

LEGISLATIVE BILL 956

Approved by the Governor March 12, 1990

Introduced by Landis, 46

AN ACT relating to financial institutions; to amend sections 8-133, 8-1108.01, 8-1109.02, 8-1507, 8-1509, and 8-1510, Reissue Revised Statutes of Nebraska, 1943, sections 8-141, 8-902.03, 8-1506, and 8-1508, Revised Statutes Supplement, 1988, and sections 8-157, 8-1103, and 8-1111, Revised Statutes Supplement, 1989; to provide for securing deposits as prescribed; to provide an exception to loan limitations; to provide for the acquisition of eligible savings associations; to require bonds from trust companies; to change provisions relating to the application for a bank acquisition; to define terms; to change provisions relating to hearings of and orders by the Director of Banking and Finance; to change provisions relating to transactions exempt from registration; to change provisions relating to the acquisition or merger of failing institutions; to provide operative dates; 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 8-133, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-133. No bank shall, directly or indirectly, pay any interest on deposits at a greater rate than the director ~~shall~~ by regulation ~~provide~~ provides, except that when authorized by the United States Government and approved by the director no bank shall be prohibited from paying interest on any type of United States treasury tax and loan deposits or similar type of United States accounts. Any officer, director, stockholder, or employee of a bank; or any other person who ~~shall~~ directly or indirectly, either personally or for the bank, ~~pay~~ pays any money, ~~give~~ gives any consideration of value, or ~~pledge~~ pledges any assets, except as provided by law, as an inducement, in addition to the legal interest, for making or retaining a deposit in the bank shall be guilty of a Class IV felony. Any

depositor who shall ~~accept~~ accepts any such inducement shall be guilty of a Class IV felony. Deposits made in violation of this section shall not be entitled to priority of payment from the assets of the bank. In determining the maximum interest that may be paid on deposits, the director shall consider generally recognized sound banking principles, the financial soundness of banks, competitive conditions, and general economic conditions. A bank may secure deposits made by a trustee under 11 U.S.C. 101 et seq. by pledge of the assets of the bank or by furnishing a surety bond as provided in 11 U.S.C. 345.

Sec. 2. That section 8-141, Revised Statutes Supplement, 1988, be amended to read as follows:

8-141. (1) No bank shall directly or indirectly loan to any single corporation, firm, or individual, including in such loans all loans made to the several members or shareholders of such firm or corporation, for the use and benefit of such corporation, firm, or individual, more than twenty-five percent of the paid-up capital, surplus, and capital notes and debentures of such bank. Such limitation of twenty-five percent shall be subject to the following exceptions:

{1} (a) Obligations of any person, copartnership, association, or corporation in the form of notes or drafts secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock, when the market value of the livestock securing the obligation is not at any time less than one hundred fifteen percent of the face amount of the notes covered by such documents, shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures, in addition to such twenty-five percent of such capital and surplus;

{2} (b) Obligations of any person, copartnership, association, or corporation secured by not less than a like amount of bonds or notes of the United States issued since April 24, 1917, or certificates of indebtedness of the United States, treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures, in addition to such twenty-five percent of such capital and surplus; or

{3} (c) Obligations of any person, copartnership, association, or corporation, which are

secured by negotiable warehouse receipts in an amount not less than one hundred fifteen percent of the face amount of the note or notes secured by such documents, shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures, in addition to such twenty-five percent of such capital and surplus.

