Emergency Provisions effective March 20, 2008 - §8-115.01, 8-143.01, 8-157, and §8-1,140

Nebraska Banking Act
Chapter 8, Article 1
§§ 8-101 to 8-1,140

8-101
Terms, defined.

For purposes of the Nebraska Banking Act, unless the context otherwise requires:

(1) Bank subsidiary corporation means a corporation which has a bank as a shareholder and which is organized for purposes of engaging in activities which are part of the business of banking or incidental to such business except for the receipt of deposits. A bank subsidiary corporation is not to be considered a branch of its bank shareholder;

(2) Capital or capital stock means capital stock;

(3) Department means the Department of Banking and Finance;

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

(5) Bank or banking corporation means any incorporated banking institution which was incorporated under the laws of this state as they existed prior to May 9, 1933, and any corporation duly organized under the laws of this state for the purpose of conducting a bank within this state under the act. Bank means any such banking institution which is, in addition to the exercise of other powers, following the practice of repaying deposits upon check, draft, or order and of making loans;

(6) Order includes orders transmitted by electronic transmission;

(7) Automatic teller machine means a machine established and located off the premises of a financial institution which has a main chartered office or approved branch located in the State of Nebraska, whether attended or unattended, which utilizes electronic, sound, or mechanical signals or impulses, or any combination thereof, and from which electronic funds transfers may be initiated. An unattended automatic teller machine shall not be deemed to be a branch operated by a financial institution;

(8) Automatic teller machine surcharge means a fee that an operator of an automatic teller machine imposes upon a consumer for an electronic funds transfer, if such operator is not the financial institution that holds an account of such consumer from which the electronic funds transfer is to be made;

(9) Data processing center means a facility, wherever located, at which electronic impulses or other indicia of a transaction originating at an automatic teller machine or point-of-sale terminal are received and either authorized or routed to a switch or other data processing center in order to

enable the automatic teller machine or point-of-sale terminal to perform any function for which it is designed;

(10) Point-of-sale terminal means an information processing terminal which utilizes electronic, sound, or mechanical signals or impulses, or any combination thereof, which are transmitted to a financial institution or which are recorded for later transmission to effectuate electronic funds transfer transactions for the purchase or payment of goods and services and which are initiated by an access device in conjunction with a personal identification number. A point-of-sale terminal is not a branch operated by a financial institution. Any terminal owned or operated by a seller of goods and services shall be connected directly or indirectly to an acquiring financial institution;

(11) Making loans includes advances or credits that are initiated by means of credit card or other transaction card. Transaction card and other transactions, including transactions made pursuant to prior agreements, may be brought about and transmitted by means of an electronic impulse. Such loan transactions including transactions made pursuant to prior agreements shall be subject to sections 8-815 to 8-829 and shall be deemed loans made at the place of business of the financial institution;

(12) Financial institution means a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the United States, the department, or a foreign state agency; any other similar organization which is covered by federal deposit insurance; or a trust company;

(13) Financial institution employees includes parent holding company and affiliate employees;

(14) Switch means any facility where electronic impulses or other indicia of a transaction originating at an automatic teller machine or point-of-sale terminal are received and are routed and transmitted to a financial institution, data processing center, or other switch, wherever located. A switch may also be a data processing center;

(15) Impulse means an electronic, sound, or mechanical impulse, or any combination thereof;

(16) Insolvent means a condition in which (a) the actual cash market value of the assets of a bank is insufficient to pay its liabilities to its depositors, (b) a bank is unable to meet the demands of its creditors in the usual and customary manner, (c) a bank, after demand in writing by the director, fails to make good any deficiency in its reserves as required by law, or (d) the stockholders of a bank, after written demand by the director, fail to make good an impairment of its capital or surplus; and

(17) Foreign state agency means any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created under the laws of any other state, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands or which is operating under the code of law for the District of Columbia.

Last amended:
Laws 2003, LB 131, § 1
Laws 2003, LB 217, § 1

~ Reissue 2007

8-101.01
Act, how cited.

Sections 8-101 to 8-1,140 shall be known and may be cited as the Nebraska Banking Act.

Last amended:
Laws 1999, LB 396, § 4

~ Reissue 2007

8-102
Department of Banking and Finance; supervision and control of specified financial institutions; declaration of public purpose.

The department shall, under the laws of this state specifically made applicable to each, have general supervision and control over banks, trust companies, credit unions, and building and loan associations; all of which are hereby declared to be quasi-public in nature and subject to regulation and control by the state.

Last amended:
Laws 2003, LB 131, § 2

~ Reissue 2007

8-103
Director of Banking and Finance; financial institutions; supervision and examination; director and department employees; prohibited acts; exception; penalty.

(1) The director shall have charge of and full supervision over the examination of banks and the enforcement of compliance with the statutes by banks and their holding companies in their business and functions and shall constructively aid and assist banks in maintaining proper banking standards and efficiency. The director shall also have charge of and full supervision over the examination of and the enforcement of compliance with the statutes by trust companies, building and loan associations, and credit unions in their business and functions and shall constructively aid and assist trust companies, building and loan associations, and credit unions in maintaining proper standards and efficiency.

(2) If the director is financially interested directly or indirectly in any financial institution doing business in Nebraska, subject to his or her jurisdiction, the financial institution shall be under the direct supervision of the Governor, and as to such financial institution, the Governor shall exercise all the supervisory powers otherwise vested in the Director of Banking and Finance by the laws of this state, and reports of examination by state bank examiners, foreign state bank examiners, examiners of the Federal Reserve Board, examiners of the Office of the Comptroller of the Currency, and examiners for the Federal Deposit Insurance Corporation shall be transmitted to the Governor.

(3)(a) No person employed by the department shall be permitted to borrow money from any financial institution doing business in Nebraska subject to the jurisdiction of the department, except that persons employed by the department may borrow money in the normal course of business from the Nebraska State Employees Credit Union.

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

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

Last amended:
Laws 2003, LB 131, § 3

~ Reissue 2007

8-103.01
Repealed. Laws 2002, LB 1094, s. 19.

~ Reissue 2007

8-104
Director of Banking and Finance; oath; bond or insurance.

The director shall, before assuming the duties of office, take and subscribe to the constitutional oath of office, and file the same in the office of the Secretary of State, and shall be bonded or insured as required by section 11-201.

Last amended:
Laws 2004, LB 884, § 3

Effective date July 16, 2004.

Cross References:
For provisions of premium on bond of receiver,see section 25-21,218.
For provisions relating to appointment of Director of Banking and Finance,see section 81-102.

~ Reissue 2007

8-105
Deputies; examiners and assistants; disqualifications; salaries; bond or insurance.

(1) The director may employ such deputies, examiners, and other assistants as he or she may need to discharge in a proper manner the duties imposed upon him or her by law. Neither the director, nor any deputy or assistant, shall employ any person who at the time of hire is a relative of the director or a relative of any deputy or assistant in the work of the department. The deputies, examiners, and other assistants shall perform such duties as shall be assigned to them. The deputies and financial institution examiners hired after March 4, 2003, shall hold office at the will of the director and shall receive such salary as set by the director and approved by the Governor based upon the level of credentials for the positions. Each employee who is employed as a deputy or a financial institution examiner on March 4, 2003, may elect to become employed at will. The election to become employed at will may be made at any time upon notification to the director in writing, but once made, such election shall be final. Until the election to be employed at will is made, the employee shall be treated as continuing participation in the State Personnel System. The director shall, with the approval of the Governor, fix the compensation of the other examiners and assistants, which shall be paid either monthly or on a biweekly basis.

(2) The deputies, examiners, and other assistants, before assuming the duties of office, shall be bonded or insured as required by section 11-201.

Last amended:
Laws 2004, LB 884, § 4
Effective date July 16, 2004.

~ Reissue 2007

8-106
Director of Banking and Finance; rules and regulations; power to make; standards.

The director shall have the power to make such rules and to establish such regulations for the government of banks under his supervision as may in his judgment seem wise and expedient and which do not in any way conflict with any of the provisions of law. In making such rules and regulations, the director shall consider generally recognized sound banking principles, the financial soundness of banks, competitive conditions, and general economic conditions.

Last amended:
Laws 1963, c. 29, § 6, p. 136

Cross References:
For adoption and promulgation of administrative rules,see sections 84-901 to 84-920.

~ Reissue 2007

8-107
Banks; books and accounts; failure to keep; penalty.

The department shall have power to require the officers of any bank, or any of them, to open and keep such books or accounts as the department in its discretion may determine and prescribe for the purpose of keeping accurate and convenient records of the transactions and accounts of such bank. Any bank that refuses or neglects to open and keep such books or accounts as may be prescribed by the department shall be subject to a penalty of ten dollars for each day it neglects or fails to open and keep such books and accounts after receiving written notice from the department. Such penalty may be collected in the manner prescribed for the collection of fees for the examination of such bank.

Last amended:
Laws 1963, c. 29, § 7, p. 136

~ Reissue 2007

8-108
Director of Banking and Finance; financial institution examination; powers; procedure; charge.

The director, his or her deputy, or any duly appointed examiner shall have power to make a thorough examination into all the books, papers, and affairs of any bank or other institution in Nebraska subject to the department's jurisdiction, or its holding company, if any, and in so doing to administer oaths and affirmations, to examine on oath or affirmation the officers, agents, and clerks of such institution or its holding company, if any, touching the matter which they may be authorized and directed to inquire into and examine, and to subpoena the attendance of any person or persons in this state to testify under oath or affirmation in relation to the affairs of such institution or its holding company, if any. Such powers shall include, but not be limited to, the authority to examine and monitor by electronic means the books, papers, and affairs of any financial institution or the holding company of a financial institution. The examination may be in the presence of at least two members of the board of directors of the institution or its holding company, if any, undergoing such examination, and it shall be the duty of the examiner to incorporate in his or her report the names of the directors in whose presence the examination was made. The director may accept any examination or report from the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, or a foreign state

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

Last amended:
Laws 2007, LB 124, § 1

~ Reissue 2007

8-109
Bank examiner; failure to report unlawful conduct or unsafe condition; penalty.

If any bank examiner shall have knowledge of the insolvency or unsafe condition of any bank under state supervision, or that there are bad or doubtful assets in such bank, or that the bank or any of its officers has violated any law governing the conduct of the bank, or that it is unsafe and inexpedient to permit such bank to continue business, and shall fail to forthwith report such fact in writing over his signature to the department, he shall be guilty of a Class II misdemeanor and shall forfeit his office.

Last amended:
Laws 1977, LB 40, § 37

~ Reissue 2007

8-110
Banks; bonds; filing; approval; requirements; open to inspection.

The department shall require each state bank to obtain a fidelity bond, naming the bank as obligee, in an amount to be fixed by the department. The bond shall be issued by an authorized insurer and shall be conditioned to protect and indemnify the bank from loss which it may sustain, of money or other personal property, including that for which the bank is responsible through or by reason of the fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, misapplication, misappropriation, or any other dishonest or criminal act of or by any of its officers or employees. Such bond may contain a deductible clause in an amount to be approved by the director. An executed copy of the bond shall be filed with and approved by the director and shall remain a part of the records of the department. If the premium of the bond is not paid, the bond shall not be canceled or subject to cancellation unless at least ten days' advance notice, in writing, is filed with the department. No bond which is current with respect to premium payments shall be canceled or subject to cancellation unless at least forty-five days' advance notice, in writing, is filed with the department. The bond shall always be open to public

inspection during the office hours of the department. In the event a bond is canceled, the department may take whatever action it deems appropriate in connection with the continued operation of the bank involved.

Last amended:
Laws 1985, LB 653, § 3

~ Reissue 2007

8-111
Director of Banking and Finance; real estate; power to convey; execution of conveyance.

The director may convey any real estate title to which is vested in the Department of Banking and Finance by operation of law or otherwise. Such conveyance shall be signed by the director, sealed with the seal of the department, and acknowledged by the director.

Last amended:
Laws 1963, c. 29, § 11, p. 138

~ Reissue 2007

8-112
Director of Banking and Finance; records required; list of borrowers; disclosures prohibited; confidential records.

(1) The director shall keep, as records of his or her office, proper books showing all acts, matters, and things done under the jurisdiction of the department. Neither the director nor anyone connected with the department shall in any instance disclose the name of any depositor or debtor of any financial institution or other entity regulated by the department or the amount of his or her deposit or debt to anyone, except insofar as may be necessary in the performance of his or her official duty, except that the department may maintain a record of borrowers from the financial institutions in this state and may give information concerning the total liabilities of any such borrowers to any financial institution owning obligations of such borrowers.

(2) Examination reports, investigation reports, and documents and information relating to such reports are confidential records of the department and may be released or disclosed only (a) insofar as is necessary in the performance of the official duty of the department or (b) pursuant to a properly issued subpoena and upon entry of a protective order from a court of competent jurisdiction to protect and keep confidential the names of borrowers or depositors or to protect the public interest. If examination reports, investigation reports, or documents and information relating to such reports are subpoenaed from the department, the party issuing the subpoena shall give notice of the issuance of such subpoena at least three business days in advance of the entry of a protective order to the financial institution which is the subject of such reports or documents and information, unless the financial institution is already a party to the underlying proceeding or

unless such notice is otherwise prohibited by law or by court order.

Last amended:
Laws 1999, LB 396, § 6

~ Reissue 2007

8-113
Unauthorized use of word bank or its derivatives; penalty.

No individual, firm, company, corporation, or association doing business in the State of Nebraska, unless organized as a bank under the Nebraska Banking Act or the authority of the federal government, or as a building and loan association, savings and loan association, or savings bank under Chapter 8, article 3, or the authority of the federal government, shall use the word bank or any derivative thereof as any part of a title or description of any business activity. This section does not apply to: (1) Banks, building and loan associations, savings and loan associations, or savings banks chartered and supervised by a foreign state agency; (2) bank holding companies registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative banc is used; (3) affiliates or subsidiaries of (a) a bank organized under the Nebraska Banking Act or the authority of the federal government or chartered and supervised by a foreign state agency, (b) a building and loan association, savings and loan association, or savings bank organized under Chapter 8, article 3, or the authority of the federal government or chartered and supervised by a foreign state agency, or (c) a bank holding company registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative banc is used; (4) organizations substantially owned by (a) a bank organized under the Nebraska Banking Act or the authority of the federal government or chartered and supervised by a foreign state agency, (b) a building and loan association, savings and loan association, or savings bank organized under Chapter 8, article 3, or the authority of the federal government or chartered and supervised by a foreign state agency, (c) a bank holding company registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative banc is used, or (d) any combination of entities listed in subdivisions (a) through (c) of this subdivision; (5) mortgage bankers licensed or registered under the Mortgage Bankers Registration and Licensing Act, if the word mortgage immediately precedes the word bank or its derivative; (6) organizations described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 and exempt from taxation under section 501(a) of the code; (7) trade associations which are exempt from taxation under section 501(c)(6) of the code which represent a segment of the banking or savings and loan industries, and any affiliate or subsidiary thereof; and (8) such other firms, companies, corporations, or associations as have been in existence and doing business prior to December 1, 1975, under a name composed in part of the word bank or some derivative thereof. Any violation of this section shall be a Class V misdemeanor.

Last amended:
Laws 2007, LB 124, § 2

Cross References:
Mortgage Bankers Registration and Licensing Act,see section 45-701.

~ Reissue 2007

8-114
Banks; corporate status required; unlawful banking; penalty.

It shall be unlawful for any person to conduct a bank within this state except by means of a corporation duly organized for such purpose under the laws of this state. It shall be unlawful for any corporation to receive money upon deposit or conduct a bank under the laws of this state until such corporation has complied with all the provisions and requirements of the Nebraska Banking Act. Any violation of this section shall be a Class V misdemeanor for each day of the continuation of such offense and be cause for the appointment of a receiver as provided in the act to wind up such banking business.

Last amended:
Laws 1998, LB 1321, § 3

~ Reissue 2007

8-115
Banks; charter required.

No corporation shall conduct a bank in this state without having first obtained a charter in the manner provided in the Nebraska Banking Act.

Last amended:
Laws 1998, LB 1321, § 4

~ Reissue 2007

8-115.01
Banks; new charter; transfer of charter; procedure.

When an application required by section 8-120 is made by a corporation, the following procedures shall be followed:

(1) Except as provided for in subdivision (2) of this section, when application is made for a new bank charter, a public hearing shall be held on each application. Notice of the filing of the application shall be published by the department for three weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the bank. The

date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after the application has been accepted for filing by the director as substantially complete unless the applicant agrees to a later date. Notice of the filing of the application shall be sent by the department to all financial institutions located in the county where the applicant proposes to operate;

(2) When application is made for a new bank charter and the director determines, in his or her discretion, that the conditions of subdivision (3) of this section are met, then the public hearing requirement of subdivision (1) of this section shall only be required if, (a) after publishing a notice of the proposed application in a newspaper of general circulation in the county where the main office of the applicant is to be located and (b) after giving notice to all financial institutions located within such county, the director receives a substantive objection to the application within fifteen days after the first day of publication;

(3) The director shall consider the following in each application before the public hearing requirement of subdivision (1) of this section may be waived:

(a) Whether the experience, character, and general fitness of the applicant and of the applicant's officers and directors is such as to warrant belief that the applicant will operate the business honestly, fairly, and efficiently;

(b) Whether the length of time that the applicant or a majority of the applicant's officers, directors, and shareholders have been involved in the business of banking in this state has been for a minimum of five consecutive years; and

(c) Whether the condition of financial institutions currently owned by the applicant, the applicant's holding company, if any, or the applicant's officers, directors, or shareholders is such as to indicate that a hearing on the current application would not be necessary;

(4) Except as provided in subdivision (6) of this section, when application is made for transfer of a bank charter and move of the main office of a bank to any location other than within the corporate limits of the city or village of its original charter or, if such bank charter is not located in a city or village, then for transfer outside the county in which it is located, the director shall hold a hearing on the matter if he or she determines, in his or her discretion, that the condition of the applicant warrants a hearing. If the director determines that the condition of the applicant does not warrant a hearing, the director shall (a) publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed main office and charter of the applicant would be located and (b) give notice of such application to all financial institutions located within the county where the proposed main office and charter would be located and to such other interested parties as the director may determine. If the director receives any substantive objection to the proposed relocation within fifteen days after the first day of publication, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subdivision shall be published for two consecutive weeks in a newspaper of general circulation in the county where the main office would be located. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after the application has been accepted for filing by the director as

substantially complete unless the applicant agrees to a later date. When the persons making application for transfer of a main office and charter are officers or directors of the bank, there is a rebuttable presumption that such persons are parties of integrity and responsibility;

(5) Except as provided in subdivision (6) of this section, when application is made for a move of any bank's main office within the city, village, or county, if not chartered within a city or village, of its original charter, the director shall publish notice of the proposed move in a newspaper of general circulation in the county where the main office of the applicant is located and shall give notice of such intended move to all financial institutions located within the county where such bank is located. If the director receives a substantive objection to such move within fifteen days after publishing such notice, he or she shall publish an additional notice and hold a hearing as provided in subdivision (1) of this section;

(6) With the approval of the director, a bank may move its main office and charter to the location of a branch of the bank without public notice or hearing as long as (a) the condition of the bank, in the discretion of the director, does not warrant a hearing and (b) the branch (i) is located in Nebraska, (ii) has been in operation for at least one year as a branch of the bank or was acquired by the bank pursuant to section 8-1506 or 8-1516, and (iii) is simultaneously relocated to the original main office location;

(7) The director shall send any notice to financial institutions required by this section by first-class mail, postage prepaid, or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail;

(8) The expense of any publication and mailing required by this section shall be paid by the applicant; and

(9) Notwithstanding any provision of this section, the director shall take immediate action on any charter application or applications concerned without the benefit of a hearing in the case of an emergency so declared by the Governor, the Secretary of State, and the director.

