

## LEGISLATIVE BILL 1275

Approved by the Governor April 3, 1996

Introduced by Landis, 46

AN ACT relating to financial institutions; to amend sections 8-122 and 8-1509, Reissue Revised Statutes of Nebraska, and sections 8-157 and 8-1507, Revised Statutes Supplement, 1995; to change provisions relating to acquisitions and mergers; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. (1)(a) Except as provided in subsection (2) of this section, subsections (4), (5), and (6) of section 8-157, and sections 8-1507 and 8-1515, with the approval of the director, a bank may only acquire another bank in Nebraska as a result of a purchase or merger (i) in any case in which a substantially completed application for acquisition or merger has been filed with the director prior to the effective date of this act if (A) the acquired bank has been chartered for more than eighteen months and (B) the acquired bank and its detached branch banks are converted to detached branch banks of the acquiring bank or (ii) in any case in which an application for acquisition or merger is filed with the director on or after the effective date of this act if (A) the acquiring bank and the acquired bank have each been chartered for more than eighteen months and (B) the acquired bank and its detached branch banks are converted to detached branch banks of the acquiring bank.

(b) Except as provided in subsection (2) of this section, with the approval of the director, a financial institution may only acquire another financial institution in Nebraska as a result of a cross-industry merger or acquisition under section 8-1510 (i) in any case in which a substantially completed application for such cross-industry acquisition or merger has been filed with the director prior to the effective date of this act if (A) the acquired financial institution and its detached branches are converted to detached branches of the acquiring financial institution and (B) section 8-1510 has been satisfied or (ii) in any case in which an application for such cross-industry acquisition or merger has been filed with the director on or after the effective date of this act if (A) the acquiring financial institution and the acquired financial institution have each been chartered for more than eighteen months, (B) the acquired financial institution and its detached branches are converted to detached branches of the acquiring financial institution, and (C) section 8-1510 has been satisfied.

(2) Subdivisions (1)(a)(i), (1)(a)(ii), (1)(b)(i)(A), (1)(b)(ii)(A), and (1)(b)(ii)(B) of this section shall not apply to any application for merger in which a financial institution has been organized to merge with an existing financial institution when the acquiring financial institution is at the same location as the former existing financial institution following the merger and the merger involves a purchase of substantially all of the assets and liabilities of the former existing financial institution.

(3) For purposes of this section:

(a) Bank means a bank organized under the laws of this state or organized under the laws of the United States to do business in this state; and

(b) Financial institution means a bank, savings bank, savings and loan association, building and loan association, trust company, industrial loan and investment company, or credit union, organized under the laws of this state or organized under the laws of the United States to do business in this state.

Sec. 2. Section 8-122, Reissue Revised Statutes of Nebraska, is amended to read:

8-122. (1) After the examination and approval by the department of the application required by section 8-120, if the department upon investigation and after the public hearing on the application shall be satisfied that the stockholders and officers of the corporation applying for such charter are parties of integrity and responsibility, that the requirements of section 8-702 have been met, and that the public necessity, convenience, and advantage will be promoted by permitting such corporation to engage in business as a bank, the department shall, upon the payment of the required fees, and, upon the filing with the department of a statement, under oath, of the president, secretary, or treasurer, that the paid-up capital stock, surplus, and undivided profits have been paid in, as determined by the department in accordance with section 8-116, issue to such corporation a

charter to transact the business of a bank in this state provided for in its articles of incorporation.

(a) In the case of a bank organized to merge with an existing bank, there shall be a rebuttable presumption that the public necessity, convenience, and advantage will be met by the merger of the two banks, except that such presumption shall not apply when the new bank that is formed by the merger is at a different location than that of the former existing bank. Any application for merger under this subdivision shall be subject to section 1 of this act.

