

LEGISLATURE OF NEBRASKA
 ONE HUNDRED SECOND LEGISLATURE
 SECOND SESSION
LEGISLATIVE BILL 963

Final Reading

Introduced by Pahls, 31; McCoy, 39; Pirsch, 4.

Read first time January 11, 2012

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to banking and finance; to amend sections 8-141,
 2 8-183.05, 8-212, 8-213, 8-214, 8-215, 8-230, 8-1901,
 3 8-2101, 8-2103, 8-2104, 8-2107, 8-2108, and 8-2403,
 4 Reissue Revised Statutes of Nebraska, sections 8-157,
 5 8-209, 8-2102, and 8-2106, Revised Statutes Cumulative
 6 Supplement, 2010, and sections 8-1,140, 8-355, 8-602, and
 7 21-17,115, Revised Statutes Supplement, 2011; to change
 8 provisions relating to loan limits and restrictions; to
 9 change provisions relating to branch banking, the
 10 pledging of securities by trust companies, and fees
 11 charged by the Department of Banking and Finance; to
 12 revise powers of state-chartered banks, building and loan
 13 associations, and credit unions; to change provisions
 14 relating to names of financial institutions; to rename
 15 the Interstate Branching By Merger Act of 1997; to change
 16 and eliminate provisions relating to interstate branch

1 banking and mergers; to harmonize provisions; to repeal
2 the original sections; to outright repeal section 8-2105,
3 Reissue Revised Statutes of Nebraska; and to declare an
4 emergency.

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

1 Section 1. Section 8-141, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 8-141 (1) No bank shall directly or indirectly loan to
4 any single corporation, limited liability company, firm, or
5 individual, including in such loans all loans made to the several
6 members or shareholders of such firm, limited liability company, or
7 corporation, for the use and benefit of such corporation, limited
8 liability company, firm, or individual, more than twenty-five percent
9 of the paid-up capital, surplus, and capital notes and debentures or
10 fifteen percent of the unimpaired capital and unimpaired surplus of
11 such bank, whichever is greater. Such limitations shall be subject to
12 the following exceptions:

13 (a) Obligations of any person, partnership, limited
14 liability company, association, or corporation in the form of notes
15 or drafts secured by shipping documents or instruments transferring
16 or securing title covering livestock or giving a lien on livestock,
17 when the market value of the livestock securing the obligation is not
18 at any time less than one hundred fifteen percent of the face amount
19 of the notes covered by such documents, shall be subject under this
20 section to a limitation of ten percent of such capital, surplus, and
21 capital notes and debentures or ten percent of such unimpaired
22 capital and unimpaired surplus, whichever is greater, in addition to
23 such twenty-five percent of such capital and surplus or such fifteen
24 percent of such unimpaired capital and unimpaired surplus;

25 (b) Obligations of any person, partnership, limited

1 liability company, association, or corporation secured by not less
2 than a like amount of bonds or notes of the United States issued
3 since April 24, 1917, or certificates of indebtedness of the United
4 States, treasury bills of the United States, or obligations fully
5 guaranteed both as to principal and interest by the United States
6 shall be subject under this section to a limitation of ten percent of
7 such capital, surplus, and capital notes and debentures or ten
8 percent of such unimpaired capital and unimpaired surplus, whichever
9 is greater, in addition to such twenty-five percent of such capital
10 and surplus or such fifteen percent of such unimpaired capital and
11 unimpaired surplus;

12 (c) Obligations of any person, partnership, limited
13 liability company, association, or corporation which are secured by
14 negotiable warehouse receipts in an amount not less than one hundred
15 fifteen percent of the face amount of the note or notes secured by
16 such documents shall be subject under this section to a limitation of
17 ten percent of such capital, surplus, and capital notes and
18 debentures or ten percent of such unimpaired capital and unimpaired
19 surplus, whichever is greater, in addition to such twenty-five
20 percent of such capital and surplus or such fifteen percent of such
21 unimpaired capital and unimpaired surplus; or

22 (d) Obligations of any person, partnership, limited
23 liability company, association, or corporation which are secured by
24 readily marketable collateral having a market value, as determined by
25 reliable and continuously available price quotations, in an amount at

1 least equal to the face amount of the note or notes secured by such
2 collateral, shall be subject under this section to a limitation of
3 ten percent of such capital, surplus, and capital notes and
4 debentures or ten percent of such unimpaired capital and unimpaired
5 surplus, whichever is greater, in addition to such twenty-five
6 percent of such capital and surplus or such fifteen percent of such
7 unimpaired capital and unimpaired surplus.

8 (2) For purposes of this section, the discounting of
9 bills of exchange, drawn in good faith against actually existing
10 values, and the discounting of commercial paper actually owned by the
11 persons negotiating the same shall not be considered as the lending
12 of money. Loans or obligations shall not be subject to any limitation
13 under this section, based upon such capital and surplus or such
14 unimpaired capital and unimpaired surplus, to the extent that they
15 are secured or covered by guaranties, or by commitments or agreements
16 to take over or to purchase the same, made by any federal reserve
17 bank or by the United States Government or any authorized agency
18 thereof, including any corporation wholly owned directly or
19 indirectly by the United States, or general obligations of any state
20 of the United States or any political subdivision thereof. The phrase
21 general obligation of any state or any political subdivision thereof
22 means an obligation supported by the full faith and credit of an
23 obligor possessing general powers of taxation, including property
24 taxation, but does not include municipal revenue bonds and sanitary
25 and improvement district warrants which are subject to the

