

209 CMR: DIVISION OF BANKS AND LOAN AGENCIES

209 CMR 31.00: ESTABLISHMENT AND OPERATION OF ELECTRONIC BRANCHES OF FINANCIAL INSTITUTIONS AND FOR THE PROTECTION OF CONSUMERS IN ELECTRONIC FUND TRANSFERS

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31.01: Definitions

(1) All terms defined in M.G.L. c. 167B, § 1 shall have the same meaning for purposes of 209 CMR 31.00 unless defined below.

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

An access device becomes an "accepted access device" when the customer to whom the access device was issued:

- (a) 1. requests and receives, or signs, or uses, or authorizes another to use, the access device for the purpose of transferring money between accounts or obtaining money, property, labor or services;
- 2. receives an access device issued in renewal of, or in substitution for, an accepted access device, whether such device is issued by the initial financial institution or a successor.
- (b) Any access device which was issued before December 31, 1981, and which was at the time issued, or which subsequently became, an "accepted access device" as defined in 12 CFR Part 205, is also an "accepted access device" for purposes of 209 CMR 31.00.
- (c) In any action with regard to whether a consumer received an access device issued on or after the effective date of 209 CMR 31.00, the burden will be upon the financial institution to prove that the consumer received the access device unless the consumer signed a receipt for the access device.

Books as referred to in M.G.L. c. 167B, § 5 shall include but not be limited to any hardware, computer programs and firmware or combinations used to accomplish the purposes of M.G.L. c. 167B.

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.

Customer means any consumer, legal person or other depositor or borrower of a financial institution or organization.

Non-bank ATM Provider. 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.

Non-bank Electronic Branch. An electronic branch owned, leased or operated by a non-bank ATM provider. A non-bank electronic branch shall not include a point of sale terminal owned or operated by a merchant.

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Organization means a person who assists or provides services to a financial institution in order to make available electronic fund transfers, but it does not include a person who provides incidental services such as legal or auditing services, printing, card embossing, equipment installation or maintenance.

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

Real Time means the processing of transactions as they occur rather than batching them for updating at a later time.

31.02: Regulations

(1) All regulations and amendments prescribed by the Commissioner under the authority of M.G.L. c. 167B will be found in 209 CMR 31.00.

(2) For convenience, section numbers in 209 CMR 31.00 will generally follow section numbers in M.G.L. c. 167B.

(3) A financial institution is deemed to have provided the disclosures required under M.G.L. c. 167B, § 8(a) if it provides the disclosures and/or model forms required under the federal Electronic Funds Transfer Act, 15 USC § 1693 and its implementing regulations, 12 CFR Part 205, provided that any necessary modifications are made to conform to M.G.L. c. 167B.

(4) The office of the Commissioner will endeavor to maintain a current compilation of 209 CMR and of official Board or staff interpretations. Compliance with any provision of the Federal Electronic Fund Transfers Act, the Board's Regulation E, official Board interpretations and official staff interpretations, which does 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.

31.03: Enabling Powers

(1) Withdrawals from electronic branches, other than those located at an office of the financial institution or organization shall be only from a demand deposit account, negotiable withdrawal account, or statement account or against a preauthorized line of credit.

(2) In determining the amount which a financial institution may invest in electronic branches, any investment in real property will be considered as bank building for limitation purposes.

(3) No electronic branch, including a non-bank electronic branch, shall be located in or upon premises where there occurs legalized gambling other than a state lottery.

(4) All financial institutions, as defined by M.G.L. c. 167B, § 1, shall meet minimum security standards mandated under 209 CMR 4.03 or applicable federal banking agency requirements. A non-bank ATM provider shall be subject to the non-bank electronic branch security provisions of 209 CMR 31.06(5).

(5) No financial institution or organization shall be permitted to operate a system that permits a person to directly debit or credit an account in real time when using dial-up communications or user programmable terminals without the express written vote by the Board of Directors and/or Trustees of the financial institution and/or organization after having evaluated the risks in such system.

(6) Mandatory sharing will only be required upon the showing of a financial institution that it is at a competitive disadvantage.

31.04: Application Process and Form

(1) An application to purchase, establish, install, operate, lease, use or share an electronic branch shall be on a form supplied by or acceptable to the Commissioner.

