

LEGISLATURE OF NEBRASKA
 ONE HUNDRED THIRD LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 213

Introduced by Gloor, 35.

Read first time January 15, 2013

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to financial institutions; to amend sections
 2 8-101.01, 8-103, 8-108, 8-135, 8-167.01, 8-1,140, 8-204,
 3 8-213, 8-355, 8-702, 8-705, 8-706, 8-915, and 21-17,115,
 4 Reissue Revised Statutes of Nebraska; to change
 5 provisions relating to financial interests of the
 6 Director of Banking and Finance and borrowing
 7 restrictions on employees of the Department of Banking
 8 and Finance; to change provisions relating to Director of
 9 Banking and Finance powers, electronic fund transfers,
 10 bank publication requirements, and bank membership in a
 11 limited liability company; to change provisions relating
 12 to trust companies; to revise powers of state-chartered
 13 banks, building and loan associations, and credit unions;
 14 to eliminate obsolete provisions; to harmonize
 15 provisions; to repeal the original sections; and to
 16 declare an emergency.
 17 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 8-101.01, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 8-101.01 Sections 8-101 to 8-1,140 and section 4 of this
4 act shall be known and may be cited as the Nebraska Banking Act.

5 Sec. 2. Section 8-103, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 8-103 (1) The director shall have charge of and full
8 supervision over the examination of banks and the enforcement of
9 compliance with the statutes by banks and their holding companies in
10 their business and functions and shall constructively aid and assist
11 banks in maintaining proper banking standards and efficiency. The
12 director shall also have charge of and full supervision over the
13 examination of and the enforcement of compliance with the statutes by
14 trust companies, building and loan associations, and credit unions in
15 their business and functions and shall constructively aid and assist
16 trust companies, building and loan associations, and credit unions in
17 maintaining proper standards and efficiency.

18 (2) If the director is financially interested directly or
19 indirectly in any financial institution doing business in Nebraska,
20 subject to his or her jurisdiction, the financial institution shall
21 be under the direct supervision of the Governor, and as to such
22 financial institution, the Governor shall exercise all the
23 supervisory powers otherwise vested in the Director of Banking and
24 Finance by the laws of this state, and reports of examination by
25 state bank examiners, foreign state bank examiners, examiners of the

1 Federal Reserve Board, examiners of the Office of the Comptroller of
2 the Currency, ~~and examiners for~~ of the Federal Deposit Insurance
3 Corporation, and examiners of the Consumer Financial Protection
4 Bureau shall be transmitted to the Governor.

5 (3)(a) No person employed by the department shall be
6 permitted to borrow money from any financial institution doing
7 business in Nebraska subject to the jurisdiction of the department,
8 except that persons employed by the department may borrow money in
9 the normal course of business from the Nebraska State Employees
10 Credit Union. If the credit union is acquired by, or merged into, a
11 Nebraska state-chartered credit union, persons employed by the
12 department may borrow money in the normal course of business from the
13 successor credit union.

14 (b) In the event a loan to a person employed by the
15 department is sold or otherwise transferred to a financial
16 institution doing business in Nebraska and subject to the
17 jurisdiction of the department, no violation of this section occurs
18 if (i) the person employed by the department did not solicit the sale
19 or transfer of the loan and (ii) the person employed by the
20 department gives notice to the director of such sale or transfer. The
21 director, in his or her discretion, may require such person to make
22 all reasonable efforts to seek another lender.

