

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 603

Introduced by Lindstrom, 18.

Read first time January 23, 2019

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to banks and banking; to amend section
- 2 8-157.01, Revised Statutes Cumulative Supplement, 2018; to change
- 3 provisions relating to automatic teller machine fees; to harmonize
- 4 provisions; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 8-157.01, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 8-157.01 (1) Any establishing financial institution may establish
4 and maintain any number of automatic teller machines at which all banking
5 transactions, defined as receiving deposits of every kind and nature and
6 crediting such to customer accounts, cashing checks and cash withdrawals,
7 transferring funds from checking accounts to savings accounts,
8 transferring funds from savings accounts to checking accounts,
9 transferring funds from either checking accounts and savings accounts to
10 accounts of other customers, transferring payments from customer accounts
11 into accounts maintained by other customers of the financial institution
12 or the financial institution, including preauthorized draft authority,
13 preauthorized loans, and credit transactions, receiving payments payable
14 at the financial institution or otherwise, account balance inquiry, and
15 any other transaction incidental to the business of the financial
16 institution or which will provide a benefit to the financial
17 institution's customers or the general public, may be conducted. Any
18 automatic teller machine owned by a nonfinancial institution third party
19 shall be sponsored by an establishing financial institution. Neither such
20 automatic teller machines nor the transactions conducted thereat shall be
21 construed as the establishment of a branch or as branch banking.

22 (2) Any financial institution may become a user financial
23 institution by agreeing to pay the establishing financial institution the
24 automatic teller machine usage fee. Such agreement shall be implied by
25 the use of such automatic teller machines.

26 (3)(a)(i) All automatic teller machines shall be made available on a
27 nondiscriminating basis for use by Nebraska customers of a user financial
28 institution and (ii) all Nebraska automatic teller machine transactions
29 initiated by Nebraska customers of a user financial institution shall be
30 made on a nondiscriminating basis.

31 (b) It shall not be deemed discrimination if (i) an automatic teller

1 machine does not offer the same transaction services as other automatic
2 teller machines, (ii) there are no automatic teller machine usage fees
3 charged between affiliate financial institutions for the use of automatic
4 teller machines, (iii) the automatic teller machine usage fees of an
5 establishing financial institution that authorizes and directly or
6 indirectly routes Nebraska automatic teller machine transactions to
7 multiple switches, all of which comply with the requirements of
8 subdivision (3)(d) of this section, differ solely based upon the fees
9 established by the switches ~~fact that the automatic teller machine usage~~
10 ~~fee schedules of such switches differ from one another,~~ (iv) automatic
11 teller machine usage fees differ based upon whether the transaction
12 initiated at an automatic teller machine is subject to a surcharge or
13 provided on a surcharge-free basis, ~~(v) the manner in which an~~
14 ~~establishing financial institution authorizes and directly or indirectly~~
15 ~~routes Nebraska automatic teller machine transactions results in the same~~
16 ~~automatic teller machine usage fees for all user financial institutions~~
17 ~~for essentially the same service routed over the same switch,~~ or (v) (vi)
18 the automatic teller machines established or sponsored by an establishing
19 financial institution are made available for use by Nebraska customers of
20 any user financial institution which agrees to pay the automatic teller
21 machine usage fee and which conforms to the operating rules and technical
22 standards established by the switch to which a Nebraska automatic teller
23 machine transaction is directly or indirectly routed.

24 (c) The director, upon notice and after a hearing, may terminate or
25 suspend the use of any automatic teller machine if he or she determines
26 that the automatic teller machine is not made available on a
27 nondiscriminating basis or that Nebraska automatic teller machine
28 transactions initiated at such automatic teller machine are not made on a
29 nondiscriminating basis.

