

LEGISLATIVE BILL 983

Approved by the Governor April 17, 1986

Introduced by DeCamp, 40

AN ACT relating to banks and banking; to amend section 8-141, Reissue Revised Statutes of Nebraska, 1943, and section 8-157, Revised Statutes Supplement, 1985; to authorize a bank to amortize loan losses in certain instances as prescribed; to provide for renewal, extension, and servicing of certain loans within lending limits as prescribed; to change provisions relating to the establishment of auxiliary offices; to repeal the original sections; and to declare an emergency.

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

Section 1. Whenever any examination of a bank reveals that loan losses have occurred at the bank to the extent that the capital of the bank is impaired and additional capitalization is required, such bank shall, after meeting the following qualification, be allowed to amortize such loan losses over a period of five years. In order to meet the amortization qualification, the bank shall submit a written plan to the Director of Banking and Finance outlining specific steps the bank intends to take to avoid further deterioration and to return to profitability. The director shall have the authority to accept or reject such plan for qualification and, if accepted, shall insure that such plan is regularly reviewed.

Sec. 2. That section 8-141, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-141. No bank shall directly or indirectly loan to any single corporation, firm, or individual, including in such loans all loans made to the several members or shareholders of such firm or corporation, for the use and benefit of such corporation, firm, or individual, more than twenty-five per cent of the paid-up capital, surplus, and capital notes and debentures of such bank. Such limitation of twenty-five per cent shall be subject to the following exceptions:

(1) Obligations of any person, copartnership, association, or corporation in the form of notes or drafts secured by shipping documents or instruments

transferring or securing title covering livestock or giving a lien on livestock, when the market value of the livestock securing the obligation is not at any time less than one hundred fifteen per cent of the face amount of the notes covered by such documents, shall be subject under this section to a limitation of ten per cent of such capital, surplus, and capital notes and debentures, in addition to such twenty-five per cent of such capital and surplus;

(2) Obligations of any person, copartnership, association, or corporation secured by not less than a like amount of bonds or notes of the United States issued since April 24, 1917, or certificates of indebtedness of the United States, treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States, shall be subject under this section to a limitation of ten per cent of such capital, surplus, and capital notes and debentures, in addition to such twenty-five per cent of such capital and surplus; or

(3) Obligations of any person, copartnership, association, or corporation, which are secured by negotiable warehouse receipts in an amount not less than one hundred fifteen per cent of the face amount of the note or notes secured by such documents, shall be subject under this section to a limitation of ten per cent of such capital, surplus, and capital notes and debentures, in addition to such twenty-five per cent of such capital and surplus.

For purposes of this section, the discounting of bills of exchange, drawn in good faith against actually existing values, and the discounting of commercial paper actually owned by the persons negotiating the same, shall not be considered as the lending of money. Loans or obligations shall not be subject to any limitation under this section, based upon such capital stock and surplus, to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase the same, made by any federal reserve bank or by the United States government or any authorized agency thereof, including any corporation wholly owned directly or indirectly by the United States or general obligations of any state of the United States or any political subdivision thereof. The phrase general obligation of any state or any political subdivision thereof shall mean an obligation supported by the full faith and credit of an obligor possessing general powers of taxation, include property taxation, but shall not include municipal revenue bonds

and sanitary and improvement district warrants which shall be subject to the limitations set forth in this section. Obligations representing loans to any national banking association or to any banking institution organized under the laws of any state, when such loans are approved by the Director of Banking and Finance by regulation or otherwise, shall not be subject under this section to any limitation based upon such capital and surplus. For the purpose of determining lending limits, copartnerships shall not be treated as separate entities. Each individual shall be charged with his or her personal debt plus the debt of every copartnership in which he or she is a partner.

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

Sec. 3. That section 8-157, Revised Statutes Supplement, 1985, be amended to read as follows:

8-157. (1) No bank shall maintain any branch bank and, except as provided in subsections (2) to ~~(11)~~ (12) of this section and section 8-122.01, the general business of every bank shall be transacted at the place of business specified in its charter.