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

1 Sec. 3. Section 8-108, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 8-108 (1) The director, his or her deputy, or any duly
4 appointed examiner shall have power to make a thorough examination
5 into all the books, papers, and affairs of any bank or other
6 institution in Nebraska subject to the department's jurisdiction, or
7 its holding company, if any, and in so doing to administer oaths and
8 affirmations, to examine on oath or affirmation the officers, agents,
9 and clerks of such institution or its holding company, if any,
10 touching the matter which they may be authorized and directed to
11 inquire into and examine, and to subpoena the attendance of any
12 person or persons in this state to testify under oath or affirmation
13 in relation to the affairs of such institution or its holding
14 company, if any. Such powers shall include, but not be limited to,
15 the authority to examine and monitor by electronic means the books,
16 papers, and affairs of any financial institution or the holding
17 company of a financial institution. The examination may be in the
18 presence of at least two members of the board of directors of the
19 institution or its holding company, if any, undergoing such
20 examination, and it shall be the duty of the examiner to incorporate
21 in his or her report the names of the directors in whose presence the
22 examination was made.

23 (2) The director may accept any examination or report
24 from the Federal Deposit Insurance Corporation, the Federal Reserve
25 Board, the Comptroller of the Currency, the Consumer Financial

1 Protection Bureau, or a foreign state agency.

2 (3) The director may provide any such examination or
3 report to the Federal Deposit Insurance Corporation, the Federal
4 Reserve Board, the Comptroller of the Currency, the Consumer
5 Financial Protection Bureau, or a foreign state agency. The
6 department shall have power to examine the books, papers, and affairs
7 of any electronic data processing center which has contracted with a
8 financial institution to conduct the financial institution's
9 electronic data processing business. The department may charge the
10 electronic data processing center for the time spent by examiners in
11 such examination at the rate set forth in section 8-606 for
12 examiners' time spent in examinations of financial institutions.

13 Sec. 4. (1) A bank may be a member of a limited liability
14 company to the extent and in a manner specified by rule, regulation,
15 or order of the department.

16 (2) A limited liability company which has a bank as a
17 member shall engage in only those activities which are part of the
18 business of banking or incidental to such business except for the
19 receipt of deposits.

20 (3) A limited liability company which has a bank as a
21 member is subject to examination and regulation by the department to
22 the same extent as its bank member.

23 (4) A limited liability company which has a bank as a
24 member is not to be considered a branch of its bank member.

25 Sec. 5. Section 8-135, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 8-135 (1) All persons, regardless of age, may become
3 depositors in any bank and shall be subject to the same duties and
4 liabilities respecting their deposits. Whenever a deposit is accepted
5 by any bank in the name of any person, regardless of age, the deposit
6 may be withdrawn by the depositor by any of the following methods:

7 (a) Check or other instrument in writing. The check or
8 other instrument in writing constitutes a receipt or acquittance if
9 the check or other instrument in writing is signed by the depositor
10 and constitutes a valid release and discharge to the bank for all
11 payments so made; or

12 (b) Electronic means through:

13 (i) Preauthorized direct withdrawal;

14 (ii) An automatic teller machine;

15 (iii) A debit card;

16 (iv) A transfer by telephone;

17 (v) A network, including the Internet; or

18 (vi) Any electronic terminal, computer, magnetic tape, or
19 other electronic means.

20 (2) This section shall not be construed to affect the
21 rights, liabilities, or responsibilities of participants in an
22 electronic fund transfer under the federal Electronic Fund Transfer
23 Act, 15 U.S.C. 1693 et seq., as ~~it~~ the act existed on ~~September 4,~~
24 ~~2005,~~ January 1, 2013, and shall not affect the legal relationships
25 between a minor and any person other than the bank.

1 Sec. 6. Section 8-167.01, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 8-167.01 The publication requirements of section 8-167
4 shall not apply to any bank that makes a disclosure statement
5 available to any member of the general public upon request in
6 compliance with the disclosure of financial information provisions of
7 12 C.F.R. part 350, as such part existed on January 1, 2013. ~~or 12~~
8 ~~C.F.R. section 208.17.~~

9 Sec. 7. Section 8-1,140, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 8-1,140 Notwithstanding any of the other provisions of
12 the Nebraska Banking Act or any other Nebraska statute, any bank
13 incorporated under the laws of this state and organized under the
14 provisions of the act, or under the laws of this state as they
15 existed prior to May 9, 1933, shall directly, or indirectly through a
16 subsidiary or subsidiaries, have all the rights, powers, privileges,
17 benefits, and immunities which may be exercised as of January 1,
18 2012, 2013, by a federally chartered bank doing business in Nebraska,
19 including the exercise of all powers and activities that are
20 permitted for a financial subsidiary of a federally chartered bank.
21 Such rights, powers, privileges, benefits, and immunities shall not
22 relieve such bank from payment of state taxes assessed under any
23 applicable laws of this state.

