

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 100

Introduced by Watermeier, 1.

Read first time January 10, 2013

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to banks and banking; to amend section 8-157.01,
2 Reissue Revised Statutes of Nebraska; to eliminate a
3 notice requirement with respect to automatic teller
4 machines; to repeal the original section; and to declare
5 an emergency.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 8-157.01, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 8-157.01 (1) Any financial institution which has a main
4 chartered office or approved branch located in the State of Nebraska
5 may establish and maintain any number of automatic teller machines at
6 which all banking transactions, defined as receiving deposits of
7 every kind and nature and crediting such to customer accounts,
8 cashing checks and cash withdrawals, transfer of funds from checking
9 accounts to savings accounts, transfer of funds from savings accounts
10 to checking accounts, transfer of funds from either checking accounts
11 and savings accounts to accounts of other customers, payment
12 transfers from customer accounts into accounts maintained by other
13 customers of the financial institution or the financial institution,
14 including preauthorized draft authority, preauthorized loans, and
15 credit transactions, receiving payments payable at the financial
16 institution or otherwise, and account balance inquiry, may be
17 conducted. Any other transaction incidental to the business of the
18 financial institution or which will provide a benefit to the
19 financial institution's customers or the general public may be
20 conducted at an automatic teller machine upon thirty days' prior
21 written notice to the director if the director does not object to the
22 proposed other transaction within the thirty-day notice period.
23 Neither such automatic teller machines nor the transactions conducted
24 thereat shall be construed as the establishment of a branch or as
25 branch banking. Such automatic teller machines shall be made

1 available on a nondiscriminating basis for use by customers of any
2 financial institution which has a main chartered office or approved
3 branch located in the State of Nebraska which becomes a user
4 financial institution. It shall not be deemed discrimination if an
5 automatic teller machine does not offer the same transaction services
6 as other automatic teller machines or if there are no fees charged
7 between affiliate financial institutions for the use of automatic
8 teller machines.

9 (2) Any financial institution may become a user financial
10 institution by agreeing to pay the establishing financial institution
11 its automatic teller machine usage fee. Such agreement shall be
12 implied by the use of such automatic teller machines. Nothing in this
13 subsection shall prohibit a user financial institution from agreeing
14 to responsibilities and benefits which might be contained in a
15 standardized agreement. The establishing financial institution or its
16 designated data processing center shall be responsible for
17 transmitting transactions originating from its automatic teller
18 machine to a switch, but nothing contained in this section shall be
19 construed to require routing of all transactions to a switch. All
20 automatic teller machines must be made available on a
21 nondiscriminating basis, for use by customers of any financial
22 institution which has a main chartered office or approved branch
23 located in the State of Nebraska which becomes a user financial
24 institution, through methods, fees, and processes that the
25 establishing financial institution has provided for switching

1 transactions. The director, upon notice and after a hearing, may
2 terminate or suspend the use of any automatic teller machine if he or
3 she determines that it is not available on a nondiscriminating basis
4 for use by customers of any financial institution which has a main
5 chartered office or approved branch located in the State of Nebraska
6 which becomes a user financial institution or that transactions
7 originated by customers of user financial institutions are not being
8 routed to a switch or other data processing centers. Nothing in this
9 section may be construed to prohibit nonbank employees from assisting
10 in transactions originated at the automatic teller machines, and such
11 assistance shall not be deemed to be engaging in the business of
12 banking. Such nonbank employees may be trained in the use of the
13 automatic teller machines by financial institution employees.

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

21 ~~(4)(a)-(4)~~ Any consumer initiating an electronic funds
22 transfer at an automatic teller machine for which an automatic teller
23 machine surcharge will be imposed shall receive notice in accordance
24 with the provisions of 15 U.S.C. 1693b(d)(3)(A) and (B), as such
25 section existed on January 1, 2004. 2013. Such notice shall ~~(i) be~~

1 ~~posted in a prominent and conspicuous location on or at the automatic~~
2 ~~teller machine at which the electronic funds transfer is initiated by~~
3 ~~the consumer and (ii) appear on the screen of the automatic teller~~
4 machine or appear on a paper notice issued from such machine after
5 the transaction is initiated and before the consumer is irrevocably
6 committed to completing the transaction.

7 ~~(b) Subdivision (a)(ii) of this subsection shall not~~
8 ~~apply until January 1, 2005, to any automatic teller machine that~~
9 ~~lacks the technical capability to disclose the notice on the screen~~
10 ~~or to issue a paper notice after the transaction is initiated and~~
11 ~~before the consumer is irrevocably committed to completing the~~
12 ~~transaction.~~

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

24 (6) A seller of goods and services or any other third
25 party on whose premises one or more point-of-sale terminals are

1 established shall not be, solely by virtue of such establishment, a
2 financial institution and shall not be subject to the laws governing,
3 or other requirements imposed on, financial institutions, except for
4 the requirement that it faithfully perform its obligations in
5 connection with any transaction originated at any point-of-sale
6 terminal on its premises. The acquiring financial institution shall
7 be responsible for compliance with all applicable standards, rules,
8 and regulations governing point-of-sale transactions.

