

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 775

Introduced by Seiler, 33; Nelson, 6.

Read first time January 10, 2014

Committee: Judiciary

A BILL

1 FOR AN ACT relating to banks and banking; to amend sections 8-1401,
2 8-1402, and 8-1403, Reissue Revised Statutes of Nebraska;
3 to change provisions relating to disclosure of
4 confidential information; to harmonize provisions; and to
5 repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 8-1401, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 8-1401 (1) No person organized under the Business
4 Corporation Act, the Credit Union Act, the Nebraska Banking Act, the
5 Nebraska Industrial Development Corporation Act, the Nebraska
6 Nonprofit Corporation Act, the Nebraska Professional Corporation Act,
7 the Nebraska Trust Company Act, or Chapter 8, article 3, or otherwise
8 authorized to conduct business in Nebraska or organized under the
9 laws of the United States, shall be required to disclose any records
10 or information, financial or otherwise, that it deems confidential
11 concerning its affairs or the affairs of any person with which it is
12 doing business to any person, party, agency, or organization, unless:

13 (a) The disclosure relates to a lawyers trust account and
14 is required to be made to the Counsel for Discipline of the Nebraska
15 Supreme Court pursuant to a rule adopted by the Nebraska Supreme
16 Court;

17 (b) The disclosure is governed by rules for discovery
18 promulgated pursuant to section 25-1273.01;

19 (c) The disclosure is made pursuant to section 3 of this
20 act;

21 ~~(e)~~—(d) The request for disclosure is made by a law
22 enforcement agency regarding a crime, a fraud, or any other unlawful
23 activity in which the person to whom the request for disclosure is
24 made is or may be a victim of such crime, fraud, or unlawful
25 activity;

1 ~~(d)~~—(e) The request for disclosure is made by a
2 governmental agency which is a duly constituted supervisory
3 regulatory agency of the person to whom the request for disclosure is
4 made and the disclosure relates to examinations, audits,
5 investigations, or inquiries of such persons;

6 ~~(e)~~—(f) The request for disclosure is made pursuant to
7 subpoena issued under the laws of this state by a governmental agency
8 exercising investigatory or adjudicative functions with respect to a
9 matter within the agency's jurisdiction;

10 ~~(f)~~—(g) The production of records is pursuant to a
11 written demand of the Tax Commissioner under section 77-375;

12 ~~(g)~~—(h) There is first presented to such person a
13 subpoena, summons, or warrant issued by a court of competent
14 jurisdiction;

15 ~~(h)~~—(i) A statute by its terms or rules and regulations
16 adopted and promulgated thereunder requires the disclosure, other
17 than by subpoena, summons, warrant, or court order;

18 ~~(i)~~—(j) There is presented to such person an order of a
19 court of competent jurisdiction setting forth the exact nature and
20 limits of such required disclosure and a showing that all persons to
21 be affected by such order have had reasonable notice and an
22 opportunity to be heard upon the merits of such order;

23 ~~(j)~~—(k) The request for disclosure relates to information
24 or records regarding the balance due, monthly payments due, payoff
25 amounts, payment history, interest rates, due dates, or similar

1 information for indebtedness owed by a deceased person when the
2 request is made by a person having an ownership interest in real
3 estate or personal property which secures such indebtedness owed to
4 the person to whom the request for disclosure is made; or

5 ~~(*)~~ (1) There is first presented to such person the
6 written permission of the person about whom records or information is
7 being sought authorizing the release of the requested records or
8 information.

9 (2) Any person who makes a disclosure of records or
10 information as required by this section shall not be held civilly or
11 criminally liable for such disclosure in the absence of malice, bad
12 faith, intent to deceive, or gross negligence.

13 Sec. 2. Section 8-1402, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 8-1402 (1) Any person, party, agency, or organization
16 requesting disclosure of records or information pursuant to section
17 8-1401 shall pay the costs of providing such records or information,
18 unless:

19 (a) The request for disclosure is made pursuant to
20 subdivision (1)(a) of section 8-1401 and a Nebraska Supreme Court
21 rule provides for the method of payment;

22 (b) The request is made pursuant to subdivision (1)(b) of
23 section 8-1401 and the rules for discovery provide for the method of
24 payment;

25 (c) The request for disclosure is made pursuant to

1 subdivision ~~(1)(c) or (1)(d)~~ (1)(d) or (1)(e) of section 8-1401;

2 (d) Otherwise ordered by a court of competent
3 jurisdiction; or

4 (e) The person making the disclosure waives any or all of
5 the costs.

