

Nebraska Sale of Checks and Funds Transmission Act
Chapter 8, Article 10
§§ 8-1001 to 8-1019

8-1001

Terms, defined.

For purposes of the Nebraska Sale of Checks and Funds Transmission Act, unless the context otherwise requires:

(1) Person means any individual, partnership, limited liability company, association, joint-stock association, trust, or corporation, but does not include the United States Government or the government of the State of Nebraska;

(2) Licensee means any person duly licensed pursuant to the act;

(3) Check means any check, draft, money order, personal money order, or other instrument, order, or instruction for the transmission or payment of money;

(4) Personal money order means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his or her agent for the receipt, transmission, or handling of money, whether such instrument is signed by the seller, by the purchaser or remitter, or by some other person;

(5) Director means the Director of Banking and Finance;

(6) Financial institution has the same meaning as in section 8-101;

(7) Transmission means a transfer by oral, written, or electronic means or instruction; and

(8) Control means the power, directly or indirectly, to direct the management or policies of a licensee, whether through ownership of securities, by contract, or otherwise. Any person who (a) has the power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or any person in control of a licensee, (b) directly or indirectly has the right to vote ten percent or more of a class of voting security or has the power to sell or direct the sale of ten percent or more of a class of voting securities, (c) in the case of a limited liability company, is a managing member, or (d) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, ten percent or more of the capital, is presumed to control that licensee.

Last amended:

Laws 2009, LB 327, § 11

Operative Date: August 30, 2009

~ Supplement 2009

8-1001.01

Act, how cited.

Sections 8-1001 to 8-1019 shall be known and may be cited as the Nebraska Sale of Checks and Funds Transmission Act.

Last amended:

Laws 2009, LB 327, § 12
Operative Date: August 30, 2009

~ Supplement 2009

8-1002

Sale of checks; license required.

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 Nebraska Sale of Checks and Funds Transmission Act.

Last amended:

Laws 2001, LB 53, § 9

~ Reissue 2007

8-1003

Act; applicability.

(1) Nothing in the Nebraska Sale of Checks and Funds Transmission Act shall apply to the sale or issuance of checks or the transmission of money by:

- (a) Departments or agencies of the United States or of any state or municipal government; or
- (b) Financial institutions.

(2) The act shall not apply to the receipt of money by an incorporated telegraph company as described in section 86-601 at any office of such company for immediate transmission by telegraph if the business of such company is not limited solely to the transmission of money.

Last amended:

Laws 2004, LB 999, § 8

~ Reissue 2007

8-1004

Applicant for license; qualifications.

To qualify for a license under the Nebraska Sale of Checks and Funds Transmission Act, an applicant shall meet the following requirements:

(1) The applicant shall have a net worth of at least fifty thousand dollars computed according to generally accepted accounting principles; and

(2) The financing responsibility, financial condition, business experience, character, and general fitness of the applicant shall be such as reasonably to warrant the belief that applicant's business will be conducted honestly, carefully, and efficiently. To the extent deemed advisable by him or her, the director may investigate and consider the qualifications of officers and directors of an applicant in determining whether this qualification has been met.

Last amended:

Laws 2001, LB 53, § 11

~ Reissue 2007

8-1005

Application; contents.

Each application for such license shall be made in writing, under oath, to the director in such form as he or she may prescribe. The application shall state the full name and business address of:

(1) The proprietor, if the applicant is an individual;

(2) Every member, if the applicant is a partnership, limited liability company, or association, except that if the applicant is a joint-stock association having fifty or more members, the name and business address need be given only of the association and each officer and director thereof;

(3) Every trustee and officer if the applicant is a trust; or

(4) The corporation and each officer and director thereof, if the applicant is a corporation.

Last amended:

Laws 1993, LB 121, § 95

~ Reissue 2007

8-1006

Application; fee; financial statement; surety bond; conditions.

(1) Each application for a license shall be accompanied by:

(a) An application fee of one thousand dollars which shall not be subject to refund but which, if the license be granted, shall constitute the license fee for the first license year or part thereof;

(b) Financial statements, reasonably satisfactory to the director, showing that the applicant's net worth exceeds fifty thousand dollars; and

(c) Except as otherwise provided in subsection (2) of this section, a surety bond issued by a bonding company or insurance company authorized to do business in this state, in the principal sum of one hundred thousand dollars and in an additional principal sum of five thousand dollars for each location, in excess of one, at which the applicant proposes to sell checks in this state, but in no event shall the bond be required to be in excess of two hundred fifty thousand dollars. The bond shall be in form satisfactory to the director and shall run to the state for the benefit of any claimants against the applicant or its agents to secure the faithful performance of the obligations of the applicant and its agents with respect to the receipt, handling, transmission, and payment of money in connection with the sale of checks. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. The bond shall remain in force and effect until the surety is released from liability by the director or until the bond is canceled by the surety, which cancellation may be had only upon thirty days' written notice to the director. Such cancellation shall not affect any liability incurred or accrued prior to the termination of the thirty-day period.

