

## Bonus Section D

# STATE OF NEW YORK

5436--A

Cal. No. 4

1995-1996 Regular Sessions

## IN SENATE

June 13, 1995

Introduced by Sens. FARLEY, BRUNO, COOK, DeFRANCISCO, HOBLOCK, JOHNSON, KUHL, LARKIN, LEIBELL, LEVY, LIBOUS, MALTESE, MARCELLINO, MARCHI, MAZIARZ, ONORATO, PADAVAN, PRESENT, SALAND, SANTIAGO, TRUNZO, TULLY, VOLKER, WRIGHT -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Banks in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the banking law, in relation to interstate branching; interstate expansion by bank holding companies; the provision of accommodation services to customers of affiliated banking organizations; and repealing certain provisions of the banking law relating thereto and to amend the banking law, in relation to enacting the "ATM safety act"; and providing for the repeal of certain provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1     Section 1. The opening paragraph of subdivision 1 of section 14-c of  
2     the banking law, as added by chapter 19 of the laws of 1978, is amended  
3     to read as follows:  
4     The banking board shall[, on or before June first, nineteen hundred  
5     seventy-nine,] promulgate rules and regulations with respect to the  
6     disclosure of information on savings and time accounts by all banking  
7     organizations and out-of-state state banks authorized to operate and  
8     maintain branches pursuant to article five-C of this chapter. Such  
9     rules and regulations shall set forth guidelines for, but not be limited  
10    to the following:  
11    5 2. The opening paragraph of paragraph (a) of subdivision 3 of  
12    section 28-b of the banking law, as amended by chapter 361 of the laws  
13    of 1984, is amended to read as follows:

EXPLANATION--Matter in italics (underlined) is new; matter in brackets  
[ ] is old law to be omitted.

 PRINTED ON RECYCLED PAPER

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\*\* Note: Pages 2 through 7 relate  
to interstate banking.  
The ATM provision begins  
on Page 8.

close loans, service loans, and receive payments on loans and other obligations shall not be deemed a branch office of such savings bank.

For the purposes of this section, the term "affiliated bank" means any bank, as defined in section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)(1)), that is a subsidiary of the same bank holding company as that term is defined in section 2 of the Bank Holding Company Act (12 U.S.C. 1841).

**S. 18.** Subparagraph (l) of paragraph (d), and paragraph (e) of subdivision 2 of section 240 of the banking law, subparagraph 1 of paragraph (d) as amended by chapter 883 of the laws of 1980 and paragraph (e) as amended by chapter 638 of the laws of 1981, such paragraphs as relate thereto by section seventeen of this act, are amended to read as follows:

(1) If so provided in the merger plan submitted to the superintendent pursuant to section six hundred one of this chapter, a savings bank may, in addition to the authority granted under paragraph (a) of this subdivision, and without limitation by any of the provisions of paragraph (b) [c] of [such] this subdivision, maintain, as a branch office, or branch offices, the place or places of business of any savings bank or savings and loan association which it has received into itself by merger pursuant to this chapter which were in existence at the time the merger becomes effective, including any branch office of the merging savings bank or savings and loan association which has been approved pursuant to subdivision three of this section or paragraph (c) of subdivision two [(c)] of section three hundred ninety-six of this chapter even if such branch office is not in operation at the time said merger becomes effective and may maintain, as its principal office rather than as a branch office, the principal office of such merging savings bank or savings and loan association, in which event the former principal office of the receiving savings bank [or savings and loan association] may be maintained as a branch office.

(e) If so provided in an agreement submitted to the superintendent pursuant to section six hundred one-c of this chapter, a savings bank may, in addition to the authority granted under paragraph (a) of this subdivision, and without limitation by any of the provisions of paragraph (a) or [(b)] (c) of this subdivision, maintain as a branch office or offices the place or places of business of any savings bank or savings and loan association which it has acquired pursuant to such agreement as authorized by section six hundred one-c of this chapter.

Subdivision 6 of section 600 of the banking law, as amended by chapter 152 of the laws of 1993, is amended to read as follows:

(6) One or more banks, trust companies, stock-form savings banks[,] or stock-form savings and loan associations, with one or more [repository] institutions incorporated or otherwise organized in a state as the term "state" [out-of-state banks as such term is defined in subdivision 15 [three] one of section two hundred twenty-two of this chapter] as follows:

\$ 20. The banking law is amended by adding a new article II-AA to read as follows:

#### ARTICLE II-AA ATM SAFETY ACT

- 50 Section 75-a. Legislative intent.
- 51 75-b. Definitions.
- 52 75-c. Security measures.
- 53 75-d. List of facilities.
- 54 75-e. Consumer safety information.
- 55 75-f. Enforcement and statistics.
- 56 75-g. Report of compliance.

union, whether headquartered within or outside of the state, that operates one or more automated teller machine facilities within the state.

6. "Candlefoot power" means the light intensity of candles measured on a horizontal plane thirty-six inches above ground level and five feet in front of the area to be measured.

7. "Regular banking hours" means the time at which an office of a banking institution is open to the banking public for normal transaction of business.

