

LEGISLATIVE BILL 932

Approved by the Governor April 13, 2000

Introduced by Landis, 46

AN ACT relating to banking and finance; to amend sections 8-148.07, 8-301, 8-305, 8-317, 8-331, 8-334, 8-336, 8-340, 8-345.01, 8-346, 8-1103, 8-1111, 8-1120, 8-1502, 21-1701, 21-1767, 21-1768, 30-3205, 45-116, 45-205, 45-337, 45-717, 45-919, 72-1263, 72-1264, 77-2327, 77-2386, 77-2390, 77-2395, and 81-885.21, Reissue Revised Statutes of Nebraska, sections 8-101, 8-205, 8-223, 8-910, and 77-2387, Revised Statutes Supplement, 1998, and sections 8-157.01, 8-1,140, 8-355, 8-602, 21-17,115, 45-137, and 77-2391, Revised Statutes Supplement, 1999; to revise the powers of bank subsidiary corporations, state-chartered banks, building and loan associations, and credit unions; to change provisions relating to automatic teller machines, the Nebraska Trust Company Act, building and loan companies, department fees, the Nebraska Bank Holding Company Act of 1995, the Securities Act of Nebraska, acquisitions and mergers, the Credit Union Act, investments by fiduciaries, installment loans, revolving charge agreements, installment sales, the Mortgage Bankers Registration and Licensing Act, the Delayed Deposit Services Licensing Act, the deposit of public funds, and real estate trust accounts; to require a fidelity bond from credit unions; to eliminate provisions relating to foreign building and loan associations; to harmonize provisions; to provide operative dates; to repeal the original sections; to outright repeal sections 8-342 to 8-345, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. Section 8-101, Revised Statutes Supplement, 1998, is amended to read:

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

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

(2) Capital or capital stock means capital stock;

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

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

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

(6) Order includes orders transmitted by electronic transmission;

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

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

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

(10) ~~(9)~~ Point-of-sale terminal means an information processing

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

~~(11)~~ ~~(10)~~ Making loans includes advances or credits that are initiated by means of credit card or other transaction card. Transaction card and other transactions, including transactions made pursuant to prior agreements, may be brought about and transmitted by means of an electronic impulse. Such loan transactions including transactions made pursuant to prior agreements shall be subject to sections 8-815 to 8-829 and shall be deemed loans made at the place of business of the financial institution;

~~(12)~~ ~~(11)~~ Financial institution means a bank, savings bank, building and loan association, savings and loan association, industrial loan and investment company, credit union, trust company, or other institution offering automatic teller machines;

~~(13)~~ ~~(12)~~ Financial institution employees includes parent holding company and affiliate employees;

~~(14)~~ ~~(13)~~ Switch means any facility where electronic impulses or other indicia of a transaction originating at an automatic teller machine or point-of-sale terminal are received and are routed and transmitted to a financial institution, data processing center, or other switch, wherever located. A switch may also be a data processing center;

~~(15)~~ ~~(14)~~ Impulse means an electronic, sound, or mechanical impulse, or any combination thereof;

~~(16)~~ ~~(15)~~ Insolvent means a condition in which (a) the actual cash market value of the assets of a bank is insufficient to pay its liabilities to its depositors, (b) a bank is unable to meet the demands of its creditors in the usual and customary manner, (c) a bank, after demand in writing by the director, fails to make good any deficiency in its reserves as required by law, or (d) the stockholders of a bank, after written demand by the director, fail to make good an impairment of its capital or surplus; and

~~(16)~~ ~~(17)~~ Foreign state agency means any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created under the laws of any other state, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands or which is operating under the code of law for the District of Columbia.

Sec. 2. Section 8-148.07, Reissue Revised Statutes of Nebraska, is amended to read:

8-148.07. A bank subsidiary corporation shall engage in only those activities prescribed under subdivision (1) of section 8-101 or that its bank shareholder is authorized to perform under the laws of this state and shall engage in those activities only at locations in this state where the bank shareholder could be authorized to perform activities.

Sec. 3. Section 8-157.01, Revised Statutes Supplement, 1999, is amended to read:

8-157.01. (1) Upon prior written notice to the director, any financial institution which has a main chartered office or approved branch office located in the State of Nebraska may establish and maintain any number of automatic teller machines at which all banking transactions, defined as receiving deposits of every kind and nature and crediting such to customer accounts, cashing checks and cash withdrawals, transfer of funds from checking accounts to savings accounts, transfer of funds from savings accounts to checking accounts, transfer of funds from either checking accounts and savings accounts to accounts of other customers, payment transfers from customer accounts into accounts maintained by other customers of the financial institution or the financial institution, including preauthorized draft authority, preauthorized loans, and credit transactions, receiving payments payable at the financial institution or otherwise, and account balance inquiry, may be conducted. Any other transaction incidental to the business of the financial institution or which will provide a benefit to the financial institution's customers or the general public may be conducted at an automatic teller machine upon thirty days' prior written notice to the director if the director does not object to the proposed other transaction within the thirty-day notice period. Neither such automatic teller machines nor the transactions conducted thereat shall be construed as the establishment of a branch bank or as branch banking. Such automatic teller machines shall be

made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch office located in the State of Nebraska which becomes a user financial institution. It shall not be deemed discrimination if an automatic teller machine does not offer the same transaction services as other automatic teller machines or if there are no fees charged between affiliate financial institutions for the use of automatic teller machines.

(2) Any financial institution may become a user financial institution by agreeing to pay the establishing financial institution its automatic teller machine usage fee. Such agreement shall be implied by the use of such automatic teller machines. Nothing in this subsection shall prohibit a user financial institution from agreeing to responsibilities and benefits which might be contained in a standardized agreement. The establishing financial institution or its designated data processing center shall be responsible for transmitting transactions originating from its automatic teller machine to a switch, but nothing contained in this section shall be construed to require routing of all transactions to a switch. All automatic teller machines must be made available on a nondiscriminating basis, for use by customers of any financial institution which has a main chartered office or approved branch office located in the State of Nebraska which becomes a user financial institution, through methods, fees, and processes that the establishing financial institution has provided for switching transactions. The director, upon notice and after a hearing, may terminate or suspend the use of any automatic teller machine if he or she determines that it is not available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch office located in the State of Nebraska which becomes a user financial institution or that transactions originated by customers of user financial institutions are not being routed to a switch or other data processing centers. Nothing in this section may be construed to prohibit nonbank employees from assisting in transactions originated at the automatic teller machines, and such assistance shall not be deemed to be engaging in the business of banking. Such nonbank employees may be trained in the use of the automatic teller machines by financial institution employees.

(3) An establishing financial institution shall not be deemed to make an automatic teller machine available on a nondiscriminating basis if, through personnel services offered, advertising on or off the automatic teller machines premises, or otherwise, it discriminates in the use of the automatic teller machine against any user financial institution which has a main chartered office or approved branch office located in the State of Nebraska.

(4)(a) On and after August 1, 2000, any consumer initiating an electronic funds transfer at an automatic teller machine for which an automatic teller machine surcharge will be imposed shall receive notice in accordance with the provisions of 15 U.S.C. 1693b(d)(3)(A) and (B). Such notice shall (i) be posted in a prominent and conspicuous location on or at the automatic teller machine at which the electronic funds transfer is initiated by the consumer and (ii) appear on the screen of the automatic teller machine or appear on a paper notice issued from such machine after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(b) Subdivision (a)(ii) of this subsection shall not apply until January 1, 2005, to any automatic teller machine that lacks the technical capability to disclose the notice on the screen or to issue a paper notice after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(5) A point-of-sale terminal may be established at any point within this state. A financial institution may contract with a seller of goods and services or any other third party for the operation of point-of-sale terminals. A point-of-sale terminal shall be made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch office located in the State of Nebraska which becomes a user financial institution. Nothing in this subsection shall prohibit payment of fees to a financial institution which issues an access device used to initiate electronic funds transfer transactions at a point-of-sale terminal.

(6) ~~(5)~~ A seller of goods and services or any other third party on whose premises one or more point-of-sale terminals are established shall not be, solely by virtue of such establishment, a financial institution and shall not be subject to the laws governing, or other requirements imposed on, financial institutions, except for the requirement that it faithfully perform its obligations in connection with any transaction originated at any point-of-sale terminal on its premises. The acquiring financial institution

shall be responsible for compliance with all applicable standards, rules, and regulations governing point-of-sale transactions.

(7) ~~(6)~~ Any financial institution, upon a request of the director, shall file with the director a current listing of all point-of-sale terminals established by the financial institution within this state. For purposes of this subsection, point-of-sale terminal shall include a group of one or more of such terminals established at a single business location. Such listing shall contain any reasonable descriptive information pertaining to the point-of-sale terminal as required by the director. Neither the establishment of such point-of-sale terminal nor any transactions conducted thereat shall be construed as the establishment of a branch bank or as branch banking. Following establishment of a point-of-sale terminal, the director, upon notice and after a hearing, may terminate or suspend the use of such point-of-sale terminal if he or she determines that it is not made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch office located in the State of Nebraska which becomes a user financial institution, that the necessary information is not on file with the director, or that transactions originated by customers of user financial institutions are not being routed to a switch or other data processing center. Nothing in this section shall be construed to prohibit nonbank employees from assisting in transactions originated at the point-of-sale terminals, and such assistance shall not be deemed to be engaging in the business of banking.

