

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 852**

Introduced by Banking, Commerce and Insurance Committee: Pahls, 31, Chairperson; Carlson, 38; Christensen, 44; Gay, 14; Hansen, 42; Langemeier, 23; Pankonin, 2; Pirsch, 4.

Read first time January 11, 2008

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to financial services; to amend sections  
2 45-703, 45-704, 45-907, 45-922, and 45-1006, Revised  
3 Statutes Cumulative Supplement, 2006, and sections 45-702  
4 and 45-722, Revised Statutes Supplement, 2007; to change  
5 provisions relating to the Mortgage Bankers Registration  
6 and Licensing Act, the Delayed Deposit Services Licensing  
7 Act, and the Nebraska Installment Loan Act; to harmonize  
8 provisions; to provide operative dates; to repeal the  
9 original sections; and to declare an emergency.

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

1                   Section 1. Section 45-702, Revised Statutes Supplement,  
2 2007, is amended to read:

3                   45-702 For purposes of the Mortgage Bankers Registration  
4 and Licensing Act:

5                   (1) Borrower means the mortgagor or mortgagors under a  
6 real estate mortgage or the trustor or trustors under a deed of  
7 trust;

8                   (2) Branch office means any location at which the  
9 business of a mortgage banker is to be conducted, including (a) any  
10 offices physically located in Nebraska, (b) any offices that, while  
11 not physically located in this state, intend to transact business  
12 with Nebraska residents, and (c) any third-party or home-based  
13 locations that agents and representatives intend to use to transact  
14 business with Nebraska residents;

15                   (3) Breach of security of the system means unauthorized  
16 acquisition of data that compromises the security, confidentiality,  
17 or integrity of the information maintained by a multistate  
18 licensing and application system, its affiliates, or subsidiaries;

19                   (4) Control means the power, directly or indirectly,  
20 to direct the management or policies of a mortgage banking  
21 business, whether through ownership of securities, by contract,  
22 or otherwise. Any person who (a) is a director, a general partner,  
23 or an executive officer, including the president, chief executive  
24 officer, chief financial officer, chief operating officer, chief  
25 legal officer, chief compliance officer, and any individual with

1 similar status and function, (b) directly or indirectly has the  
2 right to vote ten percent or more of a class of voting security  
3 or has the power to sell or direct the sale of ten percent or  
4 more of a class of voting securities, (c) in the case of a limited  
5 liability company, is a managing member, or (d) in the case of a  
6 partnership, has the right to receive, upon dissolution, or has  
7 contributed, ten percent or more of the capital, is presumed to  
8 control that mortgage banking business;

9 (5) Department means the Department of Banking and  
10 Finance;

11 (6) Director means the Director of Banking and Finance;

12 (7) Financial institution means any person organized  
13 or chartered under the laws of this state, any other state,  
14 or the United States relating to banks, savings institutions,  
15 trust companies, savings and loan associations, or credit unions.  
16 Financial institution also means an industrial loan and investment  
17 company chartered under the laws of any other state and subject to  
18 similar supervision and regulation as a bank chartered under the  
19 laws of this state;

20 (8) Licensee means any person licensed under the act;

21 (9) Mortgage banker means any person not exempt under  
22 section 45-703 who, for compensation or gain or in the expectation  
23 of compensation or gain, directly or indirectly makes, originates,  
24 services, negotiates, acquires, sells, arranges for, or offers to  
25 make, originate, service, negotiate, acquire, sell, or arrange for

1 ~~ten or more mortgage loans in a calendar year;~~ a mortgage loan;

2 (10) Mortgage banking business means any person who  
3 employs a mortgage banker or mortgage bankers or who directly  
4 or indirectly makes, negotiates, acquires, sells, arranges for,  
5 or offers to make, originate, service, negotiate, acquire, sell,  
6 or arrange for ~~ten or more mortgage loans in a calendar year~~ a  
7 mortgage loan for compensation or gain or in the expectation of  
8 compensation or gain;

9 (11) Mortgage loan means any loan or extension of credit  
10 secured by a lien on real property, including a refinancing of a  
11 contract of sale or an assumption or refinancing of a prior loan or  
12 extension of credit;

13 (12) Multistate licensing and application system means  
14 a residential real estate mortgage licensing system data base of  
15 which the department is a member;

16 (13) Offer means every attempt to provide, offer to  
17 provide, or solicitation to provide a mortgage loan or any form of  
18 mortgage banking business. Offer includes, but is not limited to,  
19 all general and public advertising, whether made in print, through  
20 electronic media, or by the Internet;

21 (14) Person means an association, joint venture,  
22 joint-stock company, partnership, limited partnership, limited  
23 liability company, business corporation, nonprofit corporation,  
24 individual, or any group of individuals however organized;

25 (15) Real property means an owner-occupied single-family,

1 two-family, three-family, or four-family dwelling which is located  
2 in this state, which is occupied, used, or intended to be occupied  
3 or used for residential purposes, and which is, or is intended to  
4 be, permanently affixed to the land;

5 (16) Registered bank holding company means any bank  
6 holding company registered with the department pursuant to the  
7 Nebraska Bank Holding Company Act of 1995;

8 (17) Registrant means a person registered pursuant to  
9 section 45-704; and

10 (18) Service means accepting payments or maintenance of  
11 escrow accounts in the regular course of business in connection  
12 with a mortgage loan.