(2) In lieu of the corporate surety bond or bonds required by subdivision (1)(c) of this section, or of any portion of the principal thereof as required by such subdivision, the applicant may deposit, with the director or with such state banks or trust companies or national banks in this state as such applicant may designate and the director may approve, interest-bearing stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, village, school district, or instrumentality of this state, or guaranteed by this state, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required corporate surety bond or portion thereof. The securities shall be deposited and held to secure the same obligations as would the surety bond. The depositor shall have the right, with the approval of the director, to substitute other securities for those deposited and shall be required to do so on written order of the director made for good cause shown. The depositor shall pay the fees prescribed in section 8-602 for pledging and substitution of securities. So long as the licensee so depositing shall continue solvent, and is not in violation of the Nebraska Sale of Checks and Funds Transmission Act, such licensee shall be permitted to receive the interest or dividends on such deposit. The director shall provide for custody of such securities by a qualified trust company or bank located in the State of Nebraska or by any federal reserve bank. The compensation, if any, of the custodian for acting as such under the provisions of this section shall be paid by the depositing licensee. All such securities shall be subject to sale and transfer and to the disposal of the proceeds by the director only on the order of a court of competent jurisdiction.

Last amended:

Laws 2005, LB 533, § 23

~ Reissue 2007

8-1007

Investigation; issuance of license.

Upon the filing of an application in due form, accompanied by the fee and documents mentioned in section 8-1006, the director shall investigate to ascertain whether the qualifications prescribed by section 8-1004 have been met. If the director approves such documents and finds that the bond is in the prescribed amount, he or she shall issue to the applicant a license to engage in the business of selling checks in this state pursuant to the Nebraska Sale of Checks and Funds Transmission Act.

Last amended:

Laws 2001, LB 53, § 13

~ Reissue 2007

8-1008

Licensee; bond; requirements.

After a license has been granted, the licensee shall maintain the bond or securities in the amount prescribed by section 8-1006, as follows:

(1) Each licensee who does not have on file or deposit a bond or securities in the undiminished sum of two hundred fifty thousand dollars shall file semiannual reports with the director setting forth the locations at which the licensee sells checks in this state as of January 1 and July 1 in each year with the report for each such date being due on or before the fifteenth day thereafter. The licensee shall not be required to list on such reports those agents which are exempted by the provisions of section 8-1003. Within ten days following the filing of such reports, the principal sum of the bond or securities shall be increased to reflect any increase in the number of locations and may be decreased to reflect any decrease in the number of locations; and

(2) If the director finds at any time that any bond required by the Nebraska Sale of Checks and Funds Transmission Act is insecure, insufficient, or exhausted, an additional bond to be approved by the director shall be filed by the licensee within ten days after written demand therefore by the director.

Last amended:

Laws 2006, LB 876, § 15

~ Reissue 2007

8-1009

Annual license fee.

Each licensee shall, annually on or before July 1 of each year, file a license renewal application and pay to the director a license fee of two hundred fifty dollars.

Last amended:

Laws 2004, LB 999, § 11

~ Reissue 2007

8-1010

Licensee; places of business.

Each licensee may conduct business at one or more locations within this state and through or by means of such employees, agents, or representatives as the licensee may designate and appoint from time to time. In addition to any reports which may be required by subdivision (1) of section 8-1008, each licensee shall notify the Department of Banking and Finance annually on or before July 1 of each year of all such locations except for agents which are exempted under section 8-1003. No license under the Nebraska Sale of Checks and Funds Transmission Act shall be required of any employee, agent, or representative who is acting for or in behalf of a licensee in the sale of checks of which the licensee is the issuer.

Last amended:

Laws 2006, LB 876, § 16

~ Reissue 2007

8-1011

Licensee; name imprinted on checks.

Every check sold by a licensee, directly or through an agent, shall bear the name of the licensee clearly imprinted thereon.

