STATE OF NEW YORK

5531

2023-2024 Regular Sessions

IN SENATE

March 7, 2023

Introduced by Sen. THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

AN ACT to amend the banking law, in relation to non-bank automated teller machines

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The banking law is amended by adding a new article 2-AAA to read as follows:

ARTICLE II-AAA
NON-BANK ATM REGISTRATION

Section 76-a. Definitions.
76-b. Responsibilities.
76-c. Registration.
76-d. Required disclosures.
76-e. Penalties.
76-f. Examination of books.
76-g. Suspension or revocation of registration.
76-h. Treatment of fees.
76-i. Rules and regulations.

§ 76-a. Definitions. For purposes of this article, the following terms shall have the following meanings:

1. "Non-bank automated teller machine" or "non-bank ATM" means any automated teller machine that is not under the dominion and control of a state or federally chartered bank, trust company, savings bank, savings and loan association or credit union.

2. "Operate" means to own, lease or otherwise legally control a non-bank ATM.

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

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3. "Operator" means the person who owns, leases, or otherwise legally controls a non-bank ATM and is responsible for registering the non-bank ATM.

§ 76-b. Responsibilities. 1. A person shall not operate a non-bank ATM in this state unless that person registers the non-bank ATM with the superintendent.

2. Operators shall not charge a transaction fee in excess of the rate set by the superintendent.

3. Non-bank ATMs must be operated in compliance with the federal Electronic Funds Transfer Act, Anti Money Laundering Act, Bank Secrecy Act, and the ATM safety act under article two-AA of this chapter.

§ 76-c. Registration. 1. Operators must register any non-bank ATM with the superintendent on a registration form established by the superintendent that contains such information as the superintendent may require, including at a minimum:

(a) the operator's name, address, and telephone number;

(b) the name and address of where the non-bank ATM is located;

(c) the types of transactions available;

(d) the processor's name, address, and telephone number;

(e) the servicing agent's name, address, and telephone number;

(f) the name, title, address, and telephone number of the person completing the registration; and

(g) any other information required by the superintendent.

2. The operator shall pay to the superintendent a registration fee as prescribed pursuant to section eighteen-a of this chapter.

3. After the initial registration, the operator shall bi-annually submit to the superintendent a registration renewal and registration fee.

4. The operator shall promptly notify the superintendent in writing:

(a) of any changes to the information required in subdivision one of this section; or

(b) if the operation of the non-bank ATM is terminated.

5. The certificate of registration issued shall not be transferable from one operator to another operator or from one location to another. If the operator of the non-bank ATM changes, the new operator must re-register the non-bank ATM with the superintendent.

§ 76-d. Required disclosures. 1. An operator shall clearly and conspicuously disclose on a sign posted on the non-bank ATM or in clear view of the non-bank ATM:

(a) the name of the operator;

(b) the name, address, and telephone number where a customer may direct inquiries or complaints;

(c) a statement that the department is responsible for the operator's compliance with state law and the address and telephone number for the department; and

(d) that a fee may be assessed by the operator.

2. An operator may not charge a fee for the use of the non-bank ATM that exceeds the rate permitted under section seventy-six-b of this article. An operator shall clearly and conspicuously disclose the fee during the course of the transaction in a manner that permits the customer to cancel the transaction without incurring the fee.

3. A non-bank ATM must provide a receipt for the transaction that includes the following information in a clear and conspicuous manner:

(a) the amount of the transaction;

(b) the amount of any fee imposed by the operator;

(c) the total amount debited to the customer's account, including any fee imposed by the operator;

(d) the date and time of the transaction;

(e) a number or code that identifies the customer and account accessed; and

(f) the location of the non-bank ATM.

§ 76-e. Penalties. Any operator who violates any provision of this article or any rule adopted by the superintendent is subject to the following:

1. For the first violation of this article, a civil penalty up to five hundred dollars shall be imposed; and

2. For second and subsequent violations, a civil penalty up to one thousand dollars shall be imposed for each single violation.

§ 76-f. Examination of books. 1. The superintendent may at any time, and as often as may be determined, either personally or by a person duly designated by the superintendent, make investigations and examine the books, accounts, records, and files of an operator to determine compliance with this article. For that purpose the superintendent and duly designated representatives shall have free access to the offices and place of business, books, accounts, papers, records, files, safes and vaults of all such operators. The superintendent shall have authority to require the attendance of and to examine under oath all persons whomsoever whose testimony may be required.

2. In the event of such investigation or examination, the operator shall pay the reasonable costs and expenses of the investigation or examination as determined by the superintendent.

§ 76-g. Suspension or revocation of registration. After notice and hearing, the superintendent may revoke or suspend an operator's registration to operate a non-bank ATM if the superintendent finds that:

1. The operator has knowingly violated any provision of this article, any rule or regulation promulgated by the superintendent under and within the authority of this article, or any other applicable law; or

2. The operator does not cooperate with an examination or investigation by the superintendent.

§ 76-h. Treatment of fees. The aggregate of fees, examination expense reimbursement and other payments made pursuant to this article are appropriated for the use of the superintendent.

§ 76-i. Rules and regulations. In addition to such powers as may otherwise be prescribed by law, the superintendent is hereby authorized and empowered to promulgate such rules and regulations as may in the judgement of the superintendent be consistent with the purposes of this article, or appropriate for the effective administration of this article.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law; effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.