

## LEGISLATIVE BILL 2

Approved by the Governor February 2, 1987

Introduced by Marsh, 29, Vice-Chairperson, Exec. Board

AN ACT relating to banks and banking; to amend sections 8-112, 8-113, 8-114, 8-115, 8-121, 8-124, 8-128, 8-132, 8-185, 8-187, 8-190, 8-193, 8-197, 8-1,102, 8-1,103, 8-1,104, 8-1,116, 8-1,119, 8-1,120, and 21-2007, Reissue Revised Statutes of Nebraska, 1943, and section 8-126, Revised Statutes Supplement, 1986; to repeal obsolete statutes relating to a change in internal references and the substitution of names; to harmonize provisions; and to repeal the original sections, and also sections 8-1,122 and 8-1,132, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 8-112, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-112. The director shall keep, as records of his or her office, proper books showing all acts, matters, and things done under the provisions of sections 8-101 to 8-1,122 8-1,121. Neither he the director nor anyone connected with the department shall in any instance disclose the name of any depositor or debtor of any bank or the amount of his or her deposit or debt to anyone, except insofar as may be necessary in the performance of his or her official duty, except that the department may maintain a record of borrowers from the banks in this state and may give information concerning the total liabilities of any such borrowers to any bank owning obligations of such borrowers.

Sec. 2. That section 8-113, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-113. No individual, firm, company, corporation, or association in the State of Nebraska, unless organized under authority of the federal government, shall use the word bank or any derivative thereof as any part of a title or descriptive of any business activity, except corporations complying with the terms of sections 8-101 to 8-1,122 8-1,121 and such other corporations or associations as have been in

existence and doing business for a period of ten years or more prior to October 19, 1963, under a name composed in part of the word bank or some derivative thereof. Any violation of ~~the provisions of~~ this section shall be a Class V misdemeanor.

Sec. 3. That section 8-114, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-114. It shall be unlawful for any person to conduct a bank within this state except by means of a corporation duly organized for such purpose under the laws of this state. It shall be unlawful for any corporation to receive money upon deposit or conduct a bank under the laws of this state, until such corporation ~~shall have~~ has complied with all the provisions and requirements of sections 8-101 to ~~8-1,122~~ 8-1,121. Any violation of ~~the provisions of~~ this section shall be a Class V misdemeanor for each day of the continuation of such offense, and be cause for the appointment of a receiver as provided in sections 8-101 to ~~8-1,122~~ 8-1,121 to wind up such banking business.

Sec. 4. That section 8-115, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-115. No corporation shall conduct a bank in this state without having first obtained a charter in the manner provided in sections 8-101 to ~~8-1,122~~ 8-1,121.

Sec. 5. That section 8-121, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-121. If the department, upon examination of the application required by section 8-120, is satisfied that such corporation has complied with the requirements of sections 8-101 to ~~8-1,121~~ 8-1,122, and if charter approval is intended, it shall issue to such corporation a certificate stating that such corporation has complied with the laws of this state, advising of any requirements which must be met.

Sec. 6. That section 8-124, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-124. The affairs and business of any bank chartered after September 2, 1973, or which has had transfer of twenty-five per cent or more of voting shares after September 2, 1973, shall be managed or controlled by a board of directors of not less than five and not more than fifteen members, who shall be selected from the stockholders at such time and in such manner as

may be provided by the articles of incorporation of the corporation and in conformity with the provisions of sections 8-101 to ~~8-1,122~~ 8-1,121. Any bank chartered before September 2, 1973, may have a minimum of three directors and not more than fifteen directors so long as it does not have transfer of twenty-five per cent or more voting shares, with such directors selected as provided in this section. Any vacancy on the board shall be filled within ninety days by appointment by the remaining directors, and any director so appointed shall serve until the next election of directors, except that if the vacancy created leaves a minimum of five directors, appointment shall be optional. The board shall select from among its number the president and secretary, and shall select a cashier. Such officers shall hold their office at the pleasure of the board of directors. The board of directors shall hold at least one regular meeting in each calendar quarter, and at one of such meetings in each year a thorough examination of the books, records, funds, and securities held by the bank shall be made and recorded in detail upon its record book. In lieu of the one annual examination required, the board of directors may accept one annual audit by an accountant or accounting firm approved by the Director of Banking and Finance.

Sec. 7. That section 8-126, Revised Statutes Supplement, 1986, be amended to read as follows:

8-126. A majority of the members of the board of directors of any bank transacting business under the provisions of sections 8-101 to ~~8-1,122~~ 8-1,121 shall be residents of this state. Reasonable efforts shall be made to acquire members of the boards of directors from the county in which such bank is located. Every director shall be the owner of at least one share of the paid-up capital stock in his or her own name and right. Directors of banks shall be persons of good moral character, known integrity, business experience, and responsibility. No person shall act as such member of the board of directors of any bank until such bank applies for and obtains approval from the Department of Banking and Finance.

