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SENATE BILL 223

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

ROMAN M. MAES III

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; PROVIDING FOR PUBLIC ASSISTANCE BENEFIT ACCOUNTS IN THE REMOTE FINANCIAL SERVICE UNIT ACT; AMENDING A SECTION OF THE REMOTE FINANCIAL SERVICE UNIT ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 58-16-3 NMSA 1978 (being Laws 1990, Chapter 123, Section 3, as amended) is amended to read:

"58-16-3. DEFINITIONS. --

A. As used in the Remote Financial Service Unit Act:

(1) "account" means an account maintained by a cardholder or merchant with a financial institution, or with an agency or department of the state, which term shall include demand deposit, checking, negotiable order of withdrawal (NOW)

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[bracketed material] = delete

1 share, share draft, public assistance benefit or other
2 consumer or asset accounts or pre-authorized credit card
3 accounts;

4 (2) "account transfer" means a transaction
5 that enables movement of funds by a cardholder from one
6 account to another account within the same financial
7 institution;

8 (3) "acquirer" means the intercept processor
9 that acquires financial data relating to a transaction from a
10 card acceptor or a merchant and puts the data into a network
11 system and means "agent acquirer" unless specifically
12 indicated otherwise;

13 (4) "agent acquirer" means any financial
14 institution acting as an authorized agent of the acquirer in
15 enabling financial data relating to a POS transaction to be
16 acquired by the acquirer from a card acceptor or merchant and
17 means "acquirer" unless specifically indicated otherwise;

18 (5) "ATM transaction" means any one or more
19 of the following transactions undertaken at an automated
20 teller machine (ATM):

- 21 (a) a cash advance from an account;
- 22 (b) a cash advance from an authorized
23 line of credit;
- 24 (c) a deposit to an account;
- 25 (d) a balance inquiry;

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1 (e) an account transfer; and
2 (f) a normal financial transaction for
3 a cardholder involving the issuance of non-cash or
4 cash-equivalent items; provided, however, that normal
5 financial transactions at an ATM will expressly exclude any
6 POS transaction;

7 (6) "authorization" means the issuance of
8 approval, by or on behalf of the financial institution holding
9 the cardholder's account, to complete a transaction initiated
10 or authorized by the cardholder;

11 (7) "automated teller machine" or "ATM" means
12 an unmanned device that is activated by the cardholder through
13 a specially prepared card or by the transmission of a code via
14 a keyboard or keyset or both and is capable of one or more of
15 the following transactions:

16 (a) dispensing cash to any cardholder
17 from an account or against a preauthorized line of credit;

18 (b) accepting deposits;

19 (c) account transfers;

20 (d) satisfying a balance inquiry in the
21 cardholder's account or accounts; and

22 (e) conducting normal financial
23 transactions involving the issuance of non-cash or
24 cash-equivalent items; provided, however, that normal
25 financial transactions at an ATM will expressly exclude a

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1 transaction that can only be initiated and completed at a POS
2 terminal;

3 (8) "balance inquiry" means a transaction
4 that permits a cardholder to obtain the current balance of the
5 cardholder's account or accounts;

6 (9) "card" means a plastic card or other
7 instrument or any other access device issued by a financial
8 institution or by an agency or department of the state to a
9 cardholder that enables the cardholder to have access to and
10 that processes transactions against one or more accounts, and
11 the term shall be used when referring either to an ATM access
12 card, an EBT card, a debit card or a credit card identifying a
13 cardholder who has established a pre-approved credit line or
14 public assistance benefit with the issuer of the credit card;

15 (10) "card acceptor" means the party
16 accepting the card and presenting transaction data to an
17 acquirer;

18 (11) "cardholder" means a person to whom a
19 card has been issued by a financial institution or who is
20 authorized to use the card;

21 (12) "cash advance" means any transaction
22 resulting in a cardholder receiving cash, whether initiated
23 through an ATM or a POS terminal;

24 (13) "chargeback" means the credit of all or
25 a portion of an amount previously posted to a cardholder's

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1 account;

2 (14) "clearing account" means an account or
3 several accounts maintained for the purpose of settlement and
4 payment of fees to the network manager;

5 (15) "credit" means a claim for funds by the
6 cardholder for the credit of the cardholder's account and
7 provides details of funds acknowledged as payable by the
8 acquirer or card acceptor to the issuer for credit to the
9 cardholder's account;