Last amended:
Laws 2008, LB 851, § 1

Operative date March 20, 2008

8-116
Banks; capital stock; undivided profits; amount required.

(1) A charter for a bank hereafter organized shall not be issued unless the corporation applying therefor shall have a surplus of not less than seventy thousand dollars or seventy percent of its paid-up capital stock, whichever is greater, and a paid-up capital stock as follows: In villages or counties of less than one thousand inhabitants, one hundred thousand dollars; in cities, villages, or counties of one thousand or more and less than twenty-five thousand inhabitants, not less than one hundred fifty thousand dollars; in cities or counties of twenty-five thousand or more and less than one hundred thousand inhabitants, not less than two hundred thousand dollars; and in cities

or counties of one hundred thousand or more inhabitants, not less than five hundred thousand dollars.

(2) Notwithstanding subsection (1) of this section, the department shall have the authority to determine the minimum amount of paid-up capital stock and surplus and required for any corporation applying for a bank charter, which amounts shall not be less than the amounts provided in subsection (1) of this section.

(3) For purposes of this section, population shall be determined by the most recent federal decennial census.

Last amended:
Laws 2008, LB 851, § 2

Operative date July 18, 2008

8-116.01
Banks; capital notes and debentures; issuance; conditions.

With the approval of the director, any bank may at any time, through action of its board of directors and without requiring any action of its stockholders, issue and sell its capital notes or debentures. Such capital notes or debentures shall be subordinate and subject to the claims of depositors and may be subordinated and subjected to the claims of other creditors. The capital stock of any bank as such term capital stock is used respectively in sections 8-116, 8-118, and 8-127, the capital of any corporation transacting a banking business as the term capital is used in section 8-187, and the capital of a bank as the term capital is used in section 8-132, shall be deemed to be unimpaired when the amount of such capital notes and debentures as represented by cash or sound assets exceeds the impairment as found by the department. Before any such capital notes or debentures are retired or paid by the bank, any existing deficiency of its capital, disregarding the notes or debentures to be retired, must be paid in, in cash, to the end that the sound capital assets shall at least equal the capital or capital stock of the bank in the sense such terms capital and capital stock are used in the respective sections named. Such capital notes or debentures shall in no case be subject to any assessment. The holders of such capital notes or debentures shall not be held individually responsible as such holders for any debts, contracts, or engagements of such bank and shall not be held liable for assessments to restore impairments in the capital of such bank.

Last amended:
Laws 2005, LB 533, § 3

~ Reissue 2007

8-117
Repealed. Laws 2002, LB 1094, s. 19.

~ Reissue 2007

8-117.01
Repealed. Laws 2002, LB 1094, s. 19.

~ Reissue 2007

8-118
Banks; unlawful promotion; sale of stock prior to issuance of charter; penalty.

It shall be unlawful for any person for hire (1) to promote or attempt to promote the organization of a corporation to conduct the business of a bank in this state or (2) to sell the capital stock of such a corporation prior to the issuance of a charter to such corporation authorizing its operation as a bank. Any person violating the provisions of this section shall be guilty of a Class II misdemeanor.

Last amended:
Laws 1977, LB 40, § 40

~ Reissue 2007

8-119
Capital stock; sale; compensation prohibited; false statement; penalties.

No corporation organized for the purpose of conducting a bank under the laws of this state shall be granted the certificate provided in section 8-121, or the charter provided in section 8-122, until there shall have been filed with the department a statement, under oath, of the president or cashier of such corporation that no premium, bonus, commission, compensation, reward, salary, or other form of remuneration has been paid, or promised to be paid, to any person for selling the stock of such corporation. The president or cashier of any such corporation who shall be found guilty of filing a false statement under the provisions of this section shall be guilty of a Class I misdemeanor. Whenever, after such certificate and charter shall have been delivered, the department shall determine, after a public hearing that such statement is false, it shall cancel such certificate and charter, and a receiver shall be appointed for such corporation in the manner provided for in case of a corporation which is conducting a bank in an unsafe or unauthorized manner.

Last amended:
Laws 1977, LB 40, § 41

~ Reissue 2007

8-120
Corporation; application to conduct, merge, or transfer bank; contents.

(1) Every corporation organized for and desiring to conduct a bank or to conduct a bank for purposes of a merger with an existing bank shall make under oath and transmit to the department a complete detailed application giving (a) the name of the proposed bank; (b) a certified copy of the articles of incorporation; (c) the names of the stockholders; (d) the county, city, or village and the exact location therein in which such bank is proposed to be located; (e) the nature of the proposed banking business; (f) the proposed amounts of paid-up capital stock and surplus, and the items of actual cash and property, as reported and approved at a meeting of the stockholders, to be included in such amounts; and (g) a statement that at least twenty percent of the amounts stated in subdivision (f) of this subsection have in fact been paid in to the corporation by its stockholders.

(2) In the case of a merger, the existing bank which is to be merged into shall complete an application and meet the requirements of this section.

(3) This section also applies when application is made for transfer of a bank charter and move of a bank's main office to any location other than (a) within the corporate limits of the city or village of its original charter, (b) within the county in which it is located if such bank charter is not located in a city or village, or (c) as provided in subdivision (6) of section 8-115.01.

Last amended:
Laws 2008, LB 851, § 3

Operative date July 18, 2008

8-121
Corporation; examination of application by department; charter approval intended; certificate; issuance.

If the department, upon examination of the application required by section 8-120, is satisfied that such corporation has complied with the requirements of the Nebraska Banking Act and if charter approval is intended, it shall issue to such corporation a certificate stating that such corporation has complied with the laws of this state, advising of any requirements which must be met.

Last amended:
Laws 1998, LB 1321, § 5

~ Reissue 2007

8-122
Issuance of charter to transact business.

(1) After the examination and approval by the department of the application required by section 8-120, if the department upon investigation and after any public hearing on the application held pursuant to section 8-115.01 shall be satisfied that the stockholders and officers of the corporation applying for such charter are parties of integrity and responsibility, that the requirements of section 8-702 have been met, and that the public necessity, convenience, and advantage will be promoted by permitting such corporation to engage in business as a bank, the department shall, upon the payment of the required fees, and, upon the filing with the department of a statement, under oath, of the president, secretary, or treasurer, that the paid-up capital stock and surplus have been paid in, as determined by the department in accordance with section 8-116, issue to such corporation a charter to transact the business of a bank in this state provided for in its articles of incorporation. In the case of a bank organized to merge with an existing bank, there shall be a rebuttable presumption that the public necessity, convenience, and advantage will be met by the merger of the two banks, except that such presumption shall not apply when the new bank that is formed by the merger is at a different location than that of the former existing bank. Any application for merger under this subsection shall be subject to section 8-1516.

(2) On payment of the required fees and the receipt of the charter, such corporation may begin to conduct a bank.

Last amended:
Laws 2008, LB 851, § 4

Operative date July 18, 2008

8-122.01
Repealed. Laws 2002, LB 1094, s. 19.

~ Reissue 2007

8-123
Transferred to section 8-1902.

~ Reissue 2007

8-124
Banks; board of directors; officers; term; meetings; examination; audit.

The affairs and business of any bank chartered after September 2, 1973, or which has had transfer of twenty-five percent or more of voting shares after September 2, 1973, shall be managed or controlled by a board of directors of not less than five and not more than fifteen members, who shall be selected at such time and in such manner as may be provided by the

articles of incorporation of the corporation and in conformity with the Nebraska Banking Act. Any bank chartered before September 2, 1973, may have a minimum of three directors and not more than fifteen directors so long as it does not have transfer of twenty-five percent or more voting shares, with such directors selected as provided in this section. Any vacancy on the board shall be filled within ninety days by appointment by the remaining directors, and any director so appointed shall serve until the next election of directors, except that if the vacancy created leaves a minimum of five directors, appointment shall be optional. The board shall appoint a secretary and, from among its own members, select a president. Such officers shall hold their office at the pleasure of the board of directors. The board of directors shall hold at least one regular meeting in each calendar quarter, and at one of such meetings in each year a thorough examination of the books, records, funds, and securities held by the bank shall be made and recorded in detail upon its record book. In lieu of the one annual examination required, the board of directors may accept one annual audit by an accountant or accounting firm approved by the Director of Banking and Finance.

Last amended:
Laws 2007, LB 124, § 3

~ Reissue 2007

8-124.01
Banks; board of directors; vacancy; notice; filling; notice.

At any time that a vacancy on the board of directors of a bank occurs, the bank shall, within thirty days, notify the department of the vacancy. Vacancies shall be filled within ninety days by appointment by the remaining directors, except that if the vacancy created leaves a minimum of five directors, appointment shall be optional. When the vacancy has been filled, the bank shall notify the department that the vacancy has been filled and include in the notice the name, address, and occupation of the director appointed.

Last amended:
Laws 1995, LB 599, § 1

~ Reissue 2007

8-125
Banks; board of directors; meetings; record; contents; publication.

A full and complete record of the proceedings and business of all meetings of the board of directors shall be spread upon the bank's minutes. Such record of the meetings shall show the gross earnings and disposition thereof by indicating expenses and taxes paid, worthless items charged off, depreciation in assets, amount carried to surplus fund, and amount of dividend, and shall also indicate the amount of undivided profits remaining. Published statements of assets and liabilities shall show for undivided profits only the net amount after deducting all expenses.

Last amended:
Laws 1963, c. 29, § 25, p. 144

~ Reissue 2007

8-126
Bank directors; qualifications; approval by department; revocation of approval; procedure.

A majority of the members of the board of directors of any bank transacting business under the Nebraska Banking Act shall have their residences in this state or within twenty-five miles of the main office of the bank. Reasonable efforts shall be made to acquire members of such board of directors from the county in which such bank is located. Directors of banks shall be persons of good moral character, known integrity, business experience, and responsibility. No person shall act as a member of the board of directors of any bank until such bank applies for and obtains approval from the Department of Banking and Finance.

If the department, upon investigation, determines that any director of a bank is conducting the business of the bank in an unsafe or unauthorized manner or is endangering the interests of the stockholders or depositors, the department shall have authority, following notice and opportunity for hearing, to revoke such approval to act as a member of the board of directors. The department may adopt and promulgate rules and regulations and prescribe forms to carry out this section.

Last amended:
Laws 1998, LB 1321, § 7

~ Reissue 2007

8-127
List of stockholders; open to inspection; violation; penalty.

The president and cashier, or the business manager, of every bank shall cause to be kept at all times a full and correct list of the names and residences of all its stockholders, the number of shares held by each, and the amount of paid-up capital represented thereby. Such list shall be subject to the inspection of all stockholders of the bank during all business hours, and shall be kept in the business office where all stockholders may have ready access to it. Any person violating this section shall be guilty of a Class III misdemeanor.

Last amended:
Laws 1977, LB 40, § 42

~ Reissue 2007

8-128
Capital stock; increase; decrease; notice; publication; denial by department, when.

The paid-in capital stock of any bank may be increased or decreased in the following manner: The stockholders at any regular meeting or at any special meeting duly called for such purpose shall by vote of those owning two-thirds of the capital stock authorize the president or cashier to notify the department of the proposed increase or reduction of paid-in capital stock, and a notice containing a statement of the amount of any proposed reduction of paid-in capital stock shall be published for four weeks in some newspaper published and of general circulation in the county where such bank is located. Reduction of paid-in capital stock shall be discretionary with the department, but shall be denied if granting the same would reduce the paid-in capital stock below the requirements of the Nebraska Banking Act or would impair the security of the depositors. The bank shall notify the department when the proposed increase or decrease of the paid-in capital stock has been consummated.

Last amended:
Laws 1998, LB 1321, § 8

~ Reissue 2007

8-129
Stockholders' meeting; Director of Banking and Finance may call; notice; expense.

Whenever the director shall deem it expedient he may call a meeting of the stockholders of any bank organized under the laws of this state, by mailing notice of such meeting to each stockholder five days previous thereto. All necessary expenses incurred in the giving of such notice shall be borne by the bank whose stockholders are required to convene.

Last amended:
Laws 1963, c. 29, § 29, p. 146

~ Reissue 2007

8-130
Federal reserve system; membership by state banks and trust companies authorized; examinations.

Any bank or trust company, incorporated under the laws of this state, shall have power to subscribe to the capital stock of the Federal Reserve Bank of Kansas City, Missouri, and become a member of the federal reserve system created and organized under an act of Congress of the United States, approved December 23, 1913, and known as the Federal Reserve Act, and shall have power to assume such liabilities and to exercise such powers as a member of such system as are prescribed by the provisions of such act, or amendments thereto. So long as such bank or trust company shall remain a member of such system, it shall be subject to examination by the

legally constituted authorities, and to all provisions of such Federal Reserve Act and regulations made pursuant thereto by the Federal Reserve Board which are applicable to such bank or trust company as a member of the federal reserve system. The state authorities may, in their discretion, accept examinations and audits made under the provisions of the Federal Reserve Act in lieu of examinations required of banks or trust companies organized under the laws of this state.

Last amended:
Laws 1963, c. 29, § 30, p. 146

~ Reissue 2007

8-131
Repealed. Laws 2003, LB 217, s. 50.

~ Reissue 2007

8-132
Banks; available funds; deficient reserve; impairment of capital; duty of bank; powers and duties of department; notice to bank.

The available funds of a bank shall consist of cash on hand and balances due from other solvent banks approved by the department. Cash shall include lawful money of the United States and exchange for any clearinghouse association. Whenever the available funds or any reserve of any bank are deemed deficient by the department, such bank shall not make any new loans or discount otherwise than by discounting or purchasing bills of exchange payable at sight or make any dividends of its profits until it has on hand available funds and reserve deemed sufficient for operation by the department. The department shall notify any bank, in case its available funds or reserves are deemed deficient or its capital is impaired, to make good such available funds, reserves, or capital within such time as the department may direct, and any failure of such bank to make good any deficiency in the amount of its available funds, reserve, or capital within the time directed shall be cause for the director to take possession of such bank, declare it insolvent, and liquidate it as provided in the Nebraska Banking Act.

Last amended:
Laws 2003, LB 217, § 4

~ Reissue 2007

8-132.01
Impairment of capital; amortization of loan losses; authorized; conditions.

Whenever any examination of a bank reveals that loan losses have occurred at the bank to the

extent that the capital of the bank is impaired and additional capitalization is required, such bank shall, after meeting the following qualification, be allowed to amortize such loan losses over a period of seven years. In order to meet the amortization qualification, the bank shall submit a written plan to the Director of Banking and Finance outlining specific steps the bank intends to take to avoid further deterioration and to return to profitability. The director shall have the authority to accept or reject such plan for qualification and, if accepted, shall insure that such plan is regularly reviewed.

Last amended:
Laws 1989, LB 296, § 1

~ Reissue 2007

8-133
Rate of interest; inducements prohibited; penalties.

(1) A state-chartered bank may pay interest at any rate on any deposits made or retained in the bank.

(2) Any officer, director, stockholder, or employee of a bank or any other person who directly or indirectly, either personally or for the bank, pays any money, gives any consideration of value, or pledges any assets, except as provided by law, as an inducement, in addition to the legal interest, for making or retaining a deposit in the bank shall be guilty of a Class IV felony. Any depositor who accepts any such inducement shall be guilty of a Class IV felony. Deposits made in violation of this section shall not be entitled to priority of payment from the assets of the bank. In determining the maximum interest that may be paid on deposits, the bank shall consider generally recognized sound banking principles, the financial soundness of banks, competitive conditions, and general economic conditions.

(3) A bank may secure deposits made by a trustee under 11 U.S.C. 101 et seq. by pledge of the assets of the bank or by furnishing a surety bond as provided in 11 U.S.C. 345. A bank may also secure deposits made by the United States Secretary of the Interior on behalf of any individual Indian or any Indian tribe under 25 U.S.C. 162a by a pledge of the assets of the bank or by furnishing an acceptable bond as provided in 25 U.S.C. 162a.

(4) Nothing in this section shall prohibit a bank or any officer, director, stockholder, or employee thereof from providing to a depositor a guaranty bond which provides coverage for the deposits of the depositor which are in excess of the amounts insured by the Federal Deposit Insurance Corporation.

Last amended:
Laws 2003, LB 217, § 5

~ Reissue 2007

8-134
Deposits; repayment only on presentation of pass book, when; notice.

Banks may, by agreement, provide that deposits received under agreement shall be repaid only on presentation of pass books and may require notice to be given before such deposits are repaid.

Last amended:
Laws 1963, c. 29, § 34, p. 148

~ Reissue 2007

8-135
Deposits; withdrawal methods authorized; section; how construed.

