

1 *Senate* BILL NO. *323*  
 2 INTRODUCED BY *Inchman by request*

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE THE  
 5 ESTABLISHMENT, OPERATION, AND USE OF ELECTRONIC FUNDS  
 6 TRANSFER SYSTEMS."

7  
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Short title. This act shall be known and  
 10 may be cited as the "Electronic Funds Transfer Systems Act".

11 Section 2. Policy. It is the public policy of this  
 12 state that:

13 (1) for the protection of consumers and institutions,  
 14 the installation and operation of electronic funds transfer  
 15 systems in this state should be subject to regulation and  
 16 supervision by the department of business regulation as  
 17 provided in this act;

18 (2) electronic funds transfer systems should protect  
 19 the privacy of information and transactions transmitted by  
 20 or through such systems;

21 (3) competition be preserved, monopoly prevented, and  
 22 innovation encouraged in the establishment, operation, and  
 23 use of electronic funds transfer systems which should offer  
 24 their services at a fair price in a nondiscriminatory  
 25 manner; and

1 (4) electronic funds transfer services should be  
 2 provided in such manner and to such extent as to not impair  
 3 the safe and sound operation of the financial structure of  
 4 this state.

5 Section 3. Definitions. As used in this act, the  
 6 following definitions apply:

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

9 (2) "Person" means a natural person, a corporation  
 10 (and its wholly owned subsidiaries), a partnership, an  
 11 association, a trust, a cooperative, or an instrumentality  
 12 of the federal government.

13 (3) "Electronic funds transfer transaction" or  
 14 "transaction" means the transfer of funds from one person to  
 15 another by a third person by use of an electronic device or  
 16 facility.

17 (4) "Electronic funds transfer system" or "system"  
 18 means any electronic device or facility when used for an  
 19 electronic funds transfer transaction. The term includes but  
 20 is not limited to a point-of-sale terminal, a remote service  
 21 unit, or an automated clearinghouse.

22 (5) "Funds transfer institution" or "institution"  
 23 means any person who establishes, operates, or utilizes an  
 24 electronic funds transfer system pursuant to this act.

25 (6) "Automated clearinghouse" or "ACH" means any

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1 electronic information processing device or facility when  
 2 used to receive, retransmit, clear, or post financial  
 3 transactions which originated from a point-of-sale terminal,  
 4 remote service unit, or another ACH and which results in  
 5 either transferring funds to or from one or more accounts in  
 6 institutions or segregating funds in an account in an  
 7 institution for future transfer, or both.

8 (7) "Transaction terminal" or "terminal" means an  
 9 electronic information processing device when used by an  
 10 institution for the purpose of effecting transactions.

11 Section 4. Prohibition. Except as provided in this  
 12 act, no person shall establish, operate, or utilize an  
 13 electronic funds transfer system in this state; provided,  
 14 however, that nothing in this act shall be considered to  
 15 limit or affect the functions or activities of the federal  
 16 government or its instrumentalities.

17 Section 5. Authorization. Any institution may itself  
 18 or in conjunction with other institutions establish,  
 19 operate, or utilize one or more electronic funds transfer  
 20 systems in this state subject to the following limitations  
 21 and conditions:

22 (1) An automated clearinghouse may be established,  
 23 operated, and used for the purpose of facilitating  
 24 transactions between and among institutions in this state or  
 25 other states. Every ACH's operation and use shall be

1 conditioned on:

2 (a) its availability for use for similar transactions  
 3 by any institution on a nondiscriminatory basis upon payment  
 4 of reasonable fees by such institution;

5 (b) the safe, sound, fair, and nondiscriminatory  
 6 conduct of its business; and

7 (c) its continued ownership, operation, and use in  
 8 such manner as not to tend to restrict competition or  
 9 restrain trade.

10 (2) One or more transaction terminals may be located  
 11 anywhere in this state.

12 (3) To the extent any institution establishes or  
 13 operates any terminal to effect any electronic funds  
 14 transfer transaction, it shall permit any other institution  
 15 or customers of such other institution to share the use of  
 16 any such terminal to effect similar transactions upon  
 17 request of such other institution and its agreement to pay a  
 18 fair and reasonable fee for such sharing; provided, however,  
 19 that nothing herein shall be considered to require the  
 20 modification or enlargement of any such terminal or system  
 21 to which it is connected to accommodate such sharing.

22 (4) Upon written request of any institution, the  
 23 department shall determine whether any fee for sharing of an  
 24 electronic funds transfer system as provided in [sections  
 25 5(1)(a) and 5(3) of this act] is fair and reasonable and if

1 he finds such fee not to be fair and reasonable to  
 2 promulgate a fair and reasonable fee schedule. In  
 3 determining whether the fees charged by an institution or  
 4 promulgated by the department for the use of such an  
 5 electronic funds transfer system by another institution are  
 6 fair and reasonable, the department shall consider whether  
 7 such fees require the sharing institution to pay a  
 8 reasonable proportion of all costs properly allocable to the  
 9 installation and operation of such system (to the extent  
 10 such system is used for electronic funds transfer  
 11 transactions), including a reasonable return on investment.  
 12 All determinations by the department shall be made pursuant  
 13 to notice and hearing and shall be in writing setting forth  
 14 the reasons for its determination.

