

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 136

Introduced by Avery, 28.

Read first time January 11, 2013

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the use of administrative fines and costs and
2 forfeited property; to amend sections 2-10,103.02, 8-169,
3 8-1,134, 8-223, 8-332, 8-1108.01, 8-1120, 8-1726, 9-832,
4 21-20,169, 44-322, 44-3,127, 44-5814, 44-5815, 45-191.09,
5 45-347, 45-921, 45-1014, 45-1017, 45-1019, 54-415,
6 54-2606, 58-703, 58-711, 59-1725.01, 60-6,345, 69-2116,
7 69-2117, 69-2118, 71-449, 71-1920, 71-8006, 75-309.01,
8 81-5,162, and 81-3537, Reissue Revised Statutes of
9 Nebraska, and sections 45-351 and 45-1002, Revised
10 Statutes Cumulative Supplement, 2012; to provide for
11 distribution of administrative fines in accordance with
12 Article VII, section 5, of the Constitution of Nebraska
13 and forfeited property in accordance with Article VII,
14 section 7, of the Constitution of Nebraska; to provide
15 for disposition of certain costs; to delete obsolete or
16 repetitive provisions; to harmonize provisions; to repeal
17 the original sections; and to declare an emergency.

LB 136

LB 136

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

1 Section 1. Section 2-10,103.02, Reissue Revised Statutes
2 of Nebraska, is amended to read:

3 2-10,103.02 (1) Pursuant to section 2-10,103.01, the
4 director may issue an order imposing an administrative fine on a
5 licensee in an amount which shall not exceed five hundred dollars. In
6 determining whether to impose an administrative fine and, if a fine
7 is imposed, the amount of the fine, the director shall take into
8 consideration (a) the seriousness of the violation, (b) the extent to
9 which the licensee derived financial gain as a result of his or her
10 failure to comply, (c) the extent of intent, willfulness, or
11 negligence by the licensee in the violation, (d) the likelihood of
12 the violation reoccurring, (e) the history of the licensee's failure
13 to comply, (f) the licensee's attempts to prevent or limit his or her
14 failure to comply, (g) the licensee's willingness to correct
15 violations, (h) the nature of the licensee's disclosure of
16 violations, (i) the licensee's cooperation with investigations of his
17 or her failure to comply, and (j) any factors which may be
18 established by the rules and regulations.

19 (2) ~~All money collected by the department as an~~
20 ~~administrative fine shall be remitted on a monthly basis to the State~~
21 ~~Treasurer for credit to the permanent school fund.~~

22 (2) The department shall remit administrative fines
23 collected under this section to the State Treasurer on a monthly
24 basis for distribution in accordance with Article VII, section 5, of
25 the Constitution of Nebraska.

10 Sec. 2. Section 8-169, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 8-169 Any bank that shall fail, neglect, or refuse to
13 make or furnish any report or any published statement required by the
14 Nebraska Banking Act shall pay to the department fifty dollars for
15 each day such failure shall continue, unless the department shall
16 extend the time for filing such report. The department shall remit
17 funds collected under this section to the State Treasurer for
18 distribution in accordance with Article VII, section 5, of the
19 Constitution of Nebraska.

20 Sec. 3. Section 8-1,134, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 8-1,134 (1) Whenever the Director of Banking and Finance
23 has reason to believe that a violation of any provision of Chapter 8
24 or of the Credit Union Act or any rule, regulation, or order of the
25 Department of Banking and Finance has occurred, he or she may cause a

1 written complaint to be served upon the alleged violator. The
2 complaint shall specify the statutory provision or rule, regulation,
3 or order alleged to have been violated and the facts alleged to
4 constitute a violation thereof and shall order that necessary
5 corrective action be taken within a reasonable time to be prescribed
6 in such order. Any such order shall become final as to any person
7 named in the order unless such person requests, in writing, a hearing
8 before the director no later than ten days after the date such order
9 is served. In lieu of such order, the director may require that the
10 alleged violator appear before the director at a time and place
11 specified in the notice and answer the charge complained of. The
12 notice shall be delivered to the alleged violator or violators in
13 accordance with subsection (4) of this section not less than ten days
14 before the time set for the hearing.

15 (2) The director shall provide an opportunity for a fair
16 hearing to the alleged violator at the time and place specified in
17 the notice or any modification of the notice. On the basis of the
18 evidence produced at the hearing, the director shall make findings of
19 fact and conclusions of law and enter such order as in his or her
20 opinion will best further the purposes of Chapter 8 or the Credit
21 Union Act and the rules, regulations, and orders of the department.
22 Written notice of such order shall be given to the alleged violator
23 and to any other person who appeared at the hearing and made written
24 request for notice of the order. If the hearing is held before any
25 person other than the director, such person shall transmit a record

1 of the hearing together with findings of fact and conclusions of law
2 to the director. The director, prior to entering his or her order on
3 the basis of such record, shall provide opportunity to the parties to
4 submit for his or her consideration exceptions to the findings or
5 conclusions and supporting reasons for such exceptions. The order of
6 the director shall become final and binding on all parties unless
7 appealed to the district court of Lancaster County as provided in
8 section 8-1,135. As part of such order, the director may impose a
9 fine, in addition to the costs of the investigation, upon a person
10 found to have violated any provision of Chapter 8, the Credit Union
11 Act, or the rules, regulations, or orders of the department. The fine
12 shall not exceed ten thousand dollars per violation for the first
13 offense and twenty-five thousand dollars per violation for a second
14 or subsequent offense involving a violation of the same provision of
15 Chapter 8, the Credit Union Act, the rules and regulations of the
16 department, or the same order of the department. The fines and costs
17 shall be in addition to all other penalties imposed by the laws of
18 this state. The department shall collect the fines and costs and
19 remit them, ~~shall be collected by the director, and shall be~~
20 ~~remitted to the State Treasurer. Costs shall be credited to the~~
21 ~~Financial Institution Assessment Cash Fund, and fines shall be~~
22 ~~credited to the permanent school fund. The State Treasurer shall~~
23 credit the costs to the Financial Institution Assessment Cash Fund
24 and distribute the fines in accordance with Article VII, section 5,
25 of the Constitution of Nebraska. If a person fails to pay the fine or

1 costs of the investigation, a lien in the amount of the fine and
2 costs shall be imposed upon all of the assets and property of such
3 person in this state and may be recovered by suit by the director.
4 The lien shall attach to the real property of such person when notice
5 of the lien is filed and indexed against the real property in the
6 office of the register of deeds in the county where the real property
7 is located. The lien shall attach to any other property of such
8 person when notice of the lien is filed against the property in the
9 manner prescribed by law.

10 (3) Whenever the director finds that an emergency exists
11 requiring immediate action to protect the safety and soundness of the
12 institutions under the supervision and control of the department, the
13 director may, without notice or hearing, issue an order reciting the
14 existence of an emergency and requiring that such action be taken as
15 the director deems necessary to meet the emergency. Notwithstanding
16 the provisions of subsection (2) of this section, the order shall be
17 effective immediately. Any person to whom such order is directed
18 shall comply immediately, but on application to the director shall be
19 afforded a hearing as soon as possible and not later than ten days
20 after such application by the affected person. On the basis of the
21 hearing, the director shall continue the order in effect, revoke it,
22 or modify it. This subsection shall not apply to a determination of
23 necessary acquisition made by the department pursuant to sections
24 8-1506 to 8-1510.

25 (4) Except as otherwise expressly provided, any notice,

1 order, or other instrument issued by or under authority of the
2 director shall be served on any person affected thereby either
3 personally or by certified mail, return receipt requested. Proof of
4 service shall be filed in the office of the director. Every
5 certificate or affidavit of service made and filed as provided in
6 this subsection shall be *prima facie* evidence of the facts stated in
7 the certificate or affidavit, and a certified copy shall have the
8 same force and effect as the original.

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

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

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

15 Sec. 4. Section 8-223, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 8-223 (1) The trust company shall file with the
18 Department of Banking and Finance during the months of January and
19 July of each year a statement under oath of the condition of the
20 trust company on the last business day of the preceding December and
21 June in the manner and form required by the department. For purposes
22 of the Nebraska Trust Company Act, the trust company's annual report
23 shall be deemed to be the report filed with the Department of Banking
24 and Finance during the month of January.

