

Senate

Record of Committee Proceedings

Committee on Privacy, Electronic Commerce and Financial Institutions

Senate Bill 325

Relating to: automatic teller machine fees and requiring the exercise of rule making-authority.

By Senator Robson; cosponsored by Representatives J. Lehman, Black, Coggs, Hasenohrl and Pocan.

January 12, 2000 Referred to committee on Privacy, Electronic Commerce and Financial Institutions.

February 2, 2000 **PUBLIC HEARING HELD**

Present: (4) Senators Erpenbach, Plache, Rude and Fitzgerald.

Absent: (1) Senator Jauch.

Appearances for

- Senator Judith Robson ✓
- Representative John Lehman ✓
- Kerry Schumann, WISPRG ✓

Appearances against

- Gof Thompson, Bank of New Glarus ✓
- Daryll Lund, Community Bankers of WI ✓
- Kurt Bauer, WI Bankers Assoc ✓
- Jolene Plautz, Kwik Trip Stores ✓
- Tim Elverman, Bank One WI ✓
- Georgia Maxwell, WI Credit Union League ✓
- Randy Beck, WI Credit Union League ✓

Appearances for Information Only

- None.

Registrations for

- Robert Bonetti, AARP ✓
- Representative Mark Pocan ✓
- Stephen Meili, Center for Public Representation ✓

Registrations against

- Tom Liebe, Petroleum Marketers & WI Assn of Convenience Stores ✓
- Max Michaelson, Co-op Credit Union ✓

February 2, 2000

EXECUTIVE SESSION - POLLING

Moved by Senator Erpenbach that **Senate Bill 325** be recommended for passage.

Ayes: (3) Senators Erpenbach, Jauch and Plache.

Noes: (2) Senators Rude and Fitzgerald.

Absent: (0) None.

PASSAGE RECOMMENDED, Ayes 3, Noes 2, Absent 0

Julie Laundrie
Committee Clerk

Public Hearing

Roll Call

	<u>Present</u>	<u>Absent</u>
Sen Erpenbach	X	
Sen Fitzgerald	X	
Sen Jauch		
Sen Plache	X	
Sen Rude	X	

Senate

Committee Report

The committee on **Privacy, Electronic Commerce and Financial Institutions**, reports and recommends:

Senate Bill 325

Relating to: automatic teller machine fees and requiring the exercise of rule making-authority.

By Senator Robson; cosponsored by Representatives J. Lehman, Black, Coggs, Hasenohrl and Pocan.

PASSAGE RECOMMENDED, Ayes 3, Noes 2, Absent 0

Ayes: (3) Senators Erpenbach, Jauch and Plache.

Noes: (2) Senators Rude and Fitzgerald.

Senator Jon Erpenbach
Chair

Senate Privacy, Electronic Commerce and Financial Institutions Committee

Return by 5pm on Wednesday, February 2, 2000.

Recommended passage of Senate Bill 325.

Aye *2*

No

Jon Erpenbach

Senator Jon Erpenbach

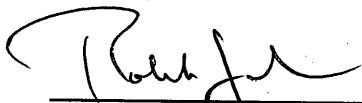
Senate Privacy, Electronic Commerce and Financial Institutions Committee

Return by 5pm on Wednesday, February 2, 2000.

Recommended passage of Senate Bill 325.

Aye X

No _____



Senator Robert Jauch

Senate Privacy, Electronic Commerce and Financial Institutions Committee

Return by 5pm on Wednesday, February 2, 2000.

Recommended passage of Senate Bill 325.

Aye X

No

Kim Plache
Senator Kimberly Plache

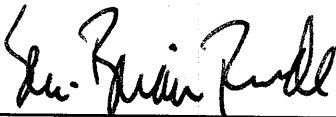
Senate Privacy, Electronic Commerce and Financial Institutions Committee

Return by 5pm on Wednesday, February 2, 2000.

Recommended passage of Senate Bill 325.

Aye _____

No _____



Senator Brian Rude


Senate Privacy, Electronic Commerce and Financial Institutions Committee

Return by 5pm on Wednesday, February 2, 2000.

Recommended passage of Senate Bill 325.

Aye _____

No X _____



Senator Scott Fitzgerald

ATM Bill

Property Tax shift to homeowners in Wisconsin because of Computer Tax Exemption for ATM Machines is \$1.2 million per year according to a fiscal estimate received yesterday on a bill I co-author with Spencer Black that would restore the property tax on ATM machines.

WISPIRG

1121 University Ave., Madison, WI 53715 608-251-1918

TESTIMONY OF WISPIRG IN SUPPORT OF SENATE BILL 325

Kerry Schumann, Director
Before the Wisconsin Senate Committee on Privacy, Electronic Commerce and Financial Institutions
February 2, 2000

Thank you for the opportunity to testify today. My name is Kerry Schumann, and I am the Director of WISPIRG, the Wisconsin Public Interest Research Group. WISPIRG is a non-profit and non-partisan consumer and environmental watchdog group with 15,000 citizen members around the state and student members at UW-Madison and UW-Milwaukee. WISPIRG has prepared and released several reports documenting problems in the banking industry, including reports on the ATM fee.

I am here to support Senate Bill 325 and commend Senator Robson for introducing this bill, which is designed to protect Wisconsin consumers from one of the fastest growing and most unfair types of bank fees. In WISPIRG's view, SB 325, which would ban double ATM fees, is a critical bill. Were the legislature to enact it, Wisconsin would rapidly become one of the nation's leaders in slowing the pace of growth of unfair bank fees. Enacting this bill would have a ripple effect throughout the country, and send a clear message to banks that are gouging consumers with unfair fees. The message is simple: if Congress is too afraid of the bank lobby to protect our consumers from the big banks that are nickel, dime and dollaring consumers with unfair fees, then the states are happy to step forward and protect consumers.

I'm here today on behalf of WISPIRG's members around the state, and have five points to make about the banks' double dipping.

