

LEGISLATIVE BILL 423

Approved by the Governor May 6, 1993

Introduced by Robak, 22

AN ACT relating to banks and banking; to amend section 8-820, Reissue Revised Statutes of Nebraska, 1943, section 8-157.01, Revised Statutes Supplement, 1992, as amended by section 8, Legislative Bill 81, Ninety-third Legislature, First Session, 1993, and section 40, Legislative Bill 81, Ninety-third Legislature, First Session, 1993; to provide for investment in qualified Canadian Government obligations as prescribed; to provide for the use of a national automatic teller machine program; to provide for a trust company to administer certain assets in a fiduciary capacity; to provide that certain amounts charged for loans initiated by a transaction card may be charged and collected as interest; and to repeal the original sections.

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

Section 1. (1) Any bank may deal in, underwrite, and purchase for its own account qualified Canadian Government obligations to the same extent that such bank may deal in, underwrite, and purchase for its own account obligations of the United States Government or general obligations of any state thereof.

(2) For purposes of this section:

(a) Qualified Canadian Government obligation shall mean any debt obligation which is backed by Canada or any Canadian province to a degree which is comparable to the liability of the United States Government or any state thereof for any obligation which is backed by the full faith and credit of the United States Government or any state thereof. Qualified Canadian Government obligations shall also include any debt obligation of any agent of Canada or any Canadian province if:

(i) The obligation of such agent is assumed in such agent's capacity as agent for Canada or any Canadian province; and

(ii) Canada or any Canadian province, on whose behalf such agent is acting with respect to such obligation, is ultimately and unconditionally liable for such obligation; and

(b) The term Canadian province shall mean a province of Canada and shall include the Yukon Territory and the Northwest Territories and their successors.

Sec. 2. That section 8-157.01, Revised Statutes Supplement, 1992, as amended by section 8, Legislative Bill 81, Ninety-third Legislature, First Session, 1993, be amended to read as follows:

8-157.01. (1) With the approval of the director, any

financial institution which has a main chartered office or approved branch office located in the State of Nebraska may establish and maintain any number of automatic teller machines at which all banking transactions, defined as receiving deposits of every kind and nature and crediting such to customer accounts, cashing checks and cash withdrawals, transfer of funds from checking accounts to savings accounts, transfer of funds from savings accounts to checking accounts, transfer of funds from either checking accounts and savings accounts to accounts of other customers, payment transfers from customer accounts into accounts maintained by other customers of the financial institution or the financial institution, including preauthorized draft authority, preauthorized loans, and credit transactions, receiving payments payable at the financial institution or otherwise, account balance inquiry, and such other transactions that the director upon application, notice, and hearing may approve, may be conducted. Neither such automatic teller machines nor the transactions conducted thereat shall be construed as the establishment of a branch bank or as branch banking. Such automatic teller machines shall be made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch office located in the State of Nebraska which becomes a user financial institution. It shall not be deemed discrimination if an automatic teller machine does not offer the same transaction services as other automatic teller machines or if there are no fees charged between affiliate financial institutions for the use of automatic teller machines.

(2) Any financial institution may become a user financial institution by agreeing to pay the establishing financial institution its automatic teller machine usage fee. Such agreement shall be implied by the use of such automatic teller machines. Nothing in this subsection shall prohibit a user financial institution from agreeing to responsibilities and benefits which might be contained in a standardized agreement. The establishing financial institution shall file with the director the information necessary to originate a transaction at any automatic teller machine. Such information shall contain a means of designating the financial institution or data processing center to which such transactions shall be switched and shall also contain information adequate to perform authorization of cash withdrawal and other transactions authorized by this section. The director shall make such information available to any other financial institution desiring to become a user financial institution. The establishing financial institution or its designated data processing center shall be responsible for transmitting transactions originating from its automatic teller machine to a switch, but nothing contained in this section shall be construed to require routing of all transactions to a switch. The director shall refuse to approve the establishment of any automatic teller machines unless such automatic teller machines will be made available on a nondiscriminating basis, for use by customers of any financial institution which has a main chartered office or approved branch office located in the State of Nebraska which becomes a user financial institution, through methods, fees, and processes that the establishing financial institution has provided

