

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 328

Introduced by Pahls, 31.

Read first time January 15, 2009

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to finance; to amend sections 8-113, 8-702,
2 45-712, 45-713, 45-718, 45-719, 45-720, 45-721, 45-1008,
3 45-1018, 45-1019, and 45-1025, Reissue Revised Statutes
4 of Nebraska, and sections 45-701, 45-702, 45-703,
5 45-704, 45-705, 45-706, 45-707, 45-708, 45-709, 45-710,
6 45-711, 45-714, 45-715, 45-716, 45-717, 45-717.01,
7 45-717.02, 45-722, 45-723, 45-1001, 45-1002, 45-1007,
8 45-1013, 45-1024, 45-1033, and 76-2711, Revised Statutes
9 Cumulative Supplement, 2008; to change provisions
10 relating to mortgage origination and installment loans;
11 to implement certain federal requirements; to rename
12 an act; to provide for civil penalties; to provide for
13 licensee duties; to eliminate obsolete provisions; to
14 harmonize provisions; to repeal the original sections;

1 and to declare an emergency.

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

1 Section 1. Section 8-113, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 8-113 No individual, firm, company, corporation, or
4 association doing business in the State of Nebraska, unless
5 organized as a bank under the Nebraska Banking Act or the
6 authority of the federal government, or as a building and loan
7 association, savings and loan association, or savings bank under
8 Chapter 8, article 3, or the authority of the federal government,
9 shall use the word bank or any derivative thereof as any part of
10 a title or description of any business activity. This section does
11 not apply to: (1) Banks, building and loan associations, savings
12 and loan associations, or savings banks chartered and supervised
13 by a foreign state agency; (2) bank holding companies registered
14 pursuant to section 8-913 if the term holding company is also used
15 as any part of the title or description of any business activity
16 or if the derivative banc is used; (3) affiliates or subsidiaries
17 of (a) a bank organized under the Nebraska Banking Act or the
18 authority of the federal government or chartered and supervised
19 by a foreign state agency, (b) a building and loan association,
20 savings and loan association, or savings bank organized under
21 Chapter 8, article 3, or the authority of the federal government
22 or chartered and supervised by a foreign state agency, or (c) a
23 bank holding company registered pursuant to section 8-913 if the
24 term holding company is also used as any part of the title or
25 description of any business activity or if the derivative banc is

1 used; (4) organizations substantially owned by (a) a bank organized
2 under the Nebraska Banking Act or the authority of the federal
3 government or chartered and supervised by a foreign state agency,
4 (b) a building and loan association, savings and loan association,
5 or savings bank organized under Chapter 8, article 3, or the
6 authority of the federal government or chartered and supervised
7 by a foreign state agency, (c) a bank holding company registered
8 pursuant to section 8-913 if the term holding company is also used
9 as any part of the title or description of any business activity or
10 if the derivative bank is used, or (d) any combination of entities
11 listed in subdivisions (a) through (c) of this subdivision; (5)
12 mortgage bankers licensed or registered under the ~~Mortgage Bankers~~
13 ~~Registration and Residential Mortgage Licensing Act~~, if the word
14 mortgage immediately precedes the word bank or its derivative;
15 (6) organizations described in section 501(c)(3) of the Internal
16 Revenue Code as defined in section 49-801.01 and exempt from
17 taxation under section 501(a) of the code; (7) trade associations
18 which are exempt from taxation under section 501(c)(6) of the
19 code which represent a segment of the banking or savings and loan
20 industries, and any affiliate or subsidiary thereof; and (8) such
21 other firms, companies, corporations, or associations as have been
22 in existence and doing business prior to December 1, 1975, under a
23 name composed in part of the word bank or some derivative thereof.
24 Any violation of this section shall be a Class V misdemeanor.

25 Sec. 2. Section 8-702, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 8-702 (1) Except as provided in subsection (2) of this
3 section, any banking institution organized under the laws of this
4 state shall, before a charter may be issued, enter into such
5 contracts, incur such obligations, and generally do and perform any
6 and all such acts and things whatsoever as may be necessary or
7 appropriate in order to obtain membership in the Federal Deposit
8 Insurance Corporation and provide for insurance of deposits in the
9 banking institution. Any banking institution may take advantage of
10 any and all memberships, loans, subscriptions, contracts, grants,
11 rights, or privileges which may at any time be available or
12 inure to banking institutions or to their depositors, creditors,
13 stockholders, conservators, receivers, or liquidators by virtue
14 of those provisions of section 8 of the Federal Banking Act of
15 1933 (section 12B of the Federal Reserve Act, as amended) which
16 establish the Federal Deposit Insurance Corporation and provide
17 for the insurance of deposits or of any other provisions of
18 that or of any other act or resolution of Congress to aid,
19 regulate, or safeguard banking institutions and their depositors,
20 including any amendments of the same or any substitutions therefor.
21 Any banking institution may also subscribe for and acquire any
22 stock, debentures, bonds, or other types of securities of the
23 Federal Deposit Insurance Corporation and comply with the lawful
24 regulations and requirements from time to time issued or made by
25 such corporation.

1 ~~(2)~~ (2)(a) A banking institution which has not complied
2 with subsection (1) of this section and which was in operation on
3 September 4, 2005, may continue to operate if it provides notice
4 to depositors and holders of savings certificates, certificates of
5 indebtedness, or other similar instruments that such deposits or
6 instruments are not insured. Such notice shall be given ~~(a)~~ (i)
7 on the date any such deposit, savings certificate, certificate of
8 indebtedness, or similar instrument is created for deposits made
9 and instruments created on or after October 1, 1984, and ~~(b)~~
10 (ii) annually on October 1 thereafter as follows: AS PROVIDED BY
11 THE LAWS OF THE STATE OF NEBRASKA YOU ARE HEREBY NOTIFIED THAT
12 YOUR DEPOSIT, SAVINGS CERTIFICATE, CERTIFICATE OF INDEBTEDNESS,
13 OR OTHER SIMILAR INSTRUMENT IS NOT INSURED. Any advertising
14 conducted by such banking institution shall in each case state:
15 THE DEPOSITS, SAVINGS CERTIFICATES, CERTIFICATES OF INDEBTEDNESS,
16 OR SIMILAR INSTRUMENTS OF THIS INSTITUTION ARE NOT INSURED. The
17 banking institution shall also display such notice in one or
18 more prominent places in all facilities in which the institution
19 operates. All such notices and statements shall be given in large
20 or contrasting type in such a manner that such notices shall be
21 conspicuous. Each willful failure to give the notice prescribed
22 in this subsection shall constitute a Class II misdemeanor. All
23 officers and directors of any such banking institution shall be
24 jointly and severally responsible for the issuance of the notices
25 described in this subsection in the form and manner described.

1 The banking institution shall annually by November 1 file proof of
2 compliance with this subsection with the Department of Banking and
3 Finance.

4 (b) Effective July 31, 2010, any banking institution
5 described in subdivision (a) of this subsection that employs
6 mortgage loan originators, as that term is defined in section
7 45-702, shall register such employees with the Nationwide Mortgage
8 Licensing System and Registry, as that term is defined in section
9 45-702, by furnishing the following information concerning the
10 employees' identity to the Nationwide Mortgage Licensing System and
11 Registry:

12 (i) Fingerprints for submission to the Federal Bureau of
13 Investigation, and any governmental agency or entity authorized to
14 receive such information, for a state and national criminal history
15 background check; and

16 (ii) Personal history and experience, including
17 authorization for the Nationwide Mortgage Licensing System and
18 Registry to obtain information related to any administrative,
19 civil, or criminal findings by any governmental jurisdiction.

20 (3) The charter of any banking institution which fails to
21 comply with the provisions of this section shall be automatically
22 forfeited and such banking institution shall be liquidated and
23 dissolved, either voluntarily by its board of directors under the
24 supervision of the department or involuntarily by the department
25 as in cases of insolvency, except that such charter shall not

1 be automatically forfeited for failure to comply with subdivision
2 (2) (b) of this section, if the banking institution cures such
3 violation within sixty days after receipt of notice of such
4 violation from the Department of Banking and Finance. Any banking
5 institution whose charter is automatically forfeited under the
6 provisions of this subsection which continues to engage in the
7 business for which it had been chartered after such forfeiture, as
8 well as the directors and officers thereof, shall be subject to the
9 penalties provided by law for illegally engaging in the business of
10 banking.

11 Sec. 3. Section 45-701, Revised Statutes Cumulative
12 Supplement, 2008, is amended to read:

13 45-701 Sections 45-701 to ~~45-723~~ 45-706 and sections 9 to
14 39 of this act shall be known and may be cited as the ~~Mortgage~~
15 ~~Bankers Registration and Residential Mortgage Licensing Act.~~

16 Sec. 4. Section 45-702, Revised Statutes Cumulative
17 Supplement, 2008, is amended to read:

18 45-702 For purposes of the ~~Mortgage Bankers Registration~~
19 ~~and Residential Mortgage Licensing Act:~~

20 (1) Borrower means the mortgagor or mortgagors under a
21 real estate mortgage or the trustor or trustors under a ~~deed of~~
22 trust deed;

23 (2) Branch office means any location at which the
24 business of a mortgage banker or mortgage loan originator is
25 to be conducted, including (a) any offices physically located in

1 Nebraska, (b) any offices that, while not physically located in
2 this state, intend to transact business with Nebraska residents,
3 and (c) any third-party or home-based locations that mortgage loan
4 originators, agents, and representatives intend to use to transact
5 business with Nebraska residents;

6 (3) Breach of security of the system means unauthorized
7 acquisition of data that compromises the security, confidentiality,
8 or integrity of the information maintained by a ~~multistate~~
9 ~~licensing and application system,~~ the Nationwide Mortgage Licensing
10 System and Registry, its affiliates, or subsidiaries;

11 (4) Clerical or support duties means tasks which
12 occur subsequent to the receipt of a residential mortgage loan
13 application including (a) the receipt, collection, distribution,
14 and analysis of information common for the processing or
15 underwriting of a residential mortgage loan or (b) communication
16 with a consumer to obtain the information necessary for the
17 processing or underwriting of a residential mortgage loan, to
18 the extent that such communication does not include offering or
19 negotiating loan rates or terms or counseling consumers about
20 residential mortgage loan rates or terms;

21 ~~(4)~~ (5) Control means the power, directly or indirectly,
22 to direct the management or policies of a mortgage banking
23 business, whether through ownership of securities, by contract,
24 or otherwise. Any person who (a) is a director, a general partner,
25 or an executive officer, including the president, chief executive

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

11 ~~(5)~~ (6) Department means the Department of Banking and
 12 Finance;

13 ~~(6)~~ Director means the Director of Banking and Finance;

14 (7) ~~Financial~~ Depository institution means any person
 15 (a) organized or chartered under the laws of this state, any
 16 other state, or the United States relating to banks, savings
 17 institutions, trust companies, savings and loan associations,
 18 ~~or~~ credit unions, or industrial banks or similar depository
 19 institutions which the Board of Directors of the Federal Deposit
 20 Insurance Corporation finds to be operating substantially in
 21 the same manner as an industrial bank; and (b) engaged in
 22 the business of receiving deposits other than funds held in a
 23 fiduciary capacity, including, but not limited to, funds held as
 24 trustee, executor, administrator, guardian, or agent; - Financial
 25 institution also means an industrial loan and investment company

1 chartered under the laws of any other state and subject to similar
2 supervision and regulation as a bank chartered under the laws of
3 this state;

4 (8) Director means the Director of Banking and Finance;

5 (9) Dwelling means a residential structure located or
6 intended to be located in this state that contains one to four
7 units, whether or not that structure is attached to real property,
8 including an individual condominium unit, cooperative unit, mobile
9 home, or trailer, if it is used as a residence;

10 (10) Federal banking agencies means the Board of
11 Governors of the Federal Reserve System, the Comptroller of the
12 Currency, the Director of the Office of Thrift Supervision, the
13 National Credit Union Administration, and the Federal Deposit
14 Insurance Corporation;

15 (11) Immediate family member means a spouse, child,
16 sibling, parent, grandparent, or grandchild, including stepparents,
17 stepchildren, stepsiblings, and adoptive relationships;

18 (12) Installment loan company means any person licensed
19 pursuant to the Nebraska Installment Loan Act;

20 ~~(8)~~ (13) Licensee means any person licensed under the act
21 as either a mortgage banker or mortgage loan originator;

22 (14) Loan processor or underwriter means an individual
23 who (a) performs clerical or support duties as an employee at the
24 direction of and subject to the supervision and instruction of a
25 person licensed, or exempt from licensing, under the Residential

1 Mortgage Licensing Act or Nebraska Installment Loan Act and (b)
 2 does not represent to the public, through advertising or other
 3 means of communicating or providing information including the use
 4 of business cards, stationery, brochures, signs, rate lists, or
 5 other promotional items, that such individual can or will perform
 6 any of the activities of a mortgage loan originator;

7 ~~(9)~~ (15) Mortgage banker or mortgage banking business
 8 means any person ~~not exempt under section 45-703~~ (a) other than
 9 (i) a person exempt under section 45-703, (ii) an individual
 10 who is a loan processor or underwriter, or (iii) an individual
 11 who is licensed in this state as a mortgage loan originator
 12 and (b) who, for compensation or gain or in the expectation of
 13 compensation or gain, directly or indirectly makes, originates,
 14 services, negotiates, acquires, sells, arranges for, or offers to
 15 make, originate, service, negotiate, acquire, sell, or arrange for
 16 a residential mortgage loan;

17 ~~(10)~~ Mortgage banking business means any person who
 18 employs a mortgage banker or mortgage bankers or who directly or
 19 indirectly makes, negotiates, acquires, sells, arranges for, or
 20 offers to make, originate, service, negotiate, acquire, sell, or
 21 arrange for a mortgage loan for compensation or gain or in the
 22 expectation of compensation or gain;

23 ~~(11)~~ Mortgage loan means any loan or extension of credit
 24 secured by a lien on real property, including a refinancing of a
 25 contract of sale or an assumption or refinancing of a prior loan or

1 ~~extension of credit;~~

2 ~~(12) Multistate licensing and application system means~~
3 ~~a residential real estate mortgage licensing system data base of~~
4 ~~which the department is a member;~~

5 (16) (a) Mortgage loan originator means an individual who
6 for compensation or gain or in the expectation of compensation
7 or gain (i) takes a residential mortgage loan application or (ii)
8 offers or negotiates terms of a residential mortgage loan.

