

**ONE HUNDRED SIXTH LEGISLATURE - SECOND SESSION - 2020**  
**COMMITTEE STATEMENT (CORRECTED)**  
**LB909**

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**Hearing Date:** Tuesday January 21, 2020  
**Committee On:** Banking, Commerce and Insurance  
**Introducer:** Williams  
**One Liner:** Change provisions relating to banking and finance

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**  
**Aye:** 8 Senators Gragert, Howard, Kolterman, La Grone, Lindstrom,  
McCollister, Quick, Williams  
**Nay:**  
**Absent:**  
**Present Not Voting:**

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**Oral Testimony:**

**Proponents:**

Senator Matt William  
Mark Quandahl  
Bob Hallstrom  
Brandon Luetkenhaus

**Representing:**

Introducer  
Department of Banking and Finance  
Nebraska Bankers Association  
NE Credit Union League

**Opponents:**

**Representing:**

**Neutral:**

**Representing:**

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**Summary of purpose and/or changes:**

LB 909, introduced at the request of the Nebraska Department of Banking and Finance (Department), amends a number of statutes under the jurisdiction of the Department. The bill provides, section by section, as follows:

Section 1 amends Section 8-103 of the Nebraska Banking Act to provide, within Subsection (3), that certain employees of the Department not involved in financial institution supervision may borrow from Nebraska state-chartered depository financial institutions.

Section 2 amends Section 8-135 of the Nebraska Banking Act, which authorizes minors to establish deposit accounts, to update a reference within Subsection (3) to the federal Electronic Fund Transfer Act as it existed on January 1, 2020 (currently January 1, 2019).

Section 3 amends Section 8-141 of the Nebraska Banking Act, which sets the lending limits for state-chartered banks, to update the definition of "unimpaired capital and surplus" within Subsection (6), to align with a revised federal rule implementing the Community Bank Leverage Ratio framework and to provide a reference date to the federal regulation relating to bank reports of condition.

Section 4 amends Section 8-143.01 of the Nebraska Banking Act, which governs loans to bank insiders, to provide a cross-referencing date of January 1, 2020, within Subsection (7)(b), to the statute existing reference to 12 CFR

215.4(a)(2), and to update a reference within Subsection (10) to 12 USC 84 and its implementing federal Regulation to such law and regulation as they existed on January 1, 2020 (currently January 1, 2019).

Section 5 amends Section 8-157.01 of the Nebraska Banking Act, which governs automated teller machines (ATMs) and electronic switches, to update a reference within Subsection (4) to the federal Electronic Fund Transfer Act as it existed on January 1, 2020 (currently January 1, 2019).

Section 6 amends Section 8-167 of the Nebraska Banking Act, which requires banks to file reports of condition with the Department, to repeal obsolete language related to the publication of these reports.

Section 7 amends Section 8-183.04 of the Nebraska Banking Act, which authorizes certain mutual savings associations to update a reference to 12 CFR 5.21 as such regulation existed on January 1, 2020 (currently January 1, 2019).

Section 8 amends Section 8-1,140 of the Nebraska Banking Act, which is the "wild-card" statute for state-chartered banks. This section is being amended to provide that state-chartered banks have the same rights, powers, privileges, and immunities as federally chartered banks doing business in Nebraska as of January 1, 2020 (currently January 1, 2019). Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually.

Section 9 amends Section 8-318, relating to customer accounts in building and loan associations, to update a reference within Subsection (1)(c) to the federal Electronic Fund Transfer Act as of January 1, 2020 (currently January 1, 2019).

Section 10 amends Section 8-355, which is the "wild-card" statute for state-chartered savings associations. This section is being amended to provide that state-chartered savings associations have the same rights, powers, privileges, and immunities as federally chartered savings associations doing business in Nebraska as of January 1, 2020 (currently January 1, 2019). Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually.

Section 11 amends Section 8-1101, which is the definitional section of the Securities Act of Nebraska. The amendments would update Subsection (14) to:

- Provide that references to the named federal Acts will be as the acts existed on January 1, 2020 (currently January 1, 2019), and
- Add the Interstate Land Sales Full Disclosure Act, which is currently referenced in Section 8-1111(5) of the Securities Act of Nebraska, to the list of named federal Acts in this subsection. This amendment, along with amendments in Sections 12, 13, and 14 of the bill, is intended to reduce the amount of paper necessary to update references to federal law, regulations, and standards on an annual basis.