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

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

(b) Electronic means through:

(i) Preauthorized direct withdrawal;

(ii) An automatic teller machine;

(iii) A debit card;

(iv) A transfer by telephone;

(v) A network, including the Internet; or

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

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

Last amended:
Laws 2005, LB 533, § 6

~ Reissue 2007

8-136
Repealed. Laws 1974, LB 354, s. 316.

~ Reissue 2007

8-137
Checks; certification; requirements; effect.

No officer or employee of any bank shall certify any check drawn upon such bank unless the person, firm, or corporation drawing the check has on deposit with the bank at the time such check is certified an amount of credit, on the depositors' ledger of such bank, subject to the payment of such check, equal to the amount specified in such check; but the amount of such check shall not be recoverable from the payee or holder except in case of fraud. Whenever a check drawn upon any bank is certified by any officer or employee of such bank, the amount thereof shall be immediately charged against the account of the person, firm, or corporation drawing the same.

Last amended:
Laws 1963, c. 29, § 37, p. 149

~ Reissue 2007

8-138
Deposits; receiving when insolvent; prohibition; penalty.

No bank shall accept or receive on deposit for any purpose any money, bank bills, United States treasury notes or currency, or other notes, bills, checks, drafts, credits, or currency, when such bank is insolvent; and if any bank shall receive or accept on deposit any such deposits when such bank is insolvent, the officer, agent, or employee knowingly receiving or accepting or being accessory to, or permitting or conniving at the receiving or accepting on deposit therein or thereby, any such deposit shall be guilty of a Class III felony.

Last amended:
Laws 1977, LB 40, § 44

~ Reissue 2007

8-139
Executive officers; approval of loans and investments; qualifications; license; revocation;

regulations; forms; violations; penalty.

No loan or investment shall be made by a bank, directly or indirectly, without the approval of an active executive officer. Executive officers of banks shall be persons of good moral character, known integrity, business experience and responsibility, and be capable of conducting the affairs of a bank on sound banking principles. No person shall act as an active executive officer of any bank until such bank shall apply for and obtain from the department a license for such person to so act. If the department, upon investigation, shall be satisfied that any active executive officer of a bank is conducting its business in an unsafe or unauthorized manner, or is endangering the interests of the stockholders or depositors, the department shall have authority to revoke such license. Any person who shall act or attempt to act as an active executive officer of any bank, except under a license from the department, or anyone who shall permit or assist such person to act or attempt to act as such, shall be guilty of a Class III felony. The department may make and enforce reasonable regulations and prescribe forms to be used to carry out the intent of this section.

Last amended:
Laws 1977, LB 40, § 45

~ Reissue 2007

8-140
Repealed. Laws 1994, LB 611, s. 4.

~ Reissue 2007

Section 8-141
Loans; limits; exceptions.

(1) No bank shall directly or indirectly loan to any single corporation, limited liability company, firm, or individual, including in such loans all loans made to the several members or shareholders of such firm, limited liability company, or corporation, for the use and benefit of such corporation, limited liability company, firm, or individual, more than twenty-five percent of the paid-up capital, surplus, and capital notes and debentures or fifteen percent of the unimpaired capital and unimpaired surplus of such bank, whichever is greater. Such limitations shall be subject to the following exceptions:

(a) Obligations of any person, partnership, limited liability company, association, or corporation in the form of notes or drafts secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock, when the market value of the livestock securing the obligation is not at any time less than one hundred fifteen percent of the face amount of the notes covered by such documents, shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures or

ten percent of such unimpaired capital and unimpaired surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus;

(b) Obligations of any person, partnership, limited liability company, association, or corporation secured by not less than a like amount of bonds or notes of the United States issued since April 24, 1917, or certificates of indebtedness of the United States, treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures or ten percent of such unimpaired capital and unimpaired surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus;

(c) Obligations of any person, partnership, limited liability company, association, or corporation which are secured by negotiable warehouse receipts in an amount not less than one hundred fifteen percent of the face amount of the note or notes secured by such documents shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures or ten percent of such unimpaired capital and unimpaired surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus; or

(d) Obligations of any person, partnership, limited liability company, association, or corporation which are secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, in an amount at least equal to the face amount of the note or notes secured by such collateral, shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures or ten percent of such unimpaired capital and unimpaired surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus.

(2) 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. Loans or obligations shall not be subject to any limitation under this section, based upon such capital and surplus or such unimpaired capital and unimpaired surplus, to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase the same, made by any federal reserve bank or by the United States Government or any authorized agency thereof, including any corporation wholly owned directly or indirectly by the United States, or general obligations of any state of the United States or any political subdivision thereof. The phrase general obligation of any state or any political subdivision thereof means an obligation supported by the full faith and credit of an obligor possessing general powers of taxation, including property taxation, but does not include municipal revenue bonds and sanitary and improvement district warrants which are subject to the limitations set forth in this section. Any bank may subscribe to, invest in, purchase, and own single-family mortgages secured by the Federal Housing Administration or the United States Department of Veterans Affairs and mortgage-backed certificates of the Government National Mortgage Association which are

guaranteed as to payment of principal and interest by the Government National Mortgage Association. Such mortgages and certificates shall not be subject under this section to any limitation based upon such capital and surplus or such unimpaired capital and unimpaired surplus. Obligations representing loans to any national banking association or to any banking institution organized under the laws of any state, when such loans are approved by the Director of Banking and Finance by regulation or otherwise, shall not be subject under this section to any limitation based upon such capital and surplus or such unimpaired capital and unimpaired surplus. Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject under this section to any limitation based on such capital and surplus or such unimpaired capital and unimpaired surplus. The department may adopt and promulgate rules and regulations governing the terms and conditions of such security interest and segregated deposit account. For the purpose of determining lending limits, partnerships shall not be treated as separate entities. Each individual shall be charged with his or her personal debt plus the debt of every partnership in which he or she is a partner, except that for purposes of this section (a) an individual shall only be charged with the debt of any limited partnership in which he or she is a partner to the extent that the terms of the limited partnership agreement provide that such individual is to be held liable for the debts or actions of such limited partnership and (b) no individual shall be charged with the debt of any general partnership in which he or she is a partner beyond the extent to which (i) his or her liability for such partnership debt is limited by the terms of a contract or other written agreement between the bank and such individual and (ii) any personal debt of such individual is incurred for the use and benefit of such general partnership.

(3) A loan made within lending limits at the initial time the loan was made may be renewed, extended, or serviced without regard to changes in the lending limit of a bank following the initial extension of the loan if (a) the renewal, extension, or servicing of the loan does not result in the extension of funds beyond the initial amount of the loan or (b) the accrued interest on the loan is not added to the original amount of the loan in the process of renewal, extension, or servicing.

(4) Any bank may purchase or take an interest in life insurance contracts for any purpose incidental to the business of banking. A bank's purchase of any life insurance contract, as measured by its cash surrender value, from any one life insurance company shall not at any time exceed twenty-five percent of the paid-up capital, surplus, and capital notes and debentures of such bank or fifteen percent of the paid-up capital, surplus, undivided profits, and capital notes and debentures of such bank, whichever is greater. A bank's purchase of life insurance contracts, as measured by their cash surrender values, in the aggregate from all life insurance companies shall not at any time exceed thirty-five percent of the paid-up capital, surplus, undivided profits, and capital notes and debentures of such bank. The limitations under this subsection on a bank's purchase of life insurance contracts, in the aggregate from all life insurance companies, shall not apply to any contract purchased prior to April 5, 1994.

(5) For purposes of this section, unimpaired capital and unimpaired surplus means (a) the bank's tier 1 and tier 2 capital included in the bank's risk-based capital under the capital guidelines of the appropriate federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3), and (b) the balance of the

bank's allowance for loan and lease losses not included in the bank's tier 2 capital for purposes of the calculation of risk-based capital by the appropriate federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3). Notwithstanding the provisions of section 8-1,140, the department may, by order, deny or limit the inclusion of goodwill in the calculation of a bank’s unimpaired capital and unimpaired surplus or in the calculation of a bank’s paid-up capital and surplus.

Last amended:
Laws 2006, LB 876, § 8

~ Reissue 2007

8-142
Loans; excessive amount; violations; penalty.

Any officer or employee of any bank who shall violate or knowingly permit a violation of the provisions of section 8-141, shall be guilty of a Class IV misdemeanor.

Last amended:
Laws 1977, LB 40, § 47

~ Reissue 2007

8-143
Loans; excessive amount; violations; forfeiture of charter; directors' personal liability.

If the directors of any bank shall knowingly violate or knowingly permit any of the officers, agents, or servants of the bank to violate any of the provisions of section 8-141, all rights, privileges, and franchises of the bank shall be thereby forfeited. Before such charter shall be declared forfeited, such violation shall be determined and adjudged by a court of competent jurisdiction in a suit brought for that purpose by the director in his own name. In case of such violation, every director who participated in or knowingly assented to the same shall be held liable in his personal and individual capacity for all damages which the bank, its shareholders, or any other person shall have sustained in consequence of such violation.

Last amended:
Laws 1963, c. 29, § 43, p. 152

~ Reissue 2007

8-143.01
Extension of credit; limits; written report; credit report; violation; penalty; powers of director.

(1) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds the higher of twenty-five thousand dollars or five percent of the bank's unimpaired capital and unimpaired surplus unless (a) the extension of credit has been approved in advance by a majority vote of the entire board of directors of the bank, a record of which shall be made and kept as a part of the records of such bank, and (b) the interested party has abstained from participating directly or indirectly in such vote.

(2) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds five hundred thousand dollars except by complying with the requirements of subdivisions (1)(a) and (b) of this section.

(3) No bank shall extend credit to any of its executive officers, and no such executive officer shall borrow from or otherwise become indebted to his or her bank, except in the amounts and for the purposes set forth in subsection (4) of this section.

(4) A bank shall be authorized to extend credit to any of its executive officers:

(a) In any amount to finance the education of such executive officer's children;

(b)(i) In any amount to finance or refinance the purchase, construction, maintenance, or improvement of a residence of such executive officer if the extension of credit is secured by a first lien on the residence and the residence is owned or is expected to be owned after the extension of credit by the executive officer and (ii) in the case of a refinancing, only the amount of the refinancing used to repay the original extension of credit, together with the closing costs of the refinancing, and any additional amount thereof used for any of the purposes enumerated in this subdivision are included within this category of credit;

(c) In any amount if the extension of credit is (i) secured by a perfected security interest in bonds, notes, certificates of indebtedness, or Treasury Bills of the United States or in other such obligations fully guaranteed as to principal and interest by the United States, (ii) secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States, or (iii) secured by a perfected security interest in a segregated deposit account in the lending bank; or

(d) For any other purpose not specified in subdivisions (a), (b), and (c) of this subsection if the aggregate amount of such other extensions of credit to such executive officer does not exceed, at any one time, the greater of two and one-half percent of the bank's unimpaired capital and unimpaired surplus or twenty-five thousand dollars, but in no event greater than one hundred

thousand dollars or the amount of the bank's lending limit as prescribed in section 8-141, whichever is less.

(5)(a) Except as provided in subdivision (b) or (c) of this subsection, any executive officer shall make, on an annual basis, a written report to the board of directors of the bank of which he or she is an executive officer stating the date and amount of all loans or indebtedness on which he or she is a borrower, cosigner, or guarantor, the security therefor, and the purpose for which the proceeds have been or are to be used.

(b) Except as provided in subdivision (c) of this subsection, in lieu of the reports required by subdivision (a) of this subsection, the board of directors of a bank may obtain a credit report from a recognized credit agency, on an annual basis, for any or all of its executive officers.

(c) Subdivisions (a) and (b) of this subsection do not apply to any executive officer if such officer is excluded by a resolution of the board of directors or by the bylaws of the bank from participating in the major policymaking functions of the bank and does not actually participate in the major policymaking functions of the bank.

(6) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds the lending limit of the bank as prescribed in section 8-141.

(7)(a) Except as provided in subdivision (b) of this subsection, no bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons unless the extension of credit (i) is made on substantially the same terms, including interest rates and collateral, as, and following credit-underwriting procedures that are not less stringent than, those prevailing at the time for comparable transactions by the bank with other persons that are not covered by this section and who are not employed by the bank and (ii) does not involve more than the normal risk of repayment or present other unfavorable features.

(b) Nothing in subdivision (a) of this subsection shall prohibit any extension of credit made by a bank pursuant to a benefit or compensation program under the provisions of 12 C.F.R. 215.4(a)(2).

(8) For purposes of this section:

(a) Executive officer shall mean a person who participates or has authority to participate, other than in the capacity of director, in the major policymaking functions of the bank, whether or not the officer has an official title, the title designates such officer as an assistant, or such officer is serving without salary or other compensation. Executive officer shall include the chairperson of the board of directors, the president, all vice presidents, the cashier, the corporate secretary, and the treasurer, unless the executive officer is excluded by a resolution of the board of directors or by the bylaws of the bank from participating, other than in the capacity of director, in the major policymaking functions of the bank, and the executive officer does not actually participate in such functions. A manager or assistant manager of a branch of a bank shall not be considered to

be an executive officer unless such individual participates or is authorized to participate in the major policymaking functions of the bank; and

(b) Unimpaired capital and unimpaired surplus shall mean the sum of:

(i) The total equity capital of the bank reported on its most recent consolidated report of condition filed under section 8-166;

(ii) Any subordinated notes and debentures approved as an addition to the bank's capital structure by the appropriate federal banking agency; and

(iii) Any valuation reserves created by charges to the bank's income reported on its most recent consolidated report of condition filed under section 8-166.

(9) Any executive officer, director, or principal shareholder of a bank or any other person who intentionally violates this section or who aids, abets, or assists in a violation of this section shall be guilty of a Class IV felony.

(10) The Director of Banking and Finance shall have authority to adopt and promulgate rules and regulations to implement this section, including rules or regulations defining or further defining terms used in this section, consistent with the provisions of 12 U.S.C. 84 and implementing Regulation O.

Last amended:
Laws 2008, LB 851, § 5

Operative date March 20, 2008

8-144
Loans or extension of credit; improper; willful and knowing violation; liability.

Any officer or employee of any bank who shall willfully and knowingly violate any of the provisions of sections 8-141 to 8-143.01 shall be liable under his or her bond for any loss to the bank resulting therefrom.

Last amended:
Laws 1994, LB 611, § 3

~ Reissue 2007

8-145
Loans; other improper solicitation or receipt of benefits; unlawful inducement; penalty.

Any stockholder or director, officer, agent, or employee of any bank who, for the use or benefit of himself or any other person than such bank, solicits or asks for or receives or agrees to

receive from any person, any gift or compensation or reward or inducement of any kind for (1) procuring or endeavoring to procure any loan from such bank to any person, or (2) procuring or endeavoring to procure the purchase by such bank from any person of any negotiable or nonnegotiable instrument of any kind by discount or otherwise, or (3) procuring or endeavoring to procure the purchase by such bank from any person of any real or personal property of any kind, or (4) procuring or endeavoring to procure such bank to permit any person to overdraw his account with such bank, shall be guilty of a Class I misdemeanor.

Last amended:
Laws 1977, LB 40, § 48

~ Reissue 2007

8-146
Repealed. Laws 1972, LB 1358, s. 1.

~ Reissue 2007

8-147
Direct borrowing of bank; loans and investments; limitation on amounts; illegal transfer of assets; violation; penalty.

(1) The aggregate amount of direct borrowing of any bank shall at no time exceed the amount of its paid-up capital, surplus, undivided profits, capital reserves, capital notes, and debentures, except with the prior written permission of the director. Direct borrowing shall not include:

(a) Money borrowed on the bank's bills payable secured by (i) direct or indirect obligations of the United States Government or (ii) obligations guaranteed by agencies of the United States Government;

(b) Rediscounts, bills payable, borrowings, or other liabilities with or to the federal reserve system or the federal reserve banks, if the bank is a member of the federal reserve system;

(c) Rediscounts, bills payable, borrowings, or other liabilities with or to the Federal Home Loan Bank System or the Federal Home Loan Banks, if the bank is a member of the Federal Home Loan Bank System; or

(d) Rediscounts, bills payable, borrowings, or other liabilities with or to the federal intermediate credit banks.

(2) The aggregate amount of the loans and investments of any bank shall at no time exceed fifteen times the amount of its paid-up capital, surplus, undivided profits, capital reserves, capital notes, and debentures. For purposes of this section, loans and investments shall not include a

bank's (a) cash reserves, (b) real estate and buildings at which the bank is authorized to conduct its business, (c) furniture and fixtures, and (d) obligations set forth in subdivisions (1)(a), (b), and (c) of this section.

(3) Any bank becoming a member of the federal reserve system or the Federal Home Loan Bank System shall have the same privileges to the same extent as national banks.

(4) With the prior written permission of the director, a bank may rediscount paper in an amount in excess of its paid-up capital stock.

(5) Any transfer of assets of a bank in violation of this section shall be void as against the creditors of the bank.

(6) Any officer, director, or employee of a bank who does, or permits to be done, any act in violation of this section and any other person who knowingly assists in the violation of this section shall be guilty of a Class IV felony.

Last amended:
Laws 1997, LB 2, § 1

~ Reissue 2007

8-148
Banks; own capital stock; loans on, purchase, or use as collateral by bank prohibited; exceptions.

(1) Except as provided in subsection (2) or (3) of this section, a bank shall not make any loan or discount on the security of the shares of its own capital stock or the capital stock of its holding company, if any, be the purchaser or holder of any such shares, or purchase any securities convertible into stock or, except as provided in this section and sections 8-148.01, 8-148.02, 8-148.04, 8-148.06, 8-149, and 21-2109, the shares of any corporation, unless such security or purchase is necessary to prevent loss upon a debt previously contracted in good faith. Such stock so purchased or acquired shall, within six months after the time of its purchase unless written approval of a longer holding period is obtained from the director, be sold or disposed of at public or private sale, or in default thereof, a receiver may be appointed to close up the business of the bank, except that such stock, if shares of another bank or a bank holding company, shall be sold or disposed of as required by the director. In no case shall the amount of stock so held at any one time exceed ten percent of the paid-up capital of such bank.

(2) Any bank may subscribe to, invest, purchase, and own shares of investment companies registered under the Investment Company Act of 1940 when the investment companies' assets consist of and are limited to obligations that are eligible for investment by the bank. The department may adopt and promulgate rules and regulations governing the amounts, terms, and conditions of such subscriptions, investments, purchases, and ownership.