9 (b) A mortgage loan originator does not include (i)
10 an individual engaged solely as a loan processor or underwriter,
11 except as otherwise provided in section 12 of this act, (ii)
12 a person or entity that only performs real estate brokerage
13 activities and is licensed or registered in accordance with
14 Nebraska law, unless the person or entity is compensated by a
15 lender, a mortgage broker, or other mortgage loan originator or by
16 any agent of such lender, mortgage broker, or other mortgage loan
17 originator, and (iii) a person solely involved in extensions of
18 credit relating to time-share programs as that term is defined in
19 section 76-1702;

20 (17) Nationwide Mortgage Licensing System and Registry
21 means a mortgage licensing system developed and maintained
22 by the Conference of State Bank Supervisors and the American
23 Association of Residential Mortgage Regulators for the licensing
24 and registration of mortgage loan originators, mortgage bankers,
25 and installment loan companies;

1 (18) Nontraditional mortgage product means any
2 residential mortgage loan product other than a thirty-year fixed
3 rate residential mortgage loan;

4 ~~(13)~~ (19) Offer means every attempt to provide, offer to
5 provide, or solicitation to provide a mortgage loan or any form of
6 mortgage banking business. Offer includes, but is not limited to,
7 all general and public advertising, whether made in print, through
8 electronic media, or by the Internet;

9 ~~(14)~~ (20) Person means an association, joint venture,
10 joint-stock company, partnership, limited partnership, limited
11 liability company, business corporation, nonprofit corporation,
12 individual, or any group of individuals however organized;

13 ~~(15)~~ Real property means an owner-occupied single-family,
14 two-family, three-family, or four-family dwelling which is located
15 in this state, which is occupied, used, or intended to be occupied
16 or used for residential purposes, and which is, or is intended to
17 be, permanently affixed to the land;

18 (21) Real estate brokerage activity means any activity
19 that involves offering or providing real estate brokerage services
20 to the public, including (a) acting as a real estate salesperson
21 or real estate broker for a buyer, seller, lessor, or lessee of
22 real property, (b) bringing together parties interested in the
23 sale, purchase, lease, rental, or exchange of real property, (c)
24 negotiating, on behalf of any party, any portion of a contract
25 relating to the sale, purchase, lease, rental, or exchange of

1 real property, other than in connection with providing financing
2 with respect to any such transaction, (d) engaging in any activity
3 for which a person engaged in the activity is required to be
4 registered or licensed as a real estate salesperson or real estate
5 broker under any applicable law, and (e) offering to engage in any
6 activity or act in any capacity described in subdivision (a), (b),
7 (c), or (d) of this subdivision;

8 ~~(16)~~ (22) Registered bank holding company means any bank
9 holding company registered with the department pursuant to the
10 Nebraska Bank Holding Company Act of 1995;

11 (23) Registered mortgage loan originator means any
12 individual who (a) meets the definition of mortgage loan originator
13 and is an employee of (i) a depository institution, (ii) a
14 subsidiary that is (A) wholly owned and controlled by a depository
15 institution, and (B) regulated by a federal banking agency, or
16 (iii) an institution regulated by the Farm Credit Administration
17 and (b) is registered with, and maintains a unique identifier
18 through, the Nationwide Mortgage Licensing System and Registry;

19 ~~(17)~~ (24) Registrant means a person registered pursuant
20 to section 45-704; and

21 (25) Residential mortgage loan means any loan or
22 extension of credit, including a refinancing of a contract of sale
23 or an assumption or refinancing of a prior loan or extension of
24 credit, which is primarily for personal, family, or household use
25 and is secured by a mortgage, trust deed, or other equivalent

1 consensual security interest on a dwelling or residential real
 2 estate upon which is constructed or intended to be constructed a
 3 dwelling;

4 (26) Residential real estate means any real property
 5 located in this state upon which is constructed or intended to be
 6 constructed a dwelling;

7 ~~(18)~~ (27) Service means accepting payments or maintenance
 8 of escrow accounts in the regular course of business in connection
 9 with a residential mortgage loan;--

10 (28) State means any state of the United States, the
 11 District of Columbia, any territory of the United States, Puerto
 12 Rico, Guam, American Samoa, the Trust Territory of the Pacific
 13 Islands, the Virgin Islands, or the Northern Mariana Islands; and

14 (29) Unique identifier means a number or other identifier
 15 assigned by protocols established by the Nationwide Mortgage
 16 Licensing System and Registry.

17 Sec. 5. Section 45-703, Revised Statutes Cumulative
 18 Supplement, 2008, is amended to read:

19 45-703 (1) Except as provided in section 45-704, the
 20 following shall be exempt from the Mortgage Bankers Registration
 21 and Residential Mortgage Licensing Act:

22 (a) Any ~~financial~~ depository institution or wholly owned
 23 subsidiary thereof;

24 (b) Any registered bank holding company;

25 ~~(c) Any insurance company organized under the laws~~

1 of this state and subject to regulation by the Department of
2 Insurance;

3 (c) Any insurance company that is subject to regulation
4 by the Department of Insurance and is either (i) organized or
5 chartered under the laws of Nebraska or (ii) organized or chartered
6 under the laws of any other state if such insurance company has a
7 place of business in Nebraska;

8 (d) Any person licensed to practice law in this state
9 who is not actively and principally engaged in the business of
10 negotiating mortgage loans when such person renders services in
11 the regular course of his or her practice as an attorney at law;
12 negotiates the terms of a residential mortgage loan on behalf of
13 a client as an ancillary matter to the attorney's representation
14 of the client, unless the attorney is compensated by a lender, a
15 mortgage broker, or other mortgage loan originator or by any agent
16 of such lender, mortgage broker, or other mortgage loan originator;

17 (e) Any person licensed in this state as a real estate
18 broker or real estate salesperson pursuant to section 81-885.02
19 who is not actively and principally engaged in the business of
20 negotiating mortgage loans when such person renders services as a
21 real estate broker or real estate salesperson; engaging in real
22 estate brokerage activities, unless such person is compensated by a
23 lender, a mortgage broker, or other mortgage loan originator or by
24 any agent of such lender, mortgage broker, or other mortgage loan
25 originator;

1 (f) Any individual acting solely as an employee of a
2 mortgage banker licensed or registered pursuant to the act or
3 ~~exempt from the act,~~ registered mortgage loan originator when
4 acting for an entity described in subdivision (23)(a)(i), (ii), or
5 (iii) of section 45-702;

6 (g) Any individual acting solely as an agent of a
7 mortgage banker licensed or registered pursuant to the act or
8 ~~exempt from the act if there is a written agency contract between~~
9 ~~the individual and the licensee which provides that,~~ with respect
10 to the mortgage banking business, ~~the individual acts exclusively~~
11 ~~for the licensee as an agent,~~ sales finance company licensed
12 pursuant to the Nebraska Installment Sales Act, provided that such
13 sales finance company does not engage in mortgage banking business
14 in any capacity other than as a purchaser or servicer of an
15 installment contract, as that term is defined in section 45-335,
16 which is secured by a mobile home or trailer;

17 (h) Any holding company of a financial institution other
18 than a ~~registered bank holding company,~~ trust company chartered
19 pursuant to the Nebraska Trust Company Act;

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

23 (j) Any insurance company organized or chartered under
24 the laws of any other state if the insurance company has a place of
25 ~~business in Nebraska,~~ and individual who offers or negotiates terms

1 of a residential mortgage loan with or on behalf of an immediate
2 family member of the individual;

3 (k) Any individual who does not regularly engage in the
4 mortgage banking business who ~~(i)~~ makes a mortgage loan with his
5 or her own funds for his or her own investment, ~~(ii)~~ makes a
6 purchase-money mortgage, or ~~(iii)~~ finances the sale of his or her
7 own real property without the intent to resell the mortgage loan.
8 offers or negotiates terms of a residential mortgage loan secured
9 by a dwelling that served as the individual's residence; and

10 (l) Any employee or independent agent of a mortgage
11 banker licensed or registered pursuant to the act or exempt from
12 the act, provided that such employee or independent agent does
13 not conduct the activities of a mortgage loan originator or loan
14 processor or underwriter.

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

20 Sec. 6. Section 45-704, Revised Statutes Cumulative
21 Supplement, 2008, is amended to read:

22 45-704 (1) Notwithstanding any other provision of the
23 Mortgage Bankers Registration and Residential Mortgage Licensing
24 Act, no person exempt from licensing under subdivisions (1)(h)
25 through (1)(k) of section 45-703 who employs or enters into an

1 independent agent agreement with an individual who is required to
2 obtain a mortgage loan originator license in this state pursuant to
3 section 12 of this act shall act as a mortgage banker or engage in
4 ~~the mortgage banking business~~ until such person has registered with
5 the department.

6 (2) Any person required to register pursuant to
7 subsection (1) of this section shall submit to the department
8 a registration statement on forms provided by the department.
9 The forms shall contain such information as the department may
10 prescribe as necessary or appropriate, including, but not limited
11 to, (a) all addresses at which business is to be conducted, (b)
12 the names and titles of each director and principal officer of the
13 business, and (c) a description of the activities of the applicant
14 in such detail as the department may require.

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

18 (4) The department shall acknowledge the registration
19 by issuing to the registrant a receipt or other form of
20 acknowledgment.

21 (5) A registrant shall maintain a surety bond as required
22 by section 9 of this act, submit reports of condition as required
23 by section 11 of this act, and comply with the requirements of
24 section 20 of this act pertaining to the employment of mortgage
25 loan originators.

1 ~~(5)~~ (6) A registration under this section shall not be
2 assignable.

3 ~~(6)~~ (7) After original registration, all registrations
4 shall remain in full force and effect until the next succeeding
5 ~~March 1~~ December 31. Thereafter, a registration under this section
6 may be renewed on an annual basis for a renewal fee of one hundred
7 dollars.

8 (8) (a) If a registrant fails to maintain a surety bond
9 as required by section 9 of this act, the department may issue a
10 notice of cancellation of the registration.

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

16 Sec. 7. Section 45-705, Revised Statutes Cumulative
17 Supplement, 2008, is amended to read:

18 45-705 (1) No person shall act as a mortgage banker or
19 use the title mortgage banker in this state unless he, she, or it
20 is licensed as a mortgage banker, is or has registered with the
21 department as provided in ~~the Mortgage Bankers Registration and~~
22 ~~Licensing Act~~ section 45-704, or is licensed under the Nebraska
23 Installment Loan Act or is otherwise exempt from the act pursuant
24 to section 45-703.

25 (2) Applicants for a license as a mortgage banker shall

1 submit to the department an application on forms prescribed by the
2 department. The application shall include, but not be limited to,
3 (a) the applicant's corporate name and no more than one trade name
4 or doing business as designation which the applicant intends to
5 use in this state, if applicable, (b) the applicant's main office
6 address, (c) all branch office addresses at which business is to be
7 conducted, (d) the names and titles of each director and principal
8 officer of the applicant, (e) the names of all shareholders,
9 partners, or members of the applicant, (f) a description of the
10 activities of the applicant in such detail as the department may
11 require, and (g) if the applicant is an individual, his or her
12 social security number.

13 (3) The application for a license as a mortgage banker
14 shall include or be accompanied by, in a manner as prescribed by
15 the director, (a) the name and street address in this state of a
16 registered agent appointed by the licensee for receipt of service
17 of process and (b) the written consent of the registered agent
18 to the appointment. A post office box number may be provided in
19 addition to the street address.

20 (4) The application for a license as a mortgage banker
21 shall be accompanied by an application fee of four hundred dollars
22 and, if applicable, a seventy-five-dollar fee for each branch
23 office listed in the application and any processing fee allowed
24 under subsection ~~(3)~~ of section 45-715. (2) of section 33 of this
25 act.

1 (5) The director may prescribe that the application for
2 a license as a mortgage banker include or be accompanied by, in
3 a manner as prescribed by the director, a background investigation
4 of each applicant by means of fingerprints and a check of his
5 or her criminal history record information maintained by the
6 Federal Bureau of Investigation through the ~~Nebraska State Patrol~~.
7 Nationwide Mortgage Licensing System and Registry. If the applicant
8 is a partnership, association, corporation, or other form of
9 business organization, the director may require a criminal history
10 record information check on each member, director, or principal
11 officer of each applicant or any individual acting in the capacity
12 of the manager of an office location. The applicant shall be
13 responsible for the direct costs associated with criminal history
14 record information checks performed. The information obtained
15 thereby may be used by the director to determine the applicant's
16 eligibility for licensing under this section. Except as authorized
17 pursuant to subsection ~~(3) of section 45-715,~~ (2) of section 33
18 of this act, receipt of criminal history record information by a
19 private person or entity is prohibited.

20 (6) A license as a mortgage banker granted under the
21 ~~Mortgage Bankers Registration and Residential Mortgage Licensing~~
22 Act shall not be assignable.

23 (7) An application is deemed filed when accepted as
24 substantially complete by the director.

25 Sec. 8. Section 45-706, Revised Statutes Cumulative

1 Supplement, 2008, is amended to read:

2 45-706 (1) Upon the filing of an application for a
3 license as a mortgage banker, if the director finds that the
4 character and general fitness of the applicant, the members thereof
5 if the applicant is a partnership, limited liability company,
6 association, or other organization, and the officers, directors,
7 and principal employees if the applicant is a corporation are
8 such that the business will be operated honestly, soundly, and
9 efficiently in the public interest consistent with the purposes
10 of the ~~Mortgage Bankers Registration and Residential Mortgage~~
11 Licensing Act, the director shall issue a license as a mortgage
12 banker to the applicant. The director shall approve or deny an
13 application for a license within ninety days after (a) acceptance
14 of the application; (b) delivery of the bond required under section
15 ~~45-709, 9 of this act~~; and (c) payment of the required fee.

16 (2) If the director determines that the mortgage banker
17 license application should be denied, the director shall notify
18 the applicant in writing of the denial and of the reasons
19 for the denial. The director shall not deny an application
20 for a mortgage banker license because of the failure to submit
21 information required under the act or rules and regulations
22 adopted and promulgated under the act without first giving the
23 applicant an opportunity to correct the deficiency by supplying
24 the missing information. A decision of the director denying a
25 mortgage banker license application pursuant to the act may be

1 appealed. ~~The~~ 7 and the appeal shall be in accordance with the
2 Administrative Procedure Act and rules and regulations adopted and
3 promulgated by the department under the act. The director may deny
4 an application for a mortgage banker license application if (a) he
5 or she determines that the applicant does not meet the conditions
6 of subsection (1) of this section or (b) an officer, director,
7 shareholder owning five percent or more of the voting shares of
8 the applicant, partner, or member was convicted of, pleaded guilty
9 to, or was found guilty after a plea of nolo contendere to ~~(a)~~
10 (i) a misdemeanor under any state or federal law which involves
11 dishonesty or fraud or which involves any aspect of the mortgage
12 banking business, financial depository institution business, or
13 installment loan company business or (b) (ii) any felony under
14 state or federal law.

15 (3) (a) All initial licenses shall remain in full force
16 and effect until the next succeeding ~~March 1~~. ~~Beginning January 1,~~
17 ~~2008,~~ initial licenses shall remain in full force and effect until
18 the next succeeding December 31. Thereafter, December 31. Mortgage
19 banker licenses may be renewed annually by filing with submitting
20 to the director an application a request for renewal containing
21 such information as the director may require to indicate any
22 material change in the information contained in the original
23 application or succeeding renewal applications, including the
24 information submitted under subsection (3) of section 45-705. and
25 any supplemental material as required by the director. The mortgage

1 banker licensee shall certify that the information contained in the
2 license application, as subsequently amended, that is on file with
3 the department and the information contained in any supplemental
4 material previously provided to the department remains true and
5 correct.

6 (b) ~~Except as provided in subdivision (3)(c) of this~~
7 ~~section, for~~ For the annual renewal of a license to conduct a
8 mortgage banking business under the ~~Mortgage Bankers Registration~~
9 ~~and Residential Mortgage Licensing Act~~, the fee shall be two
10 hundred dollars plus seventy-five dollars for each branch office,
11 if applicable, and any processing fee allowed under subsection ~~(3)~~
12 ~~of section 45-715.~~ (2) of section 33 of this act.

13 ~~(c) Licenses which expire on March 1, 2008, shall be~~
14 ~~renewed until December 31, 2008, upon compliance with subdivision~~
15 ~~(3)(a) of this section. For such renewals, the department shall~~
16 ~~prorate the fees provided in subdivision (3)(b) of this section~~
17 ~~using a factor of ten-twelfths.~~

18 (4) The director may require a mortgage banker licensee
19 to maintain a minimum net worth, proven by an audit conducted by
20 a certified public accountant, if the director determines that the
21 financial condition of the licensee warrants such a requirement or
22 that the requirement is in the public interest.

23 Sec. 9. Section 45-709, Revised Statutes Cumulative
24 Supplement, 2008, is amended to read:

25 ~~45-709~~ (1) ~~An~~ Except as provided in subsection (2)

1 of this section, an applicant for a mortgage banker license or
2 registration shall file with the department a surety bond in the
3 amount of one hundred thousand dollars, furnished by a surety
4 company authorized to do business in the State of Nebraska. The
5 surety bond also shall cover all mortgage loan originators who are
6 employees or independent agents of the applicant. The bond shall
7 be for the use of the State of Nebraska and any Nebraska resident
8 who may have claims or causes of action against the applicant or
9 against an individual who is a mortgage loan originator employed
10 by, or in an independent agent relationship with, the applicant.
11 Submission of a rider to an existing bond indicating that the
12 required coverage is outstanding and evidencing the beneficiaries
13 required in this section shall satisfy the requirements of this
14 section. The bond or a substitute bond shall remain in effect
15 during all periods of licensing.

16 (2) Upon filing of the mortgage report of condition
17 required by section 11 of this act, a mortgage banker licensee or
18 registrant shall maintain or increase its surety bond to reflect
19 the total dollar amount of the closed residential mortgage loans
20 originated in this state in the preceding year in accordance with
21 the following table. A licensee may decrease its surety bond in
22 accordance with the following table if the surety bond required
23 is less than the amount of the surety bond on file with the
24 department.

25 Dollar Amount of Closed

1	<u>Residential Mortgage Loans</u>	<u>Surety Bond Required</u>
2	<u>\$0.00 to \$5,000,000.00</u>	<u>\$100,000.00</u>
3	<u>\$5,000,000.01 to \$10,000,000.00</u>	<u>\$125,000.00</u>
4	<u>\$10,000,000.01 to \$25,000,000.00</u>	<u>\$150,000.00</u>
5	<u>Over \$25,000,000.00</u>	<u>\$200,000.00</u>

6 (3) Should the department determine that a mortgage
7 banker licensee or registrant does not maintain a surety bond
8 in the amount required by subsection (2) of this section, the
9 department shall give written notification to the mortgage banker
10 licensee or registrant requiring him, her, or it to increase the
11 surety bond within thirty days to the amount required by subsection
12 (2) of this section.