1 limitations set forth in this section. Any bank may subscribe to,
2 invest in, purchase, and own single-family mortgages secured by the
3 Federal Housing Administration or the United States Department of
4 Veterans Affairs and mortgage-backed certificates of the Government
5 National Mortgage Association which are guaranteed as to payment of
6 principal and interest by the Government National Mortgage
7 Association. Such mortgages and certificates shall not be subject
8 under this section to any limitation based upon such capital and
9 surplus or such unimpaired capital and unimpaired surplus.
10 Obligations representing loans to any national banking association or
11 to any banking institution organized under the laws of any state,
12 when such loans are approved by the Director of Banking and Finance
13 by regulation or otherwise, shall not be subject under this section
14 to any limitation based upon such capital and surplus or such
15 unimpaired capital and unimpaired surplus. Loans or extensions of
16 credit secured by a segregated deposit account in the lending bank
17 shall not be subject under this section to any limitation based on
18 such capital and surplus or such unimpaired capital and unimpaired
19 surplus. The department may adopt and promulgate rules and
20 regulations governing the terms and conditions of such security
21 interest and segregated deposit account. For the purpose of
22 determining lending limits, partnerships shall not be treated as
23 separate entities. Each individual shall be charged with his or her
24 personal debt plus the debt of every partnership in which he or she
25 is a partner, except that for purposes of this section (a) an

1 individual shall only be charged with the debt of any limited
2 partnership in which he or she is a partner to the extent that the
3 terms of the limited partnership agreement provide that such
4 individual is to be held liable for the debts or actions of such
5 limited partnership and (b) no individual shall be charged with the
6 debt of any general partnership in which he or she is a partner
7 beyond the extent to which (i) his or her liability for such
8 partnership debt is limited by the terms of a contract or other
9 written agreement between the bank and such individual and (ii) any
10 personal debt of such individual is incurred for the use and benefit
11 of such general partnership.

12 (3) A loan made within lending limits at the initial time
13 the loan was made may be renewed, extended, or serviced without
14 regard to changes in the lending limit of a bank following the
15 initial extension of the loan if (a) the renewal, extension, or
16 servicing of the loan does not result in the extension of funds
17 beyond the initial amount of the loan or (b) the accrued interest on
18 the loan is not added to the original amount of the loan in the
19 process of renewal, extension, or servicing.

20 (4) Any bank may purchase or take an interest in life
21 insurance contracts for any purpose incidental to the business of
22 banking. A bank's purchase of any life insurance contract, as
23 measured by its cash surrender value, from any one life insurance
24 company shall not at any time exceed twenty-five percent of the paid-
25 up capital, surplus, and capital notes and debentures of such bank or

1 fifteen percent of the ~~paid-up capital, surplus, undivided profits,~~
2 ~~and capital notes and debentures~~ unimpaired capital and unimpaired
3 surplus of such bank, whichever is greater. A bank's purchase of life
4 insurance contracts, as measured by their cash surrender values, in
5 the aggregate from all life insurance companies shall not at any time
6 exceed thirty-five percent of the paid-up capital, surplus, undivided
7 profits, and capital notes and debentures of such bank. The
8 limitations under this subsection on a bank's purchase of life
9 insurance contracts, in the aggregate from all life insurance
10 companies, shall not apply to any contract purchased prior to April
11 5, 1994.

12 (5) On and after January 21, 2013, the director is
13 authorized to determine the manner and extent to which credit
14 exposure resulting from derivative transactions, repurchase
15 agreements, reverse repurchase agreements, securities lending
16 transactions, and securities borrowing transactions shall be taken
17 into account for purposes of determining compliance with this
18 section. In making such determinations, the director may, but is not
19 required to, act by rule, regulation, or order.

20 ~~(5)-(6)~~ For purposes of this section: ~~unimpaired~~

21 (a) Derivative transaction means any transaction that is
22 a contract, agreement, swap, warrant, note, or option that is based,
23 in whole or in part, on the value of, any interest in, or any
24 quantitative measure or the occurrence of any event relating to, one
25 or more commodities, securities, currencies, interest or other rates,

1 indices, or other assets;

2 (b) Loan includes:

3 (i) All direct and indirect advances of funds to a person
4 made on the basis of any obligation of that person to repay the funds
5 or repayable from specific property pledged by or on behalf of that
6 person;

7 (ii) To the extent specified by rule, regulation, or
8 order of the department, any liability of a state bank to advance
9 funds to or on behalf of a person pursuant to a contractual
10 commitment; and

11 (iii) Any credit exposure to a person arising from a
12 derivative transaction, repurchase agreement, reverse repurchase
13 agreement, securities lending transaction, or securities borrowing
14 transaction between the bank and the person; and

15 (c) Unimpaired capital and unimpaired surplus means (a)
16 (i) the bank's tier 1 and tier 2 capital included in the bank's risk-
17 based capital under the capital guidelines of the appropriate federal
18 banking agency, based on the bank's most recent consolidated report
19 of condition filed under 12 U.S.C. 1817(a)(3), and (b)—(ii) the
20 balance of the bank's allowance for loan and lease losses not
21 included in the bank's tier 2 capital for purposes of the calculation
22 of risk-based capital by the appropriate federal banking agency,
23 based on the bank's most recent consolidated report of condition
24 filed under 12 U.S.C. 1817(a)(3). Notwithstanding the provisions of
25 section 8-1,140, the department may, by order, deny or limit the

1 inclusion of goodwill in the calculation of a bank's unimpaired
2 capital and unimpaired surplus or in the calculation of a bank's
3 paid-up capital and surplus.

4 Sec. 2. Section 8-157, Revised Statutes Cumulative
5 Supplement, 2010, is amended to read:

6 8-157 (1) Except as otherwise provided in this section
7 and section ~~8-2104~~, 8-2103, the general business of every bank shall
8 be transacted at the place of business specified in its charter.

9 (2)(a)(i) Except as provided in subdivision (2)(a)(ii) of
10 this section, with the approval of the director, any bank located in
11 this state may establish and maintain in this state an unlimited
12 number of branches at which all banking transactions allowed by law
13 may be made.

