

SENATE BILL REPORT

SB 5813

As Reported By Senate Committee On:
Financial Institutions, Insurance & Housing, March 4, 1997

Title: An act relating to automated teller machines.

Brief Description: Regulating automated teller machines.

Sponsors: Senators McDonald, Winsley, Prentice and Heavey.

Brief History:

Committee Activity: Financial Institutions, Insurance & Housing: 2/25/97, 3/4/97.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, INSURANCE & HOUSING

Majority Report: That Substitute Senate Bill No. 5813 be substituted therefor, and the substitute bill do pass.

Signed by Senators Winsley, Chair; Finkbeiner, Hale, Heavey and Prentice.

Staff: Dave Cheal (786-7576)

Background: In the past 20 years, automated teller machines (ATMs) have become an increasingly important point of banking services. There are now just under 4,000 ATMs in Washington, with 71 percent being owned by banks (including commercial banks, thrift institutions and credit unions) and 29 percent being owned by nonbank companies. They provide an array of banking services in addition to dispensing cash. In addition to conventional ATMs, many grocery stores, gas stations, and other retail outlets provide point of sale cash-back service.

Bank owned ATMs are located both at branch banks and nonbranch sites, such as large grocery stores, shopping malls and airports. Initially, ATMs were proprietary, and customers' access cards would only work in machines owned and maintained by their bank. Then networks emerged that provided the convenience of being able to use an access card in virtually any ATM in the state. Banks defray the cost of use of network ATMs by noncustomers by an interchange fee charged to the bank that issued the noncustomer access card. Some banks absorb part or all of the interchange fee, and some pass the fee along to their customers. With the emergence of networks, large banks generally became the principal acquirers of ATMs, and small banks found it more prudent to pay the interchange fee.

For many years, ATM network rules have prohibited the imposition of fees on noncustomer use of ATMs. Last April, the ban was abruptly lifted, and some banks began imposing surcharges on noncustomers at their ATMs. These fees are typically \$1 or \$1.50.

The four largest banks in Washington, measured by share of deposits and total assets, own approximately 67 percent of bank-owned ATMs. Some grocery chains, malls and airports

have exclusive ATM contracts with certain banks, which preclude the entry of other ATMs in these high volume use locations.

Concerns have been raised that the combination of current concentration of ownership of ATMs, exclusive contracts for high volume locations, and the imposition of noncustomer surcharges may amount to predatory pricing by encouraging customers of small institutions to switch their accounts to banks where there would be no ATM surcharge. A related concern is that the abruptness of the rule change with respect to surcharges prevented any competitive response on the part of small, non-ATM owning institutions, such as the formation of their own networks or other market entry strategies.

Summary of Substitute Bill: Dominant banking institutions and their affiliates are prohibited from imposing user surcharges on automated teller machines that they own or operate, unless they are located at one of their branches. This prohibition ends March 31, 1998. Dominant banking institutions— are defined as a banking institution with total assets exceeding \$1 billion whose market share of automated teller machines exceeds that bank's deposit market share. Surcharge— is a fee directly imposed on a consumer by the owner of an automated teller machine when such a fee does not impact an account held by the consumer with the owner of the ATM.

Surcharges imposed by other banks must be disclosed to the consumer on the ATM with an opportunity to cancel the transaction without incurring any obligation.

Violation of the act is made an express violation of the Consumer Protection Act. If a federal chartering authority or a court declares the act to be invalid with respect to a federally chartered bank, the act automatically becomes invalid to the same extent with other banking institutions located within the state.

The chairs of the House and Senate committees on financial institutions are directed to appoint a study task force which will examine the extent to which the ATM market is competitive, the potential anticompetitive effect surcharges may have on the deposit base of small banks, ways the ATM market may become more competitive, and potential barriers to promoting an efficient competitive ATM market. The study task force is also directed to examine proposed legislation to promote an efficient and competitive ATM market. The task force report must be made by December 1, 1997.

Substitute Bill Compared to Original Bill: The substitute bill contains an end date to the prohibition on surcharging. This prohibition is limited in the substitute bill to ATM's not located at a bank.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Dominant banks (as defined) control 67 percent of bank-owned ATM's. Statements by bank officials and bank advertising indicate a hope and perhaps an intent to cause customers to switch banks to avoid surcharges. There is enough evidence of possible

anti-competitiveness in the current situation to impose a limited, short-term moratorium to allow further study and to allow small banks time to adjust to new market forces.

Testimony Against: There is no evidence that surcharging causes customers to change banks. The market will adjust if allowed to work, free of government intervention. Market concentration is really less than 67 percent. The drastic step of price controls should only be used in the clearest cases of anti-competitive markets.

Testified: Cindy Robert, National Independent ATM Serv. (con); Kevin Robinson, WRM Stores; Bill Brandt; David Adams, Washington Credit Union League (pro); Tony Backes, Pres., Seattle Telco Fed. Credit Union; Laura Lee Stewart, Pres., Credit Union of the Pacific (pro); Mike Rodin, Key Bank (con); Charles Riley, Ex. Vice Pre., US Bank (con); Stan Carlson, Legal Counsel, Seafirst (con); Keith Leffcer, Economist (con); Rick Comandich, Sen. Vice Pres., US Bank (con); Don Fordyce, US Bank (con); Pat Fahey, Pres., Pacific Northwest Bank (pro); Steve McNaughton, CEO, Pemco (pro); Ed Wack, Pres., Olympia Federal Savings (pro).