
CHAPTER 469-H.F.No.1180

[Coded]

An act relating to financial institutions; permitting the establishment and operation of electronic funds transfer facilities; prescribing the powers and duties of the commissioner of banks in relation to funds transfer facilities; protecting the privacy and security of customers of financial institutions who use electronic funds transfer facilities; prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[47.61] ELECTRONIC FUNDS TRANSFER FACILITIES; DEFINITIONS.** Subdivision 1. For the purposes of sections 1 to 15, unless the context requires otherwise, the following terms shall have the meanings given them.

Subd. 2. "Commissioner" means the commissioner of banks.

Subd. 3. "Electronic financial terminal" means an electronic information processing device, other than a telephone, located separate and apart from a financial institution's principal office, branch, or detached facility which is established to do either or both of the following:

(a) Capture the data necessary to initiate financial transactions; or

(b) Through its attendant support system, store or initiate the transmission of the information necessary to consummate a financial transaction.

Subd. 4. "Financial institution" means a national banking association, federal savings and loan association, or federal credit union having its main office in this state, or a bank, savings bank, savings and loan association, or credit union established and operating under the laws of this state.

Subd. 5. "Retail location" means a location where the primary business is selling goods or services to consumers. Such location shall include only that portion of the building or structure in which such goods or services are offered for sale and any adjoining mall areas. Such location shall not include a wholesale or manufacturing business.

Subd. 6. "Retailer" means a person primarily engaged in the business of selling goods or services to consumers or a person who owns or operates a mall area.

Subd. 7. "Transmission facility" means the electronic system which is used to forward from one financial institution, its affiliate, or agent, to one or more financial institutions, their affiliates, or agents, financial transaction data originating from an electronic financial terminal and its attendant support system.

Sec. 2. **[47.62] AUTHORIZATION.** Subdivision 1. Any person may establish and ~~Changes or additions indicated by underline deletions by strikeout~~

maintain at a retail location one or more electronic financial terminals. Any financial institution may provide for its customers the use of an electronic financial terminal by entering into an agreement with any person who has established and maintains one or more electronic financial terminals if that person authorizes use of the electronic financial terminal to all financial institutions on a nondiscriminatory basis pursuant to section 4 of this act.

Subd. 2. No electronic financial terminal shall be established by a person other than a federal savings and loan association, federal credit union, or national banking association unless the commissioner has approved the establishment of the terminal.

Subd. 3. Application for authorization shall be made in the manner prescribed by rule. The commissioner shall grant authorization for the establishment of an electronic financial terminal if he finds that:

(a) There is reason to believe that the terminal will be properly and safely managed;

(b) The applicant is financially sound;

(c) The proposed charges for making the services of the terminal available to financial institutions are fair, equitable, and nondiscriminatory;

(d) The applicant has furnished all of the information required by rule;

(e) The terminal applicant will not gain an unfair competitive advantage because the terminal is not operationally available to other financial institutions or their data processors within a reasonable period of time; and

(f) The location and placement of the electronic financial terminal is not designed to give or promote an unfair competitive advantage to any financial institution.

If the commissioner has not denied the application within 45 days of its submission to him, the authorization shall be deemed to be granted.

Subd. 4. When more than one electronic financial terminal is established and maintained at a single place of business by the same person, a single application and fee shall be sufficient. For each application, a \$100 fee shall be paid to the commissioner, and for each application for a change in pricing structure, a \$10 fee shall be paid to the commissioner. If the \$100 fee or the \$10 fee is less than the costs incurred by the commissioner in approving or disapproving the application, the fee shall be equal to those costs.

Sec. 3. [47.63] FUNCTIONS OF AN ELECTRONIC FINANCIAL TERMINAL.

Financial transactions which may be performed by an electronic financial terminal shall be limited to the disbursement of funds under a preauthorized credit agreement, the withdrawal of funds from a customer's account, the deposit of funds in a customer's account, the receiving of cash or checks, the disbursement of cash, the payment of loan

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payments, and the transfer of funds to or from one or more accounts in one or more financial institutions. All permitted transactions must be made pursuant to a preexisting contractual agreement between the financial institution and an account holder. Accounts may not be opened at such facilities. Any retailer may also operate a device which is capable of performing the functions of an electronic financial terminal for any internal business activity of that retailer.

Sec. 4. [47.64] OPERATION OF AN ELECTRONIC FINANCIAL TERMINAL.

