mortgage loans originated in this state in the preceding year. The surety bond will also be required to cover all mortgage loan originators who are employees or independent agents of the applicant. This section also provides that if the Department of Banking and Finance determines that a mortgage banker licensee or registrant does not maintain a surety bond in the amount required, written notice is to be given requiring an increase of the surety bond within thirty days. This section is amended to reflect the requirement in S.A.F.E. that surety bonding must be based upon the volume of loan originations. Its placement in the act is changed so that all sections applying to mortgage bankers are in consecutive order.

Section 10 moves and amends section 45-722 of the act. This section clarifies that any appeal of a denial of a change of control is subject to both the Administrative Procedure Act and the administrative rules of procedure of the Department of Banking and Finance. Since this section only applies to mortgage bankers, it is being moved so that all sections applying to mortgage bankers are in consecutive order.

Section 11 enacts a new section to provide that mortgage reports of condition must be submitted to the Nationwide Mortgage Licensing System and Registry as required by the Department of Banking and Finance. Such reports are mandated by S.A.F.E.

Section 12 enacts a new section to provide that an individual may not engage in the business of a loan originator without first obtaining, and maintaining, a license as a state licensed loan originator and obtaining a unique identifier. This section provides that an independent agent may not engage in activities as a loan processor or underwriter unless such independent agent, loan processor or underwriter obtains and maintains a license, a prohibition contained in S.A.F.E. This section requires these persons to obtain and maintain a valid unique identifier issued by the NMLSR. This section also authorizes the Director of Banking and Finance to adopt and promulgate licensing rules or regulations and interim procedures for licensing and acceptance of applications and to establish expedited procedures for previously registered or licensed individuals. Finally, this section provides that all loan originators must be licensed on or before July 31, 2010.

Section 13 enacts a new section to provide application requirements for mortgage loan originators. These include completion of an application and an application fee of one hundred fifty dollars, plus the cost of the criminal history and background check, and any processing fee of the NMLSR. An applicant must furnish the NMLSR with fingerprints for an FBI state and national criminal history background check, a personal history form with authorization for the NMLSR and the Director of Banking and Finance to obtain an independent credit report and information related to any administrative, civil, or criminal findings by any governmental jurisdiction. This section further provides that the director may use the NMLSR as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any government agency related to criminal histories, and for requesting information from and distributing information to any source as directed by the director as it pertains to all remaining items of the background check, including a credit report regarding the applicant. This provision incorporates S.A.F.E.'s mandate that the NMLSR is the channeling agent for the FBI criminal history background check.

Section 14 enacts a new section to provide that the Director of Banking and Finance shall not issue a mortgage loan originator license unless he or she makes findings that the applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction; has not been convicted of, or pleaded guilty or no contest to certain misdemeanors or any felony under state or federal law, unless subsequently pardoned; has met standards for financial responsibility; demonstrated character, and general fitness; completed pre-licensing education requirements; passed a written test; and is covered by a surety bond. This section provides procedures for denial of an application,

including appeal, and provides that a mortgage loan originator license shall not be assignable.

Section 15 enacts a new section to set forth the pre-licensing education requirements for a mortgage loan originator. These include at least 20 hours of education which includes 3 hours of federal law and regulations; 3 hours of ethics; and 2 hours of training related to lending standards for the nontraditional mortgage product marketplace, and must be reviewed and approved by NMLSR. These specific requirements are mandated by S.A.F.E.

Section 16 enacts a new section to require an applicant to take and pass a written test created by NMLSR. Components of the test are set forth as are minimum scores and provisions for retaking the test. These requirements are mandated by S.A.F.E.

Section 17 enacts a new section to establish the renewal requirements for mortgage loan originators. All initial mortgage loan originator licenses will remain in force until the next succeeding December 31. The minimum standards for license renewal include continuing to meet the minimum standards for license issuance; meeting annual continuing education requirements; and payment of an annual renewal fee of one hundred twenty-five dollars, the cost of the criminal history and background check, and any NMLSR processing fees.

Section 18 enacts a new section to establish continuing education requirements for mortgage loan originators. These requirements are 3 hours of federal law and regulations, 3 hours of ethics, and 2 hours of standards on non-traditional mortgage lending, with the courses reviewed and approved by the NMLSR. These continuing education requirements are specifically mandated by S.A.F.E. This section also provides time frames for receiving credit; allows credit for persons who are instructors; and provides for interstate acceptance of continuing education requirements.

Section 19 enacts a new section to provide that a mortgage loan originator whose license is placed on inactive status under this section may not act as a mortgage loan originator in this state until such time as the license is reactivated. The Department of Banking and Finance is authorized to place a mortgage loan originator license on inactive status if the employee/independent agent relationship has been terminated; or upon cancellation, surrender, expiration, revocation, or suspension of the employer's mortgage banker license or installment loan company license. This section provides for renewal and reactivation of an inactive license.

Section 20 enacts a new section to outline employment provisions for loan originators, including supervision, limitation to employment or agency status with only one mortgage banker, office requirements, and contracts. This section authorizes a transfer notification fee of fifty dollars for a licensed mortgage loan originator moving from one licensee to another, and requires notification of termination within 10 days after termination.

Section 21 enacts a new section to provide that the unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage

loan application forms, solicitations or advertisements, including business cards or websites, and any other documents as established by rule, regulation, or order of the Director of Banking and Finance.

Section 22 moves and amends section 45-711 to provide that a mortgage banker licensee must notify the Department of Banking and Finance within three business days of the following occurrences: bankruptcy; loss of the ability to fund loans after it has made a loan commitment or approved a loan application; suspension or revocation procedures in any other jurisdiction; filing of a criminal indictment or information against a licensee or its principals; or certain convictions of a principal of a licensee. A thirty calendar day post notification requirement is retained for certain occurrences, including the move of branch offices.

