

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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February 1, 1999

1. This draft prohibits all state, national and federal financial institutions from charging an ATM fee under certain circumstances. However, it is unclear whether and to what extent the state may regulate the fees charged by national and federal financial institutions. For example, it is possible that the National Banking Act, at 12 USC 24 (Seventh), would preempt the application of this bill to national banks. Currently, both the state of Connecticut and the state of Iowa are in litigation over the applicability of their ATM statutes to national banks. See *Fleet Nat'l Bank v. Burke*, 1998 Conn. Super. LEXIS 3554; *Bank One v. Guttau*, 1998 U.S. Dist. LEXIS 14830. Thus far, there has been no binding court decision on the issue.

2. I have incorporated an effective date provision into this draft to give the regulators involved an opportunity to promulgate the required rules. The delayed effective date also gives financial institutions time to change the operation of their ATMs so that the financial institutions can comply with the law.

If you desire to further discuss these or other issues, please feel free to contact me. Also, please let me know if you want copies of the federal law or the cases that deal with these issues or if you would like an update on the status of the *Fleet Nat'l Bank and Bank One* cases.

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