Sec. 8. That section 8-128, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-128. The paid-in capital stock of any bank may be increased or decreased in the manner following manner: The stockholders at any regular meeting or at any special meeting duly called for such purpose shall by vote of those owning two-thirds of the capital stock

authorize the president or cashier to notify the department of the proposed increase or reduction of paid-in capital stock, and a notice containing a statement of the amount of any proposed reduction of paid-in capital stock shall be published for four weeks in some newspaper published and of general circulation in the county where such bank is located. Reduction of paid-in capital stock shall be discretionary with the department, but shall be denied if granting the same would reduce the paid-in capital stock below the requirements of sections 8-101 to ~~8-1,121~~ ~~8-1,122~~, or would impair the security of the depositors. The bank shall notify the department when the proposed increase or decrease of the paid-in capital stock has been consummated.

Sec. 9. That section 8-132, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-132. The available funds referred to in section 8-131 shall consist of cash on hand and balances due from other solvent banks approved by the Department of Banking and Finance. Cash shall include lawful money of the United States and exchange for any clearing house association. Whenever the available funds of any bank ~~shall~~ fall below the required reserve, such bank shall not make any new loans or discount otherwise than by discounting or purchasing bills of exchange payable at sight; ~~nor shall such bank or~~ make any dividends of its profits until it has on hand the available funds required by section 8-131. The department shall notify any bank, in case its reserves ~~shall~~ fall below the amount required; or its capital is impaired, to make good such reserve or capital within such time as the department may direct, and any failure of such bank to make good any deficiency in the amount of its reserve or its capital within the time directed shall be cause for the director to take possession of such bank, declare it insolvent, and liquidate it as provided in sections 8-101 to ~~8-1,122~~ 8-1,121.

Sec. 10. That section 8-185, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-185. Any bank may voluntarily liquidate by paying off all its depositors in full. The bank so liquidating shall file a certified statement with the department, setting forth the fact that all its liabilities have been paid and naming its stockholders with the amount of stock held by each, and surrender its certificate of authority to transact a banking business.

The department shall cause an examination to be made of any such bank for the purpose of determining that all of its liabilities, except liabilities to stockholders, have been paid. Upon such examination, if it appears that all liabilities other than liabilities to stockholders have been paid, the bank shall cease to be subject to the provisions of sections 8-101 to 8-112 8-1, 121.

Sec. 11. That section 8-187, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-187. Whenever it ~~shall appear~~ appears to the department from any examination or report provided for by the laws of this state that the capital of any bank is impaired, or that such bank is conducting its business in an unsafe or unauthorized manner, or is endangering the interests of its depositors, or upon failure of such bank to make any of the reports or statements required by the laws of this state, or if the officers or employees of any bank ~~shall refuse~~ refuse to submit its books, papers, and affairs to the inspection of any examiner, or if any officer thereof ~~shall refuse~~ refuses to be examined upon oath touching the affairs of any such bank, or if from any examination or report provided for by law, the department ~~shall have~~ has reason to conclude that such bank is in an unsafe or unsound condition to transact the business for which it is organized, or that it is unsafe and inexpedient for it to continue business, or if any such bank ~~shall neglect or refuse neglects or refuses~~ to observe any order of the department, the department may forthwith take possession of the property and business of the bank and shall thereafter conduct the affairs of the bank, and shall retain possession of all money, rights, credits, assets, and property of every description belonging to the bank, as against any mesne or final process issued by any court against the bank whose property has been taken, and may retain possession for a sufficient time to make an examination of its affairs and dispose thereof as provided by law. All levies, judgment liens, attachments, or other liens obtained through legal proceedings against the bank or its property, acquired within sixty days next preceding the taking of possession, in the event the bank is liquidated and the business of the bank is not resumed or carried on after the taking over thereof by the department, shall be void and the property affected by the levy, judgment lien, attachment, or other lien so obtained shall be wholly discharged and released therefrom. The director shall

retain possession of the property and business of the bank until the bank shall resume business or its affairs be finally liquidated as provided in sections 8-101 to 8-1,122 8-1,121.

Sec. 12. That section 8-190, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-190. Whenever any bank refuses or neglects to deliver possession of its affairs, assets, or property of whatever nature to the department or to any person ordered or appointed to take charge of such bank according to the provisions of sections 8-101 to 8-1,122 8-1,121, the director shall make an application to the district court of the county in which such bank is located or to any judge thereof for an order placing such department, or the person ordered or appointed by the department to take charge of such bank, in charge thereof and of its affairs and property. If the judge of the district court having jurisdiction of the same ~~shall be~~ is absent from the district at the time such application is to be made, then any Judge of the Supreme Court may grant such order, but the petition and order of possession shall be forthwith transmitted to the clerk of the district court of the county in which such bank is located.