Section 12 amends Section 8-1101.01 of the Securities Act of Nebraska to:

- Provide, within Subsection (1) that references to federal rules and regulations adopted under the Investment Advisors Act of 1940 and the Securities Act of 1933 will be as those rules and regulations existed on January 1, 2020 (currently January 1, 2019), and
- Add a reference within new Subsection (2) to the fair practice and ethical standards adopted by the Securities and Exchange Commission or the Financial Industry Regulatory Authority in effect on January 1, 2020. This language is currently included in Section 8-1103(9)(c) of the Act. This amendment, along with the amendments in Sections 11, 13, and 14 of the bill, is intended to reduce the amount of paper necessary to update references to federal law, regulations, and standards on an annual basis.

Section 13 amends Section 8-1103, which is the principal registration statute in the Securities Act of Nebraska for firms and individuals providing securities-related services and products, to revise a reference within Subsection (9)(c)(i) to the fair practice and ethical standards adopted by the Securities and Exchange Commission or the Financial Industry Regulatory Authority. The amendment will strike the effective date reference of January 1, 2019, as this reference is being moved to Subsection 2 of Section 8-1101.01 (Section 12 of the bill). This amendment, along with the

amendments in Sections 11, 12, and 14 of the bill, is intended to reduce the amount of paper necessary to update references to federal law, regulations, and standards on an annual basis.

Section 14 amends Section 8-1111, which provides for transactional exemptions from registration (securities, broker-dealer, agent) under the Securities Act of Nebraska, to revise a reference within Subsection (5) to the Interstate Land Sales Full Disclosure Act. The amendment will strike the effective date reference of January 1, 2019, as this reference is being moved to Subsection 2 of Section 8-1101 (Section 11 of the bill). This amendment, along with the amendments in Sections 11, 12, and 13 of the bill, is intended to reduce the amount of paper necessary to update references to federal law, regulations, and standards on an annual basis.

Section 15 amends Section 8-1704 of the Commodity Code, which defines the term "CFTC rule" to update a reference to rules, regulations, or orders of the Commodity Futures Trading Commission in effect on January 1, 2020 (currently January 1, 2019).

Section 16 amends Section 8-1707 of the Commodity Code, which defines the term "Commodity Exchange Act" to update a reference to the federal Commodity Exchange Act in effect on January 1, 2020 (currently January 1, 2019).

Section 17 amends Section 21-17,115 of the Nebraska Credit Union Act, which is the "wild-card" statute for state-chartered credit unions. This section is being amended to provide that state-chartered credit unions have the same rights, powers, privileges, and immunities as federally chartered credit unions doing business in Nebraska as of January 1, 2020 (currently January 1, 2019). Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually.

Section 18 amends Section 45-191.02 of the Loan Broker Act to provide that filing fees collected under the Act will be placed in the Securities Act Cash Fund rather than the Financial Institutions Assessment Cash Fund, as the Department's Securities Bureau administers these laws, and to align with the distribution of enforcement costs collected under Section 45-191.09.

Section 19 amends Section 45-191.09 of the Loan Broker Act, which provides investigation and enforcement authority to the Department for violations of the Loan Broker Act, to update Subsection (4)(a) by providing that fines collected by the Department are to be credited by the State Treasurer in accordance with Article VII, section 5, of the Nebraska Constitution.

Section 20 amends Section 45-1017 of the Nebraska Installment Loan Act, which provides examination and enforcement authority to the Department, to:

- Provide that examinations of licensees may be conducted as often as the Department Director deems necessary, rather than on an annual basis as currently required,
- Update language relating to "books and record" to clarify that the Department may conduct offsite examinations of licensees, and
- Provide that fines collected by the Department are to be credited by the State Treasurer in accordance with Article VII, section 5, of the Nebraska Constitution.

Section 21 amends Section 45-1033 of the Nebraska Installment Loan Act, which provides enforcement authority to the Department for violations of the Act, to mirror the amendment in Section 45-1017 relating to conducting offsite examinations.

Section 22 amends Section 59-1722 of the Seller-Assisted Marketing Plan Act, which provides limited exemptions to the Act for certain franchises, to update references to Federal Trade Commission disclosure rules for franchise offerings, and to remove an obsolete reference to guidelines of the North American Securities Administrators Association for such offerings.

Section 23 amends Section 59-1725.01 of the Seller-Assisted Marketing Plan Act, which provides enforcement authority

to the Department for violations of the Act, to update Subsection (4)(a) by providing that fines collected by the Department are to be credited by the State Treasurer in accordance with Article VII, section 5, of the Nebraska Constitution.

