

# **BANKING, COMMERCE AND INSURANCE COMMITTEE**

**ONE HUNDREDTH LEGISLATURE  
SECOND SESSION**

**SUMMARY OF 2008 LEGISLATION**

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**Senator Chris Langemeier, Vice Chairperson**

**Senator Tom Carlson**

**Senator Mark Christensen**

**Senator Tim Gay**

**Senator Tom Hansen**

**Senator Dave Pankonin**

**Senator Pete Pirsch**

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**William A. Marienau, Committee Counsel**

**Janice K. Foster, Committee Clerk**

MEMORANDUM

TO: Members of the Legislature and  
Other Interested Persons

FROM: Senator Rich Pahls, Chairperson  
Banking, Commerce and Insurance Committee

DATE: May 28, 2008

RE: Summary of 2008 Session Legislation

I am pleased to present, for your reference, the following summary of the provisions and disposition of all carried-over 2007 bills and 2008 bills referenced to and considered by the Banking, Commerce and Insurance Committee.

I hope you find this summary helpful as you review our work as of the conclusion of the 2008 session. If you have questions or need additional information, please contact me or our committee staff: Bill Marienau, Legal Counsel, and Janice Foster, Committee Clerk.

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## **BANKING AND FINANCE**

### **LB 113 (Pahls) Prohibit branch banking by industrial loan companies**

#### **Left on General File/Provisions amended into LB 851e and Enacted**

##### **BILL AS INTRODUCED**

This bill would enact a new section in Chapter 8, article 4 of the banks and banking statutes to provide that an industrial loan company or industrial bank shall not establish or operate a branch in this state.

An industrial loan company or industrial bank would be defined as a company that is (a) chartered by another state to make consumer loans or commercial loans or to accept deposits insured by the FDIC, but not to accept demand deposits, and (b) owned by a commercial entity that is not a bank holding company or a financial holding company subject to federal law.

The bill carries the emergency clause.

##### **EXPLANATION OF COMMITTEE AMENDMENTS**

The committee amendments (AM478) would strike the original provisions of the bill and would insert and amend section 8-2102 of the Interstate Branching By Merger Act of 1997 to provide a definition of “bank” for purposes of the act. The definition would incorporate by reference a definition of bank in federal statute, 12 U.S.C. 1813, thereby clarifying that the restrictions in the Interstate Branching By Merger Act of 1997 apply to a broad range of financial institutions, including industrial loan companies. The committee amendments would reaffirm existing law that out-of-state financial institutions may not establish a “de novo” branch in this state or acquire a branch located in this state without engaging in an interstate merger transaction with a Nebraska bank or without the acquisition of a Nebraska bank.

### **LB 174 (Janssen) Provide duties for and prohibit certain actions by issuers of credit and debit cards**

#### **Left in Committee**

##### **OVERVIEW**

This bill would enact nine new sections to impose duties and restrictions on credit card and debit card issuers with regard to merchants and prohibit certain terms in contracts between credit card and debit card issuers and merchants.

##### **SUMMARY**

The bill would provide, section by section, as follows:

Section 1 would enact a new section to provide definitions for purposes of sections 1 to 3 of the bill: “acquiring bank,” “chargeback,” “credit card,” “debit card,” “financial institution,” “interchange fee,” “issuing bank,” “merchant,” and “merchant account.”

Section 2 would enact a new section to provide that (1) whenever a contract authorizing a merchant to accept a credit card or debit card specifies that the merchant is bound by rules of an issuing bank, the contracting issuing bank shall give the merchant access to the complete rules, notify the merchant when a rule has been changed or a new rule added, and provide a copy of the new or modified rule to the merchant, (2) a contract authorizing a merchant to accept a credit card shall contain the contracting issuing bank’s schedule of fees and rates it charges to merchants and an explanation of which rates apply to the merchant and the situations in which those rates apply, and (3) a contract authorizing a merchant to accept a credit card or debit card may not require a merchant to agree not to disclose the contracting issuing bank’s rules or rates.

Section 3 would enact a new section to provide that (1) if an issuing bank fails to give a merchant access to its rules or rates as required by section 2 of the bill then the merchant shall not be liable for any chargeback or fees associated with its credit card or debit card transactions from the time the contract was executed until the rules and rates are provided, and the issuing bank shall be liable for a civil penalty of \$10,000 per each violation of a failure to provide the rules and (2) any merchant may maintain a civil action for damages or equitable relief for breach of contract under sections 2 and 3 of the bill.

Section 4 would enact a new section to provide definitions for purposes of sections 4 to 6 of the bill: “acquiring bank,” “credit card,” “debit card,” “financial institution,” “issuing bank,” “merchant,” and “merchant account.”

Section 5 would enact a new section to provide that a contract authorizing a merchant to accept a credit card or debit card shall not give an issuing bank the authority to charge a merchant or deduct from the merchant’s account the cost of a credit card or debit card transaction because the cost of the transaction exceeds a predetermined amount or require a merchant to limit or waive such a provision.

Section 6 would enact a new section to provide that (1) any merchant may maintain a civil action for damages or equitable relief for a breach of contract under section 5 of the bill and (2) the Attorney General also may maintain a civil action for a violation of section 5 of the bill and any issuing bank that violates section 5 of the bill shall be subject to a civil penalty of \$5,000 per violation.

Section 7 would enact a new section to provide definitions for purposes of sections 7 to 9 of the bill: “credit card,” “debit card,” and “interchange fee.”

Section 8 would enact a new section to provide that charges or fees charged to merchants or deducted from credit card or debit card sales for processing credit card or

debit card transactions shall not be applied to the tax portion of any credit card or debit card sales.

Section 9 would enact a new section to provide that (1) a merchant may maintain a civil action for damages or equitable relief for breach of contract under section 8 of the bill and (2) the Attorney General also may maintain a civil action for a violation of section 8 of the bill, and any person issuing a credit card or debit card who violates section 8 of the bill shall be subject to a civil penalty of \$5,000 per violation.

Section 10 would provide for severability.

### **LB 717 (Pahls) Change provisions relating to finance.**

#### **Left on General File/Provisions amended into LB 851e and Enacted**

##### **OVERVIEW**

This bill would amend sections 8-115.01, 8-143.01, and 8-157 of the Nebraska Banking Act, section 8-234 of the Nebraska Trust Company Act, section 8-374 of the building and loan association statutes, section 8-1510 of the acquisition or merger of financial institution statutes, section 25-202 of the commencement and limitation of actions statutes, and section 64-214 of the notaries statutes to replace certified mail notice requirements with first-class mail notice requirements; clarify that a state-chartered bank may, by board of directors resolution or bylaws, exclude a licensed executive officer from the definition of executive officer for purposes of insider lending restrictions if such officer is not authorized to participate in major policymaking functions of the bank and does not actually participate in such functions; extend from twenty to thirty years the period of time in which a cause of action for the foreclosure of a mortgage or deed of trust accrues with respect to the rights of subsequent purchasers and encumbrancers for value; and allow employees and agents of a bank to take acknowledgments of third parties to any written instrument given to the bank and to administer oaths for any other stockholder, director, officer, employee, or agent of the bank. The bill would outright repeal section 30-3206, regarding short-term placement of funds awaiting investment or distribution by a bank or trust company serving as a fiduciary in deposits of the commercial department of such bank or trust company.

##### **SUMMARY**

The bill would provide, section by section, as follows:

##### **BANKS**

Section 1 would amend section 8-115.01 of the Nebraska Banking Act to provide that notice to other financial institutions regarding an application by a bank for a new charter, to transfer a charter, or to move a main office shall be sent by the Director of Banking and Finance by “first-class mail, postage prepaid,” rather than by “certified mail.”

Section 2 would amend section 8-143.01 of the Nebraska Banking Act to clarify that an executive officer of a bank may be exempted from designation as an executive officer by board of directors resolution or bank bylaws if such individual is not authorized to participate and does not participate in the major policy making functions of the bank.

Section 3 would amend section 8-157 of the Nebraska Banking Act to provide that notice to other financial institutions regarding an application by a bank for a branch, to establish a mobile branch, to acquire a branch, or to move a branch shall be sent by the Director of Banking and Finance by “first-class mail, postage prepaid,” rather than by “certified mail.”

#### TRUST COMPANIES

Section 4 would amend section 8-234 of the Nebraska Trust Company Act to provide that notice to other financial institutions regarding an application to establish a branch trust office shall be sent by the Director of Banking and Finance by “first-class mail, postage prepaid,” rather than by “certified mail.”

#### BUILDING AND LOAN ASSOCIATIONS

Section 5 would amend section 8-374 of the building and loan association statutes to provide that the expense of “any” publication of notice regarding an application for a certificate of approval for a stock savings and loan association shall be paid by the applicant.

#### ACQUISITION OR MERGER OF FINANCIAL INSTITUTIONS

Section 6 would amend section 8-1510 to provide that notice to other financial institutions regarding an application for cross-industry acquisition or merger shall be sent by the Director of Banking and Finance by “first-class mail, postage prepaid,” rather than by “certified mail” or may be sent by “electronic mail” if the financial institution agrees in advance to receive notices by it.

#### FORECLOSURE

Section 7 would amend section 25-202 to provide that its provisions regarding the statute of limitations for causes of actions for foreclosure of mortgages also apply to deeds of trust and that if no date of maturity is stated or ascertainable from the filed mortgage or deed of trust the cause of action for foreclosure accrues no later than “thirty” years rather than no later than “twenty” years after the date of the mortgage or deed of trust.

#### RECOGNITION OF ACKNOWLEDGMENTS

Section 8 would amend section 64-214 to provide that it is lawful for an “employee” or “agent” of a bank, as well as a stockholder or director of a bank, who is a notary public, to take the acknowledgment of any person to any written instrument given to or by the bank and to administer an oath to any other stockholder, director, officer, employee, or agent of the bank.

Section 9 would provide for repealers of amendatory sections.

Section 10 would provide for outright repeal of section 30-3206 regarding short-term placement of funds awaiting investment or distribution by a bank or trust company serving as a fiduciary in deposits of the commercial department of such bank or trust company.

#### EXPLANATION OF COMMITTEE AMENDMENTS

The committee amendments (AM1776) would add the emergency clause.

### **LB 831 (Lathrop) Change provisions relating to security freezes on consumer credit information**

#### **Left in committee**

This bill would amend sections 8-2602, 8-2607, and 8-2609 of the Credit Report Protection Act, enacted in 2007. The bill would provide, section by section, as follows:

Section 1 would amend section 8-2602 of the Credit Report Protection Act to provide for a definition of “minor” – a person under nineteen years of age. (The act currently allows a minor, at the request of a parent or custodial parent or guardian, to seek a security freeze. The act also provides that a consumer reporting agency may not charge a fee for placing a security freeze if the consumer is a minor.)

Section 2 would amend section 8-2607 of the Credit Report Protection Act to repeal the provisions which require a consumer reporting agency to remove a security freeze seven years after it was put in place unless earlier removed pursuant to a request by the consumer.

Section 3 would amend section 8-2609 of the Credit Report Protection Act to reduce the amount of the fee which a consumer reporting agency may charge for placing a security freeze from fifteen dollars to five dollars.

Section 4 would provide for repealers.

### **LB 851e (Banking, Commerce and Insurance Committee) Change provisions relating to banking and finance**

#### **Committee Priority Bill (Banking, Commerce and Insurance Committee)**

**Enacted/Sections 2, 3, 4, 8, 9, 19, 20, 21, 23, 24, 25, 28, and 30 of the bill become Operative on July 18, 2008 and the other sections of the bill become Operative on March 20, 2008/Includes provisions of LB 113 (section 15 of the bill), LB 116 (section 27 of the bill), LB 716 (section 28 of the bill), LB 717 (sections 1, 5, 6, 10, 12,**

**14, 18, 26, and 32 of the bill), LB 851 (sections 1 to 4, 7 to 9, 11, and 17 of the bill), LB 852 (sections 19 to 25 of the bill), and LB 918 (sections 13 and 16 of the bill)/Provisions of LB 716, as included in the bill and Enacted, also amended into LB 308A and further amended and Enacted**

## OVERVIEW

LB 851, originally introduced at the request of the Director of Banking and Finance, amends various sections regarding banking and finance and also contains provisions of six additional bills and their committee amendments, as follows:

1. The provisions of LB 113 (Pahls) amend section 8-2102 of the Interstate Branching By Merger Act of 1997 to provide a definition of “bank” for purposes of the act. The definition incorporates by reference a definition of bank in federal statute, 12 U.S.C. 1813, thereby clarifying that the restrictions in the Interstate Branching By Merger Act of 1997 apply to a broad range of financial institutions, including industrial loan companies. These provisions reaffirm pre-existing law that out-of-state financial institutions may not establish a “de novo” branch in this state or acquire a branch located in this state without engaging in an interstate merger transaction with a Nebraska bank or without the acquisition of a Nebraska bank. (Section 15 of LB 851e.)
2. The provisions of LB 116 (Pahls) amend Uniform Commercial Code Section 9-324 to clarify provisions regarding a conflicting purchase-money security interest and security interest in the same livestock. Specifically, UCC Section 9-324(d) provides that a perfected purchase-money security interest in livestock has priority over a conflicting security interest in the same livestock if the purchase-money security interest is perfected when the debtor receives possession of the livestock. These provisions amend UCC Section 9-324(d) to provide that such possession means possession by the debtor or possession by a third party on behalf of or at the direction of the debtor, including, but not limited to, possession by a bailee or an agent of the debtor. (Section 27 of LB 851e.)
3. The provisions of LB 716 (Pahls) amend Uniform Commercial Code Section 9-506(c) to provide that a financing statement with minor errors or omissions is not seriously misleading if a search of “the debtor’s correct last name” in the records of the filing office would disclose the financing statement. UCC Section 9-506(a) provides, as a general matter, that a financing statement substantially satisfying the requirements of the code is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading. (Section 28 of LB 851e.) These provisions, as enacted, were also amended into LB 308A, on Final Reading, and further amended to provide that the amendments to UCC Section 9-506(c), as enacted by LB 851e, will not become applicable until September 2, 2009.
4. The provisions of LB 717 (Pahls) amend sections 8-115.01, 8-143.01, and 8-157 of the Nebraska Banking Act, section 8-234 of the Nebraska Trust Company Act, section 8-374 of the building and loan association statutes, section 8-1510 of the acquisition or merger of financial institution statutes, section 25-202 of the commencement and limitation of actions statutes, and section 64-214 of the notaries

statutes to replace certified mail notice requirements with first-class mail notice requirements; clarify that a state-chartered bank may, by board of directors resolution or bylaws, exclude a licensed executive officer from the definition of executive officer for purposes of insider lending restrictions if such officer is not authorized to participate in major policymaking functions of the bank and does not actually participate in such functions; extend from twenty to thirty years the period of time in which a cause of action for the foreclosure of a mortgage or deed of trust accrues with respect to the rights of subsequent purchasers and encumbrancers for value; and allow employees and agents of a bank to take acknowledgments of third parties to any written instrument given to the bank and to administer oaths for any other stockholder, director, officer, employee, or agent of the bank. These provisions outright repeal section 30-3206, regarding short-term placement of funds awaiting investment or distribution by a bank or trust company serving as a fiduciary in deposits of the commercial department of such bank or trust company. (Sections 1, 5, 6, 10, 12, 14, 18, 26, and 32 of LB 851e.)

5. The provisions of LB 851 (Banking, Commerce and Insurance Committee), introduced at the request of the Director of Banking and Finance, amend sections 8-115.01, 8-116, 8-120, 8-122, and 8-1,140 of the Nebraska Banking Act, sections 8-223 and 8-224 of the Nebraska Trust Company Act, section 8-355 of the building and loan association statutes, and section 21-17,115 of the Credit Union Act in order to update the laws relating to bank charter applications, trust company and trust department reports and publications, and to provide for the annual re-enactment of the wild-card statutes for state-chartered banks, building and loan associations, and credit unions. (Sections 1 to 4, 7 to 9, 11, and 17 of LB 851e.)

6. The provisions of LB 852 (Banking, Commerce and Insurance Committee), introduced at the request of the Director of Banking and Finance, amend sections 45-702 to 45-704, and 45-722 of the Mortgage Bankers Registration and Licensing Act, sections 45-907 and 45-922 of the Delayed Deposit Services Licensing Act, and section 45-1006 of the Nebraska Installment Loan Act in order to update the laws relating to mortgage bankers, delayed deposit services licensees, and installment loan licensees. (Sections 19 to 25 of LB 851e.)

7. The provisions of LB 918 (Pahls) amend section 8-910 of the Nebraska Bank Holding Company Act of 1995 to provide that the holding company deposit cap of 22 percent of total bank and savings and loan deposits in Nebraska does not apply to segregated deposits from nonresidents of Nebraska in an owned or controlled bank. These provisions also amend section 8-2106 of the Interstate Branching By Merger Act of 1997 to harmonize an internal reference. (Sections 13 and 16 of LB 851e.)

## SUMMARY

The bill provides, section by section, as follows:

## BANKS

Section 1 amends section 8-115.01 of the Nebraska Banking Act to provide that the date for a public hearing on an application for a new bank charter or for transfer of a

bank charter shall be not more than ninety days after the application “has been accepted for filing by the director as substantially complete” rather than not more than ninety days after “filing” the application unless the applicant agrees to a later date. This amendment was proposed because the information filed in connection with an application is voluminous and is sometimes filed in parts, and because an extensive review and analysis of the information is required prior to setting the hearing. This section also amends section 8-115.01 to provide that notice to other financial institutions regarding an application by a bank for a new charter, to transfer a charter, or to move a main office shall be sent by the Director of Banking and Finance by “first-class mail, postage prepaid,” rather than by “certified mail.” (Section 1 of LB 851 as introduced and section 1 of LB 717.)