(b) In the case of an applicant which has agreed to acquire substantially all of the assets and liabilities of a cooperative credit association having more than one hundred members, a finding that the public necessity, convenience, and advantage will be promoted by permitting such applicant to engage in business as a bank shall not be required. The department may require an applicant which has agreed to acquire substantially all of the assets and liabilities of a cooperative credit association to provide to each member of the association the following preferential rights: ~~(1)~~ (i) To subscribe to capital stock of the applicant in proportion to such member's equity interest in the association and ~~(2)~~ (ii) to subscribe to capital stock of the applicant which was not subscribed to under subdivision ~~(1)~~ (1)(b)(i) of this section as may be agreed upon by the applicant and the association.

(2) On payment of the required fees and the receipt of the charter, such corporation may begin to conduct a bank.

Sec. 3. Section 8-157, Revised Statutes Supplement, 1995, is amended to read:

8-157. (1) Except as provided in subsections (2) through (10) 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)(a) With the approval of the director, any bank may maintain an attached branch bank if such branch bank is physically connected by a pneumatic tube or tubes or a walkway, a 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.

(b) With the approval of the director, any bank located in a Class I or Class III county may establish and maintain in Class I and Class III counties an unlimited number of detached branch banks at which all banking transactions allowed by law may be made.

(c) With the approval of the director, any bank located in a Class II county may establish and maintain not more than nine detached branch banks at which all banking transactions allowed by law may be made. Such if the bank is located within the corporate limits of a city, such detached branch banks shall be within the corporate limits of the city. If in which such bank is located, or if the bank is located within the zoning jurisdiction of a city of the primary class or is located within an unincorporated city or unincorporated area in a county which contains a city of the primary class, such detached branch banks may also be within the corporate limits of such city if the bank was in existence at such location prior to the effective date of this act.

(d) With the approval of the director, any bank located in a Class IV county may establish and maintain not more than six detached branch banks at which all banking transactions allowed by law may be made. Such detached branch banks shall be within the corporate limits of the city in which such bank is located.

(e) Any detached branch bank established and maintained by a bank pursuant to an acquisition or merger under sections 8-1506 to 8-1510 or an acquisition under section 8-1515 shall not count against the number of locations of detached branch banks permitted under this subsection.

(f) For purposes of this section:

(i) Class I county shall mean a county in this state with a population of three hundred thousand or more as determined by the most recent federal decennial census;

(ii) Class II county shall mean a county in this state with a population of at least two hundred thousand and less than three hundred thousand as determined by the most recent federal decennial census;

(iii) Class III county shall mean a county in this state with a population of at least one hundred thousand and less than two hundred thousand as determined by the most recent federal decennial census; and

(iv) Class IV county shall mean a county in this state with a population of less than one hundred thousand as determined by the most recent

federal decennial census.

(3) With the approval of the director, a bank may acquire another financial institution in Nebraska as the result of a purchase or merger pursuant to section 1 of this act. Any detached so long as (a) if the acquired institution is a bank, the acquired financial institution has been chartered for more than eighteen months and the acquired institution and its detached branches are converted to detached branch banks of the acquiring bank or (b) in a cross-industry merger under section 8-1510 in which the acquired institution and its detached branches are converted to detached branch banks of the acquiring bank, the provisions of such section have been satisfied. Such branch banks established and maintained by a bank pursuant to a purchase or merger under section 1 of this act shall not count against the number of locations of detached branch banks permitted under subdivisions (2)(c) and (2)(d) of this section. If the acquired institution is in a Class I county or in a Class III county, following a purchase or merger pursuant to this subsection the acquiring bank may establish and maintain detached branches to the same extent that the acquired institution could have established and maintained detached branches as provided in subdivision (2)(b) of this section or section 8-345.02 if the purchase or merger had not occurred. If the acquired institution is in a Class II county and it has not established nine detached branches as permitted by subdivision (2)(c) of this section or section 8-345.02, following a purchase or merger pursuant to this subsection the acquiring bank may establish and maintain detached branch banks to the same extent that the acquired institution could have established and maintained detached branches as provided in subdivision (2)(c) of this section or section 8-345.02 if the purchase or merger had not occurred. If the acquired institution is in a Class IV county and it has not established six detached branches as permitted by subdivision (2)(d) of this section or section 8-345.02, following a purchase or merger pursuant to this subsection the acquiring bank may establish and maintain detached branches to the same extent that the acquired institution could have established and maintained detached branches as provided in subdivision (2)(d) of this section or section 8-345.02 if the purchase or merger had not occurred. Regardless of the date of acquisition of such financial institution or whether the acquired financial institution was state-chartered or federally chartered, the acquired institution shall be deemed for purposes of this subsection to have been permitted to establish and maintain detached branches solely to the extent permitted to state-chartered financial institutions under subsection (2) of this section or under section 8-345.02 at the time of establishment of a new detached branch. For purposes of this subsection, financial institution or institution means a bank, savings bank, building and loan association, or savings and loan association organized under the laws of this state or organized under the laws of the United States to do business in this state.

