

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 363**

FINAL READING

Introduced by Williams, 36.

Read first time January 13, 2021

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to banking and finance; to amend sections  
2 8-201, 45-1004, and 45-1005, Reissue Revised Statutes of Nebraska,  
3 sections 8-135, 8-141, 8-143.01, 8-157.01, 8-163, 8-183.04, 8-1,140,  
4 8-204, 8-318, 8-355, 8-1101, 8-1101.01, 8-1108.02, 8-1704, 8-1707,  
5 8-2724, 8-2725, 8-2726, 8-2729, 8-2734, 8-2737, 8-2903, 21-17,115,  
6 45-335, 45-346, 59-1722, 69-2103, 69-2104, and 69-2112, Revised  
7 Statutes Cumulative Supplement, 2020, and section 4A-108, Uniform  
8 Commercial Code, Reissue Revised Statutes of Nebraska; to adopt  
9 certain federal provisions under the Nebraska Banking Act, building  
10 and loan association provisions, the Securities Act of Nebraska, the  
11 Commodity Code, the Seller-Assisted Marketing Plan Act, the Consumer  
12 Rental Purchase Agreement Act, and financial exploitation of a  
13 vulnerable or senior adult provisions; to revise powers of state-  
14 chartered banks, building and loan associations, and credit unions;  
15 to define a term; to change provisions of the Nebraska Trust Company  
16 Act, the Securities Act of Nebraska, the Nebraska Money Transmitters  
17 Act, the Credit Union Act, and the Uniform Commercial Code; to  
18 redefine a term and change bond provisions under the Nebraska  
19 Installment Sales Act; to change provisions under the Nebraska  
20 Installment Loan Act; to harmonize provisions; to repeal the  
21 original sections; and to declare an emergency.  
22 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 8-135, Revised Statutes Cumulative Supplement,  
2 2020, is amended to read:

3 8-135 (1) All persons, regardless of age, may become depositors in  
4 any bank and shall be subject to the same duties and liabilities  
5 respecting their deposits. Whenever a deposit is accepted by any bank in  
6 the name of any person, regardless of age, the deposit may be withdrawn  
7 by the depositor by any of the following methods:

8 (a) Check or other instrument in writing. The check or other  
9 instrument in writing constitutes a receipt or acquittance if the check  
10 or other instrument in writing is signed by the depositor and constitutes  
11 a valid release and discharge to the bank for all payments so made; or

12 (b) Electronic means through:

13 (i) Preauthorized direct withdrawal;

14 (ii) An automatic teller machine;

15 (iii) A debit card;

16 (iv) A transfer by telephone;

17 (v) A network, including the Internet; or

18 (vi) Any electronic terminal, computer, magnetic tape, or other  
19 electronic means.

20 (2) All persons, individually or with others and regardless of age,  
21 may enter into an agreement with a bank for the lease of a safe deposit  
22 box and shall be bound by the terms of the agreement.

23 (3) This section shall not be construed to affect the rights,  
24 liabilities, or responsibilities of participants in an electronic fund  
25 transfer under the federal Electronic Fund Transfer Act, 15 U.S.C. 1693  
26 et seq., as such act existed on January 1, 2021 ~~2020~~, and shall not  
27 affect the legal relationships between a minor and any person other than  
28 the bank.

29 Sec. 2. Section 8-141, Revised Statutes Cumulative Supplement, 2020,  
30 is amended to read:

31 8-141 (1) No bank shall directly or indirectly loan to any single

1 corporation, limited liability company, firm, or individual, including in  
2 such loans all loans made to the several members or shareholders of such  
3 corporation, limited liability company, or firm, for the use and benefit  
4 of such corporation, limited liability company, firm, or individual, more  
5 than twenty-five percent of the paid-up capital, surplus, and capital  
6 notes and debentures or fifteen percent of the unimpaired capital and  
7 unimpaired surplus of such bank, whichever is greater. Such limitations  
8 shall be subject to the following exceptions:

9 (a) Obligations of any person, partnership, limited liability  
10 company, association, or corporation in the form of notes or drafts  
11 secured by shipping documents or instruments transferring or securing  
12 title covering livestock or giving a lien on livestock, when the market  
13 value of the livestock securing the obligation is not at any time less  
14 than one hundred fifteen percent of the face amount of the notes covered  
15 by such documents, shall be subject under this section to a limitation of  
16 ten percent of such capital, surplus, and capital notes and debentures or  
17 ten percent of such unimpaired capital and unimpaired surplus, whichever  
18 is greater, in addition to such twenty-five percent of such capital and  
19 surplus or such fifteen percent of such unimpaired capital and unimpaired  
20 surplus;

21 (b) Obligations of any person, partnership, limited liability  
22 company, association, or corporation secured by not less than a like  
23 amount of bonds or notes of the United States issued since April 24,  
24 1917, or certificates of indebtedness of the United States, treasury  
25 bills of the United States, or obligations fully guaranteed both as to  
26 principal and interest by the United States shall be subject under this  
27 section to a limitation of ten percent of such capital, surplus, and  
28 capital notes and debentures or ten percent of such unimpaired capital  
29 and unimpaired surplus, whichever is greater, in addition to such twenty-  
30 five percent of such capital and surplus or such fifteen percent of such  
31 unimpaired capital and unimpaired surplus;

1 (c) Obligations of any person, partnership, limited liability  
2 company, association, or corporation which are secured by negotiable  
3 warehouse receipts in an amount not less than one hundred fifteen percent  
4 of the face amount of the note or notes secured by such documents shall  
5 be subject under this section to a limitation of ten percent of such  
6 capital, surplus, and capital notes and debentures or ten percent of such  
7 unimpaired capital and unimpaired surplus, whichever is greater, in  
8 addition to such twenty-five percent of such capital and surplus or such  
9 fifteen percent of such unimpaired capital and unimpaired surplus; or

10 (d) Obligations of any person, partnership, limited liability  
11 company, association, or corporation which are secured by readily  
12 marketable collateral having a market value, as determined by reliable  
13 and continuously available price quotations, in an amount at least equal  
14 to the face amount of the note or notes secured by such collateral, shall  
15 be subject under this section to a limitation of ten percent of such  
16 capital, surplus, and capital notes and debentures or ten percent of such  
17 unimpaired capital and unimpaired surplus, whichever is greater, in  
18 addition to such twenty-five percent of such capital and surplus or such  
19 fifteen percent of such unimpaired capital and unimpaired surplus.

20 (2)(a) For purposes of this section, the discounting of bills of  
21 exchange, drawn in good faith against actually existing values, and the  
22 discounting of commercial paper actually owned by the persons negotiating  
23 the bills of exchange or commercial paper shall not be considered as the  
24 lending of money.

25 (b) Loans or obligations shall not be subject to any limitation  
26 under this section, based upon such capital and surplus or such  
27 unimpaired capital and unimpaired surplus, to the extent that such  
28 capital and surplus or such unimpaired capital and unimpaired surplus are  
29 secured or covered by guaranties, or by commitments or agreements to take  
30 over or to purchase such capital and surplus or such unimpaired capital  
31 and unimpaired surplus, made by any federal reserve bank or by the United

1 States Government or any authorized agency thereof, including any  
2 corporation wholly owned directly or indirectly by the United States, or  
3 general obligations of any state of the United States or any political  
4 subdivision of the state. The phrase general obligation of any state or  
5 any political subdivision of the state means an obligation supported by  
6 the full faith and credit of an obligor possessing general powers of  
7 taxation, including property taxation, but does not include municipal  
8 revenue bonds and sanitary and improvement district warrants which are  
9 subject to the limitations set forth in this section.

10 (c) Any bank may subscribe to, invest in, purchase, and own single-  
11 family mortgages secured by the Federal Housing Administration or the  
12 United States Department of Veterans Affairs and mortgage-backed  
13 certificates of the Government National Mortgage Association which are  
14 guaranteed as to payment of principal and interest by the Government  
15 National Mortgage Association. Such mortgages and certificates shall not  
16 be subject under this section to any limitation based upon such capital  
17 and surplus or such unimpaired capital and unimpaired surplus.

18 (d) Obligations representing loans to any national banking  
19 association or to any banking institution organized under the laws of any  
20 state, when such loans are approved by the director by rule and  
21 regulation or otherwise, shall not be subject under this section to any  
22 limitation based upon such capital and surplus or such unimpaired capital  
23 and unimpaired surplus.

24 (e) Loans or extensions of credit secured by a segregated deposit  
25 account in the lending bank shall not be subject under this section to  
26 any limitation based on such capital and surplus or such unimpaired  
27 capital and unimpaired surplus. The director may adopt and promulgate  
28 rules and regulations governing the terms and conditions of such security  
29 interest and segregated deposit account.

30 (f) For the purpose of determining lending limits, partnerships  
31 shall not be treated as separate entities. Each individual shall be

1 charged with his or her personal debt plus the debt of every partnership  
2 in which he or she is a partner, except that for purposes of this section  
3 (a) an individual shall only be charged with the debt of any limited  
4 partnership in which he or she is a partner to the extent that the terms  
5 of the limited partnership agreement provide that such individual is to  
6 be held liable for the debts or actions of such limited partnership and  
7 (b) no individual shall be charged with the debt of any general  
8 partnership in which he or she is a partner beyond the extent to which  
9 (i) his or her liability for such partnership debt is limited by the  
10 terms of a contract or other written agreement between the bank and such  
11 individual and (ii) any personal debt of such individual is incurred for  
12 the use and benefit of such general partnership.

13 (3) A loan made within lending limits at the initial time the loan  
14 was made may be renewed, extended, or serviced without regard to changes  
15 in the lending limit of a bank following the initial extension of the  
16 loan if (a) the renewal, extension, or servicing of the loan does not  
17 result in the extension of funds beyond the initial amount of the loan or  
18 (b) the accrued interest on the loan is not added to the original amount  
19 of the loan in the process of renewal, extension, or servicing.

20 (4) Any bank may purchase or take an interest in life insurance  
21 contracts for any purpose incidental to the business of banking. A bank's  
22 purchase of any life insurance contract, as measured by its cash  
23 surrender value, from any one life insurance company shall not at any  
24 time exceed twenty-five percent of the paid-up capital, surplus, and  
25 capital notes and debentures of such bank or fifteen percent of the  
26 unimpaired capital and unimpaired surplus of such bank, whichever is  
27 greater. A bank's purchase of life insurance contracts, as measured by  
28 their cash surrender values, in the aggregate from all life insurance  
29 companies shall not at any time exceed thirty-five percent of the paid-up  
30 capital, surplus, undivided profits, and capital notes and debentures of  
31 such bank. The limitations under this subsection on a bank's purchase of

1 life insurance contracts, in the aggregate from all life insurance  
2 companies, shall not apply to any contract purchased prior to April 5,  
3 1994.

4 (5) On and after January 21, 2013, the director has the authority to  
5 determine the manner and extent to which credit exposure resulting from  
6 derivative transactions, repurchase agreements, reverse repurchase  
7 agreements, securities lending transactions, and securities borrowing  
8 transactions shall be taken into account for purposes of determining  
9 compliance with this section. In making such determinations, the director  
10 may, but is not required to, act by rule and regulation or order.

11 (6) For purposes of this section:

12 (a) Derivative transaction means any transaction that is a contract,  
13 agreement, swap, warrant, note, or option that is based, in whole or in  
14 part, on the value of, any interest in, or any quantitative measure or  
15 the occurrence of any event relating to, one or more commodities,  
16 securities, currencies, interest or other rates, indices, or other  
17 assets;

18 (b) Loan includes:

19 (i) All direct and indirect advances of funds to a person made on  
20 the basis of any obligation of that person to repay the funds or  
21 repayable from specific property pledged by or on behalf of that person;

22 (ii) To the extent specified by rule and regulation or order of the  
23 director, any liability of a state bank to advance funds to or on behalf  
24 of a person pursuant to a contractual commitment; and

25 (iii) Any credit exposure to a person arising from a derivative  
26 transaction, repurchase agreement, reverse repurchase agreement,  
27 securities lending transaction, or securities borrowing transaction  
28 between the bank and the person; and

29 (c) Unimpaired capital and unimpaired surplus means:

30 (i) For qualifying banks that have elected to use the community bank  
31 leverage ratio framework, as set forth under the Capital Adequacy

1 Standards of the appropriate federal banking agency:

2 (A) The bank's tier 1 capital as reported according to the capital  
3 guidelines of the appropriate federal banking agency; and

4 (B) The bank's allowance for loan and lease losses or allowance for  
5 credit losses, as applicable, as reported in the most recent consolidated  
6 report of condition filed under 12 U.S.C. 1817(a)(3), as such section  
7 existed on January 1, 2021 ~~2020~~; and

8 (ii) For all other banks:

9 (A) The bank's tier 1 and tier 2 capital included in the bank's  
10 risk-based capital under the capital guidelines of the appropriate  
11 federal banking agency, based on the bank's most recent consolidated  
12 report of condition filed under 12 U.S.C. 1817(a)(3), as such section  
13 existed on January 1, 2021 ~~2020~~; and

14 (B) The balance of the bank's allowance for loan and lease losses  
15 not included in the bank's tier 2 capital for purposes of the calculation  
16 of risk-based capital by the appropriate federal banking agency, based on  
17 the bank's most recent consolidated report of condition filed under 12  
18 U.S.C. 1817(a)(3), as such section existed on January 1, 2021 ~~2020~~.