Section 2 amends section 8-116 of the Nebraska Banking Act, which sets out minimum requirements for surplus, paid-up capital stock, and paid-in undivided profits for a corporation applying for a charter as a new bank. This section increases the minimum surplus requirement from the greater of fifty thousand dollars or fifty percent of paid-up capital stock to the greater of seventy thousand dollars or seventy percent of paid-up capital stock. This section repeals the requirement that the corporation shall have minimum paid-in undivided profits of not less than twenty percent of its paid-up capital stock. Because a bank which is not yet in operation does not have any undivided profits, this requirement represented an incorrect accounting treatment. (Section 2 of LB 851 as introduced.)

Sections 3 and 4 amend sections 8-120 and 8-122 of the Nebraska Banking Act, which regards bank charter application and issuance, to repeal provisions regarding undivided profits. See description of section 2 of the bill above. (Sections 3 and 4 of LB 851 as introduced.)

Section 5 amends section 8-143.01 of the Nebraska Banking Act to clarify that an executive officer of a bank may be exempted from designation as an executive officer by board of directors resolution or bank bylaws if such individual is not authorized to participate and does not participate in the major policy making functions of the bank. (Section 2 of LB 717.)

Section 6 amends section 8-157 of the Nebraska Banking Act to provide that notice to other financial institutions regarding an application by a bank for a branch, to establish a mobile branch, to acquire a branch, or to move a branch shall be sent by the Director of Banking and Finance by “first-class mail, postage prepaid,” rather than by “certified mail.” (Section 3 of LB 717.)

Section 7 amends section 8-1,140 of the Nebraska Banking Act, which is the “wild-card” statute for state-chartered banks. This section is amended to give state-chartered banks the same rights, powers, privileges, benefits, and immunities which may be exercised by a federally chartered bank doing business in Nebraska as of the operative date of this section. Due to state constitutional restrictions, this statute is amended annually. (Section 5 of LB 851 as introduced.)

## TRUST COMPANIES

Section 8 amends section 8-223 of the Nebraska Trust Company Act, which provides that a trust company shall file a report of condition every January and July with the Department of Banking and Finance. This section provides that this requirement shall not apply to the trust department of a bank if the report of condition of the trust department is included in the report of condition of the bank. (Section 6 of LB 851 as introduced.)

Section 9 amends section 8-224 of the Nebraska Trust Company Act to provide that its requirement that a trust company's annual report be published shall not apply to any trust company that makes an annual disclosure statement available to any member of the general public upon request if (a) the annual disclosure statement is in a form prescribed by the Department of Banking and Finance, (b) the trust company displays a notice in its lobby that the annual disclosure statement may be obtained from the trust company, (c) the home page of any web site maintained by the trust company contains a notice that the annual disclosure statement may be obtained from the trust company, (d) the notice includes, at a minimum, an address and telephone number to which requests for an annual disclosure statement may be made, (e) the first requested copy of the annual disclosure statement provided to a requester is free of charge, and (f) a trust company makes its annual disclosure statement available to the public beginning not later than the following March 31 or, if the trust company mails an annual disclosure statement to its shareholders, beginning not later than five days after the mailing of the disclosure statement, whichever occurs first. This section provides that the publication required by this section shall not apply to reports of the trust department of a bank "if the report of condition of the trust department is included in the reports of the bank." (Section 7 of LB 851 as introduced.)

Section 10 amends section 8-234 of the Nebraska Trust Company Act to provide that notice to other financial institutions regarding an application to establish a branch trust office shall be sent by the Director of Banking and Finance by "first-class mail, postage prepaid," rather than by "certified mail." (Section 4 of LB 717.)

## BUILDING AND LOAN ASSOCIATIONS

Section 11 amends section 8-355, which is the "wild-card" statute for state-chartered building and loan associations. This section is amended to give state-chartered building and loan associations the same rights, powers, privileges, benefits, and immunities which may be exercised by a federal savings and loan association doing business in Nebraska as of the operative date of this section. Due to state constitutional restrictions, this statute is amended annually. (Section 8 of LB 851 as introduced.)

Section 12 amends section 8-374 of the building and loan association statutes to provide that the expense of "any" publication of notice regarding an application for a certificate of approval for a stock savings and loan association shall be paid by the applicant. (Section 5 of LB 717.)

## BANK HOLDING COMPANIES

Section 13 amends section 8-910 of the Nebraska Bank Holding Company Act of 1995 to provide that the holding company deposit cap of 22 percent of total bank and savings and loan deposits in Nebraska does not apply to segregated deposits from nonresidents of Nebraska in an owned or controlled bank. (Section 1 of LB 918.)

## ACQUISITION OR MERGER OF FINANCIAL INSTITUTIONS

Section 14 amends section 8-1510 of the acquisition or merger of financial institutions statutes to provide that notice to other financial institutions regarding an application for cross-industry acquisition or merger shall be sent by the Director of Banking and Finance by “first-class mail, postage prepaid,” rather than by “certified mail” or may be sent by “electronic mail” if the financial institution agrees in advance to receive notices by it. (Section 6 of LB 717.)

## INTERSTATE BRANCHING BY MERGER

Section 15 amends section 8-2102 of the Interstate Branching By Merger Act of 1997 to provide a definition of “bank” for purposes of the act. The definition incorporates by reference a definition of bank in federal statute, 12 U.S.C. 1813, thereby clarifying that the restrictions in the Interstate Branching By Merger Act of 1997 apply to a broad range of financial institutions, including industrial loan companies. The amendments to this section reaffirm pre-existing law that out-of-state financial institutions may not establish a “de novo” branch in this state or acquire a branch located in this state without engaging in an interstate merger transaction with a Nebraska bank or without the acquisition of a Nebraska bank. (LB 113 committee amendments.)

Section 16 amends section 8-2106 of the Interstate Branching By Merger Act of 1997 to harmonize an internal reference. (Section 2 of LB 918.)

## CREDIT UNIONS

Section 17 amends section 21-17,115 of the Credit Union Act, which is the “wild-card” statute for state-chartered credit unions. This section is amended to give state-chartered credit unions the same rights, powers, privileges, benefits, and immunities which may be exercised by a federal credit union doing business in Nebraska as of the operative date of this section. Due to state constitutional restrictions, this statute is amended annually. (Section 9 of LB 851 as introduced.)

## FORECLOSURE

Section 18 amends section 25-202 to provide that its provisions regarding the statute of limitations for causes of actions for foreclosure of mortgages also apply to deeds of trust and that if no date of maturity is stated or ascertainable from the filed mortgage or deed of trust the cause of action for foreclosure accrues no later than “thirty” years rather than no later than “twenty” years after the date of the mortgage or deed of trust. (Section 7 of LB 717.)

## MORTGAGE BANKERS

Section 19 amends section 45-702 of the Mortgage Bankers Registration and Licensing Act to provide that a “mortgage banker” and a “mortgage banking business” shall be defined as a person or entity, not otherwise exempt from the act, that makes or offers to make “a mortgage loan” rather makes or offers to make “ten or more mortgage loans in a calendar year.” This amendment eliminates what had been known as the “de minimus exclusion or exemption” in the act. (Section 1 of LB 852.)

Section 20 amends section 45-703 of the Mortgage Bankers Registration and Licensing Act to provide an exemption from the act for any individual who does not regularly engage in the mortgage banking business (1) who makes a mortgage loan with his or her own funds for his or her own investment, (2) who makes a purchase-money mortgage, or (3) who finances the sale of his or her own real property without the intent to resell the mortgage loan. (Section 2 of LB 852.)

Section 21 amends section 45-704 of the Mortgage Bankers Registration and Licensing Act to harmonize an internal reference. (Section 3 of LB 852.)

Section 22 amends section 45-722 of the Mortgage Bankers Registration and Licensing Act to provide (1) that no person shall acquire control of any mortgage banking business required to be licensed under the act without giving “thirty” days’ rather than “sixty” days’ notice to the Department of Banking and Finance and (2) that the Director of Banking and Finance, upon receipt of the notice, shall act upon it within thirty days and, unless he or she disapproves the acquisition within that time, the acquisition shall become effective on the “thirty-first” rather than the “sixty-first” day after receipt without the director’s approval. (Section 4 of LB 852.)

## DELAYED DEPOSIT SERVICES

Section 23 amends section 45-907 of the Delayed Deposit Services Licensing Act to provide that the applicant for a license shall pay the expense of any publication by the Department of Banking and Finance of notice that the application for a license has been filed and that a hearing will be set if no written protest against issuance of the license has been filed with the department. (Section 5 of LB 852.)

Section 24 amends section 45-922 of the Delayed Deposit Services Licensing Act to provide that the Director of Banking and Finance may suspend or revoke a license if he or she finds that a licensee has knowingly violated a voluntary consent or compliance agreement which had been entered into with the director. (Section 6 of LB 852.)

## INSTALLMENT LOANS

Section 25 amends section 45-1006 of the Nebraska Installment Loan Act to provide that when an application for an original installment loan license has been accepted by the Director of Banking and Finance as substantially complete, notice of the filing of the application shall be published by the Department of Banking and Finance and, unless waived by the director, a hearing shall be held not less than thirty days after

the last publication rather than not less than thirty days after the filing of the application, with the costs of the hearing paid by the applicant. (Section 7 of LB 852.)

#### RECOGNITION OF ACKNOWLEDGMENTS

Section 26 amends section 64-214 of the notary statutes to provide that it is lawful for an “employee” or “agent” of a bank, as well as a stockholder or director of a bank, who is a notary public, to take the acknowledgment of any person to any written instrument given to or by the bank and to administer an oath to any other stockholder, director, officer, employee, or agent of the bank. (Section 8 of LB 717.)

#### UNIFORM COMMERCIAL CODE – SECURED TRANSACTIONS

Section 27 amends Uniform Commercial Code Section 9-324 to clarify provisions regarding a conflicting purchase-money security interest and security interest in the same livestock. Specifically, UCC Section 9-324(d) provides that a perfected purchase-money security interest in livestock has priority over a conflicting security interest in the same livestock if the purchase-money security interest is perfected when the debtor receives possession of the livestock. This section amends UCC Section 9-324(d) to provide that such possession means possession by the debtor or possession by a third party on behalf of or at the direction of the debtor, including, but not limited to, possession by a bailee or an agent of the debtor. (Section 1 of LB 116.)

Section 28 amends Uniform Commercial Code Section 9-506(c) to provide that a financing statement with minor errors or omissions is not seriously misleading if a search of “the debtor’s correct last name” in the records of the filing office would disclose the financing statement. UCC Section 9-506(a) provides, as a general matter, that a financing statement substantially satisfying the requirements of the code is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading. (Section 1 of LB 716.) The provisions of this section, as enacted, were also amended into LB 308A, on Final Reading, and further amended to provide that the amendments to UCC Section 9-506(c), as enacted by LB 851e, will not become applicable until September 2, 2009.

#### MISCELLANEOUS PROVISIONS

Section 29 provides for operative dates. Sections 2 to 4, 8, 9, 19 to 21, 23 to 25, 28, and 30 of the bill become operative on July 18, 2008 (three calendar months after adjournment of the legislative session) and sections 1, 5 to 7, 10 to 18, 22, 26, 27, 29, and 31 to 33 of the bill become operative on March 20, 2008 (the effective date of the act).

Section 30 provides for repealers of sections not subject to the emergency clause.

Section 31 provides for repealers of sections subject to the emergency clause.

Section 32 provides for outright repeal of section 30-3206 regarding short-term placement of funds awaiting investment or distribution by a bank or trust company serving as a fiduciary in deposits of the commercial department of such bank or trust company. (Section 10 of LB 717.)

Section 33 provides for the emergency clause.

The bill passed 47-0-2 with the emergency clause on March 13, 2008 and was signed by the Governor on March 19, 2008.

**LB 918 (Pahls) Change provisions relating to bank holding company ownership limitations and interstate mergers**

**Left on General File/Provisions amended into LB 851e and Enacted**

This bill would amend section 8-910 of the Nebraska Bank Holding Company Act of 1995 to provide that the holding company deposit cap of 22 percent of total bank and savings and loan deposits in Nebraska does not apply to segregated deposits from nonresidents of Nebraska in an owned or controlled bank. The bill would amend section 8-2106 of the Interstate Branching By Merger Act of 1997 to harmonize an internal reference.

**EXPLANATION OF COMMITTEE AMENDMENTS**

The committee amendments (AM1775) would add the emergency clause.

**LB 1028 (Pankonin) Change the Securities Act of Nebraska to regulate certain branch office operations and prohibit certain fraudulent activities**

**Left in Committee**

**OVERVIEW**

This bill would amend various sections of the Securities Act of Nebraska to require registration of branch offices of broker-dealers and investment advisers; make it a violation of the act to alter, destroy, mutilate, conceal, falsify, remove, or withhold evidence with intent to impede, obstruct, avoid, evade, or influence an administrative proceeding; authorize the Director of Banking and Finance to order a broker-dealer or investment adviser to cease and desist conducting business from an unregistered branch office; and authorize a court to order rescission, restitution, or disgorgement against any person violating the act or rules and regulations or orders of the director.

**SUMMARY**

The bill would provide, section by section, as follows:

Section 1 would amend section 8-1101 of the Securities Act of Nebraska to provide a definition of “branch office” of a broker-dealer or an investment adviser.

Section 2 would amend section 8-1103 of the Securities Act of Nebraska to provide that no broker-dealer or investment adviser may conduct business from a branch office within the state unless the branch office is registered with the Director of Banking

and Finance. The bill would amend this section to provide that each broker-dealer or investment adviser shall designate in writing a manager for each branch office. The bill would amend this section to provide that the fee for initial or renewal registration shall be one hundred dollars for each branch office. The bill would amend this section to provide that each branch office shall make and keep records as the director may prescribe.

Section 3 would enact a new section within the Securities Act of Nebraska to provide that it is a violation of the act for any person, in any investigation or proceeding under the act, to alter, destroy, mutilate, or conceal; to falsify; or to remove or withhold any record, document, or evidence with the intent to impede, obstruct, avoid, evade, or influence the official investigation or administration of any proceeding.

Section 4 would amend section 8-1108.01 of the Securities Act of Nebraska to provide that the Director of Banking and Finance may order a broker-dealer or investment adviser to cease and desist from conducting business from a branch office unless and until it has been registered under the act. The bill would amend this section to update general provisions regarding disposition of fines and costs.

Section 5 would amend section 8-1116 of the Securities Act of Nebraska to provide that, upon a showing by the Director of Banking and Finance, a court may enter an order of rescission, restitution, or disgorgement against any person who has violated the act, any rule and regulation adopted and promulgated thereunder, or any order of the director issued thereunder.

Section 6 would amend section 8-1123 of the Securities Act of Nebraska to provide for new section 3 of the bill to be assigned within the act.

Sections 7 to 9 would amend section 44-708 regarding life insurer funding agreements, section 45-101.04 regarding exceptions to the general usury rate, and section 59-1715 of the Seller-Assisted Marketing Plan Act to harmonize internal references to the definition of “security” in the Securities Act of Nebraska.

Section 10 would provide for repealers of amendatory sections.

## **SELF-FUNDING BENEFIT PLANS**

**LB 734 (Fulton) Change employee benefit plan provisions for certain political subdivisions**

**Speaker Priority Bill**

**Enacted/Effective July 18, 2008**

This bill amends section 13-1622 of the Political Subdivisions Self-Funding Benefits Act to provide that a city of the primary class or a county with a population of more than two hundred thousand, in addition to a city of the metropolitan class, may provide an employee benefit plan without excess insurance if the city or county obtains a determination from an independent actuary or insurer that excess insurance is not necessary to preserve the safety and soundness of the employee benefit plan.

Accordingly, under this section as amended by this bill, a plan sponsor, other than a city of the metropolitan or primary class or a county with a population of more than two hundred thousand, is required to obtain excess insurance to limit the plan sponsor's total claims liability for each plan year to not more than 125 percent of the expected claims liability as projected by an independent actuary or insurer.

Under the act, a "plan sponsor" is defined as a political subdivision providing an employee benefit plan and a "political subdivision" includes villages, cities, counties, school districts, public power districts, community colleges, natural resource districts, and all other units of local government.

The bill passed 46-0-3 on April 17, 2008 and was signed by the Governor on April 21, 2008.

## **CORPORATIONS AND OTHER COMPANIES**

**LB 379 (Pahls) Change certain corporate reporting, notice, and filing provisions and eliminate references to professional limited liability companies**

**Enacted/Effective July 18, 2008**

### **OVERVIEW**

This bill, introduced at the request of the Secretary of State, updates various sections regarding corporate filings to allow digital or electronic signatures on filings, to allow electronically transmitted notices to corporations, to allow filings to contain a post office box number in addition to the street address of a registered agent for service of process, to eliminate “professional limited liability company” as a defined term, and to allow a manager as well as a member of a foreign limited liability company to execute an application for a certificate of authority.

### **SUMMARY**

The bill provides, section by section, as follows:

#### **CORPORATE FILINGS**

Section 1 amends section 21-301, which requires domestic business corporations to file biennial reports with the Secretary of State, to provide that the required signature on the report by the president, a vice president, a secretary, or a treasurer may be “digital or electronic” and that the notice which the Secretary of State must send to each corporation for which a report and fee has not been received may be “electronically transmitted” as well as sent by United States mail.

Section 2 amends section 21-302 to provide that the biennial report filed by domestic business corporations with the Secretary of State may show a post office box number in addition to the street address of the corporation’s registered agent.