Section 24 amends Section 69-2103(4) of the Consumer Rental Purchase Agreement Act, which defines the term "consumer rental purchase agreement" to update references to federal definitions contained in 12 CFR 1026.2(a)(16), 15 USC 1602(h), and 12 CFR 1013.2, as such regulations and law existed on January 1, 2020 (currently January 1, 2019).

Section 25 amends Section 69-2104 of the Consumer Rental Purchase Agreement Act, which requires disclosures to consumers, to update references within Subsection (2) to the federal Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., as such Act existed on January 1, 2020 (currently January 1, 2019), and within Subsection (3) to the disclosure requirements of the federal Consumer Credit Protection Act, 15 U.S.C. 1667a, as such section existed on January 1, 2020 (currently January 1, 2019).

Section 26 amends Section 69-2112 of the Consumer Rental Purchase Agreement Act, which relates to advertisements for consumer rental purchase agreements, to update references within Subsection (4) to the federal Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., as such Act existed on January 1, 2020 (currently January 1, 2019).

Section 27 amends Section 4A-108 of the Uniform Commercial Code to update references within Subsections (a) and (b) to the federal Electronic Fund Transfer Act as it existed on January 1, 2020 (currently January 1, 2019).

Section 28 repeals the statutes amended.

Section 29 outright repeals Section 8-167.01 of the Nebraska Banking Act, which provides an exception to the requirement for publication of bank reports contained in Section 8-167 if a bank complies with 12 CFR part 350 as the regulation existed on January 1, 2019, for the reason that the Federal Deposit Insurance Corporation repealed 12 CFR part 350 effective April 1, 2019.

Section 30 provides for the emergency clause for all sections.

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### **Explanation of amendments:**

The committee amendments (AM2312) contain the original provisions of LB909 and also contain the provisions of six bills relating to banking and finance that were heard and advanced by the Banking, Commerce and Insurance Committee and, along with committee amendments, if any, made part of the committee amendments each on an 8-0 vote of the members of the Committee. Those six bills are as follows:

1. LB764 (Lindstrom)- Change investment provisions for fiduciaries  
(Sections 9 and 22 of AM2312)

This bill would amend Section 8-224.01 of the Nebraska Trust Company Act and Section 30-3205 of the fiduciary relationship statutes to permit a Nebraska trust company acting as a trustee or agent to invest fiduciary funds in private investment funds managed by an affiliate of the trust company. Amendments were recommended by the Department of Banking to tighten up the scope of the bill. They were adopted by the committee.

#### **Oral Testimony:**

Proponents:	Representing:
Senator Brett Lindstrom	Introducer
Mike App	Bridges Trust
Mark Quandahl	Nebraska Department of Banking and Finance

Opponents:	Representing:
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Neutral:

Representing:

Vote Results:

Aye:

Senators Gragert, Howard, Kolterman, LaGrone, Lindstrom, McCollister, Quick, Williams

Nay:

Absent:

Present Not Voting:

2. LB852 (Williams) - Change farm product lien provisions and actions relating to termination statements  
(Section 46 and 55 of AM2312)

This bill was introduced on behalf of the Secretary of State to amend two sections of statute which regard security interests.

Section 46 of AM2312 would amend section 52-1308 of the central filing system statutes to expand the definition of "farm product" to include "goats" and "hemp" for purposes of filing effective financing statements (EFSs).

Nebraska's central filing system was established in 1986 in response to the federal Food Security Act of 1985. Under the central filing system, when farm products are subjected to a security interest of a secured party (lender), the secured party may file an EFS with the Secretary of State. The EFS identifies the secured party, the debtor, and the farm products subject to the security interest. The Secretary of State compiles information off the EFS, into a master list. Buyers of farm products register with the Secretary of State to receive or obtain the master lists.

A buyer in the ordinary course of business buying farm products covered by an EFS takes free of a security interest on such products if the buyer secures a waiver or release of the security interest specified in the EFS from the secured party. Typically, if a buyer in the ordinary course of business buying farm products covered by the central filing system tenders to the seller the total purchase price by means of a check payable to such seller and a security interest holder of the seller identified in the central filing system for such products and if such security interest holder authorizes the negotiation of the check, the authorization or endorsement and payment of the check constitutes a waiver or release of the security interest to the extent of the amount of the check.

Adding goats and hemp to the definition of farm products provides specific assurance that these farm products are covered by the central filing system. The buyer knows that it does not risk paying twice - once to the seller and once to the lender. This will make credit more available.

