



Ninety-Ninth Legislature - Second Session - 2006
Revised Committee Statement
LB 876

Hearing Date: January 17, 2006

Committee On: Banking, Commerce and Insurance

Introducer(s): (Banking, Commerce and Insurance Committee: Mines, Chairperson; Flood, Jensen, Johnson, Langemeier, Loudon, Pahls, Redfield)

Title: Change provisions relating to banking and finance

Roll Call Vote – Final Committee Action:

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

7 Yes Senators Mines, Redfield, Flood, Jensen, Langemeier, Loudon,
Pahls

No

Present, not voting

1 Absent Senator Johnson

Proponents:

Senator Mick Mines
John Munn
Robert J. Hallstrom
Brandon Luetkenhaus

Representing:

Introducer
NE Department of Banking and Finance
NE Bankers Association
NE Credit Union League

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB 876 (Banking, Commerce and Insurance Committee), introduced at the request of the Department 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 8-141 of the Nebraska Banking Act, which sets forth the manner of determining the lending limits of individual state banks. This section would provide

that in calculations involving a state bank's unimpaired capital and unimpaired surplus or a state bank's paid-up capital and surplus, the Department of Banking, and Finance may, by order, deny or limit the inclusion of goodwill in the calculation. This section would specifically provide that this is an exception to the state-chartered bank wild card law, section 8-1,140.

Sections 2 and 3 would amend sections 8-178 and 8-179 of the Nebraska Banking Act relating to the conversion of national banks to state-chartered banks, to provide specific procedures for the accompanying conversion of a trust company business within the trust department of such a converting national bank to a trust company business within a trust department of the converted state-chartered bank.

Section 4 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 operative date of this section. (This section would be subject to the bill's emergency clause.) Due to state constitutional restrictions, this statute must be re-enacted annually.

BUILDING AND LOAN ASSOCIATIONS

Section 5 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 operative date of this section. (This section would be subject to the bill's emergency clause.) Due to state constitutional restrictions, this statute must be re-enacted annually.

SALE OF CHECKS AND FUNDS TRANSMISSION

Section 6 would amend section 8-1001.01 of the Nebraska Sale of Checks and Funds Transmission Act to provide that new sections 10 and 11 of the bill shall be assigned within the act.

Section 7 would amend section 8-1008 of the Nebraska Sale of Checks and Funds Transmission Act to repeal obsolete provisions.

Section 8 would amend section 8-1010 of the Nebraska Sale of Checks and Funds Transmission Act to harmonize an internal reference.

Section 9 would amend section 8-1012 of the Nebraska Sale of Checks and Funds Transmission Act to provide that the Director of Banking and Finance may suspend or revoke a license only after notice and a hearing in accordance with the Administrative Procedure Act. This section would provide that a licensee may voluntarily surrender a license to the director and that a surrender shall not affect civil or criminal liability for acts committed before the surrender or liability for fines levied before the surrender. This section would provide that if a licensee fails to renew its license as required or fails to maintain a surety bond as required, the Department of Banking and Finance may issue a notice of cancellation of the license in lieu of revocation proceedings. This section would provide that revocation, suspension, surrender, cancellation, or expiration of a license shall not impair or affect the obligation of a preexisting

lawful contract between the licensee and any person. This section would provide that revocation, suspension, surrender, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for any fines levied for acts committed before the surrender.

Section 10 would enact a new section in the Nebraska Sale of Checks and Funds Transmission Act to provide the Department of Banking and Finance with cease and desist authority to enforce the act.

Section 11 would enact a new section in the Nebraska Sale of Checks and Funds Transmission Act to provide the Director of Banking and Finance with investigative powers and would authorize the director to request the Attorney General to enforce the act.

CREDIT UNIONS

Section 12 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 operative date of this section. (This section would be subject to the bill’s emergency clause.) Due to state constitutional restrictions, this statute must be re-enacted annually.

MORTGAGE BANKERS

Section 13 would amend section 45-701 of the Mortgage Bankers Registration and Licensing Act to provide that new section 21 of the bill shall be assigned within the act.

Section 14 would amend section 45-702 of the Mortgage Bankers Registration and Licensing Act, the definition section of the act, to provide for a definition of a new term “offer” (every attempt to provide, offer to provide, or solicitation to provide a mortgage loan or any form of mortgage banking business, including all general and public advertising, whether made in print, through electronic media, or by the Internet).

Section 15 would amend section 45-706 of Mortgage Bankers Registration and Licensing Act to provide that the Director of Banking and Finance may deny an application for a mortgage banker license if an officer, director, shareholder, partner, or member was convicted of a felony under state or federal law or convicted of a misdemeanor involving the mortgage banking business, financial institution business, or installment loan business.