24 Sec. 8. Section 8-204, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 8-204 The control of the business affairs of a trust
2 company shall be vested in a board of directors of not less than five
3 persons, ~~all of whom shall be elected by and from its stockholders.~~
4 who shall be selected at such time and in such manner as may be
5 provided by the articles of incorporation of the trust company and in
6 conformity with the Nebraska Trust Company Act. Any vacancy on the
7 board shall be filled within ninety days by appointment by the
8 remaining directors, and any director so appointed shall serve until
9 the next election of directors, except that if the vacancy leaves a
10 minimum of five directors, appointment shall be optional. The board
11 shall select from among its number a president and secretary and
12 shall appoint trust officers and committees as it deems necessary.
13 The officers and committee members shall hold their positions at the
14 discretion of the board of directors. The board of directors shall
15 hold at least one regular meeting in each calendar quarter and shall
16 prepare and maintain complete and accurate minutes of the proceedings
17 at such meetings.

18 The board of directors shall make or cause to be made
19 each year a thorough examination of the books, records, funds, and
20 securities held for the trust company and customer accounts. The
21 examination may be conducted by the members of the board of directors
22 or the board may accept an annual audit by an accountant or
23 accounting firm approved by the Department of Banking and Finance.
24 Any such examination or audit must comply in scope with minimum
25 standards established by the department.

1 Unless the department otherwise approves, a majority of
2 the members of the board of directors of any trust company shall be
3 residents of this state. Reasonable efforts shall be made to acquire
4 members of the board of directors from the county in which the trust
5 company is located. ~~Every director shall own at least one share of~~
6 ~~paid up capital stock of the trust company or its holding company, if~~
7 ~~any, in his or her name and right.~~ Directors of trust companies shall
8 be persons of good moral character and known integrity, business
9 experience, and responsibility. No person shall act as such member of
10 the board of directors of any trust company until the corporation
11 applies for and obtains approval from the Department of Banking and
12 Finance.

13 Sec. 9. Section 8-213, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 8-213 In the case of national banks and federal savings
16 associations doing business as trust companies, trust companies,
17 federally chartered trust companies, out-of-state trust companies
18 authorized under the Interstate Trust Company Office Act or otherwise
19 doing business in this state, and out-of-state entities acting in a
20 fiduciary capacity in this state, which upon insolvency are not
21 liquidated by the Department of Banking and Finance, upon the
22 appointment of a receiver, trustee in bankruptcy, or other
23 liquidating agent, the department shall turn over to the receiver,
24 trustee in bankruptcy, or other liquidating agent any securities
25 pledged to it by the national bank, federal savings association,

1 trust company, federally chartered trust company, out-of-state trust
2 company authorized under the Interstate Trust Company Office Act or
3 otherwise doing business in this state, or any out-of-state entity
4 acting in a fiduciary capacity in this state, upon:

5 (1) The entry of an order by a court having jurisdiction
6 over a receiver, trustee in bankruptcy, or other liquidating agent of
7 the national bank, federal savings association, trust company,
8 federally chartered trust company, out-of-state trust company
9 authorized under the Interstate Trust Company Office Act or otherwise
10 doing business in this state, or any out-of-state entity acting in a
11 fiduciary capacity in this state, ordering the department to turn
12 over to a receiver, trustee in bankruptcy, or other liquidating agent
13 the securities pledged to the department; and

