

AMENDMENTS TO LB348

Introduced by Banking, Commerce and Insurance.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 8-101, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 8-101 For purposes of the Nebraska Banking Act, unless the context
6 otherwise requires:

7 (1) Bank subsidiary corporation means a corporation which has a bank
8 as a shareholder and which is organized for purposes of engaging in
9 activities which are part of the business of banking or incidental to
10 such business except for the receipt of deposits. A bank subsidiary
11 corporation is not to be considered a branch of its bank shareholder;

12 (2) Capital or capital stock means capital stock;

13 (3) Department means the Department of Banking and Finance;

14 (4) Director means the Director of Banking and Finance;

15 (5) Bank or banking corporation means any incorporated banking
16 institution which was incorporated under the laws of this state as they
17 existed prior to May 9, 1933, and any corporation duly organized under
18 the laws of this state for the purpose of conducting a bank within this
19 state under the act. Bank means any such banking institution which is, in
20 addition to the exercise of other powers, following the practice of
21 repaying deposits upon check, draft, or order and of making loans;

22 (6) Order includes orders transmitted by electronic transmission;

23 (7) Automatic teller machine means a machine established and located
24 ~~off the premises of a financial institution which has a main chartered~~
25 ~~office or approved branch located~~ in the State of Nebraska, whether
26 attended or unattended, which utilizes electronic, sound, or mechanical
27 signals or impulses, or any combination thereof, and from which

1 electronic funds transfers may be initiated and at which banking
2 transactions as defined in section 8-157.01 may be conducted. An
3 unattended automatic teller machine shall not be deemed to be a branch
4 operated by a financial institution;

5 (8) Automatic teller machine surcharge means a fee that an operator
6 of an automatic teller machine imposes upon a consumer for an electronic
7 funds transfer, if such operator is not the financial institution that
8 holds an account of such consumer from which the electronic funds
9 transfer is to be made;

10 (9) Data processing center means a facility, wherever located, at
11 which electronic impulses or other indicia of a transaction originating
12 at an automatic teller machine ~~or point-of-sale terminal~~ are received and
13 either authorized or routed to a switch or other data processing center
14 in order to enable the automatic teller machine ~~or point-of-sale terminal~~
15 to perform any function for which it is designed;

16 (10) Point-of-sale terminal means an information processing terminal
17 which utilizes electronic, sound, or mechanical signals or impulses, or
18 any combination thereof, which are transmitted to a financial institution
19 or which are recorded for later transmission to effectuate electronic
20 funds transfer transactions for the purchase or payment of goods and
21 services and which are initiated by an access device ~~in conjunction with~~
22 ~~a personal identification number~~. A point-of-sale terminal is not a
23 branch operated by a financial institution. Any terminal owned or
24 operated by a seller of goods and services shall be connected directly or
25 indirectly to an acquiring financial institution;

26 (11) Making loans includes advances or credits that are initiated by
27 means of credit card or other transaction card. Transaction card and
28 other transactions, including transactions made pursuant to prior
29 agreements, may be brought about and transmitted by means of an
30 electronic impulse. Such loan transactions including transactions made
31 pursuant to prior agreements shall be subject to sections 8-815 to 8-829

1 and shall be deemed loans made at the place of business of the financial
2 institution;

3 (12) Financial institution means a bank, savings bank, building and
4 loan association, savings and loan association, or credit union, whether
5 chartered by the United States, the department, or a foreign state
6 agency; any other similar organization which is covered by federal
7 deposit insurance; or a trust company;

8 (13) Financial institution employees includes parent holding company
9 and affiliate employees;

10 (14) Switch means any facility where electronic impulses or other
11 indicia of a transaction originating at an automatic teller machine ~~or~~
12 ~~point-of-sale terminal~~ are received and are routed and transmitted to a
13 financial institution, or data processing center, ~~or other switch,~~
14 wherever located. A switch may also be a data processing center;

15 (15) Impulse means an electronic, sound, or mechanical impulse, or
16 any combination thereof;

