

**LOCAL LAW NO. 10 OF 2005
COUNTY OF ROCKLAND
STATE OF NEW YORK**

A local law amending local law number 2 of 2005 pertaining to the registration, permitting and protection of privately owned automated teller machines (atms) in Rockland county for the purpose of protecting individual consumers and businesses and combating identity theft, including other provisions to protect personal safety and identity.

Be it enacted by the legislature of the county of Rockland as follows:

Section 1. Name of local law

This law shall be known as “the personal identity, social security number and automated teller machine protection act.”

Section 2. Legislative findings and intent

a. Identity theft has been recognized as one of the fastest growing crimes in America. In 2003, approximately one trillion dollars (\$1,000,000,000,000) was transacted through America’s roughly 375,000 atm machines. Of this one trillion dollars (\$1,000,000,000,000), approximately fifty million (\$50,000,000) was stolen. The federal trade commission reported that between 1998 and 2003, 27.3 million Americans became victims of identity theft. In 2002 alone, businesses lost forty eight billion dollars (\$48,000,000,000) to identity thieves and victimized consumers incurred five billion dollars (\$5,000,000,000) in out-of-pocket expenses. Identity theft is often associated with other serious crimes including mail fraud, narcotics, organized crime, money laundering, weapons trafficking, computer crimes and terrorism. Federal agencies including, but not limited to, the U.S. secret service, the U.S. postal inspection service, the federal trade commission and the FBI are designated as principal law enforcement agencies for identity theft. Although legislative research indicates that few U.S. counties regulate such conduct as of the passage of this legislation, Rockland county hereby expresses its determination to assist in combating such crimes.

b. The Rockland county legislature hereby finds and determines that privately owned automated teller machines, hereinafter “atms,” provide a valuable service to residents, businesses and tourists in Rockland county by enabling access to their funds without having to travel to their own or another bank.

c. However, these private atms are currently unregulated by the federal, state or local governments. Complaints have been made that unscrupulous atm owners are using the information obtained when residents use their machines to steal from those conducting transactions.

d. In addition, although bank atms are mandated to provide certain safety enhancements, such as rearview mirrors or security cameras, private atms are not so required. Furthermore, no license or permit is currently required for private atms, making their owners untraceable and handicapping law enforcement efforts to locate potential sources of identity or monetary theft.

e. Therefore, the Rockland county legislature has determined that Rockland county shall undertake to protect its residents and others using private atms from the theft of their identities or their money by enactment of this local law.

Section 3. Definitions

As used in this article, the following terms shall have the meanings indicated:

atm operator means a person, organization, or company operating a private atm, but shall not in any event mean an eft network. Generally, the operator is the person who provides the service by which the physical atm is connected through wired or wireless services to the banking network in order to conduct the transactions through the private atms, whether to receive cash, make a balance inquiry or deposit funds, if such is allowed by the atm itself.

atm placement agreement means an agreement between a merchant and a private atm operator or a merchant and a distributor representing a private atm operator regarding the operation of a private atm at a specified site, including the merchant's place of business.

bank account – as this term is used in the vernacular, including but not limited to any fund, account or other place where a person can deposit their money so that it is protected by federal banking laws or security and exchange commission rules.

books and records means all of the following:

- (1) A private atm operator's most recent federal income tax return or, if the private atm operator has not previously filed tax returns, the tax returns of its principals, general partners, or majority shareholders
- (2) A private atm operator's financial statements including a balance sheet and income statement.

consumer or **customer** means a person or other entity conducting a transaction at a private atm.

distributor means a person, other than a private atm operator, who owns, invests in, or leases a private atm or enters into a private atm placement agreement with a merchant and subsequently contracts with a private atm operator for operating the private atm.

eft network means one or more electronic funds transfer networks that are available to financial institutions that enables the transfer of funds in and out of a customer's bank account when the customer completes a monetary transaction at an atm, including private atms.

enforcing agent means the director of the Rockland county department of weights and measures office of consumer protection or his or her designee(s).

financial institution means a bank, savings association, or credit union or any affiliate or subsidiary thereof, which is recognized as such by the federal Gramm-Leach Bliley act of 1999 (12 u.s.c. sec. 1811).

