

1 *Senate* BILL NO. *170*
 2 INTRODUCED BY *Turnage Hallden Boylan*
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE USE OF
 5 ELECTRONIC BANKING FACILITIES AND ELECTRONIC TRANSFERS OF
 6 FUNDS BY BANKS, SAVINGS AND LOAN ASSOCIATIONS, AND CREDIT
 7 UNIONS; AMENDING SECTION 5-1028, R.C.M. 1947; AND PROVIDING
 8 AN EFFECTIVE DATE."
 9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Short title. This act shall be known and
 12 may be cited as the "Montana Electronic Funds Transfer Act".

13 Section 2. Findings and purpose. (1) The legislature
 14 has determined that development of electronic funds transfer
 15 systems is a technology which promises convenience and
 16 efficiency for all types of financial depository
 17 institutions and their customers. The legislature further
 18 finds that this technology threatens to proliferate rapidly;
 19 that there presently exists no adequate governmental
 20 regulation, federal or state, to control orderly development
 21 of this technology to prevent market domination and
 22 monopolies, to provide parity for all financial depository
 23 institutions, to provide mandatory sharing of such systems,
 24 and to assure nondiscriminatory access to such systems at
 25 nondiscriminatory rates on the part of all who are involved

1 in the use of this technology. This act shall apply to
 2 financial institutions chartered under the United States
 3 Code, to the extent permitted by such code.

4 (2) The legislature finds need to control location and
 5 structural placement of electronic terminals in order to:

6 (a) assure access, protection, and convenience to the
 7 public using them;

8 (b) assure that structural placement of automated
 9 teller machines are designed to provide maximum protection
 10 to the terminal and its contents from vandalism, tampering,
 11 and theft and, since such machines shall be unmanned, to
 12 locate them in a manner designed to permit maximum
 13 protection of the public using them;

14 (c) prevent traffic congestion at vehicle parking lots
 15 and pedestrian concourses and sidewalks;

16 (d) prevent vehicle backup onto public highways;

17 (e) prevent undue interference with nearby businesses;

18 (f) locate automated teller machines in places
 19 permitting maximum sharing of their use to all operators
 20 desiring to use them under conditions herein stated.

21 (3) The legislature further finds that in the present
 22 state of the technology there is substantial potential for
 23 error and misuse and that these systems, including various
 24 types of terminals, telecommunications between them and
 25 computer and switching equipment, or transport of

1 electronically recorded materials from the terminals to such
 2 equipment, and the computers and switches themselves are
 3 subject to malfunction, vandalism, fraud, theft, and other
 4 abuses and accidents, all indicating the obvious need for
 5 the exercise of the police power of this state to protect
 6 its citizens and their property in the use of this
 7 technology. Location of terminals is an important factor in
 8 such protection.

9 (4) The legislature further finds that commercial
 10 banks, savings and loan associations, and credit unions,
 11 chartered by both federal and state governments, are in
 12 competition for deposits, share accounts, and loans and
 13 other financial business of the state's citizens; that each
 14 has the capability of utilizing electronic funds transfer
 15 systems; and that unless there is controlled use of these
 16 systems there will be strong potentials for destructive
 17 competition and market domination by some financial
 18 institutions over others, increasing the likelihood for
 19 misuse and error, duplication and waste, and resulting
 20 increased costs.

21 (5) To meet these needs, the legislature finds that
 22 state authority must provide for authorizing such systems;
 23 for speedy and fair remedies for losses resulting from
 24 malfunction, misuse, or error; and for penalties for
 25 violation of this act.

1 Section 3. Definitions. As used in this act, the
 2 following definitions shall apply unless the context
 3 otherwise requires:

4 (1) "Electronic funds transfer" means debiting or
 5 crediting a depositor's account or otherwise transacting any
 6 business in a financial institution by electronic impulse
 7 messages, authorized under this act, transmitted directly by
 8 wire or otherwise or stored on magnetic tape or equivalent
 9 technologies, or otherwise, and processing the adjustments
 10 without regular and customary direct human intervention.
 11 Nothing in this subsection prevents a financial institution
 12 from processing its bookkeeping entries through normal human
 13 intervention.

14 (2) "Financial institution" means a bank chartered
 15 under Title 5, chapter 6, a bank chartered under the
 16 National Banking Acts in Title 12 of the United States Code,
 17 a building and loan association chartered under Title 7 of
 18 this code, a savings and loan association chartered under
 19 the Home Owners' Loan Act in Title 12 of the United States
 20 Code, a credit union chartered under Title 14, chapter 6, of
 21 this code, or a credit union chartered under the Federal
 22 Credit Union Act in Title 12 of the United States Code.

23 (3) (a) "Satellite terminal" means any machine or
 24 device located off the premises of a financial institution
 25 which a financial institution or its customers may use to

1 carry out electronic funds transfers.

2 (b) "Satellite terminal" includes:

3 (i) automated teller machine, which means a satellite
4 terminal to make electronic funds transfers, located off the
5 premises of financial institutions, operated by customers of
6 financial institutions without assistance, activated by a
7 unique identification device and personal identification
8 number;

9 (ii) point-of-sale terminal, which means a satellite
10 terminal located on the premises of a merchant, operated by
11 a merchant or his employees solely to debit a customer's
12 account in a financial institution or solely to add to a
13 customer's revolving credit account balance and solely to
14 credit the merchant's account commensurately for
15 transactions in goods or services. A point-of-sale terminal
16 need not be activated by a unique personal identification
17 device.

18 (c) The definition of "satellite terminal" does not
19 include, and nothing in this act may be construed to apply
20 to:

21 (i) an automated teller machine located on the
22 premises of a financial institution; or

23 (ii) an automated clearinghouse or any equivalent
24 system designed to transfer funds between financial
25 institutions.

1 (4) "Premises" means those locations where by
2 applicable law financial institutions are authorized to
3 maintain a principal place of business and other offices for
4 the conduct of their respective businesses; the term
5 includes a detached drive-in or walk-up facility approved
6 under 5-1028.

7 (5) "Personal identification number" means a
8 combination of numerals or letters selected for a customer
9 of a financial institution and used, in conjunction with a
10 unique identification device, to initiate a request for an
11 electronic funds transfer.

12 (6) "Customer", in relation to a financial
13 institution, means a holder of a demand or time account or a
14 membership share in the institution or a person who is a
15 borrower or a mortgagor; in relation to a merchant, it means
16 a purchaser of goods or services.

17 (7) "Merchant" means a natural person, corporation,
18 partnership, or association engaged in buying and selling
19 goods or services, except that a financial institution is
20 not a merchant.

21 (8) "Department" means the department of business
22 regulation.

23 (9) "Person" means an individual, partnership,
24 corporation, association, or any other business
25 organization.

1 (10) "Unique identification device" means a magnetic
2 encoded plastic card or equivalent device containing a
3 number unique to a customer with relation to a financial
4 institution.

5 Section 4. Satellite terminals — permitted uses.
6 Satellite terminals may be employed in the state only in the
7 following capacities:

8 (1) as an automated teller machine to make electronic
9 funds transfers as defined in this act, off the premises of
10 a financial institution, operated by the customers of
11 financial institutions without assistance;

12 (2) as a point-of-sale terminal, operated by a
13 merchant or his employees solely to debit a customer's
14 account in a financial institution and solely to credit the
15 merchant's account commensurately for transactions in goods
16 or services.

17 Section 5. Authorization for certain satellite
18 terminals required. (1) Subject to the limitation expressed
19 in [section 8] and to the other requirements of this act, a
20 business entity owned by a financial institution or
21 financial institutions may install and maintain satellite
22 terminals located not more than 3 miles beyond the
23 incorporated municipality where each participating
24 institution maintains its office or, if the financial
25 institution is located outside an incorporated municipality,

1 then not more than 3 miles from its principal place of
2 business, after first obtaining authorization from the
3 department of business regulation pursuant to rules adopted
4 by the department. Business organizations other than
5 financial institutions may own satellite terminals,
6 provided, however, that such organizations shall not engage
7 in the business of a financial institution and that ownership
8 and possession of such satellite terminals shall be
9 regulated by the department of business regulation and they
10 shall not be used for any purpose other than is authorized
11 in this act.

12 (2) A merchant may install and operate a point-of-sale
13 terminal.

14 Section 6. Consumer information. A financial
15 institution or its affiliate engaging in electronic funds
16 transfers with its customers shall, prior to authorizing a
17 customer to make electronic funds transfers, provide the
18 customer a statement setting forth, without limitation:

19 (1) the specific transactions which may be performed
20 through satellite terminals;

21 (2) the charges, if any, for individual transactions
22 engaged in through a satellite terminal;

23 (3) minimum balance requirements, if any;

24 (4) the liability of the various parties for
25 unauthorized transactions made by electronic funds transfer;

1 (5) the legal status of receipts issued from a
2 satellite terminal;

3 (6) the right of the customer to a description of
4 transactions performed by satellite terminal on any periodic
5 statement of account furnished the customer;

6 (7) the right of the customer to seek correction of
7 any errors he believes have been made in his account by
8 electronic funds transfer; and

9 (8) instructions in maintaining customer records and
10 reconciling balances and in the importance of retaining
11 receipts of electronic funds transfers.

12 Section 7. Institutional access requirements. (1) A
13 satellite terminal used by a financial institution must be
14 made available, on a nondiscriminatory basis, to all
15 financial institutions whose principal place of business is
16 located within the geographic area that may use each type of
17 satellite terminal, as defined and outlined in [section 8],
18 and that may want to participate in using this satellite
19 terminal. In addition, each customer authorized by any
20 financial institution may use the satellite terminal, with
21 the limitations on the transactions imposed and outlined in
22 [section 8]. The charges required to be paid by any
23 financial institution which utilizes the satellite terminal
24 may not exceed a pro rata portion of the cost, determined in
25 accordance with generally accepted accounting principles,

1 and a reasonable return on the owner's equity. A reasonable
2 return on an owner's equity is defined as the average return
3 on equity invested in all financial institutions. The costs
4 for the use of a satellite terminal chargeable to a
5 financial institution for a financial transaction shall not
6 exceed 125% of the average transaction cost for the use of
7 satellite terminals in Montana. A merchant may pay a
8 reasonable service fee to have a terminal located on his
9 property, on a nondiscriminatory basis.

10 (2) A financial institution may invest in, acquire, or
11 hold shares in a corporation engaged solely in operating and
12 owning satellite terminals. A financial institution may
13 utilize, establish, or own, either alone or with one or more
14 financial institutions, satellite terminals and related
15 communication equipment associated with electronic funds
16 transfers. Other business organizations may also own
17 satellite terminals and lease or otherwise permit financial
18 institutions to use the satellite terminals, provided these
19 other businesses comply with the provisions of this act and
20 agree to come under the supervision of the department. Such
21 other business organizations may not engage in the business
22 of a financial institution.

23 Section 8. Geographical restrictions on certain
24 satellite terminals. (1) If a financial institution is a
25 bank, savings and loan association, or a credit union, it

1 may engage in electronic funds transfers by means of an
 2 automated teller machine located not more than 3 miles
 3 beyond the municipality where its office is located or, if
 4 the financial institution is located outside any
 5 incorporated municipality, not more than 3 miles from its
 6 principal place of business.

7 (2) The department may authorize the operation of an
 8 automatic teller machine which a federal savings and loan
 9 association or state building and loan association or credit
 10 union uses only if such association agrees to comply with
 11 this act and regulations adopted by the department.

