
ENGROSSED SUBSTITUTE HOUSE BILL 1849

State of Washington

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1993 Regular Session

By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Zellinsky, Mielke, Peery, Kessler, Dyer, R. Johnson, Jones, R. Meyers, Jacobsen and Kremen)

Read first time 03/01/93.

1 AN ACT Relating to security for automated teller machines and night
2 deposit facilities; adding a new section to chapter 30.04 RCW; adding
3 a new section to chapter 31.12 RCW; adding a new section to chapter
4 32.04 RCW; adding a new section to chapter 33.04 RCW; adding a new
5 chapter to Title 19 RCW; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** Unless the context clearly requires
8 otherwise, the definitions in this section apply throughout this
9 chapter.

10 (1) "Access area" means a paved walkway or sidewalk that is within
11 fifty feet of an automated teller machine or night deposit facility.
12 "Access area" does not include publicly maintained sidewalks or roads.

13 (2) "Access device" means:

14 (a) "Access device" as defined in federal reserve board Regulation
15 E, 12 C.F.R. Part 205, promulgated under the Electronic Fund Transfer
16 Act, 15 U.S.C. Sec. 1601, et seq.; or

17 (b) A key or other mechanism issued by a banking institution to its
18 customer to give the customer access to the banking institution's night
19 deposit facility.

1 (3) "Automated teller machine" means an electronic information
2 processing device located in this state that accepts or dispenses cash
3 in connection with a credit, deposit, or convenience account.
4 "Automatic teller machine" does not include a device used primarily to
5 facilitate check guarantees or check authorizations, used in connection
6 with the acceptance or dispensing of cash on a person-to-person basis
7 such as by a store cashier, or used for payment of goods and services.

8 (4) "Banking institution" means a state or federally chartered
9 bank, trust company, savings bank, savings and loan association, and
10 credit union.

11 (5) "Candlefoot power" means a light intensity of candles on a
12 horizontal plane at thirty-six inches above ground level and five feet
13 in front of the area to be measured.

14 (6) "Control of an access area or defined parking area" means to
15 have the present authority to determine how, when, and by whom it is to
16 be used, and how it is to be maintained, lighted, and landscaped.

17 (7) "Defined parking area" means that portion of a parking area
18 open for customer parking that is:

19 (a) Contiguous to an access area with respect to an automated
20 teller machine or night deposit facility;

21 (b) Regularly, principally, and lawfully used for parking by users
22 of the automated teller machine or night deposit facility while
23 conducting transactions during hours of darkness; and

24 (c) Owned or leased by the operator of the automated teller machine
25 or night deposit facility or owned or controlled by the party leasing
26 the automated teller machine or night deposit facility site to the
27 operator. "Defined parking area" does not include a parking area that
28 is not open or regularly used for parking by users of the automated
29 teller machine or night deposit facility who are conducting
30 transactions during hours of darkness. A parking area is not open if
31 it is physically closed to access or if conspicuous signs indicate that
32 it is closed. If a multiple level parking area satisfies the
33 conditions of this subsection (7)(c) and would therefore otherwise be
34 a defined parking area, only the single parking level deemed by the
35 operator of the automated teller machine and night deposit facility to
36 be the most directly accessible to the users of the automated teller
37 machine and night deposit facility is a defined parking area.

38 (8) "Hours of darkness" means the period that commences thirty
39 minutes after sunset and ends thirty minutes before sunrise.

1 (9) "Night deposit facility" means a receptacle that is provided by
2 a banking institution for the use of its customers in delivering cash,
3 checks, and other items to the banking institution.

4 (10) "Operator" means a banking institution or other business
5 entity or a person who operates an automated teller machine or night
6 deposit facility.

7 NEW SECTION. **Sec. 2.** The intent of the legislature in enacting
8 this chapter is to enhance the safety of consumers using automated
9 teller machines and night deposit facilities in Washington without
10 discouraging the siting of automated teller machines and night deposit
11 facilities in locations convenient to consumers' homes and workplaces.
12 Because decisions concerning safety at automated teller machines and
13 night deposit facilities are inherently subjective, the legislature
14 establishes as the standard of care applicable to operators of
15 automated teller machines and night deposit facilities, in connection
16 with user safety, compliance with the objective standards and
17 information requirements of this chapter. It is not the intent of the
18 legislature in enacting this chapter to impose a duty to relocate or
19 modify automated teller machines or night deposit facilities upon the
20 occurrence of a particular event or circumstance, but rather to
21 establish a means for the evaluation of all automated teller machines
22 and night deposit facilities as provided in this chapter. The
23 legislature further recognizes the need for uniformity as to the
24 establishment of safety standards for automated teller machines and
25 night deposit facilities and intends with this chapter to supersede and
26 preempt a rule, regulation, code, or ordinance of a city, county,
27 municipality, or local agency regarding customer safety at automated
28 teller machines and night deposit facilities in Washington.

29 NEW SECTION. **Sec. 3.** On or before July 1, 1994, with respect to
30 an existing installed automated teller machine and night deposit
31 facility in this state, and an automated teller machine or night
32 deposit facility installed after July 1, 1994, the operator shall adopt
33 procedures for evaluating the safety of the automated teller machine or
34 night deposit facility. These procedures must pertain to the
35 following:

1 (1) The extent to which the lighting for the automated teller
2 machine or night deposit facility complies or will comply with the
3 standards required by section 5 of this act;

4 (2) The presence of landscaping, vegetation, or other obstructions
5 in the area of the automated teller machine or night deposit facility,
6 the access area, and the defined parking area; and

7 (3) The incidence of crimes of violence in the immediate
8 neighborhood of the automated teller machine or night deposit facility,
9 as reflected in the records of the local law enforcement agency and of
10 which the operator has actual knowledge.