8. "Nighttime hours" means the period of time beginning thirty minutes after sunset and ending thirty minutes before sunrise.

9. (a) "Defined parking area" means that portion of any parking area open for and accessible to customer of a banking institution which is:

- (1) contiguous to any paved walkway or sidewalk within fifty feet of an automated teller machine facility;
- (2) regularly, principally and lawfully used for parking by users of the automated teller machine facility while conducting transactions at such automated teller machine facility; and
- (3) owned or leased by the operator of the automated teller machine facility, or owned or otherwise controlled by the party leasing the automated teller machine facility site to the banking institution.

(b) The term "defined parking area" does not include any parking area which is not open or regularly used for parking by the users of the automated teller machine facility or the conduct of transactions during nighttime hours. For this purpose, the parking area is not open if it is physically closed to access or if conspicuous signs indicate that it is closed.

10. § 75-c. Security measures. Every banking institution shall maintain the following security measures with respect to each of the automated teller machine facilities within its dominion and control:

1. A surveillance camera or cameras, which shall view and record all persons entering an automated teller machine located within the interior of a building, or which shall view and record all activity occurring within a minimum of three feet in front of an automated teller machine located outside a building and open to the outdoor air. Such camera or cameras need not record banking transactions made at the automated teller machines. The recordings made by such cameras shall be preserved by the banking institution for at least thirty days.
2. Adequate lighting.
3. With respect to an indoor automated teller machine facility: (a) entry doors equipped with locking devices which permit entry to such facility only to persons using a magnetic-strip plastic card or similar access device.
- (b) To the extent practicable, as determined by an expert with competence in such matters and as permitted by local building codes, at least one exterior wall which provides an unobstructed view of the interior of the automated teller machine facility.
- (c) A reflective mirror or mirrors, as necessary, placed in such a manner as to permit a person entering an indoor automated teller machine facility to view areas within such facility that are otherwise concealed to plain view.
- (d) A clearly visible sign which, at a minimum, provides the following information:

  - (1) the activity of the automated teller machine is being recorded by a surveillance camera or cameras;
  - (2) customers should close the entry door completely upon entering and exiting;

(3) customers should not permit any unknown persons to enter after regular banking hours;

(4) customers should place withdrawn cash securely upon their person before exiting the automated teller machine facility;

(5) complaints concerning security in the automated teller machine facility should be directed to the banking institution's security department or the banking department, together with telephone numbers for such complaints, and that the nearest available public telephone should be used to call the police if emergency assistance is needed.

§ 75-d. List of facilities. Any banking institution which operates an automated teller machine facility shall file a list of such facilities with the department, including the street addresses, intersecting streets, hours of operation, and the telephone number of the banking institution's security department. Such information shall also be filed with the department with respect to each additional automated teller machine facility within a reasonable time, as specified by the superintendent, from the date upon which such facility commences operation. The department shall make such list available on request of local law enforcement agencies and other local governmental entities.

§ 75-e. Consumer safety information. Upon the original issuance or reissuance of an automated teller machine access device, the issuing banking institution shall provide its customers with written information concerning safety precautions to be employed while using an automated teller machine facility. Such written information shall include, at a minimum, the information described in paragraph (d) of subdivision three of section seventy-five-c of this article.

§ 75-f. Enforcement and statistics. 1. The department is authorized to enforce this article.

2. Statistics of crimes associated with the use of automated teller machine facilities compiled and maintained by any law enforcement agency or the department.

§ 75-g. Report of compliance. Within one year after the effective date of this article, and each year thereafter, every banking institution which has an automated teller machine facility which is in operation on such date and such date every year thereafter shall submit a written report to the department on a form prescribed by the superintendent certifying that such automated teller machine facility is in compliance with the provisions of this article or any variance or exemption that has been granted, or if such facility is not in compliance with such provisions, such report shall state the manner in which such facility fails to meet such requirements, the reasons for such non-compliance, and a plan to remedy any such non-compliance.

§ 75-h. Compliance with local building code and all other applicable provisions of law. Unless otherwise provided in this article, nothing contained in this article shall be construed to exempt or relieve any banking institution from complying with all relevant provisions of the local building code and all other applicable provisions of law.

§ 75-i. Facilities not subject to this article. The provisions of this article shall not apply to any unclosed automated teller machine located in any building, structure or space whose primary purpose or function is unrelated to banking activities, including but not limited to supermarkets, airports, school buildings, and public buildings.

§ 75-j. Facilities provided that such automated teller machine shall be available for use only during the regular hours of operation of the building, structure, or space in which such machine is located.

**S. 75-j. Civil penalties.** 1. Any banking institution found to be in violation of any provision of section seventy-five-c of this article shall correct the violation within ten business days after such finding. Where a banking institution fails to correct said violation within such period of time, the superintendent may in a proceeding after notice and hearing, require any banking institution to pay a civil penalty in a sum not to exceed two thousand five hundred dollars for each and every offense, provided, however, that the aggregate penalty for all offenses with respect to any one automated teller machine facility in any one proceeding shall not exceed ten thousand dollars. For the purposes of this article, each violation of section seventy-five-c of this article shall be considered a separate and distinct violation.