25 (2) Any trust company that fails, neglects, or refuses to

1 make or furnish any report or any published statement required by the
2 Nebraska Trust Company Act shall pay to the department fifty dollars
3 for each day such failure continues, unless the department extends
4 the time for filing such report. The department shall remit funds
5 collected under this section to the State Treasurer for distribution
6 in accordance with Article VII, section 5, of the Constitution of
7 Nebraska.

8 (3) The filing requirements of this section shall not
9 apply to the trust department of a bank if the report of condition of
10 the trust department is included in the reports of the bank required
11 by the Nebraska Banking Act.

12 Sec. 5. Section 8-332, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 8-332 Every such association shall, at the close of
15 business on June 30 of each year and at such other times as required
16 by the Department of Banking and Finance, file in the office of the
17 department, within thirty days after the receipt of a request for a
18 requisition therefor, a statement verified by the oath of its
19 president or secretary and approved by three of its directors in such
20 form as may be prescribed by the department, setting forth its actual
21 financial condition and the amount of its assets and liabilities and
22 furnishing such other information as to its affairs as the department
23 may require. A copy of such annual statement shall be published in a
24 newspaper of general circulation, in the county where such
25 association is located, three consecutive times, and due proof of

1 such publication, by affidavit, shall be filed with the department.
2 The department may call for special reports from any such association
3 whenever in its judgment such reports may be necessary or advisable,
4 but no other or further notice or statement of the amount of the
5 existing debts of such corporation shall be required to be published
6 than that on June 30. Any association failing to comply with this
7 section shall pay to the department fifty dollars for each day such
8 noncompliance continues unless the department extends the filing
9 deadlines for such reports and proofs of publication. The department
10 shall remit funds collected under this section to the State Treasurer
11 for distribution in accordance with Article VII, section 5, of the
12 Constitution of Nebraska.

13 Sec. 6. Section 8-1108.01, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 8-1108.01 (1) Whenever it appears to the director that
16 the sale of any security is subject to registration under the
17 Securities Act of Nebraska and is being offered or has been offered
18 for sale without such registration, he or she may order the issuer or
19 offerer of such security to cease and desist from the further offer
20 or sale of such security unless and until it has been registered
21 under the act.

22 (2) Whenever it appears to the director that any person
23 is acting as a broker-dealer, issuer-dealer, agent, investment
24 adviser, or investment adviser representative without registration as
25 such or acting as a federal covered adviser without making a notice

1 filing under the act, he or she may order such person to cease and
2 desist from such activity unless and until he or she has been
3 registered as such or has made the required notice filing under the
4 act.

5 (3) Whenever it appears to the director that any person
6 is violating section 8-1102, he or she may order the person to cease
7 and desist from such activity.

8 (4) The director may, after giving reasonable notice and
9 an opportunity for a hearing under this section, impose a fine not to
10 exceed twenty-five thousand dollars per violation, in addition to
11 costs of the investigation, upon a person found to have engaged in
12 any act or practice which would constitute a violation of the act or
13 any rule, regulation, or order issued under the act. The fine and
14 costs shall be in addition to all other penalties imposed by the laws
15 of this state. The director shall collect the fines and costs and
16 remit them, ~~shall be collected by the director, and shall be~~
17 ~~remitted to the State Treasurer. Costs shall be credited to the~~
18 ~~Securities Act Cash Fund, and fines shall be credited to the~~
19 ~~permanent school fund. The State Treasurer shall credit the costs to~~
20 ~~the Securities Act Cash Fund and distribute the fines in accordance~~
21 ~~with Article VII, section 5, of the Constitution of Nebraska.~~
22 Imposition of any fine and payment of costs under this subsection may
23 be appealed pursuant to section 8-1119. If a person fails to pay the
24 fine or costs of the investigation referred to in this subsection, a
25 lien in the amount of the fine and costs shall be imposed upon all of

1 the assets and property of such person in this state and may be
2 recovered by suit by the director and remitted to the State
3 Treasurer. Costs shall be credited to the Securities Act Cash Fund,
4 and fines shall be credited to the permanent school fund. The State
5 Treasurer shall credit the costs to the Securities Act Cash Fund and
6 distribute the fines in accordance with Article VII, section 5, of
7 the Constitution of Nebraska. Failure of the person to pay a fine and
8 costs shall also constitute a forfeiture of his or her right to do
9 business in this state under the Securities Act of Nebraska.

10 (5) After such an order has been made under subsection
11 (1), (2), (3), or (4) of this section, if a request for a hearing is
12 filed in writing within fifteen business days of the issuance of the
13 order by the person to whom such order was directed, a hearing shall
14 be held by the director within thirty business days after receipt of
15 the request, unless both parties consent to a later date or the
16 hearing officer sets a later date for good cause. If no hearing is
17 requested within fifteen business days of the issuance of the order
18 and none is ordered by the director, the order shall automatically
19 become a final order and shall remain in effect until it is modified
20 or vacated by the director. If a hearing is requested or ordered, the
21 director, after notice of and opportunity for hearing, shall enter
22 his or her written findings of fact and conclusions of law and may
23 affirm, modify, or vacate the order.

24 Sec. 7. Section 8-1120, Reissue Revised Statutes of
25 Nebraska, is amended to read:

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

20 (2) It shall be unlawful for the director or any of his
21 or her officers or employees to use for personal benefit any
22 information which is filed with or obtained by the director and which
23 is not made public. No provision of the act shall authorize the
24 director or any of his or her officers or employees to disclose any
25 such information except among themselves or when necessary or

1 appropriate in a proceeding or investigation under the act. No
2 provision of the act shall either create or derogate from any
3 privilege which exists at common law or otherwise when documentary or
4 other evidence is sought under a subpoena directed to the director or
5 any of his or her officers or employees.

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

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

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

25 (5) Every hearing in an administrative proceeding shall

1 be public unless the director in his or her discretion grants a
2 request joined in by all the respondents that the hearing be
3 conducted privately.

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

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

1 the act. The register shall be open for public inspection. The
2 information contained in or filed with any registration statement,
3 application, or report may be made available to the public under such
4 conditions as the director may prescribe.

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

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

14 Sec. 8. Section 8-1726, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 8-1726 (1) If the director believes, whether or not based
17 upon an investigation conducted under section 8-1725, that any person
18 has engaged or is about to engage in any act or practice constituting
19 a violation of any provision of the Commodity Code or any rule,
20 regulation, or order under the code, the director may:

21 (a) Issue a cease and desist order;

22 (b) Issue an order imposing a civil penalty in an amount
23 which may not exceed twenty-five thousand dollars for any single
24 violation or one hundred thousand dollars for multiple violations in
25 a single proceeding or a series of related proceedings; or

(c) Initiate any of the actions specified in subsection (2) of this section.

(c) An action for disgorgement or restitution; or

12 (d) An action for appointment of a receiver or
13 conservator for the defendant or the defendant's assets.

19 (3)(a) The fines and costs shall be in addition to all
20 other penalties imposed by the laws of this state. The director shall
21 collect the fines and costs and remit them to the State Treasurer.
22 The State Treasurer shall credit the costs to the Securities Act Cash
23 Fund and distribute the fines in accordance with Article VII, section
24 5, of the Constitution of Nebraska.

25 (b) If a person fails to pay the administrative fine or

1 investigation costs referred to in this section, a lien in the amount
2 of such fine and costs may be imposed upon all assets and property of
3 such person in this state and may be recovered by suit by the
4 director. Failure of the person to pay such fine and costs shall
5 constitute a separate violation of the code.

6 Sec. 9. Section 9-832, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 9-832 The director may refuse to award a contract to any
9 applicant and may terminate the contract of or initiate an
10 administrative action to levy a fine against a lottery game retailer
11 who violates any provision of the State Lottery Act or any rule or
12 regulation adopted pursuant to the act. A fine may be levied against
13 a lottery game retailer by the Tax Commissioner and shall not exceed
14 one thousand dollars per violation. In determining whether to impose
15 a fine and the amount of the fine if any fine is imposed, the Tax
16 Commissioner shall take into consideration the seriousness of the
17 violation and the extent to which the lottery game retailer derived
18 financial gain as a result of the violation. ~~All money collected by~~
~~the division as a fine shall be remitted on a monthly basis to the~~
~~State Treasurer for credit to the permanent school fund. The division~~
~~shall remit any fines collected under this section to the State~~
~~Treasurer on a monthly basis for distribution in accordance with~~
~~Article VII, section 5, of the Constitution of Nebraska. Any fine~~
~~imposed by the Tax Commissioner and unpaid shall constitute a debt to~~
~~the State of Nebraska which may be collected by lien foreclosure or~~

1 sued for and recovered in any proper form of action, in the name of
2 the State of Nebraska, in the district court of the county in which
3 the violator resides or owns property. If the director decides to
4 terminate a contract or initiate an administrative action to levy a
5 fine, the aggrieved party shall be entitled to a hearing before the
6 Tax Commissioner or his or her designee by filing a written request
7 with the Tax Commissioner within ten days after notification of the
8 director's intention to terminate a contract or initiate an
9 administrative action to levy a fine. Upon receipt of such request,
10 the Tax Commissioner shall set a hearing date which shall be within
11 thirty days of receipt of the request and shall notify the aggrieved
12 party, in writing, of the time and place for the hearing. Such notice
13 shall be given as soon as the date is set and at least seven days in
14 advance of the hearing date. The Tax Commissioner or his or her
15 designee may stay the termination of a contract pending the outcome
16 of the hearing if so requested by the aggrieved party at the time of
17 filing the written request for hearing.