1. SKYROCKETING BANK FEES

Throughout the 1990s, banks have had record-breaking profit years. According to FDIC data, full-year industry earnings for 1998 totaled \$61.9 billion, up 4.7 percent from 1997. However, income from fees is growing more rapidly. Non-interest income, including ATM fee income, rose to \$19.4 billion, an increase of 18.4 percent. Bank fees have skyrocketed since deregulation, and big banks, which have the most ATMs, charge the highest fees, across the board.

Our April, 1999 national survey of ATM fees documented the dramatic increase in the number of banks charging the surcharge. Since surcharging was allowed nationally in 1996, the percentage of banks surcharging has risen from 15% in 1996 to 45% in 1997, 71% in 1998 and 93% in 1999. Big banks, which have the vast majority of all machines, impose higher surcharges, and surcharge at higher rates. As more and more banks charge higher and higher fees, consumer are left with fewer choices.

Revenue from ATM surcharges is a major part of the big banks' three-part strategy to boost fee income. Big banks are:

(1) **Increasing existing fees.** Our 1997 and 1999 reports, "Big Banks, Bigger Fees," found a growing gap between fees charged by big and small banks. The results are

paralleled by the Federal Reserve, which has found that multi-state (big) banks charge "significantly higher" fees than locally owned banks. [Federal Reserve Board Annual Report To The Congress on Fees and Services of Depository Institutions, June 1997.]

(2) **Inventing new fees.** The ATM surcharge, human teller fees and fees charged for calling computerized account computers are examples of other new fees.

(3) **Making it harder for consumers to avoid fees.** Making it harder to avoid fees includes, for example, changing "average" balance requirements on checking accounts to "minimum daily balance" requirements, as well as raising those minimums dramatically.

In an extremely troubling additional finding of the Federal Reserve's 1998 Annual Report to Congress, it also found a statistically significant "sharp decline" in the number of banks offering free checking accounts, from 9% to 3% of all banks. More consumers are paying more fees.

WISPIRG's 1998 findings were substantiated by the findings of both the General Accounting Office survey reported on in July 1998 and also by the June 1998 Federal Reserve Annual Report to Congress on bank fees, which, for the first time, included a section on ATM surcharging and noted significant increases in the percentage of banks surcharging.

2. CONSUMERS ALREADY COMPENSATE FOR ATM USE

Even before ATM double surcharges, consumers already compensated the ATM owner through foreign (or off-us) fees they paid their own bank when they used another owner's ATM. Surcharges involve paying twice to use the ATM only once.

A portion of the off-us fee, known as the interchange fee, already is used to compensate the ATM owner and the ATM network. Banks that don't charge off-us fees still pay interchange fees, but choose to offset the costs, rather than charging their own customers. Each bank earns income from interchange fees received for use of its own ATMs.

The surcharging ATM owner, then, receives the \$1.23 average surcharge off-the-top, plus a portion of the average \$1.18 "off-us" fee. (Interchange fees vary depending on the network and are paid by the consumer's bank. A typical interchange fee might provide 10 cents to the network and 65 cents to the ATM-owner. See page 136, Hearing Record, Fair ATM Fees For Consumers Act, S. 1800, US Senate Hrg, 104-740, 11 July 1996).

3. ATM SURCHARGES ARE ANTI-COMPETITIVE

ATM surcharges are not only unfair to consumers, but also anti-competitive, since they benefit high fee big banks at the expense of low cost credit unions and community banks.

If the big banks win, consumers lose.

Banks frequently argue that ATM surcharges are needed to cover the cost of remote ATMs. They claim that ATM growth is being spurred by ATM surcharges. Hearings several years ago in front of the U.S. Senate Banking Committee in fact pointed out that ATM surcharging is part of the big banks' anti-competitive strategy to squeeze out smaller banks and credit unions by encouraging their customers to switch their accounts to banks with larger ATM networks. When confronted with the argument that, in fact, banks are surcharging at branches as well as in casinos and ski areas, banks reply that, "consumers

should pay for convenience" and "consumers have a choice between ATMs that surcharge and those that do not."

The critical choice consumers face is not whether to pay an ATM surcharge (or as the industry absurdly calls it, a "convenience fee") but whether or not small, low cost community banks will continue to exist after a significant period of ATM surcharging. Even if small banks impose surcharges of their own, they will not gain enough revenue to offset the loss of customer base to the bigger banks.

And, as big banks take over more and more of the market, some banks have even begun charging their own customers to use their own ATMs.

As we have often predicted, the ATM marketplace is not working to offer consumers either competition or choice. Consumers have few alternatives, other than paying surcharges.

4. ANTI-COMPETITIVE ATM NETWORK RULES

Surcharging is only one of the anti-competitive tactics used by big banks to keep small banks down. Another one, exposed this summer by a US Department of Justice investigation, is the use of unfair rules to participate in ATM networks, such as a prohibition on local "no-surcharge zones."

Some small banks have sought to establish "no-surcharge" zones, where they agree not to surcharge other zone members, but do want to surcharge big bank customers. They had largely been prevented from doing this by anti-competitive ATM network rules. As a result of a Department of Justice investigation into this practice in 1998, many networks have recently announced changes to these so-called "non-discrimination" rules. We hope it is not too little too late.

Although our support for the right of small banks to surcharge on a differential basis may seem inconsistent, it is not. In fact, although we publish many reports condemning high bank fees, we do not seek to ban very many fees. We generally prefer to let the marketplace work. But the market power of the big banks over ATM networks has broken down the marketplace, and forced us to support a surcharge ban as the best solution. In the present context, WISPIRG supports the right of small banks to form no-surcharge zones as a way to counter the market power of the larger banks.

