ELECTRONIC FUNDS TRANSFERS
Act 322 of 1978

AN ACT to authorize financial institutions to make electronic funds transfer terminals available to their customers; to protect the privacy and security of customers; to prohibit unfair discrimination among financial institutions and monopolistic practices in the use and availability of electronic funds transfer terminals; to prescribe remedies; and to prescribe penalties.

History: 1978, Act 322, Eff. Jan. 1, 1979.

The People of the State of Michigan enact:

488.1 Meaning of words and phrases.

Sec. 1. For the purposes of this act, the words and phrases defined in sections 2 to 5 have the meanings ascribed to them in those sections.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.2 Definitions; A to C.

Sec. 2. (1) "Available" means all deposit account functions that are performed from time to time by the particular electronic funds transfer terminal.

(2) "Bank" means that term as defined in section 1201 of the banking code of 1999, 1999 PA 276, MCL 487.11201, or a national banking association that is established under the laws of the United States and has its main office in this state.

(3) "Branch" means any of the following:

(a) For a state credit union, a branch as defined in section 102 of the credit union act, 2003 PA 215, MCL 490.102, and a service center as defined in section 103 of the credit union act, 2003 PA 215, MCL 490.103.

(b) For a federal credit union, a branch as defined in section 101 of the federal credit union act, 12 USC 1752, and applicable regulations.

(c) For a federal savings and loan association, a branch office as defined by the regulations of the federal home loan bank board pursuant to the federal home loan bank act, 12 USC 1421 to 1449, but does not include a mobile facility, satellite office, or an agency established after January 1, 1979.

(d) For a state bank, a branch as defined in section 1201 of the banking code of 1999, 1999 PA 276, MCL 487.11201.

(e) For a national banking association, a branch as defined in 12 USC 36.

(4) "Consumer finance company" means a licensee under the regulatory loan act, 1939 PA 21, MCL 493.1 to 493.24.

History: 1978, Act 322, Eff. Jan. 1, 1979;—Am. 2003, Act 220, Imd. Eff. Dec. 2, 2003;—Am. 2012, Act 449, Eff. Dec. 31, 2012.

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488.3 Definitions; C to E.

Sec. 3. (1) “Credit union” means a domestic credit union as that term is defined in section 102 of the credit union act, or a federal credit union established under the laws of the United States having its main office in this state.

(2) “Customer” means a person, but does not include a financial institution or a financial institution holding company.

(3) “Deposit account” includes share, deposit, member, and savings accounts of financial institutions.

(4) “Electronic fund transfer” is any transaction that depends upon an electronic funds transfer terminal to complete.

(5) “Electronic funds transfer terminal” means an information processing device used for the purpose of executing deposit account transactions between financial institutions and their customers by either the direct transmission of electronic impulses or the recording of electronic impulses for delayed processing. A device used for other purposes may be an electronic funds transfer terminal, but a terminal is not an electronic funds transfer terminal while being used for those other purposes. Electronic funds transfer terminal does not include a device at the time it is used to perform the functions of check guaranty, check authorization, or credit card programs, or a combination of any of those programs, and does not include a device located on the premises of a customer of a financial institution that is used to execute transactions only between that customer and the financial institution.

History: 1978, Act 322, Eff. Jan. 1, 1979;—Am. 2003, Act 220, Imd. Eff. Dec. 2, 2003.

488.4 Definitions; F to M.

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Sec. 4. (1) “Financial institution” means a bank, savings and loan association, consumer finance company, credit union, and includes a corporation wholly owned by a financial institution or by a holding company parent of any financial institution.

(2) “Funds transfer facility” means an electronic funds transfer terminal or a funds transmission facility.

(3) “Funds transmission facility” means all devices and equipment, regardless of where located, which are interconnected with an electronic funds transfer terminal and while they are being used to transmit electronic impulses to enable the terminal to perform deposit account functions.

(4) “Merchant” means a person primarily engaged in the retail sale of goods or services.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.5 Definitions; P to U.

