

LEGISLATIVE BILL 1146

Approved by the Governor April 6, 1990

Introduced by Schmit, 23

AN ACT relating to financial institutions; to amend sections 72-1263 and 72-1269, Reissue Revised Statutes of Nebraska, 1943, sections 8-903 and 77-2326.01, Revised Statutes Supplement, 1988, and sections 77-2321, 77-2326.04, 77-2326.08, and 77-2326.09, Revised Statutes Supplement, 1989; to change restrictions on certain bank holding companies and other companies as prescribed; to provide requirements for the deposit or redeposit of public funds in certain subsidiary banks as prescribed; to change provisions relating to the substitution of securities by depositories of public funds; to define and redefine terms; to provide for the deposit of public funds of county judges and clerks of the county court; to harmonize provisions; 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. That section 8-903, Revised Statutes Supplement, 1988, 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 the Bank Holding Company Act of 1963 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, (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, or (4) on or after January 1, 1990, a bank holding company as defined or referred to in 12 U.S.C. 1842(d) and which is a regional out-of-state bank holding company incorporated and domiciled in a north-central state which authorizes the acquisition or control of banks in that state by a Nebraska bank or Nebraska bank holding company under conditions no more

restrictive than those imposed by the laws of Nebraska, except that any out-of-state bank or bank holding company shall not have a name deceptively similar to an existing Nebraska bank or Nebraska bank holding company, as determined by the Director of Banking and Finance, from directly or indirectly owning or controlling more than twenty-five percent 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 in Nebraska would have deposits in Nebraska greater than an amount equal to ~~twelve percent~~ thirteen percent on January 1, 1991, and fourteen percent on January 1, 1992. 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 percent 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 percent 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 in Nebraska 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 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 or regional 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 or out-of-state bank holding company which acquires an institution or which forms a bank which acquires an institution under sections 8-1506 to 8-1510 or which acquires any assets and liabilities from the

Resolution Trust Corporation or the Federal Deposit Insurance Corporation 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 or from the Resolution Trust Corporation or the Federal Deposit Insurance Corporation after July 1, 1987 January 1, 1994, shall count against the total deposits limitation and the total bank acquisition limitation imposed by this section.

Sec. 2. (1) Each subsidiary bank of an out-of-state bank holding company shall file with the state investment officer a copy of the public section of the subsidiary bank's most current written evaluation issued pursuant to the terms of section 807 of the Community Reinvestment Act of 1977, as amended, 12 U.S.C. 2906. The copy shall be filed with the state investment officer within thirty days of receipt of the evaluation from the subsidiary bank's primary appropriate federal financial supervisory agency.

(2) On and after January 1, 1992, the state investment officer shall not further deposit or redeposit public funds as authorized by section 72-1263 in any subsidiary bank of an out-of-state bank holding company which has been assigned, by its primary appropriate federal financial supervisory agency, a rating of substantial noncompliance in meeting community credit needs. Upon the filing with the state investment officer of a copy of an updated written evaluation which reflects that the subsidiary bank is no longer assigned such rating, the subsidiary bank shall immediately be eligible for further deposit or redeposit of public funds as authorized by such section.

(3) For purposes of this section, bank holding company shall have the meaning provided in 12 U.S.C. 1841 as it exists on the effective date of this act and appropriate federal financial supervisory agency shall have the meaning provided in 12 U.S.C. 2902 as it exists on such date.

(4) This section shall not apply to any subsidiary bank of an out-of-state bank holding company, as defined in 12 U.S.C. 1842(d) as it existed on August 26, 1983, which on March 12, 1963, owned at least two banks in this state.

(5) This section shall not be construed or interpreted in any manner to be a condition precedent to

the acquisition or control of a bank in this state by an out-of-state bank or out-of-state bank holding company.

Sec. 3. That section 72-1263, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

72-1263. The state investment officer shall, out of funds available for investment, cause to be offered to all banks and building and loan associations in this state a time deposit open account in the amount of one hundred fifty thousand dollars, except that any bank or building and loan association may accept such offer in amounts of one hundred thousand dollars or fifty thousand dollars. Such deposit shall be available at any investment date to such banks or building and loan associations as are willing to meet the rate and other requirements set forth in the Nebraska Capital Expansion Act and make application therefor. The balance of the funds available for investment shall then be offered at the same rate to the banks and building and loan associations making application for and otherwise qualifying for such deposit. Such deposit shall be offered in increments of fifty thousand dollars. No deposit shall be made when doing so would violate a fiduciary obligation of the state or section 2 of this act. All funds not investable under this section shall be invested as provided by section 72-1246. No one bank or building and loan association may receive for deposit a sum of more than five hundred thousand dollars or an amount not to exceed the amount covered by the Federal Deposit Insurance Corporation, ~~or the Federal Savings and Loan Insurance Corporation,~~ plus twice the institution's equity capital or net worth or as otherwise provided for by law, whichever is less.

Sec. 4. That section 72-1269, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

72-1269. Sections 72-1261 to 72-1269 and section 2 of this act shall be known and may be cited as the Nebraska Capital Expansion Act.