18 The Tax Commissioner may affirm, reverse, or modify the
19 action of the director. The order or decision of the Tax Commissioner
20 may be appealed to the district court of Lancaster County in the
21 manner prescribed in section 9-821.

22 Sec. 10. Section 21-20,169, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 21-20,169 (1) A foreign corporation transacting business
25 in this state without a certificate of authority may not maintain a

1 proceeding in any court in this state until it obtains a certificate
2 of authority.

3 (2) The successor to a foreign corporation that
4 transacted business in this state without a certificate of authority
5 and the assignee of a cause of action arising out of that business
6 may not maintain a proceeding based on that cause of action in any
7 court in this state until the foreign corporation or its successor
8 obtains a certificate of authority.

9 (3) A court in this state may stay a proceeding commenced
10 by a foreign corporation, its successor, or its assignee until it
11 determines whether the foreign corporation or its successor requires
12 a certificate of authority. If the court determines that a
13 certificate of authority is required, the court may further stay the
14 proceeding until the foreign corporation or its successor obtains the
15 certificate.

16 (4) A foreign corporation shall be liable for a civil
17 penalty of five hundred dollars for each day, but not to exceed a
18 total of ten thousand dollars for each year, it transacts business in
19 this state without a certificate of authority. The Attorney General
20 may collect all penalties due under this subsection and shall remit
21 them to the State Treasurer for ~~credit to the permanent school fund.~~
22 distribution in accordance with Article VII, section 5, of the
23 Constitution of Nebraska.

24 (5) Notwithstanding subsections (1) and (2) of this
25 section, the failure of a foreign corporation to obtain a certificate

1 of authority shall not impair the validity of its corporate acts or
2 prevent it from defending any proceeding in this state.

3 Sec. 11. Section 44-322, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 44-322 (1)(a)(i) Every insurance company holding a
6 certificate of authority to transact the business of insurance in
7 this state shall file with the director or, if required by the
8 director, with the National Association of Insurance Commissioners,
9 on or before March 1 of each year, an annual financial statement for
10 the year ending December 31 immediately preceding on forms prescribed
11 by the director which conform substantially to the forms adopted by
12 the National Association of Insurance Commissioners, except that
13 fees, premium tax payments, and other payments associated with such
14 filings shall be paid to the director.

15 (ii) The financial statement shall be prepared in
16 accordance with annual statement instructions and accounting
17 practices and procedures manuals as prescribed by the director which
18 conform substantially to the annual statement instructions and the
19 Accounting Practices and Procedures Manuals adopted by the National
20 Association of Insurance Commissioners.

21 (iii) The salaries and compensation of the officers and
22 any other information required by the director shall be filed with
23 the director.

24 (iv) Every insurance company subject to this section
25 shall make such other periodic financial filings as the director may

1 reasonably require.

2 (b)(i) Within seven days after the failure of an
3 insurance company to comply with the requirements of subdivision (1)
4 (a) of this section, the director shall notify the insurance company
5 of such failure.

6 (ii) Subject to subdivision (1)(b)(iii) of this section,
7 if an insurance company fails to comply with the requirements of
8 subdivision (1)(a) of this section and any rules and regulations
9 adopted and promulgated under such subdivision and any orders issued
10 under such subdivision, (A) such insurance company shall forfeit one
11 hundred dollars for each day thereafter such failure continues and
12 the insurance company continues to transact any business of insurance
13 and (B) in addition to the forfeiture required under subdivision (1)
14 (b)(ii)(A) of this section, the director may suspend or refuse to
15 renew the certificate of authority of the insurance company until it
16 has complied with the requirements of subdivision (1)(a) of this
17 section and any rules and regulations adopted and promulgated under
18 such subdivision and any orders issued under such subdivision. All
19 ~~such forfeitures collected by the director shall be remitted to the~~
20 ~~State Treasurer for credit to the permanent school fund. The director~~
21 ~~shall remit any forfeitures collected under this section to the State~~
22 ~~Treasurer for distribution in accordance with Article VII, section 5,~~
23 ~~of the Constitution of Nebraska.~~

24 (iii) For good and sufficient cause shown, the director
25 may grant a reasonable extension of time not to exceed thirty days

1 within which the financial statement may be filed as required under
2 subdivision (1)(a) of this section without the forfeiture required
3 under subdivision (1)(b)(ii)(A) of this section and without any
4 suspension or refusal to renew authorized under subdivision (1)(b)
5 (ii)(B) of this section.

24 Sec. 12. Section 44-3,127, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 44-3,127 All money collected by the Department of
2 Insurance as a fine or penalty shall be paid to the State Treasurer
3 who shall deposit such money in the permanent school fund. The
4 Department of Insurance shall remit any money collected as a fine or
5 penalty to the State Treasurer for distribution in accordance with
6 Article VII, section 5, of the Constitution of Nebraska.

7 Sec. 13. Section 44-5814, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 44-5814 (1) Each third-party administrator shall file an
10 annual report for the preceding calendar year with the director on or
11 before March 1 of each year or within such extension of time therefor
12 as the director for good cause may grant. The annual report shall be
13 in the form and contain such matters as the director prescribes and
14 shall be verified by at least two officers of the third-party
15 administrator.

16 (2) The annual report shall include the complete names
17 and addresses of all insurers with which the third-party
18 administrator had a written agreement during the preceding fiscal
19 year.

20 (3) At the time of filing its annual report, the third-
21 party administrator shall pay to the director a filing fee of two
22 hundred dollars.

23 (4)(a) Within seven business days after the failure of a
24 third-party administrator to comply with the requirements of this
25 section, the director shall notify the third-party administrator of

1 such failure.

2 (b) Subject to subdivision (4)(c) of this section, if a
3 third-party administrator fails to comply with the requirements of
4 this section and any rules and regulations adopted and promulgated
5 under this section and any orders issued under this section:

6 (i) Such third-party administrator shall forfeit fifty
7 dollars for each day thereafter such failure continues and the third-
8 party administrator continues to transact any business of insurance;
9 and

10 (ii) In addition to the forfeiture required under
11 subdivision (4)(b)(i) of this section, the director may suspend the
12 certificate of authority of the third-party administrator until it
13 has complied with the requirements of this section, any rules and
14 regulations adopted and promulgated under this section, and any
15 orders issued under this section. ~~All such forfeitures collected by~~
16 ~~the director shall be remitted to the State Treasurer for credit to~~
17 ~~the permanent school fund. The director shall remit any forfeitures~~
18 collected under this section to the State Treasurer for distribution
19 in accordance with Article VII, section 5, of the Constitution of
20 Nebraska.

21 (c) For good and sufficient cause shown, the director may
22 grant a reasonable extension of time not to exceed thirty days within
23 which the annual report may be filed as required under this section
24 without the forfeiture required under subdivision (4)(b)(i) of this
25 section and without any suspension authorized under subdivision (4)

1 (b)(ii) of this section.

2 Sec. 14. Section 44-5815, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 44-5815 (1) The director shall suspend or revoke the
5 certificate of authority as a third-party administrator if the
6 director finds that the third-party administrator:

7 (a) Is in an unsound financial condition;

8 (b) Is using such methods or practices in the conduct of
9 its business so as to render its further transaction of business in
10 this state hazardous or injurious to certificate holders,
11 subscribers, or the public; or

12 (c) Has failed to pay any judgment rendered against it in
13 this state within sixty days after the judgment has become final.

