

INTERPRETIVE LETTER - 06-01 (APRIL 19, 2006)

State-chartered banks may comply with the Illinois Electronic Fund Transfer (EFT) Act surcharge notice requirements by fulfilling the notice requirements imposed under the Federal Electronic Fund Transfer Act.

Please accept this correspondence as confirmation that I have received and reviewed your March 16, 2006 letter regarding application of Section 55 of the Illinois Electronic Funds Transfer Act¹, (the "EFT Act"). Specifically you have requested that the Division of Banking provide confirmation regarding whether Section 55 of the EFT Act provides Illinois ATM terminal operators with a safe harbor default to federal statutory provisions with respect to certain surcharge fee disclosure requirements. Based upon a review of the EFT Act, the federal Electronic Fund Transfer Act,² (the "Federal Act"), the duly promulgated Federal Reserve Board Regulation E³, and in consideration of what appears to be a clear legislative intent, it is the position of the Division of Banking that operators of Illinois ATM terminals have the option of complying with either Section 50(e) of the EFT Act or relevant surcharge disclosure provisions of the Federal Act and underlying regulations.

You have indicated that your client, a state-chartered bank, is initiating a process whereby they will audit all of their ATM locations to determine appropriate surcharge fee disclosure notices. In connection with this process, you have reviewed the provisions regarding mandatory surcharge notices that are contained in Section 50(e) of the EFT Act and further described under Division of Banking Rule 315.410.⁴ In general, the provisions of Section 50(e) of the EFT Act and Division Rule 315 specifically require operators of Illinois ATM terminals to disclose the surcharge fee amount or calculation on both the terminal and on the screen utilized by consumers to complete a transaction. You have identified potentially burdensome costs that may be incurred by operators of Illinois ATM terminals in connection with altering surcharge fee signage on multiple terminal locations.

As an alternative to the specific requirements imposed under the EFT Act, you have pointed out the language contained under Section 55(a) of the EFT Act, whereby the provisions of the Federal Act and all regulations issued pursuant to the Federal Act are adopted and incorporated by reference into the EFT Act. Section 55 further indicates a legislative intent to deem compliance with the provisions of the Federal Act as a sufficient alternative to the requirements imposed under the EFT Act. Accordingly, it appears clear that the Illinois legislature established Section 55 of the EFT Act as a safe harbor alternative for operators of Illinois ATM terminals.

A review of the applicable surcharge notice requirement provisions contained under the Section 205.16 of Regulation E indicates that notice as to the surcharge amount need only appear on the terminal screen as opposed to a concurrent posting of the surcharge amount on the exterior of the terminal. In addition, Regulation E mandates that signage on the exterior of the terminal need only identify that a fee will or may be applied. Accordingly, the ability to utilize the safe harbor established under Section 55 of the EFT Act will allow your client to avoid the costly and burdensome requirement that the surcharge amount or calculation appear on the exterior of the ATM terminal.

¹ 205 ILCS 616/1

² 15 U.S.C. 1693, et seq.

³ 12 C.F.R. 205 et seq.

⁴ 38 Ill. Adm. Code, Part 315

You have also raised concern with respect to what appears to be inconsistent language contained in the text of Section 55 of the EFT. The initial sentence of that section clearly identifies the legislative intent to incorporate the provisions of the Federal Act into the provision of the Illinois EFT Act. The second sentence however indicates that compliance with the Federal Act will be deemed compliance with Section 55 of the EFT Act. The use of the term “Section” rather than “Act” appears to be an inadvertent legislative scrivener’s error. To restrict applicability of the Federal Act compliance safe harbor only to Section 55 of the EFT Act results in an absurd consequence and appears to defeat the true intent of the Illinois legislature.⁵ Accordingly, it is the position of the Division that the true intent of the Illinois legislature was to allow for compliance with the EFT Act by fulfilling the requirements imposed under the Federal Act.

⁵ See *Gibbs v. Madison County Sheriff’s Department* 326 Ill. App. 3d 473, 260 Ill. Dec. 276