Sec. 5. (1) “Person” means an individual, sole proprietorship, corporation, partnership, association, joint stock company, trust, or unincorporated organization.

(2) “Reasonable fees” means transaction, rental, or other periodic charges which are directly related to the cost of furnishing a particular service, and which are proportionate to actual usage of the service by all persons using the service competing in the same market area and may include a return on invested capital and an initial entry fee charged for the purpose of recovering noncapitalized development costs. The fees shall be negotiated on a fair and equitable basis between the parties who shall not conspire to set a fee with the purpose of destroying or preventing competition.

(3) “Savings and loan association” means an association established under Act No. 156 of the Public Acts of 1964, as amended, being sections 489.501 to 489.920 of the Michigan Compiled Laws, or a federal savings and loan association established under the laws of the United States having its main office in this state.

(4) “Unauthorized use” means either of the following:

(a) Any transaction not known to the customer and not effectuated with the express permission of the customer.

(b) Any transaction effectuated under physical duress.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.6 Terminals, facilities, or functions to which act inapplicable.

Sec. 6. This act shall not be applicable to terminals, facilities, or functions which are subject to regulation by the Michigan public service commission or which are available for direct use only by financial institutions and not by the public generally.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.7 Funds transfer facility on merchant's premises; establishment, ownership, or operation; access to, connection to, or use of facility; reasonable fees; nondiscrimination; additional facilities; equality of fees.

Sec. 7. (1) This act shall not be construed or interpreted to prevent a merchant from establishing, owning, or operating 1 or more funds transfer facilities located on its own premises. If a merchant establishes, owns, or operates a funds transfer facility on the merchant's premises and allows access to the facility by a financial institution, group of financial institutions, or their customers for a function or service, this act shall not be construed or interpreted to require the merchant to accept an access or connection to or use of the facility on its premises for any other function, service, or purpose.

(2) This act shall not be construed or interpreted to require a merchant to accept an access or connection to or use of a funds transfer facility on the merchant's premises for a function, service, or purpose that does not access a deposit account of a customer of a financial institution or group of financial institutions.

(3) If a merchant establishes, owns, or operates a funds transfer facility on the merchant's premises and allows access or connection to or use of the facility by a financial institution, group of financial institutions, or their customers for any purpose, service, or function, this act or a law governing the financial institution shall not apply to the merchant other than those sections of this act, other law, or rules directly related to the particular function or service performed by the facility on the merchant's premises for a financial institution or group of financial institutions.

(4) An agreement between a merchant and a financial institution or group of financial institutions for the use of a funds transfer facility shall provide for commercially reasonable fees. The fees shall be negotiated on a fair and equitable basis between each party and the parties shall not conspire to set a fee with the purpose of destroying or preventing competition.

(5) A merchant shall be allowed access to essential funds transfer facilities on a fair and equitable basis that is not unfairly discriminatory and upon an agreement to pay commercially reasonable fees. Fees shall be

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negotiated on a fair and equitable basis between each party and the parties shall not conspire to set a fee with the purpose of destroying or preventing competition. For the purposes of this section, it shall not be necessary to do any of the following:

(a) Unreasonably add additional facilities, if existing facilities have reached their effective capacity.

(b) Have equal transaction fees.

(c) Have equal initial entry fees.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.8 Funds transfer facility; reliable service; protection of privacy; safety and soundness of funds; compliance with antitrust laws.

Sec. 8. (1) A funds transfer facility shall provide reliable service to the person with protection of privacy of personal financial information.

(2) A funds transfer facility shall not impair the safety and soundness of a person's funds.

(3) Persons subject to this act shall act and conduct their affairs in a manner which complies with the antitrust laws of this state or the United States to assure a free and open competitive economy in this state.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.9 Funds transfer facility; restrictions.

Sec. 9. A person may not establish, operate, or make available a funds transfer facility in this state, except as provided in this act.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.10 Electronic funds transfer terminals; number; availability; transfer of funds into deposit acccount.