17 (16) Insolvent means a condition in which (a) the actual cash market
18 value of the assets of a bank is insufficient to pay its liabilities to
19 its depositors, (b) a bank is unable to meet the demands of its creditors
20 in the usual and customary manner, (c) a bank, after demand in writing by
21 the director, fails to make good any deficiency in its reserves as
22 required by law, or (d) the stockholders of a bank, after written demand
23 by the director, fail to make good an impairment of its capital or
24 surplus;~~and~~

25 (17) Foreign state agency means any duly constituted regulatory or
26 supervisory agency which has authority over financial institutions and
27 which is created under the laws of any other state, any territory of the
28 United States, Puerto Rico, Guam, American Samoa, the Trust Territory of
29 the Pacific Islands, or the Virgin Islands or which is operating under
30 the code of law for the District of Columbia; ~~-~~

31 (18) Acquiring financial institution means any financial institution

1 establishing a point-of-sale terminal; and
2 (19) Access device means a code, a transaction card, or any other
3 means of access to a customer's account, or any combination thereof, that
4 may be used by a customer for the purpose of initiating an electronic
5 funds transfer at an automatic teller machine or a point-of-sale
6 terminal.

7 Sec. 2. Section 8-157.01, Revised Statutes Cumulative Supplement,
8 2014, is amended to read:

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

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

10 (2) Any financial institution may become a user financial
11 institution by agreeing to pay the establishing financial institution the
12 ~~its~~ automatic teller machine usage fee. Such agreement shall be implied
13 by the use of such automatic teller machines. ~~Nothing in this subsection~~
14 ~~shall prohibit a user financial institution from agreeing to~~
15 ~~responsibilities and benefits which might be contained in a standardized~~
16 ~~agreement.~~

17 (3)(a) Beginning November 1, 2016, (i) all automatic teller machines
18 shall be made available on a nondiscriminating basis for use by Nebraska
19 customers of a user financial institution and (ii) all Nebraska automatic
20 teller machine transactions initiated by Nebraska customers of a user
21 financial institution shall be made on a nondiscriminating basis The
22 ~~establishing financial institution or its designated data processing~~
23 ~~center shall be responsible for transmitting transactions originating~~
24 ~~from its automatic teller machine to a switch, but nothing contained in~~
25 ~~this section shall be construed to require routing of all transactions to~~
26 ~~a switch. All automatic teller machines must be made available on a~~
27 ~~nondiscriminating basis, for use by customers of any financial~~
28 ~~institution which has a main chartered office or approved branch located~~
29 ~~in the State of Nebraska which becomes a user financial institution,~~
30 ~~through methods, fees, and processes that the establishing financial~~
31 ~~institution has provided for switching transactions.~~

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

25 (c) The director, upon notice and after a hearing, may terminate or
26 suspend the use of any automatic teller machine if he or she determines
27 that the automatic teller machine is not made available on a
28 nondiscriminating basis or that Nebraska automatic teller machine
29 transactions initiated at such automatic teller machine are ~~it is not~~
30 made available on a nondiscriminating basis ~~for use by customers of any~~
31 financial institution which has a main chartered office or approved

1 ~~branch located in the State of Nebraska which becomes a user financial~~
2 ~~institution or that transactions originated by customers of user~~
3 ~~financial institutions are not being routed to a switch or other data~~
4 ~~processing centers. Nothing in this section may be construed to prohibit~~
5 ~~nonbank employees from assisting in transactions originated at the~~
6 ~~automatic teller machines, and such assistance shall not be deemed to be~~
7 ~~engaging in the business of banking. Such nonbank employees may be~~
8 ~~trained in the use of the automatic teller machines by financial~~
9 ~~institution employees.~~

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

17 (d) A switch (i) shall provide to all financial institutions that
18 have a main office or approved branch located in the State of Nebraska
19 and that conform to the operating rules and technical standards
20 established by the switch an equal opportunity to participate in the
21 switch for the use of and access thereto; (ii) shall implement the same
22 automatic teller machine usage fee for all user financial institutions
23 for essentially the same service; (iii) shall be capable of operating to
24 accept and route Nebraska automatic teller machine transactions, whether
25 receiving data from an automatic teller machine, an establishing
26 financial institution, or from a data processing center; and (iv) shall
27 be capable of being directly or indirectly connected to every data
28 processing center for any automatic teller machine.

