

LEGISLATIVE BILL 795

Approved by the Governor February 3, 1988

Introduced by Labedz, 5, Chairperson, Executive Board

AN ACT relating to financial institutions; to amend sections 8-417, 8-817, 8-1002, 8-1106, and 8-1508, Reissue Revised Statutes of Nebraska, 1943, and section 45-101.04, Revised Statutes Supplement, 1986; to correct internal references relating to the registration of certain securities and securities companies; to change a provision relating to the sale of checks; to correct a reference to the Director of Banking and Finance; to transfer a provision relating to banks and trust companies; to eliminate a provision authorizing appointment of trust companies as conservators; to eliminate a provision governing certain lawsuits under securities laws; to eliminate a provision relating to organization of credit unions; to eliminate a reference to a nonexistent act; to harmonize provisions; to provide duties for the Revisor of Statutes; and to repeal the original sections, and also sections 8-1124 and 21-17,119, Reissue Revised Statutes of Nebraska, 1943, and section 8-207.01, Revised Statutes Supplement, 1986.

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

Section 1. That section 8-417, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-417. Sections 8-401 to 8-416 shall not apply to any company registered as a face-amount certificate company under the Investment Company Act of 1940, Public Act No. 768, 76th Congress, nor to the securities, brokers, or salesmen salespersons of any such company, but any such company and its securities shall be subject exclusively to this section and to article 3, Chapter 81, PROVIDED, the Securities Act of Nebraska, except that in lieu of all written applications, required by section 81-315 the act, any such company may submit a copy of any security it proposes to sell and a copy of its registration statement on file with the Securities and Exchange

Commission of the United States of America. In 7 and, in lieu of all fees required of issuers and brokers under sections 8-1103 and 8-1105 to 8-1108 section 81-337 with respect to the issuance of securities, any such company shall, at the time of filing its original application or statement, pay to the Director of Banking and Finance, Department of Banking and Finance, a fee of five hundred dollars. Upon 7 and, upon meeting the other requirements of article 3, Chapter 81 the act, the security covered by the application or statement shall be authorized for sale or exchange under article 3, Chapter 81; and renewal the act. Renewal authorizations thereunder under the act may be issued annually upon payment to the Director of Banking and Finance director of a fee of three thousand dollars.

Sec. 2. That section 8-1002, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1002. No person shall engage in the business of selling checks, as a service or for a fee or other consideration, without having first obtained a license under the provisions of sections 8-1001 to 8-1015 Nebraska Sale of Checks Act. Any person engaged in such business on January 1, 1966, may continue to engage therein without a license until the director shall have acted upon his application for a license if such application be filed within thirty days after January 1, 1966.

Sec. 3. That section 8-1106, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1106. (1) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 8-1108 and, if required under section 8-1112, a consent to service of process meeting the requirements of that section:

(a) Three copies of the prospectus filed under the Securities Act of 1933 together with all amendments thereto;

(b) The amount of securities to be offered in this state;

(c) The states in which a registration statement or similar document in connection with the

offering has been or is expected to be filed;

(d) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;

(e) If the director by rule or otherwise requires, a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) If the director requests, any other information, or copies of any other documents, filed under the Securities Act of 1933; and

(g) An undertaking to forward promptly all amendments to the federal registration statement, other than an amendment which merely delays the effective date.

(3) A registration statement under this section shall automatically become effective at the moment the federal registration statement or qualification becomes effective if all the following conditions are satisfied:

(a) No stop order is in effect and no proceeding is pending under the Securities Act of 1933, as amended, or under section 8-1109;

(b) The registration statement has been on file with the ~~commissioner~~ director for at least ten days; and

(c) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been filed and the offering is made within those limitations. The registrant shall promptly notify the director by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. Price amendment shall mean the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

Upon failure to receive the required notification and posteffective amendment with respect to the price amendment, the director may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or

suspending its effectiveness until there has been compliance with this subsection, if he or she promptly notifies the registrant by telephone or telegram and promptly confirms by letter or telegram when he or she notifies by telephone of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and posteffective amendment, the stop order shall be void as of the time of its entry. The director may by rule or otherwise waive either or both of the conditions specified in subsections (2) and (3) of this section. If the federal registration statement or qualification becomes effective before all these conditions have been satisfied and they are not waived, the registration statement shall automatically become effective as soon as all the conditions have been satisfied. If the registrant advises the director of the date when the federal registration statement or qualification is expected to become effective the director shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions have been satisfied, and if such advice is by telephone it shall be confirmed by telegram at the registrant's expense.

