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18. See Rob Kaiser, *Nature of Antitrust Cases has Changed a Lot Since Standard Oil*, CHI. TRIB., Nov. 7, 1999, § 1, at 12.
19. See James, *supra* note 9, at 1.
20. See *id.*
21. See *id.*
22. See Hanna, *supra* note 14, at 12.
23. *Id.*
24. See *id.*
25. See Zajac, *supra* note 1, at 1.
26. Hanna, *supra* note 14, at 12.
27. See John R. Wilke, *Microsoft Hopes for GOP Savior, but States are Problem*, WALL ST. J., Nov. 9, 1999, at A28.
28. See James, *supra* note 9, at 1.

Debate Raging Over ATM Fees

A debate is beginning to heat up over the fee banks charge non-customers for using their Automated Teller Machines (“ATMs”). Last week, San Francisco citizens enacted the first ever voter-initiated public referendum banning the ATM surcharges banks levy against non-accountholders.¹ Other cities in California, including Santa Monica, have dealt with the public outrage over ATM fees by passing city ordinances banning them, while Iowa and Connecticut have passed statewide bans on the practice.² The new laws have roused the banking industry’s opposition, however, and a lengthy legal battle is likely to ensue.

The problem, according to the U.S. Public Interest Research Group, stems from the current banking industry

practice of charging consumers twice for using ATMs not owned by their personal banks.³ Generally, accountholders are charged one fee by their own banks for using another bank's ATM and are charged an additional fee by the machine's owner. Opponents of the fees often call this practice "double dipping" because consumers are charged twice for withdrawing their money once.⁴ It is the fee ATM owners charge non-customers for using their machines, often called a surcharge, which has come under attack by the current onslaught of regulations.⁵

Bernard Sanders, one of Vermont's U.S. Congressional Representatives, claims this practice is unjustified, pointing to the fact that last year alone banks in this country charged consumers over \$2 billion in ATM surcharges.⁶ In fact, banking industry statistics indicate that 1998 was the seventh straight year U.S. banks reported record profits, with the growth rate in revenue from fees more than tripling the growth rate from other sources, like interest on loans.⁷ Despite the growth in profit from fees, the Wells Fargo Bank, which is involved in the California dispute, admits that ATM fees account for less than one percent of its total revenue.⁸ Consumer advocates may argue, therefore, that banks can afford to give up the fees without sacrificing much profit.

Additionally, the California Public Interest Research Group, which is heading the push to limit fees in California, argues that the 27 cents it costs banks to process automated transactions, compared to \$2.93 for live teller transactions, does not justify the average per transaction fee of \$1.20 charged to consumers.⁹ What makes matters worse is that the disparity between the actual per transaction cost to banks and the amount consumers are charged does not take into account the fact that ATMs allow banks to save millions each year due to the decreased demand for actual tellers.¹⁰ With the number of ATMs somewhere near 227,000 nationwide, Connecticut's Attorney General, Richard Blumenthal,

noted the potential savings by pointing out that the machines "don't take vacations. They don't get benefits. They don't get sick. They don't get retirement."¹¹

All this number crunching has resulted in a tremendous public outcry and a corresponding legislative response. As Lucy Griffin, the president of Compliance Resources, Inc., noted, "[w]hen consumers don't like a banking practice, their opposition usually generates regulations."¹² That is exactly what has happened in the previously mentioned California cities and in the states of Connecticut and Iowa.

In response to such widespread consumer criticism, the Federal Government is also starting to get involved. In fact, the U.S. Military is considering a fee ban for all ATMs located on military bases.¹³ Congress has joined the battle as Bernard Sanders, the independent Representative from Vermont mentioned above, drafted a bill that seeks to give states express authority over ATM fees.¹⁴ A previous bill, introduced in April 1999 by Representative Maurice Hinchey (D - NY), attempts to deal with the problem by amending the Electronic Fund Transfer Act¹⁵ to ban surcharges on a national level.¹⁶ In the past three years, though, similar attempts to limit ATM fees on a national scale have failed miserably.¹⁷ These previous failures bring to light the uncertain fate of the current federal propositions.