Last amended:

Laws 1965, c. 26, § 11, p. 197

~ Reissue 2007

8-1012

License; revocation; conditions; investigation.

(1) The director may, following a hearing under the Administrative Procedure Act, suspend or revoke a license issued under the Nebraska Sale of Checks and Funds Transmission Act on any ground on which he or she may refuse to grant a license or for violation of the act, for failure to pay an annual fee, or for the failure or refusal of a licensee to comply with any order, decision, or finding of the director made pursuant to the act. In furtherance of the provisions of this section, the director, if he or she has reasonable cause to believe that the grounds for revocation exist, may investigate the business, books, and records of the licensee.

(2) Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing in accordance with the Administrative Procedure Act.

(3) A licensee may voluntarily surrender a license by delivering to the director written notice of the surrender but a surrender shall not affect civil or criminal liability for acts committed before the surrender or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members for acts committed before the surrender.

(4)(a) If a licensee fails to renew its license as required by section 8-1009 and does not voluntarily surrender the license pursuant to this section, the Department of Banking and Finance may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) If a licensee fails to maintain a surety bond as required by section 8-1008, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(5) Revocation, suspension, surrender, cancellation, or expiration of a license shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person.

(6) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members for acts committed before the revocation, suspension, cancellation, or expiration.

Last amended:

Laws 2006, LB 876, § 17

~ Reissue 2007

8-1012.01

Director; powers; costs; penalty.

(1) The director may examine the books, accounts, and records of each licensee.

(2) The director may contract with other state or federal regulatory agencies to conduct examinations of licensees if the licensee's principal place of business is outside of the State of Nebraska.

(3) The director may enter into cooperative, coordinating, and information-sharing agreements with any other governmental agency that has similar supervision in this or any other state.

(4) The director may enter into joint examinations or joint enforcement actions with any other governmental agency that has similar supervision in this or any other state over any licensee.

(5) The director may, at any time, take such actions independently if he or she deems such actions to be necessary or appropriate to carry out his or her responsibilities under the Nebraska Sale of Checks and Funds Transmission Act or to ensure compliance with Nebraska law.

(6) The cost of any examination conducted under this section shall be paid by the licensee.

(7) The director may request information from a licensee regarding the conduct of its business or matters incidental to the business. A licensee receiving such a request for information has twenty-one calendar days from receipt of such request in which to submit a response. The director may assess a penalty up to one thousand dollars per day for each day a licensee fails to respond.

Last amended:

Laws 2004, LB 999, § 13

~ Reissue 2007

8-1013

Sale of checks; license; revocation; notice; hearing; appeal.

No license shall be denied or revoked except on twenty days' notice to the applicant or licensee setting forth in writing the reasons therefor. Within five days of receipt of the notice, the applicant or licensee may make written demand for hearing. The director shall, with reasonable promptness, grant a hearing to any such applicant or licensee making written demand therefor and shall give the applicant or licensee at least twenty days' written notice of the time and place of such hearing by registered or certified mail addressed to the principal place of business of such applicant or licensee. The director's decision thereon shall be rendered in writing after the close of the hearing and may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Last amended:

Laws 2003, LB 217, § 22

Cross References:

Administrative Procedure Act, see section 84-920.

~ Reissue 2007

8-1014***Violations; penalty.***

If any person to whom the Nebraska Sale of Checks and Funds Transmission Act applies, or any agent or representative of such person, violates any provision of the act or attempts to transact the business of selling or issuing checks without having first obtained a license from the director pursuant to the act, such person and each such agent or representative shall be guilty of a Class III misdemeanor. Each transaction in violation of the act and each day that a violation continues shall be a separate offense.

Last amended:

Laws 2001, LB 53, § 17

~ Reissue 2007

8-1015

Transferred to section 8-1001.01.

~ Reissue 2007

8-1016***Violation; cease and desist order; department; powers; review.***

(1) The Department of Banking and Finance may order any person to cease and desist whenever the department determines that the person has violated any provision of the Nebraska Sale of Checks and Funds Transmission Act. Upon entry of a cease and desist order, the director shall promptly notify the affected person that such order has been entered, of the reasons for such order, and that upon receipt, within fifteen business days after the date of the order, of written request from the affected person a hearing will be scheduled within thirty business days after the date of receipt of the written request, unless the parties consent to a later date or the hearing officer sets a later date for good cause. If a hearing is not requested and none is ordered by the director, the order shall remain in effect until it is modified or vacated.