Section 23 moves and amends section 45-712 to reflect the new terminology as provided in section 4 of the bill.

Section 24 moves and amends section 45-713 to reflect the new terminology as provided in section 4 of the bill.

Section 25 moves and amends section 45-714 to provide that a licensee and its officers, employees, and agents must make disclosures as required by state or federal law, and to provide that a licensee and its officers, employees or agents cannot make any payment, threat, or promise for the purposes of influencing the independent judgment of another person in connection with a residential mortgage loan, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.

Section 26 moves and amends section 45-710. This section clarifies the powers of the Director of Banking and Finance to investigate applications, complaints, and reports of violations, as well as conducting examinations of licensees. This section incorporates the powers which S.A.F.E. requires while maintaining the director's power to issue notice of investigations to licensees and to issue subpoenas. The subpoena power is contained in section 45-717.02.

Section 27 moves and amends section 45-707 to provide that the Director of Banking and Finance may revoke or suspend a license, or impose an administrative fine, if a licensee knowingly has employed any individual or maintained a contractual relationship with any individual acting as an agent, if such individual is conducting activities requiring a mortgage loan originator license in this state without first obtaining such license. This section also provides that the director may adopt procedures for the reinstatement of licenses for which a notice of expiration was issued, and that the fee for reinstatement shall be the same fee as the fee for the initial license application. This section is moved so that all sections outlining enforcement of the act are numbered consecutively.

Section 28 moves and amends section 45-717.01 to clarify that hearings conducted by the Department of Banking and Finance to impose administrative fines are subject to both the Administrative Procedure Act and the department's rules of procedure. This section is moved so that all sections outlining enforcement of the act are numbered consecutively.

Section 29 moves and amends section 45-717 to clarify that cease and desist order hearings conducted by the Department of Banking and Finance are subject to both the Administrative Procedure Act and the department's rules of procedure. Further, the language concerning statutory or common law causes of action is repealed and moved to section 31 of the bill. Section 29 is moved so that all sections outlining enforcement of the act are numbered consecutively.

Section 30 moves and amends section 45-718 to clarify terminology and provide that appeals are governed by both the Administrative Procedures Act and any rules and regulations adopted and promulgated thereunder.

Section 31 moves and amends section 45-717.02, which provides for civil enforcement of the act by the Attorney General. The language concerning subpoenas is moved to section 26 of the bill. Section 31 incorporates the language in section 45-717 concerning common law and statutory causes of action. These provisions are rearranged so that all provisions concerning civil actions related to the act are together in one section.

Section 32 moves and amends section 45-708 to provide that acting as a mortgage loan originator without a license is a Class I misdemeanor. Prior law applied only to mortgage banker licensees.

Section 33 moves and amends section 45-723 to authorize the Department of Banking and Finance to participate in the NMLSR. This section requires all mortgage bankers, registrants, and mortgage loan originators to be licensed or registered through that system. This section requires the department to: establish background checks for criminal history through fingerprint or other databases, civil or administrative records, credit history; require the payment of fees through the NMLSR; set pre-licensure education and testing and continuing education requirements as provided in the act; set renewal processing or reporting dates; and contract for the collection and maintenance of records. This section also requires the Director of Banking and Finance to report violations of the act, enforcement actions, and other relevant information, and to establish a process whereby mortgage bankers, registrants, and mortgage loan originators may challenge information entered into the NMLSR. These provisions are specifically mandated by S.A.F.E.

Section 34 enacts a new section to set forth the provisions of confidentiality and the use of such information in the NMLSR. Specifically, this section provides that information that regulators, including the Department of Banking and Finance, place on the system remains subject to any restrictions on disclosure established by the laws of that state and by federal law. Therefore, any information placed upon the system by the department remains subject to Nebraska's public records act, so that if a person were to make a public records request regarding information provided to the system by the department,

Nebraska law will govern whether such information could be released regardless of whether the department or another state agency would receive the request. Likewise, the department cannot release information placed on the system by another regulator if such information cannot be released by the laws of that state. This particular provision is mandated by S.A.F.E. and the language of this section is taken directly from S.A.F.E. This prohibition does not apply with respect to the information that is included in the NMLSR for access by the public.

Section 35 moves and amends section 45-715 to repeal the language pertaining to the multi-state licensing system as it has been moved to section 33 of this bill.

Section 36 moves and amends section 45-716 to update provisions regarding disposition of fines.

Section 37 moves and amends section 45-719 to harmonize provisions.

Section 38 moves and amends section 45-720 to harmonize provisions.

Section 39 moves and amends section 45-721 to harmonize provisions.

Section 40 amends section 45-1001 of the Nebraska Installment Loan Act to provide that new sections 50 and 51 of the bill shall be assigned within the act.

Section 41 amends section 45-1002 of the Nebraska Installment Loan Act to define "breach of security," "mortgage loan originator" and "Nationwide Mortgage Licensing System and Registry" using the same definitions as in section 45-702 (section 4 of the bill). Section 41 also defines "real property" as an owner-occupied single-family, two-family, three-family, or four-family dwelling which is located in this state, which is occupied, used, or intended to be occupied or used for residential purposes, and which is, or is intended to be, permanently affixed to the land. This definition had appeared in the Mortgage Bankers Registration and Licensing Act, but is being removed from that act due to an inconsistency with S.A.F.E., and therefore needed to be placed into the Nebraska Installment Loan Act due to the context in which it is used.