(3) Any bank may subscribe to, invest, purchase, and own Student Loan Marketing Association stock, Government National Mortgage Association stock, Federal National Mortgage Association stock, Federal Agricultural Mortgage Corporation stock, Federal Home Loan Mortgage Corporation stock, or stock issued by any authorized agency of the United States Government, including any corporation or enterprise wholly owned directly or indirectly by the United States, or with the authority to borrow directly from the United States treasury, which the department has approved by rule and regulation or order. The department may further adopt and promulgate rules and regulations governing the amounts, terms, and conditions of such subscriptions, investments, purchases, and ownerships, except that a bank shall not obligate more than five percent of its capital, surplus, undivided profits, and unencumbered reserves for such stock.

Last amended:
Laws 2005, LB 533, § 8

~ Reissue 2007

8-148.01
Corporation operating a computer center; investment of funds; limitation.

Any bank may invest not more than ten percent of its capital and surplus either in stock of a corporation operating a computer center or directly, alone or with others, in a computer center. With written approval of the Director of Banking and Finance, such additional percentage of its capital and surplus may be so invested as the director shall approve. Such investment shall not be subject to the provisions of sections 8-148, 8-149, and 8-150.

Last amended:
Laws 1993, LB 81, § 5

~ Reissue 2007

8-148.02
Banks; subscribe, invest, buy, and own stock; agricultural credit corporation; livestock loan company; limitation.

Any bank may subscribe to, invest, buy, and own stock in any agricultural credit corporation or livestock loan company, or its affiliate, the principal business of which corporation must be the extension of short and intermediate term credit to farmers and ranchers, including partnerships, limited liability companies, and corporations engaged in farming and ranching, for agricultural purposes, including the breeding, raising, fattening, or marketing of livestock. Such bank shall not obligate more than thirty-five percent of its paid-up capital, surplus, undivided profits, capital reserves, capital notes, and debentures for such purposes, except that if such bank owns at least eighty percent of the voting stock of such agricultural credit corporation or livestock loan company, such limitation on the amount of obligation for such purposes shall not

apply. Such subscription, investment, possession, or ownership shall not be subject to the provisions of sections 8-148, 8-149, and 8-150.

Last amended:
Laws 1993, LB 121, § 88

~ Reissue 2007

8-148.03
Bonds of the State of Israel; securities; banks; savings and loan associations, insurance companies, credit unions; invest funds.

Bonds of the State of Israel are hereby made securities in which banks, savings and loan associations, insurance companies, and credit unions may properly and legally invest funds.

Last amended:
Laws 1974, LB 845, § 3

~ Reissue 2007

8-148.04
Community development investments; conditions.

(1) Any bank may make a community development investment or investments either directly or through purchasing an equity interest in or an evidence of indebtedness of an entity primarily engaged in making community development investments, if the following conditions are satisfied:

(a) An investment under this subsection does not expose the bank to unlimited liability; and

(b) The bank's aggregate investment under this subsection does not exceed fifteen percent of its capital and surplus. If the bank's investment in any one entity will exceed five percent of its capital and surplus, the prior written approval of the department must be obtained.

(2) Nothing in this section shall prevent a bank from charging off as a contribution an investment made pursuant to subsection (1) of this section.

(3) Such subscription, investment, possession, or ownership shall not be subject to sections 8-148, 8-149, and 8-150.

(4) For purposes of this section, community development investments means investments of a predominantly civic, community, or public nature and not merely private and entrepreneurial.

Last amended:

Laws 2007, LB 124, § 4

~ Reissue 2007

8-148.05
Qualified Canadian Government obligations; investment.

(1) Any bank may deal in, underwrite, and purchase for its own account qualified Canadian Government obligations to the same extent that such bank may deal in, underwrite, and purchase for its own account obligations of the United States Government or general obligations of any state thereof.

(2) For purposes of this section:

(a) Qualified Canadian Government obligation shall mean any debt obligation which is backed by Canada or any Canadian province to a degree which is comparable to the liability of the United States Government or any state thereof for any obligation which is backed by the full faith and credit of the United States Government or any state thereof. Qualified Canadian Government obligations shall also include any debt obligation of any agent of Canada or any Canadian province if:

(i) The obligation of such agent is assumed in such agent's capacity as agent for Canada or any Canadian province; and

(ii) Canada or any Canadian province, on whose behalf such agent is acting with respect to such obligation, is ultimately and unconditionally liable for such obligation; and

(b) The term Canadian province shall mean a province of Canada and shall include the Yukon Territory and the Northwest Territories and their successors.

Last amended:
Laws 1993, LB 423, § 1

~ Reissue 2007

8-148.06
Banks; subscribe, invest, buy, own, and sell stock; bank subsidiary corporation; limitation.

Any bank may subscribe to, invest in, buy, own, and sell the common stock, obligations, and other securities of one or more bank subsidiary corporations organized under the laws of the State of Nebraska. A bank shall not obligate more than thirty-five percent of its paid-up capital stock, surplus, undivided profits, capital reserves, and capital notes and debentures for such purposes. An additional percentage of its paid-up capital stock, surplus, undivided profits, capital reserves, and capital notes and debentures may be invested with written approval of the director.

The subscription, investment, possession, or ownership is not subject to sections 8-148, 8-149, and 8-150.

Last amended:
Laws 1995, LB 384, § 2

~ Reissue 2007

8-148.07
Bank subsidiary corporation; authorized activities.

A bank subsidiary corporation shall engage in only those activities prescribed under subdivision (1) of section 8-101 or that its bank shareholder is authorized to perform under the laws of this state and shall engage in those activities only at locations in this state where the bank shareholder could be authorized to perform activities.

Last amended:
Laws 2000, LB 932, § 2

~ Reissue 2007

8-148.08
Bank subsidiary corporation; examination and regulation.

A bank subsidiary corporation is subject to examination and regulation by the department to the same extent as its bank shareholder.

Last amended:
Laws 1995, LB 384, § 4

~ Reissue 2007

8-149
Banks; investment in bank premises or holding corporations; loans upon security of stock of holding corporation; written approval of Director of Banking and Finance required; when.

(1) No bank shall, without the written approval of the director, (a) invest in bank premises or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank, or (b) make loans to or upon the security of the stock of any such corporation, if the aggregate of all such investments and loans will exceed the paid-up capital stock, surplus, and capital notes and debentures of such bank. Stock held as authorized by this section shall not be subject to the provisions of section 8-148.

(2) Investments by a bank in bank premises necessary for the transaction of its business shall include, but not be limited to:

(a) Premises that are owned and occupied, or to be occupied if under construction, by the bank, its branches, or its consolidated subsidiaries;

(b) Real estate acquired and intended, in good faith, for use in future expansions;

(c) Parking facilities that are used by customers or employees of the bank, its branches, or its consolidated subsidiaries;

(d) Residential property for the use of officers or employees of the bank, its branches, or its consolidated subsidiaries who are:

(i) Located in areas where suitable housing at a reasonable price is not readily available; or

(ii) Temporarily assigned to a foreign country, including foreign nationals temporarily assigned to the United States; and

(e) Property for the use of officers, employees, or customers of the bank, its branches, and its consolidated subsidiaries or for the temporary lodging of such persons in areas where suitable commercial lodging is not readily available, if the purchase and operation of the property qualifies as a deductible business expense for federal tax purposes.

Last amended:
Laws 2007, LB 124, § 5

~ Reissue 2007

8-150
Banks; real estate; power to acquire and convey; limitations and conditions.

Any bank may purchase, hold, and convey real estate for the following purposes: (1) Such as is authorized by section 8-149; (2) such as shall be conveyed to it for debts due the bank; and (3) such as it shall purchase at sale under judgments, decrees, deeds of trust, or mortgages held by the bank or shall purchase to secure debts due to it upon its securities, but the bank at such sale shall not bid a larger amount than required to satisfy such judgments or decrees with costs. Real estate acquired in satisfaction of debts or at a sale upon judgments, decrees, deeds of trust, or mortgages shall be sold at private or public sale within five years unless authority shall be given in writing by the department to hold it for a longer period. The total amount of real estate held by any bank for purposes of subdivisions (2) and (3) of this section shall not be entered on the

records of the bank as an asset at a value greater than (a) the unpaid balance of the debts due the bank plus its out-of-pocket expenses incurred in acquiring clear title, (b) its judgments or decrees with costs, or (c) the appraised value of such real estate, whichever is less, except that a bank may expend funds as necessary for repairs or to complete a project in order to market such property. A bank may utilize property acquired by it under subdivisions (2) and (3) of this section in any manner authorized by the department.

Last amended:
Laws 1985, LB 653, § 5

~ Reissue 2007

8-151
Banks; book value of property; increases; written approval required.

No bank shall increase the book value of its existing real estate, furniture, or fixtures without first notifying the department of its intention so to do and obtaining a written approval therefor.

Last amended:
Laws 1963, c. 29, § 51, p. 155

~ Reissue 2007

8-152
Banks; loans on real estate; authorized.

A bank may make loans secured by real estate or may participate with other institutions in such loans whether such participation occurs at the inception of the loan or at any time thereafter.

Last amended:
Laws 1994, LB 979, § 5

~ Reissue 2007

8-153
Checks; preprinted information; cleared at par; exception.

All checks, unless sent to banks as special collection items, shall have preprinted the magnetically encoded routing and transit symbol of the bank and either the name of the maker or the magnetically encoded account number of the maker. Except for checks sent to banks as special collection items, all checks drawn on any bank organized under the laws of this state shall be cleared at par by the bank on which they are drawn.

Last amended:
Laws 1979, LB 269, § 1

~ Reissue 2007

8-154
Repealed. Laws 1981, LB 199, s. 1.

~ Reissue 2007

8-155
Forged, altered, or raised checks; payment on; liability of bank to depositor; when.

No bank which has paid and charged to the account of a depositor any money on a forged, altered, or raised check issued in the name of such depositor shall be liable to such depositor or his legal representative for the amount paid thereon, unless such depositor or his legal representative shall notify the bank that the check so paid is forged, altered, or raised either (1) within one year after notice to such depositor that the vouchers representing payments charged to the account of such depositor for the period during which such payment was made are ready for delivery, or (2) in case no such notice has been given within one year after the return to such depositor or his legal representative of the voucher representing such payment.

Last amended:
Laws 1963, c. 29, § 55, p. 157

~ Reissue 2007

8-156
Forged, altered, or raised checks; payment on; notice; registered or certified mail.

The notice referred to in section 8-155 may be given by either registered or certified mail addressed to such depositor or his legal representative at his last-known address with postage prepaid.

Last amended:
Laws 1963, c. 29, § 56, p. 158

~ Reissue 2007

8-157
Branch banking; Director of Banking and Finance; powers.

(1) Except as otherwise provided in this section and section 8-2104, the general business of every bank shall be transacted at the place of business specified in its charter.

(2)(a)(i) Except as provided in subdivision (2)(a)(ii) of this section, with the approval of the director, any bank located in this state may establish and maintain in this state an unlimited number of branches at which all banking transactions allowed by law may be made.

(ii) Any bank that owns or controls more than twenty-two percent of the total deposits in Nebraska, as described in subdivision (2)(c) of section 8-910 and computed in accordance with subsection (3) of section 8-910, or any bank that is a subsidiary of a bank holding company that owns or controls more than twenty-two percent of the total deposits in Nebraska, as described in subdivision (2)(c) of section 8-910 and computed in accordance with subsection (3) of section 8-910, shall not establish and maintain an unlimited number of branches as provided in subdivision (2)(a)(i) of this section. With the approval of the director, a bank as described in this subdivision may establish and maintain in the county in which such bank is located an unlimited number of branches at which all banking transactions allowed by law may be made, except that if such bank is located in a Class I or Class III county, such bank may establish and maintain in Class I and Class III counties an unlimited number of branches at which all banking transactions allowed by law may be made.

(iii) Any bank which establishes and maintains branches pursuant to subdivision (2)(a)(i) of this section and which subsequently becomes a bank as described in subdivision (2)(a)(ii) of this section shall not be subject to the limitations as to location of branches contained in subdivision (2)(a)(ii) of this section with regard to any such established branch and shall continue to be entitled to maintain any such established branch as if such bank had not become a bank as described in subdivision (2)(a)(ii) of this section.

(b) With the approval of the director, any bank or any branch may establish and maintain a mobile branch at which all banking transactions allowed by law may be made. Such mobile branch may consist of one or more vehicles which may transact business only within the county in which such bank or such branch is located and within counties in this state which adjoin such county.

(c) For purposes of this subsection:

(i) Class I county means a county in this state with a population of three hundred thousand or more as determined by the most recent federal decennial census;

(ii) Class II county means a county in this state with a population of at least two hundred thousand and less than three hundred thousand as determined by the most recent federal decennial census;

(iii) Class III county means a county in this state with a population of at least one hundred thousand and less than two hundred thousand as determined by the most recent federal decennial census; and

(iv) Class IV county means a county in this state with a population of less than one hundred thousand as determined by the most recent federal decennial census.

(3) With the approval of the director, a bank may establish and maintain branches acquired pursuant to section 8-1506 or 8-1516. All banking transactions allowed by law may be made at such branches.

(4) With the approval of the director, a bank may acquire the assets and assume the deposits of a branch of another financial institution in Nebraska if the acquired branch is converted to a branch of the acquiring bank. All banking transactions allowed by law may be made at a branch acquired pursuant to this subsection.

(5) With the approval of the director, a bank may establish a branch pursuant to subdivision (6) of section 8-115.01. All banking transactions allowed by law may be made at such branch.

(6) The name given to any branch established and maintained pursuant to this section shall not be substantially similar to the name of any existing bank or branch which is unaffiliated with the newly created branch and is located in the same city, village, or county. The name of such newly created branch shall be approved by the director.

(7) A bank which has a main chartered office or an approved branch located in the State of Nebraska may, through any of its executive officers, including executive officers licensed as such pursuant to section 8-139, or designated agents, conduct a loan closing at a location other than the place of business specified in the bank's charter or any branch thereof.

(8) A bank which has a main chartered office or approved branch located in the State of Nebraska may, upon notification to the department, establish savings account programs at any elementary or secondary school, whether public or private, that has students who reside in the same city or village as the main chartered office or branch of the bank, or, if the main office of the bank is located in an unincorporated area of a county, at any school that has students who reside in the same unincorporated area. The savings account programs shall be limited to the establishment of individual student accounts and the receipt of deposits for such accounts.

(9) Upon receiving an application for a branch to be established pursuant to subdivision (2)(a) of this section, to establish a mobile branch pursuant to subdivision (2)(b) of this section, to acquire a branch of another financial institution pursuant to subsection (4) of this section, or to move the location of an established branch other than a move made pursuant to subdivision (6) of section 8-115.01, the director shall hold a public hearing on the matter if he or she determines, in his or her discretion, that the condition of the applicant bank warrants a hearing. If the director determines that the condition of the bank does not warrant a hearing, the director shall (a) publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed branch or mobile branch would be located, the expense of which shall be paid by the applicant bank, and (b) give notice of such application to all financial institutions located within the county where the proposed branch or mobile branch would be located and to such other interested parties as the director may determine. The director shall send

the notice to financial institutions by first-class mail, postage prepaid, or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail. If the director receives any substantive objection to the proposed branch or mobile branch within fifteen days after publication of such notice, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subsection shall be published for two consecutive weeks in a newspaper of general circulation in the county where the proposed branch or mobile branch would be located. The date for hearing the application shall not be more than ninety days after the filing of the application and not less than thirty days after the last publication of notice of hearing. The expense of any publication and mailing required by this section shall be paid by the applicant.

Last amended:
Laws 2008, LB 851, § 6

Operative date March 20, 2008

8-157.01
Financial institution; electronic terminals; use; user financial institution.

(1) Any financial institution which has a main chartered office or approved branch located in the State of Nebraska may establish and maintain any number of automatic teller machines at which all banking transactions, defined as receiving deposits of every kind and nature and crediting such to customer accounts, cashing checks and cash withdrawals, transfer of funds from checking accounts to savings accounts, transfer of funds from savings accounts to checking accounts, transfer of funds from either checking accounts and savings accounts to accounts of other customers, payment transfers from customer accounts into accounts maintained by other customers of the financial institution or the financial institution, including preauthorized draft authority, preauthorized loans, and credit transactions, receiving payments payable at the financial institution or otherwise, and account balance inquiry, may be conducted. Any other transaction incidental to the business of the financial institution or which will provide a benefit to the financial institution's customers or the general public may be conducted at an automatic teller machine upon thirty days' prior written notice to the director if the director does not object to the proposed other transaction within the thirty-day notice period. Neither such automatic teller machines nor the transactions conducted thereat shall be construed as the establishment of a branch or as branch banking. Such automatic teller machines shall be made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution. It shall not be deemed discrimination if an automatic teller machine does not offer the same transaction services as other automatic teller machines or if there are no fees charged between affiliate financial institutions for the use of automatic teller machines.

(2) Any financial institution may become a user financial institution by agreeing to pay the establishing financial institution its automatic teller machine usage fee. Such agreement shall be implied by the use of such automatic teller machines. Nothing in this subsection shall prohibit a user financial institution from agreeing to responsibilities and benefits which might be contained in a standardized agreement. The establishing financial institution or its designated data

processing center shall be responsible for transmitting transactions originating from its automatic teller machine to a switch, but nothing contained in this section shall be construed to require routing of all transactions to a switch. All automatic teller machines must be made available on a nondiscriminating basis, for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution, through methods, fees, and processes that the establishing financial institution has provided for switching transactions. The director, upon notice and after a hearing, may terminate or suspend the use of any automatic teller machine if he or she determines that it is not available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution or that transactions originated by customers of user financial institutions are not being routed to a switch or other data processing centers. Nothing in this section may be construed to prohibit nonbank employees from assisting in transactions originated at the automatic teller machines, and such assistance shall not be deemed to be engaging in the business of banking. Such nonbank employees may be trained in the use of the automatic teller machines by financial institution employees.

(3) An establishing financial institution shall not be deemed to make an automatic teller machine available on a nondiscriminating basis if, through personnel services offered, advertising on or off the automatic teller machine's premises, or otherwise, it discriminates in the use of the automatic teller machine against any user financial institution which has a main chartered office or approved branch located in the State of Nebraska.

