

LEGISLATIVE BILL 615

Approved by the Governor April 17, 1987

Introduced by Pappas, 42

AN ACT relating to financial institutions; to amend section 8-101, Reissue Revised Statutes of Nebraska, 1943, and section 8-157, Revised Statutes Supplement, 1986; to define and redefine terms; to change provisions relating to electronic funds transfers and electronic terminals; to provide powers and duties for the Director of Banking and Finance; to provide for enforcement; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 8-101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

8-101. As used in sections 8-101 to 8-1,129 and section 3 of this act, unless the context otherwise requires:

(1) Capital or capital stock shall mean capital stock;

(2) Department shall mean the Department of Banking and Finance;

(3) Director shall mean the Director of Banking and Finance;

(4) Bank or banking corporation shall be construed to mean any incorporated banking institution which shall have been incorporated under the laws of this state as they existed prior to May 9, 1933, and any corporation duly organized under the laws of this state for the purpose of conducting a bank within this state under the provisions of sections 8-101 to 8-1,129. Bank shall be construed to mean any such banking institution as shall be, in addition to the exercise of other powers, following the practice of repaying deposits upon check, draft, or order, and of making loans;

(5) Order shall include orders transmitted by electronic transmission;

(6) Electronic satellite facility terminal shall mean an off-premises unmanned facility or terminal through which banking transactions are transmitted to a bank or banks financial institution by means of an

electronic impulse. Electronic terminals shall be capable of operation initiated by transaction cards or credit cards compatible with other participants in the electronic funds transfer system;

(7) Manned electronic satellite facility terminal shall mean an off-premises facility, terminal, or place at which banking transactions are brought about with the assistance of one or more persons and transmitted to a bank or banks financial institution by means of an electronic impulse. Such person or persons shall not be employees of the bank or banks financial institution involved with such transmissions. Manned electronic terminals shall be capable of operation initiated by transaction cards or credit cards compatible with other participants in the electronic funds transfer system;

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

(9) Establishing bank financial institution shall mean any bank financial institution establishing an electronic satellite facility terminal or a manned electronic satellite facility terminal;

(10) User bank financial institution shall mean any bank financial institution which desires to avail itself and its customers of an electronic satellite facility terminal or manned electronic satellite facility terminal services;

(11) Financial institution shall mean a bank, savings bank, building and loan association, savings and loan association, industrial loan and investment company, credit union, or other institution offering electronic terminal transactions;

(12) Bank Financial institution employees shall include bank parent holding company and affiliate employees;

(13) ~~(12)~~ Switch shall mean an installation where a transaction impulse is received and the transaction message is immediately routed and electronically transmitted to a processing center. A switch may be a processing center;

(14) ~~(13)~~ Impulse shall mean an electronic

impulse;

(15) ~~(14)~~ A processing center shall mean a place, designated by a user bank financial institution, capable of receiving and processing electronic impulse transactions; and

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

Sec. 2. That section 8-157, Revised Statutes Supplement, 1986, be amended to read as follows:

8-157. (1) No bank shall maintain any branch bank, and, except as provided in subsections (2) to ~~(12)~~ (5) of this section and section 8-122.01, the general business of every bank shall be transacted at the place of business specified in its charter.

(2) With the approval of the director (a) any bank may maintain an attached auxiliary office if such office is physically connected by a pneumatic tube or tubes or a walkway, tunnel, or any other electronic, mechanical, or structural connection or attachment for the public use of the bank and is within two hundred feet of the building containing the premises specified as its place of business in its charter or any adjacent connected building housing a continuation of the operations of the bank's main office and is not within three hundred feet of another bank or another bank's auxiliary or detached office and (b) any bank may establish and maintain not more than five detached auxiliary offices at which all banking transactions allowed by law may be made. Such auxiliary offices shall be within the corporate limits of the city in which such bank is located. Any bank that establishes and maintains two or more auxiliary offices shall locate one of such offices within three miles of the premises specified as its place of business in its charter. No auxiliary office shall be located within three hundred feet of another bank or within fifty feet of another auxiliary office. Any detached auxiliary office established and maintained by a bank pursuant to the acquisition or merger of an institution under sections 8-1506 to 8-1510 shall not count against the number or

location of detached auxiliary offices permitted under this section.

