

LEGISLATIVE BILL 252

Approved by the Governor April 12, 1983

Introduced by Schmit, 23; DeCamp, 40; R. Johnson, 34;
Kahle, 37; Hefner, 19; Sieck, 24;
Pappas, 42

AN ACT relating to banks; to amend sections 8-702 and 21-17,131, Reissue Revised Statutes of Nebraska, 1943, sections 8-116 and 8-122, Revised Statutes Supplement, 1982, and section 8-157, Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 58, Eighty-eighth Legislature, First Session, 1983; to state legislative findings; to provide an exception to membership in the Federal Deposit Insurance Corporation; to provide an exception to procedural requirements of bank charters; to change provisions relating to branch banking and auxiliary offices; to redefine terms; to provide severability; to repeal the original sections; and to declare an emergency.

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

Section 1. (1) The Legislature finds and declares that it is of utmost importance to the State of Nebraska and its citizens that a safe and strong system of banks and other financial depositories be maintained throughout the state. In order to promote this objective, the Legislature wishes to allow financial depositories, existing pursuant to Chapter 21, article 13, and known as cooperative credit associations, to be integrated into the regulatory scheme and system of state chartered banks.

(2) In order to further allow the integration of cooperative credit associations into the state bank system through the acquisition of substantially all of the assets and liabilities of cooperative credit associations by entities newly chartered as state banks, the Legislature hereby specifically declares that a policy is established requiring no finding that public necessity, convenience, and advantage will be promoted concerning the chartering of a new state bank to acquire substantially all of the assets of a cooperative credit

association having more than one hundred members.

(3) The Legislature recognizes its duty to promote efficient expenditure of state funds provided by its citizens, and as the public necessity, convenience, and advantage of these entities is demonstrated by their history of providing service and continuing existence, any additional such determination pursuant to a public hearing or otherwise would be redundant.

(4) The Legislature further declares that the acquisition of substantially all of the assets of an existing cooperative credit association having more than one hundred members by a newly organized state bank will promote the public necessity, convenience, and advantage.

Sec. 2. That section 8-116, Revised Statutes Supplement, 1982, be amended to read as follows:

8-116. (1) A charter for a bank hereafter organized shall not be issued unless the corporation applying therefor shall have a surplus of not less than fifty thousand dollars or fifty per cent of its paid-up capital stock, whichever is greater, and a paid-up capital stock as follows: In villages or counties of less than one thousand inhabitants, one hundred thousand dollars; in cities, villages, or counties of one thousand or more and less than twenty-five thousand inhabitants, not less than one hundred fifty thousand dollars; in cities or counties of twenty-five thousand or more and less than one hundred thousand inhabitants, not less than two hundred thousand dollars; and in cities or counties of one hundred thousand or more inhabitants, not less than five hundred thousand dollars. Such corporation shall also have minimum paid-in undivided profits of not less than twenty per cent of its paid-up capital stock. ~~PROVIDED, that~~

(2) Notwithstanding subsection (1) of this section, (a) the department shall have the authority to determine the minimum amount of paid-up capital stock, surplus, and paid-in undivided profits required for any corporation applying for a bank charter, other than an applicant which has agreed to acquire substantially all of the assets and liabilities of a cooperative credit association, which amounts shall not be less than the foregoing amounts provided in subsection (1) of this section, and (b) the amount of paid-up capital stock, surplus, and paid-in undivided profits required of an applicant which has agreed to acquire substantially all of the assets and liabilities of a cooperative credit association shall be five hundred thousand dollars.

(3) For purposes of this section, population shall be determined by the most recent federal decennial census.

Sec. 3. That section 8-122, Revised Statutes Supplement, 1982, be amended to read as follows:

8-122. 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. 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. 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) To subscribe to capital stock of the applicant in proportion to such member's equity interest in the association and (2) to subscribe to capital stock of the applicant which was not subscribed to under subdivision (1) of this section as may be agreed upon by the applicant and the association. On payment of the required fees and the receipt of the charter, such corporation may begin to conduct a bank.