merchant means the owner or lessee who has possession of the location or premises at which a private atm is installed and made available to the merchant's customers or invitees. A merchant may own or lease a private atm without being considered a distributor, provided that the private atm is intended solely for placement in that merchant's location or premises.

monetary transaction means the act of accessing an account at a financial institution with a credit card, debit card, or other bankcard at a private atm for the purpose of making cash withdrawals, balance inquiries, deposits, fund transfers from or to the account, or engaging in any other transaction.

operating an atm or **operating the atm** means the process of maintaining or providing the connection of a private atm to any eft network, regardless of who holds legal or equitable title in and to the private atm.

pin or **personal identification number** means a series of numbers that identifies a cardholder and permits use of the card.

private automated teller machine or **private atm** -- any machine that is not subject to federal or state banking regulations used to gain access to a person's money in a bank account.

sponsorship agreement means the agreement between a financial institution and the private atm operator that governs the operation of a private atm within an eft network.

Section 4. Registration of private atms

(a) Any private atm operator, distributor and merchant operating a private atm in Rockland county available for other than private use, and every private atm machine in service in Rockland county, shall be registered with the Rockland county department of consumer protection.

(b) If the private atm operator or distributor is also registered with at least one eft network through a sponsorship agreement with a financial institution that is a member of the eft network, such eft registration information shall accompany private atm registration with the department. Every subsequent atm registration by an individual or business shall reference such first registration, and must contain any and all new information not presented with such prior registrations.

(c) Each time an atm machine is moved from its currently registered location to another location within Rockland county, it must be re-registered, at a reduced fee, as provided herein.

(d) All registrations for private atms recorded under this local law must contain such information as required by the director of consumer protection to effectuate the intent of this law.

(e) With respect to any private atm placed into use prior to the effective date of this local law, the atm operator, or the distributor, and the merchant shall, between themselves, decide which one of them will do the following by that date:

- (1) Comply with all of the applicable information listed in subdivisions (a)-(d).
- (2) File with the Rockland county department of consumer protection the required information including any alterations to the private atm undertaken prior to the local law's effective date.

(f) Registration fees.

- (1) The initial registration of any private atm operator or distributor operating a private atm in Rockland county must be accompanied by a one-time fee in the sum of fifty five dollars (\$55). Such fee entitles the registered party to place one atm in Rockland county.
- (2) Each additional machine placed in Rockland County by a registered party shall be subject to a fee of twenty five dollars (\$25).
- (3) A machine that is already registered and operating in Rockland county may be moved to another location provided that the registered party updated the registration and pays a fee in the sum of ten dollars (\$10) per private atm per location.

(g) Notwithstanding any other provision of this law, while any party to the placement of the private atm may file and pay the appropriate registration forms and fees, and while any party may be subject to the penalties contained in subsection 12 of this law, the merchant shall be responsible for the failure to file registration and pay the appropriate fees required by this law. This section shall not be used by operators or distributors to seek indemnification from the merchant for the fees or penalties.

Section 5. Requirements for registered private atms.

All private atm operators, distributors and merchants in Rockland county must provide or do all of the following:

- (a) All Merchants, operators and distributors must keep and file such records as required by the director of consumer protection to effectuate the intent of this law.
- (b) Comply with all eft network operating rules and all local, state, and federal regulations governing the operations of its private atms.
- (c) Maintain comprehensive and verifiable inventory procedures and establish controls that identify the location of all of the private atms that it operates or has distributed or possesses, that are available for use by the public in Rockland county.
- (d) Operate or distribute private atms physically within Rockland county pursuant to a written agreement with merchants that are legally authorized to conduct business in New York state and Rockland county, and file a copy of said agreements, and any modifications to said agreements, with the Rockland county office of consumer protection.
- (e) Post in a conspicuous place on the front of each private atm a notice in at least 24-point type setting forth: (1) the name of the merchant and the private atm operator or distributor, (2) the telephone number to the Rockland county office of consumer protection, (3) a telephone number of the private atm operator or distributor, (4) the federal trade commission's identity theft telephone hotline phone number, currently 1-877-id-theft, (5) the fee charged to use the private atm and the maximum amount that can be withdrawn in any single transaction and (6) the following statement: "protect your identity: safeguard your card and pin number, and take your receipt."