Section 42 amends section 45-1007 of the Nebraska Installment Loan Act to set forth additional provisions regarding installment loan bond requirements for persons required to obtain a mortgage loan originator license. The amount of the bond will reflect the total dollar amount of the closed residential mortgage loans originated in this state in the preceding year in accordance with a sliding scale amount. This is mandated by S.A.F.E. The Nebraska Installment Loan Act had provided for a separate license and separate bond for each location at which an installment loan company operates in this state. This section provides that those installment loan companies which originate mortgage loans shall provide a second bond for its mortgage loan origination activities. This second bond shall cover all mortgage loan originators and all locations. This supplemental bond is scalable to meet the requirements of S.A.F.E.

Section 43 amends section 45-1008 of the Nebraska Installment Loan Act to provide that, beginning January 1, 2010, initial licenses shall remain in full force and effect until the next succeeding December 31 rather than March 1. This is necessary in order for the Department of Banking and Finance to license these entities through the Nationwide Mortgage Licensing System and Registry.

Section 44 amends section 45-1013 of the Nebraska Installment Loan Act to provide that licenses which expire on March 1, 2010, shall be renewed until December 31, 2010. For such renewals, the Department of Banking and Finance shall prorate the fees using a factor of ten-twelfths. This is mandated in order to participate in the Nationwide Mortgage Licensing System and Registry.

Section 45 amends section 45-1018 of the Nebraska Installment Loan Act to change the requirements pertaining to the submission of financial statements to the Department of Banking and Finance. S.A.F.E. mandates that all entities which employ loan originators, including companies licensed under the Nebraska Installment Loan Act, must submit reports of conditions. Therefore, after March 1, 2010, installment loan companies will be required to submit reports of condition to the department which include the company's financial statements.

Section 46 amends section 45-1019 of the Nebraska Installment Loan Act to provide for the same cease and desist procedures as were contained in the Mortgage Bankers Registration and Licensing Act.

Section 47 amends section 45-1024 of the Nebraska Installment Loan Act to harmonize provisions regarding the term "real property."

Section 48 amends section 45-1025 of the Nebraska Installment Loan Act to provide that any mortgage loan originator who works as an employee or independent agent of an installment loan licensee shall be required to obtain a mortgage loan originator license and shall be subject to the Residential Mortgage Licensing Act.

Section 49 amends section 45-1033 of the Nebraska Installment Loan Act to provide that the Director of Banking and Finance may, following a hearing under the Administrative Procedure Act and the rules and regulations adopted and promulgated by the Department of Banking and Finance thereunder, suspend or revoke any installment loan license, or impose an administrative fine on a licensee for each separate violation of the act if the licensee knowingly has employed any individual or maintained a contractual relationship with any individual, if such individual is conducting activities requiring a mortgage loan originator license in this state without first obtaining such license.

Section 50 enacts a new section in the Nebraska Installment Loan Act to provide the Department of Banking and Finance with the authority to license installment loan companies through the NMLSR, and to provide for all authorities granted to the department in section 33 of the bill with respect to mortgage bankers.

Section 51 enacts a new section in the Nebraska Installment Loan Act to set forth the provisions of confidentiality and the use of such information in the Nationwide Mortgage Licensing System and Registry. This is the same as section 34 of the bill, except that this section applies to installment loan companies.

Section 52 amends section 76-2711 of the Foreclosure Protection Act to change the internal reference to the definition of real property from section 45-702 to section 45-1002.

Section 53 provides for repealers of amendatory sections.

Section 54 provides the emergency clause. This is necessary as S.A.F.E. gives states one year to come into compliance with S.A.F.E. Without the emergency clause, the effective date of this bill would be after the date mandated for compliance by S.A.F.E.

The bill carries the emergency clause.

The bill passed 49-0-0 on April 17, 2009 with the emergency clause and was signed by the Governor on April 22, 2009.

LB 328Ae (Pahls) Appropriations Bill

Enacted/Effective April 23, 2009

This bill appropriates (1) \$108,700 from the Financial Institution Assessment Cash Fund for FY2009-10 and (2) \$104,003 from the Financial Institution Assessment Cash Fund for FY2010-11 to the Department of Banking and Finance to carry out LB 328e.

The bill carries the emergency clause.

The bill passed 48-0-1 on April 17, 2009 with the emergency clause and was signed by the Governor on April 22, 2009.

LB 431 (McGill) Change Delayed Deposit Services Licensing Act provisions

Pending in committee

OVERVIEW

This bill would amend sections 45-901, 45-906, 45-915, 45-919, 45-921, 45-925, and 45-927 of the Delayed Deposit Services Licensing Act and would enact four new sections within the act to provide that a licensee shall not enter into another delayed deposit transaction with a maker (customer) within seventy-two hours after completion of a delayed deposit transaction by such maker with the licensee or any other licensee or if such maker has a delayed deposit transaction that is not complete with the licensee or any

other licensee. The bill would require that the Director of Banking and Finance, or a third-party provider, shall develop, implement, and maintain a data base accessible to licensees to facilitate compliance with the act. The bill would require the cost of the data base to be paid for with fees paid by the licensees.

SUMMARY

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

Section 1 would amend section 45-901 of the Delayed Deposit Services Licensing Act to provide that new sections 7 to 10 of the bill shall be assigned within the act.

Section 2 would amend section 45-906 of the Delayed Deposit Services Licensing Act to provide that an application for a delayed deposit services license shall be accompanied by a data base fee of one hundred dollars to defray the costs of establishing a data base pursuant to new section 7 of the bill, and that the fee shall terminate on the date the Director of Banking and Finance implements the data base.

