

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 279

FINAL READING

Introduced by Kauth, 31.

Read first time January 11, 2023

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to banking and finance; to amend section
- 2 8-143.01, Revised Statutes Supplement, 2023; to change and eliminate
- 3 provisions relating to the report of loans, indebtedness, and credit
- 4 of executive officers of banks; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 8-143.01, Revised Statutes Supplement, 2023, is
2 amended to read:

3 8-143.01 (1) No bank shall extend credit to any of its executive
4 officers, directors, or principal shareholders or to any related interest
5 of such persons in an amount that, when aggregated with the amount of all
6 other extensions of credit by the bank to that person and to all related
7 interests of that person, exceeds the higher of twenty-five thousand
8 dollars or five percent of the bank's unimpaired capital and unimpaired
9 surplus unless (a) the extension of credit has been approved in advance
10 by a majority vote of the entire board of directors of the bank, a record
11 of which shall be made and kept as a part of the records of such bank,
12 and (b) the interested party has abstained from participating directly or
13 indirectly in such vote.

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

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

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

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

29 (b)(i) In any amount to finance or refinance the purchase,
30 construction, maintenance, or improvement of a residence of such
31 executive officer if the extension of credit is secured by a first lien

1 on the residence and the residence is owned or is expected to be owned
2 after the extension of credit by the executive officer and (ii) in the
3 case of a refinancing, only the amount of the refinancing used to repay
4 the original extension of credit, together with the closing costs of the
5 refinancing, and any additional amount thereof used for any of the
6 purposes enumerated in this subdivision are included within this category
7 of credit;

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

17 (d) For any other purpose not specified in subdivisions (a), (b),
18 and (c) of this subsection if the aggregate amount of such other
19 extensions of credit to such executive officer does not exceed, at any
20 one time, the greater of two and one-half percent of the bank's
21 unimpaired capital and unimpaired surplus or twenty-five thousand
22 dollars, but in no event greater than one hundred thousand dollars or the
23 amount of the bank's lending limit as prescribed in section 8-141,
24 whichever is less.

25 (5)(a) Except as provided in subdivision (b) of this subsection, the
26 board of directors of a bank may obtain a credit report from a recognized
27 credit agency, on an annual basis, for any or all of its executive
28 officers.

29 (b) Subdivision (a) of this subsection does not apply to any
30 executive officer if such officer is excluded by a resolution of the
31 board of directors or by the bylaws of the bank from participating in the

1 ~~major policymaking functions of the bank and does not actually~~
2 ~~participate in the major policymaking functions of the bank.~~

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

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

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

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

26 (7)(a) Except as provided in subdivision (b) of this subsection, no
27 bank shall extend credit to any of its executive officers, directors, or
28 principal shareholders or to any related interest of such persons unless
29 the extension of credit (i) is made on substantially the same terms,
30 including interest rates and collateral, as, and following credit-
31 underwriting procedures that are not less stringent than, those

1 prevailing at the time for comparable transactions by the bank with other
2 persons that are not covered by this section and who are not employed by
3 the bank and (ii) does not involve more than the normal risk of repayment
4 or present other unfavorable features.

5 (b) Nothing in subdivision (a) of this subsection shall prohibit any
6 extension of credit made by a bank pursuant to a benefit or compensation
7 program under the provisions of 12 C.F.R. 215.4(a)(2), as such regulation
8 existed on January 1, 2023.

9 (8) For purposes of this section:

10 (a) Executive officer means a person who participates or has
11 authority to participate, other than in the capacity of director, in the
12 major policymaking functions of the bank, whether or not the officer has
13 an official title, the title designates such officer as an assistant, or
14 such officer is serving without salary or other compensation. Executive
15 officer includes the chairperson of the board of directors, the
16 president, all vice presidents, the cashier, the corporate secretary, and
17 the treasurer, unless the executive officer is excluded by a resolution
18 of the board of directors or by the bylaws of the bank from
19 participating, other than in the capacity of director, in the major
20 policymaking functions of the bank, and the executive officer does not
21 actually participate in such functions. A manager or assistant manager of
22 a branch of a bank shall not be considered to be an executive officer
23 unless such individual participates or is authorized to participate in
24 the major policymaking functions of the bank; and

25 (b) Unimpaired capital and unimpaired surplus means the sum of:

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

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

31 (iii) Any valuation reserves created by charges to the bank's income

1 reported on its most recent consolidated report of condition filed under
2 section 8-166.

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

7 (10) The Director of Banking and Finance may adopt and promulgate
8 rules and regulations to carry out this section, including rules and
9 regulations defining or further defining terms used in this section,
10 consistent with the provisions of 12 U.S.C. 84 and implementing
11 Regulation O as such section and regulation existed on January 1, 2023.

12 Sec. 2. Original section 8-143.01, Revised Statutes Supplement,
13 2023, is repealed.