12 (3) No out-of-state financial institution may
 13 establish a satellite terminal within the state or lease
 14 through other businesses satellite terminals within Montana.
 15 An out-of-state financial institution may not engage in
 16 electronic funds transfers within the state, except that a
 17 customer of an out-of-state financial institution may debit
 18 his account in an out-of-state financial institution at an
 19 in-state satellite terminal to pay for merchandise and
 20 services, provided the merchant credits an account in a
 21 financial institution whose principal place of business is
 22 located within the state.

23 (4) Point-of-sale terminals may be available to all
 24 customers authorized by in-state financial institutions for
 25 debiting accounts to pay for merchandise and services.

1 Section 9. Protection of privacy. (1) No information
 2 relating to any transaction by electronic funds transfer, or
 3 application therefor, between a financial institution and
 4 its customer or prospective customer may be disclosed by the
 5 financial institution to any person or government entity
 6 without consent of the customer or under subpoena issued by
 7 a court of record.

8 (2) This section does not prevent:

9 (a) the examination of financial institutions by duly
 10 authorized regulatory authority or the transfer of
 11 information by a financial institution to a clearinghouse
 12 which administers transactions between financial
 13 institutions; or

14 (b) the access by a party to a transaction to
 15 information relating to a specific transaction.

16 Section 10. Unauthorized disclosure of electronic
 17 funds transfer records. (1) A person commits the offense of
 18 unauthorized disclosure of electronic funds transfer records
 19 if he has lawful access to such records by virtue of office
 20 or employment and:

21 (a) permits another, who lacks lawful access to such
 22 records, to inspect, copy, or read such records; or

23 (b) transfers such records to another who lacks lawful
 24 access thereto.

25 (2) A person convicted of the offense of unauthorized

1 disclosure of electronic funds transfer records shall be
 2 imprisoned in the state prison for any term not to exceed 1
 3 year, be fined not more than \$5,000, or be punished by both
 4 such imprisonment and fine.

5 Section 11. Records of electronic funds transfers. (1)
 6 A satellite terminal shall be operated so as to produce a
 7 humanly readable record of any transaction and to provide a
 8 copy of this record to the person initiating the transaction
 9 as soon as the transaction is complete.

10 (2) The receipt provided to the person initiating an
 11 electronic funds transfer shall be admissible as evidence in
 12 any legal proceeding and constitutes prima facie proof of
 13 the transaction which it records.

14 (3) (a) A financial institution shall provide each of
 15 its customers utilizing electronic funds transfer services
 16 with a periodic account statement containing a brief
 17 description of all electronic funds transfers sufficient to
 18 enable the customer to identify any transaction and relate
 19 the transaction to the receipt provided under subsection (1)
 20 of this section.

21 (b) When a periodic account statement includes both
 22 electronic funds transfers and other transactions, all
 23 electronic funds transfers shall be identified as such and
 24 be furnished in compliance with this subsection.

25 Section 12. Verification of statement — procedure for

1 discrepancies. (1) If, upon receipt of a periodic statement
 2 of account, a customer of a financial institution believes
 3 the statement contains an error with respect to an
 4 electronic funds transfer, the customer shall notify the
 5 institution within 60 days after the day the institution
 6 delivered the statement. In this notification, the customer
 7 shall identify himself and the foundation of his belief
 8 regarding the error.

9 (2) Within 10 days after a customer has notified a
 10 financial institution of a possible error under subsection
 11 (1), the institution shall either:

12 (a) correct the account in question, giving the
 13 customer a written description of the correction (if the
 14 correction is not in the exact amount of the alleged error,
 15 the description shall explain the difference); or

16 (b) after investigating the matter, give the customer
 17 a written explanation of the reasons the institution
 18 believes the statement to be correct. If requested in
 19 writing by the customer, a written explanation, documented
 20 by the institution's record of the transaction in question,
 21 shall be furnished the customer.

22 (3) A financial institution receiving notice under
 23 subsection (1) may not close the account concerning which
 24 the dispute exists or restrict transactions in such account
 25 affecting the portion not in dispute, until it complies with

1 subsection (2). A financial institution which has once
 2 complied with subsection (2) with respect to an alleged
 3 error is not required to respond under subsection (2) to
 4 repeated allegations of the same error.

5 Section 13. Unauthorized transactions — liability.

6 (1) A customer whose account is debited by an electronic
 7 funds transfer without his authorization is not liable for
 8 the amount of such transaction, and the amount shall be
 9 recredited to his account as provided under [section 13],
 10 unless:

11 (a) the financial institution has provided the
 12 customer a unique identification device for initiating
 13 electronic funds transfer requests and transactions are made
 14 as a result of the theft or loss of that device, in which
 15 case the customer is liable for the first \$50 of any
 16 consequent transactions made prior to the time the financial
 17 institution is notified of such loss or theft; or

18 (b) the financial institution has provided the
 19 customer a unique identification device for initiating, in
 20 conjunction with a personal identification number separate
 21 from the device, electronic funds transfer requests, and the
 22 customer attaches the personal identification number to the
 23 device by writing or otherwise or in any way makes the
 24 number readily available for discovery in connection with
 25 the theft or loss of the device, and transactions are made

1 as a result of the theft or loss of the device, in which
 2 case the customer is liable for one-half the value of all
 3 consequent transactions made until the financial institution
 4 is notified of such theft or loss.

5 (2) A customer who willingly gives his unique
 6 identification device and personal identification number to
 7 another is presumed to have authorized any electronic funds
 8 transfers requested by such other person.

9 (3) A merchant who makes electronic funds transfer
 10 services available on his premises is liable for the amount
 11 of an unauthorized electronic funds transfer requested from
 12 his premises only if:

13 (a) he or his agent is negligent in requiring a user
 14 of electronic funds transfer services to furnish adequate
 15 self-identification;

16 (b) he fails to retain a physical record of the
 17 transaction for 1 year following the transaction; or

18 (c) he breaches the warranty required by subsection
 19 (4) of this section.

20 (4) A merchant operating a point-of-sale terminal
 21 shall warrant to the financial institution that an order for
 22 an electronic funds transfer emanating from the terminal is
 23 part of a commercial transaction in which the customer
 24 receives goods or services of commensurate value.

25 (5) The liability for any unauthorized electronic

1 funds transfer which does not fall upon a customer or a
2 merchant under this section falls upon the financial
3 institution which carries out the transfer.

4 Section 14. Automatic teller machines -- additional
5 standards. Before the department authorizes an automatic
6 teller machine, the owner must certify to the department
7 that the machine complies with the provisions of this
8 chapter and is:

- 9 (1) equipped with adequate security provisions;
- 10 (2) activated by a unique identification device;
- 11 (3) designed so as to produce the transaction record
12 required by [section 11(1)].

13 Section 15. Point-of-sale terminals -- additional
14 standards. (1) Before the department approves a
15 point-of-sale terminal, it must find that the merchant
16 demonstrates on his application that:

- 17 (a) he will use acceptable procedures for customer
18 self-identification;
- 19 (b) he will use a draft and receipt system, on which
20 the customer's signature acknowledges receipt of the goods
21 or services paid for by electronic funds transfer;
- 22 (c) he will institute a procedure whereby he keeps one
23 copy of each such draft and receipt for 1 year following the
24 date of transaction, he gives one copy to the customer in
25 satisfaction of [section 11(1)], and he forwards one copy to

1 the customer's financial institution. The requirement of a
2 copy to the financial institution may be waived by the
3 department by rule if the point-of-sale terminal is
4 activated by a customer's unique identification device.

5 (2) A financial institution involved in an electronic
6 funds transfer initiated from a point-of-sale terminal may
7 inspect the merchant's copy of the transaction record for
8 any purpose consistent with the privacy provisions of
9 [section 9].

10 Section 16. Personal identification number --
11 restrictions. (1) A financial institution may not assign a
12 personal identification number to a customer which is
13 identical to that customer's social security account number,
14 driver's license number, or any other number assigned for
15 other purposes to that customer.

16 (2) A satellite terminal may not be operated so as to
17 print a customer's personal identification number on the
18 humanly readable receipt furnished at the time of a
19 transaction.

20 Section 17. Advertising -- restrictions. Advertising
21 on satellite terminals shall be restricted to a common
22 symbol or to identification of each participating financial
23 institution in characters of equal size and prominence. This
24 section does not restrict the right of financial
25 institutions to advertise electronic funds transfer services

1 in other media.

2 Section 18. Standard format code. All satellite
3 terminals in the state shall be operated by a standard
4 format code compatible with that used in other states. If
5 cards are used as unique identification devices, they shall
6 be of a standard size, as prescribed by department rules.

7 Section 19. Rule-making authority delegated. The
8 department may adopt, amend, or repeal rules reasonably
9 necessary to implement this act and effectuate its purposes.

10 Section 20. Enforcement. (1) Upon petition of the
11 department and opportunity for a hearing under the Montana
12 Administrative Procedure Act, the department may revoke or
13 suspend authorization to operate a satellite terminal or to
14 participate in its operation on the grounds that the person
15 holding such authority has violated a provision of this act
16 or a rule validly adopted.

17 (2) The department may bring an action in district
18 court to enjoin a person from operating or participating in
19 the operation of a satellite terminal without authority.

20 Section 21. Section 5-1028, R.C.M. 1947, is amended to
21 read as follows:

22 "5-1028. Branch bank prohibited — exceptions. (1) No
23 bank shall may maintain any branch bank, receive deposits,
24 or pay checks, except over the counter of and in its own
25 banking house. Provided, that nothing in this section shall

1 ~~prohibit~~ prohibits ordinary clearinghouse transactions
2 between banks.

3 (2) With the prior approval of the ~~superintendent of~~
4 ~~banks department~~, any bank doing business in this state may
5 establish and maintain not more than one ~~(4)~~ detached
6 drive-in and walk-up facility consisting of one ~~(4)~~ or more
7 ~~teller's teller~~ windows. The distance of the facility from
8 the main banking house shall may not exceed ~~one thousand~~
9 ~~(1,000)~~ feet measured in a straight line from the closest
10 point of the main banking house to the farthest point of the
11 detached facility. The facility shall may not be closer than
12 ~~two hundred (200)~~ feet to a facility operated by any other
13 bank ~~nor or~~ closer than ~~three hundred (300)~~ feet to the main
14 banking house of any other bank, the measurement to be made
15 in a straight line from the closest points of the closest
16 structures involved. The distances herein specified in
17 relation to a facility operated by any other bank and in
18 relation to the main banking house of any other bank may be
19 decreased by mutual written agreement of the banks involved
20 to not closer than ~~one hundred and fifty (150)~~ feet to a
21 facility operated by any other bank ~~nor or~~ closer than ~~two~~
22 ~~hundred (200)~~ feet to the main banking house of any other
23 bank, the measurement to be made in a straight line from the
24 closest points of the closest structures involved. The
25 service of the facility shall be limited to receiving

1 deposits of every kind, cashing checks or orders to pay,
 2 receiving payments payable at the bank, and such other
 3 transactions as are normally and usually conducted or
 4 handled at ~~tellers'~~ teller windows in the main banking
 5 house.

6 (3) (a) Any bank authorized to do banking business in
 7 this state may utilize a satellite terminal as defined in
 8 the Montana Electronic Funds Transfer Act and at any
 9 location permitted by the Montana Electronic Funds Transfer
 10 Act. The use of satellite terminals hereby authorized shall
 11 not be subject to the restrictions on location, transaction,
 12 or number applicable to detached drive-in, walk-up, or
 13 teller facilities.

14 (b) A satellite terminal may not be closer than 200
 15 feet to a facility operated by any other bank or closer than
 16 300 feet to the main banking house of any other bank, the
 17 measurement to be made in a straight line between the
 18 closest points of the closest structures involved. The
 19 distances herein specified in relation to a facility
 20 operated by any other bank and in relation to the main
 21 banking house of any other bank may be decreased by mutual
 22 written agreement of the banks involved to not closer than
 23 150 feet to a facility operated by any other bank or closer
 24 than 200 feet to the main banking house of any other bank,
 25 the measurement to be made in a straight line between the

1 closest points of the closest structures involved."