14 (ii) Any bank that owns or controls more than twenty-two
15 percent of the total deposits in Nebraska, as described in
16 subdivision (2)(c) of section 8-910 and computed in accordance with
17 subsection (3) of section 8-910, or any bank that is a subsidiary of
18 a bank holding company that owns or controls more than twenty-two
19 percent of the total deposits in Nebraska, as described in
20 subdivision (2)(c) of section 8-910 and computed in accordance with
21 subsection (3) of section 8-910, shall not establish and maintain an
22 unlimited number of branches as provided in subdivision (2)(a)(i) of
23 this section. With the approval of the director, a bank as described
24 in this subdivision may establish and maintain in the county in which
25 such bank is located an unlimited number of branches at which all

1 banking transactions allowed by law may be made, except that if such
2 bank is located in a Class I or Class III county, such bank may
3 establish and maintain in Class I and Class III counties an unlimited
4 number of branches at which all banking transactions allowed by law
5 may be made.

6 (iii) Any bank which establishes and maintains branches
7 pursuant to subdivision (2)(a)(i) of this section and which
8 subsequently becomes a bank as described in subdivision (2)(a)(ii) of
9 this section shall not be subject to the limitations as to location
10 of branches contained in subdivision (2)(a)(ii) of this section with
11 regard to any such established branch and shall continue to be
12 entitled to maintain any such established branch as if such bank had
13 not become a bank as described in subdivision (2)(a)(ii) of this
14 section.

15 (b) With the approval of the director, any bank or any
16 branch may establish and maintain a mobile branch at which all
17 banking transactions allowed by law may be made. Such mobile branch
18 may consist of one or more vehicles which may transact business only
19 within the county in which such bank or such branch is located and
20 within counties in this state which adjoin such county.

21 (c) For purposes of this subsection:

22 (i) Class I county means a county in this state with a
23 population of three hundred thousand or more as determined by the
24 most recent federal decennial census;

25 (ii) Class II county means a county in this state with a

1 population of at least two hundred thousand and less than three
2 hundred thousand as determined by the most recent federal decennial
3 census;

4 (iii) Class III county means a county in this state with
5 a population of at least one hundred thousand and less than two
6 hundred thousand as determined by the most recent federal decennial
7 census; and

8 (iv) Class IV county means a county in this state with a
9 population of less than one hundred thousand as determined by the
10 most recent federal decennial census.

11 (3) With the approval of the director, a bank may
12 establish and maintain branches acquired pursuant to section 8-1506
13 or 8-1516. All banking transactions allowed by law may be made at
14 such branches.

15 (4) With the approval of the director, a bank may acquire
16 the assets and assume the deposits of a branch of another financial
17 institution in Nebraska if the acquired branch is converted to a
18 branch of the acquiring bank. All banking transactions allowed by law
19 may be made at a branch acquired pursuant to this subsection.

20 (5) With the approval of the director, a bank may
21 establish a branch pursuant to subdivision (6) of section 8-115.01.
22 All banking transactions allowed by law may be made at such branch.

23 (6) The name given to any branch established and
24 maintained pursuant to this section shall not be substantially
25 similar to the name of any existing bank or branch which is

1 unaffiliated with the newly created branch and is located in the same
2 city, village, or county. The name of such newly created branch shall
3 be approved by the director.

4 (7) A bank which has a main chartered office or an
5 approved branch located in the State of Nebraska may, through any of
6 its executive officers, including executive officers licensed as such
7 pursuant to section 8-139, or designated agents, conduct a loan
8 closing at a location other than the place of business specified in
9 the bank's charter or any branch thereof.

10 (8) A bank which has a main chartered office or approved
11 branch located in the State of Nebraska may, upon notification to the
12 department, establish savings account programs at any elementary or
13 secondary school, whether public or private, that has students who
14 reside in the same city or village as the main chartered office or
15 branch of the bank, or, if the main office of the bank is located in
16 an unincorporated area of a county, at any school that has students
17 who reside in the same unincorporated area. The savings account
18 programs shall be limited to the establishment of individual student
19 accounts and the receipt of deposits for such accounts.

20 (9) Upon receiving an application for a branch to be
21 established pursuant to subdivision (2)(a) of this section, to
22 establish a mobile branch pursuant to subdivision (2)(b) of this
23 section, to acquire a branch of another financial institution
24 pursuant to subsection (4) of this section, to establish or acquire a
25 branch pursuant to subsection (1) of section 8-2103, or to move the

1 location of an established branch other than a move made pursuant to
2 subdivision (6) of section 8-115.01, the director shall hold a public
3 hearing on the matter if he or she determines, in his or her
4 discretion, that the condition of the applicant bank warrants a
5 hearing. If the director determines that the condition of the bank
6 does not warrant a hearing, the director shall (a) publish a notice
7 of the filing of the application in a newspaper of general
8 circulation in the county where the proposed branch or mobile branch
9 would be located, the expense of which shall be paid by the applicant
10 bank, and (b) give notice of such application to all financial
11 institutions located within the county where the proposed branch or
12 mobile branch would be located and to such other interested parties
13 as the director may determine. The director shall send the notice to
14 financial institutions by first-class mail, postage prepaid, or
15 electronic mail. Electronic mail may be used if the financial
16 institution agrees in advance to receive such notices by electronic
17 mail. A financial institution may designate one office for receipt of
18 any such notice if it has more than one office located within the
19 county where such notice is to be sent or a main office in a county
20 other than the county where such notice is to be sent. If the
21 director receives any substantive objection to the proposed branch or
22 mobile branch within fifteen days after publication of such notice,
23 he or she shall hold a hearing on the application. Notice of a
24 hearing held pursuant to this subsection shall be published for two
25 consecutive weeks in a newspaper of general circulation in the county

1 where the proposed branch or mobile branch would be located. The date
2 for hearing the application shall not be more than ninety days after
3 the filing of the application and not less than thirty days after the
4 last publication of notice of hearing. The expense of any publication
5 and mailing required by this section shall be paid by the applicant.