14 (2) The director may, in his or her discretion, suspend
15 or revoke the certificate of authority as a third-party administrator
16 if the director finds that the third-party administrator:

17 (a) Has violated any lawful rule or regulation or order
18 of the director or any provision of the insurance laws of this state;

19 (b) Has refused to be examined or to produce its
20 accounts, records, and files for examination or if any of its
21 officers has refused to give information with respect to its affairs
22 or has refused to perform any other legal obligation as to such
23 examination, when required by the director;

24 (c) Has, without just cause, refused to pay proper claims
25 or perform services arising under its contracts or has, without just

1 cause, caused certificate holders, subscribers, or claimants to
2 accept less than the amount due them or caused certificate holders,
3 subscribers, or claimants to retain attorneys or bring actions
4 against the third-party administrator to secure full payment or
5 settlement of such claims;

6 (d) Is affiliated with or under the same general
7 management or interlocking directorate or ownership as another third-
8 party administrator or insurer which unlawfully transacts business in
9 this state without having a certificate of authority as a third-party
10 administrator;

11 (e) At any time fails to meet any qualification for which
12 issuance of the certificate of authority as a third-party
13 administrator could have been refused had such failure then existed
14 and been known to the director;

15 (f) Has been convicted of or has entered a plea of guilty
16 or nolo contendere to a felony without regard to whether adjudication
17 was withheld; or

18 (g) Is under suspension or revocation in another state.

19 (3) The director may, in his or her discretion and
20 without advance notice or hearing thereon, immediately suspend the
21 certificate of authority as a third-party administrator if the
22 director finds that one or more of the following circumstances exist:

23 (a) The third-party administrator is insolvent or
24 impaired;

25 (b) A proceeding for supervision, rehabilitation,

1 conservation, receivership, or other delinquency proceeding regarding
2 the third-party administrator has been commenced in any state; or

3 (c) The financial condition or business practices of the
4 third-party administrator otherwise pose an imminent threat to the
5 public health, safety, or welfare of the residents of this state.

6 (4) Except as provided in subsection (4) of section
7 44-5814, if the director finds that one or more grounds exist for the
8 suspension or revocation of a certificate of authority as a third-
9 party administrator, the director may, in lieu of such suspension or
10 revocation and after notice and hearing, impose an administrative
11 penalty upon the third-party administrator in an amount not less than
12 one thousand dollars nor more than ten thousand dollars. The director
13 shall remit any forfeitures collected under this section to the State
14 Treasurer for distribution in accordance with Article VII, section 5,
15 of the Constitution of Nebraska.

16 Sec. 15. Section 45-191.09, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 45-191.09 (1) The director may summarily order a loan
19 broker to cease and desist from acting as a loan broker or from the
20 use of certain forms or practices relating to the loan broker's
21 activities if the order is in the public interest and the director
22 finds:

23 (a) The disclosure statement on file is incomplete in any
24 material respect or contains any statement which was, in light of the
25 circumstances under which it was made, false or misleading with

1 respect to any material fact;

2 (b) The loan broker has willfully violated or willfully
3 failed to comply with any provision of sections 45-189 to 45-191.11;

4 (c) There has been a substantial failure to comply with
5 any of the provisions of such sections;

6 (d) The continued use of certain forms or practices
7 relating to the loan broker's activity would constitute a
8 misrepresentation, deceit, or fraud upon the consumer; or

9 (e) Any person identified in the required disclosure
10 statement has been convicted of an offense described in subdivision
11 (2)(i)(i) of section 45-191.01 or is subject to an order or has had a
12 civil judgment entered against him or her as described in subdivision
13 (2)(i)(ii) or (2)(i)(iii) of section 45-191.01 and the involvement of
14 such person in the loan broker's business creates an unreasonable
15 risk to prospective borrowers.

16 (2) If the director believes, whether or not based upon
17 an investigation conducted under section 45-191.08, that any person
18 or loan broker has engaged in or is about to engage in any act or
19 practice constituting a violation of any provision of sections 45-189
20 to 45-191.11 or any rule, regulation, or order under such sections,
21 the director may:

22 (a) Issue a cease and desist order;

23 (b) Impose a fine not to exceed one thousand dollars per
24 violation, in addition to costs of the investigation; or

25 (c) Initiate an action in any court of competent

1 jurisdiction to enjoin such acts or practices and to enforce
2 compliance with such sections or any order under such sections.

3 (3) Upon a proper showing a permanent or temporary
4 injunction, restraining order, or writ of mandamus shall be granted.
5 The director shall not be required to post a bond.

6 ~~(4)(a) Any fine and costs imposed pursuant to this~~
7 ~~section shall be in addition to all other penalties imposed by the~~
8 ~~laws of this state and shall be collected by the department and~~
9 ~~remitted to the State Treasurer. Costs shall be credited to the~~
10 ~~Securities Act Cash Fund, and fines shall be credited to the~~
11 ~~permanent school fund.~~

12 (4)(a) Any fines and costs imposed pursuant to this
13 section shall be in addition to all other penalties imposed by the
14 laws of this state. The department shall collect the fines and costs
15 and remit them to the State Treasurer. The State Treasurer shall
16 credit the costs to the Securities Act Cash Fund and distribute the
17 fines in accordance with Article VII, section 5, of the Constitution
18 of Nebraska.

19 (b) If a person fails to pay the fine or costs of the
20 investigation referred to in this ~~subseetion, section,~~ a lien in the
21 amount of the fine and costs may be imposed upon all of the assets
22 and property of such person in this state and may be recovered by
23 suit by the department. Failure of the person to pay a fine and costs
24 shall constitute a separate violation of sections 45-189 to
25 45-191.11.

23 Sec. 16. Section 45-347, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 45-347 (1) Except as otherwise provided in subsection (2)

1 of this section, all All money collected under the authority of by
2 the department pursuant to the Nebraska Installment Sales Act shall
3 be remitted to the State Treasurer for credit to the Financial
4 Institution Assessment Cash Fund.

5 (2) The department shall remit fines collected under the
6 Nebraska Installment Sales Act to the State Treasurer for
7 distribution in accordance with Article VII, section 5, of the
8 Constitution of Nebraska.

9 Sec. 17. Section 45-351, Revised Statutes Cumulative
10 Supplement, 2012, is amended to read:

11 45-351 (1) The department shall be charged with the duty
12 of inspecting the business, records, and accounts of all persons who
13 engage in the business of a sales finance company subject to the
14 Nebraska Installment Sales Act. The director shall have the power to
15 appoint examiners who shall, under his or her direction, investigate
16 the installment contracts and business and examine the books and
17 records of licensees when the director shall so determine. Such
18 examinations shall not be conducted more often than annually except
19 as provided in subsection (2) of this section.

20 (2) The director or his or her duly authorized
21 representative shall have the power to make such investigations as he
22 or she shall deem necessary, and to the extent necessary for this
23 purpose, he or she may examine such licensee or any other person and
24 shall have the power to compel the production of all relevant books,
25 records, accounts, and documents.

1 (3) The expenses of the director incurred in the
2 examination of the books and records of licensees shall be charged to
3 the licensees as set forth in sections 8-605 and 8-606. The director
4 may charge the costs of an investigation of a nonlicensed person to
5 such person, and such costs shall be paid within thirty days after
6 receipt of billing.

7 (4) Upon receipt by a licensee of a notice of
8 investigation or inquiry request for information from the department,
9 the licensee shall respond within twenty-one calendar days. Each day
10 a licensee fails to respond as required by this subsection shall
11 constitute a separate violation.

12 (5) If the director finds, after notice and opportunity
13 for hearing in accordance with the Administrative Procedure Act, that
14 any person has willfully and intentionally violated any provision of
15 the Nebraska Installment Sales Act, any rule or regulation adopted
16 and promulgated under the act, or any order issued by the director
17 under the act, the director may order such person to pay (a) an
18 administrative fine of not more than one thousand dollars for each
19 separate violation and (b) the costs of investigation. ~~The department~~
20 ~~shall remit fines collected under this subsection to the State~~
21 ~~Treasurer for distribution in accordance with Article VII, section 5,~~
22 ~~of the Constitution of Nebraska.~~

23 (6) If a person fails to pay an administrative fine and
24 the costs of investigation ordered pursuant to subsection (5) of this
25 section, a lien in the amount of such fine and costs may be imposed

1 upon all assets and property of such person in this state and may be
2 recovered in a civil action by the director. The lien shall attach to
3 the real property of such person when notice of the lien is filed and
4 indexed against the real property in the office of the register of
5 deeds in the county where the real property is located. The lien
6 shall attach to any other property of such person when notice of the
7 lien is filed against the property in the manner prescribed by law.
8 Failure of the person to pay such fine and costs shall constitute a
9 separate violation of the Nebraska Installment Sales Act.

