

**HOUSE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Bruce J. Ayers**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act establishing uniform safeguards and public protections for consumers conducting bank transactions at automated teller machines.

PETITION OF:

NAME:

Bruce J. Ayers

DISTRICT/ADDRESS:

1st Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 76 OF 2007-2008.]

## The Commonwealth of Massachusetts

—————  
In the Year Two Thousand and Nine  
—————

### AN ACT ESTABLISHING UNIFORM SAFEGUARDS AND PUBLIC PROTECTIONS FOR CONSUMERS CONDUCTING BANK TRANSACTIONS AT AUTOMATED TELLER MACHINES..

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

- 1 SECTION 1. Section 1 of Chapter 167B of the General Laws, as appearing in the 2004 Official Edition, is hereby  
2 amended by inserting after the word “agreement” in the following new paragraph:—  
3 “Adequate lighting” with respect to an open and operating teller machine facility located on an exterior wall of a  
4 building open to the outdoor air, and any defined parking areas means lighting during nighttime hours according to  
5 the following standards:  
6 (i) a minimum of 10 candlefoot power at the face of the automated teller machine and extending in an unobstructed  
7 direction outward 5 feet;  
8 (ii) a minimum of 2 candlefoot power within 50 feet from all unobstructed directions from the face of the automated  
9 teller machine. If such machine is located within 10 feet of the corner of the building and the automated teller  
10 facility is generally accessible from the adjacent side, there shall be a minimum of 2 candlefoot power along the first  
11 40 unobstructed feet of the adjacent side of the building.  
12 With respect to defined parking areas, “adequate lighting” means a minimum of 2 candlefoot power in that portion  
13 of the parking area within 60 feet of the automated teller machine facility.  
14 With respect to an automated teller machine facility located within the interior of a building, “adequate lighting”  
15 means lighting, on a 24 hour basis, which permits a person entering the facility to readily and easily see all persons  
16 occupying such facility, and which permits a person inside the facility to readily and easily see all persons at the  
17 entry door of such facility.  
18 “Automated teller machine facility” means the area comprised of 1 or more automated teller machines, and any  
19 adjacent space which is made available to banking customers after regular banking hours.
- 20 SECTION 2. Section 1 of Chapter 167B of the General Laws, as appearing in the 2004 Official Edition, is hereby  
21 further amended by inserting after the word “functions”, in line 24, the following words:—  
22 “Candlefoot power” means the light intensity of candles on a horizontal plane at 36 inches above the ground level  
23 and 5 feet in front of the area to be measured.

24 SECTION 3. Section 1 of Chapter 167B of the General Laws, as appearing in the 2004 Official Edition, is hereby  
25 further amended by inserting after the word “function” in line 34 the following paragraph:—  
26 “Defined parking area” means that portion of any parking area open for bank customer parking which is (i)  
27 contiguous to any paved walkway or sidewalk within 50 feet of an automated teller machine facility; (ii) regularly,  
28 principally and lawfully used for parking by consumers accessing the automated teller machine facility during  
29 nighttime hours; and (iii) owned or leased by the operator of the automated teller machine facility, or owned or  
30 otherwise controlled by the party leasing the automated teller site to the operator. The term does not include any  
31 parking area which is not open, not regularly used or not designated for parking by the users of the automated teller  
32 machine who are conducting automated transactions during nighttime hours. A parking area is not open if it is  
33 physically closed to access or if conspicuous signs indicate it is closed or if such area falls outside the boundaries of  
34 the designated parking area for such automated teller machine as indicated by an appropriate amount of signage  
35 indicating the proper parking area.

36 SECTION 4. Section 1 of Chapter 167B of the General Laws, as appearing in the 2004 Official Edition, is hereby  
37 further amended by inserting after the word “services”, in line 109, the following words:—  
38 “Nighttime hours” means the period of time beginning at sunset and ending at sunrise.