Section 3 would amend section 45-915 of the Delayed Deposit Services Licensing Act to provide that a data base fee of one hundred dollars shall be paid to the Director of Banking and Finance for each request by a licensee to change the location of its designated principal place of business or to establish or change the location of a branch office, that the fee shall be used to defray the costs of establishing the data base pursuant to section 7 of the bill, and that the fee shall terminate on the date the director implements the data base.

Section 4 would amend section 45-919 of the Delayed Deposit Services Licensing Act to provide that no licensee shall (1) enter into another delayed deposit transaction with a maker (customer) within seventy-two hours after completion of a delayed deposit transaction by such maker with the licensee or any other licensee or (2) enter into another delayed deposit transaction with a maker if such maker has a delayed deposit transaction that is not complete with the licensee or any other licensee. This section would also expand the definition of "completion of a delayed deposit transaction" to mean (1) the licensee has presented the maker's check for payment to a financial institution and has received payment for the check, (2) the licensee has written the maker's check off as a bad debt after it was returned unpaid by the financial institution, or (3) the licensee has sold the check to a third party after it was returned unpaid by the financial institution.

Section 5 would amend section 45-921 of the Delayed Deposit Services Licensing Act to update provisions regarding disposition of administrative fines.

Section 6 would amend section 45-925 of the Delayed Deposit Services Licensing Act to update an internal reference and repeal provisions made obsolete by amendments proposed in section 45-919 by new section 4 of the bill.

Section 7 would enact a new section within the Delayed Deposit Services Licensing Act to provide that, on or before January 1, 2011, the Director of Banking and Finance or a

third-party provider, whoever is the data base provider, shall develop, implement, and maintain a statewide data base that, at all times, is accessible to licensees and is accessible to the director, if the director is not the data base provider. This section would provide that the data base shall be used to facilitate compliance by licensees with section 45-919 and to create an annual report pursuant to new section 9 of the bill. This section would provide that the data base shall allow a licensee accessing the data base to verify whether a maker has any open delayed deposit service transactions with any licensee that have not been completed. This section would provide that the data base provider may charge each licensee a verification fee for access to the data base in amounts approved by the director.

Section 8 would enact a new section within the Delayed Deposit Services Licensing Act to provide that if the Director of Banking and Finance has not yet implemented a data base or the data base is not fully operational, the licensee shall verify that a maker does not have an open delayed deposit services transaction with the licensee by way of a data base which the licensee shall maintain of all of its transactions at all of its locations. This section would provide that if the director has implemented a data base and the data base is fully operational, the licensee shall access the data base and verify that a maker does not have any transactions in violation of section 45-919. Section 8 would provide that if the director has not yet implemented a data base, the data base is not fully operational, or the licensee is unable to access the data base due to technical difficulties, a licensee may rely upon written verification of the maker that the maker does not have any outstanding delayed deposit services transactions with any licensee. This section would provide that the director may impose a data base verification fee, not to exceed one dollar per transaction, for data required to be submitted by a licensee. This section would require that for the first twelve months that the data base is operational, an additional licensing fee of fifty cents per transaction shall be paid to defray the costs of establishing the data base. This section would provide that the director may assess each licensee and each branch office a data base fee not to exceed one hundred dollars to defray the costs of establishing the data base and that the fee shall terminate on the date the director implements the data base.

Section 9 would enact a new section within the Delayed Deposit Services Licensing Act to provide that the Director of Banking and Finance or the third-party provider shall compile an annual report.

Section 10 would enact a new section within the Delayed Deposit Services Licensing Act to provide for limitations on liability.

Section 11 would amend section 45-927 of the Delayed Deposit Services Licensing Act to update provisions regarding disposition of cash funds and disposition of administrative fines.

Section 12 would provide for repealers of amendatory sections.

NOTE: LR 114 (McGill) calls for the Banking, Commerce and Insurance Committee to conduct an interim study to examine whether Nebraska should amend the Delayed Deposit Services Licensing Act to provide for greater consumer protections for customers of payday lenders.

PERSONAL PROPERTY

LB 432 (Nelson) Change provisions relating to the Uniform Disposition of Unclaimed Property Act

Enacted/Effective August 30, 2009

This bill changes provisions regarding duties of the State Treasurer under the Uniform Disposition of Unclaimed Property Act relating to confidential information and professional finders' fees.

The bill amends section 69-1317 of the Uniform Disposition of Unclaimed Property Act to provide that unclaimed property records maintained by the State Treasurer concerning the social security number, date of birth, amount due, and last-known address of an owner shall be treated as confidential and subject to the same confidentiality as tax return information held by the Department of Revenue, except that the auditor of Public accounts shall have unrestricted access to such records. The bill further provides that to claim a professional finders' fee, the professional finder shall disclose to the owner the nature, location, and value of the property, provide notice of when such property was reported or will be reported, if known, to the State Treasurer, and provide notice that such property may be claimed by the owner from the State Treasurer free of charge.

The bill passed 47-0-2 on May 20, 2009 and was signed by the Governor on May 26, 2009.

PUBLIC FUNDS DEPOSITS

LB 259e (Utter) Clarify Federal Deposit Insurance Corporation coverage with respect to public funds

Enacted/Effective March 6, 2009

This bill amends various sections in Chapters 2, 12, 14, 15, 16, 17, 30, 72, and 77 and enacts a new section to be assigned in Chapter 77, article 23, to provide that references to amounts of funds "insured" by the Federal Deposit Insurance Corporation (FDIC) also include amounts of funds "guaranteed" by the FDIC. New section 26 provides that for purposes of any law regarding a bank, capital stock financial institution, or qualifying mutual financial institution meeting a requirement to secure the deposit of public money or public funds in excess of the amount insured by the FDIC, references to amounts "insured" by the FDIC also include amounts "guaranteed" by the FDIC.

