

LEGISLATIVE BILL 649

Approved by the Governor May 25, 2021

Introduced by Flood, 19; Vargas, 7; Blood, 3; Lindstrom, 18.

A BILL FOR AN ACT relating to banking and finance; to amend section 8-115, Reissue Revised Statutes of Nebraska, sections 8-101.02, 8-101.03, 8-102, 8-113, 8-148.09, 8-1,140, 8-601, 8-602, 8-701, 8-702, 8-1120, and 8-2724, Revised Statutes Cumulative Supplement, 2020, and sections 1-201, 9-102, 9-301, 9-310, 9-312, 9-314, 9-331, and 9-406, Uniform Commercial Code, Reissue Revised Statutes of Nebraska; to adopt the Nebraska Financial Innovation Act; to authorize digital asset depository entities and provide for the charter, operation, supervision, and regulation of such entities; to transfer funds; to adopt Uniform Commercial Code provisions on controllable electronic records; to harmonize provisions; to provide operative dates; and to repeal the original sections.

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

Section 1. Sections 1 to 31 of this act shall be known and may be cited as the Nebraska Financial Innovation Act.

Sec. 2. The Legislature finds and declares that:

(1) Economic development initiatives demand buy-in and input from community stakeholders across multiple industries. The Legislature should send a strong message that Nebraska wants to bring high-tech jobs and digital asset operations to our state. Nebraska has an incredible opportunity to be a leader in this emerging technology;

(2) Nebraska desires to create an entrepreneurial ecosystem where young talent can be paired with private investors in order to create jobs, enhance our quality of life, and prevent the brain drain that is particularly acute in rural Nebraska. If Nebraska does not make intentional and meaningful changes to how it recruits and retains young people, Nebraska will be left behind;

(3) The rapid innovation of blockchain and digital ledger technology, including the growing use of virtual currency, digital assets, and other controllable electronic records has complicated the development of blockchain services and products in the marketplace;

(4) Blockchain innovators are able and willing to address banking compliance challenges such as federal customer identification, anti-money laundering, and beneficial ownership requirements to comply with regulators' concerns;

(5) Compliance with federal and state laws, including, but not limited to, know-your-customer and anti-money-laundering rules and the federal Bank Secrecy Act, is critical to ensuring the future growth and reputation of the blockchain and technology industries as a whole; and

(6) Authorizing digital asset depositories in Nebraska will provide a necessary and valuable service to blockchain innovators and customers, emphasize Nebraska's partnership with the technology and financial industry, safely grow this state's ever-evolving financial sector, and afford more opportunities for Nebraska residents.

Sec. 3. For purposes of the Nebraska Financial Innovation Act:

(1) Blockchain means a distributed digital record of controllable electronic record transactions;

(2) Centralized finance means centralized digital asset exchanges, businesses, or organizations with a valid physical address;

(3) Control has the following meaning:

(a) A person has control of a controllable electronic record if:

(i) The following conditions are met:

(A) The controllable electronic record or the system in which it is recorded, if any, gives the person:

(I) The power to derive substantially all the benefit from the controllable electronic record;

(II) Subject to subdivision (b) of this subdivision, the exclusive power to prevent others from deriving substantially all the benefit from the controllable electronic record; and

(III) Subject to subdivision (b) of this subdivision, the exclusive power to transfer control of the controllable electronic record to another person or cause another person to obtain control of a controllable electronic record that derives from the controllable electronic record; and

(B) The controllable electronic record, a record attached to or logically associated with the controllable electronic record, or the system in which the controllable electronic record is recorded, if any, enables the person to readily identify itself as having the powers specified in subdivision (a)(i) of this subdivision; or

(ii) Another person obtains control of the controllable electronic record on behalf of the person, or having previously obtained control of the controllable electronic record, acknowledges that it has control on behalf of the person.

(b) A power specified in subdivisions (3)(a)(i)(A)(II) or (III) of this section can be exclusive, even if:

(i) The controllable electronic record or the system in which it is recorded, if any, limits the use to which the controllable electronic record may be put or has protocols that are programmed to result in a transfer of control; and

(ii) The person has agreed to share the power with another person.

(c) For the purposes of subdivision (3)(a)(i)(B) of this section, a person may be identified in any way, including by name, identifying number, cryptographic key, office, or account number;

(4) Controllable electronic borrowing means the act of receiving digital assets or the use of digital assets from a lender in exchange for the payment to the lender of digital assets, interest, fees, or rewards;

(5) Controllable electronic record means an electronic record that can be subjected to control. The term has the same meaning as digital asset and does not include electronic chattel paper, electronic documents, investment property, and transferable records under the Uniform Electronic Transactions Act;

(6) Controllable electronic record exchange means a business that allows customers to purchase, sell, convert, send, receive, or trade digital assets for other digital assets;

(7) Controllable electronic record lending means the act of providing digital assets to a borrower in exchange for digital assets, interest, fees, or rewards;

(8) Controllable electronic records staking means the act of pledging a digital asset or token with an expectation of gaining digital assets, interest, fees, or other rewards on such act;

(9) Customer means a digital asset depositor or digital asset account holder;

(10) Decentralized finance means digital asset exchanges, businesses, or organizations operating independently on blockchains;

(11) Department means the Department of Banking and Finance;

(12) Digital asset depository means a financial institution that securely holds liquid assets when such assets are in the form of controllable electronic records, either as a corporation organized, chartered, and operated pursuant to the Nebraska Financial Innovation Act as a digital asset depository institution or a financial institution operating a digital asset depository business as a digital asset depository department under a grant of authority by the director;

(13) Digital asset depository department means a financial institution operating a digital asset depository business as a digital asset depository department under a grant of authority by the director;

(14) Digital asset depository institution means a corporation operating a digital asset depository business organized and chartered pursuant to the Nebraska Financial Innovation Act;

(15) Director means the Director of Banking and Finance;

(16) Financial institution means a bank, savings bank, building and loan association, savings and loan association, whether chartered by the United States, the department, or a foreign state agency; or a trust company;

(17) Fork means a change to the protocol of a blockchain network;

(18) Independent node verification network means a shared electronic data base where copies of the same information are stored on multiple computers; and

(19) Stablecoin means a cryptocurrency designed to have a stable value that is backed by a reserve asset.

Sec. 4. The director shall have the power to issue to corporations desiring to transact business as a digital asset depository institution charters of authority to transact digital asset depository business as defined in the Nebraska Financial Innovation Act. The director shall have general supervision and control over such digital asset depositories.

Sec. 5. (1)(a) A digital asset depository may:

(i) Make contracts as a corporation under Nebraska law;

(ii) Sue and be sued;

(iii) Receive notes as permitted by federal law;

(iv) Carry on a nonlending digital asset banking business for customers, consistent with subdivision (2)(b) of this section;

(v) Provide payment services upon the request of a customer; and

(vi) Make an application to become a member bank of the federal reserve system.

(b) A digital asset depository shall maintain its main office and the primary office of its chief executive officer in Nebraska.

(c) As otherwise authorized by this section, a digital asset depository may conduct business with customers outside this state.

(2)(a) A digital asset depository institution, consistent with the Nebraska Financial Innovation Act, shall be organized as a corporation under the Nebraska Model Business Corporation Act to exercise the powers set forth in subsection (1) of this section.

(b) A digital asset depository institution shall not accept demand deposits of United States currency or United States currency that may be accessed or withdrawn by check or similar means for payment to third parties and except as otherwise provided in this subsection, a digital asset depository institution shall not make any consumer loans for personal, property or household purposes, mortgage loans, or commercial loans of any fiat currency including, but not limited to, United States currency, including the provision of temporary credit relating to overdrafts. Notwithstanding this prohibition against fiat currency lending by a digital asset depository institution, a digital asset depository institution may facilitate the provision of digital

asset business services resulting from the interaction of customers with centralized finance or decentralized finance platforms including, but not limited to, controllable electronic record exchange, staking, controllable electronic record lending, and controllable electronic record borrowing. A digital asset depository institution may purchase debt obligations specified by subdivision (2)(c) of section 9 of this act.

(c) Subject to the laws of the host state, a digital asset depository institution may open a branch in another state in the manner set forth in section 8-157 or 8-2303. A digital asset depository institution, including any branch of the digital asset depository institution, may only accept digital asset deposits or provide other digital asset business services under the Nebraska Financial Innovation Act to individual customers or a customer that is a legal entity other than a natural person engaged in a bona fide business which is lawful under the laws of Nebraska, the laws of the host state if the entity is headquartered in another state, and federal law.

(3) The deposit limitations of subdivision (2)(a)(ii) of section 8-157 shall not apply to a digital asset depository.

(4) Any United States currency coming into an account established by a customer of a digital asset depository institution shall be held in a financial institution, the deposits of which are insured by the Federal Deposit Insurance Corporation, which maintained a main-chartered office in this state, any branch thereof in this state, or any branch of the financial institution which maintained the main-chartered office in this state prior to becoming a branch of such financial institution.

(5) A digital asset depository institution shall establish and maintain programs for compliance with the federal Bank Secrecy Act, in accordance with 12 C.F.R. 208.63, as the act and rule existed on January 1, 2021.

(6) A digital asset depository shall help meet the digital financial needs of the communities in which it operates, consistent with safe and sound operations, and shall maintain and update a public file and on any Internet web site it maintains containing specific information about its efforts to meet community needs, including:

(a) The collection and reporting of data;

(b) Its policies and procedures for accepting and responding to consumer complaints; and

(c) Its efforts to assist with financial literacy or personal finance programs to increase knowledge and skills of Nebraska students in areas such as budgeting, credit, checking and savings accounts, loans, stocks, and insurance.

Sec. 6. A digital asset depository institution shall be subject to the Interstate Branching and Merger Act, the Nebraska Bank Holding Company Act of 1995, and Chapter 8, articles 6, 8, 13, 14, 15, 16, 19, 20, 25, 26, and 29 unless otherwise limited or excluded or the context otherwise requires.

Sec. 7. (1) No customer shall open or maintain an account with a digital asset depository or otherwise receive any services from the digital asset depository unless the customer meets the criteria of this subsection. A customer shall:

(a) Make sufficient evidence available to the digital asset depository to enable compliance with anti-money laundering, customer identification, and beneficial ownership requirements, as determined by the federal Bank Secrecy Act guidance and the policies and practices of the institution; and

(b) If the customer is a legal entity other than a natural person:

(i) Be in good standing with the jurisdiction in the United States in which it is incorporated or organized; and

(ii) Be engaged in a business that is lawful and bona fide in Nebraska, in the host state, if applicable, and under federal law consistent with subsection (3) of this section.