30 (d) A switch (i) shall provide to all financial institutions that
31 have a main office or approved branch located in the State of Nebraska

1 and that conform to the operating rules and technical standards
2 established by the switch an equal opportunity to participate in the
3 switch for the use of and access thereto; (ii) ~~shall implement the same~~
4 ~~automatic teller machine usage fee for all user financial institutions~~
5 ~~for essentially the same service;~~ (iii) shall be capable of operating to
6 accept and route Nebraska automatic teller machine transactions, whether
7 receiving data from an automatic teller machine, an establishing
8 financial institution, or a data processing center; and (iii) ~~(iv)~~ shall
9 be capable of being directly or indirectly connected to every data
10 processing center for any automatic teller machine.

11 (e) The director, upon notice and after a hearing, may terminate or
12 suspend the operation of any switch with respect to all Nebraska
13 automatic teller machine transactions if he or she determines that the
14 switch is not being operated in the manner required under subdivision (3)
15 (d) of this section.

16 (f) Subject to the requirement for a financial institution to comply
17 with this subsection, no user financial institution or establishing
18 financial institution shall be required to become a member of any
19 particular switch.

20 (4) Any consumer initiating an electronic funds transfer at an
21 automatic teller machine for which an automatic teller machine surcharge
22 will be imposed shall receive notice in accordance with the provisions of
23 15 U.S.C. 1693b(d)(3)(A) and (B), as such section existed on January 1,
24 2018. Such notice shall appear on the screen of the automatic teller
25 machine or appear on a paper notice issued from such machine after the
26 transaction is initiated and before the consumer is irrevocably committed
27 to completing the transaction.

28 (5) A point-of-sale terminal may be established at any point within
29 this state by a financial institution, a group of two or more financial
30 institutions, or a combination of a financial institution or financial
31 institutions and a third party or parties. Such parties may contract with

1 a seller of goods and services or any other third party for the operation
2 of point-of-sale terminals.

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

10 (7) Nothing in this section shall be construed to prohibit nonbank
11 employees from assisting in transactions originated at automatic teller
12 machines or point-of-sale terminals, and such assistance shall not be
13 deemed to be engaging in the business of banking.

14 (8)(a) Annually by September 1, any entity operating as a switch in
15 Nebraska shall file a notice with the department setting forth its name,
16 address, and contact information for an officer authorized to answer
17 inquiries related to its operations in Nebraska.

18 (b) Any entity intending to operate in Nebraska as a switch shall
19 file a notice with the department setting forth its name, address, and
20 contact information for an officer authorized to answer inquiries related
21 to its operations in Nebraska. Such notice shall be filed at least thirty
22 days prior to the date on which the switch commences operations, and
23 thereafter annually by September 1.

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

26 (10) Nothing in this section shall prevent any financial institution
27 which has a main chartered office or an approved branch located in the
28 State of Nebraska from participating in a national automatic teller
29 machine program to allow its customers to use automatic teller machines
30 located outside of the State of Nebraska which are established by out-of-
31 state financial institutions or foreign financial institutions or to

1 allow customers of out-of-state financial institutions or foreign
2 financial institutions to use its automatic teller machines. Such
3 participation and any automatic teller machine usage fees charged or
4 received pursuant to the national automatic teller machine program or
5 usage fees charged for the use of its automatic teller machines by
6 customers of out-of-state financial institutions or foreign financial
7 institutions shall not be considered for purposes of determining (a) if
8 an automatic teller machine has been made available or Nebraska automatic
9 teller machine transactions have been made on a nondiscriminating basis
10 for use by Nebraska customers of a user financial institution or (b) if a
11 switch complies with subdivision (3)(d) of this section.

12 (11) An agreement to operate or share an automatic teller machine
13 may not prohibit, limit, or restrict the right of the operator or owner
14 of the automatic teller machine to charge a customer conducting a
15 transaction using an account from a foreign financial institution an
16 access fee or surcharge not otherwise prohibited under state or federal
17 law.

18 (12) Switch fees shall not be subject to this section or be
19 regulated by the department.

