



**NEW YORK STATE BANKING DEPARTMENT  
2008 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  
2008 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 15<sup>th</sup> 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 Automatic Teller Machines ("ATM") that are located in ATMFs within the dominion and control of a banking institution and are made available to banking customers after regular banking hours. It does this 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-AA of the Banking Law applies to all federal and state-chartered banking institutions, whether headquartered within or outside New York State, that 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.

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\* Added by Chapter 9, laws of 1996; effective 1/1/97

- 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.

These lighting standards became law in late 2006 and replaced the lighting requirements that had been in place since the Act was established 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 security requirements as specified in the Act. To accomplish that goal, the Banking Department has divided the State into ten (10) inspection zones with an inspector assigned to each zone. 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 time to travel between ATM locations.

**A. Inspectors** -ATMF inspectors are employees of the Banking Department, most of whom have an investigative or banking background. Every inspector is assigned to one of the ten inspection zones and is required to attend a two-day training program when they are hired. 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 quarterly basis, all inspectors convene for a staff meeting. The staff meeting provides an opportunity for inspectors to calibrate equipment, consult with their supervisors, analyze patterns and trends in ATMF inspection findings, and discuss field situations with their co-workers. The staff meetings also allow for the inspectors to receive additional training.

**B. Administration of Inspection Program** -The program is administered by the director of the program whose responsibilities include supervision of the field staff and interfacing with the industry. In order to effectively administer the ATMF inspection program throughout the State, the Banking Department has developed a computer program which allows scheduling inspections of ATMF during the day and at night. The program allows each inspector to enter the results of an inspection, through a series of prompt questions. This information is then downloaded into the Banking Department's main computer system. If any violation is detected, a second visit is automatically scheduled within thirty days of the initial visit.

All ATMF subject to outdoor lighting requirements are inspected after dusk so that the Banking Department may determine whether a banking institution has satisfied the lighting requirements as specified in the Act. These locations are then visited again during the day to inspect the recording equipment. All other ATMF are visited during regular business hours.

If properly functioning, an ATMF's video recording capability can contribute significantly to the deterrence and prosecution of crime. In order to determine if the camera, video recording system and tape library are functioning and properly maintained, the Banking Department has designed a verification system whereby inspectors hold a placard in front of the 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 uncorrected violations.

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

As a result of these regulations, the inspectors now place a dated and signed sticker on every tape in the branches' 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.

#### **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.

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\* As Amended by Chapter 553, laws of 2003; effective 9/17/03

\* Added by Chapter 455, laws of 1999; effective 1/1/99

As a result of the enactment of GBL section 399-y, when the Banking Department conducts an inspection of a bank-operated ATMF, the inspectors will 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 script wording appearing on the ATM screen or printed by the ATM.

## **VII. INSPECTION PROGRAM STATISTICAL DATA**

As of December 31, 2008 there were a total of 4732 ATMF throughout the State, of which 1376 were located in New York City and 3356 in the remainder of the State.

As detailed in the chart below, for the year ending December 31, 2008, the Banking Department performed a total of 6709 inspections, including re-inspections, resulting in the issuance of notices for 893 violations. At year end a total of 769 violations were corrected upon re-inspection.

<b><u>Type of Violation</u></b>	<b><u>Number Cited</u></b>	<b><u>Number Corrected</u></b>
45-Day Tape Library	1	1
Light Inside Facility	4	4
Lighting Parking lot 60 Feet NYC	0	0
Lighting Parking lot 60 Feet	35	39*
Lighting Parking lot 30 Feet	43	45*
Door Locking devices	81	97*
Exterior View of Interior	2	3*
Mirror to View Concealed Areas	25	30*
Rear View Mirrors NYC	70	71*
Information Sign	47	42
Fire Exit Bolts	2	1
Camera View Activity 3 Feet	170	82
Light 10 FC W/5 Feet NYC	23	8
Light 5 FC W/5 Feet	84	86*
Light 2 FC W/50 Feet	0	0
Light 1 FC W/60 Feet	131	111
Light 2 FC W/30 Feet	137	109
VCR Not Recording	2	1
Tape Cycle > 7 days	0	0
Tape Over 1 Year Old	5	10*
Tape Used > 12 times	0	0
Video Capturing All Activity NYC	18	23*
Video Capturing Entrants	13	6
<b>Total</b>	<b>893</b>	<b>769</b>

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\* The number of violations corrected exceed the number of violations issued because some violations cited in 2007 were corrected in 2008

The Banking Department performed 165 more inspections in 2008 than in 2007. This was done without having inspectors in two zones. For the year ending December 31, 2008 violations were up one percent (1%) on a year to year comparison with 2007.

For the year ending December 31, 2008, 46 ATMF were found in violation of GBL section 399-y. Most of these violations were the result of vandalism and were easily 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 Acts requirements. For the calendar year ending December 31 2008, the Banking Department did not receive any requests for a variance or an exemption to the Act's security measures.

#### **IX. DEPARTMENT EXPENSES**

The total direct cost to the Banking Department to administer the ATM inspection program for 2008 was \$306,944. This was an increase of \$15,241 over 2007. The increase in expenditures is due mainly to higher fuel costs than in the previous year.

There were significant indirect costs associated with the program. As needed, approximately 10 additional people from several divisions within the Banking Department supported the ATMF Inspection program.