

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 616

Introduced by Schumacher, 22.

Read first time January 23, 2013

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to finance; to amend section 8-602, Reissue
2 Revised Statutes of Nebraska; to adopt the Nebraska Money
3 Transmitters Act; to provide penalties; to eliminate the
4 Nebraska Sale of Checks and Funds Transmission Act; to
5 harmonize provisions; to provide an operative date; to
6 repeal the original section; and to outright repeal
7 sections 8-1001, 8-1001.01, 8-1002, 8-1003, 8-1004,
8 8-1005, 8-1006, 8-1007, 8-1008, 8-1009, 8-1010, 8-1011,
9 8-1012, 8-1012.01, 8-1013, 8-1014, 8-1016, 8-1017,
10 8-1018, and 8-1019, Reissue Revised Statutes of Nebraska.

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

1 Section 1. Sections 1 to 48 of this act shall be known
2 and may be cited as the Nebraska Money Transmitters Act.

3 Sec. 2. For purposes of the Nebraska Money Transmitters
4 Act, the definitions found in sections 3 to 23 of this act shall be
5 used.

6 Sec. 3. Applicant means a person filing an application
7 for a license under the Nebraska Money Transmitters Act.

8 Sec. 4. Authorized delegate means an entity designated by
9 the licensee or an exempt entity under the act to engage in the
10 business of money transmission on behalf of the licensee or exempt
11 entity.

12 Sec. 5. Breach of security of the system means
13 unauthorized acquisition of data that compromises the security,
14 confidentiality, or integrity of the information maintained by the
15 Nationwide Mortgage Licensing System and Registry, its affiliates, or
16 its subsidiaries.

17 Sec. 6. Control means the power, directly or indirectly,
18 to direct the management or policies of a licensee, whether through
19 ownership of securities, by contract, or otherwise. Any person who
20 (a) has the power to elect a majority of executive officers,
21 managers, directors, trustees, or other persons exercising managerial
22 authority of a licensee or any person in control of a licensee, (b)
23 directly or indirectly has the right to vote ten percent or more of a
24 class of stock or directly or indirectly has the power to sell or
25 direct the sale of ten percent or more of a class of stock, (c) in

1 the case of a limited liability company, is a managing member, or (d)
2 in the case of a partnership, has the right to receive, upon
3 dissolution, or has contributed, ten percent or more of the capital,
4 is presumed to control that licensee.

5 Sec. 7. Controlling person means any person in control of
6 a licensee.

7 Sec. 8. Department means the Department of Banking and
8 Finance.

9 Sec. 9. Director means the Director of Banking and
10 Finance.

11 Sec. 10. Electronic instrument means a card or other
12 tangible object for the transmission or payment of money that
13 contains a microprocessor chip, magnetic strip, or other means for
14 the storage of information, that is prefunded, and the value of which
15 is decremented upon each use. Electronic instrument does not include
16 a card or other tangible object that is redeemable by the issuer or
17 its affiliates in goods or services of the issuer or its affiliates.

18 Sec. 11. Executive officer means the president,
19 chairperson of the executive committee, senior officer responsible
20 for business decisions, chief financial officer, and any other person
21 who performs similar functions for a licensee.

22 Sec. 12. Key shareholder means any person or group of
23 persons acting in concert owning ten percent or more of any voting
24 class of an applicant's stock.

25 Sec. 13. Licensee means a person licensed pursuant to the

1 Nebraska Money Transmitters Act.

2 Sec. 14. Material litigation means any litigation that,
3 according to generally accepted accounting principles, is deemed
4 significant to an applicant's or licensee's financial health and
5 would be required to be referenced in an applicant's or licensee's
6 annual audited financial statements, report to shareholders, or
7 similar documents.

8 Sec. 15. Monetary value means a medium of exchange,
9 whether or not redeemable in money.

10 Sec. 16. Money transmission means the business of the
11 sale or issuance of payment instruments or stored value or of
12 receiving money or monetary value for transmission to a location
13 within or outside the United States by any and all means, including
14 wire, facsimile, or electronic transfer. Notwithstanding any other
15 provision of law, money transmission also includes bill payment
16 services not limited to the right to receive payment of any claim for
17 another but does not include bill payment services in which an agent
18 of a payee receives money or monetary value on behalf of such payee.

19 Sec. 17. Nationwide Mortgage Licensing System and
20 Registry means a licensing system developed and maintained by the
21 Conference of State Bank Supervisors and the American Association of
22 Residential Mortgage Regulators for the licensing and registration of
23 mortgage loan originators, mortgage bankers, installment loan
24 companies, and other state-regulated financial services entities and
25 industries.

1 Sec. 18. Outstanding payment instrument means any payment
2 instrument issued by a licensee which has been sold in the United
3 States directly by the licensee or any payment instrument issued by a
4 licensee which has been sold by an authorized delegate of the
5 licensee in the United States, which has been reported to the
6 licensee as having been sold, and which has not yet been paid by or
7 for the licensee.

8 Sec. 19. Payment instrument means any electronic or
9 written check, draft, money order, travelers check, or other
10 electronic or written instrument or order for the transmission or
11 payment of money, sold or issued to one or more persons, whether or
12 not such instrument is negotiable. Payment instrument does not
13 include any credit card, any voucher, any letter of credit, or any
14 instrument that is redeemable by the issuer or its affiliates in
15 goods or services of the issuer or its affiliates.