Subdivision 1. Any person establishing and maintaining an electronic financial terminal for use by one type of financial institution shall, upon written request, make its services available to any requesting financial institution of similar type on a fair, equitable and nondiscriminatory basis approved by the commissioner. A financial institution requesting use of an electronic financial terminal shall be permitted its use only if the financial institution conforms to reasonable technical operation standards which have been established by the electronic financial terminal provider as approved by the commissioner. For purposes of this subdivision, the types of financial institutions are: (a) commercial banks and mutual savings banks; (b) credit unions; and (c) savings and loan associations. The services of an electronic financial terminal may be made available to any type of financial institution. After March 1, 1979, or earlier if determined by the commissioner to be technically feasible, an electronic financial terminal which is used by or made available to one type of financial institution shall be made available, upon request, to other types of financial institutions on a fair, equitable and nondiscriminatory basis as approved by the commissioner. The charges required to be paid to any person establishing and maintaining an electronic financial terminal shall be related to an equitable proportion of the direct costs of establishing, operating, and maintaining the terminal plus a reasonable return on those costs to the owner of the terminal. The charges may provide for amortization of development costs and capital expenditures over a reasonable period of time.

Subd. 2. If a person establishing and maintaining an electronic financial terminal makes it available for use by one or more federal savings and loan associations or one or more federal credit unions and their customers, the federal savings and loan association or federal credit union shall agree to grant to any financial institution use of all similar devices owned, maintained, or used by it. A state chartered financial institution or a national bank may participate upon contractual agreement in the use of a device which is capable of performing the functions of an electronic financial terminal and is owned or operated by one or more federal savings and loan associations or federal credit unions.

Subd. 3. Any agreement or charge between a person establishing an electronic financial terminal and the retailer at whose location the terminal is established shall be upon such commercially reasonable terms and conditions as are agreed to by the parties. A retailer at whose retail location an electronic financial terminal is established and maintained may limit the kind of financial transaction functions which the terminal may perform, but such retailer shall make available upon request every financial transaction function which the terminal does perform to all financial institutions, their affiliates, or agents on a nondiscriminatory basis. A function involving either a bank credit card authorized pursuant to Minnesota Statutes, Section 48.185 or other credit card authorized under any other similar open end consumer credit sales plan need not be made so

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available.

Subd. 4. An electronic financial terminal, if manned, shall be operated exclusively by a person who is not employed by any financial institution, any financial institution holding company, or subsidiary thereof. However, persons assisting customers of financial institutions at the site of the terminal may be trained by employees of a financial institution, financial institution holding company, or subsidiary thereof, and nothing in this section shall be construed to prohibit periodic servicing of an electronic financial terminal by an employee of a financial institution, financial institution holding company, or subsidiary thereof.

Subd. 5. To insure payment to any person who suffers loss due to negligence or intentional misconduct in the operation of an electronic financial terminal any person seeking to establish an electronic financial terminal shall, at the option of the commissioner, file with the commissioner's office either a financial statement in an acceptable form, or a bond, rider to an existing bond, or other collateral security acceptable to and in an amount set by the commissioner. The commissioner shall permit the filing of a financial statement in lieu of a bond or other security only if the financial statement demonstrates that the person seeking to establish the electronic financial terminal has the financial ability to insure payment to any person who suffers loss due to negligence or intentional misconduct in the operation of the electronic financial terminal. If the filing of a financial statement is permitted, additional periodic financial information shall be filed as required by the commissioner.

Subd. 6. The person establishing and maintaining an electronic financial terminal, exclusive of any supporting equipment, structure, or system, shall limit its use in the performance of financial transactions to transactions for customers of Minnesota financial institutions and for customers of financial institutions located within 20 miles of Minnesota in an adjoining state. Nothing in this act shall be construed to authorize any person, other than a financial institution, to engage in business which is only legally authorized to be engaged in by financial institutions.

Sec. 5. **[47.65] TRANSMISSION FACILITY.** Subdivision 1. Any person may establish a transmission facility in this state upon approval by the commissioner pursuant to the provisions of this section. A transmission facility which is used by, or made available to, any financial institution must be made available to all other financial institutions upon request of such financial institution and agreement by the financial institution to pay fees on a fair, equitable and nondiscriminatory basis approved by the commissioner. A person requesting use of a transmission facility shall be permitted its use only if the person conforms to reasonable technical operating standards which have been established by the transmission facility provider as approved by the commissioner. The charges required to be paid to any person establishing a transmission facility shall be related to an equitable proportion of the direct costs of establishing, operating and maintaining such facility plus a reasonable return on those costs to the owner of the facility. The charges may provide for amortization of development costs and capital expenditures over a reasonable period of time.

Subd. 2. Before installation and operation, a transmission facility application shall

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be submitted to the commissioner on a form provided by the commissioner which states:

- (a) The location where the transmission facility will be operated;
- (b) The ownership of the transmission facility;
- (c) If applicable, the bonding or insurance company which has provided the bond for the transmission facility;
- (d) Such other information as the commissioner requires.