(8) ~~(7)~~ Transactions at point-of-sale terminals may include:

- (a) Check guarantees;
- (b) Account balance inquiries;
- (c) Transfers of funds from a customer's account for payment to a seller's account for goods and services on whose premises the point-of-sale terminal is located in payment for the goods and services;
- (d) Cash withdrawals by a customer from the customer's account or accounts;
- (e) Transfers between accounts of the same customers at the same financial institution; and
- (f) Such other transactions as the director, upon application, notice, and hearing, may approve.

(9) ~~(8)~~ Automatic teller machines may be established and maintained by a financial institution which has a main chartered office or approved branch office located in the State of Nebraska, by a group of two or more of such financial institutions, or by a combination of such financial institution or financial institutions and a third party. Point-of-sale terminals may be established and maintained by a financial institution, by a group of two or more financial institutions, or by a combination of a financial institution or financial institutions and a third party. No one, through personnel services offered, advertising on or off the point-of-sale terminal premises, or otherwise, may discriminate in the use of the point-of-sale terminal against any other user financial institution.

(10) ~~(9)~~ All financial institutions shall be given an equal opportunity for the use of and access to a switch, and no discrimination shall exist or preferential treatment be given in either the operation of such switch or the charges for use thereof. The operation of such switch shall be with the approval of the director. Approval of such switch shall be given by the director when he or she determines that its design and operation are such as to provide access thereto and use thereof by any financial institution without discrimination as to access or cost of its use. Any switch established in Nebraska and approved by the director prior to January 1, 1993, shall be deemed to be approved for purposes of this section.

(11) ~~(10)~~ Use of an automatic teller machine or a point-of-sale terminal through access to a switch and use of any switch shall be made available on a nondiscriminating basis to any financial institution. A financial institution shall only be permitted use of the switch if the financial institution conforms to reasonable technical operating standards which have been established by the switch.

(12) ~~(11)~~ To assure maximum safety and security against malfunction, fraud, theft, and other accidents or abuses and to assure that all such access devices will have the capability of activating all automatic teller machines and point-of-sale terminals established in this state, no automatic teller machine or point-of-sale terminal shall accept an access device which does not conform to such specifications as are generally accepted. No automatic teller machine or point-of-sale terminal shall be established or operated which does not accept an access device which conforms with such specifications.

An automatic teller machine shall bear a logo type or other identification symbol designed to advise customers that the automatic teller

machine may be activated by any access device which complies with the generally accepted specifications. A point-of-sale terminal shall either bear or the premises on which the point-of-sale terminal is established shall contain a visible logo type or other identification symbol designed to advise customers that the point-of-sale terminal may be activated by any access device which complies with the generally accepted specifications. An automatic teller machine or point-of-sale terminal may also bear, at the option of the establishing or acquiring financial institution, any of the following:

(a) The names of all individual financial institutions using such automatic teller machines or point-of-sale terminals in alphabetical order, except that the establishing or acquiring financial institution may be listed first, and in a uniform typeface, size, and color; or

(b) The logo type or symbol of any association, corporation, or other entity or organization formed by one or more of the financial institutions using such automatic teller machines or point-of-sale terminals.

~~(13) 12)~~ If the director, upon notice and hearing, determines at any time that the design or operation of a switch or provision for use thereof does discriminate against any financial institution in providing access thereto and use thereof either through access thereto or by virtue of the cost of its use, he or she may revoke his or her approval of such switch operation and immediately order the discontinuance of the operation of such switch.

~~(14) 13)~~ If it is determined by the director, after notice and hearing, that discrimination against any financial institution has taken place, that one financial institution has been preferred over another, or that any financial institution or person has not complied with any of the provisions of this section, he or she shall immediately issue a cease and desist order or an order for compliance within ten days after the date of the order, and upon noncompliance with such order, the offending financial institution shall be subject to sections 8-1,135 to 8-1,138 and to having the privileges granted in this section revoked.

~~(15) 14)~~ For purposes of this section:

(a) Access ~~shall mean~~ means the ability to utilize an automatic teller machine or a point-of-sale terminal to conduct permitted banking transactions or purchase goods and services electronically;

(b) Access device ~~shall mean~~ means a code, a transaction card, or any other means of access to a customer's account, or any combination thereof, that may be used by a customer for the purpose of initiating an electronic funds transfer at an automatic teller machine or a point-of-sale terminal;

(c) Account ~~shall mean~~ means a checking account, a savings account, a share account, or any other customer asset account held by a financial institution. Such an account may also include a line of credit which a financial institution has agreed to extend to its customer;

(d) Acquiring financial institution ~~shall mean~~ means any financial institution establishing a point-of-sale terminal;

(e) Affiliate financial institution ~~shall mean~~ means any financial institution which is a subsidiary of the same bank holding company;

(f) Electronic funds transfer ~~shall mean~~ means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through a point-of-sale terminal, an automatic teller machine, or a personal terminal for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account;

(g) Establishing financial institution ~~shall mean~~ means any financial institution establishing an automatic teller machine which has a main chartered office or approved branch office located in the State of Nebraska;

(h) Financial institution ~~shall mean~~ means a state-chartered or federally chartered bank, savings bank, building and loan association, savings and loan association, industrial loan and investment company, or credit union;

(i) Personal identification number ~~shall mean~~ means a combination of numerals or letters selected for a customer of a financial institution, a merchant, or any other third party which is used in conjunction with an access device to initiate an electronic funds transfer transaction;

(j) Personal terminal ~~shall mean~~ means a personal computer and telephone, wherever located, operated by a customer of a financial institution for the purpose of initiating a transaction affecting an account of the customer; and

(k) User financial institution ~~shall mean~~ means any financial institution which desires to avail itself of and provide its customers with automatic teller machine or point-of-sale terminal services.

~~(16) 15)~~ Nothing in this section ~~shall prohibit~~ prohibits ordinary

clearinghouse transactions between financial institutions.

(17) ~~(16)~~ Nothing in this section ~~shall require~~ requires any federally chartered establishing financial institution to obtain the approval of the director for the establishment of any automatic teller machine.

(18) ~~(17)~~ Nothing in this section shall prevent any financial institution which has a main chartered office or an approved branch office located in the State of Nebraska from participating in a national automatic teller machine program to allow its customers to use automatic teller machines located outside of the State of Nebraska which are established by out-of-state financial institutions or to allow customers of out-of-state financial institutions to use its automatic teller machines located in the State of Nebraska. Such participation and any automatic teller machine usage fees charged or received pursuant to the national automatic teller machine program shall not be considered for purposes of determining if an automatic teller machine located in the State of Nebraska has been made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch office located in the State of Nebraska which becomes a user financial institution.

Sec. 4. Section 8-1,140, Revised Statutes Supplement, 1999, is amended to read:

8-1,140. Notwithstanding any of the other provisions of the Nebraska Banking Act or any other Nebraska statute, any bank incorporated under the laws of this state and organized under the provisions of the act, or under the laws of this state as they existed prior to May 9, 1933, shall directly, or indirectly through a subsidiary or subsidiaries, have all the rights, powers, privileges, benefits, and immunities which may be exercised as of ~~March 9, 1999~~ the operative date of this section, by a federally chartered bank doing business in Nebraska, including the exercise of all powers and activities that are permitted for a financial subsidiary of a federally chartered bank. Such rights, powers, privileges, benefits, and immunities shall not relieve such bank from payment of state taxes assessed under any applicable laws of this state.

Sec. 5. Section 8-205, Revised Statutes Supplement, 1998, is amended to read:

8-205. (1) No corporation, except a bank authorized by the Director of Banking and Finance to operate a trust department, shall be authorized to transact business as a trust company under the Nebraska Trust Company Act on or after ~~September 9, 1993~~ August 1, 2000, unless it has capital stock of at least ~~three~~ five hundred thousand dollars, all of which shall be fully paid up in cash before the corporation is authorized to commence business.

(2)(a) Corporations, except a bank authorized to operate a trust department, authorized to transact business as a trust company under the act before ~~September 9, 1993~~ August 1, 2000, shall, on or after such date, maintain a capital stock of at least two hundred thousand dollars in cities of one hundred thousand inhabitants or more, one hundred thousand dollars in cities of fifty thousand and less than one hundred thousand inhabitants, fifty thousand dollars in cities of more than ten thousand and less than fifty thousand inhabitants, and twenty-five thousand dollars in cities and villages having ten thousand inhabitants or less. The population of a city for purposes of this subsection shall be the population as determined by the most recent federal decennial census.

(b) A corporation, except a bank authorized to operate a trust department, authorized to transact business as a trust company under the act before ~~September 9, 1993~~ August 1, 2000, subject to the capital stock requirement of ~~subsection (2)~~ subdivision (2)(a) of this section, which complies with the capital stock requirement of subsection (1) of this section, shall be subject to the capital stock requirement of subsection (1) of this section and shall maintain a capital stock of at least the minimum amount required by subsection (1) of this section.

