

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 851

Introduced by Banking, Commerce and Insurance Committee Pahls, 31,
Chairperson; Carlson, 38; Christensen, 44; Gay, 14;
Hansen, 42; Langemeier, 23; Pankonin, 2; Pirsch, 4.

Read first time January 11, 2008

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to banking and finance; to amend section 8-224,
2 Reissue Revised Statutes of Nebraska, sections 8-115.01,
3 8-116, 8-120, 8-122, and 8-223, Revised Statutes
4 Cumulative Supplement, 2006, and sections 8-1,140, 8-355,
5 and 21-17,115, Revised Statutes Supplement, 2007; to
6 change provisions relating to bank charters, undivided
7 profits, and trust companies and trust departments; to
8 revise powers of state-chartered banks, building and loan
9 associations, and credit unions; to provide operative
10 dates; to repeal the original sections; and to declare
11 an emergency.

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

1 Section 1. Section 8-115.01, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 8-115.01 When an application required by section 8-120 is
4 made by a corporation, the following procedures shall be followed:

5 (1) Except as provided for in subdivision (2) of this
6 section, when application is made for a new bank charter, a public
7 hearing shall be held on each application. Notice of the filing
8 of the application shall be published by the department for three
9 weeks in a legal newspaper published in or of general circulation
10 in the county where the applicant proposes to operate the bank.
11 The date for hearing the application shall be not less than thirty
12 days after the last publication of notice of hearing and not more
13 than ninety days after ~~filing~~ the application has been accepted
14 for filing by the director as substantially complete unless the
15 applicant agrees to a later date. Notice of the filing of the
16 application shall be sent by the department to all financial
17 institutions located in the county where the applicant proposes to
18 operate;

19 (2) When application is made for a new bank charter
20 and the director determines, in his or her discretion, that the
21 conditions of subdivision (3) of this section are met, then the
22 public hearing requirement of subdivision (1) of this section shall
23 only be required if, (a) after publishing a notice of the proposed
24 application in a newspaper of general circulation in the county
25 where the main office of the applicant is to be located and (b)

1 after giving notice to all financial institutions located within
2 such county, the director receives a substantive objection to the
3 application within fifteen days after the first day of publication;

4 (3) The director shall consider the following in each
5 application before the public hearing requirement of subdivision
6 (1) of this section may be waived:

7 (a) Whether the experience, character, and general
8 fitness of the applicant and of the applicant's officers and
9 directors is such as to warrant belief that the applicant will
10 operate the business honestly, fairly, and efficiently;

11 (b) Whether the length of time that the applicant or a
12 majority of the applicant's officers, directors, and shareholders
13 have been involved in the business of banking in this state has
14 been for a minimum of five consecutive years; and

15 (c) Whether the condition of financial institutions
16 currently owned by the applicant, the applicant's holding company,
17 if any, or the applicant's officers, directors, or shareholders is
18 such as to indicate that a hearing on the current application would
19 not be necessary;

20 (4) Except as provided in subdivision (6) of this
21 section, when application is made for transfer of a bank charter
22 and move of the main office of a bank to any location other
23 than within the corporate limits of the city or village of its
24 original charter or, if such bank charter is not located in a city
25 or village, then for transfer outside the county in which it is

1 located, the director shall hold a hearing on the matter if he
2 or she determines, in his or her discretion, that the condition
3 of the applicant warrants a hearing. If the director determines
4 that the condition of the applicant does not warrant a hearing,
5 the director shall (a) publish a notice of the filing of the
6 application in a newspaper of general circulation in the county
7 where the proposed main office and charter of the applicant would
8 be located and (b) give notice of such application to all financial
9 institutions located within the county where the proposed main
10 office and charter would be located and to such other interested
11 parties as the director may determine. If the director receives
12 any substantive objection to the proposed relocation within fifteen
13 days after the first day of publication, he or she shall hold
14 a hearing on the application. Notice of a hearing held pursuant
15 to this subdivision shall be published for two consecutive weeks
16 in a newspaper of general circulation in the county where the
17 main office would be located. The date for hearing the application
18 shall be not less than thirty days after the last publication of
19 notice of hearing and not more than ninety days after the ~~filing~~
20 ~~of the application~~ has been accepted for filing by the director
21 as substantially complete unless the applicant agrees to a later
22 date. When the persons making application for transfer of a main
23 office and charter are officers or directors of the bank, there is
24 a rebuttable presumption that such persons are parties of integrity
25 and responsibility;

