



**NEW YORK STATE BANKING DEPARTMENT
2010 YEAR END REPORT
ATM SAFETY ACT**

As required by Chapter 57 of the laws of 1998

Report to the Governor
and the Legislature

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**ATM SAFETY ACT
2010 YEAR END REPORT**

I. INTRODUCTION

In conformance with Chapter 57 of the laws of 1998, the ATM Safety Act ("Act"), the New York State Banking Department ("Banking Department") hereby submits to the Legislature the "ATM Inspection Report."

Section 75-g(2) of the Banking Law requires the Superintendent of Banks ("Superintendent") to report to the Legislature, on an annual basis, on or before January 15th, the following:

- The number of automated teller machine facilities ("ATMF") inspections conducted by the Banking Department during the previous year;
- The number and types of violations or other instances of noncompliance identified and measures undertaken by the Banking Department and banking institutions to address them; and
- The expenses incurred exclusively by the Banking Department for the purpose of the implementation of section 75-g of the Banking Law, including the number of Banking Department personnel assigned to such purpose.

II. BACKGROUND

The primary purpose of the Act is to ensure the safety and convenience of consumers using such Automatic Teller Machines ("ATM") by establishing minimum security measures for ATMF. Article II-AA* authorizes the Banking Department to enforce the provisions of the Act and the security requirements as set forth in New York City's Local Law 70, which predated the Act. The Act also empowers the Superintendent to assess fines for violations of the Act and to approve variances or exemptions to the security measures required by the Act. Article II-AA1 of the Banking Law applies to all federal and state-chartered banking institutions, whether headquartered within or outside the State of New York, provided that they operate one or more ATMF within New York State.

III. THE ACTS SECURITY REQUIREMENTS

The Act established the following security requirements for ATMF:

- A surveillance camera or cameras that view and record:
 - (a) all persons entering an ATMF located within the interior of a building, or
 - (b) all activity occurring within a minimum of three feet from the front of an ATM located outside a building and open to the outdoor air. Such camera or cameras need not record banking transactions made at the ATM. The recordings made by such cameras shall be preserved by the banking institution for at least 45 days.

* Added by Chapter 9, laws of 1996; effective January 1, 1997

- With respect to an indoor ATMF:
 - (a) entry doors equipped with locking devices which permit entry to such ATMF only to persons using a magnetic-strip plastic card or similar access device;
 - (b) to the extent practicable, as determined by an expert with competence in these matters and as permitted by local building codes, at least one exterior wall that provides an unobstructed view of the interior of the ATMF.
- A reflective mirror or mirrors, as necessary, placed in such a manner as to permit a person entering an indoor ATMF to view areas within the facility that are otherwise concealed to plain view.
- A clearly visible sign which, at a minimum, provides the following information:
 - (a) the activity of the ATMF is being recorded by a surveillance camera or cameras;
 - (b) customers should close the entry door completely upon entering and exiting;
 - (c) customers should not permit any unknown persons to enter after regular banking hours;
 - (d) customers should place withdrawn cash securely upon their person before exiting the ATMF; and
 - (e) complaints concerning security at the ATMF should be directed to the banking institution's security department or the Banking Department, together with the telephone numbers for such complaints, and that the nearest available public telephone should be used to call the police if emergency assistance is needed.
- That regulated ATMs have adequate lighting, which is defined by the Act as follows:

At an ATM located within the interior of a building, lighting, on a twenty-four hour basis, at a level which permits a person entering such ATMF to readily and easily see all persons occupying such ATMF and which permits a person inside the ATMF to readily and easily see all persons at the entry door of the ATMF.
- With respect to outside ATMF:
 - (a) A minimum illuminance of five (5) footcandles at five feet from an ATM.
 - (b) A minimum illuminance of two (2) footcandles in all unobstructed directions from an ATM at 30 feet.
 - (c) A minimum illuminance of one (1) footcandle at 60 feet in all unobstructed directions from an ATM, measured on a vertical plane and pointed at the light source.
- With respect to indoor ATMF:
 - (a) A minimum illuminance of two (2) footcandles in all unobstructed directions from a facility at 30 feet.
 - (b) A minimum illuminance of one (1) footcandle at 60 feet in all unobstructed directions from a facility, measured on a vertical plane and pointed at the light source.

The current lighting standards became effective December 12, 2006, and replaced the lighting standards that had been in place since the enactment of the ACT in 1996. If a particular facility does not meet the new standards but meets the former standards such facility is considered in compliance.