Sec. 10. (1) A financial institution may make available to its customers 1 or more electronic funds transfer terminals anywhere in this state subject to this section and sections 12 to 28.

(2) The electronic funds transfer terminals may be made available by the financial institution solely to its own customers if the terminals are located on the premises of its main office or approved branch. As used in this subsection, “approved branch” does not include electronic funds transfer terminals located at a place where the financial institution carries on no other substantial financial functions for its customers.

(3) Except as provided in subsection (2), an electronic funds transfer terminal shall not be available to the customers of a financial institution unless it is available for use by the customers of any financial institution on a basis which is not unfairly discriminatory upon request of a financial institution and agreement by the financial institution to pay reasonable fees.

(4) Unless the participating financial institution agrees otherwise, an electronic funds transfer terminal shall not be used to transfer funds directly or indirectly from a customer's deposit account in that financial institution into a deposit account of that customer in another financial institution, except that the function of receiving for deposit in a financial institution of an item that is payable by another financial institution shall not constitute a transfer of funds, under this subsection if the item is received for collection rather than immediate payment.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.11 Funds transmission facility; establishment, operation, or availability; exemption of internal computer system.

Sec. 11. (1) A person may establish, operate, or make available a funds transmission facility anywhere in this state subject to this section and sections 12 to 28.

(2) A funds transmission facility shall be available for use by any financial institution using the electronic funds transfer terminals which are interconnected with the funds transmission facilities on a nondiscriminatory basis upon request of a financial institution and agreement by the financial institution to pay reasonable fees.

(3) This section shall not be construed to include a financial institution's internal computer system when used for purposes other than as a funds transmission facility.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.12 Providing information about customer's deposit account or customer's transaction; furnishing credit information; verifications; liability for violation.

Sec. 12. (1) To protect the privacy of customers using funds transfer services, a person providing services of a funds transfer facility and a financial institution providing services by means of a funds transfer facility,

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except as provided by law or with the consent of the customer, shall not provide to an outside party information about a customer's deposit account or a customer's transaction obtained through use of a funds transfer facility.

(2) This section shall not be construed to prevent the furnishing of credit information under the fair credit reporting act, 15 U.S.C. 1681 to 1681t, or if necessary to verify or complete the transaction or verify the existence of the customer's accounts or of information regarding improper use of a customer's account.

(3) A person providing services of a funds transfer facility and a financial institution providing services by means of a funds transfer facility, shall be jointly liable for a violation of this section.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.13 Issuance of card or means of access to customer's account; requirements.

Sec. 13. A financial institution shall not issue to a customer a card or means of access to a customer's account for the purpose of initiating an electronic fund transfer other than in response to a request or application therefor or as a renewal of, or in substitution for, an accepted card or means of access, whether issued by the initial issuer or a successor, except that a financial institution may distribute unsolicited cards or means of access only to its own customers and only if all of the following occur:

(a) The card or means of access does not have credit features, except overdraft privileges on deposit accounts.

(b) The distribution is accompanied by a full disclosure of the customer's rights and liabilities and a written agreement to sign to indicate the customer's acceptance of the card or other means of access.

(c) The card or other means of access is not capable of being used until additional information is furnished by the issuer after receipt of the customer's written agreement.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.14 Liability for unauthorized use of account; proof; "customer negligence" defined; failure to notify depository financial institution of unauthorized use; reporting lost means of access or violation of security.

Sec. 14. (1) A customer shall not be liable for an unauthorized use of his or her account through an electronic fund transfer unless the depository institution can prove, without benefit of inference or presumption, that the customer's negligence substantially contributed to the unauthorized use and that the financial institution exercised reasonable care to prevent the loss. As used in this section customer negligence means only the following:

(a) Writing the personal identification number on the card or other means of affording access.

(b) Keeping the personal identification number with the card or other means of affording access.

(c) Voluntarily permitting the account accessing device, including the personal identification number and the card, to come into the possession of a person who makes or causes to be made an unauthorized use.