1 (5) Except as provided in subdivision (6) of this
2 section, when application is made for a move of any bank's
3 main office within the city, village, or county, if not chartered
4 within a city or village, of its original charter, the director
5 shall publish notice of the proposed move in a newspaper of general
6 circulation in the county where the main office of the applicant
7 is located and shall give notice of such intended move to all
8 financial institutions located within the county where such bank is
9 located. If the director receives a substantive objection to such
10 move within fifteen days after publishing such notice, he or she
11 shall publish an additional notice and hold a hearing as provided
12 in subdivision (1) of this section;

13 (6) With the approval of the director, a bank may move
14 its main office and charter to the location of a branch of the
15 bank without public notice or hearing as long as (a) the condition
16 of the bank, in the discretion of the director, does not warrant
17 a hearing and (b) the branch (i) is located in Nebraska, (ii) has
18 been in operation for at least one year as a branch of the bank
19 or was acquired by the bank pursuant to section 8-1506 or 8-1516,
20 and (iii) is simultaneously relocated to the original main office
21 location;

22 (7) The director shall send any notice to financial
23 institutions required by this section by certified mail or
24 electronic mail. Electronic mail may be used if the financial
25 institution agrees in advance to receive such notices by electronic

1 mail;

2 (8) The expense of any publication and certified mailing
3 required by this section shall be paid by the applicant; and

4 (9) Notwithstanding any provision of this section, the
5 director shall take immediate action on any charter application
6 or applications concerned without the benefit of a hearing in the
7 case of an emergency so declared by the Governor, the Secretary of
8 State, and the director.

9 Sec. 2. Section 8-116, Revised Statutes Cumulative
10 Supplement, 2006, is amended to read:

11 8-116 (1) A charter for a bank hereafter organized shall
12 not be issued unless the corporation applying therefor shall have
13 a surplus of not less than ~~fifty~~ seventy thousand dollars or
14 ~~fifty~~ seventy percent of its paid-up capital stock, whichever
15 is greater, and a paid-up capital stock as follows: In villages
16 or counties of less than one thousand inhabitants, one hundred
17 thousand dollars; in cities, villages, or counties of one thousand
18 or more and less than twenty-five thousand inhabitants, not less
19 than one hundred fifty thousand dollars; in cities or counties of
20 twenty-five thousand or more and less than one hundred thousand
21 inhabitants, not less than two hundred thousand dollars; and in
22 cities or counties of one hundred thousand or more inhabitants,
23 not less than five hundred thousand dollars. ~~Such corporation shall~~
24 ~~also have minimum paid-in undivided profits of not less than twenty~~
25 ~~percent of its paid-up capital stock.~~

1 (2) Notwithstanding subsection (1) of this section, the
2 department shall have the authority to determine the minimum
3 amount of paid-up capital stock, and surplus, ~~and paid-in undivided~~
4 ~~profits~~ required for any corporation applying for a bank charter,
5 which amounts shall not be less than the amounts provided in
6 subsection (1) of this section.

7 (3) For purposes of this section, population shall be
8 determined by the most recent federal decennial census.

9 Sec. 3. Section 8-120, Revised Statutes Cumulative
10 Supplement, 2006, is amended to read:

11 8-120 (1) Every corporation organized for and desiring
12 to conduct a bank or to conduct a bank for purposes of a merger
13 with an existing bank shall make under oath and transmit to the
14 department a complete detailed application giving (a) the name
15 of the proposed bank; (b) a certified copy of the articles of
16 incorporation; (c) the names of the stockholders; (d) the county,
17 city, or village and the exact location therein in which such
18 bank is proposed to be located; (e) the nature of the proposed
19 banking business; (f) the proposed amounts of paid-up capital
20 stock, and surplus, ~~and undivided profits~~, and the items of actual
21 cash and property, as reported and approved at a meeting of the
22 stockholders, to be included in such amounts; and (g) a statement
23 that at least twenty percent of the amounts stated in subdivision
24 (f) of this subsection have in fact been paid in to the corporation
25 by its stockholders.

