

ONE HUNDRED EIGHTH LEGISLATURE - FIRST SESSION - 2023
COMMITTEE STATEMENT
LB214

Hearing Date: Monday January 23, 2023
Committee On: Banking, Commerce and Insurance
Introducer: Slama
One Liner: Adopt changes to federal law regarding banking and finance and change provisions relating to digital asset depositories, loan brokers, mortgage loan originators, and installment loans

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

Vote Results:
Aye: 8 Senators Aguilar, Ballard, Bostar, Dungan, Jacobson, Kauth, Slama, von Gillern
Nay:
Absent:
Present Not Voting:

Testimony:

Proponents:

Tori Osborne
Kelly Lammers
Bob Hallstrom
Brandon Luetkenhaus
Dexter Schrodt

Representing:

Legislative Aide, District 1
Nebraska Department of Banking
Nebraska Bankers Association
Nebraska Credit Union League
Nebraska Independent Community Bankers

Opponents:

Representing:

Neutral:

Representing:

* ADA Accommodation Written Testimony

Summary of purpose and/or changes:

LB214 would amend a number of statutes under the jurisdiction of the Department of Banking & Finance. The bill would provide, section by section, as follows:

Section 1 amends Section 8-135 of the Nebraska Banking Act, which authorizes minors to establish deposit accounts, to update a reference within Subsection (3) to the federal Electronic Fund Transfer Act as the Act existed on January 1, 2023 (currently January 1, 2022).

Section 2 amends Section 8-141 of the Nebraska Banking Act, which sets the lending limits for state-chartered banks, to update references within subsection (6) to 12 U.S.C. 1817(a)(3), the federal regulation relating to filing Reports of Condition, as the regulation existed on January 1, 2023 (currently January 1, 2022).

Section 3 amends Section 8-143.01 of the Nebraska Banking Act, which governs loans to bank insiders, to update a reference within subsection (7) to 12 CPR 215.4(a)(2), relating to extensions of credit to benefit and compensation programs, as the regulation existed on January 1, 2023 (currently January 1, 2022), and to similarly update references within Subsection (10) to 12 USC 84 and its implementing federal Regulation 0, as such law and regulation existed on January 1, 2023 (currently January 1, 2022).

Section 4 amends Section 8-157.01 of the Nebraska Banking Act, which governs automated teller machines (ATMs) and electronic switches, to update a reference within Subsection (4) to the federal Electronic Fund Transfer Act as the Act existed on January 1, 2023 (currently January 1, 2022).

Section 5 amends Section 8-183.04 of the Nebraska Banking Act, which authorizes the conversion of certain mutual savings associations to state-chartered banks, to update a reference to 12 CPR 5.21, the federal regulation governing capital requirements for these associations, as such regulation existed on January 1, 2023 (currently January 1, 2022).

Section 6 amends Section 8-1,140 of the Nebraska Banking Act, which is the "wild-card" statute for state-chartered banks. This section is being amended to provide that state-chartered banks have the same rights, powers, privileges, and immunities as federally chartered banks doing business in Nebraska as of January 1, 2023 (currently January 1, 2022). Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually.

Section 7 amends Section 8-318, relating to customer accounts in building and loan associations, to update a reference within Subsection (l)(c) to the federal Electronic Fund Transfer Act as of January 1, 2023 (currently January 1, 2022).

Section 8 amends Section 8-355, which is the "wild-card" statute for state-chartered savings associations. This section is being amended to provide that state-chartered savings associations have the same rights, powers, privileges, and immunities as federally chartered savings associations doing business in Nebraska as of January 1, 2023 (currently January 1, 2022). Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually.

Section 9 amends Section 8-1101, which is the definitional section of the Securities Act of Nebraska. The amendment would update Subsection (14) to provide that references to the federal Securities Act of 1933, Securities Exchange Act of 1934, Investment Advisers Act of 1940, Commodity Exchange Act, and the Interstate Land Sales Full Disclosure Act will be as the Acts existed on January 1, 2023 (currently January 1, 2022).

