

LEGISLATIVE BILL 295

Approved by the Governor March 4, 1985

Introduced by DeCamp, 40; Schmit, 23

AN ACT relating to banks and banking; to amend sections 8-157 and 8-903, Revised Statutes Supplement, 1984; to change provisions relating to branch banks; to change provisions relating to bank holding companies; to provide for severability; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 8-157, Revised Statutes Supplement, 1984, be amended to read as follows:

8-157. (1) No bank shall maintain any branch bank and, except as provided in subsections (2) to (9) (11) 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 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) 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) 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.

(6) ~~(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.

(7) ~~(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.

(8) ~~(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.

(9) (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.

(10) (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.

(11) (9) The provisions of section ~~sect:ens~~ 8-101 and ~~8-157~~ 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) (10) Nothing in this section shall prohibit ordinary clearinghouse transactions between banks.

Sec. 2. That section 8-903, Revised Statutes Supplement, 1984, be amended to read as follows:

8-903. It shall be unlawful for any action to be taken after March 12, 1963, which results in a company becoming a bank holding company as defined in section 8-902. Nothing in sections 8-901 to 8-904 shall prohibit (1) a bank holding company or a company which owns only one bank which is not a bank holding company as defined in section 8-902, (2) a bank holding company as defined in section 8-1202, or (3) an out-of-state bank holding company as defined in 12 U.S.C. 1842(d) as it exists on August 26, 1983, and which on March 12, 1963, owned at least two banks in this state from directly or indirectly owning or controlling more than twenty-five per cent of the voting shares of any bank or the power to control in any manner the election of a majority of the directors of any

bank unless upon such acquisition the banks so owned or controlled would have deposits greater than an amount equal to eleven ~~nine~~ per cent of the total deposits of all banks in this state plus the total deposits, savings accounts, passbook accounts, and shares in savings and loan associations and building and loan associations in this state as determined by the Director of Banking and Finance on the basis of the most recent calendar year-end reports. If any person, association, partnership, or corporation owns twenty-five per cent or more of the voting stock of any bank holding company acquiring a bank and any such person, association, partnership, or corporation owns twenty-five per cent or more of the voting stock of any other bank or bank holding company in Nebraska, then the total deposits of such other bank or banks and of all banks owned or controlled by such bank holding company shall be included in the computation of the total deposits of a bank holding company acquiring a bank. Except as provided in subsection (3) of section 8-157, no Ne bank holding company shall be allowed to own or control more than nine banks located in the State of Nebraska at any time after August 26, 1983. A bank holding company, including an out-of-state bank holding company, may not acquire any bank which has been chartered by this state or the Comptroller of the Currency of the United States of America for less than five years. A bank which acquires and holds all or substantially all of the voting stock of one newly established bank under sections 8-1512 and 8-1513 shall not have such acquisition count against the total deposit limitation or bank acquisition limitation imposed by this section, nor shall such acquisition be limited, restricted, or disallowed by any other prohibition imposed by this section. A bank holding company which acquires an institution or which forms a bank which acquires an institution under sections 8-1506 to 8-1510 shall not have such acquisition or formation count against the total deposits limitation or bank acquisition limitation imposed by this section, nor shall such acquisition or formation be limited, restricted, or disallowed by any other prohibition imposed by this section, except that any such acquisition which occurs under sections 8-1506 to 8-1510 after July 1, 1987, shall count against the total deposits limitation and the total bank acquisition limitation imposed by this section.

Sec. 3. 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. 4. That original sections 8-157 and 8-903, Revised Statutes Supplement, 1984, are repealed.

Sec. 5. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.