19 (7) Notwithstanding the provisions of section 8-1,140, the director  
20 may, by order, deny or limit the inclusion of goodwill in the calculation  
21 of a bank's unimpaired capital and unimpaired surplus or in the  
22 calculation of a bank's paid-up capital and surplus.

23 Sec. 3. Section 8-143.01, Revised Statutes Cumulative Supplement,  
24 2020, is amended to read:

25 8-143.01 (1) No bank shall extend credit to any of its executive  
26 officers, directors, or principal shareholders or to any related interest  
27 of such persons in an amount that, when aggregated with the amount of all  
28 other extensions of credit by the bank to that person and to all related  
29 interests of that person, exceeds the higher of twenty-five thousand  
30 dollars or five percent of the bank's unimpaired capital and unimpaired  
31 surplus unless (a) the extension of credit has been approved in advance



1 by a majority vote of the entire board of directors of the bank, a record  
2 of which shall be made and kept as a part of the records of such bank,  
3 and (b) the interested party has abstained from participating directly or  
4 indirectly in such vote.

5 (2) No bank shall extend credit to any of its executive officers,  
6 directors, or principal shareholders or to any related interest of such  
7 persons in an amount that, when aggregated with the amount of all other  
8 extensions of credit by the bank to that person and to all related  
9 interests of that person, exceeds five hundred thousand dollars except by  
10 complying with the requirements of subdivisions (1)(a) and (b) of this  
11 section.

12 (3) No bank shall extend credit to any of its executive officers,  
13 and no such executive officer shall borrow from or otherwise become  
14 indebted to his or her bank, except in the amounts and for the purposes  
15 set forth in subsection (4) of this section.

16 (4) A bank shall be authorized to extend credit to any of its  
17 executive officers:

18 (a) In any amount to finance the education of such executive  
19 officer's children;

20 (b)(i) In any amount to finance or refinance the purchase,  
21 construction, maintenance, or improvement of a residence of such  
22 executive officer if the extension of credit is secured by a first lien  
23 on the residence and the residence is owned or is expected to be owned  
24 after the extension of credit by the executive officer and (ii) in the  
25 case of a refinancing, only the amount of the refinancing used to repay  
26 the original extension of credit, together with the closing costs of the  
27 refinancing, and any additional amount thereof used for any of the  
28 purposes enumerated in this subdivision are included within this category  
29 of credit;

30 (c) In any amount if the extension of credit is (i) secured by a  
31 perfected security interest in bonds, notes, certificates of

1 indebtedness, or Treasury Bills of the United States or in other such  
2 obligations fully guaranteed as to principal and interest by the United  
3 States, (ii) secured by unconditional takeout commitments or guarantees  
4 of any department, agency, bureau, board, commission, or establishment of  
5 the United States or any corporation wholly owned directly or indirectly  
6 by the United States, or (iii) secured by a perfected security interest  
7 in a segregated deposit account in the lending bank; or

8 (d) For any other purpose not specified in subdivisions (a), (b),  
9 and (c) of this subsection if the aggregate amount of such other  
10 extensions of credit to such executive officer does not exceed, at any  
11 one time, the greater of two and one-half percent of the bank's  
12 unimpaired capital and unimpaired surplus or twenty-five thousand  
13 dollars, but in no event greater than one hundred thousand dollars or the  
14 amount of the bank's lending limit as prescribed in section 8-141,  
15 whichever is less.

16 (5)(a) Except as provided in subdivision (b) or (c) of this  
17 subsection, any executive officer shall make, on an annual basis, a  
18 written report to the board of directors of the bank of which he or she  
19 is an executive officer stating the date and amount of all loans or  
20 indebtedness on which he or she is a borrower, cosigner, or guarantor,  
21 the security therefor, and the purpose for which the proceeds have been  
22 or are to be used.

23 (b) Except as provided in subdivision (c) of this subsection, in  
24 lieu of the reports required by subdivision (a) of this subsection, the  
25 board of directors of a bank may obtain a credit report from a recognized  
26 credit agency, on an annual basis, for any or all of its executive  
27 officers.

28 (c) Subdivisions (a) and (b) of this subsection do not apply to any  
29 executive officer if such officer is excluded by a resolution of the  
30 board of directors or by the bylaws of the bank from participating in the  
31 major policymaking functions of the bank and does not actually

1 participate in the major policymaking functions of the bank.

2 (6) No bank shall extend credit to any of its executive officers,  
3 directors, or principal shareholders or to any related interest of such  
4 persons in an amount that, when aggregated with the amount of all other  
5 extensions of credit by the bank to that person and to all related  
6 interests of that person, exceeds the lending limit of the bank as  
7 prescribed in section 8-141.

8 (7)(a) Except as provided in subdivision (b) of this subsection, no  
9 bank shall extend credit to any of its executive officers, directors, or  
10 principal shareholders or to any related interest of such persons unless  
11 the extension of credit (i) is made on substantially the same terms,  
12 including interest rates and collateral, as, and following credit-  
13 underwriting procedures that are not less stringent than, those  
14 prevailing at the time for comparable transactions by the bank with other  
15 persons that are not covered by this section and who are not employed by  
16 the bank and (ii) does not involve more than the normal risk of repayment  
17 or present other unfavorable features.

18 (b) Nothing in subdivision (a) of this subsection shall prohibit any  
19 extension of credit made by a bank pursuant to a benefit or compensation  
20 program under the provisions of 12 C.F.R. 215.4(a)(2), as such regulation  
21 existed on January 1, 2021 ~~2020~~.

22 (8) For purposes of this section:

23 (a) Executive officer means a person who participates or has  
24 authority to participate, other than in the capacity of director, in the  
25 major policymaking functions of the bank, whether or not the officer has  
26 an official title, the title designates such officer as an assistant, or  
27 such officer is serving without salary or other compensation. Executive  
28 officer includes the chairperson of the board of directors, the  
29 president, all vice presidents, the cashier, the corporate secretary, and  
30 the treasurer, unless the executive officer is excluded by a resolution  
31 of the board of directors or by the bylaws of the bank from

1 participating, other than in the capacity of director, in the major  
2 policymaking functions of the bank, and the executive officer does not  
3 actually participate in such functions. A manager or assistant manager of  
4 a branch of a bank shall not be considered to be an executive officer  
5 unless such individual participates or is authorized to participate in  
6 the major policymaking functions of the bank; and

7 (b) Unimpaired capital and unimpaired surplus means the sum of:

8 (i) The total equity capital of the bank reported on its most recent  
9 consolidated report of condition filed under section 8-166;

10 (ii) Any subordinated notes and debentures approved as an addition  
11 to the bank's capital structure by the appropriate federal banking  
12 agency; and

13 (iii) Any valuation reserves created by charges to the bank's income  
14 reported on its most recent consolidated report of condition filed under  
15 section 8-166.

16 (9) Any executive officer, director, or principal shareholder of a  
17 bank or any other person who intentionally violates this section or who  
18 aids, abets, or assists in a violation of this section is guilty of a  
19 Class IV felony.

20 (10) The Director of Banking and Finance may adopt and promulgate  
21 rules and regulations to carry out this section, including rules and  
22 regulations defining or further defining terms used in this section,  
23 consistent with the provisions of 12 U.S.C. 84 and implementing  
24 Regulation 0 as such section and regulation existed on January 1, 2021  
25 ~~2020~~.

26 Sec. 4. Section 8-157.01, Revised Statutes Cumulative Supplement,  
27 2020, is amended to read:

28 8-157.01 (1) Any establishing financial institution may establish  
29 and maintain any number of automatic teller machines at which all banking  
30 transactions, defined as receiving deposits of every kind and nature and  
31 crediting such to customer accounts, cashing checks and cash withdrawals,

1 transferring funds from checking accounts to savings accounts,  
2 transferring funds from savings accounts to checking accounts,  
3 transferring funds from either checking accounts and savings accounts to  
4 accounts of other customers, transferring payments from customer accounts  
5 into accounts maintained by other customers of the financial institution  
6 or the financial institution, including preauthorized draft authority,  
7 preauthorized loans, and credit transactions, receiving payments payable  
8 at the financial institution or otherwise, account balance inquiry, and  
9 any other transaction incidental to the business of the financial  
10 institution or which will provide a benefit to the financial  
11 institution's customers or the general public, may be conducted. Any  
12 automatic teller machine owned by a nonfinancial institution third party  
13 shall be sponsored by an establishing financial institution. Neither such  
14 automatic teller machines nor the transactions conducted thereat shall be  
15 construed as the establishment of a branch or as branch banking.

16 (2) Any financial institution may become a user financial  
17 institution by agreeing to pay the establishing financial institution the  
18 automatic teller machine usage fee. Such agreement shall be implied by  
19 the use of such automatic teller machines.

20 (3)(a)(i) All automatic teller machines shall be made available on a  
21 nondiscriminating basis for use by Nebraska customers of a user financial  
22 institution and (ii) all Nebraska automatic teller machine transactions  
23 initiated by Nebraska customers of a user financial institution shall be  
24 made on a nondiscriminating basis.

25 (b) It shall not be deemed discrimination if (i) an automatic teller  
26 machine does not offer the same transaction services as other automatic  
27 teller machines, (ii) there are no automatic teller machine usage fees  
28 charged between affiliate financial institutions for the use of automatic  
29 teller machines, (iii) the automatic teller machine usage fees of an  
30 establishing financial institution that authorizes and directly or  
31 indirectly routes Nebraska automatic teller machine transactions to

1 multiple switches, all of which comply with the requirements of  
2 subdivision (3)(d) of this section, differ solely based upon the fees  
3 established by the switches, (iv) automatic teller machine usage fees  
4 differ based upon whether the transaction initiated at an automatic  
5 teller machine is subject to a surcharge or provided on a surcharge-free  
6 basis, or (v) the automatic teller machines established or sponsored by  
7 an establishing financial institution are made available for use by  
8 Nebraska customers of any user financial institution which agrees to pay  
9 the automatic teller machine usage fee and which conforms to the  
10 operating rules and technical standards established by the switch to  
11 which a Nebraska automatic teller machine transaction is directly or  
12 indirectly routed.

13 (c) The director, upon notice and after a hearing, may terminate or  
14 suspend the use of any automatic teller machine if he or she determines  
15 that the automatic teller machine is not made available on a  
16 nondiscriminating basis or that Nebraska automatic teller machine  
17 transactions initiated at such automatic teller machine are not made on a  
18 nondiscriminating basis.

19 (d) A switch (i) shall provide to all financial institutions that  
20 have a main office or approved branch located in the State of Nebraska  
21 and that conform to the operating rules and technical standards  
22 established by the switch an equal opportunity to participate in the  
23 switch for the use of and access thereto; (ii) shall be capable of  
24 operating to accept and route Nebraska automatic teller machine  
25 transactions, whether receiving data from an automatic teller machine, an  
26 establishing financial institution, or a data processing center; and  
27 (iii) shall be capable of being directly or indirectly connected to every  
28 data processing center for any automatic teller machine.

29 (e) The director, upon notice and after a hearing, may terminate or  
30 suspend the operation of any switch with respect to all Nebraska  
31 automatic teller machine transactions if he or she determines that the

1 switch is not being operated in the manner required under subdivision (3)  
2 (d) of this section.

3 (f) Subject to the requirement for a financial institution to comply  
4 with this subsection, no user financial institution or establishing  
5 financial institution shall be required to become a member of any  
6 particular switch.

7 (4) Any consumer initiating an electronic funds transfer at an  
8 automatic teller machine for which an automatic teller machine surcharge  
9 will be imposed shall receive notice in accordance with the provisions of  
10 15 U.S.C. 1693b(d)(3)(A) and (B), as such section existed on January 1,  
11 2021 ~~2020~~. Such notice shall appear on the screen of the automatic teller  
12 machine or appear on a paper notice issued from such machine after the  
13 transaction is initiated and before the consumer is irrevocably committed  
14 to completing the transaction.

15 (5) A point-of-sale terminal may be established at any point within  
16 this state by a financial institution, a group of two or more financial  
17 institutions, or a combination of a financial institution or financial  
18 institutions and a third party or parties. Such parties may contract with  
19 a seller of goods and services or any other third party for the operation  
20 of point-of-sale terminals.