16 Sec. 20. Permissible investments means:

17 (1) Cash;

18 (2) Certificates of deposit or other debt obligations of
19 a financial institution, either domestic or foreign;

20 (3) Bills of exchange or time drafts drawn on and
21 accepted by a commercial bank, otherwise known as bankers'
22 acceptances, which are eligible for purchase by member banks of the
23 federal reserve system;

24 (4) Any investment bearing a rating of one of the three
25 highest grades as defined by a nationally recognized organization

1 that rates such securities;

2 (5) Investment securities that are obligations of the
3 United States or its agencies or instrumentalities, obligations that
4 are guaranteed fully as to principal and interest by the United
5 States, or any obligations of any state or political subdivision
6 thereof;

7 (6) Shares in a money market mutual fund, interest-
8 bearing bills or notes or bonds, debentures or stock traded on any
9 national securities exchange or on a national over-the-counter
10 market, or mutual funds primarily composed of such securities or a
11 fund composed of one of more permissible investments as set forth in
12 this section;

13 (7) Any demand borrowing agreement or agreements made to
14 a corporation or a subsidiary of a corporation whose capital stock is
15 listed on a national exchange;

16 (8) Receivables that are due to a licensee from its
17 authorized delegates pursuant to a contract described in section 39
18 of this act which are not past due or doubtful of collection; or

19 (9) Any other investment or similar security approved by
20 the director.

21 Sec. 21. Person means any individual, partnership,
22 limited liability company, association, joint-stock association,
23 trust, or corporation. Person does not include the United States or
24 the State of Nebraska.

25 Sec. 22. Remit, except as used in section 47 of this act,

1 means either to make direct payment of the funds to a licensee or its
2 representatives authorized to receive those funds or to deposit the
3 funds in a bank, credit union, or savings and loan association or
4 other similar financial institution in an account specified by a
5 licensee.

6 Sec. 23. Stored value means monetary value that is
7 evidenced by an electronic record. Stored value does not include any
8 item that is redeemable by the issuer or its affiliates in goods or
9 services of the issuer or its affiliates.

10 Sec. 24. (1) The requirement for a license under the
11 Nebraska Money Transmitters Act does not apply to:

12 (a) The United States or any department, agency, or
13 instrumentality thereof;

14 (b) Any post office of the United States Postal Service;

15 (c) A state or any political subdivision thereof;

16 (d)(i) Banks, credit unions, building and loan
17 associations, savings and loan associations, savings banks, or mutual
18 banks organized under the laws of any state or the United States;

19 (ii) Subsidiaries of the institutions listed in
20 subdivision (d)(i) of this subsection;

21 (iii) Bank holding companies which have a banking
22 subsidiary located in Nebraska and whose debt securities have an
23 investment grade rating by a national rating agency; or

24 (iv) Authorized delegates of the institutions and
25 entities listed in subdivision (d)(i), (ii), or (iii) of this

1 subsection, except that authorized delegates that are not banks,
2 credit unions, building and loan associations, savings and loan
3 associations, savings banks, mutual banks, subsidiaries of any of the
4 foregoing, or bank holding companies shall comply with all
5 requirements imposed upon authorized delegates under the act;

6 (e) The provision of electronic transfer of government
7 benefits for any federal, state, or county governmental agency, as
8 defined in Consumer Financial Protection Bureau Regulation E, 12
9 C.F.R. 1005, as such regulation existed on January 1, 2013, by a
10 contractor for and on behalf of the United States or any department,
11 agency, or instrumentality thereof or any state or any political
12 subdivision thereof; or

13 (f) An operator of a payment system only to the extent
14 that the payment system provides processing, clearing, or settlement
15 services between or among persons who are all exempt under this
16 section in connection with wire transfers, credit card transactions,
17 debit card transactions, automated clearinghouse transfers, or
18 similar fund transfers.

19 (2) An authorized delegate of a licensee or of an exempt
20 entity, acting within the scope of its authority conferred by a
21 written contract as described in section 39 of this act, is not
22 required to obtain a license under the Nebraska Money Transmitters
23 Act, except that such an authorized delegate shall comply with the
24 other provisions of the act which apply to money transmission
25 transactions.

1 Sec. 25. (1) Except as otherwise provided in section 24
2 of this act, a person shall not engage in money transmission without
3 a license issued pursuant to the Nebraska Money Transmitters Act.

4 (2) A person is engaged in money transmission if the
5 person provides money transmission services to any resident of this
6 state even if the person providing money transmission services has no
7 physical presence in this state.

8 (3) If a licensee has a physical presence in this state,
9 the licensee may conduct its business at one or more locations,
10 directly or indirectly owned, or through one or more authorized
11 delegates, or both, pursuant to the single license granted to the
12 licensee.

13 (4) A license issued pursuant to the act is not
14 transferable or assignable.

15 Sec. 26. To qualify for a license under the Nebraska
16 Money Transmitters Act, an applicant, at the time of filing for a
17 license, and a licensee at all times after a license is issued, shall
18 satisfy the following requirements:

19 (1) Each applicant or licensee must have a net worth of
20 not less than fifty thousand dollars, calculated in accordance with
21 generally accepted accounting principles;

22 (2) The financial condition and responsibility, financial
23 and business experience, and character and general fitness of the
24 applicant or licensee must reasonably warrant the belief that the
25 applicant's or licensee's business will be conducted honestly,

1 fairly, and in a manner commanding the confidence and trust of the
2 community. In determining whether this requirement is met and for
3 purposes of investigating compliance with the act, the director may
4 review and consider the relevant business records and capital
5 adequacy of the applicant or licensee;

6 (3) Each corporate applicant or licensee must be in good
7 standing in the state of its incorporation; and

8 (4) Each applicant or licensee must be registered or
9 qualified to do business in the state.

10 Sec. 27. (1)(a) Each applicant shall submit, with the
11 application, a surety bond issued by a bonding company or insurance
12 company authorized to do business in this state and acceptable to the
13 director in the principal sum of one hundred thousand dollars and in
14 an additional principal sum of five thousand dollars for each
15 location, in excess of one, at which the applicant proposes to sell
16 and issue payment instruments or engage in money transmission in this
17 state, up to a maximum of two hundred fifty thousand dollars. The
18 director may increase the amount of the bond to a maximum of two
19 hundred fifty thousand dollars for good cause. The bond shall be in a
20 form satisfactory to the director and shall run to the state for the
21 benefit of any claimants against the licensee to secure the faithful
22 performance of the obligations of the licensee with respect to the
23 receipt, handling, transmission, and payment of money in connection
24 with money transmission. In the case of a bond, the aggregate
25 liability of the surety shall not exceed the principal sum of the

1 bond. Any claimant against the licensee may bring suit directly on
2 the bond or the director may bring suit on behalf of any claimant,
3 either in one action or in successive actions.

