

**ONE HUNDREDTH LEGISLATURE - SECOND SESSION -
2008**

COMMITTEE STATEMENT

LB851

Hearing Date: January 22, 2008

Committee On: Banking, Commerce and Insurance

Introducer(s): (Banking, Commerce and Insurance Committee)

Title: Change provisions relating to banking and finance

Roll Call Vote - Final Committee Action:

Placed on General File with Amendments

Vote Results:

8 Yes Senators Carlson, Christensen, Gay, Hansen,
Langemeier, Pahls, Pankonin, Pirsch

0 No

0 Absent

0 Present, not voting

Proponents:
Senator Rich Pahls
John Munn
Robert Hallstrom

Representing:
Introducer
Dept. of Banking and Finance
NE Bankers Association

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or change:

LB 851 (Banking, Commerce and Insurance Committee), introduced at the request of the Director of Banking and Finance, would amend various sections regarding banking and finance. The bill would provide, section by section, as follows:

BANKS

Section 1 would amend section 8-115.01 of the Nebraska Banking Act to provide that the date for a public hearing on an application for a new bank charter or for transfer of a bank charter shall be not more than ninety days after the application “has been accepted for filing by the director as substantially complete” rather than ninety days after “filing” the application unless the applicant agrees to a later date. This amendment is proposed because the information filed in connection with an application is voluminous and is sometimes filed in parts, and because an extensive review and analysis of the information is required prior to setting the hearing.

Section 2 would amend section 8-116 of the Nebraska Banking Act, which sets out minimum requirements for surplus, paid-up capital stock, and paid-in undivided profits for a corporation applying for a charter as a new bank. This section of the bill would increase the minimum surplus requirement from the greater of fifty thousand dollars or fifty percent of paid-up capital stock to the greater of seventy thousand dollars or seventy percent of paid-up capital stock. This section of the bill would repeal the requirement that the corporation shall have minimum paid-in undivided profits of not less than twenty percent of its paid-up capital stock. Because a bank not yet in operation does not have any undivided profits, this requirement represents an incorrect accounting treatment.

Sections 3 and 4 would amend sections 8-120 and 8-122 of the Nebraska Banking Act regarding bank charter application and issuance to repeal provisions regarding undivided profits. See description of section 2 of the bill above.

Section 5 would amend section 8-1,140 of the Nebraska Banking Act, which is the “wild-card” statute for state-chartered banks. This section would be amended to give state-chartered banks the same rights, powers, privileges, benefits, and immunities which may be exercised by a national bank doing business in Nebraska as of the effective date of the bill. Due to state constitutional restrictions, this statute is amended annually.

TRUST COMPANIES

Section 6 would amend section 8-223 of the Nebraska Trust Company Act, which provides that a trust company shall file a report of condition every January and July with the Department of Banking and Finance. This section of the bill would provide that this requirement shall not apply to the trust department of a bank if the report of condition of the trust department is included in the report of condition of the bank.

Section 7 would amend section 8-224 of the Nebraska Trust Company Act to provide that its requirement that a trust company’s annual report be published shall not apply to any trust company that makes

an annual disclosure statement available to any member of the general public upon request if (a) the annual disclosure statement is in a form prescribed by the Department of Banking and Finance, (b) the trust company displays a notice in its lobby that the annual disclosure statement may be obtained from the trust company, (c) the home page of any web site maintained by the trust company contains a notice that the annual disclosure statement may be obtained from the trust company, (d) the notice includes, at a minimum, an address and telephone number to which requests for an annual disclosure statement may be made, (e) the first requested copy of the annual disclosure statement provided to a requester is free of charge, and (f) a trust company makes its annual disclosure statement available to the public beginning not later than the following March 31 or, if the trust company mails an annual disclosure to its shareholders, beginning not later than five days after the mailing of the disclosure statement, whichever occurs first. This section of the bill would provide that the publication required by this section would not apply to reports of the trust department of a bank “if the report of condition of the trust department is included in the reports of the bank.”

BUILDING AND LOAN ASSOCIATIONS

Section 8 would amend section 8-355, which is the “wild-card” statute for state-chartered building and loan associations. This section would be amended to give state-chartered building and loan associations the same rights, powers, privileges, benefits, and immunities which may be exercised by a federal savings and loan association doing business in Nebraska as of the effective date of the bill. Due to state constitutional restrictions, this statute is amended annually.

