

LEGISLATIVE BILL 241

Approved by the Governor March 30, 1983

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

AN ACT relating to banking and finances; to provide for the merger or acquisition of certain financial institutions as prescribed; to provide powers and duties for the Department of Banking and Finance and the Director of Banking and Finance; to establish requirements; to provide procedures; and to declare an emergency.

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

Section 1. Whenever the Department of Banking and Finance determines the acquisition of any of the institutions under its supervision is necessary because its capital is impaired, it is conducting its business in an unsafe or unauthorized manner, or it is endangering the interest of depositors or savers, the Director of Banking and Finance may take immediate action in the case of an emergency so declared by the Governor, the Secretary of State, and the Director of Banking and Finance, without the benefit of a hearing, to take possession of and convert or merge the charter, form of ownership, or operating powers of any institution under the department's supervision into the charter, form of ownership, or operating powers of a bank or any institution under the department's supervision to facilitate the acquisition.

Sec. 2. The Department of Banking and Finance may permit cross-industry acquisition of any failing institution under its supervision or permit acquisition and operation of such institutions as a bank subsidiary by a bank holding company when the department determines the acquisition of any of the institutions under its supervision 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 institution as a state institution under the respective Nebraska statutes notwithstanding its denomination as a bank subsidiary. Acquisitions by any financial institution under 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. In considering an application under this section, the director shall authorize transactions considering the following priorities:

- (1) First, between institutions of the same type; and
- (2) Second, between institutions of different types.

Sec. 3. Whenever an application by a bank holding company is received by the Department of Banking and Finance to acquire any other financial institution, the following terms and conditions shall be met and such acquisitions shall be valid only when and for as long as these conditions are satisfied:

- (1) The acquiring bank holding company may not apply for, nor shall it operate, such a state chartered institution as a nonbank subsidiary under section 4 of the Federal Bank Holding Company Act of 1956, as amended;

- (2) The state chartered institution to be acquired by a bank holding company shall be subject to the conditions upon which a bank incorporated under the laws of this state may establish, maintain, relocate, or close any of its offices pursuant to the Nebraska Banking Act, but nothing in this act shall require such an association to divest itself of any branch office in operation at the time of acquisition; and

- (3) A state chartered institution to be acquired by a bank holding company shall be subject to the provisions of section 3 of the Federal Bank Holding Company Act of 1956, as amended, and those rules and regulations that apply to bank subsidiaries of bank holding companies as are or may be established by both the Board of Governors of the Federal Reserve System and the Director of Banking and Finance.

Sec. 4. A bank holding company shall not acquire, hold, or operate a state chartered institution acquired under this act located in this state as a nonbank subsidiary under section 4 of the Federal Bank Holding Company Act of 1956, as amended, nor shall the Director of Banking and Finance either accept or approve an application for acquisition under 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 Bank Holding Act.

Sec. 5. The Director of Banking and Finance may permit cross-industry acquisition or merger of institutions under its supervision upon the application of such institutions to the department. The application shall be made on forms prescribed by the department. When an application is made for such an acquisition or merger,

notice of the filing of the application shall be published by the Department of Banking and Finance three weeks in a legal newspaper in or of general circulation in the county where the applicant proposes to operate the institution. The expense of the publication shall be paid by the applicant. A public hearing shall be held on each application. The date for hearing the application shall be not more than ninety days after the filing of the application and not less than thirty days after the last publication of notice after the examination and approval by the department of the application. If the department, upon investigation and after public hearing on the application, shall be satisfied that the stockholders and officers of the institution applying for such acquisition or merger are parties of integrity and responsibility, that the requirements of section 8-702 have been met or some alternate form of protection for depositors has been met, and that the public necessity, convenience, and advantage will be promoted by permitting such acquisition or merger, the department shall, upon payment of the required fees, issue to such institution an order of approval for the acquisition or merger. In the case of an acquisition or merger of an institution into a bank or bank holding company, such acquisition or merger shall be subject to sections 3 and 4 of this act.

Sec. 6. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.