Sec. 5. That section 77-2321, Revised Statutes Supplement, 1989, be amended to read as follows:

77-2321. The depository furnishing securities as set forth in section 77-2320 shall have the right at any time and without prior approval to substitute other approved securities of equal value in lieu of securities already deposited, except that such securities substituted shall be those provided for in such section. At all times the total value of the securities on

deposit shall be in an amount equal to or greater than the amount of the public funds deposited in the bank or capital stock financial institution less the amount insured by the Federal Deposit Insurance Corporation, except that in the case of the deposit of municipal bonds alone, the total value shall equal ten percent more than the amount of the public funds deposited in the bank or capital stock financial institution less the amount insured by the Federal Deposit Insurance Corporation. Following any substitution of securities pursuant to this section, the county treasurer shall report such substitution at the next meeting of the county board, pledged if it so desires at any time- in counties having a population of two hundred thousand inhabitants or more the county board may by resolution authorize the county treasurer to accept the substitution of other approved securities in lieu of securities already pledged and report such action at the next meeting of the county board. If the action of the treasurer in accepting such substitution shall not be approved by the board at such first meeting, then the depository shall be required to deposit securities satisfactory to the board or the treasurer shall withdraw the deposit within three days. Such securities substituted must, however, be those provided for in section 77-2320 and approved by the members of the county board; the total value of which in the case of bonds alone shall at all times equal ten percent more than the maximum amount of the deposit to which the bank or capital stock financial institution is entitled.

Sec. 6. That section 77-2326.01, Revised Statutes Supplement, 1988, be amended to read as follows:

77-2326.01. As used in For purposes of sections 77-2326-01 77-2313 to 77-2326.09, (1) the term county board shall include county commissioners or county supervisors, as the case may be, and (2) the term public money shall include all funds which come into the hands of county judges, clerks of the county court, or clerks of the district court pursuant to any provision of law authorizing such officers to collect or receive the same.

Sec. 7. That section 77-2326.04, Revised Statutes Supplement, 1989, be amended to read as follows:

77-2326.04. (1) No deposits in excess of the amount insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation shall be made to accumulate in any bank or

capital stock financial institution designated as a depository unless and until the county judge, clerk of the county court, or clerk of the district court, as the case may be, has received from such depository as security for the prompt repayment by the depository of his or her respective deposits in excess of the amount insured by the Federal Deposit Insurance Corporation ~~or the Federal Savings and Loan Insurance Corporation~~ either a surety bond in form and with corporate sureties approved by the county judge or judges or by formal resolution of the county board, as the case may be, or in lieu thereof a pledge of or grant of a security interest in:

(a) Bonds, notes, certificates of indebtedness, or treasury bills of the United States Government of any issue;

(b) Obligations fully and unconditionally guaranteed both as to principal and interest by the United States or bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration;

(c) Bonds of any county, city, village, or school district of this state which have been issued and registered as required by law;

(d) Loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture; or

(e) Registered warrants of any county, city, or school district of this state.

(2) The delivery by the bank or capital stock financial institution designated as a depository to the county judge, clerk of the county court, or clerk of the district court, as the case may be, of a written receipt or acknowledgment from a Federal Reserve Bank or branch thereof or some other bank, capital stock financial institution, or trust company in this state, other than the bank or capital stock financial institution granting the security interest, that includes the name and title of such public officer, describes securities identified on the books or records of the depository, and provides that the securities or the proceeds of securities will be delivered only upon surrender of the receipt or the acknowledgment duly executed by the public officer designated thereon and by the authorized representative of the depository shall, together with such public officer's actual and continued possession of such

receipt or acknowledgment, constitute a valid and perfected security interest in favor of such public officer in and to the securities so identified. Article 9, Uniform Commercial Code, shall not apply to any security interest arising under this section. The provisions of section 77-2366 shall apply to deposits in capital stock financial institutions.

Sec. 8. That section 77-2326.08, Revised Statutes Supplement, 1989, be amended to read as follows:

77-2326.08. The depository pledging or granting a security interest in bonds or securities under sections 77-2326.01 to 77-2326.09 shall have the right to substitute therefor from time to time other and different bonds and securities of equal value within the foregoing requirements and to withdraw all or any part of such bonds or securities so pledged or in which a security interest has been granted upon repayment to the clerk of the county court or clerk of the district court of the value of the bonds or securities thus withdrawn. Each depository shall furnish directly to the county board a sworn monthly statement of the funds of the county judge, clerk of the county court, and clerk of the district court on deposit in such depository. The provisions of section 77-2366 shall apply to deposits in capital stock financial institutions.

Sec. 9. That section 77-2326.09, Revised Statutes Supplement, 1989, be amended to read as follows:

77-2326.09. ~~Neither the clerks~~ The clerk of the county court, the clerk of the district court, ~~nor~~ their deputies or other employees, and ~~nor~~ their sureties shall not be liable for any loss resulting from the failure of any bank or capital stock financial institution as to any such deposits made and maintained as provided in sections 77-2326.01 to 77-2326.09.

Sec. 10. 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. 11. That original sections 72-1263 and 72-1269, Reissue Revised Statutes of Nebraska, 1943, sections 8-903 and 77-2326.01, Revised Statutes Supplement, 1988, and sections 77-2321, 77-2326.04, 77-2326.08, and 77-2326.09, Revised Statutes Supplement, 1989, are repealed.

Sec. 12. Since an emergency exists, this act shall be in full force and take effect, from and after

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its passage and approval, according to law.