2 Section 22. Severability. If a part of this act is
 3 invalid, all valid parts that are severable from the invalid
 4 part remain in effect. If a part of this act is invalid in
 5 one or more of its applications, the part remains in effect
 6 in all valid applications that are severable from the
 7 invalid applications.

8 Section 23. Effective date. This act is effective on
 9 January 1, 1978.

-End-

STATE OF MONTANA

REQUEST NO. 133-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 25, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 170 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 170 is an act authorizing the use of electronic banking facilities and electronic transfer of funds by banks, savings and loan associations, and credit unions, and authorizing the Department of Business Regulation to implement and effectuate the act.

ASSUMPTIONS:

1. Prior to the effective date, the Department of Business Regulation must promulgate the necessary rules and regulations to implement the act (6 month period).
2. One (1) employee with technical expertise in electronics will be necessary to monitor and supervise the introduction and operation of satellite installations throughout the state.
3. An electronic funds transfer technician will be required to travel extensively to insure compliance of the estimated 34 automated teller machines and 73 point of sale (P.O.S.) terminals.
4. The staff of the financial division of the Department of Business Regulation would increase by .50 FTE in FY 78 and 1.50 FTE in FY 79.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Personal services	\$ 8,780	\$24,180
Operating expenses	<u>4,700</u>	<u>6,400</u>
Increased expenditures under proposed law	<u>\$13,480</u>	<u>\$30,580</u>

Richard L. ...
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-26-77

Approved by Committee
on Business and Industry

1 SENATE BILL NO. 170

2 INTRODUCED BY TURNAGE, HAZELBAKER, BOYLAN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE USE OF
5 ELECTRONIC BANKING FACILITIES AND ELECTRONIC TRANSFERS OF
6 FUNDS BY BANKS, SAVINGS AND LOAN ASSOCIATIONS, AND CREDIT
7 UNIONS; AMENDING SECTION 5-1028, R.C.M. 1947; AND PROVIDING
8 AN EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Short title. This act shall be known and
12 may be cited as the "Montana Electronic Funds Transfer Act".

13 Section 2. Findings and purpose. (1) The legislature
14 has determined that development of electronic funds transfer
15 systems is a technology which promises convenience and
16 efficiency for all types of financial depository
17 institutions and their customers. The legislature further
18 finds that this technology threatens to proliferate rapidly;
19 that there presently exists no adequate governmental
20 regulation, federal or state, to control orderly development
21 of this technology to prevent market domination and
22 monopolies, to provide parity for all financial depository
23 institutions, to provide mandatory sharing of such systems,
24 and to assure nondiscriminatory access to such systems at
25 nondiscriminatory rates on the part of all who are involved

1 in the use of this technology. This act shall apply to
2 financial institutions chartered under the United States
3 Code, to the extent permitted by such code.

4 (2) The legislature finds need to control location and
5 structural placement of electronic terminals in order to:

6 (a) assure access, protection, and convenience to the
7 public using them;

8 (b) assure that structural placement of automated
9 teller machines are designed to provide maximum protection
10 to the terminal and its contents from vandalism, tampering,
11 and theft and, since such machines shall be unmanned, to
12 locate them in a manner designed to permit maximum
13 protection of the public using them;

14 (c) prevent traffic congestion at vehicle parking lots
15 and pedestrian concourses and sidewalks;

16 (d) prevent vehicle backup onto public highways;

17 (e) prevent undue interference with nearby businesses;

18 (f) locate automated teller machines in places
19 permitting maximum sharing of their use to all operators
20 desiring to use them under conditions herein stated.

21 (3) The legislature further finds that in the present
22 state of the technology there is substantial potential for
23 error and misuse and that these systems, including various
24 types of terminals, telecommunications between them and
25 computer and switching equipment, or transport of

1 electronically recorded materials from the terminals to such
 2 equipment, and the computers and switches themselves are
 3 subject to malfunction, vandalism, fraud, theft, and other
 4 abuses and accidents, all indicating the obvious need for
 5 the exercise of the police power of this state to protect
 6 its citizens and their property in the use of this
 7 technology. Location of terminals is an important factor in
 8 such protection.

9 (4) The legislature further finds that commercial
 10 banks, savings and loan associations, and credit unions,
 11 chartered by both federal and state governments, are in
 12 competition for deposits, share accounts, and loans and
 13 other financial business of the state's citizens; that each
 14 has the capability of utilizing electronic funds transfer
 15 systems; and that unless there is controlled use of these
 16 systems there will be strong potentials for destructive
 17 competition and market domination by some financial
 18 institutions over others, increasing the likelihood for
 19 misuse and error, duplication and waste, and resulting
 20 increased costs.

21 (5) To meet these needs, the legislature finds that
 22 state authority must provide for authorizing such systems;
 23 for speedy and fair remedies for losses resulting from
 24 malfunction, misuse, or error; and for penalties for
 25 violation of this act.

1 Section 3. Definitions. As used in this act, the
 2 following definitions shall apply unless the context
 3 otherwise requires:

4 (1) "Electronic funds transfer" means debiting or
 5 crediting a depositor's account or otherwise transacting any
 6 business in a financial institution by electronic impulse
 7 messages, authorized under this act, transmitted directly by
 8 wire or otherwise or stored on magnetic tape or equivalent
 9 technologies, or otherwise, and processing the adjustments
 10 without regular and customary direct human intervention.
 11 Nothing in this subsection prevents a financial institution
 12 from processing its bookkeeping entries through normal human
 13 intervention.

14 (2) "Financial institution" means a bank chartered
 15 under Title 5, ~~chapter 6, OF THIS CODE,~~ a bank chartered
 16 under the National Banking Acts in Title 12 of the United
 17 States Code, a building and loan association chartered under
 18 Title 7 of this code, a savings and loan association
 19 chartered under the Home Owners' Loan Act in Title 12 of the
 20 United States Code, a credit union chartered under Title 14,
 21 chapter 6, of this code, or a credit union chartered under
 22 the Federal Credit Union Act in Title 12 of the United
 23 States Code. FOR PURPOSES OF THIS ACT ONLY, A CONSUMER LOAN
 24 COMPANY LICENSED UNDER TITLE 47, CHAPTER 2, SHALL BE
 25 CONSIDERED A FINANCIAL INSTITUTION.

1 (3) (a) "Satellite terminal" means any machine or
2 device located off the premises of a financial institution
3 which a financial institution or its customers may use to
4 carry out electronic funds transfers.

5 (b) "Satellite terminal" includes:

6 (i) automated teller machine, which means a satellite
7 terminal to make electronic funds transfers, located off the
8 premises of financial institutions, operated by customers of
9 financial institutions without assistance, activated by a
10 unique identification device and personal identification
11 number;

12 (ii) point-of-sale terminal, which means a satellite
13 terminal located on the premises of a merchant, operated by
14 a merchant or his employees solely to debit a customer's
15 account in a financial institution ~~or solely to add to a~~
16 ~~customer's revolving credit account balance~~ and solely to
17 credit the merchant's account commensurately for
18 transactions in goods or services. A point-of-sale terminal
19 need not be activated by a unique personal identification
20 device.

21 (c) The definition of "satellite terminal" does not
22 include, and nothing in this act may be construed to apply
23 to:

24 (i) an automated teller machine located on the
25 premises of a financial institution; or

1 (ii) an automated clearinghouse or any equivalent
2 system designed to transfer funds between financial
3 institutions.

4 (4) "Premises" means those locations where by
5 applicable law financial institutions are authorized to
6 maintain a principal place of business and other offices for
7 the conduct of their respective businesses; the term
8 includes a detached drive-in or walk-up facility approved
9 under 5-1028.

10 (5) "Personal identification number" means a
11 combination of numerals or letters selected for a customer
12 of a financial institution and used, in conjunction with a
13 unique identification device, to initiate a request for an
14 electronic funds transfer.

15 (6) "Customer", in relation to a financial
16 institution, means a holder of a demand or time account or a
17 membership share in the institution or a person who is a
18 borrower or a mortgagor; in relation to a merchant, it means
19 a purchaser of goods or services.

20 (7) "Merchant" means a natural person, corporation,
21 partnership, or association engaged in buying and selling
22 goods or services, except that a financial institution is
23 not a merchant.

24 (8) "Department" means the department of business
25 regulation.

1 (9) "Person" means an individual, partnership,
2 corporation, association, or any other business
3 organization.

4 (10) "Unique identification device" means a magnetic
5 encoded plastic card or equivalent device containing a
6 number unique to a customer with relation to a financial
7 institution.

8 Section 4. Satellite terminals — permitted uses.
9 Satellite terminals may be employed in the state only in the
10 following capacities:

11 (1) as an automated teller machine to make electronic
12 funds transfers as defined in this act, off the premises of
13 a financial institution, operated by the customers of
14 financial institutions without assistance;

15 (2) as a point-of-sale terminal, operated by a
16 merchant or his employees solely to debit a customer's
17 account in a financial institution and solely to credit the
18 merchant's account commensurately for transactions in goods
19 or services.

20 Section 5. Authorization for certain satellite
21 terminals required. (1) Subject to the limitation expressed
22 in [section 8] and to the other requirements of this act, a
23 business entity owned by a financial institution or
24 financial institutions may install and maintain satellite
25 terminals located WITHIN OR not more than 3 miles beyond the

1 incorporated municipality where each participating
2 institution maintains its office or, if the financial
3 institution is located outside an incorporated municipality,
4 then not more than 3 miles from its principal place of
5 business, after first obtaining authorization from the
6 department of business regulation pursuant to rules adopted
7 by the department. Business organizations other than
8 financial institutions may own satellite terminals,
9 provided, however, that such organizations shall not engage
10 in the business of a financial institution and that ownership
11 and possession of such satellite terminals shall be
12 regulated by the department of business regulation and they
13 shall not be used for any purpose other than is authorized
14 in this act.

15 (2) A merchant may install and operate a point-of-sale
16 terminal.

17 Section 6. Consumer information. A financial
18 institution or its affiliate engaging in electronic funds
19 transfers with its customers shall, prior to authorizing a
20 customer to make electronic funds transfers, provide the
21 customer a statement setting forth, without limitation:

22 (1) the specific transactions which may be performed
23 through satellite terminals;

24 (2) the charges, if any, for individual transactions
25 engaged in through a satellite terminal;

1 (3) minimum balance requirements, if any;

2 (4) the liability of the various parties for
3 unauthorized transactions made by electronic funds transfer;

4 (5) the legal status of receipts issued from a
5 satellite terminal;

6 (6) the right of the customer to a description of
7 transactions performed by satellite terminal on any periodic
8 statement of account furnished the customer;

9 (7) the right of the customer to seek correction of
10 any errors he believes have been made in his account by
11 electronic funds transfer; and

12 (8) instructions in maintaining customer records and
13 reconciling balances and in the importance of retaining
14 receipts of electronic funds transfers.

15 Section 7. Institutional access requirements. (1) A
16 satellite terminal used by a financial institution must be
17 made available, on a nondiscriminatory basis, to all
18 financial institutions ~~whose principal place of business is~~
19 OR BRANCHES THEREOF located within the geographic area that
20 may use each type of satellite terminal, as defined and
21 outlined in [section 8], and that may want to participate in
22 using this satellite terminal. In addition, each customer
23 authorized by any financial institution may use the
24 satellite terminal, with the limitations on the transactions
25 imposed and outlined in [section 8]. The charges required

1 to be paid by any financial institution which utilizes the
2 satellite terminal may not exceed a pro rata portion of the
3 cost, determined in accordance with generally accepted
4 accounting principles, and a reasonable return on the
5 owner's equity. A reasonable return on an owner's equity is
6 defined as the average return on equity invested in all
7 financial institutions. The costs for the use of a
8 satellite terminal chargeable to a financial institution for
9 a financial transaction shall not exceed 125% of the average
10 transaction cost for the use of satellite terminals in
11 Montana. A merchant may pay a reasonable service fee to
12 have a terminal located on his property, on a
13 nondiscriminatory basis.

