

LEGISLATIVE BILL 857

Approved by the Governor February 14, 2002

Introduced by Executive Board: Coordsen, 32, Chairperson

AN ACT relating to banking and finance; to amend sections 8-1109.01, 8-1508, 8-1511, 76-882, and 87-301, Reissue Revised Statutes of Nebraska, and section 8-1401, Revised Statutes Supplement, 2000; to update statutory references; and to repeal the original sections.

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

Section 1. Section 8-1109.01, Reissue Revised Statutes of Nebraska, is amended to read:

8-1109.01. The director may issue an order denying effectiveness to, or suspend or revoke the effectiveness of, a registration statement to register securities by qualification if he or she finds that the conditions in subdivision (1) of section 8-1109, or if he or she finds that any of the following conditions exist:

- (1) Such order is in the public interest;
- (2) The issuer's plan of business, or the plan of financing is either unfair, unjust, inequitable, dishonest, oppressive, or fraudulent or would tend to work a fraud upon the purchaser;
- (3) The issuer's or registrant's literature, circulars, or advertising is misleading, incorrect, incomplete, or calculated to deceive the purchaser or investor;
- (4) The securities offered or to be offered, or issued or to be issued, in payment for property, patents, formulas, goodwill, promotion, or intangible assets, are in excess of the reasonable value thereof, or the offering has been, or would be, made with unreasonable amounts of options;
- (5) The offering has been or would be made with unreasonable amounts of underwriters' or sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options. ~~However, + PROVIDED, that~~ in an application to register the securities for a holding company which is organized for one of its purposes to acquire or start an insurance company, the total commissions, organization and promotion expenses shall not exceed ten percent of the money paid upon stock subscriptions;
- (6) The authority of the applicant or registrant to do business has been denied or revoked by any other governmental agency;
- (7) The enterprise or business of the issuer, promoter, or guarantor is unlawful;
- (8) There is a refusal to furnish information required by the director within a reasonable time to be fixed by the director;
- (9) There has been a violation of any of the provisions of Chapter ~~8, article 11,~~ Securities Act of Nebraska or of the orders of the director of which such issuer or registrant has notice;
- (10) There has been a failure to keep and maintain sufficient records to permit an audit satisfactorily disclosing to the director the true situation or condition of such issuer;
- (11) The applicant or registrant has failed to pay the proper registration, filing, or investigation fee;
- (12) Any registration statement registering securities by qualification, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact; or
- (13) The security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any federal or state act applicable to the offering.

Sec. 2. Section 8-1401, Revised Statutes Supplement, 2000, is amended to read:

8-1401. No person or corporation or association organized under ~~Chapter 8, article 1, 2, 3, or 4,~~ the Business Corporation Act, the Credit Union Act, the Nebraska Banking Act, the Nebraska Depository Institution Guaranty Corporation Act, the Nebraska Industrial Development Corporation Act, the Nebraska Nonprofit Corporation Act, ~~the Business Corporation Act,~~ the Nebraska Professional Corporation Act, the Nebraska Trust Company Act, or ~~the Nebraska Industrial Development Corporation Act,~~ Chapter 8, article 3 or 4, or otherwise authorized to conduct business in Nebraska or organized under the

laws of the United States, shall be required to disclose any information, financial or otherwise, that it deems confidential concerning its affairs or the affairs of any person or corporation with which it is doing business to any person, party, agency, or organization, unless there shall first be presented to such person, corporation, or association a court order of a court of competent jurisdiction setting forth the exact nature and limits of such required disclosure and a showing that all persons or organizations to be affected by such order have had reasonable notice and an opportunity to be heard upon the merits of such order. The requesting party shall pay the costs of providing such information pursuant to section 8-1402. This section shall not apply to any duly constituted supervisory regulatory agency of such person, corporation, or association, to the production of records pursuant to a written demand of the Tax Commissioner under section 77-375, to disclosures governed by rules for discovery adopted and promulgated pursuant to section 25-1273.01, or to such cases for which specific disclosures are specifically required by other sections of the statutes heretofore or hereafter enacted, except that the Department of Banking and Finance shall be subject to the payment of cost provision of this section when making inquiries that are beyond those normally made in conducting examinations and inquiries for the purpose of determining the safety and soundness of a financial institution, but shall not be subject to the disclosure and reasonable notice provisions of this section when making reasonable inquiries of any person, corporation, or association for the purpose of enforcing any of the laws over which the department has jurisdiction.

Sec. 3. Section 8-1508, Reissue Revised Statutes of Nebraska, is amended to read:

8-1508. Whenever an application by a bank or a bank holding company is received by the Department of Banking and Finance to acquire any other financial institution, the following terms and conditions shall be met and such acquisitions shall be valid only when and for as long as these conditions are satisfied:

(1) The acquiring bank holding company may not apply for and it shall not operate such a financial institution as a nonbank subsidiary under section 4 of the federal Bank Holding Company Act of 1956, as amended such act existed on the effective date of this act, unless such financial institution is a savings association as defined by section 2(j) of the federal Bank Holding Company Act of 1956, as amended such act existed on the effective date of this act;

(2) The financial institution to be acquired by a bank or a bank holding company shall be subject to the conditions upon which a bank incorporated under the laws of this state may establish, maintain, relocate, or close any of its offices pursuant to Chapter 8, article 1 the Nebraska Banking Act, but nothing in sections 8-1506 to 8-1510 or any other provision of law shall require divestiture of any branch or office in operation at the time of acquisition; and

(3) A financial institution to be acquired by a bank holding company shall be subject to the provisions of section 3 of the federal Bank Holding Company Act of 1956, as amended such act existed on the effective date of this act, and those rules and regulations that apply to bank subsidiaries of bank holding companies as are or may be established by both the Board of Governors of the Federal Reserve System and the Director of Banking and Finance.