for switching transactions. Once approval is given for the automatic teller machine of an establishing financial institution, the director, upon notice and after a hearing, may revoke the approval for the automatic teller machine or may suspend the use of such automatic teller machine if he or she determines that it is not available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch office located in the State of Nebraska which becomes a user financial institution, that the necessary information is not on file with the director, or that transactions originated by customers of user financial institutions are not being routed to a switch or other data processing centers. Nothing in this section may be construed to prohibit nonbank employees from assisting in transactions originated at the automatic teller machines, and such assistance shall not be deemed to be engaging in the business of banking. Such nonbank employees may be trained in the use of the automatic teller machines by financial institution employees.

(3) An establishing financial institution shall not be deemed to make an automatic teller machine available on a nondiscriminating basis if, through personnel services offered, advertising on or off the automatic teller machines premises, or otherwise, it discriminates in the use of the automatic teller machine against any user financial institution which has a main chartered office or approved branch office located in the State of Nebraska.

(4) A point-of-sale terminal may be established at any point within this state. A financial institution may contract with a seller of goods and services or any other third party for the operation of point-of-sale terminals. A point-of-sale terminal shall be made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch office located in the State of Nebraska which becomes a user financial institution. Nothing in this subsection shall prohibit payment of fees to a financial institution which issues an access device used to initiate electronic funds transfer transactions at a point-of-sale terminal.

(5) A seller of goods and services or any other third party on whose premises one or more point-of-sale terminals are established shall not be, solely by virtue of such establishment, a financial institution and shall not be subject to the laws governing, or other requirements imposed on, financial institutions, except for the requirement that it faithfully perform its obligations in connection with any transaction originated at any point-of-sale terminal on its premises. The acquiring financial institution shall be responsible for compliance with all applicable standards, rules, and regulations governing point-of-sale transactions.

(6) Any financial institution, upon a request of the director, shall file with the director a current listing of all point-of-sale terminals established by the financial institution within this state. For purposes of this subsection, point-of-sale terminal shall include a group of one or more of such terminals established at a single business location. Such listing shall contain any reasonable descriptive information pertaining to the

point-of-sale terminal as required by the director. Neither the establishment of such point-of-sale terminal nor any transactions conducted thereat shall be construed as the establishment of a branch bank or as branch banking. Following establishment of a point-of-sale terminal, the director, upon notice and after a hearing, may terminate or suspend the use of such point-of-sale terminal if he or she determines that it is not made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch office located in the State of Nebraska which becomes a user financial institution, that the necessary information is not on file with the director, or that transactions originated by customers of user financial institutions are not being routed to a switch or other data processing center. Nothing in this section shall be construed to prohibit nonbank employees from assisting in transactions originated at the point-of-sale terminals, and such assistance shall not be deemed to be engaging in the business of banking.

(7) Transactions at point-of-sale terminals may include:

(a) Check guarantees;

(b) Account balance inquiries;

(c) Transfers of funds from a customer's account for payment to a seller's account for goods and services on whose premises the point-of-sale terminal is located in payment for the goods and services;

(d) Cash withdrawals by a customer from the customer's account or accounts;

(e) Transfers between accounts of the same customers at the same financial institution; and

(f) Such other transactions as the director, upon application, notice, and hearing, may approve.

(8) Automatic teller machines may be established and maintained by a financial institution which has a main chartered office or approved branch office located in the State of Nebraska, by a group of two or more of such financial institutions, or by a combination of such financial institution or financial institutions and a third party. Point-of-sale terminals may be established and maintained by a financial institution, by a group of two or more financial institutions, or by a combination of a financial institution or financial institutions and a third party. No one, through personnel services offered, advertising on or off the point-of-sale terminal premises, or otherwise, may discriminate in the use of the point-of-sale terminal against any other user financial institution.

(9) All financial institutions shall be given an equal opportunity for the use of and access to a switch, and no discrimination shall exist or preferential treatment be given in either the operation of such switch or the charges for use thereof. The operation of such switch shall be with the approval of the director. Approval of such switch shall be given by the director when he or she determines that its design and operation are such as to provide access thereto and use thereof by any financial institution without discrimination as to access or cost of its use. Any switch established in Nebraska and approved by the director prior to

January 1, 1993, shall be deemed to be approved for purposes of this section.

