



## Legislation Text

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Int. No. 680

By the Speaker (Council Member Vallone) and Council Members Berman, McCaffrey, Koslowitz, Eldridge, DiBrienza, Spigner, Eisland, Robles, Rivera, Pinkett, Sabini, Robinson, Reed, Perkins, Freed, Provenzano, Clarke, Carrion, Dear, Malave-Dilan, Espada, Foster, Harrison, Lasher, Linares, Lopez, Marshall, Michels, Nelson, O'Donovan, Povman, Quinn, Rodriguez and Warden.

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting surcharge fees on automated teller machine transactions.

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. The Council hereby finds that since the introduction by banks of automated teller machines (“ATMs”) in the 1970s, consumers have become increasingly dependent on them for accessing their accounts. According to reports from the former Chair of the United States Senate Banking Committee, increasing reliance on this technological advance was exactly what financial institutions planned, because the ability to replace tellers with these machines would allow financial institutions to reduce costs, increase efficiency and ultimately benefit consumers. Since that time, the number of ATMs has exploded with an estimated 2700 bank ATMs currently operating in New York City. According to reports, cash withdrawals which cost banks over \$1.00 to have a teller process, cost about 27 cents when processed by an ATM.

However, the Council also finds that in the years since the introduction of ATMs, and especially in recent years, fees charged for ATM transactions have skyrocketed, to the point where a consumer may pay several times more for an ATM withdrawal as a bank would pay a teller to process the transaction, despite the fact that the bank’s costs of processing the transaction are several times lower. In 1997, revenues from ATM surcharge fees were estimated at \$3 billion.

The Council hereby finds that the practice by banks of levying a second charge (or “surcharge”) directly

on consumers using automated teller machine-cards (ATM cards or access devices) issued by other financial institutions has skyrocketed recently. Prior to 1996, the vast majority of banks operating ATMs in the City levied one charge to cover the costs relating to the use of their ATMs by customers of other financial institutions. This single charge (or “interchange fee”) was levied on a non-customer’s bank and was sometimes borne by that bank or, in other instances, passed onto the ATM user by his or her bank in the form of a fee for using another bank’s ATM (a “foreign fee”).

The Council further finds that this interchange fee, levied by the ATM bank on the non-customer’s bank, compensates the ATM owner for costs relating to the transaction. In spite of this, the Council further finds that financial institutions have increasingly been levying a second and additional fee - the surcharge - directly on the consumer using their ATM machine. This practice has increased dramatically in the last few years, ever since the nation’s two largest ATM networks, Plus and Cirrus, eliminated rules prohibiting their member institutions from surcharging customers of other member banks for the use of their ATMs. Plus, in defending its no-surcharge rule during the late 1980s, stated that the premise on which ATM networks were formed, and upon which banks relied in joining, was that customers of all the member banks would be able to share in the use of all the networks ATMs - not to provide an independent revenue source to the cash-dispensing bank.

Nevertheless, ever since this change in policy, surcharging has dramatically increased in frequency and amounts. According to the United States General Accounting Office, 39% of banks operating ATMs levied such surcharges on consumers using ATM cards issued by other banks in early 1997, just under a year after the surcharge prohibition was lifted by Plus and Cirrus. By early 1998, this percentage had risen to 64% nationwide. A recent survey of New York City banks by the Council reveals that as of late 1999, 87% of banks surveyed surcharge. In addition, studies have shown that the amount of these surcharges have dramatically increased. The average surcharge by banks that impose them rose from \$1.16 in 1997 to \$1.37 in 1999, according to one study. The General Accounting Office found the most commonly imposed surcharge in 1998 to be \$1.50.

Thus, in cases where the consumer's bank passes off the charge it pays to the ATM owner to its customer, a consumer can commonly wind up paying \$2.00 to \$3.00 for a cash machine withdrawal. For a senior citizen, a person of modest means or a student who can only afford to withdraw \$20.00 or \$40.00 at a time, this represents an enormous charge. And, according to a recent survey conducted by the Council, the vast majority of ATM consumers are unaware that the surcharge they are paying to the ATM owner is in addition to a fee that the same ATM owner is collecting from the customer's bank for the transaction.