(c) A corporation, except a bank authorized to operate a trust department, authorized to transact business as a trust company under the act before ~~September 9, 1993~~ August 1, 2000, subject to the capital stock requirement of ~~subsection (2)~~ subdivision (2)(a) of this section, which complies with the capital stock requirement of a corporation located in a larger city pursuant to ~~subsection (2)~~ subdivision (2)(a) of this section, shall be subject to the capital stock requirement of such a corporation located in a larger city pursuant to ~~subsection (2)~~ subdivision (2)(a) of this section and shall maintain a capital stock of at least the minimum amount required for such a corporation located in a larger city pursuant to ~~subsection (2)~~ subdivision (2)(a) of this section.

(d) A capital stock requirement once attained by a corporation pursuant to either this subsection or subsection (1) ~~or (2)~~ of this section

shall not be reduced.

(3) If at any time the department determines that the capital stock of a trust company is impaired, it may require the shareholders of the trust company to make up the capital stock impairment.

Sec. 6. Section 8-223, Revised Statutes Supplement, 1998, is amended to read:

8-223. (1) The trust company shall file with the Department of Banking and Finance during the months of January and July of each year a statement under oath of the condition of the trust company on the last business day of the preceding December and June in the manner and form required by the department. For purposes of the Nebraska Trust Company Act, the trust company's annual report shall be deemed to be the report filed with the Department of Banking and Finance during the month of January.

(2) Any trust company that fails, neglects, or refuses to make or furnish any report or any published statement required by the Nebraska Trust Company Act shall pay to the department fifty dollars for each day such failure continues, unless the department extends the time for filing such report.

Sec. 7. Section 8-301, Reissue Revised Statutes of Nebraska, is amended to read:

8-301. The Department of Banking and Finance shall have power to issue permits to and shall have general supervision and control of all building and loan associations as defined in sections 8-301 to ~~8-345~~ 8-340.01.

Sec. 8. Section 8-305, Reissue Revised Statutes of Nebraska, is amended to read:

8-305. The words loan and building association, building association, building and loan association, savings and loan association, or loan and savings association, shall form part of the corporate name of every such corporation. No individual, firm, company, corporation, or association operating in the State of Nebraska, unless (1) organized under authority of the federal government, (2) organized as a building and loan association under the authority of any foreign state and complying with the provisions of the Nebraska statutes, (3) organized and incorporated under and in accordance with the provisions of sections 8-301 to ~~8-349~~ 8-385, or (4) having been in existence and doing business in Nebraska under its present name for a period of ten years prior to January 1, 1949, shall, after August 27, 1949, use in its name the words loan and building association, building and loan association, savings and loan association, loan and savings association, loan and building, building and loan, savings and loan, loan and savings, building and savings, or savings and building, in combination with any other word or words. Any person, firm, company, corporation, or association violating ~~the provisions of~~ this section shall be guilty of a Class V misdemeanor for each offense. Each day such person, firm, or corporation shall use any such prohibited words shall be deemed a separate and distinct offense in violation ~~hereof~~ of this section.

Sec. 9. Section 8-317, Reissue Revised Statutes of Nebraska, is amended to read:

8-317. Certificates of stock or other written evidence thereof shall be issued for each account in conformity with sections 8-301 to ~~8-345~~ 8-340.01 and the bylaws. Every stockholder shall receive credit on the books of the association for all amounts paid by ~~him~~ the stockholder upon ~~his~~ the stockholder's subscription for stock, together with ~~his~~ the stockholder's pro rata share of all dividends declared, as hereinafter provided, and when the sum of such payments and dividends, less all fines or other charges, ~~shall~~ equal the par value of the shares of stock held by ~~him~~ the stockholder, ~~he~~ the stockholder shall be entitled to receive such par value, with such interest not exceeding the legal rate, as the directors may determine, from the time of maturity until paid. Holders of stock thus matured and members desiring to withdraw before such maturity shall be paid the value of their stock in the order of the maturity of or notice of withdrawal of such stock. At no time shall more than two-thirds of the unloaned funds in the treasury of the association, inclusive of such funds applicable to the demands of withdrawing stockholders, as hereinbefore provided, be applicable to the demands of holders of matured stock without the consent of the board of directors.

Sec. 10. Section 8-331, Reissue Revised Statutes of Nebraska, is amended to read:

8-331. Every association shall adopt articles of incorporation and bylaws. A copy of the articles of incorporation and bylaws of every such association shall be filed in the office of the Department of Banking and Finance, together with an application for a certificate of approval and payment of the examination fee prescribed by section 8-602. The application shall furnish and set forth facts and information desired by the Department of

Banking and Finance. The department, upon completion of its investigations and its examination of ~~said~~ the articles, bylaws, and application for certificate of approval, shall issue a certificate of ~~its~~ approval of ~~such organization~~ the association and articles of incorporation and bylaws, ~~but~~ PROVIDED, that no such certificate of approval shall be issued unless and until the department ~~shall have~~ has determined:

(1) That ~~said~~ the articles of incorporation and bylaws conform to the requirements of sections 8-301 to ~~8-349~~, 8-385 and contain a just and equitable plan for the management of the association's business;

(2) That the persons organizing ~~such~~ the association are of good character and responsibility;

(3) That in its judgment a need exists for such an institution in the community to be served;

(4) That there is a reasonable probability of its usefulness and success; and

(5) That the same can be established without undue injury to properly conducted existing local building and loan associations.

No such association shall transact any business, except the execution of its articles of incorporation, the adoption of bylaws, and the election of directors and officers, until it ~~shall have~~ has procured ~~the a~~ certificate of approval ~~above provided for~~ under this section. No amendment of the articles of incorporation or bylaws of any such association shall become operative until a copy of the ~~same~~ amendment has been filed and a certificate of approval obtained ~~as is above provided under this section~~ in regard to the original articles of incorporation and bylaws.

Sec. 11. Section 8-334, Reissue Revised Statutes of Nebraska, is amended to read:

8-334. Whenever it appears to the Department of Banking and Finance that the assets of any association or corporation organized under the laws of this state for the purpose set forth in section 8-302 do not equal the liabilities, that it is conducting its business in an unsafe or unauthorized manner, that it is jeopardizing the interest of its members, or that it is unsafe for such association or corporation to transact business, the department shall take possession of the books, records, and assets of every description of such association or corporation, and the department shall have full authority to retain such possession as against any mesne or final process issued by any court against such association or corporation whose property has been taken possession of by ~~such~~ the department, pending the further proceedings specified in sections 8-301 to ~~8-345~~ 8-340.01. If such possession is refused by the secretary, managing officer, or person in charge of such association or corporation, the department shall communicate such fact to the Attorney General together with a copy of such order of possession and it shall become the duty of the Attorney General to apply to the Court of Appeals or to the district court or county court of the county where such association or corporation is located or to a judge of any such court for a writ of assistance in placing the department in immediate possession of such association or corporation. It shall be sufficient to authorize the issuance of the writ and the taking possession of such association or corporation ~~thereunder~~ under the writ if it is made to appear that possession was refused.

Sec. 12. Section 8-336, Reissue Revised Statutes of Nebraska, is amended to read:

8-336. The Department of Banking and Finance, or any person authorized by it, shall, after having taken possession of the association ~~as aforesaid~~ under section 8-334, and pending the further proceedings specified in sections 8-301 to ~~8-345~~ 8-340.01, prepare, or have prepared, a full and true exhibit of the affairs, property, and condition of such association, including an itemized statement of all its assets and liabilities. The department shall also ~~and shall~~ receive and collect all debts, dues, and claims belonging to it, ~~and~~ pay the immediate and reasonable expense of its trust, ~~and shall~~ receive and receipt for all monthly payments becoming due after the date of coming into possession of the association, and ~~shall~~ keep the same separate and apart from the other money and effects of such association.

Sec. 13. Section 8-340, Reissue Revised Statutes of Nebraska, is amended to read:

8-340. The Department of Banking and Finance ~~shall have~~ has power to make such rules and regulations for the government of all associations of the character defined in sections 8-301 to ~~8-345~~ 8-340.01 as may, in its judgment, seem wise and expedient.

Sec. 14. Section 8-345.01, Reissue Revised Statutes of Nebraska, is amended to read:

8-345.01. Nothing in section 8-157 shall prohibit building and loan

associations as defined in sections 8-301 to ~~8-345~~ 8-340.01 from establishing and operating new automatic teller machines for the purpose of transmitting savings and loan transactions or industrial loan and investment companies as defined in sections 8-401 to 8-450 from establishing and operating new automatic teller machines for the purpose of transmitting industrial loan and investment company transactions.

Sec. 15. Section 8-346, Reissue Revised Statutes of Nebraska, is amended to read:

8-346. (1) The Director of Banking and Finance, his or her deputy, or any duly appointed examiner shall have power to make a thorough examination into all the books, records, business, and affairs of every building and loan association organized under the laws of this state ~~and every foreign building and loan association authorized to transact business in this state~~ as often as deemed necessary. The director may accept in his or her discretion, in lieu of any examination authorized by the laws of this state, a report of an examination made of a building and loan association by the Federal Deposit Insurance Corporation or the Office of Thrift Supervision, or the director may examine any such association jointly with either of these federal agencies.

