

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 75

Introduced by Pirsch, 4.

Read first time January 8, 2009

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to banking and finance; to amend section
2 8-157.01, Reissue Revised Statutes of Nebraska; to change
3 provisions relating to automatic teller machine usage
4 fees; to repeal the original section; and to declare an
5 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
5 Nebraska may establish and maintain any number of automatic teller
6 machines at which all banking transactions, defined as receiving
7 deposits of every kind and nature and crediting such to customer
8 accounts, cashing checks and cash withdrawals, transfer of funds
9 from checking accounts to savings accounts, transfer of funds
10 from savings accounts to checking accounts, transfer of funds from
11 either checking accounts and savings accounts to accounts of other
12 customers, payment transfers from customer accounts into accounts
13 maintained by other customers of the financial institution or
14 the financial institution, including preauthorized draft authority,
15 preauthorized loans, and credit transactions, receiving payments
16 payable at the financial institution or otherwise, and account
17 balance inquiry, may be conducted. Any other transaction incidental
18 to the business of the financial institution or which will provide
19 a benefit to the financial institution's customers or the general
20 public may be conducted at an automatic teller machine upon
21 thirty days' prior written notice to the director if the director
22 does not object to the proposed other transaction within the
23 thirty-day notice period. Neither such automatic teller machines
24 nor the transactions conducted thereat shall be construed as the
25 establishment of a branch or as branch banking. Such automatic

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

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

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

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

23 (4)(a) Any consumer initiating an electronic funds
24 transfer at an automatic teller machine for which an automatic
25 teller machine surcharge will be imposed shall receive notice in

1 accordance with the provisions of 15 U.S.C. 1693b(d) (3) (A) and (B) ,
2 as such section existed on January 1, 2004. Such notice shall (i)
3 be posted in a prominent and conspicuous location on or at the
4 automatic teller machine at which the electronic funds transfer is
5 initiated by the consumer and (ii) appear on the screen of the
6 automatic teller machine or appear on a paper notice issued from
7 such machine after the transaction is initiated and before the
8 consumer is irrevocably committed to completing the transaction.

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

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

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

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

1 a nondiscriminating basis for use by customers of any financial
2 institution which has a main chartered office or approved branch
3 located in the State of Nebraska which becomes a user financial
4 institution, that the necessary information is not on file with
5 the director, or that transactions originated by customers of
6 user financial institutions are not being routed to a switch
7 or other data processing center. Nothing in this section shall
8 be construed to prohibit nonbank employees from assisting in
9 transactions originated at the point-of-sale terminals, and such
10 assistance shall not be deemed to be engaging in the business of
11 banking.

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

13 (a) Check guarantees;

14 (b) Account balance inquiries;

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

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

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

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

25 (9) (a) Automatic teller machines may be established and

1 maintained by a financial institution which has a main chartered
2 office or approved branch located in the State of Nebraska, by
3 a group of two or more of such financial institutions, or by a
4 combination of such financial institution or financial institutions
5 and a third party.

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

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

1 purposes of this section.

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

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

19 An automatic teller machine shall bear a logo type or
20 other identification symbol designed to advise customers that
21 the automatic teller machine may be activated by any access
22 device which complies with the generally accepted specifications.
23 A point-of-sale terminal shall either bear or the premises on
24 which the point-of-sale terminal is established shall contain
25 a visible logo type or other identification symbol designed to

1 advise customers that the point-of-sale terminal may be activated
2 by any access device which complies with the generally accepted
3 specifications. An automatic teller machine or point-of-sale
4 terminal may also bear, at the option of the establishing or
5 acquiring financial institution, any of the following:

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

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

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

22 (14) If it is determined by the director, after notice
23 and hearing, that discrimination against any financial institution
24 has taken place, that one financial institution has been preferred
25 over another, or that any financial institution or person has not

1 complied with any of the provisions of this section, he or she
2 shall immediately issue a cease and desist order or an order for
3 compliance within ten days after the date of the order, and upon
4 noncompliance with such order, the offending financial institution
5 shall be subject to sections 8-1,134 to 8-1,139 and to having the
6 privileges granted in this section revoked.

7 (15) For purposes of this section:

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

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

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

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

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

25 (f) Electronic funds transfer means any transfer of

1 funds, other than a transaction originated by check, draft, or
2 similar paper instrument, that is initiated through a point-of-sale
3 terminal, an automatic teller machine, or a personal terminal for
4 the purpose of ordering, instructing, or authorizing a financial
5 institution to debit or credit an account;

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

10 (h) Financial institution means a state-chartered
11 or federally chartered bank, savings bank, building and loan
12 association, savings and loan association, or credit union, or a
13 subsidiary of any such entity;

14 (i) Foreign financial institution means a financial
15 institution located outside the United States;

16 ~~(i)~~ (j) Personal identification number means a
17 combination of numerals or letters selected for a customer of
18 a financial institution, a merchant, or any other third party
19 which is used in conjunction with an access device to initiate an
20 electronic funds transfer transaction;

21 ~~(j)~~ (k) Personal terminal means a personal computer and
22 telephone, wherever located, operated by a customer of a financial
23 institution for the purpose of initiating a transaction affecting
24 an account of the customer; and

25 ~~(k)~~ (l) User financial institution means any financial

1 institution which desires to avail itself of and provide its
2 customers with automatic teller machine or point-of-sale terminal
3 services.

4 (16) Nothing in this section prohibits ordinary
5 clearinghouse transactions between financial institutions.

6 (17) Nothing in this section requires any federally
7 chartered establishing financial institution to obtain the approval
8 of the director for the establishment of any automatic teller
9 machine.

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

1 has been made available on a nondiscriminating basis for use by
2 customers of any financial institution which has a main chartered
3 office or approved branch located in the State of Nebraska which
4 becomes a user financial institution.

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.