

LEGISLATIVE BILL 384

Approved by the Governor June 1, 1995

Introduced by Landis, 46; Fisher, 35

AN ACT relating to banks and banking; to amend sections 8-123, 8-179, 8-821, 8-1402, 15-846, 15-848, 28-612, 45-702, and 77-2306, Reissue Revised Statutes of Nebraska, and sections 8-101, 8-903, 8-1511, and 15-847, Revised Statutes Supplement, 1994; to define and redefine terms; to allow for bank investments in bank subsidiary corporations; to change provisions relating to personal loans, the deposit of city funds, similarly named financial institutions, and the deposit of state funds; to allow bank holding companies to own or control an unlimited number of banks as prescribed; to change provisions relating to the disclosure of confidential information; to provide an alternative method for the disclosure of financial information by banks; to adopt the Nebraska Bank Holding Company Act of 1995; to repeal the Bank Holding Company Act of 1963 and the One Bank Holding Company Act of 1973; to harmonize provisions; to provide duties for the Revisor of Statutes; to provide operative dates; to provide severability; to repeal the original sections; to outright repeal sections 8-901, 8-902.01 to 8-902.05, 8-904, 8-1201, 8-1203 to 8-1207, and 8-1514, Reissue Revised Statutes of Nebraska, sections 8-902 and 8-1202, Revised Statutes Supplement, 1994, and section 8-903, Revised Statutes Supplement, 1994, as amended by section 10, Legislative Bill 384, Ninety-fourth Legislature, First Session, 1995; and to declare an emergency.

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

Section 1. Section 8-101, Revised Statutes Supplement, 1994, is amended to read:

8-101. For purposes of sections 8-101 to 8-1,129 and sections 2 to 4 and 18 of this act, unless the context otherwise requires:

(1) Bank subsidiary corporation means a corporation which has a bank as a shareholder and which is organized for purposes of engaging in activities which are part of the business of banking or incidental to such business except for the receipt of deposits. A bank subsidiary corporation is not to be considered a branch of its bank shareholder;

~~(1)~~ (2) Capital or capital stock ~~shall mean~~ means capital stock;

~~(2)~~ (3) Department ~~shall mean~~ means the Department of Banking and Finance;

~~(3)~~ (4) Director ~~shall mean~~ means the Director of Banking and Finance;

~~(4)~~ (5) Bank or banking corporation ~~means~~ shall be construed to mean any incorporated banking institution which ~~shall have been~~ was incorporated under the laws of this state as they existed prior to May 9, 1933, and any corporation duly organized under the laws of this state for the purpose of conducting a bank within this state under sections 8-101 to 8-1,129 and sections 2 to 4 and 18 of this act. Bank shall be construed to mean means any such banking institution ~~as shall be~~ which is, in addition to the exercise of other powers, following the practice of repaying deposits upon check, draft, or order and of making loans;

~~(5)~~ (6) Order ~~shall include~~ includes orders transmitted by electronic transmission;

~~(6)~~ (7) Automatic teller machine ~~shall mean~~ means a machine established and located off the premises of a financial institution which has a main chartered office or approved branch office located in the State of Nebraska, whether attended or unattended, which utilizes electronic, sound, or mechanical signals or impulses, or any combination thereof, and from which electronic funds transfers may be initiated. An unattended automatic teller machine shall not be deemed to be an office operated by a financial institution;

~~(7)~~ (8) Data processing center ~~shall mean~~ means a facility, wherever located, at which electronic impulses or other indicia of a transaction originating at an automatic teller machine or point-of-sale terminal are received and either authorized or routed to a switch or other data processing center in order to enable the automatic teller machine or point-of-sale terminal to perform any function for which it is designed;

~~(8)~~ (9) Point-of-sale terminal ~~shall mean~~ means an information processing terminal which utilizes electronic, sound, or mechanical signals or

impulses, or any combination thereof, which are transmitted to a financial institution or which are recorded for later transmission to effectuate electronic funds transfer transactions for the purchase or payment of goods and services and which are initiated by an access device in conjunction with a personal identification number. A point-of-sale terminal ~~shall not be deemed to be~~ is not an office operated by a financial institution. Any terminal owned or operated by a seller of goods and services shall be connected directly or indirectly to an acquiring financial institution;