Section 55 of AM2312 would amend Section 9-513A of the Uniform Commercial Code. This section, enacted in 2013, sets out procedures by which victims of unauthorized financing statement filings can obtain relief. A person who is improperly identified as a debtor on a financing statement can file an affidavit with the filing office (usually the Secretary of State) seeking filing by the filing office of a termination statement with regard to the financing statement. If the filing office files a termination statement, it shall send to each secured party of record identified in the financing statement a notice advising the secured party of record that the termination statement has been filed. A secured party of record may bring an action within twenty business days against the person who filed the affidavit seeking a determination as to whether the financing statement was filed by a person entitled to do so.

This section would provide that if the secured party of record timely files an action, the secured party of record shall send written notification to the Secretary of State of the filing of the action. If the secured party of record does not timely file an action, the Secretary of State may remove the filed financing statement from the searchable index.

Oral Testimony:

Proponents:

Representing:

Senator Matt Williams                      Introducer  
Colleen Byelick                            Nebraska Secretary of State  
Ryan McIntosh                              Nebraska Bankers Association

Opponents:                                 Representing:

Neutral:                                    Representing:

Vote Results:

Aye:

Senators Gragert, Howard, Kolterman, LaGrone, Lindstrom, McCollister, Quick, Williams

Nay:

Absent:

Present Not Voting:

3. LB853 (Williams) - Authorize financial institutions to place a hold on certain customer transactions in cases of financial exploitation  
(Sections 18 to 20 of AM2312)

This bill would enact three new sections. Section 20 of AM2312 would provide that when a financial institution, or an employee of a financial institution, reasonably believes, or has received information from the Department of Health and Human Services or a law enforcement agency demonstrating that is reasonable to believe, that financial exploitation of a vulnerable adult or senior adult may have occurred, may have been attempted, is occurring, or is being attempted, the financial institution may, but is not required to place a hold on certain customer transactions. A financial institution may notify any third party reasonably associated with a vulnerable adult or senior adult if the financial institution reasonably believes that financial exploitation of a vulnerable adult or senior adult may have occurred, may have been attempted, is occurring, or is being attempted. A financial institution may choose not to notify a third party if the financial institution reasonably believes the third party is, may be, or may have been engaged in the financial exploitation or if requested to refrain from making a notification by a law enforcement agency if such notification could interfere with a law enforcement investigation. Nothing in these provisions shall prevent a financial institution from notifying the Department of Health and Human Services or a law enforcement agency if the financial institution reasonably believes that the financial exploitation of a vulnerable adult or senior adult may have occurred, may have been attempted, or is occurring, or is being attempted. A financial financial institution and any employees, agents, officers, and directors shall be immune from civil, criminal, or administrative liability that may otherwise exist (a) for delaying or refusing to execute a transaction, withdrawal, or disbursement, or for not delaying or refusing to execute such transaction, withdrawal, or disbursement under this section, and (b) for actions taken in furtherance of determinations made under this section. Under the bill, a "senior adult" is a person 65 years of age or older and a "vulnerable adult" is a person 18 years of age or older who has a substantial mental or functional impairment or for whom a guardian or conservator has been appointed.

Oral Testimony:

Proponents:	Representing:
Senator Matt Williams	Introducer
George Howard	Five Points Bank of Hastings
Kent Franzen	Henderson State Bank
Mark Collins	Nebraska Attorney General
Theresa Heye	Nebraska Independent Community Bankers Association
Elizabeth Simpson	Home Instead, Inc
Brandon Luetkenhaus	Nebraska Credit Union League
Jina Ragland	AARP, Nebraska
Mark Quandahl	Nebraska Department of Banking and

Bob Hallstrom Finance  
Nebraska Bankers Association

Opponents: Representing:

Neutral: Representing:

Cameron Guenzel Nebraska Association of Trial  
Attorneys

Vote Results:

Aye:

Senators Gragert, Howard, Kolterman, LaGrone, Lindstrom, McCollister, Quick, Williams

Nay:

Absent:

Present Not Voting:

4. LB854 (Williams) - Change provisions under the Public Funds Deposit Security Act relating to secured deposits and pooled collateral  
(Sections 52-53 of AM2312)

This bill would amend sections 77-2398 and 77-23,100 of the Public Funds Deposit Security Act to make clarifying changes. Under this act, a depository financial institution subject to a requirement by law to secure the deposit of public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation may give security by (1) furnishing securities or (2) providing a deposit guaranty bond in satisfaction of the requirement.

The bill would amend the act to make a few changes in provisions regarding what is called the "single bank pooled method." These changes are as follows:

Section 52 of AM2312 would amend section 77-2398 to provide that a financial institution may not retain any deposit of public funds which is required to be secured unless, within ten days or such shorter period as has been agreed upon by the financial institution and the Director of Banking and Finance, it has secured the deposits for the benefit of the governmental units having funds with such financial institution.