CREDIT UNIONS

Section 9 would amend section 21-17,115 of the Credit Union Act, which is the “wild-card” statute for state-chartered credit unions. This section would be amended to give state-chartered credit unions the same rights, powers, privileges, benefits, and immunities which may be exercised by a federal credit union doing business in Nebraska as of the effective date of the bill. Due to state constitutional restrictions, this statute is amended annually.

MISCELLANEOUS PROVISIONS

Section 10 would provide for operative dates. (Sections 5 and 8 to 11 of the bill would be subject to the emergency clause.)

Section 11 would provide for repealers of sections subject to the emergency clause.

Section 12 would provide for repealers of sections not subject to the emergency clause.

Section 13 would provide for the emergency clause.

Explanation of amendments, if any:

The committee amendments (AM1782) would become the bill. The committee amendments contain the provisions of and any pending committee amendments to LB 113, LB 116, LB 716, LB 717, LB 851, LB 852, and LB 918, as follows:

The provisions of LB 113 (Pahls) would amend section 8-2102 of the Interstate Branching By Merger Act of 1997 to provide a definition of “bank” for purposes of the act. The definition would incorporate by reference a definition of bank in federal statute, 12 U.S.C. 1813, thereby clarifying that the restrictions in the Interstate Branching By Merger Act of 1997 apply to a broad range of financial institutions, including industrial loan companies. The amendments would reaffirm existing law that out-of-state financial institutions may not establish a “de novo” branch in this state or acquire a branch located in this state without engaging in an interstate merger transaction with a Nebraska bank or without the acquisition of a Nebraska bank. (Section 15 of the committee amendments.)

The provisions of LB 116 (Pahls) would amend Uniform Commercial Code Section 9-324 to clarify provisions regarding a conflicting purchase-money security interest and security interest in the same livestock. Subsection (d) of this section currently provides that a perfected purchase-money security interest in

livestock has priority over a conflicting security interest in the same livestock if the purchase-money security interest is perfected when the debtor receives possession of the livestock. The amendments would provide that such possession means possession by the debtor or possession by a third party on behalf of or at the direction of the debtor, including, but not limited to, possession by a bailee or an agent of the debtor. (Section 27 of the committee amendments.)

The provisions of LB 716 (Pahls) would amend Uniform Commercial Code section 9-506 to provide that a financing statement with minor errors or omissions is not seriously misleading if a search of “the debtor’s correct last name” in the records of the filing office would disclose the financing statement. This section of the code currently provides, as a general matter, that a financing statement substantially satisfying the requirements of the code is effective unless errors or omissions make the financing statement seriously misleading. (Section 28 of the committee amendments.)

The provisions of LB 717 (Pahls) would amend sections 8-115.01, 8-143.01, and 8-157 of the Nebraska Banking Act, section 8-234 of the Nebraska Trust Company Act, section 8-374 of the building and loan association statutes, section 8-1510 of the acquisition or merger of financial institution statutes, section 25-202 of the commencement and limitation of actions statutes, and section 64-214 of the notaries statutes to replace certified mail notice requirements with first-class mail notice requirements; clarify that a state-chartered bank may, by board of directors resolution or bylaws, exclude a licensed executive officer from the definition of executive officer for purposes of insider lending restrictions if such officer is not authorized to participate in major policymaking functions of the bank and does not actually participate in such functions; extend from twenty to thirty years the period of time in which a cause of action for the foreclosure of a mortgage or deed of trust accrues with respect to the rights of subsequent purchasers and encumbrancers for value; and allow employees and agents of a bank to take acknowledgments of third parties to any written instrument given to the bank and to administer oaths for any other stockholder, director, officer, employee, or agent of the bank. The amendments would outright repeal section 30-3206, regarding short-term placement of funds awaiting investment or distribution by a bank or trust company serving as a fiduciary in deposits of the commercial department of such bank or trust company. (Sections 1, 5, 6, 10, 12, 14, 18, 26, and 32 of the committee amendments.)

The provisions of LB 851 (Banking, Commerce and Insurance Committee), introduced at the request of the Director of Banking and Finance, would amend sections 8-115.01, 8-116, 8-120, 8-122, and 8-1,140 of the Nebraska Banking Act, sections 8-223 and 8-224 of the Nebraska Trust Company Act, section 8-355 of the building and loan association statutes, and section 21-17,115 of the Credit Union Act in order to update the laws relating to bank charter applications, trust company and trust department reports and publications, and to provide for the annual re-enactment of the wild-card statutes for state-chartered banks, building and loan associations, and credit unions. (Section 1 to 4, 7 to 9, 11, and 17 of the committee amendments.)