(9) (10) Making loans ~~shall include~~ includes advances or credits that are initiated by means of credit card or other transaction card. Transaction card and other transactions, including transactions made pursuant to prior agreements, may be brought about and transmitted by means of an electronic impulse. Such loan transactions including transactions made pursuant to prior agreements shall be subject to sections 8-815 to 8-829 and shall be deemed loans made at the place of business of the financial institution;

(10) (11) Financial institution ~~shall mean means~~ means a bank, savings bank, building and loan association, savings and loan association, industrial loan and investment company, credit union, or other institution offering automatic teller machines;

(11) (12) Financial institution employees ~~shall include~~ includes parent holding company and affiliate employees;

(12) (13) Switch ~~shall mean means~~ means any facility where electronic impulses or other indicia of a transaction originating at an automatic teller machine or point-of-sale terminal are received and are routed and transmitted to a financial institution, data processing center, or other switch, wherever located. A switch may also be a data processing center;

(13) (14) Impulse ~~shall mean means~~ means an electronic, sound, or mechanical impulse, or any combination thereof;

(14) (15) Insolvent ~~shall mean means~~ means a condition in which (a) the actual cash market value of the assets of a bank is insufficient to pay its liabilities to its depositors, (b) a bank is unable to meet the demands of its creditors in the usual and customary manner, (c) a bank, after demand in writing by the director, fails to make good any deficiency in its reserves as required by law, or (d) the stockholders of a bank, after written demand by the director, fail to make good an impairment of its capital or surplus; and

(15) (16) Foreign state agency ~~shall mean means~~ means any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created under the laws of any other state, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands or which is operating under the code of law for the District of Columbia.

Sec. 2. Any bank may subscribe to, invest in, buy, own, and sell the common stock, obligations, and other securities of one or more bank subsidiary corporations organized under the laws of the State of Nebraska. A bank shall not obligate more than thirty-five percent of its paid-up capital stock, surplus, undivided profits, capital reserves, and capital notes and debentures for such purposes. An additional percentage of its paid-up capital stock, surplus, undivided profits, capital reserves, and capital notes and debentures may be invested with written approval of the director. The subscription, investment, possession, or ownership is not subject to sections 8-148, 8-149, and 8-150.

Sec. 3. A bank subsidiary corporation shall engage in only those activities that its bank shareholder is authorized to perform under the laws of this state and shall engage in those activities only at locations in this state where the bank shareholder could be authorized to perform activities.

Sec. 4. A bank subsidiary corporation is subject to examination and regulation by the department to the same extent as its bank shareholder.

Sec. 5. Section 8-179, Reissue Revised Statutes of Nebraska, is amended to read:

8-179. The resulting state bank shall file a statement with the department, under the oath of its president or cashier, showing that the procedure prescribed by the laws of the United States and by this state have been followed, and setting forth in the statement the matter prescribed by sections ~~section 8-121 and 8-123~~ sections 6 to 8 of this act, and pay the fees prescribed therein, and thereupon the department shall issue to such corporation the certificate provided for in section 8-122 and a charter to transact the business provided for in its articles of incorporation. The department may accept good assets of any such national bank, worth not less than par, in lieu of the payment otherwise provided by law for the stock of such resulting bank. When the parties requesting the conversion, merger, or consolidation are officers or directors of either the national bank or of the

state bank they shall be accepted without investigation as parties of integrity and responsibility. Unless the resulting bank is at a different location than the former national or state bank the department shall recognize the public necessity, convenience, and advantage of permitting the resulting bank to engage in business.

Sec. 6. For purposes of sections 6 to 8 of this act, unless the context otherwise requires:

(1) Department means the Department of Banking and Finance; and

(2) Financial institution means:

(a) A state-chartered or federally chartered bank, savings bank, building and loan association, savings and loan association, industrial loan and investment association, or credit union;

(b) A subsidiary of a bank holding company or out-of-state bank holding company; or

(c) A branch of a financial institution described in subdivision (a) or (b) of this subdivision.

Sec. 7. Section 8-123, Reissue Revised Statutes of Nebraska, is amended to read:

~~8-123.~~ It shall be unlawful for two or more banks financial institutions in the same city, village, or county in this state to have or use the same name or names so nearly alike as to cause confusion in transacting business. In all cases where such in which a similarity of names now exists, or may hereafter exist, a complaint may be made to the department. If ~~7~~ and ~~if~~ in the judgment of the department such a similarity does exist and ~~does~~ create creates confusion in conducting the business of either or both of such banks financial institutions, the department may by order require the junior bank financial institution which is junior in time or organization in the use of its name in such city, village, or county to so change or modify its name as to prevent such confusion. The ~~7~~ and the change of name so made shall be approved by the department.