10 (16) "credit card cash advance" means a cash
11 loan obtained by a cardholder against a pre-authorized line of
12 credit through presentation of a card;

13 (17) "data interchange" means the exchange of
14 transaction data, authorization requests, transaction records
15 or other data between intercept processors and acquirers and
16 issuers through a shared system or network;

17 (18) "debit" means a transaction initiated by
18 a cardholder that results in the debit to the cardholder's
19 account, through use of a card or otherwise, and results in a
20 claim for funds made by the acquirer or card acceptor against
21 the issuer;

22 (19) "director" means the director of the
23 financial institutions division of the regulation and
24 licensing department;

25 (20) "electronic benefit transfer" or "EBT"

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1 means a system administered by an agency or department of the
2 state designed to provide a public assistance benefit or other
3 benefit of money value provided by a department or agency of
4 the state through POS terminals;

5 (21) "electronic benefit transfer card" or
6 "EBT card" means a plastic card or any other access device
7 issued by an agency or department of the state to a cardholder
8 that enables the cardholder to have access to and that
9 processes transactions against one or more public assistance
10 benefit accounts or other benefit accounts;

11 ~~[(20)]~~ (22) "electronic funds transfer" or
12 "EFT" means a system designed to facilitate the exchange of
13 monetary value via electronic media utilizing electronic or
14 mechanical signals or impulses or a combination of electronic
15 or mechanical impulses and audio, radio or microwave
16 transmissions;

17 ~~[(21)]~~ (23) "financial institution" means an
18 insured state or national bank, a state or federal savings and
19 loan association or savings bank, a state or federal credit
20 union or authorized branches of each of the foregoing;

21 ~~[(22)]~~ (24) "in-state financial
22 ~~[institutions]~~ institution" means a financial institution
23 authorized to engage in and engaged in business in New Mexico
24 and having its main office or a staffed branch within the
25 state;

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1 [~~(23)~~] (25) "intercept processor" means any
2 electronic data processor operating for a financial
3 institution that passes transactions;

4 [~~(24)~~] (26) "issuer" means a financial
5 institution that issues cards or accepts transactions for a
6 card, is the acceptor of a transaction and is typically, but
7 not always, the entity that maintains the account relationship
8 with the cardholder;

9 [~~(25)~~] (27) "lobby ATM "or "teller-line ATM"
10 means any ATM located within the lobby of a financial
11 institution or in its teller line, access to which is
12 available only during regular banking hours;

13 [~~(26)~~] (28) "merchant" means a seller of
14 goods or services, retailer or other person who, pursuant to
15 an agreement with a financial institution, agrees to accept or
16 causes its outlets to accept cards for EFT transactions when
17 properly presented, is usually a card acceptor and is a seller
18 of goods and services who is regularly and principally engaged
19 in the business of selling, leasing or renting goods, selling
20 or leasing services for any purpose or selling insurance,
21 whether the business is a wholesale or retail business and
22 whether the goods or services are for business, agricultural,
23 personal, family or household purposes. "Merchant" includes a
24 professional licensed by the state of New Mexico, but does not
25 include financial institutions;

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1 [~~(27)~~] (29) "modem" is a contraction of
2 "modulator-demodulator" and means a functional unit that
3 enables digital data to be transmitted over analog
4 transmission facilities such as telephone lines, radio or
5 microwave transmissions;

6 [~~(28)~~] (30) "network" means a
7 computer-operated system of transmitting items and messages
8 between ATM or POS terminals, intercept processor and
9 financial institutions, and settling transactions between
10 financial institutions, and includes without limitation, ATMs,
11 POS terminals, all related computer hardware and software,
12 modems, logos and service marks;

13 [~~(29)~~] (31) "network manager" means the
14 person managing the business of a network;

15 [~~(30)~~] (32) "off-line" means not on-line;

16 [~~(31)~~] (33) "[~~off-premise~~] off-premises ATM"
17 means ATMs installed away from the building or lobby of a
18 financial institution by a distance of not less than five
19 hundred feet;

20 [~~(32)~~] (34) "on-line" means a system in which
21 all input data enters the computer at a financial institution,
22 an intercept processor or the network from its point of origin
23 and that is capable of transmitting information back to the
24 point of origin after all input data is processed;