6 Sec. 3. Section 8-183.05, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 8-183.05 (1) Upon the issuance of a state bank charter to
9 a converting savings association, the corporate existence of the
10 converting association shall not terminate, but such bank shall be a
11 continuation of the entity so converted and all property of the
12 converted savings association, including its rights, titles, and
13 interests in and to all property of whatever kind, whether real,
14 personal, or mixed, things in action, and every right, privilege,
15 interest, and asset of any conceivable value or benefit then
16 existing, or pertaining to it, or which would inure to it,
17 immediately, by operation of law and without any conveyance or
18 transfer and without any further act or deed, shall vest in and
19 remain the property of such converted savings association, and the
20 same shall have, hold, and enjoy the same in its own right as fully
21 and to the same extent as the same was possessed, held, and enjoyed
22 by the converting savings association.

23 (2) Upon issuance of the charter, the new state bank
24 shall continue to have and succeed to all the rights, obligations,
25 and relations of the converting savings association.

1 (3) All pending actions and other judicial proceedings to
2 which the converting savings association is a party shall not be
3 abated or discontinued by reason of such conversion but may be
4 prosecuted to final judgment, order, or decree in the same manner as
5 if such conversion had not been made, and such converted savings
6 association may continue the actions in its new corporate name. Any
7 judgment, order, or decree may be rendered for or against the
8 converting savings association theretofore involved in the
9 proceedings.

10 (4) Nothing in this section shall be construed to
11 authorize a converted savings association to establish branches
12 except as permitted by section 8-157 and the Interstate Branching ~~by~~
13 and Merger Act, of 1997. This subsection shall not be construed to
14 require divestiture of any branches of a savings association in
15 existence at the time of the conversion to a state bank charter.

16 Sec. 4. Section 8-1,140, Revised Statutes Supplement,
17 2011, is amended to read:

18 8-1,140 Notwithstanding any of the other provisions of
19 the Nebraska Banking Act or any other Nebraska statute, any bank
20 incorporated under the laws of this state and organized under the
21 provisions of the act, or under the laws of this state as they
22 existed prior to May 9, 1933, shall directly, or indirectly through a
23 subsidiary or subsidiaries, have all the rights, powers, privileges,
24 benefits, and immunities which may be exercised as of January 1,
25 ~~2011, 2012,~~ by a federally chartered bank doing business in Nebraska,

1 including the exercise of all powers and activities that are
2 permitted for a financial subsidiary of a federally chartered bank.
3 Such rights, powers, privileges, benefits, and immunities shall not
4 relieve such bank from payment of state taxes assessed under any
5 applicable laws of this state.

6 Sec. 5. Section 8-209, Revised Statutes Cumulative
7 Supplement, 2010, is amended to read:

8 8-209 (1) Any corporation organized to do business as a
9 trust company under the Nebraska Trust Company Act shall make a
10 pledge with the Department of Banking and Finance of approved
11 securities.

12 (2) The amount of securities required to be pledged shall
13 be based on the market value of trust assets held by the trust
14 company as follows:

15 (a) Trust companies with trust assets with a market value
16 of less than twenty-five million dollars shall pledge securities in
17 the amount of one hundred thousand dollars in par value;

18 (b) Trust companies with trust assets with a market value
19 of at least twenty-five million dollars but less than two hundred
20 fifty million dollars shall pledge securities in the amount of two
21 hundred thousand dollars in par value;

22 (c) Trust companies with trust assets with a market value
23 of at least two hundred fifty million dollars but less than two
24 billion five hundred million dollars shall pledge securities in the
25 amount of three hundred thousand dollars in par value;

1 (d) Trust companies with trust assets with a market value
2 of at least two billion five hundred million dollars but less than
3 five billion dollars shall pledge securities in the amount of four
4 hundred thousand dollars in par value; and

5 (e) Trust companies with trust assets with a market value
6 of five billion dollars or more shall pledge securities in the amount
7 of five hundred thousand dollars in par value.

8 (3) A trust company shall determine the market value of
9 its trust assets at the end of each calendar year. If such valuation
10 shows that the pledge of securities is less than is required by
11 subsection (2) of this section, the trust company shall increase the
12 amount of the securities pledged with the department within sixty
13 days following the end of the calendar year.

14 (4) If at any time the market value of pledged assets is
15 determined to have depreciated to less than ninety percent of par
16 value or the trust company has trust funds deposited with itself or
17 its supporting commercial bank in excess of those deposits referred
18 to by section 8-212, the Director of Banking and Finance may require
19 additional pledges in amounts deemed necessary to fully secure
20 pledging requirements or excessive trust fund depository balances.

21 (5) Any national bank authorized by the Office of the
22 Comptroller of the Currency or the Board of Governors of the Federal
23 Reserve System to act in a fiduciary capacity in this state, any out-
24 of-state bank authorized by its home state regulator to act in a
25 fiduciary capacity in this state, any federal savings association

1 authorized by ~~the Director of the Office of Thrift Supervision or the~~
2 Office of the Comptroller of the Currency to act in a fiduciary
3 capacity in this state, any federally chartered trust company, ~~and~~
4 any out-of-state trust company authorized under the Interstate Trust
5 Company Office Act or otherwise doing business in this state, and any
6 out-of-state entity acting in a fiduciary capacity in this state
7 shall make similar pledges with the department, and all such deposits
8 ~~of national banks~~ held by the department shall be considered as
9 having been lawfully so pledged and subject to the Nebraska Trust
10 Company Act.

11 Sec. 6. Section 8-212, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 8-212 Securities pledged as provided in section 8-209
14 shall be primarily liable for the obligations of the trust company,
15 state or national bank, federal savings association, federally
16 chartered trust company, ~~or~~ out-of-state trust company authorized
17 under the Interstate Trust Company Office Act or otherwise doing
18 business in this state, or an out-of-state entity acting in a
19 fiduciary capacity in this state, incurred while acting in any
20 fiduciary capacity, for depository of money in court, and for losses
21 arising from trust funds deposited with failed financial institutions
22 in excess of deposit insurance limits and shall not be liable for any
23 other debt or obligation of the ~~trust company~~ financial institution
24 or out-of-state entity until all such trust liabilities have been
25 discharged.