11 NEW SECTION. **Sec. 4.** (1) An operator of an automated teller
12 machine or night deposit facility installed on or after July 1, 1994,
13 shall comply with section 5 of this act beginning on the date the
14 automated teller machine or night deposit facility is installed.
15 Compliance with section 5 of this act by an operator as to an automated
16 teller machine and night deposit facility existing as of July 1, 1994,
17 is optional until July 1, 1996, and mandatory thereafter. This section
18 applies to an operator of an automated teller machine or night deposit
19 facility only to the extent that the operator controls the access area
20 or defined parking area to be lighted.

21 (2) If an access area or a defined parking area is not controlled
22 by the operator of an automated teller machine or night deposit
23 facility, and if the person who leased the automated teller machine or
24 night deposit facility site to the operator controls the access area or
25 defined parking area, the person who controls the access area or
26 defined parking area shall comply with section 5 of this act for an
27 automated teller machine or night deposit facility installed on or
28 after July 1, 1994, beginning on the date the automated teller machine
29 or night deposit facility is installed and for an automated teller
30 machine or night deposit facility existing as of July 1, 1994, by or on
31 July 1, 1996.

32 NEW SECTION. **Sec. 5.** The operator, owner, or other person
33 responsible for an automated teller machine or night deposit facility
34 shall provide lighting during hours of darkness with respect to an open
35 and operating automated teller machine or night deposit facility and a
36 defined parking area, access area, and the exterior of an enclosed

1 automated teller machine or night deposit facility installation
2 according to the following standards:

3 (1) There must be a minimum of ten candlefoot power at the face of
4 the automated teller machine or night deposit facility and extending in
5 an unobstructed direction outward five feet;

6 (2) There must be a minimum of two candlefoot power within fifty
7 feet from all unobstructed directions from the face of the automated
8 teller machine or night deposit facility. In the event the automated
9 teller machine or night deposit facility is located within ten feet of
10 the corner of the building and the automated teller machine or night
11 deposit facility is generally accessible from the adjacent side, there
12 must be a minimum of two candlefoot power along the first forty
13 unobstructed feet of the adjacent side of the building; and

14 (3) There must be a minimum of two candlefoot power in that portion
15 of the defined parking area within fifty feet of the automated teller
16 machine or night deposit facility.

17 NEW SECTION. **Sec. 6.** The issuer of an access device shall furnish
18 a customer receiving the device with a notice of basic safety
19 precautions that the customer should employ while using an automated
20 teller machine or night deposit facility. This information must be
21 furnished by personally delivering or by mailing the information to
22 each customer whose mailing address is in this state for the account to
23 which the access device relates. This information must be furnished
24 for an access device issued on or after July 1, 1994, at or before the
25 time the customer is furnished with his or her access device. For a
26 customer to whom an access device was issued before July 1, 1994, the
27 information must be delivered or mailed to the customer on or before
28 December 31, 1994. Only one notice must be furnished per household,
29 and if an access device is furnished to more than one customer for a
30 single account or set of accounts or on the basis of a single
31 application or other request for the access devices, only a single
32 notice must be furnished in satisfaction of the notification
33 responsibilities as to all those customers. The information may be
34 included with other disclosures related to the access device furnished
35 to the customer, such as with an initial or periodic disclosure
36 statement furnished under the Electronic Fund Transfer Act, 15 U.S.C.
37 Sec. 1601, et seq.

1 NEW SECTION. **Sec. 7.** This chapter does not apply to an automated
2 teller machine or night deposit facility that is:

3 (1) Located inside of a building, unless it is a freestanding
4 installation that exists for the sole purpose of providing an enclosure
5 for the automated teller machine or night deposit facility;

6 (2) Located inside a building, except to the extent a transaction
7 can be conducted from outside the building; or

8 (3) Located in an area, including an access area, building,
9 enclosed space, or parking area that is not controlled by the operator.

10 NEW SECTION. **Sec. 8.** This chapter supersedes and preempts all
11 rules, regulations, codes, statutes, or ordinances of all cities,
12 counties, municipalities, and local agencies regarding customer safety
13 at automated teller machines or night deposit facilities located in
14 this state.

15 NEW SECTION. **Sec. 9.** Compliance with the objective standards and
16 information requirements of this chapter is prima facie evidence that
17 the operator of the automated teller machine or night deposit facility
18 in question has provided adequate measures for the safety of users of
19 the automated teller machine or night depository.

20 NEW SECTION. **Sec. 10.** A new section is added to chapter 30.04 RCW
21 to read as follows:

22 Chapter 19.-- RCW (sections 1 through 9 of this act) applies to
23 automated teller machines and night depositories regulated under this
24 title.

25 NEW SECTION. **Sec. 11.** A new section is added to chapter 31.12 RCW
26 to read as follows:

27 Chapter 19.-- RCW (sections 1 through 9 of this act) applies to
28 automated teller machines and night depositories regulated under this
29 title.

30 NEW SECTION. **Sec. 12.** A new section is added to chapter 32.04 RCW
31 to read as follows:

32 Chapter 19.-- RCW (sections 1 through 9 of this act) applies to
33 automated teller machines and night depositories regulated under this
34 title.

1 NEW SECTION. **Sec. 13.** A new section is added to chapter 33.04 RCW
2 to read as follows:

3 Chapter 19.-- RCW (sections 1 through 9 of this act) applies to
4 automated teller machines and night depositories regulated under this
5 title.

6 NEW SECTION. **Sec. 14.** Sections 1 through 9 of this act shall
7 constitute a new chapter in Title 19 RCW.

8 NEW SECTION. **Sec. 15.** This act is necessary for the immediate
9 preservation of the public peace, health, or safety, or support of the
10 state government and its existing public institutions, and shall take
11 effect immediately.

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