(2) For purposes of this section, the discounting of bills of exchange, drawn in good faith against actually existing values, and the discounting of commercial paper actually owned by the persons negotiating the same shall not be considered as the lending of money. Loans or obligations shall not be subject to any limitation under this section, based upon such capital stock and surplus, to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase the same, made by any federal reserve bank or by the United States Government or any authorized agency thereof, including any corporation wholly owned directly or indirectly by the United States, or general obligations of any state of the United States or any political subdivision thereof. The phrase general obligation of any state or any political subdivision thereof shall mean an obligation supported by the full faith and credit of an obligor possessing general powers of taxation, including property taxation, but shall not include municipal revenue bonds and sanitary and improvement district warrants which shall be subject to the limitations set forth in this section. Any bank may subscribe to, invest in, purchase, and own single-family mortgages secured by the Federal Housing Administration or the Veterans¹ Administration United States Department of Veterans Affairs and mortgage-backed certificates of the Government National Mortgage Association which are guaranteed as to payment of principal and interest by the Government National Mortgage Association. Such mortgages and certificates shall not be subject under this section to any limitation based upon such capital and surplus. Obligations representing loans to any national banking association or to any banking institution organized under the laws of any state, when such loans are approved by the Director of Banking and Finance by regulation or otherwise, shall not be subject under this section to any limitation based upon such capital and surplus. Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject under this section to any limitation based on such capital and surplus. The

department may adopt and promulgate rules and regulations governing the terms and conditions of such security interest and segregated deposit account. For the purpose of determining lending limits, copartnerships shall not be treated as separate entities. Each individual shall be charged with his or her personal debt plus the debt of every copartnership in which he or she is a partner.

(3) A loan made within lending limits at the initial time the loan was made may be renewed, extended, or serviced without regard to changes in the lending limit of a bank following the initial extension of the loan if (a) the renewal, extension, or servicing of the loan does not result in the extension of funds beyond the initial amount of the loan or (b) the accrued interest on the loan is not added to the original amount of the loan in the process of renewal, extension, or servicing.

Sec. 3. (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 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) 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. 4. That section 8-157, Revised Statutes Supplement, 1989, be amended to read as follows:

8-157. (1) No bank shall maintain any branch bank, and except as provided in subsections (2) through ~~(6)~~ (7) 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) With the approval of the director (a) any bank may maintain an attached auxiliary office if such office is physically connected by a pneumatic tube or tubes or a walkway, 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) any bank may establish and maintain not more than five detached auxiliary offices at which all banking transactions allowed by law may be made. Such auxiliary offices 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, such auxiliary offices may also be within the corporate limits of such city. Any detached auxiliary office established and maintained by a bank pursuant to the acquisition or merger of an institution under sections 8-1506 to 8-1510 or the acquisition of an eligible savings association under section 3 of this act shall not count against the number or location of detached auxiliary offices permitted under this section.

(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 are converted to auxiliary offices of the acquiring bank. Such auxiliary offices shall not count against the number of locations of detached auxiliary offices

permitted under subsections (1) and (2) of this section.

(4) With the approval of the director, a bank may acquire the assets and assume the deposits of a detached auxiliary office of another bank in Nebraska if: (a) The acquired detached auxiliary office has been approved for more than eighteen months; (b) the acquired detached auxiliary office is converted to an auxiliary office of the acquiring bank; and (c) the bank from which the detached auxiliary office is acquired and the acquiring bank are subsidiaries of the same bank holding company or the detached auxiliary office to be acquired was chartered as a bank prior to becoming a detached auxiliary office. All banking transactions allowed by law may be made at a detached auxiliary office acquired pursuant to this subsection. Such auxiliary office shall not count against the number of locations of detached auxiliary offices permitted under subsections (1) and (2) 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 of the acquired bank as auxiliary offices 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 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 3 of this act if (a) the acquired detached auxiliary office or eligible savings association is converted to an auxiliary office of the acquiring bank and (b) the detached auxiliary office 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 acquired pursuant to this subsection. Such auxiliary offices shall not count against the number of locations of detached auxiliary offices permitted under subsections (1) and (2) 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 of the acquired bank as auxiliary offices of the acquiring bank.

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

For the 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.