The bill carries the emergency clause.

The bill passed 49-0-0 on February 27, 2009 with the emergency clause and was signed by the Governor on March 5, 2009.

LB 428 (Christensen) Authorize deposit of public funds in credit unions and clarify Federal Deposit Insurance Corporation and National Credit Union Administration coverage

Pending in committee

This bill would amend section 77-2365.01 to provide that a political subdivision located in a community where there is no bank, capital stock financial institution, or qualifying mutual financial organization may deposit public funds with a state or federal mutual organized credit union in the community where the office of the political subdivision is located in an amount not to exceed the amount insured or guaranteed by the National Credit Union Administration. This section would define a qualifying mutual financial institution to include a state or federal mutual organized credit union which is located in a community where there is no bank, capital stock financial institution, or qualifying mutual financial institution.

The bill would also amend various sections in Chapters 2, 14, 15, 16, 17, 30, and 77 and would enact a new section (section 24 of the bill) to be assigned to Chapter 77, article 23, to provide that for purposes any law requiring a bank, capital stock financial institution, or qualifying mutual financial institution to secure the deposit of public money or public funds in excess of the amount insured by the Federal Deposit Insurance Corporation (FDIC) "or the National Credit Union Administration" (NCUA), references to amounts

"insured" by the FDIC or NCUA also include amounts "guaranteed" by the FDIC or NCUA.

The bill carries the emergency clause.

REAL ESTATE LICENSEES

LB 11 (Langemeier) Change provisions of the Nebraska Real Estate License Act

Enacted/Effective August 30, 2009

This bill amends section 81-885.14 of the Nebraska Real Estate License Act regarding fees paid by real estate brokers and salespersons to the State Real Estate Commission. Under this section, the amount of each fee is established by the commission not to exceed a maximum dollar amount specified by the Legislature for that fee.

The bill provides that the broker's or salesperson's examination fee shall be not more than two hundred fifty dollars instead of not more than one hundred fifty dollars and that the broker's or salesperson's license application fee shall be not more than two hundred fifty dollars instead of not more than one hundred fifty dollars.

The bill clarifies and eliminates provisions regarding nonresident licenses.

The bill provides that the broker's license fee shall be not more than two hundred fifty dollars instead of not more than one hundred fifty dollars for a resident broker and not more than three hundred dollars for a nonresident broker. The bill provides that the salesperson's license fee shall be not more than two hundred dollars instead of not more than one hundred dollars for a resident salesperson and not more than two hundred dollars for a nonresident salesperson.

The bill provides that the broker's annual license renewal fee shall be not more than two hundred fifty dollars instead of not more than one hundred fifty dollars for each resident broker and not more than three hundred dollars for each nonresident broker. The bill provides that the salesperson's annual license renewal fee shall be not more than two hundred dollars instead of not more than one hundred dollars for each resident salesperson and not more than two hundred dollars for each nonresident salesperson.

The bill provides that any electronic payment presented to the commission as a license or examination fee that is not accepted against the commission shall be cause for license revocation or denial. Section 81-885.14 had already provided that a check presented to the commission as a license or examination fee which is returned unpaid shall be cause for license revocation or denial.

The bill passed 44-0-5 on February 6, 2009 and was signed by the Governor on February 12, 2009.

LB 29 (Pahls) Change branch office management requirements under the Nebraska Real Estate License Act

Enacted/Effective August 30, 2009

This bill amends section 81-885.19 of the Nebraska Real Estate License Act to provide that a “broker or an associate broker shall be the” manager of a branch office rather than the manager of a branch office “must be an associate broker.” These amendments to this section will allow managing brokers, as well as associate brokers, to manage branch offices.

The bill passed 44-0-5 on February 6, 2009 and was signed by the Governor on February 12, 2009.

LB 30 (Pahls) Change provisions of the Nebraska Real Estate License Act

Enacted/Effective August 30, 2009

OVERVIEW

This bill amends various sections of the Nebraska Real Estate License Act to provide that the Nebraska Real Estate Commission shall have authority to impose civil fines on licensees for each violation up to two thousand five hundred dollars per complaint. Previously under the act, the commission could only suspend or revoke licenses, censure licensees, and enter into consent decrees. The bill authorizes the commission to impose civil fines on licensees alone or in combination with such disciplinary actions. The bill also clarifies provisions, updates internal references, and adds customary language regarding investment of cash funds, disposition of fines, and procedures of recovery of unpaid fines.

SUMMARY

The bill provides, section by section, as follows:

Section 1 enacts a new section in the Nebraska Real Estate License Act to provide for a separate section which states the named act and to provide that new sections 1 and 10 of the bill shall be assigned within the act.

Section 2 amends section 81-885.02 of the Nebraska Real Estate License Act to update a reference to the act.

Section 3 amends section 81-885.05 of the Nebraska Real Estate License Act to update a reference to the act.

Section 4 amends section 81-885.09 of the Nebraska Real Estate License Act to update references to the act.

Section 5 amends section 81-885.10 of the Nebraska Real Estate License Act to update a reference to the act and to provide that, alone or in combination with its existing power to take disciplinary actions (revoking or suspending a license, censuring a licensee, and entering a consent decree), the State Real Estate Commission may impose a civil fine on a licensee for each violation not to exceed two thousand five hundred dollars per complaint.

Section 6 amends section 81-885.15 of the Nebraska Real Estate License Act to update references to the act and to adopt provisions regarding the investment of cash funds in the State Real Estate Commission's Fund by the state investment officer.