Moreover, the Council further finds that this surcharge practice not only creates a heavy direct financial burden on consumers which is in addition to a charge which compensates banks for costs incurred, but is also very likely to have an anti-competitive effect on banks which further disadvantages consumers. Banking experts and consumer advocates have reported that the trend in ATM surcharge practices could lead to consumers leaving smaller banks, savings and loans and credit unions which pay higher interest rates, and switching their accounts to larger banks with more ATM machines but with less favorable account terms. This could lead, in the longer term, to a decline in price competition in deposit interest rates. Thus, a warped market could develop whereby large banks could end up gaining customers rather than losing them if they raise their surcharges and lower the interest rates they pay their depositors. This will hurt smaller banks and financial institutions, restrict competition in the industry and ultimately hurt bank consumers.

Therefore, the Council hereby deems ATM surcharges an unfair and unconscionable trade practice, cognizable under the City's consumer affairs laws, and hereby prohibits banks and financial institutions operating ATMs in the city of New York from levying such surcharges on customers of other banks using their ATMs.

The Council, having reviewed applicable federal law governing the provision by financial institutions of ATM services, finds that such law specifically allows states and municipalities to provide their citizens with greater consumer protections in the area of ATM transactions. The Electronic Fund Transfer Act (the "EFTA", 15 USC §1693 et seq.), the stated purpose of which is to set forth a framework establishing the rights, liabilities

and responsibilities of participants in electronic fund transfer systems, contains express provisions permitting state or local consumer protection measures that afford consumers greater protection than that afforded by the federal law. Thus, the EFTA explicitly preserves the right of City's like New York to enact its own laws protecting ATM consumers from unfair practices.

§ 2. Chapter five of title twenty of administrative code of the city of New York is amended by adding a new subchapter 14 to read as follows:

#### **SUBCHAPTER 14**

##### **PROHIBITION ON ATM SURCHARGES**

§20-759 a. **Definitions.** For purposes of this section:

(1) "Access Device" means a card, code, or other means of access issued by a financial institution to a customer of such financial institution for the purpose of affording such customer access to his or her account, which can be used to initiate transactions on an automated teller machine, including, but not limited to, cash withdrawal or electronic fund transfer.

(3) "Automated teller machine" means any electronic information processing device, linked to a financial institution's account records, which enables ATM consumers to carry out banking transactions, including, but not limited to: account transfers, deposits, cash withdrawals, balance inquiries, and mortgage and loan payments. The term does not include devices used solely to facilitate check guarantees or check authorizations, or which are used in connection with the acceptance or dispensing of cash on a person-to-person basis, such a store cashier.

(4) "ATM consumer" means a natural person to whom an access device has been issued by a financial institution.

(5) "Financial institution" means any national or state bank, federal or state savings and loan association, federal or state savings bank, federal or state credit union, or federal or state trust company.

**b. Prohibitions on Surcharges.** It shall be unlawful for any financial institution to impose a fee or charge of any kind on an ATM consumer for accessing an automated teller machine located in the city of New York that is owned or operated, directly or indirectly, by such financial institution, with an access device issued by another financial institution.

**c. Penalties.** (1) Any financial institution found to be in violation of subdivision b of this section shall be subject to a civil penalty of not more than two hundred fifty dollars. Each violation of subdivision b of this section with respect to a particular automated teller machine shall be considered a separate violation thereof.

(2) Any bank found to be in violation of subdivision b of this section shall correct the violation within three days after such

finding. Failure to correct the violation within three days after such finding shall subject the financial institution to a civil penalty of not less than five hundred dollars nor more than one thousand dollars and an additional civil penalty of two hundred fifty dollars per day for each day such violation continues, provided, however, that if the commissioner determines that any financial institution has willfully failed to correct the violation, such financial institution shall be subject to a civil penalty of not less than one thousand dollars nor more than five thousand dollars and an additional civil penalty of two hundred fifty dollars per day for each day such violation continues.

(3) A proceeding to recover any civil penalty authorized to be imposed pursuant to this section shall be commenced by the service of a notice of violation which shall be returnable to the commissioner of consumer affairs. Such commissioner, after due notice and an opportunity for a hearing, shall be authorized to impose the civil penalties prescribed by this section.

d. **Civil Actions.** Any person injured by a violation of subdivision b may enforce its provisions by means of a civil action.

(1) Any financial institution that violates subdivision b shall be liable to the person injured for the actual damages as determined by a jury, or a court sitting without a jury, but in no case less than two hundred fifty dollars.

(2) Any financial institution that violates subdivision b shall also be liable for reasonable attorneys' fees and court costs as determined by the court.

Section 3. This local law shall take effect ninety days after its enactment into law.

**Final Confidential Draft**