Section 6. Agreements between private atm distributors and operators.

A distributor must provide the private atm operator with all of the following before it accepts any private atm placement agreement:

- (1) The distributor's full legal name and any trade name under which the distributor is conducting business.
- (2) The distributor's federal and New York income tax identification numbers and, if the distributor is a sole proprietor, his or her social security number.

Section 7. Safety rules for private atms.

The following safety rules apply to all private atms:

- a) All private atms must be in well-lit areas; and

b) All private atms must have devices, such as mirrors or other reflective panels that allow consumers to see behind them as they conduct their transactions. Such devices may be affixed to, or stand independently of, the private atm.

Section 8. Not to supercede eft matters

Nothing in this local law shall be interpreted or construed to modify, amend, suspend, supersede, or cancel any eft network rule or regulation.

Section 9. Exemptions

The following entities are exempt from the requirement of this local law unless they are acting in the private atm arena:

- (1) Any financial institution regulated by the federal or state governments.
- (2) A subsidiary or affiliate of an entity specified in paragraph (1).
- (3) A person providing atm services to a financial institution regulated by the federal reserve board, the federal deposit insurance corporation, the comptroller of the currency, the u.s. office of thrift supervision, the national credit union administration, or the state of new york or any of its departments where the state requires the information required by this local law.

Section 10. No impact on banking regulations

This local law has no impact on or intent to affect bank accounts, federal and state banking procedures or banking regulations as such is not within the jurisdiction of the county of Rockland.

Section 11. No waiver

The requirements of this article may not be waived.

Section 12. Penalties

(a) Any private atm operator, distributor or merchant that knowingly or otherwise operates a private atm without complying with all the requirements of this local law and/or provides false or misleading information in connection with placing private atms into service to the public, shall be subject to a civil penalty of up to five hundred dollars (\$500) for the first such act of non-compliance or of providing false or misleading information, and a civil penalty of up to one thousand dollars (\$1,000) for every subsequent such act, to assessed and collected by any enforcing agent. For the purpose of this section, every day that any private atm operator, distributor or merchant

knowingly or otherwise operates a private atm without complying with all the requirements of this local shall constitute a separate act of non-compliance.

Section 13. Use of Social Security Numbers by County Government, its Contract Agencies and Rockland Community College

A county department, a contract agency of the county, and Rockland community college, when utilizing funds from the county, shall be prohibited from using federal social security numbers as a means of identification or record-keeping unless the use of a social security number is mandated or otherwise required by federal or state law. This does not prevent such departments, Rockland community college, or contract agencies from utilizing the “last four digits” of such social security number alone or in conjunction with numerical, alphabetical or other symbols for said purposes.

Section 14. Reporting to federal authorities; guidance to victims

Any enforcing agent learning of potential identity theft shall report any involved individuals and other involved entities to the federal trade commission or other appropriate federal and state authorities, and provide guidance to victims, whether the theft resulted from an atm machine or some other source.

Section 15. Identity theft public education and awareness effort

The commissioner of finance shall distribute all funds received under this local law, whether by registration or civil penalty, to the Rockland county office of consumer protection until its enforcement costs under this local law are fully reimbursed. Any excess funds generated by this local law, after all such enforcement expenses to the office of consumer protection are reimbursed, shall be remitted to the computer crime unit for the purpose of funding a public awareness and education effort specifically designed to prevent identity theft.

Section 16. Intermunicipal Cooperation

The computer crime unit, under the supervision of the district attorney and the sheriff of Rockland county, shall aspire to collaborate with local law enforcement entities within the county to report incidences of identity theft to the federal trade commission.

Section 17. No liability

Nothing in this local law shall be deemed as creating liability to Rockland county for identity theft or other crimes associated with the use of atms.

Section 18. Applicability

This article shall apply to any private atm placement in Rockland county before, on or after the effective date of this local law.

Section 19. Severability.

If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, effect or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 20. Effective date.

This local law shall become effective three months; from the filing of this local law in the office of the New York secretary of state pursuant to section 27 of the municipal home rule law.