(4)(a) Any consumer initiating an electronic funds transfer at an automatic teller machine for which an automatic teller machine surcharge will be imposed shall receive notice in accordance with the provisions of 15 U.S.C. 1693b(d)(3)(A) and (B), as such section existed on January 1, 2004. Such notice shall (i) be posted in a prominent and conspicuous location on or at the automatic teller machine at which the electronic funds transfer is initiated by the consumer and (ii) appear on the screen of the automatic teller machine or appear on a paper notice issued from such machine after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(b) Subdivision (a)(ii) of this subsection shall not apply until January 1, 2005, to any automatic teller machine that lacks the technical capability to disclose the notice on the screen or to issue a paper notice after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(5) A point-of-sale terminal may be established at any point within this state. A financial institution may contract with a seller of goods and services or any other third party for the operation of point-of-sale terminals. A point-of-sale terminal shall be made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution. Nothing in this subsection shall prohibit payment of fees to a financial institution which issues an access device used to initiate electronic funds transfer transactions at a point-of-sale terminal.

(6) A seller of goods and services or any other third party on whose premises one or more point-of-sale terminals are established shall not be, solely by virtue of such establishment, a financial institution and shall not be subject to the laws governing, or other requirements imposed on, financial institutions, except for the requirement that it faithfully perform its obligations in connection with any transaction originated at any point-of-sale terminal on its premises. The acquiring financial institution shall be responsible for compliance with all applicable standards, rules, and regulations governing point-of-sale transactions.

(7) Any financial institution, upon a request of the director, shall file with the director a current listing of all point-of-sale terminals established by the financial institution within this state. For purposes of this subsection, point-of-sale terminal shall include a group of one or more of such terminals established at a single business location. Such listing shall contain any reasonable descriptive information pertaining to the point-of-sale terminal as required by the director. Neither the establishment of such point-of-sale terminal nor any transactions conducted thereat shall be construed as the establishment of a branch or as branch banking. Following establishment of a point-of-sale terminal, the director, upon notice and after a hearing, may terminate or suspend the use of such point-of-sale terminal if he or she determines that it is not made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution, that the necessary information is not on file with the director, or that transactions originated by customers of user financial institutions are not being routed to a switch or other data processing center. Nothing in this section shall be construed to prohibit nonbank employees from assisting in transactions originated at the point-of-sale terminals, and such assistance shall not be deemed to be engaging in the business of banking.

(8) Transactions at point-of-sale terminals may include:

(a) Check guarantees;

(b) Account balance inquiries;

(c) Transfers of funds from a customer's account for payment to a seller's account for goods and services on whose premises the point-of-sale terminal is located in payment for the goods and services;

(d) Cash withdrawals by a customer from the customer's account or accounts;

(e) Transfers between accounts of the same customers at the same financial institution; and

(f) Such other transactions as the director, upon application, notice, and hearing, may approve.

(9)(a) Automatic teller machines may be established and maintained by a financial institution which has a main chartered office or approved branch located in the State of Nebraska, by a group of two or more of such financial institutions, or by a combination of such financial institution or financial institutions and a third party.

(b) Point-of-sale terminals may be established and maintained by a financial institution which has a main chartered office or approved branch located in the State of Nebraska, by a group of two or more of such financial institutions, or by a combination of such financial institutions and a third party. No one, through personnel services offered, advertising on or off the point-of-sale terminal premises, or otherwise, may discriminate in the use of the point-of-sale terminal against any other user financial institution.

(10) All financial institutions shall be given an equal opportunity for the use of and access to a switch, and no discrimination shall exist or preferential treatment be given in either the operation of such switch or the charges for use thereof. The operation of such switch shall be with the approval of the director. Approval of such switch shall be given by the director when he or she determines that its design and operation are such as to provide access thereto and use thereof by any financial institution without discrimination as to access or cost of its use. Any switch established in Nebraska and approved by the director prior to January 1, 1993, shall be deemed to be approved for purposes of this section.

(11) Use of an automatic teller machine or a point-of-sale terminal through access to a switch and use of any switch shall be made available on a nondiscriminating basis to any financial institution. A financial institution shall only be permitted use of the switch if the financial institution conforms to reasonable technical operating standards which have been established by the switch.

(12) To assure maximum safety and security against malfunction, fraud, theft, and other accidents or abuses and to assure that all such access devices will have the capability of activating all automatic teller machines and point-of-sale terminals established in this state, no automatic teller machine or point-of-sale terminal shall accept an access device which does not conform to such specifications as are generally accepted. No automatic teller machine or point-of-sale terminal shall be established or operated which does not accept an access device which conforms with such specifications.

An automatic teller machine shall bear a logo type or other identification symbol designed to advise customers that the automatic teller machine may be activated by any access device which complies with the generally accepted specifications. A point-of-sale terminal shall either bear or the premises on which the point-of-sale terminal is established shall contain a visible logo type or other identification symbol designed to advise customers that the point-of-sale terminal may be activated by any access device which complies with the generally accepted specifications. An automatic teller machine or point-of-sale terminal may also bear, at the option of the establishing or acquiring financial institution, any of the following:

(a) The names of all individual financial institutions using such automatic teller machines or point-of-sale terminals in alphabetical order, except that the establishing or acquiring financial institution may be listed first, and in a uniform typeface, size, and color; or

(b) The logo type or symbol of any association, corporation, or other entity or organization formed by one or more of the financial institutions using such automatic teller machines or point-of-sale terminals.

(13) If the director, upon notice and hearing, determines at any time that the design or operation of a switch or provision for use thereof does discriminate against any financial institution in providing access thereto and use thereof either through access thereto or by virtue of the cost of its use, he or she may revoke his or her approval of such switch operation and immediately order the discontinuance of the operation of such switch.

(14) If it is determined by the director, after notice and hearing, that discrimination against any financial institution has taken place, that one financial institution has been preferred over another, or that any financial institution or person has not complied with any of the provisions of this section, he or she shall immediately issue a cease and desist order or an order for compliance within ten days after the date of the order, and upon noncompliance with such order, the offending financial institution shall be subject to sections 8-1,134 to 8-1,139 and to having the privileges granted in this section revoked.

(15) For purposes of this section:

(a) Access means the ability to utilize an automatic teller machine or a point-of-sale terminal to conduct permitted banking transactions or purchase goods and services electronically;

(b) Access device means a code, a transaction card, or any other means of access to a customer's account, or any combination thereof, that may be used by a customer for the purpose of initiating an electronic funds transfer at an automatic teller machine or a point-of-sale terminal;

(c) Account means a checking account, a savings account, a share account, or any other customer asset account held by a financial institution. Such an account may also include a line of credit which a financial institution has agreed to extend to its customer;

(d) Acquiring financial institution means any financial institution establishing a point-of-sale terminal;

(e) Affiliate financial institution means any financial institution which is a subsidiary of the same bank holding company;

(f) Electronic funds transfer means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through a point-of-sale terminal, an automatic teller machine, or a personal terminal for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account;

(g) Establishing financial institution means any financial institution establishing an automatic teller machine which has a main chartered office or approved branch located in the State of Nebraska;

(h) Financial institution means a state-chartered or federally chartered bank, savings bank, building and loan association, savings and loan association, or credit union, or a subsidiary of

any such entity;

(i) Personal identification number means a combination of numerals or letters selected for a customer of a financial institution, a merchant, or any other third party which is used in conjunction with an access device to initiate an electronic funds transfer transaction;

(j) Personal terminal means a personal computer and telephone, wherever located, operated by a customer of a financial institution for the purpose of initiating a transaction affecting an account of the customer; and

(k) User financial institution means any financial institution which desires to avail itself of and provide its customers with automatic teller machine or point-of-sale terminal services.

(16) Nothing in this section prohibits ordinary clearinghouse transactions between financial institutions.

(17) Nothing in this section requires any federally chartered establishing financial institution to obtain the approval of the director for the establishment of any automatic teller machine.

(18) Nothing in this section shall prevent any financial institution which has a main chartered office or an approved branch located in the State of Nebraska from participating in a national automatic teller machine program to allow its customers to use automatic teller machines located outside of the State of Nebraska which are established by out-of-state financial institutions or to allow customers of out-of-state financial institutions to use its automatic teller machines located in the State of Nebraska. Such participation and any automatic teller machine usage fees charged or received pursuant to the national automatic teller machine program shall not be considered for purposes of determining if an automatic teller machine located in the State of Nebraska has been made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution.

Last amended:
Laws 2004, LB 999, § 2

~ Reissue 2007

8-158
Banks; appointment as personal representative or administrator; authorized.

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 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.

Last amended:
Laws 1986, LB 909, § 1

~ Reissue 2007

8-159
Banks; trust department; authorization.

Any bank, having adopted or amended its articles of incorporation to authorize the conduct of a trust business as defined in the Nebraska Trust Company Act, may be further chartered by the director to transact a trust company business in a trust department in connection with such bank.

Last amended:
Laws 1998, LB 1321, § 10

~ Reissue 2007

8-160
Banks; trust department; amendment of charter; supervision.

The director shall have the power to issue to banks amendments to their charters of authority to transact trust business as defined in the Nebraska Trust Company Act and shall have general supervision and control over such trust department of banks.

Last amended:
Laws 1998, LB 1321, § 11

Cross References:
Nebraska Trust Company Act,see section 8-201.01.

~ Reissue 2007

8-161
Banks; trust department; application; investigation; authorization.

The director, before granting to any bank the right to operate a trust department, shall require such bank to make an application for amendment of its charter, setting forth such information as the director may require. If, upon investigation, the department shall be satisfied that the bank requesting such charter is operated by stockholders, directors, and officers of integrity and responsibility, the department shall, with such additional capital as the director shall require, issue to such bank an amendment to its charter, entitling it to operate a trust department and entitling it to transact the business provided for in the Nebraska Trust Company Act.

Last amended:
Laws 1998, LB 1321, § 12

Cross References:
Nebraska Trust Company Act,see section 8-201.01.

~ Reissue 2007

8-162
Banks; trust department; separation from other departments; powers; duties.

The trust department of a bank when chartered under sections 8-159 to 8-161 shall be separate and apart from every other department of the bank and shall have all of the powers, duties, and obligations of a trust company provided in the Nebraska Trust Company Act.

Last amended:
Laws 1998, LB 1321, § 13

Cross References:
Nebraska Trust Company Act,see section 8-201.01.

~ Reissue 2007

8-162.01
Banks; trust department; conduct of business; location.

Any bank authorized to transact a trust company business in a trust department pursuant to sections 8-159 to 8-162 may conduct such trust company business at the office of any bank which is a subsidiary of the same bank holding company as the authorized bank.

Last amended:
Laws 1993, LB 81, § 13

~ Reissue 2007

8-163
Dividends; withdrawal of capital or surplus prohibited; not made; when.

No bank shall withdraw or permit to be withdrawn, either in the form of dividends or otherwise, any part of its capital or surplus without the written permission of the director. If losses have at any time been sustained equal to or exceeding the undivided profits on hand, no dividends shall be made. No dividend shall be made by any bank in an amount greater than the net profits on hand without the written permission of the director. As used in this section, net

profits on hand shall mean the remainder of all earnings from current operations plus actual recoveries on loans and investments and other assets after deducting from the total thereof all current operating expenses, losses and bad debts, accrued dividends on preferred stock if any, and federal and state taxes, for the present and two immediately preceding calendar years.

Last amended:
Laws 1988, LB 996, § 3

~ Reissue 2007

8-164
Dividends declared; conditions.

The board of directors of any bank may declare dividends on its capital stock but only under the following conditions:

(1) All bad debts required to be charged off by either the directors or the department shall first have been charged off. All debts due any bank on which interest is past due and unpaid for a period of six months, unless such debts are well secured or in the process of collection, shall be considered bad debts within the meaning of this section; and

(2) Twenty percent of the net profits accumulated since the preceding dividend shall first have been carried to the surplus fund unless such surplus fund equals or exceeds the amount of the paid-up capital stock.

Last amended:
Laws 1994, LB 979, § 6

~ Reissue 2007

8-165
Losses; charged to surplus fund; restoration of surplus fund; effect on dividends.

Any losses sustained by any bank in excess of its undivided profits shall be charged to its surplus fund. Its surplus fund shall thereafter be reimbursed from the earnings, and no dividends shall thereafter be declared or paid by any such bank, without the written permission of the director, until such surplus fund shall be fully restored to its former amount.

Last amended:
Laws 1988, LB 996, § 5

~ Reissue 2007

8-166
Banks; reports to department; form; number required; verification; waiver.

Every bank shall make to the department not less than two reports during each year according to the form which may be prescribed by the department, which report shall be certified as correct, in the manner prescribed by the department, by the president, vice president, cashier, or assistant cashier and in addition by two members of the board of directors. The director may waive the requirements of this section if a bank files its reports electronically with the Federal Deposit Insurance Corporation, the Federal Reserve Board, or an electronic collection agent of the Federal Deposit Insurance Corporation or the Federal Reserve Board.

Last amended:
Laws 1997, LB 137, § 7

~ Reissue 2007

8-167
Banks; reports to department; contents; publication.

Each report required by section 8-166 shall exhibit in detail and under appropriate headings the resources and liabilities of the bank at the close of business on any past day specified by the call for report and shall be submitted to the department within thirty days, or as may be required by the department, after the receipt of requisition for the report. A summary of such report in the form prescribed by the department shall be published one time in a legal newspaper in the place where such bank is located. If there is no legal newspaper in the place where the bank is located, then such summary shall be published in a legal newspaper published in the same county or, if none is published in the county, in a legal newspaper of general circulation in the county. Such publication shall be at the expense of such bank. Proof of such publication shall be transmitted to the department within thirty days, or as may be required by the department, from the date fixed for such report.

Last amended:
Laws 1986, LB 960, § 1

~ Reissue 2007

8-167.01
Banks; publication requirements not applicable; when.

The publication requirements of section 8-167 shall not apply to any bank that makes a disclosure statement available to any member of the general public upon request in compliance with the disclosure of financial information provisions of 12 C.F.R. part 350 or 12 C.F.R. section 208.17.

Last amended:
Laws 1995, LB 384, § 18

~ Reissue 2007

8-168
Banks; special reports to department.

Any bank shall be required to furnish such special reports as may be required by the department to enable such department to obtain full and complete knowledge of the condition of such bank.

Last amended:
Laws 1963, c. 29, § 68, p. 161

~ Reissue 2007

8-169
Banks; reports; published statements; failure to make; penalty, recovery.

Any bank that shall fail, neglect, or refuse to make or furnish any report or any published statement required by the Nebraska Banking Act shall pay to the department fifty dollars for each day such failure shall continue, unless the department shall extend the time for filing such report.

Last amended:
Laws 1998, LB 1321, § 14

~ Reissue 2007

8-170
Records and files; time required to be kept; destroy, when.

(1) Banks shall not be required to preserve or keep their records or files for a longer period than six years next after the first day of January of the year following the time of the making or filing of such records or files except as provided in subsection (2) of this section.

(2)(a) Ledger sheets showing unpaid balances in favor of depositors of banks shall not be destroyed unless the bank has remitted such unpaid balances to the State Treasurer in accordance with the Uniform Disposition of Unclaimed Property Act. Banks shall retain a record of every such remittance for ten years following the date of such remittance.

(b) Corporate records that relate to the corporation or the corporate existence of the bank shall

not be destroyed.

Last amended:
Laws 1999, LB 396, § 10

Cross References:
Uniform Disposition of Unclaimed Property Act,see section 69-1329.

~ Reissue 2007

8-171
Records; destruction; liability; excuse for failure to produce.

No liability shall accrue against any bank destroying any such records after the expiration of the time provided in section 8-170. In any cause or proceedings in which any such records or files may be called in question or be demanded of the bank or any officer or employee thereof, a showing that such records or files have been destroyed in accordance with the terms of sections 8-170 to 8-174 shall be a sufficient excuse for the failure to produce them.

Last amended:
Laws 1963, c. 29, § 71, p. 162

~ Reissue 2007

8-172
Repealed. Laws 1975, LB 279, s. 75.

~ Reissue 2007

8-173
Actions against bank on claims inconsistent with records; accrual of cause of action; limitations.

All causes of action against a bank based upon a claim or claims inconsistent with an entry or entries in any bank record or ledger, made in the regular course of business, shall accrue one year after the date of such entry or entries. No action founded upon such a cause may be brought after the expiration of five years from the date of such accrual.

Last amended:
Laws 1963, c. 29, § 73, p. 163

~ Reissue 2007

8-174
Records and files; destruction; applicable to national banks so far as may be permitted by laws of United States.

The provisions of sections 8-170 to 8-174, so far as may be permitted by the laws of the United States, shall apply to the records and files of national banks.

Last amended:
Laws 1963, c. 29, § 74, p. 163

~ Reissue 2007

8-175
Banks; false entry or statement; other offenses relating to books and records; penalty.

Any person who shall willfully and knowingly subscribe to, or make, or cause to be made, any false statement or false entry in the books of any bank, or shall knowingly subscribe to or exhibit false papers with the intent to deceive any person or persons authorized to examine into the affairs of any such bank, or shall make, state, or publish any false statement of the amount of the assets or liabilities of any such bank, or shall fail to make true and correct entry in the books and records of such bank of its business and transactions in the manner and form prescribed by the department, or shall mutilate, alter, destroy, secrete, or remove any of the books or records of such bank without the written consent of the director, or shall make, state, or publish any false statement of the amount of the assets or liabilities of any such bank, shall be guilty of a Class III felony.

Last amended:
Laws 1977, LB 40, § 51

~ Reissue 2007

8-176
Repealed. Laws 1965, c. 141, s. 2, p. 482.

~ Reissue 2007

8-177
Banks; consolidation; approval required; creditors' claims.

Any bank, which is in good faith winding up its business for the purpose of consolidating with some other bank, may transfer its resources and liabilities to the bank with which it is in the process of consolidation, but no consolidation shall be made without the consent of the department, nor shall such consolidation operate to defeat the claim of any creditor or hinder any creditor in the collection of his debt against such banks or either of them.

Last amended:
Laws 1963, c. 29, § 77, p. 164

~ Reissue 2007

8-178
National bank; reorganization as state bank; authorization; vote required; public hearing; when.

