

209 CMR: DIVISION OF BANKS AND LOAN AGENCIES

209 CMR 31.00: ELECTRONIC FUND TRANSFERS AND ESTABLISHMENT AND OPERATION OF ELECTRONIC BRANCHES

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Subpart A: General Provisions

31.01: Purpose

The purpose of 209 CMR 31.00 is the protection of consumers engaging in electronic fund transfers and remittance transfers, as well as to set forth the general registration and related procedures for the establishment and operation of automated teller machines. 209 CMR 31.00 applies to financial institutions, banks, and credit unions, as set forth in 209 CMR 31.03.

31.02: Definitions

(1) Definitions and rules of construction as presented in 12 CFR 1005.2 are incorporated by reference as 209 CMR 31.02, except as noted in 209 CMR 31.02(2).

31.02: continued

(2) For purposes of 209 CMR 31.00, the following definitions apply:

Bank includes a savings bank, a co-operative bank, a trust company, a federal bank, an out-of-state bank, and an out-of-state federal bank, as defined in M.G.L. c. 167, § 1.

Clear and Conspicuous. A representation of material being disclosed that is of such size, color or contrast which is presented as to be readily noticed and understood by a reasonable person to whom it is being disclosed.

Consumer means a natural person.

Credit Union includes a credit union, a federal credit union, and a foreign credit union as defined in M.G.L. c. 171, § 1.

Electronic Branch means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. Electronic Branch includes, but is not limited to automated teller machines and cash dispensing machines. Electronic Branch shall not include a teller machine or similar device located on the premises of and operated solely by an employee of a financial institution or a point-of-sale terminal.

Electronic Fund Transfer means any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, which is initiated through an electronic branch telephone instrument, or computer or magnetic tape or point-of-sale terminal so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic Fund Transfer includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds and transfers initiated by telephone.

Financial Institution, except as provided in 209 CMR 31.03(2), shall have the meaning set forth in 12 CFR 1005.2 and shall include a non-bank ATM provider.

Merchant means any person, corporation, association, partnership or other entity which provides a location for a point-of-sale terminal and contracts with a financial institution for electronic funds transfer services.

Non-bank ATM Provider means a person, other than a financial institution holding a consumer's account, providing or making available electronic fund transfer services to consumers through a non-bank electronic branch. A merchant shall not be considered a non-bank ATM provider.

Person means a natural person, corporation, partnership or association.

Point-of-sale Terminal means an electronic terminal located on the premises of a merchant when such terminal is used with the assistance of an employee of a merchant for a customer's purchase or lease of goods or services sold or leased by such merchant or adjustments thereto or the receipt of cash by the customer which is ancillary to the customer's purchase or lease of goods or services from such merchant; provided, however, that such terminal shall be deemed an electronic branch for the purposes of 209 CMR 31.00 whenever it is used for any other electronic fund transfer.

31.03: Coverage

(1) 209 CMR 31.00 shall apply to financial institutions, as defined in 209 CMR 31.02; provided, however, that a bank or credit union shall not be a financial institution for purposes of 209 CMR 31.04, 31.05, 31.07 through 31.11, 31.13(2), 31.14 through 31.17, and 31.19 through 31.42 and shall comply with the corresponding provisions of 12 CFR 1005.

(2) Banks and credit unions are subject to the requirements of 12 CFR 1005, except as set forth in 209 CMR 31.00.

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31.04: General Disclosure Requirements; Jointly Offered Services

Compliance with 12 CFR 1005.4 constitutes compliance with 209 CMR 31.04.

31.05: Issuance of Access Devices

Compliance with 12 CFR 1005.5 constitutes compliance with 209 CMR 31.05.

31.06: Liability of Consumer for Unauthorized Transfers

Compliance with 12 CFR 1005.6 constitutes compliance with 209 CMR 31.06, provided, however, that the maximum liability of a consumer shall be limited to \$50.00.

31.07: Initial Disclosures

Compliance with 12 CFR 1005.7 constitutes compliance with 209 CMR 31.07.

31.08: Change in Terms Notice; Error Resolution Notice

Compliance with 12 CFR 1005.8 constitutes compliance with 209 CMR 31.08.

31.09: Receipts at Electronic Terminals

Compliance with 12 CFR 1005.9 shall constitute compliance with 209 CMR 31.09, provided, however that the electronic funds transfer receipt shall also include:

- (1) A transfer identification number which provides a permanent audit trail; and
- (2) A 24 hour toll free telephone number to call for inquiries or complaints.

31.10: Preauthorized Transfers

Compliance with 12 CFR 1005.10 shall constitute compliance with 209 CMR 31.10.

31.11: Procedures for Resolving Errors

Compliance with 12 CFR 1005.11 shall constitute compliance with 209 CMR 31.11.

31.12: Relation to Other Laws

- (1) Provisions regarding relation to the federal Truth in Lending Act, as presented in 12 CFR 1005.12(a), and the Massachusetts Truth in Lending Act, as presented in 209 CMR 32.00: *Truth in Lending*, are incorporated by reference as 209 CMR 31.12.
- (2) Compliance with any applicable provisions of the Electronic Fund Transfer Act, regulation 12 CFR Part 1005 (Regulation E), and the corresponding Appendices and Official Interpretations, which do not conflict with M.G.L. c. 167B, 209 CMR 31.00, or an advisory ruling of the Commissioner, shall be deemed to be compliance with M.G.L. c. 167B and 209 CMR 31.00.