4 (b) The director may at any time require the filing of a
5 new or supplemental bond in the form as provided in subdivision (a)
6 of this subsection if he or she determines that the bond filed under
7 this section is exhausted or is inadequate for any reason, including,
8 but not limited to, the financial condition of a licensee or an
9 applicant for a license or violations of the Nebraska Money
10 Transmitters Act, any rule, regulation, or order thereunder, or any
11 state or federal law applicable to a licensee or an applicant for a
12 license. The new or supplemental bond shall not exceed five hundred
13 thousand dollars.

14 (2) In lieu of the corporate surety bond or bonds
15 required by subsection (1) of this section or of any portion of the
16 principal thereof as required by such subsection, the applicant or
17 licensee may deposit, with the director or with such banks or trust
18 companies located in this state or with any federal reserve bank as
19 the applicant or licensee may designate and the director may approve,
20 interest-bearing stocks and bonds, notes, debentures or other
21 obligations of the United States or any agency or instrumentality
22 thereof, or guaranteed by the United States, or of this state, or of
23 a city, county, village, school district, or instrumentality of this
24 state, or guaranteed by this state, to an aggregate amount, based
25 upon principal amount or market value, whichever is lower, of not

1 less than the amount of the required corporate surety bond or portion
2 thereof. The securities shall be deposited and held to secure the
3 same obligations as would the surety bond. The licensee shall have
4 the right, with the approval of the director, to substitute other
5 securities for those deposited and shall be required to do so on
6 written order of the director made for good cause shown. The licensee
7 shall pay the fees prescribed in section 8-602 for pledging and
8 substitution of securities. So long as the licensee so depositing
9 shall continue solvent, and is not in violation of the Nebraska Money
10 Transmitters Act, such licensee shall be permitted to receive the
11 interest or dividends on such deposit. The safekeeping of such
12 securities and all other expenses incidental to the pledging of such
13 securities shall be paid by the licensee. All such securities shall
14 be subject to sale and transfer and to the disposal of the proceeds
15 by the director only on the order of a court of competent
16 jurisdiction.

17 (3) The surety bond shall remain in effect until
18 cancellation, which may occur only after thirty days' written notice
19 to the director. Cancellation shall not affect any liability incurred
20 or accrued during the period the surety bond was in effect.

21 (4) The surety bond shall remain in place for at least
22 five years after the licensee ceases money transmission in this
23 state, except that the director may permit the surety bond to be
24 reduced or eliminated before that time to the extent that the amount
25 of the licensee's payment instruments outstanding in this state are

1 reduced. The director may also permit a licensee to substitute a
2 letter of credit or such other form of security acceptable to the
3 director for the surety bond in place at the time the licensee ceases
4 money transmission in the state.

5 Sec. 28. (1) Each licensee shall at all times possess
6 permissible investments having an aggregate market value, calculated
7 in accordance with generally accepted accounting principles, of not
8 less than the aggregate face amount of all outstanding payment
9 instruments and stored value issued or sold by the licensee in the
10 United States. This requirement may be waived by the director if the
11 dollar volume of a licensee's outstanding payment instruments and
12 stored value does not exceed the bond or other security posted by the
13 licensee pursuant to section 27 of this act.

14 (2) Permissible investments, even if commingled with
15 other assets of the licensee, are deemed by operation of law to be
16 held in trust for the benefit of the purchasers and holders of the
17 licensee's outstanding payment instruments in the event of the
18 bankruptcy of the licensee.

19 Sec. 29. Each application for a license under the
20 Nebraska Money Transmitters Act shall be made in writing and in a
21 form prescribed by the director. Each application shall state or
22 contain:

23 (1) For all applicants:

24 (a) The exact name of the applicant, the applicant's
25 principal address, any fictitious or trade name used by the applicant

1 in the conduct of its business, and the location of the applicant's
2 business records;

3 (b) The history of the applicant's criminal convictions
4 and material litigation for the five-year period before the date of
5 the application;

6 (c) A description of the activities conducted by the
7 applicant and a history of operations;

8 (d) A description of the business activities in which the
9 applicant seeks to be engaged in this state;

10 (e) A list identifying the applicant's proposed
11 authorized delegates in this state, if any, at the time of the filing
12 of the application;

13 (f) A sample authorized delegate contract, if applicable;

14 (g) A sample form of payment instrument, if applicable;

15 (h) The locations at which the applicant and its
16 authorized delegates, if any, propose to conduct money transmission
17 in this state; and

18 (i) The name and address of the clearing bank or banks on
19 which the applicant's payment instruments will be drawn or through
20 which the payment instruments will be payable;

21 (2) If the applicant is a corporation, the applicant
22 shall also provide:

23 (a) The date of the applicant's incorporation and state
24 of incorporation;

25 (b) A certificate of good standing from the state in

1 which the applicant was incorporated;

2 (c) A certificate of authority from the Secretary of
3 State to conduct business in this state;

4 (d) A description of the corporate structure of the
5 applicant, including the identity of any parent or subsidiary of the
6 applicant, and a disclosure of whether any parent or subsidiary is
7 publicly traded on any stock exchange;

8 (e) The name, business and residence address, and
9 employment history for the five-year period immediately before the
10 date of the application of the applicant's executive officers and the
11 officers or managers who will be in charge of the applicant's
12 activities to be licensed hereunder;

13 (f) The name, business and residence address, and
14 employment history for the five-year period immediately before the
15 date of the application of any key shareholder of the applicant;