Any national banking association located and doing business within the State of Nebraska which follows the procedure prescribed by the laws of the United States may convert into a state bank or merge or consolidate with a state bank upon a vote of the holders of at least two-thirds of the capital stock of such state bank when the resulting state bank meets the requirements of the state law as to the formation of a new state bank. If the national banking association has been further chartered to conduct a trust company business within a trust department of the bank, the trust department to be converted shall meet the requirements of state law as to the formation of a trust company business within a trust department of a state bank.

The public hearing requirement of subdivision (1) of section 8-115.01 and the rules and regulations of the department shall be required only if (1) after publishing a notice of the proposed conversion in a newspaper of general circulation in the county where the main office of the national bank is located, the expense of which shall be paid by the applicant bank, the director receives an objection to the conversion within fifteen days after such publication or (2) in the discretion of the director, the condition of the bank warrants a hearing. If the national bank has been further chartered to conduct a trust company business within a trust department of the bank, the notice of the proposed conversion of the national bank shall include notice that the trust department will be converted in connection with the national bank conversion.

Last amended:
Laws 2006, LB 876, § 10

~ Reissue 2007

8-179
National bank; reorganization as state bank; procedure.

(1) The resulting state bank shall file a statement with the department, under the oath of its president or cashier, (a) showing that the procedure prescribed by the laws of the United States and by this state have been followed, (b) setting forth in the statement the matter prescribed by sections 8-121 and 8-1901 to 8-1903, and (c) if the national bank has been further chartered to conduct a trust company business within a trust department of the bank, setting forth the matter prescribed by sections 8-159 to 8-162.01. Upon payment of all applicable fees, the department shall issue to such corporation the certificate provided for in section 8-122, a charter to transact the business provided for in its articles of incorporation, and, if applicable, a charter to conduct a trust company business within a trust department of the bank.

(2) The department may accept good assets of any such national bank, worth not less than par, in lieu of the payment otherwise provided by law for the stock of such resulting bank. When the parties requesting the conversion, merger, or consolidation are officers or directors of either the national bank or of the state bank, they shall be accepted without investigation as parties of integrity and responsibility. Unless the resulting bank is at a different location than the former national or state bank, the department shall recognize the public necessity, convenience, and advantage of permitting the resulting bank and, if applicable, the trust company business within a trust department of the bank, to engage in business.

Last amended:
Laws 2006, LB 876, § 11

~ Reissue 2007

8-180
State bank; reorganization as national bank; vote required.

Any state bank, without the approval of any state authority, may, upon a vote of the holders of at least two-thirds of its capital stock, convert into and merge or consolidate with national banking associations as provided by federal law.

Last amended:
Laws 1963, c. 29, § 80, p. 165

~ Reissue 2007

8-181
National or state bank; conversion, merger, or consolidation; resulting bank; considered same corporate entity; termination of franchise.

When a national bank has converted into or merged or consolidated with a state bank, or a state bank has converted into or merged or consolidated with a national bank, the resulting bank shall be considered the same business and corporate entity as the former bank or banks and as a continuation thereof, and the ownership and title to all properties and assets and the obligations

and liabilities of the converting, merging, or consolidating banks shall automatically pass to and become the properties and assets and the obligations and liabilities of the resulting bank. Upon the conversion, merger, or consolidation, when the resulting bank is a national bank, the franchise of the converting, merging, or consolidating state bank shall automatically terminate.

Last amended:
Laws 1963, c. 29, § 81, p. 166

~ Reissue 2007

8-182
State bank; conversion, merger, or consolidation with a national bank; objecting stockholders; stock; payment.

The owner of shares of a state bank which were voted against a conversion into or a merger or consolidation with a national bank shall be entitled to receive, from the assets of such state bank, the value of such stock in cash, when the merger or consolidation becomes effective, upon written demand made to the resulting bank at any time within thirty days after the effective date of the merger or consolidation, accompanied by the surrender of the stock certificates. The value of such shares shall be determined, as of the date of the shareholders' meeting approving the conversion, merger, or consolidation, by three appraisers, one to be selected by the owners of two-thirds of the shares voting against the conversion, merger, or consolidation, one by the board of directors of the resulting state bank, and the third by the two so chosen. If the appraisal is not completed within sixty days after the merger or consolidation becomes effective the department shall cause an appraisal to be made and such appraisal shall then govern. The expenses of appraisal shall be paid by the resulting bank.

Last amended:
Laws 1963, c. 29, § 82, p. 166

~ Reissue 2007

8-183
National or state bank; conversion, merger, or consolidation; resulting bank; assets; valuation.

Without approval by the department, no asset shall be carried on the books of the resulting bank, when the resulting bank is a state bank, at a valuation higher than that on the books of the converting, merging, or consolidating bank at the time of the examination, by a state or national bank examiner, last occurring before the effective date of the conversion, merger, or consolidation.

Last amended:
Laws 1963, c. 29, § 83, p. 167

~ Reissue 2007

8-183.01
State or federal savings association; conversion to state bank; plan of conversion; procedure.

(1) Any state or federal savings association, whether formed as a mutual association or a capital stock association, may apply to the director to convert to a state bank.

(2) Any savings association seeking to convert its form of organization pursuant to this section shall first obtain approval of a plan of conversion by resolution adopted by not less than a two-thirds majority vote of the total number of directors authorized to vote.

(3) Upon approval of a plan of conversion by the board of directors, such plan and the resolution approving it shall be submitted to the director. The director shall approve the plan of conversion if he or she finds, after appropriate investigation, that:

(a) The plan of conversion is fair and equitable;

(b) The interests of the applicant, its members or shareholders, its savings account holders, and the public are adequately protected; and

(c) The converting savings association has complied with the requirements of this section.

(4) If the director approves the plan of conversion, the approval shall be in writing and sent to the home office of the converting savings association. As part of its approval, the director may prescribe terms and conditions to be fulfilled either before or after the conversion to cause the converting savings association to conform to the requirements of the Nebraska Banking Act.

(5) If the director disapproves the plan of conversion, the reasons for such disapproval shall be stated in writing and sent to the home office of the converting savings association, which shall be afforded an opportunity to amend and resubmit the plan within a reasonable period of time as prescribed by the director. In the event the director disapproves the plan after such resubmission, written notice of such final disapproval shall be sent by certified mail to the savings association's home office.

Last amended:
Laws 1998, LB 1321, § 27

~ Reissue 2007

8-183.02
State or federal savings association; plan of conversion; approval.

(1) If the director approves a plan of conversion in accordance with section 8-183.01, such

plan shall be submitted for adoption to the members or shareholders of the converting savings association by vote at a meeting called to consider such action. At least three weeks prior to such meeting, a copy of the plan, together with an accurate summary plan description explaining the operation of the plan and the rights, duties, obligations, liabilities, conditions, and requirements which may be imposed upon such members or shareholders and the converted association as a result of the operation of the plan, shall be mailed to each member or shareholder eligible to vote at such meeting.

(2) The plan of conversion must be approved by not less than sixty percent of the total outstanding shares, which may be voted by proxy or in person at the meeting called to consider such conversion.

(3) A certified copy of the proceedings at such meeting shall be filed with the director within thirty days after such meeting.

(4) If the plan of conversion is approved, the board of directors of the savings association shall take action to obtain a state bank charter, adopt articles of incorporation, adopt bylaws, elect directors and officers, and take such other action as is required or appropriate for a state bank corporation.

Last amended:
Laws 1998, LB 1321, § 28

~ Reissue 2007

8-183.03
State or federal savings association; conversion to state bank; requirements.

(1) To obtain a state bank charter, a savings association shall meet the requirements of state law as to the formation of a new state bank. The public hearing requirement of subdivision (1) of section 8-115.01 shall only be required if (a) after publishing a notice of the proposed conversion in a newspaper of general circulation in the county where the main office of the converting savings association is located, the expense of which shall be paid by the applicant savings association, the director receives a substantive objection to the conversion within fifteen days after such publication or (b) in the discretion of the director, the condition of the savings association warrants a hearing.

(2) If the savings association is a federal association, compliance with the procedure for conversion to a state bank prescribed by the laws of the United States, if any, shall be demonstrated to the director.

(3) When the persons requesting the conversion of the savings association are officers or directors of the savings association, there shall be a rebuttable presumption that such persons are parties of integrity and responsibility.

(4) If the main office of the resulting state bank is to be at the same location as the main office of the converting savings association, the director shall recognize that the public necessity, convenience, and advantage of the community will be met by permitting the resulting bank to engage in business.

(5) The director may make an examination of the applicant savings association prior to his or her decision on the application for a state bank charter. The cost of such examination shall be paid by the applicant savings association.

Last amended:
Laws 2002, LB 957, § 6

~ Reissue 2007

8-183.04
State or federal savings association; mutual savings association; retention of mutual form authorized.

Notwithstanding any other provision of the Nebraska Banking Act or any other Nebraska law, a state or federal savings association which was formed and in operation as a mutual savings association as of July 15, 1998, may elect to retain its mutual form of corporate organization upon conversion to a state bank. All references to shareholders or stockholders for state banks shall be deemed to be references to members for such a converted savings association. The director shall have the power to adopt and promulgate rules and regulations governing such converted mutual savings associations. In adopting and promulgating such rules and regulations, the director may consider the provisions of sections 8-301 to 8-384 governing savings associations in mutual form of corporate organization.

Last amended:
Laws 2005, LB 533, § 10

~ Reissue 2007

8-183.05
State or federal savings association; issuance of state bank charter; effect; section, how construed.

(1) Upon the issuance of a state bank charter to a converting savings association, the corporate existence of the converting association shall not terminate, but such bank shall be a continuation of the entity so converted and all property of the converted savings association, including its rights, titles, and interests in and to all property of whatever kind, whether real, personal, or mixed, things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, or pertaining to it, or which would inure to it, immediately, by operation of law and without any conveyance or transfer and without any further act or deed, shall vest in and

remain the property of such converted savings association, and the same shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by the converting savings association.

(2) Upon issuance of the charter, the new state bank shall continue to have and succeed to all the rights, obligations, and relations of the converting savings association.

(3) All pending actions and other judicial proceedings to which the converting savings association is a party shall not be abated or discontinued by reason of such conversion but may be prosecuted to final judgment, order, or decree in the same manner as if such conversion had not been made, and such converted savings association may continue the actions in its new corporate name. Any judgment, order, or decree may be rendered for or against the converting savings association theretofore involved in the proceedings.

(4) Nothing in this section shall be construed to authorize a converted savings association to establish branches except as permitted by section 8-157 and the Interstate Branching by Merger Act of 1997. This subsection shall not be construed to require divestiture of any branches of a savings association in existence at the time of the conversion to a state bank charter.

Last amended:
Laws 2002, LB 1089, § 4

Cross References:
Interstate Branching by Merger Act of 1997,see section 8-2101.

~ Reissue 2007

8-184
Voluntary liquidation; approval required; examination; fees.

Whenever any bank shall desire to go into voluntary liquidation, it shall first obtain the written consent of the department which may, before granting such request, order a special examination of the affairs of such bank, for which the same fees may be collected as in regular examination.

Last amended:
Laws 1963, c. 29, § 84, p. 167

~ Reissue 2007

8-185
Voluntary liquidation; procedure.

Any bank may voluntarily liquidate by paying off all its depositors in full. The bank so liquidating shall file a certified statement with the department, setting forth the fact that all its

liabilities have been paid and naming its stockholders with the amount of stock held by each, and surrender its certificate of authority to transact a banking business. The department shall cause an examination to be made of any such bank for the purpose of determining that all of its liabilities, except liabilities to stockholders, have been paid. Upon such examination, if it appears that all liabilities other than liabilities to stockholders have been paid, the bank shall cease to be subject to the Nebraska Banking Act.

Last amended:
Laws 1998, LB 1321, § 15

~ Reissue 2007

8-186
Bank; possession; voluntary surrender to department; notice; posting; liens dissolved.

Any bank may place its affairs and assets under the control of the department by posting on its door the following notice: This bank is in the hands of the Department of Banking and Finance. The posting of such notice, or the taking possession of any bank by the department or by any bank examiner shall be sufficient to place all of its assets of whatever nature immediately in the possession of the department, and shall operate as a bar to the levying of attachments or executions thereon, and shall operate to dissolve and release all levies, judgment liens, attachments, or other liens obtained through legal proceedings within sixty days next preceding the posting of such notice or the taking possession of such bank by the department.

Last amended:
Laws 1963, c. 29, § 86, p. 168

~ Reissue 2007

8-187
Banks; department may take possession; when; examination of affairs; liens dissolved; retention of possession.

Whenever it appears to the department from any examination or report provided for by the laws of this state that the capital of any bank is impaired, or that such bank is conducting its business in an unsafe or unauthorized manner, or is endangering the interests of its depositors, or upon failure of such bank to make any of the reports or statements required by the laws of this state, or if the officers or employees of any bank refuse to submit its books, papers, and affairs to the inspection of any examiner, or if any officer thereof refuses to be examined upon oath touching the affairs of any such bank, or if from any examination or report provided for by law, the department has reason to conclude that such bank is in an unsafe or unsound condition to transact the business for which it is organized, or that it is unsafe and inexpedient for it to continue business, or if any such bank neglects or refuses to observe any order of the department, the department may forthwith take possession of the property and business of the bank and shall

thereafter conduct the affairs of the bank, and shall retain possession of all money, rights, credits, assets, and property of every description belonging to the bank, as against any mesne or final process issued by any court against the bank whose property has been taken, and may retain possession for a sufficient time to make an examination of its affairs and dispose thereof as provided by law. All levies, judgment liens, attachments, or other liens obtained through legal proceedings against the bank or its property, acquired within sixty days next preceding the taking of possession, in the event the bank is liquidated and the business of the bank is not resumed or carried on after the taking over thereof by the department, shall be void and the property affected by the levy, judgment lien, attachment, or other lien so obtained shall be wholly discharged and released therefrom. The director shall retain possession of the property and business of the bank until the bank shall resume business or its affairs are finally liquidated as provided in the Nebraska Banking Act.

Last amended:
Laws 1998, LB 1321, § 16

~ Reissue 2007

8-188
Banks; possession by department; effective upon notice.

The director, or any deputy or any examiner authorized by the director, may take possession of a bank by handing to the president, cashier or any person in charge of the bank, a written notice that the bank is in the possession of the department.

Last amended:
Laws 1963, c. 29, § 88, p. 169

~ Reissue 2007

8-189
Banks; attempted prevention of possession by department; penalty.

Any officer, director, or employee of a bank, who shall attempt to prevent the department from taking possession of such bank, shall be guilty of a Class I misdemeanor.

Last amended:
Laws 1977, LB 40, § 52

~ Reissue 2007

8-190
Banks; possession by department; refusal to deliver; possession by banks; application for

court order.

Whenever any bank refuses or neglects to deliver possession of its affairs, assets, or property of whatever nature to the department or to any person ordered or appointed to take charge of such bank according to the Nebraska Banking Act, the director shall make an application to the district court of the county in which such bank is located or to any judge thereof for an order placing the department or such person in charge thereof and of its affairs and property. If the judge of the district court having jurisdiction is absent from the district at the time such application is to be made, any judge of the Court of Appeals or Supreme Court may grant such order, but the petition and order of possession shall be forthwith transmitted to the clerk of the district court of the county in which such bank is located.

Last amended:
Laws 1998, LB 1321, § 17

~ Reissue 2007

8-191
Banks; possession by department; notice to banks and trust companies; notice or knowledge of possession forestalls liens.

Upon taking possession of the property and business of any bank, the department shall forthwith give notice of such fact by letter or telegram to all banks or trust companies holding or in possession of any assets of such bank, so far as known by such department. No bank so notified or knowing of such possession by the department shall have a lien or charge for any payment, advance, or clearance thereafter made, or liability thereafter incurred, against any of the assets of the bank of whose property and business the department shall have taken possession unless the bank be continued as a going concern.

Last amended:
Laws 1963, c. 29, § 91, p. 170

~ Reissue 2007

8-192
Banks; possession by department; inventory of assets and liabilities; filing.

Upon taking charge of any bank, the director shall cause to be made an inventory in triplicate of all the property, assets, and liabilities of the bank so far as the same can be ascertained. One copy thereof shall be filed in the office of the director, one copy thereof retained in the bank, and after the declaration of insolvency of the bank, as provided in section 8-194, one copy shall be filed with the clerk of the district court of the county in which the bank is located.

Last amended:
Laws 1963, c. 29, § 92, p. 170

~ Reissue 2007

8-193
Banks; redelivery of possession; bond; departmental supervision; repossession by department.

Whenever the officers, directors, stockholders, or owners of any insolvent bank give good and sufficient bond running to the department with an incorporated surety company authorized by the laws of this state to transact such business, conditioned upon the full settlement of all the liabilities of such bank by such officers, directors, stockholders, or owners within a stated time, and the bond is approved by the department, then the department shall turn over all the assets of such bank to the officers, directors, stockholders, or owners of the bank furnishing the bond, reserving the same right to require report of the condition and to examine into the affairs of the bank as existed in the department previous to its closing. If, upon such examination, it is found by the department that the officers, directors, stockholders, or owners are not closing up the affairs of the bank in such manner as to discharge its liabilities and to close up its affairs in a manner satisfactory to the department within a reasonable time, the department shall take immediate possession of the bank for the liquidation thereof as provided in the Nebraska Banking Act.

Last amended:
Laws 1998, LB 1321, § 18

~ Reissue 2007

8-194
Insolvent banks; determination; declaration by Director of Banking and Finance; filing.

Upon determination of insolvency of any bank by the director and failure of owners thereof to restore solvency within the time and in the manner provided by law, or upon violation of the laws of the state by the bank, the director shall make a finding in writing of the condition of the affairs of such bank and a declaration of insolvency and such finding and declaration shall be filed with the clerk of the district court of the county in which such bank is located.

Last amended:
Laws 1963, c. 29, § 94, p. 171

~ Reissue 2007

8-195
Insolvent banks; possession by Director of Banking and Finance; petition to enjoin; show

cause order; findings by district court; disposition of case.