13 Sec. 2. Section 45-703, Revised Statutes Cumulative  
14 Supplement, 2006, is amended to read:

15 45-703 (1) Except as provided in section 45-704, the  
16 following shall be exempt from the Mortgage Bankers Registration  
17 and Licensing Act:

18 (a) Any financial institution or wholly owned subsidiary  
19 thereof;

20 (b) Any registered bank holding company;

21 (c) Any insurance company organized under the laws  
22 of this state and subject to regulation by the Department of  
23 Insurance;

24 (d) Any person licensed to practice law in this state  
25 who is not actively and principally engaged in the business of

1 negotiating mortgage loans when such person renders services in the  
2 regular course of his or her practice as an attorney at law;

3 (e) Any person licensed in this state as a real estate  
4 broker or real estate salesperson pursuant to section 81-885.02  
5 who is not actively and principally engaged in the business of  
6 negotiating mortgage loans when such person renders services as a  
7 real estate broker or real estate salesperson;

8 (f) Any individual acting solely as an employee of a  
9 mortgage banker licensed or registered pursuant to the act or  
10 exempt from the act;

11 (g) Any individual acting solely as an agent of a  
12 mortgage banker licensed or registered pursuant to the act or  
13 exempt from the act if there is a written agency contract between  
14 the individual and the licensee which provides that, with respect  
15 to the mortgage banking business, the individual acts exclusively  
16 for the licensee as an agent;

17 (h) Any holding company of a financial institution other  
18 than a registered bank holding company;

19 (i) Any wholly owned subsidiary of an organization listed  
20 in subdivisions (b) and (c) of this subsection if the listed  
21 organization maintains a place of business in Nebraska; ~~and~~

22 (j) Any insurance company organized or chartered under  
23 the laws of any other state if the insurance company has a place of  
24 business in Nebraska; and -

25 (k) Any individual who does not regularly engage in the

1 mortgage banking business who (i) makes a mortgage loan with his  
2 or her own funds for his or her own investment, (ii) makes a  
3 purchase-money mortgage, or (iii) finances the sale of his or her  
4 own real property without the intent to resell the mortgage loan.

5 (2) It shall not be necessary to negate any of the  
6 exemptions provided in this section in any complaint, information,  
7 indictment, or other writ or proceedings brought under the act, and  
8 the burden of establishing the right to any exemption shall be upon  
9 the person claiming the benefit of such exemption.

10 Sec. 3. Section 45-704, Revised Statutes Cumulative  
11 Supplement, 2006, is amended to read:

12 45-704 (1) Notwithstanding any other provision of the  
13 Mortgage Bankers Registration and Licensing Act, no person exempt  
14 from licensing under subdivisions (1)(h) through ~~(1)(j)~~ (1)(k) of  
15 section 45-703 shall act as a mortgage banker or engage in the  
16 mortgage banking business until such person has registered with the  
17 department.

18 (2) Any person required to register pursuant to  
19 subsection (1) of this section shall submit to the department  
20 a registration statement on forms provided by the department.  
21 The forms shall contain such information as the department may  
22 prescribe as necessary or appropriate, including, but not limited  
23 to, (a) all addresses at which business is to be conducted, (b)  
24 the names and titles of each director and principal officer of the  
25 business, and (c) a description of the activities of the applicant

1 in such detail as the department may require.

2 (3) The registration statement required in subsection (2)  
3 of this section shall be accompanied by a registration fee of two  
4 hundred dollars.

5 (4) The department shall acknowledge the registration  
6 by issuing to the registrant a receipt or other form of  
7 acknowledgment.

8 (5) A registration under this section shall not be  
9 assignable.

10 (6) After original registration, all registrations shall  
11 remain in full force and effect until the next succeeding March 1.  
12 Thereafter, a registration under this section may be renewed on an  
13 annual basis for a renewal fee of one hundred dollars.

14 (7) If a registrant fails to renew his, her, or its  
15 registration as required by this section and does not voluntarily  
16 surrender the registration by delivering to the director written  
17 notice of the surrender, the department may issue a notice of  
18 expiration of the registration.

