SENATE DOCKET, NO. 816 FILED ON: 1/17/2013

SENATE . . . . . No. 448

The Commonwealth of Massachusetts

PRESENTED BY:

Brian A. Joyce

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:

An Act providing for public safeguards and protections for users of automated teller machines.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Brian A. Joyce	*Norfolk, Bristol and Plymouth*

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SENATE . . . . . No. 448

By Mr. Joyce, a petition (accompanied by bill, Senate, No. 448) of Brian A. Joyce for legislation to provide for public safeguards and protections for users of automated teller machines. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *428* OF 2011-2012.]

The Commonwealth of Massachusetts

An Act providing for public safeguards and protections for users of 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:

SECTION 1. Section 1 of Chapter 167B of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the word "agreement", in line 19, the following definitions:-

"Adequate lighting" with respect to an open and operating teller machine facility located on an exterior wall of a building open to the outdoor air, and any defined parking area, means lighting during nighttime hours according to the following standards:

(i) a minimum of ten candlefoot power at the face of the automated teller machine and extending in an unobstructed direction outward five feet;

(ii) a minimum of two candlefoot power within fifty feet from all unobstructed directions from the face of the automated teller machine. If such machine is located within ten feet of the corner of the building and the automated teller machine facility is generally accessible from the adjacent side, there shall be a minimum of two candlefoot power along the first forty unobstructed feet of the adjacent side of the building.

With respect to defined parking areas, "adequate lighting" means a minimum of two candlefoot power in that portion of the parking area within sixty feet of the automated teller machine facility.

17 With respect to an automated teller machine facility located within the interior of a
18 building, "adequate lighting" means lighting, on a twenty-four hour basis, which permits a
19 person entering the facility to readily and easily see all persons occupying such facility, and
20 which permits a person inside the facility to readily and easily see all persons at the entry door of
21 such facility.

22 "Automated teller machine facility" means the area comprised of one or more automated
23 teller machines, and any adjacent space which is made available to banking customers after
24 regular banking hours.

25 SECTION 2. Section 1 of Chapter 167B of the General Laws, as so appearing, is hereby
26 further amended by inserting after the word "functions", in line 29, the following definition:-

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

29 SECTION 3. Section 1 of Chapter 167B of the General Laws, as so appearing, is hereby
30 further amended by inserting after the word "function", in line 39, the following definition:-

31 "Defined parking area" means that portion of any parking area open for bank customer
32 parking which is (i) contiguous to any paved walkway or sidewalk within fifty feet of an
33 automated teller machine facility; (ii) regularly, principally and lawfully used for parking by
34 users of the automated teller machine facility during nighttime hours; and (iii) owned or leased
35 by the operator of the automated teller machine facility, or owned or otherwise controlled by the
36 party leasing the automated teller site to the operator. The term does not include any parking area
37 which is not open or regularly used for parking by the users of the automated teller machine who
38 are conducting automated transactions during nighttime hours. A parking area is not open if it is
39 physically closed to access or if conspicuous signs indicate that it is closed.

40 SECTION 4. Section 1 of Chapter 167B of the General Laws, as so appearing, is hereby
41 further amended by inserting after the number "4", in line 109, the following definition:-

42 "Nighttime hours" means the period of time beginning at sunset and ending at sunrise.

43 SECTION 5. Section 1 of chapter 167B of the General Laws, as so appearing, is hereby
44 further amended by inserting after the word "intervals", in line 150, the following definition:-

45 "Regular banking hours" means the period of time during each weekday, Monday
46 through Friday, commencing at nine o’clock a.m. and ending at three o’clock p.m.

47 SECTION 6. Chapter 167B, as so appearing, is hereby further amended by adding at the
48 end thereof the following new sections:-

49 Section 25. (a) Security Measures. A bank shall maintain the following security measures
50 with respect to each of its automated teller machine facilities:

(1) a surveillance camera or cameras, which shall view and record all persons entering, exiting, and moving within or about an automated teller machine facility located within the interior of a building, or which shall view and record all activity within a minimum three feet in front of an automated teller machine located on an exterior wall of a building open to the outdoor air. The camera or cameras need not view and record banking transactions made at the automated teller machine. The recordings made by such cameras shall be preserved by the bank for at least thirty days;

(2) within six months after the submission of the report of the temporary task force required by the subsection (b) of this section, entry doors equipped with locking devices shall permit entry to such facility only to persons using an automated teller machine card or access code issued by a bank for that purpose. Provided, however, that any automated teller machine facility located within the interior of a building that is not equipped with such entry locking devices within six months after the submission of such report shall thereafter have at least one security guard stationed therein during the period of time after regular banking hours such automated teller machine facility is available to banking customers;

(3) entry doors equipped with fire exit bolts;

(4) adequate lighting;

(5) at least one exterior wall made substantially of untinted glass or other untinted, transparent material, which provides an unobstructed view of the automated teller machine or machines within the automated teller machine facility;

(6) reflective mirrors or surfaces at each automated teller machine which provide the user a rear view;

(7) a reflective mirror or mirrors placed in a manner which permits a person present in the automated teller machine facility to view areas within such facility which are otherwise concealed from plain view;

(8) a clearly visible sign, which at minimum, states:

(i) the activity within the automated teller machine facility is being recorded by surveillance camera;

(ii) customers should close the entry door completely upon entering if the automated teller machine facility is located within the interior of a building;

(iii) customers should not permit entrance to any unknown person at any time after regular banking hours if an automated teller machine facility located within the interior of a building is available to banking customers;

84 (iv) customers should place withdrawn cash securely upon their person before
85 exiting the automated teller machine facility; and

86 (v) complaints concerning security in the automated teller machine facility should
87 be directed to the bank's security department or to the department of consumer affairs, together
88 with the telephone numbers for such complaints. Where emergency assistance is needed due to
89 criminal activity or medical emergency, call 911 at the nearest available public telephone.