(2) The director may vacate or modify a cease and desist order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(3) A person aggrieved by a cease and desist order of the director may obtain judicial review of the order in the manner prescribed in the Administrative Procedure Act. The director may obtain an order from the district court of Lancaster County for enforcement of the cease and desist order.

Cross References:

Administrative Procedure Act, see section 84-920.

Last amended:

Laws 2006, LB 876, § 18.

~ Reissue 2007

8-1017

Investigation or proceeding; enforcement of act; director; powers; failure to comply with act; effect.

(1) For the purpose of any investigation or proceeding under the Nebraska Sale of Checks and Funds Transmission Act, the director or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry. If any person refuses to comply with a subpoena issued under this section or to testify with respect to any matter relevant to the proceeding, the district court of Lancaster County may, on application of the director, issue an order requiring the person to comply with the subpoena and to testify. Failure to obey an order of the court to comply with the subpoena may be punished by the court as civil contempt.

(2) The director may request the Attorney General to enforce the act. A civil enforcement action by the Attorney General may be filed in the district court of Lancaster County. A civil enforcement action by the Attorney General may seek temporary and permanent injunctive relief, restitution for a customer aggrieved by a violation of the act, and costs for the investigation and prosecution of the enforcement action.

(3) Failure to comply with the act shall not affect the validity or enforceability of any transaction. A person entering into a transaction pursuant to the act is not required to ascertain the extent of compliance with the act.

(4) Nothing in the act shall limit any statutory or common-law right of any person to bring any action in any court for any act involved in the sale of checks or funds transmission business or the right of the state to punish any person for any violation of law.

Last amended:

Laws 2006, LB 876, § 19.

~ Reissue 2007

8-1018

Acquisition of control of licensee; notice to director; disapproval; conditions; notice; hearing; order.

(1) No person acting personally or as an agent shall acquire control of any licensee under the Nebraska Sale of Checks and Funds Transmission Act without first giving thirty days' notice to the director on forms prescribed by the director of such proposed acquisition.

(2) The director, upon receipt of such notice, shall act upon it within thirty days, and unless he or she disapproves the proposed acquisition within that period of time, the acquisition shall become effective on the thirty-first day after receipt without the director's approval, except that the director may extend the thirty-day period an additional thirty days if, in his or her judgment, any material information submitted is substantially inaccurate or the acquiring person has not furnished all the information required by the director.

(3) An acquisition may be made prior to the expiration of the disapproval period if the director issues written notice of his or her intent not to disapprove the action.

(4)(a) The director may disapprove any proposed acquisition if:

(i) The financial condition of any acquiring person is such as might jeopardize the financial stability of the acquired licensee;

(ii) The business experience, character, and general fitness of any acquiring person or of any of the proposed management personnel indicate that the acquired licensee would not be operated honestly, carefully, or efficiently; or

(iii) Any acquiring person neglects, fails, or refuses to furnish all information required by the director. The director may require that any acquiring person comply with the application requirements of section 8-1005.

(b) The director shall notify the acquiring person in writing of disapproval of the acquisition. The notice shall provide a statement of the basis for the disapproval.

(c) Within fifteen business days after receipt of written notice of disapproval, the acquiring person may request a hearing on the proposed acquisition in accordance with the Administrative Procedure Act and rules and regulations of the Department of Banking and Finance. Following

such hearing, the director shall, by order, approve or disapprove the proposed acquisition on the basis of the record made at the hearing.

Last amended:

Laws 2009, LB 327, § 13

Operative Date: August 30, 2009

~ Supplement 2009

8-1019

Licensee; material change in application; notice; report; when required.

(1) A licensee shall file notice with the director within thirty calendar days of any material changes in information provided in a licensee's application as prescribed by the director.

(2) A licensee shall file a report with the director within five business days after the licensee has reason to know of the occurrence of any of the following events:

(a) The filing of a petition by or against the licensee under any bankruptcy law of the United States for bankruptcy or reorganization;

(b) The filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;

(c) The commencement of a proceeding to revoke or suspend the licensee's license in a state or country in which the licensee engages in business or is licensed;

(d) The cancellation or other impairment of the licensee's bond or other security;

(e) A charge or conviction of the licensee or of an executive officer, manager, or director of, or person in control of, the licensee for a felony; or

(f) A charge or conviction of an authorized agent for a felony.

Last amended:

Laws 2009, LB 327, § 14

Operative Date: August 30, 2009

~ Supplement 2009