

SENATE BILL NO. 310

INTRODUCED BY MCLANE, SPAETH, VAN VALKENBURG, LYNCH,  
MENAHAN, JACOBSON, DAILY, RAMIREZ, HAYNE

IN THE SENATE

FEBRUARY 1, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
FEBRUARY 13, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 14, 1989	PRINTING REPORT.
FEBRUARY 15, 1989	SECOND READING, DO PASS.
FEBRUARY 16, 1989	ENGROSSING REPORT.
FEBRUARY 17, 1989	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 17, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
FEBRUARY 20, 1989	FIRST READING.
MARCH 8, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 11, 1989	SECOND READING, CONCURRED IN.
MARCH 13, 1989	THIRD READING, CONCURRED IN. AYES, 98; NOES, 0.
	RETURNED TO SENATE.

MARCH 14, 1989

IN THE SENATE

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *310*  
2 INTRODUCED BY *McInerney Van Vleet Lynch*  
3 *Menahan Jacobson Day Ramsey Hayden*  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN  
5 PROVISIONS OF THE MONTANA ELECTRONIC FUNDS TRANSFER ACT; AND  
6 AMENDING SECTIONS 32-6-103, 32-6-104, 32-6-303, AND  
7 32-6-305, MCA."  
8

9 WHEREAS, it is desirable to revise the Montana  
10 Electronic Funds Transfer Act to address obligations of  
11 merchants and business organizations and to provide for the  
12 use of a personal identification number at a point-of-sale  
13 terminal as an alternative to obtaining a customer's  
14 signature.  
15

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

17 **Section 1.** Section 32-6-103, MCA, is amended to read:

18 "32-6-103. Definitions. As used in this chapter, the  
19 following definitions shall apply unless the context  
20 otherwise requires:

21 (1) "Electronic funds transfer" means debiting or  
22 crediting a depositor's account or otherwise transacting any  
23 business in a financial institution by electronic impulse  
24 messages, authorized under this chapter, transmitted  
25 directly by wire or otherwise or stored on magnetic tape or

1 equivalent technologies, or otherwise, and processing the  
2 adjustments without regular and customary direct human  
3 intervention. Nothing in this subsection prevents a  
4 financial institution from processing its bookkeeping  
5 entries through normal human intervention.

6 (2) "Financial institution" means a bank chartered  
7 under chapter 1 of this title, a bank chartered under the  
8 National Banking Acts in Title 12 of the United States Code,  
9 a building and loan association chartered under chapter 2 of  
10 this title, a savings and loan association chartered under  
11 the Home Owners' Loan Act in Title 12 of the United States  
12 Code, a credit union chartered under chapter 3 of this  
13 title, or a credit union chartered under the Federal Credit  
14 Union Act in Title 12 of the United States Code. For  
15 purposes of this chapter only, a consumer loan company  
16 licensed under chapter 5 ~~shall be~~ is considered a financial  
17 institution.

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

22 (b) "Satellite terminal" includes:

23 (i) automated teller machine, which means a satellite  
24 terminal to make electronic funds transfers, located off the  
25 premises of financial institutions, operated by customers of

1 financial institutions without assistance, activated by a  
2 unique identification device and personal identification  
3 number;

4 (ii) point-of-sale terminal, which means a satellite  
5 terminal located on the premises of a merchant, operated by  
6 a merchant or his employees solely to debit a customer's  
7 deposit or share account in a financial institution and  
8 solely to credit the merchant's account commensurately for  
9 transactions in goods or services. A point-of-sale terminal  
10 need not be activated by a unique personal identification  
11 device. A merchant has the option, provided that the  
12 necessary computer capability exists at a reasonable cost,  
13 of selling goods or services by point-of-sale terminals with  
14 the electronic funds transfer taking effect at the time of  
15 the transaction or at a stated time after the transaction.

16 (c) The definition of "satellite terminal" does not  
17 include and nothing in this chapter may be construed to  
18 apply to:

19 (i) an automated teller machine located on the  
20 premises of a financial institution;

21 (ii) an automated clearinghouse or any equivalent  
22 system designed to transfer funds between financial  
23 institutions; or

24 (iii) a point-of-sale terminal which is utilized by a  
25 merchant in the merchant's business only and does not

1 provide access to a financial institution.