Sec. 13. That section 8-193, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-193. Whenever the officers, directors, stockholders, or owners of any insolvent bank ~~shall~~ give good and sufficient bond running to the department with an incorporated surety company authorized by the laws of this state to transact such business, conditioned upon the full settlement of all the liabilities of such bank by such officers, directors, stockholders, or owners within a stated time, and the bond ~~shall have been~~ is approved by the department, then the department shall turn over all the assets of such bank to the officers, directors, stockholders, or owners of the bank furnishing the bond, reserving the same right to require report of the condition and to examine into the affairs of the bank as existed in the department previous to its closing. If, upon such examination, it ~~be~~ is found by the department that the officers, directors, stockholders, or owners are not closing up the affairs of the bank in such manner as to discharge its liabilities and to close up its affairs in a manner satisfactory to the department within a reasonable time, the department shall take immediate possession of the

bank for the liquidation thereof as provided in sections 8-101 to ~~8-17, 122~~ 8-1, 121.

Sec. 14. That section 8-197, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-197. Pending final judgment on the petition to enjoin, the director shall retain possession of the property and business of ~~such~~ the bank. If not enjoined, the director shall proceed to liquidate the affairs of such bank as provided in sections 8-101 to ~~8-17, 122~~ 8-1, 121, except that: (1) The Federal Deposit Insurance Corporation may, under the laws of this state, accept the appointment as receiver or liquidator of any insolvent state bank whose deposits are insured by the Federal Deposit Insurance Corporation; or (2) when any state bank ~~shall be~~ is declared insolvent and ordered to be liquidated and the deposits of such bank are not insured by the Federal Deposit Insurance Corporation, then depositors and other creditors of such insolvent state bank, representing fifty-one per cent or more of the deposit and other claims in number and in amount of the total thereof, shall have the right to liquidate such insolvent bank by and through liquidating trustees, who shall have the same power as the department and the director to liquidate such bank, if within thirty days after the filing of the declaration of insolvency, articles of trusteeship, executed and acknowledged by fifty-one per cent or more of the depositors and other creditors in number, representing fifty-one per cent or more of the total of all deposits and claims in such bank, ~~shall be~~ are filed with the director. The articles creating the trusteeship shall be in writing, shall name the trustees, ~~and~~ shall state the terms and conditions of such trust, and shall become effective when it ~~shall be~~ is determined by the director that fifty-one per cent or more of the depositors and other creditors in number, representing fifty-one per cent or more of the total of all deposits and claims in such bank, have signed and acknowledged the same. All nonconsenting depositors and other creditors of the insolvent bank shall be held to be subject to the terms and conditions of such trusteeship to the same extent and with the same effect as if they had joined in the execution thereof, and their respective claims shall be treated in all respects as if they had joined in the execution of such articles of trusteeship. Upon finding that such articles have been executed and acknowledged as provided in this section, the director shall thereupon transfer all of the assets of the insolvent bank to such liquidating

trustees and take their receipt therefor, and all duties and responsibilities of the department and the director as otherwise provided by law with respect to such liquidation shall be assumed by such liquidating trustees. The 7 and the director shall then be relieved from further responsibility in connection therewith, and he the director and his bondsmen the person who issued the applicable bond shall be released from further liability on his the director's official bond in respect to such liquidation. The trustees shall then proceed to liquidate such bank as nearly as may be in the manner provided by law for the liquidation of insolvent banks by the department acting as receiver and liquidating agent.

Sec. 15. That section 8-1,102, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1,102. Upon the declaration of insolvency of a bank by the director, the department shall become the receiver and liquidating agent to wind up the business of that bank, and the department shall be vested with the title to all of the assets of such bank wheresoever the same may be situated and whatsoever kind and character such assets may be, as of the date of the filing of the declaration of insolvency with the clerk of the district court of the county in which such bank is located. All levies, judgment liens, attachments, or other liens obtained through legal proceedings against such bank or its property acquired within sixty days next preceding the filing of the declaration of insolvency shall be void, and the property affected by the levy, judgment lien, attachment, or other lien obtained through legal proceedings, shall be wholly discharged and released therefrom. If, at any time within sixty days prior to the taking over by the director of a bank which ~~is~~ ~~shall~~ later be declared insolvent, any transfers of the assets of such bank are made to prevent liquidation and distribution of such assets to the bank's creditors as provided in sections 8-101 to ~~8-1,121~~ ~~8-1,122~~, or if any transfers are made so as to create a preference of one creditor over another, such transfers shall be void and the director shall be entitled to recover such assets for the benefit of the trust.