29 (e) The director, upon notice and after a hearing, may terminate or
30 suspend the operation of any switch with respect to all Nebraska
31 automatic teller machine transactions if he or she determines that the

1 switch is not being operated in the manner required under subdivision (3)
2 (d) of this section.

3 (f) Subject to the requirement for a financial institution to comply
4 with this subsection, no user financial institution or establishing
5 financial institution shall be required to become a member of any
6 particular switch.

7 (4) Any consumer initiating an electronic funds transfer at an
8 automatic teller machine for which an automatic teller machine surcharge
9 will be imposed shall receive notice in accordance with the provisions of
10 15 U.S.C. 1693b(d)(3)(A) and (B), as such section existed on January 1,
11 2015 ~~2013~~. Such notice shall appear on the screen of the automatic teller
12 machine or appear on a paper notice issued from such machine after the
13 transaction is initiated and before the consumer is irrevocably committed
14 to completing the transaction.

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

27 (6) A seller of goods and services or any other third party on whose
28 premises one or more point-of-sale terminals are established shall not
29 be, solely by virtue of such establishment, a financial institution and
30 shall not be subject to the laws governing, or other requirements imposed
31 on, financial institutions, except for the requirement that it faithfully

1 perform its obligations in connection with any transaction originated at
2 any point-of-sale terminal on its premises. ~~The acquiring financial~~
3 ~~institution shall be responsible for compliance with all applicable~~
4 ~~standards, rules, and regulations governing point-of-sale transactions.~~

5 (7) ~~Any financial institution, upon a request of the director, shall~~
6 ~~file with the director a current listing of all point-of-sale terminals~~
7 ~~established by the financial institution within this state. For purposes~~
8 ~~of this subsection, point-of-sale terminal shall include a group of one~~
9 ~~or more of such terminals established at a single business location. Such~~
10 ~~listing shall contain any reasonable descriptive information pertaining~~
11 ~~to the point-of-sale terminal as required by the director. Neither the~~
12 ~~establishment of such point-of-sale terminal nor any transactions~~
13 ~~conducted thereat shall be construed as the establishment of a branch or~~
14 ~~as branch banking. Following establishment of a point-of-sale terminal,~~
15 ~~the director, upon notice and after a hearing, may terminate or suspend~~
16 ~~the use of such point-of-sale terminal if he or she determines that it is~~
17 ~~not made available on a nondiscriminating basis for use by customers of~~
18 ~~any financial institution which has a main chartered office or approved~~
19 ~~branch located in the State of Nebraska which becomes a user financial~~
20 ~~institution, that the necessary information is not on file with the~~
21 ~~director, or that transactions originated by customers of user financial~~
22 ~~institutions are not being routed to a switch or other data processing~~
23 ~~center. Nothing in this section shall be construed to prohibit nonbank~~
24 ~~employees from assisting in transactions originated at automatic teller~~
25 ~~machines or the point-of-sale terminals, and such assistance shall not be~~
26 ~~deemed to be engaging in the business of banking.~~

27 (8)(a) Beginning September 1, 2015, and thereafter annually by
28 September 1, any entity operating as a switch in Nebraska prior to
29 September 1, 2015, regardless of whether the switch had been approved by
30 the department, shall file a notice with the department setting forth its
31 name, address, and contact information for an officer authorized to

1 answer inquiries related to its operations in Nebraska.

2 (b) On or after September 1, 2015, any entity intending to operate
3 in Nebraska as a switch shall file a notice with the department setting
4 forth its name, address, and contact information for an officer
5 authorized to answer inquiries related to its operations in Nebraska.
6 Such notice shall be filed at least thirty days prior to the date on
7 which the switch commences operations, and thereafter annually by
8 September 1.

