

## LEGISLATIVE BILL 1053

Approved by the Governor April 15, 1996

Introduced by Landis, 46

AN ACT relating to banking and finance; to amend sections 8-103, 8-105, 8-112, 8-1,134, 45-345, and 45-713, Reissue Revised Statutes of Nebraska, sections 8-133, 8-147, and 8-1110, Revised Statutes Supplement, 1994, and sections 8-1101, 8-1111, and 45-711, Revised Statutes Supplement, 1995; to change provisions relating to loans to Department of Banking and Finance employees, nepotism, confidential department records, direct borrowing by a bank, and departmental hearings; to authorize the securing of deposits by the Secretary of the Interior on behalf of Indians or Indian tribes as prescribed; to change provisions relating to the Securities Act of Nebraska; to redefine a term; to change provisions relating to securities and securities transactions exempt from registration; to change provisions relating to installment sales licenses; to provide duties for licensees under the Mortgage Bankers Registration and Licensing Act; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 8-103, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

(b) In the event a loan to a person employed by the department is sold or otherwise transferred to a financial institution doing business in Nebraska and subject to the jurisdiction of the department, no violation of this section occurs if (i) the person employed by the department did not solicit the sale or transfer of the loan and (ii) the person employed by the department gives notice to the director of such sale or transfer. The director, in his or her discretion, may require such person to make all reasonable efforts to seek another lender.

(4) Any person who intentionally violates this section or who aids, abets, or assists in a violation of this section shall be guilty of a Class IV felony.

Sec. 2. Section 8-105, Reissue Revised Statutes of Nebraska, is amended to read:

8-105. (1) The director may employ such deputies, examiners, and other assistants as he or she may need to discharge in a proper manner the duties imposed upon him or her by law. Neither the director, nor any deputy or assistant, shall employ any relative, person who at the time of hire is a relative of the director or any a relative of any deputy or assistant in the

work of the department. The deputies, examiners, and other assistants shall perform such duties as shall be assigned to them. The director shall, with the approval of the Governor, fix the compensation of the deputies, examiners, and other assistants, which shall be paid either monthly or on a biweekly basis.

(2) The deputies, examiners, and other assistants, before assuming the duties of office, shall be bonded under the blanket surety bond required by section 11-201.

Sec. 3. Section 8-112, Reissue Revised Statutes of Nebraska, is amended to read:

8-112. (1) The director shall keep, as records of his or her office, proper books showing all acts, matters, and things done under sections 8-101 to 8-112 the jurisdiction of the department. Neither the director nor anyone connected with the department shall in any instance disclose the name of any depositor or debtor of any bank financial institution or other entity regulated by the department or the amount of his or her deposit or debt to anyone, except insofar as may be necessary in the performance of his or her official duty, except that the department may maintain a record of borrowers from the banks financial institutions in this state and may give information concerning the total liabilities of any such borrowers to any bank financial institution owning obligations of such borrowers.

(2) Examination reports, investigation reports, and documents and information relating to such reports are confidential records of the department and may be released or disclosed only (a) insofar as is necessary in the performance of the official duty of the department or (b) pursuant to a properly issued subpoena. The department, in its discretion, may obtain the entry of a protective order from a court of competent jurisdiction to protect and keep confidential the names of borrowers or depositors or to protect the public interest.

Sec. 4. Section 8-133, Revised Statutes Supplement, 1994, is amended to read:

8-133. (1) Except as provided in subsection (2) of this section, no bank shall, directly or indirectly, pay any interest on deposits at a greater rate than the director by regulation provides, except that when authorized by the United States Government and approved by the director, no bank shall be prohibited from paying interest on any type of United States treasury tax and loan deposits or similar type of United States accounts. Any officer, director, stockholder, or employee of a bank or any other person who directly or indirectly, either personally or for the bank, pays any money, gives any consideration of value, or pledges any assets, except as provided by law, as an inducement, in addition to the legal interest, for making or retaining a deposit in the bank shall be guilty of a Class IV felony. Any depositor who accepts any such inducement shall be guilty of a Class IV felony. Deposits made in violation of this section shall not be entitled to priority of payment from the assets of the bank. In determining the maximum interest that may be paid on deposits, the director shall consider generally recognized sound banking principles, the financial soundness of banks, competitive conditions, and general economic conditions. A bank may secure deposits made by a trustee under 11 U.S.C. 101 et seq. by pledge of the assets of the bank or by furnishing a surety bond as provided in 11 U.S.C. 345. A bank may also secure deposits made by the United States Secretary of the Interior on behalf of any individual Indian or any Indian tribe under 25 U.S.C. 162a by a pledge of the assets of the bank or by furnishing an acceptable bond as provided in 25 U.S.C. 162a.