Section 3 amends section 21-304, which requires foreign business corporations to file biennial reports with the Secretary of State, to provide that the required signature on the report by the president, a vice president, a secretary, or a treasurer may be “digital or electronic” and that the notice which the Secretary of State must send to each corporation for which a report and fee has not been received may be “electronically transmitted” as well as sent by United States mail.

Section 4 amends section 21-305 to provide that the biennial report filed by foreign business corporations with the Secretary of State may show a post office box number in addition to the street address of the corporation’s registered agent.

## COOPERATIVE COMPANIES

Section 5 amends section 21-1302 to provide that the articles of incorporation filed by cooperative companies with the Secretary of State may contain a post office box number in addition to the street address of the registered agent.

## NONSTOCK COOPERATIVE MARKETING COMPANIES

Section 6 amends section 21-1403 of the Nonstock Cooperative Marketing Act to provide that the articles of incorporation filed by nonstock cooperative associations with the Secretary of State may contain a post office box number in addition to the street address of the registered agent.

## NONPROFIT CORPORATIONS

Sections 7 to 14 amend sections 21-1921, 21-1934, 21-1935, 21-19,148, 21-19,152, 21-19,153, 21-19,161, and 21-19,172 of the Nebraska Nonprofit Corporation Act to provide that corporate filings by nonprofit corporations with the Secretary of State may contain a post office box number in addition to the street address of the registered agent.

## BUSINESS CORPORATIONS

Sections 15 to 19 amend sections 21-2018, 21-2032, 21-20,170, 21-20,175, and 21-20,181.01 of the Business Corporation Act to provide that corporate filings by business corporations with the Secretary of State may contain a post office box number in addition to the street address of the registered agent.

## PROFESSIONAL CORPORATIONS

Section 20 amends section 21-2216 of the Nebraska Professional Corporation Act to provide that a professional corporation shall update with the Secretary of State on an annual rather than a biennial basis its filing of the name and residence addresses of all officers, directors, shareholders, and professional employees.

## INDUSTRIAL DEVELOPMENT CORPORATIONS

Section 21 amends section 21-2304 of the Nebraska Industrial Development Corporation Act to provide that the articles of incorporation filed by an industrial development corporation with the Secretary of State shall set forth the name of its “current” registered agent.

## LIMITED LIABILITY COMPANIES

Section 22 amends section 21-2601.01 of the Limited Liability Company Act to repeal the definition of “professional limited liability company.”

Sections 23 and 24 amend sections 21-2606 and 21-2610 of the Limited Liability Company Act to provide that LLC filings with the Secretary of State may contain a post office box number in addition to the street address of the registered agent.

Section 25 amends section 21-2632.01 of the Limited Liability Company Act to eliminate use of the expression “professional limited liability company” in conjunction

with elimination of “professional limited liability company” as a defined term in section 22 of the bill.

Section 26 amends section 21-2638 of the Limited Liability Company Act to provide that an application for a certificate of authority submitted by a foreign limited liability company to the Secretary of State may be executed by a manager as well as a member of the foreign LLC and may set forth a post office box number in addition to the street address of the current resident agent for service of process.

#### MISCELLANEOUS PROVISIONS

Section 27 provides for repealers.

The bill passed 48-0-1 on February 1, 2008 and was signed by the Governor on February 7, 2008.

### **LB 848 (Erdman) Change and eliminate provisions of the Nebraska Limited Cooperative Association Act**

**Enacted/Effective July 18, 2008**

#### OVERVIEW

This bill amends various sections of the Nebraska Limited Cooperative Association Act, enacted as LB 368 in 2007, in order to update the act and make its provisions more consistent with the Uniform Limited Cooperative Association Act as approved and recommended to the states for enactment by the National Conference of Commissioners on Uniform State Laws in 2007.

#### SUMMARY

The bill provides, section by section, as follows:

Section 1 amends section 21-2901 of the Nebraska Limited Cooperative Association Act to provide that new sections 21 to 23 of the bill shall be assigned within the act.

Section 2 amends section 21-2903 of the Nebraska Limited Cooperative Association Act to provide that (1) the definition of “distribution” means a transfer of money or other property from a limited cooperative association to a member “because of the member’s financial rights or to a transferee of a member’s financial rights” rather than a transfer of money or other property from a limited cooperative association to a member “in the member’s capacity as a member or to a transferee because of a right owned by the transferee,” (2) the definition of “entity” includes “a cooperative,” (3) the definition of “investor” means a “member that has made a contribution to a limited cooperative association and is not permitted or required by the articles of association or bylaws” to conduct patronage business with the limited cooperative association in order to receive financial rights rather than a “person admitted as a member that is not

required” to conduct patronage business with the limited cooperative association in order to receive financial rights, and (4) the definition of “member” means a person that is a patron member or investor member “or both” in a limited cooperative association.

Section 3 amends section 21-2910 of the Nebraska Limited Cooperative Association Act to provide that among information required to be maintained at its principal office a limited cooperative association shall maintain a copy of any filed articles of “consolidation” as well as filed articles of merger.

Section 4 amends section 21-2922 of the Nebraska Limited Cooperative Association Act to provide for furnishing by the Secretary of State of certificates of “good standing” rather than certificates of “existence.”

Section 5 amends section 21-2929 of the Nebraska Limited Cooperative Association Act to provide that a limited cooperative association may have only one member if the member is an entity organized under the Nonstock Cooperative Marketing Act, the cooperative corporation statutes, the cooperative credit association statutes, or the cooperative farm land company statutes, in addition to an entity organized under the Nebraska Limited Cooperative Association Act.

Section 6 amends section 21-2930 of the Nebraska Limited Cooperative Association Act to eliminate an internal reference to a section of the act that is outright repealed by section 35 of the bill.

Section 7 amends section 21-2935 of the Nebraska Limited Cooperative Association Act to provide that a special members’ meeting may be called by members holding at least “twenty” percent rather than “ten” percent of the votes of any class or group entitled to be cast on the matter that is the purpose of the meeting or at least “twenty” percent rather than “ten” percent of all votes entitled to be cast on the matter that is the purpose of the meeting.

Section 8 amends section 21-2939 of the Nebraska Limited Cooperative Association Act to provide that (1) if the articles of organization provide for investor members, each investor member has one vote, unless the articles of organization or bylaws otherwise provide and (2) the articles of organization or bylaws may provide for the allocation of investor member voting power by class, classes, or any combination of classes.

Section 9 amends section 21-2945 of the Nebraska Limited Cooperative Association Act to provide that a member’s interest consists of, among other things, governance rights rather than governance rights “under allocation and distributions.”

Sections 10 to 12 amend sections 21-2949 to 21-2951 of the Nebraska Limited Cooperative Association Act, regarding marketing contracts, by striking all of their provisions and replacing them with provisions based on sections 701 to 703 of the Uniform Limited Cooperative Association Act.

Section 13 amends section 21-2952 of the Nebraska Limited Cooperative Association Act by striking and replacing all of its provisions regarding (1) liquidated damages to be paid to a limited cooperative association for a breach or anticipatory repudiation of a marketing contract and (2) the seeking by a limited cooperative association of injunctive relief to prevent the further breach or an anticipatory repudiation of the marketing contract and the specific performance of the marketing contract.

Section 14 amends section 21-2953 of the Nebraska Limited Cooperative Association Act to provide that the board of directors may adopt policies and procedures that are not in conflict with the articles of organization, the bylaws, and the act.

Section 15 amends section 21-2955 of the Nebraska Limited Cooperative Association Act to provide that, unless otherwise provided in the articles of organization or bylaws, a director “may” rather than “shall” be an officer or employee of the limited cooperative association.

Section 16 amends section 21-2956 of the Nebraska Limited Cooperative Association Act to provide that the “bylaws” as well as the articles of organization may provide for the election of all or a specified number of directors by the holders of one or more groups of classes of members’ interests.

Section 17 amends section 21-2959 of the Nebraska Limited Cooperative Association Act, regarding removal of a director with or without cause, by striking all of its provisions and replacing them with provisions based on section 807 of the Uniform Limited Cooperative Association Act.

Section 18 amends section 21-2960 of the Nebraska Limited Cooperative Association Act, regarding suspension of a director, by inserting additional provisions based on section 808 of the Uniform Limited Cooperative Association Act.

Section 19 amends section 21-2978 of the Nebraska Limited Cooperative Association Act to change a reference regarding a member’s contribution obligation being “paid” to being “met.”

Section 20 amends section 21-2980 of the Nebraska Limited Cooperative Association Act, regarding allocation of profits and losses, by inserting additional provisions based on section 1004 of the Uniform Limited Cooperative Association Act.

Sections 21 to 23 enact new sections within the Nebraska Limited Cooperative Association Act regarding redemption or repurchase, limitations on distributions, and liability for improper distributions based on sections 1006 to 1008 of the Uniform Limited Cooperative Association Act.

Section 24 amends section 21-2982 of the Nebraska Limited Cooperative Association Act, regarding dissociation of members, to provide for “consolidation” as well as merger.

Section 25 amends section 21-2992 of the Nebraska Limited Cooperative Association Act to clarify that a dissolved limited cooperative association “may” request persons having claims against the limited cooperative association to present themselves in accordance with its notice of dissolution.

Section 26 amends section 21-29,110 of the Nebraska Limited Cooperative Association Act to provide that “unless the articles of organization or bylaws provide otherwise,” a member of a limited cooperative association does not have vested “property” rights “resulting from” rather than “in” any provision in the articles of organization or bylaws.

Section 27 amends section 21-29,117 of the Nebraska Limited Cooperative Association Act to provide for “consolidation” as well as merger and to provide that the definition of “organization” includes “a cooperative.”

Section 28 amends section 21-29,122 of the Nebraska Limited Cooperative Association Act to specify that any one or more limited cooperative associations may merge or consolidate with or into any one or more limited cooperative associations, limited liability companies, general partnerships, limited partnerships, cooperatives, or corporations, and any one or more limited liability companies, general partnerships, limited partnerships, cooperatives, or corporations may merge or consolidate with or into any one or more limited cooperative associations.

Section 29 amends section 21-29,123 of the Nebraska Limited Cooperative Association Act, regarding notice and action on a plan of merger, to provide for “consolidation” as well as merger.

Section 30 amends section 21-29,124 of the Nebraska Limited Cooperative Association Act, regarding approval or abandonment of a plan of merger, to provide for “consolidation” as well as merger.

Section 31 amends section 21-29,125 of the Nebraska Limited Cooperative Association Act, regarding merger of a subsidiary, to provide for “consolidation” as well as merger, and to repeal an erroneous reference to the “organic law” of a limited cooperative association.

Section 32 amends section 21-29,126 of the Nebraska Limited Cooperative Association Act, regarding filings required for a merger, to provide for “consolidation” as well as merger.

Section 33 amends section 21-29,127 of the Nebraska Limited Cooperative Association Act, regarding the effect of a merger, to provide for “consolidation” as well as merger.

Section 34 provides for repealers of amendatory sections.

Section 35 provides for outright repeal of redundant sections regarding conversion and consolidation: sections 21-29,118 to 21-29,121 and 21-29,128.

The bill passed 45-0-4 on April 15, 2008 and was signed by the Governor on April 16, 2008.

**LB 907 (Pirsch) Change provisions relating to corporations and limited liability companies**

**Speaker Priority Bill**

**Enacted/Effective July 18, 2008**

**OVERVIEW**

This bill amends various sections regarding filings with the Secretary of State by nonprofit corporations, business corporations, and limited liability companies.

**SUMMARY**

The bill provides, section by section, as follows:

**NONPROFIT CORPORATIONS**

Section 1 amends section 21-1905 of the Nebraska Nonprofit Corporation Act to delete from this section's fee schedule the twenty-five dollar fee for filing with the Secretary of State an application for use of an indistinguishable name. An application for this purpose was made obsolete by 2003 legislation.

**BUSINESS CORPORATIONS**

Section 2 amends section 21-2005 of the Business Corporation Act to delete from this section's fee schedule the twenty-five dollar fee for filing with the Secretary of State an application for use of an indistinguishable name. An application for this purpose was made obsolete by 2003 legislation.

**LIMITED LIABILITY COMPANIES**

Section 3 amends section 21-2604 of the Limited Liability Company Act to provide that the Secretary of State shall authorize a limited liability company (LLC) to use a name that is deceptively similar to, upon the records of the Secretary of State, the name of another LLC or business entity if the other LLC or business entity consents to the use in writing or if the applicant delivers to the Secretary of State a final court judgment that establishes the applicant's right to use the name in this state.

Section 4 amends section 21-2611 of the Limited Liability Company Act to provide that a defunct LLC may at any time after the forfeiture of its certificate of organization, rather than at any time "within one year" after the forfeiture of its certificate of organization, be revived and reinstated by filing the necessary documents and fees with the Secretary of State.

## MISCELLANEOUS

Section 5 provides for repealers.

The bill passed 46-0-3 on April 16, 2008 and was signed by the Governor on April 17, 2008.

## **INSURANCE**

### **LB 62 (Langemeier, Hansen, Lathrop, Pahls, Pankonin, Pirsch, Rogert, Wallman) Authorize insurance producers to charge incidental fees**

#### **Left in Committee**

This bill would amend section 44-354 to provide that an insurance producer (agent or broker) may charge additional incidental fees for premium installments, late payments, policy reinstatements, or other similar services which would include payment by credit card, processing insufficient funds checks, obtaining records, reports, appraisals, inventories, and other like documentation, and making regulatory filings for an insured or applicant for insurance.

The bill would provide that the insurance producer shall actually perform a service or incur a cost in order to charge an incidental fee.

The bill would provide that the fee for making a payment by credit card may not exceed the amount charged to the insurance producer by the credit card company.

The bill would provide that fees shall be disclosed in writing at or before the time the fee is charged and that the amount of fees shall be posted conspicuously where the insurance producer conducts business.

The bill would provide that a violation shall be subject to the Unfair Insurance Trade Practices Act.

### **LB 118 (Banking, Commerce and Insurance Committee) Change the Comprehensive Health Insurance Pool Act**

#### **Left in Committee**

## **OVERVIEW**

This bill, introduced at the request of the Director of Insurance, would amend sections 44-4221, 44-4222, and 44-4224 of the Comprehensive Health Insurance Pool (CHIP) Act to provide stricter requirements for CHIP eligibility and additional duties for the administering insurer regarding eligibility determination.

## **SUMMARY**

The bill would provide, section by section, as follows:

Section 1 would amend section 44-4221 of the Comprehensive Health Insurance Pool Act to provide that to be eligible for CHIP coverage an individual shall not be eligible for coverage under a group health plan.

Section 2 would amend section 44-4222 of the Comprehensive Health Insurance Pool Act to provide that an individual shall not be eligible for CHIP coverage if: (1) the premium for CHIP pool coverage is paid by any person not related to him or her; or (2) he or she fails to provide information or records requested by the administering insurer in order to determine continuing eligibility for CHIP coverage.

Section 3 would amend section 44-4224 of the Comprehensive Health Insurance Pool Act to provide that the administering insurer shall collect information necessary to determine eligibility for CHIP coverage and that state agencies may release such information to the administering insurer.

Section 4 would provide for repealers.

NOTE: LR 301 (Pahls) calls on the Banking, Commerce and Insurance Committee to conduct an interim study to examine issues relating to the Comprehensive Health Insurance Pool.

**LB 262 (Kruse, Christensen, Cornett, Engel, Howard, Kopplin, Lathrop, Nelson)  
Change automobile insurance requirements**

**Left in Committee**

**OVERVIEW**

This bill would increase the current required minimum limits of automobile liability insurance coverage (1) for bodily injury to or death of other persons and (2) for damage to property of others.

**SUMMARY**

Sections 1 to 6 would amend the following sections to increase the minimum liability limits (1) from \$25,000 to \$50,000 for injury to or death of one person in one accident, (2) from \$50,000 to \$100,000 for injury to or death of two or more persons in one accident, and, (3) where applicable, from \$25,000 to \$50,000 for injury to or destruction of property of others in one accident:

- Section 44-6408 of the Uninsured and Underinsured Motorist Insurance Coverage Act (requirements of coverage) (note: property damage limits have no application in the case of uninsured and underinsured coverages, which are for bodily injury and death only) (section 1 of the bill);
- Section 60-310 of the Motor Vehicle Registration Act (definition of “automobile liability policy” for purposes of motor vehicle registration requirements) (section 2 of the bill);

- Section 60-346 of the Motor Vehicle Registration Act (definition of “proof of financial responsibility” for purposes of motor vehicle registration requirements) (section 3 of the bill);
- Section 60-501 of the Motor Vehicle Safety Responsibility Act (definition of “proof of financial responsibility”) (section 4 of the bill);
- Section 60-509 of the Motor Vehicle Safety Responsibility Act (requirements for an automobile liability policy or bond) (section 5 of the bill); and
- Section 60-534 of the Motor Vehicle Safety Responsibility Act (requirements for a certified SR22 motor vehicle liability policy) (section 6 of the bill).

Section 7 would amend section 60-549 of the Motor Vehicle Safety Responsibility Act to increase the minimum amount of cash or securities deposited with the State Treasurer necessary to evidence proof of financial responsibility from \$75,000 to \$150,000 – historically this amount has been the sum of the minimum limit for bodily injury to or death of two or more persons in one accident plus the minimum limit for injury to or destruction of property of others in one accident.

Section 8 would provide that the bill becomes operative on January 1, 2008.

Section 9 would provide for repealers.

