

Introduced by Legislator Craig M. Johnson

LOCAL LAW NO. 2 -2005

A LOCAL LAW to amend the Nassau County Administrative Code, in relation to the regulation of automated teller machines.

Passed by the Nassau County Legislature on March 7, 2005

Voting: ayes: 19, nays: 0, abstained: 0

Became a law on March 11, 2005 with the approval of the Chief Deputy County Executive

Be it enacted by the County Legislature of the County of Nassau as follows:

Section 1. Chapter XXI of Chapter 272 of the Laws of 1939, constituting the Nassau County Administrative Code, is amended to add a new Title D-12, as follows:

Title D-12 Automated Teller Machine Safety

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§ 21-22.0 Short title

This law shall be known as the “Automated Teller Machine Safety Act.”

§ 21-22.1. Legislative findings and intent

Identity theft is recognized as one of the fastest-growing crimes in America. The Federal Trade Commission has reported that between 1998 and 2003, 27.3 million Americans became victims of identity theft, which is often associated with other serious crimes including mail fraud, narcotics, organized crime, money laundering, weapons trafficking, computer crimes and terrorism. The use of automated teller machines enables consumers to access funds conveniently without having to go to a bank, but it also provides an opportunity for identity thieves. Indeed, people who use the unenclosed automated teller machines found in many buildings such as supermarkets and convenience stores, whose functions are unrelated to banking activities, are particularly vulnerable because such machines are not regulated by federal or state law. These machines can be the setting for unscrupulous machine operators or third parties to obtain the personal bank information of persons conducting financial transactions. While automated teller machines located at banking institutions provide certain safety enhancements, such as rearview mirrors or security cameras, ‘non-bank’ automated teller machines are currently not legally required to do so. Moreover, because such machines are not at present licensed or otherwise registered in New York State, their operators are often untraceable, making it difficult for law enforcement trying to solve identity theft crimes involving automated teller machine fraud. This local law implements measures to combat identity theft and protect citizens’ personal information at those automated teller machines that are not currently regulated by federal or state law.

§ 21-22.2 Definitions

As used in this Title:

“Automated teller machine” shall mean a device which is linked to the accounts and records of a banking institution and which enables consumers to carry out banking transactions,

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including, but not limited to, account transfers, deposits, cash withdrawals, balance inquiries, and loan payments.

“Operator” shall mean a person, organization, or company, including but not limited to one who owns, invests in, or leases an automated teller machine and is responsible for the maintenance, functioning, and operation of such machine, which is located in any building, structure or space whose primary purpose or function is unrelated to banking activities, including but not limited to supermarkets, restaurants, bars, and convenience stores, airports, school buildings, and public buildings.

“Automated teller machine placement agreement” shall mean an agreement between a merchant and a private automated teller machine operator authorizing the location and providing the terms of operation of a private automated teller machine at a specified site, including the merchant’s place of business.

“EFT Network” shall mean an electronic funds transfer network that enables the transfer of funds in and out of a person’s bank account when such person completes a transaction at an automated teller machine.

“Enforcing Agent” shall refer to the Nassau County Office of Consumer Affairs or the Nassau County Police Department.

“Transaction” shall mean the act of accessing an account at a financial institution with a credit card, debit card, or other bankcard at a private automated teller machine for the purpose of making cash withdrawals, balance inquiries, deposits, fund transfers from or to the account, or engaging in any other transaction.

§ 21-22.3 Applicability

The provisions of this Title shall apply to any unenclosed 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, restaurants, bars, convenience stores, airports, school buildings, and public buildings, where such automated teller machine is available for use only during the regular hours of operation of the building, structure, or space in which such machine is located.

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§ 21-22.4 Registration of private automated teller machines

(a) No automated teller machine shall be operated in Nassau county without first being registered in accordance with the provisions of this title, except as otherwise expressly provided in this title.

(b) Every operator of an automated teller machine operated in Nassau County shall, except as otherwise expressly provided, apply in the form and manner established by the Commissioner, to the office of Consumer Affairs, or to any agent of the commissioner, an application for registration addressed to the commissioner, and on a form to be prepared under the direction of and furnished by the Commissioner for that purpose, containing: (a) a brief description of the automated teller machine to be registered, including the name and serial number of such machine, and such other facts as the Commissioner shall require; (b) the name and address of the operator of such machine, specifying in the case of an unincorporated association or partnership, the name and address of each member or partner thereof, and in the case of any corporation, the name and address of each officer; (c) the location and identification of the automated teller machine to be registered; (d) proof that such automated teller machine is in compliance with all applicable federal and state regulations; and (e) such additional facts or evidence as the commissioner may require in connection with the application for registration, including, if the operator is also registered with at least one EFT network through a sponsorship agreement with a financial institution that is a member of the EFT network, such EFT registration information. The application shall contain or be accompanied by such evidence of the ownership of the automated teller machine to be registered as may be required by the Commissioner or his agent.

(c) The removal of any automated teller machine from a premises and its relocation to another in Nassau County shall require the re-registration of such machine in accordance with subdivision (b) above, except that such re-registration shall be charged a reduced fee, as provided herein.

(d) Times for Registration, re-registration; fees.

(i) Registrations and renewed registrations shall take effect and expire on dates determined by the Commissioner and shall be valid for a period of one year. However, where the expiration date of the registration of any automated teller machine falls on a Saturday,

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Sunday or county holiday, such registration shall be valid for the operation of such vehicle until midnight of the next day on which County offices shall be open for business.