14 (2) A financial institution may invest in, acquire, or
15 hold shares in a corporation engaged solely in operating and
16 owning satellite terminals. A financial institution may
17 utilize, establish, or own, either alone or with one or more
18 financial institutions, satellite terminals and related
19 communication equipment associated with electronic funds
20 transfers. Other business organizations may also own
21 satellite terminals and lease or otherwise permit financial
22 institutions to use the satellite terminals, provided these
23 other businesses comply with the provisions of this act and
24 agree to come under the supervision of the department. Such
25 other business organizations may not engage in the business

1 of a financial institution.

2 Section 8. Geographical restrictions on certain
3 satellite terminals. (1) If a financial institution is a
4 bank, savings and loan association, or a credit union, it
5 may engage in electronic funds transfers by means of an
6 automated teller machine located WITHIN OR not more than 3
7 miles beyond the municipality where its office is located
8 or, if the financial institution is located outside any
9 incorporated municipality, not more than 3 miles from its
10 principal place of business.

11 (2) The department may authorize the operation of an
12 automatic teller machine which a federal savings and loan
13 association or state building and loan association or credit
14 union uses only if such association agrees to comply with
15 this act and regulations adopted by the department.

16 (3) No out-of-state financial institution may
17 establish a satellite terminal within the state or lease
18 through other businesses satellite terminals within Montana.
19 An out-of-state financial institution may not engage in
20 electronic funds transfers within the state, except that a
21 customer of an out-of-state financial institution may debit
22 his account in an out-of-state financial institution at an
23 in-state satellite terminal to pay for merchandise and
24 services, provided the merchant credits an account in a
25 financial institution whose principal place of business is

1 located within the state.

2 (4) Point-of-sale terminals may be available to all
3 customers authorized by in-state financial institutions for
4 debiting accounts to pay for merchandise and services.

5 Section 9. Protection of privacy. (1) No information
6 relating to any transaction by electronic funds transfer, or
7 application therefor, between a financial institution and
8 its customer or prospective customer may be disclosed by the
9 financial institution to any person or government entity
10 without consent of the customer or under subpoena issued by
11 a court of record.

12 (2) This section does not prevent:

13 (a) the examination of financial institutions by duly
14 authorized regulatory authority or the transfer of
15 information by a financial institution to a clearinghouse
16 which administers transactions between financial
17 institutions; or

18 (b) the access by a party to a transaction to
19 information relating to a specific transaction.

20 Section 10. Unauthorized disclosure of electronic
21 funds transfer records. (1) A person commits the offense of
22 unauthorized disclosure of electronic funds transfer records
23 if he has lawful access to such records by virtue of office
24 or employment and:

25 (a) permits another, who lacks lawful access to such

1 records, to inspect, copy, or read such records; or

2 (b) transfers such records to another who lacks lawful
3 access thereto.

4 (2) A person convicted of the offense of unauthorized
5 disclosure of electronic funds transfer records shall be
6 imprisoned in the state prison for any term not to exceed 1
7 year, be fined not more than \$5,000, or be punished by both
8 such imprisonment and fine.

9 Section 11. Records of electronic funds transfers. (1)
10 A satellite terminal shall be operated so as to produce a
11 humanly readable record of any transaction and to provide a
12 copy of this record to the person initiating the transaction
13 as soon as the transaction is complete.

14 (2) The receipt provided to the person initiating an
15 electronic funds transfer shall be admissible as evidence in
16 any legal proceeding and constitutes prima facie proof of
17 the transaction which it records.

18 (3) (a) A financial institution shall provide each of
19 its customers utilizing electronic funds transfer services
20 with a periodic account statement containing a brief
21 description of all electronic funds transfers sufficient to
22 enable the customer to identify any transaction and relate
23 the transaction to the receipt provided under subsection (1)
24 of this section.

25 (b) When a periodic account statement includes both

1 electronic funds transfers and other transactions, all
2 electronic funds transfers shall be identified as such and
3 be furnished in compliance with this subsection.

4 Section 12. Verification of statement — procedure for
5 discrepancies. (1) If, upon receipt of a periodic statement
6 of account, a customer of a financial institution believes
7 the statement contains an error with respect to an
8 electronic funds transfer, the customer shall notify the
9 institution within 60 days after the day the institution
10 delivered the statement. In this notification, the customer
11 shall identify himself and the foundation of his belief
12 regarding the error.

13 (2) Within 10 days after a customer has notified a
14 financial institution of a possible error under subsection
15 (1), the institution shall either:

16 (a) correct the account in question, giving the
17 customer a ~~written~~ description of the correction (if the
18 correction is not in the exact amount of the alleged error,
19 the description shall explain the difference); or

20 (b) after investigating the matter, give the customer
21 ~~a written~~ an explanation of the reasons the institution
22 believes the statement to be correct. If requested in
23 writing by the customer, a written explanation, documented
24 by the institution's record of the transaction in question,
25 shall be furnished the customer.

1 (3) A financial institution receiving notice under
 2 subsection (1) may not close the account concerning which
 3 the dispute exists or restrict transactions in such account
 4 affecting the portion not in dispute, until it complies with
 5 subsection (2). A financial institution which has once
 6 complied with subsection (2) with respect to an alleged
 7 error is not required to respond under subsection (2) to
 8 repeated allegations of the same error.

9 Section 13. Unauthorized transactions — liability.

10 (1) A customer whose account is debited by an electronic
 11 funds transfer without his authorization is not liable for
 12 the amount of such transaction, and the amount shall be
 13 recredited to his account as provided under [section 13],
 14 unless:

15 (a) the financial institution has provided the
 16 customer a unique identification device for initiating
 17 electronic funds transfer requests and transactions are made
 18 as a result of the theft or loss of that device, in which
 19 case the customer is liable for the first \$50 of any
 20 consequent transactions made prior to the time the financial
 21 institution is notified of such loss or theft; or

22 (b) the financial institution has provided the
 23 customer a unique identification device for initiating, in
 24 conjunction with a personal identification number separate
 25 from the device, electronic funds transfer requests, and the

1 customer attaches the personal identification number to the
 2 device by writing or otherwise or in any way makes the
 3 number readily available for discovery in connection with
 4 the theft or loss of the device, and transactions are made
 5 as a result of the theft or loss of the device, in which
 6 case the customer is liable for one-half the value of all
 7 consequent transactions made until the financial institution
 8 is notified of such theft or loss.

9 (2) A customer who willingly gives his unique
 10 identification device and personal identification number to
 11 another is presumed to have authorized any electronic funds
 12 transfers requested by such other person.

13 (3) A merchant who makes electronic funds transfer
 14 services available on his premises is liable for the amount
 15 of an unauthorized electronic funds transfer requested from
 16 his premises only if:

17 (a) he or his agent is negligent in requiring a user
 18 of electronic funds transfer services to furnish adequate
 19 self-identification;

20 (b) he fails to retain a physical record of the
 21 transaction for 1 year following the transaction; or

22 (c) he breaches the warranty required by subsection
 23 (4) of this section.

24 (4) A merchant operating a point-of-sale terminal
 25 shall warrant to the financial institution that an order for

1 an electronic funds transfer emanating from the terminal is
 2 part of a commercial transaction in which the customer
 3 receives goods or services of commensurate value.

4 (5) The liability for any unauthorized electronic
 5 funds transfer which does not fall upon a customer or a
 6 merchant under this section falls upon the financial
 7 institution which carries out the transfer.

8 Section 14. Automatic teller machines — additional
 9 standards. Before the department authorizes an automatic
 10 teller machine, the owner must certify to the department
 11 that the machine complies with the provisions of this
 12 chapter and is:

- 13 (1) equipped with adequate security provisions;
 14 (2) activated by a unique identification device;
 15 (3) designed so as to produce the transaction record
 16 required by [section 11(1)].

17 Section 15. Point-of-sale terminals — additional
 18 standards. (1) Before the department approves a
 19 point-of-sale terminal, it must find that the merchant
 20 demonstrates on his application that:

- 21 (a) he will use acceptable procedures for customer
 22 self-identification;
 23 (b) he will use a draft and receipt system, on which
 24 the customer's signature acknowledges receipt of the goods
 25 or services paid for by electronic funds transfer;

1 (c) he will institute a procedure whereby he keeps one
 2 copy of each such draft and receipt for 1 year following the
 3 date of transaction, he gives one copy to the customer in
 4 satisfaction of [section 11(1)], and he forwards one copy to
 5 the customer's financial institution. The requirement of a
 6 copy to the financial institution may be waived by the
 7 department by rule if the point-of-sale terminal is
 8 activated by a customer's unique identification device.

9 (2) A financial institution involved in an electronic
 10 funds transfer initiated from a point-of-sale terminal may
 11 inspect the merchant's copy of the transaction record for
 12 any purpose consistent with the privacy provisions of
 13 [section 9].

14 Section 16. Personal identification number —
 15 restrictions. (1) A financial institution may not assign a
 16 personal identification number to a customer which is
 17 identical to that customer's social security account number,
 18 driver's license number, or any other number assigned for
 19 other purposes to that customer.

20 (2) A satellite terminal may not be operated so as to
 21 print a customer's personal identification number on the
 22 humanly readable receipt furnished at the time of a
 23 transaction.

24 Section 17. Advertising — restrictions. Advertising
 25 on satellite terminals shall be restricted to a common

1 symbol or to identification of each participating financial
2 institution in characters of equal size and prominence. This
3 section does not restrict the right of financial
4 institutions to advertise electronic funds transfer services
5 in other media.

6 Section 18. Standard format code. All satellite
7 terminals in the state shall be operated by a standard
8 format code compatible with that used in other states. If
9 cards are used as unique identification devices, they shall
10 be of a standard size, as prescribed by department rules.

11 Section 19. Rule-making authority delegated. The
12 department may adopt, amend, or repeal rules reasonably
13 necessary to implement this act and effectuate its purposes.

14 Section 20. Enforcement. (1) Upon petition of the
15 department and opportunity for a hearing under the Montana
16 Administrative Procedure Act, the department may revoke or
17 suspend authorization to operate a satellite terminal or to
18 participate in its operation on the grounds that the person
19 holding such authority has violated a provision of this act
20 or a rule validly adopted.

21 (2) The department may bring an action in district
22 court to enjoin a person from operating or participating in
23 the operation of a satellite terminal without authority.

24 Section 21. Section 5-1028, R.C.M. 1947, is amended to
25 read as follows:

1 "5-1028. Branch bank prohibited — exceptions. (1) No
2 bank shall ~~may~~ maintain any branch bank, receive deposits,
3 or pay checks, except over the counter of and in its own
4 banking house. Provided, that nothing in this section shall
5 ~~prohibit~~ prohibits ordinary clearinghouse transactions
6 between banks.