14 (2) The publication of a notice for three successive
15 weeks in some legal newspaper published in the county or, if none is
16 published in the county, in a legal newspaper of general circulation
17 in the county in which the principal place of business of the
18 national bank, federal savings association, trust company, federally
19 chartered trust company, out-of-state trust company authorized under
20 the Interstate Trust Company Office Act or otherwise doing business
21 in this state, or any out-of-state entity acting in a fiduciary
22 capacity in this state, is located that all claims for the trust
23 liabilities must be filed with the receiver, trustee in bankruptcy,
24 or other liquidating agent within thirty days. In the case of
25 national banks the notice provided for in 12 U.S.C. 193, and in the

1 case of trust companies liquidated in bankruptcy court, the notice
2 provided for in 11 U.S.C. ~~94(b), 342,~~ shall be sufficient without
3 further notice being given and shall be in lieu of the notice
4 required in this subdivision. In the case of out-of-state trust
5 companies authorized under the Interstate Trust Company Office Act or
6 otherwise doing business in this state, or in the case of any out-of-
7 state entity acting in a fiduciary capacity in this state, an
8 additional notice shall be published in each county in Nebraska where
9 the out-of-state trust company or out-of-state entity maintains an
10 office, does business, or acts in a fiduciary capacity, or maintained
11 an office, conducted business, or acted in a fiduciary capacity,
12 within one year prior to the insolvency.

13 Sec. 10. Section 8-355, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 8-355 Notwithstanding any of the provisions of Chapter 8,
16 article 3, or any other Nebraska statute, except as provided in
17 section 8-345.02, any association incorporated under the laws of the
18 State of Nebraska and organized under the provisions of such article
19 shall have all the rights, powers, privileges, benefits, and
20 immunities which may be exercised as of January 1, ~~2012,~~ 2013, by a
21 federal savings and loan association doing business in Nebraska. Such
22 rights, powers, privileges, benefits, and immunities shall not
23 relieve such association from payment of state taxes assessed under
24 any applicable laws of this state.

25 Sec. 11. Section 8-702, Reissue Revised Statutes of

1 Nebraska, is amended to read:

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

25 (2)(a) A banking institution which has not complied with

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

1 with subdivision (2)(a) of this section with the Department of
2 Banking and Finance.

3 (b) ~~Effective July 31, 2010, or within one hundred eighty~~
4 ~~days after the Nationwide Mortgage Licensing System and Registry is~~
5 ~~capable of accepting such registrations, whichever occurs later, any~~
6 Any banking institution described in subdivision (a) of this
7 subsection that employs mortgage loan originators, as defined in
8 section 45-702, shall register such employees with the Nationwide
9 Mortgage Licensing System and Registry, as defined in section 45-702,
10 by furnishing the following information concerning the employees'
11 identities to the Nationwide Mortgage Licensing System and Registry:

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

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

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

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

10 Sec. 12. Section 8-705, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 8-705 The Director of Banking and Finance is authorized
13 to accept in his or her discretion, in lieu of any examination
14 authorized by the laws of this state to be conducted by his or her
15 department of a banking institution, the examination that may have
16 been made such banking institution within a reasonable period by the
17 Federal Deposit Insurance Corporation, the Federal Reserve Board, the
18 Comptroller of the Currency, the Consumer Financial Protection
19 Bureau, or a foreign state agency if a copy of the examination is
20 furnished to the director. The director may also in his or her
21 discretion accept any report relative to the condition of a banking
22 institution which may have been obtained by the Federal Deposit
23 Insurance Corporation, the Federal Reserve Board, the Comptroller of
24 the Currency, the Consumer Financial Protection Bureau, or a foreign
25 state agency within a reasonable period in lieu of a report

1 authorized by the laws of this state to be required of such
2 institution by his or her department if a copy of such report is
3 furnished to the director.

4 As used in this section, unless the context otherwise
5 requires, foreign state agency shall mean any duly constituted
6 regulatory or supervisory agency which has authority over financial
7 institutions and which is created under the laws of any other state,
8 any territory of the United States, Puerto Rico, Guam, American
9 Samoa, the Trust Territory of the Pacific Islands, or the Virgin
10 Islands or which is operating under the code of law for the District
11 of Columbia.