1 Sec. 7. Section 8-213, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 8-213 In the case of national banks and federal savings
4 associations doing business as trust companies, trust companies,
5 federally chartered trust companies, ~~and~~ out-of-state trust companies
6 authorized under the Interstate Trust Company Office Act or otherwise
7 doing business in this state, and out-of-state entities acting in a
8 fiduciary capacity in this state, which upon insolvency are not
9 liquidated by the Department of Banking and Finance, upon the
10 appointment of a receiver, trustee in bankruptcy, or other
11 liquidating agent, the department shall turn over to the receiver,
12 trustee in bankruptcy, or other liquidating agent any securities
13 pledged to it by the national bank, federal savings association,
14 trust company, federally chartered trust company, ~~or~~ out-of-state
15 trust company authorized under the Interstate Trust Company Office
16 Act or otherwise doing business in this state, or any out-of-state
17 entity acting in a fiduciary capacity in this state, upon:

18 (1) The entry of an order by a court having jurisdiction
19 over a receiver, trustee in bankruptcy, or other liquidating agent of
20 the national bank, federal savings association, trust company,
21 federally chartered trust company, ~~or~~ out-of-state trust company
22 authorized under the Interstate Trust Company Office Act or otherwise
23 doing business in this state, or any out-of-state entity acting in a
24 fiduciary capacity in this state, ordering the department to turn
25 over to a receiver, trustee in bankruptcy, or other liquidating agent

1 the securities pledged to the department; and

2 (2) The publication of a notice for three successive
3 weeks in some legal newspaper published in the county or, if none is
4 published in the county, in a legal newspaper of general circulation
5 in the county in which the principal place of business of the
6 national bank, federal savings association, trust company, federally
7 chartered trust company, ~~or~~ out-of-state trust company authorized
8 under the Interstate Trust Company Office Act or otherwise doing
9 business in this state, or any out-of-state entity acting in a
10 fiduciary capacity in this state, is located that all claims for the
11 trust liabilities must be filed with the receiver, trustee in
12 bankruptcy, or other liquidating agent within thirty days. In the
13 case of national banks the notice provided for in 12 U.S.C. 193, and
14 in the case of trust companies liquidated in bankruptcy court, the
15 notice provided for in 11 U.S.C. 94(b), shall be sufficient without
16 further notice being given and shall be in lieu of the notice
17 required in this subdivision. In the case of out-of-state trust
18 companies authorized under the Interstate Trust Company Office Act or
19 otherwise doing business in this state, or in the case of any out-of-
20 state entity acting in a fiduciary capacity in this state, an
21 additional notice shall be published in each county in Nebraska where
22 the out-of-state trust company or out-of-state entity maintains an
23 office, does business, or acts in a fiduciary capacity, or maintained
24 an office, conducted business, or acted in a fiduciary capacity,
25 within one year prior to the insolvency.

1 Sec. 8. Section 8-214, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 8-214 Any national bank, federal savings association,
4 federally chartered trust company, or out-of-state trust company
5 authorized under the Interstate Trust Company Office Act or otherwise
6 doing business in this state, which has surrendered its right to
7 exercise such fiduciary powers in this state may have its pledged
8 securities released to it upon furnishing to the Department of
9 Banking and Finance a certificate by its primary financial
10 institution regulator that such ~~national bank, federal savings~~
11 ~~association, federally chartered trust company, or out of state trust~~
12 ~~company authorized under the Interstate Trust Company Office Act~~
13 financial institution is no longer authorized to exercise such powers
14 and has been relieved, in accordance with the laws of this state, of
15 all duties and obligations as assignee, receiver, or trustee, either
16 by appointment of court or under will, and for depository of money in
17 court. Any out-of-state entity acting in a fiduciary capacity in this
18 state which has surrendered its right to exercise such fiduciary
19 powers in this state may have its pledged securities released to it
20 upon furnishing to the department such proof as the department may
21 require to show that such out-of-state entity is no longer acting as
22 a fiduciary in this state.

23 Sec. 9. Section 8-215, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 8-215 Any trust company, state or national bank or

1 federal savings association with a trust department, federally
2 chartered trust company, ~~or out-of-state trust company~~ authorized
3 under the Interstate Trust Company Office Act or otherwise doing
4 business in this state, or out-of-state entity acting in a fiduciary
5 capacity in this state, upon liquidating its business and affairs for
6 reasons other than insolvency, may have its pledged securities
7 released to it upon satisfying the Department of Banking and Finance
8 that it has been lawfully relieved of all its duties and obligations
9 as assignee, receiver, or trustee, either by appointment of court or
10 under will, and for depository of money in court, after first having
11 published notice three successive weeks in some legal newspaper
12 published in the county or, if none is published in the county, in a
13 legal newspaper of general circulation in the county in which the
14 principal place of business of the trust company, trust department of
15 a state or national bank or federal savings association, or federally
16 chartered trust company, ~~or out-of-state trust company~~ authorized
17 ~~under the Interstate Trust Company Office Act~~ is located that all
18 claims against such securities, whether absolute or contingent, must
19 be filed with the department by a day certain, not less than thirty
20 days after the last publication of such notice. In the case of an
21 out-of-state trust company authorized under the Interstate Trust
22 Company Office Act or otherwise doing business in this state, or in
23 the case of any out-of-state entity acting in a fiduciary capacity in
24 this state, the notice shall be published in each county in Nebraska
25 where the out-of-state trust company or out-of-state entity maintains

1 an office, does business, or acts in a fiduciary capacity, or
2 maintained an office, conducted business, or acted in a fiduciary
3 capacity, within one year prior to the liquidation of its affairs.

