

LEGISLATIVE BILL 909

Approved by the Governor April 1, 1986

Introduced by DeCamp, 40

AN ACT relating to banks and banking; to amend sections 8-158, 8-1,130, 8-206, 8-207, 8-207.01, 8-228, 8-230, 8-318, 8-409, 8-712, 8-1111, and 8-1301, Reissue Revised Statutes of Nebraska, 1943; to change a term relating to estates; and to repeal the original sections.

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

Section 1. That section 8-158, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-158. Any bank, chartered to conduct a banking business in this state and so authorized by its corporate articles, shall have power to act, either by itself or jointly with any natural person or persons, as ~~executer~~ personal representative of the estate of any deceased person or as administrator of the estate of any person under the appointment of a court of record having jurisdiction of the estate of such deceased person.

Sec. 2. That section 8-1,130, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1,130. Any bank, building and loan association, or savings and loan association may accept investments in savings accounts or shares in the name of any administrator, ~~executer~~ personal representative, custodian, conservator, guardian, trustee, or other fiduciary for a named beneficiary or beneficiaries. Any such fiduciary shall have the power to open, make additions to, and withdraw any such account, in whole or in part, or to purchase such shares, purchase additional shares, or sell all or any part of such shares, and any such fiduciary who is the owner of shares shall have power to vote as a member as if the membership were held absolutely. The withdrawal value of any such account or shares, and earnings thereon, or other rights relating thereto may be paid or delivered, in whole or in part, to such fiduciary without regard to any notice to the contrary as long as such fiduciary is living. The payment or delivery to any such fiduciary or a receipt or acquittance signed by any such fiduciary to whom any such payment or any such delivery of right is made shall

be a valid and sufficient release and discharge of the bank or association for the payment or delivery so made. Whenever a person holding an account or shares in a fiduciary capacity dies and no written notice of the revocation or termination of the fiduciary relationship ~~shall have~~ has been given to the bank or association and the bank or association has no written notice of any other disposition of the beneficial estate, the withdrawal value of such account or shares, and earnings thereon, or other rights relating thereto may, at the option of the bank or association, be paid or delivered, in whole or in part, to the beneficiary or beneficiaries. Whenever an account or share shall be designated by any person, describing himself or herself in opening such account, or acquiring such share, as trustee for another and no other or further notice of the existence and terms of a legal and valid trust than such description ~~shall have~~ has been given in writing to the bank or association, or whenever an account is opened or shares are acquired, specifically designated as a trust account or share held in trust and which contains a trust agreement as a part thereof, in the event of the death of the person so described as trustee, the withdrawal value of such account or shares or any part thereof, together with the earnings thereon, may be paid to the person for whom the account or shares are so described. The payment or delivery to any such beneficiary, beneficiaries, or designated person, or a receipt or acquittance signed by any such beneficiary, beneficiaries, or designated person for any such payment or delivery shall be a valid and sufficient release and discharge of the bank or association for the payment or delivery so made. No bank or association paying any such fiduciary, beneficiary, or designated person in accordance with the provisions of this section shall thereby be liable for any estate, inheritance, or succession taxes which may be due this state.

Sec. 3. That section 8-206, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-206. A corporation, created under the provisions of sections 8-201 to 8-226 shall have power:

(1) To receive trust funds for investment or in trust upon such terms and conditions as may be agreed upon, and to purchase, hold, and lease fire and burglar-proof and other vaults and safes from which a revenue may be derived;

(2) To accept and execute all such trusts as may be committed to it by any corporation, person, or

persons, and to act as assignee, receiver, trustee, and depositor, and to accept and execute all such trusts as may be committed or referred to it by order, judgment, or decree of any court of record;

(3) To take, accept, and hold by the order, judgment, or decree of any such court, or by gift, grant, assignment, transfer, devise, or bequest, any real or personal property in trust; to care for, manage, and convey the same in accordance with such trusts; and to execute and perform any and all such trusts;

(4) To act as agent or attorney-in-fact for any person or corporation, public or private;