(2) If the customer fails to notify the depository financial institution of an unauthorized use within 30 days after the receipt of a statement conforming with section 18 and containing an unauthorized use, a customer shall be liable for a subsequent unauthorized use that could have been prevented by timely notification.

(3) A customer shall not be liable for further unauthorized use of his or her account by electronic fund transfer after the customer has reported that the means of access to his or her account has been lost or that the security of his or her personal identification number has been violated.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.15 Notification of electronic fund transfer error; investigation; report; notification requirements; requirements of report to customer; meaning of electronic fund transfer error; placing hold on funds in account; closing account; report; correction resulting in credit to account; crediting account with interest.

Sec. 15. (1) If a customer notifies a financial institution orally or in writing within 60 days after receipt of the statement, that an electronic fund transfer error affecting the customer's account with the financial institution has occurred, the financial institution shall investigate the alleged error and report the results of the investigation to the customer within 10 business days.

(2) A financial institution may require that notification be made to a specified phone number, office, or individual during business hours and that the customer verify the oral notification in writing within 14 calendar days following oral notification on a form to be provided by the financial institution for that purpose.

(3) The financial institution's report to the customer shall do either of the following:

(a) Provisionally correct the amount in question and provide the customer with written notification of the correction and, if the correction is not in the exact amount of the alleged error, provide the customer with a

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written explanation of any difference between the alleged error and correction made. A financial institution making a provisional correction to the customer's account may charge back the corrected amount to the customer's account 15 days after providing notification and an explanation of the charge-back to the customer. A provisional correction shall become final not later than 60 days after the day it is made. A provisional correction shall be accompanied by a notice explaining to the customer that the amount of the correction may be charged back to the customer's account within 60 days.

(b) Provide the customer with a written explanation, stating the reason the financial institution believes the statement is correct.

(4) For purposes of this section, an electronic fund transfer error consists of:

(a) An unauthorized electronic fund transfer.

(b) An incorrect electronic fund transfer from or to the customer's deposit account.

(c) The omission of an electronic fund transfer affecting the customer's account.

(5) A financial institution which receives a notice under subsection (1) shall not place a hold on the funds in the account which are in excess of the amount in dispute. If the financial institution closes the account in which the disputed funds are held, the financial institution shall provide the report to the customer required by subsection (3). This section shall not be construed or interpreted to prohibit a financial institution from placing a hold on a customer's account as permitted by law or contract.

(6) If the correction of an error relating to a transaction engaged in through a funds transfer facility in an account of a customer results in a credit to the account, the financial institution shall additionally credit the account with interest which would have been paid to the customer by the financial institution if there had not been an error.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.16 Reversal of electronic fund transfer and recrediting customer's account; requirements; "normal business hours" defined.

Sec. 16. (1) The financial institutions which are parties to an electronic fund transfer shall reverse an electronic fund transfer initiated by a customer to a third party in payment for goods or services and recredit the customer's account for the full amount of the transfer, if all of the following occur:

(a) The customer provides notice to the financial institution of having made a good faith attempt to seek redress and makes an assurance to the financial institution of return to the third party of related goods in dispute where returnable goods are involved. This does not imply that reversability applies only to goods.

(b) The amount of the transaction is $50.00 or more.

(c) Within 4 calendar days following the transaction, the financial institution receives from the customer during the normal business hours of the financial institution a written or oral request for the reversal.

(d) The customer verifies the reverse order, notice, and assurance in writing within 14 calendar days following oral notification, on a form to be provided by the financial institution for that purpose. If written verification is not furnished, the financial institution shall reinstate the original debits and credits involved in the transaction to the extent of the available account balance.

(2) For the purposes of this section "normal business hours" means that part of any day in which the financial institution is open to the public for carrying on substantially all of its business functions.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.17 Receipt evidencing electronic fund transfer; time; costs.