(2) The director may, at his or her discretion, make available to the Federal Deposit Insurance Corporation or the Office of Thrift Supervision copies of reports of any such examination or any information furnished to or obtained by him or her in such examination. The rights, powers, duties, and privileges of the director, his or her deputy, or any duly appointed examiner in connection with such examinations shall be the same as is or may be provided by law in reference to the examinations of banks.

Sec. 16. Section 8-355, Revised Statutes Supplement, 1999, is amended to read:

8-355. Notwithstanding any of the provisions of Chapter 8, article 3, or any other Nebraska statute, except as provided in section 8-345.02, any association incorporated under the laws of the State of Nebraska and organized under the provisions of such article shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of ~~March 9, 1999~~ the operative date of this section, by a federal savings and loan association doing business in Nebraska. Such rights, powers, privileges, benefits, and immunities shall not relieve such association from payment of state taxes assessed under any applicable laws of this state.

Sec. 17. Section 8-602, Revised Statutes Supplement, 1999, is amended to read:

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

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

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

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

(4) For issuing to cooperative credit associations a charter, authority, or license to do business in this state, twenty-five dollars;

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

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

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

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

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

(10) For investigating the applications required by sections 8-120, 8-331, and 8-403 and the documents required by sections 8-201, 21-1312, and 21-1313, the cost of such examination, investigation, and inspection, including all legal expenses and the cost of any hearing transcript, with a minimum fee under (a) section 8-120 of two thousand five hundred dollars, (b) section 8-331 of two thousand dollars, (c) section 8-403 of two thousand five hundred dollars, and (d) sections 8-201, 21-1312, and 21-1313 of one thousand dollars. The department may require the applicant to procure and give a surety bond in such principal amount as the department may determine and conditioned for the payment of the fees provided in this subdivision;

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

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

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

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

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

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

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

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

(19) For investigating an application for a purchase of an eligible savings association under section 8-1515, five hundred dollars;

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

(21) For investigating an application or a notice to establish a representative trust office, five hundred dollars.

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

Sec. 18. Section 8-910, Revised Statutes Supplement, 1998, is amended to read:

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

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

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

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

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

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

(2) The prohibition set forth in subsection (1) of this section shall not apply if:

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

(b) The bank holding company does not have a name deceptively

similar to an existing unaffiliated bank or bank holding company located in Nebraska;

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

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

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

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

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

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

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

Sec. 19. Section 8-1103, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

(d) The registration of an investment adviser representative shall not be effective unless the investment adviser representative is employed by a

registered investment adviser or a federal covered adviser. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser shall promptly notify the director. When an investment adviser representative begins or terminates employment with a federal covered adviser, the investment adviser representative shall promptly notify the director.

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

(a) The applicant's form and place of organization;

(b) The applicant's proposed method of doing business;

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

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

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

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

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

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

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

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

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

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

specified by section 8-1118; and

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

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

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

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

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

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

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

(c) Every registered broker-dealer, except as provided in section 15

of the Securities Exchange Act of 1934, and investment adviser, except as provided by section 222 of the Investment Advisers Act of 1940, shall file such financial reports as the director may prescribe by rule and regulation or order.

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

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

(9)(a) The director may by order deny, suspend, or revoke registration of any broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative or bar, censure, or impose a fine pursuant to subsection (4) of section 8-1108.01 on any registrant or any partner, limited liability company member, officer, director, or person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director for a registrant from employment with any broker-dealer, issuer-dealer, or investment adviser if he or she finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer, issuer-dealer, or investment adviser, any partner, limited liability company member, officer, director, person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or person directly or indirectly controlling the broker-dealer, issuer-dealer, or investment adviser:

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

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

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

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

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

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

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

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

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

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

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

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

(b)(i) The director may not institute a proceeding under this section on the basis of a final judicial or administrative order made known to him or her by the applicant prior to the effective date of the registration unless the proceeding is instituted within the next ninety days following registration. For purposes of this subdivision, a final judicial or administrative order does not include an order that is stayed or subject to further review or appeal. This subdivision shall not apply to renewed registrations.

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

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

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

Sec. 20. Section 8-1111, Reissue Revised Statutes of Nebraska, 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)(a) Any nonissuer transaction by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days if, at the time of the transaction:

(i) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;

(ii) The security is sold at a price reasonably related to the current market price of the security;

(iii) The security does not constitute the whole or part of an

unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

(iv) A nationally recognized securities manual designated by rule and regulation or order of the director or a document filed with the Securities and Exchange Commission which is publicly available through the Electronic Data Gathering and Retrieval System (EDGAR) contains:

(A) A description of the business and operations of the issuer;

(B) The names of the issuer's officers and the names of the issuer's directors, if any, or, in the case of a non-United-States issuer, the corporate equivalents of such persons in the issuer's country of domicile;

(C) An audited balance sheet of the issuer as of a date within eighteen months or, in the case of a reorganization or merger when parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and

(D) An audited income statement for each of the issuer's immediately preceding two fiscal years, or for the period of existence of the issuer if in existence for less than two years, or, in the case of a reorganization or merger when the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and

(v) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System (NASDAQ), unless:

(A) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

(B) The issuer of the security has been engaged in continuous business, including predecessors, for at least three years; or

(C) The issuer of the security has total assets of at least two million dollars based on an audited balance sheet as of a date within eighteen months or, in the case of a reorganization or merger when parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; or

(b) Any nonissuer transaction in a security by a registered agent of a registered broker-dealer if:

(i) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons; and

(ii) The security is senior in rank to the common stock of the issuer both as to payment of dividends or interest and upon dissolution or liquidation of the issuer and such security has been outstanding at least three years and the issuer or any predecessor has not defaulted within the current fiscal year or the three immediately preceding fiscal years in the payment of any dividend, interest, principal, or sinking fund installment on the security when due and payable;

(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, 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 (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 general or public advertisements or 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 means 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. Failure to provide such notice may be cured by an order issued by the director in his or her discretion;

(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, and (e) there is no general or public advertising or solicitation.

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. 21. Section 8-1120, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

(3) The director may from time to time make, amend, and rescind such rules and forms as are necessary to carry out the act. No rule or form may be made unless the director finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the act.

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

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

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

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

(7) A document is filed when it is received by the director. The director shall keep a register of all applications for registration and registration statements which are or have ever been effective under the Securities Act of Nebraska and all denial, suspension, or revocation orders which have ever been entered under the act. The register shall be open for

public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules as the director shall prescribe.

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

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

Sec. 22. Section 8-1502, Reissue Revised Statutes of Nebraska, is amended to read:

8-1502. (1) Except as provided in subsection (2) of this section, no person acting personally or as agent shall acquire control of any state-chartered bank, trust company, or industrial loan and investment company without first giving sixty days' notice to the Department of Banking and Finance on forms provided by the department of such proposed acquisition.

The Director of Banking and Finance, upon receipt of such notice, shall act upon it within thirty days, and, unless he or she disapproves the proposed acquisition within that period of time, it may become effective on the sixty-first day after receipt without his or her approval, except that the director may extend the thirty-day period an additional thirty days if in his or her judgment any material information submitted is substantially inaccurate or the acquiring party has not furnished all the information required by sections 8-1501 to 8-1505 or by the director.

An acquisition may be made prior to the expiration of the disapproval period if the director issues written notice of his or her intent not to disapprove the action.

Within three days after his or her decision to disapprove any proposed acquisition, the director shall notify the acquiring party in writing of the disapproval. The notice shall provide a statement of the basis for the disapproval.

(2) The notice requirements of subsection (1) of this section shall not apply when:

(a) Shares of a state-chartered bank, trust company, or industrial loan and investment company are acquired by a person in the regular course of securing or collecting a debt previously contracted in good faith or through inheritance or a bona fide gift if notice of such acquisition is given to the department, on forms provided by the department, within ten days after the acquisition; or

(b) The director, the Governor, and the Secretary of State jointly determine that an emergency exists which requires expeditious action or that the department must act immediately to prevent probable failure of the institution to be acquired.

Sec. 23. Section 21-1701, Reissue Revised Statutes of Nebraska, is amended to read:

21-1701. Sections 21-1701 to 21-17,116 and section 25 of this act shall be known and may be cited as the Credit Union Act.

Sec. 24. Section 21-1767, Reissue Revised Statutes of Nebraska, is amended to read:

21-1767. (1) The board of directors shall have regular meetings as often as necessary but not less frequently than once a month unless otherwise approved by the ~~director~~ Director of Banking and Finance. ~~If a quorum of the board is present at the scheduled place for the regular board meeting, the board members not present may participate by means of a conference telephone or similar communications equipment in which all individuals participating in the meeting can hear each other.~~ Special meetings of the board may be called as provided in the bylaws. ~~and may be held by means of a conference telephone or similar communications equipment in which all persons participating in the meeting can hear each other.~~

(2) Unless the articles of association or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means shall be deemed to be present in person at the meeting.

(3) If the ~~director~~ Director of Banking and Finance deems it expedient, he or she may call a meeting of the board of directors of any credit union, for any purpose, by giving notice to the directors of the time, place, and purpose thereof at least three business days prior to the meeting, either by personal service or by registered or certified mail sent to their

last-known addresses as shown on the credit union books.

~~(2)~~ (4) A full and complete record of the proceedings and business of all meetings of the board of directors shall be recorded in the minutes of the meeting.

