

ONE HUNDRED SEVENTH LEGISLATURE - FIRST SESSION - 2021
COMMITTEE STATEMENT
LB363

Hearing Date: Tuesday January 26, 2021
Committee On: Banking, Commerce and Insurance
Introducer: Williams
One Liner: Change provisions relating to banking, finance, securities, consumer protection, dividends, and installment sales and loans

Roll Call Vote - Final Committee Action:

Advanced to General File

Vote Results:

Aye: 8 Senators Aguilar, Bostar, Flood, Lindstrom, McCollister, Pahls, Slama, Williams
Nay:
Absent:
Present Not Voting:

Oral Testimony:

Proponents:

Senator Matt Williams
Kelly Lammers
Bob Hallstrom

Representing:

Introducer
Nebraska Department of Banking & Finance
Nebraska Bankers Association

Opponents:

Representing:

Neutral:

Representing:

Submitted Written Testimony:

Proponents:

Julia Plucker

Representing:

Nebraska Credit Union League

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB 363, introduced at the request of the Nebraska Department of Banking and Finance, amends a number of statutes under the jurisdiction of the Department. The bill provides, section by section, as follows:

Section 1 amends Section 8-135 of the Nebraska Banking Act, which authorizes minors to establish deposit accounts, to update a reference within Subsection (3) to the federal Electronic Fund Transfer Act as the Act existed on January 1, 2021 (currently January 1, 2020).

Section 2 amends Section 8-141 of the Nebraska Banking Act, which sets the lending limits for state-chartered banks, to update references within subsection (6) to 12 U.S.C. 1817(a)(3), the federal regulation relating to filing Reports of Condition, as the regulation existed on January 1, 2021 (currently January 1, 2020).

Section 3 amends Section 8-143.01 of the Nebraska Banking Act, which governs loans to bank insiders, to update a reference within subsection (7) to 12 CFR 215.4(a)(2), relating to extensions of credit to benefit and compensation programs, as the regulation existed on January 1, 2021 (currently January 1, 2020), and to similarly update references within Subsection (10) to 12 USC 84 and its implementing federal Regulation O, as such law and regulation existed on January 1, 2021 (currently January 1, 2020).

Section 4 amends Section 8-157.01 of the Nebraska Banking Act, which governs automated teller machines (ATMs) and electronic switches, to update a reference within Subsection (4) to the federal Electronic Fund Transfer Act as the Act existed on January 1, 2021 (currently January 1, 2020).

Section 5 amends Section 8-163 of the Nebraska Banking Act, relating to dividends paid by state-chartered banks, to replace the references to 'undivided profits on hand' and 'net profits on hand' with 'retained net earnings' and to define such term.

Section 6 amends Section 8-183.04 of the Nebraska Banking Act, which authorizes the conversion of certain mutual savings associations to state-chartered banks, to update a reference to 12 CFR 5.21, the federal regulation governing capital requirements for these associations, as such regulation existed on January 1, 2021 (currently January 1, 2020).

Section 7 amends Section 8-1,140 of the Nebraska Banking Act, which is the 'wild-card' statute for state-chartered banks. This section is being amended to provide that state-chartered banks have the same rights, powers, privileges, and immunities as federally chartered banks doing business in Nebraska as of January 1, 2021 (currently January 1, 2020). Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually.

Section 8 amends Section 8-201 of the Nebraska Trust Company Act, which provides for the chartering of state trust companies, to require information on proposed members of the board of directors as part of a charter application and to add a statutory cross-reference relating to the selection of the trust company's President and Secretary.

Section 9 amends Section 8-204 of the Nebraska Trust Company Act, relating to directors of a state-chartered trust company, to clarify that the President of the trust company must be, or named as, a member of the board of directors, and that a person selected as a director to fill a vacancy on the board must receive the approval of the Department before serving as a trust company director.

Section 10 amends Section 8-318, relating to customer accounts in building and loan associations, to update a reference within Subsection (1)(c) to the federal Electronic Fund Transfer Act as of January 1, 2021 (currently January 1, 2020).

Section 11 amends Section 8-355, which is the 'wild-card' statute for state-chartered savings associations. This section is being amended to provide that state-chartered savings associations have the same rights, powers, privileges, and immunities as federally chartered savings associations doing business in Nebraska as of January 1, 2021 (currently January 1, 2020). Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually.

Section 12 amends Section 8-1101, which is the definitional section of the Securities Act of Nebraska. The amendment would update Subsection (14) to provide that references to the federal Securities Act of 1933, Securities Exchange Act of 1934, Investment Advisers Act of 1940, Commodity Exchange Act, and the Interstate Land Sales Full Disclosure Act will be as the Acts existed on January 1, 2021 (currently January 1, 2020).

Section 13 amends Section 8-1101.01 of the Securities Act of Nebraska to:

Provide, within Subsection (1) that references to federal rules and regulations adopted under the federal Investment Advisors Act of 1940 and the Securities Act of 1933 will be as those rules and regulations existed on January 1, 2021 (currently January 1, 2020), and

Provide, within Subsection (2) that references to the fair practice and ethical standards adopted by the Securities and Exchange Commission or the Financial Industry Regulatory Authority will be as those standards existed on January 1, 2021 (currently January 1, 2020).

Section 14 amends Section 8-1108.02, relating to federal covered securities under Section 18(b)(2) of the federal Securities Act of 1933, to provide a cure process for late filings of federal covered securities. The process will apply to federal Rule 506 filings, which allow sales of these securities without registration to no more than 35 unaccredited investors in Nebraska. Orders curing late filings will be at the discretion of the Director of the Department and a late filing fee of \$200 would be required.