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

Sec. 5. Section 8-147, Revised Statutes Supplement, 1994, is amended to read:

8-147. Except as provided in this section, the aggregate amount of direct borrowing of any bank shall at no time exceed the amount of its paid-up capital, surplus, undivided profits, capital reserves, capital notes, and debentures, nor shall any bank at any time permit its loans and investments, exclusive of its cash reserve, banking house, fixtures, direct or indirect obligations of the United States Government, and obligations guaranteed by agencies of the United States Government, to exceed in the aggregate fifteen times the amount of its paid-up capital, surplus, undivided profits, capital reserves, capital notes, and debentures. Any bank may borrow money on its bills payable secured by direct or indirect obligations of the United States Government or secured by obligations guaranteed by agencies of the United

States Government in an amount in excess of its paid-up capital and surplus. Any bank may, with the written consent of the director, rediscount paper in an amount in excess of its paid-up capital stock and surplus. Any transfer of assets of a bank in violation of this section shall be void as against the creditors of such bank. Any officer or employee of such bank who does, or permits to be done, any act in violation of this section, and any other person who knowingly assists in the violation of this section, shall be guilty of a Class IV felony. Any bank becoming a member of the federal reserve system may have the same privileges as to rediscounts and bills payable with the federal reserve banks, and may incur liabilities to such banks, to the same extent as national banks. Any bank becoming a member of the Federal Home Loan Bank System may have the same privileges as to rediscounts and bills payable with the Federal Home Loan Banks, and may incur liabilities to such banks, to the same extent as national banks. Any bank may have the same privileges as to rediscounts and bills payable with the federal intermediate credit banks, and may incur liabilities to such banks, to the same extent as national banks.

(1) The aggregate amount of direct borrowing of any bank shall at no time exceed the amount of its paid-up capital, surplus, undivided profits, capital reserves, capital notes, and debentures, except with the prior written permission of the director. Direct borrowing shall not include:

(a) Money borrowed on the bank's bills payable secured by (i) direct or indirect obligations of the United States Government or (ii) obligations guaranteed by agencies of the United States Government;

(b) Rediscounts, bills payable, borrowings, or other liabilities with or to the federal reserve system or the federal reserve banks, if the bank is a member of the federal reserve system;

(c) Rediscounts, bills payable, borrowings, or other liabilities with or to the Federal Home Loan Bank System or the Federal Home Loan Banks, if the bank is a member of the Federal Home Loan Bank System; or

(d) Rediscounts, bills payable, borrowings, or other liabilities with or to the federal intermediate credit banks.

(2) The aggregate amount of the loans and investments of any bank shall at no time exceed fifteen times the amount of its paid-up capital, surplus, undivided profits, capital reserves, capital notes, and debentures, except with the prior written permission of the director. For purposes of this section, loans and investments shall not include a bank's (a) cash reserves, (b) real estate and buildings at which the bank is authorized to conduct its business, (c) furniture and fixtures, and (d) obligations set forth in subdivisions (1)(a), (b), and (c) of this section.

(3) Any bank becoming a member of the federal reserve system or the Federal Home Loan Bank System shall have the same privileges to the same extent as national banks.

(4) With the prior written permission of the director, a bank may rediscount paper in an amount in excess of its paid-up capital stock.

(5) Any transfer of assets of a bank in violation of this section shall be void as against the creditors of the bank.

(6) Any officer, director, or employee of a bank who does, or permits to be done, any act in violation of this section and any other person who knowingly assists in the violation of this section shall be guilty of a Class IV felony.