Financial responsibility limits were first enacted in 1949 and have been increased three times thereafter, as follows:

°LB 493	1949	\$5,000/\$10,000/\$1,000
°LB 628	1959	\$10,000/\$20,000/\$5,000
°LB 365	1973	\$15,000/\$30,000/\$10,000
°LB 253	1983	\$25,000/\$50,000/\$25,000 (current)

### **LB 378 (Pahls) Change the Small Employer Health Insurance Availability Act**

#### **Left in Committee**

##### **OVERVIEW**

This bill would amend sections 44-5223, 44-5225, and 44-5260 of the Small Employer Health Insurance Availability Act and would enact a new section within the act to provide that the act’s current requirement that small employer carriers shall actively offer to small employers all health benefit plans it actively markets to small employers in

this state shall not apply to health benefit plans made available only through one or more bona fide associations.

## SUMMARY

The bill would provide, section by section, as follows:

Sections 1 and 2 would amend sections 44-5223 and 44-5225 of the Small Employer Health Insurance Availability Act to provide that new section 3 of the bill shall be assigned within the act.

Section 3 would enact a new section within the Small Employer Health Insurance Availability Act to provide that a “bona fide association” shall be defined as: an association that (1) has been actively in existence for at least five years, (2) has been formed and maintained in good faith for purposes other than obtaining insurance, (3) does not condition membership in the association on any health-status related factor relating to an individual, (4) makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to the members or individuals eligible for coverage through a member, and (5) does not make health insurance coverage offered through the association available other than in connection with a member of the association.

Section 4 would amend section 44-5260 of the Small Employer Health Insurance Availability Act to provide that its current requirement that small employer carriers shall actively offer to small employers all health benefit plans it actively markets to small employers in this state shall not apply to health benefit plans made available in the small group market only through one or more bona fide associations.

Section 5 would provide for repealers of amendatory sections.

## **LB 647 (Johnson, Aguilar, Kruse, Pedersen, Schimek, Synowiecki) Change provisions relating to insurance coverage of mental health and physical health conditions**

### **Left in Committee**

## OVERVIEW

This bill would amend sections 44-791 to 44-794 to change requirements for group health insurance plans regarding mental health coverage. These sections currently provide that if a group health insurance plan provides coverage for mental health conditions, it shall not establish any rate, term, or condition that places a greater financial burden on an insured for access to treatment for a serious mental illness than for access to treatment for a physical health condition. These sections currently provide that a group health insurance plan is not required to provide coverage for mental health conditions or serious mental illnesses. The bill would amend these sections to provide for mandated coverage of mental health conditions by group health insurance plans.

## SUMMARY

The bill would provide, section by section, as follows:

Section 1 would amend section 44-791, which provides legislative findings and intent. The bill would amend this section to find that if properly treated and managed by “substance abuse professionals,” as well as mental health professionals, persons with mental health conditions can and do lead full and productive lives; that treatment of mental health conditions has become unaffordable “due to a disparate level” of insurance coverage for mental health conditions “that is available at an affordable cost;” and that it is the intent of sections 44-791 to 44-795 that persons with group health insurance plans “are provided a parity of benefits” for mental health and physical health conditions.

Section 2 would amend section 44-792, which provides definitions.

The bill would amend the definition of “mental health condition” so that it would mean any condition or disorder involving mental illness under any of the diagnostic categories listed in “the Diagnostic and Statistical Manual of Mental Disorders” as well as the Mental Disorders Section of the International Classification of Disease.

The bill would amend the definition of “mental health professional” so that it would include, among existing listed professionals, a licensed “practicing advanced practice registered nurse” and a licensed “practicing alcohol and drug counselor.”

The bill would amend the definition of “rate, term, or condition” so that it would include rather than exclude “deductibles, copayment levels,” and “coinsurance levels,” and so that it would include “medication management and other financial components or treatment limits of the insurance coverage.”

The bill would repeal the definition of “serious mental illness.”

Section 3 would amend section 44-793 to provide that a health insurance plan “shall provide” coverage for treatment of mental health conditions and shall not establish any rate, term, or condition that places a greater financial burden on the insured for access to treatment for a “mental health condition rather than for access to treatment for” a physical health condition; and that “any deductible or out-of-pocket limits required under a health insurance plan shall be comprehensive for coverage of both mental health and physical health conditions.” The bill would repeal provisions of this section which currently provide that any health insurance plan, if coverage is provided for treatment of mental health conditions, shall not establish any rate, term, or condition that places a greater financial burden on an insured for access to treatment for a “serious mental illness than for access to treatment for” a physical health condition. The bill would also repeal provisions of this section which currently provide that “if an out-of-pocket limit is established for physical health conditions,” the health insurance plan “shall apply such out-of-pocket limit as a single comprehensive out-of-pocket limit for both physical health conditions and mental health conditions.”

Section 4 would amend section 44-794 to repeal provisions which provide that sections 44-791 to 44-795 shall not be construed to require a health insurance plan to provide coverage for mental health conditions or serious mental illnesses or to provide the same rates, terms, or conditions between treatments for serious mental illnesses and preventative care. The bill would also amend this section to provide that sections 44-791 to 44-795 shall not be construed to prohibit a health insurance plan from providing separate reimbursement rates and service delivery systems including, but not limited to, mental health carve-out programs “if the separate reimbursement rates and service delivery systems are in compliance with rules and regulations adopted and promulgated by the Director of Insurance, that assure the system for delivery of treatment for mental health conditions does not diminish or negate the requirements of section 44-793” (section 3 of the bill).

Section 5 would provide that the bill becomes operative on January 1, 2008.

Section 6 would provide for repealers.

**LB 779 (Pirsch) Change requirements for filing certain statements with the Director of Insurance under the Multiple Employer Welfare Arrangement Act**

**Left on General File/Provisions amended into LB 855 and Enacted**

**BILL AS INTRODUCED**

This bill would amend section 44-7613 of the Multiple Employer Welfare Arrangement (MEWA) Act to streamline and clarify compliance requirements for MEWAs. The bill would provide that:

(1) A MEWA’s annual financial statement shall be filed with the Director of Insurance “within ninety days after the last day of the fiscal year” of the MEWA and shall be attested to by “at least two members of” the board of trustees “, one of whom shall be the chairperson or president of the board of trustees,” and not just attested to by the board;

(2) a MEWA’s annual statement from a qualified actuary regarding sufficiency to pay claims and expenses shall be obtained and given to the director “within ninety days after the last day of the fiscal year” of the MEWA; and

(3) each MEWA shall file an annual certificate of compliance within ninety days after the last day of the fiscal year of the MEWA signed by at least two members of the board of trustees, one of whom shall be the chairperson or president of the board of trustees.

## EXPLANATION OF COMMITTEE AMENDMENTS

The committee amendments (AM1615) would amend new subsection (3) of section 44-7613, which would require a MEWA to file an annual certificate of compliance, to clarify that the certificate shall be filed “with the Director of Insurance.”

### **LB 792 (Karpisek) Change provisions governing insurance producers**

#### **Left in committee**

This bill would enact a new section to provide that a change in the insurance producer (agent or broker) of record regarding a property and casualty insurance policy authorized by the insured shall become effective no later than fifteen business days after the authorization is received by the insurer. The bill would provide that when the change is effective, the insurer shall not restrict access to the policy by the insurance producer to whom the transfer of business is made.

The bill would provide that a violation of it would be an unfair trade practice in the business of insurance under the Unfair Insurance Trade Practices Act.

The bill would direct the Revisor of Statutes to assign this new section to Chapter 44, article 3.

### **LB 825 (Schimek) Require insurance coverage for cochlear implants as prescribed**

#### **Left in committee**

This bill would enact a new section to provide that individual and group sickness and accident insurance policies, certificates, and subscriber contracts; hospital, medical, or surgical expense-incurred policies; and self-funded employee benefit plans to the extent not preempted by federal law shall provide coverage for single or bilateral cochlear implants for persons diagnosed with severe to profound hearing impairment.

### **LB 853 (Banking, Commerce and Insurance Committee) Change provisions of the Viatical Settlements Act**

#### **Senator Priority Bill (Pahls)**

#### **Enacted/Effective July 18, 2008/Some provisions amended into LB 855 and Enacted**

#### **OVERVIEW**

This bill amends sections 44-1101 to 44-1114 of the Viatical Settlements Act and enacts two new sections within the act to update requirements and restrictions regarding viatical settlement contracts.

Nebraska first enacted its Viatical Settlements Act in 2000. That enactment was based on the National Association of Insurance Commissioners (NAIC) Viatical Settlements Model Act. The model act was first adopted by the NAIC in 1993 to provide a regulatory structure for those states that wanted to regulate the viatical settlement industry in order to protect consumers, then generally “terminally” or chronically ill individuals, from unscrupulous viatical settlement providers and other persons in the business of viatical settlements. The NAIC revised its model in 2000 to address the issue of healthy consumers who might want to sell their life insurance policies on the secondary market by means of “life settlements.” Since 2000, a new type of transaction related to life settlements has emerged: stranger-originated life insurance (STOLI). This bill enacts a series of revisions made by the NAIC in its model in 2007 in order to address STOLI and other regulatory issues in the life settlement industry, including the following: a 5-year ban on viatical settlements unless the viator can meet certain exceptions to that ban; new consumer disclosures related to viatical settlement compensation; and a new consumer disclosure requiring a statement that the viatical settlement broker represents exclusively the viator and owes a fiduciary duty to the viator, including a duty to act in the best interest of the viator. STOLI is a type of life insurance policy entered into by an applicant with a prearranged agreement and intent to sell the policy to a third party who has no insurable interest in the applicant after the two-year contestability period ends. Such transactions do not reflect the traditional underlying purpose for obtaining life insurance, which is to provide life insurance coverage to protect one’s family or business in the event of death.

LB 853, as introduced, proposed various amendments in Nebraska insurance law other than the Viatical Settlements Act. Those other matters were amended out of LB 853 by its committee amendments, but were included in the committee amendments to LB 855 and ultimately enacted.

#### SUMMARY

The bill provides, section by section, as follows:

Section 1 amends section 44-1101 of the Viatical Settlements Act to provide that new sections 9 and 12 shall be assigned within the act.

Section 2 amends section 44-1102 of the Viatical Settlements Act, which provides for definitions.

This section clarifies the definitions of “advertising,” “business of viatical settlements,” “policy,” and “viatical settlement purchaser.”

This section amends the definition of “fraudulent viatical settlement act” to include facilitating the change of state of ownership of a policy or the state of residency to a state that does not have a similar law to Nebraska’s act for the express purposes of evading or avoiding the provisions of the act.

This section extends the definition of “special purpose entity” to a transaction in which the securities in the special purpose entity are acquired by the viator or by a qualified institutional buyer or when the securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.

This section amends the definition of “viatical settlement broker” to add a life insurance producer as a person to be considered a viatical settlement broker.

This section expands the definition of “viatical settlement contract” to include premium finance loans made for a life insurance policy if the viator receives a guarantee of a future viatical settlement value or the viator agrees to sell the policy following policy issuance. This section excludes from the definition of “viatical settlement contract” (a) a loan the proceeds of which are used solely to pay: (i) premiums for the policy, and (ii) the costs of the loan, (b) a loan made by licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of the loan, or (c) an agreement where all of the parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties.

This section amends the definition of “viatical settlement provider” to clarify that a viatical settlement provider is a person that enters into a viatical settlement contract with a viator that is a resident in this state. This section provides that a viatical settlement provider does not include a premium finance company making premium finance loans that takes an assignment of a life insurance policy solely as collateral for a loan. This section grants authority to the Director of Insurance to exclude other persons from the definition of viatical settlement provider.

This section amends the definition of “viator” to clarify that, if there is more than one viator on a single policy and the viators are residents of different states, the transaction will be governed by the law of the state in which the viator having the largest percentage of ownership resides.

Section 3 amends section 44-1103 of the Viatical Settlements Act to permit a life insurance producer to operate as a viatical settlement broker. This section permits a person licensed as an attorney, certified public accountant, or financial planner representing the viator to negotiate on behalf of a viator without a viatical settlement broker’s license. This section requires a viatical settlement provider or broker to demonstrate evidence of financial responsibility of \$250,000. This section requires a viatical settlement broker to complete 15 hours of training every other year, except that a life insurance producer who is operating as a viatical settlement broker is not subject to this requirement.

Section 4 amends section 44-1104 of the Viatical Settlements Act to grant the Director of Insurance authority to suspend, revoke, or refuse to renew the license of a viatical settlement broker or a life insurance producer operating as viatical settlement broker if such person has engaged in bad faith conduct with one or more viators.

Section 5 amends section 44-1105 of the Viatical Settlements Act to add internal references to other sections in the act regarding the disapproval of a viatical settlement contract form or disclosure statement form.

Section 6 amends section 44-1106 of the Viatical Settlements Act to specify what information a viatical settlement provider is to include in his or her annual statement to the Director of Insurance.

Section 7 amends section 44-1107 of the Viatical Settlements Act to specify factors that the Director of Insurance is to consider when trying to determine whether it is appropriate to make an examination of a licensee under the act.

Section 8 amends section 44-1108 of the Viatical Settlements Act to require additional disclosures for viatical settlement providers and brokers. This section requires viatical settlement providers and viatical settlement brokers to disclose to viators that a viatical settlement broker represents exclusively the viator, not the insurer or viatical settlement provider, and owes a fiduciary duty to the viator. This section requires viatical settlement providers to disclose to viators any affiliations or contractual arrangements between the viatical settlement provider and the viatical settlement purchaser. This section requires viatical settlement brokers to disclose to viators any affiliations or contractual arrangements between the viatical settlement broker and any person making an offer in connection with the proposed viatical settlement contracts. This section requires viatical settlement brokers to disclose to viators the amount and method of calculating the viatical settlement broker's compensation.

Section 9 enacts a new section in the Viatical Settlements Act to require a viatical settlement broker or provider to disclose to an insurer a transaction to which the viatical settlement broker or provider is a party, to originate, renew, continue, or finance a life insurance policy with the insurer for the purpose of engaging in the business of viatical settlements at anytime prior to, or during the first five years after, issuance of the policy.

Section 10 amends section 44-1109 of the Viatical Settlements Act to require an insurer to accept a request for verification of coverage made using an NAIC form. This section requires all viatical settlement contracts to give the viator the absolute right to rescind a viatical settlement contract. This section extends the time within which a viator has the right to rescind a viatical settlement contract from fifteen calendar days to the earlier of sixty calendar days after the

contract was executed, or thirty days after the viatical settlement proceeds have been sent to the viator.

Section 11 amends section 44-1110 of the Viatical Settlements Act to increase the period in which a life insurance policy may not be sold from two years after the date of issuance to five years after the date of issuance unless the viator can meet one of the enumerated exceptions in the section. This section adopts a new exception to the five-year period when the viator enters into a viatical settlement contract more than two years after the date of issuance if the policy premiums have been funded exclusively with unencumbered assets, there is no agreement or understanding with any other person to guarantee any such liability or to purchase the policy, and neither the insured nor the policy has been evaluated for settlement. This section repeals exceptions to the five-year period for charitable organizations, viators that are not natural persons, viators who are the insured's employers, and viators experiencing a significant decrease in income. This section requires insurers to respond to completed requests for change in ownership of a policy within thirty days.

Section 12 enacts a new section in the Viatical Settlements Act to prohibit a viatical settlement broker from knowingly soliciting an offer from, effectuating a viatical settlement with, or making a sale to any viatical settlement purchaser, financing entity, or related provider trust that is controlling, controlled by, or under common control with such viatical settlement broker. Any violation of these provisions is deemed a fraudulent viatical settlement act. This section prohibits a viatical settlement provider from entering into a viatical settlement contract unless the viatical settlement advertising materials have been filed with the Director of Insurance. This section provides that marketing materials may not expressly reference that the insurance is "free" for any period of time and restricts the term "free" in connection with the sale or financing of a life insurance policy.

Section 13 amends section 44-1111 of the Viatical Settlements Act to require that if an individual making a testimonial has a financial interest in the party making use of the testimonial, that fact shall be disclosed in the advertising material.

Section 14 amends section 44-1112 of the Viatical Settlements Act to specify that an award of attorney's fees and costs in a civil action under the section does not apply to a person reporting his or her own fraudulent viatical settlement acts.

Section 15 amends section 44-1113 of the Viatical Settlements Act to clarify that, except for a fraudulent viatical settlement act committed by the viator, the enforcement provisions and penalties of this section do not apply to a viator.

Section 16 amends section 44-1114 of the Viatical Settlements Act to provide the Director of Insurance with rule and regulation authority to establish

standards for evaluating the reasonableness of discount rates used to determine the amount paid in exchange for a policy insuring the life of a person who is chronically ill or terminally ill.

Section 17 amends section 44-1115 of the Viatical Settlements Act to clarify that a violation of the act, including the commission of a fraudulent viatical settlement act, is an unfair trade practice under the Unfair Insurance Trade Practices Act.

Section 18 provides for repealers of amendatory sections.

The bill passed 40-2-7 on April 15, 2008 and was signed by the Governor on April 17, 2008.

### **LB 854 (Banking, Commerce and Insurance Committee) Adopt the Discount Medical Plan Organization Act**

#### **Left on General File/Provisions amended into LB 855 and Enacted**

##### **OVERVIEW**

This bill, introduced at the request of the Director of the Department of Insurance, would amend section 28-631 regarding criminal insurance fraud, sections 44-6603 and 44-6604 of the Insurance Fraud Act, and would enact 16 new sections to be known as the Discount Medical Plan Organization Act for the purpose of establishing standards for discount medical plan organizations in order to protect consumers from unfair or deceptive marketing, sales, and enrollment practices. The bill would define a discount medical plan organization as an entity that, in exchange for fees, dues, or charges, provides access for discount medical plan members to providers of medical or ancillary services and the right to receive services at a discount.