7 (2) With the prior approval of the ~~superintendent of~~
8 ~~bank~~ department, any bank doing business in this state may
9 establish and maintain not more than one ~~(1)~~
10 drive-in and walk-up facility consisting of one ~~(1)~~ or more
11 ~~teller's~~ teller windows. The distance of the facility from
12 the main banking house shall ~~may~~ not exceed ~~one thousand~~
13 ~~(1,000)~~ feet measured in a straight line from the closest
14 point of the main banking house to the farthest point of the
15 detached facility. The facility shall ~~may~~ not be closer than
16 ~~two hundred (200)~~ feet to a facility operated by any other
17 bank ~~nor~~ or closer than ~~three hundred (300)~~ feet to the main
18 banking house of any other bank, the measurement to be made
19 in a straight line from the closest points of the closest
20 structures involved. The distances herein specified in
21 relation to a facility operated by any other bank and in
22 relation to the main banking house of any other bank may be
23 decreased by mutual written agreement of the banks involved
24 to not closer than ~~one hundred and fifty (150)~~ feet to a
25 facility operated by any other bank ~~nor~~ or closer than ~~two~~

1 ~~hundred~~ (200) feet to the main banking house of any other
 2 bank, the measurement to be made in a straight line from the
 3 closest points of the closest structures involved. The
 4 service of the facility shall be limited to receiving
 5 deposits of every kind, cashing checks or orders to pay,
 6 receiving payments payable at the bank, and such other
 7 transactions as are normally and usually conducted or
 8 handled at ~~tellers~~ teller windows in the main banking
 9 house.

10 (3) (a) Any bank authorized to do banking business in
 11 this state may utilize a satellite terminal as defined in
 12 the Montana Electronic Funds Transfer Act and at any
 13 location permitted by the Montana Electronic Funds Transfer
 14 Act. The use of satellite terminals hereby authorized shall
 15 not be subject to the restrictions on location, transaction,
 16 or number applicable to detached drive-in, walk-up, or
 17 teller facilities.

18 (b) A satellite terminal OTHER THAN A POINT OF SALES
 19 TERMINAL may not be closer than 200 feet to a facility
 20 operated by any other bank or closer than 300 feet to the
 21 main banking house of any other bank, the measurement to be
 22 made in a straight line between the closest points of the
 23 closest structures involved. The distances herein specified
 24 in relation to a facility operated by any other bank and in
 25 relation to the main banking house of any other bank may be

1 decreased by mutual written agreement of the banks involved
 2 to not closer than 150 feet to a facility operated by any
 3 other bank or closer than 200 feet to the main banking house
 4 of any other bank, the measurement to be made in a straight
 5 line between the closest points of the closest structures
 6 involved."

7 Section 22. Severability. If a part of this act is
 8 invalid, all valid parts that are severable from the invalid
 9 part remain in effect. If a part of this act is invalid in
 10 one or more of its applications, the part remains in effect
 11 in all valid applications that are severable from the
 12 invalid applications.

13 Section 23. Effective date. This act is effective on
 14 January 1, 1978.

-End-

1 SENATE BILL NO. 170
 2 INTRODUCED BY TURNAGE, HAZELBAKER, BOYLAN
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE USE OF
 5 ELECTRONIC BANKING FACILITIES AND ELECTRONIC TRANSFERS OF
 6 FUNDS BY BANKS, SAVINGS AND LOAN ASSOCIATIONS, AND CREDIT
 7 UNIONS; AMENDING SECTION 5-1028, R.C.M. 1947; AND PROVIDING
 8 AN EFFECTIVE DATE."
 9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 Section 1. Short title. This act shall be known and
 12 may be cited as the "Montana Electronic Funds Transfer Act".
 13 Section 2. Findings and purpose. (1) The legislature
 14 has determined that development of electronic funds transfer
 15 systems is a technology which promises convenience and
 16 efficiency for all types of financial depository
 17 institutions and their customers. The legislature further
 18 finds that this technology threatens to proliferate rapidly;
 19 that there presently exists no adequate governmental
 20 regulation, federal or state, to control orderly development
 21 of this technology to prevent market domination and
 22 monopolies, to provide parity for all financial depository
 23 institutions, to provide mandatory sharing of such systems,
 24 and to assure nondiscriminatory access to such systems at
 25 nondiscriminatory rates on the part of all who are involved

1 in the use of this technology. This act shall apply to
 2 financial institutions chartered under the United States
 3 Code, to the extent permitted by such code.

4 (2) The legislature finds need to control location and
 5 structural placement of electronic terminals in order to:

6 (a) assure access, protection, and convenience to the
 7 public using them;

8 (b) assure that structural placement of automated
 9 teller machines are designed to provide maximum protection
 10 to the terminal and its contents from vandalism, tampering,
 11 and theft and, since such machines shall be unmanned, to
 12 locate them in a manner designed to permit maximum
 13 protection of the public using them;

14 (c) prevent traffic congestion at vehicle parking lots
 15 and pedestrian concourses and sidewalks;

16 (d) prevent vehicle backup onto public highways;

17 (e) prevent undue interference with nearby businesses;

18 (f) locate automated teller machines in places
 19 permitting maximum sharing of their use to all operators
 20 desiring to use them under conditions herein stated.

21 (3) The legislature further finds that in the present
 22 state of the technology there is substantial potential for
 23 error and misuse and that these systems, including various
 24 types of terminals, telecommunications between them and
 25 computer and switching equipment, or transport of

There are no changes in *SB 170*, and due to length will not be rerun. Please refer to yellow copy for complete text.

1 electronically recorded materials from the terminals to such
 2 equipment, and the computers and switches themselves are
 3 subject to malfunction, vandalism, fraud, theft, and other
 4 abuses and accidents, all indicating the obvious need for
 5 the exercise of the police power of this state to protect
 6 its citizens and their property in the use of this
 7 technology. Location of terminals is an important factor in
 8 such protection.

9 (4) The legislature further finds that commercial
 10 banks, savings and loan associations, and credit unions,
 11 chartered by both federal and state governments, are in
 12 competition for deposits, share accounts, and loans and
 13 other financial business of the state's citizens; that each
 14 has the capability of utilizing electronic funds transfer
 15 systems; and that unless there is controlled use of these
 16 systems there will be strong potentials for destructive
 17 competition and market domination by some financial
 18 institutions over others, increasing the likelihood for
 19 misuse and error, duplication and waste, and resulting
 20 increased costs.

21 (5) To meet these needs, the legislature finds that
 22 state authority must provide for authorizing such systems;
 23 for speedy and fair remedies for losses resulting from
 24 malfunction, misuse, or error; and for penalties for
 25 violation of this act.

1 Section 3. Definitions. As used in this act, the
 2 following definitions shall apply unless the context
 3 otherwise requires:

4 (1) "Electronic funds transfer" means debiting or
 5 crediting a depositor's account or otherwise transacting any
 6 business in a financial institution by electronic impulse
 7 messages, authorized under this act, transmitted directly by
 8 wire or otherwise or stored on magnetic tape or equivalent
 9 technologies, or otherwise, and processing the adjustments
 10 without regular and customary direct human intervention.
 11 Nothing in this subsection prevents a financial institution
 12 from processing its bookkeeping entries through normal human
 13 intervention.

14 (2) "Financial institution" means a bank chartered
 15 under Title 5, ~~chapter 6, OF THIS CODE,~~ a bank chartered
 16 under the National Banking Acts in Title 12 of the United
 17 States Code, a building and loan association chartered under
 18 Title 7 of this code, a savings and loan association
 19 chartered under the Home Owners' Loan Act in Title 12 of the
 20 United States Code, a credit union chartered under Title 14,
 21 chapter 6, of this code, or a credit union chartered under
 22 the Federal Credit Union Act in Title 12 of the United
 23 States Code. FOR PURPOSES OF THIS ACT ONLY, A CONSUMER LOAN
 24 COMPANY LICENSED UNDER TITLE 47, CHAPTER 2, SHALL BE
 25 CONSIDERED A FINANCIAL INSTITUTION.

1. Amend page 5, section 3, subsection (3), line 14.

Following: "customer's"

Insert: "deposit or share"

2. Amend page 5, section 3, subsection (3), line 20.

Following: "device."

Insert: "A merchant has the option, provided that the necessary computer capability exists at a reasonable cost, of selling goods or services by point-of-sale terminals with the electronic fund transfer taking effect at the time of the transaction or at a stated time after the transaction."

3. Amend page 5, section 3, subsection (3), line 25.

Following: "institution;"

Strike: "or"

4. Amend page 6, section 3, subsection (3), line 3.

Following: "institutions"

Insert: "; or

(iii) a point-of-sale terminal which is utilized by a merchant in the merchant's business only and does not provide access to a financial institution"

5. Amend page 7, section 4, subsection (2), line 16.

Following: "customer's"

Insert: "deposit or share"

6. Amend page 8, section 5, subsection (2), line 16.

Following: "terminal."

Insert: "A merchant may utilize a machine as a point-of-sale terminal, which machine performs functions in addition to electronic funds transfer if such other functions do not violate the provisions of this act."

7. Amend page 8, section 6, line 21.

Following: "customer"

Strike: "a"

Insert: "an itemized"

Following: "statement"

Insert: "clearly"

8. Amend page 9, section 6, subsection (4), line 3.

Following: "transfer"

Insert: ", with special emphasis upon the liability when the customer makes his personal identification number readily available for discovery in connection with theft or loss of the unique identification device and upon the importance of immediate notification to the institution of such theft or loss"

9. Amend page 9, section 6, subsection (7), line 11.

Following: "transfer;"

Strike: "and"

AS AMENDED

BE CONCURRED IN

Continued on page 2.

COMMITTEE ON BUSINESS AND INDUSTRY AMENDMENTS TO SENATE BILL NO. 170

10. Amend page 9, section 6, line 14.
Following: "transfers"
Strike: "."
Insert: "; and"

11. Amend page 9, section 6.
Following: line 14
Insert: "(9) the economic significance of having no "float" time and no stop-payment authority.

(a) The customer shall then sign a statement acknowledging his acceptance of these terms and conditions and give the statement to the financial institution. A copy of the statement, countersigned by an officer of the financial institution, shall be provided the customer. In addition, the information set forth in subsection (4) of this section shall be specifically acknowledged by the customer. The customer shall verify his acknowledgement by signing his initials immediately adjacent to the information provided."

12. Amend page 10, section 7, subsection (1), lines 5 through 13.
Following: "equity."
Strike: lines 5 through 13 in their entirety
Insert: "The costs for the use of an automated teller machine chargeable to a financial institution for a financial transaction may not exceed 125% of the average transaction cost for the use of automated teller machines in Montana. A financial institution may contract with a merchant for the operation of point-of-sale terminals. The contract shall specify the conditions upon which the merchant will make the point-of-sale terminal(s) available to customers of the financial institution and shall include terms covering connection charge, fees, format code and security provisions. A point-of-sale terminal shall be available for use by all financial institutions upon such contractual terms as may be commercially reasonable."

13. Amend page 11, section 8, subsection (2), lines 12 through 14.
Following: "which a"
Strike: "federal savings and loan association or state building and loan association or credit union"
Insert: "financial institution"

14. Amend page 11, section 8, subsection (2), line 14.
Following: "such"
Strike: "association agrees to comply"
Insert: "institution complies"

15. Amend page 12, section 9, subsection (1), line 10.
Following: "or"
Insert: ", if the customer refuses to so consent,"

16. Amend page 15, section 13, subsection (1), line 13.
Following: "section"
Strike: "13"
Insert: "12"

AS AMENDED

BE CONCURRED IN

Continued on page 3.

17. Amend page 17, section 13, subsection (5), line 4.

Following: "unauthorized"

Insert: "or erroneous"

18. Amend page 19, section 18, lines 8 through 10.

Following: "states."

Strike: section 18 in its entirety

Insert: "If cards are used as unique identification devices, the department may, by rule, prescribe a standard size."