(5) To act either by itself or jointly with any natural person or persons or with any other trust company or state or national bank doing business in this state as administrator of the estate of any deceased person, or as ~~executor~~ personal representative, or as guardian, of the property of any infant, insane person, idiot, habitual drunkard, or person under any other disability, or as conservator, or as trustee for any person or of the estate of any deceased person under the appointment of any court of record having jurisdiction of the estate of such person. A ; ~~PROVIDED,~~ that a corporation so appointed as administrator, ~~executor~~ personal representative, or guardian shall give a bond the same as is required by law for natural persons acting in the same capacity. No charge shall be allowed against such estate for legal services performed by an attorney who is a salaried employee of such corporation, or ~~where when~~ a portion of the charge for legal service is retained by such corporation. Any officer or employee of such corporation causing or consenting to such division of fee for legal service shall be guilty of contempt of court. No investments of such estate or property shall be made in the capital stock or securities of such corporation, or securities sold by such corporation. Such corporation shall not substitute any of the assets of such estate under its control for securities of such corporation or securities sold by such corporation. Any officer or employee of such corporation causing such substitution or consenting to such substitution shall be guilty of embezzlement;

(6) To loan money upon real estate and upon collateral security when the collateral would of itself be a legal investment for the ~~said~~ corporation; and to borrow money, to execute and issue its notes payable at a future date, and to pledge its real estate, mortgages, or other securities therefor. No loan shall be made to any officer or director of ~~said~~ such corporation;

(7) To buy, hold, own, and sell government, state, county, and municipal bonds, bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration, stock, warrants, bills of exchange, notes, mortgages, and other investment securities, negotiable and nonnegotiable, except bonds the interest on which has been in default for a period of two years next preceding the date of purchase, stock of any corporation that has not earned annual dividends of at least four per cent per annum for at least three years just prior to the date of such purchase, and stock of any corporation organized under sections 8-201 to 8-226;

(8) To purchase, own, or rent real estate needed in the conduct of the business and to erect thereon buildings deemed expedient and necessary, the cost of such real estate and buildings not to exceed forty per cent of the paid-up capital stock; and to purchase, own, and improve such other real estate as it may be required to bid in under foreclosure or in payment of other debts; and

(9) To perform all acts and exercise all powers connected with, belonging to or incident to, or necessary for the full and complete exercise and discharge of the rights, powers, and responsibilities hereinbefore granted, and all provisions of sections 8-201 to 8-226 shall be liberally construed. None of the powers hereby granted shall extend to or be construed to authorize any such corporation to conduct the business of banking, as defined in sections 8-101 to 8-1,121.

Sec. 4. That section 8-207, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-207. Courts of this state may appoint such corporation receiver, assignee, trustee, guardian, conservator, ~~executer~~ personal representative, or administrator. When such corporation is so appointed and an oath is required to be made, whether in order to qualify or for any other purpose, the president, vice president, secretary, or trust officer may, on behalf of such corporation, make and subscribe the required oath.

Sec. 5. That section 8-207.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-207.01. Any corporation authorized by law to act as ~~an executer~~ a personal representative,

administrator, or guardian may be appointed as a conservator under this act.

Sec. 6. That section 8-228, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-228. ~~Where~~ When a state trust company has merged or consolidated with a national bank, the resulting national bank and trust company shall be considered the same business and corporate entity as the former bank and trust company and as a continuation thereof, and the ownership and title to all properties and assets and the obligations and liabilities of the merging or consolidating trust company shall automatically pass to and become the properties and assets and the obligations and liabilities of the resulting national bank and trust company and shall be deemed to be transferred to and vested in the resulting national bank and trust company without any deed or other transfer; and such resulting national bank and trust company, by virtue of such consolidation or merger and without any order or other action on the part of any court or otherwise, shall hold and enjoy the same and all rights of property, franchises, and interests, including appointments, designations, and nominations and all other rights and interests as trustee, ~~executer~~ personal representative, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any such merging or consolidating trust company at the time of such merger or consolidation. Upon the merger or consolidation, the state charter of the merging or consolidating state trust company shall automatically terminate.