13 ~~(2)~~ (4) At any time the director may require the filing
14 of a new or supplemental bond in the form as provided in subsection
15 (1) of this section if he or she determines that the bond filed
16 under ~~subsection (1)~~ subsections (1) and (2) of this section is
17 exhausted or is inadequate for any reason, including the financial
18 condition of the licensee or the applicant for a license. The new
19 or supplemental bond shall not exceed one million dollars.

20 ~~(3)~~ Until March 1, 2007, a licensee licensed prior to
21 July 14, 2006, may maintain the bond amount such licensee was
22 originally licensed under, unless the licensee is maintaining
23 a bond pursuant to subsection (2) of this section. Licensees
24 maintaining a bond pursuant to subsection (2) of this section
25 shall continue to maintain the amount of that bond until instructed

1 ~~otherwise by the director.~~

2 Sec. 10. Section 45-722, Revised Statutes Cumulative
3 Supplement, 2008, is amended to read:

4 ~~45-722~~ (1) No person acting personally or as an agent
5 shall acquire control of any mortgage banking business required to
6 be licensed under the ~~Mortgage Bankers Registration and Residential~~
7 Mortgage Licensing Act without first giving thirty days' notice
8 to the department on forms prescribed by the department of such
9 proposed acquisition and paying a filing fee of two hundred
10 dollars.

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

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

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

25 (i) The financial condition of any acquiring person is

1 such as might jeopardize the financial stability of the acquired
2 mortgage banking business;

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

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

9 (b) The director shall notify the acquiring party in
10 writing of disapproval of the acquisition. The notice shall provide
11 a statement of the basis for the disapproval.

12 (c) Within fifteen business days after receipt of written
13 notice of disapproval, the acquiring party may request a hearing
14 on the proposed acquisition in accordance with the Administrative
15 Procedure Act and rules and regulations adopted and promulgated by
16 the department under the act. At the conclusion of such hearing,
17 the director shall, by order, approve or disapprove the proposed
18 acquisition on the basis of the record made at the hearing.

19 Sec. 11. Each licensed mortgage banker, registrant, and
20 installment loan company shall submit to the Nationwide Mortgage
21 Licensing System and Registry reports of condition, which shall be
22 in such form and shall contain such information as the department
23 may require.

24 Sec. 12. (1) An individual, unless specifically exempted
25 from the Residential Mortgage Licensing Act under section 45-703,

1 shall not engage in, or offer to engage in, the business of
2 a mortgage loan originator with respect to any residential real
3 estate or dwelling located or intended to be located in this
4 state without first obtaining and maintaining annually a license
5 under the act. Each licensed mortgage loan originator shall obtain
6 and maintain a valid unique identifier issued by the Nationwide
7 Mortgage Licensing System and Registry.

8 (2) In order to facilitate an orderly transition to
9 licensing and minimize disruption in the mortgage marketplace, the
10 effective date for subsection (1) of this section is July 31, 2010.

11 (3) An independent agent shall not engage in the
12 activities as a loan processor or underwriter unless such
13 independent agent loan processor or underwriter obtains and
14 maintains a license under subsection (1) of this section. Each
15 independent agent loan processor or underwriter licensed as a
16 mortgage loan originator shall obtain and maintain a valid unique
17 identifier issued by the Nationwide Mortgage Licensing System and
18 Registry.

19 (4) For the purposes of implementing an orderly and
20 efficient licensing process, the director may adopt and promulgate
21 licensing rules or regulations and interim procedures for licensing
22 and acceptance of applications. For previously registered or
23 licensed individuals the director may establish expedited review
24 and licensing procedures.

25 Sec. 13. (1) An applicant for a license shall apply in a

1 form as prescribed by the director.

2 (2) The application for a license as a mortgage loan
3 originator shall be accompanied by an application fee of one
4 hundred fifty dollars, plus the cost of the criminal history
5 background check required by subsection (3) of this section and any
6 processing fee allowed under subsection (2) of section 33 of this
7 act.

8 (3) In connection with an application for licensing as
9 a mortgage loan originator, the applicant shall, at a minimum,
10 furnish to the Nationwide Mortgage Licensing System and Registry
11 information concerning the applicant's identity, including the
12 following:

13 (a) Fingerprints for submission to the Federal Bureau
14 of Investigation and any other governmental agency or entity
15 authorized to receive such information for a state, national, and
16 international criminal history background check; and

17 (b) Personal history and experience in a form prescribed
18 by the Nationwide Mortgage Licensing System and Registry, including
19 the submission of authorization for the Nationwide Mortgage
20 Licensing System and Registry and the director to obtain the
21 following:

22 (i) An independent credit report obtained from a consumer
23 reporting agency described in section 603(p) of the federal Fair
24 Credit Reporting Act, as the act existed on January 1, 2009; and

25 (ii) Information related to any administrative, civil, or

1 criminal findings by any governmental jurisdiction.

2 (4) For the purposes of this section and in order
3 to reduce the points of contact which the Federal Bureau of
4 Investigation may have to maintain for purposes of subdivisions
5 (3) (a) and (3) (b) (ii) of this section, the director may use
6 the Nationwide Mortgage Licensing System and Registry as a
7 channeling agent for requesting information from and distributing
8 information to the United States Department of Justice or any other
9 governmental agency.

10 (5) For the purposes of this section and in order to
11 reduce the points of contact which the director may have to
12 maintain for purposes of subdivisions (3) (b) (i) and (3) (b) (ii)
13 of this section, the director may use the Nationwide Mortgage
14 Licensing System and Registry as a channeling agent for requesting
15 and distributing information to and from any source so directed by
16 the director.

17 Sec. 14. (1) The director shall not issue a mortgage
18 loan originator license unless the director makes at a minimum the
19 following findings:

20 (a) The applicant has never had a mortgage loan
21 originator license revoked in any governmental jurisdiction, except
22 that a subsequent formal vacation of such revocation shall not be
23 deemed a revocation;

24 (b) The applicant has not been convicted of, or pled
25 guilty or nolo contendere or its equivalent to, in a domestic,

1 foreign, or military court:

2 (i) A misdemeanor under any state or federal law which
3 involves dishonesty or fraud or which involves any aspect of
4 the business of a mortgage banker, depository institution, or
5 installment loan company, unless such individual has received a
6 pardon for such conviction; or

7 (ii) Any felony under state or federal law, unless such
8 individual has received a pardon for such conviction;

9 (c) The applicant has demonstrated financial
10 responsibility, character, and general fitness such as to command
11 the confidence of the community and to warrant a determination
12 that the mortgage loan originator will operate honestly, fairly,
13 and efficiently within the purposes of the Residential Mortgage
14 Licensing Act. For purposes of this subsection, an individual has
15 shown that he or she is not financially responsible when he or she
16 has shown a disregard in the management of his or her own financial
17 condition. The director may consider the following factors in
18 making a determination as to financial responsibility:

19 (i) The applicant's current outstanding judgments, except
20 judgments solely as a result of medical expenses;

21 (ii) The applicant's current outstanding tax liens or
22 other government liens and filings;

23 (iii) The applicant's foreclosures within the past three
24 years; and

25 (iv) A pattern of seriously delinquent accounts within

1 the past three years by the applicant;

2 (d) The applicant has completed the prelicensing
3 education requirements described in section 15 of this act;

4 (e) The applicant has passed a written test that meets
5 the test requirement described in section 16 of this act; and

6 (f) The applicant is covered by a surety bond as required
7 pursuant to section 9 of this act or a supplemental surety bond as
8 required pursuant to section 45-1007.

9 (2) If the director determines that a mortgage loan
10 originator license application should be denied, the director shall
11 notify the applicant in writing of the denial and of the reasons
12 for the denial. The director shall not deny an application for a
13 mortgage loan originator license because of the failure to submit
14 information required under the act or rules and regulations adopted
15 and promulgated under the act without first giving the applicant
16 an opportunity to correct the deficiency by supplying the missing
17 information. A decision of the director denying a mortgage loan
18 originator license application pursuant to the act may be appealed.
19 The appeal shall be in accordance with the Administrative Procedure
20 Act and rules and regulations adopted and promulgated by the
21 department under the act.

22 (3) A mortgage loan originator license shall not be
23 assignable.

24 Sec. 15. (1) In order to meet the prelicensing education
25 requirement referred to in subdivision (1)(d) of section 14 of

1 this act, an individual shall complete at least twenty hours
2 of education approved in accordance with subsection (2) of this
3 section, which shall include at least the following:

4 (a) Three hours of instruction in federal law and
5 regulations regarding mortgage origination;

6 (b) Three hours of instruction in ethics, which shall
7 include instruction on fraud, consumer protection, and fair lending
8 issues; and

9 (c) Two hours of instruction related to lending standards
10 for the nontraditional mortgage product marketplace.

11 (2) For purposes of subsection (1) of this section,
12 prelicensing education courses shall be reviewed and approved
13 by the Nationwide Mortgage Licensing System and Registry based
14 upon reasonable standards. Review and approval of a prelicensing
15 education course shall include review and approval of the course
16 provider.

17 (3) Nothing in this section shall preclude any
18 prelicensing education course, as approved by the Nationwide
19 Mortgage Licensing System and Registry, that is provided by the
20 employer of the applicant or an entity which is affiliated with
21 the applicant by an agency contract or any subsidiary or affiliate
22 of such employer or entity.

23 (4) Prelicensing education may be offered either in a
24 classroom, online, or by any other means approved by the Nationwide
25 Mortgage Licensing System and Registry.

1 (5) The prelicensing education requirements approved by
2 the Nationwide Mortgage Licensing System and Registry in subsection
3 (1) of this section for any state shall be accepted as credit
4 towards completion of prelicensing education requirements in this
5 state.

6 (6) An individual who previously held a mortgage loan
7 originator license applying to be licensed again shall prove that
8 he or she has either (a) completed all of the continuing education
9 requirements for the year in which the license was last held or
10 (b) made up any deficiency in continuing education as provided by
11 subsection (8) of section 18 of this act.

12 Sec. 16. (1) In order to meet the written test
13 requirement referred to in subdivision (1)(e) of section 14 of this
14 act, an individual shall pass, in accordance with the standards
15 established under this section, a qualified written test developed
16 by the Nationwide Mortgage Licensing System and Registry and
17 administered by a test provider approved by the Nationwide Mortgage
18 Licensing System and Registry based upon reasonable standards.

19 (2) A written test shall not be treated as a qualified
20 written test for purposes of subsection (1) of this section
21 unless the test adequately measures the applicant's knowledge
22 and comprehension in appropriate subject areas, including the
23 following:

24 (a) Ethics;

25 (b) Federal laws and regulations pertaining to mortgage

1 origination;

2 (c) State laws and regulations pertaining to mortgage
3 origination; and

4 (d) Federal and state laws and regulations, including
5 instruction on fraud, consumer protection, the nontraditional
6 mortgage marketplace, and fair lending issues.

7 (3) Nothing in this section shall prohibit a test
8 provider approved by the Nationwide Mortgage Licensing System
9 and Registry from providing a test at the location of the employer
10 of the applicant or the location of any subsidiary or affiliate of
11 the employer of the applicant or the location of any entity with
12 which the applicant holds an exclusive arrangement to conduct the
13 business of a mortgage loan originator.

14 (4)(a) An individual shall not be considered to have
15 passed a qualified written test unless the individual achieves a
16 test score of not less than seventy-five percent correct answers to
17 questions.

18 (b) An individual may retake a test three consecutive
19 times with each consecutive taking occurring at least thirty days
20 after the preceding test.

21 (c) After failing three consecutive tests, an individual
22 shall wait at least six months before taking the test again.

23 (d) A licensed mortgage loan originator who fails to
24 maintain a valid license for a period of five years or longer shall
25 retake the test, not taking into account any time during which such

1 individual is a registered mortgage loan originator.

2 Sec. 17. (1) All initial mortgage loan originator
3 licenses shall remain in full force and effect until the next
4 succeeding December 31. Mortgage loan originator licenses may be
5 renewed annually by submitting to the director a request for
6 renewal and any supplemental material as required by the director.
7 The mortgage loan originator licensee shall certify that the
8 information contained in the license application, as subsequently
9 amended, that is on file with the department, and the information
10 contained in any supplemental material previously provided to the
11 department, remains true and correct.

12 (2) The minimum standards for license renewal for
13 mortgage loan originators shall include the following:

14 (a) The mortgage loan originator continues to meet the
15 minimum standards for license issuance under subdivisions (1)(a)
16 through (f) of section 14 of this act;

17 (b) The mortgage loan originator has satisfied the annual
18 continuing education requirements described in section 18 of this
19 act; and

20 (c) The mortgage loan originator has paid all required
21 fees for renewal of the license.

22 (3) For the annual renewal of a mortgage loan originator
23 license, the fee shall be one hundred twenty-five dollars, plus
24 the cost of the criminal history background check required by the
25 director and any processing fee allowed under subsection (2) of

1 section 33 of this act.

2 (4) Except as provided in subsection (4) of section 19 of
3 this act and subsection (4) of section 27 of this act, should the
4 director conclude that a mortgage loan originator does not meet the
5 minimum standards for license renewal, the director shall deny the
6 renewal application. A decision of the director denying a renewal
7 of a mortgage loan originator license pursuant to the Residential
8 Mortgage Licensing Act may be appealed. The appeal shall be in
9 accordance with the Administrative Procedure Act and the rules and
10 regulations adopted and promulgated by the department under the
11 act.

12 Sec. 18. (1) A mortgage loan originator shall complete
13 annually at least eight hours of education approved in accordance
14 with subsection (2) of this section, which shall include at least:

15 (a) Three hours of instruction in federal laws and
16 regulations regarding mortgage origination;

17 (b) Two hours of instruction in ethics, which shall
18 include instruction on fraud, consumer protection, and fair lending
19 issues; and

20 (c) Two hours of instruction related to lending standards
21 for the nontraditional mortgage product marketplace.

22 (2) For purposes of subsection (1) of this section,
23 continuing education courses shall be reviewed and approved by
24 the Nationwide Mortgage Licensing System and Registry based upon
25 reasonable standards. Review and approval of a continuing education

1 course shall include review and approval of the course provider.

2 (3) Nothing in this section shall preclude any education
3 course, as approved by the Nationwide Mortgage Licensing System and
4 Registry, that is provided by the employer of the mortgage loan
5 originator or an entity which is affiliated with the mortgage loan
6 originator by an agency contract, or any subsidiary or affiliate of
7 such employer or entity.

8 (4) Continuing education may be offered either in a
9 classroom, online, or by any other means approved by the Nationwide
10 Mortgage Licensing System and Registry.

11 (5) A licensed mortgage loan originator:

12 (a) Shall only receive credit for a continuing education
13 course in the year in which the course is taken except as provided
14 in subsection (8) of this section; and

15 (b) Shall not take the same approved course in the same
16 or consecutive years to meet the annual requirements for continuing
17 education.

18 (6) A licensed mortgage loan originator who is an
19 instructor of an approved continuing education course may receive
20 credit for the licensed mortgage loan originator's own annual
21 continuing education requirement at the rate of two hours credit
22 for every one hour taught.

23 (7) An individual having successfully completed the
24 education requirements approved by the Nationwide Mortgage
25 Licensing System and Registry in subdivisions (1)(a), (b), and (c)

1 of this section for any state shall be accepted as credit towards
2 completion of continuing education requirements in this state.

3 (8) A licensed mortgage loan originator who subsequently
4 becomes unlicensed shall complete the continuing education
5 requirements for the last year in which the license was held prior
6 to issuance of a new license or renewal license. Such individual
7 may make up any deficiency in continuing education as established
8 by rule, regulation, or order of the director provided that such
9 individual meets the requirements of subdivision (2) (a) of section
10 17 of this act, and has paid the new application fee as provided by
11 subsection (2) of section 13 of this act or the reinstatement fee
12 as provided by subdivision (4) (b) of section 27 of this act.

13 Sec. 19. (1) A mortgage loan originator whose license
14 is placed on inactive status under this section shall not act as
15 a mortgage loan originator in this state until such time as the
16 license is reactivated.