Sec. 8. The department may adopt and promulgate rules and regulations to carry out the purposes of sections 6 and 7 of this act.

Sec. 9. Section 8-821, Reissue Revised Statutes of Nebraska, is amended to read:

8-821. In addition to the charges permitted by section 8-820, no further amount or exaction shall be directly or indirectly contracted for or received, except:

(1) Lawful fees actually and necessarily paid to a public officer for filing, recording, or releasing an instrument securing the loan;

(2) Taxable costs to which the bank is adjudged to be entitled in judicial proceedings instituted to collect the loan;

(3) Premiums paid for insurance policies covering tangible personal property securing the loan. Such insurance shall be only in such amount and nature as is customary and reasonable, having regard to all the circumstances of the loan, and the premium shall not exceed standard rates. If insurance is procured by or through the bank, an executed copy of the insurance policy or certificate of insurance shall be delivered to the borrower within fifteen days;

(4) Premiums paid for insurance policies covering tangible personal property acquired, in whole or in part, with the proceeds of the loan;

~~(4)~~ (5) The actual costs of nonfiling insurance;

~~(5)~~ (6) Premiums paid for credit life, health, disability, sickness and accident, or involuntary unemployment or job protection insurance policies; ~~or either or any one or more of them;~~

~~(6)~~ (7) Charges permitted by section 8-822; and

~~(7)~~ (8) Fees agreed to by the parties for loan service costs for exceeding authorized limits, replacing lost cards, returning checks, or delinquency on the account.

Sec. 10. Section 8-903, Revised Statutes Supplement, 1994, is amended to read:

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 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, limited liability company, 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, limited liability company, 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 January 1, 1994, shall count against the total deposits limitation and the total bank acquisition limitation imposed by this section.

Sec. 11. Section 8-1402, Reissue Revised Statutes of Nebraska, is amended to read:

8-1402. If any person, corporation, or association, covered by section 8-1401, is required by court order or lawful subpoena, summons, or warrant or, ~~shall~~ after receiving the written permission of the person, corporation, or association about whom information is being sought, voluntarily ~~consent~~ consents to provide information in its possession, it shall be paid by the requesting person, party, agency, or organization for ~~such~~ the service. The requesting person, party, agency, or organization shall pay five dollars per hour per person for the time actually spent on ~~such~~ the service or, if such person, corporation, or association can show that its actual expense in providing ~~such~~ the information was greater than five dollars per hour per person, it shall be paid the actual cost of providing ~~such~~ the information. No person, corporation, or association ~~shall have~~ has an obligation to provide any information pursuant to section 8-1401, other than pursuant to a court order, lawful subpoena, summons, or warrant, until assurances ~~have been~~ are received that the costs due under this section will be paid.

Sec. 12. Section 8-1511, Revised Statutes Supplement, 1994, is amended to read:

8-1511. As used in For purposes of sections 8-1511 to 8-1513, unless the context otherwise requires:

(1) Affiliated bank or thrift institution shall mean (a) if the bank or thrift institution is a subsidiary of a state bank, national banking association, or thrift institution, the parent bank or thrift institution as the case may be and (b) if the bank or thrift institution is a subsidiary of a bank or thrift institution holding company, the principal subsidiary of the

holding company which is a bank or thrift institution as the case may be;

(2) Association of banks or thrift institutions shall mean two or more banks or thrift institutions formed for the purpose of acquiring and holding all or substantially all of the voting stock of one newly established bank pursuant to sections 8-1512 and 8-1513;

(3) Bank or banking corporation shall mean the principal office of (a) any national bank doing business in this state, (b) any corporation which is chartered to conduct a bank in this state as provided in Chapter 8, article 1, (c) any association of banks, (d) a bank holding company as defined in section 8-962 the Nebraska Bank Holding Company Act of 1995, or (e) a bank holding company as defined in the Bank Holding Company Act of 1956, as amended, 12 U.S.C. 1841 et seq., or a subsidiary thereof; with bank subsidiaries whose operations are principally conducted in a state other than Nebraska an out-of-state bank holding company as defined in the Nebraska Bank Holding Company Act of 1995;