We are also aware that numerous small banks have begun to surcharge. In our view, they do so reluctantly. We are also aware that some small bank associations oppose this legislation, largely due to their general opposition to regulation. However, many small banks are quite aware that surcharges hurt them. In Massachusetts, the Community Bank League of New England has testified that it is losing customer base to big banks, due to surcharging. Other small banks and their associations have testified that they would prefer, in an ideal world, that ATM owners only impose one fee, either an interchange fee or a surcharge, but not both. A world without surcharges helps them preserve market share and that helps preserve a fair financial marketplace.

5. STATES HAVE THE RIGHT TO REGULATE SURCHARGES

This last point is critical. The states absolutely have the right under federal banking law to regulate surcharges, even if they are imposed by nationally-regulated and chartered banks. In fact, two states, Iowa and Connecticut, ban ATM surcharges already by regulation. Voters in San Francisco and Santa Monica, CA recently voted to ban the ATM surcharge in those cities.

I cannot over-stress the importance of this final point. States clearly have the authority under the federal Electronic Funds Transfer Act (EFTA) to enact ATM surcharges bans that apply to national banks and national bank branches in their states. Bank lobbyists routinely claim that the Office of the Comptroller of the Currency has sole authority over national banks. This is deceptively false. Connecticut and Iowa have enacted ATM surcharge bans by regulation, and these bans do apply to national banks. Although national banks, joined by the OCC, are suing to overturn these regulations, the courts have not supported their spurious and improper requests for injunctive relief.

It is imperative that the bill apply to all ATMs, regardless of whether the owner is a state bank, national bank, or some other entity. State and national banks have done an effective job of misleading legislatures about the omnipotence of the OCC's authority and thereby stifled numerous initiatives around the nation, from ATM surcharge bans to low-cost lifeline banking initiatives. Their misrepresentation has had a chilling effect on state consideration of banking consumer protection laws. You should reject any attempts to amend your bill to only apply to state banks -- the EFTA is clearly non-preemptive.

Further, in 1994, during enactment of its last major banking law, the Riegle Neal Interstate Branching Efficiency Act, the Congress condemned "overly-aggressive" preemption determinations by the OCC and limited the OCC's authority to preempt in areas of consumer protection law, especially where no comparable consumer law exists federally. It is very clear that non federal law regulates ATM fees and the underlying statute regulating ATM use is explicitly non-preemptive.

Nevertheless, we are aware that the OCC routinely ignores the wishes of Congress. That's not surprising, since its history has been to act as an indentured servant of the banks rather than as an impartial regulator. However, the OCC has not been able to take the field in consumer banking regulation except where the states have been too timid to fight back. In this case, the law, two centuries of federalism, and the abject failure of the federal government to protect consumers are all on your side.

CONCLUSION

The legislature faces a critical opportunity. You can help Wisconsin become a national leader in fighting the anti-competitive practices of big banks, and help preserve our balanced financial marketplace, which includes many small community banks and credit unions, or you can do nothing. I urge you to make Wisconsin a leader in consumer protection.

Additional information, including the full text of our reports, can be found on our web site, <http://www.pirg.org/consumer> or www.stopatmfees.com

To the Committee on Privacy, Electronic Commerce, and Financial Institutions:

A couple of years ago I visited an ATM in Racine. It was one I had used previously. This time, however, there was a man in a suit there. He was explaining that by changing to the bank that employed him, the Bank of Elmwood, one could avoid the surcharge now being charged by the ATM.

Incensed, I drove home and called my state representative, John Lehman. I told him I thought that the surcharges were outrageous and that banning such surcharges would be an excellent cause for him to take up. It would be a good issue, for who, other than bank executives, would support the banks rather than middle-class consumers?

Did I have a lot to learn! I had expected such a bill to fly through the legislature. Instead I learned that the legislature is, indeed, controlled by lobbyists. The bankers, of course, can afford far more lobbyists than consumers. In fact, I don't know that consumers have any lobbyists at all. Consequently banks continue to make more and more money off consumers. They even get tax breaks for their ATMs now.

I can't honestly say that ATM surcharges have caused me financial hardship. I do, though, find them a moderate irritant. They serve as a constant reminder of how little power people like me have compared to that of the bankers.

I believe that SB325 is an important piece of legislation. If we had the initiative referendum in Wisconsin, it would have been law a long time ago. Its passage would demonstrate that there is still hope for representative government in Wisconsin.

Betsy Georg

Access Cash Conveniently Eliminating Surcharges Statewide

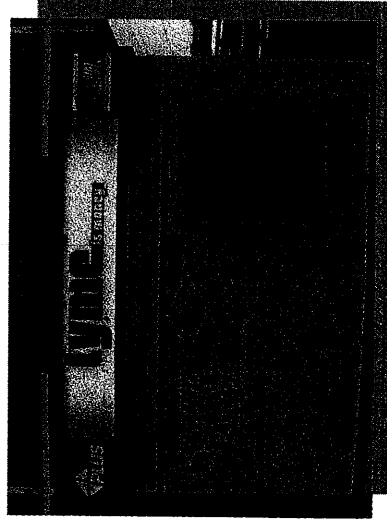


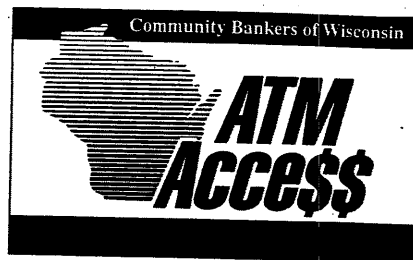
The ATM Network for Wisconsin Community Banks

ATM Access is a service provided exclusively for the members of the Community Bankers of Wisconsin.



ATM Access provides community banks with the opportunity to compete in a rapidly changing and competitive ATM market. By joining ATM Access your bank will be able to offer yet another valuable service to your customers. Service is the cornerstone of the community banking philosophy.