Sec. 6. Section 8-1,134, Reissue Revised Statutes of Nebraska, is amended to read:

8-1,134. (1) Whenever the Director of Banking and Finance has reason to believe that a violation of any provision of Chapter 8 or Chapter 21, article 17, or any rule, regulation, or order of the Department of Banking and Finance has occurred, he or she may cause a written complaint to be served upon the alleged violator. The complaint shall specify the statutory provision or rule, regulation, or order alleged to have been violated and the facts alleged to constitute a violation thereof and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final as to any person named in the order unless such person requests, in writing, a hearing before the director no later than ten days after the date such order is served. In lieu of such order, the director may require that the alleged violator appear before the director at a time and place specified in the notice and answer the charge complained of. The notice shall be delivered to the alleged violator or violators in accordance with subsection (4) of this section not less than ten days before the time set for the hearing.

(2) The director shall provide an opportunity for a fair hearing to the alleged violator at the time and place specified in the notice or any modification of the notice. On the basis of the evidence produced at the hearing, the director or hearing officer shall make findings of fact and

conclusions of law and enter such order as in his or her opinion will best further the purposes of Chapter 8 or Chapter 21, article 17, and the rules, regulations, and orders of the Department of Banking and Finance. Written notice of such order shall be given to the alleged violator and to any other person who appeared at the hearing and made written request for notice of the order. If the hearing is held before any person other than the director, such person shall transmit a record of the hearing together with findings of fact and conclusions of law to the director. The director, prior to entering his or her order on the basis of such record, shall provide opportunity to the parties to submit for his or her consideration exceptions to the findings or conclusions and supporting reasons for such exceptions. The order of the director shall become final and binding on all parties unless appealed to the district court of Lancaster County as provided in section 8-1,135.

(3) Whenever the director finds that an emergency exists requiring immediate action to protect the safety and soundness of the institutions under the supervision and control of the Department of Banking and Finance, the director may, without notice or hearing, issue an order reciting the existence of an emergency and requiring that such action be taken as the director deems necessary to meet the emergency. Notwithstanding the provisions of subsection (2) of this section, the order shall be effective immediately. Any person to whom such order is directed shall comply immediately, but on application to the director shall be afforded a hearing as soon as possible and not later than ten days after such application by the affected person. On the basis of the hearing, the director shall continue the order in effect, revoke it, or modify it. This subsection shall not apply to a determination of necessary acquisition made by the Department of Banking and Finance pursuant to sections 8-1506 to 8-1510.

(4) Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the director shall be served on any person affected thereby either personally or by certified mail, return receipt requested. Proof of service shall be filed in the office of the director.

Every certificate or affidavit of service made and filed as provided in this subsection shall be prima facie evidence of the facts stated in the certificate or affidavit, and a certified copy shall have the same force and effect as the original.

(5) The hearing provided for in this section may be conducted by the director, or by any member of the department acting in his or her behalf, or the director may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the director at any time and place. A verbatim record of the proceedings of such hearings shall be taken and filed with the director, together with findings of fact and conclusions of law made by the director or hearing officer. The director may subpoena witnesses, and any witness who is subpoenaed shall receive the same fees as in civil actions in the district court and mileage as provided in section 81-1176 for state employees. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the district court of Lancaster County shall have jurisdiction, upon application of the director, to issue an order requiring such person to appear and testify or produce evidence as the case may require. Failure to obey such order of the court may be punished by such court as contempt.

If requested to do so by any party concerned with such hearing, the full stenographic notes, or tapes of an electronic transcribing device, of the testimony presented at such hearing shall be taken and filed. The stenographer shall, upon the payment of the stenographer's fee allowed by the court, furnish a certified transcript of all or any part of the stenographer's notes to any party to the action requiring and requesting such notes.

(6) The director may close to the public the hearing, or any portion of the hearing, provided for in this section when he or she finds that the closure is (a) necessary to protect any person, or any financial institution or entity under the department's jurisdiction, against unwarranted injury or (b) in the public interest. The director shall close no more of the public hearing than is necessary to attain the objectives of this subsection.

