

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 760

Introduced by Scheer, 19.

Read first time January 06, 2016

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to banks and banking; to amend sections 8-318
2 and 8-345.01, Reissue Revised Statutes of Nebraska, section 8-135,
3 Revised Statutes Cumulative Supplement, 2014, and section 8-157.01,
4 Revised Statutes Supplement, 2015; to update certain references to
5 the federal Electronic Fund Transfer Act; to change an internal
6 reference; and to repeal the original sections.

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

1 Section 1. Section 8-135, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 8-135 (1) All persons, regardless of age, may become depositors in
4 any bank and shall be subject to the same duties and liabilities
5 respecting their deposits. Whenever a deposit is accepted by any bank in
6 the name of any person, regardless of age, the deposit may be withdrawn
7 by the depositor by any of the following methods:

8 (a) Check or other instrument in writing. The check or other
9 instrument in writing constitutes a receipt or acquittance if the check
10 or other instrument in writing is signed by the depositor and constitutes
11 a valid release and discharge to the bank for all payments so made; or

12 (b) Electronic means through:

13 (i) Preauthorized direct withdrawal;

14 (ii) An automatic teller machine;

15 (iii) A debit card;

16 (iv) A transfer by telephone;

17 (v) A network, including the Internet; or

18 (vi) Any electronic terminal, computer, magnetic tape, or other
19 electronic means.

20 (2) This section shall not be construed to affect the rights,
21 liabilities, or responsibilities of participants in an electronic fund
22 transfer under the federal Electronic Fund Transfer Act, 15 U.S.C. 1693
23 et seq., as the act existed on January 1, 2016 ~~2013~~, and shall not affect
24 the legal relationships between a minor and any person other than the
25 bank.

26 Sec. 2. Section 8-157.01, Revised Statutes Supplement, 2015, is
27 amended to read:

28 8-157.01 (1) Any establishing financial institution may establish
29 and maintain any number of automatic teller machines at which all banking
30 transactions, defined as receiving deposits of every kind and nature and
31 crediting such to customer accounts, cashing checks and cash withdrawals,

1 transferring funds from checking accounts to savings accounts,
2 transferring funds from savings accounts to checking accounts,
3 transferring funds from either checking accounts and savings accounts to
4 accounts of other customers, transferring payments from customer accounts
5 into accounts maintained by other customers of the financial institution
6 or the financial institution, including preauthorized draft authority,
7 preauthorized loans, and credit transactions, receiving payments payable
8 at the financial institution or otherwise, account balance inquiry, and
9 any other transaction incidental to the business of the financial
10 institution or which will provide a benefit to the financial
11 institution's customers or the general public, may be conducted. Any
12 automatic teller machine owned by a nonfinancial institution third party
13 shall be sponsored by an establishing financial institution. Neither such
14 automatic teller machines nor the transactions conducted thereat shall be
15 construed as the establishment of a branch or as branch banking.

16 (2) Any financial institution may become a user financial
17 institution by agreeing to pay the establishing financial institution the
18 automatic teller machine usage fee. Such agreement shall be implied by
19 the use of such automatic teller machines.

20 (3)(a) Beginning November 1, 2016, (i) all automatic teller machines
21 shall be made available on a nondiscriminating basis for use by Nebraska
22 customers of a user financial institution and (ii) all Nebraska automatic
23 teller machine transactions initiated by Nebraska customers of a user
24 financial institution shall be made on a nondiscriminating basis.

25 (b) It shall not be deemed discrimination if (i) an automatic teller
26 machine does not offer the same transaction services as other automatic
27 teller machines, (ii) there are no automatic teller machine usage fees
28 charged between affiliate financial institutions for the use of automatic
29 teller machines, (iii) the automatic teller machine usage fees of an
30 establishing financial institution that authorizes and directly or
31 indirectly routes Nebraska automatic teller machine transactions to

1 multiple switches, all of which comply with the requirements of
2 subdivision (3)(d) of this section, differ solely upon the fact that the
3 automatic teller machine usage fee schedules of such switches differ from
4 one another, (iv) automatic teller machine usage fees differ based upon
5 whether the transaction initiated at an automatic teller machine is
6 subject to a surcharge or provided on a surcharge-free basis, (v) the
7 manner in which an establishing financial institution authorizes and
8 directly or indirectly routes Nebraska automatic teller machine
9 transactions results in the same automatic teller machine usage fees for
10 all user financial institutions for essentially the same service routed
11 over the same switch, or (vi) the automatic teller machines established
12 or sponsored by an establishing financial institution are made available
13 for use by Nebraska customers of any user financial institution which
14 agrees to pay the automatic teller machine usage fee and which conforms
15 to the operating rules and technical standards established by the switch
16 to which a Nebraska automatic teller machine transaction is directly or
17 indirectly routed.