Section 10 amends Section 8-1101.01 of the Securities Act of Nebraska to:
Provide, within Subsection (1), that references to federal rules and regulations adopted under the federal Investment Advisers Act of 1940 and the Securities Act of 1933 will be as those rules and regulations existed on January 1, 2023 (currently January 1, 2022), and; Provide, within Subsection (2), that references to the fair practice and ethical standards adopted by the Securities and Exchange Commission or the Financial Industry Regulatory Authority will be as those standards existed on January 1, 2023 (currently January 1, 2022).

Section 11 amends Section 8-1704 of the Commodity Code, which defines the term "CFTC rule," to update a reference to rules, regulations, or orders of the Commodity Futures Trading Commission in effect on January 1, 2023 (currently January 1, 2022).

Section 12 amends Section 8-1707 of the Commodity Code, which defines the term "Commodity Exchange Act," to update a reference to the federal Commodity Exchange Act in effect on January 1, 2023 (currently January 1, 2022).

Section 13 amends Section 8-2724 of the Nebraska Money Transmitters Act, which provides exemptions from the licensing requirements of the Act, to update a reference within Subsection (l)(e) to Consumer Financial Protection Bureau Regulation

E, 12 C.F.R. part 1005, in effect on January 1, 2023 (currently January 1, 2022).

Section 14 amends Section 8-2903, relating to financial exploitation of a vulnerable adult or senior adult in the financial institutions sector, to update references within Subsection (7) to federal check clearing and collectability laws [12 U.S.C. 5001, 12 U.S.C. 4001, and 12 C.F.R. 31 part 229], as such laws and regulation existed on January 1, 2023 (currently, January 1, 2022).

Section 15 amends Section 8-3005 of the Nebraska Financial Innovation Act to update references within Subsection (5) to the federal Bank Secrecy Act, 12 C.F.R. 208.63, in effect on January 1, 2023 (currently January 1, 2022).

Section 16 amends Section 8-3007 of the Nebraska Financial Innovation Act to update references within Subsection (3) to the federal Bank Secrecy Act, in effect on January 1, 2023 (currently January 1, 2022).

Section 17 amends Section 21-17,115 of the Nebraska Credit Union Act, which is the "wild-card" statute for state-chartered credit unions. This section is being amended to provide that state-chartered credit unions have the same rights, powers, privileges, and immunities as federally chartered credit unions doing business in Nebraska as of January 1, 2023 (currently January 1, 2022). Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually.

Section 18 amends Section 45-191.01 of the loan broker statutes to provide within Subsection (2)(a) that the requirement for loan brokers to include their electronic mail and Internet addresses within the disclosure statement provided to prospective borrowers is mandatory.

Section 19 amends Section 45-191.04 of the loan broker statutes to provide within Subsection (3)(c) that the requirement for loan brokers to include their electronic mail and Internet addresses within the loan brokerage agreement entered into with borrowers is mandatory.

Section 20 amends Section 45-735 of the Residential Mortgage Licensing Act to provide within Subsection (2) that the Department may authorize and regulate remote work arrangements for mortgage loan originators and other agents and employees of licensed mortgage bankers, registrants, and installment loan companies.

Section 21 amends Section 45-1002 of the Nebraska Installment Loan Act to define the terms "consumer" and "loan" within Subsections (l)(c) and (1)(k), and to repeal Subsection (3), which will be unnecessary with the adoption of the added definitions.

Section 22 amends Section 45-1003 of the Nebraska Installment Loan Act to provide that a person who markets, owns in whole or in part, holds, acquires, services, or otherwise participates in, consumer loans made by a financial institution, must be licensed under the Act. Financial institutions are exempt from licensing under the Act.

Section 23 amends Section 45-1006 of the Nebraska Installment Loan Act to provide within Subsection (2) that the Director of the Department may waive the hearing requirements for an applicant who does not originate loans under the Act.