If the commissioner finds that (a) the facility will be properly and safely managed, (b) the applicant is financially sound, (c) there is a reasonable probability of success for the facility, (d) the proposed charges for making the services of the facility available to financial institutions are fair, equitable and nondiscriminatory, and (e) all information has been furnished by the applicant, he shall approve the application within 90 days. If the commissioner has not denied the application within 90 days of the submission of the application, the authorization shall be deemed granted. For each application, a \$500 fee shall be paid to the commissioner. For each application for change in pricing structure, a \$50 fee shall be paid to the commissioner. If the \$500 fee or the \$50 fee is less than the costs incurred by the commissioner in approving or disapproving the application, the application fee shall be equal to those costs.

Subd. 3. To insure payment to any person who suffers loss due to negligence or intentional misconduct in the operation of a transmission facility any person seeking to establish a transmission facility shall, at the option of the commissioner, file in his office either a financial statement in an acceptable form, or a bond, rider to an existing bond, or other collateral security acceptable to and in an amount set by the commissioner. The commissioner shall permit the filing of a financial statement in lieu of a bond or other security only if the financial statement demonstrates that the person seeking to establish the transmission facility has the financial ability to insure payment to any person who suffers loss due to negligence or intentional misconduct in the operation of the transmission facility. If the filing of a financial statement is permitted, additional periodic financial information shall be filed as required by the commissioner.

Sec. 6. [47.66] **EXAMINATION.** An electronic financial terminal or a transmission facility may be examined by the commissioner to the extent permitted by law as to any financial transaction by, with, or involving a financial institution solely for the purpose of reconciling accounts and verifying the security and accuracy of such electronic financial terminals or transmission facilities, including any supporting equipment, structures, or systems. All facts and information obtained in the course of such examination shall not be disclosed except as otherwise provided by law. The person examined shall pay examination fees as determined by the commissioner.

Sec. 7. [47.67] **ADVERTISING.** No advertisement by a person which relates to an electronic financial terminal may be inaccurate or misleading with respect to such a terminal. Except with respect to direct mailings by financial institutions to their customers, the advertising of rate of interest paid on accounts in connection with

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electronic financial terminals is prohibited. Any advertisement, either on or off the site of an electronic financial terminal, promoting the use or identifying the location of an electronic financial terminal, which identifies any financial institution, group or combination of financial institutions, or third parties as owning or providing for the use of its services is prohibited. The following shall be expressly permitted:

(a) A simple directory listing placed at the site of an electronic financial terminal identifying the particular financial institutions using its services;

(b) The use of a generic name, either on or off the site of an electronic financial terminal, which does not promote or identify any particular financial institution, group or combination of financial institutions, or any third parties; and

(c) Media advertising or direct mailing of information by a financial institution or retailer identifying locations of electronic financial terminals and promoting their usage.

Sec. 8. [47.68] ELECTRONIC FINANCIAL TERMINAL SECURITY. Every person establishing and maintaining an electronic financial terminal and every financial institution using an electronic financial terminal shall adopt and maintain safeguards to insure the safety of funds, items, and other information, which safeguards shall include security devices consistent with the appropriate requirements specified under the federal bank protection act of 1968, P. L. 90-389, or such alternative security precautions as are approved by the commissioner.

Sec. 9. [47.69] CONSUMER PRIVACY. Subdivision 1. To protect the privacy of customers using electronic financial terminals, including any supporting equipment, structures or systems, information received by or processed through such terminals, supporting equipment, structures or systems shall be treated and used only in accordance with applicable law relating to the dissemination and disclosure of such information. The person establishing and maintaining an electronic financial terminal, including any supporting equipment, structures or systems, shall take such steps as are reasonably necessary to restrict disclosure of information to that necessary to complete the transaction and to safeguard any information received or obtained about a customer or his account from misuse by any person manning an electronic financial terminal, including any supporting equipment, structures or systems.

Subd. 2. The commissioner shall have the authority by rule to require each person operating pursuant to this act to supply information to customers using electronic financial terminals of the person's consumer protection policies including the rights and liabilities of the consumer and protection against wrongful and unnecessary or accidental disclosure of confidential information.