(4) With the approval of the director, a bank may acquire the assets and assume the deposits of a detached branch bank of another financial institution bank in Nebraska if:

(a) The acquired detached branch has been established, maintained, and operated bank has been approved for more than eighteen months; and

(b) The acquired detached branch bank is converted to a detached branch bank of the acquiring bank, and

(c) The bank from which the detached branch bank is acquired and the acquiring bank are subsidiaries of the same bank holding company or the detached branch bank to be acquired was chartered as a bank prior to becoming a detached branch bank.

All banking transactions allowed by law may be made at a detached branch bank acquired pursuant to this subsection. Such detached branches branch banks shall not count against the number of locations of detached branch banks permitted under subdivisions (2)(c) and (2)(d) of this section. The restrictions contained in this subsection shall not limit the authority of a bank to acquire another bank and to continue to operate all of the detached branch banks of the acquired bank as detached branch banks of the acquiring bank.

For purposes of this subsection, financial institution means a bank, savings bank, building and loan association, or savings and loan association organized under the laws of this state or organized under the laws of the United States to do business in this state.

(5) With the approval of the director, a bank may acquire the assets and assume the deposits of a detached branch bank of another bank in Nebraska or acquire the assets and assume the deposits of an eligible savings association acquired by another bank in Nebraska pursuant to section 8-1515 if:

(a) The acquired detached branch bank or eligible savings

association is converted to a detached branch bank of the acquiring bank; and

(b) The detached branch bank or the eligible savings association to be acquired was operated, established, and maintained as an eligible savings association at its existing location prior to August 9, 1989, and was maintained at such location on such date.

All banking transactions allowed by law may be made at a detached branch bank acquired pursuant to this subsection. Such detached branch banks shall not count against the number of locations of detached branch banks permitted under subdivisions (2)(c) and (2)(d) of this section. The restrictions contained in this subsection shall not limit the authority of a bank to acquire another bank and to continue to operate all of the detached branch banks of the acquired bank as detached branch banks of the acquiring bank. The detached branch bank or eligible savings association acquired as a detached branch bank under this subsection and section 8-1515 shall continue to be entitled to establish and maintain such branches as it could have established and maintained if such acquisition had not occurred. Regardless of the date of acquisition of such detached branch bank or eligible savings association or whether the acquired detached branch bank or eligible savings association was state-chartered or federally chartered, the acquired detached branch bank or eligible savings association shall be deemed for purposes of this subsection to have been permitted to establish and maintain detached branches solely to the extent permitted to state-chartered financial institutions under subsection (2) of this section or under section 8-345.02 at the time of establishment of a new detached branch.

(6) With the approval of the director, a bank may acquire a branch of a savings association which is a successor to an eligible savings association if such acquisition occurs within ninety days of the date the successor savings association acquired the eligible savings association and the branch is converted to a detached branch bank of the acquiring bank. The detached branch of an eligible savings association acquired as a detached branch bank under this subsection and section 8-1515 shall continue to be entitled to establish and maintain such branches as it could have established and maintained if such acquisition had not occurred. Regardless of the date of acquisition of such detached branch of an eligible savings association or whether the acquired detached branch of an eligible savings association was state-chartered or federally chartered, the acquired detached branch of an eligible savings association shall be deemed for purposes of this subsection to have been permitted to establish and maintain detached branches solely to the extent permitted to state-chartered financial institutions under section 8-345.02 at the time of establishment of a new detached branch.