IV. OVERVIEW OF THE ATMF INSPECTION PROGRAM

The Banking Department's ATMF inspection program is designed to satisfy the Act's mandate that all ATMF are in compliance with the Act's security requirements. To accomplish this, the Banking Department has divided the State into ten (10) inspection zones. ATMF inspectors are assigned to cover specific zones*. This approach enables the Banking Department to minimize travel and related expenses. To further control expenses and maximize the time and overall efficiency of the inspectors, ATMF have been assigned to inspectors according to postal zip codes. This minimizes the distance and travel time between ATM locations.

A. Inspectors

ATMF inspectors are employees of the Banking Department and most have an investigative or banking background. Upon employment with the Banking Department, inspectors must attend an ATMF inspector's training program and are then assigned to a specific zone. Following an inspection, each inspector enters the results of the inspection onto a laptop computer and transmits the results to the Banking Department where it is loaded onto the mainframe computer. On a bi-annual basis, all inspectors convene for a staff meeting. The staff meetings provide an opportunity for inspectors to calibrate equipment, consult with their supervisors, analyze patterns and trends in ATMF inspection findings, and discuss methods for handling field situations. The staff meetings also allow for the inspectors to receive additional ATMF inspection training, as well other training required by the Banking Department. In addition to the bi-annual meetings, inspectors are routinely contacted to discuss ongoing inspections and other pertinent issues.

B. Administration of Inspection Program

The ATMF Inspection program is administered by the ATM Safety Act Program Administrator whose responsibilities include supervision of the field staff and interfacing with the banking industry. In order to effectively administer the ATMF inspection program throughout the State, the Banking Department has developed and utilizes a computer program which creates a schedule for daytime and evening ATMF inspections. The program also allows each inspector to enter the results of their individual inspection and electronically transmits the results to the Banking Department to be uploaded into the program maintained at the Banking Department. If any violation is reported by the inspector, a second visit is automatically scheduled by the program.

ATMF subject to outdoor lighting requirements are assigned to be inspected after dusk so that the Banking Department may determine whether a banking institution has satisfied the lighting requirements as specified in the Act. This night time lighting inspection is followed

* Due to budgetary restraints, the Inspection Program is currently down two inspectors.

by a day visit so that the inspector may inspect the video recording equipment at the ATMF. All other ATMF are visited during regular business hours.

If properly functioning, an ATMF's video recording capabilities can contribute significantly to the deterrence of criminal activity, as well as aid in any resulting criminal prosecution. The Banking Department conducts inspections to ensure that an ATMF's camera, video recording system and tape library are functioning and properly maintained. These inspections involve inspectors going to the ATMF and holding a placard in front of the ATMF's camera or recording system for 30-40 seconds. The inspector will note on the inspection form the time at which the placard was displayed and the information on the placard. The Banking Department will then send the banking institution a "camera verification letter," which requests that the banking institution review the pertinent videotape of the inspector's visit and identify what information was placed on the placard. If a banking institution is unable to accurately review a tape, a violation is issued and the ATMF is scheduled for a revisit.

Inspectors will revisit an ATMF to determine whether a violation found on the initial visit was corrected. If the inspector finds that the previously noted violation has not been corrected, the Banking Department notifies the banking institution that immediate corrective action is required. Where appropriate, the Department holds hearings and issues fines for all uncorrected violations.

In January of 2000, the Superintendent promulgated a regulation intended to address maintenance of videotape clarity. This regulation requires a banking institution to use videotapes of a particular quality. These tapes may only be used for a one-year period, and a particular tape must not be used more than once every 45 days.*

As a result of this regulation, the ATMF inspectors place a dated and signed sticker on every tape in the ATMF's tape library. The following year the inspectors will check that the old tapes (those with stickers) have been retired to ensure that the bank is using fresh tapes.

C. Proposed Amendments to Part 301.6

On September 15, 2010, the Banking Department proposed amendments to Part 301.6, Report of Compliance. The amendments will require that the annual report to the Banking Department under Section 75-g be made under penalties of perjury, and require institutions which are cited for violations of the Act to file follow up reports, also under penalties of perjury, regarding corrective action taken.

This new reporting requirement would facilitate the enforcement of Banking Law Section 75-j, which states that where a banking institution fails to correct a violation of Section 75-c within 10 business days of such finding, the Superintendent may after notice and a hearing require the institution to pay a civil penalty.

* Chapter 553, laws of 2003 effective September 17, 2003, extended the tape retention period from 30 to 45 days.

This type of self reporting would minimize the need for inspectors to follow up on violations by doing reinspections, maximizing the effective use of the Department's resources. Proof of failure to correct violations of Banking Law Section 75-c within 10 business days after notification, whether gathered from the required follow up reports or from reinspections, could serve in appropriate cases as the basis for the Banking Department to hold hearings and impose civil monetary penalties pursuant to Section 75-j.

