

LEGISLATIVE BILL 611

Approved by the Governor March 15, 1994

Introduced by Wesely, 26

AN ACT relating to banks and banking; to amend section 8-144, Reissue Revised Statutes of Nebraska, 1943, and section 8-101, Revised Statutes Supplement, 1993; to provide and eliminate certain bank insider lending limit provisions as prescribed; to define terms; to provide a penalty; to provide powers for the Director of Banking and Finance; to harmonize provisions; and to repeal the original sections, and also section 8-140, Revised Statutes Supplement, 1993. Be it enacted by the people of the State of Nebraska,

Section 1. That section 8-101, Revised Statutes Supplement, 1993, be amended to read as follows:

8-101. ~~As used in~~ For purposes of sections 8-101 to 8-1,129 and section 2 of this act, unless the context otherwise requires:

(1) Capital or capital stock shall mean capital stock;
 (2) Department shall mean the Department of Banking and Finance;
 (3) Director shall mean the Director of Banking and Finance;
 (4) Bank or banking corporation shall be construed to mean any incorporated banking institution which shall have been 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 sections 8-101 to 8-1,129 and section 2 of this act. Bank shall be construed to mean any such banking institution as shall be, in addition to the exercise of other powers, following the practice of repaying deposits upon check, draft, or order and of making loans;

(5) Order shall include orders transmitted by electronic transmission;

(6) Automatic teller machine shall mean a machine established and located off the premises of a financial institution which has a main chartered office or approved branch office 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. An unattended automatic teller machine shall not be deemed to be an office operated by a financial institution;

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

(8) Point-of-sale terminal shall mean 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 in conjunction with a personal identification number. A point-of-sale terminal shall not be deemed to be an office 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;

(9) Making loans shall include 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;

(10) Financial institution shall mean a bank, savings bank, building and loan association, savings and loan association, industrial loan and investment company, credit union, or other institution offering automatic teller machines;

(11) Financial institution employees shall include parent holding company and affiliate employees;

(12) Switch shall mean any facility where electronic impulses or other indicia of a transaction originating at an automatic teller machine or point-of-sale terminal are received and are routed and transmitted to a

financial institution, data processing center, or other switch, wherever located. A switch may also be a data processing center;

(13) Impulse shall mean an electronic, sound, or mechanical impulse, or any combination thereof;

(14) Insolvent shall mean 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; and

(15) Foreign state agency shall mean 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.

Sec. 2. (1) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds the higher of twenty-five thousand dollars or five percent of the bank's unimpaired capital and unimpaired surplus unless (a) the extension of credit has been approved in advance by a majority vote of the entire board of directors of the bank, a record of which shall be made and kept as a part of the records of such bank, and (b) the interested party has abstained from participating directly or indirectly in such vote.

(2) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds five hundred thousand dollars except by complying with the requirements of subdivisions (1)(a) and (b) of this section.

(3) No bank shall extend credit to any of its executive officers licensed pursuant to section 8-139, and no such executive officer shall borrow from or otherwise become indebted to his or her bank, except in the amounts and for the purposes set forth in subsection (4) of this section.

(4) A bank shall be authorized to extend credit to any of its executive officers licensed pursuant to section 8-139:

(a) In any amount to finance the education of such executive officer's children;

(b) In any amount to finance the purchase, construction, maintenance, or improvement of a residence of such executive officer if the extension of credit is secured by a first lien on the residence and the residence is owned or is expected to be owned after the extension of credit by the executive officer; or

(c) For any other purpose not specified in subdivisions (a) and (b) of this subsection if the aggregate amount of such other extensions of credit to such executive officer does not exceed, at any one time, the greater of two and one-half percent of the bank's unimpaired capital and unimpaired surplus or twenty-five thousand dollars, but in no event greater than one hundred thousand dollars or the amount of the bank's lending limit as prescribed in section 8-141, whichever is less.

(5) Any executive officer licensed pursuant to section 8-139 who becomes indebted to any other financial institution or institutions shall, by the next regularly scheduled meeting of the board of directors, make a written report to the board of directors of the bank of which he or she is an executive 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.

(6) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds the lending limit of the bank as prescribed in section 8-141 or 12 U.S.C. 84, whichever is less.

(7) For purposes of this section:

(a) Executive officer shall mean a person who participates or has authority to participate, other than in the capacity of director, in the major policymaking functions of the bank, whether or not the officer has an official title, the title designates such officer as an assistant, or such officer is serving without salary or other compensation. Executive officer shall include

the chairperson of the board of directors, the president, all vice presidents, the cashier, the corporate secretary, and the treasurer, unless the executive officer is excluded by a resolution of the board of directors or by the bylaws of the bank from participating, other than in the capacity of director, in the major policymaking functions of the bank, and the executive officer does not actually participate in such functions. A manager or assistant manager of a branch of a bank shall not be considered to be an executive officer unless such individual participates or is authorized to participate in the major policymaking functions of the bank; and

(b) Unimpaired capital and unimpaired surplus shall mean the sum of:

(i) The total equity capital of the bank reported on its most recent consolidated report of condition filed under section 8-166;

(ii) Any subordinated notes and debentures approved as an addition to the bank's capital structure by the appropriate federal banking agency; and

(iii) Any valuation reserves created by charges to the bank's income reported on its most recent consolidated report of condition filed under section 8-166.

(8) Any executive officer, director, or principal shareholder of a bank or any other 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.

(9) The Director of Banking and Finance shall have authority to adopt and promulgate rules and regulations to implement this section, including rules or regulations defining or further defining terms used in this section, consistent with the provisions of 12 U.S.C. 84 and implementing Regulation O.

Sec. 3. That section 8-144, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-144. Any officer or employee of any bank who shall willfully and knowingly violate any of the provisions of sections 8-140 8-141 to 8-143 and section 2 of this act shall be liable under his or her bond for any loss to the bank resulting therefrom.

Sec. 4. That original section 8-144, Reissue Revised Statutes of Nebraska, 1943, and section 8-101, Revised Statutes Supplement, 1993, and also section 8-140, Revised Statutes Supplement, 1993, are repealed.