

BY Senators Forman, Williams, and Grant

FLORIDA SENATE - 1994  
32-966-94

SB 2366  
See HB 2043

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1 A bill to be entitled  
2 An act relating to automated teller machines;  
3 creating ss. 655.960, 655.961, 655.962,  
4 655.963, 655.964, 655.965, and 655.966, F.S.;

5 providing definitions; requiring evaluations of  
6 automated teller machines; requiring compliance  
7 with specified standards; providing for a good  
8 faith standard for evaluating automated teller  
9 machines; establishing compliance dates for  
10 operators and persons controlling certain  
11 areas; specifying standards for lighting,  
12 mirrors, and landscaping; requiring the  
13 provision of certain notice; providing  
14 exemptions; providing an exemption from  
15 liability to certain persons under certain  
16 circumstances; providing for preemption;  
17 prohibiting restrictions on customer fees;  
18 providing an effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:  
21  
22 Section 1. Sections 655.960, 655.961, 655.962,  
23 655.963, 655.964, 655.965, and 655.966, Florida Statutes, are  
24 created to read:

25 655.960 Definitions.--As used in this section and ss.  
26 655.961-655.966, unless the context otherwise requires:  
27 (1) "Access area" means any paved walkway or sidewalk  
28 which is within 50 feet of any automated teller machine. The  
29 term does not include any street or highway open to the use of  
30 the public, as defined in s. 316.003(53)(a) or (b), including  
31 any adjacent sidewalk, as defined s. 316.003(47).

1 (2) "Access device" has the same meaning as set forth  
2 in Federal Reserve Board Regulation E, 12 C.F.R. part 205,  
3 promulgated pursuant to the Electronic Fund Transfer Act, 15  
4 U.S.C. ss. 1601 et seq.

5 (3) "Automated teller machine" means any electronic  
6 information processing device located in this state which  
7 accepts or dispenses cash in connection with a credit,  
8 deposit, checking, or convenience account. The term does not  
9 include devices used solely to facilitate check guarantees or  
10 check authorizations or which are used in connection with the  
11 acceptance or dispensing of cash on a person-to-person basis,  
12 such as by a store cashier.

13 (4) "Candlefoot power" means the light intensity of  
14 candles on a horizontal plane at 36 inches above ground level  
15 and 5 feet in front of the area to be measured.

16 (5) "Control," with respect to an access area or  
17 defined parking area, means to have the present legal  
18 authority to determine how, when, and by whom such area is to  
19 be used, and how such area is to be maintained, lighted, and  
20 landscaped. If an operator leases an access area or defined  
21 parking area as lessee, such lessee shall not be considered to  
22 have control for the purposes of the ss. 655.960-655.966.

23 (6) "Customer" means a natural person to whom an  
24 access device has been issued for personal, family, or  
25 household use.

26 (7) "Defined parking area" means that portion of any  
27 parking area open for customer parking which is contiguous to  
28 an access area with respect to an automated teller machine, is  
29 regularly, principally, and lawfully used for parking by users  
30 of the automated teller machine while conducting automated  
31 teller machine transactions during the hours of darkness, and

1 is owned or leased by the operator of the automated teller  
2 machine or owned or controlled by the party leasing the  
3 automated teller machine site to the operator. The term does  
4 not include any parking area which is not open or regularly  
5 used for parking by users of the automated teller machine who  
6 are conducting automated teller machine transactions during  
7 the hours of darkness. A parking area is not open if it is  
8 physically closed to access or if conspicuous signs indicate  
9 that it is closed. If a multiple level parking area satisfies  
10 the conditions of this subsection and would therefore  
11 otherwise be a defined parking area, only the single parking  
12 level deemed by the operator of the automated teller machine  
13 to be the most directly accessible to the users of the  
14 automated teller machine shall be considered a parking area.  
15 (8) "Financial institution office" means a main office  
16 or principal office, as defined in s. 655.005, and a branch or  
17 branch office as defined in s. 658.12(4).  
18 (9) "Hours of darkness" means the period that  
19 commences 30 minutes after sunset and ends 30 minutes before  
20 sunrise.  
21 (10) "Operator" means any financial institution, as  
22 defined in s. 655.005, other business entity, or any person  
23 who controls the use or operation by a customer or other  
24 member of the general public of an automated teller machine.  
25 An operator controls the use or operation of an automated  
26 teller machine for the purposes of ss. 655.960-655.966 if such  
27 person or entity has the present legal authority to determine  
28 when and by whom the automated teller machine may be used or  
29 operated and how it is to be maintained in compliance with the  
30 provisions of ss. 655.960-655.966. An operator does not  
31 include any person or entity which is not a financial