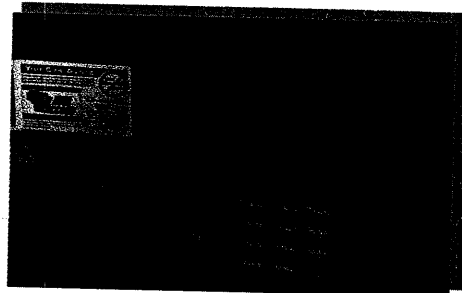


ATM Access is a statewide alliance of community banks that have joined together to offer customers surcharge-free cash

withdrawals at hundreds of ATM locations across Wisconsin.

With the rapid deployment of ATMs and the increasing percentage of ATMs surcharging, community banks must work together to diminish the risk of losing account relationships because of limited ATM availability. With

ATM Access your customers will have access to the largest surcharge-free ATM alliance in Wisconsin.



Under an affiliation with the TYME Corporation, participating banks waive surcharges for cardholders of ATM Access members while retaining the ability to surcharge non-member card holders who use your terminal. Customers will be able to identify the surcharge-free ATM terminals through the bright green and white ATM Access signs and decals that are found on the ATM terminal.

Benefits of the **ATM Access** network include:

- Strengthen customer relationships and attract new customers
- Participate in a large network of surcharge-free ATMs to compete more effectively with larger institutions
- Retain the option to surcharge ATM transactions by non ATM Access cardholders
- Distinctive logo and affiliation with TYME the most recognized ATM network in Wisconsin
- Low membership costs to join ATM Access

For a listing of participating banks and **ATM Access** locations, please visit our web site at www.atmaccess.net or call **ATM Access** at 800-286-8133.



State Representative
John Lehman

**Testimony of Representative John Lehman
Senate Bill 325 – ATM Surcharges**

Chairman Erpenbach and members of the Committee on Privacy, Electronic Commerce and Financial Institutions, thank you so much for this opportunity to testify on Senate Bill 325, relating to bank charges for transactions at automatic teller machines (ATM's).

Two years ago, early in my first term in the State Assembly I received a phone call from a middle aged constituent. Well, he was furious and wanted me to do something. The ATM at the Elmwood Plaza Shopping Center on the south side of Racine had just slapped on a \$1.00 fee. You see, he had been using this ATM for some time to make transactions to his credit union on the northwest side, about 10-15 minutes away by car. He had never been charged before. In fact, he reasoned that the ATM saved teller costs at his home bank so any costs of his transaction at the ATM were most likely covered by his home banking institution. "My credit union already charges me for ATM transactions over 5 per month and this ATM never charged me before!" What was happening?

Like a good legislator, I promised to research the problem. I started by calling the owner of the ATM, the bank president, and a great community minded fellow. "Why the new charge?" I asked. "We see this as a new profit center! It's free enterprise. Besides, your constituent can always decide not to use us if he doesn't like the fee. And besides, those things are awfully darn expensive to build and maintain." Hmmm. It got me curious.

Back at the office I discovered some facts that seem to indicate that banks would do just fine without a surcharge. My constituent made more sense than the bank president when I looked at it a little more closely.

I discovered that a fee structure is already in place providing for institution to institution reimbursement for transaction cost including amortization of development costs and capital expenditures. (DFI 14.05) so banks don't need to surcharge! Wisconsin bank to bank charges for ATM transactions are as follows: (From Jack Derr, Vice President of TYME Corp. November 1999)

- 43 cents for withdraws
- \$1.10 for deposits
- 20 cents for balance inquiries

Total surcharges for 1998 for consumer uses of ATMs was \$2.1 billion (U.S. PIRG)

1. If they feel the need to boost profits they can work it out amongst themselves— through the TYME network or with the Department of Financial Institutions. I believe such a system is highly preferable to give customers early warning, rather than have them suffer that "ATM shock", uncertainty at the ATM machine.
2. Looking into the ATM situation I found that Iowa has used administrative language to ban surcharging. So it is possible. Wisconsin could do the same. Eliminating the ATM surcharge has not been a hardship in Iowa.

(Continued)

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E-Mail:
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1-800-362-9472

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2421 James Boulevard
Racine, WI 53403
(414) 632-3330

3. A third strong argument against surcharging. There is another important fact that argues on the constituent's side. The cost of installing and operating an ATM are substantially less than the cost to construct, maintain and staff a branch office. ATM transaction cost is \$.27 compared \$2.93 for transactions processed by human tellers. (From the office of thrift supervision, the federal regulatory agency that oversees the nations' thrift institutions). Also, the average full service ATM purchase and installation is \$30,000 compared to \$1 million for a full service branch office (July 1997 article, The Regional Economist, Federal Reserve Bank of St. Louis.) The ATMs are saving bank costs and should not necessitate these new double charges.

So based on experience and some research I support this companion bill to Assembly Bill 131. The method we have used to get at this problem you may find interesting... here is what I tried to do. Administrative rules currently prohibit restricting access to ATM's and prohibit discriminatory rates or services (DFI 14.04 and 14.05). The language of this bill attempts to use this non-discriminatory language to ban surcharging of another bank's customer—a so-called "non-proprietary" customer. If you don't surcharge your own customer, don't surcharge the other guy's customer.

There is one other consideration I'd like you to make as you look at SB 325. You will notice that we do not attempt to regulate Independent Service Organization (ISO's) that are putting up ATMs in gas stations and super markets. The reason for that is that there is already in place a fair banking institution to banking reimbursement network, but such fair reimbursement is not available to the ISO's. They charge at the machine and they "live off" this charge in a way that financial institutions do not.

In conclusion I want to again thank you for your time. Others who are about to testify are certainly more expert in banking law than I. There may be other and/or better ways to limit the ATM surcharge. I am all ears.

First and foremost, I hope that today as we have this discussion we will all the while remember the consumer, or the hundreds of kids lined up on State Street or the seniors or low income folks who are struggling with a double charge – the ATM surcharge. I believe that it's time for us to join Iowa on the short list of states that proudly display those signs everywhere, "NO Fee ATM!"