Section 24 amends Section 59-1722 of the Seller-Assisted Marketing Plan Act, which provides limited exemptions to the Act for certain franchises, to update references to Federal Trade Commission disclosure rules for franchise offerings as such rules existed on January 1, 2023 (currently January 1, 2022).

Section 25 amends Section 69-2103(4) of the Consumer Rental Purchase Agreement Act, which defines the term "consumer rental purchase agreement," to update references to federal definitions contained in 12 CFR 1026.2(a)(16), 15 USC 1602(h), and 12 CFR 1013.2, relating to consumer leases and credit sales, as such regulations and law existed on

January 1,2023 (currently January 1,2022).

Section 26 amends Section 69-2104 of the Consumer Rental Purchase Agreement Act, which requires disclosures to consumers, to update references within Subsection (2) to the federal Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., as such Act existed on January 1,2023 (currently January 1,2022) , and within Subsection (3) to the disclosure requirements of the federal Consumer Credit Protection Act, 15 U.S.C. 1667a, as such regulation existed on January 1,2023 (currently January 1,2022).

Section 27 amends Section 69-2112 of the Consumer Rental Purchase Agreement Act, which relates to advertisements for consumer rental purchase agreements, to update references within Subsection (4) to the federal Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., as such Act existed on January 1, 2023 (currently January 1, 2022).

Section 28 amends Section 4A-108 of the Uniform Commercial Code to update references within Subsections (a) and (b) to the federal Electronic Fund Transfer Act as it existed on January 1, 2023 (currently January 1, 2022).

Section 29 repeals the statutes amended.

Section 30 provides for the emergency clause.

Explanation of amendments:

The committee amendments (AM398) contain the provisions of LB214 as amended by AM81 (Section 4-11, 13-18, 43-54, and 55-56 of AM398) and also the provisions of two other bills that were heard by the Banking, Commerce and Insurance Committee and each made a part of the committee amendments on an 8-0 vote. Those bills are as follows:

LB669 (Ballard) Provide powers for the Director of Banking and Finance regarding conditions on financial institutions (Section 2 and 55-56 of AM398)

The bill would amend Neb. Rev. Stat. 8-102 of the Nebraska Banking Act (Act). The bill is a response to Liberty First Credit Union v. State of Nebraska Department of Banking and Finance (D02CI21-34), whereby the Lancaster County District Court found that the Act did not confer broad powers upon the the Nebraska Department of Banking and Finance (NDBF), which would allow the NDBF to place geographic limitations on requests made to it by credit unions seeking to increase membership size. The bill would provide specifically as follows:

Section 1 adds language to Neb. Rev. Stat. 8-102 that would allow the Director of the NDBF to prescribe conditions on banks, trust companies, credit unions, building and loan associations, savings and loan associations, and digital asset depositories, and their holding companies, as part of any written order, decision, or determination required to be made pursuant to the Nebraska Banking Act, the Credit Union Act, and the Nebraska Financial Innovation Act.

Repeals the original statutes being amended.

Creates an emergency provision.

Oral Testimony:

Proponents:

Senator Beau Ballard, Introducer

Kelly Lammers, Nebraska Department of Banking and Finance

Bob Hallstrom, Nebraska Bankers Association

Dexter Schrodt, Nebraska Independent Community Bankers

Opponents: None

Neutral: None

Vote Results:

Aye: Senators Aguilar, Ballard, Bostar, Dungan, Jacobson, Kauth, von Gillern, Slama

Nay:

Absent:

Present Not Voting:

LB674 (Jacobson) as amended by AM421 Change provisions relating to digital asset depositories (Section 1, 3, 12, 19-42, and 55-56 of AM398)

The bill, introduced at the request of the Nebraska Department of Banking and Finance (Department), amends the Nebraska Financial Innovation Act (NFIA) and related statutes under the jurisdiction of the Department. The bill provides specifically as follows:

Amends Section 8-101.03 of the Nebraska Banking Act, which is the definitional section of the Act, to revise the definition of digital asset depository in Subsection (10) to provide that a charter, rather than a grant of authority will be issued by the Department for these financial institutions. This revision and corresponding revisions throughout the bill reflect the long-established regulatory title for certain financial institutions.