25 [~~(33)~~] (35) "[~~on-premise~~] on-premises ATM"

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1 means an ATM that stands in or immediately adjacent to the
2 financial institution's building, such as in the financial
3 institution's lobby, through the wall or a drive-up ATM within
4 five hundred feet of the financial institution's building;

5 [~~(34)~~] (36) "person" means an individual,
6 partnership, joint venture, corporation or other legal entity
7 however organized;

8 [~~(35)~~] (37) "personal identification number"
9 or "PIN" means a series of numbers or letters selected for or
10 by the cardholder and used by the cardholder as a code or
11 password in conjunction with a card to perform a transaction;

12 [~~(36)~~] (38) "point-of-sale terminal" or "POS
13 terminal" means an information processing device or machine,
14 located upon the premises occupied by one or more merchants,
15 through which transaction messages are initiated and
16 electronically transmitted to an acquirer to effectuate a POS
17 transaction and that accepts debit cards, [~~and~~] credit cards
18 and EBT cards;

19 [~~(37)~~] (39) "POS transaction" means any of
20 the following transactions undertaken at a POS terminal:

- 21 (a) purchases;
- 22 (b) purchases that include cash back to
23 the cardholder;
- 24 (c) cash advances at POS terminals;
- 25 (d) receipt of a public assistance

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1 benefit at POS terminals;

2 [~~(d)~~] (e) returned item transaction
3 message resulting in a credit to the cardholder's account;

4 [~~(e)~~] (f) a credit;

5 [~~(f)~~] (g) an authorization;

6 [~~(g)~~] (h) chargebacks at POS terminals;

7 [~~(h)~~] (i) card verification whereby the
8 validity of a card is determined at POS terminals;

9 [~~(i)~~] (j) balance inquiries at POS
10 terminals; and

11 [~~(j)~~] (k) force post financial advice
12 at POS terminals whereby any other transaction authorized by
13 an issuer-approved stand-in processor requires settlement
14 resulting in a debit to the cardholder's account.

15 Nothing in this paragraph shall be construed to include
16 credit card transactions;

17 (40) "public assistance benefit" means a
18 benefit of monetary value available from various state and
19 federal public benefit programs administered through or
20 enforced by an agency or department of the state;

21 [~~(38)~~] (41) "purchase" means a transaction
22 that, if approved, results in a debit transaction for the
23 payment of goods and services or may include cash paid to the
24 cardholder of some part of the amount of the transaction;

25 [~~(39)~~] (42) "receipt" means a hard-copy

Underscored material = new
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1 description of a transaction:

2 (a) for the purposes of the Remote
3 Financial Service Unit Act, if the transaction is an ATM
4 transaction, the receipt shall contain, at a minimum: 1) the
5 date of the ATM transaction; 2) the amount of the ATM
6 transaction, if any; 3) the account number; 4) the type of
7 account accessed; 5) the location of the ATM used in the ATM
8 transaction; 6) the identity of any party or account to which
9 funds are transferred; and 7) the type of ATM transaction
10 completed; and

11 (b) for the purposes of the Remote
12 Financial Service Unit Act, if the transaction is a POS
13 transaction, the receipt shall contain, at a minimum: 1) the
14 date of the POS transaction; 2) the amount of the POS
15 transaction, if any; 3) the account number; 4) the type of
16 account accessed; 5) the merchant's name and location; and
17 6) the type of POS transaction completed;

18 [~~(40)~~] (43) "remote financial service unit"
19 means a POS terminal or an ATM;

20 [~~(41)~~] (44) "returned item transaction
21 message" means a credit message generated by the acquirer or
22 by the merchant that returns the value of the returned item to
23 the cardholder's account;

24 [~~(42)~~] (45) "settlement" means the process by
25 which funds are transferred between financial institutions,

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1 intercept processors or networks in the flow of a transaction
2 or in the payment of fees associated with the transaction;

3 [~~(43)~~] (46) "shared ATM terminals" or "shared
4 POS terminals" means ATM or POS terminals that are shared
5 among financial institutions by formal agreement for the
6 purposes of cardholder convenience, reduction of capital
7 investment and marketing advantage;

8 [~~(44)~~] (47) "single subscriber terminal"
9 means any terminal or set of terminals used to connect a
10 single customer of a financial institution to [~~its~~] his
11 financial institution through which EFT messages are sent and
12 completed, other than transactions;