90 (9) a twenty-foot radius where no vehicles are allowed to park or stand, enforced by the
91 police and bank authorities;

92 All banks operating in the Commonwealth which provide outside and enclosed
93 automated teller machines shall also provide an emergency telephone which provides access to a
94 911 emergency number as a safety outlet for its customers. The Commissioner of Banks shall
95 coordinate the installation of 911 emergency numbers working closely with each bank in the
96 implementation of this conversion on a timely basis not in excess of one year for such
97 installation upon the passage of this act.

98 Paragraphs (2), (3), (5), and (7) of this subsection shall not apply to any automated teller
99 machine facility located on an exterior wall of a building open to the outdoor air.

100 (b) Special commission. There is hereby established a special commission to study the
101 technological feasibility of the limited access entry door requirements of paragraph (2) of
102 subsection (a) of this section. The task force shall be comprised of fifteen members, two of
103 whom shall be representatives of federally chartered banks, two of whom shall be representatives
104 of state chartered banks, and two of whom shall be representatives of savings and loans
105 associates. The Governor and the Senate President shall each appoint seven members: the chair
106 of the temporary task force shall be jointly appointed by the Governor and the Senate President.
107 Not later than twelve months after the appointment of the last member of the special
108 commission, the task force shall submit a report containing its conclusions to the Governor and
109 the Senate President.

110 (c) Any bank which operates an automated teller machine facility shall file a list of such
111 facilities with the department of public safety and the division of banks and loan agencies,
112 including the street addresses, intersecting streets, hours of operation, method of security, and
113 method of surveillance at each facility, and the telephone number of the bank's security
114 department. The department of public safety shall distribute this list to each local police
115 department which are available to banking customers.

116 (d) Violations and penalties.

117 (1) A bank found to be in violation of any provision of subdivision I of this section shall
118 be subject to a civil penalty of not more than two hundred fifty dollars. Each violation of any

119 provision of subdivision I of this section with respect to a particular automated teller machine
120 facility shall be considered a separate violation thereof.

121 (2) Any bank found to be in violation of any provision of subdivision I of this section
122 shall correct the violation within three days after such finding shall subject the bank to a civil
123 penalty of not less than five hundred dollars or more than one thousand dollars and an additional
124 civil penalty of two hundred fifty dollars per day such violation continues.

125 (3) Any bank found to be in violation of subsection (a) of this section shall be liable for a
126 civil penalty of not more than one thousand dollars for each automated teller machine facility for
127 which a report has not been filed. Any bank which makes a material false statement or material
128 omission in any report filed pursuant to subdivision III of this section shall be liable for a civil
129 penalty of not more than five thousand dollars for each report.

130 (4) A proceeding to recover any civil penalty authorized to be imposed pursuant to this
131 section shall be commenced by the service of a notice of violation which shall be returnable to
132 the commissioner of banks and loan agencies. Such commissioner, after due notice and an
133 opportunity for a hearing, shall be authorized to impose the civil penalties prescribed by this
134 section.

135 (e) Consumer safety information. Upon the original issuance or reissuance of an
136 automated teller machine facility access card or code, or any other means or device permitting
137 access to an automated teller facility, the issuing bank shall provide its customer with written
138 information concerning safety precautions to be employed while using an automated teller
139 machine facility. Such written information shall include at a minimum the information described
140 in subparagraphs (i) through (v) of paragraph (8) of subsection (a) of this section. In addition,
141 until such time as all facilities are required to comply with security measures contained in this
142 section, and for one year thereafter, such written information shall also include a statement
143 indicating that entrance to an automated teller machine facility located within the interior of a
144 building may be obtained by persons who are not authorized to use the automated teller machine
145 facility.

146 (f) Certification of compliance. Within thirty days after the effective date of the this
147 section, and each year thereafter every bank which has an automated teller machine facility
148 which is in operation on such date shall submit a written report to the commissioner of banks
149 certifying that such automated teller machine facility is in compliance with the provisions of this
150 section, or if such facility is not in compliance with the provisions of this section, such report
151 shall state the manner in which such facility fails to meet the requirements of this section and the
152 reasons for such non-compliance. Each report shall be accompanied by a fee of one hundred
153 dollars.

154 (g) Enforcement statistics.

155 (1) The Division of Banks and Loan Agencies shall be authorized to enforce this section.

156 (2) Statistics of crimes associated with the use of automated teller machines compiled and
157 maintained by the department of public safety shall be made available upon the request of any
158 bank or other interested party.

159 (h) Exemptions. The provisions of this section shall not apply to any unenclosed
160 automated teller machine located in any building, structure, or space whose primary purpose or
161 function is unrelated to banking activities, including but not limited to supermarkets, airports,
162 and school buildings, provided that such automated teller machine shall be available for use only
163 during the regular hours of operation of the building, structure or space in which such machine is
164 located.