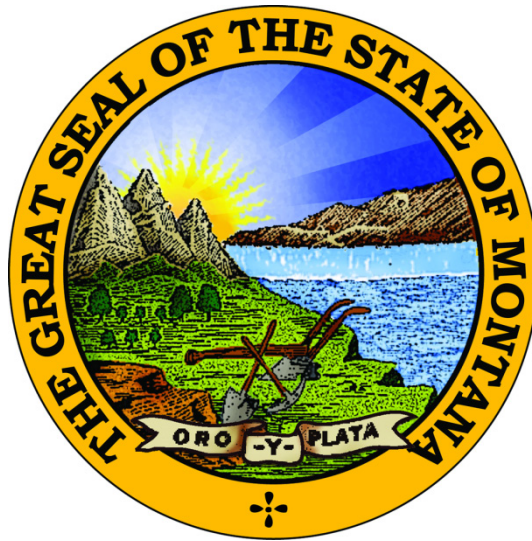


STATE OF MONTANA  
DEPARTMENT OF ADMINISTRATION  
DIVISION OF BANKING AND FINANCIAL INSTITUTIONS  
**ELECTRONIC FUNDS TRANSFER ACT**



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CHAPTER 6  
ELECTRONIC FUNDS TRANSFER ACT

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## **PART 1 GENERAL PROVISIONS**

**32-6-101. Short title.** This chapter shall be known and may be cited as the "Montana Electronic Funds Transfer Act".

**History:** En. 5-1701 by Sec. 1, Ch. 503, L. 1977; R.C.M. 1947, 5-1701.

**32-6-102. Electronic funds transfer systems -- applicability.** (1) The legislature has determined that electronic funds transfer systems are technologies offered by all types of financial depository institutions. These technologies provide the consumer with both convenience and efficiency in making financial transactions. Regulation E of the federal Electronic Fund Transfer Act, 15 U.S.C. 1693, et seq., addresses many of the consumer issues relating to these systems. This chapter applies to financial institutions chartered under the United States Code or Title 32, chapter 1, parts 1 through 5, to the extent that those laws permit.

(2) Financial institutions that are subject to and in compliance with Regulation E of the federal Electronic Fund Transfer Act must be considered to be in compliance with the provisions of this chapter.

**History:** En. 5-1702 by Sec. 2, Ch. 503, L. 1977; R.C.M. 1947, 5-1702; amd. Sec. 12, Ch. 265, L. 1995; amd. Sec. 141, Ch. 42, L. 1997; amd. Sec. 1, Ch. 77, L. 2005.

**32-6-103. Definitions.** As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Customer", in relation to a financial institution, means a holder of a demand or time account or a membership share in the institution or a person who is a borrower or a mortgagor; in relation to a merchant, it means a purchaser of goods or services.

(2) "Department" means the department of administration.

(3) (a) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes but is not limited to point-of-sale transfers, automated teller machine transfers, direct deposits or withdrawals of funds, and transfers initiated by telephone. It also includes a transfer resulting from a debit card transaction, including a transaction that does not involve an electronic terminal at the time of the transaction.

(b) The term does not include payments made by check, draft, or similar paper instrument at an electronic terminal.

(4) "Electronic terminal" means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic funds transfer. The term includes but is not limited to point-of-sale terminals, automated teller machines, and cash dispensing machines.

(5) "Financial institution" means a bank chartered under chapter 1 of this title, a bank chartered under the National Banking Acts in Title 12 of the United States Code, a building and loan association chartered under chapter 2 of this title, a savings and loan association chartered under the Home Owners' Loan Act in Title 12 of the United States Code, a credit union chartered under chapter 3 of this title, or a credit union chartered under the Federal

Credit Union Act in Title 12 of the United States Code. For purposes of this chapter only, a consumer loan company licensed under chapter 5 is considered a financial institution.

(6) "Merchant" means a natural person, corporation, partnership, or association engaged in buying and selling goods or services, except that a financial institution is not a merchant.

(7) "Person" means an individual, partnership, corporation, association, or any other business organization.

(8) "Premises" means those locations where, by applicable law, financial institutions are authorized to maintain a principal place of business and other offices for the conduct of their respective businesses. The term includes a detached drive-in or walk-up facility approved under 32-1-372.

(9) (a) "Satellite terminal" means any machine or device that is located off the premises of a financial institution and that a financial institution or its customers may use to carry out electronic funds transfers.

(b) Satellite terminal includes:

(i) an automated teller machine, which means a satellite terminal to make electronic funds transfers, located off the premises of financial institutions, operated by customers of financial institutions without assistance, and activated by a unique identification device and personal identification number;

(ii) a point-of-sale terminal, which means a satellite terminal located on the premises of a merchant, operated by a customer, a merchant, or the merchant's employees solely to debit or credit a customer's deposit or share account in a financial institution and solely to credit or debit the merchant's account commensurately for transactions in goods or services. A point-of-sale terminal need not be activated by a unique personal identification device. A merchant has the option, if the necessary computer capability exists at a reasonable cost, of selling goods or services by point-of-sale terminals with the electronic funds transfer taking effect at the time of the transaction or at a stated time after the transaction.