Section 53 would amend section 77-23,100 to provide that the statements containing information relating to public funds and pledging requirements relate to "governmental units" rather than "custodial officials". Reports to be provided to governmental units by the administrator of the single bank pooled method for providing security are to be provided within 20 days after the "deadline" for receiving reporting statements from participating financial institutions. The requirements for reports to be "provided" to governmental units may be satisfied by posting the report on the administrator's website for access by participating governmental units if the governmental unit has agreed in advance to receive such report by accessing the administrator's web site.

This bill carries the emergency clause.

Oral Testimony:

Proponents: Representing:  
Senator Matt Williams Introducer  
Bob Hallstrom Nebraska Bankers Association

Opponents: Representing:

Neutral: Representing:

Vote Results:

Aye:

Senators Gragert, Howard, Kolterman, LaGrone, Lindstrom, McCollister, Quick, Williams

Nay:

Absent:

Present Not Voting:

5. LB908 (Williams) - Change provisions of the Delayed Deposit Services Licensing Act (Sections 35 to 43 of AM2312)

This bill would amend sections 45-901, 45-902, 45-905, 45-906, 45-910, 45-911, 45-912, and 45-915, of the Delayed Deposit Services Licensing Act and would enact a new section within the act to provide that, on and after January 1, 2021, licensees are required to be licensed and registered through the Nationwide Mortgage Licensing System and Registry (NMLS). DDS licensees are regulated by the Department of Banking and Finance.

The NMLS is a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage originators, mortgage bankers, installment loan companies, and other state-regulated financial services entities and industries.

The bill would authorize the department to participate in the NMLS to carry out the bill. For this purpose, the director may establish requirements which may include: background checks of applicants and licensees; the payment of fees to apply for or renew a license through the NMLS; the setting or resetting of renewal processing or reporting dates; and amending or surrendering a license.

The department may contract with the NMLS to collect and maintain records and process fees related to applicants, licensees, or other persons subject to the Delayed Deposit Services Licensing Act. The department may allow the NMLS to collect licensing fees on behalf of the department and may allow the NMLS to collect a processing fee for the services of the NMLS directly from each applicant or licensee.

The director may use the NMLS as a channeling agent for requesting information from and distributing information to the United States Department of Justice or other governmental agencies.

The bill would also apply to the requirements on licensees regarding designation or change of location of a principal place of business in Nebraska and also establishment or change of location of a branch office.

Oral Testimony:

Proponents:

Senator Matt Williams

Mark Quandahl

Representing:

Introducer

Nebraska Department of Banking and Finance

Opponents:

Representing:

Neutral:

Representing:

Vote Results:

Aye:

Senators Gragert, Howard, Kolterman, Lindstrom, McCollister, Quick, Williams



Nay:  
Absent:  
Present Not Voting:  
Senator LaGrone

6. LB939 (Williams) - Change provisions under the Collection Agency Act  
(Sections 25 to 44 of AM2312)

This bill would amend sections 45-601, 45-602, 45-605, 45-606, 45-609, 45-610, 45-611, 45-620, and 45-623 of the Collection Agency Act and would enact a new section within the act to provide that, effective October 1, 2020, the Collection Agency Licensing Board may require licensees under the act to be licensed and registered through the Nationwide Mortgage Licensing System and Registry (NMLS).

The NMLS is a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, installment loan companies, and other state-regulated financial services entities and industries.

The bill would authorize the board to participate in the NMLS to carry out the bill. For this purpose, the board may establish requirements which may include: any information deemed necessary by the NMLS; the payment of fees to apply for or renew a license and any processing fee; the setting or resetting of renewal processing or reporting dates; and amending or surrendering a license.

The board may contract with the NMLS to collect and maintain records and process fees related to licensees or other persons subject to the Collection Agency Act. The board may allow the NMLS to collect licensing fees on behalf of the board and allow the NMLS to collect a processing fee for the services of the NMLS directly from each licensee or applicant for a license.

Oral Testimony:

Proponents:	Representing:
Senator Matt Williams	Introducer
Colleen Byelick	Nebraska Secretary of State
David Wilson	Nebraska Secretary of State
Mark Quandahl	Nebraska Department of Banking and Finance
Julia Plucker	Nebraska Collectors Association

Neutral: Representing:

Vote Results:

Aye:  
Senators Gragert, Howard, Kolterman, Lindstrom, McCollister, Quick, Williams  
Nay:  
Absent:  
Present Not Voting:  
Senator LaGrone

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Matt Williams, Chairperson