(2) A customer which meets the criteria of subsection (1) of this section may be issued a digital asset depository account and otherwise receive services from the digital asset depository, contingent on the availability of sufficient insurance under subsection (5) of section 23 of this act.

(3) Consistent with subdivisions (1)(a)(iv) and (v) of section 5 of this act, and in addition to any requirements specified by federal law, a digital asset depository shall require that any potential customer that is a legal entity other than a natural person provide reasonable evidence that the entity is engaged in a business that is lawful and bona fide in Nebraska, in the host state, and under federal law or is likely to open a lawful, bona fide business within a federal Bank Secrecy Act compliant time frame, as the act existed on January 1, 2021. For purposes of this subsection, reasonable evidence includes business entity filings, articles of incorporation or organization, bylaws, operating agreements, business plans, promotional materials, financing agreements, or other evidence.

Sec. 8. The terms and conditions of a customer's digital asset depository account at a digital asset depository shall be disclosed at the time the customer contracts for a digital asset business service. Such disclosure shall be full and complete, contain no material misrepresentations, be in readily understandable language, and shall include, as appropriate and to the extent applicable:

(1) A schedule of fees and charges the digital asset depository may assess, the manner by which fees and charges will be calculated if they are not set in advance and disclosed, and the timing of the fees and charges;

(2) A statement that the customer's digital asset depository account is not protected by the Federal Deposit Insurance Corporation;

(3) A statement whether there is support for forked networks of each

digital asset;

(4) A statement that investment in digital assets is volatile and subject to market loss;

(5) A statement that investment in digital assets may result in total loss of value;

(6) A statement that legal, legislative, and regulatory changes may impair the value of digital assets;

(7) A statement that customers should perform research before investing in digital assets;

(8) A statement that transfers of digital assets are irrevocable, if applicable;

(9) A statement how liability for an unauthorized, mistaken, or accidental transfer shall be apportioned;

(10) A statement that digital assets are not legal tender in any jurisdiction;

(11) A statement that digital assets may be subject to cyber theft or theft and become unrecoverable;

(12) A statement about who maintains control, ownership, and access to any private key related to a digital assets customer's digital asset account; and

(13) A statement that losing private key information may result in permanent total loss of access to digital assets.

Sec. 9. (1) At all times, a digital asset depository shall maintain unencumbered liquid assets denominated in United States dollars valued at not less than one hundred percent of the digital assets in custody.

(2) For purposes of this section, liquid assets means:

(a) United States currency held on the premises of the digital asset depository that is not a digital asset depository institution;

(b) United States currency held for the digital asset depository by a federal reserve bank or a Federal Deposit Insurance Corporation-insured financial institution which has a main-chartered office in this state, any branch thereof in this state, or any branch of the financial institution which maintained a main-chartered office in this state prior to becoming a branch of such financial institution; or

(c) Investments which are highly liquid and obligations of the United States treasury or other federal agency obligations, consistent with rules and regulations or order adopted by the director.

Sec. 10. A digital asset depository shall comply with all state and federal laws, including, but not limited to, those relating to anti-money laundering, customer identification, and beneficial ownership.

Sec. 11. (1) With respect to all digital asset business activities, a digital asset depository shall display and include in all advertising, in all marketing materials, on any Internet web site it maintains, and at each window or place where it accepts digital asset deposits, (a) a notice conspicuously stating that digital asset deposits and digital asset accounts are not insured by the Federal Deposit Insurance Corporation, if applicable, and (b) the following conspicuous statement: Holdings of digital assets are speculative and involve a substantial degree of risk, including the risk of complete loss. There is no assurance that any digital asset will be viable, liquid, or solvent. Nothing in this communication is intended to imply that any digital asset held in custody by a digital asset depository is low-risk or risk-free. Digital assets held in custody are not guaranteed by a digital asset depository and are not FDIC insured.

(2) Upon opening a digital asset depository account, and if applicable, a digital asset depository shall require each customer to execute a statement acknowledging that all digital asset deposits at the digital asset depository are not insured by the Federal Deposit Insurance Corporation. The digital asset depository shall permanently retain this acknowledgment, whether in electronic form or as a signature card.

Sec. 12. (1) Except as otherwise provided by subsection (5) of this section, five or more adult persons, including at least one Nebraska resident, may form a digital asset depository institution. The incorporators shall subscribe the articles of incorporation and transmit them to the director as part of an application for a charter under section 15 of this act.

(2) The articles of incorporation shall include the following information:

(a) The corporate name;

(b) The object for which the corporation is organized;

(c) The term of its existence, which may be perpetual;

(d) The place in Nebraska where its main office shall be physically located and its operations conducted;

(e) The amount of capital stock and the number of shares;

(f) The name and residence of each shareholder subscribing to more than ten percent of the stock and the number of shares owned by that shareholder;

(g) The number of directors and the names of those who shall manage the affairs of the corporation for the first year; and

(h) A statement that the articles of incorporation are made to enable the incorporators to avail themselves of the advantages of the laws of the state.

(3) Copies of all amended articles of incorporation shall be filed in the same manner as the original articles of incorporation.

(4) The incorporators shall solicit capital prior to filing an application for a charter with the director, consistent with section 13 of this act. In the event an application for a charter is not filed or is denied by the director, all capital shall be promptly returned without loss.

(5) Subject to federal and state law, a bank holding company may apply to

hold a digital asset depository.

Sec. 13. (1) The capital stock of each digital asset depository institution chartered under the Nebraska Financial Innovation Act shall be subscribed for as paid-up stock. No digital asset depository institution shall be chartered with capital stock of less than ten million dollars.

(2) No digital asset depository institution shall commence business until the full amount of its authorized capital is subscribed and all capital stock is fully paid in. No digital asset depository institution may be chartered without a paid-up surplus fund of at least three years of estimated operating expenses in the amount disclosed pursuant to subsection (2) of section 15 of this act or in another amount required by the director.

(3) A digital asset depository institution may acquire additional capital prior to the granting of a charter and shall report this capital in its charter application.

Sec. 14. (1) Any financial institution, having adopted or amended its articles of incorporation to authorize the conduct of a digital asset depository business may be further chartered by the director to transact a digital asset depository business in a digital asset depository department in connection with such financial institution.

(2) The director has the authority to issue to financial institutions amendments to their charters of authority to transact digital asset depository business and has general supervision and control over such digital asset depository departments of financial institutions.

(3) The director, before granting to any financial institution the right to operate a digital asset depository department, shall require such financial institution to make an application for amendment of its charter, setting forth such information as the director may require.

(4) A digital asset depository department of a financial institution when chartered under subsection (1) of this section shall be separate and apart from every other department of the financial institution and shall have all of the powers, duties, and obligations of a digital asset depository institution as set forth in the Nebraska Financial Innovation Act.

(5) Any financial institution authorized to transact a digital asset depository business in a digital asset depository department pursuant to subsection (1) of this section may conduct such digital asset depository business at the office of any financial institution which is a subsidiary of the same bank holding company as the authorized financial institution.

(6) A financial institution may deposit or have on deposit funds of an account controlled by the financial institution's digital asset depository department unless prohibited by applicable law.

Sec. 15. (1) No corporation shall act as a digital asset depository without first obtaining authority or a charter to operate from the director under the Nebraska Financial Innovation Act.

(2) The incorporators under section 12 of this act shall apply to the director for a charter. The application shall contain the digital asset depository institution's articles of incorporation, a detailed business plan, a comprehensive estimate of operating expenses for the first three years of operation, a complete proposal for compliance with the provisions of the Nebraska Financial Innovation Act, evidence of the capital required under section 13 of this act, and any investors or owners holding ten percent or more equity in the digital asset depository institution. The director may prescribe the form of application.

(3) A financial institution may apply to the director for authority to operate a digital asset depository business as a department. The application shall contain a detailed business plan, a comprehensive estimate of operating expenses for the first three years of operation, and a complete proposal for compliance with the provisions of the Nebraska Financial Innovation Act. The director may prescribe the form of application.

(4) Each application for a charter or authority shall be accompanied by an application fee of fifty thousand dollars.

Sec. 16. (1) After a substantially complete application for digital asset depository authority or a digital asset depository institution charter has been submitted, the director shall notify the applicants in writing within thirty calendar days of any deficiency in the required information or that the application has been accepted for filing. When the director is satisfied that all required information has been furnished, the director shall establish a time and place for a public hearing which shall be conducted not less than sixty days, nor more than one hundred twenty days, after notice from the director to the applicants that the application is in order.

(2) Within thirty days after receipt of notice of the time and place of the public hearing, the department shall cause notice of filing of the application and the hearing to be published at the applicants' expense in a newspaper of general circulation within the county where the proposed digital asset depository is to be located. Publication shall be made at least once a week for three consecutive weeks before the hearing, stating the proposed location of the digital asset depository, the names of the applicants for a charter, the nature of the activities to be conducted by the proposed digital asset depository, and other information required by rule and regulation. The director shall electronically send notice of the hearing to state and national banks, federal savings and loan associations, state and federal credit unions, and other financial institutions in the state, federal agencies, and financial industry trade groups.

Sec. 17. The hearing for a charter application or for authority to

operate a digital asset depository shall be conducted under the Administrative Procedure Act and shall comply with the requirements of the act.

Sec. 18. Upon receiving the application for a charter to become a digital asset depository institution, or for authority to operate a digital asset depository department, the applicable fee, and other information required by the director, the director shall make a careful investigation and examination of the following:

(1) The character, reputation, criminal record, financial standing, and ability of the shareholders owning ten percent or more equity in the applicant;

(2) The character, financial responsibility, criminal background, banking or other financial experience, and business qualifications of those proposed as officers and directors;

(3) Whether the applicant or any of its officers, directors, or shareholders owning ten percent or more equity in the applicant have ever been convicted of any (i) misdemeanor involving any aspect of a digital asset depository business or any business of a similar nature or (ii) felony;

(4) Whether the applicant or any of its officers, directors, or shareholders owning ten percent or more equity in the applicant have ever been permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of a digital asset depository business or any business of a similar nature;

(5) A criminal history record information check of the applicant, its officers, directors, and shareholders owning ten percent or more equity in the applicant. The direct cost of the criminal history record information check shall be paid by the applicant; and

(6) The application for a charter, or for authority to operate a digital asset depository, including the adequacy and plausibility of the business plan of the digital asset depository, the benefits to the customers, and whether the applicant has offered a complete proposal for compliance with the Nebraska Financial Innovation Act.