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

28 (7) Nothing in this section shall be construed to prohibit nonbank  
29 employees from assisting in transactions originated at automatic teller  
30 machines or point-of-sale terminals, and such assistance shall not be  
31 deemed to be engaging in the business of banking.

1           (8)(a) Annually by September 1, any entity operating as a switch in  
2 Nebraska shall file a notice with the department setting forth its name,  
3 address, and contact information for an officer authorized to answer  
4 inquiries related to its operations in Nebraska.

5           (b) Any entity intending to operate in Nebraska as a switch shall  
6 file a notice with the department setting forth its name, address, and  
7 contact information for an officer authorized to answer inquiries related  
8 to its operations in Nebraska. Such notice shall be filed at least thirty  
9 days prior to the date on which the switch commences operations, and  
10 thereafter annually by September 1.

11           (9) Nothing in this section prohibits ordinary clearinghouse  
12 transactions between financial institutions.

13           (10) Nothing in this section shall prevent any financial institution  
14 which has a main chartered office or an approved branch located in the  
15 State of Nebraska from participating in a national automatic teller  
16 machine program to allow its customers to use automatic teller machines  
17 located outside of the State of Nebraska which are established by out-of-  
18 state financial institutions or foreign financial institutions or to  
19 allow customers of out-of-state financial institutions or foreign  
20 financial institutions to use its automatic teller machines. Such  
21 participation and any automatic teller machine usage fees charged or  
22 received pursuant to the national automatic teller machine program or  
23 usage fees charged for the use of its automatic teller machines by  
24 customers of out-of-state financial institutions or foreign financial  
25 institutions shall not be considered for purposes of determining (a) if  
26 an automatic teller machine has been made available or Nebraska automatic  
27 teller machine transactions have been made on a nondiscriminating basis  
28 for use by Nebraska customers of a user financial institution or (b) if a  
29 switch complies with subdivision (3)(d) of this section.

30           (11) An agreement to operate or share an automatic teller machine  
31 may not prohibit, limit, or restrict the right of the operator or owner



1 of the automatic teller machine to charge a customer conducting a  
2 transaction using an account from a foreign financial institution an  
3 access fee or surcharge not otherwise prohibited under state or federal  
4 law.

5 (12) Switch fees shall not be subject to this section or be  
6 regulated by the department.

7 (13) Nothing in this section shall prevent a group of two or more  
8 credit unions, each of which has a main chartered office or an approved  
9 branch located in the State of Nebraska, from participating in a credit  
10 union service organization organized on or before January 1, 2015, for  
11 the purpose of owning automatic teller machines, provided that all  
12 participating credit unions have an ownership interest in the credit  
13 union service organization and that the credit union service organization  
14 has an ownership interest in each of the participating credit unions'  
15 automatic teller machines. Such participation and any automatic teller  
16 machine usage fees associated with Nebraska automatic teller machine  
17 transactions initiated by customers of participating credit unions at  
18 such automatic teller machines shall not be considered for purposes of  
19 determining if such automatic teller machines have been made available on  
20 a nondiscriminating basis or if Nebraska automatic teller machine  
21 transactions initiated at such automatic teller machines have been made  
22 on a nondiscriminating basis, provided that all Nebraska automatic teller  
23 machine transactions initiated by customers of participating credit  
24 unions result in the same automatic teller machine usage fees for  
25 essentially the same service routed over the same switch.

26 (14) Nebraska automatic teller machine usage fees and any agreements  
27 relating to Nebraska automatic teller machine usage fees shall comply  
28 with subsection (3) of this section.

29 (15) For purposes of this section:

30 (a) Access means the ability to utilize an automatic teller machine  
31 or a point-of-sale terminal to conduct permitted banking transactions or

1 purchase goods and services electronically;

2 (b) Account means a checking account, a savings account, a share  
3 account, or any other customer asset account held by a financial  
4 institution. Such an account may also include a line of credit which a  
5 financial institution has agreed to extend to its customer;

6 (c) Affiliate financial institution means any financial institution  
7 which is a subsidiary of the same bank holding company;

8 (d) Automatic teller machine usage fee means any per transaction fee  
9 established by a switch or otherwise established on behalf of an  
10 establishing financial institution and collected from the user financial  
11 institution and paid to the establishing financial institution for the  
12 use of the automatic teller machine. An automatic teller machine usage  
13 fee shall not include switch fees;

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

20 (f) Essentially the same service means the same Nebraska automatic  
21 teller machine transaction offered by an establishing financial  
22 institution irrespective of the user financial institution, the Nebraska  
23 customer of which initiates the Nebraska automatic teller machine  
24 transaction. A Nebraska automatic teller machine transaction that is  
25 subject to a surcharge is not essentially the same service as the same  
26 banking transaction for which a surcharge is not imposed;

27 (g) Establishing financial institution means any financial  
28 institution which has a main chartered office or approved branch located  
29 in the State of Nebraska that establishes or sponsors an automatic teller  
30 machine or any out-of-state financial institution that establishes or  
31 sponsors an automatic teller machine;

1 (h) Financial institution means a bank, savings bank, building and  
2 loan association, savings and loan association, or credit union, whether  
3 chartered by the department, the United States, or a foreign state  
4 agency; any other similar organization which is covered by federal  
5 deposit insurance; or a subsidiary of any such entity;

6 (i) Foreign financial institution means a financial institution  
7 located outside the United States;

8 (j) Nebraska automatic teller machine transaction means a banking  
9 transaction as defined in subsection (1) of this section which is (i)  
10 initiated at an automatic teller machine established in whole or in part  
11 or sponsored by an establishing financial institution, (ii) for an  
12 account of a Nebraska customer of a user financial institution, and (iii)  
13 processed through a switch regardless of whether it is routed directly or  
14 indirectly from an automatic teller machine;

15 (k) Personal terminal means a personal computer and telephone,  
16 wherever located, operated by a customer of a financial institution for  
17 the purpose of initiating a transaction affecting an account of the  
18 customer;

19 (l) Sponsoring an automatic teller machine means the acceptance of  
20 responsibility by an establishing financial institution for compliance  
21 with all provisions of law governing automatic teller machines and  
22 Nebraska automatic teller machine transactions in connection with an  
23 automatic teller machine owned by a nonfinancial institution third party;

24 (m) Switch fee means a fee established by a switch and assessed to a  
25 user financial institution or to an establishing financial institution  
26 other than an automatic teller machine usage fee; and

27 (n) User financial institution means any financial institution which  
28 has a main chartered office or approved branch located in the State of  
29 Nebraska which avails itself of and provides its customers with automatic  
30 teller machine services.

31 Sec. 5. Section 8-163, Revised Statutes Cumulative Supplement, 2020,

1 is amended to read:

2 8-163 (1) No bank shall withdraw or permit to be withdrawn, either  
3 in the form of dividends or otherwise, any part of its capital or surplus  
4 without the written permission of the director. If losses have at any  
5 time been sustained equal to or exceeding the retained net income  
6 ~~undivided profits on hand~~, no dividends shall be made without the written  
7 permission of the director. No dividend shall be made by any bank in an  
8 amount greater than the retained net income ~~net profits on hand~~ without  
9 the written permission of the director.

10 (2) As used in this section, retained net income ~~net profits on hand~~  
11 means the sum of the bank's net income, as reported in its most recent  
12 report of condition and income, less any dividends declared during such  
13 year, for the current and two prior calendar years. Retained net income  
14 is reduced by any net losses incurred during that year not already  
15 reported in net income and by any transfers out of undivided profits to  
16 fund the retirement of preferred stock. Transfers out of undivided  
17 profits to the surplus account will not be treated as reductions to  
18 retained net income remainder of all earnings from current operations  
19 plus actual recoveries on loans and investments and other assets after  
20 deducting from the total thereof all current operating expenses, losses,  
21 and bad debts, accrued dividends on preferred stock, if any, and federal  
22 and state taxes, for the present and two immediately preceding calendar  
23 years.

24 Sec. 6. Section 8-183.04, Revised Statutes Cumulative Supplement,  
25 2020, is amended to read:

26 8-183.04 (1) Notwithstanding any other provision of the Nebraska  
27 Banking Act or any other Nebraska law, a state or federal savings  
28 association which was formed and in operation as a mutual savings  
29 association as of July 15, 1998, may elect to retain its mutual form of  
30 corporate organization upon conversion to a state bank.

31 (2) All references to shareholders or stockholders for state banks

1 shall be deemed to be references to members for such a converted savings  
2 association.

3 (3) The amount and type of capital required for such a converted  
4 savings association shall be as required for federal mutual savings  
5 associations in 12 C.F.R. 5.21, as such regulation existed on January 1,  
6 2021 ~~2020~~, except that if at any time the department determines that the  
7 capital of such a converted savings association is impaired, the director  
8 may require the members to make up the capital impairment.

9 (4) The director may adopt and promulgate rules and regulations  
10 governing such converted mutual savings associations. In adopting and  
11 promulgating such rules and regulations, the director may consider the  
12 provisions of sections 8-301 to 8-384 governing savings associations in  
13 mutual form of corporate organization.

14 Sec. 7. Section 8-1,140, Revised Statutes Cumulative Supplement,  
15 2020, is amended to read:

16 8-1,140 Notwithstanding any of the other provisions of the Nebraska  
17 Banking Act or any other Nebraska statute, any bank incorporated under  
18 the laws of this state and organized under the provisions of the act, or  
19 under the laws of this state as they existed prior to May 9, 1933, shall  
20 directly, or indirectly through a subsidiary or subsidiaries, have all  
21 the rights, powers, privileges, benefits, and immunities which may be  
22 exercised as of January 1, 2021 ~~2020~~, by a federally chartered bank doing  
23 business in Nebraska, including the exercise of all powers and activities  
24 that are permitted for a financial subsidiary of a federally chartered  
25 bank. Such rights, powers, privileges, benefits, and immunities shall not  
26 relieve such bank from payment of state taxes assessed under any  
27 applicable laws of this state.

28 Sec. 8. Section 8-201, Reissue Revised Statutes of Nebraska, is  
29 amended to read:

30 8-201 The Director of Banking and Finance shall have the power to  
31 issue to corporations desiring to transact business as trust companies

1 charters of authority to transact trust company business as defined in  
2 the Nebraska Trust Company Act. He or she shall have general supervision  
3 and control over such trust companies. Any three or more persons may  
4 adopt articles of incorporation and become a body corporate for the  
5 purpose of engaging in and conducting the business of a trust company,  
6 upon complying with the requirements of the act and the general laws of  
7 this state relating to the organization of corporations and upon  
8 obtaining a charter to transact business as a trust company from the  
9 director.

10 Every corporation organized for and desiring to transact a trust  
11 company business shall, before commencing such business, make under oath  
12 and transmit to the Department of Banking and Finance a complete  
13 statement including:

- 14 (1) The name of the proposed trust company;
- 15 (2) A certified copy of the articles of incorporation;
- 16 (3) The names of the stockholders;
- 17 (4) The names of the proposed members of the board of directors of  
18 the trust company, who shall be approved by the department in accordance  
19 with section 8-204;
- 20 ~~(5) (4)~~ The name of the county, city, or village in which the trust  
21 company is located;
- 22 ~~(6) (5)~~ The amount of paid-up capital stock; and
- 23 ~~(7) (6)~~ A statement sworn to by the president and secretary, each of  
24 whom have been selected in accordance with section 8-204, that the  
25 capital stock has been paid in as provided for.

26 The corporation shall also pay the fee prescribed by section 8-602  
27 for investigation of such statement.

28 If upon investigation the department is satisfied that the parties  
29 requesting the charter are parties of integrity and responsibility, that  
30 the corporation will apply safe and sound methods for the purpose of  
31 carrying out trust company duties, and that the public necessity,

1 convenience, and advantage will be promoted by permitting the corporation  
2 to transact business as a trust company, the department shall issue to  
3 the corporation a charter entitling it to transact the business provided  
4 for in the act. Upon payment of the required fees, the pledging of assets  
5 required by section 8-209, and the receipt of the charter, the  
6 corporation may begin to transact business as a trust company. It shall  
7 be unlawful for any corporation, except a foreign corporate trustee to  
8 the extent authorized under section 30-3820, to engage in business as a  
9 trust company or to act in any other fiduciary capacity unless it has  
10 first obtained from the Department of Banking and Finance a charter of  
11 authority to do business.

12 The Department of Banking and Finance may adopt and promulgate rules  
13 and regulations to carry out the governance of trust companies under its  
14 supervision.