1 (2) In the case of a merger, the existing bank which
2 is to be merged into shall complete an application and meet the
3 requirements of this section.

4 (3) This section also applies when application is made
5 for transfer of a bank charter and move of a bank's main office to
6 any location other than (a) within the corporate limits of the city
7 or village of its original charter, (b) within the county in which
8 it is located if such bank charter is not located in a city or
9 village, or (c) as provided in subdivision (6) of section 8-115.01.

10 Sec. 4. Section 8-122, Revised Statutes Cumulative
11 Supplement, 2006, is amended to read:

12 8-122 (1) After the examination and approval by the
13 department of the application required by section 8-120, if the
14 department upon investigation and after any public hearing on the
15 application held pursuant to section 8-115.01 shall be satisfied
16 that the stockholders and officers of the corporation applying
17 for such charter are parties of integrity and responsibility, that
18 the requirements of section 8-702 have been met, and that the
19 public necessity, convenience, and advantage will be promoted by
20 permitting such corporation to engage in business as a bank, the
21 department shall, upon the payment of the required fees, and, upon
22 the filing with the department of a statement, under oath, of the
23 president, secretary, or treasurer, that the paid-up capital stock,
24 and surplus, ~~and undivided profits~~ have been paid in, as determined
25 by the department in accordance with section 8-116, issue to such

1 corporation a charter to transact the business of a bank in this
2 state provided for in its articles of incorporation. In the case of
3 a bank organized to merge with an existing bank, there shall be a
4 rebuttable presumption that the public necessity, convenience, and
5 advantage will be met by the merger of the two banks, except that
6 such presumption shall not apply when the new bank that is formed
7 by the merger is at a different location than that of the former
8 existing bank. Any application for merger under this subsection
9 shall be subject to section 8-1516.

10 (2) On payment of the required fees and the receipt of
11 the charter, such corporation may begin to conduct a bank.

12 Sec. 5. Section 8-1,140, Revised Statutes Supplement,
13 2007, is amended to read:

14 8-1,140 Notwithstanding any of the other provisions of
15 the Nebraska Banking Act or any other Nebraska statute, any bank
16 incorporated under the laws of this state and organized under
17 the provisions of the act, or under the laws of this state as
18 they existed prior to May 9, 1933, shall directly, or indirectly
19 through a subsidiary or subsidiaries, have all the rights, powers,
20 privileges, benefits, and immunities which may be exercised as of
21 ~~March 20, 2007,~~ the effective date of this act, by a federally
22 chartered bank doing business in Nebraska, including the exercise
23 of all powers and activities that are permitted for a financial
24 subsidiary of a federally chartered bank. Such rights, powers,
25 privileges, benefits, and immunities shall not relieve such bank

1 from payment of state taxes assessed under any applicable laws of
2 this state.

3 Sec. 6. Section 8-223, Revised Statutes Cumulative
4 Supplement, 2006, is amended to read:

5 8-223 (1) The trust company shall file with the
6 Department of Banking and Finance during the months of January and
7 July of each year a statement under oath of the condition of the
8 trust company on the last business day of the preceding December
9 and June in the manner and form required by the department. For
10 purposes of the Nebraska Trust Company Act, the trust company's
11 annual report shall be deemed to be the report filed with the
12 Department of Banking and Finance during the month of January.

13 (2) Any trust company that fails, neglects, or refuses to
14 make or furnish any report or any published statement required by
15 the Nebraska Trust Company Act shall pay to the department fifty
16 dollars for each day such failure continues, unless the department
17 extends the time for filing such report.

18 (3) The filing requirements of this section shall not
19 apply to the trust department of a bank if the report of condition
20 of the trust department is included in the reports of the bank
21 required by the Nebraska Banking Act.