Section 16 would amend section 45-707 of the Mortgage Bankers Registration and Licensing Act to provide that revocation, suspension, cancellation, or expiration of a mortgage banker license shall not affect liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members for acts committed before the revocation, suspension, cancellation, or expiration.

Section 17 would amend section 45-709 of the Mortgage Banker Registration and Licensing Act to increase the base amount of the surety bond required to be filed by a licensee from \$50,000 to \$100,000 phased-in until March 1, 2007.

Section 18 would amend section 45-714 of the Mortgage Bankers Registration and Licensing Act, which lists prohibited acts, to provide, additionally, that a licensee, an officer, an employee, or an agent of a licensee shall not (1) advertise any false, misleading, or deceptive statement (a) with regard to rates, terms, or conditions for a mortgage loan on the Internet or (b) regarding the qualifications of the licensee or of any officer, employee or agent, and (2) borrow money from, personally loan money to, or guarantee any loan made to any customer or applicant for a mortgage loan.

Section 19 would amend section 45-717 of the Mortgage Banker Registration and Licensing Act to repeal provisions regarding investigation and enforcement so they can be moved to new section 21 of the bill.

Section 20 would amend section 45-717.01 of the Mortgage Banker Registration and Licensing Act to increase the maximum administrative fine for each violation of the act from \$1,000 to \$5,000.

Section 21 would enact a new section in the Mortgage Bankers Registration and Licensing Act to provide the Director of Banking and Finance with investigative authority and authorize the director to request the Attorney General to enforce the act.

INSTALLMENT LOANS

Section 22 would amend section 45-1007 of the Nebraska Installment Loan Act to provide for repeal of obsolete provisions.

MISCELLANEOUS

Section 23 would provide that sections 4, 5, and 12 of the bill (the “wild-card” sections) would be subject to the emergency clause.

Section 24 would provide for repealers of amendatory sections subject to the emergency clause.

Section 25 would provide for repealers of amendatory sections not subject to the emergency clause.

Section 26 would provide for the emergency clause.

Explanation of amendments, if any:

AMENDMENTS TO BILL AS INTRODUCED

The committee amendments (AM1997) would provide that sections 2 and 3 of the bill, as introduced, would be subject to the emergency clause. (These sections would amend sections 8-178 and 8-179 of the Nebraska Banking Act relating to the conversion of national banks to state-chartered banks, to provide specific procedures for the accompanying conversion of a trust company business within the trust department of such a converting national bank to a trust company business within a trust department of the converted state-chartered bank.)

AMENDMENTS TO ADD PROVISIONS OF OTHER BILLS

LB 877 (Banking, Commerce and Insurance Committee) Change community development investment conditions for banks

Section 2 of the committee amendments would amend section 8-148.04 of the Nebraska Banking Act to increase the maximum amount of investment a state-chartered bank can make in any one community development entity from 5 percent to 10 percent of the bank's capital and surplus. The amendments would provide that if the bank's investment in any one entity would exceed 5 percent of its capital and surplus, the prior written approval of the Department of Banking and Finance must be obtained. Currently, this section provides that the bank's investment in any one entity cannot exceed 5 percent of its capital and surplus and its aggregate investments in all such entities cannot exceed 10 percent of its capital and surplus. (This section would be subject to the emergency clause.)

LB 985 (Mines) Change provisions relating to banker's banks

Sections 13 to 15 of the committee amendments would amend sections 8-1601, 8-1602, 8-1605 of the banker's bank statutes. These statutes currently allow for the formation of a banker's bank, which is FDIC-insured, owned by other Nebraska banks, and provides services exclusively for other banks.

The amendments would allow a banker's bank to be owned by bank holding companies, foreign bank holding companies, as well as other Nebraska banks, or a combination of such entities. The amendments would allow banks to own an interest in a bank holding company or foreign bank holding company of a banker's bank or foreign banker's bank.

LB 927 (Mines) Change Uniform Commercial Code provisions governing secured transactions

Sections 27 of the committee amendments would amend Uniform Commercial Code (UCC) Section 9-705 to provide that a financing statement filed in the proper place in Nebraska before July 1, 2001, under former UCC Article 9, and for which the proper place of filing in Nebraska was not changed on July 1, 2001, under Revised UCC Article 9, shall not be subject to the provisions of subdivision (c)(2) of this section which would otherwise cause such financing statement to cease to be effective on June 30, 2006.

Section 28 of the committee amendments would amend UCC Section 9-707 to harmonize an internal reference.

(These sections would be subject to the emergency clause.)

Senator Mick Mines, Chairperson