Sec. 19. (1) Within ninety days after receipt of the transcript of the public hearing, the director shall render a decision on the application based on the following criteria and requirements:

(a) Whether the character, reputation, criminal record, financial standing, and ability of the shareholders owning ten percent or more equity in the applicant are sufficient to afford reasonable promise of a successful operation;

(b) That the digital asset depository will be operated by officers of integrity and responsibility;

(c) Whether the character, financial responsibility, criminal background, and banking or other financial experience and business qualifications of those proposed as officers and directors are sufficient to afford reasonable promise of a successful operation;

(d) The adequacy and plausibility of the business plan of the digital asset depository institution, including the ongoing customer expectations of the digital asset depository institution as determined by the director;

(e) Compliance by the digital asset depository institution with the capital and surplus requirements of section 13 of this act;

(f) Whether the digital asset depository institution is being formed for no other purpose than legitimate objectives authorized by law;

(g) That the name of the proposed digital asset depository institution includes the words "digital asset bank" so that it does not resemble the name of any other financial institution transacting business in the state so as to cause confusion;

(h) That the digital asset depository will be operated in a safe and sound manner to benefit its customers;

(i) That the digital asset depository shall help meet the digital financial needs of the communities in which it operates, consistent with safe and sound operations, and shall maintain and update a public file and on any Internet web site it maintains containing specific information about its efforts to meet community needs, including:

(i) The collection and reporting of data;

(ii) Its policies and procedures for accepting and responding to consumer complaints; and

(iii) Its efforts to assist with financial literacy or personal finance programs to increase knowledge and skills of Nebraska students in areas such as budgeting, credit, checking and savings accounts, loans, stocks, and insurance;

(j) Whether the applicants have complied with all provisions of state law and are eligible to apply for membership in the federal reserve system; and

(k) Any other considerations in addition to statutory requirements submitted by the applicant pursuant to operational order, rules and regulations, or request of the department.

(2) The director shall approve an application upon making favorable findings on the criteria set forth in subsection (1) of this section. If necessary, the director may either conditionally approve an application by specifying conditions relating to the criteria or may disapprove the application. The director shall state findings of fact and conclusions of law as part of such decision.

(3) If the director approves the application, the director shall issue an order.

Sec. 20. (1) If an application is approved and a charter or authority is granted by the director under section 19 of this act, the digital asset depository shall not commence business before satisfaction of all conditions

precedent contained in the director's order or conditional order.

(2) If an approved digital asset depository fails to commence business in good faith within twelve months after the issuance of a charter or an order of authority to operate by the director, the charter or authority shall expire. The director, for good cause and upon an application filed prior to the expiration of the six-month period, may extend the time within which the digital asset depository may open for business.

Sec. 21. Any decision of the department or director in approving, conditionally approving, or disapproving a charter or authority for a digital asset depository is appealable in accordance with the Administrative Procedure Act.

Sec. 22. (1) Except as otherwise provided by subsection (2) of this section, a digital asset depository shall, before transacting any business, pledge or furnish a surety bond to the director to cover costs likely to be incurred by the director in a liquidation or conservatorship of the digital asset depository. The amount of the surety bond or pledge of assets under subsection (2) of this section shall be determined by the director in an amount sufficient to defray the costs of a liquidation or conservatorship.

(2) In lieu of a bond, a digital asset depository may irrevocably pledge specified assets equivalent to a bond under subsection (1) of this section. Any assets pledged to the director under this subsection shall be held in a state or nationally chartered bank, trust company, federal reserve bank, or savings and loan association having a principal or branch office in this state, excluding affiliated institutions. All costs associated with pledging and holding such assets are the responsibility of the digital asset depository.

(3) Assets pledged to the director shall not include money and shall be of the same nature and quality as those required under section 8-210.

(4) Surety bonds shall run to the State of Nebraska, and shall be approved under the terms and conditions required under section 8-110.

(5) The director may by order or rules and regulations establish additional investment guidelines or investment options for purposes of the pledge or surety bond required by this section.

(6) In the event of a liquidation or conservatorship of a digital asset depository pursuant to section 27 of this act, the director may, without regard to priorities, preferences, or adverse claims, reduce the surety bond or assets pledged under this section to cash as soon as practicable and utilize the cash to defray the costs associated with the liquidation or conservatorship.

(7) Income from assets pledged under subsection (2) of this section shall be paid to the digital asset depository no less than annually, unless a liquidation or conservatorship takes place.

(8) Upon evidence that the current surety bond is or pledged assets are insufficient, the director may require a digital asset depository to increase its surety bond or pledged assets by providing not less than thirty days' written notice to the digital asset depository.

Sec. 23. (1) The director may call for reports verified under oath from a digital asset depository at any time as necessary to inform the director of the condition of the digital asset depository. Such reports shall be available to the public.

(2) All reports required of a digital asset depository by the director and all materials relating to examinations of a digital asset depository shall be subject to the provisions of sections 8-103 and 8-108.

(3) Every digital asset depository is subject to examination by the department to determine the condition and resources of a digital asset depository, the mode of managing digital asset depository affairs and conducting business, the actions of officers and directors in the investment and disposition of funds, the safety and prudence of digital asset depository management, compliance with the requirements of the Nebraska Financial Innovation Act, and such other matters as the director may require.

(4) A digital asset depository shall pay an assessment in a sum to be determined by the director in accordance with section 8-601 and approved by the Governor and the costs of any examination or investigation as provided in sections 8-108 and 8-606.

(5) A digital asset depository shall maintain appropriate insurance or a bond covering the operational risks of the digital asset depository, which shall include coverage for directors' and officers' liability, errors and omissions liability, and information technology infrastructure and activities liability as determined by the director.

Sec. 24. A digital asset depository is authorized to carry on one or more of the following digital asset business activities:

(1) Provide digital asset and cryptocurrency custody services;

(2) Issue stablecoins and hold deposits at a Federal Deposit Insurance Corporation-insured financial institution which has a main-chartered office in this state, any branch thereof in this state, or any branch of the financial institution which maintained a main-chartered office in this state prior to becoming a branch of such financial institution that serves as reserves for stablecoins; and

(3) Use independent node verification networks and stablecoins for payment activities.

Sec. 25. The director may suspend or revoke the charter or authority of a digital asset depository if, after notice and opportunity for a hearing, the director determines that:

(1) The digital asset depository has failed or refused to comply with an order issued under section 8-1,136, 8-2504, or 8-2743;

(2) The application for a charter or authority contained a materially false statement, misrepresentation, or omission; or

(3) An officer, a director, or an agent of the digital asset depository, in connection with an application for a charter or authority, an examination, a report, or other document filed with the director, knowingly made a materially false statement, misrepresentation, or omission to the department, the director, or the duly authorized agent of the department or director.

Sec. 26. If the charter or authority of a digital asset depository is surrendered, suspended, or revoked, the digital asset depository shall continue to be subject to the provisions of the Nebraska Financial Innovation Act during any liquidation or conservatorship.

Sec. 27. (1) If the director finds that a digital asset depository has failed, is operating in an unsafe or unsound condition, or is endangering the interests of customers, and the failure, unsafe or unsound condition, or endangerment has not been remedied within the time prescribed under section 8-1,117 or as directed by order of the director issued pursuant to section 8-1,136, 8-2504, or 8-2743, the director shall conduct a liquidation or appoint a receiver as provided by sections 8-198, 8-1,100, and 8-1,102.

(2) For purposes of this section:

(a) Failed or failure means, consistent with an order or rules and regulations of the director, a circumstance when a digital asset depository has not:

(i) Complied with the requirements of section 9 of this act;

(ii) Maintained capital and surplus as required by section 13 of this act;

or

(iii) Paid, in the manner commonly accepted by business practices, its legal obligations to customers on demand or to discharge any promissory notes, or other indebtedness when due; and

(b) Unsafe or unsound condition means, consistent with an order or rules and regulations of the director, a circumstance relating to a digital asset depository which is likely to:

(i) Cause the failure of the digital asset depository;

(ii) Cause a substantial dissipation of assets or earnings;

(iii) Substantially disrupt the services provided by the digital asset depository to customers; or

(iv) Otherwise substantially prejudice the interests of customers of the digital asset depository.

Sec. 28. (1) A digital asset depository may voluntarily dissolve in accordance with this section. Voluntary dissolution shall be accomplished by either liquidating the digital asset depository or reorganizing the digital asset depository into an appropriate business entity that does not engage in any activity authorized only for a digital asset depository. Upon complete liquidation or completion of the reorganization, the director shall revoke the charter or authority of the digital asset depository. Thereafter, the corporation or business entity shall not use the words digital asset depository or digital asset bank in its business name or in connection with its ongoing business.

(2) A digital asset depository institution may dissolve its charter either by liquidation or reorganization. The board of directors shall file an application for dissolution with the director, accompanied by a filing fee established by an order or the rules and regulations of the director. The application shall include a comprehensive plan for dissolution setting forth the proposed disposition of all assets and liabilities in reasonable detail to effect a liquidation or reorganization, and any other plans required by the director. The plan of dissolution shall provide for the discharge or assumption of all of the known and unknown claims and liabilities of the digital asset depository institution. Additionally, the application for dissolution shall include other evidence, certifications, affidavits, documents, or information as the director may require, including demonstration of how assets and liabilities will be disposed, the timetable for effecting disposition of the assets and liabilities, and a proposal of the digital asset depository institution for addressing any claims that are asserted after dissolution has been completed. The director shall examine the application for compliance with this section, the business entity laws applicable to the required type of dissolution, and applicable orders and rules and regulations. The director may conduct a special examination of the digital asset depository institution, consistent with subsection (3) of section 23 of this act, for purposes of evaluating the application.

(3) If the director finds that the application is incomplete, the director shall return it for completion not later than sixty days after it is filed. If the application is found to be complete by the director, the director shall approve or disapprove the application not later than thirty days after it is filed. If the director approves the application, the digital asset depository institution may proceed with the dissolution pursuant to the plan outlined in the application, subject to any further conditions the director may prescribe. If the digital asset depository institution subsequently determines that the plan of dissolution needs to be amended to complete the dissolution, it shall file an amended plan with the director and obtain approval to proceed under the amended plan. If the director does not approve the application or amended plan, the digital asset depository institution may appeal the decision to the director pursuant to the Administrative Procedure Act.

(4) Upon completion of all actions required under the plan of dissolution and satisfaction of all conditions prescribed by the director, the digital

asset depository institution shall submit a written report of its actions to the director. The report shall contain a certification made under oath that the report is true and correct. Following receipt of the report, the director, no later than sixty days after the filing of the report, shall examine the digital asset depository institution to determine whether the director is satisfied that all required actions have been taken in accordance with the plan of dissolution and any conditions prescribed by the director. If all requirements and conditions have been met, the director shall, within thirty days of the examination, notify the digital asset depository institution in writing that the dissolution has been completed and issue an order of dissolution.