10 Sec. 18. Section 45-921, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 45-921 (1) The director may examine or investigate
13 complaints about or reports of alleged violations of the Delayed
14 Deposit Services Licensing Act or any rule, regulation, or order of
15 the director thereunder. The director may order the actual cost of
16 such examination or investigation to be paid by the person who is the
17 subject of the examination or investigation, whether the alleged
18 violator is licensed or not.

19 (2) The director may publish information concerning any
20 violation of the act or any rule, regulation, or order of the
21 director under the act.

22 (3) For purposes of any investigation, examination, or
23 proceeding under the act, the director may administer oaths and
24 affirmations, subpoena witnesses, compel their attendance, take
25 evidence, and require the production of any books, papers,

1 correspondence, memoranda, agreements, or other documents or records
2 which the director deems relevant or material to the examination,
3 investigation, or proceeding.

4 (4) In the case of contumacy by or refusal to obey a
5 subpoena issued to any person, the district court of Lancaster
6 County, upon application by the director, may issue an order
7 requiring such person to appear before the director and to produce
8 documentary evidence if so ordered to give evidence on the matter
9 under investigation or in question. Failure to obey the order of the
10 court may be punished by the court as contempt.

11 (5) Upon receipt by a licensee of a notice of
12 investigation or inquiry request for information from the department,
13 the licensee shall respond within twenty-one calendar days. Each day
14 a licensee fails to respond as required by this subsection shall
15 constitute a separate violation.

16 (6) If the director finds, after notice and opportunity
17 for hearing in accordance with the Administrative Procedure Act, that
18 any person has violated subsection (5) of this section, the director
19 may order such person to pay (a) an administrative fine of not more
20 than one thousand dollars for each separate violation and (b) the
21 costs of investigation. ~~All fines collected by the department~~
~~pursuant to this subsection shall be remitted to the State Treasurer~~
~~for credit to the permanent school fund.~~

24 (7) If a person fails to pay an administrative fine and
25 the costs of investigation ordered pursuant to subsection (6) of this

1 section, a lien in the amount of such fine and costs may be imposed
2 upon all assets and property of such person in this state and may be
3 recovered in a civil action by the director. The lien shall attach to
4 the real property of such person when notice of the lien is filed and
5 indexed against the real property in the office of the register of
6 deeds in the county where the real property is located. The lien
7 shall attach to any other property of such person when notice of the
8 lien is filed against the property in the manner prescribed by law.
9 Failure of the person to pay such fine and costs shall constitute a
10 separate violation of the Delayed Deposit Services Licensing Act.

11 Sec. 19. Section 45-1002, Revised Statutes Cumulative
12 Supplement, 2012, is amended to read:

13 45-1002 (1) For purposes of the Nebraska Installment Loan
14 Act:

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

17 (b) Breach of security of the system means unauthorized
18 acquisition of data that compromises the security, confidentiality,
19 or integrity of the information maintained by the Nationwide Mortgage
20 Licensing System and Registry, its affiliates, or its subsidiaries;

21 (c) Department means the Department of Banking and
22 Finance;

23 (d) Debt cancellation contract means a loan term or
24 contractual arrangement modifying loan terms under which a financial
25 institution or licensee agrees to cancel all or part of a borrower's

1 obligation to repay an extension of credit from the financial
2 institution or licensee upon the occurrence of a specified event. The
3 debt cancellation contract may be separate from or a part of other
4 loan documents. The term debt cancellation contract does not include
5 loan payment deferral arrangements in which the triggering event is
6 the borrower's unilateral election to defer repayment or the
7 financial institution's or licensee's unilateral decision to allow a
8 deferral of repayment;

9 (e) Debt suspension contract means a loan term or
10 contractual arrangement modifying loan terms under which a financial
11 institution or licensee agrees to suspend all or part of a borrower's
12 obligation to repay an extension of credit from the financial
13 institution or licensee upon the occurrence of a specified event. The
14 debt suspension contract may be separate from or a part of other loan
15 documents. The term debt suspension contract does not include loan
16 payment deferral arrangements in which the triggering event is the
17 borrower's unilateral election to defer repayment or the financial
18 institution's or licensee's unilateral decision to allow a deferral
19 of repayment;

20 (f) Director means the Director of Banking and Finance;

21 (g) Financial institution has the same meaning as in
22 section 8-101;

23 (h) Guaranteed asset protection waiver means a waiver
24 that is offered, sold, or provided in accordance with the Guaranteed
25 Asset Protection Waiver Act;

(i) Licensee means any person who obtains a license under
the Nebraska Installment Loan Act;

(j)(i) Mortgage loan originator means an individual who for compensation or gain (A) takes a residential mortgage loan application or (B) offers or negotiates terms of a residential mortgage loan.

(k) Nationwide Mortgage Licensing System and Registry
means a licensing system developed and maintained by the Conference
of State Bank Supervisors and the American Association of Residential
Mortgage Regulators for the licensing and registration of mortgage
loan originators, mortgage bankers, installment loan companies, and
other state-regulated financial services entities and industries;

25 (1) Person means individual, partnership, limited

1 liability company, association, financial institution, trust,
2 corporation, and any other legal entity; and

3 (m) Real property means an owner-occupied single-family,
4 two-family, three-family, or four-family dwelling which is located in
5 this state, which is occupied, used, or intended to be occupied or
6 used for residential purposes, and which is, or is intended to be,
7 permanently affixed to the land.

8 ~~(2) Except as provided in subsection (3) of section
9 45-1017 and subsection (4) of section 45-1019, no revenue arising
10 under the Nebraska Installment Loan Act shall inure to any school
11 fund of the State of Nebraska or any of its governmental
12 subdivisions.~~

13 ~~(3)~~ (2) Loan, when used in the Nebraska Installment Loan
14 Act, does not include any loan made by a person who is not a licensee
15 on which the interest does not exceed the maximum rate permitted by
16 section 45-101.03.

17 ~~(4)~~ (3) Nothing in the Nebraska Installment Loan Act
18 applies to any loan made by a person who is not a licensee if the
19 interest on the loan does not exceed the maximum rate permitted by
20 section 45-101.03.

21 Sec. 20. Section 45-1014, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 ~~45-1014 All original license fees and annual renewal fees
24 shall be collected by the department and remitted to the State
25 Treasurer for credit to the Financial Institution Assessment Cash~~

1 Fund. All investigation and examination fees, charges, and costs
2 collected by or paid to the department shall likewise be remitted to
3 the State Treasurer for credit to the Financial Institution
4 Assessment Cash Fund and shall be available for the uses and purposes
5 of the fund.

6 (1) The department shall remit all fees and costs
7 collected pursuant to the Nebraska Installment Loan Act to the State
8 Treasurer for credit to the Financial Institution Assessment Cash
9 Fund.

10 (2) The department shall remit fines collected under the
11 Nebraska Installment Loan Act to the State Treasurer for distribution
12 in accordance with Article VII, section 5, of the Constitution of
13 Nebraska.

14 Sec. 21. Section 45-1017, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 45-1017 (1) The department shall inspect the business,
17 records, and accounts of all persons that lend money subject to the
18 Nebraska Installment Loan Act. The department may examine or
19 investigate complaints about or reports of alleged violations by a
20 licensee made to the department. The department may inspect and
21 investigate the business, records, and accounts of all persons in the
22 public business of lending money contrary to the act and who do not
23 have a license under the act. The director may appoint examiners who
24 shall, under his or her direction, investigate the loans and business
25 and examine the books and records of licensees annually and more

1 often as determined by the director. The expenses incurred by the
2 department in examining the books and records of licensees and in
3 administering the act during each calendar year shall be paid by the
4 licensee as set forth in sections 8-605 and 8-606.

5 (2) Upon receipt by a licensee of a notice of
6 investigation or inquiry request for information from the department,
7 the licensee shall respond within twenty-one calendar days. Each day
8 a licensee fails to respond as required by this subsection
9 constitutes a separate violation.