The provisions of LB 852 (Banking, Commerce and Insurance Committee), introduced at the request of the Director of Banking and Finance, would amend sections 45-702 to 45-704, and 45-722 of the Mortgage Bankers Registration and Licensing Act, sections 45-907 and 45-922 of the Delayed Deposit Services Licensing Act, and section 45-1006 of the Nebraska Installment Loan Act in order to update the laws relating to mortgage bankers, delayed deposit services licensees, and installment loan licensees. (Sections 19 to 25 of the committee amendments.)

The provisions of LB 918 (Pahls) would amend section 8-910 of the Nebraska Bank Holding Company Act of 1995 to provide that the holding company deposit cap of 22 percent of total bank and savings and loan deposits in Nebraska does not apply to segregated deposits from nonresidents of Nebraska in an owned or controlled bank. The amendments would amend section 8-2106 of the Interstate Branching By Merger Act of 1997 to harmonize an internal reference. (Sections 13 and 16 of the committee amendments.)

The committee amendments would provide, section by section, as follows:

BANKS

Section 1 would amend section 8-115.01 of the Nebraska Banking Act to provide that the date for a public hearing on an application for a new bank charter or for transfer of a bank charter shall be not more than ninety days after the application “has been accepted for filing by the director as substantially complete” rather than ninety days after “filing” the application unless the applicant agrees to a later date. This amendment is proposed because the information filed in connection with an application is voluminous and is sometimes filed in parts, and because an extensive review and analysis of the information is required prior to setting the hearing. Section 1 would also amend section 8-115.01 of the Nebraska Banking Act to provide that notice to other financial institutions regarding an application by a bank for a new charter, to transfer a charter, or to move a main office shall be sent by the Director of Banking and Finance by “first-class mail, postage prepaid,” rather than by “certified mail.” (Section 1 of LB 851 as introduced and section 1 of LB 717.)

Section 2 would amend section 8-116 of the Nebraska Banking Act, which sets out minimum requirements for surplus, paid-up capital stock, and paid-in undivided profits for a corporation applying for a charter as a new bank. This section would increase the minimum surplus requirement from the greater of fifty thousand dollars or fifty percent of paid-up capital stock to the greater of seventy thousand dollars or seventy percent of paid-up capital stock. This section would repeal the requirement that the corporation shall have minimum paid-in undivided profits of not less than twenty percent of its paid-up capital stock. Because a bank not yet in operation does not have any undivided profits, this requirement represents an incorrect accounting treatment. (Section 2 of LB 851 as introduced.)

Sections 3 and 4 would amend sections 8-120 and 8-122 of the Nebraska Banking Act regarding bank charter application and issuance to repeal provisions regarding undivided profits. See description of section 2 above. (Sections 3 and 4 of LB 851 as introduced.)

Section 5 would amend section 8-143.01 of the Nebraska Banking Act to clarify that an executive officer of a bank may be exempted from designation as an executive officer by board of directors resolution or bank bylaws if such individual is not authorized to participate and does not participate in the major policy making functions of the bank. (Section 2 of LB 717.)

Section 6 would amend section 8-157 of the Nebraska Banking Act to provide that notice to other financial institutions regarding an application by a bank for a branch, to establish a mobile branch, to acquire a branch, or to move a branch shall be sent by the Director of Banking and Finance by “first-class mail, postage prepaid,” rather than by “certified mail.” (Section 3 of LB 717.)

Section 7 would amend section 8-1,140 of the Nebraska Banking Act, which is the “wild-card” statute for state-chartered banks. This section would be amended to give state-chartered banks the same rights, powers, privileges, benefits, and immunities which may be exercised by a national bank doing business in Nebraska as of the effective date of the bill. Due to state constitutional restrictions, this statute is amended annually. (Section 5 of LB 851 as introduced.)

TRUST COMPANIES

Section 8 would amend section 8-223 of the Nebraska Trust Company Act, which provides that a trust company shall file a report of condition every January and July with the Department of Banking and Finance. This section would provide that this requirement shall not apply to the trust department of a bank if the report of condition of the trust department is included in the report of condition of the bank. (Section 6 of LB 851 as introduced.)