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

11 (10) Nothing in this section shall prevent any financial institution
12 which has a main chartered office or an approved branch located in the
13 State of Nebraska from participating in a national automatic teller
14 machine program to allow its customers to use automatic teller machines
15 located outside of the State of Nebraska which are established by out-of-
16 state 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. Such
19 participation and any automatic teller machine usage fees charged or
20 received pursuant to the national automatic teller machine program or
21 usage fees charged for the use of its automatic teller machines by
22 customers of out-of-state financial institutions or foreign financial
23 institutions shall not be considered for purposes of determining (a) if
24 an automatic teller machine has been made available or Nebraska automatic
25 teller machine transactions have been made on a nondiscriminating basis
26 for use by Nebraska customers of a user financial institution or (b) if a
27 switch complies with subdivision (3)(d) of this section.

28 (11) An agreement to operate or share an automatic teller machine
29 may not prohibit, limit, or restrict the right of the operator or owner
30 of the automatic teller machine to charge a customer conducting a
31 transaction using an account from a foreign financial institution an

1 access fee or surcharge not otherwise prohibited under state or federal
2 law.

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

5 (13) Nothing in this section shall prevent a group of two or more
6 credit unions, each of which has a main chartered office or an approved
7 branch located in the State of Nebraska, from participating in a credit
8 union service organization organized on or before January 1, 2015, for
9 the purpose of owning automatic teller machines, provided that all
10 participating credit unions have an ownership interest in the credit
11 union service organization and that the credit union service organization
12 has an ownership interest in each of the participating credit unions'
13 automatic teller machines. Such participation and any automatic teller
14 machine usage fees associated with Nebraska automatic teller machine
15 transactions initiated by customers of participating credit unions at
16 such automatic teller machines shall not be considered for purposes of
17 determining if such automatic teller machines have been made available on
18 a nondiscriminating basis or if Nebraska automatic teller machine
19 transactions initiated at such automatic teller machines have been made
20 on a nondiscriminating basis, provided that all Nebraska automatic teller
21 machine transactions initiated by customers of participating credit
22 unions result in the same automatic teller machine usage fees for
23 essentially the same service routed over the same switch.

24 (14)(a) Except for any violation of this subsection, the department
25 shall take no enforcement action under this section between the effective
26 date of this act and November 1, 2016, with respect to access to
27 automatic teller machines, Nebraska automatic teller machine usage fees,
28 or any agreements relating to Nebraska automatic teller machine usage
29 fees which existed on the effective date of this act, except for changes
30 in automatic teller machine usage fees announced prior to the effective
31 date of this act.

1 (b) Nebraska automatic teller machine usage fees or agreements
2 relating to Nebraska automatic teller machine usage fees in effect on the
3 effective date of this act shall remain unchanged until April 1, 2016,
4 except for changes in automatic teller machine usage fees announced prior
5 to the effective date of this act.

6 (c) There shall be a moratorium on the implementation of any
7 agreement with new members relating to Nebraska automatic teller machine
8 usage fees between the effective date of this act and April 1, 2016,
9 except for changes in automatic teller machine usage fees announced prior
10 to the effective date of this act.

11 (d) Any agreement implemented on or after April 1, 2016, relating to
12 Nebraska automatic teller machine usage fees shall comply with subsection
13 (3) of this section.

14 (e) Commencing November 1, 2016, Nebraska automatic teller machine
15 usage fees and any agreements relating to Nebraska automatic teller
16 machine usage fees shall comply with subsection (3) of this section.

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

18 ~~(a) Check guarantees;~~

19 ~~(b) Account balance inquiries;~~

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

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

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

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

29 ~~(9)(a) Automatic teller machines may be established and maintained~~
30 ~~by a financial institution which has a main chartered office or approved~~
31 ~~branch located in the State of Nebraska, by a group of two or more of~~

1 ~~such financial institutions, or by a combination of such financial~~
2 ~~institution or financial institutions and a third party.~~

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

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

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

28 ~~(12) To assure maximum safety and security against malfunction,~~
29 ~~fraud, theft, and other accidents or abuses and to assure that all such~~
30 ~~access devices will have the capability of activating all automatic~~
31 ~~teller machines and point-of-sale terminals established in this state, no~~