Sec. 16. That section 8-1,103, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1,103. For the purpose of executing and performing any of the powers and duties hereby conferred

upon him or her, the director may, in the name of the department, or the delinquent bank, or in his or her own name as director, prosecute and defend any and all suits and other legal proceedings, and may, in the name of the department, or the delinquent bank, or in his or her own name as director, execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary and proper to effectuate any sale of real or personal property or sale or compromise authorized by order of the court as provided in sections 8-101 to ~~8-17,122~~ 8-1,121. Any deed or other instrument executed pursuant to such authority shall be valid and effectual for all purposes as though the same had been executed by the officers of the delinquent bank by authority of its board of directors.

Sec. 17. That section 8-1,104, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1,104. Upon taking possession of the property and business of any bank, the director shall collect all money due to such bank and do such other acts as are necessary to conserve its assets and business and, on declaration of insolvency, he or she shall proceed to liquidate the affairs thereof as provided in sections 8-101 to ~~8-17,122~~ 8-1,121. He or she shall collect all debts due to and belonging to such bank. If he or she desires and if he may desire to sell or compromise any or all bad or doubtful debts, or any or all of the real and personal property of such bank, he or she shall apply to the district court of the county in which the bank is located for an order permitting such sale or compromise on such terms and in such manner as the court may direct. All money so collected by the director may be, from time to time, deposited in one or more state banks or national banks. No deposits of such money shall be made unless a pledge of assets, or a depository bond, or both are given as security for such deposit. All depository banks are authorized to give such security. The director may, ~~in his discretion~~, invest a portion or all of such money in short-time interest-bearing securities of the federal government.

Sec. 18. That section 8-1,116, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1,116. After the department ~~shall have has~~ taken possession of any bank under the provisions of sections 8-101 to ~~8-17,122~~ 8-1,121, the stockholders thereof may repair its credit, restore or substitute its

reserves, and otherwise place it in safe condition, but such bank shall not be permitted to reopen its business until the department, after careful investigation of its affairs, is of the opinion that its stockholders have complied with the law, that the bank's credit and funds are in all respects repaired, that its reserves are restored or are sufficiently substituted, and that it should be permitted again to reopen for business, whereupon the department may issue written permission for resumption of business under its charter.

Sec. 19. That section 8-1,119, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1,119. Where no other punishment is provided in sections 8-101 to ~~8-1,122~~ 8-1,121, any person violating any of the provisions of sections 8-101 to ~~8-1,122~~ 8-1,121 shall be guilty of a Class III misdemeanor.

Sec. 20. That section 8-1,120, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1,120. The department may offer and pay out of the funds appropriated to it rewards for the apprehension and conviction of any person or persons violating ~~the provisions of~~ sections 8-101 to ~~8-1,122~~ 8-1,121, but such rewards shall not exceed two hundred and fifty dollars in any one case.

Sec. 21. That section 21-2007, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

21-2007. The corporate name:

(1) Shall contain the word corporation, company, incorporated, or limited, or shall contain an abbreviation of one of such words, except that a corporation organized to conduct a banking business under ~~the provisions of~~ sections 8-101 to ~~8-1,122~~ 8-1,121, whether organized before or after May 17, 1967, may use a name which includes the word bank without using any of such words;

(2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation; and

(3) Shall not be the same as, or deceptively similar to, the trade name or name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in ~~sections~~

~~21-2001 to 21-207,134~~ the Nebraska Business Corporation Act, or the name of a corporation which has in effect a registration of its corporate name as provided in ~~sections 21-2001 to 21-207,134~~ such act, except that this provision shall not apply if the applicant files with the Secretary of State either of the following: (a) The written consent of such other corporation or holder of a reserved or registered name or trade name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name; or (b) a certified copy of a final decree of a court of competent jurisdiction establishing the right of the applicant to the use of such name in this state.

A corporation with which another corporation, domestic or foreign, is merged, or which is formed by the reorganization or consolidation of one or more domestic or foreign corporations or upon a sale, lease, or other disposition to or exchange with a domestic corporation of all or substantially all the assets of another corporation, domestic or foreign, including its name, may have the same name as that used in this state by any of such corporations if such other corporation was organized under the laws of, or is authorized to transact business in, this state.

Sec. 22. That original sections 8-112, 8-113, 8-114, 8-115, 8-121, 8-124, 8-128, 8-132, 8-185, 8-187, 8-190, 8-193, 8-197, 8-1,102, 8-1,103, 8-1,104, 8-1,116, 8-1,119, 8-1,120, and 21-2007, Reissue Revised Statutes of Nebraska, 1943, and section 8-126, Revised Statutes Supplement, 1986, and also sections 8-1,122 and 8-1,132, Reissue Revised Statutes of Nebraska, 1943, are repealed.