19. Amend page 19.

Following: line 10

Insert: "Section 19. Conventional checking option preserved. A financial institution may not require any customer to deal with or through it by means of electronic funds transfer in lieu of writing checks in the usual manner upon a conventional checking account and may not impose any extraordinary charge upon customers who choose to write checks in the usual manner upon a conventional checking account maintained at that financial institution. Nothing in this section prohibits a financial institution from charging a reasonable fee to cover the expenses of providing a checking account to a customer or from realizing a reasonable profit for providing that service."

Renumber: all subsequent sections

COMMITTEE ON BUSINESS AND INDUSTRY AMENDMENTS TO SENATE BILL NO. 170

1. Amend page 5, section 3, subsection (3), line 14.

Following: "customer's"

Insert: "deposit or share"

2. Amend page 5, section 3, subsection (3), line 20.

Following: "device."

Insert: "A merchant has the option, provided that the necessary computer capability exists at a reasonable cost, of selling goods or services by point-of-sale terminals with the electronic fund transfer taking effect at the time of the transaction or at a stated time after the transaction."

3. Amend page 5, section 3, subsection (3), line 25.

Following: "institution;"

Strike: "or"

4. Amend page 6, section 3, subsection (3), line 3.

Following: "institutions"

Insert: "; or

(iii) a point-of-sale terminal which is utilized by a merchant in the merchant's business only and does not provide access to a financial institution"

5. Amend page 7, section 4, subsection (2), line 16.

Following: "customer's"

Insert: "deposit or share"

6. Amend page 8, section 5, subsection (2), line 16.

Following: "terminal."

Insert: "A merchant may utilize a machine as a point-of-sale terminal, which machine performs functions in addition to electronic funds transfer if such other functions do not violate the provisions of this act."

7. Amend page 8, section 6, line 21.

Following: "customer"

Strike: "a"

Insert: "an itemized"

Following: "statement"

Insert: "clearly"

8. Amend page 9, section 6, subsection (4), line 3.

Following: "transfer"

Insert: ", with special emphasis upon the liability when the customer makes his personal identification number readily available for discovery in connection with theft or loss of the unique identification device and upon the importance of immediate notification to the institution of such theft or loss"

9. Amend page 9, section 6, subsection (7), line 11.

Following: "transfer;"

Strike: "and"

AS AMENDED

BE CONCURRED IN

Continued on page 2.

COMMITTEE ON BUSINESS AND INDUSTRY AMENDMENTS TO SENATE BILL NO. 170

10. Amend page 9, section 6, line 14.

Following: "transfers"

Strike: "."

Insert: "; and"

11. Amend page 9, section 6.

Following: line 14

Insert: "(9) the economic significance of having no "float" time and no stop-payment authority.

(a) The customer shall then sign a statement acknowledging his acceptance of these terms and conditions and give the statement to the financial institution. A copy of the statement, countersigned by an officer of the financial institution, shall be provided the customer. In addition, the information set forth in subsection (4) of this section shall be specifically acknowledged by the customer. The customer shall verify his acknowledgement by signing his initials immediately adjacent to the information provided."

12. Amend page 10, section 7, subsection (1), lines 5 through 13.

Following: "equity."

Strike: lines 5 through 13 in their entirety

Insert: "The costs for the use of an automated teller machine chargeable to a financial institution for a financial transaction may not exceed 125% of the average transaction cost for the use of automated teller machines in Montana. A financial institution may contract with a merchant for the operation of point-of-sale terminals. The contract shall specify the conditions upon which the merchant will make the point-of-sale terminal(s) available to customers of the financial institution and shall include terms covering connection charge, fees, format code and security provisions. A point-of-sale terminal shall be available for use by all financial institutions upon such contractual terms as may be commercially reasonable."

13. Amend page 11, section 8, subsection (2), lines 12 through 14.

Following: "which a"

Strike: "federal savings and loan association or state building and loan association or credit union"

Insert: "financial institution"

14. Amend page 11, section 8, subsection (2), line 14.

Following: "such"

Strike: "association agrees to comply"

Insert: "institution complies"

15. Amend page 12, section 9, subsection (1), line 10.

Following: "or"

Insert: ", if the customer refuses to so consent,"

16. Amend page 15, section 13, subsection (1), line 13.

Following: "section"

Strike: "13"

Insert: "12"

AS AMENDED

BE CONCURRED IN

Continued on page 3.

17. Amend page 17, section 13, subsection (5), line 4.

Following: "unauthorized"

Insert: "or erroneous"

18. Amend page 19, section 18, lines 8 through 10.

Following: "states."

Strike: section 18 in its entirety

Insert: "If cards are used as unique identification devices, the department may, by rule, prescribe a standard size."

19. Amend page 19.

Following: line 10

Insert: "Section 19. Conventional checking option preserved. A financial institution may not require any customer to deal with or through it by means of electronic funds transfer in lieu of writing checks in the usual manner upon a conventional checking account and may not impose any extraordinary charge upon customers who choose to write checks in the usual manner upon a conventional checking account maintained at that financial institution. Nothing in this section prohibits a financial institution from charging a reasonable fee to cover the expenses of providing a checking account to a customer or from realizing a reasonable profit for providing that service."

Renumber: all subsequent sections

1 SENATE BILL NO. 170

2 INTRODUCED BY TURNAGE, HAZELBAKER, BOYLAN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE USE OF
5 ELECTRONIC BANKING FACILITIES AND ELECTRONIC TRANSFERS OF
6 FUNDS BY BANKS, SAVINGS AND LOAN ASSOCIATIONS, AND CREDIT
7 UNIONS; AMENDING SECTION 5-1028, R.C.M. 1947; AND PROVIDING
8 AN EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:11 Section 1. Short title. This act shall be known and
12 may be cited as the "Montana Electronic Funds Transfer Act".

13 Section 2. Findings and purpose. (1) The legislature
14 has determined that development of electronic funds transfer
15 systems is a technology which promises convenience and
16 efficiency for all types of financial depository
17 institutions and their customers. The legislature further
18 finds that this technology threatens to proliferate rapidly;
19 that there presently exists no adequate governmental
20 regulation, federal or state, to control orderly development
21 of this technology to prevent market domination and
22 monopolies, to provide parity for all financial depository
23 institutions, to provide mandatory sharing of such systems,
24 and to assure nondiscriminatory access to such systems at
25 nondiscriminatory rates on the part of all who are involved

1 in the use of this technology. This act shall apply to
2 financial institutions chartered under the United States
3 Code, to the extent permitted by such code.

4 (2) The legislature finds need to control location and
5 structural placement of electronic terminals in order to:

6 (a) assure access, protection, and convenience to the
7 public using them;

8 (b) assure that structural placement of automated
9 teller machines are designed to provide maximum protection
10 to the terminal and its contents from vandalism, tampering,
11 and theft and, since such machines shall be unmanned, to
12 locate them in a manner designed to permit maximum
13 protection of the public using them;

14 (c) prevent traffic congestion at vehicle parking lots
15 and pedestrian concourses and sidewalks;

16 (d) prevent vehicle backup onto public highways;

17 (e) prevent undue interference with nearby businesses;

18 (f) locate automated teller machines in places
19 permitting maximum sharing of their use to all operators
20 desiring to use them under conditions herein stated.

21 (3) The legislature further finds that in the present
22 state of the technology there is substantial potential for
23 error and misuse and that these systems, including various
24 types of terminals, telecommunications between them and
25 computer and switching equipment, or transport of

1 electronically recorded materials from the terminals to such
 2 equipment, and the computers and switches themselves are
 3 subject to malfunction, vandalism, fraud, theft, and other
 4 abuses and accidents, all indicating the obvious need for
 5 the exercise of the police power of this state to protect
 6 its citizens and their property in the use of this
 7 technology. Location of terminals is an important factor in
 8 such protection.

9 (4) The legislature further finds that commercial
 10 banks, savings and loan associations, and credit unions,
 11 chartered by both federal and state governments, are in
 12 competition for deposits, share accounts, and loans and
 13 other financial business of the state's citizens; that each
 14 has the capability of utilizing electronic funds transfer
 15 systems; and that unless there is controlled use of these
 16 systems there will be strong potentials for destructive
 17 competition and market domination by some financial
 18 institutions over others, increasing the likelihood for
 19 misuse and error, duplication and waste, and resulting
 20 increased costs.

21 (5) To meet these needs, the legislature finds that
 22 state authority must provide for authorizing such systems;
 23 for speedy and fair remedies for losses resulting from
 24 malfunction, misuse, or error; and for penalties for
 25 violation of this act.

1 Section 3. Definitions. As used in this act, the
 2 following definitions shall apply unless the context
 3 otherwise requires:

4 (1) "Electronic funds transfer" means debiting or
 5 crediting a depositor's account or otherwise transacting any
 6 business in a financial institution by electronic impulse
 7 messages, authorized under this act, transmitted directly by
 8 wire or otherwise or stored on magnetic tape or equivalent
 9 technologies, or otherwise, and processing the adjustments
 10 without regular and customary direct human intervention.
 11 Nothing in this subsection prevents a financial institution
 12 from processing its bookkeeping entries through normal human
 13 intervention.

14 (2) "Financial institution" means a bank chartered
 15 under Title 5, ~~chapter 6, OF THIS CODE,~~ a bank chartered
 16 under the National Banking Acts in Title 12 of the United
 17 States Code, a building and loan association chartered under
 18 Title 7 of this code, a savings and loan association
 19 chartered under the Home Owners' Loan Act in Title 12 of the
 20 United States Code, a credit union chartered under Title 14,
 21 chapter 6, of this code, or a credit union chartered under
 22 the Federal Credit Union Act in Title 12 of the United
 23 States Code. FOR PURPOSES OF THIS ACT ONLY, A CONSUMER LOAN
 24 COMPANY LICENSED UNDER TITLE 47, CHAPTER 2, SHALL BE
 25 CONSIDERED A FINANCIAL INSTITUTION.

1 (3) (a) "Satellite terminal" means any machine or
2 device located off the premises of a financial institution
3 which a financial institution or its customers may use to
4 carry out electronic funds transfers.

5 (b) "Satellite terminal" includes:

6 (i) automated teller machine, which means a satellite
7 terminal to make electronic funds transfers, located off the
8 premises of financial institutions, operated by customers of
9 financial institutions without assistance, activated by a
10 unique identification device and personal identification
11 number;

12 (ii) point-of-sale terminal, which means a satellite
13 terminal located on the premises of a merchant, operated by
14 a merchant or his employees solely to debit a customer's
15 DEPOSIT OR SHARE account in a financial institution or
16 ~~solely to add to a customer's revolving credit account~~
17 ~~balance and solely to credit the merchant's account~~
18 ~~commensurately for transactions in goods or services. A~~
19 ~~point-of-sale terminal need not be activated by a unique~~
20 ~~personal identification device. A MERCHANT HAS THE OPTION,~~
21 ~~PROVIDED THAT THE NECESSARY COMPUTER CAPABILITY EXISTS AT A~~
22 ~~REASONABLE COST, OF SELLING GOODS OR SERVICES BY~~
23 ~~POINT-OF-SALE TERMINALS WITH THE ELECTRONIC FUND TRANSFER~~
24 ~~TAKING EFFECT AT THE TIME OF THE TRANSACTION OR AT A STATED~~
25 ~~TIME AFTER THE TRANSACTION.~~

1 (c) The definition of "satellite terminal" does not
2 include, and nothing in this act may be construed to apply
3 to:

4 (i) an automated teller machine located on the
5 premises of a financial institution; or

6 (ii) an automated clearinghouse or any equivalent
7 system designed to transfer funds between financial
8 institutions; OR

9 (III) A POINT-OF-SALE TERMINAL WHICH IS UTILIZED BY A
10 MERCHANT IN THE MERCHANT'S BUSINESS ONLY AND DOES NOT
11 PROVIDE ACCESS TO A FINANCIAL INSTITUTION.