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

Sec. 5. The Department of Banking and Finance shall require each trust company doing business under sections 8-201 to 8-226 to obtain a fidelity bond, naming the trust company as obligee, in an amount to be fixed by the department. The bond shall be issued by an authorized insurer and shall be conditioned to protect and indemnify the trust company from loss which it may sustain of money or other personal property, including that for which the trust company is responsible, through or by reason of the fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, misapplication, misappropriation, or other dishonest or criminal act of or by any of its officers or employees. Such bond may contain a deductible clause in an amount to be approved by the Director of Banking and Finance. An executed copy of the bond shall be filed with and approved by the director and shall remain a part of the records of the department. If the premium of the bond is not paid, the

bond shall not be canceled or subject to cancellation unless at least ten days' advance notice, in writing, is filed with the department. No bond which is current with respect to premium payments shall be canceled or subject to cancellation unless at least forty-five days' advance notice, in writing, is filed with the department. The bond shall always be open to public inspection during the office hours of the department. In the event a bond is canceled, the department may take whatever action it deems appropriate in connection with the continued operation of the trust company involved.

Sec. 6. That section 8-902.03, Revised Statutes Supplement, 1988, be amended to read as follows:

8-902.03. A regional out-of-state bank holding company and, on or after January 1, 1991, any bank holding company authorized by section 8-902.02 to own or control banks in this state, which desires to make an acquisition as authorized by the Bank Holding Company Act of 1963, shall file an application with the Director of Banking and Finance accompanied by an application fee of five thousand dollars payable to the Department of Banking and Finance. The application shall contain such information as the director may, by rule and regulation, prescribe as necessary or appropriate. The applicant shall furnish to the director all of the following:

(1) Information establishing that the acquisition will promote the safety and soundness of the bank or bank holding company proposed to be acquired, including the subsidiary banks of the bank holding company proposed to be acquired;

(2) Information demonstrating that the applicant intends to adequately meet the convenience and needs of the communities served by the bank or subsidiary banks of the bank holding company proposed to be acquired in accordance with the federal Community Reinvestment Act of 1977, including, when applicable, information relating to the following:

(a) Procedures proposed to be carried out by the bank or subsidiary banks of the bank holding company proposed to be acquired to ascertain the credit needs of the communities served by the bank or subsidiary banks of the bank holding company proposed to be acquired, including the extent of proposed efforts to communicate to such communities the credit services proposed to be provided by the bank or subsidiary banks of the bank holding company proposed to be acquired;

(b) The extent of the proposed marketing and

special credit-related programs to be conducted by the bank or subsidiary banks of the bank holding company proposed to be acquired to make the communities served by the bank or subsidiary banks of the bank holding company proposed to be acquired aware of the credit services proposed to be offered by it or them;

(c) The extent of proposed participation by the board of directors of the bank or subsidiary banks of the bank holding company proposed to be acquired in formulating the policies and reviewing the performance of the bank or subsidiary banks of the bank holding company proposed to be acquired in meeting the purposes of the federal Community Reinvestment Act of 1977;

(d) The expected geographic distribution of credit extensions, credit applications, and credit denials of the bank or subsidiary banks of the bank holding company proposed to be acquired;

(e) The proposed participation, including investments by the bank or subsidiary banks of the bank holding company proposed to be acquired, in local community development and redevelopment projects or programs or innovative agricultural enterprises or crop development programs; and

(f) The expected ability of the bank or subsidiary banks of the bank holding company proposed to be acquired to meet various credit needs of the communities served by the bank or subsidiary banks of the bank holding company proposed to be acquired;

(3) Proposed capital investment, loan, and dividend policies of the applicant, including a discussion of the range of consumer and business services which are proposed to be offered by the bank or subsidiary banks of the bank holding company proposed to be acquired and how the bank or subsidiary banks of the bank holding company proposed to be acquired propose to meet the credit needs of individuals, small business, and agriculture in the communities served by it or them;

(4) Any plans of the applicant to merge, sell the assets of, or liquidate the bank, bank holding company, or subsidiary banks of the bank holding company proposed to be acquired or to make any other major change in the business or corporate structure or management;

(5) Information on how the proposed acquisition will result in net new benefits to the communities served by the bank or subsidiary banks of the bank holding company proposed to be acquired; and

(6) Evidence of compliance by the subsidiary banks of the applicant in the states in which they are

located with the federal Community Reinvestment Act of 1977 and any applicable state or community reinvestment statutes or rules.