4 Sec. 10. Section 8-230, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 8-230 For purposes of the Nebraska Trust Company Act,
7 unless the context otherwise requires:

8 (1) Agency capacity means a capacity resulting from a
9 ~~trust company~~ an undertaking to act alone or jointly with others
10 primarily as agent for another in all matters connected with its
11 undertaking, including the capacities of registrar, paying agent, or
12 transfer agent with respect to stocks, bonds, or other evidences of
13 indebtedness of any corporation, association, municipality, state, or
14 public authority, escrow agent, or agent for the investment of money
15 or any other similar capacity;

16 (2) Branch trust office means an office of a trust
17 company, other than the main or principal office of a trust company,
18 at which a trust company may act in any fiduciary capacity or conduct
19 any activity permitted under the Nebraska Trust Company Act;

20 (3) Fiduciary capacity means a capacity resulting from a
21 ~~trust company~~ an undertaking to act alone or jointly with others
22 primarily for the benefit of another in all matters connected with
23 the undertaking and includes the capacities of trustee, including
24 trustee of a common trust fund, administrator, personal
25 representative, guardian of an estate, conservator, receiver,

1 attorney in fact, and custodian and any other similar capacity;

2 (4) Representative trust office means an office at which
3 a trust company does not act in any fiduciary capacity or conduct or
4 engage in any activity related to its fiduciary capacities but may
5 otherwise engage in any other activity permitted under the Nebraska
6 Trust Company Act; and

7 (5) Trust company means any trust company which is
8 incorporated under the laws of this state, any national banking
9 association having its principal office in this state and authorized
10 to conduct a trust company business as defined in the Nebraska Trust
11 Company Act, any bank authorized to conduct a trust company business
12 in a trust department pursuant to sections 8-159 to 8-162, any
13 federal savings association authorized to conduct a trust company
14 business, and any federally chartered trust company.

15 Sec. 11. Section 8-355, Revised Statutes Supplement,
16 2011, is amended to read:

17 8-355 Notwithstanding any of the provisions of Chapter 8,
18 article 3, or any other Nebraska statute, except as provided in
19 section 8-345.02, any association incorporated under the laws of the
20 State of Nebraska and organized under the provisions of such article
21 shall have all the rights, powers, privileges, benefits, and
22 immunities which may be exercised as of January 1, ~~2011~~, 2012, by a
23 federal savings and loan association doing business in Nebraska. Such
24 rights, powers, privileges, benefits, and immunities shall not
25 relieve such association from payment of state taxes assessed under

1 any applicable laws of this state.

2 Sec. 12. Section 8-602, Revised Statutes Supplement,
3 2011, is amended to read:

4 8-602 The Director of Banking and Finance shall charge
5 and collect fees for certain services rendered by the Department of
6 Banking and Finance according to the following schedule:

7 (1) For filing and examining articles of incorporation,
8 articles of association, and bylaws, except credit unions, one
9 hundred dollars, and for credit unions, fifty dollars;

10 (2) For filing and examining an amendment to articles of
11 incorporation, articles of association, and bylaws, except credit
12 unions, fifty dollars, and for credit unions, fifteen dollars;

13 (3) For issuing to banks, credit card banks, trust
14 companies, and building and loan associations a charter, authority,
15 or license to do business in this state, a sum which shall be
16 determined on the basis of one dollar and fifty cents for each one
17 thousand dollars of authorized capital, except that the minimum fee
18 in each case shall be two hundred twenty-five dollars;

19 (4) For issuing an executive officer's or loan officer's
20 license, fifty dollars at the time of the initial license and fifteen
21 dollars on or before January 15 each year thereafter, except credit
22 unions for which the fee shall be twenty-five dollars at the time of
23 the initial license and fifteen dollars on or before January 15 each
24 year thereafter;

25 (5) For affixing certificate and seal, five dollars;

1 (6) For making substitution of securities held by it and
2 issuing a receipt, fifteen dollars;

3 (7) For issuing a certificate of approval to a credit
4 union, ten dollars;

5 (8) For investigating the applications required by
6 sections 8-117, 8-120, 8-331, and 8-2402 and the documents required
7 by section 8-201, the cost of such examination, investigation, and
8 inspection, including all legal expenses and the cost of any hearing
9 transcript, with a minimum fee under (a) sections 8-117, 8-120, and
10 8-2402 of two thousand five hundred dollars, (b) section 8-331 of two
11 thousand dollars, and (c) section 8-201 of one thousand dollars. The
12 department may require the applicant to procure and give a surety
13 bond in such principal amount as the department may determine and
14 conditioned for the payment of the fees provided in this subdivision;

15 (9) For registering a statement of intention to engage in
16 the business of making personal loans pursuant to section 8-816,
17 fifty dollars;

18 (10) For the handling of pledged securities as provided
19 in sections 8-210 and 8-1006, at the time of the initial deposit of
20 such securities, one dollar and fifty cents for each thousand dollars
21 of securities deposited and a like amount on or before January 15
22 each year thereafter. The fees shall be paid by the ~~company, national~~
23 ~~bank, federal savings association, federally chartered trust company,~~
24 ~~out of state trust company authorized under the Interstate Trust~~
25 ~~Company Office Act, or state chartered bank~~ entity pledging the

1 securities;

2 (11) For investigating an application to move its
3 location within the city or village limits of its original license or
4 charter for banks, trust companies, and building and loan
5 associations, two hundred fifty dollars;

6 (12) For investigating an application under subdivision
7 (6) of section 8-115.01, five hundred dollars;

8 (13) For investigating an application for approval to
9 establish or acquire a branch pursuant to section 8-157 or 8-2103 or
10 to establish a mobile branch pursuant to section 8-157, two hundred
11 fifty dollars;

12 (14) For investigating a notice of acquisition of control
13 under subsection (1) of section 8-1502, five hundred dollars;

14 (15) For investigating an application for a cross-
15 industry merger under section 8-1510, five hundred dollars;

16 (16) For investigating an application for a merger of two
17 state banks, ~~or~~ a merger of a state bank and a national bank in which
18 the state bank is the surviving entity, or an interstate merger
19 application in which the Nebraska state chartered bank is the
20 resulting bank, five hundred dollars;

21 (17) For investigating an application or a notice to
22 establish a branch trust office, five hundred dollars;

23 (18) For investigating an application or a notice to
24 establish a representative trust office, five hundred dollars;

25 (19) For investigating an application to establish a

1 credit union branch under section 21-1725.01, two hundred fifty
2 dollars;

3 (20) For investigating an applicant under section 8-1513,
4 five thousand dollars; and

5 (21) For investigating a request to extend a conditional
6 bank charter under section 8-117, one thousand dollars.

