

BankBCLP

NEW LEGISLATION INTRODUCED ON ATM NOTICES

Apr 20, 2012

Legislation has been introduced in the United States House of Representatives that, if passed, would relieve banks of the responsibility of installing and monitoring the presence of physical notices on their ATMs notifying customers about the imposition of ATM transaction fees.

On April 17, 2012, Representatives Blaine Luetkemeyer (R-MO) and David Scott (D-GA) introduced [H.R. 4367](#) which seeks to amend the Electronic Fund Transfer Act to limit the fee disclosure requirement for operators of ATMs to the electronic notice alone. The electronic notice allows a consumer to choose whether the consumer wishes to continue with the ATM transaction and pay the fee or exit the transaction. This proposed bill comes in the wake of [class action litigation filed against banks and other ATM operators nationwide \(and most recently against several Georgia community banks\)](#) alleging that the banks failed to post or maintain the physical notice on their [ATMs](#).

As currently written, the Electronic Fund Transfer Act requires both a physical notice at or on the ATM in addition to the electronic notice the customer receives on the computer screen when making the withdrawal. Currently, there are statutory penalties for failure to comply with the Act. While there is no minimum penalty proscribed for a class action, the statute provides that in a successful class action, plaintiffs may recover up to "the lesser of \$500,000 or 1 percent of the net worth of the (ATM operator)," plus attorneys' fees and costs. There may be a defense to such claims when the bank maintains procedures reasonably adapted to avoid a failure to comply with the Act and the failure to comply was a "bona fide error."

Even where banks have been in full compliance with the physical notice requirements, many banks have found that their fee notice placards have mysteriously disappeared or have been removed by persons as yet unknown in the time periods preceding the institution of litigation against them.

While the mere introduction of this bill does not currently relieve banks from the need to install and closely monitor the presence of these notices on their ATMs, we remain hopeful that the Congress will eliminate this unnecessary regulation. For the time being, please take a moment to survey all of your ATMs to ensure that they have the necessary notice affixed to them and that the notice has not been removed. We also recommend that you periodically inspect your machines and photograph them so that you will have evidence of your compliance with the Act.

If you have questions about this proposed legislation, compliance with the statute, or the defense of these cases, please do not hesitate to call Walt Moeling (404.572.6629), Bill Custer (404.572.6828) or Jennifer Dempsey (404.572.6985).

MEET THE TEAM



William V. Custer

Atlanta

bill.custer@bclplaw.com

[+1 404 572 6828](tel:+14045726828)



Jennifer B. Dempsey

Atlanta

jennifer.dempsey@bclplaw.com

[+1 404 572 6985](tel:+14045726985)

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