15 (5) As a condition precedent to the establishment or  
 16 operation of any electronic funds transfer system, an  
 17 institution shall file with the department in such form as  
 18 it shall prescribe:

19 (a) a written notice specifying the locations of each  
 20 such system and the components and nature thereof and the  
 21 types of transactions effected;

22 (b) its agreement to share such system in accordance  
 23 with the provisions of [sections 5(1)(a) and 5(3) of this  
 24 act];

25 (c) its agreement to make available to the department

1 upon request such financial information as the department  
 2 considers appropriate to determine the reasonableness of  
 3 fees for sharing as provided in this act; and

4 (d) on January 1 of each year hereafter a list  
 5 identifying each electronic funds transfer system and  
 6 component it owns or operates for its sole use and each  
 7 system and component it owns or operates on a sharing basis,  
 8 identifying each other institution sharing each such device  
 9 and specifying the fees charged for such sharing. Such list  
 10 shall specify the types of transactions effected by such  
 11 system and its components.

12 (6) Any transaction originating at any transaction  
 13 terminal shall be considered to have occurred at premises of  
 14 the institution to which such transaction is transmitted.

15 (7) An institution establishing, operating, or using  
 16 an electronic funds transfer system in this state may  
 17 connect such system with a regional or national electronic  
 18 funds transfer system.

19 Section 6. Privacy. To protect the privacy of  
 20 consumers using an electronic funds transfer system, no  
 21 institution, except as permitted by law, shall provide any  
 22 information about a consumer's transactions nor shall it use  
 23 any such information except as required for operation of the  
 24 system or as otherwise permitted by law. Nothing in this  
 25 section shall be considered to prohibit an otherwise lawful

1 disclosure, exchange, or use of credit information.

2 Section 7. Enforcement. (1) The department shall  
3 enforce the provisions of this act.

4 (2) (a) If the department has probable cause to  
5 believe that a person has engaged in an act which is subject  
6 to action by the department, it may investigate to determine  
7 if the act has been committed and, to the extent necessary  
8 for this purpose, may administer oaths or affirmations and,  
9 upon its own motion or upon request of any party, may  
10 subpoena witnesses, compel their attendance, adduce  
11 evidence, and require the production of any matter which is  
12 relevant to the investigation, including the existence,  
13 description, nature, custody, condition, and location of any  
14 books, documents, or other tangible things and the identity  
15 and location of persons having knowledge of relevant facts  
16 or any other matter reasonably calculated to lead to  
17 discovery of admissible evidence.

18 (b) If, in the opinion of the department, any person  
19 is violating any provision of this act or any lawful order  
20 of the department issued pursuant to this act, it shall  
21 serve upon such person a notice specifying the nature of  
22 such violation and fixing a time and place for hearing to  
23 determine whether a cease-and-desist order should be issued  
24 against such person. Such hearing shall be fixed for a date  
25 not less than 20 or more than 30 days after service of such

1 notice.

2 (c) If, upon the record made at such hearing, the  
3 department finds that any violation as specified in such  
4 notice has been established, it shall issue and serve upon  
5 such person an order to cease and desist from such  
6 violation.

7 (d) If any person shall fail to comply with such  
8 cease-and-desist order, the department may apply to any  
9 court of competent jurisdiction for an injunction to enforce  
10 such order. If the court shall determine upon review of the  
11 record made before the department that the cease-and-desist  
12 order was based upon substantial evidence, it shall issue  
13 such injunction. If the court finds that violation of the  
14 cease-and-desist order was willful, it shall impose a  
15 penalty of not to exceed \$1,000 a day for each day such  
16 person has failed to comply with the order after service  
17 thereof.

18 (e) Nothing in this section shall be considered to  
19 preclude any person from bringing an action for damages or  
20 injunctive relief by reason of violation of any provision of  
21 this act.

22 (f) Any person aggrieved by any decision or order of  
23 the department under this act may seek judicial review  
24 thereof as provided under the Montana Administrative  
25 Procedure Act.

1           (3) The department may adopt, amend, or repeal  
2 substantive rules when specifically authorized by this act  
3 and adopt, amend, or repeal procedural rules to carry out  
4 the provisions of this act.

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

-End-

STATE OF MONTANA

REQUEST NO. 298-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 1, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 323 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 323 is an act to regulate the establishment, operation, and use of electronic funds transfer systems.

ASSUMPTIONS:

1. Immediately after the effective date of this act, the Department of Business Regulation must hold hearings to establish rules and reporting procedures to implement the act.
2. One (1) employee with technical expertise in electronics will be necessary to monitor and supervise the introduction, installation and regulation 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 1.00 FTE in FY 78 and 1.50 FTE in FY 79.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Personal services	\$17,559	\$24,180
Operating expenses	<u>8,400</u>	<u>7,400</u>
Increased expenditures under proposed law	<u>\$25,959</u>	<u>\$31,580</u>

TECHNICAL NOTE:

Senate Bill 323 strongly parallels proposed Senate Bill 170 which has an effective date of January 1, 1978 as opposed to Senate Bill 323 which has an effective date of July 1, 1977.

*Richard L. Zengler*  
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-2-77