(4) Qualifying association shall mean an association, corporation, partnership, limited liability company, or other entity which at all times maintains an office in this state at which it employs at least fifty persons in this state and which pursuant to contract or otherwise offers at least the following services to banks: (a) The distribution, as agent for a bank, of credit cards or transaction cards; (b) the preparation of periodic statements of amounts due under such account; (c) the receipt from credit card or transaction card holders of amounts paid on or with respect to such accounts; and (d) the maintenance of financial records reflecting the status of such accounts from time to time;

(5) Thrift institution shall mean (a) any corporation which is chartered as a building and loan association, savings and loan association, savings bank, credit union, or cooperative credit association under the laws of the United States, any other state, or the District of Columbia and whose operations are principally conducted outside of Nebraska, (b) any holding company of a thrift institution with subsidiaries whose operations are principally conducted outside of Nebraska, or (c) any association of thrift institutions; and

(6) Transaction card shall mean a device or means used to access a prearranged revolving credit plan account.

Sec. 13. Section 15-846, Reissue Revised Statutes of Nebraska, is amended to read:

15-846. For the security of the funds deposited as provided in section 15-845 the city treasurer shall require each depository to give bond for the safekeeping and payment of such deposits and the accretions ~~thereof to the deposit~~, which bond shall run to the city and be approved by the ~~mayor city attorney for form and legality~~. Such bond shall be conditioned that such a depository shall, at the end of every quarter, render to the treasurer a statement in duplicate showing the several daily balances, the amount of money of the city held by it during the quarter, the amount of the accretion ~~thereto to the deposit~~, and how credited. The bond shall also be conditioned that the depository shall pay such deposit and the accretion when demanded by the city treasurer at any time, ~~generally do and perform whatever may be required as~~ required by sections 15-845 to 15-847, and faithfully discharge the trust reposed in such depository. Such bond shall be as nearly as practicable in the form provided in section 77-2304. No person in any way connected with any depository as officer or stockholder shall be accepted as a surety on any bond given by the depository of which he or she is an officer or stockholder. Such bond shall be deposited with the city clerk. The provisions of section 77-2366 shall apply to deposits in capital stock financial institutions.

Sec. 14. Section 15-847, Revised Statutes Supplement, 1994, is amended to read:

15-847. In lieu of the bond required by section 15-846, any bank or capital stock financial institution making application to become a depository may deposit or pledge as security with the city treasurer (1) United States Government bonds, (2) bonds of the State of Nebraska or bonds of any state the bonds of which are purchased by the Board of Educational Lands and Funds of this state for investment of the permanent school fund, (3) warrants of the State of Nebraska, (4) county bonds, municipal bonds, or school district bonds of any county, city, village, or school district in the State of Nebraska issued under the direction of and with the approval of the Auditor of Public Accounts, (5) 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, (6) loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture, or (7) warrants of the county or any city, village,

or school district in the county, or (8) mortgage-backed securities issued by either the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association. The penal sum of such bond or the sum of such pledge of assets may be reduced in the amount of such deposit insured by the Federal Deposit Insurance Corporation. The depository depositing or pledging securities described in this section shall have the right to substitute other approved securities as provided in this section in lieu of securities already pledged if it so desires at any time. The depository may at its option deposit or make the pledge of securities authorized in this section in the manner provided in section 77-2328. The provisions of section 77-2366 shall apply to deposits in capital stock financial institutions.

Sec. 15. Section 15-848, Reissue Revised Statutes of Nebraska, is amended to read:

15-848. The city treasurer shall not have on deposit in any bank or capital stock financial institution at any time more than the maximum amount of the bond given by such financial institution if the financial institution gives a surety bond, nor in any financial institution giving a personal bond, more than one-half of the amount of the bond of such financial institution. The amount on deposit plus accretions at any time with any such financial institution shall not in either case exceed the paid-up capital stock and surplus of such financial institution or more than ninety ninety-eight percent of the par market value of the securities pledged or furnished by such financial institution when the financial institution pledges or deposits approved securities in lieu of a bond. The city treasurer shall not be liable for any loss sustained by reason of the failure of any such bonded depository whose bond shall have been duly approved by the mayor city attorney as provided by section 15-846 or which has, in lieu of a surety bond, pledged or deposited approved securities as provided by section 15-847. The provisions of section 77-2366 shall apply to deposits in capital stock financial institutions.

