

LEGISLATURE OF NEBRASKA  
 ONE HUNDRED THIRD LEGISLATURE  
 FIRST SESSION  
**LEGISLATIVE BILL 213**

Final Reading

Introduced by Gloor, 35.

Read first time January 15, 2013

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to financial institutions; to amend sections  
 2 8-103, 8-108, 8-135, 8-167.01, 8-1,140, 8-204, 8-213,  
 3 8-355, 8-702, 8-705, 8-706, 8-915, and 21-17,115, Reissue  
 4 Revised Statutes of Nebraska; to change provisions  
 5 relating to financial interests of the Director of  
 6 Banking and Finance and borrowing restrictions on  
 7 employees of the Department of Banking and Finance; to  
 8 change provisions relating to Director of Banking and  
 9 Finance powers, electronic fund transfers, and bank  
 10 publication requirements; to change provisions relating  
 11 to trust companies; to revise powers of state-chartered  
 12 banks, building and loan associations, and credit unions;  
 13 to eliminate obsolete provisions; to harmonize  
 14 provisions; to repeal the original sections; and to  
 15 declare an emergency.  
 16 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 8-103, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           8-103 (1) The director shall have charge of and full  
4 supervision over the examination of banks and the enforcement of  
5 compliance with the statutes by banks and their holding companies in  
6 their business and functions and shall constructively aid and assist  
7 banks in maintaining proper banking standards and efficiency. The  
8 director shall also have charge of and full supervision over the  
9 examination of and the enforcement of compliance with the statutes by  
10 trust companies, building and loan associations, and credit unions in  
11 their business and functions and shall constructively aid and assist  
12 trust companies, building and loan associations, and credit unions in  
13 maintaining proper standards and efficiency.

14           (2) If the director is financially interested directly or  
15 indirectly in any financial institution doing business in Nebraska,  
16 subject to his or her jurisdiction, the financial institution shall  
17 be under the direct supervision of the Governor, and as to such  
18 financial institution, the Governor shall exercise all the  
19 supervisory powers otherwise vested in the Director of Banking and  
20 Finance by the laws of this state, and reports of examination by  
21 state bank examiners, foreign state bank examiners, examiners of the  
22 Federal Reserve Board, examiners of the Office of the Comptroller of  
23 the Currency, ~~and examiners for of~~ the Federal Deposit Insurance  
24 Corporation, and examiners of the Consumer Financial Protection  
25 Bureau shall be transmitted to the Governor.

1                   (3)(a) No person employed by the department shall be  
2 permitted to borrow money from any financial institution doing  
3 business in Nebraska subject to the jurisdiction of the department,  
4 except that persons employed by the department may borrow money in  
5 the normal course of business from the Nebraska State Employees  
6 Credit Union. If the credit union is acquired by, or merged into, a  
7 Nebraska state-chartered credit union, persons employed by the  
8 department may borrow money in the normal course of business from the  
9 successor credit union.

10                   (b) In the event a loan to a person employed by the  
11 department is sold or otherwise transferred to a financial  
12 institution doing business in Nebraska and subject to the  
13 jurisdiction of the department, no violation of this section occurs  
14 if (i) the person employed by the department did not solicit the sale  
15 or transfer of the loan and (ii) the person employed by the  
16 department gives notice to the director of such sale or transfer. The  
17 director, in his or her discretion, may require such person to make  
18 all reasonable efforts to seek another lender.

19                   (4) Any person who intentionally violates this section or  
20 who aids, abets, or assists in a violation of this section shall be  
21 guilty of a Class IV felony.

22                   Sec. 2. Section 8-108, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24                   8-108 (1) The director, his or her deputy, or any duly  
25 appointed examiner shall have power to make a thorough examination

1 into all the books, papers, and affairs of any bank or other  
2 institution in Nebraska subject to the department's jurisdiction, or  
3 its holding company, if any, and in so doing to administer oaths and  
4 affirmations, to examine on oath or affirmation the officers, agents,  
5 and clerks of such institution or its holding company, if any,  
6 touching the matter which they may be authorized and directed to  
7 inquire into and examine, and to subpoena the attendance of any  
8 person or persons in this state to testify under oath or affirmation  
9 in relation to the affairs of such institution or its holding  
10 company, if any. Such powers shall include, but not be limited to,  
11 the authority to examine and monitor by electronic means the books,  
12 papers, and affairs of any financial institution or the holding  
13 company of a financial institution. The examination may be in the  
14 presence of at least two members of the board of directors of the  
15 institution or its holding company, if any, undergoing such  
16 examination, and it shall be the duty of the examiner to incorporate  
17 in his or her report the names of the directors in whose presence the  
18 examination was made.