2 (4) "Premises" means those locations where by  
3 applicable law financial institutions are authorized to  
4 maintain a principal place of business and other offices for  
5 the conduct of their respective businesses; the term  
6 includes a detached drive-in or walk-up facility approved  
7 under 32-1-372.

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

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

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

22 (8) "Department" means the department of commerce.

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

(10) "Unique identification device" means a magnetic encoded plastic card or equivalent device containing a number unique to a customer ~~with-relation-to~~ and issued by a financial institution, merchant, or other person."

**Section 2.** Section 32-6-104, MCA, is amended to read:

"32-6-104. Consumer information. (1) A financial institution or its affiliate engaging in electronic funds transfers with its customers shall, prior to authorizing a customer to make electronic funds transfers, provide the customer an itemized statement clearly setting forth, without limitation:

(a) the specific transactions which may be performed through satellite terminals;

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

(c) minimum balance requirements, if any;

(d) the liability of the various parties for unauthorized transactions made by electronic funds transfer, 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;

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

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

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

(h) instructions in maintaining customer records and reconciling balances and in the importance of retaining receipts of electronic funds transfers; and

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

(2) 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~~ must be provided the customer. In addition, the information set forth in subsection (1)(d) ~~of--this--section--shall~~ must be specifically acknowledged by the customer. The customer shall verify his acknowledgement by signing his initials immediately adjacent to the information provided.

(3) A merchant or person other than a financial institution that issues a unique identification device to its customers for use at a point-of-sale terminal and that provides to the holders of the unique identification device

1 a disclosure that satisfies the initial disclosures of terms  
 2 and conditions under Regulation E of the federal Electronic  
 3 Fund Transfer Act is considered to be in compliance with the  
 4 disclosure requirements of this section."

5 **Section 3.** Section 32-6-303, MCA, is amended to read:

6 **"32-6-303. Unauthorized transactions -- liability. (1)**

7 A customer whose account is debited by an electronic funds  
 8 transfer without his authorization is not liable for the  
 9 amount of such transaction, and the amount ~~shall~~ must be  
 10 recredited to his account as provided under 32-6-302,  
 11 unless:

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

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

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

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

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

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

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

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

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

1 commensurate value.

2 (5) The liability for any unauthorized or erroneous  
3 electronic funds transfer ~~which that~~ does not fall upon a  
4 customer or a merchant under this section falls upon the  
5 financial institution ~~which that~~ carries out the transfer."

6 **Section 4.** Section 32-6-305, MCA, is amended to read:

7 "32-6-305. Point-of-sale terminals -- additional  
8 standards. (1) Before the department approves a  
9 point-of-sale terminal, it must find that the merchant  
10 demonstrates on his application that:

11 (a) he will use acceptable procedures for customer  
12 self-identification;

13 (b) he will use a draft and receipt system, on which  
14 the customer's signature acknowledges receipt of the goods  
15 or services paid for by electronic funds transfer;. If the  
16 sale is initiated by the customer entering his personal  
17 identification number in the point-of-sale terminal, the  
18 merchant is not required to obtain the customer's signature.

19 (c) he will institute a procedure whereby he keeps one  
20 copy of each ~~such~~ draft and receipt for 1 year following the  
21 date of transaction, he gives one copy to the customer in  
22 satisfaction of 32-6-301(1), and he forwards one copy to the  
23 customer's financial institution. The requirement of a copy  
24 to the financial institution may be waived by the department  
25 by rule if the point-of-sale terminal is activated by a

1 customer's unique identification device.

2 (2) A financial institution involved in an electronic  
3 funds transfer initiated from a point-of-sale terminal may  
4 inspect the merchant's copy of the transaction record for  
5 any purpose consistent with the privacy provisions of  
6 32-6-105."

7 NEW SECTION. **Section 5.** Extension of authority. Any  
8 existing authority to make rules on the subject of the  
9 provisions of [this act] is extended to the provisions of  
10 [this act].

