

REQUIRE DISCLOSURE OF ATM TRANSACTION FEES

**House Bills 4889 and 4891 as passed by
the House**

Sponsor: Rep. Liz Brater

**House Bills 4890, 4892 and 4893 as passed
by the House**

Sponsor: Rep. Samuel Thomas III

Second Analysis (11-20-97)

Committee: Commerce

THE APPARENT PROBLEM:

Beginning in 1996, some banks and other financial institutions began imposing surcharges on their non-member customers' automated teller machine (ATM) transactions, charging \$1.00 per transaction, on average. (The transaction fee charged by Michigan's four largest banks is reported to be \$1.50.) Sometimes the fees are hidden, since they are deducted at the time of the transaction without notice to the customer. In addition, as this wave of new transaction fees passes through the banking industry, it is increasingly possible that a customer can be charged a second fee on the same transaction by his or her own financial institution, if using an ATM at a financial institution where he or she is not a member. This practice is sometimes called double-charging. Institutions owning ATMs point out that the fees they impose on customers actually increase customer accessibility to ATM machines, since the money helps financial institutions to purchase and maintain the \$40,000 machines. Consumer advocates point out that banks save about 80 cents per transaction when a customer uses an ATM rather than a teller, and that those savings are ample to maintain ATMs.

Legislation has been introduced in the United States Congress and eighteen states, including Michigan, to govern financial institutions' ATM fee practices. Generally, the legislation falls into three categories: to ban ATM fees entirely; to limit the maximum fee that can be charged; or to require that fees be disclosed when customers undertake a transaction. Laws have been enacted in three states: Georgia, Louisiana, and Maryland. Louisiana law sets a maximum transaction fee, while Maryland requires a notice as well as setting a transaction fee limit. In Connecticut and Iowa banking commissioners recently barred surcharges by the banks that own the ATMs.

THE CONTENT OF THE BILLS:

The package of bills would require banks, savings banks, credit unions, savings and loan associations, and other legal entities that provide automatic teller machines (ATMs) or other electronic transaction services to inform users of any charges or fees that would be assessed for the use of the service. Further, each bill would require that for each transaction involving an ATM, the person using the ATM be provided the option of a printed statement or an on-screen display or both, indicating the nature and amounts involved in the transaction and the resulting balances of the accounts affected by the transaction.

Specifically, four of the bills would amend various acts regulating financial institutions to require that such institutions inform anyone who uses their ATMs or other electronic transaction devices of any fees that the institution charges for the use of those devices. The institution would be required to inform anyone who used such a device that a fee would be charged for the transaction and inform the user of the amount that would be charged. The information would have to be displayed on the ATM screen and the consumer provided with an opportunity to cancel the incomplete transaction without incurring a fee or charge. The notice would have to remain on the screen until the consumer elects to cancel the transaction, proceed with the transaction, or until 30 seconds have elapsed, at which time the transaction would have to be canceled automatically without charge to the consumer. In addition, if the person was using the ATM to obtain access to an account in another financial institution or under a credit card arrangement, the ATM or other device would also have to inform the user that his or her institution might also impose an additional fee for the transaction. House Bills 4889 - 4892 would amend the Savings Bank Act (MCL 487.3513), the Banking Code of 1969 (MCL 487.547) the credit union

act (MCL 490.32), and the Savings and Loan Act of 1980 (MCL 491.1135), respectively.

House Bill 4893 would create a new act that would apply to persons and other legal entities who provide ATM services and/or other electronic transaction services but are not financial institutions. The bill would set the same requirements regarding notification of consumers about fees or charges as are contained in the other bills, including the display on the ATM screen that would remain visible until the person elected to continue or cancel the transaction, and the warning that other institutions might impose further fees. In addition, House Bill 4893 would impose a penalty for violations of its provisions. Each transaction that was completed in violation of the bill's provisions would be treated as a separate misdemeanor offense punishable by a fine of not more than \$1,000, imprisonment for not more than 90 days, or both.