Sec. 7. Section 8-1101, Revised Statutes Supplement, 1995, is amended to read:

8-1101. For purposes of the Securities Act of Nebraska, unless the context otherwise requires:

(1) Director shall mean the Director of Banking and Finance of the State of Nebraska except as further provided in section 8-1120;

(2) Agent shall mean any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but agent shall not include an individual who represents

an issuer in (a) effecting a transaction in a security exempted by subdivision (8), (9), or (10) of section 8-1110, (b) effecting certain transactions exempted by section 8-1111, or (c) effecting transactions with existing employees, limited liability company members, partners, or directors of the issuer or any of its subsidiaries if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. A partner, limited liability company member, officer, or director of a broker-dealer shall be an agent only if he or she otherwise comes within this definition;

(3) Broker-dealer shall mean any person engaged in the business of effecting transactions in securities for the account of others or for his or her own account. Broker-dealer shall not include (a) an issuer-dealer, agent, bank, savings institution, or trust company, (b) an issuer effecting a transaction in its own security exempted by subdivision (7) of section 8-1110, (c) a person who has no place of business in this state if he or she effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (d) a person who has no place of business in this state if during any period of twelve consecutive months he or she does not direct more than five offers to sell or to buy into this state in any manner to persons other than those specified in subdivision (3)(c) of this section;

(4) Guaranteed shall mean guaranteed as to payment of principal, interest, or dividends;

(5) Investment adviser shall mean any person who for compensation engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who for compensation and as a part of a regular business issues or promulgates analyses or reports concerning securities. Investment adviser shall also include financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. Investment adviser shall not include (a) an investment adviser representative, (b) a bank, savings institution, or trust company, (c) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession, (d) a broker-dealer, (e) an issuer-dealer, (f) a publisher of any bona fide newspaper, news column, news letter, news magazine, or business or financial publication or service, whether communicated in hard copy form, by electronic means, or otherwise which does not consist of the rendering of advice on the basis of the specific investment situation of each client, (g) a person who has no place of business in this state if his or her only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or during any period of twelve consecutive months he or she does not direct business communications into this state in any manner to more than five clients other than those specified in this subdivision (g), or (h) such other persons not within the intent of this subdivision as the director may by rule, regulation, or order designate;

(6) Investment adviser representative shall mean any partner, limited liability company member, officer, or director or any person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who (a) makes any recommendations or otherwise renders advice regarding securities, (b) manages accounts or portfolios of clients, (c) determines which recommendation or advice regarding securities should be given, (d) solicits, offers, or negotiates for the sale of or sells investment advisory services, or (e) supervises employees who perform any of the foregoing;

(7) Issuer shall mean any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed,

restricted management, or unit type, the term issuer shall mean the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued;

(8) Issuer-dealer shall mean (a) any issuer located in the State of Nebraska or (b) any issuer which registered its securities by qualification who proposes to sell to the public of the State of Nebraska the securities that it issues without the benefit of another registered broker-dealer. Such securities shall have been approved for sale in the State of Nebraska pursuant to section 8-1104;

(9) Nonissuer shall mean not directly or indirectly for the benefit of the issuer;

(10) Person shall mean an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

(11) Sale or sell shall include every contract of sale of, contract to sell, or disposition of a security or interest in a security for value. Offer or offer to sell shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock shall be considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, shall be considered to include an offer of the other security;

(12) Securities Act of 1933, Securities Exchange Act of 1934, Public Utility Holding Company Act of 1935, Investment Advisers Act of 1940, and Investment Company Act of 1940 shall mean the federal statutes of those names as amended on or before January 1, 1993;

(13) Security shall mean any note, stock, treasury stock, bond, debenture, units of beneficial interest in a real estate trust, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, membership interest in any limited liability company organized under Nebraska law or any other jurisdiction unless otherwise excluded from this definition, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, in general any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. Security shall not include any insurance or endowment policy or annuity contract issued by an insurance company. Security shall also not include a membership interest in a limited liability company when all of the following exist: (a) The member enters into a written commitment to be engaged actively and directly in the management of the limited liability company; and (b) all members of the limited liability company are actively engaged in the management of the limited liability company; and

(14) State shall mean any state, territory, or possession of the United States as well as the District of Columbia and Puerto Rico.