15 Sec. 9. Section 8-204, Revised Statutes Cumulative Supplement, 2020,  
16 is amended to read:

17 8-204 (1) The control of the business affairs of a trust company  
18 shall be vested in a board of directors of not less than five persons who  
19 shall be selected at such time and in such manner as may be provided by  
20 the articles of incorporation of the trust company and in conformity with  
21 the Nebraska Trust Company Act. Any vacancy on the board shall be filled  
22 within ninety days by appointment by the remaining directors, and any  
23 director so appointed shall serve until the next election of directors,  
24 except that if the vacancy leaves a minimum of five directors,  
25 appointment shall be optional. The person appointed to fill the vacancy  
26 shall not serve as a director until the trust company obtains approval  
27 from the Department of Banking and Finance in accordance with subsection  
28 (6) of this section.

29 (2) The board of directors shall select from among its number a  
30 president and secretary and shall appoint trust officers and committees  
31 as it deems necessary. No person shall act as president if such person is

1 not a member of the board of directors. The officers and committee  
2 members shall hold their positions at the discretion of the board of  
3 directors.

4 (3) The board of directors shall hold at least one regular meeting  
5 in each calendar quarter and shall prepare and maintain complete and  
6 accurate minutes of the proceedings at such meetings.

7 (4) The board of directors shall make or cause to be made each year  
8 a thorough examination of the books, records, funds, and securities held  
9 for the trust company and customer accounts. The examination may be  
10 conducted by the members of the board of directors or the board may  
11 accept an annual audit by an accountant or accounting firm approved by  
12 the Department of Banking and Finance. Any such examination or audit must  
13 comply in scope with minimum standards established by the department.

14 (5) Unless the department otherwise approves, a majority of the  
15 members of the board of directors of any trust company shall be residents  
16 of this state. Reasonable efforts shall be made to acquire members of the  
17 board of directors from the county in which the trust company is located.  
18 Directors of trust companies shall be persons of good moral character and  
19 known integrity, business experience, and responsibility.

20 (6) No person shall act as such member of the board of directors of  
21 any trust company until the corporation applies for and obtains approval  
22 from the Department of Banking and Finance.

23 Sec. 10. Section 8-318, Revised Statutes Cumulative Supplement,  
24 2020, is amended to read:

25 8-318 (1)(a) Shares of stock in any association, or in any federal  
26 savings and loan association incorporated under the provisions of the  
27 federal Home Owners' Loan Act, with its principal office and place of  
28 business in this state, may be subscribed for, held, transferred,  
29 surrendered, withdrawn, and forfeited and payments thereon received and  
30 receipted for by any person, regardless of age, in the same manner and  
31 with the same binding effect as though such person were of the age of



1 majority, except that a minor or his or her estate shall not be bound on  
2 his or her subscription to stock except to the extent of payments  
3 actually made thereon.

4 (b) Whenever a share account is accepted by any building and loan  
5 association in the name of any person, regardless of age, the deposit may  
6 be withdrawn by the shareholder by any of the following methods:

7 (i) Check or other instrument in writing. The check or other  
8 instrument in writing constitutes a receipt or acquittance if the check  
9 or other instrument in writing is signed by the shareholder and  
10 constitutes a valid release in discharge to the building and loan  
11 association for all payments so made; or

12 (ii) Electronic means through:

13 (A) Preauthorized direct withdrawal;

14 (B) An automatic teller machine;

15 (C) A debit card;

16 (D) A transfer by telephone;

17 (E) A network, including the Internet; or

18 (F) Any electronic terminal, computer, magnetic tape, or other  
19 electronic means.

20 (c) This section shall not be construed to affect the rights,  
21 liabilities, or responsibilities of participants in an electronic fund  
22 transfer under the federal Electronic Fund Transfer Act, 15 U.S.C. 1693  
23 et seq., as it existed on January 1, 2021 ~~2020~~, and shall not affect the  
24 legal relationships between a minor and any person other than the  
25 building and loan association.

26 (2) All trustees, guardians, personal representatives,  
27 administrators, and conservators appointed by the courts of this state  
28 may invest and reinvest in, acquire, make withdrawals in whole or in  
29 part, hold, transfer, or make new or additional investments in or  
30 transfers of shares of stock in any (a) building and loan association  
31 organized under the laws of the State of Nebraska or (b) federal savings

1 and loan association incorporated under the provisions of the federal  
2 Home Owners' Loan Act, having its principal office and place of business  
3 in this state, without an order of approval from any court.

4 (3) Trustees created solely by the terms of a trust instrument may  
5 invest in, acquire, hold, and transfer such shares, and make withdrawals,  
6 in whole or in part, therefrom, without any order of court, unless  
7 expressly limited, restricted, or prohibited therefrom by the terms of  
8 such trust instrument.

9 (4) All building and loan associations referred to in this section  
10 are qualified to act as trustee or custodian within the provisions of the  
11 federal Self-Employed Individuals Tax Retirement Act of 1962, as amended,  
12 or under the terms and provisions of section 408(a) of the Internal  
13 Revenue Code, if the provisions of such retirement plan require the funds  
14 of such trust or custodianship to be invested exclusively in shares or  
15 accounts in the association or in other associations. If any such  
16 retirement plan, within the judgment of the association, constitutes a  
17 qualified plan under the federal Self-Employed Individuals Tax Retirement  
18 Act of 1962, or under the terms and provisions of section 408(a) of the  
19 Internal Revenue Code, and the regulations promulgated thereunder at the  
20 time the trust was established and accepted by the association, is  
21 subsequently determined not to be such a qualified plan or subsequently  
22 ceases to be such a qualified plan, in whole or in part, the association  
23 may continue to act as trustee of any deposits theretofore made under  
24 such plan and to dispose of the same in accordance with the directions of  
25 the member and beneficiaries thereof. No association, in respect to  
26 savings made under this section, shall be required to segregate such  
27 savings from other assets of the association. The association shall keep  
28 appropriate records showing in proper detail all transactions engaged in  
29 under the authority of this section.

30 Sec. 11. Section 8-355, Revised Statutes Cumulative Supplement,  
31 2020, is amended to read:

1           8-355 Notwithstanding any of the provisions of Chapter 8, article 3,  
2 or any other Nebraska statute, except as provided in section 8-345.02,  
3 any association incorporated under the laws of the State of Nebraska and  
4 organized under the provisions of such article shall have all the rights,  
5 powers, privileges, benefits, and immunities which may be exercised as of  
6 January 1, 2021 ~~2020~~, by a federal savings and loan association doing  
7 business in Nebraska. Such rights, powers, privileges, benefits, and  
8 immunities shall not relieve such association from payment of state taxes  
9 assessed under any applicable laws of this state.

10           Sec. 12. Section 8-1101, Revised Statutes Cumulative Supplement,  
11 2020, is amended to read:

12           8-1101 For purposes of the Securities Act of Nebraska, unless the  
13 context otherwise requires:

14           (1) Agent means any individual other than a broker-dealer who  
15 represents a broker-dealer or issuer in effecting or attempting to effect  
16 sales of securities, but agent does not include an individual who  
17 represents (a) an issuer in (i) effecting a transaction in a security  
18 exempted by subdivision (6), (7), or (8) of section 8-1110, (ii)  
19 effecting certain transactions exempted by section 8-1111, (iii)  
20 effecting transactions in a federal covered security as described in  
21 section 18(b)(3) of the Securities Act of 1933, or (iv) effecting  
22 transactions with existing employees, limited liability company members,  
23 partners, or directors of the issuer or any of its subsidiaries if no  
24 commission or other remuneration is paid or given directly or indirectly  
25 for soliciting any person in this state or (b) a broker-dealer in  
26 effecting transactions described in section 15(h)(2) of the Securities  
27 Exchange Act of 1934. A partner, limited liability company member,  
28 officer, or director of a broker-dealer is an agent only if he or she  
29 otherwise comes within this definition;

30           (2) Broker-dealer means any person engaged in the business of  
31 effecting transactions in securities for the account of others or for his

1 or her own account. Broker-dealer does not include (a) an issuer-dealer,  
2 agent, bank, savings institution, or trust company, (b) an issuer  
3 effecting a transaction in its own security exempted by subdivision (5)  
4 (a), (b), (c), (d), (e), or (f) of section 8-1110 or which qualifies as a  
5 federal covered security pursuant to section 18(b)(1) of the Securities  
6 Act of 1933, (c) a person who has no place of business in this state if  
7 he or she effects transactions in this state exclusively with or through  
8 the issuers of the securities involved in the transactions, other broker-  
9 dealers, or banks, savings institutions, credit unions, trust companies,  
10 insurance companies, investment companies as defined in the Investment  
11 Company Act of 1940, pension or profit-sharing trusts, or other financial  
12 institutions or institutional buyers, whether acting for themselves or as  
13 trustees, (d) a person who has no place of business in this state if  
14 during any period of twelve consecutive months he or she does not direct  
15 more than five offers to sell or to buy into this state in any manner to  
16 persons other than those specified in subdivision (2)(c) of this section,  
17 or (e) a person who is a resident of Canada and who has no office or  
18 other physical presence in Nebraska if the following conditions are  
19 satisfied: (i) The person must be registered with, or be a member of, a  
20 securities self-regulatory organization in Canada or a stock exchange in  
21 Canada; (ii) the person must maintain, in good standing, its provisional  
22 or territorial registration or membership in a securities self-regulatory  
23 organization in Canada, or stock exchange in Canada; (iii) the person  
24 effects, or attempts to effect, (A) a transaction with or for a Canadian  
25 client who is temporarily present in this state and with whom the  
26 Canadian broker-dealer had a bona fide customer relationship before the  
27 client entered this state or (B) a transaction with or for a Canadian  
28 client in a self-directed tax advantaged retirement plan in Canada of  
29 which that client is the holder or contributor; and (iv) the person  
30 complies with all provisions of the Securities Act of Nebraska relating  
31 to the disclosure of material information in connection with the

1 transaction;

2 (3) Department means the Department of Banking and Finance. Director  
3 means the Director of Banking and Finance of the State of Nebraska except  
4 as further provided in section 8-1120;

5 (4) Federal covered adviser means a person who is registered under  
6 section 203 of the Investment Advisers Act of 1940;

7 (5) Federal covered security means any security described as a  
8 covered security under section 18(b) of the Securities Act of 1933 or  
9 rules and regulations under the act;

10 (6) Guaranteed means guaranteed as to payment of principal,  
11 interest, or dividends;

12 (7) Investment adviser means any person who for compensation engages  
13 in the business of advising others, either directly or through  
14 publications or writings, as to the value of securities or as to the  
15 advisability of investing in, purchasing, or selling securities or who  
16 for compensation and as a part of a regular business issues or  
17 promulgates analyses or reports concerning securities. Investment adviser  
18 also includes financial planners and other persons who, as an integral  
19 component of other financially related services, provide the foregoing  
20 investment advisory services to others for compensation and as part of a  
21 business or who hold themselves out as providing the foregoing investment  
22 advisory services to others for compensation. Investment adviser does not  
23 include (a) an investment adviser representative, (b) a bank, savings  
24 institution, or trust company, (c) a lawyer, accountant, engineer, or  
25 teacher whose performance of these services is solely incidental to the  
26 practice of his or her profession, (d) a broker-dealer or its agent whose  
27 performance of these services is solely incidental to its business as a  
28 broker-dealer and who receives no special compensation for them, (e) an  
29 issuer-dealer, (f) a publisher of any bona fide newspaper, news column,  
30 newsletter, news magazine, or business or financial publication or  
31 service, whether communicated in hard copy form, by electronic means, or

1 otherwise which does not consist of the rendering of advice on the basis  
2 of the specific investment situation of each client, (g) a person who has  
3 no place of business in this state if (i) his or her only clients in this  
4 state are other investment advisers, federal covered advisers, broker-  
5 dealers, banks, savings institutions, credit unions, trust companies,  
6 insurance companies, investment companies as defined in the Investment  
7 Company Act of 1940, pension or profit-sharing trusts, or other financial  
8 institutions or institutional buyers, whether acting for themselves or as  
9 trustees, or (ii) during the preceding twelve-month period, he or she has  
10 had five or fewer clients who are residents of this state other than  
11 those persons specified in subdivision (g)(i) of this subdivision, (h)  
12 any person that is a federal covered adviser or is excluded from the  
13 definition of investment adviser under section 202 of the Investment  
14 Adviser Act of 1940, or (i) such other persons not within the intent of  
15 this subdivision as the director may by rule and regulation or order  
16 designate;

