S T A T E O F N E W Y O R K

3734

2011-2012 Regular Sessions

I N S E N A T E

March 2, 2011

Introduced by Sen. MARCELLINO -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law and the banking law, in relation to enacting the private automated teller machine safety act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "private automated teller machine safety act".

S 2. The general business law is amended by adding a new section 399-yyy to read as follows:

S 399-YYY. AUTOMATED TELLER MACHINE SAFETY RULES. EVERY PERSON OR ENTITY SHALL MAINTAIN THE FOLLOWING SECURITY MEASURES WITH RESPECT TO EACH OF THE AUTOMATED TELLER MACHINES LOCATED AND INSTALLED ON HIS OR HER PROPERTY:

1. ADEQUATE LIGHTING, WHICH PERMITS A PERSON USING AN AUTOMATED TELLER MACHINE TO READILY AND EASILY SEE ALL OTHER PERSONS IN THE IMMEDIATE VICINITY OF SUCH MACHINE; AND

2. A REFLECTIVE MIRROR OR MIRRORS, EITHER AFFIXED TO OR STANDING INDEPENDENTLY OF EACH AUTOMATED TELLER MACHINE, PLACED IN SUCH A MANNER AS TO PERMIT A PERSON USING SUCH MACHINE TO SEE BEHIND THEM AS THEY CONDUCT THEIR TRANSACTIONS.

S 3. The banking law is amended by adding a new article 2-AAA to read as follows:

ARTICLE II-AAA

PRIVATE AUTOMATED TELLER MACHINE SAFETY

SECTION 75-P. LEGISLATIVE FINDINGS AND INTENT.
75-Q. DEFINITIONS.
75-R. APPLICABILITY.
75-S. REGISTRATION.
75-T. REQUIREMENTS FOR OPERATION.
75-U. APPLICATION; WAIVER.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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75-V. PENALTIES.

S 75-P. LEGISLATIVE FINDINGS AND INTENT. IDENTITY THEFT IS RECOGNIZED AS ONE OF THE FASTEST-GROWING CRIMES IN AMERICA. THE FEDERAL TRADE COMMISSION HAS REPORTED THAT BETWEEN NINETEEN HUNDRED NINETY-EIGHT AND TWO THOUSAND THREE, 27.3 MILLION AMERICANS BECAME VICTIMS OF IDENTITY THEFT, WHICH IS OFTEN ASSOCIATED WITH OTHER SERIOUS CRIMES INCLUDING MAIL FRAUD, NARCOTICS, ORGANIZED CRIME, MONEY LAUNDERING, WEAPONS TRAFFICKING, COMPUTER CRIMES, AND TERRORISM. THE USE OF AUTOMATED TELLER MACHINES ENABLES CONSUMERS TO ACCESS FUNDS CONVENIENTLY WITHOUT HAVING TO GO TO A BANK, BUT IT ALSO PROVIDES AN OPPORTUNITY FOR IDENTITY THIEVES. INDEED, PEOPLE WHO USE THE UNENCLOSED AUTOMATED TELLER MACHINES FOUND IN MANY BUILDINGS SUCH AS SUPERMARKETS AND CONVENIENCE STORES, WHOSE FUNCTIONS ARE UNRELATED TO BANKING ACTIVITIES, ARE PARTICULARLY VULNERABLE BECAUSE SUCH MACHINES ARE NOT REGULATED BY FEDERAL OR STATE LAW. THESE MACHINES CAN BE THE SETTING FOR UNSCRUPULOUS MACHINE OPERATORS OR THIRD PARTIES TO OBTAIN THE PERSONAL BANK INFORMATION OF PERSONS CONDUCTING FINANCIAL TRANSACTIONS. WHILE AUTOMATED TELLER MACHINES LOCATED AT BANKING INSTITUTIONS PROVIDE CERTAIN SAFETY ENHANCEMENTS, SUCH AS REARVIEW MIRRORS OR SECURITY CAMERAS, PRIVATE AUTOMATED TELLER MACHINES ARE CURRENTLY NOT LEGALLY REQUIRED TO DO SO. MOREOVER, BECAUSE SUCH MACHINES ARE NOT, AT PRESENT, LICENSED OR OTHERWISE REGISTERED IN NEW YORK STATE, THEIR OPERATORS ARE OFTEN UNTRACEABLE, MAKING IT DIFFICULT FOR LAW ENFORCEMENT TRYING TO SOLVE IDENTITY THEFT CRIMES INVOLVING AUTOMATED TELLER MACHINE FRAUD. THIS LAW IMPLEMENTS MEASURES TO COMBAT IDENTITY THEFT AND PROTECT CITIZENS' PERSONAL INFORMATION AT THOSE AUTOMATED TELLER MACHINES THAT ARE NOT CURRENTLY REGULATED BY FEDERAL OR STATE LAW.