19 Sec. 4. Section 45-722, Revised Statutes Supplement,  
20 2007, is amended to read:

21 45-722 (1) No person acting personally or as an agent  
22 shall acquire control of any mortgage banking business required  
23 to be licensed under the Mortgage Bankers Registration and  
24 Licensing Act without first giving ~~sixty~~ thirty days' notice to the  
25 department on forms prescribed by the department of such proposed



1 acquisition and paying a filing fee of two hundred dollars.

2 (2) The director, upon receipt of such notice, shall act  
3 upon it within thirty days and, unless he or she disapproves the  
4 proposed acquisition within that period of time, the acquisition  
5 shall become effective on the ~~sixty-first~~ thirty-first day after  
6 receipt without the director's approval, except that the director  
7 may extend the thirty-day period an additional thirty days if,  
8 in his or her judgment, any material information submitted is  
9 substantially inaccurate or the acquiring party has not furnished  
10 all the information required by the department.

11 (3) An acquisition may be made prior to the expiration of  
12 the disapproval period if the director issues written notice of his  
13 or her intent not to disapprove the action.

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

16 (i) The financial condition of any acquiring person is  
17 such as might jeopardize the financial stability of the acquired  
18 mortgage banking business;

19 (ii) The character and general fitness of any acquiring  
20 person or of any of the proposed management personnel indicates  
21 that the acquired mortgage banking business would not be operated  
22 honestly, soundly, or efficiently in the public interest; or

23 (iii) Any acquiring person neglects, fails, or refuses to  
24 furnish all information required by the department.

25 (b) The director shall notify the acquiring party in

1 writing of disapproval of the acquisition. The notice shall provide  
2 a statement of the basis for the disapproval.

3 (c) Within fifteen business days after receipt of written  
4 notice of disapproval, the acquiring party may request a hearing  
5 on the proposed acquisition in accordance with the Administrative  
6 Procedure Act. At the conclusion of such hearing, the director  
7 shall, by order, approve or disapprove the proposed acquisition on  
8 the basis of the record made at the hearing.

9 Sec. 5. Section 45-907, Revised Statutes Cumulative  
10 Supplement, 2006, is amended to read:

11 45-907 (1) When an application for a delayed deposit  
12 services business license has been accepted by the director as  
13 substantially complete, notice of the filing of the application  
14 shall be published by the director for three successive weeks in  
15 a legal newspaper published in or of general circulation in the  
16 county where the applicant proposes to operate the delayed deposit  
17 services business. ~~The costs of the publication shall be paid by~~  
18 ~~the applicant.~~ A public hearing shall be held on each application  
19 except as provided in subsection (2) of this section. The date  
20 for hearing shall not be less than thirty days after the last  
21 publication. Written protest against the issuance of the license  
22 may be filed with the Department of Banking and Finance by any  
23 person not less than five days before the date set for hearing. The  
24 director, in his or her discretion, may grant a continuance. The  
25 costs of the hearing shall be paid by the applicant. The director

1 may investigate the propriety of the issuance of a license to the  
2 applicant. The costs of such investigation shall be paid by the  
3 applicant.

4 (2) The director may waive the hearing requirements of  
5 subsection (1) of this section if (a) the applicant has held and  
6 operated under a license to engage in the delayed deposit services  
7 business in Nebraska pursuant to the Delayed Deposit Services  
8 Licensing Act for at least three calendar years immediately prior  
9 to the filing of the application, (b) no written protest against  
10 the issuance of the license has been filed with the department  
11 within fifteen days after publication of a notice of the filing  
12 of the application one time in a newspaper of general circulation  
13 in the county where the applicant proposes to operate the delayed  
14 deposit services business, and (c) in the judgment of the director,  
15 the experience, character, and general fitness of the applicant  
16 warrant the belief that the applicant will comply with the act.

17 (3) The expense of any publication made pursuant to this  
18 section shall be paid by the applicant.