To: Leslie Lord
for Georgia
Maxwell

April 9, 1999

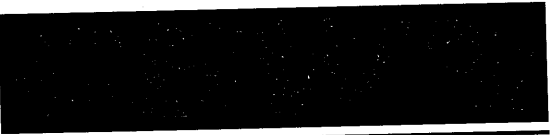
Banks Score Win On ATM Surcharges

The U.S. District Court for the District of Connecticut in New Haven has ruled that the state banking commissioner lacks legal standing to bar three banks from charging an ATM surcharge fee on non-customers. According to The Hartford Courant, Judge Janet Bond Arterton also ruled that the federal Office of the Comptroller of the Currency is the only agency that has such authority, but that state officials could seek to stop the surcharge in state court. Two of the banks involved in the case, Fleet Bank, Providence, RI, and First Union Corp., Charlotte, NC, say they have no plans to restore the fee on non-customers who use their ATMs. The third institution, BankBoston, which recently merged with Fleet, says it will delay a final decision on surcharging pending a review of the ruling. State Banking Commissioner John Burke declared he will file an injunction in state Superior Court should any bank try to impose the surcharge, the Courant reports. He previously had said he would not challenge any ruling on the surcharge. After the verdict, Connecticut state Attorney General Richard Blumenthal also said he would appeal the decision.

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http://www.electronicbanker.com/html/news/040999_2.htm

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Community Bankers of Wisconsin

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**Public Hearing of the
Senate Privacy, Electronic Commerce and Financial
Institutions Committee**

SB 325 – Automated Teller Machine (ATM) Fees

**Testimony of Daryll Lund, President & CEO
Community Bankers of Wisconsin**

Chairperson Erpenbach and members of the committee, my name is Daryll Lund, President & CEO of the Community Bankers of Wisconsin (CBW). CBW is a statewide trade association representing the interests of approximately 230 community based financial institutions.

I appear before you today to testify in opposition to SB 325.

Reasons for our opposition are as follows:

1. ATM deployments have benefited consumers.

ATMs have revolutionized the way Americans conduct their banking, allowing consumers to bank 24 hours a day, seven days a week across town and across the world. Today, consumers have access to their money whether on a street corner, in an airport, at a hotel, at a local grocery store, convenience store or gas station, or virtually anywhere they happen to be. While initially perceived as merely bank teller substitutes, ATMs have developed into a whole new product with multiple service offerings that provide new levels of consumer convenience. This convenience, as with all conveniences, comes at a cost. Any legislation that would prohibit such ATM access fees will result in the closure of many ATMs and limit future ATM deployment, thereby reducing ATM availability for consumers.

2. ATM fees should be set by the marketplace.

The Community Bankers of Wisconsin strongly supports an open marketplace approach to ATM access fees. In today's marketplace, consumers decide whether they are willing to pay for increased convenience and whether or not the price is reasonable.

Consumer's everyday make "freedom of choice" decisions. Today consumers pay a hotel 75 cents to make an in-room call vs. 25 cents at a pay phone; they will pay \$5.00 and up for a taxicab vs. \$1.00 to \$1.50 for a bus or subway and they pay \$1.00 to purchase a soda at a vending machine vs. 25 cents in a supermarket.

Consumers also have choices when using an ATM that is part of the TYME network, which is the predominant ATM network in Wisconsin. Wisconsin financial institutions that are part of the TYME network must prominently disclose a plaque or sign on or immediately adjacent to the ATM terminal when a fee is being assessed. In addition, the ATM terminal screen must display a series of messages informing the customer (1) that a surcharge will be imposed, (2) the amount of the surcharge, (3) that if the customer does not want to pay the surcharge, the customer may cancel the transaction at no charge.

According to information from the TYME Corporation in December 1999 TYME processed 5.5 million ATM transactions. Of that total only 16 percent of those transactions were assessed a convenience fee.

This shows that consumers have found ways to get their money without paying additional fees. Most financial institutions don't charge their own customers for a cash withdrawal at their own ATMs; Consumers can use Point-of Sale locations to get cash back. TYME has approximately 15,000 Point-of-Sale locations in the Midwest; Consumers can use debit cards that can be used at millions of merchant locations worldwide instead of cash and consumers can cash a check at their own bank for no fee.

3. States cannot regulate ATMs operated by national banks and other third party owners.

Recent court decisions in Iowa and Connecticut have found that states may not regulate ATMs operated by national banks. If Wisconsin were to enact a ban on ATM access fees it could only be applied to state chartered institutions thereby making the Wisconsin state charter less desirable over a national bank charter.

4. Community banks in Wisconsin have formed the ATM Access network to benefit consumers.

Consumers can take advantage of a service offered by Wisconsin community banks called "ATM Access". ATM Access is a statewide alliance of community banks that joined together in November 1997 to offer customers cash withdrawals without paying a convenience fee. Today consumers utilizing the ATM Access network can make cash withdrawals at over 270 ATM locations in over 100 communities across Wisconsin. These terminals are located at banks, convenience stores, gas stations, medical centers and hospitals, hotels, grocery stores and shopping malls. Consumers can find ATM Access terminals by visiting the ATM Access website (www.atmaccess.net) which provides a listing of ATM locations and participating banks. In addition community banks have also distributed approximately 100,000 ATM Access location directories listing the cities and addresses of ATM Access terminal locations.

ATM Access was a natural market response to the ATM fee environment and proves the point that the marketplace works when it is allowed to do so.

Thank you for the opportunity to appear before your committee. I would be happy to answer any questions.



Testimony before the
Senate Privacy, Electronic Commerce and
Financial Institutions Committee

In Opposition to SB 325

10:00 am, February 2, 2000
by Kurt R. Bauer
Wisconsin Bankers Association

Senator Erpenbach and members of the Committee, my name is Kurt Bauer. I am the director of government relations for the Wisconsin Bankers Association. WBA represents nearly 400 commercial bank and thrift institutions of all sizes throughout the state.