19           (2) The director may accept any examination or report  
20 from the Federal Deposit Insurance Corporation, the Federal Reserve  
21 Board, the Comptroller of the Currency, the Consumer Financial  
22 Protection Bureau, or a foreign state agency.

23           (3) The director may provide any such examination or  
24 report to the Federal Deposit Insurance Corporation, the Federal  
25 Reserve Board, the Comptroller of the Currency, the Consumer

1 Financial Protection Bureau, or a foreign state agency. The  
2 department shall have power to examine the books, papers, and affairs  
3 of any electronic data processing center which has contracted with a  
4 financial institution to conduct the financial institution's  
5 electronic data processing business. The department may charge the  
6 electronic data processing center for the time spent by examiners in  
7 such examination at the rate set forth in section 8-606 for  
8 examiners' time spent in examinations of financial institutions.

9           Sec. 3. Section 8-135, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           8-135 (1) All persons, regardless of age, may become  
12 depositors in any bank and shall be subject to the same duties and  
13 liabilities respecting their deposits. Whenever a deposit is accepted  
14 by any bank in the name of any person, regardless of age, the deposit  
15 may be withdrawn by the depositor by any of the following methods:

16           (a) Check or other instrument in writing. The check or  
17 other instrument in writing constitutes a receipt or acquittance if  
18 the check or other instrument in writing is signed by the depositor  
19 and constitutes a valid release and discharge to the bank for all  
20 payments so made; or

21           (b) Electronic means through:

22           (i) Preauthorized direct withdrawal;

23           (ii) An automatic teller machine;

24           (iii) A debit card;

25           (iv) A transfer by telephone;

1 (v) A network, including the Internet; or

2 (vi) Any electronic terminal, computer, magnetic tape, or  
3 other electronic means.

4 (2) This section shall not be construed to affect the  
5 rights, liabilities, or responsibilities of participants in an  
6 electronic fund transfer under the federal Electronic Fund Transfer  
7 Act, 15 U.S.C. 1693 et seq., as ~~it~~ the act existed on ~~September 4,~~  
8 ~~2005,~~ January 1, 2013, and shall not affect the legal relationships  
9 between a minor and any person other than the bank.

10 Sec. 4. Section 8-167.01, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12 8-167.01 The publication requirements of section 8-167  
13 shall not apply to any bank that makes a disclosure statement  
14 available to any member of the general public upon request in  
15 compliance with the disclosure of financial information provisions of  
16 12 C.F.R. part 350, as such part existed on January 1, 2013. ~~or 12~~  
17 ~~C.F.R. section 208.17.~~

18 Sec. 5. Section 8-1,140, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 8-1,140 Notwithstanding any of the other provisions of  
21 the Nebraska Banking Act or any other Nebraska statute, any bank  
22 incorporated under the laws of this state and organized under the  
23 provisions of the act, or under the laws of this state as they  
24 existed prior to May 9, 1933, shall directly, or indirectly through a  
25 subsidiary or subsidiaries, have all the rights, powers, privileges,

1 benefits, and immunities which may be exercised as of January 1,  
2 ~~2012, 2013,~~ by a federally chartered bank doing business in Nebraska,  
3 including the exercise of all powers and activities that are  
4 permitted for a financial subsidiary of a federally chartered bank.  
5 Such rights, powers, privileges, benefits, and immunities shall not  
6 relieve such bank from payment of state taxes assessed under any  
7 applicable laws of this state.

8           Sec. 6. Section 8-204, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10           8-204 The control of the business affairs of a trust  
11 company shall be vested in a board of directors of not less than five  
12 persons, ~~all of whom shall be elected by and from its stockholders.~~  
13 who shall be selected at such time and in such manner as may be  
14 provided by the articles of incorporation of the trust company and in  
15 conformity with the Nebraska Trust Company Act. Any vacancy on the  
16 board shall be filled within ninety days by appointment by the  
17 remaining directors, and any director so appointed shall serve until  
18 the next election of directors, except that if the vacancy leaves a  
19 minimum of five directors, appointment shall be optional. The board  
20 shall select from among its number a president and secretary and  
21 shall appoint trust officers and committees as it deems necessary.  
22 The officers and committee members shall hold their positions at the  
23 discretion of the board of directors. The board of directors shall  
24 hold at least one regular meeting in each calendar quarter and shall  
25 prepare and maintain complete and accurate minutes of the proceedings

1 at such meetings.