10 (3) If the director finds, after notice and opportunity
11 for hearing in accordance with the Administrative Procedure Act, that
12 any person has willfully and intentionally violated any provision of
13 the Nebraska Installment Loan Act, any rule or regulation adopted and
14 promulgated under the act, or any order issued under the act, the
15 director may order such person to pay (a) an administrative fine of
16 not more than one thousand dollars for each separate violation and
17 (b) the costs of investigation. ~~All fines collected by the department~~
18 ~~pursuant to this subsection shall be remitted to the State Treasurer~~
19 ~~for credit to the permanent school fund.~~

20 (4) If a person fails to pay an administrative fine and
21 the costs of investigation ordered pursuant to subsection (3) of this
22 section, a lien in the amount of such fine and costs may be imposed
23 upon all assets and property of such person in this state and may be
24 recovered in a civil action by the director. The lien shall attach to
25 the real property of such person when notice of the lien is filed and

1 indexed against the real property in the office of the register of
2 deeds in the county where the real property is located. The lien
3 shall attach to any other property of such person when notice of the
4 lien is filed against the property in the manner prescribed by law.
5 Failure of the person to pay such fine and costs constitutes a
6 separate violation of the act.

7 Sec. 22. Section 45-1019, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 45-1019 (1) The department may order any person to cease
10 and desist whenever the department determines that the person has
11 violated any provision of the Nebraska Installment Loan Act. Upon
12 entry of a cease and desist order, the director shall promptly notify
13 the affected person that such order has been entered, of the reasons
14 for such order, and that upon receipt, within fifteen business days
15 after the date of the order, of written request from the affected
16 person a hearing will be scheduled within thirty business days after
17 the date of receipt of the written request unless the parties consent
18 to a later date or the hearing officer sets a later date for good
19 cause. If a hearing is not requested and none is ordered by the
20 director, the order shall remain in effect until it is modified or
21 vacated.

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

25 (3) A person aggrieved by a cease and desist order of the

1 director may obtain judicial review of the order in the manner
2 prescribed in the Administrative Procedure Act and the rules and
3 regulations adopted and promulgated by the department under the act.
4 The director may obtain an order from the district court of Lancaster
5 County for the enforcement of the cease and desist order.

6 (4) A person who violates a cease and desist order of the
7 director may, after notice and hearing and upon further order of the
8 director, be subject to a penalty of not more than five thousand
9 dollars for each act in violation of the cease and desist order. The
10 department shall remit fines collected under this section to the
11 State Treasurer for distribution in accordance with Article VII,
12 section 5, of the Constitution of Nebraska.

13 Sec. 23. Section 54-415, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 54-415 (1) Any person taking up an estray shall report
16 the same within seven days thereafter to the Nebraska Brand
17 Committee, if within the brand inspection area, or to the county
18 sheriff of the county where the estray was taken up, if not within
19 the brand inspection area. If the animal is determined to be an
20 estray by a representative of the Nebraska Brand Committee or the
21 county sheriff, as the case may be, such animal shall, as promptly as
22 may be practicable, be sold through the most convenient livestock
23 auction market. The proceeds of such sale, after deducting the
24 selling expenses, shall be paid over to the Nebraska Brand Committee
25 to be placed in the estray fund identified in section 54-1,118, if

1 such estray was taken up within the brand inspection area, and
2 otherwise to the treasurer of the county in which such estray was
3 taken up. During the time such proceeds are impounded, any person
4 taking up such estray may file claim with the Nebraska Brand
5 Committee or the county treasurer, as the case may be, for the
6 expense of feeding and keeping such estray while in his or her
7 possession. When such claim is filed it shall be the duty of the
8 Nebraska Brand Committee or the county board, as the case may be, to
9 decide on the validity of the claim so filed and allow the claim for
10 such amount as may be deemed equitable. When the estray originates
11 within the brand inspection area such proceeds shall be impounded for
12 one year, unless ownership is determined sooner by the Nebraska Brand
13 Committee, and if ownership is not determined within such one-year
14 period, the proceeds shall be ~~paid into the permanent school fund,~~
15 remitted to the State Treasurer, less the actual expenses incurred in
16 the investigation and processing of the estray fund. Any amount
17 deducted as actual expenses incurred shall be deposited in the
18 Nebraska Brand Inspection and Theft Prevention Fund. When the estray
19 is located outside the brand inspection area and ownership cannot be
20 determined by the county board, the county board shall then order
21 payment of the balance of the sale proceeds, less expenses, to the
22 ~~permanent school fund.~~ State Treasurer. If the brand committee or the
23 county board determines ownership of an estray sold in accordance
24 with this section by means of evidence of ownership other than the
25 owner's recorded Nebraska brand, an amount not to exceed the actual

1 investigative costs or expenses may be deducted from the proceeds of
2 the sale. Any person who violates this section is guilty of a Class
3 II misdemeanor. The definitions found in sections 54-172 to 54-190
4 apply to this section.

5 (2) Any proceeds of sale of an estray, after expenses,
6 shall be remitted to the State Treasurer for distribution in
7 accordance with Article VII, section 7, of the Constitution of
8 Nebraska.

9 Sec. 24. Section 54-2606, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 54-2606 The proceeds from any livestock ordered to be
12 sold pursuant to section 54-2605 shall not be distributed until all
13 fines and costs associated with such action have been paid. All money
14 collected as a fine shall be remitted to the State Treasurer for
15 credit to the permanent school fund. distribution in accordance with
16 Article VII, section 5, of the Constitution of Nebraska. All fines
17 levied under this section remaining unpaid shall constitute a debt to
18 the State of Nebraska which may be collected by lien foreclosure or
19 sued for and recovered in any proper form of action, in the name of
20 the State of Nebraska, in the district court of the county in which
21 the violation occurred.

22 Sec. 25. Section 58-703, Revised Statutes Cumulative
23 Supplement, 2012, is amended to read:

24 58-703 The Affordable Housing Trust Fund is created. The
25 fund shall receive money pursuant to ~~sections 8-1120 and section~~

1 76-903 and may include revenue from sources recommended by the
2 housing advisory committee established in section 58-704,
3 appropriations from the Legislature, transfers authorized by the
4 Legislature, grants, private contributions, repayment of loans, and
5 all other sources, except that appropriations from the General Fund
6 and transfers from the General Fund or the Cash Reserve Fund may not
7 be used as a revenue source for the Affordable Housing Trust Fund
8 after June 30, 2013. The Department of Economic Development as part
9 of its comprehensive housing affordability strategy shall administer
10 the Affordable Housing Trust Fund.

11 Transfers may be made from the Affordable Housing Trust
12 Fund to the General Fund, the Behavioral Health Services Fund, and
13 the Site and Building Development Fund at the direction of the
14 Legislature.

15 Sec. 26. Section 58-711, Revised Statutes Cumulative
16 Supplement, 2012, is amended to read:

17 58-711 The Department of Economic Development shall
18 submit, as part of the department's annual status report under
19 section 81-1201.11, information detailing the status of the
20 Affordable Housing Trust Fund. The status report shall list (1) the
21 applications funded during the previous calendar year, (2) the
22 applications funded in previous years, (3) the identity of the
23 organizations receiving funds, (4) the location of each project, (5)
24 the amount of funding provided to the project, (6) the amount of
25 funding leveraged as a result of the project, (7) the number of units

1 of housing created by the project and the occupancy rate, (8) the
2 expected cost of rent or monthly payment of those units, (9) the
3 projected number of new employees and community investment as a
4 result of the project, and (10) the amount of revenue deposited into
5 the Affordable Housing Trust Fund pursuant to ~~sections 8-1120 and~~
6 section 76-903. The status report shall contain no information that
7 is protected by state or federal confidentiality laws.

8 Sec. 27. Section 59-1725.01, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 59-1725.01 (1) The Director of Banking and Finance may
11 summarily order a seller or any officer, director, employee, or agent
12 of such seller to cease and desist from the further offer or sale of
13 any seller-assisted marketing plan by the seller if the director
14 finds:

15 (a) There has been a substantial failure to comply with
16 any of the provisions of the Seller-Assisted Marketing Plan Act;

17 (b) The offer or sale of the plan would constitute
18 misrepresentation to or deceit or fraud upon the purchasers; or

19 (c) Any person identified in the required disclosure
20 document has been convicted of an offense described in subdivision
21 (2)(a) of section 59-1735 or is subject to an order or has had a
22 civil judgment entered against him or her as described in subdivision
23 (2)(b) or (c) of section 59-1735, and the involvement of such person
24 in the sale or management of the seller-assisted marketing plan
25 creates an unreasonable risk to prospective purchasers.