Sec. 25. The department shall require each credit union to obtain a fidelity bond, naming the credit union as obligee, in an amount to be determined by the department. The bond shall be issued by an authorized insurer and shall be conditioned to protect and indemnify the credit union from loss which it may sustain of money or other personal property, including that for which the credit union is responsible through or by reason of the fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, misapplication, misappropriation, or any other dishonest or criminal act of or by any of its officers, directors, supervisory committee members, credit committee members, or employees. Such bond may contain a deductible clause in an amount to be approved by the director. An executed copy of the bond shall be filed with and approved by the director and shall remain a part of the records of the department. If the premium of the bond is not paid, the bond shall not be canceled or subject to cancellation unless at least ten days' advance notice, in writing, is filed with the department by the insurer. No bond which is current with respect to premium payments shall be canceled or subject to cancellation unless at least forty-five days' advance notice, in writing, is filed with the department by the insurer. The bond shall always be open to public inspection during the office hours of the department. In the event a bond is canceled, the department may take whatever action it deems appropriate in connection with the continued operation of the credit union involved.

Sec. 26. Section 21-1768, Reissue Revised Statutes of Nebraska, is amended to read:

21-1768. In addition to the duties found elsewhere in the Credit Union Act, the board of directors shall:

(1) Act upon applications for membership or appoint one or more membership officers to act on applications for membership under such conditions as prescribed by the board. A person denied membership by a membership officer may appeal the denial in writing to the board;

(2) Purchase adequate bond coverage ~~to protect the credit union against losses specified in the rules and regulations of the department as required by section 25 of this act;~~

(3) Report to the department all bond claims within thirty calendar days after filing and all frauds and embezzlements involving officials or employees within thirty calendar days after discovery;

(4) Determine from time to time the interest rate or rates, consistent with the Credit Union Act, to be charged on loans, or under such conditions as prescribed by the board, delegate the authority to make such determinations and to authorize any interest refunds on such classes of loans and under such conditions as the board prescribes;

(5) Establish the policies of the credit union with respect to (a) shares, share drafts, and share certificates and (b) the granting of loans and the extending of lines of credit, including, subject to the limitations contained in section 21-1791, the maximum amount which may be loaned to any one member;

(6) Declare dividends on shares or delegate the authority to declare dividends under such conditions as prescribed by the board;

(7) Have charge of investment of funds, except that the board may appoint an investment committee of not less than three directors or an investment officer who is either a member of the board of directors or an employee of the credit union to make investments under conditions and policies established by the board and to make monthly reports to the board;

(8) Establish written policies for investments, including deposits and loans other than those to individuals, which address, at a minimum, investment objectives, investment responsibility, portfolio composition, diversification, and the financial condition of the investment obligor;

(9) Authorize the employment of such persons necessary to carry on the business of the credit union and fix the compensation, if any, of the chief executive officer;

(10) Approve an annual operating budget for the credit union which includes provisions for the compensation of employees;

(11) Designate a depository or depositories for the funds of the credit union;

(12) Suspend or remove any or all members of the credit committee, if any, for failure to perform their duties;

(13) Appoint any special committee deemed necessary;

(14) Adopt and enforce the overall policies for the operation of the

credit union; and

(15) Perform such other duties as directed by the members of the credit union from time to time and perform or authorize any action not inconsistent with the Credit Union Act and not specifically reserved by the bylaws for the members of the credit union.

Sec. 27. Section 21-17,115, Revised Statutes Supplement, 1999, is amended to read:

21-17,115. Notwithstanding any of the other provisions of the Credit Union Act or any other Nebraska statute, any credit union incorporated under the laws of the State of Nebraska and organized under the provisions of the act shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of ~~February 25, 1999~~ the operative date of this section, by a federal credit union doing business in Nebraska on the condition that such rights, powers, privileges, benefits, and immunities shall not relieve such credit union from payment of state taxes assessed under any applicable laws of this state.

Sec. 28. Section 30-3205, Reissue Revised Statutes of Nebraska, is amended to read:

30-3205. (1) A fiduciary holding funds for investment may invest such funds in securities of, or other interests in, any open-end or closed-end management-type investment company or investment trust registered pursuant to the federal Investment Company Act of 1940, as amended, if a court order, will, agreement, or other instrument creating or defining the investment powers of the fiduciary directs, requires, authorizes, or permits the investment of such funds in any of the following: (a) Such investments as the fiduciary may, in his or her discretion, select; (b) investments generally, other than those in which fiduciaries are by law authorized to invest trust funds; and (c) United States Government obligations if the portfolio of such investment company or investment trust is limited to United States Government obligations and to repurchase agreements fully collateralized by such obligations and if such investment company or investment trust takes delivery of the collateral, either directly or through an authorized custodian.

(2) A bank or trust company acting as a fiduciary, agent, or otherwise may, in the exercise of its investment discretion or at the direction of another person authorized to direct investment of funds held by the bank or trust company as a fiduciary, invest and reinvest interests in the securities of an open-end or closed-end management-type investment company or investment trust registered pursuant to the federal Investment Company Act of 1940, as amended, or may retain, sell, or exchange such interests so long as the portfolio of the investment company or investment trust as an entity consists substantially of investments not prohibited by the instrument governing the fiduciary relationship. The fact that the bank or trust company or an affiliate of the bank or trust company provides services to the investment company or investment trust, such as that of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager, or otherwise, and is receiving reasonable compensation for the services shall not preclude the bank or trust company from investing, reinvesting, retaining, or exchanging any interest held by the trust estate in the securities of any open-end or closed-end management-type investment company or investment trust registered pursuant to the federal Investment Company Act of 1940, as amended.

(3) The compensation received by a bank or trust company or affiliate of the bank or trust company for providing investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager, or other such services to the investment company or investment trust may be in addition to the compensation to which the bank or trust company or affiliate of the bank or trust company is otherwise entitled to receive from the trust if the basis on which the compensation from the investment company or investment trust is calculated is expressed by a percentage of the asset value, a percentage of the income earned, or the actual amount charged and is (a) consented to in writing by all persons entitled to receive statements of account activity and (b) disclosed initially by prospectus and at least annually thereafter to such persons by account, statement, or any other written means.

For purposes of this subsection, a conservator or other legal guardian appointed by a court of competent jurisdiction shall represent any person entitled to receive statements of account activity. In addition, any person appointed to serve as agent under a valid durable power of attorney pursuant to the Uniform Durable Power of Attorney Act may represent any person entitled to receive statements of account activity. Person entitled to receive statements of account activity does not include any person who is not acting in a fiduciary capacity but has been designated by any beneficiary of a fiduciary account to receive statements of account activity on behalf of or in

addition to such person.

Sec. 29. Section 45-116, Reissue Revised Statutes of Nebraska, is amended to read:

45-116. (1) Any person may, after procuring a license from the Department of Banking and Finance, engage or continue in the business of making loans of money, and charge, contract for, and receive the maximum for interest and other charges in accordance with the authorization and requirements of sections 45-114 to 45-158.

(2)(a) A license shall not be required for an affiliate of a licensee if the activities of the affiliate in this state are limited solely to the securitization of loans made by the licensee and the servicing rights to the loans are retained by the licensee or assigned or otherwise transferred to a financial institution, licensee, or permittee.

(b) For purposes of this subsection:

(i) Affiliate means an entity that controls, is controlled by, or is under common control with another entity;

(ii) Control means to own directly or indirectly or to control in any manner twenty-five percent of the voting shares of an entity or to control in any manner the election of the majority of directors of any entity; and

(iii) Securitization means the placing of individual installment loans made by licensees into a commingled or pooled security that is subsequently sold or otherwise transferred to another entity.

(c) Nothing in this subsection shall be construed to exempt a licensee or affiliate from the provisions of the Securities Act of Nebraska.

Sec. 30. Section 45-137, Revised Statutes Supplement, 1999, is amended to read:

45-137. (1) Except as provided in section 45-138 and subsection (6) of this section, every licensee hereunder may make loans and may contract for and receive thereon charges at a rate not exceeding twenty-four percent per annum on that part of the unpaid principal balance on any loan not in excess of one thousand dollars and twenty-one percent per annum on any remainder of such unpaid principal balance. Charges on loans made under sections 45-114 to 45-158 shall not be paid, deducted, or received in advance. The contracting for, charging of, or receiving of charges as provided for in subsection (2) of this section shall not be deemed to be the payment, deduction, or receipt of such charges in advance.