(3) With the approval of the director, a bank may acquire another bank in Nebraska as the result of a purchase or merger so long as the acquired bank has been chartered for more than three years and the acquired institution and its detached auxiliary offices are converted to auxiliary offices of the acquiring bank. Such auxiliary offices shall not count against the number of locations of detached auxiliary offices permitted under subsections (1) and (2) of this section.

(4) With the approval of the director and subject to the limitations specified in this subsection, a single bank may establish one detached auxiliary office within the corporate limits of any municipality in which a financial institution has closed and ceased doing business within the preceding two years if no other financial institution operates an office within such municipality. If thirty days or less have elapsed since the financial institution ceased operation, the director shall only approve the establishment of a detached auxiliary office by a bank which has its place of business, as specified in its charter, in the same county as or in a contiguous county to the county in which such municipality is located. If more than thirty days have elapsed since the financial institution ceased operation, the director may approve the establishment of a detached auxiliary office by any bank located within Nebraska.

For the purposes of this subsection:

(a) An unmanned electronic ~~satellite facility~~ terminal shall not be deemed to be an office operated by a financial institution; and

(b) Financial institution shall mean a bank, savings bank, building and loan association, savings and loan association, industrial loan and investment company, or credit union, or other institution offering electronic terminal transactions.

(5) The name given to any detached bank or branch bank established and maintained pursuant to this section shall not be substantially similar to the name of any existing bank or branch bank which is unaffiliated with the newly created bank or branch bank and is located in the same municipality. The name of such newly created bank or branch bank shall be approved by the director.

(6) With the approval of the director, any bank may establish and maintain any number of electronic satellite facilities or manned electronic satellite

facilities at which all banking transactions, defined as receiving deposits of every kind and nature and crediting such to customer accounts, cashing checks and cash withdrawals, transfer of funds from checking accounts to savings accounts, transfer of funds from savings accounts to checking accounts, transfer of funds from either checking accounts and savings accounts to accounts of other customers, payment transfers from customer accounts into accounts maintained by other bank customers or the bank, including preauthorized draft authority, preauthorized loans, and credit transactions, receiving payments payable at the bank or otherwise, and such other transactions that the Director of Banking and Finance upon application, notice, and hearing may approve, may be conducted. Such electronic satellite facilities or manned electronic satellite facilities may be established only by a bank as defined in subdivision (4) of section 8-101 or by a national banking association whose main chartered office is located in the State of Nebraska. Neither such electronic satellite facilities, the manned electronic satellite facilities, nor the transactions conducted thereat shall be construed as the establishment of a branch bank or as branch banking. Such facilities shall be available on a nondiscriminating basis for use by customers of any other bank becoming a user bank. It shall not be deemed discrimination if a facility does not offer the same transaction services as other facilities.

Any bank may become a user bank by agreeing to pay the establishing bank its transaction fees. Such agreement may be implied by the use of such facilities. Nothing in this subsection shall prohibit a user bank from agreeing to responsibilities and benefits which might be contained in a standardized agreement. The establishing bank shall file with the director the information necessary to originate a transaction at any facility. Such information shall contain a means of designating the bank or processor to which such transactions shall be switched and shall also contain information adequate to perform authorization of cash withdrawal and other transactions authorized by this section. The director shall make such information available to any other bank desiring to become a user bank. The establishing bank shall be responsible for transmitting transactions originating from its facility to a switch, but nothing contained in this section may be construed to provide that any inhouse or auxiliary office premises transactions shall be required to go through a switch. The director shall refuse to approve

the establishment of any electronic satellite facilities or manned electronic satellite facilities unless such facilities will be available on a nondiscriminating basis through methods, fees, and processes that the establishing bank has provided for switching transactions. Once approval is given for the facility of an establishing bank, the director, upon notice and after a hearing, may revoke the approval for the facility or may suspend the use of such facility if he or she determines that it is not available on a nondiscriminating basis, that the necessary information is not on file with the director, or that transactions originated by customers of user banks are not being switched to processing centers. Nothing in this section may be construed to prohibit nonbank employees from assisting in transactions originated at the facilities, and such assistance shall not be deemed to be engaging in the business of banking. Such nonbank employees may be trained in the use of the facilities by bank employees.

