

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #2

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JUN 1 3 29 PM '98

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: WV Division of Banking TITLE NUMBER: 106

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §§ 31A-8-12b(h);

31C-1-3(a) and 31C-2-5(d)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 7

TITLE OF RULE BEING AMENDED: Legislative Rule Pertaining to the Installation,

Operation and Sharing of Customer Bank Communication Terminals and the Utilization of

Nonexclusive Access Interchange System

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 2, 1998 AT 4:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

WV Division of Banking

State Capitol Complex

Building 3, Room 311

Charleston, WV 25305-0240

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Robin C. Capehart, Cabinet Secretary

June 1, 1998  
Date

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$3.00



## DIVISION OF BANKING

Building #3, Room 311 • State Capitol Complex • 1900 Kanawha Blvd., East • Charleston, WV 25305-0240 • FAX: (304) 558-0442

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COMMISSIONER OF BANKING  
RULE PERTAINING TO  
INSTALLATION, OPERATION AND SHARING OF CUSTOMER BANK  
COMMUNICATION TERMINALS AND THE UTILIZATION OF NONEXCLUSIVE  
ACCESS INTERCHANGE SYSTEM  
106 CSR 7

### Summary of Proposed Rule Amendments

The proposed rule amendments would amend the current rule to deal with new issues arising from the placement of ATMs in West Virginia from out-of-state banks, as well as from the split in the ownership interest and operational control/responsibilities which now occur regarding ATMs. It would set forth what is present policy governing: conspicuous display of the bank or credit union's name on the ATM; the treatment of the institution's own customer on the same terms as at ATMs the institutions owns; the ability for a non-customer to be informed of any charges prior to completing the transaction, with an ability to cancel a proposed transaction without charge; and the notification of ATM locations to the Commissioner for tracking purposes. The rule is needed to make the policy enforceable, and to clarify how ATMs may operate in this state.

E.E.O./AFFIRMATIVE ACTION EMPLOYER



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COMMISSIONER OF BANKING  
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ACCESS INTERCHANGE SYSTEM  
106 CSR 7

Statement of Circumstances

The proposed rule amendments are needed to address the issues arising from the placement of ATMs by third-party vendors at merchant locations, which by law must still be operated by a bank or credit union.

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**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

**Rule Title:** Legislative Rule Pertaining to the Installation, Operation and Sharing of Customer Bank Communication Terminals and the Utilization of Nonexclusive Access Interchange System [106 CSR 7]

**Type of Rule:** X **Legislative**           **Interpretive**           **Procedural**

**Agency:** West Virginia Division of Banking

**Address:** State Capitol Complex  
Building 3, Room 311  
Charleston, West Virginia 25305-0240

**1. Effect of Proposed Rule:**

	ANNUAL		FISCAL YEAR	NEXT	THEREAFTER
	INCREASE	DECREASE			
ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSES	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

**2. Explanation of above estimates:**

The rule changes merely track current policy followed and enforced by the Division of Banking with respect to the operation of ATMs and other types of remote terminals by banks where such terminals are owned or leased by merchants. In addition, the changes merely alert readers that these rules also apply to credit unions, a fact set out in law at W. Va. Code § 31C-2-5(d). The changes set forth thus conform to current practices, and hence contain no additional costs.

**3. Objectives of these rules:**

To clarify what the term “operate” means in the context of managing transactions through ATMs. Setting the policy position of the Division in a rule will make for easier enforcement. The application of the rule to credit unions will also be more easily recognized by these changes.

**Rule Title:** Legislative Rule Pertaining to the Installation, Operation and Sharing of Customer Bank Communication Terminals and the Utilization of Nonexclusive Access Interchange System [106 CSR 7]

**4. Explanation of Overall Economic Impact of Proposed Rule.**

**A. Economic Impact on State Government:**

None.

**B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:**

None. On-screen disclosures of ATM surcharges, with an ability to void the transaction without charge are now the standard industry practice, therefore, no additional expense is anticipated to be incurred by banks or credit unions.

**C. Economic Impact on Citizens / Public at Large:**

None.

