

## LEGISLATIVE BILL 470

Approved by the Governor March 25, 1992

Introduced by Schmit, 23; Crosby, 29; Landis, 46

AN ACT relating to banks and banking; to amend section 8-157.01, Reissue Revised Statutes of Nebraska, 1943, sections 8-157, 8-602, and 8-1515, Reissue Revised Statutes of Nebraska, 1943, as amended by sections 3, 11, and 12, respectively, Legislative Bill 757, Ninety-second Legislature, Second Session, 1992, and section 8-355, Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 985, Ninety-second Legislature, Second Session, 1992; to change provisions relating to the establishment of detached auxiliary offices; to change terminology; to limit the establishment of detached branches by building and loan associations; to harmonize provisions; to provide a duty for the Revisor of Statutes; 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, Reissue Revised Statutes of Nebraska, 1943, as amended by section 3, Legislative Bill 757, Ninety-second Legislature, Second Session, 1992, be amended to read as follows:

8-157. (1) ~~No bank shall maintain any branch bank, and except~~ Except as provided in subsections (2) through (8) 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)~~ (a) With the approval of the director, ~~(a)~~ any bank may maintain an attached auxiliary office branch bank if such office 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, ~~and~~

(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 ~~six~~ nine detached auxiliary offices branch banks at which all banking transactions allowed by law may be made. Such auxiliary offices detached branch banks shall be within the corporate limits of the city 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 auxiliary offices detached branch banks may also be within the corporate limits of such city.

(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 auxiliary office branch bank established and maintained by a bank pursuant to the an acquisition or merger of an institution under sections 8-1506 to 8-1510 or the an acquisition of an eligible savings association under section 8-1515 shall not count against the number or location of locations of detached auxiliary offices branch banks permitted under this section 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 bank in Nebraska as the result of a purchase or merger so long as the acquired bank has been chartered for more than eighteen months and the acquired institution and its detached auxiliary offices branch banks are converted to auxiliary offices detached branch banks of the acquiring bank. Such auxiliary offices branch banks shall not count against the number of locations of detached auxiliary offices branch banks permitted under subsections (1) and (2) 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 branch banks to the same extent that the acquired institution could have established and maintained detached branch banks as provided in subdivision (2)(b) of this section 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 branch banks as permitted by subdivision (2)(c) of this section, 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 branch banks as provided in subdivision (2)(c) of this section 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 branch banks as permitted by subdivision (2)(d) of this section, 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 branch banks as provided in subdivision (2)(d) of this section if the purchase or merger had not occurred.

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

(a) The acquired detached auxiliary office branch bank has been approved for more than eighteen months;

(b) the The acquired detached auxiliary office branch bank is converted to an auxiliary office a detached branch bank of the acquiring bank; and

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

All banking transactions allowed by law may be made at a detached auxiliary office branch bank acquired pursuant to this subsection. Such auxiliary office detached branch banks shall not count against the number of locations of detached auxiliary offices branch banks permitted under subsections (1) and (2) 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 auxiliary offices branch banks of the acquired bank as auxiliary offices detached branch banks of the acquiring bank.

(5) With the approval of the director, a bank may acquire the assets and assume the deposits of a detached auxiliary office 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 The acquired detached auxiliary office branch bank or eligible savings association is converted to an auxiliary office detached branch bank of the acquiring bank; and

(b) the The detached auxiliary office 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 auxiliary office branch bank acquired pursuant to this subsection. Such auxiliary offices detached branch banks shall not count against the number of locations of detached auxiliary offices branch banks permitted under subsections (1) and (2) 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 auxiliary offices branch banks of the acquired bank as auxiliary offices detached branch banks of the acquiring bank.

(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 an auxiliary office a detached branch bank of the acquiring bank.

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

For purposes of this subsection:

(a) An unmanned electronic terminal 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 electronic terminal transactions.

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

Sec. 2. That section 8-157.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-157.01. (1) With the approval of the director, any financial institution may establish and maintain any number of electronic terminals or manned electronic terminals 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 customers of the financial institution or the financial institution, including preauthorized draft authority, preauthorized loans, and credit transactions, receiving payments payable at the financial institution or otherwise, and such other transactions that the director upon application, notice, and hearing may approve, may be conducted. Such electronic terminals or manned electronic terminals may be established only by a financial institution or by a national financial institution association ~~whose~~ the main chartered office of which is located in the State of Nebraska. Neither such electronic terminals, the manned electronic terminals, nor the transactions conducted thereat shall be construed as the establishment of a branch bank or as branch banking. Such terminals shall be available on a nondiscriminating basis for use by customers of any other financial institution becoming a user financial institution. It shall not be deemed discrimination if a terminal does not offer the same transaction services as other terminals.