12 Sec. 13. Section 8-706, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 8-706 The Director of Banking and Finance may furnish to
15 the Federal Deposit Insurance Corporation, the Federal Reserve Board,
16 the Comptroller of the Currency, the Consumer Financial Protection
17 Bureau, or a foreign state agency, or to any official or examiner
18 thereof, a copy or copies of any or all examinations made of any such
19 banking institution and of any or all reports made by it and shall
20 give access and disclose to the Federal Deposit Insurance
21 Corporation, the Federal Reserve Board, the Comptroller of the
22 Currency, the Consumer Financial Protection Bureau, or a foreign
23 state agency, or to any official or examiner thereof, any and all
24 information possessed by the office of the director with reference to
25 the conditions or affairs of any such insured institution. Nothing in

1 this section shall be construed to limit the duty of any banking
2 institution in this state, deposits in which are to any extent
3 insured under the provisions of section 8 of the Banking Act of 1933
4 (section 12B of the Federal Reserve Act, as amended), or of any
5 amendment of or substitution for the same, to comply with the
6 provisions of such act, its amendments or substitutions, or the
7 requirements of the Federal Deposit Insurance Corporation relative to
8 examinations and reports, nor to limit the powers of the director
9 with reference to examinations and reports under existing law.

10 As used in this section, unless the context otherwise
11 requires, foreign state agency shall mean any duly constituted
12 regulatory or supervisory agency which has authority over financial
13 institutions and which is created under the laws of any other state,
14 any territory of the United States, Puerto Rico, Guam, American
15 Samoa, the Trust Territory of the Pacific Islands, or the Virgin
16 Islands or which is operating under the code of law for the District
17 of Columbia.

18 Sec. 14. Section 8-915, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 8-915 The director may make examinations of any bank
21 holding company with one or more state-chartered bank subsidiaries
22 and each state-chartered bank subsidiary thereof, the cost of which
23 shall be assessed, in the manner set forth in sections 8-605 and
24 8-606, against and paid for by such bank holding company. The
25 director may accept reports of examination made by the Federal

1 Reserve Board, the Comptroller of the Currency, the Consumer
2 Financial Protection Bureau, the Federal Deposit Insurance
3 Corporation, or a foreign state agency in lieu of making an
4 examination by the department. The director may provide reports of
5 examination conducted by the department or other confidential
6 information to any of such regulatory entities. The director may
7 contract with any of such regulatory entities to conduct and pay for
8 such an examination for the department. The director may contract
9 with any of such regulatory entities to conduct and receive payment
10 for such an examination for any of such regulatory entities. The
11 director may enter into cooperative agreements with any or all of
12 such regulatory entities to foster the purposes of the Nebraska Bank
13 Holding Company Act of 1995.

14 Sec. 15. Section 21-17,115, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 21-17,115 Notwithstanding any of the other provisions of
17 the Credit Union Act or any other Nebraska statute, any credit union
18 incorporated under the laws of the State of Nebraska and organized
19 under the provisions of the act shall have all the rights, powers,
20 privileges, benefits, and immunities which may be exercised as of
21 January 1, ~~2012,~~ 2013, by a federal credit union doing business in
22 Nebraska on the condition that such rights, powers, privileges,
23 benefits, and immunities shall not relieve such credit union from
24 payment of state taxes assessed under any applicable laws of this
25 state.

1 Sec. 16. Original sections 8-101.01, 8-103, 8-108, 8-135,
2 8-167.01, 8-1,140, 8-204, 8-213, 8-355, 8-702, 8-705, 8-706, 8-915,
3 and 21-17,115, Reissue Revised Statutes of Nebraska, are repealed.

4 Sec. 17. Since an emergency exists, this act takes effect
5 when passed and approved according to law.