Section 15 amends Section 8-1704 of the Commodity Code, which defines the term "CFTC rule," to update a reference to rules, regulations, or orders of the Commodity Futures Trading Commission in effect on January 1, 2021 (currently January 1, 2020).

Section 16 amends Section 8-1707 of the Commodity Code, which defines the term "Commodity Exchange Act," to update a reference to the federal Commodity Exchange Act in effect on January 1, 2021 (currently January 1, 2020).

Section 17 amends Section 8-2724 of the Nebraska Money Transmitters Act, which provides exemptions from the licensing requirements of the Act, to add exemptions for Nebraska-licensed collection agencies, credit services organizations, and debt management businesses from licensing under the Act, when such businesses are acting within the scope of their license. Such businesses are licensed and regulated by the Nebraska Secretary of State.

Section 18 amends Section 8-2725 of the Nebraska Money Transmitters Act, which sets the parameters for licensing under the Act, to clarify that a license is required for persons providing money transmission services to a Nebraska resident even if the resident is not physically present in Nebraska at the time of the transaction.

Section 19 amends Section 8-2726 of the Nebraska Money Transmitters Act, which establishes the requirements for a license under the Act, to add the requirements that a licensee must be organized in the United States or its territories and have a physical location in the United States.

Section 20 amends Section 8-2729 of the Nebraska Money Transmitters Act, which provides the application requirements for a money transmitter license, to require that all clearing banks used by licensees must be covered by federal deposit insurance, and to require the submission of personal financial statements for key shareholders.

Section 21 amends Section 8-2734 of the Nebraska Money Transmitters Act, which sets the requirements for the annual renewal of a money transmitter license, to eliminate the statutory requirement that a licensee submit a locations report to the Department as part of the renewal process.

Section 22 amends Section 8-2737 of the Nebraska Money Transmitters Act to provide additional investigative authority to the Department; to establish a 21-day response deadline for notices of investigation and inquiries from the Department; to provide for the imposition of a \$2,000/day fine for failure to respond; and to provide for a lien and civil action if a person fails to pay such fine.

Section 23 amends Section 8-2903, relating to financial exploitation of a vulnerable adult or senior adult in the financial institutions sector, to update references within subsection (7) to federal check clearing and collectability laws [12 U.S.C. 5001, 12 U.S.C. 4001, and 12 C.F.R. 31 part 229, as such laws and regulation existed on January 1, 2021 (currently, January 1, 2020)].

Section 24 amends Section 21-17,115 of the Nebraska Credit Union Act, which is the "wild-card" statute for state-chartered credit unions. This section is being amended to provide that state-chartered credit unions have the same rights, powers, privileges, and immunities as federally chartered credit unions doing business in Nebraska as of January 1, 2021 (currently January 1, 2020). Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually.

Section 25 amends Section 45-335 of the Nebraska Installment Sales Act to revise the definition of "sales finance company" within subsection (11), to include parties that acquire any rights of ownership, servicing, managing, or participation in installment sales contracts, or that otherwise engage with a consumer on behalf of the purchaser of installment sales contracts.

Section 26 amends Section 45-346 of the Nebraska Installment Sales Act, which sets the requirements for a license under the Act, to require, within subsection (3), that a licensee increase its surety bond by \$50,000 for each branch office licensed under the Act.

Section 27 amends Section 45-1004 of the Nebraska Installment Loan Act, to provide that an installment loan license is required for parties who acquire any rights of ownership, or who service, manage, participate in, or otherwise hold an installment loan or engage in business with an installment loan borrower.

Section 28 amends Section 45-1005 of the Nebraska Installment Loan Act, which requires an applicant for a license to submit a form and fee to the Department, to incorporate the revised definition of an installment loan licensee contained in the amendment to Section 45-1004 (Section 27 of this bill).

Section 29 amends Section 59-1722 of the Seller-Assisted Marketing Plan Act, which provides limited exemptions to the Act for certain franchises, to update references to Federal Trade Commission disclosure rules for franchise offerings as such rules existed on January 1, 2021 (currently January 1, 2020).

Section 30 amends Section 69-2103(4) of the Consumer Rental Purchase Agreement Act, which defines the term "consumer rental purchase agreement," to update references to federal definitions contained in 12 CFR 1026.2(a)(16), 15 USC 1602(h), and 12 CFR 1013.2, relating to consumer leases and credit sales, as such regulations and law existed on January 1, 2021 (currently January 1, 2020).

Section 31 amends Section 69-2104 of the Consumer Rental Purchase Agreement Act, which requires disclosures to consumers, to update references within Subsection (2) to the federal Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., as such Act existed on January 1, 2021 (currently January 1, 2020), and within Subsection (3) to the disclosure requirements of the federal Consumer Credit Protection Act, 15 U.S.C. 1667a, as such regulation existed on January 1, 2021 (currently January 1, 2020).

Section 32 amends Section 69-2112 of the Consumer Rental Purchase Agreement Act, which relates to advertisements for consumer rental purchase agreements, to update references within Subsection (4) to the federal Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., as such Act existed on January 1, 2021 (currently January 1, 2020).

Section 33 amends Section 4A-108 of the Uniform Commercial Code to update references within Subsections (a) and (b) to the federal Electronic Fund Transfer Act as it existed on January 1, 2021 (currently January 1, 2020).

Section 34 repeals the statutes amended.

Section 35 provides for the emergency clause for all sections.

Matt Williams, Chairperson