Sec. 4. That section 8-1508, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1508. Whenever an application by a bank or a bank holding company is received by the Department of Banking and Finance to acquire any other financial institution, the following terms and conditions shall be met and such acquisitions shall be valid only when and for as long as these conditions are satisfied:

(1) The acquiring bank holding company may not apply for, nor shall it operate, such a state-chartered institution as a nonbank subsidiary under section 4 of the Federal Bank Holding Company Act of 1956, as amended;

(2) The state-chartered institution to be acquired by a bank or a bank holding company shall be subject to the conditions upon which a bank incorporated under the laws of this state may establish, maintain, relocate, or close any of its offices pursuant to ~~the Nebraska Banking Act~~ Chapter 8, article 1, but nothing in sections 8-1506 to 8-1510 or any other provision of law shall require divestiture of any branch or office in operation at the time of acquisition; and

(3) A state-chartered institution to be acquired by a bank holding company shall be subject to

the provisions of section 3 of the Federal Bank Holding Company Act of 1956, as amended, and those rules and regulations that apply to bank subsidiaries of bank holding companies as are or may be established by both the Board of Governors of the Federal Reserve System and the Director of Banking and Finance.

Sec. 5. That section 45-101.04, Revised Statutes Supplement, 1986, be amended to read as follows:

45-101.04. The limitation on the rate of interest provided in section 45-101.03 shall not apply to:

(1) Other rates of interest authorized for loans made by any licensee or permittee operating under a license or permit duly issued by the Department of Banking and Finance pursuant to the Credit Union Act, subsection (4) of section 8-319, or sections 8-401 to 8-417, 8-815 to 8-823, 8-826 to 8-829, ~~21-1760 to 21-1764, 21-1766 to 21-1796, 21-1799 to 21-17,108, 21-17,110 to 21-17,119~~, 45-114, 45-116 to 45-140, or 45-142 to 45-155;

(2) Loans made to any corporation, partnership, or trust;

(3) The guarantor or surety of any loan to a corporation, partnership, or trust;

(4) Loans made when the aggregate principal amount of the indebtedness is twenty-five thousand dollars or more of the borrower to any one financial institution, licensee, or permittee;

(5) Loans insured, guaranteed, sponsored, or participated in, either in whole or part, by any agency, department, or program of the United States or state government;

(6) Loans or advances of money, repayable on demand, which are made solely upon securities, as defined in subdivision (12) of section 8-1101, pledged as collateral for such repayment and in which such loans or advances are used by the borrower only for the purchase of securities as so defined. It shall be lawful to contract for and receive any rate of interest on such transaction as the parties thereto may expressly agree;

(7) Interest charges made on open credit accounts by a person who sells goods or services on credit when the interest charges do not exceed one and one-third percent per month for any charges which remain unpaid for more than thirty days following rendition of the statement of account;

(8) A minimum charge of ten dollars per loan

which may be charged by the lender in lieu of all interest charges;

(9) Loans described in subsection (4) of section 8-319 made by a state or federal savings and loan association at a rate not to exceed nineteen percent per annum;

(10) Loans made primarily for business or agricultural purposes or loans secured by real estate when such loans are made (a) by a licensee or permittee operating under a license or permit duly issued by the Department of Banking and Finance, (b) by any bank or savings and loan association chartered by the United States, or (c) by any lender approved by the Federal Housing Administration or Veterans' Administration; or

(11) Interest charges made on any goods or services sold under an installment contract pursuant to Chapter 45, article 3 the Nebraska Installment Sales Act. Subject to section 45-338, it shall be lawful to contract for and receive any rate of interest on such contract as the parties may expressly agree to in writing.

Sec. 6. That section 8-817, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~8-817.~~ No bank or trust company shall be eligible for a license or to make loans under sections 45-114 to 45-158, ~~7~~ after May 24, 1965-

Sec. 7. Wherever the phrase sections 8-1101 to 8-1124 appears in sections 8-1101, 8-1103, 8-1105, 8-1108, 8-1112 to 8-1114, 8-1116 to 8-1118, 8-1120 to 8-1122, and 70-734, the Revisor of Statutes shall substitute the phrase the Securities Act of Nebraska and in section 8-1123, when the section number 8-1124 appears, the Revisor of Statutes shall substitute the section number 8-1123.

Sec. 8. That original sections 8-417, 8-817, 8-1002, 8-1106, and 8-1508, Reissue Revised Statutes of Nebraska, 1943, and section 45-101.04, Revised Statutes Supplement, 1986, and also sections 8-1124 and 21-17,119, Reissue Revised Statutes of Nebraska, 1943, and section 8-207.01, Revised Statute Supplement, 1986, are repealed.