17 (8) Investment adviser representative means any partner, limited  
18 liability company member, officer, or director or any person occupying a  
19 similar status or performing similar functions of a partner, limited  
20 liability company member, officer, or director or other individual,  
21 except clerical or ministerial personnel, who is employed by or  
22 associated with an investment adviser that is registered or required to  
23 be registered under the Securities Act of Nebraska or who has a place of  
24 business located in this state and is employed by or associated with a  
25 federal covered adviser, and who (a) makes any recommendations or  
26 otherwise renders advice regarding securities, (b) manages accounts or  
27 portfolios of clients, (c) determines which recommendation or advice  
28 regarding securities should be given, (d) solicits, offers, or negotiates  
29 for the sale of or sells investment advisory services, or (e) supervises  
30 employees who perform any of the foregoing;

31 (9) Issuer means any person who issues or proposes to issue any

1 security, except that (a) with respect to certificates of deposit,  
2 voting-trust certificates, or collateral-trust certificates or with  
3 respect to certificates of interest or shares in an unincorporated  
4 investment trust not having a board of directors, or persons performing  
5 similar functions, or of the fixed, restricted management, or unit type,  
6 the term issuer means the person or persons performing the acts and  
7 assuming the duties of depositor or manager pursuant to the provisions of  
8 the trust or other agreement or instrument under which the security is  
9 issued and (b) with respect to a fractional or pooled interest in a  
10 viatical settlement contract, issuer means the person who creates, for  
11 the purpose of sale, the fractional or pooled interest. In the case of a  
12 viatical settlement contract that is not fractionalized or pooled, issuer  
13 means the person effecting a transaction with a purchaser of such  
14 contract;

15 (10) Issuer-dealer means (a) any issuer located in the State of  
16 Nebraska or (b) any issuer which registered its securities by  
17 qualification who proposes to sell to the public of the State of Nebraska  
18 the securities that it issues without the benefit of another registered  
19 broker-dealer. Such securities shall have been approved for sale in the  
20 State of Nebraska pursuant to section 8-1104;

21 (11) Nonissuer means not directly or indirectly for the benefit of  
22 the issuer;

23 (12) Person means an individual, a corporation, a partnership, a  
24 limited liability company, an association, a joint-stock company, a trust  
25 in which the interests of the beneficiaries are evidenced by a security,  
26 an unincorporated organization, a government, or a political subdivision  
27 of a government;

28 (13) Sale or sell includes every contract of sale of, contract to  
29 sell, or disposition of a security or interest in a security for value.  
30 Offer or offer to sell includes every attempt or offer to dispose of, or  
31 solicitation of an offer to buy, a security or interest in a security for

1 value. Any security given or delivered with or as a bonus on account of  
2 any purchase of securities or any other thing is considered to constitute  
3 part of the subject of the purchase and to have been offered and sold for  
4 value. A purported gift of assessable stock shall be considered to  
5 involve an offer and sale. Every sale or offer of a warrant or right to  
6 purchase or subscribe to another security of the same or another issuer,  
7 as well as every sale or offer of a security which gives the holder a  
8 present or future right or privilege to convert into another security of  
9 the same or another issuer, shall be considered to include an offer of  
10 the other security;

11 (14) Securities Act of 1933, Securities Exchange Act of 1934,  
12 Investment Advisers Act of 1940, Investment Company Act of 1940,  
13 Commodity Exchange Act, and the federal Interstate Land Sales Full  
14 Disclosure Act means the acts as they existed on January 1, 2021 ~~2020~~;

15 (15) Security means any note, stock, treasury stock, bond,  
16 debenture, units of beneficial interest in a real estate trust, evidence  
17 of indebtedness, certificate of interest or participation in any profit-  
18 sharing agreement, collateral-trust certificate, preorganization  
19 certificate or subscription, transferable share, investment contract,  
20 viatical settlement contract or any fractional or pooled interest in such  
21 contract, membership interest in any limited liability company organized  
22 under Nebraska law or any other jurisdiction unless otherwise excluded  
23 from this definition, voting-trust certificate, certificate of deposit  
24 for a security, certificate of interest or participation in an oil, gas,  
25 or mining title or lease or in payments out of production under such a  
26 title or lease, in general any interest or instrument commonly known as a  
27 security, or any certificate of interest or participation in, temporary  
28 or interim certificate for, guarantee of, or warrant or right to  
29 subscribe to or purchase any of the foregoing. Security does not include  
30 any insurance or endowment policy or annuity contract issued by an  
31 insurance company. Security also does not include a membership interest



1 in a limited liability company when all of the following exist: (a) The  
2 member enters into a written commitment to be engaged actively and  
3 directly in the management of the limited liability company; and (b) all  
4 members of the limited liability company are actively engaged in the  
5 management of the limited liability company. For the limited purposes of  
6 determining professional malpractice insurance premiums, a security  
7 issued through a transaction that is exempted pursuant to subdivision  
8 (23) of section 8-1111 shall not be considered a security;

9 (16) State means any state, territory, or possession of the United  
10 States as well as the District of Columbia and Puerto Rico; and

11 (17) Viatical settlement contract means an agreement for the  
12 purchase, sale, assignment, transfer, devise, or bequest of all or any  
13 portion of the death benefit or ownership of a life insurance policy or  
14 contract for consideration which is less than the expected death benefit  
15 of the life insurance policy or contract. Viatical settlement contract  
16 does not include (a) the assignment, transfer, sale, devise, or bequest  
17 of a death benefit of a life insurance policy or contract made by the  
18 viator to an insurance company or to a viatical settlement provider or  
19 broker licensed pursuant to the Viatical Settlements Act, (b) the  
20 assignment of a life insurance policy or contract to a bank, savings  
21 bank, savings and loan association, credit union, or other licensed  
22 lending institution as collateral for a loan, or (c) the exercise of  
23 accelerated benefits pursuant to the terms of a life insurance policy or  
24 contract and consistent with applicable law.

25 Sec. 13. Section 8-1101.01, Revised Statutes Cumulative Supplement,  
26 2020, is amended to read:

27 8-1101.01 For purposes of the Securities Act of Nebraska:

28 (1) Federal rules and regulations adopted under the Investment  
29 Advisors Act of 1940 or the Securities Act of 1933 means such rules and  
30 regulations as they existed on January 1, 2021 ~~2020~~; and

31 (2) Fair practice or ethical rules or standards promulgated by the

1 Securities and Exchange Commission, the Financial Industry Regulatory  
2 Authority, or a self-regulatory organization approved by the Securities  
3 and Exchange Commission means such practice, rules, or standards as they  
4 existed on January 1, 2021 ~~2020~~.

5 Sec. 14. Section 8-1108.02, Revised Statutes Cumulative Supplement,  
6 2020, is amended to read:

7 8-1108.02 (1) The director, by rule and regulation or order, may  
8 require the filing of any or all of the following documents with respect  
9 to a federal covered security under section 18(b)(2) of the Securities  
10 Act of 1933:

11 (a) Prior to the initial offer of such federal covered security in  
12 this state, all documents that are part of a federal registration  
13 statement filed with the Securities and Exchange Commission under the  
14 Securities Act of 1933, together with a consent to service of process  
15 signed by the issuer and with a filing fee as prescribed by section  
16 8-1108.03;

17 (b) After the initial offer of such federal covered security in this  
18 state, all documents which are part of any amendment to the federal  
19 registration statement filed with the Securities and Exchange Commission  
20 under the Securities Act of 1933; and

21 (c) A sales report of the total amount of such federal covered  
22 securities offered or sold in this state, together with the filing fee  
23 prescribed by section 8-1108.03.

24 (2)(a) The director, by rule and regulation or order, may require  
25 the filing of any document required to be filed with the Securities and  
26 Exchange Commission under the Securities Act of 1933 with respect to a  
27 federal covered security under section 18(b)(3) of the Securities Act of  
28 1933 together with a filing fee of two hundred dollars.

29 (b) The director, by rule and regulation or order, may require the  
30 filing of any document required to be filed with the Securities and  
31 Exchange Commission under the Securities Act of 1933 with respect to a

1 federal covered security under section 18(b)(4) of the Securities Act of  
2 1933 together with a filing fee of two hundred dollars. In addition, for  
3 federal covered securities under section 18(b)(4)(F) of the Securities  
4 Act of 1933, the director may also require the submission of a consent to  
5 service of process signed by the issuer. Such filing shall be made no  
6 later than fifteen days after the first sale of such federal covered  
7 security in this state, except that failure to give such notice may be  
8 cured by an order issued by the director at the director's discretion and  
9 upon the payment of an additional two hundred dollars as a late filing  
10 fee and may require that such filing be made no later than fifteen days  
11 after the first sale of such federal covered security in this state.

12 (c) In connection with filings made pursuant to subdivisions (a) and  
13 (b) of this subsection, the director, by rule and regulation or order,  
14 may require the filing of all documents which are part of any amendment  
15 which the issuer is required to file with the Securities and Exchange  
16 Commission.

17 (3) The director may issue a stop order suspending the offer and  
18 sale of a federal covered security, except a federal covered security  
19 under section 18(b)(1) of the Securities Act of 1933, if he or she finds  
20 that (a) the order is in the public interest and (b) there is a failure  
21 to comply with any condition established under this section or with any  
22 other applicable provision of the Securities Act of Nebraska.

23 (4) The director, by rule and regulation or order, may waive any or  
24 all of the provisions of this section, except that the director does not  
25 have the authority to waive the payment of fees as required by this  
26 section.

27 (5) No person may bring an action pursuant to section 8-1118 based  
28 on the failure of an issuer to file any notice or pay any fee required by  
29 this section.

30 (6) All federal covered securities offered or sold in this state  
31 must be sold through a registered agent of a broker-dealer registered

1 under the Securities Act of Nebraska or by persons duly exempted or  
2 excluded from such registration, except that this subsection shall not  
3 apply to the offer or sale of the following, so long as no commission or  
4 other remuneration is paid directly or indirectly for soliciting any  
5 prospective buyer:

6 (a) A federal covered security under section 18(b)(4)(F) of the  
7 Securities Act of 1933; or

8 (b) A federal covered security under section 18(b)(3) of the  
9 Securities Act of 1933 which is exempt from federal registration pursuant  
10 to Tier 2 of federal Regulation A, 17 C.F.R. 230.251(a).

11 Sec. 15. Section 8-1704, Revised Statutes Cumulative Supplement,  
12 2020, is amended to read:

13 8-1704 CFTC rule shall mean any rule, regulation, or order of the  
14 Commodity Futures Trading Commission in effect on January 1, 2021 ~~2020~~.

15 Sec. 16. Section 8-1707, Revised Statutes Cumulative Supplement,  
16 2020, is amended to read:

17 8-1707 Commodity Exchange Act shall mean the act of Congress known  
18 as the Commodity Exchange Act, 7 U.S.C. 1, as amended on January 1, 2021  
19 ~~2020~~.

20 Sec. 17. Section 8-2724, Revised Statutes Cumulative Supplement,  
21 2020, is amended to read:

22 8-2724 (1) The requirement for a license under the Nebraska Money  
23 Transmitters Act does not apply to:

24 (a) The United States or any department, agency, or instrumentality  
25 thereof;

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

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

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

31 (ii) Subsidiaries of the institutions listed in subdivision (d)(i)

1 of this subsection;

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

5 (iv) Authorized delegates of the institutions and entities listed in  
6 subdivision (d)(i), (ii), or (iii) of this subsection, except that  
7 authorized delegates that are not banks, credit unions, building and loan  
8 associations, savings and loan associations, savings banks, mutual banks,  
9 subsidiaries of any of the foregoing, or bank holding companies shall  
10 comply with all requirements imposed upon authorized delegates under the  
11 act;

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

18 (f) An operator of a payment system only to the extent that the  
19 payment system provides processing, clearing, or settlement services  
20 between or among persons who are all exempt under this section in  
21 connection with wire transfers, credit card transactions, debit card  
22 transactions, automated clearinghouse transfers, or similar fund  
23 transfers; or -

24 (g) A person, firm, corporation, or association licensed in this  
25 state and acting within this state within the scope of a license:

26 (i) As a collection agency pursuant to the Collection Agency Act;

27 (ii) As a credit services organization pursuant to the Credit  
28 Services Organization Act; or

29 (iii) To engage in the debt management business pursuant to sections  
30 69-1201 to 69-1217.

31 (2) An authorized delegate of a licensee or of an exempt entity,

1 acting within the scope of its authority conferred by a written contract  
2 as described in section 8-2739, is not required to obtain a license under  
3 the Nebraska Money Transmitters Act, except that such an authorized  
4 delegate shall comply with the other provisions of the act which apply to  
5 money transmission transactions.

6 Sec. 18. Section 8-2725, Revised Statutes Cumulative Supplement,  
7 2020, is amended to read:

8 8-2725 (1) Except as otherwise provided in section 8-2724, a person  
9 shall not engage in money transmission without a license issued pursuant  
10 to the Nebraska Money Transmitters Act.

11 (2) A person is engaged in money transmission if the person provides  
12 money transmission services to any resident of this state even if the  
13 person providing money transmission services has no physical presence in  
14 this state or if the resident is not physically located in this state at  
15 the time when the resident enters into money transmission or otherwise  
16 receives money transmission services.