(5) Upon receiving an order of dissolution, the digital asset depository institution shall surrender its charter to the director. The digital asset depository institution shall then file articles of dissolution and other documents required by sections 21-2,184 to 21-2,201 for a corporation with the Secretary of State. In the case of reorganization, the digital asset depository institution shall file the documents required by the Secretary of State to finalize the reorganization.

(6) If the director determines that all required actions under the plan for dissolution, or as otherwise required by the director, have not been completed, the director shall notify the digital asset depository institution, not later than thirty days after this determination, in writing, of what additional actions shall be taken in order for the institution to be eligible for a certificate of dissolution. The director shall establish a reasonable deadline of up to thirty days for the submission of evidence that additional actions have been taken and the director may extend any deadline upon good cause. If the digital asset depository institution fails to file a supplemental report showing that the additional actions have been taken before the deadline, or submits a report that is found not to be satisfactory by the director, the director shall notify the digital asset depository institution in writing that its voluntary dissolution is not approved, and the institution may appeal the decision to the director pursuant to the Administrative Procedure Act.

Sec. 29. If a digital asset depository fails to submit any report required by the Nebraska Financial Innovation Act or by order or rules and regulations of the director within the prescribed period, the director may impose and collect a fee of five thousand dollars for each day the report is overdue, as established by order of the director. The fee shall be remitted to the State Treasurer for credit to the Department of Banking and Finance Settlement Cash Fund.

Sec. 30. Each officer, director, employee, or agent of a digital asset depository, following written notice from the director, is subject to removal upon order of the director if such officer, director, employee, or agent knowingly, willfully, or negligently:

(1) Fails to perform any duty required by the Nebraska Financial Innovation Act or other applicable law;

(2) Fails to conform to any order or rules and regulations of the director; or

(3) Endangers the interest of a customer.

Sec. 31. The director may issue any order and adopt and promulgate any rules and regulations necessary to implement the Nebraska Financial Innovation Act.

Sec. 32. Section 8-101.02, Revised Statutes Cumulative Supplement, 2020, is amended to read:

8-101.02 Sections 8-101.02 to 8-1,140 and sections 39, 40, 41, and 42 of this act shall be known and may be cited as the Nebraska Banking Act.

Sec. 33. Section 8-101.03, Revised Statutes Cumulative Supplement, 2020, is amended to read:

8-101.03 For purposes of the Nebraska Banking Act, unless the context otherwise requires:

(1) Access device means a code, a transaction card, or any other means of access to a customer's account, or any combination thereof, that may be used by a customer for the purpose of initiating an electronic funds transfer at an automatic teller machine or a point-of-sale terminal;

(2) Acquiring financial institution means any financial institution establishing a point-of-sale terminal;

(3) Automatic teller machine means a machine established and located in the State of Nebraska, whether attended or unattended, which utilizes electronic, sound, or mechanical signals or impulses, or any combination thereof, and from which electronic funds transfers may be initiated and at which banking transactions as defined in section 8-157.01 may be conducted. An unattended automatic teller machine shall not be deemed to be a branch operated by a financial institution;

(4) Automatic teller machine surcharge means a fee that an operator of an automatic teller machine imposes upon a consumer for an electronic funds transfer, if such operator is not the financial institution that holds an account of such consumer from which the electronic funds transfer is to be made;

(5) Bank or banking corporation means any incorporated banking institution which was incorporated under the laws of this state as they existed prior to May 9, 1933, and any corporation duly organized under the laws of this state for the purpose of conducting a bank within this state under the act. Bank means any such banking institution which is, in addition to the exercise of other powers, following the practice of repaying deposits upon check, draft, or order and of making loans. Bank or banking corporation includes a digital asset

depository institution as defined in section 3 of this act. Notwithstanding the provisions of this subdivision, a digital asset depository institution is subject to the provisions of subdivision (2)(b) of section 5 of this act;

(6) Bank subsidiary corporation means a corporation which has a bank as a shareholder and which is organized for purposes of engaging in activities which are part of the business of banking or incidental to such business except for the receipt of deposits. A bank subsidiary corporation may include a corporation organized under the Nebraska Financial Innovation Act. A bank subsidiary is not to be considered a branch of its bank shareholder;

(7) Capital or capital stock means capital stock;

(8) Data processing center means a facility, wherever located, at which electronic impulses or other indicia of a transaction originating at an automatic teller machine are received and either authorized or routed to a switch or other data processing center in order to enable the automatic teller machine to perform any function for which it is designed;

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

(10) Digital asset depository means a financial institution that securely holds liquid assets when such assets are in the form of controllable electronic records, either as a corporation organized, chartered, and operated pursuant to the Nebraska Financial Innovation Act as a digital asset depository institution, or a financial institution operating a digital asset depository business as a digital asset depository department under a grant of authority by the director;

(11) ~~(10)~~ Director means the Director of Banking and Finance;

(12) ~~(11)~~ Financial institution means a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the United States, the department, or a foreign state agency; any other similar organization which is covered by federal deposit insurance; or a trust company; or a digital asset depository that is not a digital asset depository institution;

(13) ~~(12)~~ Financial institution employees includes parent holding company and affiliate employees;

(14) ~~(13)~~ Foreign state agency means any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created under the laws of any other state, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands or which is operating under the code of law for the District of Columbia;

(15) ~~(14)~~ Impulse means an electronic, sound, or mechanical impulse, or any combination thereof;

(16) ~~(15)~~ Insolvent means a condition in which (a) the actual cash market value of the assets of a bank is insufficient to pay its liabilities to its depositors, (b) a bank is unable to meet the demands of its creditors in the usual and customary manner, (c) a bank, after demand in writing by the director, fails to make good any deficiency in its reserves as required by law, or (d) the stockholders of a bank, after written demand by the director, fail to make good an impairment of its capital or surplus;

(17) ~~(16)~~ Making loans includes advances or credits that are initiated by means of credit card or other transaction card. Transaction card and other transactions, including transactions made pursuant to prior agreements, may be brought about and transmitted by means of an electronic impulse. Such loan transactions including transactions made pursuant to prior agreements shall be subject to sections 8-815 to 8-829 and shall be deemed loans made at the place of business of the financial institution;

(18) ~~(17)~~ Order includes orders transmitted by electronic transmission;

(19) ~~(18)~~ Point-of-sale terminal means an information processing terminal which utilizes electronic, sound, or mechanical signals or impulses, or any combination thereof, which are transmitted to a financial institution or which are recorded for later transmission to effectuate electronic funds transfer transactions for the purchase or payment of goods and services and which are initiated by an access device. A point-of-sale terminal is not a branch operated by a financial institution. Any terminal owned or operated by a seller of goods and services shall be connected directly or indirectly to an acquiring financial institution; and

(20) ~~(19)~~ Switch means any facility where electronic impulses or other indicia of a transaction originating at an automatic teller machine are received and are routed and transmitted to a financial institution or data processing center, wherever located. A switch may also be a data processing center.

Sec. 34. Section 8-102, Revised Statutes Cumulative Supplement, 2020, is amended to read:

8-102 The department shall, under the laws of this state specifically made applicable to each, have general supervision and control over banks, trust companies, credit unions, building and loan associations, ~~and~~ savings and loan associations, and digital asset depositories, all of which are hereby declared to be quasi-public in nature and subject to regulation and control by the state.

Sec. 35. Section 8-113, Revised Statutes Cumulative Supplement, 2020, is amended to read:

8-113 (1) No individual, firm, company, corporation, or association doing business in the State of Nebraska, unless organized as a bank under the Nebraska Banking Act or the authority of the director or federal government, a digital asset depository that is not a digital asset depository institution, or

as a building and loan association, savings and loan association, or savings bank under Chapter 8, article 3, or the authority of the federal government, shall use the word bank or any derivative thereof as any part of a title or description of any business activity.

(2) This section does not apply to:

(a) Banks, building and loan associations, savings and loan associations, or savings banks chartered and supervised by a foreign state agency;

(b) Bank holding companies registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative bank is used;

(c) Affiliates or subsidiaries of (i) a bank organized under the Nebraska Banking Act or the authority of the federal government or chartered and supervised by a foreign state agency, (ii) a building and loan association, savings and loan association, or savings bank organized under Chapter 8, article 3, or the authority of the federal government or chartered and supervised by a foreign state agency, or (iii) a bank holding company registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative bank is used;

(d) Organizations substantially owned by (i) a bank organized under the Nebraska Banking Act or the authority of the federal government or chartered and supervised by a foreign state agency, (ii) a building and loan association, savings and loan association, or savings bank organized under Chapter 8, article 3, or the authority of the federal government or chartered and supervised by a foreign state agency, (iii) a bank holding company registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative bank is used, or (iv) any combination of entities listed in subdivisions (i) through (iii) of this subdivision;

(e) Mortgage bankers licensed or registered under the Residential Mortgage Licensing Act, if the word mortgage immediately precedes the word bank or its derivative;

(f) Digital asset depository institutions chartered under the Nebraska Financial Innovation Act, if the term digital asset is also used as any part of the title or description of any business activity or if any derivative of the word bank is used in such title or description of any such business activity;

(g) ~~(f)~~ Organizations which are described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01, which are exempt from taxation under section 501(a) of the code, and which are not providing or arranging for financial services subject to the authority of the department, a foreign state agency, or the federal government;

(h) ~~(g)~~ Trade associations which are exempt from taxation under section 501(c)(6) of the code and which represent a segment of the banking or savings and loan industries, and any affiliate or subsidiary thereof;

(i) ~~(h)~~ Firms, companies, corporations, or associations which sponsor incentive-based solid waste recycling programs that issue reward points or credits to persons for their participation therein; and

(j) ~~(i)~~ Such other firms, companies, corporations, or associations as have been in existence and doing business prior to December 1, 1975, under a name composed in part of the word bank or some derivative thereof.

(3) This section does not apply to an individual, firm, company, corporation, or association doing business in Nebraska which uses the word bank or any derivative thereof as any part of a title or description of any business activity if such use is unlikely to mislead or confuse the public or give the impression that such individual, firm, company, corporation, or association is lawfully organized and operating as a bank under the Nebraska Banking Act or the authority of the federal government, or as a building and loan association, savings and loan association, or savings bank under Chapter 8, article 3, or the authority of the federal government.

(4) Any violation of this section is a Class V misdemeanor.

Sec. 36. Section 8-115, Reissue Revised Statutes of Nebraska, is amended to read:

8-115 No corporation shall conduct a bank or digital asset depository in this state without having first obtained a charter or under a grant of authority in the case of a digital asset depository in the manner provided in the Nebraska Banking Act or the Nebraska Financial Innovation Act, respectively.