1 ~~automatic teller machine or point-of-sale terminal shall accept an access~~
2 ~~device which does not conform to such specifications as are generally~~
3 ~~accepted. No automatic teller machine or point-of-sale terminal shall be~~
4 ~~established or operated which does not accept an access device which~~
5 ~~conforms with such specifications.~~

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

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

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

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

1 ~~(14) If it is determined by the director, after notice and hearing,~~
2 ~~that discrimination against any financial institution has taken place,~~
3 ~~that one financial institution has been preferred over another, or that~~
4 ~~any financial institution or person has not complied with any of the~~
5 ~~provisions of this section, he or she shall immediately issue a cease and~~
6 ~~desist order or an order for compliance within ten days after the date of~~
7 ~~the order, and upon noncompliance with such order, the offending~~
8 ~~financial institution shall be subject to sections 8-1,134 to 8-1,139 and~~
9 ~~to having the privileges granted in this section revoked.~~

10 (15) For purposes of this section:

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

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

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

23 ~~(d) Acquiring financial institution means any financial institution~~
24 ~~establishing a point-of-sale terminal;~~

25 **(c e)** Affiliate financial institution means any financial
26 institution which is a subsidiary of the same bank holding company;

27 (d) Automatic teller machine usage fee means any per transaction fee
28 established by a switch or otherwise established on behalf of an
29 establishing financial institution and collected from the user financial
30 institution and paid to the establishing financial institution for the
31 use of the automatic teller machine. An automatic teller machine usage

1 fee shall not include switch fees;

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

8 (f) Essentially the same service means the same Nebraska automatic
9 teller machine transaction offered by an establishing financial
10 institution irrespective of the user financial institution, the Nebraska
11 customer of which initiates the Nebraska automatic teller machine
12 transaction. A Nebraska automatic teller machine transaction that is
13 subject to a surcharge is not essentially the same service as the same
14 banking transaction for which a surcharge is not imposed;

15 (g) Establishing financial institution means any financial
16 institution ~~establishing an automatic teller machine~~ which has a main
17 chartered office or approved branch located in the State of Nebraska that
18 establishes or sponsors an automatic teller machine or any out-of-state
19 financial institution that establishes or sponsors an automatic teller
20 machine;

21 (h) Financial institution means a ~~state-chartered or federally~~
22 ~~chartered~~ bank, savings bank, building and loan association, savings and
23 loan association, or credit union, whether chartered by the department,
24 the United States, or a foreign state agency; any other similar
25 organization which is covered by federal deposit insurance; or a
26 subsidiary of any such entity;

27 (i) Foreign financial institution means a financial institution
28 located outside the United States;

29 (j) Nebraska automatic teller machine transaction means a banking
30 transaction as defined in subsection (1) of this section which is (i)
31 initiated at an automatic teller machine established in whole or in part

1 or sponsored by an establishing financial institution, (ii) for an
2 account of a Nebraska customer of a user financial institution, and (iii)
3 processed through a switch regardless of whether it is routed directly or
4 indirectly from an automatic teller machine;

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

9 (k) Personal terminal means a personal computer and telephone,
10 wherever located, operated by a customer of a financial institution for
11 the purpose of initiating a transaction affecting an account of the
12 customer; ~~and~~

13 (l) Sponsoring an automatic teller machine means the acceptance of
14 responsibility by an establishing financial institution for compliance
15 with all provisions of law governing automatic teller machines and
16 Nebraska automatic teller machine transactions in connection with an
17 automatic teller machine owned by a nonfinancial institution third party;

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

21 (n 1) User financial institution means any financial institution
22 which has a main chartered office or approved branch located in the State
23 of Nebraska which avails desires to avail itself of and provides provide
24 its customers with automatic teller machine or point-of-sale terminal
25 services.