9 (7) Any financial institution, upon a request of the
10 director, shall file with the director a current listing of all
11 point-of-sale terminals established by the financial institution
12 within this state. For purposes of this subsection, point-of-sale
13 terminal shall include a group of one or more of such terminals
14 established at a single business location. Such listing shall contain
15 any reasonable descriptive information pertaining to the point-of-
16 sale terminal as required by the director. Neither the establishment
17 of such point-of-sale terminal nor any transactions conducted thereat
18 shall be construed as the establishment of a branch or as branch
19 banking. Following establishment of a point-of-sale terminal, the
20 director, upon notice and after a hearing, may terminate or suspend
21 the use of such point-of-sale terminal if he or she determines that
22 it is not made available on a nondiscriminating basis for use by
23 customers of any financial institution which has a main chartered
24 office or approved branch located in the State of Nebraska which
25 becomes a user financial institution, that the necessary information

1 is not on file with the director, or that transactions originated by
2 customers of user financial institutions are not being routed to a
3 switch or other data processing center. Nothing in this section shall
4 be construed to prohibit nonbank employees from assisting in
5 transactions originated at the point-of-sale terminals, and such
6 assistance shall not be deemed to be engaging in the business of
7 banking.

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

9 (a) Check guarantees;

10 (b) Account balance inquiries;

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

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

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

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

21 (9)(a) Automatic teller machines may be established and
22 maintained by a financial institution which has a main chartered
23 office or approved branch located in the State of Nebraska, by a
24 group of two or more of such financial institutions, or by a
25 combination of such financial institution or financial institutions

1 and a third party.

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

11 (10) All financial institutions shall be given an equal
12 opportunity for the use of and access to a switch, and no
13 discrimination shall exist or preferential treatment be given in
14 either the operation of such switch or the charges for use thereof.
15 The operation of such switch shall be with the approval of the
16 director. Approval of such switch shall be given by the director when
17 he or she determines that its design and operation are such as to
18 provide access thereto and use thereof by any financial institution
19 without discrimination as to access or cost of its use. Any switch
20 established in Nebraska and approved by the director prior to January
21 1, 1993, shall be deemed to be approved for purposes of this section.

22 (11) Use of an automatic teller machine or a point-of-
23 sale terminal through access to a switch and use of any switch shall
24 be made available on a nondiscriminating basis to any financial
25 institution. A financial institution shall only be permitted use of

1 the switch if the financial institution conforms to reasonable
2 technical operating standards which have been established by the
3 switch.

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

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

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

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

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

17 (14) If it is determined by the director, after notice
18 and hearing, that discrimination against any financial institution
19 has taken place, that one financial institution has been preferred
20 over another, or that any financial institution or person has not
21 complied with any of the provisions of this section, he or she shall
22 immediately issue a cease and desist order or an order for compliance
23 within ten days after the date of the order, and upon noncompliance
24 with such order, the offending financial institution shall be subject
25 to sections 8-1,134 to 8-1,139 and to having the privileges granted

1 in this section revoked.

2 (15) For purposes of this section:

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

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

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

16 (d) Acquiring financial institution means any financial
17 institution establishing a point-of-sale terminal;

18 (e) Affiliate financial institution means any financial
19 institution which is a subsidiary of the same bank holding company;

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

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

5 (h) Financial institution means a state-chartered or
6 federally chartered bank, savings bank, building and loan
7 association, savings and loan association, or credit union, or a
8 subsidiary of any such entity;

9 (i) Foreign financial institution means a financial
10 institution located outside the United States;

11 (j) Personal identification number means a combination of
12 numerals or letters selected for a customer of a financial
13 institution, a merchant, or any other third party which is used in
14 conjunction with an access device to initiate an electronic funds
15 transfer transaction;

16 (k) Personal terminal means a personal computer and
17 telephone, wherever located, operated by a customer of a financial
18 institution for the purpose of initiating a transaction affecting an
19 account of the customer; and

20 (l) User financial institution means any financial
21 institution which desires to avail itself of and provide its
22 customers with automatic teller machine or point-of-sale terminal
23 services.

24 (16) Nothing in this section prohibits ordinary
25 clearinghouse transactions between financial institutions.

1 (17) Nothing in this section requires any federally
2 chartered establishing financial institution to obtain the approval
3 of the director for the establishment of any automatic teller
4 machine.

5 (18) Nothing in this section shall prevent any financial
6 institution which has a main chartered office or an approved branch
7 located in the State of Nebraska from participating in a national
8 automatic teller machine program to allow its customers to use
9 automatic teller machines located outside of the State of Nebraska
10 which are established by out-of-state financial institutions or
11 foreign financial institutions or to allow customers of out-of-state
12 financial institutions or foreign financial institutions to use its
13 automatic teller machines located in the State of Nebraska. Such
14 participation and any automatic teller machine usage fees charged or
15 received pursuant to the national automatic teller machine program or
16 usage fees charged for the use of its automatic teller machines by
17 customers of out-of-state financial institutions or foreign financial
18 institutions shall not be considered for purposes of determining if
19 an automatic teller machine located in the State of Nebraska has been
20 made available on a nondiscriminating basis for use by customers of
21 any financial institution which has a main chartered office or
22 approved branch located in the State of Nebraska which becomes a user
23 financial institution.

24 (19) An agreement to operate or share an automatic teller
25 machine may not prohibit, limit, or restrict the right of the

1 operator or owner of the automatic teller machine to charge a
2 customer conducting a transaction using an account from a foreign
3 financial institution an access fee or surcharge not otherwise
4 prohibited under state or federal law.

5 Sec. 2. Original section 8-157.01, Reissue Revised
6 Statutes of Nebraska, is repealed.

7 Sec. 3. Since an emergency exists, this act takes effect
8 when passed and approved according to law.