

LEGISLATIVE BILL 351

Approved by the Governor March 10, 1997

Introduced by Landis, 46

AN ACT relating to banks and banking; to amend section 8-157, Revised Statutes Supplement, 1996; to adopt the Interstate Branching By Merger Act of 1997; to provide an operative date; to repeal the original section; and to declare an emergency.

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

Section 1. Sections 1 to 8 of this act shall be known and may be cited as the Interstate Branching By Merger Act of 1997.

Sec. 2. For purposes of the Interstate Branching By Merger Act of 1997, unless the context otherwise requires:

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

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

(3) Home state means (a) with respect to a state chartered bank, the state in which the bank is chartered and (b) with respect to a national bank, the state in which the main office of the bank is located;

(4) Home state regulator means, with respect to an out-of-state state chartered bank, the bank supervisory agency of the state in which such bank is chartered;

(5) Host state means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain, a branch;

(6) Interstate merger transaction means a merger or consolidation of two or more banks, at least one of which is a Nebraska bank and at least one of which is an out-of-state bank, and the conversion of the main office and the branches of any bank involved in such merger or consolidation into branches of the resulting bank;

(7) Nebraska bank means a bank whose home state is Nebraska;

(8) Nebraska state chartered bank means a corporation which is chartered to conduct a bank in this state pursuant to sections 8-101 to 8-1,139.

(9) Out-of-state bank means a bank whose home state is a state other than Nebraska;

(10) Out-of-state state chartered bank means a bank chartered under the laws of any state other than Nebraska;

(11) Resulting bank means a bank that has resulted from an interstate merger transaction under the act; and

(12) State means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

Sec. 3. (1) A Nebraska state chartered bank may engage in an interstate merger transaction and establish one or more branches in any other state in accordance with the laws of the other state and with the approval of the director.

(2) A Nebraska state chartered bank may conduct any activities at any branch outside the State of Nebraska that are permissible for a bank chartered by the host state where the branch is located.

Sec. 4. (1) A Nebraska bank which has been in existence for five years or more may be acquired by and engage in an interstate merger transaction with any out-of-state bank.

(2) A bank which is acquired and converted to a branch bank of an out-of-state bank pursuant to an interstate merger transaction shall have all the powers and be subject to the same limitations as any other branch located in this state.

(3) An out-of-state bank that has acquired a Nebraska bank under the Interstate Branching By Merger Act of 1997 may maintain and operate the branches of a Nebraska bank with which the out-of-state bank engaged in an interstate merger transaction, and may establish or acquire additional branches in this state, to the same extent that any Nebraska bank may establish or acquire a branch in Nebraska.

(4) All branches of an out-of-state bank shall comply with all applicable Nebraska laws and regulations in the conduct of their business in this state to the maximum extent authorized by federal law.

Sec. 5. No out-of-state bank shall be permitted to establish or acquire a branch located in this state without engaging in an interstate merger transaction or as provided in subsection (3) of section 4 of this act.

Sec. 6. An interstate merger transaction shall not be permitted if, upon consummation of such transaction, the resulting bank or its bank holding company would have direct or indirect ownership or control of deposits in Nebraska in excess of fourteen percent of the total deposits of all banks in Nebraska, plus the total deposits, savings accounts, passbook accounts, and share accounts 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 subsection (4) or (5) of section 8-910.

Sec. 7. (1) The director may make such examinations of any branch established and maintained in this state by an out-of-state state chartered bank as the director may deem necessary to determine whether the branch is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices.

(2) The director may prescribe requirements for periodic reports regarding any out-of-state bank that operates a branch in Nebraska pursuant to the Interstate Branching By Merger Act of 1997. Any reporting requirements prescribed by the director under this subsection shall be consistent with the reporting requirements applicable to Nebraska state banks and appropriate for the purpose of enabling the director to carry out his or her responsibilities under the act.

(3) The director may enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in Nebraska of an out-of-state state chartered bank or any branch of a Nebraska state chartered bank in a host state, and the director may accept such reports of examination and reports of investigation in lieu of conducting his or her own examinations or investigations.

(4) The director may enter into contracts with any bank supervisory agencies that have concurrent jurisdiction over a Nebraska state chartered bank or an out-of-state state chartered bank operating a branch in this state to engage the services of such agencies' examiners or to provide the services of department examiners to such agency.

(5) The director may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in Nebraska of an out-of-state state chartered bank or any branch of a Nebraska state chartered bank in any host state. The director may, at any time, take such actions independently if he or she deems such actions to be necessary or appropriate to carry out his or her responsibilities under the act or to ensure compliance with the laws of this state. In the case of an out-of-state state chartered bank, the director shall recognize the exclusive authority of the home state regulator over corporate government matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(6) The cost of any examination conducted under this section shall be assessed against such out-of-state state chartered bank in the manner set forth in section 8-601 and paid for by such out-of-state state chartered bank.

Sec. 8. Nothing in the Interstate Branching By Merger Act of 1997 shall prevent the resulting bank in an interstate merger transaction from closing or disposing of any branches acquired in the transaction in accordance with state law subject to applicable federal law regarding branch closures.

