

By Mr. Backman, a petition (accompanied by bill, Senate, No. 53) of the Boston College Law School Consumer Law Seminar, by Kenneth Arbeen, Professor William F. Willier, Jack H. Backman, John A. Businger and others for legislation to protect consumer privacy in electronic systems. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-eight.

AN ACT TO PROTECT CONSUMER PRIVACY IN ELECTRONIC SYSTEMS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 106 of the General Laws (Uniform Commercial
2 Code) is hereby amended by redefining the term "item" on
3 Section 4-104 (g) and by inserting in Article 4 a new Part 6
4 following Section 4-504.

5 Section 4-104(1) (g) will be amended to read as follows:

6 "Item" means any instrument or electronically recorded,
7 stored or transmitted message for the payment of money
8 even though it is not negotiable, but does not include
9 money.

10 Part 6

11 Electronic Funds Transfers

12 Section 4-601 *Applicability and Intent*

13 (1) To the extent that items within Part 6 are also within
14 the scope of the remainder of Article 4, they are subject to
15 the provisions of those parts. In the event of conflict the pro-
16 visions of this Part will govern.

17 (2) The intent of this part is to supplement the existing law
18 so as to accommodate the new developments brought about
19 by the use of the electronic funds transfer systems.

20 Section 4-602 *Definitions*

21 In this Part the following definitions apply:

22 (1) "Electronic funds transfer" means a transfer of an
23 amount from one account to another account where either the
24 order by the customer to make the transfer or the transfer

25 itself is effected by electronic means.

26 (2) "Transfer order" means an authorization by a customer
27 to a payor bank to transfer funds from the customer's account,
28 whether or not such transfer creates an extension of credit
29 from the payor bank to the customer by overdraft or other-
30 wise.

31 (3) "Transferee" means the person designated in or by a
32 transfer order to receive the funds transferred or to be trans-
33 ferred and any intermediary to the transfer process.

34 (4) "Transferor" means a payor bank or other person
35 transferring funds or involved in the process of transferring
36 funds from one account to another by an electronic funds
37 transfer.

38 Section 4-604 *Prohibited Disclosures*

39 (1) A transferor shall not disclose to any third person the
40 fact, amount or date of any electronic funds transfer to or
41 from a customer's account or the identity of any transferee,
42 except

43 (a) Upon specific written consent of the customer, or

44 (b) Upon order of a court, or

45 (c) To the extent the transfer constitutes an extension of
46 credit from a payor bank to its customer, the informa-
47 tion relates solely to the credit aspect of the trans-
48 action and the disclosure is made in accordance with
49 the Federal Fair Credit Reporting Act.

50 (2) If a disclosure of informational data is made and is not
51 within one of the exceptions of subsection (1), regardless of
52 the transferor's negligence, the transferor must notify the
53 customer of the determination. Failure to meet the require-
54 ments of this section subjects the transferor to a penalty not
55 to exceed \$1000.

56 Section 4-604 *Charges and Credits*

57 Charges to a customer for making electronic funds transfer
58 from an account shall not exceed those for paying items drawn
59 on checking or similar accounts, and electronic funds transfer
60 accounts shall be entitled to the same interest or other credits
61 as are accorded checking or similar accounts.

62 Section 4-605 *Right to Countermand Order*

63 (1) A customer may countermand a transfer made pursuant
64 to a transfer order within 7 days after the transfer has been
65 made.

66 (2) If the transfer order was in writing, the countermand
67 must be in writing. Otherwise, the countermand may be oral,
68 but must be confirmed in allowed by this section, any trans-
69 feror may charge back the transfer to its immediate trans-
70 feree.

71 (4) A customer who has arranged with the transferor to
72 make automatic transfer orders on a designated schedule may
73 order the transferor to stop a payment by giving oral notice
74 by the end of the banking day prior to the date of payment.

75 (5) A transferor who fails to honor a countermand order
76 from its customer received in the time and manner provided
77 by this section, shall be accountable to the customer for the
78 amount of the transfer.

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