(c) The definition of satellite terminal does not include and nothing in this chapter may be construed to apply to:

(i) an automated teller machine located on the premises of a financial institution;

(ii) an automated clearinghouse or any equivalent system designed to transfer funds between financial institutions; or

(iii) a point-of-sale terminal that is used by a merchant in the merchant's business only and does not provide access to a financial institution.

(10) "Unique identification device" means a magnetic encoded plastic card or equivalent device that contains either a number or a dollar balance, or both, that is unique to a customer and that is issued by a financial institution, merchant, or other person.

**History: En. 5-1703 by Sec. 3, Ch. 503, L. 1977; R.C.M. 1947, 5-1703; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 255, L. 1989; amd. Sec. 13, Ch. 265, L. 1995; amd. Sec. 101, Ch. 483, L. 2001.**

**32-6-104. Consumer information -- charge for use of electronic terminal.** (1) A financial institution or its affiliate engaging in electronic funds transfers with its customers shall, prior to authorizing a customer to make electronic funds transfers, provide the customer with an itemized statement clearly setting forth, without limitation:

(a) the specific transactions that may be performed through satellite terminals;

(b) the charges, if any, for individual transactions made through a satellite terminal;

(c) minimum balance requirements, if any;

(d) the liability of the various parties for unauthorized transactions made by electronic funds transfer, with special emphasis upon the liability when the customer makes a personal identification number readily available for discovery in connection with theft or loss of the unique identification device and upon the importance of immediate notification to the institution of theft or loss;

(e) the legal status of receipts issued from a satellite terminal;

(f) the right of the customer to a description of transactions performed by satellite terminal on any periodic statement of account furnished the customer;

(g) the right of the customer to seek correction of an error that the customer believes has been made in the customer's account by electronic funds transfer;

(h) instructions in maintaining customer records and reconciling balances and in the importance of retaining receipts of electronic funds transfers; and

(i) the economic significance of having no "float" time and no stop-payment authority.

(2) The customer shall sign a statement acknowledging acceptance of these terms and conditions and give the statement to the financial institution. A copy of the statement, countersigned by an officer of the financial institution, must be provided to the customer. In addition, the information set forth in subsection (1)(d) must be specifically acknowledged by the customer. The customer shall verify acknowledgment by signing the customer's initials immediately adjacent to the information provided.

(3) (a) The owner of an electronic terminal may impose a surcharge for the use of its electronic terminal. The owner of an electronic terminal that elects to impose a surcharge for the use of its electronic terminal shall clearly advise the user of the electronic terminal, by a conspicuous disclosure on the terminal or through a message displayed on the electronic terminal screen, of the exact amount of the surcharge. The user must then be provided the option either to cancel the transaction, without incurring the surcharge, or to complete the transaction subject to the surcharge.

(b) An agreement by a financial institution to share or operate electronic terminals may not prohibit, limit, or restrict the right of the financial institution to charge a customer any fees allowed by state or federal law or to require a financial institution to waive any other rights or obligations it has under the laws of this state.

(4) A merchant or person other than a financial institution that issues a unique identification device to its customers for use at a point-of-sale terminal and that provides to the holders of the unique identification device a disclosure that satisfies the initial disclosures of terms and conditions under Regulation E of the federal Electronic Fund Transfer Act is considered to be in compliance with the disclosure requirements of this section.

**History: En. 5-1706 by Sec. 6, Ch. 503, L. 1977; R.C.M. 1947, 5-1706; amd. Sec. 2, Ch. 255, L. 1989; amd. Sec. 14, Ch. 265, L. 1995; amd. Sec. 1, Ch. 186, L. 2003.**

**32-6-105. Protection of privacy.** (1) No information relating to any transaction by electronic funds transfer, or application therefor, between a financial institution and its customer or prospective customer may be disclosed by the financial institution to any person or government entity without:

(a) the consent of the customer; or

(b) a subpoena issued by a court of record directing the financial institution to disclose such information to the person or government entity.

(2) Compliance with such subpoena relieves a financial institution and its employees of liability to a customer or other person for such disclosure.

(3) This section does not prevent:

(a) the examination of financial institutions by duly authorized regulatory authority or the transfer of information by a financial institution to a clearinghouse which administers transactions between financial institutions; or

(b) the access by a party to a transaction to information relating to a specific transaction.

**History: En. 5-1709 by Sec. 9, Ch. 503, L. 1977; R.C.M. 1947, 5-1709; amd. Sec. 1, Ch. 186, L. 1987.**

**32-6-106. Unauthorized disclosure of electronic funds transfer records.** (1) A person commits the offense of unauthorized disclosure of electronic funds transfer records if the person has lawful access to the records by virtue of office or employment and:

(a) permits another, who lacks lawful access to the records, to inspect, copy, or read the records; or

(b) transfers the records to another who lacks lawful access to the records.

(2) A person convicted of the offense of unauthorized disclosure of electronic funds transfer records shall be imprisoned in the state prison for any term not to exceed 1 year, be fined not more than \$5,000, or be punished by both imprisonment and fine.