16 (g) The history of criminal convictions and material
17 litigation for the five-year period immediately before the date of
18 the application of every executive officer or key shareholder of the
19 applicant;

20 (h) A copy of the applicant's most recent audited
21 financial statement including balance sheet, statement of income or
22 loss, statement of changes in shareholder equity, and statement of
23 changes in financial position and, if available, the applicant's
24 audited financial statements for the immediately preceding two-year
25 period. However, if the applicant is a wholly owned subsidiary of

1 another corporation, the applicant may submit either the parent
2 corporation's consolidated audited financial statements for the
3 current year and for the immediately preceding two-year period or the
4 parent corporation's Form 10-K reports filed with the United States
5 Securities and Exchange Commission for the prior three years in lieu
6 of the applicant's financial statements. If the applicant is a wholly
7 owned subsidiary of a corporation having its principal place of
8 business outside the United States, similar documentation filed with
9 the parent corporation's non-United States regulator may be submitted
10 to satisfy this subdivision; and

11 (i) Copies of all filings, if any, made by the applicant
12 with the United States Securities and Exchange Commission or with a
13 similar regulator in a country other than the United States, within
14 the year preceding the date of filing of the application; and

15 (3) If the applicant is not a corporation, the applicant
16 shall also provide:

17 (a) The name, business and residence address, personal
18 financial statement and employment history, for the five-year period
19 immediately before the date of the application, of each principal of
20 the applicant and the name, business and residence address, and
21 employment history for the five-year period immediately before the
22 date of the application of any other person or persons who will be in
23 charge of the applicant's money transmission activities;

24 (b) A copy of the applicant's registration or
25 qualification to do business in this state;

1 (c) The history of criminal convictions and material
2 litigation for the five-year period immediately before the date of
3 the application for each individual having any ownership interest in
4 the applicant and each individual who exercises supervisory
5 responsibility with respect to the applicant's activities; and

6 (d) Copies of the applicant's audited financial
7 statements including balance sheet, statement of income or loss, and
8 statement of changes in financial position for the current year and,
9 if available, for the immediately preceding two-year period.

10 Sec. 30. (1) Effective July 1, 2014, the department shall
11 require such licensees under the Nebraska Money Transmitters Act to
12 be licensed and registered through the Nationwide Mortgage Licensing
13 System and Registry. In order to carry out this requirement, the
14 department is authorized to participate in the Nationwide Mortgage
15 Licensing System and Registry. For this purpose, the department may
16 establish, by adopting and promulgating rules and regulations or by
17 order, requirements as necessary. The requirements may include, but
18 not be limited to:

19 (a) Background checks of applicants and licensees,
20 including, but not limited to:

21 (i) Checks of an applicant's or a licensee's criminal
22 history through fingerprint or other data bases, except that the
23 department shall not require the submission of fingerprints by (A) an
24 executive officer or director of an applicant or licensee which is
25 either a publicly traded company or a wholly-owned subsidiary of a

1 publicly traded company or (B) an applicant or licensee who has
2 previously submitted the fingerprints of an executive officer or
3 director directly to the Nationwide Mortgage Licensing System and
4 Registry and the Federal Bureau of Investigation will accept such
5 finger prints for a criminal background check;

6 (ii) Checks of civil or administrative records;

7 (iii) Checks of an applicant's or a licensee's credit
8 history; or

9 (iv) Any other information as deemed necessary by the
10 Nationwide Mortgage Licensing System and Registry;

11 (b) The payment of fees to apply for or renew a license
12 through the Nationwide Mortgage Licensing System and Registry;

13 (c) The setting or resetting, as necessary, of renewal
14 processing or reporting dates;

15 (d) Information and reports pertaining to authorized
16 delegates; and

17 (e) Amending or surrendering a license or any other such
18 activities as the director deems necessary for participation in the
19 Nationwide Mortgage Licensing System and Registry.

20 (2) In order to fulfill the purposes of the act, the
21 department is authorized to establish relationships or contracts with
22 the Nationwide Mortgage Licensing System and Registry or other
23 entities designated by the Nationwide Mortgage Licensing System and
24 Registry to collect and maintain records and process transaction fees
25 or other fees related to licensees or other persons subject to the

1 act. The department may allow such system to collect licensing fees
2 on behalf of the department and allow such system to collect a
3 processing fee for the services of the system directly from each
4 licensee or applicant for a license.

5 (3) The director is required to regularly report
6 enforcement actions and other relevant information to the Nationwide
7 Mortgage Licensing System and Registry subject to the provisions
8 contained in section 31 of this act.

9 (4) The director shall establish a process whereby
10 applicants and licensees may challenge information entered into the
11 Nationwide Mortgage Licensing System and Registry by the director.

12 (5) The department shall ensure that the Nationwide
13 Mortgage Licensing System and Registry adopts a privacy, data
14 security, and breach of security of the system notification policy.
15 The director shall make available upon written request a copy of the
16 contract between the department and the Nationwide Mortgage Licensing
17 System and Registry pertaining to the breach of security of the
18 system provisions.

19 (6) The department shall upon written request provide the
20 most recently available audited financial report of the Nationwide
21 Mortgage Licensing System and Registry.