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

(a) Notwithstanding the requirement for substantially equal and consecutive monthly installments, the first installment period may exceed one month by as much as fifteen days and the charges for each day exceeding one month shall be one-thirtieth of the charges which would be applicable to a first installment period of one month. The charge for extra days in the first installment period may be added to the first installment and such charges for such extra days shall be excluded in computing any rebate;

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

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

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

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

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

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

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

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

(4) Except as provided in subsections (5) and (6) of this section, in addition to that provided for under sections 45-114 to 45-158, no further or other amount whatsoever shall be directly or indirectly charged, contracted for, or received. If any amount, in excess of the charges permitted, is charged, contracted for, or received, the contract of loan shall not on that account be void, but the licensee shall have no right to collect or receive any interest or other charges whatsoever. If such interest or other charges have been collected or contracted for, the licensee shall refund to the borrower all interest and other charges collected and shall not collect any interest or other charges contracted for and thereafter due on the loan involved, as liquidated damages, and the licensee or its assignee, if found liable, shall pay the costs of any action relating thereto, including a reasonable attorney's fee. No licensee shall be found liable under the provisions of this subsection if the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

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

(6)(a) Loans secured solely by real estate shall not be subject to the limitations on the rate of interest provided in subsection (1) of this section or the limitations on the nonrefundable loan origination fee under subsection (5) of this section if (i) the principal amount of the loan is seven thousand five hundred dollars or more and (ii) the sum of the principal amount of the loan and the balances of all other liens against the property do not exceed one hundred percent of the appraised value of the property.

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

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

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

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

(7)(a) A licensee making a mortgage loan as defined in subdivision (8) of section 45-702 on real property as defined in subdivision (10) of such section shall comply with subdivisions (1), (2), (3), (4), (6), and (7) of section 45-711.

(b) A licensee making a loan pursuant to this subsection shall, not later than January 1, 2001, 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 services mortgage loans, it shall continue to maintain a toll-free telephone number or accept collect calls to respond to inquiries from borrowers for a period of ninety days 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 subsection.

Sec. 31. Section 45-205, Reissue Revised Statutes of Nebraska, is amended to read:

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

Sec. 32. Section 45-337, Reissue Revised Statutes of Nebraska, is amended to read:

45-337. (1) The amount, if any, included for insurance, which may be purchased by the holder of the contract, shall not exceed the applicable premium rates chargeable in accordance with filings, if any, with the Department of Insurance. If dual interest insurance on the goods is purchased by the holder it shall, within thirty days after execution of the installment contract, send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages, and all the terms and conditions of the contract or contracts of insurance.

(2) If any insurance is canceled or the premium adjusted during the term of the installment contract, any refund of the insurance premium plus the unearned time-price differential thereon received by the holder shall be credited by the holder to the last maturing installment of the contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder or either of them.

(3) If any insurance is cancelled due to the payment of all sums for which the buyer is liable under an installment contract, the holder of the installment contract shall, upon receipt of payment of all sums due, send notice to the buyer within fifteen business days of the name, address, and telephone number of the insurance company which issued the insurance contract or the party responsible for any refund, and notice that the buyer may be

eligible for a refund. A copy of such notice shall be retained by the holder of the installment contract.

(4) The holder may also purchase nonfiling insurance and charge a reasonable fee. The fee shall not exceed the amount of fees and charges prescribed by law which would have been paid to public officials for filing, perfecting, releasing, and satisfying any lien or security interest in the goods or services.

Sec. 33. Section 45-717, Reissue Revised Statutes of Nebraska, is amended to read:

45-717. (1) The department may order a ~~licensee~~ any person to cease and desist whenever the department determines that the ~~licensee~~ person has violated any provision of the Mortgage Bankers Registration and Licensing Act. Upon entry of a cease and desist order, the director shall promptly notify the ~~licensee~~ affected person that such order has been entered, of the reasons for such order, and that upon receipt within ten business days after the date of the order of written request from the ~~licensee~~ affected person a hearing will be scheduled within ten business days after the date of receipt of the written request unless the ~~licensee~~ person consents to a later date. If a hearing is not requested and none is ordered by the director, the order shall remain in effect until it is modified or vacated.

(2) The director may vacate or modify a cease and desist order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(3) For the purpose of any investigation or proceeding under the act, the director or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry. If any person refuses to comply with a subpoena issued under this section or to testify with respect to any matter relevant to the proceeding, the district court of Lancaster County may, on application of the director, issue an order requiring the person to comply with the subpoena and to testify. Failure to obey an order of the court to comply with the subpoena may be punished by the court as a civil contempt.

(4) A person aggrieved by a cease and desist order of the director may obtain judicial review of the order in the manner prescribed in the Administrative Procedure Act. The director may obtain an order from the district court of Lancaster County for the enforcement of the cease and desist order.

(5) A person who violates a cease and desist order of the director may, after notice and hearing and upon further order of the director, be subject to a penalty of not more than five thousand dollars for each act in violation of the cease and desist order.

(6) The director may request the Attorney General to enforce the Mortgage Bankers Registration and Licensing Act. A civil enforcement action by the Attorney General may be filed in Lancaster County. A civil enforcement action by the Attorney General may seek temporary and permanent injunctive relief, restitution for a borrower aggrieved by a violation of the act, and costs for the investigation and prosecution of the enforcement action.

(7) Except when expressly authorized, there shall be no private cause of action for any violation of the act.

(8) Failure to comply with the Mortgage Bankers Registration and Licensing Act shall not affect the validity or enforceability of any mortgage loan. A person acquiring a mortgage loan or an interest in a mortgage loan is not required to ascertain the extent of compliance with the act.

(9) Nothing in the act shall limit any statutory or common-law right of any person to bring any action in any court for any act involved in the mortgage banking business or the right of the state to punish any person for any violation of law.

Sec. 34. Section 45-919, Reissue Revised Statutes of Nebraska, is amended to read:

45-919. (1) No licensee shall:

(a) At any one time hold from any one maker more than two checks;

(b) At any one time hold from any one maker a check or checks in an aggregate face amount of more than five hundred dollars;

(c) Hold or agree to hold a check for more than thirty-one days. A check which is in the process of collection for the reason that it was not negotiable on the day agreed upon shall not be deemed as being held in excess of the thirty-one-day period;

(d) Require the maker to receive payment by a method which causes the maker to pay additional or further fees and charges to the licensee or other person; or

(e) Accept a check as repayment, refinancing, or any other consolidation of a check or checks held by the same licensee.

(2) For purposes of this section, licensee shall include a person related to the licensee by common ownership or control, a person in whom such licensee has any financial interest, or any employee or agent of the licensee.

Sec. 35. Section 72-1263, Reissue Revised Statutes of Nebraska, is amended to read:

72-1263. The state investment officer shall, out of funds available for investment, cause to be offered to all banks and building and loan associations in this state a time deposit open account in the amount of ~~one~~ three hundred ~~fifty~~ thousand dollars, except that any bank or building and loan association may accept such offer in ~~amounts~~ increments of one hundred thousand dollars or fifty thousand dollars. Such deposit shall be available at any investment date to such banks or building and loan associations as are willing to meet the rate and other requirements set forth in the Nebraska Capital Expansion Act and make application therefor. The balance of the funds available for investment shall then be offered at the same rate to the banks and building and loan associations making application for and otherwise qualifying for such deposit. Such deposit shall be offered in increments of fifty thousand dollars. No deposit shall be made when doing so would violate a fiduciary obligation of the state or section 72-1268.07. All funds not investable under this section shall be invested as provided by section 72-1246. No one bank or building and loan association may receive for deposit a sum of more than ~~five hundred thousand~~ one million dollars or an amount not to exceed the amount covered by the Federal Deposit Insurance Corporation, plus twice the institution's equity capital or net worth or as otherwise provided for by law, whichever is less.

Sec. 36. Section 72-1264, Reissue Revised Statutes of Nebraska, is amended to read:

72-1264. Funds shall be offered for deposit as they become available. The time of such deposit shall be known as an investment date. The state investment officer may make prudent interim investments. If the funds available for investment are less than the amount required for banks or building and loan associations qualified for the applicable minimum deposit of ~~one~~ three hundred ~~fifty~~ thousand dollars, the state investment officer shall prorate the available funds among the desiring banks or building and loan associations.

Sec. 37. Section 77-2327, Reissue Revised Statutes of Nebraska, is amended to read:

77-2327. All bonds given to secure deposits of public money by the state or by any county, except for deposit guaranty bonds defined under section 77-2387, shall expire on January 1 of each year.

Sec. 38. Section 77-2386, Reissue Revised Statutes of Nebraska, is amended to read:

77-2386. Sections 77-2386 to 77-2397 and sections 43 to 51 of this act shall be known and may be cited as the Public Funds Deposit Security Act.