Sec. 7. That section 8-1103, Revised Statutes Supplement, 1989, be amended to read as follows:

8-1103. (1) It shall be unlawful for any person to transact business in this state as a broker-dealer, issuer-dealer, or agent, except in certain transactions exempt under section 8-1111, unless he or she is registered under the Securities Act of Nebraska. It shall be unlawful for any broker-dealer to employ an agent for purposes of effecting or attempting to effect transactions in this state unless the agent is registered. It shall be unlawful for an issuer to employ an agent unless the issuer is registered as an issuer-dealer and unless the agent is registered. It shall be unlawful for any person to transact business in this state as an investment adviser unless (a) he or she is registered as an investment adviser under this section, (b) he or she is registered as a broker-dealer under this section, or (c) his or her only clients in this state are investment companies, as defined in the Investment Company Act of 1940, or insurance companies.

(2) A broker-dealer, issuer-dealer, agent, or investment adviser may apply for registration by filing with the director an application together with a consent to service of process pursuant to section 8-1112 and payment of the fee prescribed in subsection (5) of this section.

Registration of a broker-dealer or issuer-dealer shall automatically constitute registration of all partners, officers, or directors of such broker-dealer or issuer-dealer as agents, except any partner, officer, or director whose registration as an agent is denied, suspended, or revoked under subsection (7) of this section, without the filing of applications for registration as agents or the payment of fees for registration as agents. The application shall contain whatever information the director requires concerning such matters as:

(a) The applicant's form and place of organization;

(b) The applicant's proposed method of doing business;

(c) The qualifications and business history of the applicant and, in the case of a broker-dealer or investment adviser, any partner, officer, or director;

(d) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of

a felony; and

(e) The applicant's financial condition and history.

(3)(a) If no denial order is in effect and no proceeding is pending under subsection (7) of this section, registration shall become effective at noon of the thirtieth day after an application is filed. The director may specify an earlier effective date, and he or she may by order defer the effective date until noon of the thirtieth day after the filing of any amendment.

(b) The director shall require as conditions of registration:

(a) (i) That the applicant, except for renewal, and, in the case of a corporation or partnership, the officers, directors, or partners, pass such examination or examinations as the director may prescribe as evidence of knowledge of the securities business;

(b) (ii) That an issuer-dealer and its agents pass an examination prescribed and administered by the Department of Banking and Finance. Such examination shall be administered upon request and upon payment of an examination fee of five dollars. Any applicant for issuer-dealer registration who has satisfactorily passed any other examination approved by the director shall be exempted from this requirement upon furnishing evidence of satisfactory completion of such examination to the director; and

(c) (iii) That a broker-dealer or issuer-dealer have a minimum net capital of twenty-five thousand dollars. In lieu of a minimum net capital requirement of twenty-five thousand dollars, the director may require a broker-dealer or issuer-dealer to post a corporate surety bond with surety licensed to do business in Nebraska in an amount equal to such capital requirements. When the director finds that a surety bond with a surety company would cause an undue burden on an issuer-dealer, the director may require the issuer-dealer to post a signature bond. Every such surety bond shall run in favor of Nebraska, shall provide for suit thereon by any person who has a cause of action under section 8-1118, and shall provide that no suit may be maintained to enforce any liability on the bond unless brought within two years after the sale or other act upon which it is based.

(c) The director may waive the requirement of an examination for any applicant who by reason of prior experience can demonstrate his or her knowledge of the securities business. Registration of a broker-dealer,

issuer-dealer, agent, or investment adviser shall be effective for a period of one year and may be renewed as provided in this section. The registration of an agent shall not be effective during any period when he or she is not associated with a registered broker-dealer or issuer-dealer specified in his or her application or a notice filed with the director. When an agent begins or terminates a connection with a registered broker-dealer or issuer-dealer, the agent and the broker-dealer or issuer-dealer shall promptly notify the director.

(4) Registration of a broker-dealer, issuer-dealer, agent, or investment adviser may be renewed by filing with the director prior to the expiration thereof an application containing such information as the director may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, issuer-dealer, agent, or investment adviser filed with the director by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer or issuer-dealer, a financial statement showing the financial condition of such broker-dealer or issuer-dealer as of a date within ninety days.