Section 9 would amend section 8-224 of the Nebraska Trust Company Act to provide that its requirement that a trust company’s annual report be published shall not apply to any trust company that makes an annual disclosure statement available to any member of the general public upon request if (a) the annual disclosure statement is in a form prescribed by the Department of Banking and Finance, (b) the trust company displays a notice in its lobby that the annual disclosure statement may be obtained from the trust company, (c) the home page of any web site maintained by the trust company contains a notice that the annual disclosure

statement may be obtained from the trust company, (d) the notice includes, at a minimum, an address and telephone number to which requests for an annual disclosure statement may be made, (e) the first requested copy of the annual disclosure statement provided to a requester is free of charge, and (f) a trust company makes its annual disclosure statement available to the public beginning not later than the following March 31 or, if the trust company mails an annual disclosure to its shareholders, beginning not later than five days after the mailing of the disclosure statement, whichever occurs first. This section would provide that the publication required by this section would not apply to reports of the trust department of a bank “if the report of condition of the trust department is included in the reports of the bank.” (Section 7 of LB 851 as introduced.)

Section 10 would amend section 8-234 of the Nebraska Trust Company Act to provide that notice to other financial institutions regarding an application to establish a branch trust office shall be sent by the Director of Banking and Finance by “first-class mail, postage prepaid,” rather than by “certified mail.” (Section 4 of LB 717.)

BUILDING AND LOAN ASSOCIATIONS

Section 11 would amend section 8-355, which is the “wild-card” statute for state-chartered building and loan associations. This section would be amended to give state-chartered building and loan associations the same rights, powers, privileges, benefits, and immunities which may be exercised by a federal savings and loan association doing business in Nebraska as of the effective date of the bill. Due to state constitutional restrictions, this statute is amended annually. (Section 8 of LB 851 as introduced.)

Section 12 would amend section 8-374 of the building and loan association statutes to provide that the expense of “any” publication of notice regarding an application for a certificate of approval for a capital stock savings and loan association shall be paid by the applicant. (Section 5 of LB 717.)

BANK HOLDING COMPANIES

Section 13 would amend section 8-910 of the Nebraska Bank Holding Company Act of 1995 to provide that the holding company deposit cap of 22 percent of total bank and savings and loan deposits in Nebraska does not apply to segregated deposits from nonresidents of Nebraska in an owned or controlled bank. (Section 1 of LB 918.)

ACQUISITION OR MERGER OF FINANCIAL INSTITUTIONS

Section 14 would amend section 8-1510 of the acquisition or merger of financial institutions statutes to provide that notice to other financial institutions regarding an application for cross-industry acquisition or merger shall be sent by the Director of Banking and Finance by “first-class mail, postage prepaid,” rather than by “certified mail” or may be sent by “electronic mail” if the financial institution agrees in advance to receive notices by it. (Section 6 of LB 717.)

INTERSTATE BRANCHING BY MERGER

Section 15 would amend section 8-2102 of the Interstate Branching By Merger Act of 1997 to provide a definition of “bank” for purposes of the act. The definition would incorporate by reference a definition of bank in federal statute, 12 U.S.C. 1813, thereby clarifying that the restrictions in the Interstate Branching By Merger Act of 1997 apply to a broad range of financial institutions, including industrial loan companies. The amendments would reaffirm existing law that out-of-state financial institutions may not establish a “de novo” branch in this state or acquire a branch located in this state without engaging in an interstate merger transaction with a Nebraska bank or without the acquisition of a Nebraska bank. (LB 113 committee amendments.)

Section 16 would amend section 8-2106 of the Interstate Branching By Merger Act of 1997 to harmonize an internal reference. (Section 2 of LB 918.)

CREDIT UNIONS

Section 17 would amend section 21-17,115 of the Credit Union Act, which is the “wild-card” statute for state-chartered credit unions. This section would be amended to give state-chartered credit unions the same rights, powers, privileges, benefits, and immunities which may be exercised by a federal credit union

doing business in Nebraska as of the effective date of the bill. Due to state constitutional restrictions, this statute is amended annually. (Section 9 of LB 851 as introduced.)

FORECLOSURE

Section 18 would amend section 25-202 to provide that its provisions regarding the statute of limitations for causes of actions for foreclosure of mortgages also apply to deeds of trust and that if no date of maturity is stated or ascertainable from the filed mortgage or deed of trust the cause of action for foreclosure accrues no later than “thirty” years rather than no later than “twenty” years after the date of the mortgage or deed of trust. (Section 7 of LB 717.)

MORTGAGE BANKERS

Section 19 would amend section 45-702 of the Mortgage Bankers Registration and Licensing Act to provide that a “mortgage banker” and a “mortgage banking business” shall be defined as a person or entity, not otherwise exempt from the act, that makes or offers to make “a mortgage loan” rather makes or offers to make “ten or more mortgage loans in a calendar year.” This amendment would eliminate what is known as the “de minimus exclusion or exemption” in the act. (Section 1 of LB 852.)