7 Sec. 13. Section 8-1901, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 8-1901 For purposes of sections 8-1901 to 8-1903, unless
10 the context otherwise requires:

11 (1) Department means the Department of Banking and
12 Finance; and

13 (2) Financial institution means:

14 (a) A ~~state chartered or federally chartered~~ bank,
15 savings bank, building and loan association, savings and loan
16 association, credit union, or trust company, whether chartered by the
17 department, the United States, or a foreign state agency;

18 (b) A subsidiary of a bank holding company or out-of-
19 state bank holding company; or

20 (c) A branch of a financial institution described in
21 subdivision (a) or (b) of this subdivision.

22 Sec. 14. Section 8-2101, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 8-2101 Sections 8-2101 to 8-2108 shall be known and may
25 be cited as the Interstate Branching By and Merger Act. ~~of 1997.~~

1 Sec. 15. Section 8-2102, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 8-2102 For purposes of the Interstate Branching ~~By and~~
4 Merger Act, ~~of 1997,~~ unless the context otherwise requires:

5 (1) Bank means a bank as defined in 12 U.S.C. 1813, as
6 such section existed on ~~March 20, 2008;~~ January 1, 2012;

7 (2) Department means the Department of Banking and
8 Finance;

9 (3) Director means the Director of Banking and Finance;

10 (4) Home state means (a) with respect to a state
11 chartered bank, the state in which the bank is chartered and (b) with
12 respect to a national bank, the state in which the main office of the
13 bank is located;

14 (5) Home state regulator means, with respect to an out-
15 of-state state chartered bank, the bank supervisory agency of the
16 state in which such bank is chartered;

17 (6) Host state means a state, other than the home state
18 of a bank, in which the bank maintains, or seeks to establish and
19 maintain, a branch;

20 (7) Interstate merger transaction means a merger or
21 consolidation of two or more banks, at least one of which is a
22 Nebraska bank and at least one of which is an out-of-state bank, and
23 the conversion of the main office and the branches of any bank
24 involved in such merger or consolidation into branches of the
25 resulting bank;

1 (8) Nebraska bank means a bank whose home state is
2 Nebraska;

3 (9) Nebraska state chartered bank means a corporation
4 which is chartered to conduct a bank in this state pursuant to the
5 Nebraska Banking Act;

6 (10) Out-of-state bank means a bank whose home state is a
7 state other than Nebraska;

8 (11) Out-of-state state chartered bank means a bank
9 chartered under the laws of any state other than Nebraska;

10 (12) Resulting bank means a bank that has resulted from
11 an interstate merger transaction under the Interstate Branching By
12 and Merger Act; and of 1997; and

13 (13) State means any state of the United States, the
14 District of Columbia, any territory of the United States, Puerto
15 Rico, Guam, American Samoa, the Trust Territory of the Pacific
16 Islands, the Virgin Islands, and the Northern Mariana Islands.

17 Sec. 16. Section 8-2103, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 8-2103 (1) A Nebraska state chartered bank may establish
20 and maintain a branch or acquire a branch in any other state with the
21 prior approval of the director and upon payment of the branch
22 application fee set forth in section 8-602.

23 ~~(1)~~(2) A Nebraska state chartered bank may engage in an
24 interstate merger transaction in any other state in which it is the
25 resulting bank and establish one or more branches in ~~any such~~ other

1 state ~~in accordance with the laws of the other state and with the~~
2 prior approval of the director and upon payment of the merger and
3 branch application fees set forth in section 8-602.

4 ~~(2)-(3)~~ A Nebraska state chartered bank may conduct any
5 activities at any branch outside the State of Nebraska that are
6 permissible ~~for a bank chartered by~~ under the laws of the host state
7 where the branch is located or of the United States.

8 Sec. 17. Section 8-2104, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 8-2104 (1) ~~A Nebraska bank which has been in existence~~
11 ~~for five years or more may be acquired by and engage in an interstate~~
12 ~~merger transaction with any out of state bank.~~ An out-of-state bank
13 may establish and maintain a branch or acquire a branch in this state
14 upon compliance with any applicable requirements of the Business
15 Corporation Act for registration or qualification to do business in
16 this state.

17 (2) ~~A bank which is acquired and converted to a branch of~~
18 ~~an~~ An out-of-state bank pursuant to may engage in an interstate
19 merger transaction shall have all the powers and be subject to the
20 same limitations as any other branch located in this state. in this
21 state in which it is the resulting bank and establish one or more
22 branches in this state. The out-of-state bank shall notify the
23 department of the proposed interstate merger transaction involving a
24 Nebraska state chartered bank within fifteen days after the date it
25 files an application for an interstate merger transaction with its

1 primary regulator.

2 ~~(3) An out-of-state bank that has acquired a Nebraska~~
3 ~~bank under the Interstate Branching By Merger Act of 1997 may~~
4 ~~maintain and operate the branches of a Nebraska bank with which the~~
5 ~~out-of-state bank engaged in an interstate merger transaction, and~~
6 ~~may establish or acquire additional branches in this state, to the~~
7 ~~same extent that any Nebraska bank may establish or acquire a branch~~
8 ~~in Nebraska.~~

9 (3) An out-of-state bank may conduct only those
10 activities at its branch or branches in this state that are
11 permissible under the laws of Nebraska or of the United States,
12 except that an out-of-state bank with trust powers may exercise all
13 trust powers in this state as a Nebraska bank with trust powers
14 subject to the requirements of section 8-209.