(5) The fee for initial or renewal registration shall be one hundred dollars for a broker-dealer or issuer-dealer, fifty dollars for an investment adviser, and fifteen dollars for an agent. When an application is denied or withdrawn, the director shall retain all of the fee.

(6) Every registered broker-dealer, issuer-dealer, and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under subdivision (1) of section 8-1110, as the director shall prescribe. All records so required shall be preserved for three years unless the director shall prescribe otherwise for particular types of records. All the records of a registered broker-dealer, issuer-dealer, or investment adviser shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the director, within or without this state, as the director deems necessary or appropriate in the public interest or for the protection of investors.

(7)(a) The director may by order deny, suspend, or revoke registration of any broker-dealer, issuer-dealer, agent, or investment adviser if he or she finds that the order is in the public interest and that

the applicant or registrant or, in the case of a broker-dealer, issuer-dealer, or investment adviser, any partner, officer, or director:

{a} (i) Has filed an application for registration under this section which, as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

{b} (ii) Has willfully violated or willfully failed to comply with any provision of the Securities Act of Nebraska or a predecessor act or any rule, regulation, or order adopted and promulgated pursuant to the act or a predecessor act;

{c} (iii) Has been convicted, within the past ten years, of any misdemeanor involving a security or any aspect of the securities business or any felony;

{d} (iv) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

{e} (v) Is the subject of an order of the director denying, suspending, or revoking registration as a broker-dealer, issuer-dealer, agent, or investment adviser;

{f} (vi) Is the subject of an order entered within the past five years by the securities administrator of any other state or by the Securities and Exchange Commission denying or revoking registration as a broker-dealer or agent; or the substantial equivalent of those terms as defined in section 8-1101, is the subject of an order of the Securities and Exchange Commission suspending or expelling him or her from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order. ~~The ; but the~~ director may not institute a revocation or suspension proceeding under this subdivision more than one year from the date of the order relied on, and he or she may not enter any order under this subdivision on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

{g} (vii) Has engaged in dishonest or unethical practices in the securities business;

{h} (viii) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or

in the sense that he or she cannot meet his or her obligations as they mature, but the director may not enter an order against a broker-dealer, issuer-dealer, or investment adviser under this subdivision without a finding of insolvency as to the broker-dealer, issuer-dealer, or investment adviser;

(*) (ix) Has not complied with a condition imposed by the director under subsection (3) of this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

(j) (x) Has failed to pay the proper filing fee, but the director may enter only a denial order under this subdivision, and he or she shall vacate any such order when the deficiency has been corrected; or

(k) (xi) Has been denied the right to do business or his or her respective authority to do business has been revoked by any other governmental agency for cause.

(b) The director may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him or her when registration became effective. The director may by order summarily postpone or suspend registration pending final determination of any proceeding under this subsection. Upon the entry of the order, the director shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the reasons therefor and that within fifteen business days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order, or extend it until final determination. No order may be entered under this section denying or revoking registration without appropriate prior notice to the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, and opportunity for hearing, and written findings of fact and conclusions of law.

(c) If the director finds that any registrant or applicant for registration is no longer in existence

or has ceased to do business as a broker-dealer, issuer-dealer, investment adviser, or agent, is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the director may by order cancel the registration or application.

Sec. 8. That section 8-1108.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1108.01. (1) Whenever it shall ~~appear~~ appears to the director that the sale of any security is subject to registration under the Securities Act of Nebraska and is being offered or has been offered for sale without such registration, he or she may order the issuer or offerer of such security to cease and desist from the further offer or sale of such security unless and until it has been registered under the act.

(2) Whenever it shall ~~appear~~ appears to the director that any person is acting as a broker-dealer, investment adviser, or agent without registration as such, he or she may order such person to cease and desist from such activity unless and until he or she has been registered as such under the Securities Act of Nebraska.

