

Effective date: January 9, 1991

Title 45 - DEPARTMENT OF BANKING AND FINANCE

Chapter 16 - DIRECTOR, OFFICER OR EMPLOYEE BORROWING

001 Section 8-140 pertains to directors, officers and employees of state banks borrowing funds of the bank. The Department of Banking and Finance interprets this section to mean that such director, officer or employee directly or indirectly receives funds in exchange for some consideration returning to the bank. Thus, the director, officer or employee may be a guarantor without falling within the purview of section 8-140. There are, however, two instances in which a director, officer, or employee will fall within the purview of section 8-140 even though he or she is only in the capacity of guarantor. These are:

001.01 when the loan is in default, or

001.02 when the maker clearly does not have the ability or financial capacity to repay the loan, and reliance is being placed upon the guarantor.

In order to avoid a violation of Section 8-140 in the event 001.01 or 001.02 should occur, the approval of the board of directors must be obtained for such guarantees prior to giving the guarantee.