20 (13) Nothing in this section shall prevent a group of two or more
21 credit unions, each of which has a main chartered office or an approved
22 branch located in the State of Nebraska, from participating in a credit
23 union service organization organized on or before January 1, 2015, for
24 the purpose of owning automatic teller machines, provided that all
25 participating credit unions have an ownership interest in the credit
26 union service organization and that the credit union service organization
27 has an ownership interest in each of the participating credit unions'
28 automatic teller machines. Such participation and any automatic teller
29 machine usage fees associated with Nebraska automatic teller machine
30 transactions initiated by customers of participating credit unions at
31 such automatic teller machines shall not be considered for purposes of

1 determining if such automatic teller machines have been made available on
2 a nondiscriminating basis or if Nebraska automatic teller machine
3 transactions initiated at such automatic teller machines have been made
4 on a nondiscriminating basis, provided that all Nebraska automatic teller
5 machine transactions initiated by customers of participating credit
6 unions result in the same automatic teller machine usage fees for
7 essentially the same service routed over the same switch.

8 (14) Nebraska automatic teller machine usage fees and any agreements
9 relating to Nebraska automatic teller machine usage fees shall comply
10 with subsection (3) of this section.

11 (15) For purposes of this section:

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

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

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

21 (d) Automatic teller machine usage fee means any per transaction fee
22 established by a switch or otherwise established on behalf of an
23 establishing financial institution and collected from the user financial
24 institution and paid to the establishing financial institution for the
25 use of the automatic teller machine. An automatic teller machine usage
26 fee shall not include switch fees;

27 (e) Electronic funds transfer means any transfer of funds, other
28 than a transaction originated by check, draft, or similar paper
29 instrument, that is initiated through a point-of-sale terminal, an
30 automatic teller machine, or a personal terminal for the purpose of
31 ordering, instructing, or authorizing a financial institution to debit or

1 credit an account;

2 (f) Essentially the same service means the same Nebraska automatic
3 teller machine transaction offered by an establishing financial
4 institution irrespective of the user financial institution, the Nebraska
5 customer of which initiates the Nebraska automatic teller machine
6 transaction. A Nebraska automatic teller machine transaction that is
7 subject to a surcharge is not essentially the same service as the same
8 banking transaction for which a surcharge is not imposed;

9 (g) Establishing financial institution means any financial
10 institution which has a main chartered office or approved branch located
11 in the State of Nebraska that establishes or sponsors an automatic teller
12 machine or any out-of-state financial institution that establishes or
13 sponsors an automatic teller machine;

14 (h) Financial institution means a bank, savings bank, building and
15 loan association, savings and loan association, or credit union, whether
16 chartered by the department, the United States, or a foreign state
17 agency; any other similar organization which is covered by federal
18 deposit insurance; or a subsidiary of any such entity;

19 (i) Foreign financial institution means a financial institution
20 located outside the United States;

21 (j) Nebraska automatic teller machine transaction means a banking
22 transaction as defined in subsection (1) of this section which is (i)
23 initiated at an automatic teller machine established in whole or in part
24 or sponsored by an establishing financial institution, (ii) for an
25 account of a Nebraska customer of a user financial institution, and (iii)
26 processed through a switch regardless of whether it is routed directly or
27 indirectly from an automatic teller machine;

28 (k) Personal terminal means a personal computer and telephone,
29 wherever located, operated by a customer of a financial institution for
30 the purpose of initiating a transaction affecting an account of the
31 customer;

1 (1) Sponsoring an automatic teller machine means the acceptance of
2 responsibility by an establishing financial institution for compliance
3 with all provisions of law governing automatic teller machines and
4 Nebraska automatic teller machine transactions in connection with an
5 automatic teller machine owned by a nonfinancial institution third party;

6 (m) Switch fee means a fee established by a switch and assessed to a
7 user financial institution or to an establishing financial institution
8 other than an automatic teller machine usage fee; and

9 (n) User financial institution means any financial institution which
10 has a main chartered office or approved branch located in the State of
11 Nebraska which avails itself of and provides its customers with automatic
12 teller machine services.

13 Sec. 2. Original section 8-157.01, Revised Statutes Cumulative
14 Supplement, 2018, is repealed.