2           The board of directors shall make or cause to be made  
3 each year a thorough examination of the books, records, funds, and  
4 securities held for the trust company and customer accounts. The  
5 examination may be conducted by the members of the board of directors  
6 or the board may accept an annual audit by an accountant or  
7 accounting firm approved by the Department of Banking and Finance.  
8 Any such examination or audit must comply in scope with minimum  
9 standards established by the department.

10           Unless the department otherwise approves, a majority of  
11 the members of the board of directors of any trust company shall be  
12 residents of this state. Reasonable efforts shall be made to acquire  
13 members of the board of directors from the county in which the trust  
14 company is located. ~~Every director shall own at least one share of~~  
15 ~~paid up capital stock of the trust company or its holding company, if~~  
16 ~~any, in his or her name and right.~~ Directors of trust companies shall  
17 be persons of good moral character and known integrity, business  
18 experience, and responsibility. No person shall act as such member of  
19 the board of directors of any trust company until the corporation  
20 applies for and obtains approval from the Department of Banking and  
21 Finance.

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

24           8-213 In the case of national banks and federal savings  
25 associations doing business as trust companies, trust companies,



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

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

23 (2) The publication of a notice for three successive  
24 weeks in some legal newspaper published in the county or, if none is  
25 published in the county, in a legal newspaper of general circulation

1 in the county in which the principal place of business of the  
2 national bank, federal savings association, trust company, federally  
3 chartered trust company, out-of-state trust company authorized under  
4 the Interstate Trust Company Office Act or otherwise doing business  
5 in this state, or any out-of-state entity acting in a fiduciary  
6 capacity in this state, is located that all claims for the trust  
7 liabilities must be filed with the receiver, trustee in bankruptcy,  
8 or other liquidating agent within thirty days. In the case of  
9 national banks the notice provided for in 12 U.S.C. 193, and in the  
10 case of trust companies liquidated in bankruptcy court, the notice  
11 provided for in 11 U.S.C. ~~94(b)~~, 342, shall be sufficient without  
12 further notice being given and shall be in lieu of the notice  
13 required in this subdivision. In the case of out-of-state trust  
14 companies authorized under the Interstate Trust Company Office Act or  
15 otherwise doing business in this state, or in the case of any out-of-  
16 state entity acting in a fiduciary capacity in this state, an  
17 additional notice shall be published in each county in Nebraska where  
18 the out-of-state trust company or out-of-state entity maintains an  
19 office, does business, or acts in a fiduciary capacity, or maintained  
20 an office, conducted business, or acted in a fiduciary capacity,  
21 within one year prior to the insolvency.

22           Sec. 8. Section 8-355, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24           8-355 Notwithstanding any of the provisions of Chapter 8,  
25 article 3, or any other Nebraska statute, except as provided in

1 section 8-345.02, any association incorporated under the laws of the  
2 State of Nebraska and organized under the provisions of such article  
3 shall have all the rights, powers, privileges, benefits, and  
4 immunities which may be exercised as of January 1, ~~2012~~, 2013, by a  
5 federal savings and loan association doing business in Nebraska. Such  
6 rights, powers, privileges, benefits, and immunities shall not  
7 relieve such association from payment of state taxes assessed under  
8 any applicable laws of this state.

9           Sec. 9. Section 8-702, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           8-702 (1) Except as provided in subsection (2) of this  
12 section, any banking institution organized under the laws of this  
13 state shall, before a charter may be issued, enter into such  
14 contracts, incur such obligations, and generally do and perform any  
15 and all such acts and things whatsoever as may be necessary or  
16 appropriate in order to obtain membership in the Federal Deposit  
17 Insurance Corporation and provide for insurance of deposits in the  
18 banking institution. Any banking institution may take advantage of  
19 any and all memberships, loans, subscriptions, contracts, grants,  
20 rights, or privileges which may at any time be available or inure to  
21 banking institutions or to their depositors, creditors, stockholders,  
22 conservators, receivers, or liquidators by virtue of those provisions  
23 of section 8 of the Federal Banking Act of 1933 (section 12B of the  
24 Federal Reserve Act, as amended) which establish the Federal Deposit  
25 Insurance Corporation and provide for the insurance of deposits or of

1 any other provisions of that or of any other act or resolution of  
2 Congress to aid, regulate, or safeguard banking institutions and  
3 their depositors, including any amendments of the same or any  
4 substitutions therefor. Any banking institution may also subscribe  
5 for and acquire any stock, debentures, bonds, or other types of  
6 securities of the Federal Deposit Insurance Corporation and comply  
7 with the lawful regulations and requirements from time to time issued  
8 or made by such corporation.