Sec. 8. Section 8-1110, Revised Statutes Supplement, 1994, is amended to read:

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

(1) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing or any certificate of deposit for any of the foregoing;

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

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States

or any bank, savings institutions, or trust company organized and supervised under the laws of any state;

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

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

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

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

(b) The issuer of any security which has been approved for listing or designation on notice of issuance on such exchanges or market systems, and for which no quotations have been available and no public trading has taken place for any of such issuer's securities, may rely upon the exemption stated in subdivision (7)(a) of this section, if a notice is filed with the director together with a filing fee of two hundred dollars, prior to first use of a disclosure document covering such securities in this state; except that failure to file such notice in a timely manner may be cured by the director in his or her discretion;

(c) The director may adopt and promulgate rules and regulations which, after notice to such exchange or market system and an opportunity to be heard, remove any such exchange or market system from the exemption stated in subdivision (7)(a) of this section if the director finds that the listing requirements or market surveillance of such exchange or market system is such that the continued availability of such exemption for such exchange or market system is not in the public interest and that removal is necessary for the protection of investors;

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

(a) If the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus;

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

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

(d) Except as provided in subdivision (8)(g) of this section, the issuer has had consolidated net income, without taking into account extraordinary items and the cumulative effect of accounting changes, of at least one million dollars in four of its last five fiscal years, including its last fiscal year, and if the offering is of interest-bearing securities the issuer has had for its last fiscal year net income before deduction for income taxes and depreciation of at least one and one-half times the issuer's annual interest expense, taking into account the proposed offering and the intended use of the proceeds. For purposes of this subdivision, last fiscal year shall mean the most recent year for which audited financial statements are available, if such statements cover a fiscal period ending not more than fifteen months from the commencement of the offering;

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

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

(g) If the issuer of the securities is a finance company which has liquid assets of at least one hundred five percent of its liabilities, other than deferred income taxes, deferred investment tax credit, capital stock, and surplus, at the end of its last five fiscal years, the net income requirement of subdivision (8)(d) of this section before deduction for interest expense shall be one and one-fourth times its annual interest expense. For purposes of this subdivision, (i) finance company shall mean a company engaged primarily in the business of wholesale, retail, installment, mortgage, commercial, industrial, or consumer financing, banking, or factoring and (ii) liquid assets shall mean (A) cash receivables payable on demand or not more than twelve years following the close of the company's last fiscal year less applicable reserves and unearned income and (B) readily marketable securities less applicable reserves and unearned income; and

(h) Any security issued or guaranteed as to both principal and interest by an international bank of which the United States is a member shall be exempt from registration under this section;

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

(10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, any renewal of such paper which is likewise limited, or any guarantee of such paper or such renewal.

Sec. 9. Section 8-1111, Revised Statutes Supplement, 1995, is amended to read:

8-1111. Except as provided in this section, sections 8-1103 to 8-1109 shall not apply to any of the following transactions:

(1) Any isolated transaction, whether effected through a broker-dealer or not;

(2) Any nonissuer distribution of an outstanding security by a registered agent of a registered broker-dealer if (a) a recognized securities manual contains the name of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations or (b) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security;

(3) Any nonissuer transaction effected by or through a registered agent of a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the director may by rule or regulation require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust or by an agreement for the sale of real estate or chattels if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, are offered and sold as a unit. Such exemption shall not apply to any transaction in a bond or other evidence of indebtedness secured by a real estate mortgage or deed of trust or by an agreement for the sale of real estate if the real estate securing the evidences of indebtedness are



parcels of real estate the sale of which requires the subdivision in which the parcels are located to be registered under the Interstate Land Sales Full Disclosure Act, 82 Stat. 590 et seq., 15 U.S.C. 1701 et seq.;

(6) Any transaction by an executor, personal representative, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading the Securities Act of Nebraska;