-End-

APPROVED BY COMM. ON  
BUSINESS & INDUSTRY

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 8 National Banking Acts in Title 12 of the United States Code,  
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22 identification device and upon the importance of immediate  
23 notification to the institution of ~~such~~ theft or loss;

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15 of the statement, countersigned by an officer of the  
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17 In addition, the information set forth in subsection (1)(d)  
18 ~~of--this--section--shall~~ must be specifically acknowledged by  
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22 (3) A merchant or person other than a financial  
23 institution that issues a unique identification device to  
24 its customers for use at a point-of-sale terminal and that  
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 3 Fund Transfer Act is considered to be in compliance with the  
 4 disclosure requirements of this section."

5 **Section 3.** Section 32-6-303, MCA, is amended to read:

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7 A customer whose account is debited by an electronic funds  
 8 transfer without his authorization is not liable for the  
 9 amount of such transaction, and the amount ~~shall~~ must be  
 10 recredited to his account as provided under 32-6-302,  
 11 unless:

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

19 (b) the financial institution has provided the  
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 21 conjunction with a personal identification number separate  
 22 from the device, electronic funds transfer requests and the  
 23 customer attaches the personal identification number to the  
 24 device by writing or otherwise or in any way makes the  
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6 (2) A customer who willingly gives his unique  
 7 identification device and personal identification number to  
 8 another is presumed to have authorized any electronic funds  
 9 transfers requested by ~~such~~ the other person.

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

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

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

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

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

1 commensurate value.

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6 **Section 4.** Section 32-6-305, MCA, is amended to read:

7 "32-6-305. Point-of-sale terminals -- additional  
8 standards. (1) Before the department approves a  
9 point-of-sale terminal, it must find that the merchant  
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7 NEW SECTION. **Section 5.** Extension of authority. Any  
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24 corporation, association, or any other business  
25 organization.

(10) "Unique identification device" means a magnetic encoded plastic card or equivalent device containing a number unique to a customer ~~with-relation-to~~ and issued by a financial institution, merchant, or other person."

**Section 2.** Section 32-6-104, MCA, is amended to read:

**"32-6-104. Consumer information.** (1) A financial institution or its affiliate engaging in electronic funds transfers with its customers shall, prior to authorizing a customer to make electronic funds transfers, provide the customer an itemized statement clearly setting forth, without limitation:

(a) the specific transactions which may be performed through satellite terminals;

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

(c) minimum balance requirements, if any;

(d) the liability of the various parties for unauthorized transactions made by electronic funds transfer, 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;

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

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

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

(h) instructions in maintaining customer records and reconciling balances and in the importance of retaining receipts of electronic funds transfers; and

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

(2) 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~~ must be provided the customer. In addition, the information set forth in subsection (1)(d) ~~of--this--section--shall~~ must be specifically acknowledged by the customer. The customer shall verify his acknowledgement by signing his initials immediately adjacent to the information provided.

(3) A merchant or person other than a financial institution that issues a unique identification device to its customers for use at a point-of-sale terminal and that provides to the holders of the unique identification device

1 a disclosure that satisfies the initial disclosures of terms  
 2 and conditions under Regulation E of the federal Electronic  
 3 Fund Transfer Act is considered to be in compliance with the  
 4 disclosure requirements of this section."

5 **Section 3.** Section 32-6-303, MCA, is amended to read:

6 "32-6-303. Unauthorized transactions -- liability. (1)

7 A customer whose account is debited by an electronic funds  
 8 transfer without his authorization is not liable for the  
 9 amount of such transaction, and the amount shall must be  
 10 recredited to his account as provided under 32-6-302,  
 11 unless:

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

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

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

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

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

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

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

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

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



1 commensurate value.

2 (5) The liability for any unauthorized or erroneous  
3 electronic funds transfer ~~which that~~ does not fall upon a  
4 customer or a merchant under this section falls upon the  
5 financial institution ~~which that~~ carries out the transfer."

6 **Section 4.** Section 32-6-305, MCA, is amended to read:

7 "32-6-305. Point-of-sale terminals -- additional  
8 standards. (1) Before the department approves a  
9 point-of-sale terminal, it must find that the merchant  
10 demonstrates on his application that:

11 (a) he will use acceptable procedures for customer  
12 self-identification;

13 (b) he will use a draft and receipt system, on which  
14 the customer's signature acknowledges receipt of the goods  
15 or services paid for by electronic funds transfer. If the  
16 sale is initiated by the customer entering his personal  
17 identification number in the point-of-sale terminal, the  
18 merchant is not required to obtain the customer's signature.