9 (2)(a) A banking institution which has not complied with  
10 subsection (1) of this section and which was in operation on  
11 September 4, 2005, may continue to operate if it provides notice to  
12 depositors and holders of savings certificates, certificates of  
13 indebtedness, or other similar instruments that such deposits or  
14 instruments are not insured. Such notice shall be given (i) on the  
15 date any such deposit, savings certificate, certificate of  
16 indebtedness, or similar instrument is created for deposits made and  
17 instruments created on or after October 1, 1984, and (ii) annually on  
18 October 1 thereafter as follows: AS PROVIDED BY THE LAWS OF THE STATE  
19 OF NEBRASKA YOU ARE HEREBY NOTIFIED THAT YOUR DEPOSIT, SAVINGS  
20 CERTIFICATE, CERTIFICATE OF INDEBTEDNESS, OR OTHER SIMILAR INSTRUMENT  
21 IS NOT INSURED. Any advertising conducted by such banking institution  
22 shall in each case state: THE DEPOSITS, SAVINGS CERTIFICATES,  
23 CERTIFICATES OF INDEBTEDNESS, OR SIMILAR INSTRUMENTS OF THIS  
24 INSTITUTION ARE NOT INSURED. The banking institution shall also  
25 display such notice in one or more prominent places in all facilities

1 in which the institution operates. All such notices and statements  
2 shall be given in large or contrasting type in such a manner that  
3 such notices shall be conspicuous. Each willful failure to give the  
4 notice prescribed in subdivision (2)(a) of this section shall  
5 constitute a Class II misdemeanor. All officers and directors of any  
6 such banking institution shall be jointly and severally responsible  
7 for the issuance of the notices described in subdivision (2)(a) of  
8 this section in the form and manner described. The banking  
9 institution shall annually by November 1 file proof of compliance  
10 with subdivision (2)(a) of this section with the Department of  
11 Banking and Finance.

12 (b) ~~Effective July 31, 2010, or within one hundred eighty~~  
13 ~~days after the Nationwide Mortgage Licensing System and Registry is~~  
14 ~~capable of accepting such registrations, whichever occurs later, any~~  
15 Any banking institution described in subdivision (a) of this  
16 subsection that employs mortgage loan originators, as defined in  
17 section 45-702, shall register such employees with the Nationwide  
18 Mortgage Licensing System and Registry, as defined in section 45-702,  
19 by furnishing the following information concerning the employees'  
20 identities to the Nationwide Mortgage Licensing System and Registry:

21 (i) Fingerprints for submission to the Federal Bureau of  
22 Investigation, and any governmental agency or entity authorized to  
23 receive such information, for a state and national criminal history  
24 background check; and

25 (ii) Personal history and experience, including

1 authorization for the Nationwide Mortgage Licensing System and  
2 Registry to obtain information related to any administrative, civil,  
3 or criminal findings by any governmental jurisdiction.

4 (3) The charter of any banking institution which fails to  
5 comply with the provisions of this section shall be automatically  
6 forfeited and such banking institution shall be liquidated and  
7 dissolved, either voluntarily by its board of directors under the  
8 supervision of the department or involuntarily by the department as  
9 in cases of insolvency, except that such charter shall not be  
10 automatically forfeited for failure to comply with subdivision (2)(b)  
11 of this section if the banking institution cures such violation  
12 within sixty days after receipt of notice of such violation from the  
13 Department of Banking and Finance. Any banking institution whose  
14 charter is automatically forfeited under the provisions of this  
15 subsection which continues to engage in the business for which it had  
16 been chartered after such forfeiture, as well as the directors and  
17 officers thereof, shall be subject to the penalties provided by law  
18 for illegally engaging in the business of banking.

19 Sec. 10. Section 8-705, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21 8-705 The Director of Banking and Finance is authorized  
22 to accept in his or her discretion, in lieu of any examination  
23 authorized by the laws of this state to be conducted by his or her  
24 department of a banking institution, the examination that may have  
25 been made of such banking institution within a reasonable period by

1 the Federal Deposit Insurance Corporation, the Federal Reserve Board,  
2 the Comptroller of the Currency, the Consumer Financial Protection  
3 Bureau, or a foreign state agency if a copy of the examination is  
4 furnished to the director. The director may also in his or her  
5 discretion accept any report relative to the condition of a banking  
6 institution which may have been obtained by the Federal Deposit  
7 Insurance Corporation, the Federal Reserve Board, the Comptroller of  
8 the Currency, the Consumer Financial Protection Bureau, or a foreign  
9 state agency within a reasonable period in lieu of a report  
10 authorized by the laws of this state to be required of such  
11 institution by his or her department if a copy of such report is  
12 furnished to the director.