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, to an individual accredited investor, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity. For purposes of this subdivision, the term "individual accredited investor" means (a) any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer, (b) any manager of a limited liability company that is the issuer of the securities being offered or sold. (c) any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his or her purchase, exceeds one million dollars, or ~~(e)~~ (d) any natural person who had an individual income in excess of two hundred thousand dollars in each of the two most recent years or joint income with that person's spouse in excess of three hundred thousand dollars in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(9) Any transaction pursuant to an offering in which sales are made to not more than fifteen persons, other than those designated in subdivisions (8), (11), and (17) of this section, in this state during any period of twelve consecutive months if (a) the seller reasonably believes that all the buyers are purchasing for investment, (b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (d) no solicitations are made by newspaper, radio, or television;

(10) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten, and (c) no payment is made by any subscriber;

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (a) no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this state or (b) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days;

(12) Any offer, but not a sale, of a security for which registration statements have been filed under both the Securities Act of Nebraska and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either the Securities Act of Nebraska or the Securities Act of 1933;

(13) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by the stockholders for the distribution other than the surrender of a right to a cash dividend when the stockholder can elect to take a dividend in cash or stock;

(14) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) Any transaction involving the issuance for cash of any evidence of ownership interest or indebtedness by an agricultural cooperative formed as a corporation under section 21-1301 or 21-1401 if the issuer has first filed a notice of intention to issue with the director and the director has not by order, mailed to the issuer by certified or registered mail within ten business days after receipt thereof, disallowed the exemption;

(16) Any transaction in this state not involving a public offering when (a) there is no general or public advertising or solicitation, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) any such transaction is effected in accordance with rules and regulations adopted and promulgated by the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of investors. For purposes of this subdivision, not involving a public offering shall mean any offering in which the seller has reason to believe that the securities purchased are taken for investment and in which each offeree, by reason of his or her knowledge about the affairs of the issuer or otherwise, does not require the protections afforded by registration under sections 8-1104 to 8-1107 in order to make a reasonably informed judgment with respect to such investment;

(17) The issuance of any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer and if the director is notified in writing within thirty days after the inception of the plan or, with respect to plans which were in effect prior to August 18, 1965, but closed on that date, within thirty days after they are reopened;

(18) Any interest in a common trust fund or similar fund maintained by a bank or trust company organized and supervised under the laws of any state or a bank organized under the laws of the United States for the collective investment and reinvestment of funds contributed to such common trust fund or similar fund by the bank or trust company in its capacity as trustee, personal representative, administrator, or guardian and any interest in a collective investment fund or similar fund maintained by the bank or trust company for the collective investment of funds contributed to such collective investment fund or similar fund by the bank or trust company in its capacity as trustee or agent which interest is issued in connection with an employee's savings, pension, profit-sharing, or similar benefit plan or a self-employed person's retirement plan, if a notice generally describing the terms of the collective investment fund or similar fund is filed by the bank or trust company with the director within thirty days after the establishment of the fund. Failure to give the notice may be cured by an order issued by the director in his or her discretion;

(19) Any transaction in which a United States Series EE Savings Bond is given or delivered with or as a bonus on account of any purchase of any item or thing; or

(20) Any transaction in this state not involving a public offering by a Nebraska issuer selling solely to Nebraska residents, when (a) any such transaction is effected in accordance with rules and regulations adopted and promulgated by the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of investors, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director no later than twenty days prior to any sales for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (d) a filing fee of two hundred dollars is paid at the time of filing the notice.

The director may by order deny or revoke the exemption specified in subdivision (2) of this section with respect to a specific security. Upon the entry of such an order, the director shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within fifteen business days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain

in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to all interested persons, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. No such order may operate retroactively. No person may be considered to have violated the provisions of the Securities Act of Nebraska by reason of any offer or sale effected after the entry of any such order if he or she sustains the burden of proof that he or she did not know and in the exercise of reasonable care could not have known of the order. In any proceeding under the act, the burden of proving an exemption from a definition shall be upon the person claiming it.

Sec. 10. Section 45-345, Reissue Revised Statutes of Nebraska, is amended to read:

45-345. No person shall engage in the business of a sales finance company in this state without obtaining a license therefor from the Department of Banking and Finance as provided in sections 45-334 to 45-353; ~~PROVIDED, that no the Nebraska Installment Sales Act whether or not such person maintains an office, place of doing business, or agent in this state, unless such person meets the requirements of section 45-340.~~ No bank, trust company, industrial loan and investment company, building and loan association, or installment loan licensee authorized to do business in this state shall be required to obtain a license under sections 45-334 to 45-353 the act but shall comply with all of the other provisions of ~~sections 45-334 to 45-353~~ the act.