6 (2) The requesting person, party, agency, or organization
7 shall pay five dollars per hour per person for the time actually
8 spent on the service or, if such person can show that its actual
9 expense in providing the records or information was greater than five
10 dollars per hour per person, it shall be paid the actual cost of
11 providing the records or information.

12 (3) No person authorized to receive payment pursuant to
13 subsection (1) of this section has an obligation to provide any
14 records or information pursuant to section 8-1401 until assurances
15 are received that the costs due under this section will be paid,
16 except for requests made pursuant to subdivisions ~~(1)(c), (1)(d), (1)~~
17 ~~(e), and (1)(f)~~ (1)(e), (1)(g), (1)(h), and (1)(i) of section 8-1401.

18 Sec. 3. (1) This section does not apply to:

19 (a) Real property owned by a decedent; or

20 (b) The contents of a safety deposit box rented by a
21 decedent from a state-chartered or federally chartered bank, savings
22 bank, building and loan association, savings and loan association, or
23 credit union.

24 (2) After the death of a decedent, a person (a) indebted
25 to the decedent or (b) having possession of (i) personal property,

1 (ii) an instrument evidencing a debt, (iii) an obligation, (iv) a
2 chase in action, (v) a life insurance policy, (vi) a bank account,
3 (vii) a certificate of deposit, or (viii) intangible property,
4 including annuities, fixed income investments, mutual funds, cash,
5 money market accounts, or stocks, belonging to the decedent, shall
6 furnish the value of the indebtedness or property on the date of
7 death and the names of the known or designated beneficiaries of
8 property described in this subsection to a person who is (A) an heir
9 at law of the decedent, (B) a devisee of the decedent or a person
10 nominated as a personal representative in a will of the decedent, or
11 (C) an agent or attorney authorized in writing by any such person
12 described in subdivision (A) or (B) of this subdivision, with a copy
13 of such authorization attached to the affidavit, and who also
14 presents an affidavit containing the information required by
15 subsection (3) of this section.

16 (3) An affidavit presented under subsection (2) of this
17 section shall state:

18 (a) The name, address, social security number if
19 available, and date of death of the decedent;

20 (b) The name and address of the affiant and that the
21 affiant is (A) an heir at law of the decedent, (B) a devisee of the
22 decedent or a person nominated as a personal representative in a will
23 of the decedent, or (C) an agent or attorney authorized in writing by
24 any such person described in subdivision (A) or (B) of this
25 subdivision;

1 (c) That the disclosure of the value on the date of death
2 is necessary to determine whether the decedent's estate can be
3 administered under the summary procedures set forth in section
4 30-24,125 or 30-24,127 to assist in the determination of the
5 inheritance tax in an estate that is not subject to probate or to
6 assist a conservator or guardian in the preparation of a final
7 accounting subsequent to the death of the decedent;

8 (d) That the affiant is answerable and accountable for
9 the information received to the decedent's personal representative,
10 if any, or to any other person having a superior right to the
11 property or indebtedness;

12 (e) That the affiant swears or affirms that all
13 statements in the affidavit are true and material and further
14 acknowledges that any false statement may subject the person to
15 penalties relating to perjury under section 28-915; and

16 (f) That no application or petition for the appointment
17 of a personal representative is pending or has been granted in any
18 jurisdiction.

19 (4) A person presented with an affidavit under subsection
20 (2) of this section shall provide the requested information within
21 five business days after being presented with the affidavit.

22 (5) A person who acts in good faith reliance on an
23 affidavit presented under subsection (2) of this section is immune
24 from liability for the disclosure of the requested information.

25 Sec. 4. Section 8-1403, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 8-1403 For purposes of sections 8-1401 and 8-1402 and
3 section 3 of this act:

4 (1) Governmental agency means any agency, department, or
5 commission of this state or any authorized officer, employee, or
6 agent of such agency, department, or commission;

7 (2) Law enforcement agency means an agency or department
8 of this state or of any political subdivision of this state that
9 obtains, serves, and enforces arrest warrants or that conducts or
10 engages in prosecutions for violations of the law; and

11 (3) Person means any individual, corporation,
12 partnership, limited liability company, association, joint stock
13 association, trust, unincorporated organization, and any other legal
14 entity.

15 Sec. 5. Original sections 8-1401, 8-1402, and 8-1403,
16 Reissue Revised Statutes of Nebraska, are repealed.