(ii) The following fees shall be paid to the Commissioner, or agent, upon the registration or the renewal of a registration of an automated teller machine in accordance with the provisions of this title: for the initial registration by the operator of any automated teller machine in Nassau County, one hundred dollars (\$100); for each renewal of such registration after the initial registration of such machine, fifty dollars (\$50).

(e) With respect to any automated teller machine placed into operation prior to the effective date of this local law, the operator of such machine shall, within ninety days of the effective date of this local law, comply with the registration provisions of this section; provided, however, that such registration, and each registration thereafter, shall be considered and charged a fee for a renewal under subdivision (d) of this section.

§ 21-22.5 Requirements for operation of automated teller machines registered in accordance with this title

(a) Notwithstanding any other provision of this law, no person or entity shall permit an unenclosed automated teller machine to be located on his or her premises without having obtained proof that such machine has been registered in accordance with the provisions of this title.

(b) Each operator of an automated teller machine registered in accordance with this Title shall:

(i) comply with all EFT network operating rules and all local, state, and federal regulations governing the operations of its private automated teller machines;

(ii) maintain comprehensive and verifiable inventory procedures and establish controls that identify the location of all of the private automated teller machines that it owns and operates in Nassau County;

(iii) when locating and installing an automated teller machine on premises owned by another person or entity, operate such machine within Nassau County only pursuant to an automated teller machine placement agreement with a person or entity who is legally authorized to conduct business in New York State and Nassau County. Such agreement shall provide the operator's full legal name and any trade name under which business is conducted, along with the operator's federal and New York income tax identification numbers, or in the case of a sole

proprietor, his or her social security number, and shall be filed with the Commissioner of Consumer Affairs; and

(iv) post in a conspicuous place on the front of each private automated teller machine a notice in at least 24-point type setting forth: (1) the name of the operator of an automated teller machine registered in accordance with this Title, as well as the name and phone number of the merchant on whose premises such machine is located; (2) the telephone number of the commissioner of Consumer Affairs; and (3) the language: "Protect your PIN. Report a lost or stolen card immediately."

(c) Every operator of an automated teller machine, and any person or entity on whose premises any such machine is located and installed, shall maintain such records in relation to such machine as the commissioner of Consumer Affairs may require.

§ 21-22.6 Safety rules for automated teller machines

Every person or entity shall maintain the following security measures with respect to each of the automated teller machines located and installed on his or her property:

- a) Adequate lighting, which permits a person using an automated teller machine to readily and easily see all other persons in the immediate vicinity of such machine; and
- b) A reflective mirror or mirrors, either affixed to or standing independently of each automated teller machine, placed in such a manner as to permit a person using such machine to see behind them as they conduct their transactions.

§ 21-22.7 No impact on banking regulations; not to supersede EFT regulations

This local law shall have no impact on or intent to affect bank accounts, federal and state banking procedures or banking regulations, and shall not be interpreted or construed to modify, amend, suspend, supersede, or cancel any EFT network rule or regulation.

§ 21-22.8 Facilities not subject to this article; exemptions

The provisions of this title shall not apply to any automated teller machine facility located in an area within the dominion and control of a banking institution, including any state or federally chartered bank, trust company, savings bank, savings and loan association, or credit union, that operates one or more automated teller machines within the state of New York.

§ 21-22.9 No waiver

No requirement of this title shall be waived.

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§ 21-22.10 Penalties

(a) Any operator of an automated teller machine found to be in violation of any provision of this title shall be subject to a civil penalty of up to five thousand dollars (\$5,000), which may be recovered following notice and an opportunity to be heard in a proceeding before the Commissioner of Consumer Affairs. Each period of fifteen days that such violation remains uncorrected shall constitute a separate distinct offense.

(b) Any person or entity who permits an automated teller machine to be located and installed and to operate on his or her premises in violation of any provision of this title shall be subject to a civil penalty of up to two hundred fifty dollars (\$250), which may be recovered following notice and an opportunity to be heard in a proceeding before the Commissioner of Consumer Affairs. Each period of fifteen days that such violation remains uncorrected shall constitute a separate distinct offense.

(c) Any civil penalty imposed pursuant to this section shall not limit or preclude any cause of action available to any person or entity injured or aggrieved by such action.

§ 21-22.11 Reporting to federal authorities; guidance to victims

The Commissioner of Consumer Affairs or the Commissioner of Police of Nassau County shall, upon learning of an instance of possible identity theft, report such information to the Federal Trade Commission or other appropriate federal and state authorities, and provide guidance to victims.

§ 21-22.12 Identity theft public education and awareness effort

The Treasurer shall receive all monies resulting from the operation of this title and shall allocate and credit such monies, as follows:

All of the monies received from the collection of fees and the imposition of fines pursuant to this title shall be credited to the General Fund for the Office of Consumer Affairs to reimburse such office for the administration and enforcement of this title.

§ 21-22.13 County not liable

Nothing in this title shall be deemed to impose any civil or criminal liability upon Nassau County or any of its officials, employees or agencies.

§ 2. Severability

If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity or

circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, effect or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

§ 3. Effective Date

This local law shall become effective one hundred twenty (120) days after it shall have become a law.

APPROVED

MAR 11 2005

County Executive

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