17 (2) The department shall place a mortgage loan originator
18 license on inactive status upon the occurrence of one of the
19 following:

20 (a) Upon receipt of a notice from either the licensed
21 mortgage banker, registrant, installment loan company, or mortgage
22 loan originator that the mortgage loan originator's relationship as
23 an employee or independent agent of a licensed mortgage banker or
24 installment loan company has been terminated;

25 (b) Upon the cancellation of the employing licensed

1 mortgage banker's license pursuant to section 27 of this act or
2 upon the cancellation of the employing installment loan company's
3 license pursuant to subdivision (3)(b) of section 45-1033 for
4 failure to maintain the required surety bond;

5 (c) Upon the voluntary surrender of the employing
6 licensed mortgage banker's license pursuant to section 27 of this
7 act, or upon the voluntary surrender of the employing installment
8 loan company's license pursuant to section 45-1032;

9 (d) Upon the expiration of the employing licensed
10 mortgage banker's license pursuant to section 27 of this act or
11 upon the expiration of the employing installment loan company's
12 license pursuant to subdivision (3)(a) of section 45-1033, if such
13 mortgage loan originator has renewed his or her license pursuant
14 to section 17 of this act;

15 (e) Upon the revocation or suspension of the employing
16 licensed mortgage banker's license pursuant to section 27 of this
17 act, or the revocation or suspension of the employing installment
18 loan company's license pursuant to subsection (1) of section
19 45-1033; or

20 (f) Upon the cancellation, surrender, or expiration of
21 the employing registrant's registration with the department.

22 (3) If a mortgage loan originator license becomes
23 inactive under this section, the license shall remain inactive
24 until the license expires, the licenseholder surrenders the
25 license, the license is revoked or suspended pursuant to section 27

1 of this act, or the license is reactivated.

2 (4) A mortgage loan originator who holds an inactive
3 mortgage loan originator license may renew such inactive license
4 provided that he or she remains otherwise eligible for renewal
5 pursuant to section 17 of this act, except for being covered by a
6 surety bond pursuant to subdivision (1)(f) of section 14 of this
7 act. Such renewal shall not reactive the license.

8 (5) The department shall reactivate a mortgage loan
9 originator license upon receipt of a notice pursuant to section 20
10 of this act that the mortgage loan originator licensee has been
11 hired as a mortgage loan originator by a licensed mortgage banker,
12 registrant, or installment loan company, and if such mortgage loan
13 originator is covered by a surety bond pursuant to subdivision
14 (1)(f) of section 14 of this act.

15 Sec. 20. (1) A mortgage loan originator shall be an
16 employee or independent agent of a single licensed mortgage
17 banker, registrant, or installment loan company that shall directly
18 supervise, control, and maintain responsibility for the acts and
19 omissions of the mortgage loan originator.

20 (2) A mortgage loan originator shall not engage in
21 mortgage loan origination activities at any location that is not a
22 main office location of a licensed mortgage banker, registrant, or
23 installment loan company or a branch office of a licensed mortgage
24 banker or registrant. The licensed mortgage banker, registrant, or
25 installment loan company shall designate the location or locations

1 at which each mortgage loan originator is originating residential
2 mortgage loans.

3 (3) Any licensed mortgage banker, registrant, or
4 installment loan company who engages an independent agent as a
5 mortgage loan originator shall maintain a written agency contract
6 with such mortgage loan originator. Such written agency contract
7 shall provide that the mortgage loan originator is originating
8 loans exclusively for the licensed mortgage banker, registrant, or
9 installment loan company.

10 (4) A licensed mortgage banker, registrant, or
11 installment loan company that has hired a licensed mortgage loan
12 originator as an employee or entered into an independent agent
13 agreement with such licensed mortgage loan originator, shall
14 provide notification to the department as soon as reasonably
15 possible after entering into such relationship, along with a fee of
16 fifty dollars. The employing entity shall not allow the mortgage
17 loan originator to conduct such activity in this state prior to
18 such notification to the department and confirmation that the
19 department has received notice of the termination of the mortgage
20 loan originator's prior employment.

21 (5) A licensed mortgage banker, registrant, or
22 installment loan company shall notify the department no later than
23 ten days after the termination, whether voluntary or involuntary,
24 of a mortgage loan originator, unless the mortgage loan originator
25 has previously notified the department of the termination.

1 Sec. 21. The unique identifier of any individual
2 originating a residential mortgage loan shall be clearly shown on
3 all residential mortgage loan application forms, solicitations,
4 or advertisements, including business cards or web sites, and any
5 other documents as established by rule, regulation, or order of the
6 director.

7 Sec. 22. Section 45-711, Revised Statutes Cumulative
8 Supplement, 2008, is amended to read:

9 ~~45-711~~ A licensee shall:

10 (1) Disburse required funds paid by the borrower and held
11 in escrow for the payment of insurance payments no later than the
12 date upon which the premium is due under the insurance policy;

13 (2) Disburse funds paid by the borrower and held in
14 escrow for the payment of real estate taxes prior to the time such
15 real estate taxes become delinquent;

16 (3) Pay any penalty incurred by the borrower because
17 of the failure of the licensee to make the payments required
18 in subdivisions (1) and (2) of this section unless the licensee
19 establishes that the failure to timely make the payments was due
20 solely to the fact that the borrower was sent a written notice of
21 the amount due more than fifteen calendar days before the due date
22 to the borrower's last-known address and failed to timely remit the
23 amount due to the licensee;

24 (4) At least annually perform a complete escrow analysis.
25 If there is a change in the amount of the periodic payments, the

1 licensee shall mail written notice of such change to the borrower
2 at least twenty calendar days before the effective date of the
3 change in payment. The following information shall be provided to
4 the borrower, without charge, in one or more reports, at least
5 annually:

6 (a) The name and address of the licensee;

7 (b) The name and address of the borrower;

8 (c) A summary of the escrow account activity during the
9 year which includes all of the following:

10 (i) The balance of the escrow account at the beginning of
11 the year;

12 (ii) The aggregate amount of deposits to the escrow
13 account during the year; and

14 (iii) The aggregate amount of withdrawals from the escrow
15 account for each of the following categories:

16 (A) Payments applied to loan principal;

17 (B) Payments applied to interest;

18 (C) Payments applied to real estate taxes;

19 (D) Payments for real property insurance premiums; and

20 (E) All other withdrawals; and

21 (d) A summary of loan principal for the year as follows:

22 (i) The amount of principal outstanding at the beginning
23 of the year;

24 (ii) The aggregate amount of payments applied to
25 principal during the year; and

1 (iii) The amount of principal outstanding at the end of
2 the year;

3 (5) Establish and maintain a toll-free telephone number
4 or accept collect telephone calls to respond to inquiries from
5 borrowers, if the licensee services residential mortgage loans.
6 If a licensee ceases to service residential mortgage loans, it
7 shall continue to maintain a toll-free telephone number or accept
8 collect telephone calls to respond to inquiries from borrowers for
9 a period of twelve months after the date the licensee ceased to
10 service residential mortgage loans. A telephonic messaging service
11 which does not permit the borrower an option of personal contact
12 with an employee, agent, or contractor of the licensee shall not
13 satisfy the conditions of this section. Each day such licensee
14 fails to comply with this subdivision shall constitute a separate
15 violation of the Mortgage Bankers Registration and Residential
16 Mortgage Licensing Act;

17 (6) Answer in writing, within ten business days after
18 receipt, any written request for payoff information received from
19 a borrower or a borrower's designated representative. This service
20 shall be provided without charge to the borrower, except that when
21 such information is provided upon request within sixty days after
22 the fulfillment of a previous request, a processing fee of up to
23 ten dollars may be charged;

24 (7) Execute and deliver a release of mortgage pursuant to
25 the provisions of section 76-252 or, in the case of a trust deed,

1 execute and deliver a reconveyance pursuant to the provisions of
2 section 76-1014.01;

3 (8) Maintain a copy of all documents and records relating
4 to each residential mortgage loan and application for a residential
5 mortgage loan, including, but not limited to, loan applications,
6 federal Truth in Lending Act statements, good faith estimates,
7 appraisals, notes, rights of rescission, and mortgages or trust
8 deeds for a period of two years after the date the residential
9 mortgage loan is funded or the loan application is denied or
10 withdrawn; and

11 (9) Notify the director in writing within three business
12 days after the occurrence of any of the following:

13 (a) The filing of a voluntary petition in bankruptcy or
14 notice of a filing of an involuntary petition in bankruptcy;

15 (b) The licensee has lost the ability to fund a loan
16 or loans after it had made a loan commitment or commitments and
17 approved a loan application or applications;

18 (c) That any other state or jurisdiction invoked
19 suspension or revocation procedures against the licensee;

20 (d) The filing of a criminal indictment or information
21 against the licensee or any of its officers, directors,
22 shareholders, partners, members, employees, or agents; or

23 (e) The licensee or any of the licensee's officers,
24 directors, shareholders, partners, members, employees, or agents
25 was convicted of, pleaded guilty to, or was found guilty after a

1 plea of nolo contendere to (i) a misdemeanor under state or federal
2 law which involves dishonesty or fraud or which involves any aspect
3 of the mortgage banking business, financial institution business,
4 or installment loan business or (ii) any felony under state or
5 federal law; and

6 ~~(9)~~ (10) Notify the director in writing or through an
7 electronic method as prescribed by the director within thirty days
8 after the occurrence of any material development, including, but
9 not limited to, of the following:

10 ~~(a) The filing of a voluntary petition in bankruptcy or~~
11 ~~notice of a filing of an involuntary petition in bankruptcy;~~

12 ~~(b) Business reorganization;~~

13 ~~(c) The institution of license suspension or revocation~~
14 ~~procedures by any other state or jurisdiction;~~

15 ~~(d) The filing of a criminal indictment or information~~
16 ~~against the licensee or any of its officers, directors,~~
17 ~~shareholders, partners, members, employees, or agents;~~

18 ~~(e) The licensee or any of the licensee's officers,~~
19 ~~directors, shareholders, partners, members, employees, or agents~~
20 ~~was convicted of, pleaded guilty to, or was found guilty after a~~
21 ~~plea of nolo contendere to (i) a misdemeanor under state or federal~~
22 ~~law which involves dishonesty or fraud or which involves any aspect~~
23 ~~of the mortgage banking business, financial institution business,~~
24 ~~or installment loan business or (ii) any felony under state or~~
25 ~~federal law;~~

1 (a) Business reorganization;

2 ~~(f)~~ (b) A change of name, trade name, doing business as
3 designation, or main office address;

4 ~~(g)~~ (c) The establishment of a branch office. Notice of
5 such establishment shall be on forms prescribed by the department
6 and accompanied by a fee of seventy-five dollars for each branch
7 office; or

8 ~~(h)~~ (d) The closing of a branch office.

9 Sec. 23. Section 45-712, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 ~~45-712~~ If a licensee in connection with a residential
12 mortgage loan has possession of an abstract of title and fails to
13 deliver the abstract to the borrower within twenty business days
14 of the borrower's request made by certified mail, return receipt
15 requested, in connection with a proposed sale of the real property,
16 the borrower may authorize the preparation of a new abstract of
17 title to the real property and the person failing to deliver the
18 original abstract shall pay the borrower the reasonable costs of
19 the preparation of the new abstract of title. If a borrower brings
20 an action against the person failing to deliver an abstract of
21 title to recover the payment made, the borrower shall also be
22 entitled to recover reasonable attorney's fees and court costs
23 incurred in the action.

24 Sec. 24. Section 45-713, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 ~~45-713~~ Not less than fifteen days prior to the effective
2 date of the transfer of servicing rights involving any residential
3 mortgage loan, the licensee transferring the servicing rights shall
4 send a written notice of transfer to each borrower which shall
5 include:

6 (1) The effective date of the transfer;

7 (2) The name, address, and telephone number of the
8 transferee and the name of a referral person or department of the
9 transferee;

10 (3) Instructions concerning payments made before the
11 effective date of the transfer; and

12 (4) Instructions concerning payments made after the
13 effective date of the transfer.

14 The provisions of this section shall not apply when
15 the licensee transferring the servicing rights has provided the
16 borrower with a written notice of transfer at the time of closing
17 on the residential mortgage loan.

18 Sec. 25. Section 45-714, Revised Statutes Cumulative
19 Supplement, 2008, is amended to read:

20 ~~45-714~~ (1) A licensee, an officer, an employee, or an
21 agent of the licensee shall not:

22 (a) Assess a late charge if all payments due are received
23 before the date upon which late charges are authorized in the
24 underlying mortgage or deed of trust deed or other loan documents;

25 (b) Delay closing of a residential mortgage loan for the

1 purpose of increasing interest, costs, fees, or charges payable by
2 the borrower;

3 (c) Misrepresent or conceal material facts or make false
4 promises intended to influence, persuade, or induce an applicant
5 for a residential mortgage loan or a borrower to take a residential
6 mortgage loan or cause or contribute to such a misrepresentation by
7 any person acting on a licensee's or any other lender's behalf;

8 (d) Misrepresent to, or conceal from, an applicant for a
9 residential mortgage loan or a borrower material facts, terms, or
10 conditions of a residential mortgage loan to which the licensee is
11 a party;

12 (e) Fail to make disclosures as required by the
13 Residential Mortgage Licensing Act and any other applicable state
14 or federal law including regulations thereunder;

15 ~~(e)~~ (f) Engage in any transaction, practice, or business
16 conduct that is not in good faith or that operates a fraud upon any
17 person in connection with the making of any residential mortgage
18 loan;

19 ~~(f)~~ (g) Receive compensation for acting as a mortgage
20 banker or mortgage loan originator if the licensee has otherwise
21 acted as a real estate broker or agent in connection with the
22 sale of the real estate which secures the residential mortgage loan
23 unless the licensee has provided written disclosure to the person
24 from whom compensation is collected that the licensee is receiving
25 compensation both for acting as a mortgage banker or mortgage loan

1 originator and for acting as a real estate broker or agent;

2 ~~(g)~~ (h) Advertise, display, distribute, broadcast,
3 televise, or cause or permit to be advertised, displayed,
4 distributed, broadcasted, or televised, in any manner, including
5 by the Internet, any false, misleading, or deceptive statement or
6 representation with regard to rates, terms, or conditions for a
7 residential mortgage loan or any false, misleading, or deceptive
8 statement regarding the qualifications of the licensee or of any
9 officer, employee, or agent thereof;

10 ~~(h)~~ (i) Record a lien on real property if money is
11 not available for the immediate disbursement to the borrower unless,
12 before that recording, the licensee (i) informs the borrower in
13 writing of the reason for the delay and of a definite date by which
14 disbursement shall be made and (ii) obtains the borrower's written
15 permission for the delay unless the delay is required by any other
16 state or federal law;

17 ~~(i)~~ (j) Fail to account for or deliver to any person
18 personal property obtained in connection with the mortgage banking
19 business, including, but not limited to, money, funds, deposits,
20 checks, drafts, mortgages, trust deeds, or other documents or
21 things of value which the licensee was not entitled to retain;

22 ~~(j)~~ (k) Fail to disburse, without just cause, any funds
23 in accordance with any agreement connected with the mortgage
24 banking business;

25 ~~(k)~~ (l) Collect fees and charges on funds other than

1 new funds if the licensee makes a residential mortgage loan to
2 refinance an existing residential mortgage loan to a current
3 borrower of the licensee within twelve months after the previous
4 residential mortgage loan made by the licensee;

5 ~~(l)~~ (m) Assess any fees against the borrower other
6 than those which are reasonable and necessary, including
7 actual charges incurred in connection with the making, closing,
8 disbursing, servicing, extending, transferring, or renewing of
9 a loan, including, but not limited to, (i) prepayment charges,
10 (ii) delinquency charges, (iii) premiums for hazard, private
11 mortgage, disability, life, or title insurance, (iv) fees for
12 escrow services, appraisal services, abstracting services, title
13 services, surveys, inspections, credit reports, notary services,
14 and recording of documents, (v) origination fees, (vi) interest on
15 interest after default, and (vii) costs and charges incurred for
16 determining qualification for the loan proceeds and disbursement
17 of the loan proceeds;

18 ~~(m)~~ (n) Allow the borrower to finance, directly or
19 indirectly, (i) any credit life, credit accident, credit health,
20 credit personal property, or credit loss-of-income insurance or
21 debt suspension coverage or debt cancellation coverage, whether
22 or not such coverage is insurance under applicable law, that
23 provides for cancellation of all or part of a borrower's liability
24 in the event of loss of life, health, personal property, or
25 income or in the case of accident written in connection with

1 a residential mortgage loan or (ii) any life, accident, health,
2 or loss-of-income insurance without regard to the identity of
3 the ultimate beneficiary of such insurance. For purposes of this
4 section, any premiums or charges calculated and paid on a periodic
5 basis that are not added to the principal of the loan shall not be
6 considered financed directly or indirectly by the creditor;

7 ~~(n)~~ (o) Falsify any documentation relating to a
8 residential mortgage loan or a residential mortgage loan
9 application;

10 ~~(e)~~ (p) Recommend or encourage default on an existing
11 loan or other debt prior to and in connection with the closing or
12 planned closing of a residential mortgage loan that refinances all
13 or any portion of such existing loan or debt;

14 ~~(p)~~ (q) Borrow money from, personally loan money to,
15 or guarantee any loan made to any customer or applicant for a
16 residential mortgage loan; ~~or~~

17 ~~(q)~~ (r) Obtain a signature on a document required to
18 be notarized in connection with a residential mortgage loan or a
19 residential mortgage loan application unless the qualified notary
20 public performing the notarization is physically present at the
21 time the signature is obtained; or.