12 (4) "Premises" means those locations where by
13 applicable law financial institutions are authorized to
14 maintain a principal place of business and other offices for
15 the conduct of their respective businesses; the term
16 includes a detached drive-in or walk-up facility approved
17 under 5-1028.

18 (5) "Personal identification number" means a
19 combination of numerals or letters selected for a customer
20 of a financial institution and used, in conjunction with a
21 unique identification device, to initiate a request for an
22 electronic funds transfer.

23 (6) "Customer", in relation to a financial
24 institution, means a holder of a demand or time account or a
25 membership share in the institution or a person who is a

1 borrower or a mortgagor; in relation to a merchant, it means
2 a purchaser of goods or services.

3 (7) "Merchant" means a natural person, corporation,
4 partnership, or association engaged in buying and selling
5 goods or services, except that a financial institution is
6 not a merchant.

7 (8) "Department" means the department of business
8 regulation.

9 (9) "Person" means an individual, partnership,
10 corporation, association, or any other business
11 organization.

12 (10) "Unique identification device" means a magnetic
13 encoded plastic card or equivalent device containing a
14 number unique to a customer with relation to a financial
15 institution.

16 Section 4. Satellite terminals -- permitted uses.
17 Satellite terminals may be employed in the state only in the
18 following capacities:

19 (1) as an automated teller machine to make electronic
20 funds transfers as defined in this act, off the premises of
21 a financial institution, operated by the customers of
22 financial institutions without assistance;

23 (2) as a point-of-sale terminal, operated by a
24 merchant or his employees solely to debit a customer's
25 DEPOSIT OR SHARE account in a financial institution and

1 solely to credit the merchant's account commensurately for
2 transactions in goods or services.

3 Section 5. Authorization for certain satellite
4 terminals required. (1) Subject to the limitation expressed
5 in [section 8] and to the other requirements of this act, a
6 business entity owned by a financial institution or
7 financial institutions may install and maintain satellite
8 terminals located WITHIN OR not more than 3 miles beyond the
9 incorporated municipality where each participating
10 institution maintains its office or, if the financial
11 institution is located outside an incorporated municipality,
12 then not more than 3 miles from its principal place of
13 business, after first obtaining authorization from the
14 department of business regulation pursuant to rules adopted
15 by the department. Business organizations other than
16 financial institutions may own satellite terminals,
17 provided, however, that such organizations shall not engage
18 in the business of a financial institution and that ownership
19 and possession of such satellite terminals shall be
20 regulated by the department of business regulation and they
21 shall not be used for any purpose other than is authorized
22 in this act.

23 (2) A merchant may install and operate a point-of-sale
24 terminal. A MERCHANT MAY UTILIZE A MACHINE AS A
25 POINT-OF-SALE TERMINAL, WHICH MACHINE PERFORMS FUNCTIONS IN

1 ADDITION TO ELECTRONIC FUNDS TRANSFER IF SUCH OTHER FUNCTIONS
 2 DO NOT VIOLATE THE PROVISIONS OF THIS ACT.

3 Section 6. Consumer information. A financial
 4 institution or its affiliate engaging in electronic funds
 5 transfers with its customers shall, prior to authorizing a
 6 customer to make electronic funds transfers, provide the
 7 customer a AN ITEMIZED statement CLEARLY setting forth,
 8 without limitation:

9 (1) the specific transactions which may be performed
 10 through satellite terminals;

11 (2) the charges, if any, for individual transactions
 12 engaged in through a satellite terminal;

13 (3) minimum balance requirements, if any;

14 (4) the liability of the various parties for
 15 unauthorized transactions made by electronic funds transfer,
 16 WITH SPECIAL EMPHASIS UPON THE LIABILITY WHEN THE CUSTOMER
 17 MAKES HIS PERSONAL IDENTIFICATION NUMBER READILY AVAILABLE
 18 FOR DISCOVERY IN CONNECTION WITH THEFT OR LOSS OF THE UNIQUE
 19 IDENTIFICATION DEVICE AND UPON THE IMPORTANCE OF IMMEDIATE
 20 NOTIFICATION TO THE INSTITUTION OF SUCH THEFT OR LOSS;

21 (5) the legal status of receipts issued from a
 22 satellite terminal;

23 (6) the right of the customer to a description of
 24 transactions performed by satellite terminal on any periodic
 25 statement of account furnished the customer;

1 (7) the right of the customer to seek correction of
 2 any errors he believes have been made in his account by
 3 electronic funds transfer; and

4 (8) instructions in maintaining customer records and
 5 reconciling balances and in the importance of retaining
 6 receipts of electronic funds transfers; AND

7 (9) THE ECONOMIC SIGNIFICANCE OF HAVING NO "FLOAT"
 8 TIME AND NO STOP-PAYMENT AUTHORITY.

9 (A) THE CUSTOMER SHALL THEN SIGN A STATEMENT
 10 ACKNOWLEDGING HIS ACCEPTANCE OF THESE TERMS AND CONDITIONS
 11 AND GIVE THE STATEMENT TO THE FINANCIAL INSTITUTION. A COPY
 12 OF THE STATEMENT, COUNTERSIGNED BY AN OFFICER OF THE
 13 FINANCIAL INSTITUTION, SHALL BE PROVIDED THE CUSTOMER. IN
 14 ADDITION, THE INFORMATION SET FORTH IN SUBSECTION (4) OF
 15 THIS SECTION SHALL BE SPECIFICALLY ACKNOWLEDGED BY THE
 16 CUSTOMER. THE CUSTOMER SHALL VERIFY HIS ACKNOWLEDGEMENT BY
 17 SIGNING HIS INITIALS IMMEDIATELY ADJACENT TO THE INFORMATION
 18 PROVIDED.

19 Section 7. Institutional access requirements. (1) A
 20 satellite terminal used by a financial institution must be
 21 made available, on a nondiscriminatory basis, to all
 22 financial institutions whose principal place of business is
 23 OR BRANCHES THEREOF located within the geographic area that
 24 may use each type of satellite terminal, as defined and
 25 outlined in [section 8], and that may want to participate in

1 using this satellite terminal. In addition, each customer
 2 authorized by any financial institution may use the
 3 satellite terminal, with the limitations on the transactions
 4 imposed and outlined in [section 8]. The charges required
 5 to be paid by any financial institution which utilizes the
 6 satellite terminal may not exceed a pro rata portion of the
 7 cost, determined in accordance with generally accepted
 8 accounting principles, and a reasonable return on the
 9 owner's equity. ~~A reasonable return on an owner's equity is~~
 10 ~~defined as the average return on equity invested in all~~
 11 ~~financial institutions. The costs for the use of a~~
 12 ~~satellite terminal chargeable to a financial institution for~~
 13 ~~a financial transaction shall not exceed 125% of the average~~
 14 ~~transaction cost for the use of satellite terminals in~~
 15 ~~Montana. A merchant may pay a reasonable service fee to~~
 16 ~~have a terminal located on his property on a~~
 17 ~~nondiscriminatory basis. THE COSTS FOR THE USE OF AN~~
 18 ~~AUTOMATED TELLER MACHINE CHARGEABLE TO A FINANCIAL~~
 19 ~~INSTITUTION FOR A FINANCIAL TRANSACTION MAY NOT EXCEED 125%~~
 20 ~~OF THE AVERAGE TRANSACTION COST FOR THE USE OF AUTOMATED~~
 21 ~~TELLER MACHINES IN MONTANA. A FINANCIAL INSTITUTION MAY~~
 22 ~~CONTRACT WITH A MERCHANT FOR THE OPERATION OF POINT-OF-SALE~~
 23 ~~TERMINALS. THE CONTRACT SHALL SPECIFY THE CONDITIONS UPON~~
 24 ~~WHICH THE MERCHANT WILL MAKE THE POINT-OF-SALE TERMINAL(S)~~
 25 ~~AVAILABLE TO CUSTOMERS OF THE FINANCIAL INSTITUTION AND~~

1 ~~SHALL INCLUDE TERMS COVERING CONNECTION CHARGE, FEES, FORMAT~~
 2 ~~CODE AND SECURITY PROVISIONS. A POINT-OF-SALE TERMINAL SHALL~~
 3 ~~BE AVAILABLE FOR USE BY ALL FINANCIAL INSTITUTIONS UPON SUCH~~
 4 ~~CONTRACTUAL TERMS AS MAY BE COMMERCIALY REASONABLE.~~

5 (2) A financial institution may invest in, acquire, or
 6 hold shares in a corporation engaged solely in operating and
 7 owning satellite terminals. A financial institution may
 8 utilize, establish, or own, either alone or with one or more
 9 financial institutions, satellite terminals and related
 10 communication equipment associated with electronic funds
 11 transfers. Other business organizations may also own
 12 satellite terminals and lease or otherwise permit financial
 13 institutions to use the satellite terminals, provided these
 14 other businesses comply with the provisions of this act and
 15 agree to come under the supervision of the department. Such
 16 other business organizations may not engage in the business
 17 of a financial institution.

18 Section 8. Geographical restrictions on certain
 19 satellite terminals. (1) If a financial institution is a
 20 bank, savings and loan association, or a credit union, it
 21 may engage in electronic funds transfers by means of an
 22 automated teller machine located WITHIN OR not more than 3
 23 miles beyond the municipality where its office is located
 24 or, if the financial institution is located outside any
 25 incorporated municipality, not more than 3 miles from its

1 principal place of business.

2 (2) The department may authorize the operation of an
3 automatic teller machine which a ~~federal--savings--and--loan~~
4 ~~association--or--state--building--and--loan--association--or--credit~~
5 ~~union~~ FINANCIAL INSTITUTION uses only if such ~~association~~
6 ~~agrees-to-comply~~ INSTITUTION COMPLIES with this act and
7 regulations adopted by the department.

8 (3) No out-of-state financial institution may
9 establish a satellite terminal within the state or lease
10 through other businesses satellite terminals within Montana.
11 An out-of-state financial institution may not engage in
12 electronic funds transfers within the state, except that a
13 customer of an out-of-state financial institution may debit
14 his account in an out-of-state financial institution at an
15 in-state satellite terminal to pay for merchandise and
16 services, provided the merchant credits an account in a
17 financial institution whose principal place of business is
18 located within the state.

19 (4) Point-of-sale terminals may be available to all
20 customers authorized by in-state financial institutions for
21 debiting accounts to pay for merchandise and services.

22 Section 9. Protection of privacy. (1) No information
23 relating to any transaction by electronic funds transfer, or
24 application therefor, between a financial institution and
25 its customer or prospective customer may be disclosed by the

1 financial institution to any person or government entity
2 without consent of the customer or IF THE CUSTOMER REFUSES
3 TO SO CONSENT, under subpoena issued by a court of record.

4 (2) This section does not prevent:

5 (a) the examination of financial institutions by duly
6 authorized regulatory authority or the transfer of
7 information by a financial institution to a clearinghouse
8 which administers transactions between financial
9 institutions; or

10 (b) the access by a party to a transaction to
11 information relating to a specific transaction.

12 Section 10. Unauthorized disclosure of electronic
13 funds transfer records. (1) A person commits the offense of
14 unauthorized disclosure of electronic funds transfer records
15 if he has lawful access to such records by virtue of office
16 or employment and:

17 (a) permits another, who lacks lawful access to such
18 records, to inspect, copy, or read such records; or

19 (b) transfers such records to another who lacks lawful
20 access thereto.

21 (2) A person convicted of the offense of unauthorized
22 disclosure of electronic funds transfer records shall be
23 imprisoned in the state prison for any term not to exceed 1
24 year, be fined not more than \$5,000, or be punished by both
25 such imprisonment and fine.