Sec. 9. Section 8-157, Revised Statutes Supplement, 1996, is amended to read:

8-157. (1) Except as provided in subsections (2) through (10) of this section, and section 8-122.01, and section 4 of this act, the general business of every bank shall be transacted at the place of business specified in its charter.

(2)(a) With the approval of the director, any bank may maintain an attached branch bank if such 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.

(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 nine detached branch banks at which all banking transactions allowed by law may be made. If the bank is

located within the corporate limits of a city, such detached branch banks shall be within the corporate limits of the city. 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 detached branch banks may also be within the corporate limits of such city if the bank was in existence at such location prior to April 4, 1996.

(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 branch bank established and maintained by a bank pursuant to an acquisition or merger under sections 8-1506 to 8-1510 or an acquisition under section 8-1515 shall not count against the number of locations of detached branch banks permitted under this 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 financial institution in Nebraska as the result of a purchase or merger pursuant to section 8-1516. Any detached branch banks established and maintained by a bank pursuant to a purchase or merger under section 8-1516 shall not count against the number of locations of detached branch banks permitted under 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 branches to the same extent that the acquired institution could have established and maintained detached branches as provided in subdivision (2)(b) of this section or section 8-345.02 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 branches as permitted by subdivision (2)(c) of this section or section 8-345.02, 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 branches as provided in subdivision (2)(c) of this section or section 8-345.02 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 branches as permitted by subdivision (2)(d) of this section or section 8-345.02, following a purchase or merger pursuant to this subsection the acquiring bank may establish and maintain detached branches to the same extent that the acquired institution could have established and maintained detached branches as provided in subdivision (2)(d) of this section or section 8-345.02 if the purchase or merger had not occurred. Regardless of the date of acquisition of such financial institution or whether the acquired financial institution was state-chartered or federally chartered, the acquired institution shall be deemed for purposes of this subsection to have been permitted to establish and maintain detached branches solely to the extent permitted to state-chartered financial institutions under subsection (2) of this section or under section 8-345.02 at the time of establishment of a new detached branch. For purposes of this subsection, financial institution or institution means a bank, savings bank, building and loan association, or savings and loan association organized under the laws of this state or organized under the laws of the United States to do business in this state.

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

(a) The acquired detached branch has been established, maintained, and operated for more than eighteen months; and

(b) The acquired detached branch is converted to a detached branch bank of the acquiring bank.

All banking transactions allowed by law may be made at a detached branch acquired pursuant to this subsection. Such detached branches shall not count against the number of locations of detached branch banks permitted under 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 branch banks of the acquired bank as detached branch banks of the acquiring bank.

For purposes of this subsection, financial institution means a bank, savings bank, building and loan association, or savings and loan association organized under the laws of this state or organized under the laws of the United States to do business in this state.

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

(b) The detached 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 branch bank acquired pursuant to this subsection. Such detached branch banks shall not count against the number of locations of detached branch banks permitted under 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 branch banks of the acquired bank as detached branch banks of the acquiring bank. The detached branch bank or eligible savings association acquired as a detached branch bank under this subsection and section 8-1515 shall continue to be entitled to establish and maintain such branches as it could have established and maintained if such acquisition had not occurred. Regardless of the date of acquisition of such detached branch bank or eligible savings association or whether the acquired detached branch bank or eligible savings association was state-chartered or federally chartered, the acquired detached branch bank or eligible savings association shall be deemed for purposes of this subsection to have been permitted to establish and maintain detached branches solely to the extent permitted to state-chartered financial institutions under subsection (2) of this section or under section 8-345.02 at the time of establishment of a new detached branch.

(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 a detached branch bank of the acquiring bank. The detached branch of an eligible savings association acquired as a detached branch bank under this subsection and section 8-1515 shall continue to be entitled to establish and maintain such branches as it could have established and maintained if such acquisition had not occurred. Regardless of the date of acquisition of such detached branch of an eligible savings association or whether the acquired detached branch of an eligible savings association was state-chartered or federally chartered, the acquired detached branch of an eligible savings association shall be deemed for purposes of this subsection to have been permitted to establish and maintain detached branches solely to the extent permitted to state-chartered financial institutions under section 8-345.02 at the time of establishment of a new detached branch.

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

For purposes of this subsection:

(a) An unattended automatic teller machine 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 automatic teller machine transactions.

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

(9) A bank which has a main chartered office or an approved branch bank located in the State of Nebraska may, through any of its executive officers, including executive officers licensed as such pursuant to section 8-139, or designated agents, conduct a loan closing at a location other than the place of business specified in the bank's charter or any detached branch thereof. The director may adopt and promulgate rules and regulations to implement the provisions of this section.

(10) A bank which has a main chartered office or approved branch office located in the State of Nebraska may, upon notification to the department, establish savings account programs at any elementary or secondary school, whether public or private, located in the same city or village as the main chartered office or branch office of the bank, or, if the main office of the bank is located in an unincorporated area of a county, at any school located in the same unincorporated area. The savings account programs shall be limited to the establishment of individual student accounts and the receipt of deposits for such accounts.

Sec. 10. This act becomes operative on May 31, 1997.

Sec. 11. Original section 8-157, Revised Statutes Supplement, 1996, is repealed.

Sec. 12. Since an emergency exists, this act takes effect when passed and approved according to law.