

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 348**

FINAL READING

Introduced by Krist, 10.

Read first time January 15, 2015

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to financial institutions; to amend section  
2 8-101, Reissue Revised Statutes of Nebraska, and sections 8-157.01  
3 and 28-636, Revised Statutes Cumulative Supplement, 2014; to define  
4 and redefine terms; to change provisions relating to automatic  
5 teller machines and point-of-sale terminals; to change and eliminate  
6 provisions relating to branch banking; to harmonize provisions; to  
7 provide severability; to repeal the original sections; and to  
8 declare an emergency.  
9 Be it enacted by the people of the State of Nebraska,

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

3 8-101 For purposes of the Nebraska Banking Act, unless the context  
4 otherwise requires:

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

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

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

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

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

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

21 (7) Automatic teller machine means a machine established and located  
22 ~~off the premises of a financial institution which has a main chartered~~  
23 ~~office or approved branch located~~ in the State of Nebraska, whether  
24 attended or unattended, which utilizes electronic, sound, or mechanical  
25 signals or impulses, or any combination thereof, and from which  
26 electronic funds transfers may be initiated and at which banking  
27 transactions as defined in section 8-157.01 may be conducted. An  
28 unattended automatic teller machine shall not be deemed to be a branch  
29 operated by a financial institution;

30 (8) Automatic teller machine surcharge means a fee that an operator  
31 of an automatic teller machine imposes upon a consumer for an electronic

1 funds transfer, if such operator is not the financial institution that  
2 holds an account of such consumer from which the electronic funds  
3 transfer is to be made;

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

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

20 (11) Making loans includes advances or credits that are initiated by  
21 means of credit card or other transaction card. Transaction card and  
22 other transactions, including transactions made pursuant to prior  
23 agreements, may be brought about and transmitted by means of an  
24 electronic impulse. Such loan transactions including transactions made  
25 pursuant to prior agreements shall be subject to sections 8-815 to 8-829  
26 and shall be deemed loans made at the place of business of the financial  
27 institution;

28 (12) Financial institution means a bank, savings bank, building and  
29 loan association, savings and loan association, or credit union, whether  
30 chartered by the United States, the department, or a foreign state  
31 agency; any other similar organization which is covered by federal

1 deposit insurance; or a trust company;

2 (13) Financial institution employees includes parent holding company  
3 and affiliate employees;

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

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

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

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

25 (18) Acquiring financial institution means any financial institution  
26 establishing a point-of-sale terminal; and

27 (19) Access device means a code, a transaction card, or any other  
28 means of access to a customer's account, or any combination thereof, that  
29 may be used by a customer for the purpose of initiating an electronic  
30 funds transfer at an automatic teller machine or a point-of-sale  
31 terminal.

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

3           8-157.01 (1) Any establishing financial institution ~~which has a main~~  
4 ~~chartered office or approved branch located in the State of Nebraska~~ may  
5 establish and maintain any number of automatic teller machines at which  
6 all banking transactions, defined as receiving deposits of every kind and  
7 nature and crediting such to customer accounts, cashing checks and cash  
8 withdrawals, transferring ~~transfer~~ of funds from checking accounts to  
9 savings accounts, transferring ~~transfer~~ of funds from savings accounts to  
10 checking accounts, transferring ~~transfer~~ of funds from either checking  
11 accounts and savings accounts to accounts of other customers,  
12 transferring payments ~~payment~~ transfers from customer accounts into  
13 accounts 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 payable  
16 at the financial institution or otherwise, ~~and~~ account balance inquiry,  
17 and any ~~may be~~ conducted. Any other transaction incidental to the  
18 business of the financial institution or which will provide a benefit to  
19 the financial institution's customers or the general public, may be  
20 conducted. Any automatic teller machine owned by a nonfinancial  
21 institution third party shall be sponsored by an establishing financial  
22 institution ~~at an automatic teller machine upon thirty days' prior~~  
23 ~~written notice to the director if the director does not object to the~~  
24 ~~proposed other transaction within the thirty-day notice period.~~ Neither  
25 such automatic teller machines nor the transactions conducted thereat  
26 shall be construed as the establishment of a branch or as branch banking.  
27 ~~Such automatic teller machines shall be made available on a~~  
28 ~~nondiscriminating basis for use by customers of any financial institution~~  
29 ~~which has a main chartered office or approved branch located in the State~~  
30 ~~of Nebraska which becomes a user financial institution. It shall not be~~  
31 ~~deemed discrimination if an automatic teller machine does not offer the~~

1 ~~same transaction services as other automatic teller machines or if there~~  
2 ~~are no fees charged between affiliate financial institutions for the use~~  
3 ~~of automatic teller machines.~~

4 (2) Any financial institution may become a user financial  
5 institution by agreeing to pay the establishing financial institution the  
6 its automatic teller machine usage fee. Such agreement shall be implied  
7 by the use of such automatic teller machines. ~~Nothing in this subsection~~  
8 ~~shall prohibit a user financial institution from agreeing to~~  
9 ~~responsibilities and benefits which might be contained in a standardized~~  
10 ~~agreement.~~