WBA strongly opposes SB 325 for two main reasons:

First, if enacted, it would put state-chartered financial institutions at a competitive disadvantage to their federal counterparts.

Second, despite the claims of proponents, a ban on ATM surcharging is anything but in the best interest of consumers.

Two recent court cases, one in Iowa and one in Connecticut, ruled that federal law preempts state and local government restrictions on fees charged by national bank and federal thrift institutions. The Legislative Reference Bureau analysis of SB 325 references that federal preemption. Keep in mind that SB 325 doesn't prohibit non-bank ATM operators, such as EDS, from charging an ATM fee. That means that only state chartered financial institutions will be subject to this prohibition which puts them at a clear competitive disadvantage to their federal chartered counterparts and non-bank ATM operators. If that were allowed to happen, state-chartered institutions would have a strong incentive to switch to a federal charter in order to avoid the ATM surcharge prohibition.

That's bad for Wisconsin because state-regulated financial institutions pay exam fees and other assessments to the Department of Financial Institutions (DFI). A portion of those fees are transferred to the state's General Purpose Revenue (GPR) fund. As the Fiscal Estimate that accompanies SB 325 notes, fewer state-regulated institutions mean less revenue flowing into state coffers. It also means that regulatory control of more Wisconsin-based institutions will shift from Madison to Washington, DC.

But the main reason for you to reject SB 325 is because it's not in the best interest of consumers. That may surprise you because proponents of this bill claim that it is. But eliminating choices and conveniences is not consumer protection.

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The Washington-based Brookings Institute agrees with me. They recently issued a report suggesting that placing price controls on financial institution-owned ATMs would have the boomerang affect of increasing fee rather than eliminating them. That's because banks, thrifts and credit unions that own ATMs would likely sell their low-volume and therefore unprofitable machines to non-bank ATM operators not subject to the prohibition. The result is that there would be far fewer ATM operators and therefore, less competition. That equals higher fees for consumers.

Another consequence of enacting an ATM fee ban is that there will inevitably be far fewer machines available to consumers. Since 1996 when surcharging was first permitted, there has been a 63% proliferation in the number of ATM placements nationwide. In Wisconsin, there were little more than 2,000 ATMs before 1996, according to TYME Corporation. Today, there are over 4,000.

But if financial institutions can't recoup the considerable investment of placing ATMs in convenient locations, they will be sold or removed. And if the ATM isn't there, the consumer no longer has a choice to pay a fee to use it or not.

Consumers have that choice today. If they choose not to pay an ATM fee, they can easily be avoided by using a machine owned by the institution they bank with. In that case, they won't be surcharged. Or they can write a check. Or they can use their debit or credit card. Or they can access their money the old fashion way by visiting the bank lobby or using the drive-thru.

With ATMs, choices and convenience are being added, not being taken away.

I urge you to consider for a moment how ATMs have revolutionized banking services for millions of Wisconsin consumers. ATMs are accessible 24 hours a day, seven days a week. Not that long ago, consumers didn't have that option available to them. If they needed money, they had to go to the bank. And if they needed money after business hours or on weekends, they were out of luck.

The bottom line is that ATMs offer unmatched convenience to consumers. But like any other product or service in a free market economy, there is a cost -- in other words, no fee, no service. In this case, no ATM access fee, no ATM. Politicians can say that they will eliminate the cost to the consumer for using ATMs, but that will only work if they eliminate the cost to financial institutions as well and that isn't possible.

For these reasons, the Wisconsin Bankers Association strongly opposes SB 325.

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Friday, November 12, 1999

Editorials

Paying a price for convenience

The 24-hour mini-mart down the street charges more for milk or diapers than the supermarket. But because it's open all the time and is just down the street, there are times when you probably say, "What the heck, I'm willing to pay more for that convenience."

Paying a little more for convenience is something Americans do all the time without thinking twice about it. But now a California-style revolt is brewing over this practice as it relates to ATM fees charged by banks. The Santa Monica City Council and voters in San Francisco have decreed that banks will be banned from charging non-customers any surcharge for using their ATMs. That's right. The banks aren't charging their *own* customers these fees. Rather, they are charging other banks' customers a fee for the convenience of using their machines.

It's hard to isolate the outrage here. Consumers can avoid paying these fees by using ATMs owned by their own banks. But sometimes—as is their choice—they may opt to pay for the convenience of using an ATM owned by someone else.

Two big California banks—Bank of America and Wells Fargo & Co.—have responded by saying they will cut off all ATM access to non-customers in those

communities. The whole mess goes to federal court Monday.

But before this revolt in the name of "helping" consumers spreads any further, let's remember that Americans value convenience and have shown a willingness to pay for it. That shouldn't be illegal.

There are now about 227,000 ATMs in the country, a number that has nearly doubled since the ban on surcharges was lifted in 1996. Because owners of ATMs can now charge such fees, they were encouraged to place these instant-cash machines wherever people might need money—in stores and malls and airports and gas stations and movie theaters, even though volume might be lower and the cost of servicing them might be higher.

The practical effect of banning such fees is that fewer ATMs will be found in out-of-the-way spots, so you won't have the option of paying for the convenience of using them. Banks will be encouraged to sell their ATMs to those that aren't banks, since non-bank owners of ATMs—merchants and the like—will be free to charge any fee they like. So, in fact, some ATM fees may rise. If that's how California wants to "help" consumers, savvy consumers rightfully will respond, "Thanks for nothing."

11/18/99

BANKS' ATM FEES

Citizens have no 'right' to get services free

Rarely have politicians engaged in more shameless pandering than in the current craze to outlaw surcharges on automatic teller machines.

Following the passage of bans on ATM fees by several cities in California — where so many illusions and fantasies originate — local politicians from New York to Wisconsin have begun publicly considering similar laws.

The bans, which may well prove unconstitutional, prohibit banks from charging fees to noncustomers who want to withdraw money from their ATMs.