Sec. 16. Section 28-612, Reissue Revised Statutes of Nebraska, is amended to read:

28-612. (1) A person commits a Class IV felony if he or she:

- (a) Willfully and knowingly subscribes to, makes, or causes to be made any false statement or entry in the books of an organization; or
- (b) Knowingly subscribes to or exhibits false papers with the intent to deceive any person or persons authorized to examine into the affairs of any such organization; or
- (c) Makes, states, or publishes any false statement of the amount of the assets or liabilities of any such organization; or
- (d) Fails to make true and correct entry in the books and records of such organization of its business and transactions in the manner and form prescribed by the Department of Banking and Finance; or
- (e) Mutilates, alters, destroys, secretes, or removes any of the books or records of such organization, without the consent of the Director of Banking and Finance.

(2) As used in this section, organization shall mean means:

- (a) Any trust company transacting a business under sections 8-201 to 8-226; or
- (b) Any association organized for the purpose set forth in section 8-302; or
- (c) Any bank as defined under subsection (4) of in section 8-101; or
- (d) Any cooperative credit association set forth in sections 21-1308 to 21-1331, transacting business in this state; or
- (e) Any industrial loan and investment company as defined under subsection (2) of in section 8-401; or
- (f) Any credit union transacting business in this state under sections 21-1760 to 21-17,120.

Sec. 17. Section 45-702, Reissue Revised Statutes of Nebraska, is amended to read:

45-702. For purposes of the Mortgage Bankers Registration and Licensing Act:

- (1) Borrower shall mean the mortgagor or mortgagors under a real estate mortgage or the trustor or trustors under a deed of trust;
- (2) Department shall mean the Department of Banking and Finance;
- (3) Director shall mean the Director of Banking and Finance;
- (4) Financial institution shall mean any person organized or chartered under the laws of this state, any other state, or the United States relating to banks, savings institutions, trust companies, savings and loan associations, or credit unions. Financial institution shall also mean an industrial loan and investment company chartered under the laws of this state or chartered under the laws of any other state and subject to similar

supervision and regulation as an industrial loan and investment company chartered under the laws of this state or installment loan licensees or similar associations organized under the laws of this state and subject to supervision by the department;

(5) Licensee shall mean any person licensed under the act;

(6) Mortgage banker shall mean any person not exempt under section 45-703 who, for compensation or gain or in the expectation of compensation or gain, directly or indirectly makes, originates, services, negotiates, acquires, sells, arranges for, or offers to make, originate, service, negotiate, acquire, sell, or arrange for ten or more mortgage loans in a calendar year;

(7) Mortgage banking business shall mean any person who employs a mortgage banker or mortgage bankers or who directly or indirectly makes, negotiates, acquires, sells, arranges for, or offers to make, originate, service, negotiate, acquire, sell, or arrange for ten or more mortgage loans in a calendar year for compensation or gain or in the expectation of compensation or gain;

(8) Mortgage loan shall mean any loan or extension of credit secured by a lien on real property, including a refinancing of a contract of sale or an assumption or refinancing of a prior loan or extension of credit;

(9) Person shall mean an association, joint venture, joint-stock company, partnership, limited partnership, limited liability company, business corporation, nonprofit corporation, individual, or any group of individuals however organized;

(10) Real property shall mean an owner-occupied single-family, two-family, three-family, or four-family dwelling which is located in this state and is occupied, used, or intended to be occupied or used for residential purposes;

(11) Registered bank holding company shall mean any ~~(a) one bank holding company registered with the department pursuant to section 8-1202 or 8-1203; (b) bank holding company as defined in section 8-902; or (c) regional out-of-state bank holding company as defined in section 8-902 and on and after January 1, 1991; any bank holding company authorized by section 8-902.02 to own or control banks in this state acting pursuant to the Bank Holding Company Act of 1963 the Nebraska Bank Holding Company Act of 1995;~~

(12) Registrant shall mean a person registered pursuant to section 45-704; and

(13) Service shall mean accepting payments and maintenance of escrow accounts in the regular course of business in connection with a mortgage loan.