Sec. 4. That section 8-157, Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 58, Eighty-eighth Legislature, First Session, 1983, be amended to read as follows:

8-157. (1) No bank shall maintain any branch bank and, except as provided in subsection (2) or subsections (2) (3) to (9) of this section and section 3, Legislative Bill 58, Eighty-eighth Legislature, First Session, 1983, 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.

(3) 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 pro rata transaction and other costs, including a reasonable return on capital expenditures incurred in establishing and maintaining such facilities. The establishing bank shall file with the director the information necessary to originate a transaction at any facility. Such information must contain a means of designating the bank or processor to which such transactions shall be switched, and must 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 in-house 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 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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 order the discontinuance of the operation of such switch.

(8) 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 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 political subdivision thereof.

(9) The provisions of sections 8-101 and 8-157 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.

(10) Nothing in this section shall prohibit

ordinary clearinghouse transactions between banks.

Sec. 5. That section 8-702, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-702. (1) Except as provided in subsection subsections (3) and (4) of this section, any banking institution hereafter organized under the laws of this state shall, before a charter may be issued, enter into such contracts, incur such obligations, and generally do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights or privileges, which may at any time be available or inure to banking institutions or to their depositors, creditors, stockholders, conservators, receivers, or liquidators, by virtue of those provisions of section 8, of the Federal Banking Act of 1933 (section 12B of the Federal Reserve Act, as amended), which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits, or of any other provisions of that or of any other act or resolution of Congress to aid, regulate or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor; also, such banking institution may subscribe for and acquire any stock, debentures, bonds, or other types of securities of the Federal Deposit Insurance Corporation and comply with the lawful regulations and requirements from time to time issued or made by such corporation.

(2) Except as provided in subsection subsections (3) and (4) of this section, any banking institution to which a charter has been issued prior to October 19, 1963, and which is not a member of the Federal Deposit Insurance Corporation shall, within one year after October 19, 1963, obtain membership in such corporation and the insurance of its deposits and file proof of compliance with the Department of Banking and Finance.

(3) The provisions of subsection (1) or (2) of this section shall not apply to any bank which procures a bond furnishing blanket excess fidelity coverage of one million dollars over that furnished by bonds required under section 8-110. Such bond shall be filed with and approved by the Director of Banking and Finance and remain a part of the records of the department and shall always be open to public inspection during the office hours of the department.

(4) The provisions of subsection (1), (2), or (3) of this section shall not apply to an applicant acquiring substantially all of the assets and liabilities of a cooperative credit association which (a) has been unable to comply with subsection (1) of

this section because the Federal Deposit Insurance Corporation has determined that the paid-up capital stock, surplus, or paid-in undivided profits of the applicant, as approved by the department in accordance with section 8-116, are inadequate, and (b) becomes a member of a corporation formed pursuant to sections 21-17,127 to 21-17,145.

(4) (5) The charter of any banking institution which fails to comply with the provisions of subsection (2), or (3), or (4) of this section shall be automatically forfeited and such banking institution shall be liquidated and dissolved, either voluntarily by its board of directors under the supervision of the Department of Banking and Finance or involuntarily by the Department of Banking and Finance as in cases of insolvency. Any banking institution whose charter is automatically forfeited under the provisions of this subsection which continues to engage in the business of banking after such forfeiture, as well as the directors and officers thereof, shall be subject to the penalties provided by law for illegally engaging in the business of banking.

Sec. 6. That section 21-17,131, Reissue Revised Statutes of Nebraska, 1943, 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;

(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;

(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.

Sec. 7. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 8. That original sections 8-702 and 21-17,131, Reissue Revised Statutes of Nebraska, 1943, sections 8-116 and 8-122, Revised Statutes Supplement, 1982, and section 8-157, Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 58, Eighty-eighth Legislature, First Session, 1983, are repealed.

Sec. 9. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.