Sec. 4. Section 8-1511, Reissue Revised Statutes of Nebraska, is amended to read:

8-1511. For purposes of sections 8-1511 to 8-1513, unless the context otherwise requires:

(1) Affiliated bank or thrift institution shall mean (a) if the bank or thrift institution is a subsidiary of a state bank, national banking association, or thrift institution, the parent bank or thrift institution as the case may be and (b) if the bank or thrift institution is a subsidiary of a bank or thrift institution holding company, the principal subsidiary of the holding company which is a bank or thrift institution as the case may be;

(2) Association of banks or thrift institutions shall mean two or more banks or thrift institutions formed for the purpose of acquiring and holding all or substantially all of the voting stock of one newly established bank pursuant to sections 8-1512 and 8-1513;

(3) Bank or banking corporation shall mean the principal office of (a) any national bank doing business in this state, (b) any corporation which is chartered to conduct a bank in this state as provided in Chapter 8, article 1 the Nebraska Banking Act, (c) any association of banks, (d) a bank holding company as defined in the Nebraska Bank Holding Company Act of 1995, or (e) an out-of-state bank holding company as defined in the Nebraska Bank Holding Company Act of 1995;

(4) Qualifying association shall mean an association, corporation, partnership, limited liability company, or other entity which at all times maintains an office in this state at which it employs at least fifty persons in this state and which pursuant to contract or otherwise offers at least the following services to banks: (a) The distribution, as agent for a bank, of credit cards or transaction cards; (b) the preparation of periodic statements of amounts due under such account; (c) the receipt from credit card or transaction card holders of amounts paid on or with respect to such accounts; and (d) the maintenance of financial records reflecting the status of such accounts from time to time;

(5) Thrift institution shall mean (a) any corporation which is chartered as a building and loan association, savings and loan association, savings bank, credit union, or cooperative credit association under the laws of the United States, any other state, or the District of Columbia and whose operations are principally conducted outside of Nebraska, (b) any holding company of a thrift institution with subsidiaries whose operations are principally conducted outside of Nebraska, or (c) any association of thrift institutions; and

(6) Transaction card shall mean a device or means used to access a prearranged revolving credit plan account.

Sec. 5. Section 76-882, Reissue Revised Statutes of Nebraska, is amended to read:

76-882. If an interest in a condominium is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of a public-offering statement of ~~sections 76-825 to 76-894~~ the Nebraska Condominium Act if he or she delivers to the purchaser a copy of the public-offering statement filed with the Securities and Exchange Commission. An interest in a condominium is not a security under the ~~provisions of Chapter 8, article 11~~ Securities Act of Nebraska.

Sec. 6. Section 87-301, Reissue Revised Statutes of Nebraska, is amended to read:

87-301. For purposes of the Uniform Deceptive Trade Practices Act, unless the context otherwise requires:

(1) Article shall mean a product as distinguished from its trademark, label, or distinctive dress in packaging;

(2) Certification mark shall mean a mark used in connection with the goods or services of a person other than the certifier to indicate geographic origin, material, mode of manufacture, quality, accuracy, or other characteristics of the goods or services or to indicate that the work or labor on the goods or services was performed by members of a union or other organization;

(3) Collective mark shall mean a mark used by members of a cooperative, association, or other collective group or organization to identify goods or services and distinguish them from those of others, or to indicate membership in the collective group or organization;

(4) Mark shall mean a word, name, symbol, device, or any combination of the foregoing in any form or arrangement;

(5) Person shall mean an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity;

(6) Service mark shall mean a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others;

(7) Trademark shall mean any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made or sold by him or her and to distinguish them from goods made or sold by others;

(8) Trade name shall mean a word or a name, or any combination of the foregoing in any form or arrangement used by a person to identify his or her business, vocation, or occupation and distinguish it from the business, vocation, or occupation of others;

(9) Chain distributor scheme also known as pyramid sales shall mean a sales device whereby a person, upon a condition that he or she make an investment, is granted a license or right to recruit for profit one or more additional persons who also are granted such license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted such license or right upon such condition. A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for such license or right to recruit or the receipt of profits therefrom, shall not change the identity of the scheme as a

chain distributor scheme;

(10) Investment shall be any acquisition, for a consideration other than personal services, of personal property, tangible or intangible, for profit or business purposes, and shall include, without limitation, franchises, business opportunities, and services. It shall not include real estate, ~~or securities registered under Chapter 8, article 11 the Securities Act of Nebraska~~, or sales demonstration equipment and materials furnished at cost for use in making sales and not for resale;

(11) Referral or chain referral sales or leases shall mean any sales technique, plan, arrangement, or agreement whereby the seller or lessor gives or offers to give a rebate or discount or otherwise pays or offers to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of the buyer or lessee giving to the seller or lessor the names of prospective buyers or lessees or otherwise aiding the seller or lessor in making a sale or lease to another person if the earning of the rebate, discount, or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease; and

(12) Attorney General shall mean the Attorney General of the State of Nebraska or the county attorney of any county with the consent and advice of the Attorney General.

Sec. 7. Original sections 8-1109.01, 8-1508, 8-1511, 76-882, and 87-301, Reissue Revised Statutes of Nebraska, and section 8-1401, Revised Statutes Supplement, 2000, are repealed.