

One Hundred Seventh Legislature - First Session - 2021

Introducer's Statement of Intent

LB363

Chairperson: Senator Matt Williams

Committee: Banking, Commerce and Insurance

Date of Hearing: January 26, 2021

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 363 is a bill introduced at the request of the Nebraska Department of Banking and Finance (“Department”) to update and clarify laws under the jurisdiction of the Department.

LB 363 provides for the annual re-enactment of the depository financial institutions “wild card” statutes to provide equal rights, powers, privileges, benefits, and immunities for state-chartered banks, savings and loans, and credit unions, with their respective federal counterparts. Due to state constitutional restrictions, these statutes are amended annually. (§8-1,140; §8-355; §21-17,115) (Sections 7, 11, and 24 of the bill).

LB 363 would amend the following laws to update cross-referenced federal statutes and regulations to refer to those statutes and regulations as they existed on January 1, 2021:

- §§8-135, 8-141, 8-143.01, 8-157.01, and 8-183.04 of the Nebraska Banking Act (Sections 1, 2, 3, 4, and 6 of the bill);
- §8-318 of the savings and loan statutes (Section 10 of the bill);
- §§ 8-1101 and 8-1101.01 of the Securities Act of Nebraska (Sections 12 and 13 of the bill);
- §§8-1704 and 8-1707 of the Nebraska Commodity Code (Sections 15 and 16 of the bill);
- §8-2903 of the depository institutions financial exploitation statutes (Section 23 of the bill);
- §59-1722 of the Seller-Assisted Marketing Plan Act (Section 29 of the bill);
- §§69-2103, 69-2104, and 69-2112 of the Consumer Rental Purchase Agreement Act (Sections 30, 31, and 32 of the bill); and
- Uniform Commercial Code §4A-1088 (Section 33 of the bill).

The listed statutes currently have a reference date of January 1, 2020.

LB 363 proposes one additional amendment to the Nebraska Banking Act to revise §8-163, which provides the requirements for the payment of bank dividends, to replace references to ‘undivided profits on hand’ and ‘net profits on hand’ with the defined term, ‘retained net earnings’ (Section 5 of the bill).

LB 363 also proposes one additional amendment to the Securities Act of Nebraska to provide a cure process, within §8-1108.02, for late filings of federal covered securities under Section 18(b)(2) of the federal Securities Act of 1933, subject to the discretion of the Director of the Department and payment of a late fee (Section 14 of the bill).

LB 363 would update provisions of the Nebraska Trust Company Act relating to boards of directors, by amending §8-201 to require information on proposed board members as part of the charter application process and add a statutory cross-reference relating to selection of officers, and amending §8-204 to clarify that the president of the trust company must be a member of the board of directors and that a person appointed to fill a vacancy on the board must be approved by the Department prior to acting as a director. (Sections 8 and 9 of the bill.)

LB 363 would update the Nebraska Money Transmitters Act by amending the following:

- §8-2724 to exempt Nebraska-licensed collection agencies, credit services organizations, and debt management businesses from licensing under the Nebraska Money Transmitters Act;
- §8-2725 to clarify that a license is required for persons providing money transmission services to a Nebraska resident even if the resident is not physically present in Nebraska at the time of the transaction;
- §8-2726 to provide that a licensee must be organized in the United States or its territories and have a physical location in the United States;
- §8-2729 to require that all clearing banks used by licensees must be covered by federal deposit insurance, and to require the submission of personal financial statements for key shareholders;
- §8-2734 to eliminate the requirement that a locations report be provided as part of the annual renewal licensing process; and
- §8-2737 to provide additional investigative authority to the Department; establish a 21-day response deadline for notices of investigation and inquiries from the Department; establish a \$2,000/day fine for failure to respond to such notice, and provide for a lien and civil action for failure to pay such fine. (Sections 17 – 22 of the bill.)

LB 363 would update the Nebraska Installment Sales Act by revising the definition of “sales finance company” in §45-335 to include other parties involved in an installment sales transaction or that have contact with customers on behalf of the sales finance company, and by revising §45-346 to require that a licensee increase its surety bond by \$50,000 for each branch office licensed under this Act. (Sections 25 and 26 of the bill).

LB 363 would similarly update §§45-1004 and 45-1005 of the Nebraska Installment Loan Act to require a license for parties who acquire any rights of ownership, or who service, manage, participate in, or otherwise hold an installment loan or engage in business with an installment loan borrower. (Sections 27 and 28 of the bill).

The bill would provide for an emergency clause.

Principal Introducer: _____

Senator Matt Williams