
SUBSTITUTE SENATE BILL 5813

State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Financial Institutions, Insurance & Housing
(originally sponsored by Senators McDonald, Winsley, Prentice and
Heavey)

Read first time 03/05/97.

1 AN ACT Relating to automated teller machines; amending RCW
2 19.174.010 and 19.174.020; adding new sections to chapter 19.174 RCW;
3 and creating a new section.

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

5 **Sec. 1.** RCW 19.174.010 and 1993 c 324 s 2 are each amended to read
6 as follows:

7 (1) The intent of the legislature in enacting this chapter is to
8 enhance the safety of consumers using automated teller machines and
9 night deposit facilities in Washington without discouraging the siting
10 of automated teller machines and night deposit facilities in locations
11 convenient to consumers' homes and workplaces. Because decisions
12 concerning safety at automated teller machines and night deposit
13 facilities are inherently subjective, the legislature establishes as
14 the standard of care applicable to operators of automated teller
15 machines and night deposit facilities, in connection with user safety,
16 compliance with the objective standards and information requirements of
17 this chapter. It is not the intent of the legislature in enacting this
18 chapter to impose a duty to relocate or modify automated teller
19 machines or night deposit facilities upon the occurrence of a

1 particular event or circumstance, but rather to establish a means for
2 the evaluation of all automated teller machines and night deposit
3 facilities as provided in this chapter. The legislature further
4 recognizes the need for uniformity as to the establishment of safety
5 standards for automated teller machines and night deposit facilities
6 and intends with this chapter to supersede and preempt a rule,
7 regulation, code, or ordinance of a city, county, municipality, or
8 local agency regarding customer safety at automated teller machines and
9 night deposit facilities in Washington.

10 (2) The legislature finds that the fees charged for using automated
11 teller machines by many banking institutions could have a negative
12 impact on the financial institutions industry and consumers. The
13 legislature intends to ensure there is an efficient and competitive
14 automated teller machine market.

15 **Sec. 2.** RCW 19.174.020 and 1993 c 324 s 1 are each amended to read
16 as follows:

17 Unless the context clearly requires otherwise, the definitions in
18 this section apply throughout this chapter.

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

22 (2) "Access device" means:

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

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

29 (3) "Automated teller machine" means an electronic information
30 processing device located in this state that accepts or dispenses cash
31 in connection with a credit, deposit, or convenience account.
32 "~~(Automatic [automated])~~ Automated teller machine" does not include
33 a device used primarily to facilitate check guarantees or check
34 authorizations, used in connection with the acceptance or dispensing of
35 cash on a person-to-person basis such as by a store cashier, or used
36 for payment of goods and services.

1 (4) "Banking institution" means a state or federally chartered
2 bank, trust company, savings bank, savings and loan association, and
3 credit union.

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

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

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

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

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

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

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

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

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

1 (11) "Dominant banking institution" means a banking institution
2 with total assets in Washington exceeding one billion dollars whose
3 market share of banking institution-owned automated teller machines in
4 Washington exceeds the banking institution's deposit market share in
5 Washington.

6 (12) "Surcharge" is a fee directly imposed on a consumer by the
7 owner of the automated teller machine when such a fee does not relate
8 to or affect an account held by the consumer with the owner of the
9 automated teller machine.

10 NEW SECTION. Sec. 3. A new section is added to chapter 19.174 RCW
11 to read as follows:

12 (1) A dominant banking institution or its affiliates owning or
13 operating an automated teller machine in this state may not impose a
14 surcharge upon a customer for the use of that machine unless the
15 automated teller machine is located in or attached to a branch office.
16 For the purposes of this section "branch office" means an established
17 staffed place of business with facilities for in-person transactions
18 between employees of the banking institution and its customers. This
19 subsection applies until March 31, 1998.

20 (2) If a surcharge is imposed on a consumer at an automated teller
21 machine, the operator of that automated teller machine shall disclose
22 to the consumer electronically on the automated teller machine the
23 total amount of the surcharge. Such disclosure shall be provided prior
24 to the consumer's entry of the amount and provide the consumer with an
25 opportunity to cancel the transaction without incurring any obligation.

26 NEW SECTION. Sec. 4. A new section is added to chapter 19.174 RCW
27 to read as follows:

28 The legislature finds that the practices covered by this chapter
29 are matters vitally affecting the public interest for the purpose of
30 applying the consumer protection act, chapter 19.86 RCW. A violation
31 of this chapter is not reasonable in relation to the development and
32 preservation of business and is an unfair or deceptive act in trade or
33 commerce and an unfair method of competition for the purpose of
34 applying the consumer protection act, chapter 19.86 RCW.

35 NEW SECTION. Sec. 5. A new section is added to chapter 19.174 RCW
36 to read as follows:

1 In the event the responsible federal chartering authority, pursuant
2 to applicable federal law, or in the event a court of competent
3 jurisdiction declares that chapter . . . , Laws of 1997 (this act) is
4 invalid with respect to a federally chartered bank, trust company,
5 savings bank, savings and loan association, or credit union, chapter
6 . . . , Laws of 1997 (this act) is also invalid with respect to any
7 other banking institution located in the state of Washington to that
8 same extent.

9 NEW SECTION. **Sec. 6.** The chairs of the house of representatives
10 and senate committees with jurisdiction over financial institutions
11 shall appoint a task force composed of banking institution
12 representatives to study issues relating to the imposition of
13 surcharges at automated teller machines. The study shall include but
14 is not limited to: (1) The extent to which the automated teller
15 machine market is a competitive market; (2) the potential
16 anticompetitive effect imposing surcharges has on the deposit base of
17 small banking institutions; (3) ways in which the automated teller
18 machine market may become more competitive; and (4) the identification
19 of potential barriers to promoting an efficient and competitive
20 automated teller machine market, and any proposed legislation to
21 promote an efficient and competitive automated teller machine market.
22 The task force shall report their findings by December 1, 1997.

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