(3) The director may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed twenty-five thousand dollars per violation, in addition to costs of the investigation, upon a person found to have engaged in any act or practice which would constitute a violation of the Securities Act of Nebraska or any rule, regulation, or order issued under the act. The fine and costs shall be in addition to all other penalties imposed by the laws of this state, and shall be collected by the director on behalf of the State of Nebraska, and shall be ~~paid into~~ remitted to the state treasury and credited to the Securities Act Cash Fund. Imposition of any fine and payment of costs under this subsection may be appealed pursuant to section 8-1119. If a person fails to pay the fine or costs of the investigation referred to in this subsection, a lien in the amount of the fine and costs shall be imposed upon all of the assets and property of such person in this state and may be recovered by suit by the director and remitted to the State Treasurer for credit to deposited in the Securities Act Cash Fund. Failure of the person to pay a fine and costs shall also constitute a forfeiture of his or her right to do business in this state under the Securities Act of Nebraska.

(4) After such an order has been made under subsection (1), (2), or (3) of this section, if a request for a hearing is filed in writing within fifteen business days of the issuance of the order by the person to whom such order was directed, a hearing shall be held by the director within fifteen business days after receipt of the request. ~~Upon conclusion of such hearing, the director may affirm, modify, or vacate the order.~~ If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order.

Sec. 9. That section 8-1109.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1109.02. Upon the entry of an order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement to register securities under any part of section 8-1109 or 8-1109.01, the director shall promptly notify the issuer of the securities and the applicant or registrant that the order has been entered and of the reasons therefor and that within fifteen business days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the director shall enter his written findings of fact and conclusions of law and the order will shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to the issuer and to the applicant or registrant, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. The director may modify or vacate a stop order if he or she finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

Sec. 10. That section 8-1111, Revised Statutes Supplement, 1989, be amended to read as follows:

8-1111. Except as provided in this section, sections 8-1103 to 8-1109 shall not apply to any of the

following transactions:

(1) Any isolated transaction, whether effected through a broker-dealer or not;

(2) Any nonissuer distribution of an outstanding security by a registered agent of a registered broker-dealer if (a) a recognized securities manual contains the name of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations or (b) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security;

(3) Any nonissuer transaction effected by or through a registered agent of a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the director may by rule or regulation require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust or by an agreement for the sale of real estate or chattels if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, are offered and sold as a unit. Such exemption shall not apply to any transaction in a bond or other evidence of indebtedness secured by a real estate mortgage or deed of trust or by an agreement for the sale of real estate if the real estate securing the evidences of indebtedness are parcels of real estate the sale of which requires the subdivision in which the parcels are located to be registered under the Interstate Land Sales Full Disclosure Act, 82 Stat. 590 et seq., 15 U.S.C. 1701 et seq.;

(6) Any transaction by an executor, personal representative, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(7) Any transaction executed by a bona fide

pledgee without any purpose of evading the Securities Act of Nebraska;

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) Any transaction pursuant to a sale to not more than ten persons, other than those designated in ~~subdivision (8)~~ subdivisions (8) and (11) of this section, in this state during any period of twelve consecutive months if (a) the seller reasonably believes that all the buyers are purchasing for investment, (b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (d) no solicitations are made by newspaper, radio, or television;

(10) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten, and (c) no payment is made by any subscriber;

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (a) no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this state or (b) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days;

(12) Any offer, but not a sale, of a security for which registration statements have been filed under both the Securities Act of Nebraska and the Securities Act of 1933 if no stop order or refusal order is in

effect and no public proceeding or examination looking toward such an order is pending under either the Securities Act of Nebraska or the Securities Act of 1933;

(13) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by the stockholders for the distribution other than the surrender of a right to a cash dividend when the stockholder can elect to take a dividend in cash or stock;

(14) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) Any transaction involving the issuance for cash of any evidence of ownership interest or indebtedness by an agricultural cooperative formed as a corporation under section 21-1301 or 21-1401 if the issuer has first filed a notice of intention to issue with the director and the director has not by order, mailed to the issuer by certified or registered mail within ten business days after receipt thereof, disallowed the exemption; or

(16) Any transaction in this state not involving a public offering when (a) there is no general or public advertising or solicitation, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (d) any such transaction is effected in accordance with rules and regulations adopted and promulgated by the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of investors. As used in this section for purposes of this subdivision, not involving any a public offering shall mean any offering in which the seller has reason to believe that the securities purchased are taken for

investment and in which each offeree, by reason of his or her knowledge about the affairs of the issuer or otherwise, does not require the protections afforded by registration under sections 8-1104 to 8-1107 in order to make a reasonably informed judgment with respect to such investment.

