

17:16K-1. Short title

This act shall be known and may be cited as the "Electronic Fund Transfer Privacy Act."

L.1983, c. 466, s. 1, eff. Jan. 12, 1984.

17:16K-2. Definitions

As used in this act:

a. "Access device" means a card, code, or other means of access to a consumer's account, or any combination thereof, that may be used by the consumer for the purpose of initiating electronic fund transfers.

b. "Account" means a demand, time, or savings deposit, or other consumer asset account, other than an occasional or incidental credit balance, held either directly or indirectly by a financial institution and established for personal, family or household purposes.

c. "Electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephone, or computer or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to point-of-sale transfers, automated teller machine transfers, direct deposits or withdrawals of funds and transfers initiated by telephone. The term does not include payments made by check, draft, or similar paper instrument at an electronic terminal or any transaction which is exempt, by statute or regulation, from the provisions of Title IX of the Federal Consumer Credit Protection Act.

d. "Financial institution" means a State or National Bank, a State or Federal Savings and Loan Association, a State or Federal Mutual Savings Bank, a State or Federal Credit Union, or any other person who, directly or indirectly, holds an account belonging to a consumer. The term also includes any person who issues an access device and agrees with a consumer to provide electronic fund transfer services.

e. "Government agency" means any federal, State, or local unit of government or any agency or instrumentality thereof.

f. "Supervisory agency" means the New Jersey Department of Banking and any other State or federal agency which has statutory authority to examine the financial condition or business operations of a particular financial institution.

L.1983, c. 466, s. 2, eff. Jan. 12, 1984.

17:16K-3. Disclosure of information by financial institution to third party

A financial institution may disclose information relative to an electronic fund transfer or account to a third party when:

- a. The disclosure is necessary for the completion of an electronic fund transfer;
- b. The possessor of the account gives written permission to the financial institution to disclose the information;
- c. The disclosure is for the purpose of verifying the existence and condition of an account for a third party, including, but not limited to, a credit bureau or a merchant;
- d. The disclosure is necessary to resolve an error or an inquiry as to an alleged error;
- e. The disclosure is made to a supervisory agency in the exercise of its supervisory and regulatory examination functions with respect to a financial institution; or
- f. The disclosure is made to a government agency in the exercise of its statutory functions with respect to a person applying for or receiving public assistance.

L.1983, c. 466, s. 3, eff. Jan. 12, 1984.

17:16K-4. Government agencies; obtaining information; necessity of search warrant or subpoena

No government agency, except as provided for in subsections e. and f. of section 3 of this act, may obtain information from an electronic fund transfer account without first obtaining a search warrant or subpoena.

L.1983, c. 466, s. 4, eff. Jan. 12, 1984.

17:16K-5. Interception by government agency; court order

a. No government agency shall intercept an electronic fund transfer without first obtaining a court order.

b. The judge, upon consideration of an application, may enter an ex parte order, as requested or as modified, authorizing the interception of an electronic fund transfer, if the court determines on the basis of the facts submitted by the applicant that there is or was probable cause for belief that:

(1) The person whose electronic fund transfer is to be intercepted is engaging or was engaged over a period of time as a part of a continuing criminal activity or is committing, has or had committed or is about to commit an offense;

(2) Particular communications concerning such offense may be obtained through such interception;

(3) Normal investigative procedures with respect to such offense have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous to employ;

c. To effect an order issued pursuant to this section, the governmental agency shall deliver a true copy of the order to the financial institution which shall promptly carry out the terms of the order under the direct supervision of the investigative law enforcement officers or agency authorized to intercept the electronic fund transfer.

L.1983, c. 466, s. 5, eff. Jan. 12, 1984.

17:16K-6. Negligent, willful or reckless violation of act by financial institution or government agency; penalties

If a court of competent jurisdiction determines that a financial institution or a government agency acted negligently, willfully, or recklessly in violating this act, the financial institution or government agency shall be liable to the aggrieved person for actual damages sustained by him; reasonable litigation costs; reasonable attorneys' fees; and only in cases where a financial institution or government agency acted willfully or recklessly, a court of competent jurisdiction may award punitive damages where appropriate. L.1983, c. 466, s. 6, eff. Jan. 12, 1984.

7:16K-7. Definitions

1. As used in this act:

"Access area" means any paved walkway or sidewalk which is within 50 feet of an automated teller machine or the entrance of an automated teller machine facility and is used by the public to access the machine or facility. The term does not include publicly maintained sidewalks or roads.