Sec. 7. That section 8-230, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-230. As used in sections 8-230 to 8-233, unless the context otherwise requires:

(1) Trust company shall mean any trust company which is incorporated under the laws of this state, and any national banking association having its principal office in this state and authorized to conduct a trust company business as defined in sections 8-201 to 8-226; and

(2) Fiduciary capacity shall mean a capacity resulting from a bank undertaking to act alone or jointly with others primarily for the benefit of another

in all matters connected with its undertaking and includes the capacities of trustee, including trustee of a common trust fund, ~~executer~~, administrator, personal representative, registrar or transfer agent with respect to stocks, bonds, or other evidences of indebtedness of any corporation, association, municipality, state, or public authority, guardian of estates, conservator, receiver, escrow agent, agent for the investment of money, attorney-in-fact, and any other similar capacity.

Sec. 8. That section 8-318, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-318. (1) Shares of stock in any association, or in any federal savings and loan association incorporated under the provisions of the Home Owners' Loan Act of 1933, with its principal office and place of business in this state, may be subscribed for, held, transferred, surrendered, withdrawn, and forfeited, and payments thereon received and receipted for by any minor in the same manner and with the same binding effect as though such person were of full age, except that the ~~said~~ minor or his or her estate, shall not be bound on his or her subscription to stock except to the extent of payments actually made thereon.

(2) All trustees, guardians, ~~executors~~ personal representatives, administrators, and conservators appointed by the courts of this state may invest and reinvest in, acquire, make withdrawals in whole or in part, hold, transfer, or make new or additional investments in or transfers of shares of stock in any (a) building and loan association organized under the laws of the State of Nebraska or (b) federal savings and loan association incorporated under the provisions of the Home Owners' Loan Act of 1933, having its principal office and place of business in this state, without an order of approval from any court.

(3) Trustees created solely by the terms of a trust instrument may invest in, acquire, hold, and transfer such shares, and make withdrawals, in whole or in part, therefrom, without any order of court, unless expressly limited, restricted, or prohibited therefrom by the terms of such trust instrument.

(4) All building and loan associations referred to in this section are qualified to act as trustee or custodian within the provisions of the Federal Self-Employed Individuals Tax Retirement Act of 1962, as amended, or under the terms and provisions of section 408 (a) of the Internal Revenue Code, as amended, if the provisions of such retirement plan

require the funds of such trust or custodianship to be invested exclusively in shares or accounts in the association or in other associations. If any such retirement plan, within the judgment of the association, constitutes a qualified plan under the Federal Self-Employed Individuals Tax Retirement Act of 1962, or under the terms and provisions of section 408 (a) of the Internal Revenue Code, as amended, and the regulations promulgated thereunder at the time the trust was established and accepted by the association, is subsequently determined not to be such a qualified plan or subsequently ceases to be such a qualified plan, in whole or in part, the association may nevertheless continue to act as trustee of any deposits theretofore made under such plan and to dispose of the same in accordance with the directions of the member and beneficiaries thereof. No association, in respect to savings made under this section, shall be required to segregate such savings from other assets of the association. ~~The~~ ~~;~~ ~~PROVIDED,~~ ~~that~~ the association shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this section.

Sec. 9. That section 8-409, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-409. Except as provided in this section, no industrial loan and investment company shall (1) accept deposits or in any manner obligate itself to maintain checking accounts or otherwise engage in the business of banking; or (2) accept any trust; or act as guardian, administrator, or ~~executor~~, personal representative or in any other fiduciary capacity. Any industrial loan and investment company may accept funds to be held in escrow and act as an escrow agent with respect to such funds. No industrial loan and investment company shall make any loan to any one person or corporation primarily in excess of twenty per cent of its combined capital, surplus, and capital notes and debentures, issued pursuant to section 8-404.01, but for purposes of this section the discounting of bills of exchange, drawn in good faith against actually existing values, and the discounting of commercial paper actually owned by the persons negotiating the same; shall not be considered as the lending of money.

Sec. 10. That section 8-712, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-712. It shall be lawful for banks, savings

banks, trust companies, insurance companies, ~~executors personal representatives~~, administrators, guardians, trustees, and other fiduciaries, the State of Nebraska and its political subdivisions, and institutions and agencies thereof, to invest their funds and the money in their custody or possession, eligible for investment, in bonds or notes secured by mortgages insured by the Federal Housing Administrator, and in debentures issued by the Federal Housing Administrator, and in securities issued by national mortgage associations.