1 (2) If the director believes, whether or not based upon
2 an investigation conducted under section 59-1725, that any person has
3 engaged in or is about to engage in any act or practice constituting
4 a violation of any provision of the Seller-Assisted Marketing Plan
5 Act or any rule, regulation, or order of the director, the director
6 may:

7 (a) Issue a cease and desist order;
8 (b) Impose a fine not to exceed five thousand dollars per
9 violation, in addition to costs of the investigation; or

10 (c) Initiate an action in any court of competent
11 jurisdiction to enjoin such acts or practices and to enforce
12 compliance with the Seller-Assisted Marketing Plan Act or any order
13 under the act.

14 (3) Upon a proper showing, a permanent or temporary
15 injunction, restraining order, or writ of mandamus shall be granted.
16 The director shall not be required to post a bond.

17 ~~(4)(a) Any fine and costs imposed under this section
18 shall be in addition to all other penalties imposed by the laws of
19 this state and shall be collected by the Department of Banking and
20 Finance and remitted to the State Treasurer. Costs shall be credited
21 to the Securities Act Cash Fund, and fines shall be credited to the
22 permanent school fund.~~

23 (4)(a) Any fines and costs imposed under this section
24 shall be in addition to all other penalties imposed by the laws of
25 this state. The Department of Banking and Finance shall collect the

1 fines and costs and remit them to the State Treasurer. The State
2 Treasurer shall credit the costs to the Securities Act Cash Fund and
3 distribute the fines in accordance with Article VII, section 5, of
4 the Constitution of Nebraska.

5 (b) If a person fails to pay the administrative fine or
6 investigation costs referred to in this section, a lien in the amount
7 of such fine and costs may be imposed upon all assets and property of
8 such person in this state and may be recovered by suit by the
9 director. Failure of the person to pay such fine and costs shall
10 constitute a separate violation of the act.

11 (5) Upon entry of an order pursuant to this section, the
12 director shall, in writing, promptly notify all persons to whom such
13 order is directed that it has been entered and of the reasons for
14 such order and that any person to whom the order is directed may
15 request a hearing in writing within fifteen business days after the
16 issuance of the order. Upon receipt of such written request, the
17 matter shall be set down for hearing to commence within thirty
18 business days after the receipt unless the parties consent to a later
19 date or the hearing officer sets a later date for good cause. If a
20 hearing is not requested within fifteen business days and none is
21 ordered by the director, the order shall automatically become final
22 and shall remain in effect until it is modified or vacated by the
23 director. If a hearing is requested or ordered, the director, after
24 notice and hearing, shall enter his or her written findings of fact
25 and conclusions of law and may affirm, modify, or vacate the order.

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

4 (7) Any person aggrieved by a final order of the director
5 may appeal the order. The appeal shall be in accordance with the
6 Administrative Procedure Act.

7 Sec. 28. Section 60-6,345, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 60-6,345 A peace officer shall seize any snowmobile used
10 for the purpose of gaining access to property for the purpose of
11 committing a felony thereon. Any snowmobile seized pursuant to this
12 section shall be held, subject to the order of the district court of
13 the county in which such felony was committed, and shall be
14 confiscated after conviction of the person from whom the snowmobile
15 was seized and disposed of by public auction which shall be conducted
16 by the sheriff of the county in which such conviction occurred. The
17 proceeds from the sale of a confiscated snowmobile shall be remitted
18 to the State Treasurer for ~~credit to the permanent school fund.~~
19 distribution in accordance with Article VII, section 5, of the
20 Constitution of Nebraska.

21 Sec. 29. Section 69-2116, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 69-2116 (1)(a) The Director of Banking and Finance in his
24 or her discretion may make such investigations within or without this
25 state as he or she deems necessary to determine whether any person

1 has violated or is about to violate the Consumer Rental Purchase
2 Agreement Act or to aid in the enforcement of the act or in the
3 adopting and promulgating of rules, regulations, and forms under the
4 act. In the discretion of the director, the actual expense of any
5 such investigation may be charged to the person who is the subject of
6 the investigation. All costs collected under this subsection shall be
7 credited to the Securities Act Cash Fund.

8 (b) The director may publish information concerning any
9 violation of the act or any rule, regulation, or order of the
10 director.

11 (c) For the purpose of any investigation or proceeding
12 under the act, the director or any officer designated by him or her
13 may administer oaths and affirmations, subpoena witnesses, compel
14 their attendance, take evidence, and require the production of any
15 books, papers, correspondence, memoranda, agreements, or other
16 documents or records which the director deems relevant or material to
17 the inquiry.

18 (2) In case of contumacy by or refusal to obey a subpoena
19 issued to any person, any court of competent jurisdiction, upon
20 application by the director, may issue to that person an order
21 requiring him or her to appear before the director or the officer
22 designated by the director to produce documentary evidence if so
23 ordered or to give evidence touching on the matter under
24 investigation or in question. Any failure to obey the order of the
25 court may be punished by the court as a contempt of court. The

1 request for an order of compliance may be addressed to either (a) the
2 district court of Lancaster County or the district court in the
3 county where service may be obtained on the person refusing to
4 testify or produce, if the person is within this state, or (b) the
5 appropriate district court of the state having jurisdiction over the
6 person refusing to testify or produce, if the person is outside this
7 state.

8 Sec. 30. Section 69-2117, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 69-2117 (1) The Director of Banking and Finance may
11 summarily order a lessor to cease and desist from the use of certain
12 forms or practices relating to consumer rental purchase agreements if
13 he or she finds that (a) there has been a substantial failure to
14 comply with any of the provisions of the Consumer Rental Purchase
15 Agreement Act or (b) the continued use of certain forms or practices
16 relating to consumer rental purchase agreements would constitute
17 misrepresentation to or deceit or fraud on the consumer.

18 (2) If the director believes, whether or not based upon
19 an investigation conducted under section 69-2116, that any person or
20 lessor has engaged in or is about to engage in any act or practice
21 constituting a violation of any provision of the Consumer Rental
22 Purchase Agreement Act or any rule, regulation, or order under the
23 act, the director may:

24 (a) Issue a cease and desist order;
25 (b) Impose a fine of not to exceed one thousand dollars

1 per violation, in addition to costs of the investigation; or
2 (c) Initiate an action in any court of competent
3 jurisdiction to enjoin such acts or practices and to enforce
4 compliance with the act or any order under the act.

5 (3) Upon a proper showing a permanent or temporary
6 injunction, restraining order, or writ of mandamus shall be granted.
7 The director shall not be required to post a bond.

8 ~~(4) Any fine and costs imposed pursuant to this section~~
9 ~~shall be in addition to all other penalties imposed by the laws of~~
10 ~~this state and shall be collected by the director and remitted to the~~
11 ~~State Treasurer. Costs shall be credited to the Securities Act Cash~~
12 ~~Fund, and fines shall be credited to the permanent school fund. The~~
13 ~~fines and costs shall be in addition to all other penalties imposed~~
14 ~~by the laws of this state. The director shall collect the fines and~~
15 ~~costs and remit them to the State Treasurer. The State Treasurer~~
16 ~~shall credit the costs to the Securities Act Cash Fund and distribute~~
17 ~~the fines in accordance with Article VII, section 5, of the~~
18 ~~Constitution of Nebraska. If a person fails to pay the fine or costs~~
19 ~~of the investigation referred to in this subsection, section, a lien~~
20 ~~in the amount of the fine and costs shall be imposed upon all of the~~
21 ~~assets and property of such person in this state and may be recovered~~
22 ~~by suit by the director. Failure of the person to pay a fine and~~
23 ~~costs shall constitute a separate violation of the act.~~

24 (5) Upon entry of an order pursuant to this section, the
25 director shall promptly notify all persons to whom such order is

1 directed that it has been entered and of the reasons for such order
2 and that any person to whom the order is directed may request a
3 hearing in writing within fifteen business days of the issuance of
4 the order. Upon a receipt of a written request, the matter shall be
5 set down for hearing to commence within thirty business days after
6 the receipt unless the parties consent to a later date or the hearing
7 officer sets a later date for good cause. If a hearing is not
8 requested within fifteen business days and none is ordered by the
9 director, the order shall automatically become final and shall remain
10 in effect until it is modified or vacated by the director. If a
11 hearing is requested or ordered, the director after notice and
12 hearing shall enter his or her written findings of fact and
13 conclusions of law and may affirm, modify, or vacate the order.