But why shouldn't big banks that provide and maintain ATMs in hundreds of locations charge what the market is willing to pay for this convenient service? Why shouldn't they reward their own customers with free ATM use, while giving noncustomers a reason to become customers? Nothing could be a more wholesome and commonplace business practice.

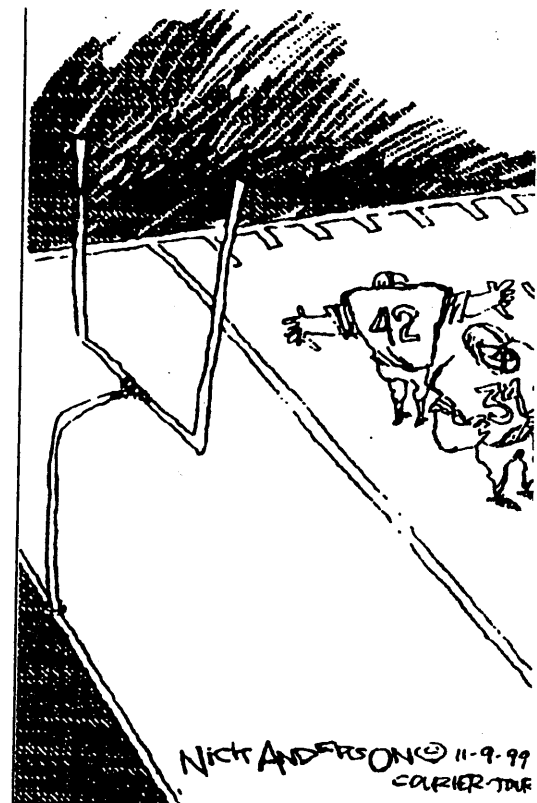
If people don't like paying ATM fees, they have the power to avoid them. The secret? *They can decline to use the service.*

Human life thrived before the advent of ATMs. In this age of checks, debit cards, credit cards, etc., plucky, resourceful Americans will find a way to deal with this crisis without government intervention. People dislike ATM fees precisely because they like ATMs so much they don't want to do without them. The financial industry has created a service that consumers value highly but would, of course, prefer to get for free, or at least for less.

Well, life is full of hardships. ATM surcharges are not the only prices people resent paying. They're also irked by parking meters, dog licenses, auto registration fees and innumerable other charges governments impose. Maybe politicians should start by banning some of those. While they're at it, states could stop discriminating against "noncustomers" through higher nonresident tuition charges, fishing license fees and so on.

When government manipulates prices, it creates shortages or gluts. If banks are prevented from charging noncustomers to use their ATMs, they will limit the service to their customers, and probably provide fewer machines. Will that serve the public interest?

The marketplace is fully capable of determining what ATM service is actually worth. Government has no rational business encouraging the idea that people have some natural right to get something for nothing.



Drug war

When journalists let drug-war enforcers act as gatekeepers for drug information, important facts are often omitted or distorted, as in your Nov. 14 methamphetamine story.

Bureau of Criminal Apprehension Special Agent Tim O'Malley said, "Meth users are dangerous." That's misleading.

The vast majority of meth users are not dangerous. On May 5, a San Jose Mercury News article (see www.mapinc.org/drugnews/v99.n478.a10.html) titled "Violence-drug link disputed: Justice Department report contradicts common perception" reaffirmed that the meth-violence cliché is a hoax used by police to stir up public fear: "According to the study, meth users were found 'significantly less likely' than other drug arrestees to be charged with a violent offense."

Pioneer Press reporters laudably questioned police assertions about the prevalence of meth use in Minnesota.

In general, drug users are normal people. The image of bloodthirsty dopeheads is drug-war propaganda used to justify curtailing our constitutional rights and to uphold a monstrous anti-drug bureaucracy.

On drug issues, substantial misrepresentations of fact get huge headlines. Factual corrections receive, at best, an occasional letter to the editor, hardly adequate to undo the damage of official lying. Something's wrong here. Doesn't anyone care that American citizens are being duped

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Market forces are capable of regulating ATM fees without government intervention

A free-market analysis of the growing movement to outlaw ATM fees seems to be easy:

As long as the fees are disclosed, a consumer can choose or not choose to pay for the convenience of using a service. Government, through the medium of a voter referendum such as that recently passed in San Francisco, has no right to interfere in such a private transaction and decision.

But free-market theory can be brought to bear on the subject at a deeper level, and it yields a less clear-cut result, revolving around the price and value of things.

In addition to a minimum of governmental interference in the marketplace, free-market dogma suggests that if there is a widespread demand for a product, some entrepreneur will find a way to turn a profit by satisfying that demand.

There obviously is a huge demand for no-fee or low-fee ATMs available to all, regardless of their bank. Yet, so far, no entrepreneur has set up a business to make money meeting this demand.

It would follow that existing technology and business creativity do not allow for the profitable delivery of such a product.

There are costs to running an ATM — a situation that has been made abundantly clear to me as a director of the Journal Credit Union, which is based at this newspaper and is exploring entering the ATM business.

Among other things, there are telephone and data processing costs, an employee must be paid to service the ATM, another employee must be paid to hand



AVRUM D. LANK

process things such as checks deposited into the terminal, and interest is lost on the cash contained within the machine.

In addition, for an ATM network to add a lot of value to consumers, it must have multiple locations, which just makes the costs of maintaining a viable network even higher.

For a bank, thrift or credit union, these costs can be offset either in part or entirely by freeing up teller time, by the profit made on deposits of customers, by charging customers a small fee or by making the ATM part of the web of relationships that keeps the customer happy.

None of this applies to a non-customer, however.

So unless customers are to subsidize non-customers, it

makes sense from the perspective of a financial institution to charge non-customers a fee for using an ATM, or to enter into agreements with other institutions to mutually serve each other's customers. That, in fact, is how the TYME System developed in Wisconsin.

