

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; PROVIDING FOR PUBLIC ASSISTANCE BENEFIT ACCOUNTS IN THE REMOTE FINANCIAL SERVICE UNIT ACT; AMENDING A SECTION OF THE REMOTE FINANCIAL SERVICE UNIT ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 58-16-3 NMSA 1978 (being Laws 1990, Chapter 123, Section 3, as amended) is amended to read:

"58-16-3. DEFINITIONS.--

A. As used in the Remote Financial Service Unit Act:

(1) "account" means an account maintained by a cardholder or merchant with a financial institution or with a state agency, which term shall include demand deposit, checking, negotiable order of withdrawal (NOW) share, share draft, public assistance benefit or other consumer or asset accounts or pre-authorized credit card accounts;

(2) "account transfer" means a transaction that enables movement of funds by a cardholder from one account to another account within the same financial institution;

(3) "acquirer" means the intercept processor that acquires financial data relating to a transaction from a card acceptor or a merchant and puts the data into a network

system and means "agent acquirer" unless specifically indicated otherwise;

(4) "agent acquirer" means any financial institution acting as an authorized agent of the acquirer in enabling financial data relating to a POS transaction to be acquired by the acquirer from a card acceptor or merchant and means "acquirer" unless specifically indicated otherwise;

(5) "ATM transaction" means any one or more of the following transactions undertaken at an automated teller machine (ATM):

- (a) a cash advance from an account;
- (b) a cash advance from an authorized line of credit;
- (c) a deposit to an account;
- (d) a balance inquiry;
- (e) an account transfer; and
- (f) a normal financial transaction for a cardholder involving the issuance of non-cash or cash-equivalent items; provided, however, that normal financial transactions at an ATM will expressly exclude any POS transaction;

(6) "authorization" means the issuance of approval, by or on behalf of the financial institution holding the cardholder's account, to complete a transaction initiated or authorized by the cardholder;

(7) "automated teller machine" or "ATM" means an unmanned device that is activated by the cardholder through a specially prepared card or by the transmission of a code via a keyboard or keyset or both and is capable of one or more of the following transactions:

(a) dispensing cash to any cardholder from an account or against a preauthorized line of credit;

(b) accepting deposits;

(c) account transfers;

(d) satisfying a balance inquiry in the cardholder's account or accounts; and

(e) conducting normal financial transactions involving the issuance of non-cash or cash-equivalent items; provided, however, that normal financial transactions at an ATM will expressly exclude a transaction that can only be initiated and completed at a POS terminal;

(8) "balance inquiry" means a transaction that permits a cardholder to obtain the current balance of the cardholder's account or accounts;

(9) "card" means a plastic card or other instrument or any other access device issued by a financial institution or by a state agency to a cardholder that enables the cardholder to have access to and that processes transactions against one or more accounts, and the term shall be used when referring either to an ATM access card, a debit

card, a credit card identifying a cardholder who has established a pre-approved credit line with the issuer of the credit card or an EBT card issued to a recipient of public assistance benefits;

(10) "card acceptor" means the party accepting the card and presenting transaction data to an acquirer;

(11) "cardholder" means a person to whom a card has been issued by a financial institution or who is authorized to use the card;

(12) "cash advance" means any transaction resulting in a cardholder receiving cash, whether initiated through an ATM or a POS terminal;

(13) "chargeback" means the credit of all or a portion of an amount previously posted to a cardholder's account;

(14) "clearing account" means an account or several accounts maintained for the purpose of settlement and payment of fees to the network manager;

(15) "credit" means a claim for funds by the cardholder for the credit of the cardholder's account and provides details of funds acknowledged as payable by the acquirer or card acceptor to the issuer for credit to the cardholder's account;

(16) "credit card cash advance" means a cash

loan obtained by a cardholder against a pre-authorized line of credit through presentation of a card;

(17) "data interchange" means the exchange of transaction data, authorization requests, transaction records or other data between intercept processors and acquirers and issuers through a shared system or network;

(18) "debit" means a transaction initiated by a cardholder that results in the debit to the cardholder's account, through use of a card or otherwise, and results in a claim for funds made by the acquirer or card acceptor against the issuer;

(19) "director" means the director of the financial institutions division of the regulation and licensing department;

(20) "electronic benefit transfer" or "EBT" means a system administered by a state agency designed to provide a public assistance benefit or other benefit of money value provided by a state agency through POS terminals;

(21) "electronic benefit transfer card" or "EBT card" means a plastic card or any other access device issued by a state agency to a cardholder that enables the cardholder to have access to and process transactions against one or more public assistance benefit accounts or other benefit accounts;

(22) "electronic funds transfer" or "EFT"

means a system designed to facilitate the exchange of monetary value via electronic media utilizing electronic or mechanical signals or impulses or a combination of electronic or mechanical impulses and audio, radio or microwave transmissions;

(23) "financial institution" means an insured state or national bank, a state or federal savings and loan association or savings bank, a state or federal credit union or authorized branches of each of the foregoing;

(24) "in-state financial institution" means a financial institution authorized to engage in and engaged in business in New Mexico and having its main office or a staffed branch within the state;

(25) "intercept processor" means any electronic data processor operating for a financial institution that passes transactions;

(26) "issuer" means a financial institution that issues cards or accepts transactions for a card, is the acceptor of a transaction and is typically, but not always, the entity that maintains the account relationship with the cardholder;

(27) "lobby ATM" or "teller-line ATM" means any ATM located within the lobby of a financial institution or in its teller line, access to which is available only during regular banking hours;

(28) "merchant" means a seller of goods or services, retailer or other person who, pursuant to an agreement with a financial institution, agrees to accept or causes its outlets to accept cards for EFT transactions when properly presented, is usually a card acceptor and is a seller of goods and services who is regularly and principally engaged in the business of selling, leasing or renting goods, selling or leasing services for any purpose or selling insurance, whether the business is a wholesale or retail business and whether the goods or services are for business, agricultural, personal, family or household purposes.