In opposing the fee restrictions, John Hall, a spokesman for the American Bankers Association, argues that the fees are a necessary part of providing a service.¹⁸ Along with Hall, other opponents of the restrictions claim that ATM machines are not cheap, nor is maintaining the nationwide network which allows the machines to process transactions almost instantaneously.¹⁹ John Stafford, who works for the California Bankers Association, compared ATMs to vending machines; "[i]f you want it here[,] right now and cold, you're going to have to pay more for it than you would in the grocery store. It's a time-honored capitalist tradition."²⁰ Accordingly,

banks and their supporters want the market, rather than government regulations, to determine the fate of the fees.

The banking industry recently gained an ally in its fight to save the fees. The Office of the Comptroller of Currency (OCC) filed an *amicus curiae* brief in the suit brought by San Francisco banks challenging the legality of the recently enacted voter referendum.²¹ The OCC, which oversees the operations of national banks, contends that federal law prohibits localities from banning ATM fees. Similar briefs were filed by the OCC in challenges mounted against the statewide bans enacted by Iowa and Connecticut. The OCC's brief should give the California bankers a boost in their efforts as courts often defer to the judgment of regulatory agencies.²²

Even if the banks ultimately lose their legal battle, however, they vow to respond by restricting access to their ATMs. In fact, two California banks, the Bank of America and Wells Fargo & Co., have already responded to the locally enacted bans by cutting off ATM access to everyone but their own customers.²³ The banks justified the move by claiming that "[n]o business should be expected to provide free service to non-customers."²⁴ The banks may feel the restriction will draw in new customers seeking the convenience of their machines, but the move could backfire by worsening the banks' already tarnished reputation and causing its current customers to place their accounts with less contentious institutions.²⁵ Either way, the access restriction is sure to create a new wave of criticism.

Even though the outcome of this debate is uncertain, it is unlikely the banking industry will be able to ignore the issue, especially in light of the tremendous opposition ATM fees have generated. On the other hand, any attempt to explicitly limit a bank's ability to charge non-customers for access to its ATMs is sure to encounter heavy resistance from the banking industry. At the very least, the current wave of criticism may cause banks to reevaluate their ATM fee policies, which could lead to

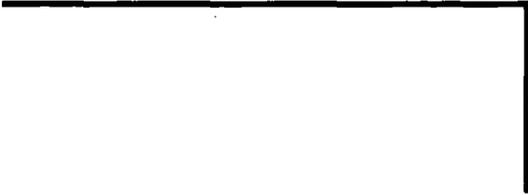
less drastic charges, and may result in a more educated public willing to shop around for banks that charge lesser fees for ATM access.

Endnotes

1. See Karen Brandon, *ATM Outrage Grows into ATM Revolt*, CHI. TRIB., Nov. 7, 1999, § 2, at 1.
2. See *id.*
3. See *id.*
4. See *id.*
5. See Sam Zuckerman, *Government Backs Attack on ATM Law*, S.F. CHRON., Nov. 6, 1999, at A1.
6. See Erin Kelly, *Bill Proposes to Let States, Cities Limit ATM Surcharges*, FLA. TODAY, Nov. 5, 1999, at 14C.
7. See Brandon, *supra* note 1.
8. See *2 Banks Limit ATM Use Following Surcharge Ban*, CHI. TRIB., Nov. 11, 1999, § 1, at 6 [hereinafter *2 Banks*].
9. See Bob Egelko, *ATM-Fee Ban Close to Reality*, ARIZ. REPUB., Oct. 27, 1999, at E1.
10. See Brandon, *supra* note 1.
11. *Id.*
12. Lucy Griffen, *Can Your Bank Forestall New Regs?*, ABA BANKING J., Oct. 1999, at 28.
13. See Brandon, *supra* note 1.
14. See *Congressman to Introduce Bill on Banning ATM Fees*, WALL ST. J., Nov. 5, 1999.
15. See 15 U.S.C. § 1693 (1994).
16. See H.R. 3055, 106th Cong. (1999).

17. See Brandon, *supra* note 1.
18. See Kelly, *supra* note 6.
19. See Brandon, *supra* note 1.
20. *Id.*
21. See Zuckerman, *supra* note 5.
22. See *id.*
23. See 2 Banks, *supra* note 8.
24. *Id.*
25. See *id.*





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