(7) An establishing bank shall not be deemed to make a facility available on a nondiscriminating basis if, through personnel services offered, advertising on or off the facility premises, or otherwise, it discriminates in the use of the facility against any user bank.

(8) Off-premises electronic satellite facilities and manned electronic satellite facilities may be established and maintained by a bank or by a group of two or more banks or a combination of a bank or banks and a third party. No one, through personnel services offered, advertising on or off the facility premises, or otherwise, may discriminate in the use of the facility against any other user bank desiring to use the services of the facility.

(9) It is an intent of this section that this section shall apply to banks chartered by the State of Nebraska and all national banking associations whose main chartered offices are located in the State of Nebraska and that there be an equal opportunity to all Nebraska banks for the use of and access to a switch and that no discrimination shall exist or preferential treatment be given in either the operation of such switch or the charges for use thereof. The operation of such switch shall be with the approval of the Director of Banking and Finance. Approval of such switch shall be given by the Director of Banking and Finance when he or she shall determine that its design and operation are such as to provide access thereto and use thereof by any

Nebraska bank without discrimination as to access or cost of its use-

(10) If the director, upon notice and hearing, determines at any time that the design or operation of a switch or provision for use thereof does discriminate against any bank in providing access thereto and use thereof either through access thereto or by virtue of the cost of its use, he or she may revoke his or her approval of such switch operation and immediately order the discontinuance of the operation of such switch-

(11) If it shall be determined by the Director of Banking and Finance, after notice and hearing, that discrimination against any bank has taken place, that one bank has been preferred over another, or that any bank or person has not complied with any of the provisions of this section, he or she shall immediately issue a cease and desist order or an order for compliance within ten days from the date of the order and upon noncompliance with such order, the offending bank shall become ineligible to receive and hold any deposits of any nature of the State of Nebraska or any of its political subdivisions-

(12) Section 8-101 and this section shall apply to banks and their activities only. Nothing in such sections may be construed to provide any authority for any nonbank institution to engage in any of the banking transactions enumerated in this section. When reference is made in this section to activities by third parties, such activities shall be limited to the ownership, operation, and maintenance of electronic satellite facilities-

(13) Nothing in this section shall prohibit ordinary clearinghouse transactions between banks-

Sec. 3. (1) With the approval of the director, any financial institution may establish and maintain any number of electronic terminals or manned electronic terminals at which all banking transactions, defined as receiving deposits of every kind and nature and crediting such to customer accounts, cashing checks and cash withdrawals, transfer of funds from checking accounts to savings accounts, transfer of funds from savings accounts to checking accounts, transfer of funds from either checking accounts and savings accounts to accounts of other customers, payment transfers from customer accounts into accounts maintained by other customers of the financial institution or the financial institution, including preauthorized draft authority, preauthorized loans, and credit transactions, receiving payments payable at the financial institution or

otherwise, and such other transactions that the director upon application, notice, and hearing may approve, may be conducted. Such electronic terminals or manned electronic terminals may be established only by a financial institution or by a national financial institution association whose main chartered office is located in the State of Nebraska. Neither such electronic terminals, the manned electronic terminals, nor the transactions conducted thereat shall be construed as the establishment of a branch bank or as branch banking. Such terminals shall be available on a nondiscriminating basis for use by customers of any other financial institution becoming a user financial institution. It shall not be deemed discrimination if a terminal does not offer the same transaction services as other terminals.