Sec. 11. Section 45-711, Revised Statutes Supplement, 1995, is amended to read:

45-711. A licensee shall:

(1) Disburse required funds paid by the borrower and held in escrow for the payment of insurance payments no later than the date upon which the premium is due under the insurance policy;

(2) Disburse funds paid by the borrower and held in escrow for the payment of real estate taxes prior to the time such real estate taxes become delinquent;

(3) Pay any penalty incurred by the borrower because of the failure of the licensee to make the payments required in subdivisions (1) and (2) of this section unless the licensee establishes that the failure to timely make the payments was due solely to the fact that the borrower was sent a written notice of the amount due more than fifteen calendar days before the due date to the borrower's last-known address and failed to timely remit the amount due to the licensee;

(4) At least annually perform a complete escrow analysis. If there is a change in the amount of the periodic payments, the licensee shall mail written notice of such change to the borrower at least twenty calendar days before the effective date of the change in payment. The following information shall be provided to the borrower, in one or more reports, at least annually:

(a) The name and address of the licensee;

(b) The name and address of the borrower;

(c) A summary of the escrow account activity during the year which includes all of the following:

(i) The balance of the escrow account at the beginning of the year;

(ii) The aggregate amount of deposits to the escrow account during the year; and

(iii) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(A) Payments applied to loan principal;

(B) Payments applied to interest;

(C) Payments applied to real estate taxes;

(D) Payments for real property insurance premiums; and

(E) All other withdrawals; and

(d) A summary of loan principal for the year as follows:

(i) The amount of principal outstanding at the beginning of the year;

(ii) The aggregate amount of payments applied to principal during the year; and

(iii) The amount of principal outstanding at the end of the year;

(5) Not later than January 1, 1996, establish and maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers, if the licensee services mortgage loans. If a licensee ceases to service mortgage loans, it shall continue to maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers for a period of twelve months after the date the licensee ceased to service mortgage loans. A telephonic messaging service which does not permit the borrower an option of personal contact with an

employee, agent, or contractor of the licensee shall not satisfy the conditions of this section. Each day such licensee fails to comply with this subdivision shall constitute a separate violation of the Mortgage Bankers Registration and Licensing Act;

(6) Answer in writing, within ten business days of receipt, any written request for payoff information received from a borrower or a borrower's designated representative; and

(7) Execute and deliver a release of mortgage pursuant to the provisions of section 76-252 or, in the case of a trust deed, execute and deliver a reconveyance pursuant to the provisions of section 76-1014.01.

Sec. 12. Section 45-713, Reissue Revised Statutes of Nebraska, is amended to read:

45-713. Within ten business Not less than fifteen days after prior to the effective date of the transfer of servicing rights involving any mortgage loan, the licensee transferring the servicing rights shall send a written notice of transfer to each borrower which shall include:

(1) The effective date of the transfer;

(2) The name, address, and telephone number of the transferee and the name of a referral person or department of the transferee;

(3) Instructions concerning payments made before the effective date of the transfer; and

(4) Instructions concerning payments made after the effective date of the transfer.

The provisions of this section shall not apply when the licensee transferring the servicing rights has provided the borrower with a written notice of transfer at the time of closing on the mortgage loan.

Sec. 13. Sections 11, 12, and 14 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 14. Original section 45-713, Reissue Revised Statutes of Nebraska, and section 45-711, Revised Statutes Supplement, 1995, are repealed.

Sec. 15. Original sections 8-103, 8-105, 8-112, 8-113, 8-114, and 45-345, Reissue Revised Statutes of Nebraska, sections 8-133, 8-147, and 8-1110, Revised Statutes Supplement, 1994, and sections 8-1101 and 8-1111, Revised Statutes Supplement, 1995, are repealed.

Sec. 16. Since an emergency exists, this act takes effect when passed and approved according to law.