Sec. 11. That section 8-1111, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1111. Except as hereinafter in this section expressly provided, sections 8-1103 to 8-1109 shall not apply to any of the following transactions:

(1) Any isolated transaction, whether effected through a broker-dealer or not;

(2) Any nonissuer distribution of an outstanding security by a registered broker-dealer if (a) a recognized securities manual contains the name of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations; or (b) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security;

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the director may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit. Such ; PROVIDED, that such

exemption shall not apply to any transaction in a bond or other evidence of indebtedness secured by a real estate mortgage or deed of trust or by an agreement for the sale of real estate if the real estate securing the evidences of indebtedness are parcels of real estate the sale of which requires the subdivision in which the parcels are located to be registered under the Interstate Land Sales Full Disclosure Act, 82 Stat. 590 et seq., 15 U.S.C. 1701 et seq.;

(6) Any transaction by an executor, personal representative, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading ~~sections 8-1101 to 8-1124~~ the Securities Act of Nebraska;

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) Any transaction pursuant to a sale to not more than ten persons, other than those designated in subdivision (8) of this section, in this state during any period of twelve consecutive months, if (a) the seller reasonably believes that all the buyers are purchasing for investment, (b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer, except to a broker-dealer registered under the provisions of sections 8-1101 to 8-1124 the Securities Act of Nebraska, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (d) no solicitations are made by newspaper, radio, or television;

(10) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten, and (c) no payment is made by any subscriber;

(11) Any transaction pursuant to an offer to

existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (a) no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this state, or (b) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days;

(12) Any offer, but not a sale, of a security for which registration statements have been filed under both sections 8-1101 to 8-1124 the Securities Act of Nebraska and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either sections 8-1101 to 8-1124 the Securities Act of Nebraska or the Securities Act of 1933;

(13) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by the stockholders for the distribution other than the surrender of a right to a cash dividend where when the stockholder can elect to take a dividend in cash or stock;

(14) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) Any transaction involving the issuance for cash of any evidence of ownership interest or indebtedness by an agricultural cooperative formed as a corporation under section 21-1301 or 21-1401, if the issuer has first filed a notice of intention to issue with the director and the director has not by order, mailed to the issuer by registered mail within ten business days after receipt thereof, disallowed the exemption; or

(16) Any transaction in this state not involving a public offering when (a) there is no general or public advertising or solicitation, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a broker-dealer or issuer dealer registered under the provisions of sections 8-1101 to 8-1124 the Securities Act of Nebraska, (c) a notice generally describing the terms of the transaction and containing a representation

that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (d) any such transaction is effected in accordance with rules and regulations adopted and promulgated by the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107, is not necessary or appropriate in the public interest or for the protection of investors. As used in this section, not involving any public offering shall mean any offering in which the seller has reason to believe that the securities purchased are taken for investment and in which each offeree, by reason of his or her knowledge about the affairs of the issuer or otherwise, does not require the protections afforded by registration under sections 8-1104 to 8-1107, in order to make a reasonably informed judgment with respect to such investment.

The director may by order deny or revoke the exemption specified in subdivision (2) of this section with respect to a specific security. Upon the entry of such an order, the director shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the director, the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No such order may operate retroactively. No person may be considered to have violated the provisions of sections 8-1101 to 8-1124 the Securities Act of Nebraska by reason of any offer or sale effected after the entry of any such order if he or she sustains the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known of the order. In any proceeding under sections 8-1101 to 8-1124 the Securities Act of Nebraska, the burden of proving an exemption from a definition is upon the person claiming it.

Sec. 12. That section 8-1301, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1301. For the purposes of sections 8-1302

and 8-1303, unless the context otherwise requires:

(1) Fiduciary shall mean a trustee under any trust, expressed, implied, resulting, or constructive, ~~executor~~ personal representative, administrator, guardian, committee, conservator, curator, tutor, custodian, nominee, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of any corporation public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust, or estate; and

(2) Person shall mean an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

Sec. 13. That original sections 8-158, 8-1,130, 8-206, 8-207, 8-207.01, 8-228, 8-230, 8-318, 8-409, 8-712, 8-1111, and 8-1301, Reissue Revised Statutes of Nebraska, 1943, are repealed.