

LEGISLATIVE BILL 1039

Approved by the Governor March 27, 1984

Introduced by Banking, Commerce & Insurance Committee,
DeCamp, 40, Chairperson; Remmers, 1;
Labeledz, 5; Beyer, 3; Schmit, 23

AN ACT relating to banking and finance; to provide powers and duties for the Director of Banking and Finance in regard to violations of certain provisions; to provide procedures; to provide for notice and hearing; to provide for appeals; to provide duties for the Attorney General and county attorneys; to provide penalties; and to declare an emergency.

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

Section 1. (1) Whenever the Director of Banking and Finance has reason to believe that a violation of any provision of Chapter 8 or any rule, regulation, or order of the Department of Banking and Finance has occurred, he or she may cause a written complaint to be served upon the alleged violator. The complaint shall specify the statutory provision or rule, regulation, or order alleged to have been violated and the facts alleged to constitute a violation thereof and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final as to any person named therein unless such person requests, in writing, a hearing before the director no later than ten days after the date such order is served. In lieu of such order, the director may require that the alleged violator appear before the director at a time and place specified in the notice and answer the charge complained of. The notice shall be delivered to the alleged violator or violators in accordance with subsection (4) of this section not less than ten days before the time set for the hearing.

(2) The director shall provide an opportunity for a fair hearing to the alleged violator at the time and place specified in the notice or any modification thereof. On the basis of the evidence produced at the hearing, the director or hearing officer shall make findings of fact and conclusions of law and enter such order as in his or her opinion will best further the purposes of Chapter 8 and the rules, regulations, and orders of the Department of Banking and Finance. Written notice of such order shall be given to the alleged violator and to any other person who appeared at the hearing and made written request for notice of the order. If the hearing is held before any person

other than the director, such person shall transmit a record of the hearing together with findings of fact and conclusions of law to the director. The director, prior to entering his or her order on the basis of such record, shall provide opportunity to the parties to submit for his or her consideration exceptions to the findings or conclusions and supporting reasons for such exceptions. The order of the director shall become final and binding on all parties unless appealed to the district court of Lancaster County as provided in section 2 of this act.

(3) Whenever the director finds that an emergency exists requiring immediate action to protect the safety and soundness of the institutions under the supervision and control of the Department of Banking and Finance, the director may, without notice or hearing, issue an order reciting the existence of an emergency and requiring that such action be taken as the director deems necessary to meet the emergency. Notwithstanding the provisions of subsection (2) of this section, the order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately, but on application to the director shall be afforded a hearing as soon as possible and not later than ten days after such application by the affected person. On the basis of the hearing, the director shall continue the order in effect, revoke it, or modify it. This subsection shall not apply to a determination of necessary acquisition made by the Department of Banking and Finance pursuant to sections 8-1506 to 8-1510.

(4) Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the director shall be served on any person affected thereby either personally or by certified mail, return receipt requested. Proof of service shall be filed in the office of the director.

Every certificate or affidavit of service made and filed as provided in this subsection shall be prima facie evidence of the facts therein stated and a certified copy thereof shall have the same force and effect as the original.

(5) The hearing provided for in this section may be conducted by the director, or by any member of the department acting in his or her behalf, or the director may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the director at any time and place. A verbatim record of the proceedings of such hearings shall be taken and filed with the director, together with findings of fact and conclusions of law made by the director or hearing officer. The director may subpoena witnesses, and any witness who is subpoenaed shall receive the same fees as in civil actions in the district court and mileage as provided in section 84-306.03 for state employees. In case of contumacy or

refusal to obey a notice of hearing or subpoena issued under the provisions of this section, the district court of Lancaster County shall have jurisdiction, upon application of the director, to issue an order requiring such person to appear and testify or produce evidence as the case may require. Failure to obey such order of the court may be punished by such court as contempt thereof.

If requested to do so by any party concerned with such hearing, the full stenographic notes, or tapes of an electronic transcribing device, of the testimony presented at such hearing shall be taken and filed. The stenographer shall, upon the payment of the stenographer's fee allowed by the court, furnish a certified transcript of all or any part of the stenographer's notes to any party to the action requiring and requesting such notes.

Sec. 2. Any person aggrieved by a final order of the Director of Banking and Finance made pursuant to section 1 of this act may obtain a review of the order in the district court of Lancaster County by filing in such court, within thirty days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the director. Upon receipt of the petition, the director shall certify and file in such court a copy of the filing, all exhibits, and the order. When the filing, exhibits, and order have been filed, the court shall have exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. The matter shall be tried de novo in the district court. The commencement of proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of the director's order.

Sec. 3. Whenever it shall appear to the Director of Banking and Finance that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of Chapter 8, he or she may bring an action in the name of the director and the Department of Banking and Finance in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with the provisions of Chapter 8. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant's assets. The director shall not be required to post a bond.

Sec. 4. The Director of Banking and Finance may refer such evidence as may be available concerning violations of the Nebraska Criminal Code or of any rule, regulation, or order under Chapter 8 to the Attorney General or the proper county attorney. It shall be the duty of each county attorney or the Attorney General to whom the director reports a violation to cause appropriate proceedings to be instituted without delay.

Sec. 5. Any person who violates any of the provisions of a final order issued by the Director of Banking and Finance shall be liable to any person or entity who suffers damage proximately caused by such violation. Any person who knowingly violates any final order issued by the Director of Banking and Finance pursuant to section 1 of this act shall be guilty of a Class I misdemeanor.

Sec. 6. An officer, director, agent, or employee of a bank, trust company, building and loan association, industrial loan and investment company, cooperative credit union, credit union, or other similar entity which is licensed, regulated, or examined by the Department of Banking and Finance who willfully misapplies any of the money, funds, or credits of any such entity or any money, funds, assets, or securities entrusted to the care or custody of such entity or the custody or care of any such officer, director, agent, or employee shall be guilty of a Class IV felony.

Sec. 7. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.