1 institution, if the primary function of such person or entity  
2 is to provide data processing services for automated teller  
3 machine transactions or to provide for the exchange, transfer,  
4 or dissemination of electronic fund transfer data.  
5 (11) Terms which are defined in the financial  
6 institution codes, unless the context otherwise requires, have  
7 the meanings ascribed to them therein for purposes of ss.  
8 655.960-655.966.  
9 655.961 Evaluations.--  
10 (1) Each existing automated teller machine shall be  
11 evaluated by its operator within 1 year after the effective  
12 date of this section to determine whether such machine is in  
13 compliance with the provisions of s. 655.962(2), (3), and (4).  
14 If a machine fails to comply with such provisions, the  
15 operator shall bring it into compliance within 1 year after  
16 the effective date of this section unless waived by the  
17 department upon a determination that compliance would not  
18 substantially increase safe use of the machine by the public.  
19 (2) It is not the intent of the Legislature to impose  
20 a continuing duty to conduct evaluations of automated teller  
21 machines, access areas, or defined parking areas or to impose  
22 a duty to relocate or modify automated teller machines upon  
23 the occurrence of any particular events or circumstances. It  
24 is the intent of the Legislature to establish a standard of  
25 good faith for the evaluation of all automated teller machines  
26 as provided in this section. A violation of the provisions of  
27 ss. 655.960-655.966 or any regulation made pursuant thereto  
28 does not constitute negligence per se.  
29 655.962 Lighting; mirrors; landscaping.--  
30 (1) Each operator of an automated teller machine that  
31 controls the access area or defined parking area to be lighted

1 shall comply with subsections (2), (3), and (4) no later than  
2 1 year after the effective date of this section. If the  
3 access area or defined parking area to be lighted is  
4 controlled by a person other than the operator, such other  
5 person shall comply with subsections (2), (3), and (4) no  
6 later than 1 year after the effective date of this section.  
7 (2) Each operator, or other person responsible for an  
8 automated teller machine pursuant to ss. 655.960-655.966,  
9 shall provide lighting during the hours of darkness with  
10 respect to an open and operating automated teller machine and  
11 any defined parking area, access area, and the exterior of an  
12 enclosed automated teller machine installation, as follows:  
13 (a) There shall be a minimum of 10 candlefoot power at  
14 the face of the automated teller machine and extending in an  
15 unobstructed direction outward 5 feet.  
16 (b) There shall be a minimum of 2 candlefoot power  
17 within 50 feet in all unobstructed directions from the face of  
18 the automated teller machine. If the automated teller machine  
19 is located within 10 feet of the corner of the building and  
20 the automated teller machine is generally accessible from the  
21 adjacent side, there shall be a minimum of 2 candlefoot power  
22 along the first 40 unobstructed feet of the adjacent side of  
23 the building.  
24 (c) There shall be a minimum of 2 candlefoot power in  
25 that portion of the defined parking area within 60 feet of the  
26 automated teller machine.  
27 (3) The operator shall provide reflective mirrors or  
28 surfaces at each automated teller machine which provide the  
29 customer with a rear view while the customer is engaged in  
30 using the automated teller machine.  
31

1 (4) The operator, or other person responsible pursuant  
2 to ss. 655.960-655.966 for an automated teller machine, shall  
3 ensure that the height of any landscaping, vegetation, or  
4 other physical obstructions in the area required to be lighted  
5 pursuant to subsection (2) for any open and operating  
6 automated teller machine shall not exceed 3 feet, except that  
7 manmade physical obstructions required by statute, law, code,  
8 ordinance, or other governmental regulation shall not be  
9 affected by this subsection.  
10 655.963 Access devices.--Customers receiving access  
11 devices shall be furnished by the respective issuers thereof  
12 with such information regarding safety precautions as the  
13 department may require by rule. This information shall be  
14 furnished by personally delivering or mailing the information  
15 to each customer whose mailing address as to the account to  
16 which the access device relates is in this state. Such  
17 information shall be furnished with respect to access devices  
18 issued on or after the effective date of this section, at or  
19 before the time the customer is furnished with his or her  
20 access device. With respect to a customer to whom an  
21 "accepted access device," as defined in Federal Reserve Board  
22 Regulation E, 12 C.F.R. part 205, has been issued prior to the  
23 effective date of this section, the information shall be  
24 delivered on or before 6 months from the effective date of  
25 this section. Only one notice need be furnished per  
26 household, and if access devices are furnished to more than  
27 one customer for a single account or set of accounts or on the  
28 basis of a single application or other request for access  
29 devices, only a single notice need be furnished in  
30 satisfaction of the notification responsibilities as to those  
31 customers. The information may be included with other