Sec. 37. Section 8-148.09, Revised Statutes Cumulative Supplement, 2020, is amended to read:

8-148.09 (1) Any bank may subscribe to, invest, buy, and own stock of another financial institution if the transaction is part of the merger or consolidation of the other financial institution with the acquiring bank, or the acquisition of substantially all of the assets of the other financial institution by the acquiring bank, and if:

(a) The merger, consolidation, or asset acquisition occurs on the same day as the acquisition of the shares of the other financial institution and the other financial institution will not be operated by the acquiring bank as a separate entity; and

(b) The transaction receives the prior approval of the director.

(2) Any bank may subscribe to, invest, buy, and own stock of a company controlling another financial institution if the transaction is part of (a) the merger or consolidation of the company controlling the other financial institution with the company controlling the acquiring bank, or the acquisition

of substantially all of the assets of the company controlling the other financial institution by the company controlling the acquiring bank, and (b) the merger or consolidation of the other financial institution with the acquiring bank, or the acquisition of substantially all of the assets of the other financial institution by the acquiring bank, and if:

(i) The merger, consolidation, or asset acquisition occurs on the same day as the acquisition of the shares of the company controlling the other financial institution, and neither the company controlling the other financial institution nor the other financial institution will be operated by the acquiring bank as a separate entity; and

(ii) The transaction receives the prior approval of the director.

(3) Any bank that acquires stock of another financial institution or company controlling another financial institution pursuant to this section shall not be deemed to be a bank holding company for purposes of the Nebraska Bank Holding Company Act of 1995, so long as the conditions of subdivision (1) (a) or (2)(b)(i) of this section, as applicable, are satisfied.

(4) For purposes of this section, financial institution means a bank, savings bank, credit card bank, savings and loan association, digital asset depository institution, building and loan association, trust company, or credit union organized under the laws of any state or organized under the laws of the United States.

Sec. 38. Section 8-1,140, Revised Statutes Cumulative Supplement, 2020, is amended to read:

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

Sec. 39. Any financial institution as defined in section 3 of this act other than a digital asset depository institution as defined in section 3 of this act may invest not more than ten percent of its capital and surplus either in stock of a corporation operating a digital asset depository institution or directly, alone, or with others, in a digital asset depository institution. With written approval of the director, such additional percentage of its capital and surplus may be so invested as the director shall approve. Such investment is not subject to sections 8-148, 8-149, and 8-150.

Sec. 40. (1) The provisions of this section are cumulative and not exclusive as an optional framework for enhanced supervision of controllable electronic record custody.

(2) If a financial institution is authorized to provide digital asset services under this section, it shall comply with all provisions of this section.

(3) A financial institution may serve as a qualified custodian, as specified by the United States Securities and Exchange Commission in 17 C.F.R. 275.206(4)-2 or any other federal rule or regulation. In performing custodial services under this section, a financial institution shall:

(a) Implement all accounting, account statement, internal control, notice, and other standards specified by applicable state or federal law and rules for custodial services;

(b) Maintain information technology best practices relating to controllable electronic records held in custody. The director may specify required best practices by rule and regulation;

(c) Fully comply with applicable federal anti-money laundering, customer identification, and beneficial ownership requirements; and

(d) Take other actions necessary to carry out this section, which may include exercising fiduciary powers similar to those permitted to national banks and ensuring compliance with federal law governing controllable electronic records classified as commodities.

(4) A financial institution providing custodial services shall enter into an agreement with an independent public accountant to conduct an examination conforming to the requirements of 17 C.F.R. 275.206(4)-2(a)(4) and (6), at the cost of the financial institution. The accountant shall transmit the results of the examination to the director within ninety days of the examination and may file the results with the United States Securities and Exchange Commission as its rules may provide. Material discrepancies in an examination shall be reported to the director within one day. The director shall review examination results upon receipt within a reasonable time and during any regular examination conducted under section 8-108.

(5) Controllable electronic records held in custody under this section are not depository liabilities or assets of the financial institution. A financial institution or a subsidiary may register as an investment adviser, investment company, or broker dealer as necessary. A financial institution shall maintain control over a controllable electronic record while in custody. A customer shall elect, pursuant to a written agreement with the financial institution, one of the following relationships for each controllable electronic record held in custody:

(a) Custody under a bailment as a nonfungible or fungible asset. Assets held under this subdivision shall be strictly segregated from other assets; or

(b) Custody under a bailment pursuant to subsection (6) of this section.

(6) If a customer makes an election under subdivision (5)(b) of this section, the financial institution may, based only on customer instructions, undertake transactions with the controllable electronic record. A financial institution maintains control pursuant to subsection (5) of this section by entering into an agreement with the counterparty to a transaction which contains a time for return of the asset. The financial institution shall not be liable for any loss suffered with respect to a transaction under this subsection, except for liability consistent with fiduciary and trust powers as a custodian under this section.

(7) A financial institution and a customer shall agree in writing regarding the source code version the financial institution will use for each controllable electronic record and the treatment of each record under the Uniform Commercial Code, if necessary. Any ambiguity under this subsection shall be resolved in favor of the customer.

(8) A financial institution shall provide clear, written notice to each customer and require written acknowledgement of the following:

(a) Prior to the implementation of any updates, material source code updates relating to controllable electronic records held in custody, except in emergencies which may include security vulnerabilities;

(b) The heightened risk of loss from transactions under subsection (6) of this section;

(c) That some risk of loss as a pro rata creditor exists as the result of custody as a fungible asset or custody under subdivision (5)(b) of this section;

(d) That custody under subdivision (5)(b) of this section may not result in the controllable electronic records of the customer being strictly segregated from other customer assets; and

(e) That the financial institution is not liable for losses suffered under subsection (6) of this section, except for liability consistent with fiduciary and trust powers as a custodian under this section.

(9) A financial institution and a customer shall agree in writing to a time period within which the financial institution must return a controllable electronic record held in custody under this section. If a customer makes an election under subdivision (5)(b) of this section, the financial institution and the customer may also agree in writing to the form in which the controllable electronic record shall be returned.

(10) All ancillary or subsidiary proceeds relating to controllable electronic records held in custody under this section shall accrue to the benefit of the customer, except as specified by a written agreement with the customer. The financial institution may elect not to collect certain ancillary or subsidiary proceeds, as long as the election is disclosed in writing. A customer who makes an election under subdivision (5)(a) of this section may withdraw the controllable electronic record in a form that permits the collection of the ancillary or subsidiary proceeds.

(11) A financial institution shall not authorize or permit rehypothecation of controllable electronic records under this section and shall not engage in any activity to use or exercise discretionary authority relating to a controllable electronic record except based on customer instructions.

(12) A financial institution shall not take any action under this section which would likely impair the solvency or the safety and soundness of the financial institution, as determined by the director after considering the nature of custodial services customary in the banking industry.

(13) To offset the costs of supervision and administration of this section, a financial institution which provides custodial services under this section shall pay the assessment as provided for in sections 8-601 and 8-605, which assessment shall not be less than two thousand dollars, and the costs of any examination or investigation as provided in sections 8-108 and 8-606.

(14) For purposes of this section, financial institution means a bank, savings bank, building and loan association, savings and loan association, whether chartered by the United States, the department, or a foreign state agency; or a trust company.

Sec. 41. The director may adopt and promulgate rules and regulations to implement sections 40 to 42 of this act.

Sec. 42. The courts of Nebraska shall have jurisdiction to hear claims in both law and equity relating to controllable electronic records, including those arising under sections 40 to 42 of this act and the Uniform Commercial Code.

Sec. 43. Section 8-601, Revised Statutes Cumulative Supplement, 2020, is amended to read:

8-601 The Director of Banking and Finance may employ deputies, examiners, attorneys, and other assistants as may be necessary for the administration of the provisions and purposes of the Credit Union Act, Delayed Deposit Services Licensing Act, Interstate Branching and Merger Act, Interstate Trust Company Office Act, Nebraska Bank Holding Company Act of 1995, Nebraska Banking Act, Nebraska Financial Innovation Act, Nebraska Installment Loan Act, Nebraska Installment Sales Act, Nebraska Money Transmitters Act, Nebraska Trust Company Act, and Residential Mortgage Licensing Act; Chapter 8, articles 3, 5, 6, 7, 8, 13, 14, 15, 16, 19, 20, 24, and 25; and Chapter 45, articles 1 and 2. The director may levy upon financial institutions, namely, the banks, trust companies, building and loan associations, savings and loan associations,

savings banks, digital asset depositories, and credit unions, organized under the laws of this state, and holding companies, if any, of such financial institutions, an assessment each year based upon the asset size of the financial institution, except that in determining the asset size of a holding company or digital asset depository, the assets of any financial institution or holding company otherwise assessed pursuant to this section and the assets of any nationally chartered financial institution shall be excluded. The assessment for digital asset depositories under the Nebraska Financial Innovation Act shall be in an amount to offset the costs of supervision and administration of the Nebraska Financial Innovation Act. The assessment shall be a sum determined by the director in accordance with section 8-606 and approved by the Governor.