Amends Section 8-115 of the Nebraska Banking Act, which requires charters or grants of authority for banks and digital asset depositories, to strike the language relating to a grant of authority.

Amends Section 8-602 of the Nebraska Banking Act, which contains a schedule for fees that the Department may charge and collect. Subsection (4) is amended to strike an authority or a license; and Subsection (10) is amended to provide that digital asset depositories which pledge securities to the Department are assessed the same fee as trust companies and money transmitters pledging securities.

Amends Section 8-3002 (6) of the NFIA, which contains Legislative findings and declarations, to correct a reference to industry which should be pluralized to industries.

Amends Section 8-3003 of the NFIA, the definitional section of the NFIA, to strike the language within Subsection (12) relating to a grant of authority and replace it with the word charter; to make grammatical changes within Subsection (16); and to revise the definition of Stablecoin within Subsection (19), to provide that it is a controllable electronic record rather than cryptocurrency to comport with other defined terms in the NFIA.

Amends Section 8-3004 of the NFIA, relating to the Department Director's powers and duties, to strike the language, grant of authority.

Amends Section 8-3005 of the NFIA, which provides permissible activities for a digital asset depository. Subsection (2)(c) is amended to authorize a digital asset depository authority to open a branch office in Nebraska. Existing authority to open a branch in another state is clarified as to compliance with the host state's law. Subsection (5) is amended to update the reference to the federal Bank Secrecy Act, in accordance with 12 C.F.R. 208.63, as in effect on January 1, 2023 (currently January 1, 2022). Subsection (6) is amended to expand the dissemination requirement for a digital asset depository's required public information file to include mobile applications and to add digital assets as a component of financial literacy programs.

Amends Section 8-3007 of the NFIA, which provides the criteria for customers of digital asset depositories, by clarifying, within Subsection (2), that the institution must have insurance prior to opening customer accounts, and within Subsection (3), that the reference to host state applies only to customers headquartered outside Nebraska. Subsection (3) is also amended to update the reference to the federal Bank Secrecy Act, as in effect on January 1, 2023 (currently January 1, 2022).

Amends Section 8-3008 of the NFIA, which requires disclosures to customers, to replace the word impair with the word impact within Subsection (6) as it applies to the value of customer accounts, and to make a grammatical change within Subsection (9).

Amends Section 8-3011 of the NFIA, which requires a digital asset depository to provide notice in advertising and customer disclosures that accounts in the institution are not covered by the Federal Deposit Insurance Corporation (FDIC); to expand the requirement to all mobile applications, and to spell out a reference to the FDIC.

Amends Section 8-3012 of the NFIA relating to the corporate formation of a digital asset depository, to require, within Subsections (1) and (3), the filing of bylaws and bylaw amendments with the Department, and to clarify within Subsection (10) that the ability of a bank holding company to purchase a digital asset depository applies to the holding of an institution and not a department.

Amends Section 8-3013 of the NFIA, which specifies the capital and surplus requirements for a digital asset depository. The amendment is within Subsection (3) and corrects the method for filing information with the Department regarding additional capital.

Amends Section 8-3014 of the NFIA, relating to digital asset depository departments which may be established by bank, to provide within Subsection (2) that the Director of the Department may require the injection of additional capital by the bank, and to strike the term of authority.

Amends Section 8-3015 of the NFIA, which provides the requirements for obtaining a digital asset depository charter. Subsection (2) is amended to include the corporation's bylaws as part of the filing, to be consistent with the amendments in Section 11 of the bill, and to change the references to authority to charter within Subsections (1), (3), and (4).

Amends Section 8-3016 of the NFIA, relating to a required hearing on an application for a charter, to revise and clarify the references to authority and charter within Subsection (1), and to correct a typographical error in Subsection (2).

Amends Section 8-3017 of the NFIA, which requires that charter application hearings be conducted under the Administrative Procedure Act, to provide a cross reference to the application statute, Section 8-3016.

