

**Interpretive Letter 96-07 (December 4, 1996)**

**ATM's which only dispense cash may be established in Illinois at any location and by any establisher.**

We are writing in response to [an out of state bank's] request for an interpretive letter regarding ATM's in Illinois that would only dispense cash. It is the opinion of the Office of Banks and Real Estate ("Office") that Illinois law does not restrict the establishment of ATM's that only dispense cash.

There are three provisions of Illinois law that are relevant in reaching the conclusion that cash dispensing only ATM's may be established at any location and without limit as to the establisher. First, Section 2 of the Illinois Banking Act ("Banking Act"), 205 ILCS 5/2 (1994), states:

a place of business at which deposits are received, checks paid, or loans made shall not be deemed to be a branch, or branch office (i) of any bank if the place is an automatic teller machine established and maintained in accordance with paragraph (16) of Section 5 of this Act...

Section 5(17) of the Banking Act states:

A bank...shall...have... the following additional general corporate powers:

(17) To establish and maintain terminals, as authorized by the Electronic Fund Transfer Act.

205 ILCS 5/5(17) (1994).

Pursuant to the above provisions of the Banking Act, a bank may establish ATM's at any location and those terminals will not be considered branches.

The Electronic Fund Transfer Act, ("EFT Act"), 205 ILCS 616 (1994), governs electronic fund transfers in this State. Section 30 of the EFT Act provides:

No terminal that accepts deposits of funds to an account may be established in this State except by (a) a bank established under the laws of this or any other state or established under the laws of the United States that (1) is authorized by law to establish a branch in this State or (2) is permitted by rule of the Commissioner to establish deposit-taking terminals in this State in order to maintain parity between national banks and banks established under the laws of this or any other state, (b) a savings and loan association or savings bank established under the laws of this or any other state or

established under the laws of the United States, (c) a credit union established under the laws of this or any other state or established under the laws of the United States, or (d) a licensee under the Consumer Installment Loan Act or the Sales Finance Agency Act.

205 ILCS 616/30 (1994).

Section 30 does not restrict the type of entity that establishes a terminal that only dispenses cash or the location of the terminal. However, if the terminal is established by a commercial bank and will accept deposits, Section 30 does limit the establisher to a bank that may lawfully establish a branch in this State.

In addition, be advised that an ATM establisher must comply with the Automated Teller Machine Security Act, 205 ILCS 695 (1994). This Act requires that any ATM operator comply with certain safety requirements concerning the establishment and maintenance of ATM's in Illinois. Finally, Section 55 of the EFT Act, 205 ILCS 616/55 (1994), adopts the federal Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq. and Regulation E, 12 C.F.R. 205, as part of Illinois law. Any consumer issues shall be governed by the provisions of those federal laws.

Based on the above Sections of the Banking Act and the EFT Act, we are of the opinion and find that a cash dispensing only ATM may be established at any location and by any establisher in this State.