Sec. 44. Section 8-602, Revised Statutes Cumulative Supplement, 2020, is amended to read:

8-602 The Director of Banking and Finance shall charge and collect fees for certain services rendered by the Department of Banking and Finance according to the following schedule:

(1) For filing and examining articles of incorporation, articles of association, and bylaws, except credit unions, one hundred dollars, and for credit unions, fifty dollars;

(2) For filing and examining an amendment to articles of incorporation, articles of association, and bylaws, except credit unions, fifty dollars, and for credit unions, fifteen dollars;

(3) For issuing to banks, credit card banks, trust companies, and building and loan associations a charter, authority, or license to do business in this state, a sum which shall be determined on the basis of one dollar and fifty cents for each one thousand dollars of authorized capital, except that the minimum fee in each case shall be two hundred twenty-five dollars;

(4) For issuing to digital asset depositories under the Nebraska Financial Innovation Act a charter, an authority, or a license to do business in this state, the sum of fifty thousand dollars;

~~(5)~~ (4) For issuing an executive officer's or loan officer's license, fifty dollars at the time of the initial license, except credit unions for which the fee shall be twenty-five dollars at the time of the initial license;

~~(6)~~ (5) For affixing certificate and seal, five dollars;

~~(7)~~ (6) For making substitution of securities held by it and issuing a receipt, fifteen dollars;

~~(8)~~ (7) For issuing a certificate of approval to a credit union, ten dollars;

~~(9)~~ (8) For investigating the applications required by sections 8-117, 8-120, 8-331, and 8-2402 and the documents required by section 8-201, the cost of such examination, investigation, and inspection, including all legal expenses and the cost of any hearing transcript, with a minimum fee under (a) sections 8-117, 8-120, and 8-2402 of two thousand five hundred dollars, (b) section 8-331 of two thousand dollars, and (c) section 8-201 of one thousand dollars. The department may require the applicant to procure and give a surety bond in such principal amount as the department may determine and conditioned for the payment of the fees provided in this subdivision;

~~(10)~~ (9) For the handling of pledged securities as provided in sections 8-210 and 8-2727 at the time of the initial deposit of such securities, one dollar and fifty cents for each thousand dollars of securities deposited and a like amount on or before January 15 each year thereafter. The fees shall be paid by the entity pledging the securities;

~~(11)~~ (10) For investigating an application to move its location within the city or village limits of its original license or charter for banks, trust companies, and building and loan associations, two hundred fifty dollars;

~~(12)~~ (11) For investigating an application under subdivision (6) of section 8-115.01, five hundred dollars;

~~(13)~~ (12) For investigating an application for approval to establish or acquire a branch pursuant to section 8-157 or 8-2103 or to establish a mobile branch pursuant to section 8-157, two hundred fifty dollars;

~~(14)~~ (13) For investigating a notice of acquisition of control under subsection (1) of section 8-1502, five hundred dollars;

~~(15)~~ (14) For investigating an application for a cross-industry merger under section 8-1510, five hundred dollars;

~~(16)~~ (15) For investigating an application for a merger of two state banks, a merger of a state bank and a national bank in which the state bank is the surviving entity, or an interstate merger application in which the Nebraska state chartered bank is the resulting bank, five hundred dollars;

~~(17)~~ (16) For investigating an application or a notice to establish a branch trust office, five hundred dollars;

~~(18)~~ (17) For investigating an application or a notice to establish a representative trust office, five hundred dollars;

~~(19)~~ (18) For investigating an application to establish a credit union branch under section 21-1725.01, two hundred fifty dollars;

~~(20)~~ (19) For investigating an applicant under section 8-1513, five thousand dollars; ~~and~~

~~(21)~~ (20) For investigating a request to extend a conditional bank charter under section 8-117, one thousand dollars; ~~and -~~

(22) For investigating an application to establish a branch office, for a merger or an acquisition of control, or for a request to extend a conditional charter for a digital asset depository, five hundred dollars.

Sec. 45. Section 8-701, Revised Statutes Cumulative Supplement, 2020, is

amended to read:

8-701 For purposes of sections 8-701 to 8-709, banking institution means any bank, stock savings bank, mutual savings bank, building and loan association, digital asset depository institution under the Nebraska Financial Innovation Act, or savings and loan association, which is now or may hereafter be organized under the laws of this state.

Sec. 46. Section 8-702, Revised Statutes Cumulative Supplement, 2020, is amended to read:

8-702 (1) Any banking institution, except a digital asset depository institution organized, chartered, and operated pursuant to the Nebraska Financial Innovation Act, organized under the laws of this state shall, before a charter may be issued, enter into such contracts, incur such obligations, and generally do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to obtain membership in the Federal Deposit Insurance Corporation and provide for insurance of deposits in the banking institution. Any banking institution may take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights, or privileges which may at any time be available or inure to banking institutions or to their depositors, creditors, stockholders, conservators, receivers, or liquidators by virtue of those provisions of section 8 of the Federal Banking Act of 1933 (section 12B of the Federal Reserve Act, as amended) which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits or of any other provisions of that or of any other act or resolution of Congress to aid, regulate, or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor. Any banking institution may also subscribe for and acquire any stock, debentures, bonds, or other types of securities of the Federal Deposit Insurance Corporation and comply with the lawful regulations and requirements from time to time issued or made by such corporation.

(2) The charter of any banking institution which fails to maintain membership in the Federal Deposit Insurance Corporation shall be automatically forfeited and such banking institution shall be liquidated and dissolved, either voluntarily by its board of directors under the supervision of the department or involuntarily by the department as in cases of insolvency. Any banking institution whose charter is automatically forfeited under the provisions of this subsection which continues to engage in the business for which it had been chartered after such forfeiture, as well as the directors and officers thereof, is guilty of a Class III felony.

(3) Nothing in this section shall be construed as prohibiting a digital asset depository institution organized, chartered, and operated pursuant to the Nebraska Financial Innovation Act from obtaining Federal Deposit Insurance Corporation insurance.

Sec. 47. Section 8-1120, Revised Statutes Cumulative Supplement, 2020, is amended to read:

8-1120 (1) Except as otherwise provided in this section, the Securities Act of Nebraska shall be administered by the Director of Banking and Finance who may employ such deputies, examiners, assistants, or counsel as may be reasonably necessary for the purpose thereof. The employment of any person for the administration of the act is subject to section 49-1499.07. The director may delegate to a deputy director or counsel any powers, authority, and duties imposed upon or granted to the director under the act, such as may be lawfully delegated under the common law or the statutes of this state. The director may also employ special counsel with respect to any investigation conducted by him or her under the act or with respect to any litigation to which the director is a party under the act.

(2) A security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company shall be registered, pursuant to the provisions of sections 8-1104 to 8-1109, with the Director of Insurance who shall as to such registrations administer and enforce the act, and as pertains to the administration and enforcement of such registration of such securities all references in the act to director shall mean the Director of Insurance.

(3)(a) It shall be unlawful for the director or any of his or her employees to use for personal benefit any information which is filed with or obtained by the director and which is not made public. Neither the director nor any of his or her employees shall disclose any confidential information except among themselves, when necessary or appropriate in a proceeding, examination, or investigation under the act, or as authorized in subdivision (3)(b) of this subsection. No provision of the act shall either create or derogate from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the director or any of his or her employees.

(b)(i) In administering the act, the director may also:

(A) Enter into agreements or relationships with other government officials, including, but not limited to, the securities administrator of a foreign state and the Securities and Exchange Commission, or self-regulatory organizations, to share resources, standardized or uniform methods or procedures, and documents, records, and information; or

(B) Accept and rely on examination or investigation reports made by other government officials, including, but not limited to, the securities administrator of a foreign state and the Securities and Exchange Commission, or self-regulatory organizations.

(ii) For purposes of this subdivision, foreign state means any state of the United States, other than the State of Nebraska, any territory of the

United States, including Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, and the District of Columbia.

(4) The director may adopt and promulgate rules and regulations and prescribe forms to carry out the act. No rule and regulation may be adopted and promulgated or form may be prescribed unless the director finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the act. In adopting and promulgating rules and regulations and prescribing forms the director may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of the Securities Act of Nebraska to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable. All rules and regulations and forms of the director shall be published and made available to any person upon request.

(5) No provision of the act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule and regulation, form, or order of the director, notwithstanding that the rule and regulation or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(6) Every hearing in an administrative proceeding shall be public unless the director in his or her discretion grants a request joined in by all the respondents that the hearing be conducted privately.

(7)(a) ~~(7)~~ The Securities Act Cash Fund is created. All filing fees, registration fees, and all other fees and all money collected by or paid to the director under any of the provisions of the act shall be remitted to the State Treasurer for credit to the fund, except that registration fees collected by or paid to the Director of Insurance pursuant to the provisions of the act shall be credited to the Department of Insurance Cash Fund. The Securities Act Cash Fund shall be used for the purpose of administering and enforcing the provisions of the act, except that transfers may be made to the General Fund at the direction of the Legislature. Any money in the Securities Act Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(b) The State Treasurer shall transfer seven hundred twelve thousand four hundred eighty-nine dollars from the Securities Act Cash Fund to the Financial Institution Assessment Cash Fund on or before October 30, 2021, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

(c) The State Treasurer shall transfer three hundred ninety-seven thousand eighty-nine dollars from the Securities Act Cash Fund to the Financial Institution Assessment Cash Fund on or before October 30, 2022, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

(8) A document is filed when it is received by the director. The director shall keep a register of all applications for registration and registration statements which are or have ever been effective under the Securities Act of Nebraska and all denial, suspension, or revocation orders which have ever been entered under the act. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such conditions as the director may prescribe.

(9) The director may, by rule and regulation or order, authorize or require the filing of any document required to be filed under the act by electronic or other means, processes, or systems.

(10) Upon request and at such reasonable charges as he or she shall prescribe, the director shall furnish to any person photostatic or other copies, certified under his or her seal of office if requested, of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under the act, any copy so certified shall be prima facie evidence of the contents of the entry or document certified.

(11) The director in his or her discretion may honor requests from interested persons for interpretative opinions.

Sec. 48. Section 8-2724, Revised Statutes Cumulative Supplement, 2020, is amended to read:

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

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

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

(c) A state or any political subdivision thereof;

(d)(i) Banks, credit unions, digital asset depository institutions as defined in section 3 of this act, building and loan associations, savings and loan associations, savings banks, or mutual banks organized under the laws of any state or the United States;

(ii) Subsidiaries of the institutions listed in subdivision (d)(i) of this subsection;

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

(iv) Authorized delegates of the institutions and entities listed in subdivision (d)(i), (ii), or (iii) of this subsection, except that authorized delegates that are not banks, credit unions, building and loan associations,

savings and loan associations, savings banks, mutual banks, subsidiaries of any of the foregoing, or bank holding companies shall comply with all requirements imposed upon authorized delegates under the act;

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

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

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

Sec. 49. Section 1-201, Uniform Commercial Code, Reissue Revised Statutes of Nebraska, is amended to read:

1-201 General definitions.

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of the Uniform Commercial Code that apply to particular articles or parts thereof, have the meanings stated.

(b) Subject to definitions contained in other articles of the code that apply to particular articles or parts thereof:

(1) "Action", in the sense of a judicial proceeding, includes recoupment, counterclaim, setoff, suit in equity, and any other proceeding in which rights are determined.

(2) "Aggrieved party" means a party entitled to pursue a remedy.

(3) "Agreement", as distinguished from "contract", means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in section 1-303.

(4) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under article 2 may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous", with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

(A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

(12) "Contract", as distinguished from "agreement", means the total legal obligation that results from the parties' agreement as determined by the Uniform Commercial Code as supplemented by any other applicable laws.

(13) "Creditor" includes a general creditor, a secured creditor, a lien

creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and a personal representative, an executor, or an administrator of an insolvent debtor's or assignor's estate.

(14) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(15) "Delivery" with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper means voluntary transfer of possession.

(16) "Document of title" means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(16A) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(17) "Fault" means a default, breach, or wrongful act or omission.