(2) With the approval of the director (a) any bank may maintain an attached auxiliary office if such office is physically connected by a pneumatic tube or tubes or a walkway, tunnel, or any other electronic, mechanical, or structural connection or attachment for the public use of the bank and is within two hundred feet of the building containing the premises specified as its place of business in its charter or any adjacent connected building housing a continuation of the operations of the bank's main office and is not within three hundred feet of another bank or another bank's auxiliary or detached office and (b) any bank may establish and maintain ~~commencing (i) in 1983 not more than three detached auxiliary offices; (ii) in 1984 not more than four detached auxiliary offices; and (iii) in 1985 and thereafter not more than five detached auxiliary offices at which all banking transactions allowed by law may be made.~~ Such auxiliary offices shall be within the corporate limits of the city in

which such bank is located. Any bank that establishes and maintains two or more auxiliary offices shall locate one of such offices within three miles of the premises specified as its place of business in its charter. No auxiliary office shall be located within three hundred feet of another bank or within fifty feet of another auxiliary office. Any detached auxiliary office established and maintained by a bank pursuant to the acquisition or merger of an institution under sections 8-1506 to 8-1510 shall not count against the number or location of detached auxiliary offices permitted under this section.

(3) With the approval of the director, a bank may acquire another bank in Nebraska as the result of a purchase or merger so long as the acquired bank has been chartered for more than ~~five~~ three years and the acquired institution and its detached auxiliary offices are converted to auxiliary offices of the acquiring bank. Such auxiliary offices shall not count against the number of locations of detached auxiliary offices permitted under subsections (1) and (2) of this section.

(4) With the approval of the director and subject to the limitations specified in this subsection, a single bank may establish one detached auxiliary office within the corporate limits of any municipality in which a financial institution has closed and ceased doing business within the preceding two years if no other financial institution operates an office within such municipality. If thirty days or less have elapsed since the financial institution ceased operation, the director shall only approve the establishment of a detached auxiliary office by a bank which has its place of business, as specified in its charter, in the same county as or in a contiguous county to the county in which such municipality is located. If more than thirty days have elapsed since the financial institution ceased operation, the director may approve the establishment of a detached auxiliary office by any bank located within Nebraska.

For the purposes of this subsection:

(a) An unmanned electronic satellite facility shall not be deemed to be an office operated by a financial institution; and

(b) Financial institution shall mean a bank, building and loan association, savings and loan association, industrial loan and investment company, or credit union.

(4) (5) The name given to any detached bank or branch bank established and maintained pursuant to this

section shall not be substantially similar to the name of any existing bank or branch bank which is unaffiliated with the newly created bank or branch bank and is located in the same municipality. The name of such newly created bank or branch bank shall be approved by the director.

{5} (6) With the approval of the director, any bank ~~or banks~~ may establish and maintain any number of electronic satellite facilities or manned electronic satellite facilities at which all banking transactions, defined as receiving deposits of every kind and nature and crediting such to customer accounts, cashing checks and cash withdrawals, transfer of funds from checking accounts to savings accounts, transfer of funds from savings accounts to checking accounts, transfer of funds from either checking accounts and savings accounts to accounts of other customers, payment transfers from customer accounts into accounts maintained by other bank customers or the bank, including preauthorized draft authority, preauthorized loans, and credit transactions, receiving payments payable at the bank or otherwise, and such other transactions that the Director of Banking and Finance upon application, notice, and hearing may approve, may be conducted. Such electronic satellite facilities or manned electronic satellite facilities may be established only by a bank as defined in subdivision (4) of section 8-101 or by a national banking association whose main chartered office is located in the State of Nebraska. Neither such electronic satellite facilities, the manned electronic satellite facilities, nor the transactions conducted thereat shall be construed as the establishment of a branch bank or as branch banking. Such facilities shall be available on a nondiscriminating basis for use by customers of any other bank becoming a user bank. It shall not be deemed discrimination if a facility does not offer the same transaction services as other facilities.