Section 7 amends section 81-885.24 of the Nebraska Real Estate License Act to clarify provisions and to provide that, alone or in combination with its existing power to take disciplinary actions (censuring a licensee or certificate holder, revoking or suspending a license or certificate, and entering a consent order), the State Real Estate Commission may impose a civil fine on a licensee pursuant to section 81-885.10 (section 5 of the bill) whenever a license or certificate has been obtained by false or fraudulent misrepresentation or the licensee or certificate holder has been found guilty of an unfair trade practice enumerated in this section.

Section 8 amends section 81-885.25 of the Nebraska Real Estate License Act to adopt provisions regarding imposition of civil fines.

Section 9 amends section 81-885.29 of the Nebraska Real Estate License Act to adopt provisions regarding imposition of civil fines.

Section 10 enacts a new section in the Nebraska Real Estate License Act to adopt provisions regarding the disposition of civil fines and to adopt provisions regarding procedures for the recovery of unpaid fines.

Section 11 amends section 81-885.43 of the Nebraska Real Estate License Act to clarify provisions and to update references to the act.

Section 12 amends section 81-885.44 of the Nebraska Real Estate License Act to update a reference to the act.

Section 13 amends section 81-885.46 of the Nebraska Real Estate License Act to update a reference to the act.

Section 14 amends section 81-885.48 of the Nebraska Real Estate License Act to harmonize provisions and update a reference to the act.

Section 15 amends section 81-887.03 of the auctioneer statutes to update a reference to the Nebraska Real Estate License Act and to eliminate a reference to sections which were repealed in 1973.

Section 16 provides for repealers of amendatory sections.

Section 17 provides for outright repeal of section 81-885.47 of the Nebraska Real Estate License Act, the provisions of which are replaced by section 1 of the bill.

The bill passed 46-0-3 on February 6, 2009 and was signed by the Governor on February 12, 2009.

ECONOMIC DEVELOPMENT

LB 606 (Karpisek) Redefine terms and change a grant qualification provision in the Microenterprise Development Act

Indefinitely postponed in committee

This bill would amend the Microenterprise Development Act, as follows:

Section 1 would amend section 81-1298 of the Microenterprise Development Act to define "microenterprise" as any business, whether new or existing, with "ten" instead of "five" or fewer employees, and to define "microloan" as any business loan up to "one hundred" thousand dollars instead of up to "thirty-five" thousand dollars.

Section 2 would amend section 81-12,102 of the Microenterprise Development Act to provide that at least fifty percent of microloan funds must be disbursed by microloan delivery organizations in microloans which do not exceed "thirty-five" thousand dollars instead of "ten" thousand dollars.

Section 3 would provide that it is the intent of the Legislature to appropriate two million five hundred thousand dollars to the Microenterprise Development Cash Fund.

LB 657 (Harms) Change the Microenterprise Development Act

Pending on General File

This bill would amend sections regarding microenterprises. The bill would provide, section by section, as follows:

Section 1 would amend section 81-1276 of the Business Development Partnership Act to eliminate contracting to provide surety bond support from among the duties of the Existing Business Assistance Division of the Department of Economic Development.

Section 2 would amend section 81-1295 of the Microenterprise Development Act to harmonize an internal reference.

Section 3 would amend section 81-1296 of the Microenterprise Development Act to eliminate a legislative finding that commercial lending institutions are developing innovative ways to respond to this sector of the economy, including working with nonprofit community-based organizations.

Section 4 would amend section 81-1297 of the Microenterprise Development Act to provide that it is no longer a purpose of the act to establish the Department of Economic Development as the coordinating office for the facilitation of microlending and

microenterprise development, and to provide that it shall be a purpose of the act to create a mechanism to deliver surety bond support services to microenterprises and other private entities.

Section 5 would amend section 81-1298 of the Microenterprise Development Act to eliminate definitions of "commercial lending institution," "microloan delivery organization," "operating costs," "selection process," and "statewide microlending support organization."

Section 6 would amend section 81-1299 of the Microenterprise Development Act to eliminate its existing provisions and would insert new provisions to provide that the Department of Economic Development shall select a single private, nonprofit organization to carry out the functions of the Microenterprise Partnership Program, and to provide that the department, in selecting the organization, shall consider the organization's ability to deliver a statewide program and the organization's ability to ascertain that the matching funds requirement described in section 81-12,102 (section 7 of the bill) is not by grant recipients.

Section 7 would amend section 81-12,102 of the Microenterprise Development Act to eliminate its existing provisions and would insert new provisions to provide that it is the intent of the Legislature to appropriate funds to the Department of Economic Development to be awarded as a grant to the private, nonprofit organization selected to carry out the purposes of the Microenterprise Partnership Program. This section would provide that the department may receive funds from local governments or the federal government, private foundations, or other sources. This section would provide that the private, nonprofit organization shall ensure that a recipient of a grant provides matching funds of at least twenty-five percent of the grant funds. This section would provide that at least fifty percent of the grants shall be disbursed in microloans which shall not exceed thirty-five thousand dollars.

Section 8 would amend section 81-12,104 of the Microenterprise Development act to eliminate provisions regarding the annual report for the Microenterprise Partnership Program.

Section 9 would amend section 84-612 to eliminate provisions requiring transfers of funds from the Cash Reserve Fund to the Microenterprise Development Cash Fund on July 9, 2007 and on July 7, 2008.

Section 10 would provide for repealers of amendatory sections.

Section 11 would provide for outright repeal of sections 81-12,100 (considerations for grants to Microloan delivery organization), 81-12,101 (use of grants to microloan delivery organization), 81-12,103 (department contracts with statewide microlending support organization), 81-12,105 (department rule and regulation authority), and 81-12,105.01 (cash fund).