(18) "Fungible goods" means:

(A) goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(B) goods that by agreement are treated as equivalent.

(19) "Genuine" means free of forgery or counterfeiting.

(20) "Good faith" means honesty in fact in the conduct or transaction concerned.

(21) "Holder" means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

(B) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) the person in control of a negotiable electronic document of title.

(22) "Insolvency proceeding" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23) "Insolvent" means:

(A) having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(B) being unable to pay debts as they become due; or

(C) being insolvent within the meaning of federal bankruptcy law.

(24) "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

(25) "Organization" means a person other than an individual.

(26) "Party", as distinguished from "third party", means a person that has engaged in a transaction or made an agreement subject to the Uniform Commercial Code.

(27) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(28) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(30) "Purchaser" means a person that takes by purchase.

(31) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(32) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(33) "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, a personal representative, an executor, or an administrator of an estate.

(34) "Right" includes remedy.

(35) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to article 9. "Security interest" does not include the special property

interest of a buyer of goods on identification of those goods to a contract for sale under section 2-401, but a buyer may also acquire a "security interest" by complying with article 9. Except as otherwise provided in section 2-505, the right of a seller or lessor of goods under article 2 or 2A to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under section 2-401 is limited in effect to a reservation of a "security interest". Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to section 1-203. "Security interest" does not include a consumer rental purchase agreement as defined in the Consumer Rental Purchase Agreement Act.

(36) "Send" in connection with a writing, record, or notice means:

(A) to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

(B) in any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

(37) "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing.

(38) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39) "Surety" includes a guarantor or other secondary obligor.

(40) "Term" means a portion of an agreement that relates to a particular matter.

(41) "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(42) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(43) "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

Sec. 50. Section 9-102, Uniform Commercial Code, Reissue Revised Statutes of Nebraska, is amended to read:

9-102 Definitions and index of definitions.

(a) In this article:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting", except as used in "accounting for", means a record:

(A) authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest in farm products:

(A) which secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.

The term also includes every lien created under sections 52-202, 52-501, 52-701, 52-901, 52-1101, 52-1201, 54-201, and 54-208, Reissue Revised Statutes of Nebraska, and Chapter 52, article 14, Reissue Revised Statutes of Nebraska.

- (6) "As-extracted collateral" means:
- (A) oil, gas, or other minerals that are subject to a security interest that:
 - (i) is created by a debtor having an interest in the minerals before extraction; and
 - (ii) attaches to the minerals as extracted; or
 - (B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.
- (7) "Authenticate" means:
- (A) to sign; or
 - (B) with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.
- (8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.
- (9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.
- (10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.
- (11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subdivision, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.
- (12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:
- (A) proceeds to which a security interest attaches;
 - (B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
 - (C) goods that are the subject of a consignment.
- (13) "Commercial tort claim" means a claim arising in tort with respect to which:
- (A) the claimant is an organization; or
 - (B) the claimant is an individual and the claim:
 - (i) arose in the course of the claimant's business or profession; and
 - (ii) does not include damages arising out of personal injury to or the death of an individual.
- (14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.
- (15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:
- (A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
 - (B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.
- (16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.
- (17) "Commodity intermediary" means a person that:
- (A) is registered as a futures commission merchant under federal commodities law; or
 - (B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.
- (18) "Communicate" means:
- (A) to send a written or other tangible record;
 - (B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or
 - (C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.
- (19) "Consignee" means a merchant to which goods are delivered in a consignment.
- (20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:
- (A) the merchant:
 - (i) deals in goods of that kind under a name other than the name of the

person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) an individual incurs an obligation primarily for personal, family, or household purposes; and

(B) a security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) a consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in section 7-201(b).

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

(i) crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to section 9-519(a).

(37) "Filing office" means an office designated in section 9-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to section 9-526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying section 9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be

cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided or to be provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment including, but not limited to, a writing that would otherwise qualify as a certificate of deposit (defined in section 3-104(j)) but for the fact that the writing contains a limitation on transfer. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, which:

(A) are leased by a person as lessor;

(B) are held by a person for sale or lease or to be furnished under a contract of service;

(C) are furnished by a person under a contract of service; or

(D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition;

or

(D) a receiver in equity from the time of appointment.

(53) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subdivision except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) "Manufactured-home transaction" means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under section 9-203(d) by a security agreement previously entered into by another person.

(57) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor", except as used in section 9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under section 9-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to", with respect to an individual, means:

- (A) the spouse of the individual;
- (B) a brother, brother-in-law, sister, or sister-in-law of the individual;
- (C) an ancestor or lineal descendant of the individual or the individual's spouse; or
- (D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to", with respect to an organization, means:

- (A) a person directly or indirectly controlling, controlled by, or under common control with the organization;
 - (B) an officer or director of, or a person performing similar functions with respect to, the organization;
 - (C) an officer or director of, or a person performing similar functions with respect to, a person described in subdivision (A);
 - (D) the spouse of an individual described in subdivision (A), (B), or (C);
- or

(E) an individual who is related by blood or marriage to an individual described in subdivision (A), (B), (C), or (D) and shares the same home with the individual.

(64) "Proceeds", except as used in section 9-609(b), means the following property:

- (A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
- (B) whatever is collected on, or distributed on account of, collateral;
- (C) rights arising out of collateral;
- (D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
- (E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to sections 9-620, 9-621, and 9-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

- (A) debt securities are issued;
- (B) all or a portion of the securities issued have an initial stated maturity of at least twenty years; and
- (C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Public organic record" means a record that is available to the public for inspection and is:

- (A) a record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;
- (B) an organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or
- (C) a record consisting of legislation enacted by the legislature of a state or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or United States which amends or restates the name of the organization.

(69) "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(70) "Record", except as used in "for record", "of record", "record or

legal title", and "record owner", means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(71) "Registered organization" means an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.

(72) "Secondary obligor" means an obligor to the extent that:

(A) the obligor's obligation is secondary; or

(B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(73) "Secured party" means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under section 2-401, 2-505, 2-711(3), 2A-508(5), 4-210, or 5-118.

(74) "Security agreement" means an agreement that creates or provides for a security interest.

(75) "Send", in connection with a record or notification, means:

(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subdivision (A).

(76) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(77) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(78) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(79) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(80) "Termination statement" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(81) "Transmitting utility" means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas, or water.

(b) "Control" as provided in section 7-106 and the following definitions in other articles apply to this article:

"Applicant". Section 5-102.

"Beneficiary". Section 5-102.

"Broker". Section 8-102.

"Certificated security". Section 8-102.

"Check". Section 3-104.

"Clearing corporation". Section 8-102.

"Contract for sale". Section 2-106.

"Controllable electronic record". Section 12-102.

"Customer". Section 4-104.

"Entitlement holder".	Section 8-102.
"Financial asset".	Section 8-102.
"Holder in due course".	Section 3-302.
"Issuer" (with respect to a letter of credit or letter-of-credit right).	Section 5-102.
"Issuer" (with respect to a security).	Section 8-201.
"Issuer" (with respect to a document of title).	Section 7-102.
"Lease".	Section 2A-103.
"Lease agreement".	Section 2A-103.
"Lease contract".	Section 2A-103.
"Leasehold interest".	Section 2A-103.
"Lessee".	Section 2A-103.
"Lessee in ordinary course of business".	Section 2A-103.
"Lessor".	Section 2A-103.
"Lessor's residual interest".	Section 2A-103.
"Letter of credit".	Section 5-102.
"Merchant".	Section 2-104.
"Negotiable instrument".	Section 3-104.
"Nominated person".	Section 5-102.
"Note".	Section 3-104.
"Proceeds of a letter of credit".	Section 5-114.
"Prove".	Section 3-103.
"Sale".	Section 2-106.
"Securities account".	Section 8-501.
"Securities intermediary".	Section 8-102.
"Security".	Section 8-102.
"Security certificate".	Section 8-102.
"Security entitlement".	Section 8-102.
"Uncertificated security".	Section 8-102.

(c) Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Sec. 51. The Uniform Commercial Code is amended by adding new section:
9-107A

Control of account, payment intangible, or controllable electronic record.

(a) A secured party has "control" of an account or payment intangible if:

(1) the account or payment intangible is included in the benefit that can be derived from a controllable electronic record; and

(2) the secured party has control of the controllable electronic record.

(b) A secured party has "control" of a controllable electronic record as provided in section 12-105.

Sec. 52. Section 9-301, Uniform Commercial Code, Reissue Revised Statutes of Nebraska, is amended to read:

9-301 Law governing perfection and priority of security interests.

Except as otherwise provided in sections 9-303 to 9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in subdivision (4), while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

(5) While a debtor is located in a jurisdiction that is not a state, the local law of the State of Nebraska governs:

(A) perfection by control of a security interest in an account, controllable electronic record, or payment intangible; and

(B) the effect of perfection or nonperfection and the priority of a security interest in an account, controllable electronic record, or payment intangible perfected by control.

Sec. 53. Section 9-310, Uniform Commercial Code, Reissue Revised Statutes of Nebraska, is amended to read:

9-310 When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

(a) Except as otherwise provided in subsection (b) and section 9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) The filing of a financing statement is not necessary to perfect a security interest:

(1) that is perfected under section 9-308(d), (e), (f), or (g);

(2) that is perfected under section 9-309 when it attaches;

(3) in property subject to a statute, regulation, or treaty described in section 9-311(a);

(4) in goods in possession of a bailee which is perfected under section 9-312(d)(1) or (2);

(5) in certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under section 9-312(e), (f), or (g);

(6) in collateral in the secured party's possession under section 9-313;

(7) in a certificated security which is perfected by delivery of the security certificate to the secured party under section 9-313;

(8) in deposit accounts, electronic chattel paper, electronic documents, investment property, accounts, payment intangibles, controllable electronic records, or letter-of-credit rights which is perfected by control under section 9-314;

(9) in proceeds which is perfected under section 9-315; or

(10) that is perfected under section 9-316.

(c) If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

Sec. 54. Section 9-312, Uniform Commercial Code, Reissue Revised Statutes of Nebraska, is amended to read:

9-312 Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, controllable electronic records, certain accounts and payment intangibles, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

(a) A security interest in chattel paper, negotiable documents, instruments, ~~or~~ investment property, controllable electronic records, and accounts or payment intangibles that are included in the benefit that can be derived from a controllable electronic record may be perfected by filing.

(b) Except as otherwise provided in section 9-315(c) and (d) for proceeds:

(1) a security interest in a deposit account may be perfected only by control under section 9-314;

(2) and except as otherwise provided in section 9-308(d), a security interest in a letter-of-credit right may be perfected only by control under section 9-314; and

(3) a security interest in money may be perfected only by the secured party's taking possession under section 9-313.