18 (c) The director, upon notice and after a hearing, may terminate or
19 suspend the use of any automatic teller machine if he or she determines
20 that the automatic teller machine is not made available on a
21 nondiscriminating basis or that Nebraska automatic teller machine
22 transactions initiated at such automatic teller machine are not made on a
23 nondiscriminating basis.

24 (d) A switch (i) shall provide to all financial institutions that
25 have a main office or approved branch located in the State of Nebraska
26 and that conform to the operating rules and technical standards
27 established by the switch an equal opportunity to participate in the
28 switch for the use of and access thereto; (ii) shall implement the same
29 automatic teller machine usage fee for all user financial institutions
30 for essentially the same service; (iii) shall be capable of operating to
31 accept and route Nebraska automatic teller machine transactions, whether

1 receiving data from an automatic teller machine, an establishing
2 financial institution, or a data processing center; and (iv) shall be
3 capable of being directly or indirectly connected to every data
4 processing center for any automatic teller machine.

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

10 (f) Subject to the requirement for a financial institution to comply
11 with this subsection, no user financial institution or establishing
12 financial institution shall be required to become a member of any
13 particular switch.

14 (4) Any consumer initiating an electronic funds transfer at an
15 automatic teller machine for which an automatic teller machine surcharge
16 will be imposed shall receive notice in accordance with the provisions of
17 15 U.S.C. 1693b(d)(3)(A) and (B), as such section existed on January 1,
18 2016 ~~2015~~. Such notice shall appear on the screen of the automatic teller
19 machine or appear on a paper notice issued from such machine after the
20 transaction is initiated and before the consumer is irrevocably committed
21 to completing the transaction.

22 (5) A point-of-sale terminal may be established at any point within
23 this state by a financial institution, a group of two or more financial
24 institutions, or a combination of a financial institution or financial
25 institutions and a third party or parties. Such parties may contract with
26 a seller of goods and services or any other third party for the operation
27 of point-of-sale terminals.

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

1 on, financial institutions, except for the requirement that it faithfully
2 perform its obligations in connection with any transaction originated at
3 any point-of-sale terminal on its premises.

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

8 (8)(a) Beginning September 1, 2015, and thereafter annually by
9 September 1, any entity operating as a switch in Nebraska prior to
10 September 1, 2015, regardless of whether the switch had been approved by
11 the department, shall file a notice with the department setting forth its
12 name, address, and contact information for an officer authorized to
13 answer inquiries related to its operations in Nebraska.

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

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

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

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

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

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

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

1 on a nondiscriminating basis, provided that all Nebraska automatic teller
2 machine transactions initiated by customers of participating credit
3 unions result in the same automatic teller machine usage fees for
4 essentially the same service routed over the same switch.

5 (14)(a) Except for any violation of this subsection, the department
6 shall take no enforcement action under this section between May 14, 2015,
7 and November 1, 2016, with respect to access to automatic teller
8 machines, Nebraska automatic teller machine usage fees, or any agreements
9 relating to Nebraska automatic teller machine usage fees which existed on
10 May 14, 2015, except for changes in automatic teller machine usage fees
11 announced prior to May 14, 2015.

12 (b) Nebraska automatic teller machine usage fees or agreements
13 relating to Nebraska automatic teller machine usage fees in effect on May
14 14, 2015, shall remain unchanged until April 1, 2016, except for changes
15 in automatic teller machine usage fees announced prior to May 14, 2015.

16 (c) There shall be a moratorium on the implementation of any
17 agreement with new members relating to Nebraska automatic teller machine
18 usage fees between May 14, 2015, and April 1, 2016, except for changes in
19 automatic teller machine usage fees announced prior to May 14, 2015.

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

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

26 (15) For purposes of this section:

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

30 (b) Account means a checking account, a savings account, a share
31 account, or any other customer asset account held by a financial

1 institution. Such an account may also include a line of credit which a
2 financial institution has agreed to extend to its customer;

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

5 (d) Automatic teller machine usage fee means any per transaction fee
6 established by a switch or otherwise established on behalf of an
7 establishing financial institution and collected from the user financial
8 institution and paid to the establishing financial institution for the
9 use of the automatic teller machine. An automatic teller machine usage
10 fee shall not include switch fees;

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

17 (f) Essentially the same service means the same Nebraska automatic
18 teller machine transaction offered by an establishing financial
19 institution irrespective of the user financial institution, the Nebraska
20 customer of which initiates the Nebraska automatic teller machine
21 transaction. A Nebraska automatic teller machine transaction that is
22 subject to a surcharge is not essentially the same service as the same
23 banking transaction for which a surcharge is not imposed;

24 (g) Establishing financial institution means any financial
25 institution which has a main chartered office or approved branch located
26 in the State of Nebraska that establishes or sponsors an automatic teller
27 machine or any out-of-state financial institution that establishes or
28 sponsors an automatic teller machine;

29 (h) Financial institution means a bank, savings bank, building and
30 loan association, savings and loan association, or credit union, whether
31 chartered by the department, the United States, or a foreign state