39 SECTION 5. Section 1 of Chapter 167B of the General Laws, as so appearing, is hereby further amended by  
40 inserting after the word “intervals” in line 139 the following:—  
41 “Regular banking hours” means the period of time during each weekday, Monday through Friday, commencing at  
42 9:00 a.m. and ending at 5:00 p.m.

43 SECTION 6. Chapter 167B is hereby further amended by inserting at the end thereof the following new sections:—  
44 Section 25. (I) Security Measures — A bank shall maintain the following security measures with respect to each of  
45 its automated teller machine facilities:

- 46 (a) A surveillance camera or cameras, which shall view and record all persons entering, exiting, and moving within  
47 or about an automated teller machine facility located within the interior of a building, or which shall view and record  
48 all activity within a minimum 3 feet in front of an automated teller machine located on an exterior wall of a building  
49 open to the outdoor air. Such camera or cameras need not view and record banking transactions made at the  
50 automated teller machine. The recordings made by such cameras shall be preserved by the bank for at least 30 days;
- 51 (b) Within 6 months after the submission of the report of the temporary task force required by the subdivision of this  
52 section, entry doors equipped with locking devices which permit entry to such facility only to persons using an  
53 automated teller machine card or access code issued by a bank for that purpose. Provided, however, that any  
54 automated teller machine facility located within the interior of a building that is not equipped with such entry  
55 locking devices within 6 months after the submission of such report shall thereafter have at least one security guard  
56 stationed therein during the period of time after regular banking that such automated teller machine facility is  
57 available to banking customers;
- 58 (c) entry doors equipped with fire exit bolts;
- 59 (d) adequate lighting;
- 60 (e) at least 1 exterior wall made substantially of untinted glass or other untinted transparent material which provides  
61 an unobstructed view of the automated teller machine or machines within the automated teller machine facility;
- 62 (f) reflective mirrors or surfaces at each automated teller machine which provide the user a rear view;
- 63 (g) a reflective mirror or mirrors placed in a manner that permits a person present in the automated teller machine  
64 facility to view areas within such facility which are otherwise concealed from plain view;
- 65 (h) a clearly visible sign which at minimum, states:
  - 66 (1) the activity within the automated teller machine facility is being recorded by surveillance camera;
  - 67 (2) customers should close the entry door completely upon entering if the automated teller machine facility is  
68 located within the interior of a building;
  - 69 (3) customers should not permit entrance to any unknown person at any time after regular banking hours if an  
70 automated teller machine facility located within the interior of a building is available to banking customers;
  - 71 (4) customers should place withdrawn cash securely upon their person before exiting the automated teller machine  
72 facility;
  - 73 (5) complaints regarding security in the automated teller machine facility should be directed to the bank’s security  
74 department or to the director of the office of the commissioner of banks, together with the contact address and  
75 telephone number for said parties;
  - 76 (6) Where the nearest emergency assistance agency is located that is responsible for addressing criminal activity or  
77 medical emergencies;
- 78 (i) the bank should create a 20 foot radius where no vehicles are allowed to park or stand, enforced jointly by the  
79 bank and the local police authority with jurisdiction;

80 (j) All banks operating in the Commonwealth which provide outside and enclosed automated teller machines shall  
81 provide a telephone which provides a direct, emergency 911 call to the police department with jurisdiction at that  
82 location. The commissioner of banks shall coordinate the installation of emergency telephones with each bank in a  
83 timely basis not exceeding 1 year from the effective date of this act, unless granted a waiver for additional time to  
84 comply by said commissioner.

85 Paragraphs (b), (c), (e) and (g) of this subdivision shall not apply to any automated teller machine facility located on  
86 an exterior wall of a building open to the outdoor air.