Section 20 would amend section 45-703 of the Mortgage Bankers Registration and Licensing Act to provide an exemption from the act for any individual who does not regularly engage in the mortgage banking business (1) who makes a mortgage loan with his or her own funds for his or her own investment, (2) who makes a purchase-money mortgage, or (3) who finances the sale of his or her own real property without the intent to resell the mortgage loan. (Section 2 of LB 852.)

Section 21 would amend section 45-704 of the Mortgage Bankers Registration and Licensing Act to adjust an internal reference in response to provisions which would be added to section 45-703 by section 2. (Section 3 of LB 852.)

Section 22 would amend section 45-722 of the Mortgage Bankers Registration and Licensing Act to provide (1) that no person shall acquire control of any mortgage banking required to be licensed under the act without giving “thirty” days’ rather than “sixty” days’ notice to the Department of Banking and Finance and (2) that the Director of Banking and Finance, upon receipt of the notice, shall act upon it within thirty days and, unless he or she disapproves the acquisition within that time, the acquisition shall become effective on the “thirty-first” rather than the “sixty-first” day after receipt without the director’s approval. (Section 4 of LB 852.)

DELAYED DEPOSIT SERVICES

Section 23 would amend section 45-907 of the Delayed Deposit Services Licensing Act to provide that the applicant for a license shall pay the expense of any publication by the Department of Banking and Finance of notice that the application for a license has been filed and that a hearing will be set if no written protest against issuance of the license has been filed with the department. (Section 5 of LB 852.)

Section 24 would amend section 45-922 of the Delayed Deposit Services Licensing Act to provide that the Director of Banking and Finance may suspend or revoke a license if he or she finds that a licensee has knowingly violated a voluntary consent or compliance agreement which had been entered into with the director. (Section 6 of LB 852.)

INSTALLMENT LOANS

Section 25 would amend section 45-1006 of the Nebraska Installment Loan Act to provide that when an application for an original installment loan license has been accepted by the Director of Banking and Finance as substantially complete, notice of the filing of the application shall be published by the Department of Banking and Finance and, unless waived by the director, a hearing shall be held not less than thirty days after the last publication rather than not less than thirty days after the filing of the application, with the costs of the hearing paid by the applicant. (Section 7 of LB 852.)

RECOGNITION OF ACKNOWLEDGMENTS

Section 26 would amend section 64-214 of the notary statutes to provide that it is lawful for an employee or agent of a bank, as well as a stockholder or director of a bank, who is a notary public, to take the acknowledgment of any person to any written instrument given to or by the bank and to administer an oath to any other stockholder, director, officer, employee, or agent of the bank. (Section 8 of LB 717.)

UNIFORM COMMERCIAL CODE – SECURED TRANSACTIONS

Section 27 would amend Uniform Commercial Code Section 9-324 to clarify provisions regarding a conflicting purchase-money security interest and security interest in the same livestock. Subsection (d) of this section currently provides that a perfected purchase-money security interest in livestock has priority over a conflicting security interest in the same livestock if the purchase-money security interest is perfected when the debtor receives possession of the livestock. The amendments would provide that such possession means possession by the debtor or possession by a third party on behalf of or at the direction of the debtor, including, but not limited to, possession by a bailee or an agent of the debtor. (Section 1 of LB 116.)

Section 28 would amend Uniform Commercial Code section 9-506 to provide that a financing statement with minor errors or omissions is not seriously misleading if a search of “the debtor’s correct last name” in the records of the filing office would disclose the financing statement. This section of the code currently provides, as a general matter, that a financing statement substantially satisfying the requirements of the code is effective, unless errors or omissions make the financing statement seriously misleading. (Section 1 of LB 716.)

MISCELLANEOUS PROVISIONS

Section 29 would provide for operative dates. (Sections 1, 5 to 7, 10 to 18, 22, 26, 27, 29, 31, and 32 would be subject to the emergency clause.)

Section 30 would provide for repealers of sections not subject to the emergency clause.

Section 31 would provide for repealers of sections subject to the emergency clause.

Section 32 would provide for outright repeal of section 30-3206 regarding short-term placement of funds awaiting investment or distribution by a bank or trust company serving as a fiduciary in deposits of the commercial department of such bank or trust company. (Section 10 of LB 717.)

Section 33 would provide for the emergency clause.

Senator Rich Pahls, Chairperson