Any bank may become a user bank by agreeing to pay the establishing bank its transaction fees. Such agreement may be implied by the use of such facilities. Nothing in this subsection shall prohibit a user bank from agreeing to responsibilities and benefits which might be contained in a standardized agreement. The establishing bank shall file with the director the information necessary to originate a transaction at any facility. Such information shall contain a means of designating the bank or processor to which such transactions shall be switched and shall also contain information adequate to perform authorization of cash

withdrawal and other transactions authorized by this section. The director shall make such information available to any other bank desiring to become a user bank. The establishing bank shall be responsible for transmitting transactions originating from its facility to a switch, but nothing contained in this section may be construed to provide that any inhouse or auxiliary office premises transactions shall be required to go through a switch. The director shall refuse to approve the establishment of any electronic satellite facilities or manned electronic satellite facilities unless such facilities will be available on a nondiscriminating basis through methods, fees, and processes that the establishing bank has provided for switching transactions. Once approval is given for the facility of an establishing bank, the director, upon notice and after a hearing, may revoke the approval for the facility or may suspend the use of such facility if he or she determines that it is not available on a nondiscriminating basis, that the necessary information is not on file with the director, or that transactions originated by customers of user banks are not being switched to processing centers. Nothing in this section may be construed to prohibit nonbank employees from assisting in transactions originated at the facilities, and such assistance shall not be deemed to be engaging in the business of banking. Such nonbank employees may be trained in the use of the facilities by bank employees.

{6} (7) An establishing bank shall not be deemed to make a facility available on a nondiscriminating basis if, through personnel services offered, advertising on or off the facility premises, or otherwise, it discriminates in the use of the facility against any user bank.

{7} (8) Off-premises electronic satellite facilities and manned electronic satellite facilities may be established and maintained by a bank or by a group of two or more banks or a combination of a bank or banks and a third party. No one, through personnel services offered, advertising on or off the facility premises, or otherwise, may discriminate in the use of the facility against any other user bank desiring to use the services of the facility.

{8} (9) It is an intent of this section that this section shall apply to banks chartered by the State of Nebraska and all national banking associations whose main chartered offices are located in the State of Nebraska and that there be an equal opportunity to all

Nebraska banks for the use of and access to a switch and that no discrimination shall exist or preferential treatment be given in either the operation of such switch or the charges for use thereof. The operation of such switch shall be with the approval of the Director of Banking and Finance. Approval of such switch shall be given by the Director of Banking and Finance when he or she shall determine that its design and operation are such as to provide access thereto and use thereof by any Nebraska bank without discrimination as to access or cost of its use.

~~(9)~~ (10) If the director, upon notice and hearing, determines at any time that the design or operation of a switch or provision for use thereof does discriminate against any bank in providing access thereto and use thereof either through access thereto or by virtue of the cost of its use, he or she may revoke his or her approval of such switch operation and ~~forthwith~~ immediately order the discontinuance of the operation of such switch.

~~(10)~~ (11) If it shall be determined by the Director of Banking and Finance, after notice and hearing, that discrimination against any bank has taken place, ~~or~~ that one bank has been preferred over another, or that any bank or person has not complied with any of the provisions of this section, he or she shall ~~forthwith~~ immediately issue a cease and desist order or an order for compliance within ten days from the date of the order and upon noncompliance with such order, the offending bank shall become ineligible to receive and hold any deposits of any nature of the State of Nebraska or any of its political subdivision thereof subdivisions.

~~(11)~~ (12) The provisions of section Section 8-101 and this section shall apply to banks and their activities only. Nothing in such sections may be construed to provide any authority for any nonbank institution to engage in any of the banking transactions enumerated in this section. When reference is made in this section to activities by third parties, such activities shall be limited to the ownership, operation, and maintenance of electronic satellite facilities.

~~(12)~~ (13) Nothing in this section shall prohibit ordinary clearinghouse transactions between banks.

Sec. 4. That original section 8-141, Reissue Revised Statutes of Nebraska, 1943, and section 8-157, Revised Statutes Supplement, 1985, are repealed.

Sec. 5. Since an emergency exists, this act

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shall be in full force and take effect, from and after
its passage and approval, according to law.