31.04: continued

- (2) A schedule of service charges or fees on any account and a schedule of charges assessed to financial institutions to use the electronic branch shall accompany each application.
- (3) Notice of any changes in any previously approved application, excluding changes in any filed fee or charge schedule, must be given to the Commissioner at least thirty days prior to the effective date of the proposed change.
- (4) No electronic branch, other than one located at an office of a financial institution, shall be terminated without prior approval of the Commissioner.

31.05: Organizations

Any organization must be approved in writing by the Commissioner before a financial institution may invest in it or contract for its services. Such organization seeking approval must file an application on a form supplied by the Commissioner.

31.06: Non-bank Electronic Branches

(1) Applicable Law. Non-bank ATM providers and non-bank electronic branches are a distinct class and means of effecting electronic funds transfers within the meaning of M.G.L. c. 167B, § 2(d). They shall be subject to all applicable provisions of M.G.L. c. 167B, as well as the disclosure, protection, responsibilities and remedies made applicable to such persons or services under 209 CMR 31.00 *et seq.*, pursuant to M.G.L. c. 167B, § 2(e).

(2) Application and Approval Process.

(a) Any person seeking to purchase, establish, install, operate, lease, use, or share a non-bank electronic branch shall file an application, in such form as the Commissioner may require, in accordance with M.G.L. c. 167B, § 4, prior to providing electronic funds transfer services. The Commissioner may demand such additional information, as he may require, to determine that a non-bank electronic branch or non-bank ATM provider is in compliance with applicable provisions of M.G.L. c. 167B and 209 CMR 31.00 *et seq.*

(b) Transfer and Termination. Approved non-bank electronic branches are not transferable and shall not be relocated or terminated without the written approval of the Commissioner.

(c) Initiation by Organization. An organization, as defined by M.G.L. c. 167B, § 1, shall not initiate or complete electronic funds transfers from any non-bank electronic branch which has not been approved under M.G.L. c. 167B, § 4 or 209 CMR 31.06(2).

(d) Penalties for Non-compliance. Failure to comply with the provisions of M.G.L. c. 167B, § 4 or 209 CMR 31.06 shall constitute grounds for denial of an application or revocation of approval.

(3) Disclosures. The following consumer disclosures shall be provided by non-bank ATM providers at all non-bank electronic branches.

(a) Posting. A non-bank ATM provider shall post, in a clear and conspicuous manner, within two feet of a non-bank electronic branch, a notice containing:

1. the name of the non-bank ATM provider, and if a corporation, its parent corporation;
2. the name, address and 24 hour toll free telephone number of the designated person to whom inquiries or complaints should be directed; and
3. the following statement in bold face 30 point type, which shall constitute compliance with 209 CMR 31.06(3)(a):

This ATM machine is privately owned and operated By [Insert the name required by 209 CMR 31.06(3)(a)1.], which is not a bank or financial institution.

FEES CHARGED TO PROCESS ATM TRANSACTIONS MAY VARY. YOU MAY WISH TO COMPARE THESE CHARGES TO THOSE OF OTHER ATMS IN CONSIDERING THE TOTAL COST OF YOUR TRANSACTION.

If you have an inquiry or unresolved complaint you may contact [Insert the name, address and the 24 hour toll free telephone number of the designated person required under 209 CMR 31.06(3)(a)2.] or the Division of Banks by calling the Division's Consumer Assistance Unit at (617) 956-1500 or by sending a written complaint to the Division of Banks, One South Station, Boston, MA 02110.

31.06: continued

(b) Fee disclosures. A non-bank ATM provider shall provide, in a clear and conspicuous manner, the following fee disclosure statements:

1. Screen Disclosure: Notice of a surcharge, the amount of the surcharge and the right to cancel an electronic funds transfer transaction shall be displayed on the screen of the non-bank electronic branch before a consumer enters the amount of his or her transaction.

The consumer also shall be required to positively acknowledge the message required by 209 CMR 31.06(3)(b)1. before the transaction may be completed.

2. Printed Disclosure. Notice of a surcharge, the amount of the surcharge and the right to cancel a transaction shall also be clearly and conspicuously affixed to a non-bank electronic branch terminal within a five inch radius of the screen. Said disclosure shall be in the following form:

"The owner of this terminal, _____, charges a fee of \$____ for a cash withdrawal from your account. This charge is in addition to any fees that may be added to the transaction amount and deducted from your account. If you have any questions regarding this additional fee please call _____".

or

"The owner of this ATM, _____, will assess U.S. Cardholders a fee of \$ _____, for a cash withdrawal. This charge is in addition to any fees that may be assessed by your financial institution. The additional charge will be added to the transaction amount and deducted from your account. If you have any questions regarding the above fee please call _____".

