

LEGISLATIVE BILL 239

Approved by the Governor May 25, 1983

Introduced by Banking, Commerce & Insurance Committee,
DeCamp, 40, Chairperson; Remmers, 1;
Beyer, 3; Clark, 47; Labedz, 5;
Schmit, 23

AN ACT relating to financial institutions; to amend sections 8-403.03 and 8-435, Revised Statutes Supplement, 1982, section 21-17,131, Reissue Revised Statutes of Nebraska, 1943, as amended by section 6, Legislative Bill 252, Eighty-eighth Legislature, First Session, 1983, and sections 2 and 3, Legislative Bill 241, Eighty-eighth Legislature, First Session, 1983; to change the number and selection of directors of industrial loan and investment companies as prescribed; to change the duties of the directors; to change provisions relating to authorized loans and charges; to redefine terms; to change provisions relating to the acquisition of financial institutions as prescribed; and to repeal the original sections.

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

Section 1. That section 8-403.03, Revised Statutes Supplement, 1982, be amended to read as follows:

8-403.03. The affairs and business of any industrial loan and investment company licensed on or after September 1, 1983, or which has twenty-five per cent or more of its voting shares transferred on or after September 1, 1983, organized under the provisions of sections 8-401 to 8-417 shall be managed and or controlled by a board of directors of not less than three five nor more than nine fifteen, who shall be natural persons selected from the stockholders at such time and in such manner as may be provided by the articles of incorporation of the corporation and pursuant to sections 8-401 to 8-417.01. Any industrial loan and investment company licensed prior to September

1. 1983, which has not had twenty-five per cent or more of its voting shares transferred after September 1, 1983, shall have not less than three directors and not more than fifteen directors and such directors shall be selected as provided in this section. No person shall act as a member of the board of directors of any industrial loan and investment company until the company applies for and obtains approval from the Department of Banking and Finance, except that no approval shall be required for any director acting on or immediately prior to September 1, 1983. Any vacancy on the board shall be filled within ninety days by appointment by the remaining directors, and any director so appointed shall serve until the next election of directors, except that if the vacancy created leaves at least five directors, appointment shall be optional. Every director of an industrial loan and investment company shall own and hold in his or her own name and right not less than one share of paid-up stock of such corporation. The board shall select from among its members a president, secretary, and treasurer. The office of secretary and treasurer may be held by the same person. Such officers shall hold their office at the pleasure of the board of directors. The board of directors shall hold at least one meeting in each six-month period regular meeting in each calendar quarter and at one such meeting in each year, a thorough examination of the books, records, funds, and securities held by the industrial loan and investment company shall be made and recorded in detail upon the board's record book, except that instead of such annual examination, the board of directors may accept one annual audit by an accountant or accounting firm approved by the Director of Banking and Finance.

Sec. 2. That section 8-435, Revised Statutes Supplement, 1982, be amended to read as follows:

8-435. In addition to the loans authorized by sections 45-101.03 and subdivisions {2} through {6} of section 45-101.04, any industrial loan and investment company may contract and receive on any installment loan, charges, including simple interest of not to exceed nineteen per cent per year, except that a minimum charge of ten dollars may be charged in lieu of interest on small loans.

Sec. 3. That section 21-17,131, Reissue Revised Statutes of Nebraska, 1943, as amended by section 6, Legislative Bill 252, Eighty-eighth Legislature, First Session, 1983, be amended to read as follows:

21-17,131. As used in sections 21-17,127 to 21-17,145, unless the context otherwise requires:

(1) Depository institution shall mean any credit union, cooperative credit association, bank chartered under section 8-122 which has acquired

substantially all of the assets and liabilities of a cooperative credit association, trust company, savings and loan association, building and loan association, or industrial loan and investment company chartered and existing under the laws of Nebraska, or bank which has acquired substantially all of the assets and liabilities of an industrial loan and investment company;

(2) Account shall mean any account of any member or depositor of a member depository institution into which are deposited shareholdings, savings, or deposits of that member, except that in the case of a bank which has acquired substantially all of the assets and liabilities of an industrial loan and investment company, account shall mean only the certificates of indebtedness outstanding at the time of acquisition;

(3) Corporation shall mean a corporation formed pursuant to sections 21-17,127 to 21-17,145;

(4) Department shall mean the Department of Banking and Finance;

(5) Covered claim shall mean any unpaid shareholdings, savings, or deposits of a member or depositor of a member depository institution and which is not in excess of the applicable amounts to which sections 21-17,127 to 21-17,145 apply as established by the plan of operation of the corporation, if such depository institution becomes insolvent and goes into voluntary liquidation or is placed in involuntary liquidation by order of the department after July 10, 1976;

(6) Member depository institution shall mean any depository institution authorized and chartered under the laws of this state so long as it maintains insurance in full force and effect pursuant to sections 21-17,127 to 21-17,145; and

(7) Shares, savings, and deposit capital shall mean the aggregate total of shares, savings, and deposits held by the member depository institution, except that in the case of a bank acquiring substantially all of the assets and liabilities of an industrial loan and investment company, the term shall mean only the certificates of indebtedness outstanding at the time of acquisition.

Sec. 4. That section 2, Legislative Bill 241, Eighty-eighth Legislature, First Session, 1983, be amended to read as follows:

Sec. 2. The Pursuant to section 1, Legislative Bill 241, Eighty-eighth Legislature, First Session, 1983, the Department of Banking and Finance may permit cross-industry acquisition of any failing institution under its supervision or permit acquisition and operation of such institutions as a bank subsidiary by a bank holding company when the department determines the acquisition of any of the institutions under its

supervision is necessary because its capital is impaired, it is conducting its business in an unsafe or unauthorized manner, or it is endangering the interests of depositors or savers. If the acquiring institution is a bank, it may continue to operate such institution as a state institution under the respective Nebraska statutes notwithstanding its denomination as a bank subsidiary. Acquisitions by any financial institution under this act shall be deemed to be of the same nature as an acquisition of a state chartered bank and shall follow such rules or regulations established by the Director of Banking and Finance for acquisition of state chartered banks by a bank holding company. In considering an application under this section, the director shall authorize transactions considering the following priorities:

- (1) First, between institutions of the same type; and
- (2) Second, between institutions of different types.

Sec. 5. That section 3, Legislative Bill 241, Eighty-eighth Legislature, First Session, 1983, be amended to read as follows:

Sec. 3. Whenever an application by a bank or a bank holding company is received by the Department of Banking and Finance to acquire any other financial institution, the following terms and conditions shall be met and such acquisitions shall be valid only when and for as long as these conditions are satisfied:

(1) The acquiring bank holding company may not apply for, nor shall it operate, such a state chartered institution as a nonbank subsidiary under section 4 of the Federal Bank Holding Company Act of 1956, as amended;

(2) The state chartered institution to be acquired by a bank or a bank holding company shall be subject to the conditions upon which a bank incorporated under the laws of this state may establish, maintain, relocate, or close any of its offices pursuant to the Nebraska Banking Act, but nothing in this act or any other provision of law shall require divestiture such an association to divest itself of any branch or office in operation at the time of acquisition; and

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

Sec. 6. That original sections 8-403.03 and 8-435, Revised Statutes Supplement, 1982, section

21-17,131, Reissue Revised Statutes of Nebraska, 1943, as amended by section 6, Legislative Bill 252, Eighty-eighth Legislature, First Session, 1983, and sections 2 and 3, Legislative Bill 241, Eighty-eighth Legislature, First Session, 1983, are repealed.