31.13: Enforcement; Record Retention

- (1) Enforcement.
  - (a) The Division of Banks shall enforce both 209 CMR 31.00 and the provisions of 12 CFR 1005, as applicable.
  - (b) Failure to comply with any provision of 209 CMR 31.00 or 12 CFR 1005, as applicable, shall constitute grounds for the initiation of enforcement measures and the imposition of sanctions under M.G.L. c. 167B, §§ 20 through 22.
- (2) Record Retention. Compliance with 12 CFR 1005.13(b) shall constitute compliance with 209 CMR 31.13(2), provided, however, that evidence of compliance with M.G.L. c. 167B and 209 CMR 31.00 shall be retained for a period not less than three years.

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31.14: Electronic Fund Transfer Service Provider Not Holding a Consumer's Account

Compliance with 12 CFR 1005.14 constitutes compliance with 209 CMR 31.14.

31.15: Electronic Fund Transfer of Government Benefits

Compliance with 12 CFR 1005.15 constitutes compliance with 209 CMR 31.15.

31.16: Disclosures at Automated Teller Machines

Compliance with 12 CFR 1005.16 constitutes compliance with 209 CMR 31.16 except that financial institutions must also provide the following consumer disclosures, in a clear and conspicuous manner, at all electronic branches:

- (1) the name of the financial institution;
- (2) the name, address and 24 hour toll free telephone number of the person to whom inquiries or complaints should be directed.

31.17: Requirements for Overdraft Services

Compliance with 12 CFR 1005.17 constitutes compliance with 209 CMR 31.17.

31.18: Requirements for Financial Institutions Offering Payroll Card Accounts

Compliance with 12 CFR 1005.18 constitutes compliance with 209 CMR 31.18, provided, however, that the maximum liability of a consumer shall be limited to \$50.00.

(31.19: Additional Provisions: Reserved)

31.20: Requirements for Gift Cards and Gift Certificates

Compliance with 12 CFR 1005.20 constitutes compliance with 209 CMR 31.20, provided, however, that a gift certificate, as defined in M.G.L. c. 255D, § 1, sold or offered to be sold shall be valid for not less than seven years after its date of issuance, or in accordance with M.G.L. c. 200A.

Subpart B: Requirements for Remittance Transfers

31.30: Remittance Transfer Definitions

Definitions and rules of construction as presented in 12 CFR 1005.30 are incorporated by reference as 209 CMR 31.30.

31.31: Disclosures

Compliance with 12 CFR 1005.31 constitutes compliance with 209 CMR 31.31.

31.32: Estimates

Compliance with 12 CFR 1005.32 constitutes compliance with 209 CMR 31.32.

31.33: Procedures for Resolving Errors

Compliance with 12 CFR 1005.33 constitutes compliance with 209 CMR 31.33.

31.34: Procedures for Cancellation and Refund of Remittance Transfers

Compliance with 12 CFR 1005.34 constitutes compliance with 209 CMR 31.34.

31.35: Acts of Agents

Compliance with 12 CFR 1005.35 constitutes compliance with 209 CMR 31.35.

31.36: Transfers Scheduled Before the Date of Transfer

Compliance with 12 CFR 1005.36 constitutes compliance with 209 CMR 31.36.

Subpart C: Additional ATM Provisions

31.40: Registration of Financial Institution Electronic Branches

(1) Application. Any financial institution seeking to operate an electronic branch shall file an application, in such form as the Commissioner may require, prior to providing electronic funds transfer services. The Commissioner may demand such additional information as he or she may require, to determine that a financial institution is in compliance with application provisions of M.G.L. c. 167B and 209 CMR 31.00.

(2) Transfer and Termination. Approved financial institution electronic branches are not transferable and shall not be relocated or terminated without notification to the Commissioner.

(3) Penalties for Non-compliance. Failure to comply with the provisions of M.G.L. c. 167B, § 4 or 209 CMR 31.00 shall constitute grounds for denial of an application or revocation of approval.

31.41: Fee Schedule Filings

(1) A financial institution shall file, by January 31<sup>st</sup> of each year, a complete written schedule of all fees and charges assessed consumers using its electronic branches as of the preceding December 31<sup>st</sup>.

(2) Any amendment to the schedule submitted under 209 CMR 31.41(1) shall be filed, in writing, with the Division on an annual basis, as may be determined by the Commissioner.

31.42: Minimum Security Requirements

(1) A financial institution providing automated teller machines in the Commonwealth shall take actions to ensure that such ATMs are operated in compliance with all applicable laws and regulations for the safety and security of its employees and consumers effecting electronic funds transfers at its electronic branches.

(2) A financial institution providing automated teller machines in the Commonwealth shall obtain and maintain, at all times, adequate fidelity and liability insurance.

(3) A financial institution shall immediately, and within not less than 24 hours, notify the Commissioner and appropriate law enforcement agencies of any criminal assault or theft involving a consumer effecting an electronic funds transfer at an electronic branch.

31.43: Assessments

(1) Each fiscal year, the Commissioner of Banks shall make an assessment against all electronic branches established under M.G.L. c. 167B, 167C, or 171 according to an annually determined rate for the purpose of reimbursing the Commonwealth for the costs and expenses incurred by the Division of Banks in meeting the requirements of M.G.L. c. 167B.

(2) In such instances where a merchant provides a location for an electronic branch that is operated by a financial institution, the financial institution shall be responsible for payment of the annual assessment to the Commissioner.

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31.44: Prohibition on Location of Electronic Branches

No electronic branch shall be located in or upon premises where there occurs legalized gambling other than a state lottery.

REGULATORY AUTHORITY

209 CMR 31.00: M.G.L. c. 167, § 2I; c. 167B; c. 167C; c. 169; c. 171, § 8A; and c. 255D, § 1.