(10) Use of an automatic teller machine or a point-of-sale terminal through access to a switch and use of any switch shall be made available on a nondiscriminating basis to any financial institution. A financial institution shall only be permitted use of the switch if the financial institution conforms to reasonable technical operating standards which have been established by the switch.

(11) To assure maximum safety and security against malfunction, fraud, theft, and other accidents or abuses and to assure that all such access devices will have the capability of activating all automatic teller machines and point-of-sale terminals established in this state, no automatic teller machine or point-of-sale terminal shall accept an access device which does not conform to such specifications as are generally accepted. No automatic teller machine or point-of-sale terminal shall be established or operated which does not accept an access device which conforms with such specifications.

An automatic teller machine shall bear a logo type or other identification symbol designed to advise customers that the automatic teller machine may be activated by any access device which complies with the generally accepted specifications. A point-of-sale terminal shall either bear or the premises on which the point-of-sale terminal is established shall contain a visible logo type or other identification symbol designed to advise customers that the point-of-sale terminal may be activated by any access device which complies with the generally accepted specifications. An automatic teller machine or point-of-sale terminal may also bear, at the option of the establishing or acquiring financial institution, any of the following:

(a) The names of all individual financial institutions using such automatic teller machines or point-of-sale terminals in alphabetical order, except that the establishing or acquiring financial institution may be listed first, and in a uniform typeface, size, and color; or

(b) The logo type or symbol of any association, corporation, or other entity or organization formed by one or more of the financial institutions using such automatic teller machines or point-of-sale terminals.

(12) If the director, upon notice and hearing, determines at any time that the design or operation of a switch or provision for use thereof does discriminate against any financial institution in providing access thereto and use thereof either through access thereto or by virtue of the cost of its use, he or she may revoke his or her approval of such switch operation and immediately order the discontinuance of the operation of such switch.

(13) If it is determined by the director, after notice and hearing, that discrimination against any financial institution has taken place, that one financial institution has been preferred over another, or that any financial institution or person has not complied with any of the provisions of this section, he or she shall immediately issue a cease and

desist order or an order for compliance within ten days from the date of the order, and upon noncompliance with such order, the offending financial institution shall be subject to sections 8-1,135 to 8-1,138 and to having the privileges granted in this section revoked.

(14) For purposes of this section:

(a) Access shall mean the ability to utilize an automatic teller machine or a point-of-sale terminal to conduct permitted banking transactions or purchase goods and services electronically;

(b) Access device shall mean a code, a transaction card, or any other means of access to a customer's account, or any combination thereof, that may be used by a customer for the purpose of initiating an electronic funds transfer at an automatic teller machine or a point-of-sale terminal;

(c) Account shall mean a checking account, a savings account, a share account, or any other customer asset account held by a financial institution. Such an account may also include a line of credit which a financial institution has agreed to extend to its customer;

(d) Acquiring financial institution shall mean any financial institution establishing a point-of-sale terminal;

(e) Affiliate financial institution shall mean any financial institution which is a subsidiary of the same bank holding company;

(f) Electronic funds transfer shall mean any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through a point-of-sale terminal, an automatic teller machine, or a personal terminal for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account;

(g) Establishing financial institution shall mean any financial institution establishing an automatic teller machine which has a main chartered office or approved branch office located in the State of Nebraska;

(h) Financial institution shall mean a state-chartered or federally chartered bank, savings bank, building and loan association, savings and loan association, industrial loan and investment company, or credit union;

(i) Personal identification number shall mean a combination of numerals or letters selected for a customer of a financial institution, a merchant, or any other third party which is used in conjunction with an access device to initiate an electronic funds transfer transaction;

(j) Personal terminal shall mean a personal computer and telephone, wherever located, operated by a customer of a financial institution for the purpose of initiating a transaction affecting an account of the customer; and

(k) User financial institution shall mean any financial institution which desires to avail itself of and provide its customers with automatic teller machine or point-of-sale terminal services.