##### **SUMMARY**

The bill would provide, section by section, as follows:

Section 1 would amend section 28-631 to specify that willful operation of an unregistered discount medical plan organization or collection of fees for purported membership in a discount medical plan organization without providing the promised benefits is a fraudulent insurance act. This section would specify that commission of such a fraudulent insurance act is a Class IV felony (maximum: 5 years, or \$10,000, or both; minimum: none). This section would amend the definition of "insurer" in section 28-631 to include "discount medical plan organizations."

Section 2 would amend section 44-6603 of the Insurance Fraud Act to amend the definition of "insurer" to include "discount medical plan organizations."

Section 3 would amend section 44-6604 of the Insurance Fraud Act to specify that willful operation of an unregistered discount medical plan organization or collection of fees for purported membership in a discount medical plan without providing the promised benefits is a fraudulent insurance act.

Section 4 would enact a new section to provide for a named act: Discount Medical Plan Organization Act.

Section 5 would enact a new section to provide that the purposes of the act are to promote the public interest by establishing standards for discount medical plan organizations.

Section 6 would enact a new section to provide definitions for “affiliate,” “ancillary services,” “control,” “director,” “discount medical plan” (a contract under which a person, in exchange for fees, dues, charges, or other consideration, offers access to medical providers at a discounted price), “discount medical plan organization” (an entity that offers a discount medical plan), “facility,” “health care professional,” “health carrier,” “marketer,” “medical services,” “member,” “person,” “provider,” and “provider network.”

Section 7 would enact a new section to provide standards under which “control” is presumed to exist for purposes of the act.

Section 8 would enact a new section to provide that the act applies to discount medical plan organizations doing business in or from this state. This section would specify circumstances under which a discount medical plan organization would not be required to register, and would specify that health care providers who offer discounts to their patients without a fee for such a discount are not required to register.

Section 9 would enact a new section to require discount medical plan organizations to register with the Director of Insurance and would provide the process for application for and issuance of a registration for a discount medical plan organization. This section would set standards for the director to evaluate the application and would provide the process for approval or disapproval of the application. This section would allow the director to revoke or suspend a registration, impose an administrative penalty, or issue a cease and desist order for violations of the act, and would provide the process for the revocation or suspension proceedings. This section would provide for annual renewal of the registration of a discount medical plan organization. This section would require discount medical plan organizations to give notice to the director of disciplinary proceedings in other states.

Section 10 would enact a new section to provide that the Director of Insurance may examine the business affairs of a discount medical plan organization. This section would provide for the process for the examination. This section would require a discount medical plan organization to pay the costs of examination.

Section 11 would enact a new section to provide that a discount medical plan organization may charge a reasonable fee for its plan. This section would allow members to claim reimbursement if they cancel the membership within 30 days. This section would require that the fee bear a reasonable relation to the services provided.

Section 12 would enact a new section to require a discount medical plan organization to have a written agreement with health providers meeting the requirements set forth in the act and would set forth requirements for the agreement. This section would require the discount medical plan organization to maintain on an Internet web site a list of the names and addresses of the providers. This section would require the discount medical plan organization to maintain a toll-free telephone number for members to obtain information and assistance. This section would require a discount health plan organization to maintain contracts with sufficient types and numbers of providers to meet the standards set forth in the act and would require maintenance of an access plan.

Section 13 would enact a new section to provide that a discount medical plan organization may contract with marketers. This section would require an agreement for marketing and would set standards for the agreement.

Section 14 would enact a new section to provide that all advertising materials of the discount medical plan organization shall be truthful and not misleading. This section would set standards for advertising materials to not be misleading. This section would prohibit the use of words that would lead people to believe they are purchasing insurance. This section would require a discount medical plan organization to disclose information, as set forth. This section would require that members receive plan documents.

Section 15 would enact a new section to require a discount medical plan organization to notify the Director of Insurance of changes in contact information for the discount medical plan organization.

Section 16 would enact a new section to provide that if information as required by this section is not provided at the time of renewal of the discount medical plan organization, the discount medical plan organization shall provide to the Director of Insurance an annual report of the discount medical plan organization's activities. This section would provide penalties for failure to provide such reports.

Section 17 would enact a new section to provide that violations of the act are violations of the Unfair Insurance Trade Practices Act and would provide for administrative penalties for violations of the Discount Medical Plan Organization Act.

Section 18 would enact a new section to provide the Director of Insurance with cease and desist authority.

Section 19 would enact a new section to provide the Director of Insurance with rule and regulation authority to carry out the act.

Section 20 would provide for repealers of amendatory sections.

#### **EXPLANATION OF COMMITTEE AMENDMENTS**

The committee amendments (AM1779) would make the following changes:

The committee amendments would amend section 6 to clarify that “regulations” means “rules and regulations.”

The committee amendments would amend section 9 of the bill to decrease the application fee for a certificate of registration from an amount not to exceed one thousand five hundred dollars to an amount not to exceed five hundred dollars. The committee amendments would amend section 9 of the bill to strike a requirement that an application for a certificate of registration include information that would permit the Director of Insurance to make a determination that the applicant has a network that is sufficient in numbers and types of providers to assure that all health care services to covered persons will be accessible without unreasonable delay. The committee amendments would amend section 9 of the bill to increase the renewal fee for a certificate of registration from one hundred dollars to three hundred dollars.

The committee amendments would amend section 11 of the bill to strike a requirement that a fee or charge charged by a discount medical plan organization shall bear a reasonable relationship to the benefits to be received by the member.

The committee amendments would amend section 12 of the bill to strike a requirement that a discount medical plan organization shall maintain a toll-free telephone number “on a twenty-four hour basis.” The committee amendments would amend section 12 of the bill to strike requirements that a discount medical plan organization shall maintain contracts with sufficient numbers and types of providers to ensure that all health care services will be accessible without delay; that in the case of emergency services, covered persons shall have access twenty-four hours per day, seven days per week; and that a discount medical plan organization shall ensure reasonable proximity of participating providers.

The committee amendments would amend section 14 of the bill to strike requirements that the written document that contains the terms and conditions of the discount medical plan which must be provided to new members shall contain contact information for the Department of Insurance and the email address of the discount medical plan organization. The requirement for the email address would be replaced by a requirement for a toll-free telephone number.

The committee amendments would amend section 16 of the bill to strike the requirement that the annual report which a discount medical plan organization must file with the Director of Insurance shall include information allowing the director to determine whether the discount medical plan organization maintains an adequate provider network.

**LB 855 (Banking, Commerce and Insurance Committee) Change provisions relating to insurance**

**Committee Priority Bill (Banking, Commerce and Insurance Committee)**

**Enacted/Sections 5 and 53 of the bill become Operative on January 1, 2009 and the other sections of the bill become Operative on July 18, 2008/Includes provisions of LB 779 (section 51 of the bill), LB 853 (sections 1, 3 to 7, 20 to 30, 49, and 50 of the bill), LB 854 (sections 2 and 31 to 48 of the bill), and LB 855 (sections 8 to 19 of the bill)**

**OVERVIEW**

LB 855, originally introduced at the request of the Director of Insurance, amends various sections and enacts new sections regarding insurance and contains provisions of three additional bills and their committee amendments, as follows:

1. The provisions of LB 779 (Pirsch) amend section 44-7613 of the Multiple Employer Welfare Arrangement Act to streamline and clarify compliance requirements for MEWAs. (Section 51 of LB 855.)
2. The provisions of LB 853 (Banking, Commerce and Insurance Committee), introduced at the request of the Director of the Department of Insurance, amend section 13-206 of the Community Development Assistance Act, sections 44-349 and 44-356 of the general statutes regarding insurance policies, section 44-789 of the sickness and accident insurance statutes, section 44-1521 of the Unfair Insurance Trade Practices Act, section 44-32,106 of the Health Maintenance Organization Act, sections 44-3901, 44-3902, and 44-3904 of the insurance producer continuing education statutes, sections 44-3909 to 44-3911 of the insurance producer prelicensing education statutes, section 44-4064 of the Insurance Producers Licensing Act, section 44-4521 of the Long-Term Care Insurance Act, sections 44-6009 and 44-6016 of the Insurers and Health Organizations Risk-Based Capital Act, and section 44-7508.02 of the Property and Casualty Insurance Rate and Form Act to update and clarify provisions. These provisions enact a new section to grant the Director of Insurance authority to adopt and promulgate rules and regulations to establish standards under the Unfair Insurance Trade Practices Act to protect members of the United States Armed Forces from dishonest and predatory sales practices. These provisions also enact a new section to grant the director authority to adopt and promulgate rules and regulations allowing insurers to submit to the jurisdiction of the director for the purpose of financial conglomerate supervision. (Sections 1, 3 to 7, 20 to 30, 49, and 50 of LB 855.) LB 855 does not contain any sections of LB 853, as introduced, which proposed amendments to the Viatical Settlements Act.
3. The provisions of LB 854 (Banking, Commerce and Insurance Committee), introduced at the request of the Director of the Department of Insurance, amend section 28-631 regarding criminal insurance fraud, sections 44-6603 and 44-6604 of the Insurance Fraud Act, and enact 16 new sections to be known as the Discount Medical Plan Organization Act for the purpose of establishing standards for discount medical plan

organizations in order to protect consumers from unfair or deceptive marketing, sales, and enrollment practices. These provisions define a discount medical plan organization as an entity that, in exchange for fees, dues, or charges, provides access for discount medical plan members to providers of medical or ancillary services and the right to receive services at a discount. (Sections 2 and 31 to 48 of LB 855.)

4. The provisions of LB 855 (Banking, Commerce and Insurance Committee), introduced at the request of the Director of the Department of Insurance, amend sections 44-1601 to 44-1605, 44-1607, 44-1607.01, 44-1613, 44-1614, and enact two new sections in order to update and conform Nebraska's group life insurance statutes with the terms of National Association of Insurance Commissioners model act language. (Sections 8 to 19 of LB 855.)

#### SUMMARY

The bill provides, section by section, as follows:

#### COMMUNITY DEVELOPMENT ASSISTANCE ACT RULEMAKING

Section 1 amends section 13-206 of the Community Development Assistance Act to specify that rule and regulation authority of the Director of Insurance under the act is discretionary rather than mandatory. (Section 1 of LB 853.)

#### CRIMINAL INSURANCE FRAUD

Section 2 amends section 28-631 to specify that willful operation of an unregistered discount medical plan organization or collection of fees for purported membership in a discount medical plan organization without providing the promised benefits is a fraudulent insurance act. This section specifies that commission of such a fraudulent insurance act is a Class IV felony (maximum: 5 years, \$10,000, or both; minimum: none). This section amends the definition of "insurer" in section 28-631 to include "discount medical plan organizations." (Section 1 of LB 854.)

#### DESCRIPTION OF INSURANCE POLICES

Section 3 amends section 44-349 to limit the requirement that insurance policies contain a description of the structure of the insurer writing the policy to policies written by assessment insurers. (Section 2 of LB 853.)

#### FINES AND PENALTIES

Section 4 amends section 44-356 to increase the penalties imposed for violation of sections 44-354 and 44-355 by making them unfair trade practices, thereby standardizing those penalties and procedures. This section changes the fine for violations of section 44-353 from a minimum of twenty dollars and a maximum of one hundred dollars to a fine not to exceed one hundred dollars. (Section 3 of LB 853.)

## **TEMPOROMANDIBULAR JOINT DISORDER COVERAGE**

Section 5 amends section 44-789 to clarify that the mandate for temporomandibular joint disorder only applies to temporomandibular joint disorder. A literal reading of section 44-789 before this amendment could allow coverage for other related coverages to be limited to \$2500. (Section 4 of LB 853.)

## **UNFAIR INSURANCE TRADE PRACTICES**

Section 6 amends section 44-1521 of the Unfair Insurance Trade Practices Act to specify that new section 7 of the bill shall be assigned within the act. (Section 22 of LB 853.)

Section 7 enacts a new section in the Unfair Insurance Trade Practices Act to provide the Director of Insurance with rule and regulation authority to establish standards under the act to protect members of the United States Armed Forces from dishonest and predatory insurance sales practices. (Section 23 of LB 853.)

## **GROUP LIFE INSURANCE**

Section 8 amends section 44-1601 to provide for internal references within the act and change an internal reference to the Credit Union Act (Section 1 of LB 855 as introduced.)

Section 9 amends section 44-1602 to conform the standards for group life insurance sponsored by an employer to the National Association of Insurance Commissioners (“NAIC”) Model Act. This section repeals the restriction on eligibility of directors and officers to participate in the group and repeals the requirement for the minimum number of lives that must be covered under an employer sponsored group life insurance plan. This section repeals the requirement that the amount of insurance must be based on a plan to preclude individual selection. (Section 2 of LB 855 as introduced.)

Section 10 amends section 44-1603 to conform the standards for group life insurance sponsored by a creditor to the NAIC Model Act by expanding the entities that may sponsor coverage to a trust established by the creditor. This section repeals the minimum participation requirement for the plan and revises the standards for the amount of coverage that may be offered. This section allows payment to be made to the creditor. (Section 3 of LB 855 as introduced.)

Section 11 amends section 44-1604 to conform the standards for group life insurance sponsored by a labor union or similar organization to the NAIC Model Act. This section repeals the restriction on payment of the entire premium by the insured members and the requirement for the minimum number of lives that must be covered. This section repeals the requirement that the amount of insurance must be based on a plan to preclude individual selection. (Section 4 of LB 855 as introduced.)

Section 12 amends section 44-1605 to conform the standards for group life insurance sponsored by a group of employers or labor unions or similar organization to

the NAIC Model Act. This section repeals the restriction on payment of the entire premium by the insured members and the requirement for the minimum number of lives that must be covered. This section repeals the requirement that the amount of insurance must be based on a plan to preclude individual selection. (Section 5 of LB 855 as introduced.)

Section 13 amends section 44-1606.01 to conform the standards for group life insurance sponsored by an association to the NAIC Model Act. This section sets standards for such associations and repeals the restriction on payment of the entire premium by the insured members and the requirement for the minimum number of lives that must be covered. This section repeals the requirement that the amount of insurance must be based on a plan to preclude individual selection. (Section 6 of LB 855 as introduced.)

Section 14 enacts a new section to conform the standards for group life insurance sponsored by a credit union to the NAIC Model Act. This section sets standards for such coverage and specifies eligibility for the coverage. (Section 7 of LB 855 as introduced.)

Section 15 enacts a new section to conform the standards for group life insurance sponsored by a discretionary group, a group which does not meet the test for a group on other bases, to the NAIC Model Act. This section permits the Director of Insurance to recognize such groups that comply with the act. This section sets standards for such coverage and specifies eligibility for the coverage. This section requires notice to policyholders if compensation is paid to the organizers of the discretionary group. (Section 8 of LB 855 as introduced.)

Section 16 amends section 44-1607 to specify that the group life insurer may assert a defense based on eligibility for coverage to the no-contest clause of the policy. This section conforms the standards for the ability of insured members to convert group life insurance policies to individual life insurance policies and to continue policies in the event of disability to the NAIC Model Act. (Section 9 of LB 855 as introduced.)

Section 17 amends section 44-1607.01 to conform the standards for group life insurance sponsored by an association to the NAIC Model Act by including the term “or similar employee organization” after “labor union.” (Section 10 of LB 855 as introduced.)

Section 18 amends section 44-1613 to update provisions. (Section 11 of LB 855 as introduced.)

Section 19 amends section 44-1614 to conform the standards for group life insurance coverage of a spouse or dependent to the NAIC Model Act. This section restricts the amount of coverage for a spouse or dependent to fifty percent of the coverage of the insured member. (Section 12 of LB 855 as introduced.)

## INSURANCE PRODUCER LICENSING

Section 20 amends section 44-32,106 of the Health Maintenance Organization Act to specify that “health maintenance organization producer” means a person licensed as an insurance producer qualified under the accident and health or sickness line of authority. (Section 24 of LB 853.)

Section 21 amends section 44-3901 of the continuing education for insurance producers statutes to change references from insurance “agents” and insurance “brokers” to insurance “producers.” (Section 25 of LB 853.)

Section 22 amends section 44-3902 of the continuing education for insurance producers statutes to change references in the definition of “licensee” from insurance “agent” and insurance “broker” to “insurance producer.” (Section 26 of LB 853.)

Section 23 amends section 44-3904 of the continuing education for insurance producers statutes to specify that licensees shall complete twenty-one hours of approved continuing education in each two-year period after January 1, 2010. This section allows an insurance producer to repeat a continuing education activity unless the repetition is within the same two-year licensing period. This section repeals a fee for providing certificates of completion for continuing education. (Section 27 of LB 853.)

Section 24 amends section 44-3909 of the prelicensing education for insurance producers statutes to specify that individuals seeking qualification under the life insurance line, accident and health or sickness insurance line, property insurance line, casualty insurance line, or personal lines property and casualty insurance line shall complete fourteen hours of prelicensing education. (Section 28 of LB 853.)

Section 25 amends section 44-3910 of the prelicensing education for insurance producers statutes to set forth designations which allows applicants for licensure to be exempted from prelicensing education. This section exempts from prelicensing education requirements those individuals who have a college degree with a concentration in insurance. (Section 29 of LB 853.)

Section 26 amends section 44-3911 of the prelicensing education for insurance producers statutes to repeal a fee for filing certificates of completion for prelicensing education. (Section 30 of LB 853.)