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that none of these bills would have any state or local fiscal impact. (11-7-97)

ARGUMENTS:

For:

ATM surcharges are hidden fees, imposed without customers' knowledge or consent. The imposition of the fees should be disclosed so that customers can decide whether to continue the ATM transaction, or, in the alternative, use the services of a teller when one is available. In addition, informed consumers alerted that their own financial institutions impose an ATM surcharge on members would be free to shop around for lower cost or no cost ATM options.

For:

It is possible that fee disclosure would assist customers to avoid a double ATM surcharge. Given notice, customers would be able to transfer their accounts to financial institutions, typically the largest banks, where only ATM noncustomer fees were imposed. These banks can afford to operate a lot of ATMs, so customers' access to banking services would be improved. According to a May 1997 editorial published in Crain's Detroit Business, it was big banks that first levied ATM surcharges last year, provoking a trend in the industry. The big banks moved to impose ATM fees--sometimes hidden to consumers, but oftentimes disclosed in advertising campaigns-- in order to take advantage of their competitive edge.

Against:

The banking commissioners in some states have barred ATM transaction fees altogether. Although these bills would require Michigan's financial institutions to disclose the imposition of fees, these bills fail to set maximum limits for the ATM transaction fees. The bills should require disclosure of fees, but also set the maximum amount for the fees. Further, an earlier version of this legislation would have required that when an ATM provided a receipt, customers would be given notice of any ATM transaction fee on their receipt.

Response:

Instead of a receipt, these bills have been amended on the House floor to provide an ATM user with the option of a printed statement or an on-screen display or both, indicating the nature and amounts involved in the transaction and the resulting balances of the accounts affected by the transaction.

Against:

There is no need for governmental regulatory intervention in the highly competitive marketing practices of rival financial institutions. If big banks levy higher surcharges on each noncustomer transaction, it may well encourage more users to open accounts with them to avoid the surcharge, but that should be of little matter to government regulators since consumers are free in the open market to purchase a service at the lowest cost.

Against:

Many financial institutions in Michigan voluntarily give notice to those using their ATMs that a fee is imposed for each transaction. Further, many of these institutions also voluntarily provide receipts listing the transaction fees. Since both notice and receipt disclosure are already the standard set by the industry, it is not necessary that these industry practices be enacted into law.

Response:

The standards set by industry leaders to require notice and receipt disclosure of ATM transaction fees are neither universally supported nor utilized by all financial institutions or ATM owners serving Michigan citizens. For example, ATMs owned by party stores, or those owned and operated at similar service and entertainment sites, are not governed by the federal laws and regulations that superintend the financial institutions industry. Consequently, these bills to regulate heretofore unregulated ATMs by requiring fee disclosure are prudent and necessary. What's more, the bills were amended in committee to ensure that regulatory duplication is avoided. Specifically, where federal regulation exists and requires the provision of a

notice, compliance with that federal regulation also would be considered as compliance with this legislation.

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

For:

These bills can help small financial institutions compete with larger neighbors. The fact that the big banks' practices could harm the smaller community banks that have sprung up in the era of big-bank mergers rightfully draws the scrutiny of regulators. Regulation and legislative intervention are warranted since the business press itself reports that smaller banks have been rebuffed in their attempts to work out additional payment agreements with the large banks to save their customers money.

POSITIONS:

The Michigan Consumer Federation supports the bills. (10-29-97)

The Michigan State AFL-CIO supports the bills. (10-28-97)

The City of Detroit Consumer Affairs Department supports the bills. (10-28-97)

The Michigan League of Savings Institutions opposes the bills. (10-30-97)

The Michigan Credit Union League supports House Bill 4893, which requires disclosure of ATM fees (and optional account balance information) for nonfinancial institutions, but opposes those bills that would require disclosure for financial institutions. (10-31-97)

The Michigan Bankers Association adamantly opposes the bills. (10-30-97)

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