S 75-Q. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE:

1. "AUTOMATED TELLER MACHINE" SHALL MEAN A DEVICE WHICH IS LINKED TO THE ACCOUNTS AND RECORDS OF A BANKING INSTITUTION AND WHICH ENABLES CONSUMERS TO CARRY OUT BANKING TRANSACTIONS, INCLUDING, BUT NOT LIMITED TO, ACCOUNT TRANSFERS, DEPOSITS, CASH WITHDRAWALS, BALANCE INQUIRIES, AND LOAN PAYMENTS.

2. "OPERATOR" SHALL MEAN A PERSON, ORGANIZATION, OR COMPANY, INCLUDING BUT NOT LIMITED TO ONE WHO OWNS, INVESTS IN, OR LEASES AN AUTOMATED TELLER MACHINE AND IS RESPONSIBLE FOR THE MAINTENANCE, FUNCTIONING, AND OPERATION OF SUCH MACHINE, WHICH IS LOCATED IN ANY BUILDING, STRUCTURE, OR SPACE WHOSE PRIMARY PURPOSE OR FUNCTION IS UNRELATED TO BANKING ACTIVITIES, INCLUDING BUT NOT LIMITED TO SUPERMARKETS, RESTAURANTS, BARS, CONVENIENCE STORES, AIRPORTS, SCHOOL BUILDINGS, AND PUBLIC BUILDINGS.

3. "AUTOMATED TELLER MACHINE PLACEMENT AGREEMENT" SHALL MEAN AN AGREEMENT BETWEEN A MERCHANT AND A PRIVATE AUTOMATED TELLER MACHINE OPERATOR AUTHORIZING THE LOCATION AND PROVIDING THE TERMS OF OPERATION OF A PRIVATE AUTOMATED TELLER MACHINE AT A SPECIFIED SITE, INCLUDING THE MERCHANT'S PLACE OF BUSINESS.

4. "EFT NETWORK" SHALL MEAN AN ELECTRONIC FUNDS TRANSFER NETWORK THAT ENABLES THE TRANSFER OF FUNDS IN AND OUT OF A PERSON'S BANK ACCOUNT WHEN SUCH PERSON COMPLETES A TRANSACTION AT AN AUTOMATED TELLER MACHINE.

5. "TRANSACTION" SHALL MEAN THE ACT OF ACCESSING AN ACCOUNT AT A FINANCIAL INSTITUTION WITH A CREDIT CARD, DEBIT CARD, OR OTHER BANKCARD AT A PRIVATE AUTOMATED TELLER MACHINE FOR THE PURPOSE OF MAKING CASH WITHDRAWALS, BALANCE INQUIRIES, DEPOSITS, FUND TRANSFERS FROM OR TO THE ACCOUNT, OR ENGAGING IN ANY OTHER TRANSACTION.

S 75-R. APPLICABILITY. THE PROVISIONS OF THIS ARTICLE SHALL APPLY TO ANY UNENCLOSED AUTOMATED TELLER MACHINE LOCATED IN ANY BUILDING, STRUC-

TURE, OR SPACE WHOSE PRIMARY PURPOSE OR FUNCTION IS UNRELATED TO BANKING ACTIVITIES, INCLUDING BUT NOT LIMITED TO SUPERMARKETS, RESTAURANTS, BARS, CONVENIENCE STORES, AIRPORTS, SCHOOL BUILDINGS, AND PUBLIC BUILDINGS, WHERE SUCH AUTOMATED TELLER MACHINE IS AVAILABLE FOR USE ONLY DURING THE REGULAR HOURS OF OPERATION OF THE BUILDING, STRUCTURE, OR SPACE IN WHICH SUCH MACHINE IS LOCATED.

S 75-S. REGISTRATION. 1. AN AUTOMATED TELLER MACHINE SHALL NOT BE MAINTAINED BY AN OPERATOR UNLESS SUCH MACHINE HAS FIRST BEEN REGISTERED IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.