22 Sec. 31. (1) In order to promote more effective
23 regulation and reduce the regulatory burden through supervisory
24 information sharing:

25 (a) Except as otherwise provided in this section, the

1 requirements under any federal or state law regarding the privacy or
2 confidentiality of any information or material provided to the
3 Nationwide Mortgage Licensing System and Registry, and any privilege
4 arising under federal or state law, including the rules of any
5 federal or state court, with respect to such information or material,
6 shall continue to apply to such information or material after the
7 information or material has been disclosed to the Nationwide Mortgage
8 Licensing System and Registry. Such information and material may be
9 shared with all federal and state regulatory officials with money
10 transmitter industry oversight authority without the loss of
11 privilege or the loss of confidentiality protections provided by
12 federal or state law;

13 (b) Information or material that is subject to privilege
14 or confidentiality under subdivision (a) of this subsection shall not
15 be subject to:

16 (i) Disclosure under any federal or state law governing
17 the disclosure to the public of information held by an officer or an
18 agency of the federal government or the respective state; or

19 (ii) Subpoena or discovery or admission into evidence in
20 any private civil action or administrative process unless, with
21 respect to any privilege held by the Nationwide Mortgage Licensing
22 System and Registry with respect to such information or material, the
23 person to whom such information or material pertains waives, in whole
24 or in part, in the discretion of such person, that privilege;

25 (c) Any state statute relating to the disclosure of

1 confidential supervisory information or any information or material
2 described in subdivision (a) of this subsection that is inconsistent
3 with such subdivision shall be superseded by the requirements of this
4 section; and

5 (d) This section shall not apply with respect to the
6 information or material relating to the employment history of, and
7 publicly adjudicated disciplinary and enforcement actions against,
8 applicants and licensees that is included in the Nationwide Mortgage
9 Licensing System and Registry for access by the public.

10 (2) For these purposes, the director is authorized to
11 enter into agreements or sharing arrangements with other governmental
12 agencies, the Conference of State Bank Supervisors, the American
13 Association of Residential Mortgage Regulators, the Money Transmitter
14 Regulators Association, or other associations representing
15 governmental agencies as established by adopting and promulgating
16 rules and regulations or an order of the director.

17 Sec. 32. Each applicant shall submit, with the
18 application, an application fee of one thousand dollars, and any
19 processing fee allowed under subsection (2) of section 30 of this act
20 which shall not be subject to refund but which, if the license is
21 granted, shall constitute the license fee for the first license year
22 or part thereof.

23 Sec. 33. (1) Upon the filing of a complete application
24 under the Nebraska Money Transmitters Act, the director shall
25 investigate the financial condition and responsibility, financial and

1 business experience, character, and general fitness of the applicant.
2 The director may conduct an onsite investigation of the applicant,
3 the reasonable cost of which shall be borne by the applicant. If the
4 director finds that the applicant's business will be conducted
5 honestly, fairly, and in a manner commanding the confidence and trust
6 of the community and that the applicant has fulfilled the
7 requirements imposed by the act and has paid the required application
8 or license fee, the director shall issue a license to the applicant
9 authorizing the applicant to engage in money transmission in this
10 state. If these requirements have not been met, the director shall
11 deny the application in writing, setting forth the reasons for the
12 denial.

13 (2) The director shall approve or deny every application
14 for an original license within one hundred twenty days after the date
15 a complete application is submitted, which period may be extended by
16 the written consent of the applicant. The director shall notify the
17 applicant of the date when the application is deemed complete.

18 (3) Any applicant aggrieved by a denial issued by the
19 director under the act may, at any time within fifteen business days
20 after the date of the denial, request a hearing before the director.
21 The hearing shall be held in accordance with the Administrative
22 Procedure Act and rules and regulations of the department.

23 Sec. 34. (1)(a) All initial licenses shall remain in full
24 force and effect until the next succeeding July 1. Beginning July 1,
25 2014, initial licenses shall remain in full force and effect until

1 the next succeeding December 31. Thereafter, each licensee shall,
2 annually on or before December 31 of each year, file a license
3 renewal application and pay to the director a license fee of two
4 hundred fifty dollars and any processing fee allowed under subsection
5 (2) of section 30 of this act, both of which shall not be subject to
6 refund.

7 (b) Licenses which expire on July 1, 2014, may be renewed
8 until December 31, 2014, upon submission of a license renewal
9 application and compliance with subsection (2) of this section. For
10 such renewals, the department shall prorate the license fee provided
11 in subdivision (1)(a) of this section using a factor of six-twelfths.

12 (2) The renewal application and license fee shall be
13 accompanied by a report, in a form prescribed by the director, which
14 shall include:

15 (a) A copy of the licensee's most recent audited
16 consolidated annual financial statement including balance sheet,
17 statement of income or loss, statement of changes in shareholders'
18 equity, and statement of changes in financial position, or, if a
19 licensee is a wholly owned subsidiary of another corporation, the
20 consolidated audited annual financial statement of the parent
21 corporation may be filed in lieu of the licensee's audited annual
22 financial statement;

23 (b) The number of payment instruments sold by the
24 licensee in the state, the dollar amount of those instruments, and
25 the dollar amount of payment instruments currently outstanding, for

1 the most recent quarter for which data is available before the date
2 of the filing of the renewal application, but in no event more than
3 one hundred twenty days before the renewal date;

4 (c) Any material changes to any of the information
5 submitted by the licensee on its original application which have not
6 previously been reported to the director on any other report required
7 to be filed under the Nebraska Money Transmitters Act;

8 (d) A list of the licensee's permissible investments; and

9 (e) A list of the locations, if any, within this state at
10 which money transmission is being conducted by either the licensee or
11 its authorized delegates.

12 Sec. 35. (1) A licensee shall file notice with the
13 director within thirty calendar days after any material change in
14 information provided in a licensee's application as prescribed by the
15 director.

16 (2) A licensee shall file a report with the director
17 within five business days after the licensee has reason to know of
18 the occurrence of any of the following events:

19 (a) The filing of a petition by or against the licensee
20 under any bankruptcy law of the United States for liquidation or
21 reorganization;

22 (b) The filing of a petition by or against the licensee
23 for receivership, the commencement of any other judicial or
24 administrative proceeding for its dissolution or reorganization, or
25 the making of a general assignment for the benefit of its creditors;

1 (c) The filing of an action to revoke or suspend the
2 licensee's license in a state or country in which the licensee
3 engages in business or is licensed;

4 (d) The cancellation or other impairment of the
5 licensee's bond or other security;

6 (e) A charge or conviction of the licensee or of an
7 executive officer, manager, or director of, or controlling person of,
8 the licensee, for a felony; or

9 (f) A charge or conviction of an authorized delegate for
10 a felony.