Section 27 amends section 44-4064 of the Insurance Producers Licensing Act to authorize the Director of Insurance to charge a fee not to exceed one hundred dollars for each resident or nonresident insurance producer license rather than a fee not to exceed forty dollars for each resident insurance producer license and a fee not to exceed eighty dollars for each nonresident insurance producer license. This section prohibits the director from pro-rating such fees or refunding

fees in the event of a license denial, and permits the director to issue refunds if fees are paid in error. (Section 31 of LB 853.)

#### **LONG-TERM CARE**

Section 28 amends section 44-4521 of the Long-Term Care Insurance Act to revise the requirement for long-term care insurance producer licensing to specify that selling, soliciting, or negotiating long-term care insurance is not permitted after August 1, 2008, unless the insurance producer has completed the required training, rather than requiring that such training occur before August 1, 2008. (Section 32 of LB 853.)

#### **RISK-BASED CAPITAL**

Section 29 amends section 44-6009 of the Insurers and Health Organizations Risk-Based Capital Act to specify that the standard for the trend test is the standard set out in the life risk-based capital instructions. (Section 33 of LB 853.)

Section 30 amends section 44-6016 of the Insurers and Health Organizations Risk-Based Capital Act to adopt a trend test for the Director of Insurance to apply to the risk-based capital levels for property and casualty insurers. (Section 34 of LB 853.)

#### **CIVIL INSURANCE FRAUD**

Section 31 amends section 44-6603 of the Insurance Fraud Act to amend the definition of “insurer” to include “discount medical plan organizations.” (Section 2 of LB 854.)

Section 32 amends section 44-6604 of the Insurance Fraud Act to specify that willful operation of an unregistered discount medical plan organization or collection of fees for purported membership in a discount medical plan without providing the promised benefits is a fraudulent insurance act. (Section 3 of LB 854.)

#### **DISCOUNT MEDICAL PLAN ORGANIZATIONS**

Section 33 enacts a new section to provide for a named act: Discount Medical Plan Organization Act. (Section 4 of LB 854.)

Section 34 enacts a new section to provide that the purposes of the act are to promote the public interest by establishing standards for discount medical plan organizations. (Section 5 of LB 854.)

Section 35 enacts a new section to provide definitions for “affiliate,” “ancillary services,” “control,” “director,” “discount medical plan” (a contract under which a person, in exchange for fees, dues, charges, or other consideration, offers access to medical providers at a discounted price), “discount medical plan organization” (an entity that offers a discount medical plan), “facility,” “health care professional,” “health

carrier,” “marketer,” “medical services,” “member,” “person,” “provider,” and “provider network.” (Section 6 of LB 854.)

Section 36 enacts a new section to provide standards under which “control” is presumed to exist for purposes of the act. (Section 7 of LB 854.)

Section 37 enacts a new section to provide that the act applies to discount medical plan organizations doing business in or from this state. This section specifies circumstances under which a discount medical plan organization would not be required to register, and specifies that health care providers who offer discounts to their patients without a fee for such a discount are not required to register. (Section 8 of LB 854.)

Section 38 enacts a new section to require discount medical plan organizations to register with the Director of Insurance and provides the process for application for and issuance of a registration for a discount medical plan organization. This section sets standards for the director to evaluate the application and provides the process for approval or disapproval of the application. This section allows the director to revoke or suspend a registration, impose an administrative penalty, or issue a cease and desist order for violations of the act, and provides the process for the revocation or suspension proceedings. This section provides for annual renewal of the registration of a discount medical plan organization. This section requires discount medical plan organizations to give notice to the director of disciplinary proceedings in other states. (Section 9 of LB 854.)

Section 39 enacts a new section to provide that the Director of Insurance may examine the business affairs of a discount medical plan organization. This section provides for the process for the examination. This section requires a discount medical plan organization to pay the costs of examination. (Section 10 of LB 854.)

Section 40 enacts a new section to provide that a discount medical plan organization may charge a periodic charge as well as a reasonable one-time processing fee for its plan. This section allows members to claim reimbursement if they cancel the membership within 30 days. (Section 11 of LB 854.)

Section 41 enacts a new section to require a discount medical plan organization to have a written agreement with health providers meeting the requirements set forth in the act and sets forth requirements for the agreement. This section requires the discount medical plan organization to maintain on an Internet web site a list of the names and addresses of the providers. This section requires the discount medical plan organization to maintain a toll-free telephone number for members to obtain information and assistance. (Section 12 of LB 854.)

Section 42 enacts a new section to provide that a discount medical plan organization may contract with marketers. This section requires an agreement for marketing and sets standards for the agreement. (Section 13 of LB 854.)

Section 43 enacts a new section to provide that all advertising materials of the discount medical plan organization shall be truthful and not misleading. This section sets standards for advertising materials to not be misleading. This section prohibits the use of words that would lead people to believe they are purchasing insurance. This section requires a discount medical plan organization to disclose information, as set forth. This section requires that members receive plan documents. (Section 14 of LB 854.)

Section 44 enacts a new section to require a discount medical plan organization to notify the Director of Insurance of changes in contact information for the discount medical plan organization. (Section 15 of LB 854.)

Section 45 enacts a new section to provide that if information as required by this section is not provided at the time of renewal of the discount medical plan organization, the discount medical plan organization shall provide to the Director of Insurance an annual report of the discount medical plan organization's activities. This section provides penalties for failure to provide such reports. (Section 16 of LB 854.)

Section 46 enacts a new section to provide that violations of the act are violations of the Unfair Insurance Trade Practices Act and provides for administrative penalties for violations of the Discount Medical Plan Organization Act. (Section 17 of LB 854.)

Section 47 enacts a new section to provide the Director of Insurance with cease and desist authority. (Section 18 of LB 854.)

Section 48 enacts a new section to provide the Director of Insurance with rule and regulation authority to carry out the act. (Section 19 of LB 854.)

#### **PROPERTY AND CASUALTY INSURANCE RATES AND FORMS**

Section 49 amends section 44-7508.02 of the Property and Casualty Insurance Rate and Form Act to specify that the Director of Insurance may disapprove an insurer's filing if the insurer fails to provide requested information. (Section 35 of LB 853.)

#### **FINANCIAL CONGLOMERATES**

Section 50 enacts a new section to grant the Director of Insurance authority to adopt and promulgate rules and regulations allowing insurers to submit to the jurisdiction of the director for the purpose of financial conglomerate supervision, and adopts standards for rule and regulation authority of the director. (Section 36 of LB 853.)

#### **MULTIPLE EMPLOYER WELFARE ARRANGEMENTS**

Section 51 amends section 44-7613 of the Multiple Employer Welfare Arrangement (MEWA) Act to provide that: (1) A MEWA's annual financial statement shall be filed with the Director of Insurance "within ninety days after the last day of the fiscal year" of the MEWA and shall be attested to by "at least two members of" the board of trustees "one of whom shall be the chairperson or president of the board of trustees,"

and not just attested to by the board; (2) a MEWA's annual statement from a qualified actuary regarding sufficiency to pay claims and expenses shall be obtained and given to the director "within ninety days after the last day of the fiscal year" of the MEWA; and (3) each MEWA shall file with the director an annual certificate of compliance within ninety days after the last day of the fiscal year of the MEWA signed by at least two members of the board of trustees, one of whom shall be the chairperson or president of the board of trustees. (Section 1 of LB 779.)

#### MISCELLANEOUS PROVISIONS

Section 52 provides that section 5 of the bill becomes operative on January 1, 2009.

Section 53 provides for repealer of the section subject to the delayed operative date.

Section 54 provides for repealers of the sections not subject to the delayed operative date.

The bill passed 47-0-2 on March 13, 2008 and was signed by the Governor on March 19, 2008.

### **LB 876 (Pahls) Change provisions relating to motor vehicle liability policies**

#### **Left in Committee**

#### OVERVIEW

This bill would amend the insurance statutes to fill a potential gap in uninsured and underinsured motorist insurance coverages for certain passengers in a motor vehicle involved in an accident with an uninsured or underinsured motor vehicle.

#### SUMMARY

The bill would provide, section by section, as follows:

Section 1 would amend section 44-6408 of the Uninsured and Underinsured Motorist Insurance Coverage Act to provide that uninsured and underinsured motorist coverages shall extend to passengers occupying the insured motor vehicle at the time of the accident with the consent of an insured and who have no other available uninsured or underinsured motorist coverage.

Section 2 would amend section 60-310 of the Motor Vehicle Registration Act to provide for consistency of terminology with section 44-6408.

Section 3 would provide for repealers.

**LB 900 (Flood, Chambers, Friend, Langemeier, Rogert, White) Prohibit use of credit information and discriminatory practices in issuing insurance policies and eliminate the Model Act Regarding Use of Credit Information in Personal Insurance**

**Left in Committee**

This bill would enact a new section to provide that an insurer (1) shall not use credit information in connection with the issuance, underwriting, renewal, cancellation, or denial of or any other action related to insurance and (2) shall not use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the consumer as a factor. The new section would provide definitions for “consumer,” “credit information,” “credit report,” “insurance score,” and “insurer.”

The bill would become operative on January 1, 2009.

The bill would outright repeal the Model Act Regarding Use of Credit Information in Personal Insurance, sections 44-7701 to 44-7712.

**LB 920 (Langemeier, Karpisek, Pankonin, Carlson, Pirsch, Lathrop, Dubas, Howard, Wallman, Kruse, Preister, Lautenbaugh, Synowiecki) Authorize insurance producers to charge certain incidental fees**

**Left on General File**

This bill would amend section 44-354 to provide that a property and casualty insurance producer (agent or broker) may charge incidental fees for the following services: (1) processing premium installments, processing late payments, or processing policy reinstatements – each not to exceed five dollars; and (2) processing insufficient funds checks, obtaining or providing records and reports, or making regulatory filings for an insured or applicant – each not to exceed twenty-five dollars.

The bill would provide that incidental fees shall be disclosed in writing at or before the time the fee is charged and that the amount of the fees shall be posted where the insurance producer conducts business, including on any web site of the insurance producer.

The bill would provide that it does not limit the ability of an insurance company to impose restrictions by contractual agreement on the ability of insurance producers to charge incidental fees.

The bill would provide that violations shall be subject to the Unfair Insurance Trade Practices Act.

The bill would provide the Director of Insurance with rule and regulation authority to carry it out.

**LB 969 (Pankonin) Require insurance coverage for prosthetics as prescribed**

**Left in Committee**

This bill would enact a new section to provide that any individual or group sickness and accident insurance policy, certificate, or subscriber contract and any self-funded employee benefit plan to the extent not preempted by federal law shall include coverage for prosthetic arms and legs that, at a minimum, equals the coverage provided under Medicare.

The bill would provide that such coverage may be limited to the most appropriate prosthetic deemed medically necessary by the treating physician, including repair or replacement. The bill would provide that a policy may require that prosthetics be furnished by a prosthetist with which the insurer has a contract, but the covered person shall have access to medically necessary clinical care, prosthetic services, and prosthetic components or technology from a nonparticipating prosthetist to the same extent the policy provides for out-of-network services for other covered benefits.

The bill would provide that it does not prevent application of deductible or copay provisions. The bill would provide that any copayment shall not exceed the copayment under Medicare and that providers shall be reimbursed no less than the amount under the Medicare reimbursement schedule. The bill would provide that there shall be no separate annual or lifetime dollar maximum on prosthetics coverage.

NOTE: LR 299 (Pankonin, Pahls, Pirsch) calls on the Banking, Commerce and Insurance Committee to conduct an interim study to examine issues relating to insurance coverage for prosthetic limbs.

**LB 1002 (Pahls) Require disclosures by group health benefit plans**

**Left in Committee**

This bill would enact a new section in the insurance statutes to provide that an insurer or entity issuing a group health benefit plan to a group of fifty-one or more employees shall provide to the employer or to an insurance producer authorized by the employer, upon request by the employer or the insurance producer, annually, but not more than three months prior to the renewal date, the total amount of actual claims identified as paid or incurred and paid, and the total amount of premiums by line of coverage. The bill would provide that “line of coverage” includes medical, prescription drug card program, dental, vision, long-term disability, and short-term disability.

The bill would provide that a violation shall be subject to the Unfair Insurance Trade Practices Act.

The bill would direct the Revisor of Statutes to assign this new section to Chapter 44, article 3.

NOTE: LR 305 (Pahls) calls on the Banking, Commerce and Insurance Committee to conduct an interim study regarding whether legislation should be enacted to require issuers of group health benefit plans to provide the plan sponsor with information regarding claims paid and the amount of premiums by line of coverage.

**LB 1045 (Pankonin) Change provisions relating to coverage changes in property and casualty and automobile liability policies**

**Enacted/Effective July 18, 2008**

This bill enacts a new section to provide that if an insurer reduces or eliminates any coverage in or introduces a more restrictive condition as part of a property and casualty insurance policy prior to renewal, not at the request of the named insured, the insurer shall send to the named insured a notice explaining clearly what coverage has been reduced or eliminated or what condition has been restricted. The notice may be in a printed or electronic form if the named insured requested the electronic form and there was an agreement to that effect prior to such request. The bill provides that if the named insured does not receive the notice, the reduction or elimination of coverage or restrictive condition shall not become part of the policy, except that there shall be a rebuttable presumption that all insureds received the notice if it was sent by email or first-class mail to the named insured's last-known email address or mailing address in the policy.

The bill provides that the notice shall be sent to each agency that holds an agency contract with the insurer.

The bill provides that it does not restrict the right of the parties to amend a policy during its term but not during the renewal process pursuant to an endorsement if requested by a named insured.

The bill directs the Revisor of Statutes to assign this new section to Chapter 44, article 5.

The bill passed 45-0-4 on April 15, 2008 and was signed by the Governor on April 16, 2008.

**LB 1090 (Lathrop) Change insurance provisions relating to underinsured motorist coverage**

**Left in Committee**

This bill would amend section 44-6412 of the Uninsured and Underinsured Motorist Insurance Coverage Act to provide that no underinsured motorist coverage shall require the exhaustion of applicable bodily injury liability policies as a prerequisite for payment under underinsured motorist coverage, except that if settlement is made with the owner or operator of an underinsured motor vehicle for less than the policy limits of applicable bodily injury liability policies, the insured may recover under the underinsured motorist coverage only the difference between the policy limits of the applicable bodily injury liability policies and the damages sustained by the insured subject to the maximum limit of underinsured motorist coverage.

## **INTEREST, LOAN, AND DEBT**

### **LB 380 (Pahls) Change a license application requirement under the Mortgage Bankers Registration and Licensing Act**

**Enacted/Effective July 18, 2008**

#### **OVERVIEW**

This bill, introduced at the request of the Secretary of State, amends sections 45-705 and 45-706 of the Mortgage Bankers Registration and Licensing Act regarding registered agents.

#### **SUMMARY**

The bill provides, section by section, as follows:

Section 1 amends section 45-705 of the Mortgage Bankers Registration and Licensing Act to provide that in an application submitted to the Department of Banking and Finance for a license as a mortgage banker “a post office box number may be provided in addition to the street address” in this state of a registered agent appointed by the licensee for receipt of service of process.

Section 2 amends section 45-706 of the Mortgage Bankers Registration and Licensing Act to harmonize provisions with section 45-705 as amended by section 1 of the bill.

Section 3 provides for repealers.

The bill passed 47-0-2 on February 1, 2008 and was signed by the Governor on February 7, 2008.

### **LB 852 (Banking, Commerce and Insurance Committee) Change provisions relating to certain financial services**

**Left on General File/Provisions amended into LB 851e and Enacted**

#### **OVERVIEW**

This bill, introduced at the request of the Director of Banking and Finance, would amend sections 45-702 to 45-704, and 45-722 of the Mortgage Bankers Registration and Licensing Act, sections 45-907 and 45-922 of the Delayed Deposit Services Licensing Act, and section 45-1006 of the Nebraska Installment Loan Act in order to update the laws relating to mortgage bankers, delayed deposit services licensees, and installment loan licensees.

## SUMMARY

The bill would provide, section by section, as follows:

### MORTGAGE BANKERS

Section 1 would amend section 45-702 of the Mortgage Bankers Registration and Licensing Act to provide that a “mortgage banker” and a “mortgage banking business” shall be defined as a person or entity, not otherwise exempt from the act, that makes or offers to make “a mortgage loan” rather makes or offers to make “ten or more mortgage loans in a calendar year.” This amendment would eliminate what is known as the “de minimus exclusion or exemption” in the act.

Section 2 would amend section 45-703 of the Mortgage Bankers Registration and Licensing Act to provide an exemption from the act for any individual who does not regularly engage in the mortgage banking business (1) who makes a mortgage loan with his or her own funds for his or her own investment, (2) who makes a purchase-money mortgage, or (3) who finances the sale of his or her own real property without the intent to resell the mortgage loan.

Section 3 would amend section 45-704 of the Mortgage Bankers Registration and Licensing Act to harmonize an internal reference.

Section 4 would amend section 45-722 of the Mortgage Bankers Registration and Licensing Act to provide (1) that no person shall acquire control of any mortgage banking business required to be licensed under the act without giving “thirty” days’ rather than “sixty” days’ notice to the Department of Banking and Finance and (2) that the Director of Banking and Finance, upon receipt of the notice, shall act upon it within thirty days and, unless he or she disapproves the acquisition within that time, the acquisition shall become effective on the “thirty-first” rather than the “sixty-first” day after receipt without the director’s approval.

### DELAYED DEPOSIT SERVICES

Section 5 would amend section 45-907 of the Delayed Deposit Services Licensing Act to provide that the applicant for a license shall pay the expense of any publication by the Department of Banking and Finance of notice that the application for a license has been filed and that a hearing will be set if no written protest against issuance of the license has been filed with the department.