2. EVERY OPERATOR OF AN AUTOMATED TELLER MACHINE OPERATED IN THE STATE SHALL SUBMIT AN APPLICATION FOR REGISTRATION TO THE SUPERINTENDENT OF BANKS IN THE FORM AND MANNER PRESCRIBED BY THE SUPERINTENDENT. SUCH APPLICATION SHALL CONTAIN:

A. A BRIEF DESCRIPTION OF THE AUTOMATED TELLER MACHINE TO BE REGISTERED, INCLUDING THE NAME AND SERIAL NUMBER OF SUCH MACHINE,

B. THE NAME AND ADDRESS OF THE OPERATOR OF SUCH MACHINE, SPECIFYING IN THE CASE OF AN UNINCORPORATED PARTNERSHIP, THE NAME AND ADDRESS OF EACH MEMBER OR PARTNER THEREOF, OR IN THE CASE OF A CORPORATION, THE NAME AND ADDRESS OF EACH OFFICER OF THE CORPORATION,

C. THE LOCATION OF THE AUTOMATED TELLER MACHINE TO BE REGISTERED,

D. PROOF SATISFACTORY TO THE SUPERINTENDENT THAT SUCH MACHINE IS IN COMPLIANCE WITH ALL APPLICABLE STATE AND FEDERAL REGULATIONS, AND

E. SUCH ADDITIONAL INFORMATION AS THE SUPERINTENDENT MAY REQUIRE.

3. THE REMOVAL OF ANY AUTOMATED TELLER MACHINE FROM A PREMISES AND ITS RELOCATION IN A DIFFERENT PREMISES WITHIN THIS STATE SHALL REQUIRE THE RENEWAL OF SUCH REGISTRATION OF SUCH MACHINE IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

4. REGISTRATIONS AND RENEWALS SHALL TAKE EFFECT ON DATES ESTABLISHED BY THE SUPERINTENDENT AND SHALL EXPIRE ONE YEAR AFTER SUCH DATE. WHERE SUCH REGISTRATION EXPIRATION DATE FALLS ON A SATURDAY, SUNDAY, OR HOLIDAY, SUCH REGISTRATION SHALL BE VALID FOR THE OPERATION OF THE AUTOMATED TELLER MACHINE UNTIL THE END OF THE NEXT BUSINESS DAY FOLLOWING SUCH SATURDAY, SUNDAY, OR HOLIDAY.

5. EACH OPERATOR SHALL PAY A REGISTRATION FEE OF ONE HUNDRED DOLLARS FOR EACH AUTOMATED TELLER MACHINE HE OR SHE WISHES TO REGISTER. EACH OPERATOR SHALL PAY A RENEWAL REGISTRATION FEE OF FIFTY DOLLARS FOR THE REGISTRATION OF EACH AUTOMATED TELLER MACHINE HE OR SHE WISHES TO RENEW.

6. ANY OPERATOR WHO HAS PLACED AN AUTOMATED TELLER MACHINE IN SERVICE PRIOR TO THE EFFECTIVE DATE OF THIS ARTICLE SHALL HAVE NINETY DAYS FROM SUCH EFFECTIVE DATE TO ENSURE THAT HIS OR HER MACHINES ARE REGISTERED IN ACCORDANCE WITH THIS ARTICLE.

S 75-T. REQUIREMENTS FOR OPERATION. 1. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, NO PERSON OR ENTITY SHALL PERMIT AN UNENCLOSED AUTOMATED TELLER MACHINE TO BE LOCATED ON HIS OR HER PREMISES WITHOUT HAVING OBTAINED PROOF THAT SUCH MACHINE HAS BEEN REGISTERED IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.

2. EACH OPERATOR OF AN AUTOMATED TELLER MACHINE REGISTERED IN ACCORDANCE WITH THIS ARTICLE SHALL:

A. COMPLY WITH ALL EFT NETWORK OPERATING RULES AND ALL LOCAL, STATE, AND FEDERAL REGULATIONS GOVERNING THE OPERATIONS OF ITS PRIVATE AUTOMATED TELLER MACHINES;

B. MAINTAIN COMPREHENSIVE AND VERIFIABLE INVENTORY PROCEDURES AND ESTABLISH CONTROLS THAT IDENTIFY THE LOCATION OF ALL OF THE PRIVATE AUTOMATED TELLER MACHINES THAT IT OWNS AND OPERATES WITHIN THE STATE;