15 (4) All branches of an out-of-state bank shall comply
16 with all applicable Nebraska laws and regulations in the conduct of
17 their business in this state to the maximum extent authorized by
18 federal law.

19 Sec. 18. Section 8-2106, Revised Statutes Cumulative
20 Supplement, 2010, is amended to read:

21 8-2106 An interstate merger transaction shall not be
22 permitted if, upon consummation of such transaction, the resulting
23 bank or its bank holding company would have direct or indirect
24 ownership or control of deposits in Nebraska in excess of ~~fourteen~~
25 twenty-two percent of the total deposits of all banks in Nebraska,

1 plus the total deposits, savings accounts, passbook accounts, and
2 share accounts in savings and loan associations and building and loan
3 associations in Nebraska, as determined by the director on the basis
4 of the most recent ~~calendar year end~~ midyear reports, except as
5 provided in subsection (4), (5), or (6) of section 8-910.

6 Sec. 19. Section 8-2107, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 8-2107 ~~(1) The director may make such examinations of any~~
9 ~~branch established and maintained in this state by an out of state~~
10 ~~state chartered bank as the director may deem necessary to determine~~
11 ~~whether the branch is being operated in compliance with the laws of~~
12 ~~this state and in accordance with safe and sound banking practices.~~

13 ~~(2) The director may prescribe requirements for periodic~~
14 ~~reports regarding any out of state bank that operates a branch in~~
15 ~~Nebraska pursuant to the Interstate Branching By Merger Act of 1997.~~
16 ~~Any reporting requirements prescribed by the director under this~~
17 ~~subsection shall be consistent with the reporting requirements~~
18 ~~applicable to Nebraska state banks and appropriate for the purpose of~~
19 ~~enabling the director to carry out his or her responsibilities under~~
20 ~~the act.~~

21 ~~(3)~~ (1) The director may enter into cooperative,
22 coordinating, and information-sharing agreements with any other bank
23 supervisory agencies or any organization affiliated with or
24 representing one or more bank supervisory agencies with respect to
25 the periodic examination or other supervision of any branch in

1 Nebraska of an out-of-state state chartered bank or any branch of a
2 Nebraska state chartered bank in a host state, and the director may
3 accept such reports of examination and reports of investigation in
4 lieu of conducting his or her own examinations or investigations.

5 ~~(4)~~(2) The director may enter into contracts with any
6 bank supervisory agencies that have concurrent jurisdiction over a
7 Nebraska state chartered bank or an out-of-state state chartered bank
8 operating a branch in this state to engage the services of such
9 agencies' examiners or to provide the services of department
10 examiners to such agency.

11 ~~(5)~~(3) The director may enter into joint examinations or
12 joint enforcement actions with other bank supervisory agencies having
13 concurrent jurisdiction over any branch in Nebraska of an out-of-
14 state state chartered bank or any branch of a Nebraska state
15 chartered bank in any host state. The director may, at any time, take
16 such actions independently if he or she deems such actions to be
17 necessary or appropriate to carry out his or her responsibilities
18 under the ~~act~~Interstate Branching and Merger Act or to ensure
19 compliance with the laws of this state. In the case of an out-of-
20 state state chartered bank, the director shall recognize the
21 exclusive authority of the home state regulator over corporate
22 government matters and the primary responsibility of the home state
23 regulator with respect to safety and soundness matters.

24 ~~(6)~~(4) The cost of any examination conducted under this
25 section shall be assessed against such out-of-state state chartered

1 bank in the manner set forth in sections 8-605 and 8-606 and paid for
2 by such out-of-state state chartered bank.

3 Sec. 20. Section 8-2108, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 8-2108 Nothing in the Interstate Branching By and Merger
6 Act ~~of 1997~~ shall prevent the resulting bank in an interstate merger
7 transaction from closing or disposing of any branches acquired in the
8 transaction in accordance with state law subject to applicable
9 federal law regarding branch closures.

10 Sec. 21. Section 8-2403, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 8-2403 A credit card bank shall be subject to the
13 Interstate Branching By and Merger Act, ~~of 1997~~, the Nebraska Bank
14 Holding Company Act of 1995, the Nebraska Banking Act, and Chapter 8,
15 articles 5, 6, 7, 8, 13, 14, 15, 16, 19, and 20, unless otherwise
16 limited or excluded or the context otherwise requires.

17 Sec. 22. Section 21-17,115, Revised Statutes Supplement,
18 2011, is amended to read:

19 21-17,115 Notwithstanding any of the other provisions of
20 the Credit Union Act or any other Nebraska statute, any credit union
21 incorporated under the laws of the State of Nebraska and organized
22 under the provisions of the act shall have all the rights, powers,
23 privileges, benefits, and immunities which may be exercised as of
24 January 1, ~~2011~~, 2012, by a federal credit union doing business in
25 Nebraska on the condition that such rights, powers, privileges,

1 benefits, and immunities shall not relieve such credit union from
2 payment of state taxes assessed under any applicable laws of this
3 state.

4 Sec. 23. Original sections 8-141, 8-183.05, 8-212, 8-213,
5 8-214, 8-215, 8-230, 8-1901, 8-2101, 8-2103, 8-2104, 8-2107, 8-2108,
6 and 8-2403, Reissue Revised Statutes of Nebraska, sections 8-157,
7 8-209, 8-2102, and 8-2106, Revised Statutes Cumulative Supplement,
8 2010, and sections 8-1,140, 8-355, 8-602, and 21-17,115, Revised
9 Statutes Supplement, 2011, are repealed.

10 Sec. 24. The following section is outright repealed:
11 Section 8-2105, Reissue Revised Statutes of Nebraska.

12 Sec. 25. Since an emergency exists, this act takes effect
13 when passed and approved according to law.