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

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

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

19 (c) The director, upon notice and after a hearing, may terminate or  
20 suspend the use of any automatic teller machine if he or she determines  
21 that the automatic teller machine is not made available on a  
22 nondiscriminating basis or that Nebraska automatic teller machine  
23 transactions initiated at such automatic teller machine are it is not  
24 made available on a nondiscriminating basis for use by customers of any  
25 financial institution which has a main chartered office or approved  
26 branch located in the State of Nebraska which becomes a user financial  
27 institution or that transactions originated by customers of user  
28 financial institutions are not being routed to a switch or other data  
29 processing centers. Nothing in this section may be construed to prohibit  
30 nonbank employees from assisting in transactions originated at the  
31 automatic teller machines, and such assistance shall not be deemed to be

1 ~~engaging in the business of banking. Such nonbank employees may be~~  
2 ~~trained in the use of the automatic teller machines by financial~~  
3 ~~institution employees.~~

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

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

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

28 (f) Subject to the requirement for a financial institution to comply  
29 with this subsection, no user financial institution or establishing  
30 financial institution shall be required to become a member of any  
31 particular switch.



1 (4) Any consumer initiating an electronic funds transfer at an  
2 automatic teller machine for which an automatic teller machine surcharge  
3 will be imposed shall receive notice in accordance with the provisions of  
4 15 U.S.C. 1693b(d)(3)(A) and (B), as such section existed on January 1,  
5 2015 ~~2013~~. Such notice shall appear on the screen of the automatic teller  
6 machine or appear on a paper notice issued from such machine after the  
7 transaction is initiated and before the consumer is irrevocably committed  
8 to completing the transaction.

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

21 (6) A seller of goods and services or any other third party on whose  
22 premises one or more point-of-sale terminals are established shall not  
23 be, solely by virtue of such establishment, a financial institution and  
24 shall not be subject to the laws governing, or other requirements imposed  
25 on, financial institutions, except for the requirement that it faithfully  
26 perform its obligations in connection with any transaction originated at  
27 any point-of-sale terminal on its premises. ~~The acquiring financial~~  
28 ~~institution shall be responsible for compliance with all applicable~~  
29 ~~standards, rules, and regulations governing point-of-sale transactions.~~

30 (7) ~~Any financial institution, upon a request of the director, shall~~  
31 ~~file with the director a current listing of all point-of-sale terminals~~

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

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

27 (b) On or after September 1, 2015, any entity intending to operate  
28 in Nebraska as a switch shall file a notice with the department setting  
29 forth its name, address, and contact information for an officer  
30 authorized to answer inquiries related to its operations in Nebraska.  
31 Such notice shall be filed at least thirty days prior to the date on

1 which the switch commences operations, and thereafter annually by  
2 September 1.

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

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

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

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

30 (13) Nothing in this section shall prevent a group of two or more  
31 credit unions, each of which has a main chartered office or an approved

1 branch located in the State of Nebraska, from participating in a credit  
2 union service organization organized on or before January 1, 2015, for  
3 the purpose of owning automatic teller machines, provided that all  
4 participating credit unions have an ownership interest in the credit  
5 union service organization and that the credit union service organization  
6 has an ownership interest in each of the participating credit unions'  
7 automatic teller machines. Such participation and any automatic teller  
8 machine usage fees associated with Nebraska automatic teller machine  
9 transactions initiated by customers of participating credit unions at  
10 such automatic teller machines shall not be considered for purposes of  
11 determining if such automatic teller machines have been made available on  
12 a nondiscriminating basis or if Nebraska automatic teller machine  
13 transactions initiated at such automatic teller machines have been made  
14 on a nondiscriminating basis, provided that all Nebraska automatic teller  
15 machine transactions initiated by customers of participating credit  
16 unions result in the same automatic teller machine usage fees for  
17 essentially the same service routed over the same switch.

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

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

31 (c) There shall be a moratorium on the implementation of any

1 agreement with new members relating to Nebraska automatic teller machine  
2 usage fees between the effective date of this act and April 1, 2016,  
3 except for changes in automatic teller machine usage fees announced prior  
4 to the effective date of this act.

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

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

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

12 ~~(a) Check guarantees;~~

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

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

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

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

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

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

28 ~~(b) Point-of-sale terminals may be established and maintained by a~~  
29 ~~financial institution which has a main chartered office or approved~~  
30 ~~branch located in the State of Nebraska, by a group of two or more of~~  
31 ~~such financial institutions, or by a combination of such financial~~

1 ~~institutions and a third party. No one, through personnel services~~  
2 ~~offered, advertising on or off the point-of-sale terminal premises, or~~  
3 ~~otherwise, may discriminate in the use of the point-of-sale terminal~~  
4 ~~against any other user financial institution.~~