TRADE PRACTICES

LB 571 (Pahls) Adopt the Guaranteed Asset Protection Waiver Act

Pending on Select File

OVERVIEW

This bill would enact 9 new sections to be known as the Guaranteed Asset Protection Waiver Act to provide requirements and restrictions regarding guaranteed asset protection waivers, which are contractual agreements wherein a creditor agrees, for a separate charge, to cancel or waive all or part of amounts due on a borrower's finance agreement in the event of a total physical damage loss or unrecovered theft of a motor vehicle.

SUMMARY

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

Section 1 would enact a new section to provide for a named act: the Guaranteed Asset Protection Waiver Act.

Section 2 would enact a new section to provide that: (1) the purpose of the act is to provide a framework within which guaranteed asset protection waivers are defined and may be offered within this state; (2) the act does not apply to an insurance policy or a debt cancellation or debt suspension contract; and (3) guaranteed asset protection waivers are exempt from the insurance laws of this state, and persons marketing or selling guaranteed asset protection waivers are exempt from this state's insurance licensing requirements.

Section 3 would enact a new section to define: "administrator" (a person, other than an insurer or creditor, that performs administrative or operational functions pursuant to guaranteed asset protection waiver programs); "borrower;" "creditor" (the lender in a loan or credit transaction, the lessor in a lease transaction, a retail seller of motor vehicles, the seller in commercial retail installment transactions, or an assignee of any of the foregoing); "finance agreement" (a loan, lease, or retail installment sales contract for the purchase or lease of a motor vehicle); "free look period;" "guaranteed asset protection waiver" (a contractual agreement wherein a creditor agrees, for a separate charge, to cancel or waive all or part of amounts due on a borrower's finance agreement in the event of a total physical damage loss or unrecovered theft of a motor vehicle); "insurer;" "motor vehicle;" and "person."

Section 4 would enact a new section to provide that: (1) guaranteed asset protection waivers may be offered, sold, or provided to borrowers in this state in compliance with the act; (2) guaranteed asset protection waivers may be sold for a single payment or may be offered with a monthly or periodic payment option; (3) any cost to the borrower shall be separately stated and is not to be considered a finance charge or interest; (4) a retail

seller shall insure its guaranteed asset waiver obligations and a creditor, other than a retail seller, may insure its guaranteed asset protection waiver obligations under a contractual liability policy directly obtained by a creditor, retail seller, or procured by an administrator to cover a creditor's or retail seller's obligations, except that retail sellers that are lessors are not required to insure obligations related to guaranteed asset protection waivers on lease vehicles; (5) the guaranteed asset protection waiver remains a part of the finance agreement upon assignment, sale, or transfer of the finance agreement by the creditor; (6) the extension of credit, the term of credit, or the term of the motor vehicle sale or lease may not be conditioned upon the purchase of a guaranteed asset protection waiver; (7) a creditor must report the sale of, and forward funds received on, guaranteed asset protection waivers to the designated parties; and (8) funds received or held by a creditor or administrator for an insurer, creditor, or administrator, shall be held in a fiduciary capacity.

Section 5 would enact a new section to provide that: (1) contractual liability policies insuring guaranteed asset protection waivers shall state the obligation of the insurer to reimburse or pay to the creditor any sums the creditor is legally obligated to waive under the guaranteed asset protection waivers issued by the creditor and purchased or held by the borrower; (2) coverage under a contractual liability policy insuring a guaranteed asset protection waiver shall also cover any subsequent assignee upon the assignment, sale, or transfer of the finance agreement; (3) coverage under a contractual liability policy insuring a guaranteed asset protection waiver shall remain in effect unless cancelled or terminated in compliance with the insurance laws of this state; and (4) the cancellation or termination of a contractual liability policy shall not reduce the insurer's responsibility for guaranteed asset protection waivers issued by the creditor prior to the date of cancellation or termination and for which premium has been received by the insurer.

Section 6 would enact a new section to provide that guaranteed asset protection waivers shall disclose in writing and in clear, understandable language the items set forth in this section.

Section 7 would enact a new section to provide for cancellation of guaranteed asset protection waiver agreements and refunds.

Section 8 would enact a new section to provide that specific provisions of the act are not applicable to a guaranteed asset protection waiver offered in connection with a lease or retail installment sale associated with a commercial transaction.

Section 9 would enact a new section to provide that the Attorney General may issue cease and desist orders and impose penalties of not more than five hundred dollars per violation and no more than ten thousand dollars in the aggregate for all violations of similar nature.

Section 10 would provide for severability.

EXPLANATION OF COMMITTEE AMENDMENTS

The committee amendments (AM983), as adopted on General File, become the bill. They would make the following changes:

The committee amendments would provide that the Guaranteed Asset Protection Waiver Act would not apply to guaranteed asset protection waivers offered, sold, or provided to borrowers by a financial association. (Section 2 of the committee amendments.)

The committee amendments would replace the definition of "administrator" with "creditor's designee" (a person other than the creditor that performs administrative or operational functions pursuant to a guaranteed asset protection waiver program). The committee amendments would provide for a definition of "financial institution" and would eliminate a definition of "insurer." The committee amendments would amend the definition of "guaranteed asset protection waiver" to provide that it means a contractual agreement wherein a creditor agrees, for a separate charge, to cancel or waive all or part of amounts due on a borrower's finance agreement in the event of a total physical damage loss or unrecovered theft of the motor vehicle "as determined by the insurer issuing the motor vehicle insurance policy subject to the terms of the waiver." (Section 3 of the bill as introduced and section 3 of the committee amendments.)

