

LEGISLATIVE BILL 653

Approved by the Governor June 7, 1985

Introduced by Banking, Commerce & Insurance Committee,
DeCamp, 40, Chairperson; Beyer, 3; Schmit,
23; Pappas, 42; Labedz, 5

AN ACT relating to banks and banking; to amend sections 8-103, 8-108, 8-110, 8-140, 8-150, 8-164, 8-198, 8-199, 8-413, and 8-1506, Reissue Revised Statutes of Nebraska, 1943, and section 21-2079, Revised Statutes Supplement, 1984; to change provisions relating to the powers of the Director of Banking and Finance; to prohibit certain persons from borrowing money as prescribed; to provide a penalty; to change provisions relating to bonds; to eliminate obsolete language; to change provisions relating to the purchase and utilization of real estate by banks; to change provisions relating to the declaration of dividends; to change provisions relating to the department as receiver; to provide for the reorganization of certain financial institutions; to change provisions relating to industrial loan and investment companies; to provide for a hearing; to change provisions relating to the right of shareholders to obtain payment; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 8-103, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-103. (1) The director shall have charge of and full supervision over the examination of banks and the enforcement of compliance with the statutes by banks and their holding companies in their business and functions; and shall constructively aid and assist banks in maintaining proper banking standards and efficiency. The director shall also have charge of and full supervision over the examination of and the enforcement of compliance with the statutes by trust companies, building and loan associations, industrial loan and investment companies, credit unions, and cooperative credit associations in their business and functions; and shall constructively aid and assist trust companies, building and loan associations, industrial loan and investment companies, and cooperative credit associations in maintaining proper standards and efficiency.

(2) If the director is financially interested directly or indirectly in any bank or other institution doing business in Nebraska, subject to his or her jurisdiction, the same shall be under the direct supervision of the Governor, and as to such bank or other institution, the Governor shall exercise all the supervisory powers otherwise vested in the Director of Banking and Finance by the laws of this state, and reports of examination by state bank examiners and by examiners for the Federal Deposit Insurance Corporation shall be transmitted to the Governor.

(3) No person employed by the department shall be permitted to borrow money from any bank or other institution doing business in Nebraska subject to the jurisdiction of the department, except that persons employed by the department may borrow money in the normal course of business from the Nebraska State Employees Credit Union.

(4) Any person who intentionally violates this section or who aids, abets, or assists in a violation of this section shall be guilty of a Class IV felony.

Sec. 2. That section 8-108, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-108. The director, his or her deputy, or any duly appointed examiner, shall have power to make a thorough examination into all the books, papers, and affairs of any bank under sections 8-101 to 8-112 or other institution in Nebraska subject to the department's jurisdiction, or its holding company, if any, and in so doing to administer oaths and affirmations and to examine on oath or affirmation the officers, agents, and clerks of such bank institution or its holding company, if any, touching the matter which they may be authorized and directed to inquire into and examine, and to subpoena the attendance of any person or persons in this state to testify under oath in relation to the affairs of such bank institution or its holding company, if any. Such bank examination shall Such powers shall include, but not be limited to, the authority to examine and monitor by electronic means the books, papers, and affairs of any financial institution or the holding company of a financial institution. The examination may be in the presence of at least two members of the board of directors of the bank institution or its holding company, if any, undergoing such examination, and it shall be the duty of the examiner to incorporate in his or her report the names of the directors in whose presence the examination was made.

Sec. 3. That section 8-110, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-110. The department shall require each state bank to obtain a surety fidelity bond, naming the bank and the State of Nebraska, jointly, as obligees as obligee, in

an amount to be fixed by the department. Such bonds The bond shall be issued by an authorized insurer and shall be conditioned to protect and indemnify the bank from loss which it may sustain, of money or other personal property, including that for which the bank is responsible, through or by reason of the fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, misapplication, or misappropriation, or any other dishonest or criminal act of or by any of its officers or employees. Such bond may contain a deductible clause in an amount to be approved by the director. The An executed copy of the bond shall be filed with and approved by the director and shall remain a part of the records of the department. If the premium of the bond is not paid, the bond shall not be canceled or subject to cancellation unless at least ten days advance notice, in writing, is filed with the department. No bond which is current with respect to premium payments shall be canceled or subject to cancellation unless at least forty-five days advance notice, in writing, is filed with the department. The bond shall always be open to public inspection during the office hours of the department. In the event a bond is canceled, the department may take whatever action it deems appropriate in connection with the continued operation of the bank involved.