1 agency; any other similar organization which is covered by federal
2 deposit insurance; or a subsidiary of any such entity;

3 (i) Foreign financial institution means a financial institution
4 located outside the United States;

5 (j) Nebraska automatic teller machine transaction means a banking
6 transaction as defined in subsection (1) of this section which is (i)
7 initiated at an automatic teller machine established in whole or in part
8 or sponsored by an establishing financial institution, (ii) for an
9 account of a Nebraska customer of a user financial institution, and (iii)
10 processed through a switch regardless of whether it is routed directly or
11 indirectly from an automatic teller machine;

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

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

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

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

28 Sec. 3. Section 8-318, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 8-318 (1)(a) Shares of stock in any association, or in any federal
31 savings and loan association incorporated under the provisions of the

1 federal Home Owners' Loan Act of 1933, with its principal office and
2 place of business in this state, may be subscribed for, held,
3 transferred, surrendered, withdrawn, and forfeited and payments thereon
4 received and receipted for by any person, regardless of age, in the same
5 manner and with the same binding effect as though such person were of the
6 age of majority, except that a minor or his or her estate shall not be
7 bound on his or her subscription to stock except to the extent of
8 payments actually made thereon.

9 (b) Whenever a share account is accepted by any building and loan
10 association in the name of any person, regardless of age, the deposit may
11 be withdrawn by the shareholder by any of the following methods:

12 (i) Check or other instrument in writing. The check or other
13 instrument in writing constitutes a receipt or acquittance if the check
14 or other instrument in writing is signed by the shareholder and
15 constitutes a valid release in discharge to the building and loan
16 association for all payments so made; or

17 (ii) Electronic means through:

18 (A) Preauthorized direct withdrawal;

19 (B) An automatic teller machine;

20 (C) A debit card;

21 (D) A transfer by telephone;

22 (E) A network, including the Internet; or

23 (F) Any electronic terminal, computer, magnetic tape, or other
24 electronic means.

25 (c) This section shall not be construed to affect the rights,
26 liabilities, or responsibilities of participants in an electronic fund
27 transfer under the federal Electronic Fund Transfer Act, 15 U.S.C. 1693
28 et seq., as it existed on January 1, 2016 ~~September 4, 2005~~, and shall
29 not affect the legal relationships between a minor and any person other
30 than the building and loan association.

31 (2) All trustees, guardians, personal representatives,

1 administrators, and conservators appointed by the courts of this state
2 may invest and reinvest in, acquire, make withdrawals in whole or in
3 part, hold, transfer, or make new or additional investments in or
4 transfers of shares of stock in any (a) building and loan association
5 organized under the laws of the State of Nebraska or (b) federal savings
6 and loan association incorporated under the provisions of the federal
7 Home Owners' Loan Act of 1933, having its principal office and place of
8 business in this state, without an order of approval from any court.

9 (3) Trustees created solely by the terms of a trust instrument may
10 invest in, acquire, hold, and transfer such shares, and make withdrawals,
11 in whole or in part, therefrom, without any order of court, unless
12 expressly limited, restricted, or prohibited therefrom by the terms of
13 such trust instrument.

14 (4) All building and loan associations referred to in this section
15 are qualified to act as trustee or custodian within the provisions of the
16 federal Self-Employed Individuals Tax Retirement Act of 1962, as amended,
17 or under the terms and provisions of section 408(a) of the Internal
18 Revenue Code, if the provisions of such retirement plan require the funds
19 of such trust or custodianship to be invested exclusively in shares or
20 accounts in the association or in other associations. If any such
21 retirement plan, within the judgment of the association, constitutes a
22 qualified plan under the federal Self-Employed Individuals Tax Retirement
23 Act of 1962, or under the terms and provisions of section 408(a) of the
24 Internal Revenue Code, and the regulations promulgated thereunder at the
25 time the trust was established and accepted by the association, is
26 subsequently determined not to be such a qualified plan or subsequently
27 ceases to be such a qualified plan, in whole or in part, the association
28 may continue to act as trustee of any deposits theretofore made under
29 such plan and to dispose of the same in accordance with the directions of
30 the member and beneficiaries thereof. No association, in respect to
31 savings made under this section, shall be required to segregate such

1 savings from other assets of the association. The association shall keep
2 appropriate records showing in proper detail all transactions engaged in
3 under the authority of this section.

4 Sec. 4. Section 8-345.01, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 8-345.01 Nothing in section 8-157.01 ~~8-157~~ shall prohibit building
7 and loan associations as defined in sections 8-301 to 8-340.01 from
8 establishing and operating new automatic teller machines for the purpose
9 of transmitting savings and loan transactions.

10 Sec. 5. Original sections 8-318 and 8-345.01, Reissue Revised
11 Statutes of Nebraska, section 8-135, Revised Statutes Cumulative
12 Supplement, 2014, and section 8-157.01, Revised Statutes Supplement,
13 2015, are repealed.