11 Sec. 36. (1) No person acting personally or as an
12 authorized delegate shall acquire control of any licensee under the
13 Nebraska Money Transmitters Act without first giving thirty days'
14 notice to the director on forms prescribed by the director of such
15 proposed acquisition.

16 (2) The director, upon receipt of such notice, shall act
17 upon the proposed acquisition within thirty days, and unless he or
18 she disapproves the proposed acquisition within that period of time,
19 the acquisition shall become effective on the thirty-first day after
20 receipt without the director's approval, except that the director may
21 extend the thirty-day period an additional thirty days if, in his or
22 her judgment, any material information submitted is substantially
23 inaccurate or the acquiring person has not furnished all the
24 information required by the director.

25 (3) An acquisition may be made prior to the expiration of

1 the disapproval period if the director issues written notice of his
2 or her intent not to disapprove the action.

3 (4)(a) The director may disapprove any proposed
4 acquisition if:

5 (i) The financial condition of any acquiring person is
6 such as might jeopardize the financial stability of the acquired
7 licensee;

8 (ii) The business experience, character, and general
9 fitness of any acquiring person or of any of the proposed management
10 personnel of the acquiring person indicate that the acquired licensee
11 would not be operated honestly, carefully, or efficiently; or

12 (iii) Any acquiring person neglects, fails, or refuses to
13 furnish all information required by the director.

14 (b) The director may require that any acquiring person
15 comply with the application requirements of section 29 of this act.

16 (c) The director shall notify the acquiring person in
17 writing of disapproval of the acquisition. The notice shall provide a
18 statement of the basis for the disapproval.

19 (d) Within fifteen business days after receipt of written
20 notice of disapproval, the acquiring person may request a hearing on
21 the proposed acquisition. The hearing shall be in accordance with the
22 Administrative Procedure Act and rules and regulations of the
23 department. Following such hearing, the director shall, by order,
24 approve or disapprove the proposed acquisition on the basis of the
25 record made at the hearing.

1 Sec. 37. (1) The director may conduct an annual onsite
2 examination of a licensee upon reasonable written notice to the
3 licensee. The director may examine a licensee without prior notice if
4 the director has a reasonable basis to believe that the licensee is
5 in noncompliance with the Nebraska Money Transmitters Act. If the
6 director concludes that an onsite examination of a licensee is
7 necessary, the licensee shall pay an examination fee and the director
8 shall charge for the actual cost of the examination at an hourly rate
9 set by the director which is sufficient to cover all reasonable
10 expenses associated with the examination. The onsite examination may
11 be conducted in conjunction with examinations to be performed by
12 representatives of agencies of another state or states. The director,
13 in lieu of an onsite examination, may accept the examination report
14 of an agency of another state or a report prepared by an independent
15 accounting firm. Reports so accepted are considered for all purposes
16 as an official report of the director. The licensee shall be
17 responsible for the reasonable expenses incurred by the department,
18 the agencies of another state, or an independent licensed or
19 certified public accountant in making the examination or report.

20 (2) The director may request financial data from a
21 licensee in addition to that required under section 34 of this act or
22 conduct an onsite examination of any authorized delegate or location
23 of a licensee within this state without prior notice to the
24 authorized delegate or licensee only if the director has a reasonable
25 basis to believe that the licensee or authorized delegate is in

1 noncompliance with the Nebraska Money Transmitters Act. When the
2 director examines an authorized delegate's operations, the authorized
3 delegate shall pay all reasonably incurred costs of such examination.
4 When the director examines a licensee's location, the licensee shall
5 pay all reasonably incurred costs of such examination.

6 Sec. 38. (1) Each licensee shall make, keep, and preserve
7 the following books, accounts, and other records for a period of
8 three years which shall be open to inspection by the director:

9 (a) A record of each payment instrument and stored value
10 sold;

11 (b) A general ledger containing all assets, liability,
12 capital, income, and expense accounts, which general ledger shall be
13 posted at least monthly;

14 (c) Settlement sheets received from authorized delegates;

15 (d) Bank statements and bank reconciliation records;

16 (e) Records of outstanding payment instruments and stored
17 value;

18 (f) Records of each payment instrument and stored value
19 paid;

20 (g) A list of the names and addresses of all of the
21 licensee's authorized delegates; and

22 (h) Any other records the director reasonably requires by
23 rule or regulation or order.

24 (2) Maintenance of such documents as are required by this
25 section in a photographic, electronic, or other similar form

1 constitutes compliance with this section.

2 (3) Records may be maintained at a location other than
3 within this state so long as the records are made accessible to the
4 director on seven business days' written notice.

5 Sec. 39. A licensee desiring to conduct money
6 transmission through an authorized delegate shall authorize each
7 authorized delegate to operate pursuant to an express written
8 contract which, for contracts entered into on or after January 1,
9 2014, shall provide the following:

10 (1) That the licensee appoints the person as its
11 authorized delegate with authority to engage in the sale and issue of
12 payment instruments or engage in the business of money transmission
13 on behalf of the licensee;

14 (2) That neither a licensee nor an authorized delegate
15 may authorize subdelegates without the written consent of the
16 director; and

17 (3) That the licensee is subject to supervision and
18 regulation by the director.

19 Sec. 40. (1) An authorized delegate shall not make any
20 fraudulent or false statement or misrepresentation to a licensee or
21 to the director.

22 (2) An authorized delegate shall conduct all money
23 transmission strictly in accordance with the licensee's written
24 procedures provided to the authorized delegate.

25 (3) An authorized delegate shall remit all money owing to

1 the licensee in accordance with the terms of the contract between the
2 licensee and the authorized delegate.