"Access device" means a card, code, or other means of access to a customer's credit or deposit account, or any combination thereof, that may be used by the customer for the purpose of effecting a transaction at an automated teller machine.

"Automated teller machine" means any electronic information processing device located in the State of New Jersey which accepts or dispenses cash in connection with a credit or deposit account. The term does not include tellers' stations staffed by a person or other manned facilities.

"Automated teller machine facility" means an enclosed area, the principal purpose of which is the housing of one or more operating automated teller machines to which customers have access to conduct transactions with respect to a credit or deposit account.

"Candlefoot power" means the light intensity of candles on a horizontal plane at 36 inches above ground level and five feet in front of the area to be measured.

"Control" of an access area or defined parking area means the present authority to determine how, when, and by whom any such area is to be used, and how it is to be maintained, lighted, and landscaped.

"Customer" means a natural person to whom an access device has been issued for personal, family, or household use.

"Defined parking area" means that portion of any parking area open for customer parking which is (1) contiguous to an access area; (2) regularly, principally, and lawfully used for parking by users of an automated teller machine or automated teller machine facility while conducting automated teller machine transactions during hours of darkness; and (3) owned or leased by the operator of an automated teller machine or owned or controlled by the party leasing an automated teller machine or automated teller machine facility site to the operator. The term does not include any parking area which is not open or regularly used for parking by users who are conducting automated teller machine transactions during hours of darkness. A parking area is not open if it is physically closed to access or if conspicuous signs indicate that it is closed. If a multiple level parking area satisfies the conditions of this definition of "defined parking area" and would therefore otherwise be a defined parking area, only the single parking level deemed by the operator of an automated teller machine or automated teller machine facility to be the most directly accessible to users shall be a defined parking area.

"Hours of darkness" means the period that commences 30 minutes after sunset and ends 30 minutes before sunrise.

"Operator" means any State or federally chartered bank, savings bank, savings and loan association, credit union, or other entity, which operates an automated teller machine.

"User" means any person to whom an access device has been issued.

"Video camera" includes any image recording device which is capable of

recording a clear image of the required areas of coverage as provided in section 3 of this act.

L.1995,c.117,s.1.

17:16K-8. Evaluation of automated teller machines for safety

2. a. Operators of all automated teller machines in operation after the effective date of this act shall evaluate the safety of automated teller machines. This evaluation shall include consideration of:

(1) The extent to which the lighting for the automated teller machine or automated teller machine facility complies with the standards required by section 4 of this act.

(2) The presence of landscaping, vegetation, or structures in the area of an automated teller machine or automated teller machine facility, the access area, or a defined parking area which might obstruct views so as to adversely affect the safety of users.

b. It is not the intent of the Legislature in enacting this section to impose a duty to close, relocate or modify automated teller machines or automated teller machine facilities upon the occurrence of any particular events or circumstances, but rather to establish a standard of good faith for the evaluation thereof.

L.1995,c.117,s.2.

17:16K-9. Video camera required

3. Every automated teller machine facility shall contain a video camera which at least shall view and record all persons entering the facility or all persons who effect a transaction.

L.1995,c.117,s.3.

17:16K-10. Minimum lighting requirements

4. Each operator and any person or entity controlling an access area or defined parking area in operation after the effective date of this act shall provide:

a. A minimum of 10 candlefoot power at the face of an unenclosed automated teller machine and extending in an unobstructed direction outward five feet.

b. A minimum of two candlefoot power within 50 feet in all unobstructed directions from the face of the automated teller machine or the entrance of an automated teller machine facility. In the event any such automated teller machine or automated teller machine facility is located within 10 feet of the corner of the

building in which it is located and the automated teller machine or automated teller machine facility is generally accessible from the adjacent side of such building, there shall be a minimum of two candlefoot power along the first 40 unobstructed feet of the adjacent side of the building, measured from the corner.

c. A minimum of two candlefoot power in that portion of the defined parking area within 60 feet of an automated teller machine or the entrance to an automated teller machine facility.

d. With respect to the interior of an automated teller machine facility, sufficient lighting to permit a person entering the facility to readily and easily see all persons occupying the facility, and to permit a person inside the facility to readily and easily see all persons entering the facility.

L.1995,c.117,s.4.