Sec. 39. Section 77-2387, Revised Statutes Supplement, 1998, is amended to read:

77-2387. For purposes of the Public Funds Deposit Security Act, unless the context otherwise requires:

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

(2) Bank means any state-chartered or federally chartered bank which has a main chartered office or branch in this state;

(3) ~~(2)~~ Capital stock financial institution means a capital stock state building and loan association, a capital stock federal savings and loan association, a capital stock federal savings bank, a capital stock industrial loan and investment company, and a capital stock state savings bank which has a main chartered office in this state;

(4) Control means to own directly or indirectly or to control in any manner twenty-five percent of the voting shares of any bank, capital stock financial institution, or holding company or to control in any manner the election of the majority of directors of any bank, capital stock financial institution, or holding company;

(5) ~~(3)~~ Custodial official means an officer or an employee of the State of Nebraska or any political subdivision who, by law, is made custodian of or has control over public money or public funds subject to the act or the security for the deposit of public money or public funds subject to the act;

(6) ~~(4)~~ Deposit guaranty bond means a bond underwritten by an insurance company authorized to do business in this state which provides coverage for deposits of a governing authority which are in excess of the amounts insured by the Federal Deposit Insurance Corporation;

(7) Event of default means the issuance of an order by a supervisory authority or a receiver which restrains a bank or capital stock financial institution from paying its deposit liabilities;

(8) ~~(5)~~ Governing authority means the official, or the governing board, council, or other body or group of officials, authorized to designate a bank or capital stock financial institution as a depository of public money or public funds subject to the act; ~~and~~

~~(6)~~ (9) Governmental unit means the State of Nebraska or any political subdivision thereof; and

(10) Securities means:

(a) Bonds or obligations fully and unconditionally guaranteed both as to principal and interest by the United States Government;

(b) United States Government notes, certificates of indebtedness, or treasury bills of any issue;

(c) United States Government bonds;

(d) United States Government guaranteed bonds or notes;

(e) Bonds or notes of United States Government agencies;

(f) Bonds of any state or political subdivision which are fully defeased as to principal and interest by any combination of bonds or notes authorized in subdivision (c), (d), or (e) of this subdivision;

(g) Bonds or obligations, including mortgage-backed obligations, issued by the Federal Home Loan Mortgage Corporation, the federal farm credit system, a Federal Home Loan Bank, or the Federal National Mortgage Association;

(h) Securities issued under the authority of the Federal Farm Loan Act;

(i) Loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture;

(j) Guaranty agreements of the Small Business Administration of the United States Government;

(k) Bonds or obligations of any county, city, village, metropolitan utilities district, public power and irrigation district, sewer district, fire protection district, rural water district, or school district in this state which have been issued and registered as required by law or which have been issued under the direction and with the approval of the Auditor of Public Accounts;

(l) Bonds of the State of Nebraska or of any other state which are purchased by the Board of Educational Lands and Funds of this state for investment in the permanent school fund or which are purchased by the state investment officer of this state for investment in the permanent school fund;

(m) Bonds or obligations of another state, or a political subdivision of another state, which are rated within the two highest classifications of prime by at least one of the standard rating services;

(n) Warrants of the State of Nebraska;

(o) Warrants of any county, city, village, local hospital district, or school district in this state; and

(p) Irrevocable, nontransferable, unconditional standby letters of credit issued by the Federal Home Loan Bank of Topeka.

Sec. 40. Section 77-2390, Reissue Revised Statutes of Nebraska, is amended to read:

77-2390. Any bank or capital stock financial institution pledging securities to secure deposits of public money or public funds pursuant to section 77-2389 may deposit, with the approval of the governing authority, the securities in a federal reserve bank or a bank, federal home loan bank, capital stock financial institution, or trust company approved by the governing authority, and take for the same a trust receipt in the form of and executed in the manner approved by the governing authority. When the transaction has been approved, the bank or capital stock financial institution may deposit the trust receipt in lieu of the securities evidenced by the trust receipt.

Sec. 41. Section 77-2391, Revised Statutes Supplement, 1999, is amended to read:

77-2391. (1) Securities pledged or securities in which a security interest has been granted pursuant to section 77-2389 shall be delivered to and held by a federal reserve bank or by a branch of a federal reserve bank, a federal home loan bank, or another responsible bank, capital stock financial institution, or trust company, other than the pledgor or the bank or capital stock financial institution granting the security interest, as designated by the governing authority, with appropriate joint custody and the pledge agreement or security interest as described in subsection (2) of this section, in a form approved by the governing authority.

(2) The delivery by the bank or capital stock financial institution designated as a depository to the custodial official of a written receipt or acknowledgment from a federal reserve bank or branch of a federal reserve bank, a federal home loan bank, or another bank, capital stock financial institution, or trust company, other than the bank or capital stock financial institution granting the security interest, that includes the title of such custodial official, describes the securities identified on the books or records of the depository, and provides that the securities or the proceeds of the securities will be delivered only upon the surrender of the written receipt or the acknowledgment duly executed by the custodial official designated on the written receipt or the acknowledgment and by the authorized representative of the depository shall, together with the custodial official's actual and continued possession of the written receipt or acknowledgment, constitute a valid and perfected security interest in favor of the custodial official in and to the identified securities. Articles 8 and 9, Uniform Commercial Code, shall not apply to any security interest arising under this section.

Sec. 42. Section 77-2395, Reissue Revised Statutes of Nebraska, is amended to read:

77-2395. (1) If a bank or capital stock financial institution designated as a depository furnishes securities pursuant to ~~the Public Funds Deposit Security Act~~ section 77-2389, the custodial official shall not have on deposit in such depository any public money or public funds in excess of the amount insured by the Federal Deposit Insurance Corporation, unless and until the depository has furnished to the custodial official securities, the market value of which are in an amount not less than one hundred two percent of the amount on deposit which is in excess of the amount so insured.

(2) If a bank or capital stock financial institution designated as a depository furnishes securities pursuant to subsection (1) of section 43 of this act, the custodial official shall not have on deposit in such depository any public money or public funds in excess of the amount insured by the Federal Deposit Insurance Corporation, unless and until the depository has furnished to the custodial official securities, the market value of which are in an amount not less than one hundred five percent of the amount on deposit which is in excess of the amount so insured.

~~(2)~~ (3) If a bank or capital stock financial institution designated as a depository provides a deposit guaranty bond pursuant to the act, the custodial official shall not have on deposit in such depository any public money or public funds in excess of the amount insured by the Federal Deposit Insurance Corporation, unless and until the depository has provided to the custodial official a deposit guaranty bond in an amount not less than the amount on deposit which is in excess of the amount so insured.

Sec. 43. (1) As an alternative to the requirements to secure the deposit of public money or public funds in excess of the amount insured by the Federal Deposit Insurance Corporation pursuant to sections 77-2389 and 77-2394, a bank or capital stock financial institution designated as a public depository may secure the deposits of one or more governmental units by providing a deposit guaranty bond or by depositing, pledging, or granting a security interest in a single pool of securities to secure the repayment of all public money or public funds deposited in the bank or capital stock financial institution by such governmental units and not otherwise secured pursuant to law, if at all times the total value of the deposit guaranty bond is at least equal to the amount on deposit which is in excess of the amount so insured or the aggregate market value of the pool of securities so deposited, pledged, or in which a security interest is granted is at least equal to one hundred five percent of the amount on deposit which is in excess of the amount so insured. Each such bank or capital stock financial institution shall carry on its accounting records at all times a general ledger or other appropriate account of the total amount of all public money or public funds to be secured by a deposit guaranty bond or by the pool of securities, as determined at the opening of business each day, and the total value of the deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest is granted to secure such public money or public funds.

(2) Only the securities listed in subdivision (10) of section 77-2387 may be provided and accepted as security for the deposit of public money or public funds and shall be eligible as collateral. The qualified trustee shall accept no security which is not listed in subdivision (10) of section 77-2387.

Sec. 44. Each governmental unit depositing public money or public funds in a bank or capital stock financial institution shall have an undivided beneficial interest under the deposit guaranty bond provided or an undivided

security interest in the pool of securities deposited, pledged, or in which a security interest is granted by a bank or capital stock financial institution pursuant to subsection (1) of section 43 of this act in the proportion that the total amount of the governmental unit's public money or public funds secured by the deposit guaranty bond or by the pool of securities bears to the total amount of public money or public funds so secured. Articles 8 and 9, Uniform Commercial Code, shall not apply to any security interest arising under this section.

Sec. 45. (1) Any bank or capital stock financial institution in which public money or public funds have been deposited which satisfies its requirement to secure the deposit of public money or public funds in excess of the amount insured by the Federal Deposit Insurance Corporation by the deposit, pledge, or granting of a security interest in a single pool of securities shall designate a qualified trustee and place with the trustee for holding the securities so deposited, pledged, or in which a security interest has been granted pursuant to subsection (1) of section 43 of this act. The bank or capital stock financial institution shall give written notice of the designation of the qualified trustee to any custodial official depositing public money or public funds for which such securities are deposited, pledged, or in which a security interest has been granted, and if an affiliate of the bank or capital stock financial institution is to serve as the qualified trustee, the notice shall disclose the affiliate relationship and shall be given prior to designation of the qualified trustee. The custodial official shall accept the written receipt of the trustee describing the pool of securities so deposited, pledged, or in which a security interest has been granted by the bank or capital stock financial institution, a copy of which shall also be delivered to the bank or capital stock financial institution.

(2) Any bank or capital stock financial institution which satisfies its requirement to secure the deposit of public money or public funds in excess of the amount insured by the Federal Deposit Insurance Corporation under the Public Funds Deposit Security Act by providing a deposit guaranty bond pursuant to the provisions of subsection (1) of section 43 of this act shall designate a qualified trustee and cause to be issued a deposit guaranty bond which runs to the qualified trustee and which is conditioned that the bank or capital stock financial institution shall render to the qualified trustee the statement required under subsection (3) of this section.