(7) With the approval of the director and subject to the limitations specified in this subsection, a single bank may establish one detached branch bank 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 branch bank 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 branch bank by any bank located within Nebraska.

For purposes of this subsection:

(a) An unattended automatic teller machine shall not be deemed to be an office operated by a financial institution; and

(b) Financial institution shall mean a bank, savings bank, building and loan association, savings and loan association, industrial loan and investment company, credit union, or other institution offering automatic teller machine transactions.

(8) The name given to any detached 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 detached branch bank and is located in the same municipality. The name of such newly created detached branch bank shall be approved by the director.

(9) A bank which has a main chartered office or an approved branch bank located in the State of Nebraska may, through any of its executive officers, including executive officers licensed as such pursuant to section 8-139, or designated agents, conduct a loan closing at a location other than the place of business specified in the bank's charter or any detached branch thereof. The director may adopt and promulgate rules and regulations to

implement the provisions of this section.

(10) A bank which has a main chartered office or approved branch office located in the State of Nebraska may, upon notification to the department, establish savings account programs at any elementary or secondary school, whether public or private, located in the same city or village as the main chartered office or branch office of the bank, or, if the main office of the bank is located in an unincorporated area of a county, at any school located in the same unincorporated area. The savings account programs shall be limited to the establishment of individual student accounts and the receipt of deposits for such accounts.

Sec. 4. Section 8-1507, Revised Statutes Supplement, 1995, is amended to read:

8-1507. Pursuant to section 8-1506, the Department of Banking and Finance may permit cross-industry acquisition of any failing financial institution or permit acquisition and operation of such financial institution as a bank subsidiary by a bank holding company when the department determines the acquisition of any of the financial institutions 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 financial institution in its original form notwithstanding its denomination as a bank subsidiary. Acquisitions by any financial institution under sections 8-1506 to 8-1510 or section 1 of 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. The failing institution acquired under this section shall continue to be entitled to establish and maintain such branches as it could have established and maintained if such acquisition had not occurred. Regardless of the date of acquisition of such failing institution or whether the acquired failing institution was state-chartered or federally chartered, the acquired failing institution shall be deemed for purposes of this section to have been permitted to establish and maintain detached branches solely to the extent permitted to state-chartered financial institutions under subsection (2) of section 8-157 or under section 8-345.02 at the time of establishment of a new detached branch.

Sec. 5. Section 8-1509, Reissue Revised Statutes of Nebraska, is amended to read:

8-1509. A bank holding company shall not acquire, hold, or operate a financial institution acquired under sections 8-1506 to 8-1510 or section 1 of this act located in this state as a nonbank subsidiary under section 4 of the ~~Federal~~ federal Bank Holding Company Act of 1956, as amended, unless such financial institution is a savings association as defined by section 2(j) of the ~~Federal~~ federal Bank Holding Company Act of 1956, as amended. The Director of Banking and Finance shall not either accept or approve an application for acquisition under sections 8-1506 to 8-1510 or section 1 of this act which contains as a term or condition thereof the approval of the Board of Governors of the Federal Reserve System under section 4(c)(8) of the ~~Federal~~ federal Bank Holding Company Act of 1956, as amended, unless such financial institution is a savings association as defined by section 2(j) of the ~~Federal~~ federal Bank Holding Company Act of 1956, as amended.

Sec. 6. Original sections 8-122 and 8-1509, Reissue Revised Statutes of Nebraska, and sections 8-157 and 8-1507, Revised Statutes Supplement, 1995, are repealed.

Sec. 7. Since an emergency exists, this act takes effect when passed and approved according to law.