**Date:** June 7, 1998

**Signature of Agency Head or Authorized Representative:**

Shawn L. Bed

TITLE 106  
LEGISLATIVE RULES  
COMMISSIONER OF BANKING

FILED

JUN 1 3 30 PM '98

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 7  
LEGISLATIVE RULE PERTAINING TO THE INSTALLATION,  
OPERATION AND SHARING OF CUSTOMER BANK COMMUNICATION  
TERMINALS AND THE UTILIZATION OF NONEXCLUSIVE ACCESS  
INTERCHANGE SYSTEM

§106-7-1. General.

1.1. Scope. -- ~~These regulations establish general rules implementing This rule implements, clarifies and explains~~ W. Va. Code §31A-8-12b, which permits the installation, operation and sharing of customer bank communication terminals and the utilization of nonexclusive access interchange systems. This rule also applies to credit unions in their installation, operation and sharing of remote service units, including automated teller machines, to the same extent as banks operating through similar electronic communication terminals. Whenever this rule is applied to a credit union, the words "credit union" shall be substituted for the words "banking institution," "bank," or "banking."

1.2. Authority. -- W. Va. Code §31A-8-12 b ~~(f)~~ (h) and §§31C-1-3(a) and 31C-2-5(d).

1.3. Filing Date. -- ~~April 11, 1983~~

1.4. Effective Date. -- ~~May 11, 1983~~

§106-7-2. Sharing customer bank communication terminals.

2.1. Mandatory sharing.

Pursuant to W. Va. Code §31A-8-12b(a)(1), any banking institution, which individually or jointly with one or more other banking institutions or other federally insured financial institutions, installs, operates and engages in banking business from a customer bank communication terminal in a location other than on the premises of its principal office, branch bank, or authorized off-premise facility, shall make such customer bank communication terminal available for use by other banking institutions on a nondiscriminatory basis. The fees and charges required to be paid by any banking institution which utilizes the customer bank communication terminal shall not exceed a pro rata share of the costs, determined in accordance with generally accepted accounting principles, of purchasing or leasing,

installing, operating and maintaining the customer bank communication terminal, plus a reasonable rate of return on these costs to the owner or lessee of the customer bank communication terminal.

2.2. Permissive/nondiscriminatory sharing.

Pursuant to W. Va. Code §31A-8-12b(a)(2), any banking institution, which individually or jointly with one or more other banking institutions or other federally insured financial institutions, installs, operates and engages in banking business from a customer bank communication terminal may make such customer bank communication terminal available for use by ~~one~~ another federally insured financial institutions. A banking institution which makes such a customer bank communication terminal available for use by one other federally insured financial institution shall make that customer bank communication terminal available for use by all other federally insured financial institutions on a nondiscriminatory basis. The charges to be paid by other federally insured financial institutions which utilizes the customer bank communication terminal shall not exceed a pro rata share of the costs, determined in accordance with generally accepted accounting principles, of purchasing or leasing, operating and maintaining the customer bank communication terminal, plus a reasonable return on these costs to the owner of the customer bank communication terminal.

2.3. ~~Written agreement or contract required to be filed with the Commissioner of Banking.~~

The terms and conditions of a banking institution's or other federally insured financial institution's use of a customer bank communication terminal under subsections 2.1 or 2.2 of these rules shall be governed by a written agreement or contract between the banking institution which installs, operates and engages in banking business from that customer bank communication terminal and the banking institution or other federally insured financial institution whose customers shall use that customer bank communication terminal. The written agreement or contract shall specify all terms and conditions, and shall include the fees and charges for the use of the customer bank communication terminal. A copy of the written agreement or contract shall, upon request, be filed with the Commissioner of Banking by the West Virginia state-chartered banking institution or the bank holding company controlling the banking institution that installs and operates the customer bank communication terminal.

2.4. Hearing before the Commissioner of Banking.

Upon the written complaint by a banking institution or federally insured financial institution that it is unreasonably being denied the use of a customer bank communication terminal which has been installed and operated by a banking institution

pursuant to subsections 2.1 or 2.2 of these rules, the Commissioner of Banking shall hold a hearing in the manner prescribed in W. Va. Code §31A-8-1. After any such hearing and consideration of all the testimony and evidence on the record, the Commissioner of Banking shall determine whether or not the banking institution or federally insured financial institution has been denied the right to utilize the customer bank communication pursuant to subsections 2.1 or 2.2 of these rules. The Commissioner of Banking may issue an order directing the banking institution that installs and operates the customer bank communication terminal to comply with the provisions of this regulation and of W. Va. Code §31A-8-12b(a) and prescribe the manner and means of so complying.

