WEST VIRGINIA CODE: §31A-8-12B

§31A-8-12b. Installation and operation of customer bank communication terminals permitted.

(a) Any banking institution as defined in §31A-1-2 of this code, individually or jointly with one or more other banking institutions or other federally insured financial institutions having their principal offices in this state, or any combination thereof, may upon 10 days prior written notice filed with the commissioner, install, operate and engage in banking business by means of one or more customer bank communication terminals. Any banking institution which installs and operates a customer bank communication terminal:

(1) Shall make the customer bank communication terminal available for use by other banking institutions; and

(2) May make the customer bank communication terminal available for use by other federally insured financial institutions, all in accordance with regulations promulgated by the commissioner. The customer bank communication terminals are not branch banks or branch offices, agencies or places of business or off-premises walk-in or drive-in banking facilities; nor do the operation of such customer bank communication terminals to communicate with and permit financial transactions to be carried out through a nonexclusive access interchange system make any banking institution which is part of such a nonexclusive access interchange system have illegal branch banks or branch offices, agencies or places of business or off-premises walk-in or drive-in banking facilities.

(b) Notwithstanding the provisions of subdivision (1), subsection (a) of this section, a customer bank communication terminal located on the premises of the principal office or branch bank of a banking institution or on the premises of an authorized off-premises facility need not be made available for use by any other banking institution or its customers.

(c) For purposes of this section, "customer bank communication terminal" means any electronic device or machine owned, leased, or operated by a bank, together with all associated equipment, structures and systems, including, without limitation, remote service units, point of sale terminals, through or by means of which a customer and a banking institution may engage in any banking transactions, whether transmitted to the banking institution instantaneously or otherwise, including, without limitation, the receipt of deposits of every kind, the receipt and dispensing of cash, requests to withdraw money from an account or pursuant to a previously authorized line of credit, receiving payments payable at the bank or otherwise transmitting instructions to receive, transfer or pay funds for a customer’s benefit. Personal computers, telephones and associated equipment which enable a bank customer to conduct banking transactions at their home or office through links to their bank’s computer or telephone network, do not constitute a "customer bank communication terminal" under this section. All transactions initiated through a customer bank communication terminal are subject to verification by the banking institution.

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(d) No person, other than: (1) A banking institution authorized to engage in the banking business in this state; or (2) a credit union authorized to conduct business in this state, may operate any automatic teller machine ("ATM") or automatic loan machine ("ALM") or remote service unit ("RSU") located in this state: Provided, That ATM or RSU terminals of out-of-state banks not having branches in this state are allowed to operate to the same extent as a West Virginia bank if a national bank from that state not having branches in West Virginia could do so through a federal preemption of state law.

(e) For the purposes of this section, "remote service unit" means automated facility, operated by a customer of a bank, that conducts banking functions such as receiving deposits, paying withdrawals, or lending money, and includes an unmanned or automated teller machine, an automated loan machine, and an automated device for receiving deposits. A remote service unit may be equipped with a telephone or video device that allows contact with bank personnel.

(f) For the purposes of this section, "point of sale terminal" means a customer bank communication terminal used for the primary purpose of either transferring funds to or from one or more deposit accounts in a banking institution or segregating funds in one or more deposit accounts in a banking institution for future transfer, or both, in order to execute transactions between a person and his or her customers incident to sales, including, without limitation, devices and machines which may be used to implement and facilitate check guaranty and check authorization programs.

(g) Nothing in this section prevents point of sale terminals and associated equipment from being owned, leased or operated by nonbanking entities: Provided, That those persons may not engage in the business of banking by using point of sale devices. The use of a point of sale terminal to enable a customer or other person to withdraw and obtain cash of more than $50 in excess of the sales transaction purchase amount, is presumed to constitute engaging in the business of banking: Provided, however, That cash withdrawals through a point of sale terminal in excess of $50 is not engaging in the business of banking if the sales transaction is made with the use of a West Virginia check card, as provided in §12-3A-1 et seq. of this code, or with an electronic benefits transfer or other card issued by state spending units to transmit payments of food benefits, temporary assistance to needy families, or other assistance, benefit or entitlement programs mandated or offered by federal or state government: Provided further, That any retailer, agency or person providing cash withdrawals with a West Virginia check card or an electronic benefits transfer card through a POS terminal is limited to charging a fee for the services in the amount of the higher of $1 or one percent of the amount of cash withdrawn.

(h) Except for customer bank communication terminals located on the premises of the principal office or a branch bank of the banking institution or on the premises of an authorized off-premises walk-in or drive-in banking facility, a customer bank communication terminal shall be unattended or attended by persons not employed by any banking institution utilizing the terminal: Provided, That:

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(1) Employees of the banking institution may be present at the terminal not located on the premises of an authorized off-premises facility solely for the purposes of installing, maintaining, repairing and servicing same; and

(2) A banking institution may provide an employee to instruct and assist customers in the operation thereof: Provided, That the employee may not engage in any other banking activity.

(i) The commissioner shall prescribe by rule the procedures and standards regarding the installation and operation of customer bank communication terminals, including, without limitation, the procedure for the sharing thereof.

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