Sec. 18. The publication requirements of section 8-167 shall not apply to any bank that makes a disclosure statement available to any member of the general public upon request in compliance with the disclosure of financial information provisions of 12 C.F.R. part 350 or 12 C.F.R. section 208.17.

Sec. 19. Sections 19 to 28 of this act shall be known and may be cited as the Nebraska Bank Holding Company Act of 1995.

Sec. 20. For purposes of the Nebraska Bank Holding Company Act of 1995, unless the context otherwise requires:

(1) Bank means any bank which is chartered to conduct a bank in this state pursuant to sections 8-101 to 8-1,139 or any national bank authorized to do business in this state;

(2) Company means any corporation, partnership, limited liability company, business trust, association, or similar organization or entity, but does not include:

(a) An individual; or

(b) Any corporation, the majority of the shares of which are owned by the United States or by any state;

(3)(a) Bank holding company means any company, including an out-of-state bank holding company, which, except as provided in subdivision (b) of this subdivision:

(i) Directly or indirectly owns or controls twenty-five percent or more of the voting shares of any bank;

(ii) Controls in any manner the election of the majority of the directors of any bank; or

(iii) For the benefit of whose shareholders or members twenty-five percent or more of the voting shares of any bank or bank holding company are held by trustees.

(b)(i) No estate, trust, guardianship, or conservatorship or fiduciary thereof shall be a bank holding company by virtue of its ownership or control of a bank or banks if such trust is not a business trust or voting trust. It shall be unlawful for any such estate, trust, guardianship, or conservatorship to acquire, by purchase, ownership, or control, twenty-five percent of the shares of any additional bank;

(ii) No company shall be a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of bank shares and which are held only for such period of time as will permit the sale thereof on a reasonable basis; and

(iii) No company shall be a bank holding company by virtue of its ownership or control of shares acquired and held in the ordinary course of securing or collecting a debt previously contracted in good faith, except that such shares shall be disposed of within a period of two years from the date on which they were acquired, unless the director, upon good cause shown, extends the two-year period. Any extensions granted by the director shall be for no more than one year at a time and, in the aggregate, for no more than three years;

(4) Adequately capitalized means a level of capitalization which meets or exceeds all applicable federal regulatory capital standards;

(5) Department means the Department of Banking and Finance;

(6) Director means the Director of Banking and Finance;

(7) Foreign state means any state of the United States other than Nebraska, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the District of Columbia;

(8) Home state means, with respect to a bank holding company, the state in which the total deposits of all banking subsidiaries of such company are the largest on the later of: (a) July 1, 1966; or (b) the date on which the company becomes a bank holding company under 12 U.S.C. 1842;

(9) Out-of-state bank holding company means a bank holding company whose home state is a foreign state, except an out-of-state bank holding company, as defined in 12 U.S.C. 1842(d) as it existed on August 26, 1983, which owned at least two banks in Nebraska as of March 12, 1963; and

(10) Foreign state agency means any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created under the laws of any state of the United States other than Nebraska, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands or which is operating under the code of law for the District of Columbia.

Sec. 21. (1) It shall be unlawful, except as provided in this section, for:

(a) Any action to be taken that causes any company to become a bank holding company;

(b) Any action to be taken that causes a bank to become a subsidiary of a bank holding company;

(c) Any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than twenty-five percent of the voting shares of such bank;

(d) Any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank; or

(e) Any bank holding company to merge or consolidate with any other bank holding company.

(2) The prohibition set forth in subsection (1) of this section shall not apply if:

(a)(i) The bank holding company is registered with the department as of September 29, 1995, as a bank holding company for any bank or banks; or

(ii) the bank holding company registers with the department in accordance with the provisions of section 24 of this act as a bank holding company;

(b) The bank holding company does not have a name deceptively similar to an existing unaffiliated bank or bank holding company located in Nebraska;

(c) Upon any action referred to in subsection (1) of this section and subject to subsection (3) of this section, the bank or banks so owned or controlled would have deposits in Nebraska in an amount no greater than fourteen percent of the total deposits of all banks in Nebraska plus the total deposits, savings accounts, passbook accounts, and shares in savings and loan associations and building and loan associations in Nebraska as determined by the director on the basis of the most recent calendar-year-end reports, except as provided in subsections (4) and (5) of this section;

(d) The bank holding company is adequately capitalized and adequately managed;

(e) The bank holding company complies with sections 8-1501 to 8-1505 if the bank or banks to be acquired are chartered in this state under sections 8-101 to 8-1,139; and

(f) The bank holding company, if an out-of-state bank holding company, complies with the limitations of section 22 of this act.