1 Section 11. Records of electronic funds transfers. (1)
 2 A satellite terminal shall be operated so as to produce a
 3 humanly readable record of any transaction and to provide a
 4 copy of this record to the person initiating the transaction
 5 as soon as the transaction is complete.

6 (2) The receipt provided to the person initiating an
 7 electronic funds transfer shall be admissible as evidence in
 8 any legal proceeding and constitutes prima facie proof of
 9 the transaction which it records.

10 (3) (a) A financial institution shall provide each of
 11 its customers utilizing electronic funds transfer services
 12 with a periodic account statement containing a brief
 13 description of all electronic funds transfers sufficient to
 14 enable the customer to identify any transaction and relate
 15 the transaction to the receipt provided under subsection (1)
 16 of this section.

17 (b) When a periodic account statement includes both
 18 electronic funds transfers and other transactions, all
 19 electronic funds transfers shall be identified as such and
 20 be furnished in compliance with this subsection.

21 Section 12. Verification of statement -- procedure for
 22 discrepancies. (1) If, upon receipt of a periodic statement
 23 of account, a customer of a financial institution believes
 24 the statement contains an error with respect to an
 25 electronic funds transfer, the customer shall notify the

1 institution within 60 days after the day the institution
 2 delivered the statement. In this notification, the customer
 3 shall identify himself and the foundation of his belief
 4 regarding the error.

5 (2) Within 10 days after a customer has notified a
 6 financial institution of a possible error under subsection
 7 (1), the institution shall either:

8 (a) correct the account in question, giving the
 9 customer a written description of the correction (if the
 10 correction is not in the exact amount of the alleged error,
 11 the description shall explain the difference); or

12 (b) after investigating the matter, give the customer
 13 a written ~~an~~ explanation of the reasons the institution
 14 believes the statement to be correct. If requested in
 15 writing by the customer, a written explanation, documented
 16 by the institution's record of the transaction in question,
 17 shall be furnished the customer.

18 (3) A financial institution receiving notice under
 19 subsection (1) may not close the account concerning which
 20 the dispute exists or restrict transactions in such account
 21 affecting the portion not in dispute, until it complies with
 22 subsection (2). A financial institution which has once
 23 complied with subsection (2) with respect to an alleged
 24 error is not required to respond under subsection (2) to
 25 repeated allegations of the same error.

1 Section 13. Unauthorized transactions -- liability.

2 (1) A customer whose account is debited by an electronic
3 funds transfer without his authorization is not liable for
4 the amount of such transaction, and the amount shall be
5 recredited to his account as provided under [section ~~13~~ 12],
6 unless:

7 (a) the financial institution has provided the
8 customer a unique identification device for initiating
9 electronic funds transfer requests and transactions are made
10 as a result of the theft or loss of that device, in which
11 case the customer is liable for the first \$50 of any
12 consequent transactions made prior to the time the financial
13 institution is notified of such loss or theft; or

14 (b) the financial institution has provided the
15 customer a unique identification device for initiating, in
16 conjunction with a personal identification number separate
17 from the device, electronic funds transfer requests, and the
18 customer attaches the personal identification number to the
19 device by writing or otherwise or in any way makes the
20 number readily available for discovery in connection with
21 the theft or loss of the device, and transactions are made
22 as a result of the theft or loss of the device, in which
23 case the customer is liable for one-half the value of all
24 consequent transactions made until the financial institution
25 is notified of such theft or loss.

1 (2) A customer who willingly gives his unique
2 identification device and personal identification number to
3 another is presumed to have authorized any electronic funds
4 transfers requested by such other person.

5 (3) A merchant who makes electronic funds transfer
6 services available on his premises is liable for the amount
7 of an unauthorized electronic funds transfer requested from
8 his premises only if:

9 (a) he or his agent is negligent in requiring a user
10 of electronic funds transfer services to furnish adequate
11 self-identification;

12 (b) he fails to retain a physical record of the
13 transaction for 1 year following the transaction; or

14 (c) he breaches the warranty required by subsection
15 (4) of this section.

16 (4) A merchant operating a point-of-sale terminal
17 shall warrant to the financial institution that an order for
18 an electronic funds transfer emanating from the terminal is
19 part of a commercial transaction in which the customer
20 receives goods or services of commensurate value.

21 (5) The liability for any unauthorized OR ERRONEOUS
22 electronic funds transfer which does not fall upon a
23 customer or a merchant under this section falls upon the
24 financial institution which carries out the transfer.

25 Section 14. Automatic teller machines -- additional

1 standards. Before the department authorizes an automatic
2 teller machine, the owner must certify to the department
3 that the machine complies with the provisions of this
4 chapter and is:

- 5 (1) equipped with adequate security provisions;
- 6 (2) activated by a unique identification device;
- 7 (3) designed so as to produce the transaction record
8 required by [section 11(1)].

9 Section 15. Point-of-sale terminals -- additional
10 standards. (1) Before the department approves a
11 point-of-sale terminal, it must find that the merchant
12 demonstrates on his application that:

- 13 (a) he will use acceptable procedures for customer
14 self-identification;
- 15 (b) he will use a draft and receipt system, on which
16 the customer's signature acknowledges receipt of the goods
17 or services paid for by electronic funds transfer;
- 18 (c) he will institute a procedure whereby he keeps one
19 copy of each such draft and receipt for 1 year following the
20 date of transaction, he gives one copy to the customer in
21 satisfaction of [section 11(1)], and he forwards one copy to
22 the customer's financial institution. The requirement of a
23 copy to the financial institution may be waived by the
24 department by rule if the point-of-sale terminal is
25 activated by a customer's unique identification device.

1 (2) A financial institution involved in an electronic
2 funds transfer initiated from a point-of-sale terminal may
3 inspect the merchant's copy of the transaction record for
4 any purpose consistent with the privacy provisions of
5 [section 9].

6 Section 16. Personal identification number --
7 restrictions. (1) A financial institution may not assign a
8 personal identification number to a customer which is
9 identical to that customer's social security account number,
10 driver's license number, or any other number assigned for
11 other purposes to that customer.

12 (2) A satellite terminal may not be operated so as to
13 print a customer's personal identification number on the
14 humanly readable receipt furnished at the time of a
15 transaction.

16 Section 17. Advertising -- restrictions. Advertising
17 on satellite terminals shall be restricted to a common
18 symbol or to identification of each participating financial
19 institution in characters of equal size and prominence. This
20 section does not restrict the right of financial
21 institutions to advertise electronic funds transfer services
22 in other media.

23 Section 18. Standard format code. All satellite
24 terminals in the state shall be operated by a standard
25 format code compatible with that used in other states. If

~~cards are used as unique identification devices, they shall be of a standard size as prescribed by department rules. IE CARDS ARE USED AS UNIQUE IDENTIFICATION DEVICES, THE DEPARTMENT MAY, BY RULE, PRESCRIBE A STANDARD SIZE.~~

~~SECTION 19. CONVENTIONAL CHECKING OPTION PRESERVED. A FINANCIAL INSTITUTION MAY NOT REQUIRE ANY CUSTOMER TO DEAL WITH OR THROUGH IT BY MEANS OF ELECTRONIC FUNDS TRANSFER IN LIEU OF WRITING CHECKS IN THE USUAL MANNER UPON A CONVENTIONAL CHECKING ACCOUNT AND MAY NOT IMPOSE ANY EXTRAORDINARY CHARGE UPON CUSTOMERS WHO CHOOSE TO WRITE CHECKS IN THE USUAL MANNER UPON A CONVENTIONAL CHECKING ACCOUNT MAINTAINED AT THAT FINANCIAL INSTITUTION. NOTHING IN THIS SECTION PROHIBITS A FINANCIAL INSTITUTION FROM CHARGING A REASONABLE FEE TO COVER THE EXPENSES OF PROVIDING A CHECKING ACCOUNT TO A CUSTOMER OR FROM REALIZING A REASONABLE PROFIT FOR PROVIDING THAT SERVICE.~~

Section 20. Rule-making authority delegated. The department may adopt, amend, or repeal rules reasonably necessary to implement this act and effectuate its purposes.

Section 21. Enforcement. (1) Upon petition of the department and opportunity for a hearing under the Montana Administrative Procedure Act, the department may revoke or suspend authorization to operate a satellite terminal or to participate in its operation on the grounds that the person holding such authority has violated a provision of this act

or a rule validly adopted.

(2) The department may bring an action in district court to enjoin a person from operating or participating in the operation of a satellite terminal without authority.

Section 22. Section 5-1028, R.C.M. 1947, is amended to read as follows:

"5-1028. Branch bank prohibited -- exceptions. (1) No bank shall ~~may~~ maintain any branch bank, receive deposits, or pay checks, except over the counter of and in its own banking house. Provided, that nothing in this section shall ~~prohibit~~ prohibits ordinary clearinghouse transactions between banks.

(2) With the prior approval of the ~~superintendent~~ of banks ~~department~~, any bank doing business in this state may establish and maintain not more than one ~~(1)~~ detached drive-in and walk-up facility consisting of one ~~(1)~~ or more ~~teller's~~ teller windows. The distance of the facility from the main banking house shall ~~may~~ not exceed ~~one-thousand~~ ~~(1,000)~~ feet measured in a straight line from the closest point of the main banking house to the farthest point of the detached facility. The facility shall ~~may~~ not be closer than ~~two-hundred~~ ~~(200)~~ feet to a facility operated by any other bank ~~nor~~ ~~or~~ closer than ~~three-hundred~~ ~~(300)~~ feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest

1 structures involved. The distances herein specified in
 2 relation to a facility operated by any other bank and in
 3 relation to the main banking house of any other bank may be
 4 decreased by mutual written agreement of the banks involved
 5 to not closer than ~~one hundred and fifty~~ {150} feet to a
 6 facility operated by any other bank ~~nor or~~ closer than two
 7 hundred {200} feet to the main banking house of any other
 8 bank, the measurement to be made in a straight line from the
 9 closest points of the closest structures involved. The
 10 service of the facility shall be limited to receiving
 11 deposits of every kind, cashing checks or orders to pay,
 12 receiving payments payable at the bank, and such other
 13 transactions as are normally and usually conducted or
 14 handled at ~~tellers~~ teller windows in the main banking
 15 house.

16 (3) (a) Any bank authorized to do banking business in
 17 this state may utilize a satellite terminal as defined in
 18 the Montana Electronic Funds Transfer Act and at any
 19 location permitted by the Montana Electronic Funds Transfer
 20 Act. The use of satellite terminals hereby authorized shall
 21 not be subject to the restrictions on location, transaction,
 22 or number applicable to detached drive-in, walk-up, or
 23 teller facilities.

24 (b) A satellite terminal OTHER THAN A POINT OF SALES
 25 TERMINAL may not be closer than 200 feet to a facility

1 operated by any other bank or closer than 300 feet to the
 2 main banking house of any other bank, the measurement to be
 3 made in a straight line between the closest points of the
 4 closest structures involved. The distances herein specified
 5 in relation to a facility operated by any other bank and in
 6 relation to the main banking house of any other bank may be
 7 decreased by mutual written agreement of the banks involved
 8 to not closer than 150 feet to a facility operated by any
 9 other bank or closer than 200 feet to the main banking house
 10 of any other bank, the measurement to be made in a straight
 11 line between the closest points of the closest structures
 12 involved."

13 Section 23. Severability. If a part of this act is
 14 invalid, all valid parts that are severable from the invalid
 15 part remain in effect. If a part of this act is invalid in
 16 one or more of its applications, the part remains in effect
 17 in all valid applications that are severable from the
 18 invalid applications.

19 Section 24. Effective date. This act is effective on
 20 January 1, 1978.

-End-