22 (s) Make any payment, threat, or promise, directly or
23 indirectly, to any person for the purposes of influencing the
24 independent judgment of the person in connection with a residential
25 mortgage loan or make any payment, threat, or promise, directly or

1 indirectly, to any appraiser of a property, for the purposes of
2 influencing the independent judgment of the appraiser with respect
3 to the value of the property.

4 (2) Any person who violates any provision of subsection
5 (1) of this section is guilty of a Class III misdemeanor.

6 (3) Any person who violates any provision of subsection
7 (1) of this section is liable to the applicant for a residential
8 mortgage loan or to the borrower for the fees, costs, and charges
9 incurred in connection with obtaining or attempting to obtain the
10 residential mortgage loan, damages resulting from such violation,
11 interest on the damage from the date of the violation, and court
12 costs, including reasonable attorney's fees.

13 Sec. 26. Section 45-710, Revised Statutes Cumulative
14 Supplement, 2008, is amended to read:

15 ~~45-710~~ (1) The director may examine documents and records
16 maintained by a licensee, registrant, individual, or person subject
17 to the Residential Mortgage Licensing Act. The director may
18 investigate complaints about a licensee, registrant, individual,
19 or person subject to the act. The director may investigate reports
20 of alleged violations of the ~~Mortgage Bankers Registration and~~
21 ~~Licensing Act~~ act, any federal law governing residential mortgage
22 loans, or any rule, regulation, or order of the director under the
23 act. For purposes of investigating violations or complaints arising
24 under the act, or for the purposes of examination, the director may
25 review, investigate, or examine any licensee, individual, or person

1 subject to the act, as often as necessary in order to carry out the
2 purposes of the act.

3 (2) For purposes of any investigation, examination, or
4 proceeding, including, but not limited to, initial licensing,
5 license renewal, license suspension, license conditioning, or
6 license revocation, the director shall have the authority to
7 access, receive, and use any books, accounts, records, files,
8 documents, information, or evidence including, but not limited to:

9 (a) Criminal, civil, and administrative history
10 information;

11 (b) Personal history and experience information including
12 independent credit reports obtained from a consumer reporting
13 agency described in section 603(p) of the federal Fair Credit
14 Reporting Act, as the act existed on January 1, 2009; and

15 (c) Any other documents, information, or evidence the
16 director deems relevant to the inquiry or investigation regardless
17 of the location, possession, control, or custody of such documents,
18 information, or evidence.

19 (3) Each licensee, registrant, individual, or person
20 subject to the Residential Mortgage Licensing Act shall make
21 available to the director upon request the books, accounts,
22 records, files, or documents relating to the operations of such
23 licensee, individual, or person subject to the act. The director
24 shall have access to such books, accounts, records, files, and
25 documents and may interview the officers, principals, mortgage

1 loan originators, employees, independent contractors, agents, and
2 customers of the licensee, individual, or person subject to the
3 act, concerning their business.

4 (4) Each licensee, registrant, individual, or person
5 subject to the act shall make or compile reports or prepare other
6 information as instructed by the director in order to carry out the
7 purposes of this section including, but not limited to:

8 (a) Accounting compilations;

9 (b) Information lists and data concerning loan
10 transactions in a format prescribed by the director; or

11 (c) Such other information deemed necessary to carry out
12 the purposes of this section.

13 ~~(2)~~ (5) The director may send a notice of investigation
14 or inquiry request for information to a licensee. Upon receipt
15 by a licensee of the director's notice of investigation or
16 inquiry request for information, the licensee shall respond within
17 twenty-one calendar days. Each day beyond that time a licensee
18 fails to respond as required by this subsection shall constitute
19 a separate violation of the Mortgage Bankers Registration and
20 Licensing Act. act. This subsection shall not be construed to
21 require the director to send a notice of investigation to a
22 licensee or any person.

23 (6) For the purpose of any investigation, examination, or
24 proceeding under the act, the director or any officer designated
25 by him or her may administer oaths and affirmations, subpoena

1 witnesses and compel their attendance, take evidence, and require
2 the production of any books, papers, correspondence, memoranda,
3 agreements, or other documents or records which the director deems
4 relevant or material to the inquiry. If any person refuses to
5 comply with a subpoena issued under this section or to testify
6 with respect to any matter relevant to the proceeding, the district
7 court of Lancaster County may, on application of the director,
8 issue an order requiring the person to comply with the subpoena and
9 to testify. Failure to obey an order of the court to comply with
10 the subpoena may be punished by the court as civil contempt.

11 ~~(3)~~ (7) In conducting an examination or investigation
12 under this section, the director may rely on reports made by
13 the licensee which have been prepared within the preceding twelve
14 months for the following federal agencies or federally related
15 entities:

16 (a) The United States Department of Housing and Urban
17 Development;

18 (b) The Federal Housing Administration;

19 (c) The Federal National Mortgage Association;

20 (d) The Government National Mortgage Association;

21 (e) The Federal Home Loan Mortgage Corporation; or

22 (f) The United States Department of Veterans Affairs.

23 (8) In order to carry out the purposes of this section,
24 the director may:

25 (a) Enter into agreements or relationships with other

1 government officials or regulatory associations in order to improve
2 efficiencies and reduce the regulatory burden by sharing resources,
3 standardized or uniform methods or procedures, and documents,
4 records, information, or evidence obtained under this section;

5 (b) Use, hire, contract, or employ publicly or privately
6 available analytical systems, methods, or software to examine or
7 investigate the licensee, individual, or person subject to the act;

8 (c) Accept and rely on examination or investigation
9 reports made by other government officials, within or without this
10 state; or

11 (d) Accept audit reports made by an independent certified
12 public accountant for the licensee, individual, or person subject
13 to the act in the course of that part of the examination covering
14 the same general subject matter as the audit and may incorporate
15 the audit report in the report of the examination, report of
16 investigation, or other writing of the director.

17 ~~(4)~~ (9) If the director receives a complaint or other
18 information concerning noncompliance with the ~~Mortgage Bankers~~
19 ~~Registration and Licensing Act~~ act by an exempt person, the
20 director shall inform the agency having supervisory authority over
21 the exempt person of the complaint.

22 (10) No licensee, individual, or person subject to
23 investigation or examination under this section shall knowingly
24 withhold, abstract, remove, mutilate, destroy, or secrete any
25 books, records, computer records, or other information.

1 ~~(5)~~ (11) The total charge for an examination or
2 investigation shall be paid by the licensee as set forth in
3 sections 8-605 and 8-606.

4 ~~(6)~~ (12) Examination reports shall not be deemed public
5 records and may be withheld from the public pursuant to section
6 84-712.05.

7 ~~(7)~~ (13) Complaint files shall be deemed public records.

8 (14) The authority of this section shall remain in
9 effect, whether such a licensee, individual, or person subject to
10 the act acts or claims to act under any licensing or registration
11 law of this state or claims to act without such authority.

12 Sec. 27. Section 45-707, Revised Statutes Cumulative
13 Supplement, 2008, is amended to read:

14 ~~45-707~~ (1) The director may, following a hearing under
15 the Administrative Procedure Act and the rules and regulations
16 adopted and promulgated under the act, suspend or revoke any
17 license issued under the ~~Mortgage Bankers Registration and~~
18 Residential Mortgage Licensing Act. The director may also impose an
19 administrative fine for each separate violation of the act if the
20 director finds:

21 (a) The licensee has materially violated or demonstrated
22 a continuing pattern of violating the ~~Mortgage Bankers Registration~~
23 ~~and Licensing Act~~, act, rules and regulations adopted and
24 promulgated under the act, any order, including a cease and desist
25 order, issued under the act, or any other state or federal law

1 applicable to the conduct of its business;

2 (b) A fact or condition exists which, if it had existed
3 at the time of the original application for the license, would have
4 warranted the director to deny the application;

5 (c) The licensee has violated a voluntary consent or
6 compliance agreement which had been entered into with the director;

7 (d) The licensee has made or caused to be made, in any
8 document filed with the director or in any proceeding under the
9 ~~Mortgage Bankers Registration and Licensing Act~~, act, any statement
10 which was, at the time and in light of the circumstances under
11 which it was made, false or misleading in any material respect or
12 suppressed or withheld from the director any information which, if
13 submitted by the licensee, would have resulted in denial of the
14 license application;

15 (e) The licensee has refused to permit an examination
16 by the director of the licensee's books and affairs pursuant to
17 subsection (1) or (2) of section 45-710 26 of this act or has
18 refused or failed to comply with subsection ~~(2)~~ (5) of section
19 ~~45-710 26 of this act~~ after written notice of the violation by
20 the director. Each day the licensee continues in violation of
21 this subdivision after such written notice constitutes a separate
22 violation;

23 (f) The licensee has failed to maintain records as
24 required by subdivision (8) of section ~~45-711 22~~ of this act or
25 as otherwise required following written notice of the violation

1 by the director. Each day the licensee continues in violation of
2 this subdivision after such written notice constitutes a separate
3 violation;

4 (g) The licensee knowingly has employed any individual
5 or knowingly has maintained a contractual relationship with any
6 individual acting as an agent, if such individual has been
7 convicted of, pleaded guilty to, or was found guilty after a
8 plea of nolo contendere to (i) a misdemeanor under any state or
9 federal law which involves dishonesty or fraud or which involves
10 any aspect of the mortgage banking business, ~~financial~~ depository
11 institution business, or installment loan company business or (ii)
12 any felony under state or federal law;

13 (h) The licensee knowingly has employed any individual
14 or knowingly has maintained a contractual relationship with any
15 individual acting as an agent, if such individual, while previously
16 associated in any other capacity with another licensee, was the
17 subject of a complaint under the ~~Mortgage Bankers Registration and~~
18 ~~Licensing Act~~ act and the complaint was not resolved at the time
19 the individual became employed by, or began acting as an agent for,
20 the licensee and the licensee with reasonable diligence could have
21 discovered the existence of such complaint;

22 (i) The licensee knowingly has employed any individual
23 or knowingly has maintained a contractual relationship with any
24 individual acting as an agent, if such individual is conducting
25 activities requiring a mortgage loan originator license in this

1 state without first obtaining such license;

2 ~~(i)~~ (j) The licensee has violated the written
3 restrictions or conditions under which the license was issued;

4 ~~(j)~~ (k) The licensee, or if the licensee is a business
5 entity, one of the officers, directors, shareholders, partners,
6 and members, was convicted of, pleaded guilty to, or was found
7 guilty after a plea of nolo contendere to (i) a misdemeanor
8 under any state or federal law which involves dishonesty or fraud
9 or which involves any aspect of the mortgage banking business,
10 ~~financial~~ depository institution business, or installment loan
11 company business or (ii) any felony under state or federal law;

12 ~~(k)~~ (l) The licensee has had a similar license revoked in
13 any other jurisdiction; or

14 ~~(l)~~ (m) The licensee has failed to reasonably supervise
15 any officer, employee, or agent to assure his or her compliance
16 with the act or with any state or federal law applicable to the
17 mortgage banking business.

18 (2) Except as provided in this section, a license shall
19 not be revoked or suspended except after notice and a hearing in
20 accordance with the Administrative Procedure Act and the rules and
21 regulations adopted and promulgated under the act.

22 (3) A licensee may voluntarily surrender a license by
23 delivering to the director written notice of the surrender, but a
24 surrender shall not affect civil or criminal liability for acts
25 committed before the surrender or liability for any fines which may

1 be levied against the licensee or any of its officers, directors,
2 shareholders, partners, or members pursuant to section ~~45-717.01~~ 28
3 of this act for acts committed before the surrender.

4 (4) (a) If a licensee fails to (i) renew its license as
5 required by section 45-706 and does not voluntarily surrender the
6 license pursuant to this section or (ii) pay the required fee
7 for renewal of the license, the department may issue a notice of
8 expiration of the license to the licensee in lieu of revocation
9 proceedings.

10 (b) The director may adopt by regulation, rule, or
11 order procedures for the reinstatement of licenses for which a
12 notice of expiration was issued in accordance with subdivision
13 (a) of this subsection. Such procedures shall be consistent with
14 standards established by the Nationwide Mortgage Licensing System
15 and Registry. The fee for reinstatement shall be the same fee as
16 the fee for the initial license application.

17 ~~(b)~~ (c) If a licensee fails to maintain a surety bond
18 as required by section ~~45-709~~, 9 of this act, the department may
19 issue a notice of cancellation of the license in lieu of revocation
20 proceedings.

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

25 (6) Revocation, suspension, cancellation, or expiration

1 of a license shall not affect civil or criminal liability for
2 acts committed before the revocation, suspension, cancellation, or
3 expiration or liability for any fines which may be levied against
4 the licensee or any of its officers, directors, shareholders,
5 partners, or members pursuant to section ~~45-717.01~~ 28 of this act
6 for acts committed before the revocation, suspension, cancellation,
7 or expiration.

8 Sec. 28. Section 45-717.01, Revised Statutes Cumulative
9 Supplement, 2008, is amended to read:

10 ~~45-717.01~~ (1) The director may, following a hearing under
11 the Administrative Procedure Act and the rules and regulations
12 adopted and promulgated under the act, impose an administrative
13 fine against any officer, director, shareholder, partner, or member
14 of a licensee, if the director finds the licensee or any such
15 person participated in or had knowledge of any act prohibited
16 by sections ~~45-707, 45-711, and 45-714~~ 22, 25, and 27 of this
17 act or otherwise violated the ~~Mortgage Bankers Registration and~~
18 Residential Mortgage Licensing Act. Such administrative fine shall
19 be in addition to or separate from any fine imposed against a
20 licensee pursuant to section ~~45-707.~~ 27 of this act.

21 (2) If the director finds, after notice and hearing in
22 accordance with the Administrative Procedure Act and the rules and
23 regulations adopted and promulgated under the act, that any person
24 has knowingly committed any act prohibited by section ~~45-707~~ 27 of
25 this act or otherwise violated the ~~Mortgage Bankers Registration~~

1 ~~and~~ Residential Mortgage Licensing Act, the director may order such
2 person to pay (a) an administrative fine of not more than five
3 thousand dollars for each separate violation and (b) the costs of
4 investigation.

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

17 Sec. 29. Section 45-717, Revised Statutes Cumulative
18 Supplement, 2008, is amended to read:

19 ~~45-717~~ (1) The department may order any person to cease
20 and desist whenever the department determines that the person
21 has violated any provision of the ~~Mortgage Bankers Registration~~
22 ~~and~~ Residential Mortgage Licensing Act. Upon entry of a cease
23 and desist order, the director shall promptly notify the affected
24 person that such order has been entered, of the reasons for such
25 order, and that upon receipt, within fifteen business days after

1 the date of the order, of written request from the affected person
2 a hearing will be scheduled within thirty business days after the
3 date of receipt of the written request unless the parties consent
4 to a later date or the hearing officer sets a later date for good
5 cause. If a hearing is not requested and none is ordered by the
6 director, the order shall remain in effect until it is modified or
7 vacated.

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

12 (3) A person aggrieved by a cease and desist order of
13 the director may obtain judicial review of the order in the manner
14 prescribed in the Administrative Procedure Act and the rules and
15 regulations adopted and promulgated under the act. The director may
16 obtain an order from the district court of Lancaster County for the
17 enforcement of the cease and desist order.

18 (4) A person who violates a cease and desist order of
19 the director may, after notice and hearing and upon further order
20 of the director, be subject to a penalty of not more than five
21 thousand dollars for each act in violation of the cease and desist
22 order.

23 ~~(5) Nothing in the Mortgage Bankers Registration and~~
24 ~~Licensing Act shall limit any statutory or common-law right of any~~
25 ~~person to bring any action in any court for any act involved in the~~

1 mortgage banking business or the right of the state to punish any
2 person for any violation of law.