2. Any banking institution found to be in violation of the provisions of section seventy-five-q of this article shall be liable for a civil penalty of not more than one thousand dollars for each automated teller machine facility for which a report has not been filed. Any banking institution which makes a material false statement or material omission in any report filed pursuant to section seventy-five-q of this article shall be liable for a civil penalty of not more than five thousand dollars for each such report.

3. Whenever payment of a civil penalty is required under this article, the superintendent shall execute a written order to that effect. A copy of such order shall be filed in the office of the department and a second copy shall, within three days of execution, be served upon such banking institution either personally or by registered or certified mail, return receipt requested, directed to the banking institution's principal place of business. Such order may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules.

Such special proceeding for review as authorized by such section must be commenced within thirty days from the service of such order. Such section shall in no way limit any of the powers granted to the superintendent under any provision of this chapter.

**S. 75-k. Collection of penalties.** The superintendent shall have the discretion to report to the attorney general any failure, after due notice, to make payments of penalties incurred under this article. The attorney general shall, thereupon, in the name of the superintendent, or the people of the state, institute such actions or proceedings as the facts may warrant.

**S. 75-l. Preemption.** 1. Except as provided in subdivision two of this section, this article shall supersede and preempt all rules, regulations, codes, statutes or ordinances of all cities, counties, municipalities, and local agencies regarding customer safety at automated teller machine facilities.

2. To the extent that any security measures inconsistent with or in addition to the provisions of section seventy-five-c of this article are in effect, on the date on which this article becomes a law, in any city having a population of one million or more, pursuant to any rules, regulations, codes, statutes or ordinances regarding customer safety at automated teller machine facilities enacted by such city on or before the date on which this article becomes a law, such security measures shall continue to be required within such city; provided, however, that the enforcement of any such security measures shall be enforced by the superintendent.

**S. 75-m. Variances and exemptions from automated teller machine security measures.** 1. Except in cities having a population of one million or more, and in accordance with the guidelines set forth in this article,

the superintendent, pursuant to rules and regulations promulgated by the superintendent and upon written request of a banking institution, may approve variances which provide substitute security measures that are substantially as safe as the requirements of any of the security measures contained in this article, or exemptions from such measures, with respect to an automated teller machine facility or facilities operated by such banking institution:

2. In no event, however, shall the superintendent vary or exempt any such measures unless he or she shall have received the following item, in form and substance satisfactory to him or her:

(a) a resolution or declaration of the governing body of the city, village, or town in which such automated teller machine facility is located consenting to any such variance or exemption; and

(b) written certification from the banking institution's security officer, appointed in accordance with federal law, that, in his or her professional judgment, either the variance will provide security measures which are substantially as safe as those which are otherwise required by this article or the exemption is warranted, as applicable;

(c) in the event the request for any such variance or exemption is premised upon the impracticability or burdensome expense that would result from compliance with the security provisions contained in this article, and such impracticability or expense is attributable to the manner in which the building in which such automated teller machine facility is, or is to be, located, constructed, configured or otherwise situated, written certification to such effect from an expert with competence in the areas of renovation and/or design, as may be appropriate; and

(d) such other evidence or information as the superintendent may, in his or her sole discretion, deem appropriate or necessary.

**S. 75-n. Rules and regulations.** The superintendent shall promulgate such rules and regulations as necessary to define and implement the provisions of this article.

**S. 75-o. Severability.** If any word, phrase, clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the word, phrase, clause, sentence, paragraph, section or part thereof directly involved in the controversy in which judgment shall have been rendered.

**S. 21. Section 43 of the banking law is amended by adding a new subdivision 10 to read as follows:**

**10. A statement of banking institutions, as defined in article II-AA of this chapter, which have been granted a variance or exemption from automated teller machine security measures. The statement shall include a listing of the number of variance or exemption applications received and granted; the name of the banking institution which received a variance or exemption; the geographic location of the automated teller machines subject to the variance or exemption; and, the general conditions or terms of the variance or exemption.**

**S. 22.** This act shall take effect immediately, except that section nine of this act shall expire and be deemed repealed on June 1, 1997; section ten of this act shall take effect on June 1, 1997; and sections twenty and twenty-one of this act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

REPEAL NOTE.—Section 142-b of the banking law, repealed by section seven of this act, permitted an out-of-state bank holding company to acquire a bank or bank holding company in this state only if the laws of such holding company's principal state permitted a comparable acquisition by a New York bank holding company either without limitation or on a reciprocal basis and required a New York bank holding company to obtain the superintendent of bank's approval to make an acquisition in a reciprocal state.

Section 225 of the banking law, repealed by section thirteen of this act, prescribed the grounds for denial by the superintendent of banks of an application by an out-of-state bank to establish one or more branch offices in this state.

Section 227-a of the banking law, repealed by section sixteen of this act, gave the superintendent of banks the authority to revoke the authority of an out-of-state bank to operate a branch office and prescribed the grounds on which such action could be taken.