17:16K-11. Basic safety precaution information to customers

5. a. Each customer receiving an access device shall be furnished by the respective issuer thereof with written notice of basic safety precautions to be employed while using an automated teller machine. This information shall be furnished by personally delivering or by mailing the information to each customer whose mailing address as to the account to which the access device relates is in the State of New Jersey. This information shall be furnished to each customer who has an access device on the day prior to the effective date of this act, within 60 days after the effective date of this act and to each customer provided with an access device on or after the effective date of this act, at the same time the customer is provided with the access device. Only one notice need be furnished per household; and if an access device is furnished to more than one customer for a single account or set of accounts or on the basis of a single application or other request for more than one access device, only a single notice need be furnished in satisfaction of the notification responsibilities as to all such customers. The information may be included with other disclosures related to the access device furnished to the customer, such as with any initial or periodic disclosure statement or notice furnished pursuant to the federal "Electronic Fund Transfer Act," 15 U.S.C. s.1693 et seq., and shall be furnished annually thereafter.

b. An issuer of an access device shall be deemed to be in compliance with the requirement of subsection a. of this section to provide a customer with basic safety precaution information if the notice advises customers of the following:

(1) To be alert to their surroundings and to defer transactions if circumstances cause them to be apprehensive for their safety;

(2) To close the entry door of any automated teller machine facility equipped with a door;

(3) To place withdrawn cash securely upon the person before exiting any automated teller machine facility;

(4) To direct complaints concerning automated teller machine security to an appropriate department of the operator or to the Department of Banking; and

(5) The telephone number of the operator and the Department of Banking.

c. Operators shall maintain, in the vicinity of an automated teller machine, and in any automated teller machine facility, a clearly visible sign, which shall be deemed to comply with the requirements of this section if it includes the information contained in paragraphs (1) through (5) of subsection b. of this section.

L.1995,c.117,s.5.

17:16K-12. Provisions; enforcement, penalty for violation

6. a. The Department of Banking shall enforce the provisions of this act.

b. Any party responsible hereunder found to be in violation of any provision of this act shall correct the violation within five business days after such finding. Failure to correct the violation within five business days after such finding may subject the party to a civil penalty of not more than \$250 which may be collected by summary proceedings instituted by the Commissioner of Banking in accordance with "the penalty enforcement law" (N.J.S.2A:58-1 et seq.).

L.1995,c.117,s.6.

17:16K-13. Other laws applicable

7. Nothing contained in this act shall be construed to exempt or relieve any operator, owner or other person responsible hereunder from complying with all relevant provisions of the State Uniform Construction Code, P.L.1975, c.217 (C.52:27D-119 et seq.), and all other applicable provisions of law.

L.1995,c.117,s.7.

17:16K-14. Nonapplicability to certain ATM's

8. The provisions of this act shall not apply to any automated teller machine or automated teller machine facility located in any building, structure or space the primary purposes or function of which is: unrelated to the provision of financial services to the general public, including but not limited to office buildings, supermarkets, airports and school buildings; to provide automated teller machine

services to persons employed in such building; or installed for a temporary purpose for a period of not more than thirty days.

L.1995,c.117,s.8.

17:16K-15. Supersedure, preemption of local rules, regulations, etc.

9. This act supersedes and preempts all rules, regulations, codes, or ordinances of any county or municipality with regard to customer safety at automated teller machines or automated teller machine facilities.

L.1995,c.117,s.9.

17:16K-16 Definitions relative to automated teller machines.

1. As used in this act:

"Automated teller machine" means any electronic information processing device located in the State of New Jersey which accepts or dispenses cash in connection with a credit or deposit account.

"Operator" means any State or federally chartered bank, savings bank, savings and loan association, credit union, or other entity, which owns or operates an automated teller machine.

L.2004,c.182,s.1.

17:16K-17 Required display on automated teller machine.

2. Every automated teller machine located in this State shall have displayed on it, in a conspicuous place, a permanent, affixed label or notice that appears on the automated teller machine screen that clearly indicates the name and contact telephone number of the operator of the automated teller machine.

L.2004,c.182,s.2.

17:16K-18 Enforcement; violations, penalties.

3. a. The Department of Banking and Insurance shall enforce the provisions of this act.

b. Any party found to be in violation of this act shall be subject to a civil

penalty of not more than \$1,000 per day for each day that the party is in violation of this act, which penalty may be collected by summary proceedings instituted by the Commissioner of Banking and Insurance in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). An operator of an automated teller machine shall not be subject to a civil penalty pursuant to this section if the label or notice has been removed or defaced without notice to the operator unless the operator knew or reasonably should have known of the removal or defacement.

c. Any provision of any agreement contrary to the provisions of this act and against public policy shall be void and unenforceable.

L.2004,c.182,s.3.