

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

940H0618

SENATE ENGROSSED NO. **SB 127** - 01/26/2002

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 institution, 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 provisions of sections 1 to 13, inclusive, of this Act, which are enacted to provide



1 additional protection for consumers of this state as permitted by 15 U.S.C. 1693, as amended
2 to January 1, 2002, and as authorized pursuant to 15 U.S.C. 1693q, as amended to January 1,
3 2002, do not apply to any bank organized under this title, any national bank, any bank holding
4 company, any savings and loan association organized under the laws of this state or the United
5 States of America, any federal credit union, or any direct or indirect subsidiary of the foregoing.

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

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

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

16 Any person desiring to obtain a license to provide automated teller machine transaction
17 routing services shall apply for a license under oath on forms supplied by the division. The
18 application shall contain the name and address of the applicant; the name and address of all
19 persons directly or indirectly owning, controlling, or holding a beneficial interest of five percent
20 or more of the outstanding securities, ownership units, membership interests, or capital, or any
21 class thereof, of the applicant; the business experience of the applicant; a balance sheet reflecting
22 the assets, liabilities, and net worth of the applicant; and other information as required by the
23 director by rule or order. The applicant shall pay an original license fee as set forth by rules of
24 the commission, promulgated pursuant to chapter 1-26, not to exceed two hundred fifty dollars.

1 Upon receipt of an application, the director shall make an examination and investigation
2 concerning the applicant and any relevant facts and, after review, either deny or grant a license
3 based upon the director's findings.

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

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

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

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

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

19 The director may, after hearing and upon ten days notice to the licensee, issue a cease and
20 desist order from any practices that do not conform to the requirements set forth in sections 2
21 to 13, inclusive, of this Act or rules adopted by the commission pursuant to chapter 1-26 or any
22 order of the director.

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

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

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

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

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

14 A person is not deemed to be providing automated teller machine transaction routing services
15 in this state if such services consist solely of the switching, routing, or processing of a transaction
16 initiated at an automated teller machine in this state with respect to an account maintained at a
17 financial institution whose principal place of business is located 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 No person may provide automated teller machine transaction routing services in this state
21 or to an automated teller machine located in this state or receive a license under this Act unless
22 the principal place of business of such person, and the principal place of business of its ultimate
23 parent or controlling person, if any, are located in this state or in another state whose laws allow
24 any person with its principal place of business in this state to provide automated teller machine

1 transaction routing services in that state without any qualifications, conditions, or requirements
2 which are more restrictive than those imposed by this chapter. The director may determine
3 whether the qualifications, conditions, and requirements imposed by the laws of any other state
4 on a person providing automated teller machine transaction routing services are more restrictive
5 than the requirements of this chapter. A violation of this section is a Class 2 misdemeanor.

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

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

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

13 The commission may promulgate rules, pursuant to chapter 1-26, to provide for the
14 management and administration of licensees and to determine whether other practices or
15 activities constitute automated teller machine transaction routing services for purposes of this
16 chapter as a result of changes in technology or commercial practices.

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

19 The provisions of sections 1 to 13, inclusive, do not apply to a person engaged in providing
20 automated teller machine transaction routing services in this state on June 30, 2002, if the
21 activities of such person in this state are limited to providing services required in binding
22 contracts in force on June 30, 2002, for the benefit of the persons who are parties to such
23 contracts on such date. Nothing in this section affects the applicability of sections 1 to 13,
24 inclusive, of this Act, to any other activities of a person described in this section or any contracts

- 1 or agreements for automated teller machine transaction routing services entered into after
- 2 June 30, 2002.