Section 6 would amend section 45-922 of the Delayed Deposit Services Licensing Act to provide that the Director of Banking and Finance may suspend or revoke a license if he or she finds that a licensee has knowingly violated a voluntary consent or compliance agreement which had been entered into with the director.

### INSTALLMENT LOANS

Section 7 would amend section 45-1006 of the Nebraska Installment Loan Act to provide that when an application for an original installment loan license has been accepted by the Director of Banking and Finance as substantially complete, notice of the

filing of the application shall be published by the Department of Banking and Finance and, unless waived by the director, a hearing shall be held not less than thirty days after the last publication rather than not less than thirty days after the filing of the application, with the costs of the hearing paid by the applicant.

#### MISCELLANEOUS PROVISIONS

Section 8 would provide for operative dates. (Sections 4, 8, and 10 of the bill would be subject to the emergency clause.)

Section 9 would provide for repealers of sections not subject to the emergency clause.

Section 10 would provide for repealers of the section subject to the emergency clause.

Section 11 would provide for the emergency clause.

### **LB 953 (Nelson) Change manufactured home and mobile home provisions relating to bankruptcy, certificates of title, and security interests**

#### **Speaker Priority Bill**

#### **Enacted/Effective July 18, 2008**

#### OVERVIEW

This bill amends sections 60-137 and 60-164 of the Motor Vehicle Certificate of Title Act and enacts a new section regarding bankruptcy and security interests involving manufactured homes and mobile homes.

#### SUMMARY

The bill provides, section by section, as follows:

#### BANKRUPTCY

Section 1 enacts a new section to provide that a manufactured home or mobile home shall be deemed real property for purposes of a chapter 13 bankruptcy plan.

#### MOTOR VEHICLE CERTIFICATES OF TITLE

Section 2 amends section 60-137 of the Motor Vehicle Certificate of Title Act to provide that (a) every owner of a manufactured home or mobile home shall obtain a certificate of title for the manufactured home or mobile home prior to affixing it to the real estate and (b) if a manufactured home or mobile home has been affixed to real estate, and a certificate of title was not issued before it was so affixed, the owner of such manufactured home or mobile home shall apply for and be issued a certificate of title at any time for surrender and cancellation.

Section 3 amends section 60-164 of the Motor Vehicle Certificate of Title Act to provide that a purchase-money security interest, under Article 9 of the Uniform Commercial Code, in a vehicle is perfected against the rights of judicial lien creditors and execution creditors on and after the date the purchase-money security interest attaches.

#### MISCELLANEOUS

Section 4 provides for repealers of amendatory sections.

The bill passed 47-0-2 on April 16, 2008 and was signed by the Governor on April 17, 2008.

### **LB 1144 (McGill) Change the Delayed Deposit Services Licensing Act**

#### **Left in Committee**

#### OVERVIEW

This bill would amend sections 45-901, 45-906, 45-915, 45-919, and 45-925 of the Delayed Deposit Services Licensing Act and would enact four new sections within the act to provide that a licensee shall not enter into another delayed deposit transaction with a maker (customer) within seventy-two hours after completion of a delayed deposit transaction by such maker with the licensee or any other licensee or if such maker has a delayed deposit transaction that is not complete with the licensee or any other licensee. The bill would require that the Director of Banking and Finance, or a third-party provider, shall develop, implement, and maintain a data base accessible to licensees to facilitate compliance with the act. The bill would require the cost of the data base to be paid for with fees paid by the licensees.

#### SUMMARY

The bill would provide, section by section, as follows:

Section 1 would amend section 45-901 of the Delayed Deposit Services Licensing Act to provide that new sections 6 to 9 of the bill shall be assigned within the act.

Section 2 would amend section 45-906 of the Delayed Deposit Services Licensing Act to provide that an application for a delayed deposit services license shall be accompanied by a data base fee of one hundred dollars to defray the costs of establishing a data base pursuant to section 6 of the bill and that the fee shall terminate on the date the Director of Banking and Finance implements the date base.

Section 3 would amend section 45-915 of the Delayed Deposit Services Licensing Act to provide that a data base fee shall be paid to the Director of Banking and Finance for each request by a licensee to change the location of its designated principal place of business or to establish or change the location of a branch office, that the fee shall be used to defray the costs of establishing the data base pursuant to section 6 of the bill, and that the fee shall terminate on the date the director implements the data base.

Section 4 would amend section 45-919 of the Delayed Deposit Services Licensing Act to provide that no licensee shall (1) enter into another delayed deposit transaction with a maker (customer) within seventy-two hours after completion of a delayed deposit transaction by such maker with the licensee or any other licensee or (2) enter into another delayed deposit transaction with a maker if such maker has a delayed deposit transaction that is not complete with the licensee or any other licensee. The bill would also amend this section to expand the definition of “completion of a delayed deposit transaction” to mean (1) the licensee has presented the maker’s check for payment to a financial institution and has received payment for the check, (2) the licensee has written the maker’s check off as a bad debt after it was returned unpaid by the financial institution, or (3) the licensee has sold the check to a third party after it was returned unpaid by the financial institution.

Section 5 would amend section 45-925 of the Delayed Deposit Services Licensing Act to update an internal reference and repeal provisions made obsolete by amendments proposed in section 4 of the bill.

Section 6 would enact a new section within the Delayed Deposit Services Licensing Act to provide that on or before January 1, 2010, the Director of Banking and Finance or a third-party provider, whoever is the data base provider, shall develop, implement, and maintain a statewide data base that, at all times, is accessible to licensees and is accessible to the director, if the director is not the data base provider. This section would provide that the data base shall be used to facilitate compliance by licensees with section 45-919 and to create an annual report pursuant to section 8 of the bill. This section would provide that the data base shall allow a licensee accessing the data base to verify whether a maker has any open delayed deposit service transactions with any licensee that have not been completed. This section would provide that the data base provider may charge each licensee a verification fee for access to the data base in amounts approved by the director.

Section 7 would enact a new section within the Delayed Deposit Services Licensing Act to provide that if the Director of Banking and Finance has not yet implemented a data base or the data base is not fully operational, the licensee shall verify that a maker does not have an open delayed deposit services transaction with the licensee by way of a data base which the licensee shall maintain of all of its transactions at all of its locations. This section would provide that if the director has implemented a data base and the data base is fully operational, the licensee shall access the data base and verify that a maker does not have any transactions in violation of section 45-919. This section would provide that if the director has not yet implemented a data base, the data base is not fully operational, or the licensee is unable to access the data base due to technical difficulties, a licensee may rely upon written verification of the maker that the maker does not have any outstanding delayed deposit services transactions with any licensee. This section would provide that the director may impose a data base verification fee, not to exceed one dollar per transaction, for data required to be submitted by a licensee. This section would require that for the first twelve months that the data base is operational, an additional licensing fee of fifty cents per transaction shall be paid to defray the costs of

establishing the data base. This section would provide that the director may assess each licensee and each branch office a data base fee not to exceed one hundred dollars to defray the costs of establishing the data base and that the fee shall terminate on the date the director implements the data base.

Section 8 would enact a new section within the Delayed Deposit Services Licensing Act to provide that the Director of Banking or the third-party provider shall compile an annual report.

Section 9 would enact a new section within the Delayed Deposit Services Licensing Act to provide for limitations on liability.

Section 10 would provide for repealers of amendatory sections.

## **PARTNERSHIPS**

**LB 383 (Pahls) Change filing requirements involving the address of a partnership's agent**

**Enacted/Effective July 18, 2008**

This bill, introduced at the request of the Secretary of State, amends sections 67-236, 67-240, 67-241, 67-281, and 67-283 of the Nebraska Uniform Limited Partnership Act, and sections 67-415, 67-454, 67-456, and 67-458 of the Uniform Partnership Act of 1998 to provide that various filings by limited partnerships, partnerships, and limited liability partnerships shall set forth the name and "street" address "and post office box number, if any," of the agent for service of process.

The bill passed 48-0-1 on February 1, 2008 and was signed by the Governor on February 7, 2008.

## **REAL PROPERTY**

**LB 123 (Banking, Commerce and Insurance Committee) Adopt the Nebraska Foreclosure Protection Act and change provisions relating to deceptive trade practices**

**Enacted/Effective July 18, 2008**

### **OVERVIEW**

This bill, introduced at the request of the Director of Banking and Finance, enacts 28 new sections to be known as the Nebraska Foreclosure Protection Act in order to impose legal restrictions and requirements on “foreclosure consultants” and “equity purchasers” who, if uncontrolled, could take advantage of homeowners in financial distress with deceptive or unconscionable business practices to dispossess them or strip the equity from their homes. The bill’s stated purpose is to: curtail and prevent the most deceptive and unconscionable of these business practices; provide homeowners with information necessary to make an informed and intelligent decision regarding transactions with foreclosure consultants and equity purchasers; provide minimum requirements for contracts between such parties, including rights to cancel such contracts; and ensure and foster fair dealing in the sale and purchase of homes in foreclosure.

### **SUMMARY**

The bill provides, section by section, as follows:

#### **GENERAL PROVISIONS**

Section 1 enacts a new section to provide for a named act: the Nebraska Foreclosure Protection Act.

Section 2 enacts a new section to provide for legislative findings.

Section 3 enacts a new section to provide for definitions to be found in sections 4 to 12 of the bill.

Section 4 enacts a new section to define “associate.”

Section 5 enacts a new section to define “equity purchase contract” as an agreement between an equity purchaser and a homeowner pertaining to acquisition of title to the homeowner’s personal residence.

Section 6 enacts a new section to define “equity purchaser” as a person who, in the course of business, acquires title to a residence in foreclosure, subject to exceptions as set forth in this section.

Section 7 enacts a new section to define “evidence of debt” as a promise to pay or a right to payment of a monetary obligation.

Section 8 enacts a new section to define “foreclosure consultant” as a person who (a) does not take or acquire an interest in or title to a residence in foreclosure and (b) offers, for compensation from the homeowner or from a loan or advance of funds, to: stop or postpone a foreclosure; obtain a forbearance under a deed of trust, mortgage, or other lien; assist the homeowner in exercising a right to cure a default; obtain an extension of the period in which a default may be cured; obtain a waiver of an acceleration clause; assist the homeowner to obtain a loan or an advance of funds; avoid or reduce the impairment of the homeowner’s credit; delay, hinder, or prevent foreclosure; or assist the homeowner in obtaining the remaining or excess proceeds from the foreclosure sale.

Section 9 enacts a new section to define “foreclosure consulting contract” as an agreement between a foreclosure consultant and a homeowner.

Section 10 enacts a new section to define “holder of evidence of debt” and exceptions as set forth in this section.

Section 11 enacts a new section to define “homeowner.”

Section 12 enacts a new section to define “residence in foreclosure.”

#### **FORECLOSURE CONSULTANT CONTRACTS**

Section 13 enacts a new section to set out required provisions in a foreclosure consulting contract, including the text of a notice to the homeowner and a notice of cancellation of the contract if the homeowner exercises his or her right to cancel the contract.

Section 14 enacts a new section to provide that a homeowner has the right to cancel a foreclosure consulting contract at any time and sets forth the steps to be taken to exercise that right.

Section 15 enacts a new section to provide that certain provisions in a foreclosure consulting contract, as set forth in this section, are void as against public policy.

Section 16 enacts a new section to provide that certain practices, as set forth in this section, if taken by a foreclosure consultant, are prohibited.

Section 17 enacts a new section to: (1) provide that a foreclosure consultant may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction; and (2) provide for judicial enforcement.

Section 18 enacts a new section to provide that a foreclosure consulting contract shall be accompanied by a written translation into any other language spoken by the homeowner.

## EQUITY PURCHASE CONTRACTS

Section 19 enacts a new section to provide requirements for equity purchase contracts.

Section 20 enacts a new section to set out required provisions in an equity purchase contract, including the text of a notice to the homeowner.

Section 21 enacts a new section to provide that a homeowner has the right to cancel an equity purchase contract until midnight of the third business day following the day on which the homeowner signs the contract or until noon on the last business day before the foreclosure sale, whichever occurs first, and sets forth the steps to be taken to exercise that right. This section provides that the homeowner does not have the right to cancel an equity purchase contract executed on or after noon of the last business day before the foreclosure sale if the homeowner first agrees to enter into an equity purchase contract with the equity purchaser on or after noon of the last business day before the foreclosure sale.

Section 22 enacts a new section to set out the required provisions in an equity purchase contract of a statement of the homeowner's right to cancel and the required provisions of an accompanying notice of cancellation.

Section 23 enacts a new section to provide that a transaction in which a homeowner purports to grant a residence in a foreclosure to an equity purchaser and in which an option to repurchase is reserved to the homeowner or is given by the equity purchaser to the homeowner is permitted only where conditions, as set forth in this section, have been met.

Section 24 enacts a new section to provide that a provision in an equity purchase contract between an equity purchaser and a homeowner is void if it attempts or purports to do certain things, as set forth in this section.

Section 25 enacts a new section to provide that: (1) the required equity purchase contract provisions shall be provided and completed by the equity purchaser; (2) until the time within which the homeowner may cancel the transaction has elapsed, the equity purchaser shall not accept or induce a conveyance of the residence in foreclosure; record the equity purchase contract; transfer or encumber an interest in the residence in foreclosure; or pay the homeowner any consideration; (3) within ten days following receipt of a notice of cancellation, the equity purchaser shall return the original equity purchase contract and any other documents signed by the homeowner; and (4) the equity purchaser shall not make any untrue or misleading statements of material fact.

Section 26 enacts a new section to: (1) provide that an equity purchaser may not facilitate or engage in any transaction that is unconscionable given the terms and circumstances of the transaction; and (2) provide for judicial enforcement.

Section 27 enacts a new section to provide that an equity purchase contract shall be accompanied by a written translation into any other language spoken by the homeowner.

#### GENERAL PROVISIONS

Section 28 enacts a new section to provide that violation of the Nebraska Foreclosure Protection Act is a Class IV felony (maximum: 5 years, \$10,000, or both; minimum: none).

Section 29 amends section 87-302 of the Uniform Deceptive Trade Practices Act to provide that a violation of the Nebraska Foreclosure Protection Act is a deceptive trade practice under the Uniform Deceptive Trade Practices Act. The Uniform Deceptive Trade Practices Act is enforced by the Attorney General.

#### MISCELLANEOUS PROVISIONS

Section 30 provides for repealer of the amendatory section.

The bill passed 47-0-2 on March 4, 2008 and was signed by the Governor on March 10, 2008.

### **LB 386 (Langemeier) Adopt the Nebraska Security Instrument Satisfaction Act**

**Enacted/Effective July 18, 2008**

#### OVERVIEW

This bill enacts seven new sections to be known as the Nebraska Security Instrument Satisfaction Act to provide that a closing agent (title insurance agent) may, on behalf of a landowner or purchaser, execute a certificate of satisfaction of a security instrument and record it in the county real property records if a deed of reconveyance or release or satisfaction of the security interest has not been executed by the secured creditor and recorded within sixty days after the date the secured creditor has received full payment or performance of the secured obligation in accordance with a payoff statement furnished by the secured creditor and the closing agent has notified the secured creditor.

#### SUMMARY

The bill provides, section by section, as follows:

Section 1 enacts a new section to provide for a named act: the Nebraska Security Instrument Satisfaction Act.

Section 2 enacts a new section to provide for definitions: (1) closing agent; (2) designation of authority; (3) good faith; (4) landowner; (5) notification or notice; (6) payoff amount; (7) payoff statement; (8) person; (9) purchase; (10) purchaser; (11)

record; (12) residential real property; (13) secured creditor; (14) secured obligation; (15) security instrument; (16) security interest; and (17) title insurer.

Section 3 enacts a new section to provide that (1) a secured creditor shall, after it receives full payment or performance of the secured obligation, record a deed of reconveyance or a release or satisfaction of a security interest in the county real property records, (2) a secured creditor who fails to record a deed of reconveyance or a release or satisfaction of a security interest within sixty days after receiving full payment or performance of the secured obligation is liable to the landowner or purchaser for actual damages, including attorney's fees and costs, and (3) a secured creditor is not liable under this section if it (a) established a reasonable procedure to achieve compliance, (b) complied with the procedure in good faith, and (c) was unable to comply due to circumstances beyond its control.

Section 4 enacts a new section to provide that a closing agent (title insurance agent) may, on behalf of a landowner or purchaser, execute a certificate of satisfaction and record it in the county real property records, if a deed of reconveyance or release or satisfaction of the security interest has not been executed and recorded within sixty days after the date (1) the secured creditor has received full payment or performance of the secured obligation and (2) the closing agent has notified the secured creditor.

Section 5 enacts a new section to provide for the contents of a certificate of satisfaction.

Section 6 enacts a new section to provide that at least sixty days in advance of recording a certificate of satisfaction, a closing agent shall notify the secured creditor that the closing agent has the authority to execute and record a certificate of satisfaction of the security interest. This section provides for the contents of a lender/payoff satisfaction notification.

Section 7 enacts a new section to provide that (1) a certificate of satisfaction is evidence of the facts contained in it, shall be accepted for recording, and operates as a satisfaction of the security interest described in it, (2) (a) a closing agent wrongfully or erroneously recording a certificate of satisfaction shall be liable to the secured party for actual damages and attorney's fees and costs, (b) a closing agent that records a certificate of satisfaction wrongfully or erroneously is not liable if the closing agent complied in good faith with the act, (c) if a certificate of satisfaction is recorded by a title insurance agent pursuant to a designation of authority, the title insurer making the designation shall be liable to a secured creditor for the wrongful or erroneous recording of the certificate of satisfaction, and (d) a single designation of authority may be recorded in the office of the register of deeds, and (3) the recording of a certificate of satisfaction does not itself extinguish the liability of any person liable for payment of the underlying obligation.