"Merchant" includes a professional licensed by the state of New Mexico, but does not include financial institutions;

(29) "modem" is a contraction of "modulator-demodulator" and means a functional unit that enables digital data to be transmitted over analog transmission facilities such as telephone lines, radio or microwave transmissions;

(30) "network" means a computer-operated system of transmitting items and messages between ATM or POS terminals, intercept processor and financial institutions, and settling transactions between financial institutions, and includes without limitation, ATMs, POS terminals, all related computer hardware and software, modems, logos and service marks;

(31) "network manager" means the person

managing the business of a network;

(32) "off-line" means not on-line;

(33) "off-premises ATM" means ATMs installed away from the building or lobby of a financial institution by a distance of not less than five hundred feet;

(34) "on-line" means a system in which all input data enters the computer at a financial institution, an intercept processor or the network from its point of origin and that is capable of transmitting information back to the point of origin after all input data is processed and requires a personal identification number;

(35) "on-premises ATM" means an ATM that stands in or immediately adjacent to the financial institution's building, such as in the financial institution's lobby, through the wall or a drive-up ATM within five hundred feet of the financial institution's building;

(36) "person" means an individual, partnership, joint venture, corporation or other legal entity however organized;

(37) "personal identification number" or "PIN" means a series of numbers or letters selected for or by the cardholder and used by the cardholder as a code or password in conjunction with a card to perform a transaction;

(38) "point-of-sale terminal" or "POS



terminal" means an information processing device or machine, located upon the premises occupied by one or more merchants, through which transaction messages are initiated and electronically transmitted to an acquirer to effectuate a POS transaction and that accepts debit cards, credit cards and EBT cards;

(39) "POS transaction" means any of the following transactions undertaken at a POS terminal:

- (a) purchases;
- (b) purchases that include cash back to the cardholder;
- (c) cash advances at POS terminals;
- (d) returned item transaction message resulting in a credit to the cardholder's account;
- (e) a credit;
- (f) an authorization;
- (g) chargebacks at POS terminals;
- (h) card verification whereby the validity of a card is determined at POS terminals;
- (i) balance inquiries at POS terminals; and
- (j) force post financial advice at POS terminals whereby any other transaction authorized by an issuer-approved stand-in processor requires settlement resulting in a debit to the cardholder's account.

Nothing in this paragraph shall be construed to include credit card transactions;

(40) "public assistance benefit" means a benefit of monetary value available from various state and federal public benefit programs administered through or enforced by a state agency;

(41) "purchase" means a transaction that, if approved, results in a debit transaction for the payment of goods and services or may include cash paid to the cardholder of some part of the amount of the transaction;

(42) "receipt" means a hard-copy description of a transaction:

(a) for the purposes of the Remote Financial Service Unit Act, if the transaction is an ATM transaction, the receipt shall contain, at a minimum: 1) the date of the ATM transaction; 2) the amount of the ATM transaction, if any; 3) the account number; 4) the type of account accessed; 5) the location of the ATM used in the ATM transaction; 6) the identity of any party or account to which funds are transferred; and 7) the type of ATM transaction completed; and

(b) for the purposes of the Remote Financial Service Unit Act, if the transaction is a POS transaction, the receipt shall contain, at a minimum: 1) the date of the POS transaction; 2) the amount of the POS

transaction, if any; 3) the account number; 4) the type of account accessed; 5) the merchant's name and location; and 6) the type of POS transaction completed;

(43) "remote financial service unit" means a POS terminal or an ATM;

(44) "returned item transaction message" means a credit message generated by the acquirer or by the merchant that returns the value of the returned item to the cardholder's account;

(45) "settlement" means the process by which funds are transferred between financial institutions, intercept processors or networks in the flow of a transaction or in the payment of fees associated with the transaction;

(46) "shared ATM or POS terminals" means ATM or POS terminals that are shared among financial institutions by formal agreement for the purposes of cardholder convenience, reduction of capital investment and marketing advantage;

(47) "single subscriber terminal" means any terminal or set of terminals used to connect a single customer of a financial institution to his financial institution through which EFT messages are sent and completed, other than transactions;

(48) "switch" means a routing mechanism and any device attached thereto that is necessary for the

processing of a transaction used to communicate information and transactions among participating financial institutions or their intercept processors in a shared system or network;

(49) "transaction" means a collection of electronic messages concluded by:

(a) a debit to or a credit from an account;

(b) a balance inquiry;

(c) the consummation of a normal financial transaction; or

(d) a rejected attempt of any one of those matters provided in Subparagraphs (a) through (c) of this paragraph;

(50) "unauthorized use of the card of another" means the utilization of the card in or through a remote financial service unit to affect the balance of or obtain information concerning the account of the cardholder by a person other than the cardholder, which person does not have the permission of the cardholder for such use; and

(51) "unauthorized withdrawal from the account of another" means the debiting of or removal of funds from a cardholder's account, accomplished by means of the utilization of a remote financial service unit by a person other than the cardholder, which person does not have actual, implied or apparent authority for the debiting or removal and

