
HOUSE BILL 1849

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By Representatives Zellinsky, Mielke, Peery, Kessler, Dyer, R. Johnson, Jones, R. Meyers, Jacobsen and Kremen

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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 solely to
5 facilitate check guarantees or check authorizations, or used in
6 connection with the acceptance or dispensing of cash on a person-to-
7 person basis such as by a store cashier.

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 eighty
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.** A banking institution may make available for
8 use by its customers one or more automated teller machines. An
9 automated teller machine may receive or dispense cash, provide
10 information, and initiate transactions in accordance with the request
11 or instruction of the customer or the customer's agent. A transaction
12 initiated through an automated teller machine is subject to
13 verification by the banking institution either by direct wire
14 transmission or otherwise.

15 NEW SECTION. **Sec. 3.** Except for automated teller machines located
16 on the premises of the principal place of business of a banking
17 institution or the general banking branches thereof, an automated
18 teller machine must be unmanned or manned by someone who is not an
19 employee of the banking institution utilizing the facility. However,
20 employees of the banking institution may be in the vicinity of the
21 facility solely for the purposes of providing physical security,
22 instruction in the use of the facility, and the installation,
23 maintenance, and repair of the facility.

24 NEW SECTION. **Sec. 4.** A person may not use or attempt to use an
25 automated teller machine facility for the purpose of obtaining
26 information concerning the account or line of credit of a customer with
27 a banking institution without the prior approval of the customer. A
28 person having received prior approval of the customer may not utilize
29 the authority to obtain through the use of the automated teller machine
30 information not necessary to the transaction that the customer seeks to
31 accomplish through the automated teller machine's use.

32 NEW SECTION. **Sec. 5.** The intent of the legislature in enacting
33 this chapter is to enhance the safety of consumers using automated
34 teller machines and night deposit facilities in Washington without
35 discouraging the siting of automated teller machines and night deposit

1 facilities in locations convenient to consumers' homes and workplaces.
2 Because decisions concerning safety at automated teller machines and
3 night deposit facilities are inherently subjective, the legislature
4 establishes as the standard of care applicable to operators of
5 automated teller machines and night deposit facilities, in connection
6 with user safety, substantial compliance with the objective standards
7 and information requirements of this chapter. Therefore, substantial
8 compliance with the objective standards and information requirements of
9 this chapter is conclusive evidence that the operator of the automated
10 teller machine or night deposit facility in question has provided
11 adequate measures for the safety of users of the automated teller
12 machine or night deposit facility. It is not the intent of the
13 legislature in enacting this chapter to impose a duty to relocate or
14 modify automated teller machines or night deposit facilities upon the
15 occurrence of a particular event or circumstance, but rather to
16 establish a means for the evaluation of all automated teller machines
17 and night deposit facilities as provided in this chapter. The
18 legislature further recognizes the need for uniformity as to the
19 establishment of safety standards for automated teller machines and
20 night deposit facilities and intends with this chapter to supersede and
21 preempt a rule, regulation, code, or ordinance of a city, county,
22 municipality, or local agency regarding customer safety at automated
23 teller machines and night deposit facilities in Washington.

24 NEW SECTION. **Sec. 6.** On or before July 1, 1994, with respect to
25 an existing installed automated teller machine and night deposit
26 facility in this state, and an automated teller machine or night
27 deposit facility installed after July 1, 1994, the operator shall adopt
28 procedures for evaluating the safety of the automated teller machine or
29 night deposit facility. These procedures must include consideration of
30 the following:

31 (1) The extent to which the lighting for the automated teller
32 machine or night deposit facility complies or will comply with the
33 standards required by sections 8 and 9 of this act;

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

37 (3) The incidence of crimes of violence in the immediate
38 neighborhood of the automated teller machine or night deposit facility,

1 as reflected in the records of the local law enforcement agency and of
2 which the operator has actual knowledge.

3 NEW SECTION. **Sec. 7.** (1) An operator of an automated teller
4 machine or night deposit facility installed on or after July 1, 1994,
5 shall comply with section 8 of this act beginning on the date the
6 automated teller machine or night deposit facility is installed.
7 Compliance with section 8 of this act by an operator as to an automated
8 teller machine and night deposit facility existing as of July 1, 1994,
9 is optional until July 1, 1996, and mandatory thereafter. This section
10 applies to an operator of an automated teller machine or night deposit
11 facility only to the extent that the operator controls the access area
12 or defined parking area to be lighted.

