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HOUSE BILL 54

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Miguel P. Garcia

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 a state agency, which term shall include demand deposit, checking, negotiable order of withdrawal (NOW) share, share

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

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

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

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

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

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

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

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

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

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

17 (b) accepting deposits;

18 (c) account transfers;

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

21 (e) conducting normal financial
22 transactions involving the issuance of non-cash or
23 cash-equivalent items; provided, however, that normal
24 financial transactions at an ATM will expressly exclude a
25 transaction that can only be initiated and completed at a POS

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1 terminal;

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

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

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 a state agency designed to
2 provide a public assistance benefit or other benefit of money
3 value provided by a state agency through POS terminals;

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

10 ~~(20)~~ (22) "electronic funds transfer" or
11 "EFT" means a system designed to facilitate the exchange of
12 monetary value via electronic media utilizing electronic or
13 mechanical signals or impulses or a combination of electronic
14 or mechanical impulses and audio, radio or microwave
15 transmissions;

16 ~~(21)~~ (23) "financial institution" means an
17 insured state or national bank, a state or federal savings and
18 loan association or savings bank, a state or federal credit
19 union or authorized branches of each of the foregoing;

20 ~~(22)~~ (24) "in-state financial
21 ~~institutions~~ institution" means a financial institution
22 authorized to engage in and engaged in business in New Mexico
23 and having its main office or a staffed branch within the
24 state;

25 ~~(23)~~ (25) "intercept processor" means any

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1 electronic data processor operating for a financial
2 institution that passes transactions;

3 [~~(24)~~] (26) "issuer" means a financial
4 institution that issues cards or accepts transactions for a
5 card, is the acceptor of a transaction and is typically, but
6 not always, the entity that maintains the account relationship
7 with the cardholder;

8 [~~(25)~~] (27) "lobby ATM" or "teller-line ATM"
9 means any ATM located within the lobby of a financial
10 institution or in its teller line, access to which is
11 available only during regular banking hours;

12 [~~(26)~~] (28) "merchant" means a seller of
13 goods or services, retailer or other person who, pursuant to
14 an agreement with a financial institution, agrees to accept or
15 causes its outlets to accept cards for EFT transactions when
16 properly presented, is usually a card acceptor and is a seller
17 of goods and services who is regularly and principally engaged
18 in the business of selling, leasing or renting goods, selling
19 or leasing services for any purpose or selling insurance,
20 whether the business is a wholesale or retail business and
21 whether the goods or services are for business, agricultural,
22 personal, family or household purposes. "Merchant" includes a
23 professional licensed by the state of New Mexico, but does not
24 include financial institutions;

25 [~~(27)~~] (29) "modem" is a contraction of

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1 "modulator-demodulator" and means a functional unit that
2 enables digital data to be transmitted over analog
3 transmission facilities such as telephone lines, radio or
4 microwave transmissions;

5 [~~(28)~~] (30) "network" means a
6 computer-operated system of transmitting items and messages
7 between ATM or POS terminals, intercept processor and
8 financial institutions, and settling transactions between
9 financial institutions, and includes without limitation, ATMs,
10 POS terminals, all related computer hardware and software,
11 modems, logos and service marks;

12 [~~(29)~~] (31) "network manager" means the
13 person managing the business of a network;

14 [~~(30)~~] (32) "off-line" means not on-line;

15 [~~(31)~~] (33) "[~~off-premise~~] off-premises ATM"
16 means ATMs installed away from the building or lobby of a
17 financial institution by a distance of not less than five
18 hundred feet;

19 [~~(32)~~] (34) "on-line" means a system in which
20 all input data enters the computer at a financial institution,
21 an intercept processor or the network from its point of origin
22 and that is capable of transmitting information back to the
23 point of origin after all input data is processed and requires
24 a personal identification number;

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) returned item transaction message

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1 resulting in a credit to the cardholder's account;

2 (e) a credit;

3 (f) an authorization;

4 (g) chargebacks at POS terminals;

5 (h) card verification whereby the

6 validity of a card is determined at POS terminals;

7 (i) balance inquiries at POS terminals;

8 and

9 (j) force post financial advice at POS

10 terminals whereby any other transaction authorized by an

11 issuer-approved stand-in processor requires settlement

12 resulting in a debit to the cardholder's account.