3 (4) An authorized delegate is deemed to consent to the
4 director's inspection with or without prior notice to the licensee or
5 authorized delegate.

6 (5) An authorized delegate is under a duty to act only as
7 authorized under the contract with the licensee and the Nebraska
8 Money Transmitters Act. An authorized delegate who exceeds its
9 authority is subject to cancellation of its contract and further
10 disciplinary action by the director.

11 (6) All funds, less fees, received by an authorized
12 delegate of a licensee from the sale or delivery of a payment
13 instrument issued by a licensee or received by an authorized delegate
14 for transmission shall, from the time such funds are received by such
15 authorized delegate until such time when the funds or an equivalent
16 amount are remitted by the authorized delegate to the licensee,
17 constitute trust funds owned by and belonging to the licensee. If an
18 authorized delegate commingles any such funds with any other funds or
19 property owned or controlled by the authorized delegate, all
20 commingled proceeds and other property is impressed with a trust in
21 favor of the licensee in an amount equal to the amount of the
22 proceeds due the licensee.

23 Sec. 41. (1) The director may, following a hearing in
24 accordance with the Administrative Procedure Act, suspend or revoke
25 any license issued pursuant to the Nebraska Money Transmitters Act if

1 he or she finds:

2 (a) Any fact or condition exists that, if it had existed
3 at the time when the licensee applied for its original or renewal
4 license, would have been grounds for denying such application;

5 (b) The licensee's net worth has become inadequate and
6 the licensee, after ten days' written notice from the director,
7 failed to take such steps as the director deems necessary to remedy
8 such deficiency;

9 (c) The licensee knowingly violated any material
10 provision of the act or any rule or order validly adopted and
11 promulgated under the act;

12 (d) The licensee conducted money transmission in an
13 unsafe or unsound manner;

14 (e) The licensee is insolvent;

15 (f) The licensee has suspended payment of its
16 obligations, made an assignment for the benefit of its creditors, or
17 admitted in writing its inability to pay its debts as they became
18 due;

19 (g) The licensee filed for liquidation or reorganization
20 under any bankruptcy law;

21 (h) The licensee refused to permit the director to make
22 any examination authorized by the act; or

23 (i) The licensee willfully failed to make any report
24 required by the act.

25 (2) In determining whether a licensee is engaging in an

1 unsafe or unsound practice, the director may consider the size and
2 condition of the licensee's money transmission, the magnitude of the
3 loss, if any, the gravity of the violation of the act, and the
4 previous conduct of the licensee.

5 (3) A licensee may voluntarily surrender a license by
6 delivering to the director written notice of the surrender, but a
7 surrender shall not affect civil or criminal liability for acts
8 committed before the surrender or liability for any fines which may
9 be levied against the licensee or any of its officers, directors, key
10 shareholders, partners, or members for acts committed before the
11 surrender.

12 (4)(a) If a licensee fails to renew its license as
13 required by section 34 of this act and does not voluntarily surrender
14 the license pursuant to this section, the department may issue a
15 notice of expiration of the license to the licensee in lieu of
16 revocation proceedings.

17 (b) If a licensee fails to maintain a surety bond as
18 required by section 27 of this act, the department may issue a notice
19 of cancellation of the license in lieu of revocation proceedings.

20 (5) Revocation, suspension, surrender, cancellation, or
21 expiration of a license shall not impair or affect the obligation of
22 a preexisting lawful contract between the licensee and any person.

23 (6) Revocation, suspension, cancellation, or expiration
24 of a license shall not affect civil or criminal liability for acts
25 committed before the revocation, suspension, cancellation, or

1 expiration or liability for any fines which may be levied against the
2 licensee or any of its officers, directors, key shareholders,
3 partners, or members for acts committed before the revocation,
4 suspension, cancellation, or expiration.

5 Sec. 42. (1) The director may, following a hearing in
6 accordance with the Administrative Procedure Act, issue an order
7 suspending or revoking the designation of an authorized delegate if
8 the director finds that:

9 (a) The authorized delegate violated the Nebraska Money
10 Transmitters Act or a rule or regulation adopted and promulgated or
11 an order issued under the act;

12 (b) The authorized delegate did not cooperate with an
13 examination or investigation by the director;

14 (c) The authorized delegate engaged in fraud, intentional
15 misrepresentation, or gross negligence;

16 (d) The authorized delegate is convicted of a violation
17 of a state or federal anti-money laundering statute;

18 (e) The competence, experience, character, or general
19 fitness of the authorized delegate or a controlling person of the
20 authorized delegate indicates that it is not in the public interest
21 to permit the authorized delegate to engage in money transmission
22 services; or

23 (f) The authorized delegate is engaged in an unsafe or
24 unsound practice.

25 (2) In determining whether an authorized delegate is

1 engaging in an unsafe or unsound practice, the director may consider
2 the size and condition of the authorized delegate's money
3 transmission, the magnitude of the loss, if any, the gravity of the
4 violation of the act, and the previous conduct of the authorized
5 delegate.

6 (3) Any authorized delegate to whom a final order is
7 issued under this section may apply to the director to modify or
8 rescind the order. The director shall not grant the application
9 unless the director finds that (a) it is in the public interest to do
10 so and (b) it is reasonable to believe that the person will comply
11 with the act and any rule, regulation, or order issued under the act
12 if and when that person is permitted to resume being an authorized
13 delegate of a licensee.

14 Sec. 43. (1) The department may order any person to cease
15 and desist whenever the department determines that the person has
16 violated the Nebraska Money Transmitters Act. Upon entry of a cease
17 and desist order, the director shall promptly notify the affected
18 person that such order has been entered, of the reasons for such
19 order, and that upon receipt, within fifteen business days after the
20 date of the order, of a written request from the affected person, a
21 hearing will be scheduled within thirty business days after the date
22 of receipt of the written request, unless the parties consent to a
23 later date or the hearing officer sets a later date for good cause.
24 The hearing shall be held in accordance with the Administrative
25 Procedure Act and rules and regulations of the department. If a

1 hearing is not requested and none is ordered by the director, the
2 order shall remain in effect until it is modified or vacated.