The director may by order deny or revoke the exemption specified in subdivision (2) of this section with respect to a specific security. Upon the entry of such an order, the director shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within fifteen business days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall ~~will~~ remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to all interested persons, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order, or extend it until final determination. No such order may operate retroactively. No person may be considered to have violated the provisions of the Securities Act of Nebraska by reason of any offer or sale effected after the entry of any such order if he or she sustains the burden of proof that he or she did not know and in the exercise of reasonable care could not have known of the order. In any proceeding under the Securities Act of Nebraska, the burden of proving an exemption from a definition shall be upon the person claiming it.

Sec. 11. For purposes of sections 8-1506 to 8-1510, financial institution shall mean a bank, savings bank, savings and loan association, building and loan association, trust company, industrial loan and investment company, or credit union, organized under the laws of this state or organized under the laws of the United States to do business in this state.

Sec. 12. That section 8-1506, Revised Statutes Supplement, 1988, be amended to read as follows:

8-1506. (1) Whenever the Department of Banking and Finance determines the acquisition of any financial institution of the institutions under its supervision is necessary because its capital is impaired, it is conducting its business in an unsafe or unauthorized manner, or it is endangering the interest

of depositors or savers, the Director of Banking and Finance may take immediate action in the case of an emergency so declared by the Governor, the Secretary of State, and the Director of Banking and Finance, without the benefit of a hearing, to take possession of and convert or merge the charter, form of ownership or operating powers, or some or all of the assets and liabilities, or one or more of the branches of the bank or other financial institution under the department's supervision into the charter, form of ownership, or operating powers of a bank or any other one or more financial institution institutions to facilitate the acquisition. In the case of a financial institution chartered under the laws of Nebraska, such immediate action may include the ability by the director to take possession of the institution.

(2) Any stockholder, depositor, or creditor of any such state-chartered financial institution shall, upon application to the director within five days of the entry of the order, be afforded a hearing relating to the department's order and determination not later than ten days after such application has been filed. On the basis of such hearing, the director shall enter a final order which may continue the original order in effect, revoke it, or modify it. Any person aggrieved by a final order of the director made pursuant to this section may appeal the order by filing, within ten days after the entry of the final order, a written petition praying that the final order be modified or set aside in whole or in part. Upon service of the petition, the director shall within fifteen days certify and file in such court a copy of the original order, the application for hearing, all exhibits and testimony, and the final order from which the appeal is taken. Such appeal shall otherwise be governed by the Administrative Procedure Act.

Sec. 13. That section 8-1507, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1507. Pursuant to section 8-1506, the Department of Banking and Finance may permit cross-industry acquisition of any failing financial institution under its supervision or permit acquisition and operation of such institutions financial institution as a bank subsidiary by a bank holding company when the department determines the acquisition of any of the financial institutions under its supervision is necessary because its capital is impaired, it is conducting its business in an unsafe or unauthorized

manner, or it is endangering the interests of depositors or savers. If the acquiring institution is a bank, it may continue to operate such financial institution as a state institution under the respective Nebraska statutes in its original form notwithstanding its denomination as a bank subsidiary. Acquisitions by any financial institution under sections 8-1506 to 8-1510 and section 11 of this act shall be deemed to be of the same nature as an acquisition of a state-chartered bank and shall follow such rules or regulations established by the Director of Banking and Finance for acquisition of state-chartered banks by a bank holding company. ~~In considering an application under this section, the director shall authorize transactions considering the following priorities:~~

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

Sec. 14. That section 8-1508, Revised Statutes Supplement, 1988, be amended to read as follows:

8-1508. Whenever an application by a bank or a bank holding company is received by the Department of Banking and Finance to acquire any other financial institution, the following terms and conditions shall be met and such acquisitions shall be valid only when and for as long as these conditions are satisfied:

(1) The acquiring bank holding company may not apply for, ~~nor and it shall it not~~ operate, such a ~~state-chartered~~ financial institution as a nonbank subsidiary under section 4 of the Federal Bank Holding Company Act of 1956, as amended, unless such financial institution is a savings association as defined by section 2(j) of the Federal Bank Holding Company Act of 1956, as amended;

(2) The ~~state-chartered~~ financial institution to be acquired by a bank or a bank holding company shall be subject to the conditions upon which a bank incorporated under the laws of this state may establish, maintain, relocate, or close any of its offices pursuant to Chapter 8, article 1, but nothing in sections 8-1506 to 8-1510 and section 11 of this act or any other provision of law shall require divestiture of any branch or office in operation at the time of acquisition; and

(3) A ~~state-chartered~~ financial institution to be acquired by a bank holding company shall be subject to the provisions of section 3 of the Federal Bank Holding Company Act of 1956, as amended, and those rules

and regulations that apply to bank subsidiaries of bank holding companies as are or may be established by both the Board of Governors of the Federal Reserve System and the Director of Banking and Finance.

Sec. 15. That section 8-1509, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1509. A bank holding company shall not acquire, hold, or operate a state-chartered financial institution acquired under sections 8-1506 to 8-1510 and section 11 of this act located in this state as a nonbank subsidiary under section 4 of the Federal Bank Holding Company Act of 1956, as amended, unless such financial institution is a savings association as defined by section 2(j) of the Federal Bank Holding Company Act of 1956, as amended. ~~The~~ Director of Banking and Finance shall not either accept or approve an application for acquisition under sections 8-1506 to 8-1510 and section 11 of this act which contains as a term or condition thereof the approval of the Board of Governors of the Federal Reserve System under section 4(c)(8) of the Federal Bank Holding Company Act of 1956, as amended, unless such financial institution is a savings association as defined by section 2(j) of the Federal Bank Holding Company Act of 1956, as amended.

Sec. 16. That section 8-1510, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-1510. The Director of Banking and Finance may permit cross-industry acquisition or merger of one or more financial institutions under its supervision upon the application of such institutions to the department. The application shall be made on forms prescribed by the department. When an application is made for such an acquisition or merger, notice of the filing of the application shall be published by the Department of Banking and Finance three weeks in a legal newspaper in or of general circulation in the county where the applicant proposes to operate the financial institution. The expense of the publication shall be paid by the applicant. A public hearing shall be held on each application. The date for hearing the application shall be not more than ninety days after the filing of the application and not less than thirty days after the last publication of notice after the examination and approval by the department of the application. If the department, upon investigation and after public hearing on the application, shall be is

satisfied that the stockholders and officers of the financial institution applying for such acquisition or merger are parties of integrity and responsibility, that the requirements of section 8-702 have been met or some alternate form of protection for depositors has been met, and that the public necessity, convenience, and advantage will be promoted by permitting such acquisition or merger, the department shall, upon payment of the required fees, issue to such institution an order of approval for the acquisition or merger. In the case of an acquisition or merger of an a financial institution into a bank or bank holding company, such acquisition or merger shall be subject to sections 8-1508 and 8-1509.

Sec. 17. Sections 2, 5, 7 to 10, and 19 of this act shall become operative three calendar months after the adjournment of this legislative session. The other sections of this act shall become operative on their effective date.

Sec. 18. That original sections 8-133, 8-1507, 8-1509, and 8-1510, Reissue Revised Statutes of Nebraska, 1943, sections 8-902.03, 8-1506, and 8-1508, Revised Statutes Supplement, 1988, and section 8-157, Revised Statutes Supplement, 1989, are repealed.

Sec. 19. That original sections 8-1108.01 and 8-1109.02, Reissue Revised Statutes of Nebraska, 1943, section 8-141, Revised Statutes Supplement, 1988, and sections 8-1103 and 8-1111, Revised Statutes Supplement, 1989, are repealed.

Sec. 20. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.