

By Ms. Noble of Boston, petition of Elaine Noble, Melvin H. King and others to protect consumer privacy in electronic funds transfer systems. Banks and Banking.

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 Code)
2 is hereby amended by redefining the term "item" on Section 4-
3 104(g) and by inserting in Article 4 a new Part 6 following Section
4 4-504:

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

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

9 **Part 6**

10 **Electronic Funds Transfers**

11 *Section 4-601 Applicability and Intent*

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

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

19 *Section 4-602 Definitions*

20 In this Part the following definitions apply:

21 (1) "Electronic funds transfer" means a transfer of an amount
22 from one account to another account where either the order by the

23 customer to make the transfer or the transfer itself is effected by
24 electronic means.

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

29 (3) "Transferee" means the person designated in or by a transfer
30 order to receive the funds transferred or to be transferred and any
31 intermediary to the transfer process.

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

35 *Section 4-604 Prohibited Disclosures*

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

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

40 (b) Upon order of a court, or

41 (c) To the extent the transfer constitutes an extension of credit
42 from a payor bank to its customer, the information relates solely to
43 the credit aspect of the transaction and the disclosure is made in
44 accordance with the Federal Fair Credit Reporting Act.

45 (2) If a disclosure of informational data is made and is not
46 within one of the exceptions of subsection (1), regardless of the
47 transferor's negligence, the transferor must notify the customer of
48 the determination. Failure to meet the requirements of this section
49 subjects the transferor to a penalty not to exceed \$1000.

50 *Section 4-604 Charges and Credits*

51 Charges to a customer for making electronic funds transfer from
52 an account shall not exceed those for paying items drawn on
53 checking or similar accounts, and electronic funds transfer
54 accounts shall be entitled to the same interest or other credits as are
55 accorded checking or similar accounts.

56 *Section 4-605 Right to Countermand Order*

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

59 (2) If the transfer order was in writing, the countermand must
60 be in writing. Otherwise, the countermand may be oral, but must
61 be confirmed in writing within 14 days.

62 (3) If a customer countermands a transfer order in the time and
63 manner allowed by this section, any transferor may charge back
64 the transfer to its immediate transferee.

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

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

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