

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

940H0618

SENATE BILL NO. 127

Introduced by: Senators Munson, McCracken, and Sutton (Dan) and Representatives Broderick, Olson (Mel), and Solum

1 FOR AN ACT ENTITLED, An Act to establish licensing requirements for providers of certain
2 automated teller machine transaction routing services.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 For purposes of this chapter, the term, automated teller machine transaction routing services,
7 means the routing and processing of transactions initiated by a user of an automated teller
8 machine, whether located at or separate and apart from a bank or branch bank and including a
9 remote service unit or cash dispensing machine, or the operation of a facility or service where
10 the electronic impulses or other indicia of a transaction originating at an automated teller
11 machine are received and are routed, switched, or transmitted to a financial instituion, a data
12 processing center, or similar facility.

13 Section 2. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 The Legislature finds that automated teller machine transaction routing services are a vital



1 component of banking services for consumers in this state, that the public interest of this state
2 and consumers in this state will be protected by supervision of automated teller machine
3 transaction routing service providers in this state, and that supervision of persons providing
4 automated transaction routing services creates additional protection for consumers as authorized
5 by Congress in the Electronic Fund Transfer Act, 15 U.S.C. 1693q as of January 1, 2002.

6 Section 3. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 The provisions of sections 1 to 14, inclusive, of this Act do not apply to any bank organized
9 under this title, any national bank, any bank holding company, any savings and loan association
10 organized under the laws of this state or the United States of America, any federal credit union,
11 or any direct or indirect subsidiary of the foregoing.

12 Section 4. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 No person may provide automated teller machine transaction routing services in this state
15 without obtaining a license from the division. A person will be deemed to provide automated
16 teller machine transaction routing services in this state if it does so directly or if such person
17 provides a substantial portion of the automated teller machine transaction routing services which
18 any other person has contracted to provide in this state. A violation of this section is a Class 2
19 misdemeanor.

20 Section 5. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 Any person desiring to obtain a license to provide automated teller machine transaction
23 routing services shall apply for a license under oath on forms supplied by the division. The
24 application shall contain the name and address of the applicant; the name and address of all

1 persons directly or indirectly owning, controlling, or holding a beneficial interest of five percent
2 or more of the outstanding securities, ownership units, membership interests, or capital, or any
3 class thereof, of the applicant; the business experience of the applicant; a balance sheet reflecting
4 the assets, liabilities, and net worth of the applicant; and other information as required by the
5 director by rule or order. The applicant shall pay an original license fee as set forth by rules of
6 the commission, promulgated pursuant to chapter 1-26, not to exceed two hundred fifty dollars.
7 Upon receipt of an application, the director shall make an examination and investigation
8 concerning the applicant and any relevant facts and, after review, either deny or grant a license
9 based upon the director's findings.

10 Section 6. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 Any license shall be renewed on July first. To renew a license, the licensee shall file for
13 renewal by June first. The renewal application shall include a fee not to exceed two hundred fifty
14 dollars as set by the commission, by rule promulgated pursuant to chapter 1-26, and any other
15 information as required by the director by rule or order.

16 Section 7. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read as
17 follows:

18 A person holding a license to provide automated teller machine transaction routing services
19 may not directly or indirectly transfer or assign the license. A person is deemed to have indirectly
20 transferred or assigned the license if it enters into arrangements, whether by subcontract or other
21 means, by which it retains another person to provide all or substantially all of the automated
22 teller machine transaction routing services which such person has agreed to provide in this state.

23 Section 8. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read as
24 follows:

1 The director may, after hearing and upon ten days notice to the licensee, issue a cease and
2 desist order from any practices that do not conform to the requirements set forth in sections 3
3 to 14, inclusive, of this Act or rules adopted by the commission pursuant to chapter 1-26 or any
4 order of the director.

5 Section 9. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The director may revoke a license for good cause pursuant to chapter 1-26. An action may
8 also be brought by the attorney general or the director to enjoin a licensee from engaging in, or
9 continuing any violation, or from doing any act in furtherance thereof. In any action, an order
10 or judgment may be entered awarding a temporary or permanent injunction.

11 Section 10. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read
12 as follows:

13 The director may deny an application for a license, or may revoke the license of an existing
14 licensee, if the director determines that the applicant or the licensee has engaged in any anti-
15 competitive practices or practices which have the purpose or effect of preventing any other
16 provider of automated teller machine transaction routing services from engaging in such business
17 inside or outside of this state.

18 Section 11. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read
19 as follows:

20 A person is not deemed to be providing automated teller machine transaction routing services
21 in this state if such services consist solely of the switching, routing, or processing of a transaction
22 initiated at an automated teller machine in this state with respect to an account maintained at a
23 financial institution whose principal place of business is located outside of this state.

24 Section 12. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read

1 as follows:

2 No person may provide automated teller machine transaction routing services in this state
3 or to an automated teller machine located in this state or receive a license under this Act unless
4 the principal place of business of such person, and the principal place of business of its ultimate
5 parent or controlling person, if any, are located in this state or in another state whose laws allow
6 any person with its principal place of business in this state to provide automated teller machine
7 transaction routing services in that state without any qualifications, conditions, or requirements
8 which are more restrictive than those imposed by this chapter. The director may determine
9 whether the qualifications, conditions, and requirements imposed by the laws of any other state
10 on a person providing automated teller machine transaction routing services are more restrictive
11 than the requirements of this chapter. A violation of this section is a Class 2 misdemeanor.

12 Section 13. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read
13 as follows:

14 A licensee is subject to examination and supervision by the director. The director may require
15 the filing of reports by licensees. The director may charge back to the licensee any cost
16 associated with an examination of the licensee.

17 Section 14. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read
18 as follows:

19 The commission may promulgate rules, pursuant to chapter 1-26, for the management and
20 administration of licensees, to promote fair and equitable competition among providers of
21 automated teller machine transaction routing services, to determine that other practices or
22 activities are automated teller machine transaction routing services for purposes of this chapter
23 as a result of changes in technology or commercial practices, and to establish any fees payable
24 to the division under this Act.

1 Section 15. That chapter 51A-8 be amended by adding thereto a NEW SECTION to read
2 as follows:

3 The provisions of sections 1 to 14, inclusive, do not apply to a person engaged in providing
4 automated teller machine transaction routing services in this state on June 30, 2002, if the
5 activities of such person in this state are limited to providing services required in binding
6 contracts in force on June 30, 2002, for the benefit of the persons who are parties to such
7 contracts on such date. Nothing in this section affects the applicability of sections 1 to 14,
8 inclusive, of this Act, to any other activities of a person described in this section or any contracts
9 or agreements for automated teller machine transaction routing services entered into after
10 June 30, 2002.