19 (c) he will institute a procedure whereby he keeps one  
20 copy of each such draft and receipt for 1 year following the  
21 date of transaction, he gives one copy to the customer in  
22 satisfaction of 32-6-301(1), and he forwards one copy to the  
23 customer's financial institution. The requirement of a copy  
24 to the financial institution may be waived by the department  
25 by rule if the point-of-sale terminal is activated by a

1 customer's unique identification device.

2 (2) A financial institution involved in an electronic  
3 funds transfer initiated from a point-of-sale terminal may  
4 inspect the merchant's copy of the transaction record for  
5 any purpose consistent with the privacy provisions of  
6 32-6-105."

7 NEW SECTION. **Section 5.** Extension of authority. Any  
8 existing authority to make rules on the subject of the  
9 provisions of [this act] is extended to the provisions of  
10 [this act].

-End-

## SENATE BILL NO. 310

INTRODUCED BY MCLANE, SPAETH, VAN VALKENBURG, LYNCH,  
MENAHAN, JACOBSON, DAILY, RAMIREZ, HAYNE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN  
PROVISIONS OF THE MONTANA ELECTRONIC FUNDS TRANSFER ACT; AND  
AMENDING SECTIONS 32-6-103, 32-6-104, 32-6-303, AND  
32-6-305, MCA."

WHEREAS, it is desirable to revise the Montana  
Electronic Funds Transfer Act to address obligations of  
merchants and business organizations and to provide for the  
use of a personal identification number at a point-of-sale  
terminal as an alternative to obtaining a customer's  
signature.

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

**Section 1.** Section 32-6-103, MCA, is amended to read:

"32-6-103. **Definitions.** As used in this chapter, the  
following definitions ~~shall~~ apply unless the context  
otherwise requires:

(1) "Electronic funds transfer" means debiting or  
crediting a depositor's account or otherwise transacting any  
business in a financial institution by electronic impulse  
messages, authorized under this chapter, transmitted

directly by wire or otherwise or stored on magnetic tape or  
equivalent technologies, or otherwise, and processing the  
adjustments without regular and customary direct human  
intervention. Nothing in this subsection prevents a  
financial institution from processing its bookkeeping  
entries through normal human intervention.

(2) "Financial institution" means a bank chartered  
under chapter 1 of this title, a bank chartered under the  
National Banking Acts in Title 12 of the United States Code,  
a building and loan association chartered under chapter 2 of  
this title, a savings and loan association chartered under  
the Home Owners' Loan Act in Title 12 of the United States  
Code, a credit union chartered under chapter 3 of this  
title, or a credit union chartered under the Federal Credit  
Union Act in Title 12 of the United States Code. For  
purposes of this chapter only, a consumer loan company  
licensed under chapter 5 ~~shall-be~~ is considered a financial  
institution.

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

(b) "Satellite terminal" includes:

(i) automated teller machine, which means a satellite  
terminal to make electronic funds transfers, located off the

1 premises of financial institutions, operated by customers of  
2 financial institutions without assistance, activated by a  
3 unique identification device and personal identification  
4 number;

5 (ii) point-of-sale terminal, which means a satellite  
6 terminal located on the premises of a merchant, operated by  
7 a merchant or his employees solely to debit a customer's  
8 deposit or share account in a financial institution and  
9 solely to credit the merchant's account commensurately for  
10 transactions in goods or services. A point-of-sale terminal  
11 need not be activated by a unique personal identification  
12 device. A merchant has the option, provided that the  
13 necessary computer capability exists at a reasonable cost,  
14 of selling goods or services by point-of-sale terminals with  
15 the electronic funds transfer taking effect at the time of  
16 the transaction or at a stated time after the transaction.

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

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

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

25 (iii) a point-of-sale terminal which is utilized by a

1 merchant in the merchant's business only and does not  
2 provide access to a financial institution.

3 (4) "Premises" means those locations where by  
4 applicable law financial institutions are authorized to  
5 maintain a principal place of business and other offices for  
6 the conduct of their respective businesses; the term  
7 includes a detached drive-in or walk-up facility approved  
8 under 32-1-372.

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

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

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

23 (8) "Department" means the department of commerce.

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

1 organization.