Sec. 4. That section 8-140, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-140. No director, officer, or employee of any bank, no corporation in which an officer of the bank is the owner of a controlling interest, and no partnership in which an officer of the bank is a member, shall be permitted to borrow any of the funds of the bank, directly or indirectly, without first having secured the approval of the board of directors at a meeting thereof, the record of which shall be made and kept as part of the records of such bank. An active officer or employee may, with such approval, borrow from the funds of the bank an amount not to exceed ten thousand dollars, except that subject to ~~the~~ provisions of sections 8-141 and 8-152 and with the specific prior approval of the board of directors, a bank may (1) make an additional loan not exceeding sixty thousand dollars to any officer or employee of the bank, if at the time the loan is made it is secured by a first lien on a dwelling which is, after making of the loan, to be owned by the officer or employee and used by him or her as a residence and (2) may make an additional loan not exceeding twenty thousand dollars to any officer or employee of the bank to finance the education of such ~~officer~~ officer's or employee's children. Such loans shall be subject to the lending limit set forth in section 8-141. A director who is not an officer and any honorary or inactive officer may borrow from the funds of the bank such amount as the board of directors shall approve. If any officer of any bank borrows from or if he or she be or becomes indebted to any

other bank, such officer shall make a written report to the board of directors of the bank of which he or she is an officer, stating the date and amount of such loan or indebtedness, the security therefor, and the purpose for which the proceeds have been or are to be used. ~~Loans made prior to November 18, 1965, may be renewed or extended for a period expiring not more than five years from November 18, 1965. No person connected with the department shall be permitted to borrow money from any state bank. Any officer, director, or employee of a bank, or any examiner, or any other person who shall intentionally violate the provisions of this section, or who shall aid, abet, or assist in a violation thereof, shall be guilty of a Class IV felony.~~

Sec. 5. That section 8-150, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-150. Any bank may purchase, hold, and convey real estate for the following purposes: ~~only-~~ (1) Such as is authorized by section 8-149; (2) such as shall be conveyed to it for debts due the bank; and (3) such as it shall purchase at sale under judgments, ~~or decrees, deeds of trust, or mortgages held by the bank or shall purchase to secure debts due to it upon its securities, but the bank at such sale shall not bid a larger amount than required to satisfy such judgments or decrees with costs. Real estate acquired in satisfaction of debts or at a sale upon judgments, or decrees, deeds of trust, or mortgages shall be sold at private or public sale within five years unless authority shall be given in writing by the department to hold it for a longer period. The total amount of real estate held by any bank for purposes of subdivisions (2) and (3) of this section shall not at any one time exceed twenty-five per cent of its paid-up capital without the written consent of the department be entered on the records of the bank as an asset at a value greater than (a) the unpaid balance of the debts due the bank plus its out-of-pocket expenses incurred in acquiring clear title, (b) its judgments or decrees with costs, or (c) the appraised value of such real estate, whichever is less, except that a bank may expend funds as necessary for repairs or to complete a project in order to market such property. A bank may utilize property acquired by it under subdivisions (2) and (3) of this section in any manner authorized by the department.~~

Sec. 6. That section 8-164, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-164. The board of directors of any bank may quarterly or semiannually declare a dividend out of net profits on its capital stock, but only under the following conditions:

(1) All bad debts, required to be charged off by either the directors or the department, shall first have been charged off. All debts due any bank, on which

interest is past due and unpaid for a period of six months, unless the same are well secured ~~and in or in the process of~~ collection, shall be considered bad debts within the meaning of this section; and -

(2) Twenty per cent of the net profits accumulated since the preceding dividend shall first have been carried to the surplus fund unless such surplus fund equals or exceeds the amount of the paid-up capital stock.

Sec. 7. That section 8-198, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-198. The department ~~is may be~~ designated the receiver and liquidating agent ~~of failed or insolvent banks and such other financial institutions as the statutes provide shall be liquidated by such department.~~ Such department shall accept appointment and act as receiver of any such institution the liquidation of which is being or is to be conducted as a judicial proceeding whenever a court having jurisdiction over such proceeding, in the exercise of its discretion, appoints the department as such receiver for any financial institution subject to the department's jurisdiction and, subject to the district court's supervision and control, may proceed to liquidate such institution or reorganize it in accordance with sections 8-101 to 8-1,129.

Sec. 8. That section 8-199, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-199. Whenever the department has been designated receiver for an institution subject to its jurisdiction, ~~the~~ The department shall have all the powers and privileges provided by the laws of this state with respect to ~~other receivers, any other receiver and such incidental powers as shall be necessary to carry out an orderly and efficient liquidation or reorganization of any bank or other financial institution of for which the department it~~ may have become receiver, either by operation of law or by judicial appointment. Acting, ~~and acting~~ by and through the director, ~~it~~ the department may in its own name as such receiver enforce on behalf of such institution, or its creditors or shareholders, by actions at law or in equity, all debts or other obligations of whatever kind or nature due to such institution, or the creditors or shareholders thereof. In, ~~and in~~ like manner, the department ~~it~~ may make, execute, and deliver any and all deeds, assignments, and other instruments necessary and proper to effectuate any sale of real or personal property, or the settlement of any obligations belonging or due to such bank or other financial institution for which the department may have become receiver, or its creditors or shareholders, when such sale or settlement is approved by the district court of the county in which such institution is located. The director shall receive no fees, salary, or other compensation for his ~~or her~~ services in connection with the liquidation~~or~~

reorganization of such institutions other than his or her salary.