3 Sec. 30. Section 45-718, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 ~~45-718~~ In addition to any other remedy a licensee may
6 have, any licensee or any person considering himself or herself
7 aggrieved by any action of the department under the ~~Mortgage~~
8 ~~Bankers Registration and Residential Mortgage Licensing Act~~ may
9 appeal the action, and the appeal shall be in accordance with the
10 Administrative Procedure Act and the rules and regulations adopted
11 and promulgated under the act.

12 Sec. 31. Section 45-717.02, Revised Statutes Cumulative
13 Supplement, 2008, is amended to read:

14 ~~45-717.02 (1) For the purpose of any investigation or~~
15 ~~proceeding under the Mortgage Bankers Registration and Licensing~~
16 ~~Act, the director or any officer designated by him or her may~~
17 ~~administer oaths and affirmations, subpoena witnesses and compel~~
18 ~~their attendance, take evidence, and require the production of~~
19 ~~any books, papers, correspondence, memoranda, agreements, or other~~
20 ~~documents or records which the director deems relevant or material~~
21 ~~to the inquiry. If any person refuses to comply with a subpoena~~
22 ~~issued under this section or to testify with respect to any matter~~
23 ~~relevant to the proceeding, the district court of Lancaster County~~
24 ~~may, on application of the director, issue an order requiring the~~
25 ~~person to comply with the subpoena and to testify. Failure to obey~~

1 an order of the court to comply with the subpoena may be punished
2 by the court as civil contempt.

3 ~~(2)~~ (1) The director may request the Attorney General to
4 enforce the ~~Mortgage Bankers Registration~~ Residential Mortgage and
5 Licensing Act. A civil enforcement action by the Attorney General
6 may be filed in the district court of Lancaster County. A civil
7 enforcement action by the Attorney General may seek temporary and
8 permanent injunctive relief, restitution for a borrower aggrieved
9 by a violation of the act, and costs for the investigation and
10 prosecution of the enforcement action.

11 ~~(3)~~ (2) Except when expressly authorized, there shall
12 be no private cause of action for any violation of the ~~Mortgage~~
13 ~~Bankers Registration and Licensing Act.~~ act.

14 (3) Nothing in the act shall limit any statutory or
15 common-law right of any person to bring any action in any court for
16 any act involved in the mortgage banking business or the right of
17 the state to punish any person for any violation of law.

18 (4) Failure to comply with the ~~Mortgage Bankers~~
19 ~~Registration and Licensing Act~~ act shall not affect the validity or
20 enforceability of any residential mortgage loan. A person acquiring
21 a residential mortgage loan or an interest in a residential
22 mortgage loan is not required to ascertain the extent of compliance
23 with the act.

24 Sec. 32. Section 45-708, Revised Statutes Cumulative
25 Supplement, 2008, is amended to read:

1 ~~45-708~~ (1) Any person required to be licensed or
2 registered under the ~~Mortgage Bankers Registration and Residential~~
3 ~~Mortgage~~ Licensing Act who, without first obtaining a license or
4 registration under the act or while such license is on inactive
5 status or expired or has been suspended, revoked, or canceled, ~~or~~
6 ~~expired~~ by the director, engages in the business of or occupation
7 of, advertises or holds himself or herself out as, claims to be, or
8 temporarily acts as a mortgage banker or mortgage loan originator
9 in this state is guilty of a Class II misdemeanor.

10 (2) Any individual who has been convicted of, pleaded
11 guilty to, or been found guilty after a plea of nolo contendere
12 to (a) a misdemeanor under any state or federal law which involves
13 dishonesty or fraud or which involves any aspect of the mortgage
14 banking business, ~~financial~~ depository institution business, or
15 installment loan company business or (b) any felony under state
16 or federal law, and is employed by or maintains a contractual
17 relationship as an agent of, any person required to be licensed
18 or registered under the ~~Mortgage Bankers Registration and Licensing~~
19 ~~Act,~~ act, is guilty of a Class I misdemeanor.

20 Sec. 33. Section 45-723, Revised Statutes Cumulative
21 Supplement, 2008, is amended to read:

22 ~~45-723~~ (1) The department shall require mortgage bankers,
23 registrants, and mortgage loan originators to be licensed and
24 registered through the Nationwide Mortgage Licensing System and
25 Registry. In order to carry out this requirement, the department

1 is authorized to participate in the Nationwide Mortgage Licensing
2 System and Registry. For this purpose, the department may
3 establish, by adopting and promulgating rules and regulations
4 or by order, requirements, as necessary. The requirements may
5 include, but not be limited to: The department may require that a
6 mortgage banker supply all or part of the information that must
7 be provided to obtain a license pursuant to a multistate licensing
8 and application system data base consistent with, and in compliance
9 with, the Mortgage Bankers Registration and Licensing Act. Nothing
10 in this subsection shall authorize the director to require any
11 person exempt from licensure under the act or the employees or
12 agents of any such person to submit information to or participate
13 in the multistate licensing and application system.

14 (a) Background checks of mortgage bankers, registrants,
15 and mortgage loan originators:

16 (i) Criminal history through fingerprint or other data
17 bases;

18 (ii) Civil or administrative records;

19 (iii) Credit history; or

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

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

24 (c) Compliance with the prelicensure education and
25 testing and continuing education requirements as provided in the

1 Residential Mortgage Licensing Act;

2 (d) The setting or resetting, as necessary, of renewal
3 processing or reporting dates; and

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

7 (2) In order to fulfill the purposes of the act, the
8 department is authorized to establish relationships or contracts
9 with the Nationwide Mortgage Licensing System and Registry or other
10 entities designated by the Nationwide Mortgage Licensing System and
11 Registry to collect and maintain records and process transaction
12 fees or other fees related to licensees or other persons subject to
13 the act. The department may allow such system to collect licensing
14 fees on behalf of the department, and allow such system to collect
15 a processing fee for the services of the system directly from each
16 licensee or applicant for a license.

17 ~~(2) Except for the department, no person shall be~~
18 ~~authorized to obtain information from a multistate licensing and~~
19 ~~application system data base or initiate any civil action based~~
20 ~~on information obtained from such data base, if such information~~
21 ~~is not currently available to such person under section 8-112 or~~
22 ~~45-710.~~

23 (3) The director is required to regularly report
24 violations of the act, as well as enforcement actions and other
25 relevant information, to the Nationwide Mortgage Licensing System

1 and Registry subject to the provisions contained in section 34 of
2 this act.

3 (4) The director shall establish a process whereby
4 mortgage bankers, registrants, and mortgage loan originators
5 may challenge information entered into the Nationwide Mortgage
6 Licensing System and Registry by the director.

7 ~~(3)~~ (5) The department shall ensure that a multistate
8 licensing and application system the Nationwide Mortgage Licensing
9 System and Registry adopts a privacy, data security, and security
10 breach notification policy. The director shall make available upon
11 written request a copy of the contract between the department and a
12 multistate licensing and application system the Nationwide Mortgage
13 Licensing System and Registry pertaining to the breach of security
14 of the system provisions.

15 ~~(4)~~ (6) The department shall upon written request provide
16 the most recently available audited financial report of the
17 multistate licensing and application system. Nationwide Mortgage
18 Licensing System and Registry.

19 Sec. 34. In order to promote more effective regulation
20 and reduce the regulatory burden through supervisory information
21 sharing:

22 (1) Except as otherwise provided in this section, the
23 requirements under any federal or state law regarding the privacy
24 or confidentiality of any information or material provided to
25 the Nationwide Mortgage Licensing System and Registry, and any

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

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

17 (3) Information or material that is subject to a
18 privilege or confidentiality under subdivision (1) of this section
19 shall not be subject to:

20 (a) Disclosure under any federal or state law governing
21 the disclosure to the public of information held by an officer or
22 an agency of the federal government or the respective state; or

23 (b) Subpoena or discovery, or admission into evidence,
24 in any private civil action or administrative process, unless with
25 respect to any privilege held by the Nationwide Mortgage Licensing

1 System and Registry with respect to such information or material,
2 the person to whom such information or material pertains waives, in
3 whole or in part, in the discretion of such person, that privilege.

4 (4) Any state statute relating to the disclosure of
5 confidential supervisory information or any information or material
6 described in subdivision (1) of this section that is inconsistent
7 with such subdivision shall be superseded by the requirements of
8 this section.

9 (5) This section shall not apply with respect to the
10 information or material relating to the employment history of, and
11 publicly adjudicated disciplinary and enforcement actions against,
12 mortgage bankers and mortgage loan originators that is included in
13 the Nationwide Mortgage Licensing System and Registry for access by
14 the public.

15 Sec. 35. Section 45-715, Revised Statutes Cumulative
16 Supplement, 2008, is amended to read:

17 45-715 (1) The department shall be responsible for the
18 administration and enforcement of the ~~Mortgage Bankers Registration~~
19 ~~and Residential Mortgage Licensing Act.~~

20 (2) The department may adopt and promulgate such rules
21 and regulations as it may deem necessary in the administration of
22 the act and not inconsistent with the act. The department shall
23 make a good faith effort to provide a copy of the notice of hearing
24 as required by section 84-907 in a timely manner to all licensees.
25 Such notice may be sent electronically to licensees.

1 ~~(3) The department may participate in a multistate~~
2 ~~licensing and application system for mortgage lenders and mortgage~~
3 ~~bankers involving one or more states, the District of Columbia, or~~
4 ~~the Commonwealth of Puerto Rico. The system shall be established to~~
5 ~~facilitate the sharing of regulatory information and the licensing~~
6 ~~and application processes, by electronic or other means. The~~
7 ~~department may allow such system to collect licensing fees on~~
8 ~~behalf of the department, allow such system to collect a processing~~
9 ~~fee for the services of the system directly from each applicant for~~
10 ~~a license, and allow such system to process and maintain records on~~
11 ~~behalf of the department, including information collected pursuant~~
12 ~~to subsection (5) of section 45-705.~~

13 Sec. 36. Section 45-716, Revised Statutes Cumulative
14 Supplement, 2008, is amended to read:

15 ~~45-716~~ (1) All fees, charges, and costs collected by
16 the department pursuant to the Mortgage Bankers Registration and
17 Residential Mortgage Licensing Act shall be remitted to the State
18 Treasurer for credit to the Financial Institution Assessment Cash
19 Fund.

20 (2) All fines collected by the department pursuant to the
21 Mortgage Bankers Registration and Licensing Act shall be remitted
22 to the State Treasurer for credit to the permanent school fund.
23 The department shall remit fines collected under the Residential
24 Mortgage Licensing Act to the State Treasurer for distribution in
25 accordance with Article VII, section 5, of the Constitution of

1 Nebraska.

2 Sec. 37. Section 45-719, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 ~~45-719~~ The ~~Mortgage Bankers Registration and Residential~~
5 Mortgage Licensing Act shall be construed liberally so as to
6 effectuate its purposes.

7 Sec. 38. Section 45-720, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 ~~45-720~~ Application for a license as a mortgage banker, ~~or~~
10 for registration as a mortgage banker, ~~or mortgage banking business~~
11 for a license as a mortgage loan originator pursuant to the
12 ~~Mortgage Bankers Registration and Residential Mortgage Licensing~~
13 Act shall constitute sufficient contact with this state for the
14 exercise of personal jurisdiction in any action arising under the
15 act.

16 Sec. 39. Section 45-721, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 ~~45-721~~ Any residential mortgage loan made with respect
19 to real property located in this state shall be subject to the
20 ~~Mortgage Bankers Registration and Residential Mortgage Licensing~~
21 Act and all other applicable laws of this state, notwithstanding
22 the place of execution, either nominal or real, of such residential
23 mortgage loan.

24 Sec. 40. Section 45-1001, Revised Statutes Cumulative
25 Supplement, 2008, is amended to read:

1 45-1001 Sections 45-1001 to 45-1069 and sections 50 and
2 51 of this act shall be known and may be cited as the Nebraska
3 Installment Loan Act.

4 Sec. 41. Section 45-1002, Revised Statutes Cumulative
5 Supplement, 2008, is amended to read:

6 45-1002 (1) For purposes of the Nebraska Installment Loan
7 Act:

8 (a) Applicant means a person applying for a license under
9 the act;

10 **(b) Breach of security of the system means unauthorized**
11 **acquisition of data that compromises the security, confidentiality,**
12 **or integrity of the information maintained by the Nationwide**
13 **Mortgage Licensing System and Registry, its affiliates, or**
14 **subsidiaries;**

15 ~~(b)~~ (c) Department means the Department of Banking and
16 Finance;

17 ~~(e)~~ (d) Debt cancellation contract means a loan term
18 or contractual arrangement modifying loan terms under which a
19 financial institution agrees to cancel all or part of a borrower's
20 obligation to repay an extension of credit from the financial
21 institution upon the occurrence of a specified event. The debt
22 cancellation contract may be separate from or a part of other loan
23 documents. The term debt cancellation contract does not include
24 loan payment deferral arrangements in which the triggering event
25 is the borrower's unilateral election to defer repayment or the

1 financial institution's unilateral decision to allow a deferral of
2 repayment;

3 ~~(d)~~ (e) Debt suspension contract means a loan term
4 or contractual arrangement modifying loan terms under which a
5 financial institution agrees to suspend all or part of a borrower's
6 obligation to repay an extension of credit from the financial
7 institution upon the occurrence of a specified event. The debt
8 suspension contract may be separate from or a part of other loan
9 documents. The term debt suspension contract does not include loan
10 payment deferral arrangements in which the triggering event is the
11 borrower's unilateral election to defer repayment or the financial
12 institution's unilateral decision to allow a deferral of repayment;

13 ~~(e)~~ (f) Director means the Director of Banking and
14 Finance;

15 ~~(f)~~ (g) Financial institution has the same meaning as in
16 section 8-101;

17 ~~(g)~~ (h) Licensee means any person who obtains a license
18 under the act; and

19 (i) Mortgage loan originator means an individual who
20 for compensation or gain (i) takes a residential mortgage loan
21 application or (ii) offers or negotiates terms of a residential
22 mortgage loan. Mortgage loan originator does not include (A)
23 any individual who is not otherwise described in subdivision (i)
24 of this subdivision and who performs purely administrative or
25 clerical tasks on behalf of a person who is described in any

1 such clause, (B) a person or entity that only performs real
2 estate brokerage activities and is licensed or registered in
3 accordance with applicable state law, unless the person or entity
4 is compensated by a lender, a mortgage broker, or other mortgage
5 loan originator or by any agent of such lender, mortgage broker, or
6 other mortgage loan originator, or (C) a person or entity solely
7 involved in extensions of credit relating to time-share programs as
8 defined in section 76-1702;

9 (j) Nationwide Mortgage Licensing System and Registry
10 means a mortgage licensing system developed and maintained
11 by the Conference of State Bank Supervisors and the American
12 Association of Residential Mortgage Regulators for the licensing
13 and registration of mortgage loan originators, mortgage bankers,
14 and installment loan companies;

15 ~~(h)~~ (k) Person means individual, partnership, limited
16 liability company, association, financial institution, trust,
17 corporation, and any other legal entity; and-

18 (l) Real property means an owner-occupied single-family,
19 two-family, three-family, or four-family dwelling which is located
20 in this state, which is occupied, used, or intended to be occupied
21 or used for residential purposes, and which is, or is intended to
22 be, permanently affixed to the land.

23 (2) Except as provided in subsection (3) of section
24 45-1017, no revenue arising under the act shall inure to any
25 school fund of the State of Nebraska or any of its governmental

1 subdivisions.

2 (3) Loan, when used in the Nebraska Installment Loan Act,
3 does not include any loan made by a person who is not a licensee
4 on which the interest does not exceed the maximum rate permitted by
5 section 45-101.03.

6 (4) Nothing in the Nebraska Installment Loan Act applies
7 to any loan made by a person who is not a licensee if the interest
8 on the loan does not exceed the maximum rate permitted by section
9 45-101.03.

10 Sec. 42. Section 45-1007, Revised Statutes Cumulative
11 Supplement, 2008, is amended to read:

12 45-1007 (1) Except as otherwise provided in this section,
13 a license shall not be issued until the applicant gives to the
14 department a bond in the penal sum of fifty thousand dollars to
15 be executed by the applicant and a surety company authorized to
16 do business in the State of Nebraska, conditioned for the faithful
17 performance by the applicant, as a licensee, of the duties and
18 obligations pertaining to the business of lending money and the
19 prompt payment of any judgment recovered against the applicant, as
20 a licensee, under the Nebraska Installment Loan Act.