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

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

22 ~~(12) To assure maximum safety and security against malfunction,~~  
23 ~~fraud, theft, and other accidents or abuses and to assure that all such~~  
24 ~~access devices will have the capability of activating all automatic~~  
25 ~~teller machines and point-of-sale terminals established in this state, no~~  
26 ~~automatic teller machine or point-of-sale terminal shall accept an access~~  
27 ~~device which does not conform to such specifications as are generally~~  
28 ~~accepted. No automatic teller machine or point-of-sale terminal shall be~~  
29 ~~established or operated which does not accept an access device which~~  
30 ~~conforms with such specifications.~~

31 ~~An automatic teller machine shall bear a logo type or other~~

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

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

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

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

26 ~~(14) If it is determined by the director, after notice and hearing,~~  
27 ~~that discrimination against any financial institution has taken place,~~  
28 ~~that one financial institution has been preferred over another, or that~~  
29 ~~any financial institution or person has not complied with any of the~~  
30 ~~provisions of this section, he or she shall immediately issue a cease and~~  
31 ~~desist order or an order for compliance within ten days after the date of~~

1 ~~the order, and upon noncompliance with such order, the offending~~  
2 ~~financial institution shall be subject to sections 8-1,134 to 8-1,139 and~~  
3 ~~to having the privileges granted in this section revoked.~~

4 (15) For purposes of this section:

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

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

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

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

19 ~~(c e)~~ Affiliate financial institution means any financial  
20 institution 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 f)~~ 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 ~~establishing an automatic teller machine~~ which has a main  
11 chartered office or approved branch located in the State of Nebraska that  
12 establishes or sponsors an automatic teller machine or any out-of-state  
13 financial institution that establishes or sponsors an automatic teller  
14 machine;

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

21 (i) Foreign financial institution means a financial institution  
22 located outside the United States;

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

30 ~~(j) Personal identification number means a combination of numerals~~  
31 ~~or letters selected for a customer of a financial institution, a~~

1 ~~merchant, or any other third party which is used in conjunction with an~~  
2 ~~access device to initiate an electronic funds transfer transaction;~~

3 (k) Personal terminal means a personal computer and telephone,  
4 wherever located, operated by a customer of a financial institution for  
5 the purpose of initiating a transaction affecting an account of the  
6 customer; ~~and~~

7 (l) Sponsoring an automatic teller machine means the acceptance of  
8 responsibility by an establishing financial institution for compliance  
9 with all provisions of law governing automatic teller machines and  
10 Nebraska automatic teller machine transactions in connection with an  
11 automatic teller machine owned by a nonfinancial institution third party;

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

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

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

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

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

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

12 ~~(19) 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 Sec. 3. Section 28-636, Revised Statutes Cumulative Supplement,  
19 2014, is amended to read:

20 28-636 For purposes of sections 28-636 to 28-640:

21 (1) Personal identification document means a birth certificate,  
22 motor vehicle operator's license, state identification card, public,  
23 government, or private employment identification card, social security  
24 card, visa work permit, firearm owner's identification card, certificate  
25 issued under section 69-2404, or passport or any document made or altered  
26 in a manner that it purports to have been made on behalf of or issued to  
27 another person or by the authority of a person who did not give that  
28 authority. Personal identification document does not include a financial  
29 transaction device as defined in section 28-618;

30 (2) Personal identification number means a combination of numerals  
31 or letters selected for a customer of a financial institution, a

1 merchant, or any other third party which is used in conjunction with an  
2 access device to initiate an electronic funds transfer transaction;

3 (3 2) Personal identifying information means any name or number that  
4 may be used, alone or in conjunction with any other information, to  
5 identify a specific person including a person's: (a) Name; (b) date of  
6 birth; (c) address; (d) motor vehicle operator's license number or state  
7 identification card number as assigned by the State of Nebraska or  
8 another state; (e) social security number or visa work permit number; (f)  
9 public, private, or government employer, place of employment, or  
10 employment identification number; (g) maiden name of a person's mother;  
11 (h) number assigned to a person's credit card, charge card, or debit  
12 card, whether issued by a financial institution, corporation, or other  
13 business entity; (i) number assigned to a person's depository account,  
14 savings account, or brokerage account; (j) personal identification number  
15 ~~as defined in section 8-157.01~~; (k) electronic identification number,  
16 address, or routing code used to access financial information; (l)  
17 digital signature; (m) telecommunications identifying information or  
18 access device; (n) unique biometric data, such as fingerprint, voice  
19 print, retina or iris image, or other unique physical representation; and  
20 (o) other number or information which can be used to access a person's  
21 financial resources; and

22 (4 3) Telecommunications identifying information or access device  
23 means a card, plate, code, account number, mobile identification number,  
24 or other telecommunications service, equipment, or instrument identifier  
25 or means of account access that alone or in conjunction with other  
26 telecommunications identifying information or another telecommunications  
27 access device may be used to: (a) Obtain money, goods, services, or any  
28 other thing of value; or (b) initiate a transfer of funds other than a  
29 transfer originated solely by a paper instrument.

30 Sec. 4. If any section in this act or any part of any section is  
31 declared invalid or unconstitutional, the declaration shall not affect

1 the validity or constitutionality of the remaining portions.

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

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