(c) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

- (1) issuance of a document in the name of the secured party;
- (2) the bailee's receipt of notification of the secured party's interest;

or

- (3) filing as to the goods.

(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

- (1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for twenty days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

- (1) ultimate sale or exchange; or

(2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) After the twenty-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this article.

Sec. 55. Section 9-314, Uniform Commercial Code, Reissue Revised Statutes of Nebraska, is amended to read:

9-314 Perfection by control.

(a) A security interest in investment property, deposit accounts, accounts, payment intangibles, controllable electronic records, letter-of-credit rights, electronic chattel paper, or electronic documents may be perfected by control of the collateral under section 7-106, 9-104, 9-105, 9-106, ~~or 9-107, or 9-107A.~~

(b) A security interest in deposit accounts, electronic chattel paper, accounts, payment intangibles, controllable electronic records, letter-of-credit rights, or electronic documents is perfected by control under section 7-106, 9-104, 9-105, ~~or 9-107, or 9-107A~~ when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) A security interest in investment property is perfected by control under section 9-106 from the time the secured party obtains control and remains perfected by control until:

- (1) the secured party does not have control; and
- (2) one of the following occurs:

(A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

Sec. 56. Section 9-331, Uniform Commercial Code, Reissue Revised Statutes of Nebraska, is amended to read:

9-331 Priority of rights of purchasers of instruments, documents, ~~and securities, and controllable electronic records~~ under other articles; priority of interests in financial assets and security entitlements under article 8 and controllable electronic records under article 12.

(a) This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, ~~or a protected purchaser of a security, or a qualified purchaser of a controllable electronic record.~~ These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in articles 3, 7, ~~and 8, and 12.~~

(b) This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under article 8 or 12.

(c) Filing under this article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b).

Sec. 57. Section 9-406, Uniform Commercial Code, Reissue Revised Statutes of Nebraska, is amended to read:

9-406 Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.

(a) Subject to subsections (b) through (i) and (k), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the

assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to subsections subsection (h) and (k), notification is ineffective under subsection (a):

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) Subject to subsections subsection (h) and (k), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Except as otherwise provided in subsection (e) and sections 2A-303 and 9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under section 9-610 or an acceptance of collateral under section 9-620.

(f) Except as otherwise provided in sections 2A-303 and 9-407, and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subject to subsections subsection (h) and (k), an account debtor may not waive or vary its option under subdivision (b)(3).

(h) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) This section does not apply to an assignment of a health-care-insurance receivable.

(j) This section prevails over any inconsistent provisions of the law of this state.

(k) Subsections (a) through (c) and (g) do not apply to an account or payment intangible that is included in the benefit that can be derived from a controllable electronic record.

Sec. 58. The Uniform Commercial Code is amended by adding new section:

12-101

Short title.

This article may be cited as Uniform Commercial Code - Controllable Electronic Records.

Sec. 59. The Uniform Commercial Code is amended by adding new section:

12-101A

Intent.

(a) The Joint Committee on the Uniform Commercial Code and Emerging Technologies of the Uniform Law Commission has developed draft Uniform Commercial Code provisions governing certain digital assets, specifically those that fall within the definition of "controllable electronic records". The current draft has been extensively vetted by those who understand and participate in digital transactions.

(b) Adoption of the Uniform Law Commission's draft by the 2021 Nebraska Legislature will create a considerable and necessary advantage for Nebraska to lead in emerging industries utilizing blockchain, digital ledger technology, virtual currencies, and other digital assets and would provide a sensible

framework and legal certainty for transactions of controllable electronic records. In subsequent sessions, if necessary, the Nebraska Legislature will review and adopt conforming amendments to the provisions of the Uniform Commercial Code on controllable electronic records to remain consistent with the language and intent of the final proposal of the Joint Committee on the Uniform Commercial Code and Emerging Technologies of the Uniform Law Commission.

Sec. 60. The Uniform Commercial Code is amended by adding new section:

12-102

Definitions.

(a) In this article, "controllable electronic record" means an electronic record that can be subjected to control (section 12-105). The term does not include electronic chattel paper, electronic documents, investment property, and transferable records under the Uniform Electronic Transactions Act.

(b) The definitions of "account," "account debtor," "authenticate," "electronic chattel paper," "investment property," and "payment intangible" in article 9 apply to this article.

Sec. 61. The Uniform Commercial Code is amended by adding new section:

12-103

Scope.

This article applies to controllable electronic records.

Sec. 62. The Uniform Commercial Code is amended by adding new section:

12-104

Rights in controllable electronic records and certain accounts and payment intangibles.

(a) In this section:

(1) "Adverse claim" means a claim that a claimant has a property interest in a controllable electronic record and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the controllable electronic record.

(2) "Qualified purchaser" means a purchaser of a controllable electronic record or an interest therein that obtains control of a controllable electronic record for value and without notice of any adverse claim. The term includes a person that acquires rights in a controllable electronic record by a transfer of control under subsection (d).

(b) Subject to subsections (c) through (i), law other than this article 12 determines whether a person acquires rights in a controllable electronic record and the rights that the person acquires.

(c) A purchaser of a controllable electronic record acquires all rights in the controllable electronic record that the transferor had or had power to transfer.

(d) A person having control of, but no rights in, a controllable electronic record has power to transfer rights in the controllable electronic record by voluntarily transferring control to a person that obtains control for value and without notice of any adverse claim.

(e) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(f) In addition to acquiring the rights of a purchaser, a qualified purchaser acquires its rights in the controllable electronic record and any account or payment intangible that is included in the benefit that can be derived from the controllable electronic record free of any adverse claim.

(g) An action based on an adverse claim to a controllable electronic record or an account or payment intangible that is included in the benefit that can be derived from a controllable electronic record, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a qualified purchaser that acquires its interest in, and obtains control of, a controllable electronic record for value and without notice of the adverse claim.

(h) A person has notice of an adverse claim if:

(1) the person knows of the adverse claim; or

(2) the person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim.

(i) Filing of a financing statement under article 9 is not notice of an adverse claim to a controllable electronic record.

Sec. 63. The Uniform Commercial Code is amended by adding new section:

12-105

Control of controllable electronic record.

(a) A person has "control" of a controllable electronic record if:

(1) the following conditions are met:

(A) the controllable electronic record or the system in which it is recorded, if any, gives the person:

(i) the power to derive substantially all the benefit from the controllable electronic record;

(ii) subject to subsection (b), the exclusive power to prevent others from deriving substantially all the benefit from the controllable electronic record; and

(iii) subject to subsection (b), the exclusive power to transfer control of the controllable electronic record to another person or cause another person to obtain control of a controllable electronic record that derives from the controllable electronic record; and

(B) the controllable electronic record, a record attached to or logically associated with the controllable electronic record, or the system in which the

controllable electronic record is recorded, if any, enables the person to readily identify itself as having the powers specified in subparagraph (A); or

(2) another person obtains control of the controllable electronic record on behalf of the person, or having previously obtained control of the controllable electronic record, acknowledges that it has control on behalf of the person.

(b) A power specified in subparagraph (a)(1)(A)(ii) or (a)(1)(A)(iii) can be "exclusive," even if:

(1) the controllable electronic record or the system in which it is recorded, if any, limits the use to which the controllable electronic record may be put or has protocols that are programmed to result in a transfer of control; and

(2) the person has agreed to share the power with another person.

(c) For the purposes of subparagraph (a)(1)(B), a person may be identified in any way, including by name, identifying number, cryptographic key, office, or account number.

Sec. 64. The Uniform Commercial Code is amended by adding new section:

12-106

Discharge of account debtor on account or payment intangible included in controllable electronic record.

(a) Subject to subsections (b) through (f), if an account or payment intangible is included in the benefit that can be derived from a controllable electronic record, the account debtor may discharge its obligation on the account or payment intangible:

(1) by paying the person having control of the controllable electronic record; or

(2) by paying a person that formerly had control of the controllable electronic record.

(b) Subject to subsection (f), an account debtor may not discharge its obligation by paying a person that formerly had control if, before the payment, the account debtor receives a notification, authenticated by the person having control, that notifies the account debtor that the person has control of the controllable electronic record, reasonably identifies the controllable electronic record, and provides a reasonable method by which the account debtor is to make payments. After receipt of the notification, the account debtor may discharge its obligation by paying in accordance with the notification and may not discharge the obligation by paying a person that formerly had control.

(c) Subject to subsection (f), notification is ineffective under subsection (b):

(1) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(2) at the option of the account debtor, if the notification notifies the account debtor to divide a payment and send portions by more than one method.

(d) Subject to subsection (f), if requested by the account debtor, the person giving the notification shall seasonably furnish reasonable proof that the person has control of the controllable electronic record. Unless the person complies, the account debtor may discharge its obligation by paying a person that formerly had control, even if the account debtor has received a notification under subsection (b).

(e) Subject to subsection (f), an account debtor may not waive or vary its option under subsection (c)(2).

(f) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

Sec. 65. The Uniform Commercial Code is amended by adding new section:

12-107

Governing law.

Unless otherwise agreed to by the parties, the laws of the State of Nebraska shall govern any actions taken pursuant to this article.

Sec. 66. The Uniform Commercial Code is amended by adding new section:

12-108

Applicability.

This article applies to any transaction involving a controllable electronic record that arises on or after the operative date of this section. This article does not apply to any transaction involving a controllable electronic record that arises before the operative date of this section even if the transaction would be subject to this article if the transaction had arisen on or after the operative date of this section. This article does not apply to a right of action with regard to any transaction involving a controllable electronic record that has accrued before the operative date of this section.

Sec. 67. The Uniform Commercial Code is amended by adding new section:

12-109

Savings clause.

Any transaction involving a controllable electronic record that arose before the operative date of this section and the rights, obligations, and interests flowing from that transaction are governed by any statute or other rule amended or repealed by this legislative bill as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule.

Sec. 68. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36,

37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, and 69 of this act become operative on October 1, 2021. Sections 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, and 70 of this act become operative on July 1, 2022. The other section of this act becomes operative on its effective date.

Sec. 69. Original section 8-115, Reissue Revised Statutes of Nebraska, and sections 8-101.02, 8-101.03, 8-102, 8-113, 8-148.09, 8-1,140, 8-601, 8-602, 8-701, 8-702, 8-1120, and 8-2724, Revised Statutes Cumulative Supplement, 2020, are repealed.

Sec. 70. Original sections 1-201, 9-102, 9-301, 9-310, 9-312, 9-314, 9-331, and 9-406, Uniform Commercial Code, Reissue Revised Statutes of Nebraska, are repealed.