

February 7, 2012

The Honorable Spencer T. Bachus, III
Chairman
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Barney Frank
Ranking Minority Member
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Timothy Johnson
Chairman
Senate Committee on Banking, Housing,
and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Richard C. Shelby
Ranking Minority Member
Senate Committee on Banking, Housing,
and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

Re: ATM Fee Disclosure Requirements

Dear Senators and Congressmen:

We are writing to request your assistance in eliminating an unnecessary ATM fee disclosure requirement that has encouraged a large and growing number of frivolous lawsuits across the nation. Our organizations collectively represent thousands of banks, credit unions, private ATM operators, and other businesses that are directly involved in providing convenient, reliable ATM services to millions of Americans. During the last 18 months, both the number and cost of these lawsuits have risen precipitously. If unchecked, these lawsuits will threaten the economic viability of ATM operators and may result in reduced consumer convenience.

The Electronic Fund Transfer Act (the Act) and its implementing rule, Regulation E (12 CFR 205.16) require ATM operators to provide two separate notices to consumers regarding the imposition of a fee for the use of the ATM. You are likely aware of the fee disclosure provided on the ATM video monitor. The fee is disclosed and the customer is required to affirmatively indicate whether he or she accepts the fee. If the customer does not affirmatively accept the fee, the transaction is cancelled and the customer is not charged. Our members fully support this fee disclosure requirement.

Regulation E also requires ATM operators to attach a physical placard to the ATM stating that a fee may be charged. If the placard is not attached, the statute prescribes that in a successful class action plaintiffs are entitled to recover “the lesser of \$500,000 or 1 per centum of the net worth of the [ATM operator]”, plus attorneys’ fees and costs. This statutorily-prescribed bounty has created a strong incentive for spurious lawsuits. It has led to situations where the placard notice affixed to the ATM has been removed and, before the ATM operator is aware of the missing placard, litigants have photographed the ATM without the placard notice and filed suit.

A physical placard fee notice may have played a useful role when Congress first enacted the statutory provision in the 1990's. At that time, off-premise ATMs were relatively uncommon, and some consumers might have been unaware that they may be charged a fee for using an ATM. Also, many ATMs were not capable of providing the notice on the monitor. Since that date, off-premise ATMs have become common; over half of the more than 400,000 ATMs in the nation are now owned and operated by non-financial institutions. Today, consumers expect to pay a fee at an ATM unless they are using an ATM owned or operated by the bank or credit union where they have their account or their financial institution has agreed to pay for the use of the ATM.

Moreover, when the ATM disclosure requirements were adopted, ATM video monitors were much smaller and the images displayed were not sharp or crisp. Accordingly, there may have been a concern that some consumers would not be able to read the video disclosure. Today, ATM video monitors are much larger, display a sharp image and are designed to place the video monitor 'front and center' to the consumer. As the size of the video monitor has increased, which is indisputably a positive disclosure development; the area in which a physical placard fee notice can be effectively placed has decreased.

Accordingly, on behalf of our members, we respectfully request that you pass legislation eliminating the unnecessary placard notice requirement contained in the EFT Act. The repeal of the dual signage provision will stop the flood of frivolous litigation and cause no harm to consumers. Without relief on this subject, the number of these baseless lawsuits will continue to rise as will the cost of this service to consumers. Such actions could very well reduce the number of ATMs deployed and result in reduced consumer convenience.

Sincerely,

American Bankers Association

American Gaming Association

ATM Industry Association

Credit Union National Association

Electronic Funds Transfer Association

Independent Community Bankers Association

National Association of Convenience Stores

cc: Members of the Senate Committee on Banking,
Housing and Urban Affairs
Members of the House Committee on Financial Services