

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2968**

BY DELEGATES NELSON, ESPINOSA, BARRETT, BYRD,

MCGEEHAN, CRISS AND PORTERFIELD

[Introduced February 11, 2019; Referred  
to the Committee on Banking and Insurance then the  
Judiciary.]

1 A BILL to amend and reenact §31A-8-12b of the Code of West Virginia, 1931, as amended,  
 2 relating to adding remote service units to the definition of customer bank communication  
 3 terminal; defining remote service unit; and requiring that operators of remote service units  
 4 maintain a physical location in this state.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW;  
 UNLAWFUL ACTS; PENALTIES.**

**§31A-8-12b. Installation and operation of customer bank communication terminals  
 permitted.**

1 (a) Any banking institution as defined in §31A-1-2 of this code, individually or jointly with  
 2 one or more other banking institutions or other federally insured financial institutions having their  
 3 principal offices in this state, or any combination thereof, may upon 10 days prior written notice  
 4 filed with the commissioner, install, operate and engage in banking business by means of one or  
 5 more customer bank communication terminals. Any banking institution which installs and operates  
 6 a customer bank communication terminal:

7 (1) Shall make ~~such~~ the customer bank communication terminal available for use by other  
 8 banking institutions; and

9 (2) May make ~~such~~ the customer bank communication terminal available for use by other  
 10 federally insured financial institutions, all in accordance with regulations promulgated by the  
 11 commissioner. ~~Such~~ The customer bank communication terminals ~~shall not be considered to be~~  
 12 are not branch banks or branch offices, agencies or places of business or off-premises walk-in or  
 13 drive-in banking facilities; nor ~~shall~~ do the operation of such customer bank communication  
 14 terminals to communicate with and permit financial transactions to be carried out through a  
 15 nonexclusive access interchange system ~~be considered to~~ make any banking institution which is  
 16 part of such a nonexclusive access interchange system ~~to~~ have illegal branch banks or branch

17 offices, agencies or places of business or off-premises walk-in or drive-in banking facilities.

18 (b) Notwithstanding the provisions of subdivision (1), subsection (a) of this section, a  
19 customer bank communication terminal located on the premises of the principal office or branch  
20 bank of a banking institution or on the premises of an authorized off-premises facility need not be  
21 made available for use by any other banking institution or its customers.

22 (c) For purposes of this section, "customer bank communication terminal" means any  
23 electronic device or machine owned, leased, or operated by a bank, together with all associated  
24 equipment, structures and systems, including, without limitation, remote service units, point of  
25 sale terminals, through or by means of which a customer and a banking institution may engage  
26 in any banking transactions, whether transmitted to the banking institution instantaneously or  
27 otherwise, including, without limitation, the receipt of deposits of every kind, the receipt and  
28 dispensing of cash, requests to withdraw money from an account or pursuant to a previously  
29 authorized line of credit, receiving payments payable at the bank or otherwise transmitting  
30 instructions to receive, transfer or pay funds for a customer's benefit. Personal computers,  
31 telephones and associated equipment which enable a bank customer to conduct banking  
32 transactions at their home or office through links to their bank's computer or telephone network,  
33 do not constitute a "customer bank communication terminal" under this section. All transactions  
34 initiated through a customer bank communication terminal ~~shall be~~ are subject to verification by  
35 the banking institution.

36 (d) No person, other than: (1) A banking institution authorized to engage in the banking  
37 business in this state; or (2) a credit union authorized to conduct business in this state, may  
38 operate any automatic teller machine ("ATM") or automatic loan machine ("ALM") or remote  
39 service unit ("RSU") located in this state: *Provided, That the operator of an RSU shall maintain a*  
40 physical location in this state: *Provided, however,* That ATM terminals of out-of-state banks not  
41 having branches in this state ~~shall be~~ are allowed to operate to the same extent as a West Virginia  
42 bank if a national bank from that state not having branches in West Virginia could do so through

43 a federal preemption of state law.

44 (e) For the purposes of this section, "remote service unit" means automated facility,  
45 operated by a customer of a bank, that conducts banking functions such as receiving deposits,  
46 paying withdrawals, or lending money, and includes an unmanned or automated teller machine,  
47 an automated loan machine, and an automated device for receiving deposits. A remote service  
48 unit may be equipped with a telephone or video device that allows contact with bank personnel.

49 ~~(e)~~ (f) For the purposes of this section, "point of sale terminal" means a customer bank  
50 communication terminal used for the primary purpose of either transferring funds to or from one  
51 or more deposit accounts in a banking institution or segregating funds in one or more deposit  
52 accounts in a banking institution for future transfer, or both, in order to execute transactions  
53 between a person and his or her customers incident to sales, including, without limitation, devices  
54 and machines which may be used to implement and facilitate check guaranty and check  
55 authorization programs.

56 ~~(f)~~ (g) Nothing in this section prevents point of sale terminals and associated equipment  
57 from being owned, leased or operated by nonbanking entities: *Provided*, That ~~such~~ those persons  
58 may not engage in the business of banking by using point of sale devices. The use of a point of  
59 sale terminal to enable a customer or other person to withdraw and obtain cash of more than \$50  
60 in excess of the sales transaction purchase amount, ~~will be~~ is presumed to constitute engaging in  
61 the business of banking: *Provided, however*, That cash withdrawals through a point of sale  
62 terminal in excess of \$50 ~~shall not constitute~~ is not engaging in the business of banking if the  
63 sales transaction is made with the use of a West Virginia check card, as provided in §12-3A-1 *et*  
64 *seq.* of this code, or with an electronic benefits transfer or other card issued by state spending  
65 units to transmit payments of food benefits, temporary assistance to needy families, or other  
66 assistance, benefit or entitlement programs mandated or offered by federal or state government:  
67 *Provided further*, That any retailer, agency or person providing cash withdrawals with a West  
68 Virginia check card or an electronic benefits transfer card through a POS terminal is limited to

69 charging a fee for the services in the amount of the higher of \$1 or one percent of the amount of  
70 cash withdrawn.

71 ~~(g)~~ (h) Except for customer bank communication terminals located on the premises of the  
72 principal office or a branch bank of the banking institution or on the premises of an authorized off-  
73 premises walk-in or drive-in banking facility, a customer bank communication terminal shall be  
74 unattended or attended by persons not employed by any banking institution utilizing the terminal:

75 *Provided, That:*

76 (1) Employees of the banking institution may be present at ~~such~~ the terminal not located  
77 on the premises of an authorized off-premises facility solely for the purposes of installing,  
78 maintaining, repairing and servicing same; and

79 (2) A banking institution may provide an employee to instruct and assist customers in the  
80 operation thereof: *Provided, That* ~~such~~ the employee ~~shall~~ may not engage in any other banking  
81 activity.

82 ~~(h)~~ (i) The commissioner shall prescribe by ~~regulation~~ rule the procedures and standards  
83 regarding the installation and operation of customer bank communication terminals, including,  
84 without limitation, the procedure for the sharing thereof.

NOTE: The purpose of this bill is to add remote service unit to the definition of customer bank communications terminals, to define remote service unit, and require operators of remote service units to maintain a physical location in this state.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.