(2) Any financial institution may become a user financial institution by agreeing to pay the establishing financial institution its transaction fees. Such agreement may be implied by the use of such terminals. Nothing in this subsection shall prohibit a user financial institution from agreeing to responsibilities and benefits which might be contained in a standardized agreement. The establishing financial institution shall file with the director the information necessary to originate a transaction at any terminal. Such information shall contain a means of designating the financial institution or processor to which such transactions shall be switched and shall also contain information adequate to perform authorization of cash withdrawal and other transactions authorized by this section. The director shall make such information available to any other financial institution desiring to become a user financial institution. The establishing financial institution shall be responsible for transmitting transactions originating from its terminal to a switch, but nothing contained in this section may be construed to provide that any inhouse or auxiliary office premises transactions shall be required to go through a switch. The director shall refuse to approve the establishment of any electronic terminals or manned electronic terminals unless such terminals will be available on a nondiscriminating basis through methods, fees, and processes that the establishing financial institution has provided for switching transactions. Once approval is given for the terminal of an establishing financial institution, the director, upon notice and after a hearing, may revoke the approval for the terminal or may suspend the use of such terminal if

he or she determines that it is not available on a nondiscriminating basis, that the necessary information is not on file with the director, or that transactions originated by customers of user financial institutions are not being switched to processing centers. Nothing in this section may be construed to prohibit nonbank employees from assisting in transactions originated at the terminals, and such assistance shall not be deemed to be engaging in the business of banking. Such nonbank employees may be trained in the use of the terminals by financial institution employees.

(3) An establishing financial institution shall not be deemed to make a terminal available on a nondiscriminating basis if, through personnel services offered, advertising on or off the terminal premises, or otherwise, it discriminates in the use of the terminal against any user financial institution.

(4) Off-premises electronic terminals and manned electronic terminals may be established and maintained by a financial institution or by a group of two or more financial institutions or a combination of a financial institution or financial institutions and a third party. No one, through personnel services offered, advertising on or off the terminal premises, or otherwise, may discriminate in the use of the terminal against any other user financial institution desiring to use the services of the terminal.

(5) It is the intent that this section shall apply to financial institutions chartered by the State of Nebraska and all national financial institution associations whose main chartered offices are located in the State of Nebraska, that there shall be an equal opportunity to all Nebraska financial institutions for the use of and access to a switch, and that no discrimination shall exist or preferential treatment be given in either the operation of such switch or the charges for use thereof. The operation of such switch shall be with the approval of the director. Approval of such switch shall be given by the director when he or she determines that its design and operation are such as to provide access thereto and use thereof by any Nebraska financial institution without discrimination as to access or cost of its use.

(6) If the director, upon notice and hearing, determines at any time that the design or operation of a switch or provision for use thereof does discriminate against any financial institution in providing access thereto and use thereof either through access thereto or by virtue of the cost of its use, he or she may revoke

his or her approval of such switch operation and immediately order the discontinuance of the operation of such switch.

(7) If it is determined by the director, after notice and hearing, that discrimination against any financial institution has taken place, that one financial institution has been preferred over another, or that any financial institution or person has not complied with any of the provisions of this section, he or she shall immediately issue a cease and desist order or an order for compliance within ten days from the date of the order, and upon noncompliance with such order, the offending financial institution shall be subject to sections 8-1,135 to 8-1,138 and to having the privileges granted in this section revoked.

(8) For purposes of this section:

(a) An unmanned electronic terminal shall not be deemed to be an office operated by a financial institution; and

(b) Financial institution shall mean a bank, savings bank, building and loan association, savings and loan association, industrial loan and investment company, credit union, or other institution offering electronic terminal transactions.

(9) Nothing in this section shall prohibit ordinary clearinghouse transactions between banks.

Sec. 4. That original section 8-101, Reissue Revised Statutes of Nebraska, 1943, and section 8-157, Revised Statutes Supplement, 1986, are repealed.

Sec. 5. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.