2 (10) "Unique identification device" means a magnetic  
3 encoded plastic card or equivalent device containing a  
4 number unique to a customer ~~with relation to~~ and issued by a  
5 financial institution, merchant, or other person."

6 **Section 2.** Section 32-6-104, MCA, is amended to read:

7 "32-6-104. Consumer information. (1) A financial  
8 institution or its affiliate engaging in electronic funds  
9 transfers with its customers shall, prior to authorizing a  
10 customer to make electronic funds transfers, provide the  
11 customer an itemized statement clearly setting forth,  
12 without limitation:

13 (a) the specific transactions which may be performed  
14 through satellite terminals;

15 (b) the charges, if any, for individual transactions  
16 engaged in through a satellite terminal;

17 (c) minimum balance requirements, if any;

18 (d) the liability of the various parties for  
19 unauthorized transactions made by electronic funds transfer,  
20 with special emphasis upon the liability when the customer  
21 makes his personal identification number readily available  
22 for discovery in connection with theft or loss of the unique  
23 identification device and upon the importance of immediate  
24 notification to the institution of such theft or loss;

25 (e) the legal status of receipts issued from a

1 satellite terminal;

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

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

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

11 (i) the economic significance of having no "float"  
12 time and no stop-payment authority.

13 (2) The customer shall then sign a statement  
14 acknowledging his acceptance of these terms and conditions  
15 and give the statement to the financial institution. A copy  
16 of the statement, countersigned by an officer of the  
17 financial institution, ~~shall~~ must be provided the customer.  
18 In addition, the information set forth in subsection (1)(d)  
19 ~~of this section shall~~ must be specifically acknowledged by  
20 the customer. The customer shall verify his acknowledgement  
21 by signing his initials immediately adjacent to the  
22 information provided.

23 (3) A merchant or person other than a financial  
24 institution that issues a unique identification device to  
25 its customers for use at a point-of-sale terminal and that

provides to the holders of the unique identification device a disclosure that satisfies the initial disclosures of terms and conditions under Regulation E of the federal Electronic Fund Transfer Act is considered to be in compliance with the disclosure requirements of this section."

**Section 3.** Section 32-6-303, MCA, is amended to read:

**"32-6-303. Unauthorized transactions -- liability.** (1)

A customer whose account is debited by an electronic funds transfer without his authorization is not liable for the amount of such transaction, and the amount ~~shall~~ must be recredited to his account as provided under 32-6-302, unless:

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

(b) the financial institution has provided the customer a unique identification device for initiating, in conjunction with a personal identification number separate from the device, electronic funds transfer requests and the customer attaches the personal identification number to the device by writing or otherwise or in any way makes the

number readily available for discovery in connection with the theft or loss of the device and transactions are made as a result of the theft or loss of the device, in which case the customer is liable for one-half the value of all consequent transactions made until the financial institution is notified of such the theft or loss.

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

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

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

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

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

(4) A merchant operating a point-of-sale terminal shall warrant to the financial institution or the department that an order for an electronic funds transfer emanating from the terminal is part of a commercial transaction in

1 which the customer receives goods or services of  
2 commensurate value.

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

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9 standards. (1) Before the department approves a  
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13 self-identification;

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15 the customer's signature acknowledges receipt of the goods  
16 or services paid for by electronic funds transfer; If the  
17 sale is initiated by the customer entering his personal  
18 identification number in the point-of-sale terminal, the  
19 merchant is not required to obtain the customer's signature.

20 (c) he will institute a procedure whereby he keeps one  
21 copy of each such draft and receipt for 1 year following the  
22 date of transaction, he gives one copy to the customer in  
23 satisfaction of 32-6-301(1), and he forwards one copy to the  
24 customer's financial institution. The requirement of a copy  
25 to the financial institution may be waived by the department

1 by rule if the point-of-sale terminal is activated by a  
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3 (2) A financial institution involved in an electronic  
4 funds transfer initiated from a point-of-sale terminal may  
5 inspect the merchant's copy of the transaction record for  
6 any purpose consistent with the privacy provisions of  
7 32-6-105."

8 **NEW SECTION. Section 5.** Extension of authority. Any  
9 existing authority to make rules on the subject of the  
10 provisions of [this act] is extended to the provisions of  
11 [this act].

-End-