(3) Each bank or capital stock financial institution which satisfies its requirement to secure the deposit of public money or public funds in excess of the amount insured by the Federal Deposit Insurance Corporation by providing a deposit guaranty bond or by depositing, pledging, or granting a security interest in a single pool of securities shall, on or before the tenth day of each month, render to the qualified trustee a statement showing as of the last business day of the previous month (a) the amount of public money or public funds deposited in such bank or capital stock financial institution that is not insured by the Federal Deposit Insurance Corporation (i) by each custodial official separately and (ii) by all custodial officials in the aggregate and (b) the total value of the deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest has been granted pursuant to subsection (1) of section 43 of this act. Any qualified trustee shall be authorized, acting for the benefit of custodial officials, to take any and all actions necessary to take title to or to effect a first perfected security interest in the securities deposited, pledged, or in which a security interest is granted.

(4) Within ten days after receiving the statement required under subsection (3) of this section from a bank or capital stock financial institution, the qualified trustee shall provide a report to each custodial official listed in such statement reflecting (a) the amount of public money or public funds deposited in such bank or capital stock financial institution by each custodial official as of the last business day of the previous month that is not insured by the Federal Deposit Insurance Corporation and that is secured pursuant to subsection (1) of section 43 of this act and (b) the total value of the deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest is granted pursuant to subsection (1) of section 43 of this act as of the last business day of the previous month. The report shall clearly notify the custodial official if the value of the securities deposited does not meet the statutory requirement.

Sec. 46. Any Federal Reserve Bank, branch of a Federal Reserve Bank, a federal home loan bank, or another responsible bank with a main-chartered office or branch in this state which is authorized to exercise trust powers, capital stock financial institution with a main-chartered office or branch in this state which is authorized to exercise trust powers, or trust

company, other than the pledgor or the bank or capital stock financial institution providing the deposit guaranty bond or granting the security interest, is qualified to act as a qualified trustee for the receipt of a deposit guaranty bond or the holding of securities under section 45 of this act. The bank or capital stock financial institution in which public money or public funds are deposited may at any time substitute, exchange, or release securities deposited with a qualified trustee if such substitution, exchange, or release does not reduce the aggregate market value of the pool of securities to an amount that is less than one hundred five percent of the total amount of public money or public funds less the portion of such public money or public funds insured by the Federal Deposit Insurance Corporation. The bank or capital stock financial institution in which public money or public funds are deposited may at any time reduce the amount of the deposit guaranty bond if the reduction does not reduce the value of the deposit guaranty bond to an amount less than the total amount of public money or public funds less the portion of such public money or public funds insured by the Federal Deposit Insurance Corporation.

Sec. 47. (1) If a bank or capital stock financial institution experiences an event of default the qualified trustee shall proceed in the following manner: (a) The qualified trustee shall ascertain the aggregate amounts of public money or public funds secured pursuant to subsection (1) of section 43 of this act and deposited in the bank or capital stock financial institution which has defaulted, as disclosed by the records of such bank or capital stock financial institution. The qualified trustee shall determine for each custodial official for whom public money or public funds are deposited in the defaulting bank or capital stock financial institution the accounts and amount of federal deposit insurance that is available for each account. It shall then determine for each such custodial official the amount of public money or public funds not insured by the Federal Deposit Insurance Corporation and the amount of the deposit guaranty bond or pool of securities pledged, deposited, or in which a security interest has been granted to secure such public money or public funds. Upon completion of this analysis, the qualified trustee shall provide each such custodial official with a statement that reports the amount of public money or public funds deposited by the custodial official in the defaulting bank or capital stock financial institution, the amount of public money or public funds that may be insured by the Federal Deposit Insurance Corporation, and the amount of public money or public funds secured by a deposit guaranty bond or secured by a pool of securities pursuant to subsection (1) of section 43 of this act. Each such custodial official shall verify this information from his or her records within ten business days after receiving the report and information from the qualified trustee; and (b) upon receipt of a verified report from such custodial official and if the defaulting bank or capital stock financial institution is to be liquidated or if for any other reason the qualified trustee determines that public money or public funds are not likely to be promptly paid upon demand, the qualified trustee shall proceed to enforce the deposit guaranty bond or liquidate the pool of securities held to secure the deposit of public money or public funds and shall repay each custodial official for the public money or public funds not insured by the Federal Deposit Insurance Corporation deposited in the bank or capital stock financial institution by the custodial official. In the event that the amount of the deposit guaranty bond or the proceeds of the securities held by the qualified trustee after liquidation is insufficient to cover all public money or public funds not insured by the Federal Deposit Insurance Corporation for all custodial officials for whom the qualified trustee serves, the qualified trustee shall pay out to each custodial official available amounts pro rata in accordance with the respective public money or public funds not insured by the Federal Deposit Insurance Corporation for each such custodial official.

(2) In the event that a federal deposit insurance agency is appointed and acts as a liquidator or receiver of any bank or capital stock financial institution under state or federal law, those duties under this section that are specified to be performed by the qualified trustee in the event of default may be delegated to and performed by such federal deposit insurance agency.

Sec. 48. Any charges or compensation of a qualified trustee for acting as such under the Public Funds Deposit Security Act shall be paid by the bank or capital stock financial institution and in no event shall be chargeable to any governmental unit, to the custodial official, or to any officer of the governmental unit. Such charges or compensation shall not be a lien or charge upon the deposit guaranty bond or the securities held by the qualified trustee prior, superior, or equal to the rights to and interests under such deposit guaranty bond or in such securities of the governmental

unit or of the custodial official. The custodial official shall be relieved from any liability to the governmental unit or to the bank or capital stock financial institution for the loss or destruction of any deposit guaranty bond or securities pledged, deposited, or in which a security interest has been granted.

Sec. 49. In lieu of placing its unqualified endorsement on each security, a bank or capital stock financial institution depositing, pledging, or granting a security interest in securities pursuant to subsection (1) of section 43 of this act that are not negotiable without its endorsement or assignment may furnish to the qualified trustee holding the securities an appropriate resolution and irrevocable power of attorney authorizing the trustee to assign the securities. The resolution and power of attorney shall conform to such terms and conditions as the trustee prescribes.

Sec. 50. Upon request of a custodial official, a bank or capital stock financial institution shall report as of the date of such request the amount of public money or public funds deposited in such bank or capital stock financial institution that is not insured by the Federal Deposit Insurance Corporation (1) by the custodial official making the request and (2) by all other custodial officials and secured pursuant to subsection (1) of section 43 of this act, and the total value of the deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest has been granted to secure public money or public funds held by the bank or capital stock financial institution, including those deposited by the custodial official. Upon request of a custodial official, a qualified trustee shall report as of the date of such request the total value of the deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest has been granted by the bank or capital stock financial institution and shall provide an itemized list of the securities in the pool. Such reports shall be made on or before the date the custodial official specifies.

Sec. 51. The public money or public funds in the bank or capital stock financial institution shall be paid promptly on the order of the custodial official depositing the public money or public funds in such bank or capital stock financial institution.

Sec. 52. Section 81-885.21, Reissue Revised Statutes of Nebraska, is amended to read:

81-885.21. (1) Each broker other than an inactive broker shall maintain in a separate insured bank, savings bank, building and loan association, or savings and loan association a separate, insured non-interest-bearing checking account in this state in his or her name or the name under which he or she does business which shall be designated a trust account in which all downpayments, earnest money deposits, or other trust funds received by him or her, his or her associate brokers, or his or her salesperson salespersons on behalf of his or her principal or any other person shall be deposited and remain until the transaction is closed or otherwise terminated unless all parties having an interest in the funds have agreed otherwise in writing.

(2) Each broker shall notify the commission of the name of the bank, savings bank, building and loan association, or savings and loan association ~~or banks~~ in which the trust account is maintained and also the name of the account on forms provided therefor.

(3) Each broker shall authorize the commission to examine such trust account by a duly authorized representative of the commission. Such examination shall be made annually or at such time as the commission may direct.

(4) A broker may maintain more than one trust account in his or her name or the name under which he or she does business if the commission is advised of such account as required in subsection (2) of this section.

(5) In the event a branch office maintains a separate trust account, a separate bookkeeping system shall be maintained in the branch office.

(6) A broker shall not be entitled to any part of the earnest money or other money paid to him or her or the entity under which he or she does business in connection with any real estate transaction as part or all of his or her commission or fee until the transaction has been consummated or terminated.

Sec. 53. Sections 38 to 51 and 54 of this act become operative on January 1, 2001. The other sections of this act become operative on their effective date.

Sec. 54. Original sections 77-2386, 77-2390, and 77-2395, Reissue Revised Statutes of Nebraska, section 77-2387, Revised Statutes Supplement, 1998, and section 77-2391, Revised Statutes Supplement, 1999, are repealed.

Sec. 55. Original sections 8-148.07, 8-301, 8-305, 8-317, 8-331,

8-334, 8-336, 8-340, 8-345.01, 8-346, 8-1103, 8-1111, 8-1120, 8-1502, 21-1701, 21-1767, 21-1768, 30-3205, 45-116, 45-205, 45-337, 45-717, 45-919, 72-1263, 72-1264, 77-2327, and 81-885.21, Reissue Revised Statutes of Nebraska, sections 8-101, 8-205, 8-223, and 8-910, Revised Statutes Supplement, 1998, and sections 8-157.01, 8-1,140, 8-355, 8-602, 21-17,115, and 45-137, Revised Statutes Supplement, 1999, are repealed.

Sec. 56. The following sections are outright repealed: Sections 8-342 to 8-345, Reissue Revised Statutes of Nebraska.

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