(2) Any financial institution may become a user financial institution by agreeing to pay the establishing financial institution its transaction fees. Such agreement may be implied by the use of such terminals. Nothing in this subsection shall prohibit a user financial institution from agreeing to responsibilities and benefits which might be contained in a standardized agreement. The establishing financial institution shall file with the director the information necessary to originate a transaction at any terminal. Such information shall contain a means of designating the financial institution or processor to which such transactions shall be switched and shall 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 financial institution desiring to become a user financial institution. The establishing financial institution shall be responsible for transmitting transactions originating from its terminal to a switch, but nothing contained in this section may be construed to provide that any inhouse or ~~auxiliary~~ office branch bank premises transactions shall be

required to go through a switch. The director shall refuse to approve the establishment of any electronic terminals or manned electronic terminals unless such terminals will be available on a nondiscriminating basis through methods, fees, and processes that the establishing financial institution has provided for switching transactions. Once approval is given for the terminal of an establishing financial institution, the director, upon notice and after a hearing, may revoke the approval for the terminal or may suspend the use of such terminal 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 financial institutions 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 terminals, 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 terminals by financial institution employees.

(3) An establishing financial institution shall not be deemed to make a terminal available on a nondiscriminating basis if, through personnel services offered, advertising on or off the terminal premises, or otherwise, it discriminates in the use of the terminal against any user financial institution.

(4) Off-premises electronic terminals and manned electronic terminals may be established and maintained by a financial institution or by a group of two or more financial institutions or a combination of a financial institution or financial institutions and a third party. No one, through personnel services offered, advertising on or off the terminal premises, or otherwise, may discriminate in the use of the terminal against any other user financial institution desiring to use the services of the terminal.

(5) It is the intent that this section shall apply to financial institutions chartered by the State of Nebraska and all national financial institution associations whose the main chartered offices of which are located in the State of Nebraska, that there shall be an equal opportunity to all Nebraska financial institutions 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.

Approval of such switch shall be given by the director when he or she determines that its design and operation are such as to provide access thereto and use thereof by any Nebraska financial institution without discrimination as to access or cost of its use.

(6) 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 financial institution 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 immediately order the discontinuance of the operation of such switch.

(7) If it is determined by the director, after notice and hearing, that discrimination against any financial institution has taken place, that one financial institution has been preferred over another, or that any financial institution or person has not complied with any of the provisions of this section, he or she shall immediately 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 financial institution shall be subject to sections 8-1,135 to 8-1,138 and to having the privileges granted in this section revoked.

(8) For purposes of this section:

(a) An unmanned electronic terminal 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 electronic terminal transactions.

(9) Nothing in this section shall prohibit ordinary clearinghouse transactions between banks.

Sec. 3. No building and loan association organized under the provisions of Chapter 8, article 3, shall establish any new detached branch within this state on or after the effective date of this act except to the extent provided for banks in subsection (2) of section 8-157.

Sec. 4. That section 8-355, Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 985, Ninety-second Legislature, Second Session, 1992, be amended to read as follows:

8-355. Notwithstanding any of the provisions of Chapter 8, article 3, or any other Nebraska statute,



except as provided in section 3 of this act. any association incorporated under the laws of the State of Nebraska and organized under the provisions of such article shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of the effective date of this act ~~the effective date of this act~~ by a federal savings and loan association doing business in Nebraska. Such rights, powers, privileges, benefits, and immunities shall not relieve such association from payment of state taxes assessed under any applicable laws of this state.

Sec. 5. That section 8-602, Reissue Revised Statutes of Nebraska, 1943, as amended by section 11, Legislative Bill 757, Ninety-second Legislature, Second Session, 1992, be amended to read as follows:

8-602. The Director of Banking and Finance shall charge and collect fees for certain services rendered by the Department of Banking and Finance according to the following schedule:

(1) For filing and examining articles of incorporation, association, and bylaws, except cooperative credit associations and credit unions, one hundred dollars, and for cooperative credit associations and credit unions, fifty dollars;

(2) For filing and examining an amendment to articles of incorporation, association, and bylaws, except cooperative credit associations and credit unions, fifty dollars, for cooperative credit associations, twenty-five dollars, and for credit unions, fifteen dollars;

(3) For issuing to banks, trust companies, building and loan associations, and industrial loan and investment companies a charter, authority, or license to do business in this state, a sum which shall be determined on the basis of one dollar and fifty cents for each one thousand dollars of authorized capital, except that the minimum fee in each case shall be two hundred twenty-five dollars, and all foreign building and loan associations shall pay annually a fee of two hundred dollars;

(4) For issuing to cooperative credit associations a charter, authority, or license to do business in this state, twenty-five dollars;

(5) For issuing an executive officer's or loan officer's license, fifty dollars at the time of the initial license and fifteen dollars on or before January 15 each year thereafter, except cooperative credit associations and credit unions for which the fee shall be twenty-five dollars at the time of the initial

license and fifteen dollars on or before January 15 each year thereafter;

(6) For affixing certificate and seal, five dollars;