13 [~~(45)~~] (48) "switch" means a routing
14 mechanism and any device attached thereto that is necessary
15 for the processing of a transaction used to communicate
16 information and transactions among participating financial
17 institutions or their intercept processors in a shared system
18 or network;

19 [~~(46)~~] (49) "transaction" means a collection
20 of electronic messages concluded by:

21 (a) a debit to or a credit from an
22 account;

23 (b) a balance inquiry;

24 (c) the consummation of a normal
25 financial transaction; or

Underscored material = new
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1 (d) a rejected attempt of any one of
2 those matters provided in Subparagraphs (a) through (c) of
3 this paragraph;

4 [~~(47)~~] (50) "unauthorized use of the card of
5 another" means the utilization of the card in or through a
6 remote financial service unit to affect the balance of or
7 obtain information concerning the account of the cardholder by
8 a person other than the cardholder, which person does not have
9 the permission of the cardholder for such use; and

10 [~~(48)~~] (51) "unauthorized withdrawal from the
11 account of another" means the debiting of or removal of funds
12 from a cardholder's account, accomplished by means of the
13 utilization of a remote financial service unit by a person
14 other than the cardholder, which person does not have actual,
15 implied or apparent authority for the debiting or removal and
16 from which debiting or removal the cardholder receives no
17 benefit.

18 B. [~~(1)~~] Any of the information provided pursuant
19 to Subparagraphs (a) and (b) of Paragraph [~~(39)~~] (42) of
20 Subsection A of this section may be provided using codes,
21 numbers or other uniform explanations so long as they are
22 explained elsewhere on the receipt.

23 [~~(2)~~] C. No receipt shall be required in any
24 transaction involving a negotiable instrument that will itself
25 become a receipt.

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[~~C-~~] D. Any term used in the Remote Financial Service Unit Act but not specifically defined shall have the meaning given to that term by the Uniform Commercial Code. "

Section 2. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 1998.

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1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

3
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5
6 January 31, 1998

7
8 Mr. President:

9
10 Your COMMITTEES' COMMITTEE, to whom has been referred

11
12 SENATE BILL 223

13
14 has had it under consideration and finds same to be GERMANE,
15 pursuant to Senate Executive Message No. 26, and thence referred to
16 the CORPORATIONS & TRANSPORTATION COMMITTEE.
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19 Respectfully submitted,

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25 Manny M. Aragon, Chairman

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Adopted _____ Not Adopted _____

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(Chief Clerk)

(Chief Clerk)

Date _____

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1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

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4
5 February 6, 1998

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7 Mr. President:

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9 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to whom
10 has been referred

11
12 SENATE BILL 223

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14 has had it under consideration and reports same with recommendation
15 that it DO PASS, and thence referred to the WAYS & MEANS
16 COMMITTEE.

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18 Respectfully submitted,

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24 Roman M. Maes, III, Chairman

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Adopted _____ Not Adopted _____

1 (Chief Clerk)

(Chief Clerk)

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4 Date _____

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7 The roll call vote was 8 For 0 Against

8 Yes: 8

9 No: 0

10 Excused: Fidel, Robinson

11 Absent: None

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FORTY-THIRD LEGISLATURE

SECOND SESSION, 1998

SB 223/a

February 13, 1998

Mr. President:

Your WAYS AND MEANS COMMITTEE, to whom has been referred

SENATE BILL 223

has had it under consideration and reports same with recommendation
that it DO PASS, amended as follows:

1. On page 4, line 12, strike "an EBT card,".

2. On page 4, lines 13 and 14, strike "or public assistance
benefit" and insert "or by an agency or department of the state".

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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SWMC/SB 223

Page 20

3. On page 4, line 14, after "card" insert "or an EBT card issued to a recipient of public assistance benefits".

4. On page 8, line 24, after "processed" insert "and requires a personal identification number".

5. On page 9, line 25, and on page 10, line 1, strike:
" (d) receipt of a public assistance benefit at POS terminals; ".

6. Reletter the succeeding subparagraphs accordingly.

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

SWMC/SB 223

Page 21

Respectfully submitted,

Carlos R. Cisneros, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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SWMC/SB 223

Page 22

No: 0

Excused: Kidd, Nava

Absent: None

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