**§106-7-3. Nonexclusive access interchange system.**

3.1. Access interchange system.

Any banking institution, which individually or jointly with one or more other banking institutions or other federally insured financial institutions, installs, operates and engages in banking business from a customer bank communication terminal, whether that customer bank communication terminal, is located on the premises of its principal office, branch bank or authorized off-premise facility or in a location other than on the premises of its principal office, branch bank or authorized off-premise facility, and makes that customer bank communication terminal available for use by another banking institution or other federally insured financial institution, has established an access interchange system for purposes of W. Va. Code 31A-8-12b(a).

3.2. Access interchange systems must be nonexclusive.

Any access interchange system established according to section 3.1 of these rules shall be nonexclusive. Any customer bank communication terminal that communicates with and permits financial transactions to be carried out through an exclusive access interchange system shall be considered to be an illegal branch bank of the banking institution that installs and operates that customer bank communication terminal.

3.3. Written agreement or contract required ~~to be filed with the Commissioner of Banking.~~

The terms and conditions for establishing any access interchange system shall be governed by a written agreement or contract. The written agreement or contract shall specify all terms and conditions, and shall include the interchange fees or charges and the transaction fees or charges. A copy of the written agreement or contract shall, upon request, be filed with the Commissioner of Banking by any West Virginia state-chartered

banking institution participating in the access interchange system.

3.4. Hearing before the Commissioner of Banking.

Upon the written complaint by a banking institution that it is unreasonably being denied utilization of an access interchange system, the Commissioner of Banking shall hold a hearing in the manner prescribed in W. Va. Code §31A-8-1. After any such hearing and consideration of all the testimony and evidence on the record, the Commissioner of Banking shall determine whether or not the banking institution has been denied the right to utilize an access interchange system pursuant to ~~Section~~ subsection 3.2 of these rules. The Commissioner of Banking may issue an order directing the access interchange system to comply with the provisions of this ~~regulation~~ rule and W. Va. Code §31A-8-12b(a) and prescribe the manner and means of so complying.

**§106-7-4. Night depository box attached to a customer bank communication terminal.**

For purposes of W. Va. Code §31A-8-12b(c), any night depository box that is attached to a customer bank communication terminal in such a way that a customer electronically communicates with a banking institution is considered to be associated equipment of that customer bank communication terminal, and as such, subject to ~~subsections~~ subsections 2 and 3 of this ~~regulation~~ rule and W. Va. Code §31A-8-12b(a).

**§106-7-5. Operation of automatic teller machine terminal.**

For purposes of W. Va. Code §31A-8-12b(d) the term "operate" in connection with an automatic teller machine (ATM) means that: (i) the bank must be responsible for oversight of the ATM's electronic and transactional operation; (ii) the ATM must clearly and conspicuously display the name of the responsible depository institution operating the ATM; and (iii) the institution must treat the ATM as its own for purposes of its customers' transactions, charging no fees not otherwise assessed its customers for use of the institution's leased or owned ATM terminals. Persons using the ATM terminal must be informed of any surcharge which may be levied upon them as non-customers of the operating depository institution. The surcharge disclosures shall be made on the screen of the terminal, and persons must be given the option upon being informed of the surcharge amount to cancel the transaction without incurring a fee.

§106-7-6. Out-sourcing of terminal servicing and processing.

All transactions initiated through a customer bank communication terminal shall be subject to verification by the operating bank. Although the operating bank may out-source servicing and transaction processing of an ATM to third parties, it is ultimately the responsibility of the bank operating the terminal to ensure the proper functioning of the terminal and its transactions, and to resolve user complaints or errors. A local or toll-free number shall be affixed to all off-premise cash dispensing or deposit taking ATM terminals, for use by persons in the event of any failures or problems they may have in utilizing the terminal to conduct their transactions.

§106-7-7. Application to remote service units of credit unions.

These rules shall also apply to credit unions in their use and operation of remote service units, such as ATMs, to the same extent as banks operating through customer bank communication terminals.