Whenever any bank of whose property and business the director has taken possession or whose insolvency has been declared as provided in section 8-194 deems itself aggrieved thereby, it may, at any time not later than ten days after such declaration of insolvency has been filed with the clerk of the district court of the county in which the bank is located, petition the district court to enjoin further proceedings, and the court, after citing the director to show cause why further proceedings should not be enjoined, and hearing the allegations and proofs of the parties and determining the facts, may, upon proof by the bank, its officers or directors, that it is solvent, that the business of the bank has been and is being conducted as provided by law, that it is not endangering the interests of its depositors and other creditors, and that the director has acted arbitrarily and abused his discretion either by taking possession of the bank or by finding and declaring the bank to be insolvent and ordering its liquidation, set aside such declaration of insolvency and enjoin the director from proceeding further, and direct him to surrender the business and property to the bank. On proof that the bank is insolvent and that its stockholders have failed to restore solvency as provided by law, or that the bank is being operated in violation of law, and that the director has acted within his powers, the petition shall be dismissed by the court.

Last amended:
Laws 1963, c. 29, § 95, p. 172

~ Reissue 2007

8-196
Insolvent banks; liquidation; injunction; appeal; bond.

An appeal shall operate as a stay of judgment of the district court, and no bond need be given if the appeal is taken by the director, but if the appeal is taken by such bank, a bond shall be given as required by law for appeal in civil cases.

Last amended:
Laws 1991, LB 732, § 13

~ Reissue 2007

8-197
Insolvent banks; liquidation by Federal Deposit Insurance Corporation or by liquidating trustees.

Pending final judgment on the petition to enjoin, the director shall retain possession of the property and business of the bank. If not enjoined, the director shall proceed to liquidate the affairs of such bank as provided in the Nebraska Banking Act, except that: (1) The Federal Deposit Insurance Corporation may, under the laws of this state, accept the appointment as

receiver or liquidator of any insolvent state bank the deposits of which are insured by the Federal Deposit Insurance Corporation; or (2) when any state bank is declared insolvent and ordered to be liquidated and the deposits of such bank are not insured by the Federal Deposit Insurance Corporation, then depositors and other creditors of such insolvent state bank, representing fifty-one percent or more of the deposit and other claims in number and in amount of the total thereof, shall have the right to liquidate such insolvent bank by and through liquidating trustees, who shall have the same power as the department and the director to liquidate such bank if, within thirty days after the filing of the declaration of insolvency, articles of trusteeship executed and acknowledged by fifty-one percent or more of the depositors and other creditors in number, representing fifty-one percent or more of the total of all deposits and claims in such bank, are filed with the director. The articles creating the trusteeship shall be in writing, shall name the trustees, shall state the terms and conditions of such trust, and shall become effective when it is determined by the director that fifty-one percent or more of the depositors and other creditors in number, representing fifty-one percent or more of the total of all deposits and claims in such bank, have signed and acknowledged the same. All nonconsenting depositors and other creditors of the insolvent bank shall be held to be subject to the terms and conditions of such trusteeship to the same extent and with the same effect as if they had joined in the execution thereof, and their respective claims shall be treated in all respects as if they had joined in the execution of such articles of trusteeship. Upon finding that such articles have been executed and acknowledged as provided in this section, the director shall thereupon transfer all of the assets of the insolvent bank to such liquidating trustees and take their receipt therefor, and all duties and responsibilities of the department and the director as otherwise provided by law with respect to such liquidation shall be assumed by such liquidating trustees. The director shall then be relieved from further responsibility in connection therewith, and the director and the person who issued the applicable bond or equivalent commercial insurance policy shall be released from further liability on the director's official bond or equivalent commercial insurance policy in respect to such liquidation. The trustees shall then proceed to liquidate such bank as nearly as may be in the manner provided by law for the liquidation of insolvent banks by the department acting as receiver and liquidating agent.

When the Federal Deposit Insurance Corporation or any party other than the department is appointed receiver and liquidating agent of an insolvent bank or other financial institution, all references to the department or the director as provided in the act for the liquidation of banks and financial institutions shall mean the Federal Deposit Insurance Corporation or other appointed receiver and liquidating agent.

Last amended:
Laws 2004, LB 884, § 5
Effective date July 16, 2004.

~ Reissue 2007

8-198
Financial institutions; designation of receiver and liquidating agent; department; powers.

The department may be designated the receiver and liquidating agent for any financial institution subject to the department's jurisdiction and, subject to the district court's supervision and control, may proceed to liquidate such institution or reorganize it in accordance with the Nebraska Banking Act.

Last amended:
Laws 1998, LB 1321, § 20

~Reissue 2007

8-199
Financial institutions; department as receiver; powers; no compensation to director.

Whenever the department has been designated receiver for an institution subject to its jurisdiction, the department shall have all the powers and privileges provided by the laws of this state with respect to any other receiver and such incidental powers as shall be necessary to carry out an orderly and efficient liquidation or reorganization of any financial institution for which the department may have become receiver, either by operation of law or by judicial appointment. Acting by and through the director, the department may in its own name as such receiver enforce on behalf of such institution or its creditors or shareholders, by actions at law or in equity, all debts or other obligations of whatever kind or nature due to such institution or the creditors or shareholders thereof. In like manner, the department may make, execute, and deliver any and all deeds, assignments, and other instruments necessary and proper to effectuate any sale of real or personal property, or the settlement of any obligations belonging or due to such financial institution for which the department may have become receiver, or its creditors or shareholders, when such sale or settlement is approved by the district court of the county in which such institution is located. The director shall receive no fees, salary, or other compensation for his or her services in connection with the liquidation or reorganization of such institutions other than his or her salary.

Last amended:
Laws 1985, LB 653, § 8

~ Reissue 2007

8-1,100
Insolvent banks; liquidation; special deputies, assistants, counsel; appointment; compensation; discharge.

The director may, under his hand and official seal, appoint such special deputies or assistants as he may find necessary for the efficient and economical liquidation of insolvent banks, with powers specified in the certificate of appointment, to assist him in the liquidation. The certificate shall be filed in the office of the director and a certified copy in the office of the clerk of the district court of the county in which such bank is located. He may also employ such counsel and

expert assistance as may be necessary to perform the work of liquidation. He shall, subject to the approval of the district court of the county in which the insolvent bank is located, fix the compensation for the services rendered by such special deputies, assistants, and counsel, which shall be taxed as costs of the liquidation. He may discharge such special deputies, assistants, or counsel at any time or may assign them to one or more liquidations or transfer them from one liquidation to another.

Last amended:
Laws 1963, c. 29, § 100, p. 175

~ Reissue 2007

8-1,101
Insolvent banks; liquidation; special deputies, assistants; bond or insurance; conditions.

Upon the declaration of insolvency, the director shall require bonds or equivalent commercial insurance policies from the special deputies or assistants in sums and with such condition as the director shall specify, to be approved by the Governor. The costs of any such bond or policy shall be taxed as costs in the liquidation. Such bond or policy shall be conditioned for the faithful performance of duty, and include indemnity to the department as receiver and liquidating agent.

Last amended:
Laws 2004, LB 884, § 6
Effective date July 16, 2004.

~ Reissue 2007

8-1,102
Insolvent banks; department as receiver and liquidating agent; liens dissolved; assets; transfers to defraud creditors; preferences.

Upon the declaration of insolvency of a bank by the director, the department shall become the receiver and liquidating agent to wind up the business of that bank, and the department shall be vested with the title to all of the assets of such bank wheresoever the same may be situated and whatsoever kind and character such assets may be, as of the date of the filing of the declaration of insolvency with the clerk of the district court of the county in which such bank is located. All levies, judgment liens, attachments, or other liens obtained through legal proceedings against such bank or its property acquired within sixty days next preceding the filing of the declaration of insolvency shall be void, and the property affected by the levy, judgment lien, attachment, or other lien obtained through legal proceedings, shall be wholly discharged and released therefrom. If at any time within sixty days prior to the taking over by the director of a bank which is later declared insolvent any transfers of the assets of such bank are made to prevent liquidation and distribution of such assets to the bank's creditors as provided in the Nebraska Banking Act or if any transfers are made so as to create a preference of one creditor over another, such transfers

shall be void and the director shall be entitled to recover such assets for the benefit of the trust.

Last amended:
Laws 1998, LB 1321, § 21

~ Reissue 2007

8-1,103
Insolvent banks; liquidation; Director of Banking and Finance; powers.

For the purpose of executing and performing any of the powers and duties hereby conferred upon him or her, the director may, in the name of the department or the delinquent bank or in his or her own name as director, prosecute and defend any and all suits and other legal proceedings and may, in the name of the department or the delinquent bank or in his or her own name as director, execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary and proper to effectuate any sale of real or personal property or sale or compromise authorized by order of the court as provided in the Nebraska Banking Act. Any deed or other instrument executed pursuant to such authority shall be valid and effectual for all purposes as though the same had been executed by the officers of the delinquent bank by authority of its board of directors.

Last amended:
Laws 1998, LB 1321, § 22

~ Reissue 2007

8-1,104
Insolvent banks; liquidation; Director of Banking and Finance; collection of debts; sale or compromise of certain debts; procedure; deposit or investment of funds.

Upon taking possession of the property and business of any bank, the director shall collect all money due to such bank and do such other acts as are necessary to conserve its assets and business and, on declaration of insolvency, he or she shall proceed to liquidate the affairs thereof as provided in the Nebraska Banking Act. He or she shall collect all debts due to and belonging to such bank. If he or she desires to sell or compromise any or all bad or doubtful debts or any or all of the real and personal property of such bank, he or she shall apply to the district court of the county in which the bank is located for an order permitting such sale or compromise on such terms and in such manner as the court may direct. All money so collected by the director may be, from time to time, deposited in one or more state banks or national banks. No deposits of such money shall be made unless a pledge of assets, a depository bond, or both are given as security for such deposit. All depository banks are authorized to give such security. The director may invest a portion or all of such money in short-time interest-bearing securities of the federal government.

Last amended:
Laws 1998, LB 1321, § 23

~ Reissue 2007

8-1,105
Insolvent banks; reorganization or liquidation proceedings; district judge; jurisdiction.

In any proceeding in connection with the insolvency, liquidation, or reorganization of a bank of which a district court has jurisdiction, a judge of the district court shall exercise such jurisdiction in any county in the judicial district for which he was elected to perform any official act in the manner and with the same effect as he might exercise in the county in which the matter arose, or to which it may have been transferred, and he may perform any such act in chambers with the same effect as in open court.

Last amended:
Laws 1963, c. 29, § 105, p. 178

~ Reissue 2007

8-1,106
Insolvent banks; claims; filing; time limit.

The director, within twenty days after the declaration of insolvency of a bank, shall file with the clerk of the district court of the county in which such bank is located, a list setting forth the name and address of each of the creditors of such bank as shown by the books thereof or who are known by the director to be creditors, and within thirty days after filing the list of creditors, he shall also file an order fixing the time and place for filing claims against such bank. The time fixed for filing claims shall not be more than sixty days nor less than thirty days from the date of the filing of the order, and within seven days after the filing of such order, the director shall mail to each known creditor of such bank a copy of the order and a blank form for proof of claim. The director shall also post a copy of the order on the door of the bank, and within two weeks from the date of the order he shall cause notice to be given by publication, in such newspapers as he may direct, once each week for two successive weeks, calling on all persons who may have claims against the bank to present them to the director within the time and the place provided for in the order and to make proof thereof. Such claims shall be sworn to by the creditor or his representative. Any claim, other than claims for deposits and exchange, not presented and filed within the time fixed by such order shall be forever barred. Claims for deposits or exchange as shown by the books of the bank presented after the expiration of the time fixed in the order for filing claims may be allowed by the director upon a showing being made by the creditor, within six months from the date of the expiration of the time for filing claims as fixed by the order, that he did not have knowledge of the closing of the bank and did not receive notice within time to permit the filing of his claim before the time fixed for filing claims had expired.

Last amended:
Laws 1963, c. 29, § 106, p. 178

~ Reissue 2007

8-1,107
Insolvent banks; claims; listing and classification; notice to claimant; filing of objection; powers and duties of Director of Banking and Finance.

(1) Upon the expiration of the time fixed for presentation of claims, the director shall thoroughly investigate all claims and file with the clerk of the district court of the county in which said bank is located a complete list of all claims against which he knows of no defense and which, in his judgment, are valid, designating their priority of payment, together with a list of the claims which, in his judgment, are invalid. He shall also file an order allowing or rejecting such claims as classified.

(2) When the director reclassifies or rejects a claim, which rejection shall be made when he doubts the justice of a claim, he shall serve written notice of such reclassification or rejection upon the claimant by either registered or certified mail and file, with the clerk of the district court of the county in which the bank is located, an affidavit of the service of such notice, which affidavit shall be prima facie evidence of such service. Such notice shall state the time and place for the filing by claimant of his objections to the classification, reclassification, or rejection of his claim.

Last amended:
Laws 1963, c. 29, § 107, p. 179

~ Reissue 2007

8-1,108
Insolvent banks; claims; objections to classification; hearing.

Any person objecting to the classification of his claim and the order based thereon must, within thirty days of the filing of the classification and order with the clerk of the district court, begin an action in that court asking to reclassify his claim and to set aside the order of the director. Notice of this action shall be given by the service of a copy of the petition therein upon the director, who shall, within thirty days of such service, file his answer or other pleading. The court shall then set the matter for hearing at the earliest convenient date and shall try the issues and determine the same according to the usual procedure in matters of equity.

Last amended:
Laws 1963, c. 29, § 108, p. 179

~ Reissue 2007

8-1,109
Insolvent banks; claims; certificate of allowance; assignment; payments endorsed on certificate.

Upon the allowance of a claim against an insolvent bank, the director shall, upon request of the claimant, issue and deliver to the claimant a certificate of indebtedness showing the amount of the claim, the date of the allowance thereof, and whether such claim is one having priority of payment or is a general claim. Any assignment of a claim or certificate of indebtedness shall be filed with the director and shall not be binding until so filed. Upon payment of any dividend on a claim, evidenced by a certificate of indebtedness, such certificate shall be presented and an endorsement of such payment shall be made thereon.

Last amended:
Laws 1963, c. 29, § 109, p. 180

~ Reissue 2007

8-1,110
Insolvent banks; claims; priority.

The claims of depositors for deposits not otherwise secured and claims of holders of exchange shall have priority over all other claims, except federal, state, county, and municipal taxes, and subject to such taxes shall, at the time of the declaration of insolvency of a bank, be a first lien on all the assets of the bank from which they are due and thus in liquidation, but no claim to priority shall be allowed which is based upon any evidence of indebtedness in the hands of or originally issued to any stockholder, officer, or employee of such bank and which represents money obtained by such stockholder, officer, or employee from himself or some other person, firm, corporation, or bank in lieu of or for the purpose of effecting a loan of funds to such failed bank.

Last amended:
Laws 1963, c. 29, § 110, p. 180

~ Reissue 2007

8-1,111
Insolvent banks; priority; not affected by federal deposit insurance.

When a bank whose deposits are insured by the Federal Deposit Insurance Corporation becomes insolvent, neither the deposits therein nor the exchange thereof shall be deemed to be otherwise secured by reason of such insurance for purposes of section 8-1,110.

Last amended:
Laws 1963, c. 29, § 111, p. 181

~ Reissue 2007

8-1,112
Insolvent banks; Director of Banking and Finance; payment of dividends.

At any time after the expiration of the date fixed for the presentation of claims, the district court may, upon the application of the director, by order authorize the director to declare out of the funds remaining in his hands, after the payment of expenses, one or more dividends, and at the earliest possible date the director shall declare a final dividend as may be directed by the district court of the county in which the principal office of such bank is located.

Last amended:
Laws 1963, c. 29, § 112, p. 181

~ Reissue 2007

8-1,113
Insolvent banks; liquidation expenses; allocation; certification.

The director shall from time to time allocate to the various banks in liquidation the expenses of the department by reason of such liquidation, other than the compensation and expense of the special deputy or assistant in charge and the fees for legal services directly incident to the bank in liquidation, and certify to the various district courts of the counties in which the banks in process of liquidation are located the amount so allocated, which shall be taxed and paid as costs in the liquidation.

Last amended:
Laws 1963, c. 29, § 113, p. 181

~ Reissue 2007

8-1,114
Repealed. Laws 1973, LB 164, s. 25.

~ Reissue 2007

8-1,115
Insolvent banks; liquidation; reports to district court; dissolution of bank; cancellation of

certificate and charter.

The director shall from time to time make and file with the clerk of the district court of the county in which the insolvent bank is located, a report of his acts of liquidation of each insolvent bank. He shall, upon the completion of the liquidation, file a final report, notice of which shall be given as the court may direct, and on hearing thereon and approval thereof by the court such liquidation shall be declared closed and the corporation dissolved. The director shall then cancel the certificate and charter issued to such bank pursuant to sections 8-121 and 8-122.

Last amended:
Laws 1963, c. 29, § 115, p. 182

~ Reissue 2007

8-1,116
Insolvent banks; stockholders; restoration of solvency; conditions.

After the department has taken possession of any bank under the Nebraska Banking Act, the stockholders thereof may repair its credit, restore or substitute its reserves, and otherwise place it in safe condition, but such bank shall not be permitted to reopen its business until the department, after careful investigation of its affairs, is of the opinion that its stockholders have complied with the law, that the bank's credit and funds are in all respects repaired, that its reserves are restored or are sufficiently substituted, and that it should be permitted again to reopen for business, whereupon the department may issue written permission for resumption of business under its charter.

Last amended:
Laws 1998, LB 1321, § 24

~ Reissue 2007

8-1,117
Banks; impaired capital; assessments on stock to restore; preferred stock excepted.

If the capital of a bank becomes impaired, whether the department shall or shall not have taken possession of the bank, whenever stockholders representing eighty-five percent or more of the common capital stock of the bank, with a view of restoring the impaired capital, shall with the approval of the department authorize the directors of the bank to levy and collect assessments on the common capital stock in such amount as they may determine necessary for such purpose, the directors shall levy the assessments so authorized and shall notify all common stockholders of record thereof by either registered or certified mail. If any common stockholder shall fail to pay his assessment within three weeks from the date of mailing such notice, the pro rata amount of such assessment shall be a lien upon his common capital stock, and the directors shall forthwith sell such shares of common capital stock at public or private sale without further notice and

apply the proceeds thereof to the payment of such assessment, and the balance, if any, shall be paid to the delinquent shareholder. Nothing in this section shall be construed to authorize the levy and collections of assessments on the preferred capital stock of the bank.