The committee amendments would strike provisions which would provide that a retail seller of motor vehicles shall, and a creditor, other than a retail seller, may, insure its guaranteed asset protection waiver obligations under a contractual liability insurance policy. The committee amendments would provide that guaranteed asset protection waivers offered, sold, or provided to buyers under the Guaranteed Asset Protection Waiver Act are not insurance and are exempt from the insurance laws of this state. The committee amendments would provide that persons marketing, selling, or offering to sell guaranteed asset protection waivers to borrowers are exempt from this state's insurance licensing requirements. The committee amendments would provide that guaranteed asset protection waivers shall not be marketed as being insured under a contractual liability policy. (Section 4 of the bill as introduced and section 4 of the committee amendments.)

The committee amendments would provide that a guaranteed asset protection waiver shall disclose that it is not insurance, is not regulated by the Department of Insurance, and that it remains a part of the finance agreement upon the assignment, sale, or transfer of the finance agreement. (Section 5 of the committee amendments.)

The committee amendments would provide that a creditor or the creditor's designee may offer a borrower a guaranteed asset protection waiver that does not provide for a refund if the creditor or the creditor's designee also offers the borrower a bona fide option to purchase a comparable waiver that provides for a refund. (Section 6 of the committee amendments.)

The committee amendments would insert and amend sections 45-335 and 45-336 of the Nebraska Installment Sales Act and sections 45-1002 and 45-1024 of the Nebraska Installment Loan Act to allow the charge for the guaranteed asset protection waiver to be included in the amount financed. (Sections 7 to 10 of the committee amendments.)

The committee amendments would strike provisions which would authorize the Attorney General to enforce the Guaranteed Asset Protection Waiver Act. (Sections 8 and 9 of the bill as introduced.)

The committee amendments would insert and amend section 60-1411.02 of the motor vehicle industry licensing statutes to authorize the Nebraska Motor Vehicle Industry Licensing Board to sanction violations of the Guaranteed Asset Protection Waiver Act. (Section 11 of the committee amendments.)

UNIFORM COMMERCIAL CODE-SECURED TRANSACTIONS

LB 87e (Pahls) Change provisions relating to the effects of errors and omissions in financing statements

Enacted/Effective February 27, 2009

This bill amends Uniform Commercial Code (UCC) Section 9-506, which regards the effect of errors and omissions in a financing statement. This section was amended by the Nebraska Legislature in 2008 to provide that a financing statement with minor errors or omissions is not seriously misleading if a search of "the debtor's correct last name" in the records of the filing office would disclose the financing statement. UCC Section 9-506 otherwise provides, as a general matter, that a financing statement substantially satisfying the requirements of the code is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading. The 2008 amendments to this section were non-uniform and would not have become applicable until September 2, 2009. The bill moves back the date of applicability in order to provide that the non-uniform 2008 amendments will not become applicable until September 2, 2010.

Other states have adopted various non-uniform amendments to this section regarding the debtor's last name. It is expected that the Uniform Law Commissioners will be considering uniform amendments regarding this matter for recommendation to all the states.

The bill carries the emergency clause.

The bill passed 43-0-6 on February 20, 2009 with the emergency clause and was signed by the Governor on February 26, 2009.

NOTE: LR 145 (Pahls) calls for the Banking, Commerce and Insurance Committee to conduct an interim study to determine whether Nebraska should update its version of Uniform Commercial Code, Article 9, relating to secured transactions.

BANKING, COMMERCE AND INSURANCE COMMITTEE 2009 INTERIM STUDY RESOLUTIONS

- LR114 (McGill) Interim study to examine whether Nebraska should amend the Delayed Deposit Services Licensing Act to provide for greater consumer protections for customers of payday lenders
- LR129 (Pahls) Interim study to examine updating statutes which restrict the unauthorized use of the word bank
- LR132 (Stuthman) Interim study to examine updating statutes to provide for partial payment of insurance policy proceeds to a city or village for certain damages or losses
- LR145 (Pahls) Interim study to determine whether Nebraska should update its version of the Uniform Commercial Code, Article 9, relating to secured transactions
- LR146 (Nantkes) Interim study to determine whether Nebraska should enact the Uniform Limited Partnership Act (2001)
- LR147 (Nantkes) Interim study to determine whether Nebraska should enact the Revised Uniform Limited Liability Company Act (2006)
- LR158 (Gay) Interim study to conduct research and provide recommendations for reform of Nebraska's health care delivery system and health care financing system (BCI and HHS Committees)
- LR188 (Lathrop) Interim study to review the practice of using credit information for insurance purposes
- LR208 (Nantkes) Interim study to focus on innovative and creative solutions to supplement traditional economic development tools
- LR217 (Mello) Interim study to examine ways to encourage entrepreneurship and private funding programs in Nebraska
- LR220 (Pirsch) Interim study to review recent trends and developments in the regulation of the business of insurance

REPORT ON THE PRIORTIZING
OF INTERIM STUDY RESOLUTIONS
Pursuant to Rule 4, Section 3(c)

COMMITTEE: Banking, Commerce and Insurance

DATE: May 20, 2009

The following resolutions were referred to the Committee on Banking, Commerce and Insurance. The committee has prioritized the resolutions in the following order:

<u>Resolution No.</u>	<u>Subject</u>
LR 220	(Pirsch) Regulation of the business of insurance
LR 129	(Pahls) Restrict the use of the word bank
LR 145	(Pahls) UCC relating to secured transactions
LR 132	(Stuthman) Payment of insurance proceeds to a city or village
LR 114	(McGill) Delayed Deposit Services Licensing Act
LR 188	(Lathrop) Use of credit information for insurance purposes
LR 146	(Nantkes) Enact Uniform Limited Partnership Act
LR 147	(Nantkes) Revise Uniform Limited Liability Company Act
LR 208	(Nantkes) Economic development tools
LR 217	(Mello) Entrepreneurship and private funding programs