(c) Electronic Funds Transfer Documentation. A non-bank ATM provider shall provide, in a clear and conspicuous manner, the following minimum information on all electronic funds transfer receipts:

1. the date and time of the electronic funds transfer;
2. the address of the non-bank electronic branch;
3. the name and address of the non-bank ATM provider;
4. the 24 hour toll free telephone number to call for inquiries or complaints;
5. the amount of the withdrawal by electronic funds transfer;
6. the amount of the surcharge or convenience fee, if any, imposed by the non-bank ATM provider;
7. the total amount debited from the consumer's account under 209 CMR 31.06(3)(c)5. through 7.; and,
8. any other information required to be disclosed under M.G.L. c. 167B, § 9.

(4) Fee Schedule Filings.

(a) A non-bank ATM provider shall file, by January 31st of each year, a complete written schedule of all fees and charges assessed consumers using its non-bank electronic branches as of the preceding December 31st.

(b) Any amendment to the schedule submitted under 209 CMR 31.06(4)(a) shall be filed, in writing, with the Division 30 days prior to its effective date. Such filing also shall state the date on which the amended schedule of fees and charges will become effective.

(5) Minimum Security Requirements.

(a) A non-bank ATM provider shall maintain adequate security for the protection of its employees and consumers effecting electronic funds transfers at its non-bank electronic branches.

(b) A non-bank ATM provider shall obtain and maintain, at all times, adequate fidelity and liability insurance in such amounts as may be required by the Commissioner, from time to time.

(c) A non-bank ATM provider 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 transfers at, or in the immediate vicinity of, its non-bank electronic branch(es).

(6) Enforcement.

(a) Failure to comply with the provisions of 209 CMR 31.06(3) and (4) shall constitute an unfair and deceptive act or practice under M.G.L. c. 93A.

(b) Failure to comply with any provision of 209 CMR 31.06 shall constitute grounds for the initiation of enforcement measures and the imposition of sanctions under 209 CMR 31.22 and M.G.L. c. 167B, §§ 20 through 22.

31.07: Financial Institution Fee Schedule Filings

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

(2) Any amendment to the schedule submitted under 209 CMR 31.07(1) shall be filed, in writing, with the Division 30 days prior to its effective date. Such filing also shall state the date on which the amended schedule of fees and charges will become effective.

31.2208: Enforcement by Commissioner

The Commissioner may request the Attorney General to cause to have placed a temporary restraining order, preliminary, or permanent injunction against any activity which the Commissioner has reason to believe violates a provision of M.G.L. c. 167B and against which a proceeding would be in the public interest.

A penalty of not more than \$10,000.00 shall be imposed for any violation of an injunction with a continuance of the cause.

In lieu of a suit, the Commissioner may accept written assurances of the discontinuance of the violation.

31.23: Annual Report

~~Annually, on or before the third Wednesday of October, the Commissioner shall file a report with the General Court and the Committee on Banks and Banking a report concerning the effects of electronic branches on the banking industry and consumers and other pertinent topics including recommendations.~~

~~The Commissioner shall also review the activities of federally chartered financial institutions concerning electronic branches in terms of authority given to establish and operate them and to compare competitive aspects with state chartered financial institutions.~~

~~In addition to the reports required by law, financial institutions and organizations shall make such other statements and reports to the Commissioner as he may require. The Commissioner shall furnish blank forms for all statements or reports required to be made to him.~~

31.2409: Assessment and Supervision

Each fiscal year, the Commissioner of Banks shall receive an assessment against all electronic branches according to an annually determined rate for the purpose of reimbursing the Commonwealth for the costs incurred by the Division of Banks for acts imposed by M.G.L. c. 167B in supervision of the establishment and operation of electronic branches.

~~The Commissioner shall file an annual report of such costs with the Joint Committee on Banks and Banking and with the House and Senate Committees on Ways and Means.~~

REGULATORY AUTHORITY

209 CMR 31.00: M.G.L. c. 167B.