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

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

23 Sec. 19. Section 8-2726, Revised Statutes Cumulative Supplement,  
24 2020, is amended to read:

25 8-2726 To qualify for a license under the Nebraska Money  
26 Transmitters Act, an applicant, at the time of filing for a license, and  
27 a licensee at all times after a license is issued, shall satisfy the  
28 following requirements:

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

1 (2) The financial condition and responsibility, financial and  
2 business experience, and character and general fitness of the applicant  
3 or licensee must reasonably warrant the belief that the applicant's or  
4 licensee's business will be conducted honestly, fairly, and in a manner  
5 commanding the confidence and trust of the community. In determining  
6 whether this requirement is met and for purposes of investigating  
7 compliance with the act, the director may review and consider the  
8 relevant business records and capital adequacy of the applicant or  
9 licensee;

10 (3) Each corporate applicant or licensee must be organized under the  
11 laws of any state of the United States, the District of Columbia, any  
12 territory of the United States, Puerto Rico, Guam, American Samoa, the  
13 Trust Territory of the Pacific Islands, the Virgin Islands, or the  
14 Northern Mariana Islands, and must be in good standing in the place state  
15 of its incorporation;~~and~~

16 (4) Each applicant or licensee must be registered or qualified to do  
17 business in the State of Nebraska; ~~and state.~~

18 (5) Each applicant or licensee must maintain an office in the United  
19 States.

20 Sec. 20. Section 8-2729, Revised Statutes Cumulative Supplement,  
21 2020, is amended to read:

22 8-2729 Each application for a license under the Nebraska Money  
23 Transmitters Act shall be made in writing and in a form prescribed by the  
24 director. Each application shall state or contain:

25 (1) For all applicants:

26 (a) The exact name of the applicant, the applicant's principal  
27 address, any fictitious or trade name used by the applicant in the  
28 conduct of its business, and the location of the applicant's business  
29 records;

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

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

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

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

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

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

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

12 (i) The name, and address, and account information of each the  
13 clearing bank or banks, which shall be covered by federal deposit  
14 insurance, on which the applicant's payment instruments and funds  
15 received for transmission or otherwise will be drawn or through which the  
16 payment instruments or other funds will be payable;

17 (2) If the applicant is a corporation, the applicant shall also  
18 provide:

19 (a) The date of the applicant's incorporation and state of  
20 incorporation;

21 (b) A certificate of good standing from the state in which the  
22 applicant was incorporated;

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

25 (d) A description of the corporate structure of the applicant,  
26 including the identity of any parent or subsidiary of the applicant, and  
27 a disclosure of whether any parent or subsidiary is publicly traded on  
28 any stock exchange;

29 (e) The name, business and residence addresses, and employment  
30 history for the five-year period immediately before the date of the  
31 application of the applicant's executive officers and the officers or



1 managers who will be in charge of the applicant's activities to be  
2 licensed under the act;

3 (f) The name, business and residence addresses, and employment  
4 history for the five-year period immediately before the date of the  
5 application and the most recent personal financial statement of any key  
6 shareholder of the applicant;

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

10 (h) A copy of the applicant's most recent audited financial  
11 statement including balance sheet, statement of income or loss, statement  
12 of changes in shareholder equity, and statement of changes in financial  
13 position and, if available, the applicant's audited financial statements  
14 for the immediately preceding two-year period. However, if the applicant  
15 is a wholly owned subsidiary of another corporation, the applicant may  
16 submit either the parent corporation's consolidated audited financial  
17 statements for the current year and for the immediately preceding two-  
18 year period or the parent corporation's Form 10-K reports filed with the  
19 United States Securities and Exchange Commission for the prior three  
20 years in lieu of the applicant's financial statements. If the applicant  
21 is a wholly owned subsidiary of a corporation having its principal place  
22 of business outside the United States, similar documentation filed with  
23 the parent corporation's non-United States regulator may be submitted to  
24 satisfy this subdivision; and

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

29 (3) If the applicant is not a corporation, the applicant shall also  
30 provide:

31 (a) The name, business and residence addresses, personal financial

1 statement, and employment history, for the five-year period immediately  
2 before the date of the application, of each principal of the applicant  
3 and the name, business and residence addresses, and employment history  
4 for the five-year period immediately before the date of the application  
5 of any other person or persons who will be in charge of the applicant's  
6 money transmission activities;

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

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

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

18 Sec. 21. Section 8-2734, Revised Statutes Cumulative Supplement,  
19 2020, is amended to read:

20 8-2734 (1) Initial licenses shall remain in full force and effect  
21 until the next succeeding December 31. Each licensee shall, annually on  
22 or before December 31 of each year, file a license renewal application  
23 and pay to the director a license fee of two hundred fifty dollars and  
24 any processing fee allowed under subsection (2) of section 8-2730, both  
25 of which shall not be subject to refund.

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

28 (a) A copy of the licensee's most recent audited consolidated annual  
29 financial statement including balance sheet, statement of income or loss,  
30 statement of changes in shareholders' equity, and statement of changes in  
31 financial position, or, if a licensee is a wholly owned subsidiary of

1 another corporation, the consolidated audited annual financial statement  
2 of the parent corporation may be filed in lieu of the licensee's audited  
3 annual financial statement;

4 (b) The number of payment instruments sold by the licensee in the  
5 state, the dollar amount of those instruments, and the dollar amount of  
6 payment instruments currently outstanding, for the most recent quarter  
7 for which data is available before the date of the filing of the renewal  
8 application, but in no event more than one hundred twenty days before the  
9 renewal date;

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

14 (d) A list of the licensee's permissible investments. ~~;~~ and

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

18 Sec. 22. Section 8-2737, Revised Statutes Cumulative Supplement,  
19 2020, is amended to read:

20 8-2737 (1) The director may conduct an examination of a licensee  
21 upon reasonable written notice to the licensee. The director may examine  
22 a licensee without prior notice if the director has a reasonable basis to  
23 believe that the licensee is in noncompliance with the Nebraska Money  
24 Transmitters Act.

25 (2) An examination may be conducted in conjunction with examinations  
26 to be performed by representatives of agencies of another state or states  
27 or departments or agencies of the United States. The director, in lieu of  
28 an examination, may accept the examination report of an agency of another  
29 state or a department or an agency of the United States or a report  
30 prepared by an independent accounting firm. Reports so accepted are  
31 considered for all purposes as an official report of the department.

1       (3) The director may make investigations regarding complaints of  
2 alleged violations of the Nebraska Money Transmitters Act, any rule and  
3 regulation or order under the act, or any state or federal law applicable  
4 to a licensee, an authorized delegate, or an applicant for a license, as  
5 the director deems necessary, and to the extent necessary for this  
6 purpose, the director may examine such licensee, authorized delegate, or  
7 any other person, interview officers, principals, employees, and  
8 customers of the licensee, authorized delegate, or applicant, and compel  
9 the production of all relevant books, records, accounts, and documents.

10       (4) ~~(3)~~ The director may request financial data from a licensee in  
11 addition to that required under section 8-2734.

12       (5) ~~(4)~~ The director may conduct an examination of any authorized  
13 delegate of a licensee within this state upon reasonable written notice  
14 to the licensee and the authorized delegate. The director may conduct an  
15 examination of any authorized delegate without prior notice to the  
16 authorized delegate or licensee only if the director has a reasonable  
17 basis to believe that the licensee or authorized delegate is in  
18 noncompliance with the Nebraska Money Transmitters Act.

19       (6) Upon receipt by a licensee, an authorized delegate, or any other  
20 person of a notice of investigation or inquiry request for information  
21 from the department, the licensee, authorized delegate, or other person  
22 shall respond within twenty-one calendar days. Failure to respond is a  
23 violation of the Nebraska Money Transmitters Act. Each day a licensee,  
24 authorized delegate, or other person fails to respond as required by this  
25 subsection shall constitute a separate violation.

26       (7) If the director finds, after notice and opportunity for hearing  
27 in accordance with the Administrative Procedure Act, that any person has  
28 violated subsection (6) of this section, the director may order such  
29 person to pay (a) an administrative fine of not more than two thousand  
30 dollars for each separate violation and (b) the costs of investigation.  
31 The department shall remit fines collected under this subsection to the

1 State Treasurer for distribution in accordance with Article VII, section  
2 5, of the Constitution of Nebraska.

3 (8) If a person fails to pay an administrative fine and the costs of  
4 investigation ordered pursuant to subsection (7) of this section, a lien  
5 in the amount of such fine and costs may be imposed upon all assets and  
6 property of such person in this state and may be recovered in a civil  
7 action by the director. The lien shall attach to the real property of  
8 such person when notice of the lien is filed and indexed against the real  
9 property in the office of the register of deeds in the county where the  
10 real property is located. The lien shall attach to any other property of  
11 such person when notice of the lien is filed against the property in the  
12 manner prescribed by law. Failure of the person to pay such fine and  
13 costs shall constitute a separate violation of the Nebraska Money  
14 Transmitters Act.

15 (9) For purposes of any investigation, examination, or proceeding  
16 under the Nebraska Money Transmitters Act, the director or any officer  
17 designated by the director may administer oaths and affirmations,  
18 subpoena witnesses, compel attendance, take evidence, and require the  
19 production of any books, papers, correspondence, memoranda, agreements,  
20 or other documents or records which the director deems relevant or  
21 material to the inquiry. If any person refuses to comply with a subpoena  
22 issued under this subsection or to testify with respect to any matter  
23 relevant to the proceeding, the district court of Lancaster County may,  
24 on application of the director, issue an order requiring the person to  
25 comply with the subpoena and to testify. Failure to obey an order of the  
26 court to comply with the subpoena may be punished by the court as civil  
27 contempt.

28 (10) ~~(5)~~ The total charge for an examination under this section  
29 shall be paid by the licensee or authorized delegate as set forth in  
30 sections 8-605 and 8-606.

31 Sec. 23. Section 8-2903, Revised Statutes Cumulative Supplement,

1 2020, is amended to read:

2 8-2903 (1) When a financial institution, or an employee of a  
3 financial institution, reasonably believes, or has received information  
4 from the department or a law enforcement agency demonstrating that it is  
5 reasonable to believe, that financial exploitation of a vulnerable adult  
6 or senior adult may have occurred, may have been attempted, is occurring,  
7 or is being attempted, the financial institution may, but is not required  
8 to:

9 (a) Delay or refuse a transaction with or involving the vulnerable  
10 adult or senior adult;

11 (b) Delay or refuse to permit the withdrawal or disbursement of  
12 funds contained in the vulnerable adult's or senior adult's account;

13 (c) Prevent a change in ownership of the vulnerable adult's or  
14 senior adult's account;

15 (d) Prevent a transfer of funds from the vulnerable adult's or  
16 senior adult's account to an account owned wholly or partially by another  
17 person;

18 (e) Refuse to comply with instructions given to the financial  
19 institution by an agent or a person acting for or with an agent under a  
20 power of attorney signed or purported to have been signed by the  
21 vulnerable adult or senior adult; or

22 (f) Prevent the designation or change the designation of  
23 beneficiaries to receive any property, benefit, or contract rights for a  
24 vulnerable adult or senior adult at death.

25 (2) A financial institution is not required to act under subsection  
26 (1) of this section when provided with information alleging that  
27 financial exploitation may have occurred, may have been attempted, is  
28 occurring, or is being attempted, but may use the financial institution's  
29 discretion to determine whether or not to act under subsection (1) of  
30 this section based on the information available to the financial  
31 institution at the time.

1           (3)(a)(i) A financial institution may notify any third party  
2 reasonably associated with a vulnerable adult or senior adult if the  
3 financial institution reasonably believes that the financial exploitation  
4 of a vulnerable adult or senior adult may have occurred, may have been  
5 attempted, is occurring, or is being attempted.

6           (ii) A third party reasonably associated with a vulnerable adult or  
7 senior adult includes, but is not limited to, the following: (A) A  
8 parent, spouse, adult child, sibling, or other known family member or  
9 close associate of a vulnerable adult or senior adult; (B) an authorized  
10 contact provided by a vulnerable adult or senior adult to the financial  
11 institution; (C) a co-owner, additional authorized signatory, or  
12 beneficiary on a vulnerable adult's or a senior adult's account; (D) an  
13 attorney in fact, trustee, conservator, guardian, or other fiduciary who  
14 has been selected by a vulnerable adult or senior adult, a court, or a  
15 third party to manage some or all of the financial affairs of the  
16 vulnerable adult or senior adult; and (E) an attorney known to represent  
17 or have represented the vulnerable adult or senior adult.