(3) If any person, association, partnership, limited liability company, or corporation owns or controls twenty-five percent or more of the voting stock of any bank holding company acquiring a bank and any such person, association, partnership, limited liability company, or corporation owns or controls 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 in Nebraska 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.

(4) A bank or bank holding company 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 limitations set forth in subdivision (2)(c) of this section.

(5) A bank holding company which acquired an institution or which formed a bank which acquired an institution under sections 8-1506 to 8-1510 or which acquired any assets and liabilities from the Resolution Trust Corporation or the Federal Deposit Insurance Corporation prior to January 1, 1994, shall not have such acquisition or formation count against the limitations set forth in subdivision (2)(c) of this section.

Sec. 22. Upon compliance with all other provisions of the Nebraska Bank Holding Company Act of 1995 and any other applicable law, an out-of-state bank holding company may acquire a bank or banks under the act only if the bank or banks to be acquired have been chartered for five years or more. In determining whether a bank has been chartered for five years or more, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring all or substantially all of the assets of an existing bank shall be deemed to have been in existence for the same period of time as the bank to be acquired.

Sec. 23. Upon approval of the Federal Reserve Board and upon compliance with section 24 of this act, a bank holding company whose home state is Nebraska may own, acquire, or control a depository institution subsidiary in any foreign state.

Sec. 24. Every bank holding company shall register with the department within thirty days after the consummation of an action set forth in section 21 of this act on forms provided by the department. The forms provided by the department shall include such information with respect to the financial condition, operations, management, and intercompany relationship of the bank holding company and its subsidiaries and related matters, as the director may deem necessary or appropriate to carry out the purposes of the Nebraska Bank Holding Company Act of 1995. Upon good cause shown, the director may, in his or her discretion, extend the time within which a bank holding company shall register. A bank holding company shall amend its registration within thirty days after any additional action under section 21, 22, or 23 of this act.

Sec. 25. The director may require reports made under oath to be filed in the department to keep it informed as to the operation of any bank holding company.

Sec. 26. The director may make examinations of any bank holding company with one or more state-chartered bank subsidiaries and each state-chartered bank subsidiary thereof, the cost of which shall be assessed, in the manner set forth in section 8-601, against and paid for by such bank holding company. The director may accept reports of examination made by the Federal Reserve Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or a foreign state agency in lieu of making an examination by the department. The director may provide reports of examination conducted by the department or other confidential information to any of such regulatory entities. The director may contract with any of such regulatory entities to conduct and pay for such an examination for the department. The director may contract with any of such regulatory entities to conduct and receive payment for such an examination for any of such regulatory entities. The director may enter into cooperative agreements with any or all of such regulatory entities to foster the purposes of the Nebraska Bank Holding Company Act of 1995.

Sec. 27. (1) Any bank subsidiary of a bank holding company may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations as an agent for a depository institution affiliate without regard to the location of the depository institution affiliate.

(2) Notwithstanding any other provision of law, a bank acting as an agent in accordance with this section for a depository institution affiliate shall not be considered to be a branch of the affiliate.

(3) A depository institution shall not:

(a) Conduct any activity as an agent under subsection (1) or (6) of this section which such institution is prohibited from conducting as a principal under any applicable law; or

(b) As a principal, have an agent conduct any activity under subsection (1) or (6) of this section which the institution is prohibited from conducting under any applicable law.

(4) No provision of this section shall be construed as affecting:

(a) The authority of any depository institution to act as an agent on behalf of any other depository institution under any other provision of law; or

(b) Whether a depository institution which conducts any activity as an agent on behalf of any other depository institution under any other provision of law shall be considered to be a branch of such other depository institution.

(5) An agency relationship between depository institutions under subsection (1) or (6) of this section shall be on terms that are consistent with safe and sound banking practices and all applicable rules and regulations of the department, any appropriate federal banking regulatory agency, and, if applicable, any foreign state agency.

