

One Hundred Fifth Legislature - First Session - 2017

Introducer's Statement of Intent

LB140

Chairperson: Senator Brett Lindstrom

Committee: Banking, Commerce and Insurance

Date of Hearing: January 23, 2017

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 140 is the product of Legislative Resolution 430 (2016). LB 140 represents the first comprehensive update to the Nebraska Banking Act since 1963.

LB 140 can be divided into substantive changes and non-substantive (stylistic) changes.

SUBSTANTIVE CHANGES

Substantive changes include new sections to the Act, repealed sections, and materially revised sections of the Act and related statutes.

NEW SECTIONS

Section 1 sets forth the four new sections of the Act found in sections 1, 2, 37, and 51 of LB 140.

Section 2 provides definitions for the Act in alphabetical order.

Section 37 is currently contained in Section 8-702(2)(b) [see Section 137 of LB 140]. It requires that banks that employ a mortgage loan originator must register that employee or employees with the Nationwide Mortgage Licensing System.

Section 51 would:

- allow a bank to acquire the stock of another financial institution if the transaction is part of the merger, consolidation or acquisition of assets of the other institution; and
- allow a bank to acquire the stock of a company controlling another financial institution if the transaction is part of the merger or consolidation of the company controlling the other financial institution with the bank's controlling company, or part of an acquisition of assets of the other controlling company.

In all of these transactions, the law would provide that the merger, consolidation or assets acquisition occurs on the same day that the stock is acquired, the other financial institution will not be operated as a separate entity, and the Director of the Department must give prior approval.

REPEALED SECTIONS

Section 157 would outright repeal these statutes as being obsolete:

- Section 8-121, which requires the Department to issue a certificate to an applicant for a bank charter stating that the applicant has complied with state laws and advising of any requirements which must be met;
- Section 8-151, which provides that a bank shall not increase the book value of property without obtaining the prior approval of the Department;
- Section 8-1,120, which authorizes the Department to offer and pay up to \$250 for the apprehension and conviction of any person violating the Act; and
- Sections 8-816, 8-819, and 8-827, relating to the requirement of registration by banks of a statement of intention to make personal loans in order to charge an interest rate on such loans greater than usury.

AMENDED SECTIONS

Department Employees

Section 6 would amend Section 8-105, to:

- change the current prohibition against the employment of any relative of any employee of the Department to a provision that would provide that the employment of anyone working for the Department is subject to Nebraska Statute §49-1499.07, which is the state's nepotism statute;
- clarify that the Director may hire legal counsel and such persons will be bonded under Section 11-201 of the Nebraska statutes; and
- remove obsolete language related to at will employees of the Department.

Financial Institution Examination Reports

Section 9 would amend Section 8-108, relating to regulatory examinations of financial institutions, to clarify that the Director of the Department may accept an examination or report from another state of federal financial institution regulator in lieu of an examination or report required under the Act. The amendment would further provide that:

- any examination or report received from another regulator remains the confidential property of that regulator;
- an examination or report received from another regulator cannot be obtained by a subpoena to the Department; and
- any request or subpoena for the examination or report must be directed to the originating regulator.

Bonds

Section 11 would amend Section 8-110 to would allow for the electronic filing of bank fidelity bonds with the Department.

Bank Board of Directors

Section 23 would amend Section 8-124 to authorize an increase in the maximum number of directors from fifteen members to twenty-five members; provide that board of directors shall select a bank president who shall be, or immediately after selection, a member of the board of directors; remove the requirement that the board shall appoint a secretary; remove obsolete language related to a minimum number of directors; and coordinate language related to filling vacancies on the board with Section 8-124.01.

Section 26 would amend Section 8-126, which sets the qualifications for bank directors, to change the current requirement that a bank make reasonable efforts to acquire members from the county where the bank is located to a requirement that members be the county where the bank's main office is located or in the county where a branch is located.

Bank Deposits

Section 32 would amend Section 8-133 to provide that bank affiliated individuals cannot be paid a higher rate of interest on deposits than paid by the bank on similar deposits and to provide that a violation is a Class IV felony. Section 32 would also update the statute's restrictions on the pledging of bank assets to secure deposits and define the term "principal shareholder."

Safe Deposit Boxes

Section 33 would amend Section 8-135 to allow minors to open and maintain safe deposit boxes.

Trust Departments

Section 59 would amend Section 8-161, which sets the conditions for granting a trust charter to a bank, by changing a required finding by the Director of the Department that the directors and shareholders of the bank are persons of integrity and responsibility, for the reason that such determinations would have previously been made, to a finding that the trust department will be operated by officers of integrity and responsibility.

Emergencies

Sections 116 – 121 would amend Sections 8-1,124 to 8-1,129. The amendments would update the definitions used in these statutes relating to emergencies, and would expand the coverage of these laws to include all financial institutions. The amendments would give authority to the Director of the Department to allow a financial institution to open a temporary office where it may conduct its business for up to thirty months, or allow a mobile branch to serve as a temporary emergency branch office.

Savings Clause

Section 155 is a savings clause stating that transactions validly entered into before the effective date of this legislation remains effective as though this legislation had not occurred.

Fixed Dates for Cross-Referenced Federal Acts and Regulations

LB 140 updates all cross-referenced federal statutes to refer to those statutes as they existed on January 1, 2017. See Sections 33, 40, 56, 65, 79, and 132.

NON-SUBSTANTIVE (STYLISTIC) CHANGES

These amendments are categorized under the following headings:

1. Grammatical, language, numerical updates or references
2. Clarification or inclusion of a definition of "financial institution" which includes Savings and Loan Associations
3. Clarification of the authority or structure of Department of Banking and Finance
4. Removal of obsolete statutory references, updates or insertions of sections or numbers
5. Updates to board membership, shareholders, stock, meetings and subsidiary corporation provisions
6. References to federal statutes, regulations, other state statutes or constitution
7. Updating or modernizing terms or methods of operation

Principal Introducer: _____

Senator Matt Williams