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National Association of Federal Credit Unions | [www.nafcu.org](http://www.nafcu.org)

June 27, 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represents the interests of our nation's federal credit unions, in support of S. 3204, a bipartisan bill to address the outdated fee disclosure requirements under the *Electronic Funds Transfer Act* (EFT). As you know, this legislation would eliminate the unnecessary placard fee disclosure requirement that has encouraged a large and growing number of frivolous lawsuits across the nation.

Earlier today, the House Financial Services Committee, by voice vote, advanced similar legislation (H.R. 4367). NAFCU is hopeful that the Senate will also act swiftly on this issue. As evidenced by broad bipartisan support in the House Financial Services Committee, this is a commonsense fix that will provide relief to credit unions and their 94 million members that rely on basic financial services such as ATM access.

Over the last 18 months, both the number and cost of lawsuits associated with the current placard disclosure requirement have risen precipitously. If unchecked, these lawsuits will threaten the economic viability of ATM operators and may result in reduced consumer convenience. The frequency of these lawsuits and the costs associated with them will only continue to rise if Congress does not address this issue with a sense of urgency.

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 paying a fee at an ATM unless they are using an ATM owned or 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). Additionally, all ATMS now have the onscreen fee disclosure and opt out option, making the placard notice outdated.

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 litigation 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. Each day without action could subject more financial institutions to this frivolous litigation.

Again, we urge the Senate to act on this issue in a timely manner. Thank you for your consideration and should you have any questions or require any additional information please contact me or Chad Adams, NAFCU's Associate Director of Legislative Affairs, at 703-842-2265 or at [cadams@nafcuh.org](mailto:cadams@nafcuh.org).

Sincerely,



Brad Thaler  
Vice President of Legislative Affairs

cc: The Honorable Harry Reid, Senate Majority Leader  
The Honorable Mitch McConnell, Senate Minority Leader  
Members of the Senate Banking Committee