Subd. 3. Every financial institution using an electronic financial terminal shall maintain reasonable procedures to minimize losses from unauthorized withdrawals from its customers' accounts by use of an electronic financial terminal. After a customer makes a bona fide deposit or payment at an electronic financial terminal and has received his receipt, any loss due to theft or other reason shall not be borne by the customer; provided, loss due to the nonpayment or dishonor of a check, or other order for payment,

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deposited at an electronic financial terminal shall be governed by the applicable provisions of Minnesota Statutes, Chapter 336. A financial institution shall be liable for all unauthorized withdrawals unless the unauthorized withdrawal was (a) due to the negligent conduct or the intentional misconduct of the operator of an electronic financial terminal or his agent in which case the operator of an electronic financial terminal or his agent shall be liable, or (b) due to the loss or theft of the customer machine readable card in which case the customer shall be liable, subject to a maximum liability of \$50, for those unauthorized withdrawals made prior to the time the financial institution is notified of the loss or theft. For purposes of this subdivision, "unauthorized withdrawal" means a withdrawal by a person other than the customer who does not have actual, implied, or apparent authority for such withdrawal, and from which withdrawal the customer receives no benefit.

Subd. 4. No person's social security number shall be used as the personal identification number or as any code to activate any electronic financial terminal.

Subd. 5. Any customer of a financial institution may bring a civil action against any person violating any subdivision of this section in the district court in the county in which the alleged violator resides or has his principal place of business or in the county wherein the alleged violation occurred. Upon adverse adjudication, the defendant shall be liable for actual damages, or \$500, whichever is greater, punitive damages when applicable, together with the court costs and reasonable attorneys' fees incurred by the plaintiff. The court may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations.

Subd. 6. Every financial institution using an electronic financial terminal shall provide its customers a receipt or record of each transaction initiated at the terminal, and shall provide its customers a transaction statement at least quarterly specifying types, dates, and amounts of all electronic financial terminal transactions for the previous statement period.

Sec. 10. **[47.70] ANTI-TRUST.** No person engaged in electronic financial terminal or transmission facility activities shall contract, combine, or conspire to restrain trade in the market for electronic financial terminals, or engage in any anticompetitive practices to the detriment of the public interest. Notwithstanding Minnesota Statutes, Section 325.8017, Subdivision 2, the provisions of sections 325.8011 to 325.8028 shall apply to persons engaged in electronic financial terminal or transmission facility activities.

Nothing in sections 1 to 14 shall operate or be construed to create an exception to the antitrust laws of the United States for any contract or combination required or authorized by this act.

Sec. 11. **[47.71] RULES.** The commissioner may promulgate such rules as are reasonably necessary to carry out and make effective the provisions and purposes of this act.

Sec. 12. **[47.72] CEASE AND DESIST ORDER; INJUNCTION; PENALTIES.**
Subdivision 1. If the commissioner determines that a person, other than a national bank,

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federal savings and loan association, or federal credit union, is violating or about to violate this act or any rule promulgated thereunder or is engaged or about to engage in an unsafe, unsound, unfair, or discriminatory practice, he may:

(a) issue and serve on such person a cease and desist order which shall become effective at the time specified therein, and remain effective and enforceable as provided therein, except to the extent that it is stayed, modified, terminated, or set aside by action of the commissioner or review in court;

(b) serve notice on such person who has established and maintains a transmission facility or an electronic financial terminal of his intent to revoke or suspend its approval to establish and maintain the transmission facility or electronic financial terminal.

When acting pursuant to this subdivision, the commissioner shall furnish the person against whom he is acting a statement of alleged violations or practices.

Subd. 2. If the violation or the unsound, unsafe, unfair or discriminatory practice continues 15 days after service of a notice of intention to revoke or suspend a person's approval to establish and maintain a transmission facility or electronic financial terminal, the commissioner may revoke or suspend such approval.

Subd. 3. The commissioner may bring an action in district court to enjoin violations of this act or any regulation promulgated thereunder, or to enforce compliance with the provisions of this act or any rule promulgated thereunder, and he may refer the matter to the attorney general. The court may also impose a penalty not exceeding \$5,000 per violation.

Sec. 13. **[47.73] HEARING.** Any person aggrieved with a cease and desist order, revocation, suspension, or denial of an application to establish an electronic financial terminal or transmission facility may request a hearing. Within seven days after receipt of a written request with respect to a cease and desist order, revocation, or suspension, or 45 days with respect to a denial of an application, the commissioner shall hold a formal hearing which shall be conducted pursuant to Minnesota Statutes, Chapter 15. No revocation or suspension shall be effective until after a hearing if a hearing is requested. Notwithstanding Minnesota Statutes, Section 15.052, Subdivision 6, all costs of the hearing shall be paid by the aggrieved party.

Sec. 14. **[47.74] FEDERAL INSTITUTIONS; APPLICATION.** The provisions of this act shall apply to national banks, federal savings and loan associations, and federal credit unions to the extent permitted by federal law.

Sec. 15. **EFFECTIVE DATE.** This act is effective the day following final enactment.

Approved March 2, 1978.

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