SENATE DOCKET, NO. 1250 FILED ON: 1/20/2011

SENATE . . . . . No. 428

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*

SENATE DOCKET, NO. 1250 FILED ON: 1/20/2011

SENATE . . . . . No. 428

By Mr. Joyce, a petition (accompanied by bill, Senate, No. 428) 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. *477* OF 2009-2010.]

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 2002 Official Edition, is hereby amended by adding after the word "agreement" in line 20 the following: —

"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,
26 is hereby further amended by adding after the word "functions" in line 24 the following:—

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,
30 is hereby further amended by adding after the word "function" in line 34 the following:

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,
41 is hereby further amended by adding after the word "services" in line 109 the following:—

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,
44 is hereby further amended by adding after the word "intervals" in line 139 the following:—

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 is hereby further amended by adding at the end
48 thereof the following new sections:—

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

(a) 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. Such 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;

(b) Within six months after the submission of the report of the temporary task force required by the subdivision of this section, entry doors equipped with locking devices which 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;

(c) entry doors equipped with fire exit bolts

(d) adequate lighting

(e) 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;

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

(g) 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;

(h) 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;

(iv) customers should place withdrawn cash securely upon their person before exiting the automated teller machine facility;

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

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

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

Paragraphs (b), (c), (e), and (g) of this subdivision shall not apply to any automated teller machine facility located on an exterior wall of a building open to the outdoor air.

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

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

(IV) Violations and penalties. (a) A bank found to be in violation of any provision of subdivision I of this section shall be subject to a civil penalty of not more than two

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

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

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

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

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

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

155 (VII) Enforcement statistics.

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

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

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