Sec. 9. That section 8-413, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-413. No industrial loan and investment company licensed under sections 8-401 to 8-417 shall at any time permit its indebtedness to exceed in the aggregate ten times the amount of its paid-up capital and surplus and capital notes and debentures issued pursuant to section 8-404.01, except that the guidelines and limits established by the Federal Deposit Insurance Corporation may be used by the director in lieu of the requirements of this section for industrial loan and investment companies which are insured with coverage issued by the Federal Deposit Insurance Corporation.

Sec. 10. That section 8-1506, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1506. Whenever the Department of Banking and Finance determines the acquisition of any of the institutions under its supervision is necessary because its capital is impaired, it is conducting its business in an unsafe or unauthorized manner, or it is endangering the interest of depositors or savers, the Director of Banking and Finance may take immediate action in the case of an emergency so declared by the Governor, the Secretary of State, and the Director of Banking and Finance, without the benefit of a hearing, to take possession of and convert or merge the charter, form of ownership, or operating powers, or some or all of the assets and liabilities of the bank or other financial of any institution under the department's supervision into the charter, form of ownership, or operating powers of a bank or any other financial institution under the department's supervision to facilitate the acquisition.

Any stockholder, depositor, or creditor of any such institution shall, upon application to the director within five days of the entry of the order, be afforded a hearing relating to the department's order and determination not later than ten days after such application has been filed. On the basis of such hearing, the director shall enter a final order which may continue the original order in effect, revoke it, or modify it. Any person aggrieved by a final order of the director made pursuant to this section may obtain a review of the final order in the district court of Lancaster County by filing in such court, within ten days after the entry of the final order, a written petition praying that the final order be modified or set aside in whole or in part. Upon service of the petition, the director shall within fifteen days certify and file in such court a copy of the original order, the application for hearing, all exhibits and testimony, and the final order from which the appeal is taken. The hearing before the district court shall be

interest is past due and unpaid for a period of six months, unless the same are well secured ~~and in or in the process of~~ collection, shall be considered bad debts within the meaning of this section; and -

(2) Twenty per cent of the net profits accumulated since the preceding dividend shall first have been carried to the surplus fund unless such surplus fund equals or exceeds the amount of the paid-up capital stock.

Sec. 7. That section 8-198, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-198. The department ~~is may be~~ designated the receiver and liquidating agent ~~of failed or insolvent banks and such other financial institutions as the statutes provide shall be liquidated by such department.~~ Such department shall accept appointment and act as receiver ~~of any such institution the liquidation of which is being or is to be conducted as a judicial proceeding whenever a court having jurisdiction over such proceeding, in the exercise of its discretion, appoints the department as such receiver for any financial institution subject to the department's jurisdiction and, subject to the district court's supervision and control, may proceed to liquidate such institution or reorganize it in accordance with sections 8-101 to 8-1, 129.~~

Sec. 8. That section 8-199, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-199. Whenever the department has been designated receiver for an institution subject to its jurisdiction, ~~The~~ department shall have all the powers and privileges provided by the laws of this state with respect to ~~other receivers, any other receiver~~ and such incidental powers as shall be necessary to carry out an orderly and efficient liquidation ~~or reorganization of any bank or other financial institution of~~ for which the department ~~it~~ may have become receiver, either by operation of law or by judicial appointment. Acting ~~and acting~~ by and through the director, ~~it~~ the department may in its own name as such receiver enforce on behalf of such institution, or its creditors or shareholders, by actions at law or in equity, all debts or other obligations of whatever kind or nature due to such institution, or the creditors or shareholders thereof. ~~In and in~~ like manner, the department ~~it~~ may make, execute, and deliver any and all deeds, assignments, and other instruments necessary and proper to effectuate any sale of real or personal property, or the settlement of any obligations belonging or due to such ~~bank or other~~ financial institution for which the department may have become receiver, or its creditors or shareholders, when such sale or settlement is approved by the district court of the county in which such institution is located. The director shall receive no fees, salary, or other compensation for his ~~or her~~ services in connection with the liquidation~~or~~

reorganization of such institutions other than his or her salary.