13           As used in this section, unless the context otherwise  
14 requires, foreign state agency shall mean any duly constituted  
15 regulatory or supervisory agency which has authority over financial  
16 institutions and which is created under the laws of any other state,  
17 any territory of the United States, Puerto Rico, Guam, American  
18 Samoa, the Trust Territory of the Pacific Islands, or the Virgin  
19 Islands or which is operating under the code of law for the District  
20 of Columbia.

21           Sec. 11. Section 8-706, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23           8-706 The Director of Banking and Finance may furnish to  
24 the Federal Deposit Insurance Corporation, the Federal Reserve Board,  
25 the Comptroller of the Currency, the Consumer Financial Protection

1 Bureau, or a foreign state agency, or to any official or examiner  
2 thereof, a copy or copies of any or all examinations made of any such  
3 banking institution and of any or all reports made by it and shall  
4 give access and disclose to the Federal Deposit Insurance  
5 Corporation, the Federal Reserve Board, the Comptroller of the  
6 Currency, the Consumer Financial Protection Bureau, or a foreign  
7 state agency, or to any official or examiner thereof, any and all  
8 information possessed by the office of the director with reference to  
9 the conditions or affairs of any such insured institution. Nothing in  
10 this section shall be construed to limit the duty of any banking  
11 institution in this state, deposits in which are to any extent  
12 insured under the provisions of section 8 of the Banking Act of 1933  
13 (section 12B of the Federal Reserve Act, as amended), or of any  
14 amendment of or substitution for the same, to comply with the  
15 provisions of such act, its amendments or substitutions, or the  
16 requirements of the Federal Deposit Insurance Corporation relative to  
17 examinations and reports, nor to limit the powers of the director  
18 with reference to examinations and reports under existing law.

19           As used in this section, unless the context otherwise  
20 requires, foreign state agency shall mean any duly constituted  
21 regulatory or supervisory agency which has authority over financial  
22 institutions and which is created under the laws of any other state,  
23 any territory of the United States, Puerto Rico, Guam, American  
24 Samoa, the Trust Territory of the Pacific Islands, or the Virgin  
25 Islands or which is operating under the code of law for the District



1 of Columbia.

2           Sec. 12. Section 8-915, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           8-915 The director may make examinations of any bank  
5 holding company with one or more state-chartered bank subsidiaries  
6 and each state-chartered bank subsidiary thereof, the cost of which  
7 shall be assessed, in the manner set forth in sections 8-605 and  
8 8-606, against and paid for by such bank holding company. The  
9 director may accept reports of examination made by the Federal  
10 Reserve Board, the Comptroller of the Currency, the Consumer  
11 Financial Protection Bureau, the Federal Deposit Insurance  
12 Corporation, or a foreign state agency in lieu of making an  
13 examination by the department. The director may provide reports of  
14 examination conducted by the department or other confidential  
15 information to any of such regulatory entities. The director may  
16 contract with any of such regulatory entities to conduct and pay for  
17 such an examination for the department. The director may contract  
18 with any of such regulatory entities to conduct and receive payment  
19 for such an examination for any of such regulatory entities. The  
20 director may enter into cooperative agreements with any or all of  
21 such regulatory entities to foster the purposes of the Nebraska Bank  
22 Holding Company Act of 1995.

23           Sec. 13. Section 21-17,115, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25           21-17,115 Notwithstanding any of the other provisions of

1 the Credit Union Act or any other Nebraska statute, any credit union  
2 incorporated under the laws of the State of Nebraska and organized  
3 under the provisions of the act shall have all the rights, powers,  
4 privileges, benefits, and immunities which may be exercised as of  
5 January 1, ~~2012,~~2013, by a federal credit union doing business in  
6 Nebraska on the condition that such rights, powers, privileges,  
7 benefits, and immunities shall not relieve such credit union from  
8 payment of state taxes assessed under any applicable laws of this  
9 state.

10           Sec. 14. Original sections 8-103, 8-108, 8-135, 8-167.01,  
11 8-1,140, 8-204, 8-213, 8-355, 8-702, 8-705, 8-706, 8-915, and  
12 21-17,115, Reissue Revised Statutes of Nebraska, are repealed.

13           Sec. 15. Since an emergency exists, this act takes effect  
14 when passed and approved according to law.