C. WHEN LOCATING AND INSTALLING AN AUTOMATED TELLER MACHINE ON PREMISES OWNED BY ANOTHER PERSON OR ENTITY, OPERATE SUCH MACHINE ONLY PURSU-

ANT TO AN AUTOMATED TELLER MACHINE PLACEMENT AGREEMENT WITH A PERSON OR ENTITY WHO IS LEGALLY AUTHORIZED TO CONDUCT BUSINESS IN NEW YORK STATE. SUCH AGREEMENT SHALL PROVIDE THE OPERATOR'S FULL LEGAL NAME AND ANY TRADE NAME UNDER WHICH BUSINESS IS CONDUCTED, ALONG WITH THE OPERATOR'S FEDERAL AND NEW YORK INCOME TAX IDENTIFICATION NUMBERS, OR IN THE CASE OF A SOLE PROPRIETOR, HIS OR HER SOCIAL SECURITY NUMBER, AND SHALL BE FILED WITH THE SUPERINTENDENT; AND

D. POST IN A CONSPICUOUS PLACE ON THE FRONT OF EACH PRIVATE AUTOMATED TELLER MACHINE A NOTICE IN AT LEAST TWENTY-FOUR-POINT TYPE SETTING FORTH: (I) THE NAME OF THE OPERATOR OF THE AUTOMATED TELLER MACHINE, AS WELL AS THE NAME AND PHONE NUMBER OF THE MERCHANT ON WHOSE PREMISES SUCH MACHINE IS LOCATED; (II) THE TELEPHONE NUMBER WHERE THE SUPERINTENDENT MAY BE CONTACTED; AND (III) THE LANGUAGE: "PROTECT YOUR PIN. REPORT A LOST OR STOLEN CARD IMMEDIATELY."

3. EVERY OPERATOR OF AN AUTOMATED TELLER MACHINE, AND ANY PERSON OR ENTITY ON WHOSE PREMISES ANY SUCH MACHINE IS LOCATED AND INSTALLED, SHALL MAINTAIN SUCH RECORDS IN RELATION TO SUCH MACHINE AS THE SUPERINTENDENT MAY REQUIRE.

S 75-U. APPLICATION; WAIVER. 1. THE PROVISIONS OF THIS ARTICLE SHALL NOT APPLY TO ANY ESTABLISHMENT THAT IS SUBJECT TO THE PROVISIONS OF ARTICLE TWO-AA OF THIS CHAPTER.

2. THE PROVISIONS OF THIS ARTICLE MAY NOT BE WAIVED FOR ANY OPERATOR.

S 75-V. PENALTIES. 1. ANY OPERATOR OF AN AUTOMATED TELLER MACHINE FOUND TO BE IN VIOLATION OF ANY PROVISION OF THIS ARTICLE SHALL BE SUBJECT TO A CIVIL PENALTY OF UP TO FIVE THOUSAND DOLLARS, WHICH MAY BE RECOVERED FOLLOWING NOTICE AND AN OPPORTUNITY TO BE HEARD IN A PROCEEDING BEFORE THE SUPERINTENDENT. EACH PERIOD OF FIFTEEN DAYS THAT SUCH VIOLATION REMAINS UNCORRECTED SHALL CONSTITUTE A SEPARATE, DISTINCT OFFENSE.

2. ANY PERSON OR ENTITY WHO PERMITS AN AUTOMATED TELLER MACHINE TO BE LOCATED AND INSTALLED AND TO OPERATE ON HIS OR HER PREMISES IN VIOLATION OF ANY PROVISION OF THIS ARTICLE SHALL BE SUBJECT TO A CIVIL PENALTY OF UP TO TWO HUNDRED FIFTY DOLLARS, WHICH MAY BE RECOVERED FOLLOWING NOTICE AND AN OPPORTUNITY TO BE HEARD IN A PROCEEDING BEFORE THE SUPERINTENDENT. EACH PERIOD OF FIFTEEN DAYS THAT SUCH VIOLATION REMAINS UNCORRECTED SHALL CONSTITUTE A SEPARATE, DISTINCT OFFENSE.

3. ANY CIVIL PENALTY IMPOSED PURSUANT TO THIS SECTION SHALL NOT LIMIT OR PRECLUDE ANY CAUSE OF ACTION AVAILABLE TO ANY PERSON OR ENTITY INJURED OR AGGRIEVED BY SUCH ACTION.

S 4. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the superintendent of banks is authorized to implement any rule or regulation necessary for the timely implementation of this act on its effective date.