26 ~~(16) Nothing in this section prohibits ordinary clearinghouse~~
27 ~~transactions between financial institutions.~~

28 ~~(17) Nothing in this section requires any federally chartered~~
29 ~~establishing financial institution to obtain the approval of the director~~
30 ~~for the establishment of any automatic teller machine.~~

31 ~~(18) Nothing in this section shall prevent any financial institution~~

1 ~~which has a main chartered office or an approved branch located in the~~
2 ~~State of Nebraska from participating in a national automatic teller~~
3 ~~machine program to allow its customers to use automatic teller machines~~
4 ~~located outside of the State of Nebraska which are established by out-of-~~
5 ~~state financial institutions or foreign financial institutions or to~~
6 ~~allow customers of out-of-state financial institutions or foreign~~
7 ~~financial institutions to use its automatic teller machines located in~~
8 ~~the State of Nebraska. Such participation and any automatic teller~~
9 ~~machine usage fees charged or received pursuant to the national automatic~~
10 ~~teller machine program or usage fees charged for the use of its automatic~~
11 ~~teller machines by customers of out-of-state financial institutions or~~
12 ~~foreign financial institutions shall not be considered for purposes of~~
13 ~~determining if an automatic teller machine located in the State of~~
14 ~~Nebraska has been made available on a nondiscriminating basis for use by~~
15 ~~customers of any financial institution which has a main chartered office~~
16 ~~or approved branch located in the State of Nebraska which becomes a user~~
17 ~~financial institution.~~

18 ~~(19) An agreement to operate or share an automatic teller machine~~
19 ~~may not prohibit, limit, or restrict the right of the operator or owner~~
20 ~~of the automatic teller machine to charge a customer conducting a~~
21 ~~transaction using an account from a foreign financial institution an~~
22 ~~access fee or surcharge not otherwise prohibited under state or federal~~
23 ~~law.~~

24 Sec. 3. Section 28-636, Revised Statutes Cumulative Supplement,
25 2014, is amended to read:

26 28-636 For purposes of sections 28-636 to 28-640:

27 (1) Personal identification document means a birth certificate,
28 motor vehicle operator's license, state identification card, public,
29 government, or private employment identification card, social security
30 card, visa work permit, firearm owner's identification card, certificate
31 issued under section 69-2404, or passport or any document made or altered

1 in a manner that it purports to have been made on behalf of or issued to
2 another person or by the authority of a person who did not give that
3 authority. Personal identification document does not include a financial
4 transaction device as defined in section 28-618;

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

9 (3) Personal identifying information means any name or number that
10 may be used, alone or in conjunction with any other information, to
11 identify a specific person including a person's: (a) Name; (b) date of
12 birth; (c) address; (d) motor vehicle operator's license number or state
13 identification card number as assigned by the State of Nebraska or
14 another state; (e) social security number or visa work permit number; (f)
15 public, private, or government employer, place of employment, or
16 employment identification number; (g) maiden name of a person's mother;
17 (h) number assigned to a person's credit card, charge card, or debit
18 card, whether issued by a financial institution, corporation, or other
19 business entity; (i) number assigned to a person's depository account,
20 savings account, or brokerage account; (j) personal identification number
21 ~~as defined in section 8-157.01~~; (k) electronic identification number,
22 address, or routing code used to access financial information; (l)
23 digital signature; (m) telecommunications identifying information or
24 access device; (n) unique biometric data, such as fingerprint, voice
25 print, retina or iris image, or other unique physical representation; and
26 (o) other number or information which can be used to access a person's
27 financial resources; and

28 (4) Telecommunications identifying information or access device
29 means a card, plate, code, account number, mobile identification number,
30 or other telecommunications service, equipment, or instrument identifier
31 or means of account access that alone or in conjunction with other

1 telecommunications identifying information or another telecommunications
2 access device may be used to: (a) Obtain money, goods, services, or any
3 other thing of value; or (b) initiate a transfer of funds other than a
4 transfer originated solely by a paper instrument.

5 Sec. 4. If any section in this act or any part of any section is
6 declared invalid or unconstitutional, the declaration shall not affect
7 the validity or constitutionality of the remaining portions.

8 Sec. 5. Original section 8-101, Reissue Revised Statutes of
9 Nebraska, and sections 8-157.01 and 28-636, Revised Statutes Cumulative
10 Supplement, 2014, are repealed.

11 Sec. 6. Since an emergency exists, this act takes effect when
12 passed and approved according to law.