Last amended:
Laws 1963, c. 29, § 117, p. 182

~ Reissue 2007

8-1,118
Insolvent banks; restoration of solvency; reopening for limited business; conditions; costs; new deposits treated as a trust fund; expenses.

If the director, with a view to restoring the solvency of any bank which the department has taken charge of pursuant to law, shall approve a contract or plan whereby the bank is permitted to receive deposits and pay checks and do a limited banking business, entered into between the unsecured depositors and unsecured creditors representing eighty-five percent or more of the total amount of deposits and unsecured claims of such bank on the one hand and the bank or its board of directors on the other, all other depositors and unsecured creditors shall be held subject to such agreement to the same extent and with the same effect as if they had joined in the execution thereof, and their claims shall be treated in all other respects as if they had joined in the execution of such agreement in the event such bank is permitted to reopen for business as limited by such contract. All deposits received after the adoption of such plan and the assets of the bank created thereby, and before the restoration of the bank to solvency, shall be a trust fund for the security and the repayment of the deposits so received and shall not be subject to the payment of any deposit, debt, claim, or demand of the bank previously created. Such money and assets shall be kept and invested in the manner directed by the director. Section 8-138 does not apply to banks operating under this section. Any county, city, village, township, or school district through its governing body, and the state through the Governor, may enter into such contract except when the funds of such county, city, village, township, or school district are adequately secured. Whenever a bank is permitted to operate under the provisions of this section, such bank shall pay all costs incurred by the department in the approval of such plan, including examiners' expenses, attorneys' fees, and clerk hire, and incurred in special examinations required by the director.

Last amended:
Laws 2003, LB 217, § 8

~ Reissue 2007

8-1,119
Violations; general penalty.

Where no other punishment is provided in the Nebraska Banking Act, any person violating

any of the provisions of the act shall be guilty of a Class III misdemeanor.

Last amended:
Laws 1998, LB 1321, § 25

~ Reissue 2007

8-1,120
Violators; apprehension and conviction; rewards.

The department may offer and pay out of the funds appropriated to it rewards for the apprehension and conviction of any person or persons violating the Nebraska Banking Act, but such rewards shall not exceed two hundred fifty dollars in any one case.

Last amended:
Laws 1998, LB 1321, § 26

~ Reissue 2007

8-1,121
Fugitive violators; rewards.

If any person against whom has been entered any indictment, complaint, or information charging a violation of the statutes of this state relating to banks and banking, which charged violation is a felony, shall be a fugitive from justice, the county attorney of the county wherein such indictment, complaint, or information was entered, shall promptly inform the Governor of the fact, and the Governor may thereupon make public proclamation that a reward of not more than twenty-five hundred dollars will be paid for information resulting in the apprehension of such fugitive. Such reward shall not be paid unless the fugitive is finally convicted of the violation charged by such indictment, complaint, or information, or of some similar violation growing out of the same transaction or out of his connection with the same bank, nor until such conviction shall become final. Upon the finality of such conviction, the county attorney shall certify the fact to the Governor, designating the person or persons entitled to any such reward. Thereupon the Governor shall order the Director of Administrative Services to draw his warrant for the amount of such reward payable to the person or persons entitled thereto, which warrant shall be drawn upon any money in the General Fund of the state treasury not otherwise appropriated, and the State Treasurer shall pay all such warrants.

Last amended:
Laws 1963, c. 29, § 121, p. 185

~ Reissue 2007

8-1,122
Repealed. Laws 1987, LB 2, s. 22.

~ Reissue 2007

8-1,123
Repealed. Laws 2007, LB 124, s. 77.

~ Reissue 2007

8-1,124
Emergencies; terms, defined.

As used in sections 8-1,124 to 8-1,129, unless the context otherwise requires:

(1) Director shall mean the Director of Banking and Finance;

(2) Bank shall mean commercial banks, or any office or facility thereof, and, to the extent that the provisions of sections 8-1,124 to 8-1,129 are not inconsistent with and do not infringe upon paramount federal law, national banks;

(3) Officers shall mean the person or persons designated by the board of directors, board of trustees, or other governing body of a bank, to act for such bank to carry out the provisions of sections 8-1,124 to 8-1,129 or, in the absence of any such designation or of such officer or officers, the president or any other officer in charge of such bank or of such office or offices;

(4) Office shall mean any place at which a bank transacts its business or conducts operations related to its business; and

(5) Emergency shall mean any condition or occurrence which may interfere physically with the conduct of normal business operations at one or more or all of the offices of a bank, or which poses an imminent or existing threat to the safety or security of persons or property, or both, including but not limited to fire, flood, earthquake, hurricanes, wind, rain, snow storms, labor disputes and strikes, power failures, transportation failures, interruption of communication facilities, shortages of fuel, housing, food, transportation or labor, robbery or attempted robbery, actual or threatened enemy attack, epidemics or other catastrophes, riots, civil commotions, and other acts of lawlessness or violence, actual or threatened.

Last amended:
Laws 1971, LB 523, § 1

~ Reissue 2007

8-1,125
Emergencies; proclamation; Director of Banking and Finance; effect.

Whenever the director is of the opinion that an emergency exists, or is impending, in this state or in any part of this state, he may, by proclamation, authorize any bank located in such affected area to close any or all of its offices. In addition, if the director is of the opinion that an emergency exists, or is impending, which affects, or may affect, a particular bank, or a particular office thereof, but not banks located in the area generally, he may authorize the particular bank or office so affected to close. Any office so closed shall remain closed until the director proclaims that the emergency has ended, or until such time as the officers of the bank determine that one or more offices, theretofore closed because of the emergency, should reopen, whichever occurs first, and, in either event, for such further time thereafter as may reasonably be required to reopen.

Last amended:
Laws 1971, LB 523, § 2

~ Reissue 2007

8-1,126
Emergencies; officers; powers.

Whenever the officers of a bank are of the opinion that an emergency exists, or is impending, which affects, or may affect, one or more or all of a bank's offices, they shall have the authority, in the reasonable and proper exercise of their discretion, to determine not to open any one or more or all of such offices on any business or banking day or, if having opened, to close any one or more or all of such offices during the continuation of such emergency, even if the director has not issued and does not issue a proclamation of emergency. Any such closed office may remain closed until such time as the officers determine that the emergency has ended, and for such further time thereafter as may reasonably be required to reopen; PROVIDED, in no case shall such office remain closed for more than forty-eight consecutive hours, excluding other legal holidays, without requesting the approval of the director.

Last amended:
Laws 1971, LB 523, § 3

~ Reissue 2007

8-1,127
Emergency; proclamation; President of United States; Governor; effect.

The officers of a bank may close any one or all of the bank's offices on any day, designated by proclamation of the President of the United States or the Governor, as a day or days of mourning, rejoicing, or other special observance.

Last amended:
Laws 1971, LB 523, § 4

~ Reissue 2007

8-1,128
Emergency; closing; notice; contents.

A bank closing an office pursuant to the authority granted under section 8-1,126 shall give as prompt notice of its action as conditions will permit and by any means available, to the director, or in the case of a national bank, to the Comptroller of the Currency.

Last amended:
Laws 1971, LB 523, § 5

~ Reissue 2007

8-1,129
Emergencies; laws applicable.

Any day on which a bank, or any one or more of its offices, is closed during all or any part of its normal banking hours pursuant to the authorization granted under sections 8-1,124 to 8-1,129 shall be, with respect to such bank or, if not all of its offices are closed, with respect to any office or offices which are closed, a legal holiday for all purposes with respect to any banking business of any character. No liability, or loss of rights of any kind, on the part of any bank, or director, officer, or employee thereof, shall accrue or result by virtue of any closing authorized by sections 8-1,124 to 8-1,129.

The provisions of sections 8-1,124 to 8-1,129 shall be construed and applied as being in addition to, and not in substitution for or limitation of, any other law of this state or of the United States authorizing the closing of a bank or excusing delay by a bank in the performance of its duties and obligations because of emergencies or conditions beyond its control or otherwise.

Last amended:
Laws 1971, LB 523, § 6

Cross References:
Bank holidays,see sections 62-301 and 62-301.01.

~ Reissue 2007

8-1,130
Investments in savings accounts in name of fiduciary; open account; withdrawal; death of fiduciary; effect.

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, 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 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 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 this section shall thereby be liable for any estate, inheritance, or succession taxes which may be due this state.

Last amended:
Laws 1986, LB 909, § 2

~ Reissue 2007

8-1,131
Retirement plan, medical savings account, or health savings account, investments; bank as trustee or custodian; powers and duties; account, how treated.

(1) All banks chartered under the laws of Nebraska 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, 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 bank or in other banks. If any such retirement plan, within the judgment of the bank, 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 and the regulations promulgated thereunder at the time the trust was established and accepted by the bank, and 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 bank may 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 bank, in respect to savings made under this subsection, shall be required to segregate such savings from other liabilities of the bank. The bank shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this subsection.

(2)(a) All banks chartered under the laws of Nebraska are qualified to act as trustee or custodian of a medical savings account created within the provisions of section 220 of the Internal Revenue Code and a health savings account created within the provisions of section 223 of the Internal Revenue Code. If any such medical savings account or health savings account, within the judgment of the bank, constitutes a medical savings account under section 220 of the Internal Revenue Code or a health savings account under section 223 of the Internal Revenue Code and the regulations promulgated thereunder at the time the trust was established and accepted by the bank, and is subsequently determined not to be such a medical savings account or health savings account, in whole or in part, the bank may 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 account holder. No bank, in respect to savings made under this subsection, shall be required to segregate such savings from other liabilities of the bank. The bank shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this subsection.

(b) Except for judgments against the medical savings account holder or health savings account holder or his or her dependents for qualified medical expenses as defined under section 223(d)(2) of the Internal Revenue Code, funds credited to a medical savings account or health savings account below twenty-five thousand dollars are not susceptible to levy, execution, judgment, or other operation of law, garnishment, or other judicial enforcement and are not an asset or property of the account holder for purposes of bankruptcy law.

Last amended:
Laws 2005, LB 465, § 1
Effective date September 4, 2005.

~ Reissue 2007

8-1,132
Repealed. Laws 1987, LB 2, s. 22.

~ Reissue 2007

8-1,133
Bank; business of leasing personal property; subject to rules and regulations.

Any bank may engage, directly or indirectly, in the business of leasing personal property subject to rules and regulations of the Department of Banking and Finance.

Last amended:
Laws 1977, LB 506, § 1

~ Reissue 2007

8-1,134
Violations; director; powers; fines; notice; hearing; closure; emergency powers; service; procedures.

(1) Whenever the Director of Banking and Finance has reason to believe that a violation of any provision of Chapter 8 or of the Credit Union Act or any rule, regulation, or order of the Department of Banking and Finance has occurred, he or she may cause a written complaint to be served upon the alleged violator. The complaint shall specify the statutory provision or rule, regulation, or order alleged to have been violated and the facts alleged to constitute a violation thereof and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final as to any person named in the order unless such person requests, in writing, a hearing before the director no later than ten days after the date such order is served. In lieu of such order, the director may require that the alleged violator appear before the director at a time and place specified in the notice and answer the charge complained of. The notice shall be delivered to the alleged violator or violators in accordance with subsection (4) of this section not less than ten days before the time set for the hearing.

(2) The director shall provide an opportunity for a fair hearing to the alleged violator at the time and place specified in the notice or any modification of the notice. On the basis of the evidence produced at the hearing, the director shall make findings of fact and conclusions of law and enter such order as in his or her opinion will best further the purposes of Chapter 8 or the Credit Union Act and the rules, regulations, and orders of the department. Written notice of such order shall be given to the alleged violator and to any other person who appeared at the hearing and made written request for notice of the order. If the hearing is held before any person other than the director, such person shall transmit a record of the hearing together with findings of fact and conclusions of law to the director. The director, prior to entering his or her order on the basis

of such record, shall provide opportunity to the parties to submit for his or her consideration exceptions to the findings or conclusions and supporting reasons for such exceptions. The order of the director shall become final and binding on all parties unless appealed to the district court of Lancaster County as provided in section 8-1,135. As part of such order, the director may impose a fine, in addition to the costs of the investigation, upon a person found to have violated any provision of Chapter 8, the Credit Union Act, or the rules, regulations, or orders of the department. The fine shall not exceed ten thousand dollars per violation for the first offense and twenty-five thousand dollars per violation for a second or subsequent offense involving a violation of the same provision of Chapter 8, the Credit Union Act, the rules and regulations of the department, or the same order of the department. The fines and costs shall be in addition to all other penalties imposed by the laws of this state, shall be collected by the director, and shall be remitted to the State Treasurer. Costs shall be credited to the Financial Institution Assessment Cash Fund, and fines shall be credited to the permanent school fund. If a person fails to pay the fine or costs of the investigation, a lien in the amount of the fine and costs shall be imposed upon all of the assets and property of such person in this state and may be recovered by suit by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law.

(3) Whenever the director finds that an emergency exists requiring immediate action to protect the safety and soundness of the institutions under the supervision and control of the department, the director may, without notice or hearing, issue an order reciting the existence of an emergency and requiring that such action be taken as the director deems necessary to meet the emergency. Notwithstanding the provisions of subsection (2) of this section, the order shall be effective immediately. Any person to whom such order is directed shall comply immediately, but on application to the director shall be afforded a hearing as soon as possible and not later than ten days after such application by the affected person. On the basis of the hearing, the director shall continue the order in effect, revoke it, or modify it. This subsection shall not apply to a determination of necessary acquisition made by the department pursuant to sections 8-1506 to 8-1510.

(4) Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the director shall be served on any person affected thereby either personally or by certified mail, return receipt requested. Proof of service shall be filed in the office of the director.

Every certificate or affidavit of service made and filed as provided in this subsection shall be prima facie evidence of the facts stated in the certificate or affidavit, and a certified copy shall have the same force and effect as the original.

(5) Any hearing provided for in this section may be conducted by the director, or by any member of the department acting in his or her behalf, or the director may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the director at any time and place. A verbatim record of the proceedings of such hearings shall be taken and filed with the director, together with findings of fact and conclusions of law made by

the director or hearing officer. The director may subpoena witnesses, and any witness who is subpoenaed shall receive the same fees as in civil actions in the district court and mileage as provided in section 81-1176. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the district court of Lancaster County shall have jurisdiction, upon application of the director, to issue an order requiring such person to appear and testify or produce evidence as the case may require. Failure to obey such order of the court may be punished by such court as contempt.

If requested to do so by any party concerned with such hearing, the full stenographic notes, or tapes of an electronic transcribing device, of the testimony presented at such hearing shall be taken and filed. The stenographer shall, upon the payment of the stenographer's fee allowed by the court, furnish a certified transcript of all or any part of the stenographer's notes to any party to the action requiring and requesting such notes.

(6) The director may close to the public the hearing, or any portion of the hearing, provided for in this section when he or she finds that the closure is (a) necessary to protect any person, or any financial institution or entity under the department's jurisdiction, against unwarranted injury or (b) in the public interest. The director shall close no more of the public hearing than is necessary to attain the objectives of this subsection.

Last amended:
Laws 1997, LB 137, § 8

Cross References:
Credit Union Act,see section 21-1701.
Financial Institution Assessment Cash Fund,purposes, see section 8-601.

~ Reissue 2007

8-1,135
Appeal; procedure.

Any person aggrieved by a final order of the Director of Banking and Finance made pursuant to section 8-1,134 may appeal the order, and the appeal shall be in accordance with the Administrative Procedure Act.

Last amended:
Laws 1988, LB 352, § 10

Cross References:
Administrative Procedure Act,see section 84-920.

~ Reissue 2007

8-1,136
Action to enjoin and enforce compliance.

Whenever it appears to the Director of Banking and Finance that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of Chapter 8 or the Credit Union Act, he or she may bring an action in the name of the director and the Department of Banking and Finance in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with the provisions of Chapter 8 or the Credit Union Act. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant's assets. The director shall not be required to post a bond.

Last amended:
Laws 1996, LB 948, § 119

Cross References:
Credit Union Act,see section 21-1701.

~ Reissue 2007

8-1,137
Evidence of violation; refer to prosecuting attorney.

The Director of Banking and Finance may refer such evidence as may be available concerning violations of the Nebraska Criminal Code or of any rule, regulation, or order under Chapter 8 or under the Credit Union Act to the Attorney General or the proper county attorney. It shall be the duty of each county attorney or the Attorney General to whom the director reports a violation to cause appropriate proceedings to be instituted without delay.

Last amended:
Laws 1996, LB 948, § 120

Cross References:
Credit Union Act,see section 21-1701.
Nebraska Criminal Code,see sections 28-101 to 28-1348.

~ Reissue 2007

8-1,138
Violation of final order; liability; penalty.

Any person who violates any of the provisions of a final order issued by the Director of Banking and Finance shall be liable to any person or entity who suffers damage proximately caused by such violation. Any person who knowingly violates any final order issued by the

Director of Banking and Finance pursuant to section 8-1,134 shall be guilty of a Class I misdemeanor.

Last amended:
Laws 1984, LB 1039, § 5

~ Reissue 2007

8-1,139
Misapplication of funds or assets; penalty.

An officer, director, agent, or employee of a bank, trust company, building and loan association, cooperative credit union, credit union, or other similar entity which is licensed, regulated, or examined by the Department of Banking and Finance who willfully misapplies any of the money, funds, or credits of any such entity or any money, funds, assets, or securities entrusted to the care or custody of such entity or the custody or care of any such officer, director, agent, or employee shall be guilty of a Class IV felony.

Last amended:
Laws 2003, LB 131, § 5

~ Reissue 2007

8-1,140
Federally chartered bank; bank organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

Notwithstanding any of the other provisions of the Nebraska Banking Act or any other Nebraska statute, any bank incorporated under the laws of this state and organized under the provisions of the act, or under the laws of this state as they existed prior to May 9, 1933, shall directly, or indirectly through a subsidiary or subsidiaries, have all the rights, powers, privileges, benefits, and immunities which may be exercised as of March 20, 2008, by a federally chartered bank doing business in Nebraska, including the exercise of all powers and activities that are permitted for a financial subsidiary of a federally chartered bank. Such rights, powers, privileges, benefits, and immunities shall not relieve such bank from payment of state taxes assessed under any applicable laws of this state.

Last amended:
Laws 2008, LB 851, § 7
Operative date March 20, 2008