21 (2)(a) Except as provided in subsection (3) of this
22 section, a licensee who employs or enters into an independent agent
23 agreement with an individual required to obtain a mortgage loan
24 originator license pursuant to the Residential Mortgage Licensing
25 Act shall maintain the surety bond required by subsection (1)

1 of this section and a supplemental surety bond. The supplemental
 2 surety bond posted by such licensee shall cover all mortgage
 3 loan originators who are employees or independent agents of such
 4 licensee. The supplemental surety bond shall be for the use of the
 5 State of Nebraska and any Nebraska resident who may have claims or
 6 causes of action against such licensee arising from a transaction
 7 involving a residential mortgage loan, as that term is defined in
 8 section 45-702, or against an individual who is a mortgage loan
 9 originator employed by, or in an independent agent relationship
 10 with, the licensee. The initial amount of the supplemental surety
 11 bond shall be one hundred thousand dollars.

12 (b) Upon filing of the mortgage report of condition
 13 required by section 45-1018, a licensee shall maintain or increase
 14 its supplemental surety bond to reflect the total dollar amount
 15 of the closed residential mortgage loans originated in this state
 16 in the preceding year in accordance with the following table. A
 17 licensee may decrease its supplemental surety bond in accordance
 18 with the following table if the supplemental surety bond required
 19 is less than the amount of the supplemental surety bond on file
 20 with the department.

21 Dollar Amount of Closed

<u>Residential Mortgage Loans</u>	<u>Surety Bond Required</u>
23 <u>\$0.00 to \$5,000,000.00</u>	<u>\$100,000.00</u>
24 <u>\$5,000,000.01 to \$10,000,000.00</u>	<u>\$125,000.00</u>

1	<u>\$10,000,000.01 to \$25,000,000.00</u>	<u>\$150,000.00</u>
2	<u>Over \$25,000,000.00</u>	<u>\$200,000.00</u>

3 (3) (a) A person who has been issued multiple licenses
4 pursuant to section 45-1010 and who employs or enters into an
5 independent agent agreement with an individual required to obtain
6 a mortgage loan originator license pursuant to the Residential
7 Mortgage Licensing Act shall maintain a surety bond for each
8 license that he, she, or it holds as required in subsection (1)
9 of this section, and shall also post one supplemental surety
10 bond which shall cover all licenses held by such person. The
11 supplemental surety bond posted by such person shall cover all
12 mortgage loan originators who are employees or independent agents
13 of such person. The supplemental surety bond shall be for the use
14 of the State of Nebraska and any Nebraska resident who may have
15 claims or causes of action against such person, arising from a
16 transaction involving a residential mortgage loan or against an
17 individual who is a mortgage loan originator employed by, or in an
18 independent agent relationship with, the person. The amount of such
19 supplemental surety bond shall be as follows:

20 (i) The initial supplemental surety bond shall be in the
21 amount of one hundred thousand dollars; and

22 (ii) Upon filing of the mortgage report of condition
23 required by section 45-1018, the person's supplemental surety bond
24 shall be maintained in accordance with subdivision (2) (c) of this

1 section. For purposes of calculating the amount of the bond that is
2 required, the total dollar amount of the closed loans shall include
3 all residential mortgage loans in this state closed by the person;

4 (b) A person who holds both one or more installment
5 loan licenses pursuant to the Nebraska Installment Loan Act and a
6 mortgage banker license pursuant to the Residential Mortgage Loan
7 Act shall not be required to post and maintain a supplemental
8 surety bond if such person meets the following conditions:

9 (i) The person maintains a surety bond as provided in
10 subsection (1) of this section for each installment loan license
11 he, she, or it holds;

12 (ii) The person maintains a mortgage banker surety bond
13 as provided in section 9 of this act; and

14 (iii) The mortgage banker surety bond covers all
15 transactions involving residential mortgage loans including such
16 transactions done pursuant to the person's installment loan license
17 or licenses.

18 (4) Should the department determine that a licensee does
19 not maintain a supplemental surety bond in the amount required by
20 subsection (2) or (3) of this section, the department shall give
21 written notification to the licensee requiring him, her, or it to
22 increase the surety bond within thirty days to the amount required
23 by subsection (2) or (3) of this section.

24 ~~(2)~~ (5) The bond or a substitute bond required by
25 subsection (1) of this section shall remain in effect or the

1 licensee shall immediately cease making loans and the license shall
2 be canceled by the director.

3 Sec. 43. Section 45-1008, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 45-1008 Upon the filing of an application under the
6 Nebraska Installment Loan Act, the payment of the license fee, and
7 the approval of the required bond, the director shall investigate
8 the facts regarding the applicant. If the director finds that (1)
9 the experience, character, and general fitness of the applicant,
10 of the applicant's partners or members if the applicant is a
11 partnership, limited liability company, or association, and of
12 the applicant's officers and directors if the applicant is a
13 corporation, are such as to warrant belief that the applicant
14 will operate the business honestly, fairly, and efficiently within
15 the purposes of the act, and (2) allowing the applicant to
16 engage in business will promote the convenience and advantage
17 of the community in which the business of the applicant is to
18 be conducted, the department shall issue and deliver an original
19 license to the applicant to make loans at the location specified
20 in the application, in accordance with the act. The license shall
21 remain in full force and effect until the following March 1 and
22 from year to year thereafter, if and when renewed under the act,
23 until it is surrendered by the licensee or canceled, suspended, or
24 revoked under the act. Beginning January 1, 2010, initial licenses
25 shall remain in full force and effect until the next succeeding

1 December 31.

2 Sec. 44. Section 45-1013, Revised Statutes Cumulative
3 Supplement, 2008, is amended to read:

4 45-1013 (1) ~~For~~ Except as provided in subdivision (2) of
5 this section, for the annual renewal of an original license under
6 the Nebraska Installment Loan Act, the licensee shall file with
7 the department a fee of two hundred fifty dollars and a renewal
8 application containing such information as the director may require
9 to indicate any material change in the information contained in the
10 original application or succeeding renewal applications.

11 (2) Licenses which expire on March 1, 2010, shall be
12 renewed until December 31, 2010, upon compliance with subsection
13 (1) of this section. For such renewals, the department shall
14 prorate the fees provided in subsection (1) of this section using a
15 factor of ten-twelfths.

16 ~~(2)~~ (3) For the relocation of its place of business,
17 a licensee shall file with the department a fee of one hundred
18 fifty dollars and an application containing such information as the
19 director may require to determine whether the relocation should be
20 approved. Upon receipt of the fee and application, the director
21 shall publish a notice of the filing of the application in a
22 newspaper of general circulation in the county where the licensee
23 proposes to relocate. If the director receives any substantive
24 objection to the proposed relocation within fifteen days after
25 publication of such notice, he or she shall hold a hearing on the

1 application in accordance with the Administrative Procedure Act and
2 the rules and regulations adopted and promulgated under the act.

3 The expense of any publication required by this section shall be
4 paid by the applicant licensee.

5 Sec. 45. Section 45-1018, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 45-1018 A (1) Prior to December 31, 2010, a licensee
8 shall on or before March 1 of each year file with the department a
9 report of the licensee's earnings and operations for the preceding
10 calendar year, and its assets at the end of the year, and giving
11 such other relevant information as the department may reasonably
12 require. The report shall be made under oath and shall be in the
13 form and manner prescribed by the department.

14 (2) Effective on January 1, 2011, a licensee shall submit
15 a mortgage report of condition, including financial statements
16 which report the licensee's earnings, as required by section 11
17 of this act on or before a date or dates established by rule,
18 regulation, or order of the director.

19 Sec. 46. Section 45-1019, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 45-1019 ~~The director shall, upon ten days' notice to the~~
22 ~~licensee or other person stating the contemplated action and in~~
23 ~~general the grounds for the action, and upon reasonable opportunity~~
24 ~~to be heard, order any licensee or other person to cease and desist~~
25 ~~from any practice which the director finds is in violation of the~~

1 ~~Nebraska Installment Loan Act or the rules and regulations adopted~~
2 ~~and promulgated under the act.~~

3 (1) The department may order any person to cease and
4 desist whenever the department determines that the person has
5 violated any provision of the Nebraska Installment Loan Act. Upon
6 entry of a cease and desist order, the director shall promptly
7 notify the affected person that such order has been entered,
8 the reasons for such order, and that upon receipt within fifteen
9 business days after the date of the order of written request from
10 the affected person a hearing will be scheduled within thirty
11 business days after the date of receipt of the written request
12 unless the parties consent to a later date or the hearing officer
13 sets a later date for good cause. If a hearing is not requested and
14 none is ordered by the director, the order shall remain in effect
15 until it is modified or vacated.

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

20 (3) A person aggrieved by a cease and desist order of
21 the director may obtain judicial review of the order in the manner
22 prescribed in the Administrative Procedure Act and the rules and
23 regulations adopted and promulgated by the department under the
24 act. The director may obtain an order from the district court of
25 Lancaster County for the enforcement of the cease and desist order.

1 (4) A person who violates a cease and desist order
 2 of the director may, after notice and hearing and upon further
 3 order of the director, be subject to a penalty of not more than
 4 five thousand dollars for each act in violation of the cease and
 5 desist order. The department shall remit fines collected under this
 6 section to the State Treasurer for distribution in accordance with
 7 Article VII, section 5, of the Constitution of Nebraska.

8 Sec. 47. Section 45-1024, Revised Statutes Cumulative
 9 Supplement, 2008, is amended to read:

10 45-1024 (1) Except as provided in section 45-1025 and
 11 subsection (6) of this section, every licensee may make loans and
 12 may contract for and receive on such loans charges at a rate
 13 not exceeding twenty-four percent per annum on that part of the
 14 unpaid principal balance on any loan not in excess of one thousand
 15 dollars, and twenty-one percent per annum on any remainder of
 16 such unpaid principal balance. Except for loans secured by mobile
 17 homes, a licensee may not make loans for a period in excess of
 18 one hundred forty-five months if the amount of the loan is greater
 19 than three thousand dollars but less than twenty-five thousand
 20 dollars. Charges on loans made under the Nebraska Installment Loan
 21 Act shall not be paid, deducted, or received in advance. The
 22 contracting for, charging of, or receiving of charges as provided
 23 for in subsection (2) of this section shall not be deemed to be the
 24 payment, deduction, or receipt of such charges in advance.

25 (2) When the loan contract requires repayment in

1 substantially equal and consecutive monthly installments of
2 principal and charges combined, the licensee may, at the time
3 the loan is made, precompute the charges at the agreed rate on
4 scheduled unpaid principal balances according to the terms of the
5 contract and add such charges to the principal of the loan. Every
6 payment may be applied to the combined total of principal and
7 precomputed charges until the contract is fully paid. All payments
8 made on account of any loan except for default and deferment
9 charges shall be deemed to be applied to the unpaid installments in
10 the order in which they are due. The portion of the precomputed
11 charges applicable to any particular month of the contract, as
12 originally scheduled or following a deferment, shall be that
13 proportion of such precomputed charges, excluding any adjustment
14 made for a first installment period of more than one month and any
15 adjustment made for deferment, which the balance of the contract
16 scheduled to be outstanding during such month bears to the sum
17 of all monthly balances originally scheduled to be outstanding
18 by the contract. This section shall not limit or restrict the
19 manner of calculating charges, whether by way of add-on, single
20 annual rate, or otherwise, if the rate of charges does not exceed
21 that permitted by this section. Charges may be contracted for and
22 earned at a single annual rate, except that the total charges from
23 such rate shall not be greater than the total charges from the
24 several rates otherwise applicable to the different portions of the
25 unpaid balance according to subsection (1) of this section. All

1 loan contracts made pursuant to this subsection are subject to the
2 following adjustments:

3 (a) Notwithstanding the requirement for substantially
4 equal and consecutive monthly installments, the first installment
5 period may not exceed one month by more than twenty-one days and
6 may not fall short of one month by more than eleven days. The
7 charges for each day exceeding one month shall be one-thirtieth of
8 the charges which would be applicable to a first installment period
9 of one month. The charge for extra days in the first installment
10 period may be added to the first installment and such charges for
11 such extra days shall be excluded in computing any rebate;

12 (b) If prepayment in full by cash, a new loan, or
13 otherwise occurs before the first installment due date, the charges
14 shall be recomputed at the rate of charges contracted for in
15 accordance with subsection (1) or (2) of this section upon the
16 actual unpaid principal balances of the loan for the actual time
17 outstanding by applying the payment, or payments, first to charges
18 at the agreed rate and the remainder to the principal. The amount
19 of charges so computed shall be retained in lieu of all precomputed
20 charges;

21 (c) If a contract is prepaid in full by cash, a new loan,
22 or otherwise after the first installment due date, the borrower
23 shall receive a rebate of an amount which is not less than the
24 amount obtained by applying to the unpaid principal balances as
25 originally scheduled or, if deferred, as deferred, for the period

1 following prepayment, according to the actuarial method, the rate
2 of charge contracted for in accordance with subsection (1) or
3 (2) of this section. The licensee may round the rate of charge
4 to the nearest one-half of one percent if such procedure is not
5 consistently used to obtain a greater yield than would otherwise
6 be permitted. Any default and deferment charges which are due and
7 unpaid may be deducted from any rebate. No rebate shall be required
8 for any partial prepayment. No rebate of less than one dollar need
9 be made. Acceleration of the maturity of the contract shall not
10 in itself require a rebate. If judgment is obtained before the
11 final installment date, the contract balance shall be reduced by
12 the rebate which would be required for prepayment in full as of the
13 date judgment is obtained;

14 (d) If any installment on a precomputed or interest
15 bearing loan is unpaid in full for ten or more consecutive days,
16 Sundays and holidays included, after it is due, the licensee may
17 charge and collect a default charge not exceeding an amount equal
18 to five percent of such installment. If any installment payment
19 is made by a check, draft, or similar signed order which is not
20 honored because of insufficient funds, no account, or any other
21 reason except an error of a third party to the loan contract, the
22 licensee may charge and collect a fifteen-dollar bad check charge.
23 Such default or bad check charges may be collected when due or at
24 any time thereafter;

25 (e) If, as of an installment due date, the payment

1 date of all wholly unpaid installments is deferred one or more
2 full months and the maturity of the contract is extended for
3 a corresponding period, the licensee may charge and collect a
4 deferment charge not exceeding the charge applicable to the first
5 of the installments deferred, multiplied by the number of months
6 in the deferment period. The deferment period is that period
7 during which no payment is made or required by reason of such
8 deferment. The deferment charge may be collected at the time of
9 deferment or at any time thereafter. The portion of the precomputed
10 charges applicable to each deferred balance and installment period
11 following the deferment period shall remain the same as that
12 applicable to such balance and periods under the original loan
13 contract. No installment on which a default charge has been
14 collected, or on account of which any partial payment has been
15 made, shall be deferred or included in the computation of the
16 deferment charge unless such default charge or partial payment is
17 refunded to the borrower or credited to the deferment charge. Any
18 payment received at the time of deferment may be applied first
19 to the deferment charge and the remainder, if any, applied to the
20 unpaid balance of the contract, except that if such payment is
21 sufficient to pay, in addition to the appropriate deferment charge,
22 any installment which is in default and the applicable default
23 charge, it shall be first so applied and any such installment shall
24 not be deferred or subject to the deferment charge. If a loan is
25 prepaid in full during the deferment period, the borrower shall

1 receive, in addition to the required rebate, a rebate of that
2 portion of the deferment charge applicable to any unexpired full
3 month or months of such deferment period; and

4 (f) If two or more full installments are in default
5 for one full month or more at any installment date and if the
6 contract so provides, the licensee may reduce the contract balance
7 by the rebate which would be required for prepayment in full as
8 of such installment date and the amount remaining unpaid shall
9 be deemed to be the unpaid principal balance and thereafter in
10 lieu of charging, collecting, receiving, and applying charges as
11 provided in this subsection, charges may be charged, collected,
12 received, and applied at the agreed rate as otherwise provided by
13 this section until the loan is fully paid.

14 (3) The charges, as referred to in subsection (1) of
15 this section, shall not be compounded. The charging, collecting,
16 and receiving of charges as provided in subsection (2) of this
17 section shall not be deemed compounding. If part or all of the
18 consideration for a loan contract is the unpaid principal balance
19 of a prior loan, then the principal amount payable under such
20 loan contract may include any unpaid charges on the prior loan
21 which have accrued within sixty days before the making of such
22 loan contract and may include the balance remaining after giving
23 the rebate required by subsection (2) of this section. Except as
24 provided in subsection (2) of this section, charges shall (a) be
25 computed and paid only as a percentage per month of the unpaid

1 principal balance or portions thereof and (b) be computed on the
2 basis of the number of days actually elapsed. For purposes of
3 computing charges, whether at the maximum rate or less, a month
4 shall be that period of time from any date in a month to the
5 corresponding date in the next month but if there is no such
6 corresponding date then to the last day of the next month, and a
7 day shall be considered one-thirtieth of a month when computation
8 is made for a fraction of a month.