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

17 (7) Any person aggrieved by a final order of the director
18 may appeal the order. The appeal shall be in accordance with the
19 Administrative Procedure Act.

20 Sec. 31. Section 69-2118, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 69-2118 To aid in the enforcement of the Consumer Rental
23 Purchase Agreement Act, the Director of Banking and Finance
24 department may examine the books and records of any lessor at least
25 once a year. The expense of the examination shall be assessed against

1 such lessor. All costs collected under this section shall be credited
2 to the Securities Act Cash Fund.

3 Sec. 32. Section 71-449, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 71-449 (1) The department may impose any one or a
6 combination of the following types of disciplinary action against the
7 license of a health care facility or health care service:

8 (a) A fine not to exceed ten thousand dollars per
9 violation;

10 (b) A prohibition on admissions or readmissions, a
11 limitation on enrollment, or a prohibition or limitation on the
12 provision of care or treatment;

13 (c) A period of probation not to exceed two years during
14 which the facility or service may continue to operate under terms and
15 conditions fixed by the order of probation;

16 (d) A period of suspension not to exceed three years
17 during which the facility or service may not operate; and

18 (e) Revocation which is a permanent termination of the
19 license and the licensee may not apply for a license for a minimum of
20 two years after the effective date of the revocation.

21 (2) Any fine imposed and unpaid under the Health Care
22 Facility Licensure Act shall constitute a debt to the State of
23 Nebraska which may be collected in the manner of a lien foreclosure
24 or sued for and recovered in any proper form of action in the name of
25 the State of Nebraska in the district court of the county in which

1 the facility or service is located. ~~The department shall, within~~
2 ~~thirty days after receipt, remit fines to the State Treasurer for~~
3 ~~credit to the permanent school fund. The department shall remit fines~~
4 ~~to the State Treasurer, within thirty days after receipt, for~~
5 ~~distribution in accordance with Article VII, section 5, of the~~
6 Constitution of Nebraska.

7 Sec. 33. Section 71-1920, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 71-1920 (1) The department may impose any one or a
10 combination of the following types of disciplinary action against a
11 license issued under the Child Care Licensing Act:

12 (a) Issue a probationary license;

13 (b) Suspend or revoke a provisional, probationary, or
14 operating license;

15 (c) Impose a civil penalty of up to five dollars per
16 child, based upon the number of children for which the program is
17 authorized to provide child care on the effective date of the finding
18 of violation, for each day the program is in violation;

19 (d) Establish restrictions on new enrollment in the
20 program;

21 (e) Establish restrictions or other limitations on the
22 number of children or the age of the children served in the program;
23 or

24 (f) Establish other restrictions or limitations on the
25 type of service provided by the program.

1 (2) A person who has had a license revoked for any cause
2 other than nonpayment of fees shall not be eligible to reapply for a
3 license for a period of two years.

4 (3) Any fine imposed and unpaid under the Child Care
5 Licensing Act shall constitute a debt to the State of Nebraska which
6 may be collected in the manner of a lien foreclosure or sued for and
7 recovered in any proper form of action in the name of the State of
8 Nebraska in the district court of the county in which the program is
9 located. ~~The department shall, within thirty days after receipt,~~
10 ~~remit fines to the State Treasurer for credit to the permanent school~~
11 ~~fund. The department shall remit fines to the State Treasurer, within~~
12 ~~thirty days after receipt, for distribution in accordance with~~
13 Article VII, section 5, of the Constitution of Nebraska.

14 Sec. 34. Section 71-8006, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 71-8006 An individual or business enterprise who violates
17 section 71-8004 or 71-8005 commits an unfair trade practice. Any
18 person or entity injured by such a violation shall have a right of
19 action against the violator for damages for each occurrence when any
20 person or entity suffered or suffers loss.

21 An individual or business enterprise that violates the
22 Certified Industrial Hygienist Title Protection Act shall be subject
23 to a civil penalty of not more than two thousand dollars. The
24 Attorney General or the county attorney of the county in which such
25 violation occurs shall, when he or she has knowledge of such

1 violation, institute an action in such county to collect the penalty
2 imposed by this section. ~~Money collected pursuant to such action~~
3 shall be remitted to the State Treasurer for credit to the permanent
4 school fund. Any civil penalty collected under this section shall be
5 remitted to the State Treasurer for distribution in accordance with
6 Article VII, section 5, of the Constitution of Nebraska.

7 Sec. 35. Section 75-309.01, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 75-309.01 Each motor vehicle owned, used, or attempted to
10 be used by any person as a common or contract carrier to transport
11 passengers for hire in violation of section 75-309 is declared to be
12 a public nuisance and subject to seizure and confiscation by any
13 person charged with the enforcement of this section. Any motor
14 vehicle which is owned, used, or attempted to be used by any person
15 as a common or contract carrier to transport passengers for hire in
16 violation of section 75-309 may be seized upon the arrest of the
17 person who uses or owns the motor vehicle, and upon the conviction of
18 the person for the violation of such section, the motor vehicle
19 shall, as a part of the element of the violation, at the discretion
20 of the court, be forfeited to the state and delivered to the
21 commission to be disposed of as provided by law. The sale shall be
22 subject to any liens of record. The commission shall remit the
23 proceeds of the sale to the State Treasurer for ~~credit to the~~
24 ~~permanent school fund. distribution in accordance with Article VII,~~
25 section 5, of the Constitution of Nebraska.

1 Sec. 36. Section 81-5,162, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 81-5,162 Any money collected under sections 81-5,158 to
4 81-5,160 shall be remitted to the State Treasurer for credit to the
5 State Fire Marshal Cash Fund. Any civil penalties collected under
6 section 81-5,163 shall be remitted to the State Treasurer for ~~credit~~
7 ~~to the permanent school fund. distribution in accordance with Article~~
8 VII, section 5, of the Constitution of Nebraska.

9 Sec. 37. Section 81-3537, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 81-3537 (1) The board may after hearing, by majority
12 vote, take any or all of the following actions, upon proof
13 satisfactory to the board that any person or organization has
14 violated the Geologists Regulation Act or any rules or regulations
15 adopted and promulgated pursuant to the act:

16 (a) Issuance of censure or reprimand;

17 (b) Suspension of judgment;

18 (c) Placement of the offender on probation with the
19 board;

20 (d) Placement of a limitation or limitations on the
21 holder of a license and upon the right of the holder of a license to
22 practice the profession to such extent, scope, or type of practice
23 for such time and under such conditions as are found necessary and
24 proper;

25 (e) Imposition of a civil penalty not to exceed ten

1 thousand dollars. The amount of the penalty shall be based on the
2 severity of the violation;

3 (f) Entrance of an order of revocation, suspension, or
4 cancellation of the certificate of licensure;

5 (g) Issuance of a cease and desist order;

6 (h) Imposition of costs as in an ordinary civil action in
7 the district court, which may include attorney's fees and hearing
8 officer fees incurred by the board and the expenses of any
9 investigation undertaken by the board; or

10 (i) Dismissal of the action.

11 In hearings under this section, the board may take into
12 account suitable evidence of reform.

13 (2) Civil penalties collected under subdivision (1)(e) of
14 this section shall be remitted to the State Treasurer for ~~credit to~~
15 ~~the permanent school fund. distribution in accordance with Article~~
16 ~~VII, section 5, of the Constitution of Nebraska.~~ All costs collected
17 under subdivision (1)(h) of this section shall be remitted to the
18 State Treasurer for credit to the Geologists Regulation Fund.

19 Sec. 38. Original sections 2-10,103.02, 8-169, 8-1,134,
20 8-223, 8-332, 8-1108.01, 8-1120, 8-1726, 9-832, 21-20,169, 44-322,
21 44-3,127, 44-5814, 44-5815, 45-191.09, 45-347, 45-921, 45-1014,
22 45-1017, 45-1019, 54-415, 54-2606, 58-703, 58-711, 59-1725.01,
23 60-6,345, 69-2116, 69-2117, 69-2118, 71-449, 71-1920, 71-8006,
24 75-309.01, 81-5,162, and 81-3537, Reissue Revised Statutes of
25 Nebraska, and sections 45-351 and 45-1002, Revised Statutes

1 Cumulative Supplement, 2012, are repealed.

2 Sec. 39. Since an emergency exists, this act takes effect
3 when passed and approved according to law.