(7) For making a photostatic copy of instruments, documents, or any other departmental records and for providing a computer-generated document, one dollar and fifty cents per page;

(8) For making substitution of securities held by it and issuing a receipt, fifteen dollars;

(9) For issuing a certificate of approval to a credit union, ten dollars;

(10) For investigating the applications required by sections 8-120, 8-331, and 8-403 and the documents required by sections 8-201, 21-1312, and 21-1313, the cost of such examination, investigation, and inspection, including all legal expenses and the cost of any hearing transcript, with a minimum fee under (a) section 8-120 of two thousand five hundred dollars, (b) section 8-331 of two thousand dollars, (c) section 8-403 of two thousand five hundred dollars, and (d) sections 8-201, 21-1312, and 21-1313 of one thousand dollars. The department may require the applicant to procure and give a surety bond in such principal amount as the department may determine and conditioned for the payment of the fees herein provided;

(11) For registering a statement of intention to engage in the business of making personal loans pursuant to section 8-816, fifty dollars;

(12) To meet the expense of safekeeping securities as provided in section 8-210, the company or national bank shall, at the time of the initial deposit thereof of such securities, pay one dollar and fifty cents for each thousand dollars of securities deposited and a like amount on or before January 15 each year thereafter;

(13) For investigating an application to move its location within the city or village limits of its original license or charter, for banks, trust companies, building and loan associations, and industrial loan and investment companies, two hundred fifty dollars;

(14) For investigating an application for approval to establish or acquire a detached ~~auxiliary teller office~~ branch bank pursuant to section 8-157, two hundred fifty dollars;

(15) For investigating an application for approval of an electronic satellite facility, fifteen dollars;

(16) For investigating a notice of acquisition

of control under subsection (1) of section 8-1502, five hundred dollars;

(17) For investigating an application for a cross-industry merger under section 8-1510, five hundred dollars;

(18) For investigating an application for a merger of two state banks or a merger of a state bank and a national bank in which the state bank is the surviving entity, five hundred dollars; and

(19) For investigating an application for a purchase of an eligible savings association under section 8-1515, five hundred dollars.

All fees and all money collected by or paid to the department under any of the provisions of Chapter 8 or any other law shall, if and when specifically appropriated by the Legislature during any biennium, constitute the Financial Institution Assessment Cash Fund for the use of the department during any biennium in administering the provisions of such chapter and any duties imposed upon the department by any other law, and all of such money when appropriated shall be appropriated for the purposes expressed in this section.

Sec. 6. That section 8-1515, Reissue Revised Statutes of Nebraska, 1943, as amended by section 12, Legislative Bill 757, Ninety-second Legislature, Second Session, 1992, be amended to read as follows:

8-1515. (1) With the approval of the director, a bank may acquire an eligible savings association and convert the eligible savings association into a detached ~~auxiliary office~~ branch bank of the acquiring bank if (a) the eligible savings association was established and maintained at its existing location prior to August 9, 1989, and was maintained at such location on such date and (b) the acquiring bank purchases or assumes all or any part of the assets or liabilities of the eligible savings association or agrees to act as the paying agent of the Federal Deposit Insurance Corporation or Resolution Trust Corporation with respect to the deposit liabilities of the eligible savings association.

(2) 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 an ~~auxiliary office~~ a detached branch bank of the acquiring bank.

(3) For purposes of this section and section

8-157, eligible savings association shall mean the main office, any or all branches of the main office, or the main office and any or all branches of the main office of any federally chartered or state-chartered savings bank, building and loan association, or savings and loan association the deposits of which are insured by the Federal Deposit Insurance Corporation (a) with respect to which any adjudication or other official determination of any court of competent jurisdiction, the director, the appropriate federal banking agency, or any other public authority has resulted in the appointment of a conservator, receiver, or other legal custodian or (b) which fails to meet the minimum capital requirements applicable to it as established by law or regulation promulgated by its principal federal or state regulator. The determination of whether any federally chartered or state-chartered savings bank, building and loan association, or savings and loan association has failed to meet the minimum capital requirements applicable to it shall be made without regard to whether it has been granted any forbearance or other relief from any statutory, regulatory, or other capital requirements by any federal or state regulator, whether the institution has submitted to any such regulator a plan to meet applicable capital requirements or standards over time, or whether any such capital plan has been approved by a federal or state regulator.

Sec. 7. The Revisor of Statutes shall assign section 3 of this act within Chapter 8, article 3.

Sec. 8. That original section 8-157.01, Reissue Revised Statutes of Nebraska, 1943, sections 8-157, 8-602, and 8-1515, Reissue Revised Statutes of Nebraska, 1943, as amended by sections 3, 11, and 12, respectively, Legislative Bill 757, Ninety-second Legislature, Second Session, 1992, and section 8-355, Reissue Revised Statutes of Nebraska, 1943, as amended by section 1, Legislative Bill 985, Ninety-second Legislature, Second Session, 1992, 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.