13 Nothing in this paragraph shall be construed to include
14 credit card transactions;

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

19 [~~(38)~~] (41) "purchase" means a transaction
20 that, if approved, results in a debit transaction for the
21 payment of goods and services or may include cash paid to the
22 cardholder of some part of the amount of the transaction;

23 [~~(39)~~] (42) "receipt" means a hard-copy
24 description of a transaction:

25 (a) for the purposes of the Remote

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

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

16 [~~(40)~~] (43) "remote financial service unit"
17 means a POS terminal or an ATM;

18 [~~(41)~~] (44) "returned item transaction
19 message" means a credit message generated by the acquirer or
20 by the merchant that returns the value of the returned item to
21 the cardholder's account;

22 [~~(42)~~] (45) "settlement" means the process by
23 which funds are transferred between financial institutions,
24 intercept processors or networks in the flow of a transaction
25 or in the payment of fees associated with the transaction;

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1 [~~(43)~~] (46) "shared ATM or POS terminals"
2 means ATM or POS terminals that are shared among financial
3 institutions by formal agreement for the purposes of
4 cardholder convenience, reduction of capital investment and
5 marketing advantage;

6 [~~(44)~~] (47) "single subscriber terminal"
7 means any terminal or set of terminals used to connect a
8 single customer of a financial institution to [~~its~~] his
9 financial institution through which EFT messages are sent and
10 completed, other than transactions;

11 [~~(45)~~] (48) "switch" means a routing
12 mechanism and any device attached thereto that is necessary
13 for the processing of a transaction used to communicate
14 information and transactions among participating financial
15 institutions or their intercept processors in a shared system
16 or network;

17 [~~(46)~~] (49) "transaction" means a collection
18 of electronic messages concluded by:

19 (a) a debit to or a credit from an
20 account;

21 (b) a balance inquiry;

22 (c) the consummation of a normal
23 financial transaction; or

24 (d) a rejected attempt of any one of
25 those matters provided in Subparagraphs (a) through (c) of

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1 this paragraph;

2 [~~(47)~~] (50) "unauthorized use of the card of
3 another" means the utilization of the card in or through a
4 remote financial service unit to affect the balance of or
5 obtain information concerning the account of the cardholder by
6 a person other than the cardholder, which person does not have
7 the permission of the cardholder for such use; and

8 [~~(48)~~] (51) "unauthorized withdrawal from the
9 account of another" means the debiting of or removal of funds
10 from a cardholder's account, accomplished by means of the
11 utilization of a remote financial service unit by a person
12 other than the cardholder, which person does not have actual,
13 implied or apparent authority for the debiting or removal and
14 from which debiting or removal the cardholder receives no
15 benefit.

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

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

24 [~~(6)~~] D. Any term used in the Remote Financial
25 Service Unit Act but not specifically defined shall have the

1 meaning given to that term by the Uniform Commercial Code."

2 Section 2. EFFECTIVE DATE. --The effective date of the
3 provisions of this act is July 1, 1999.

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1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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6 January 26, 1999

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8 Mr. Speaker:

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10 Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to
11 whom has been referred

12
13 HOUSE BILL 54

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15 has had it under consideration and reports same with
16 recommendation that it DO PASS, and thence referred to the
17 BUSINESS & INDUSTRY COMMITTEE.

18 Respectfully submitted,

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22 _____
23 Patsy Trujillo Knauer, Chairman
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HCPAC/HB 54

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

Excused: None

Absent: None

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FIRST SESSION, 1999

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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March 7, 1999

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Mr. President:

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Your PUBLIC AFFAIRS COMMITTEE, to whom has been

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referred

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HOUSE BILL 54

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has had it under consideration and reports same with

17

recommendation that it DO PASS, and thence referred to the

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CORPORATIONS & TRANSPORTATION COMMITTEE.

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Respectfully submitted,

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Shannon Robinson, Chairman

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FORTY-FOURTH LEGISLATURE
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Adopted _____ Not

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(Chief Clerk)

(Chief Clerk)

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Date _____

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The roll call vote was 6 For 0 Against

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Yes: 6

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No: 0

14

Excused: Boitano, Howes, Ingle

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Absent: None

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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March 11, 1999

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Mr. President:

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Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
whom has been referred

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HOUSE BILL 54

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has had it under consideration and reports same with
recommendation that it DO PASS.

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Respectfully submitted,

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Roman M. Maes, Chairman

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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Adopted _____ Not

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Adopted _____

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(Chief Clerk)

(Chief Clerk)

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Date _____

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The roll call vote was 6 For 0 Against

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Yes: 6

13

No: 0

14

Excused: Aragon, McKibben, Rawson, Robinson

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Absent: None

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