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Sec. 10. That section 8-1506, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1506. Whenever the Department of Banking and Finance determines the acquisition of any of the institutions under its supervision is necessary because its capital is impaired, it is conducting its business in an unsafe or unauthorized manner, or it is endangering the interest of depositors or savers, the Director of Banking and Finance may take immediate action in the case of an emergency so declared by the Governor, the Secretary of State, and the Director of Banking and Finance, without the benefit of a hearing, to take possession of and convert or merge the charter, form of ownership, or operating powers, or some or all of the assets and liabilities of the bank or other financial of any institution under the department's supervision into the charter, form of ownership, or operating powers of a bank or any other financial institution under the department's supervision to facilitate the acquisition.

Any stockholder, depositor, or creditor of any such institution shall, upon application to the director within five days of the entry of the order, be afforded a hearing relating to the department's order and determination not later than ten days after such application has been filed. On the basis of such hearing, the director shall enter a final order which may continue the original order in effect, revoke it, or modify it. Any person aggrieved by a final order of the director made pursuant to this section may obtain a review of the final order in the district court of Lancaster County by filing in such court, within ten days after the entry of the final order, a written petition praying that the final order be modified or set aside in whole or in part. Upon service of the petition, the director shall within fifteen days certify and file in such court a copy of the original order, the application for hearing, all exhibits and testimony, and the final order from which the appeal is taken. The hearing before the district court shall be

conducted by the court, without a jury, on the record which was before the department. The court may affirm the decision of the department, remand the case for further proceedings, or reverse or modify the decision if the substantial rights of the party appealing from the final order of the director may have been prejudiced because the department's decision is:

- (1) In violation of constitutional provisions;
- (2) In excess of the statutory authority or jurisdiction of the department;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Unsupported by competent, material, and substantial evidence in view of the entire record as made on review; or
- (6) Arbitrary or capricious.

Sec. 11. That section 21-2079, Revised Statutes Supplement, 1984, be amended to read as follows:

21-2079. (1) Any shareholders of a corporation shall have the right to dissent from, and obtain payment for their shares in the event of, any of the following corporate actions:

(a) Any plan of merger or consolidation to which the corporation is a party, except as provided in subsection (3) of this section;

(b) Any sale or exchange of all or substantially all of the property and assets of the corporation, otherwise than in the usual and regular course of its business and other than a sale for cash ~~where~~ when the shareholders' approval thereof is conditional upon the distribution of all or substantially all of the net proceeds of the sale to the shareholders in accordance with their respective interests within one year after the date of sale;

(c) Any plan of exchange to which the corporation is a party as the corporation the shares of which are to be acquired;

(d) Any amendment of the articles of incorporation which materially and adversely affects the rights appurtenant to the shares of the dissenting shareholder if such amendment:

(i) Alters or abolishes a preferential right of such shares;

(ii) Creates, alters, or abolishes a right in respect of the redemption of such shares, including a provision respecting a sinking fund for the redemption or repurchase of such shares;

(iii) Alters or abolishes a preemptive right of the holder of such shares to acquire shares or other securities; or

(iv) Excludes or limits the right of the holder of such shares to vote on any matter, or to cumulate his or her votes, except as such right may be limited by dilution

through the issuance of shares or other securities with similar voting rights; or

(e) Any other corporate action taken pursuant to a shareholder vote with respect to which the articles of incorporation, the bylaws, or a resolution of the board of directors directs that dissenting shareholders shall have a right to obtain payment for their shares.

(2)(a) A record holder of shares may assert dissenters' rights as to less than all of the shares registered in his or her name. In that event, his or her right shall be determined as if the shares as to which he or she has dissented and his or her other shares were registered in the names of different shareholders.

(b) A beneficial owner of shares who is not the record holder may assert dissenters' rights with respect to shares held on his or her behalf, and shall be treated as a dissenting shareholder under the terms of this section and section 21-2030 if he or she submits to the corporation at the time of or before the assertion of these rights a written consent of the record holder.

(3) The right to obtain payment under ~~the provisions of~~ this section shall not apply to the shareholders of the surviving corporation in a merger if a vote of the shareholders of such corporation is not necessary to authorize such merger or to the shareholders of a bank, trust company, stock-owned savings and loan association, industrial loan and investment company, or the holding company of any of such financial institutions.

(4) A shareholder of a corporation who has a right under this section to obtain payment for his or her shares shall have no right at law or in equity to attack the validity of the corporate action that gives rise to his or her right to obtain payment, nor to have the action set aside or rescinded, except for mergers authorized under section 21-2074 or when the corporate action is unlawful or fraudulent with regard to the complaining shareholder or to the corporation.

Sec. 12. That original sections 8-103, 8-108, 8-110, 8-140, 8-150, 8-164, 8-198, 8-199, 8-413, and 8-1506, Reissue Revised Statutes of Nebraska, 1943, and section 21-2079, Revised Statutes Supplement, 1984, are repealed.

Sec. 13. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.