3 (2) The director may issue an order against a licensee to
4 cease and desist from engaging in money transmission through an
5 authorized delegate that is the subject of a separate order pursuant
6 to section 42 of this act.

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

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

15 Sec. 44. If the director finds, after notice and hearing
16 in accordance with the Administrative Procedure Act, that any person
17 has violated the Nebraska Money Transmitters Act or any rule,
18 regulation, or order of the director thereunder, the director may
19 order such person to pay (1) an administrative fine of not more than
20 five thousand dollars for each separate violation and (2) the costs
21 of investigation.

22 Sec. 45. (1) Except as provided in subsections (2) and
23 (3) of this section, any person violating the Nebraska Money
24 Transmitters Act or any rule, regulation, or order of the director
25 made pursuant to the act or who engages in any act, practice, or

1 transaction declared by the act to be unlawful is guilty of a Class
2 III misdemeanor.

3 (2) A person who intentionally makes a false statement,
4 misrepresentation, or false certification in a record filed or
5 required to be maintained under the act or who intentionally makes a
6 false entry or omits a material entry in such a record is guilty of a
7 Class I misdemeanor.

8 (3) An individual who knowingly engages in money
9 transmission for which a license is required under the act without
10 being licensed under the act is guilty of a Class I misdemeanor.

11 Sec. 46. The director may adopt and promulgate rules and
12 regulations and issue orders, rulings, findings, and demands as may
13 be necessary to carry out the purposes of the Nebraska Money
14 Transmitters Act.

15 Sec. 47. (1) The department shall remit all fees,
16 charges, and costs collected by the department pursuant to the
17 Nebraska Money Transmitters Act to the State Treasurer for credit to
18 the Financial Institution Assessment Cash Fund.

19 (2) The department shall remit fines collected under the
20 act to the State Treasurer for distribution in accordance with
21 Article VII, section 5, of the Constitution of Nebraska.

22 Sec. 48. A license issued under the Nebraska Sale of
23 Checks and Funds Transmission Act as it existed immediately before
24 January 1, 2014, remains in force as a license under the Nebraska
25 Money Transmitters Act until the license's expiration date.

1 Thereafter, the licensee shall be treated as if the licensee had
2 applied for and had received a license under the Nebraska Money
3 Transmitters Act and shall be required to comply with the renewal
4 requirements set forth in the Nebraska Money Transmitters Act.

5 Sec. 49. Section 8-602, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 8-602 The Director of Banking and Finance shall charge
8 and collect fees for certain services rendered by the Department of
9 Banking and Finance according to the following schedule:

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

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

16 (3) For issuing to banks, credit card banks, trust
17 companies, and building and loan associations a charter, authority,
18 or license to do business in this state, a sum which shall be
19 determined on the basis of one dollar and fifty cents for each one
20 thousand dollars of authorized capital, except that the minimum fee
21 in each case shall be two hundred twenty-five dollars;

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

1 the initial license and fifteen dollars on or before January 15 each
2 year thereafter;

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

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

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

8 (8) For investigating the applications required by
9 sections 8-117, 8-120, 8-331, and 8-2402 and the documents required
10 by section 8-201, the cost of such examination, investigation, and
11 inspection, including all legal expenses and the cost of any hearing
12 transcript, with a minimum fee under (a) sections 8-117, 8-120, and
13 8-2402 of two thousand five hundred dollars, (b) section 8-331 of two
14 thousand dollars, and (c) section 8-201 of one thousand dollars. The
15 department may require the applicant to procure and give a surety
16 bond in such principal amount as the department may determine and
17 conditioned for the payment of the fees provided in this subdivision;

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

21 (10) For the handling of pledged securities as provided
22 in ~~sections 8-210 and 8-1006,~~ section 8-210 and section 27 of this
23 act at the time of the initial deposit of such securities, one dollar
24 and fifty cents for each thousand dollars of securities deposited and
25 a like amount on or before January 15 each year thereafter. The fees

1 shall be paid by the entity pledging the securities;

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

6 (12) For investigating an application under subdivision
7 (6) of section 8-115.01, five hundred dollars;

8 (13) For investigating an application for approval to
9 establish or acquire a branch pursuant to section 8-157 or 8-2103 or
10 to establish a mobile branch pursuant to section 8-157, two hundred
11 fifty dollars;

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

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

16 (16) For investigating an application for a merger of two
17 state banks, a merger of a state bank and a national bank in which
18 the state bank is the surviving entity, or an interstate merger
19 application in which the Nebraska state chartered bank is the
20 resulting bank, five hundred dollars;

21 (17) For investigating an application or a notice to
22 establish a branch trust office, five hundred dollars;

23 (18) For investigating an application or a notice to
24 establish a representative trust office, five hundred dollars;

25 (19) For investigating an application to establish a

1 credit union branch under section 21-1725.01, two hundred fifty
2 dollars;

3 (20) For investigating an applicant under section 8-1513,
4 five thousand dollars; and

5 (21) For investigating a request to extend a conditional
6 bank charter under section 8-117, one thousand dollars.

7 Sec. 50. This act becomes operative on January 1, 2014.

8 Sec. 51. Original section 8-602, Reissue Revised Statutes
9 of Nebraska, is repealed.

10 Sec. 52. The following sections are outright repealed:
11 Sections 8-1001, 8-1001.01, 8-1002, 8-1003, 8-1004, 8-1005, 8-1006,
12 8-1007, 8-1008, 8-1009, 8-1010, 8-1011, 8-1012, 8-1012.01, 8-1013,
13 8-1014, 8-1016, 8-1017, 8-1018, and 8-1019, Reissue Revised Statutes
14 of Nebraska.