Back in the 1970s, when I enthusiastically started to use ATMs, there were three leading banks in the state — M&I, First Wisconsin and Marine, but none was large enough to support an extensive statewide ATM network by itself. So they cooperated and built TYME, which did not charge any extra fees.

The banks apparently decided the price of cooperation was palatable, because it allowed them to build goodwill among their customers and to compete equally at each ATM location.

As the banks have grown larger, the reasons that led to establishment of a cooperative such as TYME diminished. Once regulations were changed to allow them, fees aimed at non-customers proliferated.

If an entrepreneur were to decide to set up a free or low-cost network outside of an established bank, he or she would

have to find a way to meet costs without the benefit of nurturing a wider relationship with customers. One way would be the use of advertising on ATM machines. Another would be finding a method of gathering data on the users of the machine and subsequently selling or renting that data in a profitable way.

While there are independent companies that run TYME machines, they all charge fees for doing so. No entrepreneur has been able to make the numbers work to meet the overwhelming market demand for a network of low-fee or no-fee ATMs, however. The inescapable conclusion is that the profit is not there.

So what happens now?

Under free-market doctrine, all of these competing forces will be mediated by price. If courts agree that government can outlaw extra fees, then the supply of ATMs will diminish, as they will become less profitable, or more costly, to financial institutions.

But no matter how a court rules, in the end, consumers will decide what price, if any, they are willing to pay to use an ATM, and banks will decide how much to charge for ATM

use, taking into account goodwill and marketing advantages the machines might confer.

If those price points do not agree, then the availability of ATMs will diminish, at least until some entrepreneur comes along with a plan to make mon-

ey at a price people will pay.

Readers may write to Avrum D. Lank, Milwaukee Journal Sentinel, P.O. 1371, Milwaukee WI 53201-0371. Comments can be left at (414) 223-5333. Internet users may send mail to: alank@onwls.com. Faxes can be sent to (414) 223-5528.

Paying \$1.50 for exercising one's constitutional right to ready cash has consumers in San Francisco breaking into spirited choruses of "The Internationale" ("Arise, you prisoners of starvation! Arise, you wretched of the Earth!")

Banks' good deeds won't go unpunished

Steve Chapman

Having been born during the Eisenhower administration, I feel entitled to occasionally sit in the rocker on the front porch, gather the youngsters around and amaze them with tales about the hardships of life in the old days, when we had to manage without video games, the Internet and automatic teller machines.

Most of us can barely remember life before the ATM. Back then, if you wanted actual cash, you had to go to the bank, write a check, stand in line and risk a teller to cash it for you. Or you went to a grocery store and got a check cashed there, though you could expect to be charged a quarter or 50 cents unless you bought something. If you needed cash late at night, when banks and stores were closed, you were out of luck.

That was all inconvenient enough, but things got worse when you traveled. You couldn't expect an out-of-town bank to cash your check. So you had to either take a large wad of bills or buy traveler's checks that could be cashed anywhere. And sometimes, inevitably, you ran out of money.

If anyone born after about 1965, this must sound as primitive as scrubbing clothes on a washboard in the creek out back. The ATM was a great change. On a typical day, my only problem in getting cash is deciding which of the five machines located within 100 yards of my office I should use.

Wherever you turn now, someone has installed a machine to assure you instant access to greenbacks 24 hours a day, 365 days a year. No waiting for a teller, no writing checks, no showing an ID, no worrying about hours, and no trouble getting money in another town, state or country. I don't have to tell my children that money doesn't grow on trees. They know it sprouts from the Cash Station.

But the banks that own and operate these machines have the regrettable desire to get a return



on their investment. So in recent years, they have taken to charging non-customers a fee for using their ATMs. Those poor souls, meanwhile, may also be charged a fee by their own bank for using another bank's machine.

Paying \$1.50 for exercising one's constitutional right to ready cash has consumers in San Francisco breaking into spirited choruses of "The Internationale" ("Arise, you prisoners of starvation! Arise, you wretched of the Earth"). Outraged by the injustices, they voted last week to bar banks from imposing such fees on non-customers. Santa Monica, Calif., recently approved its own ban, and similar measures are being considered in other cities and states, as well as in Congress. The Pentagon may also prohibit the charges on military bases.

It turns out that when you ask people if they would like to get something for nothing, their answer is yes. But the idea of telling banks what they can charge for providing a valuable service is a reversal to the economic superstition of the 1970s, when we imposed price controls on the entire economy. The result was a maddening plague of shortages and inflation.

During the gasoline crisis of 1973-80, when Washington strictly regulated what service stations could charge, gas prices were high and motorists had to endure block-long lines to fill up. Once the controls

were scrapped by President Reagan in 1981, prices fell and there was all the gasoline you wanted. (Still is.) Chastened by that experience, very few Americans think the government is competent to dictate the price of fuel. But penny apparently believe it is competent to dictate the price of the services provided by banks.

In fact, the very same laws of economics that created the gas shortage operate in this realm. Letting competition set prices has led to a vast production of ATMs. Since 1995, when the major ATM networks began to allow banks to impose these fees, the number of machines has risen from 139,134 to 227,600—an increase of 63 percent.

The fees made it feasible for banks to put ATMs in all sorts of relatively low-traffic, out-of-the-way places. Before, high volume was required to justify installing and maintaining a machine, but not anymore. In 1995, the average machine had 6,580 transactions a month. Today, the average is just 3,985. Customers are paying for the convenience of having ATMs accessible almost everywhere. Get rid of the charges, and we'll get rid of a lot of machines too.

What the complainers forget is that even outside of San Francisco, if you don't like paying to obtain cash, you don't have to. You can go to your own bank and use its ATM. Most people don't do that, because they put the value of their time and energy at more than \$1.50.

It's no mystery why banks have been willing to provide vast numbers of ATMs that make our lives easier: They do it to make a profit. The puzzle is why we blame them for it.

Manuscripts may be submitted to the Op-Ed Page by mail, fax (312-222-2559) or e-mail