

SENATE No. 00428

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 bill:

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

PETITION OF:

NAME:

Brian A. Joyce

DISTRICT/ADDRESS:

Norfolk, Bristol, and Plymouth

SENATE No. 00428

By Mr. Joyce, petition (accompanied by bill, Senate, No. 428) of Joyce for legislation to provide for public safeguards and protections for users of automated teller machines [Joint Committee on Financial Services].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ SENATE
□ , NO. 477 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

1 SECTION 1. Section 1 of Chapter 167B of the General Laws, as appearing in the 2002
2 Official Edition, is hereby amended by adding after the word "agreement" in line 20 the
3 following: —

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

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

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

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

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

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

24 SECTION 2. Section 1 of Chapter 167B of the General Laws, as so appearing, is
25 hereby further amended by adding after the word "functions" in line 24 the following:—

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

28 SECTION 3. Section 1 of Chapter 167B of the General Laws, as so appearing, is
29 hereby further amended by adding after the word "function" in line 34 the following:

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

39 SECTION 4. Section 1 of Chapter 167B of the General Laws, as so appearing, is
40 hereby further amended by adding after the word "services" in line 109 the following:—

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

42 SECTION 5. Section 1 of Chapter 167B of the General Laws, as so appearing, is
43 hereby further amended by adding after the word "intervals" in line 139 the following:—

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

46 SECTION 6. Chapter 167B is hereby further amended by adding at the end thereof the
47 following new sections:—

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

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

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

65 (c) entry doors equipped with fire exit bolts

66 (d) adequate lighting

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

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

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

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

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

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

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

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

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

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

92 All banks operating in the Commonwealth which provide outside and enclosed
93 automated teller machines shall provide an emergency telephone which provides access to a 911
94 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 (b), (c), (e), and (g) of this subdivision shall not apply to any automated teller
99 machine facility located on an exterior wall of a building open to the outdoor air.

100 (II) Special commission. There is hereby established a special commission to study the
101 technological feasibility of the limited access entry door requirements of paragraph (b) of
102 subdivision I of this section. Such 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 (III) Any bank which operates an automated teller machine facility shall file a list of
111 such 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 (IV) Violations and penalties. (a) A bank found to be in violation of any provision of
117 subdivision I of this section shall be subject to a civil penalty of not more than two hundred fifty
118 dollars. Each violation of any provision of subdivision I of this section with respect to a
119 particular automated teller machine facility shall be considered a separate violation thereof.

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

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

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

134 (V) Consumer safety information. Upon the original issuance or reissuance of an
135 automated teller machine facility access card or code, or any other means or device permitting

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

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

153 (VII) Enforcement statistics.

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

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

159 (VIII) 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.