(15) Nothing in this section shall prohibit ordinary

clearinghouse transactions between financial institutions.

(16) Nothing in this section shall require any federally chartered establishing financial institution to obtain the approval of the director for the establishment of any automatic teller machine.

(17) Nothing in this section shall prevent any financial institution which has a main chartered office or an approved branch office located in the State of Nebraska from participating in a national automatic teller machine program to allow its customers to use automatic teller machines located outside of the State of Nebraska which are established by out-of-state financial institutions or to allow customers of out-of-state financial institutions to use its automatic teller machines located in the State of Nebraska. Such participation and any automatic teller machine usage fees charged or received pursuant to the national automatic teller machine program shall not be considered for purposes of determining if an automatic teller machine located in the State of Nebraska has been made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch office located in the State of Nebraska which becomes a user financial institution.

Sec. 3. That section 40, Legislative Bill 81, Ninety-third Legislature, First Session, 1993, be amended to read as follows:

Sec. 40. (1) No charge shall be allowed against an estate or trust for legal services performed by an attorney who is a salaried employee of the trust company or when a portion of the charge for legal service is retained by the trust company. Any officer or employee of the trust company causing or consenting to such division of fee for legal service shall be guilty of a Class I misdemeanor. No investments of an estate or trust shall be made in the capital stock or securities of the trust company, in the stock or securities of its affiliated companies, or in obligations, either direct or indirect, of any director, officer, or employee of the trust company. The trust company shall not substitute any of the assets of an estate or trust under its control for securities of the trust company. A trust company may administer, in a fiduciary capacity, an estate or trust which contains such capital stock, securities, or obligations as part of its assets if such assets are received in kind from the grantor of the estate or trust and retention of such capital stock, securities, or obligations is properly authorized by the terms of the governing document. Any officer or employee of the trust company making such an investment or consenting to such an investment or causing such substitution or consenting to such substitution shall be guilty of a Class III felony.

(2) No loan of the assets of the trust company shall be made to any officer or director of such corporation. No trust company shall cause or allow funds of any account entrusted to the trust company to be loaned, directly or indirectly, to any director, officer, or employee of the trust company except when the director, officer, or employee has a specific beneficial interest in the account and such loans are allowed in governing account documents and are not prohibited by other state or federal law. Any director, officer, or employee of the trust company

causing, consenting to, or receiving funds from a loan made in violation of this section shall be guilty of a Class III felony.

Sec. 4. That section 8-820, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-820. Subject to the provisions of sections 8-815 to 8-829, any registered bank may contract for and receive, on any personal loan, charges at a rate not exceeding nineteen percent simple interest per year. In the case of loans initiated by credit card or other type of transaction card, the rate may be any amount agreed to by the parties. Any registered bank or bank acquired pursuant to sections 8-1512 and 8-1513 may also charge commercially reasonable fees for service and use of a credit card or other type of transaction card on a per transaction and monthly or annual basis. ~~Such charges shall not be construed as interest.~~ For purposes of this section, section 85 of the National Bank Act, 12 U.S.C. 85, and sections 521 and 522 of the Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U.S.C. 1730g and 1831d, all interest, charges, fees, and other amounts permitted under sections 8-815 to 8-829 for loans initiated by credit card or other type of transaction card shall be deemed to be, and may be charged and collected as, interest by the bank, and all other terms and conditions of the agreement between the bank and the borrower that are not prohibited by such sections shall be deemed material to the determination of interest. Notwithstanding the provisions of this section, in the case of loans not initiated by credit card or other type of transaction card, a bank may charge a minimum fee of up to seven dollars and fifty cents in lieu of interest on personal loans and reasonable loan service costs as defined in subdivision (2) of section 45-101.02. Such loan service costs shall not be construed as interest.

Sec. 5. That original section 8-820, Reissue Revised Statutes of Nebraska, 1943, section 8-157.01, Revised Statutes Supplement, 1992, as amended by section 8, Legislative Bill 81, Ninety-third Legislature, First Session, 1993, and section 40, Legislative Bill 81, Ninety-third Legislature, First Session, 1993, are repealed.