The comment period expired on October 30, 2010. The Banking Department anticipates the adoption of the rule in the near future.

V. NEW YORK CITY LOCAL LAW 70

Inspectors with oversight of ATMF within New York City are required to ensure that banking institutions are in compliance with Local Law 70. This is the New York City ATM law which predated the Act. Under Local Law 70 the following security criteria must also be met:

- Reflective mirrors or surfaces at each ATM that provides the user a rear-facing view of the ATMF;
- ATMF entry doors must be equipped with fire bolts pursuant to paragraph two of subdivision K of section 27-371 of the code; and
- ATMF must be equipped with a surveillance camera or cameras, which view and record all persons entering exiting and moving within or about an ATMF.

VI. GENERAL BUSINESS LAW 399-y

Section 399-y* of the General Business Law ("GBL") provides that notice be given to all ATMF consumers of any fees charged by the bank or nonbank operator of such ATMF. The law also requires such notice to be clearly posted on a sign near the ATM and actually posted on the screen of the ATM or on a paper issued from the ATM and imposes a civil fine for violations. Additionally, the law requires that the ATM permit the customer to cancel the transaction prior to completion when notice of the fee is given.

As a result of the enactment of GBL section 399-y, when the Banking Department conducts inspection of a bank-operated ATMF, the inspector also determine whether the ATMF complies with the provisions of GBL section 399-y. The inspector notes and records whether the sign is posted. In addition, each banking institution must submit to the Banking Department a copy of the actual wording that appears on the ATM screen or printed by the ATM.

VII. INSPECTION PROGRAM STATISTICAL DATA

As of December 31, 2010 there were a total of 4,787 ATMF throughout the State, of which 1,417 were located in New York City and 3,370 in the remainder of the State.

As detailed in the chart below, for the year ending December 31, 2010, the Banking Department performed a total of 6,658 inspections, which includes re-inspections,

* Added by Chapter 455, laws of 1999; effective January 1, 1999

resulting in the issuance of notices for 904 violations. At year's end, a total of 625 violations were corrected upon re-inspection.

The Banking Department performed 91 fewer inspections in 2010 than in 2009. This decrease in inspections was due to a reduction in staffing and inspector illnesses. For the year ending December 31, 2010 violations increased one and one-half percent (1.5%) on a year to year comparison with 2009.

Type of Violation	Number Cited	Number Corrected
45-Day Tape Library	0	0
Light Inside Facility	6	2
Lighting Parking lot 60 Feet NYC	0	0
Lighting Parking lot 60 Feet	63	33
Lighting Parking lot 30 Feet	83	43
Door Locking devices	91	67
Exterior View of Interior	12	6
Mirror View Concealed Areas	27	27
Rear View Mirrors NYC	9	12*
Information Sign	20	16
Fire Exit Bolts	1	1
Camera View Activity 3 Feet	113	52
Light 10 FC W/5 Feet NYC	5	15
Light 5 FC W/5 Feet	96	82
Light 2 FC W/50 Feet	0	0
Light 1 FC W/60 Feet	158	113
Light 2 FC W/30 Feet	182	128
VCR Not Recording	0	0
Tape Cycle >7 days	0	0
Tape Over 1 Year Old	5	3
Tape Used > 12 times	0	0
Video Capturing All Activity NYC	14	11
Video Capturing Entrants	19	14
Total	904	625

For the year ending December 31, 2010, 28 ATMF were found in violation of GBL section 399-y. Most of these violations were the result of vandalism and were corrected.

Banking Department representatives continue to travel throughout the State meeting with security directors and bank officers, and addressing various banking organizations, in an effort to explain the requirements of the Act and how inspections are conducted.

VIII. VARIANCES AND EXEMPTIONS

The Superintendent upon request may grant a variance or exemption from the Act's requirements. For the calendar year ending December 31 2010, the Banking Department did not receive any requests for a variance or an exemption to the Act's security measures.

* The number of violations corrected exceed the number of violations issued because some violations cited in 2009 were corrected in 2010

IX. DEPARTMENT EXPENSES

The total direct cost to the Banking Department to administer the ATM inspection program for 2010 was \$293,272. This is a decrease of \$12,584 from 2009. The decrease in expenditures was a direct result of lower fuel costs and man hours than the previous year.

However, there continues to be significant indirect costs associated with the program. As needed, approximately 10 additional people from several divisions within the Banking Department were necessary to support the ATMF Inspection program.