(6) A savings association insured by the Federal Deposit Insurance Corporation which was an affiliate of a bank on or before July 1, 1994, may conduct activities as an agent on behalf of such bank in the same manner as an insured bank affiliate of such bank may act as an agent for such bank under this section to the extent such activities are conducted only in:

(a) Nebraska or any foreign state in which:

(i) The bank is not prohibited from operating a branch under any provision of law; and

(ii) The savings association maintained an office or branch and conducted business on or before July 1, 1994; or

(b) Nebraska or any foreign state in which:

(i) The bank is not expressly prohibited from operating a branch under applicable Nebraska or foreign state law; and

(ii) The savings association maintained a main office and conducted business on or before July 1, 1994.

(7) For purposes of this section:

(a) Bank means any bank, in addition to those defined in section 20 of this act, chartered by the United States or by any foreign state agency, and insured by the Federal Deposit Insurance Corporation;

(b) Savings institution means any savings and loan association, building and loan association, capital stock savings association, savings bank, or similar entity, chartered under Chapter 8, article 3, chartered by the United States, or chartered by any foreign state agency and insured by the Federal Deposit Insurance Corporation;

(c) Depository institution means either a bank as defined in subdivision (a) of this subsection or a savings institution as defined in subdivision (b) of this subsection;

(d) Affiliate means any entity that controls, is controlled by, or is under common control with another entity; and

(e) Control means to own directly or indirectly or to control in any manner twenty-five percent of the voting shares of any bank, savings institution, or holding company or to control in any manner the election of the majority of directors of any bank, savings institution, or holding company.

Sec. 28. The department may adopt and promulgate rules and regulations to administer and to carry out the purposes of the Nebraska Bank Holding Company Act of 1995.

Sec. 29. Section 77-2306, Reissue Revised Statutes of Nebraska, is amended to read:

77-2306. (1) In lieu of a bond as provided in section 77-2305, any bank making application to become a depository under the provisions of sections 77-2301 to 77-2309 may deposit with the State Treasurer: (a) United States Government notes, certificates of indebtedness, or treasury bills of any issue; (b) bonds or 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 or obligations, including mortgage-backed obligations, issued by the Federal Home Loan Mortgage Corporation, the federal farm credit system, the Federal Home Loan Bank, or the Federal National Mortgage Association; (d) bonds or obligations of any county, city, village, sewer district, fire protection district, rural water district, or school district of this state which have

been issued and registered as required by law; ~~(d)~~ (e) bonds or obligations of another state or a political subdivision of another state the bonds of which are rated within the two highest classifications of prime by at least one of the standard rating services; (f) bonds of the State of Nebraska or of any state the bonds of which are purchased by the Board of Educational Lands and Funds of this state for investment of the permanent school fund or warrants of the State of Nebraska; ~~(e)~~ (g) loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture; or ~~(f)~~ (h) registered warrants of any county, city, or school district of this state.

(2) When the deposit to be secured is in an interest-bearing account, there may be deposited with the State Treasurer in lieu of the bond as provided in section 77-2305 guaranty agreements of the Small Business Administration of the United States Government.

Sec. 30. The Revisor of Statutes shall assign sections 2 to 4 and 18 of this act to Chapter 8, article 1, and sections 6 to 8 of this act to a new article in Chapter 8.

Sec. 31. Sections 12, 17, 19 to 28, 33, and 35 of this act become operative on September 29, 1995. The other sections of this act become operative on their effective date.

Sec. 32. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 33. Original section 45-702, Reissue Revised Statutes of Nebraska, and section 8-1511, Revised Statutes Supplement, 1994, are repealed.

Sec. 34. Original sections 8-123, 8-179, 8-821, 8-1402, 15-846, 15-848, 28-612, and 77-2306, Reissue Revised Statutes of Nebraska, and sections 8-101, 8-903, and 15-847, Revised Statutes Supplement, 1994, are repealed.

Sec. 35. The following sections are outright repealed: Sections 8-901, 8-902.01 to 8-902.05, 8-904, 8-1201, 8-1203 to 8-1207, and 8-1514, Reissue Revised Statutes of Nebraska, sections 8-902 and 8-1202, Revised Statutes Supplement, 1994, and section 8-903, Revised Statutes Supplement, 1994, as amended by section 10, Legislative Bill 384, Ninety-fourth Legislature, First Session, 1995.

Sec. 36. Since an emergency exists, this act takes effect when passed and approved according to law.