13 (2) If an access area or a defined parking area is not controlled
14 by the operator of an automated teller machine or night deposit
15 facility, and if the person who leased the automated teller machine or
16 night deposit facility site to the operator controls the access area or
17 defined parking area, the person who controls the access area or
18 defined parking area shall comply with section 8 of this act for an
19 automated teller machine or night deposit facility installed on or
20 after July 1, 1994, beginning on the date the automated teller machine
21 or night deposit facility is installed and for an automated teller
22 machine or night deposit facility existing as of July 1, 1994, by or on
23 July 1, 1996.

24 NEW SECTION. **Sec. 8.** The operator, owner, or other person
25 responsible for an automated teller machine or night deposit facility
26 shall provide lighting during hours of darkness with respect to an open
27 and operating automated teller machine or night deposit facility and a
28 defined parking area, access area, and the exterior of an enclosed
29 automated teller machine or night deposit facility installation
30 according to the following standards:

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

34 (2) There must be a minimum of two candlefoot power within fifty
35 feet from all unobstructed directions from the face of the automated
36 teller machine or night deposit facility. In the event the automated
37 teller machine or night deposit facility is located within ten feet of

1 the corner of the building and the automated teller machine or night
2 deposit facility is generally accessible from the adjacent side, there
3 must be a minimum of two candlefoot power along the first forty
4 unobstructed feet of the adjacent side of the building; and

5 (3) There must be a minimum of two candlefoot power in that portion
6 of the defined parking area within sixty feet of the automated teller
7 machine or night deposit facility.

8 NEW SECTION. **Sec. 9.** The issuer of an access device shall furnish
9 a customer receiving the device with a notice of basic safety
10 precautions that the customer should employ while using an automated
11 teller machine or night deposit facility. This information must be
12 furnished by personally delivering or by mailing the information to
13 each customer whose mailing address is in this state for the account to
14 which the access device relates. This information must be furnished
15 for an access device issued on or before July 1, 1994, at or before the
16 time the customer is furnished with his or her access device. For a
17 customer to whom an access device was issued before July 1, 1994, the
18 information must be delivered or mailed to the customer on or before
19 December 31, 1994. Only one notice must be furnished per household,
20 and if an access device is furnished to more than one customer for a
21 single account or set of accounts or on the basis of a single
22 application or other request for the access devices, only a single
23 notice must be furnished in satisfaction of the notification
24 responsibilities as to all those customers. The information may be
25 included with other disclosures related to the access device furnished
26 to the customer, such as with an initial or periodic disclosure
27 statement furnished under the Electronic Fund Transfer Act, 15 U.S.C.
28 Sec. 1601, et seq.

29 NEW SECTION. **Sec. 10.** This chapter does not apply to an automated
30 teller machine or night deposit facility that is:

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

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

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

1 NEW SECTION. **Sec. 11.** This chapter supersedes and preempts all
2 rules, regulations, codes, statutes, or ordinances of all cities,
3 counties, municipalities, and local agencies regarding customer safety
4 at automated teller machines or night deposit facilities located in
5 this state.

6 NEW SECTION. **Sec. 12.** A new section is added to chapter 30.04 RCW
7 to read as follows:

8 Chapter 19.-- RCW (sections 1 through 11 of this act) applies to
9 automated teller machines and night depositories regulated under this
10 title.

11 NEW SECTION. **Sec. 13.** A new section is added to chapter 31.12 RCW
12 to read as follows:

13 Chapter 19.-- RCW (sections 1 through 11 of this act) applies to
14 automated teller machines and night depositories regulated under this
15 title.

16 NEW SECTION. **Sec. 14.** A new section is added to chapter 32.04 RCW
17 to read as follows:

18 Chapter 19.-- RCW (sections 1 through 11 of this act) applies to
19 automated teller machines and night depositories regulated under this
20 title.

21 NEW SECTION. **Sec. 15.** A new section is added to chapter 33.04 RCW
22 to read as follows:

23 Chapter 19.-- RCW (sections 1 through 11 of this act) applies to
24 automated teller machines and night depositories regulated under this
25 title.

26 NEW SECTION. **Sec. 16.** Sections 1 through 11 of this act shall
27 constitute a new chapter in Title 19 RCW.

28 NEW SECTION. **Sec. 17.** This act is necessary for the immediate
29 preservation of the public peace, health, or safety, or support of the
30 state government and its existing public institutions, and shall take
31 effect immediately.

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