18           (b) A financial institution may choose not to notify any third party  
19 reasonably associated with a vulnerable adult or senior adult of  
20 suspected financial exploitation of the vulnerable adult or senior adult  
21 if the financial institution reasonably believes the third party is, may  
22 be, or may have been engaged in the financial exploitation of the  
23 vulnerable adult or senior adult or if requested to refrain from making a  
24 notification by a law enforcement agency, if such notification could  
25 interfere with a law enforcement investigation.

26           (c) Nothing in this subsection shall prevent a financial institution  
27 from notifying the department or a law enforcement agency, if the  
28 financial institution reasonably believes that the financial exploitation  
29 of a vulnerable adult or senior adult may have occurred, may have been  
30 attempted, is occurring, or is being attempted.

31           (4) The authority granted the financial institution under subsection

1 (1) of this section expires upon the sooner of: (a) Thirty business days  
2 after the date on which the financial institution first acted under  
3 subsection (1) of this section; (b) when the financial institution is  
4 satisfied that the transaction or act will not result in financial  
5 exploitation of the vulnerable adult or senior adult; or (c) upon  
6 termination by an order of a court of competent jurisdiction.

7 (5) Unless otherwise directed by order of a court of competent  
8 jurisdiction, a financial institution may extend the duration under  
9 subsection (4) of this section based on a reasonable belief that the  
10 financial exploitation of a vulnerable adult or senior adult may continue  
11 to occur or continue to be attempted.

12 (6) A financial institution and its bank holding company, if any,  
13 and any employees, agents, officers, and directors of the financial  
14 institution and its bank holding company, if any, shall be immune from  
15 any civil, criminal, or administrative liability that may otherwise exist  
16 (a) for delaying or refusing to execute a transaction, withdrawal, or  
17 disbursement, or for not delaying or refusing to execute such  
18 transaction, withdrawal, or disbursement under this section and (b) for  
19 actions taken in furtherance of determinations made under subsections (1)  
20 through (5) of this section.

21 (7)(a) Notwithstanding any other law to the contrary, the refusal by  
22 a financial institution to engage in a transaction as authorized under  
23 subsection (1) of this section shall not constitute the wrongful dishonor  
24 of an item under section 4-402, Uniform Commercial Code.

25 (b) Notwithstanding any other law to the contrary, a reasonable  
26 belief that payment of a check will facilitate the financial exploitation  
27 of a vulnerable adult or senior adult shall constitute reasonable grounds  
28 to doubt the collectability of the item for purposes of the federal Check  
29 Clearing for the 21st Century Act, 12 U.S.C. 5001 et seq., the federal  
30 Expedited Funds Availability Act, 12 U.S.C. 4001 et seq., and 12 C.F.R.  
31 part 229, as such acts and part existed on January 1, 2021 ~~2020~~.



1           Sec. 24. Section 21-17,115, Revised Statutes Cumulative Supplement,  
2 2020, is amended to read:

3           21-17,115 Notwithstanding any of the other provisions of the Credit  
4 Union Act or any other Nebraska statute, any credit union incorporated  
5 under the laws of the State of Nebraska and organized under the  
6 provisions of the act shall have all the rights, powers, privileges,  
7 benefits, and immunities which may be exercised as of January 1, 2021  
8 ~~2020~~, by a federal credit union doing business in Nebraska on the  
9 condition that such rights, powers, privileges, benefits, and immunities  
10 shall not relieve such credit union from payment of state taxes assessed  
11 under any applicable laws of this state.

12           Sec. 25. Section 45-335, Revised Statutes Cumulative Supplement,  
13 2020, is amended to read:

14           45-335 For purposes of the Nebraska Installment Sales Act, unless  
15 the context otherwise requires:

16           (1) Goods means all personal property, except money or things in  
17 action, and includes goods which, at the time of sale or subsequently,  
18 are so affixed to realty as to become part thereof whether or not  
19 severable therefrom;

20           (2) Services means work, labor, and services of any kind performed  
21 in conjunction with an installment sale but does not include services for  
22 which the prices charged are required by law to be established and  
23 regulated by the government of the United States or any state;

24           (3) Buyer means a person who buys goods or obtains services from a  
25 seller in an installment sale;

26           (4) Seller means a person who sells goods or furnishes services to a  
27 buyer under an installment sale;

28           (5) Installment sale means any transaction, whether or not involving  
29 the creation or retention of a security interest, in which a buyer  
30 acquires goods or services from a seller pursuant to an agreement which  
31 provides for a time-price differential and under which the buyer agrees

1 to pay all or part of the time-sale price in one or more installments and  
2 within one hundred forty-five months, except that installment contracts  
3 for the purchase of mobile homes may exceed such one-hundred-forty-five-  
4 month limitation. Installment sale does not include a consumer rental  
5 purchase agreement defined in and regulated by the Consumer Rental  
6 Purchase Agreement Act;

7 (6) Installment contract means an agreement entered into in this  
8 state evidencing an installment sale except those otherwise provided for  
9 in separate acts;

10 (7) Cash price or cash sale price means the price stated in an  
11 installment contract for which the seller would have sold or furnished to  
12 the buyer and the buyer would have bought or acquired from the seller  
13 goods or services which are the subject matter of the contract if such  
14 sale had been a sale for cash instead of an installment sale. It may  
15 include the cash price of accessories or services related to the sale  
16 such as delivery, installation, alterations, modifications, and  
17 improvements and may include taxes to the extent imposed on the cash  
18 sale;

19 (8) Basic time price means the cash sale price of the goods or  
20 services which are the subject matter of an installment contract plus the  
21 amount included therein, if a separate identified charge is made therefor  
22 and stated in the contract, for insurance, registration, certificate of  
23 title, debt cancellation contract, debt suspension contract, electronic  
24 title and lien services, guaranteed asset protection waiver, and license  
25 fees, filing fees, an origination fee, and fees and charges prescribed by  
26 law which actually are or will be paid to public officials for  
27 determining the existence of or for perfecting, releasing, or satisfying  
28 any security related to the credit transaction or any charge for  
29 nonfiling insurance if such charge does not exceed the amount of fees and  
30 charges prescribed by law which would have been paid to public officials  
31 for filing, perfecting, releasing, and satisfying any security related to

1 the credit transaction and less the amount of the buyer's downpayment in  
2 money or goods or both;

3 (9) Time-price differential, however denominated or expressed, means  
4 the amount, as limited in the Nebraska Installment Sales Act, to be added  
5 to the basic time price;

6 (10) Time-sale price means the total of the basic time price of the  
7 goods or services, the amount of the buyer's downpayment in money or  
8 goods or both, and the time-price differential;

9 (11) Sales finance company means a person purchasing one or more  
10 installment contracts from one or more sellers or acquiring any rights of  
11 ownership, servicing, or other forms of participation in or otherwise  
12 engaging with a consumer on behalf of the purchaser of one or more  
13 installment sales contracts from one or more sellers. Sales finance  
14 company includes, but is not limited to, a financial institution or  
15 installment loan licensee, if so engaged;

16 (12) Department means the Department of Banking and Finance;

17 (13) Director means the Director of Banking and Finance;

18 (14) Financial institution has the same meaning as in section  
19 8-101.03;

20 (15) Debt cancellation contract means a loan term or contractual  
21 arrangement modifying loan terms under which a financial institution or  
22 licensee agrees to cancel all or part of a buyer's obligation to repay an  
23 extension of credit from the financial institution or licensee upon the  
24 occurrence of a specified event. The debt cancellation contract may be  
25 separate from or a part of other loan documents. The term debt  
26 cancellation contract does not include loan payment deferral arrangements  
27 in which the triggering event is the buyer's unilateral election to defer  
28 repayment or the financial institution's or licensee's unilateral  
29 decision to allow a deferral of repayment;

30 (16) Debt suspension contract means a loan term or contractual  
31 arrangement modifying loan terms under which a financial institution or

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

9 (17) Guaranteed asset protection waiver means a waiver that is  
10 offered, sold, or provided in accordance with the Guaranteed Asset  
11 Protection Waiver Act;

12 (18) Licensee means any person who obtains a license under the  
13 Nebraska Installment Sales Act;

14 (19) Person means individual, partnership, limited liability  
15 company, association, financial institution, trust, corporation, and any  
16 other legal entity;

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

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

27 (22)(a) Control in the case of a corporation means (i) direct or  
28 indirect ownership of or the right to control twenty-five percent or more  
29 of the voting shares of the corporation or (ii) the ability of a person  
30 or group acting in concert to elect a majority of the directors or  
31 otherwise effect a change in policy.

1 (b) Control in the case of any other entity means (i) the power,  
2 directly or indirectly, to direct the management or policies of the  
3 entity, (ii) the contribution of twenty-five percent or more of the  
4 capital of the entity, or (iii) the right to receive, upon dissolution,  
5 twenty-five percent or more of the capital of the entity; and

6 (23) Branch office means any location, other than the main office  
7 location, at which the business of a licensee is to be conducted,  
8 including (a) any offices physically located in Nebraska, and (b) any  
9 offices that, while not physically located in this state, intend to  
10 transact business with Nebraska residents.

11 Sec. 26. Section 45-346, Revised Statutes Cumulative Supplement,  
12 2020, is amended to read:

13 45-346 (1) A license issued under the Nebraska Installment Sales Act  
14 is nontransferable and nonassignable. The same person may obtain  
15 additional licenses for each place of business operating as a sales  
16 finance company in this state upon compliance with the act as to each  
17 license, except that on or after January 1, 2020, a person is no longer  
18 required to obtain a new license for each place of business and may  
19 maintain a branch office or offices upon compliance with the act.

20 (2) Application for a license shall be on a form prescribed and  
21 furnished by the director and shall include, but not be limited to, (a)  
22 the applicant's name and any trade name or doing business as designation  
23 which the applicant intends to use in this state, (b) the applicant's  
24 main office address, (c) all branch office addresses at which business is  
25 to be conducted, (d) the names and titles of each director and principal  
26 officer of the applicant, (e) the names of all shareholders, partners, or  
27 members of the applicant, (f) a description of the activities of the  
28 applicant in such detail as the department may require, (g) if the  
29 applicant is an individual, his or her social security number, and (h)  
30 audited financial statements showing a minimum net worth of one hundred  
31 thousand dollars.

1           (3) An applicant for a license shall file with the department a  
2 surety bond in the amount of fifty thousand dollars, furnished by a  
3 surety company authorized to do business in this state. Such bond shall  
4 be increased by an additional fifty thousand dollars for each branch  
5 location of the applicant that is licensed under the Nebraska Installment  
6 Sales Act. The bond shall be for the use of the State of Nebraska and any  
7 Nebraska resident who may have claims or causes of action against the  
8 applicant. The surety may cancel the bond only upon thirty days' written  
9 notice to the director.

10           (4) A license fee of one hundred fifty dollars, and, if applicable,  
11 a one-hundred-dollar fee for each branch office listed in the  
12 application, and any processing fee allowed under subsection (2) of  
13 section 45-354 shall be submitted along with each application.

14           (5) An initial license shall remain in full force and effect until  
15 the next succeeding December 31. Each license shall remain in force until  
16 revoked, suspended, canceled, expired, or surrendered.

17           (6) The director shall, after an application has been filed for a  
18 license under the act, investigate the facts, and if he or she finds that  
19 the experience, character, and general fitness of the applicant, of the  
20 members thereof if the applicant is a corporation or association, and of  
21 the officers and directors thereof if the applicant is a corporation, are  
22 such as to warrant belief that the business will be operated honestly,  
23 fairly, and efficiently within the purpose of the act, the director shall  
24 issue and deliver a license to the applicant to do business as a sales  
25 finance company in accordance with the license and the act. The director  
26 shall have the power to reject for cause any application for a license.

27           (7) The director shall, within his or her discretion, make an  
28 examination and inspection concerning the propriety of the issuance of a  
29 license to any applicant. The cost of such examination and inspection  
30 shall be borne by the applicant.

31           (8) If an applicant for a license under the act does not complete

1 the license application and fails to respond to a notice or notices from  
2 the department to correct the deficiency or deficiencies for a period of  
3 one hundred twenty days or more after the date the department sends the  
4 initial notice to correct the deficiency or deficiencies, the department  
5 may deem the application as abandoned and may issue a notice of  
6 abandonment of the application to the applicant in lieu of proceedings to  
7 deny the application.

8 Sec. 27. Section 45-1004, Reissue Revised Statutes of Nebraska, is  
9 amended to read:

10 45-1004 (1)(a) ~~(1)~~ Any person may, after procuring a license from  
11 the department, engage or continue in the business of making loans of  
12 money and charge, contract for, and receive the maximum for interest and  
13 other charges in accordance with the authorization and requirements of  
14 the Nebraska Installment Loan Act.