22 Sec. 7. Section 8-224, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 8-224 (1) The reports required by section 8-223 shall
25 be verified by one of the managing officers, and a summary of

1 the annual report, in a form prescribed by the Department of
2 Banking and Finance, shall, within thirty days after the filing
3 of the statement with the department, be published in a newspaper
4 of general circulation in the county where the trust company is
5 chartered.

6 (2) The publication required by this section shall not
7 apply to any trust company that makes an annual disclosure
8 statement available to any member of the general public upon
9 request, in accordance with the following provisions:

10 (a) The annual disclosure statement shall be in a form
11 prescribed by the department;

12 (b) In the lobby of its main office, in every branch
13 trust office, and in every representative trust office, the trust
14 company shall at all times display a notice that the annual
15 disclosure statement may be obtained from the trust company;

16 (c) If the trust company maintains an Internet web site,
17 the home page of the web site shall at all times contain a notice
18 that the annual disclosure statement may be obtained from the trust
19 company;

20 (d) The notice described in subdivisions (b) and (c)
21 of this subsection shall include, at a minimum, an address
22 and telephone number to which requests for an annual disclosure
23 statement may be made;

24 (e) The first requested copy of the annual disclosure
25 statement shall be provided to a requester free of charge; and

1 (f) A trust company shall make its annual disclosure
2 statement available to the public beginning not later than the
3 following March 31 or, if the trust company mails an annual
4 disclosure statement to its shareholders, beginning not later than
5 five days after the mailing of the disclosure statement, whichever
6 occurs first. A trust company shall make its annual disclosure
7 statement available continuously until (i) the annual disclosure
8 statement for the succeeding year becomes available or (ii) a
9 summary of its annual report is published for the succeeding year
10 in accordance with this section.

11 (3) The publication required by this section shall not
12 apply to reports of the trust department of a bank if the report of
13 condition of the trust department is included in the reports of the
14 bank required by the Nebraska Banking Act.

15 Sec. 8. Section 8-355, Revised Statutes Supplement, 2007,
16 is amended to read:

17 8-355 Notwithstanding any of the provisions of Chapter
18 8, article 3, or any other Nebraska statute, except as provided
19 in section 8-345.02, any association incorporated under the laws
20 of the State of Nebraska and organized under the provisions
21 of such article shall have all the rights, powers, privileges,
22 benefits, and immunities which may be exercised as of ~~March~~
23 ~~20, 2007,~~ the effective date of this act, by a federal savings
24 and loan association doing business in Nebraska. Such rights,
25 powers, privileges, benefits, and immunities shall not relieve

1 such association from payment of state taxes assessed under any
2 applicable laws of this state.

3 Sec. 9. Section 21-17,115, Revised Statutes Supplement,
4 2007, is amended to read:

5 21-17,115 Notwithstanding any of the other provisions of
6 the Credit Union Act or any other Nebraska statute, any credit
7 union incorporated under the laws of the State of Nebraska and
8 organized under the provisions of the act shall have all the
9 rights, powers, privileges, benefits, and immunities which may be
10 exercised as of ~~March 20, 2007,~~ the effective date of this act, by
11 a federal credit union doing business in Nebraska on the condition
12 that such rights, powers, privileges, benefits, and immunities
13 shall not relieve such credit union from payment of state taxes
14 assessed under any applicable laws of this state.

15 Sec. 10. Sections 1, 2, 3, 4, 6, 7, and 12 of this act
16 become operative three calendar months after the adjournment of
17 this legislative session. The other sections of this act become
18 operative on their effective date.

19 Sec. 11. Original sections 8-1,140, 8-355, and 21-17,115,
20 Revised Statutes Supplement, 2007, are repealed.

21 Sec. 12. Original section 8-224, Reissue Revised Statutes
22 of Nebraska, and sections 8-115.01, 8-116, 8-120, 8-122, and 8-223,
23 Revised Statutes Cumulative Supplement, 2006, are repealed.

24 Sec. 13. Since an emergency exists, this act takes effect
25 when passed and approved according to law.