87 (II) Special commission. There is hereby established a special commission to study the technological feasibility of  
88 the limited access entry door requirements of paragraph (b) of subdivision I of this section. Such task force shall be  
89 comprised of 15 members, 2 of whom shall be representatives of federally-chartered banks, 2 of whom shall be  
90 representatives of state-chartered banks, 2 of whom shall be representatives of savings and loan associations and 2  
91 of whom shall be representatives of Massachusetts-based credit union associations. The Governor shall appoint 7  
92 members, 1 of whom shall be named the chairman of the task force with the approval of the Senate President and  
93 House Speaker. Not later than 12 months after the appointment of the last member of the special commission, the  
94 task force shall submit a report containing its conclusions to the Governor and the joint committee on banks and  
95 banking.

96 (III) Any bank which operates an automated teller machine facility shall file a list of such facilities with the  
97 executive office of public safety and the division of banks, including the street addresses, intersecting streets, hours  
98 of operation, method of security, method of surveillance at each facility and the telephone number of the bank's  
99 security department. The executive office of public safety shall distribute this list to each local police department.

100 (IV) Violations and penalties.

101 (a) A bank found to be in violation of any provision of subdivision I of this section shall be subject to a civil penalty  
102 of not more than two hundred fifty dollars. Each violation of any provision of subdivision I of this section with  
103 respect to a particular automated teller machine facility shall be considered a separate violation thereof.

104 (b) Any bank found to be in violation of any provision of subdivision I of this section shall correct the violation  
105 within 3 days after such finding or shall thereafter be subject to a civil penalty of not less than \$500 or more than  
106 \$1000 dollars and an additional civil penalty of \$250 per day for such period that said violation remains uncorrected.

107 (c) Any bank found to be in violation of subdivision (VI) of this section shall be liable for a civil penalty of not more  
108 than \$1000 for each automated teller machine facility for which a report has not been filed. Any bank which makes a  
109 material false statement or material omission in any report filed pursuant to subdivision III of this section shall be  
110 liable for a civil penalty of not more than \$5000 for each report.

111 (d) A proceeding to recover any civil penalty authorized to be imposed pursuant to this section shall be commenced  
112 by the service of a notice of violation which shall be returnable to the commissioner of banks. Such commissioner  
113 after due notice and an opportunity for a hearing, shall be authorized to impose the civil penalties prescribed by this  
114 section.

115 (V) Consumer safety information. Upon the original issuance or reissuance of an automated teller machine facility  
116 access card or code, or any other means or device permitting access to an automated teller facility, the issuing bank  
117 shall provide its customer with written information concerning safety precautions to be employed while using an  
118 automated teller machine facility. Such written information shall include at a minimum the information described in  
119 subparagraphs (i) through (v) of paragraph (h) of subdivision I of this section. In addition, until such time as all  
120 facilities are required to comply with security measures contained in this section, and for 1 year thereafter, such  
121 written information shall also include a statement indicating that entrance to an automated teller machine facility  
122 located within the interior of a building may be obtained by persons who are not authorized to use the automated  
123 teller machine facility.

124 (VI) Certification of compliance. Within 30 days after the effective date of this section, and each year thereafter  
125 every bank which has an automated teller machine facility which is in operation on such date shall submit a written  
126 report to the commissioner of banks certifying that such automated teller machine facility is in compliance with the  
127 provisions of this section, or if such facility is not in compliance with the provisions of this section, such report shall  
128 state the manner in which such facility fails to meet the requirements of this section and the reasons for such non-  
129 compliance.

130 (VII) Enforcement measures.

131 (a) The division of banks shall be authorized to enforce this section.

132 (b) Statistics of crimes associated with the use of automated teller machines compiled and maintained by the  
133 executive office of public safety shall be made available to all banks and the public.

134 (VIII) Exemptions. The provisions of this section shall not apply to any unenclosed automated teller machine  
135 located in any building, structure or space whose primary purpose or function is unrelated to banking activities,

136 including but not limited to supermarkets, office buildings, airports and school buildings, provided that such  
137 automated teller machine shall be available for use only during the regular hours of operation of the building,  
138 structure or space in which such machine is located.  
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