The bill passed 47-0-2 on March 4, 2008 and was signed by the Governor on March 10, 2008.

**LB 785 (Howard) Require seller of residential real estate to provide purchaser with information regarding sex offender registration**

**Left in Committee**

This bill would enact a new section to require each seller of residential real property required to provide the purchaser with a written disclosure statement under section 76-2,120 to also provide the purchaser with a notice stating that information regarding registered sex offenders may be obtained from local law enforcement agencies or the Nebraska State Patrol.

The new section would provide that the required notice would not create a legal duty for the seller or the real estate licensee to investigate or provide information regarding the actual presence of any registered sex offenders in the area of the seller's property.

The new section would provide that it only applies to agreements entered into on or after January 1, 2008.

**LB 1011 (Langemeier, Erdman) Change the Real Property Appraiser Act**

**Enacted/Effective July 18, 2008**

**OVERVIEW**

This bill amends various sections of the Real Property Appraiser Act to update provisions and repeal obsolete provisions.

**SUMMARY**

The bill provides, section by section, as follows:

Section 1 amends section 76-2207 of the Real Property Appraiser Act to provide that an "appraiser trainee" will no longer be defined as a person who, under the direct supervision of a "licensed" real property appraiser, assists the appraiser in any phase of appraisal activity. The definition will continue to apply to a person under the direct supervision of a certified residential or certified general real property appraiser.

Section 2 amends section 76-2213.01 of the Real Property Appraiser Act to provide that "Uniform Standards of Professional Appraisal Practice" shall be defined as the standards promulgated by the Appraisal Foundation, as the standards existed on January 1, "2008" rather than January 1, "2007."

Section 3 amends section 76-2217.02 of the Real Property Appraiser Act to provide that "trainee real property appraiser" means a person "who holds a valid credential as a trainee real property appraiser issued under the" act, and who, under the direct supervision of a certified residential or certified general real property appraiser, assists the appraiser.

Section 4 amends section 76-2221 of the Real Property Appraiser Act, which provides that the Real Property Appraiser Act shall not apply to any real property appraiser who is a salaried employee of the federal government, a state agency or political subdivision which appraises real estate, an insurance company, or financial institution. The bill amends this section to repeal exceptions which provide that any such employee who also practices as an independent real property appraiser for others shall be subject to the act and shall be credentialed prior to engaging in such other appraising. The bill amends this section to provide that any such employee who signs an appraisal report as a credentialed real property appraiser shall be subject to the act and the Uniform Standards of Professional Appraisal Practice. The bill amends this section to provide that any such employee who does not sign an appraisal report as a credentialed real property appraiser shall include a disclosure that the opinion of value may not meet the minimum standards contained in the Uniform Standards of Professional Appraisal Practice and is not governed by the Real Property Appraiser Act. The bill amends this section to provide that any appraiser appointed to act as a referee by a county board of equalization and who prepares an appraisal report shall not sign it as a credentialed appraiser and shall include a disclosure that the opinion of value may not meet the minimum standards contained in the Uniform Standards of Professional Appraisal Practice and is not governed by the Real Property Appraiser Act. The bill amends this section to provide for repeal of provisions which became obsolete on January 1, 2008.

Section 5 amends section 76-2222 of the Real Property Appraiser Act to provide that no person shall serve as a member of the Real Property Appraiser Board for consecutive terms rather than for “more than two” consecutive terms.

Section 6 amends section 76-2223 of the Real Property Appraiser Act to provide that the Real Property Appraiser Board may collect and transmit to the appropriate federal authority any fees established under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as the act existed on January 1, “2008” rather than January 1, “2006.”

Section 7 amends section 76-2228 of the Real Property Appraiser Act to provide for repeal of provisions which became obsolete on January 1, 2008.

Section 8 amends section 76-2229 of the Real Property Appraiser Act to provide that no person other than a trainee real property appraiser shall assume or use the title trainee real property appraiser or any title, designation, or abbreviation likely to create the impression of credentialing as a trained real property appraiser by this state.

Section 9 amends section 76-2229.01 of the Real Property Appraiser Act to specify that its provisions became applicable on and after January 1, 2008.

Sections 10 to 12 amend sections 76-2230, 76-2231.01, and 76-2232 of the Real Property Appraiser Act to provide for repeal of provisions which became obsolete on January 1, 2008.

Section 13 amends section 76-2233 of the Real Property Appraiser Act, which allows a nonresident to qualify for reciprocal credentialing if the applicant is currently a resident of the state, territory, or the District of Columbia in which he or she is credentialed to appraise real property. The bill amends this section to provide for repeal of provisions which allow the Real Property Appraiser Board to waive the residence requirement under special residency circumstances.

Section 14 amends section 76-2241 of the Real Property Appraiser Act to provide that the Real Property Appraiser Board shall charge and collect a temporary credential “application” fee rather than a temporary credential fee and provide that such fee for a licensed real property appraiser, a certified residential real property appraiser, or a certified general real property appraiser shall be no more than one hundred dollars rather than a temporary credential fee for a licensed real property appraiser of no more than one hundred fifty dollars and a temporary credential fee for a certified residential real property appraiser or a certified general real property appraiser of no more than two hundred dollars. The bill amends this section to provide that the board shall charge and collect a pocket card fee of no more than fifty dollars for a licensed real property appraiser, certified residential real property appraiser, or certified general real property appraiser holding a temporary credential under the act. The bill amends this section to provide that the board may collect and transmit to the appropriate federal authority any fees established under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as the act existed on January 1, “2008” rather than January 1, “2006.”

Section 15 amends section 76-2244 of the Real Property Appraiser Act to provide that each “resident” credential holder shall designate and maintain a principal place of business, and provide that upon any change in his or her principal place of business, a “resident or nonresident” credential holder shall promptly give notice to the Real Property Appraiser Board.

Section 16 amends section 76-2249 of the Real Property Appraiser Act to provide that the directory which the Real Property Appraiser Board may prepare showing the name and place of business of credential holders shall be provided to federal authorities as required by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as the act existed on January 1, “2008” rather than January 1, “2006.”

Section 17 provides for repealers.

The bill passed 44-0-5 on April 15, 2008 and was signed by the Governor on April 16, 2008.

## **REAL ESTATE LICENSEES**

### **LB 715 (Pahls) Change provisions relating to nonresident real estate licensees**

**Enacted/Effective July 18, 2008**

This bill amends section 81-885.17 of the Nebraska Real Estate License Act to provide that a nonresident real estate broker or salesperson cannot be issued a resident broker's or salesperson's license upon becoming a Nebraska resident or cannot be issued a nonresident broker's or salesperson's license without first providing the State Real Estate Commission with proof of completion of a three-hour class approved by the commission regarding the Nebraska Real Estate License Act, sections 81-885.01 to 81-885.55, and the Nebraska statutes on agency relationships, sections 76-2401 to 76-2430.

The bill passed 45-0-4 on March 4, 2008 and was signed by the Governor on March 10, 2008.

### **LB 980 (Carlson) Change trust account provisions under the Nebraska Real Estate License Act**

**Left in Committee**

This bill would amend section 81-885.21 of the Nebraska Real Estate License Act to provide that the trust account which each real estate broker must maintain for down payments and earnest money deposits may be maintained in any "federally insured financial institution" and not just in a bank, savings bank, building and loan association, or savings and loan association.

## **UNIFORM COMMERCIAL CODE-SECURED TRANSACTIONS**

### **LB 116 (Pahls) Change provisions relating to priority of purchase – money security interests**

#### **Left on General File/Provisions amended into LB 851e and Enacted**

This bill would amend Uniform Commercial Code Section 9-324 to clarify provisions regarding a conflicting purchase-money security interest and security interest in the same livestock. Specifically, UCC Section 9-324(d) provides that a perfected purchase-money security interest in livestock has priority over a conflicting security interest in the same livestock if the purchase-money security interest is perfected when the debtor receives possession of the livestock. The bill would amend UCC Section 9-324(d) to provide that such possession means possession by the debtor or possession by a third party on behalf of or at the direction of the debtor, including, but not limited to, possession by a bailee or an agent of the debtor.

### **LB 716 (Pahls) Change provisions relating to the effect of errors and omissions in a financing statement**

#### **Left on General File/Provisions amended into LB 851e and Enacted/Provisions as amended into LB 851e and Enacted also amended into LB 308A and further amended and Enacted**

This bill would amend Uniform Commercial Code Section 9-506(c) to provide that a financing statement with minor errors or omissions is not seriously misleading if a search of “the debtor’s correct last name” in the records of the filing office would disclose the financing statement. UCC Section 9-506(a) currently provides, as a general matter, that a financing statement substantially satisfying the requirements of the code is effective, even if it has minor errors and omissions, unless the errors or omissions make the financing statement seriously misleading.

### **LB 308A (Stuthman) Change provisions relating to errors and omissions in a financing statement**

#### **Enacted/Effective July 18, 2008**

This bill, as amended on Final Reading, amends Uniform Commerce Code Section 9-506, as amended by section 28 of LB 851e, to provide that the amendments to UCC Section 9-506(c), as enacted by section 28 of LB 851e, will not become applicable until September 2, 2009.

**BANKING, COMMERCE AND INSURANCE COMMITTEE**  
**BILL STATUS REPORT**

**April 17, 2008**

<b>Bill #</b>	<b>Introducer</b>	<b>One Liner</b>	<b>Hearing Date</b>	<b>BCI Action</b>	<b>Final Disposition</b>	<b>Comments</b>
LB 62	Langemeier, et al.	Authorize insurance producers to charge incidental fees	1/16/07	Held		
LB 113	Pahls	Prohibit branch banking by industrial loan companies	2/26/07	General File w/AM	Left on General File	Provisions amended into LB 851e and enacted
LB 116	Pahls	Change provisions relating to priority of purchase-money security interests	2/6/07	General File	Left on General File	Provisions amended into LB 851e and enacted
LB 118	BCI	Change the Comprehensive Health Insurance Pool Act	1/22/07	Held		Interim Study LR 301
LB 123	BCI	Adopt the Nebraska Foreclosure Protection Act and change provisions relating to deceptive trade practices	2/12/07	General File w/AM	Enacted	
LB 174	Janssen	Provide duties for and prohibit certain actions by issuers of credit and debit cards	2/26/07	Held		
LB 262	Kruse, et al.	Change automobile insurance requirements	2/20/07	Held		
LB 378	Pahls	Change the Small Employer Health Insurance Availability Act	2/13/07	Held		
LB 379	Pahls	Change certain corporate reporting, notice, and filing provisions and eliminate references to professional limited liability companies	2/13/07	General File	Enacted	

<b>Bill #</b>	<b>Introducer</b>	<b>One Liner</b>	<b>Hearing Date</b>	<b>BCI Action</b>	<b>Final Disposition</b>	<b>Comments</b>
LB 380	Pahls	Change a license application requirement under the Mortgage Bankers Registration and Licensing Act	2/5/07	General File	Enacted	
LB 383	Pahls	Change filing requirements involving the address of a partnership's agent	2/13/07	General File	Enacted	
LB 386	Langemeier	Adopt the Nebraska Security Instrument Satisfaction Act	2/12/07	General File	Enacted	
LB 647	Johnson et al.	Change provisions relating to insurance coverage of mental health and physical health conditions	2/27/07	Held		
LB 715	Pahls	Change provisions relating to nonresident real estate licensees	1/22/08	General File	Enacted	
LB 716	Pahls	Change provisions relating to the effect of errors and omissions in a financing statement	1/22/08	General File	Left on General File	Provisions amended into LB 851e and enacted. Provisions as amended into LB 851e and enacted also amended into LB 308A and further amended and enacted
LB 717	Pahls	Change provisions relating to finance	1/22/08	General File w/AM	Left on General File	Provisions amended into LB 851e and enacted
LB 734	Fulton	Change employee benefit plan provisions for certain political subdivisions	2/5/08	General File w/AM	Enacted	Speaker Priority Bill
LB 779	Pirsch	Change requirements for filing certain statements with the Director of Insurance under the Multiple Employer Welfare Arrangement Act	1/28/08	General File w/AM	Left on General File	Provisions amended into LB 855 and enacted

<b>Bill #</b>	<b>Introducer</b>	<b>One Liner</b>	<b>Hearing Date</b>	<b>BCI Action</b>	<b>Final Disposition</b>	<b>Comments</b>
LB 785	Howard	Require seller of residential real estate to provide purchaser with information regarding sex offender registration	2/12/08	Held		
LB 792	Karpisek	Change provisions governing insurance producers	1/28/08	Held		
LB 825	Schimek	Require insurance coverage for cochlear implants as prescribed	2/11/08	Held		
LB 831	Lathrop	Change provisions relating to security freezes on consumer credit information	2/12/08	Held		
LB 848	Erdman	Change and eliminate provisions of the Nebraska Limited Cooperative Association Act	2/4/08	General File	Enacted	
LB 851e	BCI	Change provisions relating to banking and finance	1/22/08	General File w/AM	Enacted	Committee Priority Bill (Banking, Commerce and Insurance Committee)/Includes provisions of LB 113, LB 116, LB 716, LB 717, LB 851, LB 852, and LB 918/Provisions of LB 716 as amended into LB 851e and enacted also amended into LB 308A and further amended and enacted
LB 852	BCI	Change provisions relating to certain financial services	1/22/08	General File	Left on General File	Provisions amended into LB 851e and enacted

<b>Bill #</b>	<b>Introducer</b>	<b>One Liner</b>	<b>Hearing Date</b>	<b>BCI Action</b>	<b>Final Disposition</b>	<b>Comments</b>
LB 853	BCI	Change provisions of the Viatical Settlements Act	1/29/08	General File w/AM	Enacted	Senator Priority Bill (Pahls)/Some provisions amended into LB 855 and enacted
LB 854	BCI	Adopt the Discount Medical Plan Organization Act	1/29/08	General File w/AM	Left on General File	Provisions amended into LB 855 and enacted
LB 855	BCI	Change provisions relating to insurance	1/29/08	General File w/AM	Enacted	Committee Priority Bill (Banking, Commerce and Insurance Committee)/Includes provisions of LB 779, LB 853, LB 854, and LB 855
LB 876	Pahls	Change provisions relating to motor vehicle liability policies	2/5/08	Held		
LB 900	Flood, et al.	Prohibit use of credit information and discriminatory practices in issuing insurance policies and eliminate the Model Act Regarding Use of Credit Information in Personal Insurance	2/12/08	Held		
LB 907	Pirsch	Change provisions relating to corporations and limited liability companies	2/4/08	General File	Enacted	Speaker Priority Bill
LB 918	Pahls	Change provisions relating to bank holding company ownership limitations and interstate mergers	1/28/08	General File w/AM	Left on General File	Provisions amended into LB 851e and enacted
LB 920	Langemeier, et al.	Authorize insurance producers to charge certain incidental fees	1/28/08	General File	Left on General File	

<b>Bill #</b>	<b>Introducer</b>	<b>One Liner</b>	<b>Hearing Date</b>	<b>BCI Action</b>	<b>Final Disposition</b>	<b>Comments</b>
LB 953	Nelson	Change manufactured home and mobile home provisions relating to bankruptcy, certificates of title, and security interests	2/19/08	General File w/AM	Enacted	Speaker Priority Bill
LB 969	Pankonin	Required insurance coverage for prosthetics as prescribed	2/11/08	Held		Interim Study LR 299
LB 980	Carlson	Change trust account provisions under the Nebraska Real Estate License Act	2/11/08	Held		
LB 1002	Pahls	Require disclosures by group health benefit plans	2/19/08	Held		Interim Study LR 305
LB 1011	Langemeier, Erdman	Change the Real Property Appraiser Act	2/4/08	General File	Enacted	
LB 1028	Pankonin	Change the Securities Act of Nebraska to regulate certain branch office operations and prohibit certain fraudulent activities	2/4/08	Held		
LB 1045	Pankonin	Change provisions relating to coverage changes in property and casualty and automobile liability policies	2/12/08	General File w/AM	Enacted	
LB 1090	Lathrop	Change insurance provisions relating to underinsured motorist coverage	2/5/08	Held		
LB 1144	McGill	Change the Delayed Deposit Services Licensing Act	2/19/08	Held		

**BANKING, COMMERCE AND INSURANCE COMMITTEE  
INTERIM STUDY RESOLUTIONS  
2008**

- LR 299 (Pankonin) Interim study to examine changes being implemented by insurance companies to reduce private insurance benefits covering prosthetic limbs
- LR 301 (Pahls) Interim study to examine issues regarding the Comprehensive Health Insurance Pool
- LR 305 (Pahls) Interim study to examine requiring issuers of group health benefit plans to provide information regarding claims paid and the amount of premiums by line of coverage
- LR 309 (Nantkes) Interim study to determine whether Nebraska should enact the Uniform Limited Partnership Act (2001)

**REPORT ON THE PRIORTIZING  
OF INTERIM STUDY RESOLUTIONS**  
Pursuant to Rule 4, Section 3(c)

COMMITTEE: Banking, Commerce and Insurance                    DATE: April 15, 2008

The following resolutions were referred to the Committee on Banking, Commerce and Insurance. The committee has prioritized the resolutions in the following order:

<b><u>Resolution No.</u></b>	<b><u>Subject</u></b>
LR 301	CHIP
LR 299	Prosthetic Limbs
LR 305	Health Plan Information
LR 309	Uniform Limited Partnership Act