Amends Section 8-3018 of the NFIA, which sets criteria required to be considered by the Department in its investigation of charter applications, to make a grammatical change and to strike references to authority in the introductory paragraph and in Subsections (1) and (6).

Amends Section 8-3019 of the NFIA, which establishes the criteria for approving a charter application, to provide within Subsection (1)(c) that the requirement for a business plan is applicable to applicants for both digital asset institutions and departments. Subsection (1)(h) revises the standard for safety and soundness. Section (1)(i) contains coordinating amendments to Section 5 of the bill relating to mobile applications and the digital assets component of financial literacy programs. Subsection (2) clarifies language relating to the process for issuing orders on charter applications.

Amends Section 8-3020 of the NFIA, which sets the conditions necessary to commence business as a digital asset depository, by providing in Subsection (1) that a charter will not be issued until all conditions precedent in the Director's order have been satisfied. Subsection (2) is amended to correct an erroneous reference to a six-month extension period to

the twelve-month period established previously in the subsection, and to strike an unnecessary reference to an order of authority to operate.

Amends Section 8-3021 of the NFIA, which provides that an appeal of the Director's decision on a charter application may be made in accordance with the Administrative Procedure Act, to change the term, disapproval to deny, and to strike a reference to authority.

Amends Section 8-3022 of the NFIA, which requires a digital asset depository to furnish a surety bond or pledge securities to the Department to cover the expected costs of liquidation or conservatorship if such should occur. A new Subsection (4) is added to provide for the substitution of securities pledged with the approval, or on the order of, the Director of the Department, and to establish the right of the pledgor to collect interest or dividends on the securities if the institution is solvent. The remainder of the statute is renumbered, and Subsection (9) reflects grammatical changes.

Amends Section 8-3023 of the NFIA, which grants the Department the authority to require digital asset depositories to submit reports and obtain insurance or bond coverage, and to conduct examinations of the institutions. Subsection (5) is amended to allow the Director to require insurance/bond coverage for business operations.

Amends Section 8-3025 of the NIFA, which sets the grounds for suspension or revocation of a digital asset depository charter, to strike references to or authority within all three subsections of the statute.

Amends Section 8-3026 of the NFIA, which requires a digital assets depository with a suspended or revoked charter to continue to comply with the NFIA during liquidation or conservatorship, to strike a reference to or authority.

Amends Section 8-3028 of the NFIA, relating to voluntary dissolution, to clarify within Subsection (1) that liquidation or reorganization is available only to digital asset depository institutions. Subsection (7) is added to provide that a financial institution operating a digital asset depository department may surrender the digital asset department charter upon compliance with the statute to the extent determined by the Department by order, rule, or regulation. Subsection (1) is further amended to strike the reference to or authority; and Subsection (3) changes the word disapprove to deny for consistency with amendments in Sections 18 and 20 of the bill.

Amends Section 8-3030 of the NFIA, which sets the criteria for which an officer, director, employee, or agent of a digital asset depository may be removed by the Director of the Department, to provide that endangering the safety and soundness of a digital asset depository is an added factor for removal.

Repeals the statutes being amended.

Provides the emergency clause for all provisions of the bill.

AM 421 amends LB 674 by removing the requirement that a digital asset depository maintain the primary office of its chief executive officer in Nebraska and replaces it with the requirement that a digital asset depository maintain the primary office of at least one executive officer with direct control and oversight of all business activities of the digital asset depository in Nebraska.

Oral Testimony:

Proponents:

Senator Mike Jacobson, Introducer

Kelly Lammers, Nebraska Department of Banking and Finance

Bob Hallstrom, Nebraska Bankers Association

Dexter Schrodt, Nebraska Independent Community Bankers

Mark Quandahl, Telcoin

Opponents: None

Neutral: None

Vote Results:

Aye: Senators Aguilar, Ballard, Bostar, Dungan, Jacobson, Kauth, von Gillern, Slama

Nay:

Absent:

Present Not Voting:

Julie Slama, Chairperson