Sec. 17. An electronic fund transfer made by a customer of a financial institution shall be evidenced by a receipt provided to the customer at the time of the electronic fund transfer. If a receipt cannot be provided at the time of the transfer it shall be provided on a regular basis at the option of the customer and upon agreement by the customer to pay all reasonable costs for the service.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.18 Statement of customer's account; frequency; contents.

Sec. 18. A financial institution shall provide each customer with a statement of the customer's account accessible through an electronic funds transfer terminal. The statement shall be provided not less than once a month in which an electronic fund transfer occurs, or annually, whichever is more frequent. The statement shall contain a brief description of each transaction made through an electronic funds transfer terminal. The description shall be sufficient to enable the customer to identify any transaction and to relate it to a receipt pursuant to section 17.

History: 1978, Act 322, Eff. Jan. 1, 1979.

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488.19 Written agreement of terms and conditions governing account; time; contents.

Sec. 19. A customer of a financial institution whose account with the financial institution is accessible through a funds transfer facility shall be provided with a written agreement by the financial institution of the terms and conditions governing the account. The agreement shall be provided at the time that the customer is issued a card or other means affording access to the funds transfer facility. The agreement shall state the following material facts:

(a) An explanation of the financial institution's liability for unauthorized use of the account and notice that the customer may be held liable for any resulting unauthorized use before the time the customer notifies the financial institution that his or her personal identification number has been compromised, if the customer does any of the following:

(*i*) Writes the personal identification number on the card.

(*ii*) Keeps the personal identification number with the card.

(*iii*) Voluntarily permits the account accessing device, including the personal identification number and the card to come into the possession of a person who makes or causes to be made an unauthorized use.

(b) The customer's right to receipts and statements affecting the account pursuant to sections 17 and 18, and that the receipt or statement is admissible evidence.

(c) An initial disclosure of the specific transactions which may be performed through the funds transfer facility by the customer.

(d) Any charges to the customer for account maintenance or for the use of the funds transfer facility and the method for determining charges.

(e) Any limitation imposed on the number of electronic fund transfer services permitted within a given period of time, and identification of the account or accounts to be accessed.

(f) The minimum balance, if any, which must be maintained by the customer in an account with a user financial institution as a condition for engaging in transactions in the account through a funds transfer facility.

(g) The right of the customer to seek correction of any statement errors by notifying the financial institution orally or in writing within 60 days after receipt of a statement containing an error; the financial institution's responsibility to respond to that notification within 10 business days after notification by either provisionally correcting the account or providing a written explanation stating the reason the financial institution believes the statement is correct; and explanation that provisional correction allows the financial institution to charge the correction back to the customer's account for up to 60 days; and the definition of error.

(h) The name and address of the governmental regulatory authority which can be notified if the financial institution violates this act.

History: 1978, Act 322, Eff. Jan. 1, 1979.

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488.20 Options to promote security of electronic fund transfers.

Sec. 20. In order to promote the security of electronic fund transfers, financial institutions shall make available to customers:

(a) Options to limit the total amount of cash which can be withdrawn through the use of an electronic funds transfer terminal, from a customer's account in any single day. The options shall include, but need not be restricted to, a limit of $50.00.

(b) An option to limit access through an electronic funds transfer terminal to 1 or more specified accounts.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.21 Civil action for violation; liability.

Sec. 21. (1) A person may bring a civil action against a person violating section 13, 14, 15, 16, 17, 18, 19, or 20 in any court having jurisdiction. Upon adverse adjudication, the defendant shall be liable for actual damages or $1,000.00, whichever is greater.

(2) If a violation of section 12 occurs, the customer may bring an action against either the financial institution providing services by means of a funds transfer facility or a person providing services of a funds transfer facility, or both, in any court having jurisdiction. Upon adverse adjudication, the defendant may be liable for actual damages or $1,000.00, whichever is greater.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.22 Monitoring and analyzing developments within field of electronic fund transfers; report; effecting provisions of section.