19 Sec. 6. Section 45-922, Revised Statutes Cumulative  
20 Supplement, 2006, is amended to read:

21 45-922 (1) The director may, following a hearing in  
22 accordance with the Administrative Procedure Act, suspend or  
23 revoke any license issued pursuant to the Delayed Deposit Services  
24 Licensing Act if he or she finds:

25 (a) A licensee or any of its officers, directors,

1 partners, or members has knowingly violated the act or any rule,  
2 regulation, or order of the director thereunder;

3 (b) A fact or condition existing which, if it had existed  
4 at the time of the original application for such license, would  
5 have warranted the director to refuse to issue such license;

6 (c) A licensee has abandoned its place of business for a  
7 period of sixty days or more; ~~or~~

8 (d) A licensee or any of its officers, directors,  
9 partners, or members has knowingly subscribed to, made, or caused  
10 to be made any false statement or false entry in the books and  
11 records of any licensee, has knowingly subscribed to or exhibited  
12 false papers with the intent to deceive the Department of Banking  
13 and Finance, has failed to make a true and correct entry in the  
14 books and records of such licensee of its business and transactions  
15 in the manner and form prescribed by the department, or has  
16 mutilated, altered, destroyed, secreted, or removed any of the  
17 books or records of such licensee without the written approval of  
18 the department or as provided in section 45-925; or -

19 (e) A licensee has knowingly violated a voluntary consent  
20 or compliance agreement which had been entered into with the  
21 director.

22 (2) Except as provided in this section, a license shall  
23 not be revoked or suspended except after notice and a hearing in  
24 accordance with the Administrative Procedure Act.

25 (3) (a) If a licensee fails to renew its license as

1 required by section 45-910 and does not voluntarily surrender the  
2 license pursuant to section 45-911, the department may issue a  
3 notice of expiration of the license to the licensee in lieu of  
4 revocation proceedings.

5 (b) If a licensee fails to maintain a surety bond as  
6 required by section 45-906, the department may issue a notice of  
7 cancellation of the license in lieu of revocation proceedings.

8 (4) Revocation, suspension, cancellation, or expiration  
9 of a license shall not impair or affect the obligation of a  
10 preexisting lawful contract between the licensee and any person,  
11 including a maker of a check.

12 (5) Revocation, suspension, cancellation, or expiration  
13 of a license shall not affect civil or criminal liability for  
14 acts committed before the revocation, suspension, cancellation,  
15 or expiration or liability for fines levied against the licensee  
16 or any of its officers, directors, shareholders, partners, or  
17 members, pursuant to section 45-925, for acts committed before the  
18 revocation, suspension, cancellation, or expiration.

19 Sec. 7. Section 45-1006, Revised Statutes Cumulative  
20 Supplement, 2006, is amended to read:

21 45-1006 (1) When an application for an original  
22 installment loan license has been accepted by the director as  
23 substantially complete, Except as provided in subsection (2) of  
24 this section, a hearing shall be held on every application for  
25 an original license under the Nebraska Installment Loan Act. The

1 hearing shall be held not less than thirty days after the filing  
2 of the application, and notice of the filing of the application  
3 shall be published by the department three successive weeks in  
4 a legal newspaper published in or of general circulation in the  
5 county where the applicant proposes to operate the business of  
6 lending money. A public hearing shall be held on each application  
7 except as provided in subsection (2) of this section. The date  
8 for hearing shall not be less than thirty days after the last  
9 publication. Written protest against the issuance of the license  
10 may be filed with the department by any person not less than five  
11 days before the date set for hearing. The director, in his or  
12 her discretion, may grant a continuance. The costs of the hearing  
13 shall be paid by the applicant. The director may ~~reject~~ deny any  
14 application for license after hearing. The director shall, in his  
15 or her discretion, make examination and inspection concerning the  
16 propriety of the issuance of a license to any applicant. The cost  
17 of such examination and inspection shall be paid by the applicant.

18 (2) The director may waive the hearing requirements of  
19 subsection (1) of this section if (a) the applicant has held, and  
20 operated under, a license to engage in the business of lending  
21 money in Nebraska pursuant to the act for at least one calendar  
22 year immediately prior to the filing of the application, (b) no  
23 written protest against the issuance of the license has been filed  
24 with the department within fifteen days after publication of a  
25 notice of the filing of the application one time in a newspaper of

1 general circulation in the county where the applicant proposes to  
2 operate the business of lending money, and (c) in the judgment of  
3 the director, the experience, character, and general fitness of the  
4 applicant warrant the belief that the applicant will comply with  
5 the ~~act~~, Nebraska Installment Loan Act.

6 (3) The expense of any publication made pursuant to this  
7 section shall be paid by the applicant.

8 Sec. 8. Sections 1, 2, 3, 5, 6, 7, and 9 of this act  
9 become operative three calendar months after the adjournment of  
10 this legislative session. The other sections of this act become  
11 operative on their effective date.

12 Sec. 9. Original sections 45-703, 45-704, 45-907, 45-922,  
13 and 45-1006, Revised Statutes Cumulative Supplement, 2006, and  
14 section 45-702, Revised Statutes Supplement, 2007, are repealed.

15 Sec. 10. Original section 45-722, Revised Statutes  
16 Supplement, 2007, is repealed.

17 Sec. 11. Since an emergency exists, this act takes effect  
18 when passed and approved according to law.