



National Association of Federal Credit Unions
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B. Dan Berger

Executive Vice President

Government Affairs

June 11, 2012

The Honorable Tim Johnson
Chairman
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, D.C. 20510

The Honorable Richard Shelby
Ranking Member
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Chairman Johnson and Ranking Member Shelby:

I am writing on behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions, in regards to S. 3204, a bill to address the outdated fee disclosure requirements under the *Electronic Funds Transfer Act* (EFT). This bipartisan legislation, introduced by Senators Johanns, Warner, Tester and Corker, would eliminate the unnecessary placard fee disclosure requirement that has encouraged a large and growing number of frivolous lawsuits across the nation. NAFCU urges swift action to move this bill through the Committee and out of the Senate as soon as possible.

NAFCU represents more than 800 credit unions that are directly involved in providing convenient, reliable ATM services to millions of Americans. Over 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 current provision imposed by the EFT requires ATM operators to provide two separate notices of the imposition of fees for the use of the ATM. One requires the fee to be disclosed on the ATM screen and prompts the customer to 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.

The provision 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 relevant statute prescribes that in a successful class action lawsuit, 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

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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, 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. Today, many consumers have come to expect to pay a fee at an ATM unless they are using an ATM owned and operated by the credit union where they have their account or their credit union has a reciprocal network agreement for use of the ATM (as many credit unions do with each other, stemming from their cooperative nature).

Accordingly, on behalf of our members, we respectfully request that you pass this legislation, as it would eliminate the unnecessary placard notice required by the EFT. The repeal of the outdated signage provision will stop the flood of frivolous litigations and cause no harm to consumers. Without relief, the number of 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.

Again, we urge you to move S. 3204 through Committee so that it may be acted on by the Senate as soon as possible. Thank you for your consideration and should you have any questions or require additional information, please contact me or Brad Thaler, NAFCU's Vice President of Legislative Affairs, at 703-842-2204 or at bthaler@nafcu.org.

Sincerely,



B. Dan Berger
Executive Vice President, Government Affairs

cc: Members of the Senate Banking Committee