15 (b) A license shall also be required for any person that holds or  
16 acquires any rights of ownership, servicing, or other forms of  
17 participation in a loan under the Nebraska Installment Loan Act or that  
18 engages with, or conducts loan activity with, an installment loan  
19 borrower in connection with a loan under the act.

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

25 (b) For purposes of this subsection:

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

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

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

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

6 Sec. 28. Section 45-1005, Reissue Revised Statutes of Nebraska, is  
7 amended to read:

8 45-1005 Any person who desires to obtain an original license to  
9 engage in the business of lending money under the terms and conditions of  
10 the Nebraska Installment Loan Act or an original license to hold or  
11 acquire any rights of ownership, servicing, or other forms of  
12 participation in a loan under the act or to engage with, or conduct loan  
13 activity with, an installment loan borrower in connection with a loan  
14 under the act, shall apply to the department for the license under oath,  
15 on a form prescribed by the department, and pay an original license fee  
16 of five hundred dollars. If the applicant is an individual, the  
17 application shall include the applicant's social security number.

18 Sec. 29. Section 59-1722, Revised Statutes Cumulative Supplement,  
19 2020, is amended to read:

20 59-1722 (1) Any transaction involving the sale of a franchise as  
21 defined in 16 C.F.R. 436.1(h), as such regulation existed on January 1,  
22 2021 ~~2020~~, shall be exempt from the Seller-Assisted Marketing Plan Act,  
23 except that such transactions shall be subject to subdivision (1)(d) of  
24 section 59-1757, those provisions regulating or prescribing the use of  
25 the phrase buy-back or secured investment or similar phrases as set forth  
26 in sections 59-1726 to 59-1728 and 59-1751, and all sections which  
27 provide for their enforcement. The exemption shall only apply if:

28 (a) The franchise is offered and sold in compliance with the  
29 requirements of 16 C.F.R. part 436, Disclosure Requirements and  
30 Prohibitions Concerning Franchising, as such part existed on January 1,  
31 2021 ~~2020~~;



1 (b) Before placing any advertisement in a Nebraska-based  
2 publication, offering for sale to any prospective purchaser in Nebraska,  
3 or making any representations in connection with such offer or sale to  
4 any prospective purchaser in Nebraska, the seller files a notice with the  
5 Department of Banking and Finance which contains (i) the name, address,  
6 and telephone number of the seller and the name under which the seller  
7 intends to do business and (ii) a brief description of the plan offered  
8 by the seller; and

9 (c) The seller pays a filing fee of one hundred dollars.

10 (2) The department may request a copy of the disclosure document  
11 upon receipt of a written complaint or inquiry regarding the seller or  
12 upon a reasonable belief that a violation of the Seller-Assisted  
13 Marketing Plan Act has occurred or may occur. The seller shall provide  
14 such copy within ten business days of receipt of the request.

15 (3) All funds collected by the department under this section shall  
16 be remitted to the State Treasurer for credit to the Securities Act Cash  
17 Fund.

18 (4) The Director of Banking and Finance may by order deny or revoke  
19 an exemption specified in this section with respect to a particular  
20 offering of one or more business opportunities if the director finds that  
21 such an order is in the public interest or is necessary for the  
22 protection of purchasers. An order shall not be entered without  
23 appropriate prior notice to all interested parties, an opportunity for  
24 hearing, and written findings of fact and conclusions of law. If the  
25 public interest or the protection of purchasers so requires, the director  
26 may by order summarily deny or revoke an exemption specified in this  
27 section pending final determination of any proceedings under this  
28 section. An order under this section shall not operate retroactively.

29 Sec. 30. Section 69-2103, Revised Statutes Cumulative Supplement,  
30 2020, is amended to read:

31 69-2103 For purposes of the Consumer Rental Purchase Agreement Act:

1           (1) Advertisement means a commercial message in any medium that  
2 aids, promotes, or assists directly or indirectly a consumer rental  
3 purchase agreement but does not include in-store merchandising aids such  
4 as window signs and ceiling banners;

5           (2) Cash price means the price at which the lessor would have sold  
6 the property to the consumer for cash on the date of the consumer rental  
7 purchase agreement for the property;

8           (3) Consumer means a natural person who rents property under a  
9 consumer rental purchase agreement;

10          (4) Consumer rental purchase agreement means an agreement which is  
11 for the use of property by a consumer primarily for personal, family, or  
12 household purposes, which is for an initial period of four months or  
13 less, whether or not there is any obligation beyond the initial period,  
14 which is automatically renewable with each payment, and which permits the  
15 consumer to become the owner of the property. A consumer rental purchase  
16 agreement in compliance with the act shall not be construed to be a lease  
17 or agreement which constitutes a credit sale as defined in 12 C.F.R.  
18 1026.2(a)(16), as such regulation existed on January 1, 2021 ~~2020~~, and 15  
19 U.S.C. 1602(h), as such section existed on January 1, 2021 ~~2020~~, or a  
20 lease which constitutes a consumer lease as defined in 12 C.F.R. 1013.2,  
21 as such regulation existed on January 1, 2021 ~~2020~~. Consumer rental  
22 purchase agreement does not include:

23           (a) Any lease for agricultural, business, or commercial purposes;

24           (b) Any lease made to an organization;

25           (c) A lease or agreement which constitutes an installment sale or  
26 installment contract as defined in section 45-335;

27           (d) A security interest as defined in subdivision (35) of section  
28 1-201, Uniform Commercial Code; and

29           (e) A home solicitation sale as defined in section 69-1601;

30          (5) Consummation means the occurrence of an event which causes a  
31 consumer to become contractually obligated on a consumer rental purchase

1 agreement;

2 (6) Department means the Department of Banking and Finance;

3 (7) Lease payment means a payment to be made by the consumer for the  
4 right of possession and use of the property for a specific lease period  
5 but does not include taxes imposed on such payment;

6 (8) Lease period means a week, month, or other specific period of  
7 time, during which the consumer has the right to possess and use the  
8 property after paying the lease payment and applicable taxes for such  
9 period;

10 (9) Lessor means a person who in the ordinary course of business  
11 operates a commercial outlet which regularly leases, offers to lease, or  
12 arranges for the leasing of property under a consumer rental purchase  
13 agreement;

14 (10) Property means any property that is not real property under the  
15 laws of this state when made available for a consumer rental purchase  
16 agreement; and

17 (11) Total of payments to acquire ownership means the total of all  
18 charges imposed by the lessor and payable by the consumer as a condition  
19 of acquiring ownership of the property. Total of payments to acquire  
20 ownership includes lease payments and any initial nonrefundable  
21 administrative fee or required delivery charge but does not include  
22 taxes, late charges, reinstatement fees, or charges for optional products  
23 or services.

24 Sec. 31. Section 69-2104, Revised Statutes Cumulative Supplement,  
25 2020, is amended to read:

26 69-2104 (1) Before entering into any consumer rental purchase  
27 agreement, the lessor shall disclose to the consumer the following items  
28 as applicable:

29 (a) A brief description of the leased property sufficient to  
30 identify the property to the consumer and lessor;

31 (b) The number, amount, and timing of all payments included in the

1 total of payments to acquire ownership;

2 (c) The total of payments to acquire ownership;

3 (d) A statement that the consumer will not own the property until  
4 the consumer has paid the total of payments to acquire ownership plus  
5 applicable taxes;

6 (e) A statement that the total of payments to acquire ownership does  
7 not include other charges such as taxes, late charges, reinstatement  
8 fees, or charges for optional products or services the consumer may have  
9 elected to purchase and that the consumer should see the rental purchase  
10 agreement for an explanation of these charges;

11 (f) A statement that the consumer is responsible for the fair market  
12 value, remaining rent, early purchase option amount, or cost of repair of  
13 the property, whichever is less, if it is lost, stolen, damaged, or  
14 destroyed;

15 (g) A statement indicating whether the property is new or used. A  
16 statement that indicates that new property is used shall not be a  
17 violation of the Consumer Rental Purchase Agreement Act;

18 (h) A statement of the cash price of the property. When the  
19 agreement involves a lease for two or more items, a statement of the  
20 aggregate cash price of all items shall satisfy the requirement of this  
21 subdivision;

22 (i) The total amount of the initial payments required to be paid  
23 before consummation of the agreement or delivery of the property,  
24 whichever occurs later, and an itemization of the components of the  
25 initial payment, including any initial nonrefundable administrative fee  
26 or delivery charge, lease payment, taxes, or fee or charge for optional  
27 products or services;

28 (j) A statement clearly summarizing the terms of the consumer's  
29 options to purchase, including a statement that at any time after the  
30 first periodic payment is made the consumer may acquire ownership of the  
31 property by tendering an amount which may not exceed fifty-five percent

1 of the difference between the total of payments to acquire ownership and  
2 the total of lease payments the consumer has paid on the property at that  
3 time;

4 (k) A statement identifying the party responsible for maintaining or  
5 servicing the property while it is being leased, together with a  
6 description of that responsibility and a statement that if any part of a  
7 manufacturer's warranty covers the leased property at the time the  
8 consumer acquires ownership of the property, such warranty shall be  
9 transferred to the consumer if allowed by the terms of the warranty; and

10 (1) The date of the transaction and the names of the lessor and the  
11 consumer.

12 (2) With respect to matters specifically governed by the federal  
13 Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., as such act  
14 existed on January 1, 2021 ~~2020~~, compliance with such act shall satisfy  
15 the requirements of this section.

16 (3) Subsection (1) of this section shall not apply to a lessor who  
17 complies with the disclosure requirements of the federal Consumer Credit  
18 Protection Act, 15 U.S.C. 1667a, as such section existed on January 1,  
19 2021 ~~2020~~, with respect to a consumer rental purchase agreement entered  
20 into with a consumer.

21 Sec. 32. Section 69-2112, Revised Statutes Cumulative Supplement,  
22 2020, is amended to read:

23 69-2112 (1) Any advertisement for a consumer rental purchase  
24 agreement which refers to or states the amount of any payment or the  
25 right to acquire ownership for any specific item shall also state clearly  
26 and conspicuously the following if applicable:

27 (a) That the transaction advertised is a consumer rental purchase  
28 agreement;

29 (b) The total of payments to acquire ownership; and

30 (c) That the consumer acquires no ownership rights until the total  
31 of payments to acquire ownership is paid.

1 (2) Any owner or employee of any medium in which an advertisement  
2 appears or through which it is disseminated shall not be liable under  
3 this section.

4 (3) Subsection (1) of this section shall not apply to an  
5 advertisement which does not refer to a specific item of property, which  
6 does not refer to or state the amount of any payment, or which is  
7 published in the yellow pages of a telephone directory or any similar  
8 directory of business.

9 (4) With respect to matters specifically governed by the federal  
10 Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., as such act  
11 existed on January 1, 2021 ~~2020~~, compliance with such act shall satisfy  
12 the requirements of this section.

13 Sec. 33. Section 4A-108, Uniform Commercial Code, Reissue Revised  
14 Statutes of Nebraska, is amended to read:

15 4A-108 Relationship to federal Electronic Fund Transfer Act.

16 (a) Except as provided in subsection (b), this article does not  
17 apply to a funds transfer any part of which is governed by the federal  
18 Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., as such act existed  
19 on January 1, 2021 ~~2020~~.

20 (b) This article applies to a funds transfer that is a remittance  
21 transfer as defined in the federal Electronic Fund Transfer Act, 15  
22 U.S.C. 1693o-1, as such section existed on January 1, 2021 ~~2020~~, unless  
23 the remittance transfer is an electronic fund transfer as defined in the  
24 federal Electronic Fund Transfer Act, 15 U.S.C. 1693a, as such section  
25 existed on January 1, 2021 ~~2020~~.

26 (c) In a funds transfer to which this article applies, in the event  
27 of an inconsistency between an applicable provision of this article and  
28 an applicable provision of the federal Electronic Fund Transfer Act, the  
29 provision of the federal Electronic Fund Transfer Act governs to the  
30 extent of the inconsistency.

31 Sec. 34. Original sections 8-201, 45-1004, and 45-1005, Reissue

1 Revised Statutes of Nebraska, sections 8-135, 8-141, 8-143.01, 8-157.01,  
2 8-163, 8-183.04, 8-1,140, 8-204, 8-318, 8-355, 8-1101, 8-1101.01,  
3 8-1108.02, 8-1704, 8-1707, 8-2724, 8-2725, 8-2726, 8-2729, 8-2734,  
4 8-2737, 8-2903, 21-17,115, 45-335, 45-346, 59-1722, 69-2103, 69-2104, and  
5 69-2112, Revised Statutes Cumulative Supplement, 2020, and section  
6 4A-108, Uniform Commercial Code, Reissue Revised Statutes of Nebraska,  
7 are repealed.

8       Sec. 35. Since an emergency exists, this act takes effect when  
9 passed and approved according to law.