**History: En. 5-1710 by Sec. 10, Ch. 503, L. 1977; R.C.M. 1947, 5-1710; amd. Sec. 1054, Ch. 56, L. 2009.**

## **PART 3 RELOCATIONS**

**32-6-301. Records of electronic funds transfers.** (1) A satellite terminal must be operated to produce a humanly readable record of any transaction and to provide a copy of this record to the person initiating the transaction as soon as the transaction is complete.

(2) The receipt provided to the person initiating an electronic funds transfer is admissible as evidence in any legal proceeding and constitutes prima facie proof of the transaction that it records.

(3) (a) A financial institution shall provide each of its customers using electronic funds transfer services with a periodic account statement containing a brief description of all electronic funds transfers sufficient to enable the customer to identify any transaction and relate the transaction to the receipt provided under subsection (1).

(b) The periodic account statement description of automated teller machine transactions must include a specific geographic location where each transaction occurred.

(c) When a periodic account statement includes both electronic funds transfers and other transactions, all electronic funds transfers must be identified as such and be furnished in compliance with this subsection (3).

**History: En. 5-1711 by Sec. 11, Ch. 503, L. 1977; R.C.M. 1947, 5-1711; amd. Sec. 15, Ch. 265, L. 1995.**

**32-6-302. Verification of statement -- procedure for discrepancies.** (1) If, upon receipt of a periodic statement of account, a customer of a financial institution believes the statement contains an error with respect to an electronic funds transfer, the customer shall notify the institution within 60 days after the day the institution delivered the statement. In this notification, the customer must be identified and shall set forth the foundation of the customer's belief regarding the error.

(2) Within 10 days after a customer has notified a financial institution of a possible error under subsection (1), the institution shall either:

(a) correct the account in question, giving the customer a description of the correction and if the correction is not in the exact amount of the alleged error, the description must explain the difference; or

(b) after investigating the matter, give the customer an explanation of the reasons the institution believes the statement to be correct. If requested in writing by the customer, a written explanation, documented by the institution's record of the transaction in question, must be furnished to the customer.

(3) A financial institution receiving notice under subsection (1) may not close the account concerning which the dispute exists or restrict transactions in the account affecting the portion not in dispute until it complies with subsection (2). A financial institution that has once complied with subsection (2) with respect to an alleged error is not required to respond under subsection (2) to repeated allegations of the same error.

**History: En. 5-1712 by Sec. 12, Ch. 503, L. 1977; R.C.M. 1947, 5-1712; amd. Sec. 1055, Ch. 56, L. 2009.**

**32-6-303. Unauthorized transactions -- liability.** (1) A customer whose account is debited by an electronic funds transfer without the customer's authorization is not liable for

the amount of the transaction, and the amount must be recredited to the customer's account as provided under 32-6-302 unless:

(a) the financial institution has provided the customer with a unique identification device for initiating electronic funds transfer requests and transactions are made as a result of the theft or loss of that device, in which case the customer is liable for the first \$50 of any consequent transactions made prior to the time the financial institution is notified of the loss or theft; or

(b) the financial institution has provided the customer with a unique identification device for initiating, in conjunction with a personal identification number separate from the device, electronic funds transfer requests and the customer attaches the personal identification number to the device by writing or otherwise or in any way makes the number readily available for discovery in connection with the theft or loss of the device and transactions are made as a result of the theft or loss of the device, in which case the customer is liable for one-half the value of all consequent transactions made until the financial institution is notified of the theft or loss.

(2) A customer who willingly gives the customer's unique identification device and personal identification number to another is presumed to have authorized any electronic funds transfers requested by the other person.

(3) A merchant who makes electronic funds transfer services available on the merchant's premises is liable for the amount of an unauthorized electronic funds transfer requested from the premises only if the merchant:

(a) or the merchant's agent is negligent in requiring a user of electronic funds transfer services to furnish adequate self-identification;

(b) fails to retain a physical record of the transaction for 1 year following the transaction; or

(c) breaches the warranty required by subsection (4).

(4) A merchant operating a point-of-sale terminal shall warrant to the financial institution or the department that an order for an electronic funds transfer emanating from the terminal is part of a commercial transaction in which the customer receives goods or services of commensurate value.

(5) The liability for any unauthorized or erroneous electronic funds transfer that does not fall upon a customer or a merchant under this section falls upon the financial institution that carries out the transfer.

**History: En. 5-1713 by Sec. 13, Ch. 503, L. 1977; R.C.M. 1947, 5-1713; amd. Sec. 3, Ch. 255, L. 1989; amd. Sec. 1056, Ch. 56, L. 2009.**

**32-6-306. Personal identification number -- restrictions.** (1) A financial institution may not assign a personal identification number to a customer which is identical to that customer's social security account number, driver's license number, or any other number assigned for other purposes to that customer.

(2) A satellite terminal may not be operated so as to print a customer's personal identification number on the humanly readable receipt furnished at the time of a transaction.

**History: En. 5-1716 by Sec. 16, Ch. 503, L. 1977; R.C.M. 1947, 5-1716.**