9 (4) Except as provided in subsections (5) and (6) of
10 this section, in addition to that provided for under the Nebraska
11 Installment Loan Act, no further or other amount whatsoever shall
12 be directly or indirectly charged, contracted for, or received.
13 If any amount, in excess of the charges permitted, is charged,
14 contracted for, or received, the loan contract shall not on
15 that account be void, but the licensee shall have no right to
16 collect or receive any interest or other charges whatsoever. If
17 such interest or other charges have been collected or contracted
18 for, the licensee shall refund to the borrower all interest
19 and other charges collected and shall not collect any interest
20 or other charges contracted for and thereafter due on the loan
21 involved, as liquidated damages, and the licensee or its assignee,
22 if found liable, shall pay the costs of any action relating
23 thereto, including reasonable attorney's fees. No licensee shall
24 be found liable under this subsection if the licensee shows
25 by a preponderance of the evidence that the violation was not

1 intentional and resulted from a bona fide error notwithstanding
2 the maintenance of procedures reasonably adopted to avoid any such
3 error.

4 (5) A borrower may be required to pay all reasonable
5 expenses incurred in connection with the making, closing,
6 disbursing, extending, readjusting, or renewing of loans. Such
7 expenses may include abstracting, recording, releasing, and
8 registration fees; premiums paid for nonfiling insurance; premiums
9 paid on insurance policies covering tangible personal property
10 securing the loan; amounts charged for a debt cancellation contract
11 or a debt suspension contract, as agreed upon by the parties,
12 if the debt cancellation contract or debt suspension contract is
13 a contract of a financial institution and such contract is sold
14 directly by such financial institution or by an unaffiliated,
15 nonexclusive agent of such financial institution in accordance
16 with 12 C.F.R. part 37, as such part existed on January 1, 2006,
17 and the financial institution is responsible for the unaffiliated,
18 nonexclusive agent's compliance with such part; title examinations;
19 credit reports; survey; and taxes or charges imposed upon or in
20 connection with the making and recording or releasing of any
21 mortgage. Except as provided in subsection (6) of this section,
22 a borrower may also be required to pay a nonrefundable loan
23 origination fee not to exceed the lesser of five hundred dollars
24 or an amount equal to seven percent of that part of the original
25 principal balance of any loan not in excess of two thousand dollars

1 and five percent on that part of the original principal balance
2 in excess of two thousand dollars, if the licensee has not made
3 another loan to the borrower within the previous twelve months.
4 If the licensee has made another loan to the borrower within the
5 previous twelve months, a nonrefundable loan origination fee may
6 only be charged on new funds advanced on each successive loan. Such
7 reasonable initial charges may be collected from the borrower or
8 included in the principal balance of the loan at the time the loan
9 is made and shall not be considered interest or a charge for the
10 use of the money loaned.

11 (6) (a) Loans secured solely by real property that are
12 not made pursuant to subdivision (11) of section 45-101.04 on real
13 property, ~~as that term is defined in section 45-702,~~ shall not
14 be subject to the limitations on the rate of interest provided
15 in subsection (1) of this section or the limitations on the
16 nonrefundable loan origination fee under subsection (5) of this
17 section if (i) the principal amount of the loan is seven thousand
18 five hundred dollars or more and (ii) the sum of the principal
19 amount of the loan and the balances of all other liens against the
20 property do not exceed one hundred percent of the appraised value
21 of the property. Acceptable methods of determining appraised value
22 shall be made by the department pursuant to rule, regulation, or
23 order.

24 (b) An origination fee on such loan shall be computed
25 only on the principal amount of the loan reduced by any portion

1 of the principal that consists of the amount required to pay off
2 another loan made under this subsection by the same licensee.

3 (c) A prepayment penalty on such loan shall be permitted
4 only if (i) the maximum amount of the penalty to be assessed is
5 stated in writing at the time the loan is made, (ii) the loan is
6 prepaid in full within two years from the date of the loan, and
7 (iii) the loan is prepaid with money other than the proceeds of
8 another loan made by the same licensee. Such prepayment penalty
9 shall not exceed six months interest on eighty percent of the
10 original principal balance computed at the agreed rate of interest
11 on the loan.

12 (d) A licensee making a loan pursuant to this subsection
13 may obtain an interest in any fixtures attached to such real
14 property and any insurance proceeds payable in connection with such
15 real property or the loan.

16 (e) For purposes of this subsection, principal amount
17 of the loan means the total sum owed by the borrower including,
18 but not limited to, insurance premiums, loan origination fees, or
19 any other amount that is financed, except that for purposes of
20 subdivision (6)(b) of this section, loan origination fees shall not
21 be included in calculating the principal amount of the loan.

22 Sec. 48. Section 45-1025, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 45-1025 (1) Licensees may charge, contract for, or
25 receive any amount or rate of interest permitted by section

1 45-101.03, 45-101.04, or 45-1024 upon any loan or upon any part
2 or all of any aggregate indebtedness of the same person. Except
3 as provided in subsection (2) of this section, the charging,
4 contracting for, or receiving of a rate of interest permitted by
5 section 45-101.04 does not exempt the licensee from compliance with
6 the Nebraska Installment Loan Act.

7 (2) (a) Loans made by a licensee pursuant to subdivision
8 (4) of section 45-101.04 are not subject to the Nebraska
9 Installment Loan Act if such loans are not made on real property,~~7~~
10 ~~as that term is defined in section 45-702.~~

11 (b) Loans made by a licensee pursuant to subdivision (11)
12 of section 45-101.04 on real property~~7~~ ~~as that term is defined~~
13 ~~in section 45-702,~~ are not subject to the Nebraska Installment
14 Loan Act. A licensee making such loans shall comply with and
15 be subject to the ~~Mortgage Bankers Registration and Residential~~
16 ~~Mortgage Licensing Act~~ with respect to such loans, except that the
17 licensee shall not be required to obtain a mortgage banker license
18 under the ~~Mortgage Bankers Registration and Residential Mortgage~~
19 ~~Licensing Act.~~

20 (c) Any mortgage loan originator who works as an employee
21 or independent agent of a licensee shall be required to obtain
22 a mortgage loan originator license and shall be subject to the
23 Residential Mortgage Licensing Act.

24 (3) Except as provided in subdivision (2) (a) of section
25 45-1024, no licensee shall enter into any loan contract under the

1 Nebraska Installment Loan Act under which the borrower agrees to
2 make any payment of principal more than thirty-six calendar months
3 from the date of making such contract when the principal balance
4 is not more than three thousand dollars. Every loan contract
5 precomputed pursuant to subsection (2) of section 45-1024 shall
6 provide for repayment of principal and charges in installments
7 which shall be payable at approximately equal periodic intervals of
8 time and so arranged that no installment is substantially greater
9 in amount than any preceding installment. When necessary in order
10 to facilitate payment in accordance with the borrower's principal
11 source of income or when the loan contract is not precomputed
12 pursuant to subsection (2) of section 45-1024, the payment schedule
13 may reduce or omit installment payments. Any loan contract made in
14 violation of this section, either knowingly or without the exercise
15 of due care to prevent the violation, shall not on that account
16 be void, but the licensee has no right to collect or receive any
17 interest or charges on such loan. If any interest or other charges
18 have been collected or contracted for, the licensee shall refund
19 to the borrower all interest and other charges collected and shall
20 not collect thereafter any interest or other charges contracted for
21 and thereafter due on the loan involved, as liquidated damages, and
22 the licensee or its assignee, if found liable, shall pay the costs
23 of any action relating thereto, including reasonable attorney's
24 fees. No licensee shall be found liable under this subsection if
25 the licensee shows by a preponderance of the evidence that the

1 violation was not intentional and resulted from a bona fide error
2 notwithstanding the maintenance of procedures reasonably adopted to
3 avoid any such error.

4 Sec. 49. Section 45-1033, Revised Statutes Cumulative
5 Supplement, 2008, is amended to read:

6 45-1033 (1) The director may, following a hearing under
7 the Administrative Procedure Act and the rules and regulations
8 adopted and promulgated by the department under the act, suspend or
9 revoke any license issued pursuant to the Nebraska Installment Loan
10 Act. The director may also impose an administrative fine on the
11 licensee for each separate violation of the act. The director may
12 take one or more of these actions if the director finds:

13 (a) The licensee has materially violated or demonstrated
14 a continuing pattern of violating the Nebraska Installment Loan Act
15 or rules and regulations adopted and promulgated under the act,
16 any order issued under the act, or any other state or federal law
17 applicable to the conduct of its business;

18 (b) A fact or condition exists which, if it had existed
19 at the time of the original application for the license, would have
20 warranted the director to deny the application;

21 (c) The licensee has violated a voluntary consent or
22 compliance agreement which had been entered into with the director;

23 (d) The licensee has knowingly provided or caused to be
24 provided to the director any false or fraudulent representation of
25 a material fact or any false or fraudulent financial statement or

1 suppressed or withheld from the director any information which, if
2 submitted by the licensee, would have resulted in denial of the
3 license application;

4 (e) The licensee has refused to permit an examination
5 by the director of the licensee's business, records, and accounts
6 pursuant to subsection (1) of section 45-1017 or refused or failed
7 to comply with subsection (2) of section 45-1017 or failed to make
8 any report required under section 45-1018. Each day the licensee
9 continues in violation of this subdivision constitutes a separate
10 violation;

11 (f) The licensee has failed to maintain records as
12 required by the director following written notice. Each day the
13 licensee continues in violation of this subdivision constitutes a
14 separate violation;

15 (g) The licensee knowingly has employed any individual
16 or knowingly has maintained a contractual relationship with any
17 individual acting as an agent, if such individual has been
18 convicted of, pleaded guilty to, or was found guilty after a
19 plea of nolo contendere to (i) a misdemeanor under any state or
20 federal law which involves dishonesty or fraud or which involves
21 any aspect of the mortgage banking business, financial institution
22 business, or installment loan business or (ii) any felony under
23 state or federal law;

24 (h) The licensee has violated the written restrictions or
25 conditions under which the license was issued; ~~ex~~

1 (i) The licensee, or if the licensee is a business
2 entity, one of the officers, directors, members, partners, or
3 controlling shareholders, was found guilty after a plea of nolo
4 contendere to (i) a misdemeanor under any state or federal law
5 which involves dishonesty or fraud or which involves any aspect of
6 the mortgage banking business, financial institution business, or
7 installment loan business or (ii) any felony under state or federal
8 law; or-

9 (j) The licensee knowingly has employed any individual
10 or knowingly has maintained a contractual relationship with any
11 individual acting as an agent, if such individual is conducting
12 activities requiring a mortgage loan originator license in this
13 state without first obtaining such license.

14 (2) Except as provided in this section, a license shall
15 not be revoked or suspended except after notice and a hearing in
16 accordance with the Administrative Procedure Act and the rules and
17 regulations adopted and promulgated by the department under the
18 act.

19 (3)(a) If a licensee fails to renew its license as
20 required by subsection (1) of section 45-1013 and does not
21 voluntarily surrender the license pursuant to section 45-1032,
22 the department may issue a notice of expiration of the license to
23 the licensee in lieu of revocation proceedings.

24 (b) If a licensee fails to maintain a surety bond as
25 required by section 45-1007, the department may issue a notice of

1 cancellation of the license in lieu of revocation proceedings.

2 (4) Revocation, suspension, cancellation, or expiration
3 of a license shall not impair or affect the obligation of a
4 preexisting lawful contract between the licensee and any person,
5 including a borrower.

6 (5) Revocation, suspension, cancellation, or expiration
7 of a license shall not affect civil or criminal liability for
8 acts committed before the revocation, suspension, cancellation, or
9 expiration or liability for any fines which may be imposed against
10 the licensee or any of its officers, directors, shareholders,
11 partners, or members pursuant to this section or section 45-1069
12 for acts committed before the surrender.

13 Sec. 50. (1) The department shall require licensees to be
14 licensed and registered through the Nationwide Mortgage Licensing
15 System and Registry. In order to carry out this requirement, the
16 department is authorized to participate in the Nationwide Mortgage
17 Licensing System and Registry. For this purpose, the department may
18 establish, by adopting and promulgating rules and regulations or by
19 order, requirements as necessary. The requirements may include, but
20 not be limited to:

21 (a) Background checks of mortgage bankers, registrants,
22 and mortgage loan originators:

23 (i) Criminal history through fingerprint or other data
24 bases;

25 (ii) Civil or administrative records;

1 (iii) Credit history; or
2 (iv) Any other information as deemed necessary by the
3 Nationwide Mortgage Licensing System and Registry;

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

6 (c) Compliance with prelicensure education and testing
7 and continuing education;

8 (d) The setting or resetting, as necessary, of renewal
9 processing or reporting dates; and

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

13 (2) In order to fulfill the purposes of the Nebraska
14 Installment Loan Act, the department is authorized to establish
15 relationships or contracts with the Nationwide Mortgage Licensing
16 System and Registry or other entities designated by the Nationwide
17 Mortgage Licensing System and Registry to collect and maintain
18 records and process transaction fees or other fees related to
19 licensees or other persons subject to the act. The department
20 may allow such system to collect licensing fees on behalf of the
21 department and allow such system to collect a processing fee for
22 the services of the system directly from each licensee or applicant
23 for a license.

24 (3) The director is required to regularly report
25 violations of the act pertaining to residential mortgage loans, as

1 defined in section 45-702, as well as enforcement actions and other
2 relevant information, to the Nationwide Mortgage Licensing System
3 and Registry subject to the provisions contained in section 51 of
4 this act.

5 (4) The director shall establish a process whereby
6 mortgage bankers, registrants, and mortgage loan originators
7 may challenge information entered into the Nationwide Mortgage
8 Licensing System and Registry by the director.

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

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

19 Sec. 51. In order to promote more effective regulation
20 and reduce the regulatory burden through supervisory information
21 sharing:

22 (1) Except as otherwise provided in this section, the
23 requirements under any federal or state law regarding the privacy
24 or confidentiality of any information or material provided to
25 the Nationwide Mortgage Licensing System and Registry, and any

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

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

17 (3) Information or material that is subject to a
18 privilege or confidentiality under subdivision (1) of this section
19 shall not be subject to:

20 (a) Disclosure under any federal or state law governing
21 the disclosure to the public of information held by an officer or
22 an agency of the federal government or the respective state; or

23 (b) Subpoena or discovery, or admission into evidence,
24 in any private civil action or administrative process, unless with
25 respect to any privilege held by the Nationwide Mortgage Licensing

1 System and Registry with respect to such information or material,
2 the person to whom such information or material pertains waives, in
3 whole or in part, in the discretion of such person, that privilege.

4 (4) Any state statute relating to the disclosure of
5 confidential supervisory information or any information or material
6 described in subdivision (1) of this section that is inconsistent
7 with such subdivision shall be superseded by the requirements of
8 this section.

9 (5) This section shall not apply with respect to the
10 information or material relating to the employment history of, and
11 publicly adjudicated disciplinary and enforcement actions against,
12 mortgage bankers and mortgage loan originators that is included in
13 the Nationwide Mortgage Licensing System and Registry for access by
14 the public.

15 Sec. 52. Section 76-2711, Revised Statutes Cumulative
16 Supplement, 2008, is amended to read:

17 76-2711 Homeowner means the owner of a residence in
18 foreclosure, including a vendee under a contract for deed to real
19 property as defined in ~~subdivision (15) of section 45-702.~~ 45-1002.

20 Sec. 53. Original sections 8-113, 8-702, 45-712, 45-713,
21 45-718, 45-719, 45-720, 45-721, 45-1008, 45-1018, 45-1019, and
22 45-1025, Reissue Revised Statutes of Nebraska, and sections
23 45-701, 45-702, 45-703, 45-704, 45-705, 45-706, 45-707, 45-708,
24 45-709, 45-710, 45-711, 45-714, 45-715, 45-716, 45-717, 45-717.01,
25 45-717.02, 45-722, 45-723, 45-1001, 45-1002, 45-1007, 45-1013,

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1 45-1024, 45-1033, and 76-2711, Revised Statutes Cumulative
2 Supplement, 2008, are repealed.

3 Sec. 54. Since an emergency exists, this act takes effect
4 when passed and approved according to law.