

LEGISLATIVE BILL 240

Approved by the Governor March 30, 1983

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

AN ACT relating to certain financial institutions; to provide procedures and standards for change in control of state-chartered banks and industrial loan and investment companies; to provide for notice; to provide requirements; and to provide powers and duties.

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

Section 1. For the purposes of this act, unless the context otherwise requires:

(1) Person shall mean an individual, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed in this subdivision; and

(2) Control shall mean to own directly or indirectly or to control in any manner twenty-five per cent or more of the voting shares of any bank, industrial loan and investment company, or holding company or to control in any manner the election of the majority of directors of any bank, industrial loan and investment company, or holding company.

Sec. 2. No person acting personally or as agent shall acquire control of any state-chartered bank or industrial loan and investment company without first giving sixty days' notice to the Department of Banking and Finance on forms provided by the department of such proposed acquisition.

The Director of Banking and Finance, upon receipt of such notice, shall act upon it within thirty days, and, unless he or she disapproves the proposed acquisition within that period of time, it may become effective without his or her approval, except that the director may extend the thirty-day period an additional thirty days if in his or her judgment any material information submitted is substantially inaccurate or the acquiring party has not furnished all the information required by this act or the director.

Within three days after his or her decision to disapprove any proposed acquisition, the director shall notify the acquiring party in writing of the disapproval. Such notice shall provide a statement of the basis for the disapproval.

Sec. 3. Within ten days of receipt of notice of disapproval pursuant to section 2 of this act, the acquiring party may request an agency hearing on the proposed acquisition. At such hearing, all issues shall be determined on the record pursuant to the administrative rules of procedure and the rules and regulations issued by the department in accordance with Chapter 84, article 9. At the conclusion of such hearing, the Director of Banking and Finance shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

Sec. 4. Except as otherwise provided by rule and regulation of the department, a notice filed pursuant to section 2 of this act shall contain the following information:

(1) The identity, personal history, business background, and experience of each person by whom or on whose behalf the acquisition is to be made, including his or her material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which he or she is a party and any criminal indictment or conviction of such person by a state or federal court;

(2) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five years immediately preceding the date of the notice, together with related statements of income, source, and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each such person, together with related statements of income, source, and application of funds as of a date not more than ninety days prior to the date of the filing of the notice;

(3) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made;

(4) The identity, source, and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons;

(5) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank

or industrial loan and investment company, to sell its assets or merge it with any company, or to make any other major change in its business or corporate structure or management;

(6) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on his or her behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of such employment, retainer, or arrangement for compensation;

(7) Copies of all invitations, tenders, or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition; and

(8) Any additional relevant information in such form as the Director of Banking and Finance may require by rule and regulation or by specific request in connection with any particular notice.

Sec. 5. The Director of Banking and Finance may disapprove any proposed acquisition if:

(1) The financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or industrial loan and investment company or prejudice the interests of the depositors of the bank or industrial loan and investment company;

(2) The competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank or industrial loan and investment company, or in the interest of the public to permit such person to control the bank or industrial loan and investment company; or

(3) Any acquiring person neglects, fails, or refuses to furnish the Director of Banking and Finance all the information required by him or her.