Sec. 22. The commissioner of the financial institutions bureau shall monitor and analyze developments within the field of electronic fund transfers and shall 1 year after the effective date of this act, submit a written

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report to the house committee on corporations and finance and senate corporations and economic development committee. The report shall include data concerning systems, ownership patterns, competitive effects, customers' satisfaction, and other pertinent data and shall contain the commissioner's recommendation for further legislative action. To effect the provisions of this section:

(a) Not later than 10 days after a financial institution establishes or commences participation in a funds transfer facility, it shall notify its appropriate regulatory authority unless the financial institution has been included in a previous notice given pursuant to this subsection. The notice shall include:

(*i*) The name of the financial institution which has established or commenced participation in a funds transfer facility.

(*ii*) The address of the location of the funds transfer facility.

(*iii*) The name of each financial institution with which it has contracted to share the funds transfer facility.

(b) The commissioner of the financial institutions bureau may receive complaints and inquiries concerning disputes relating to the operation or use of a funds transfer facility. If a complaint or inquiry involves a federally chartered institution and may require investigation or regulatory action, the commissioner of the financial institutions bureau shall forward the complaint to the appropriate federal agency.

(c) A person seeking access to a funds transfer facility pursuant to section 10 or 11 and seeking a resolution of a dispute by court action or arbitration pursuant to section 27 or 28, shall notify the financial institutions bureau of the nature of the dispute, persons involved, and the method by which the dispute is to be settled.

(d) The commissioner of the financial institutions bureau may exchange information received pursuant to this section with federal agencies which regulate financial institutions.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.23 Restraining trade or engaging in anticompetitive practices.

Sec. 23. A person providing services of a funds transfer facility and a financial institution using a funds transfer facility shall not contract, combine, conspire, or otherwise attempt to restrain trade in a market for services of funds transfer facilities or engage in anticompetitive practices to the detriment of the public interest.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.24 Unauthorized transactions prohibited.

Sec. 24. A funds transfer facility shall not be used to facilitate or effect a transaction with a financial institution, which transaction the financial institution is not otherwise authorized by law to transact.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.25 Applicability of antitrust laws.

Sec. 25. This act shall not be construed or applied to preclude the enforcement of, exempt from, or otherwise immunize a person subject to this act from the antitrust laws of this state or of the United States.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.26 Application of state or federal statute to credit or deposit account relationships.

Sec. 26. In the application of any state or federal statute to credit or deposit account relationships, the transfer of funds by use of a funds transfer facility shall constitute only an additional means of effecting a payment, and this act shall not be construed as limiting or enlarging the rights of persons under those statutes or any regulations legally promulgated pursuant thereto.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.27 Unjust denial of access; unfairly discriminatory sharing requirements; arbitration; judgment; redress in circuit court.

Sec. 27. A financial institution seeking to share a funds transfer facility pursuant to this act, and believing that it has been unjustly denied access or that the sharing requirements for its participation are unfairly discriminatory may seek a settlement of the dispute by arbitration pursuant to the rules of the American arbitration association applicable to commercial arbitration if all parties have agreed to arbitration, and judgment upon the award rendered by the arbitrator shall be final and may be entered in a court having jurisdiction; or seek redress in the circuit court in the appropriate jurisdiction.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.28 Violation injurious to business or property; action for treble damages, costs, and attorneys' fees.

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Sec. 28. A person who is injured in his or her business or property by another person who violates section 9, 10, 11, 23, or 24, may bring an action in any court having jurisdiction to recover treble damages, costs of the action, and reasonable attorneys' fees.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.29 Wilful violation as misdemeanor; penalty.

Sec. 29. A person who wilfully violates this act is guilty of a misdemeanor, punishable by a fine of not more than $10,000.00.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.30 Conditional effective date.

Sec. 30. This act shall not take effect unless House Bill No. 4554 of the 1977 regular session of the legislature is enacted into law.

History: 1978, Act 322, Eff. Jan. 1, 1979.

488.31 Effective date.

Sec. 31. This act shall take effect January 1, 1979.

History: 1978, Act 322, Eff. Jan. 1, 1979.

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