

2001 DRAFTING REQUEST

Bill

Received: **12/13/2000**

Received By: **rmarchan**

Wanted: **As time permits**

Identical to LRB:

For: **John Lehman (608) 266-0634**

By/Representing: **Tim**

This file may be shown to any legislator: **NO**

Drafter: **rmarchan**

May Contact:

Alt. Drafters:

Subject: **Fin. Inst. - miscellaneous**
Fin. Inst. - banking inst.

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

ATM fees

Instructions:

See Attached. Redraft 1999 AB-131.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rmarchan 12/13/2000	wjackson 12/15/2000		_____			State
/1			jfrantze 12/18/2000	_____	lrb_docadmin 12/18/2000	lrb_docadmin 01/16/2001	

FE Sent For:

<END>

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1/1	rmarchan	1/1 WJ 12/15	12/18	12/18			

FE Sent For:

<END>

LEGISLATIVE REFERENCE BUREAU

BILL REQUEST FORM

Legal Section, 5th Floor, 100 N. Hamilton St.
(608) 266-3561

Use of this form is optional. It is often helpful to talk directly with the LRB attorney who will draft the bill.
Use this form only for **BILL** drafts. Attach more pages if necessary.

Date of request: 12/11/00	Legislator or agency requesting this draft: Rep. John Lehman
Name/phone number of person submitting request: Tim 266-0635	
Persons to contact for questions about this draft (names and phone numbers please): Tim 266-0635	
Describe the problem, including any helpful examples. How do you want to solve the problem? AB 131 Please redraft this bill for introduction 2001 session	
If you know of any statute sections that might be affected, please list them or provide a marked (not re-typed) copy.	

Please attach a copy of any correspondence or material that may help us. You may also attach a marked (not re-typed) copy of any LRB draft, or provide its number (e.g., 1997 LRB-2345/1 or 1995 AB-67):

Requests are confidential unless stated otherwise.

May we tell others that we are working on this for you? YES NO

If yes, anyone who asks? YES NO

Any legislator? YES NO ONLY the following persons:

Do you consider this urgent? YES NO If yes, please indicate why:

Is this request of higher priority than other pending request(s) you have made?

YES NO If yes, please sign your name here:

1502/1

RM NR
DNOTE

IN
12/13

1999 SENATE BILL 325

January 12, 2000 - Introduced by Senator ROBSON, cosponsored by Representatives J. LEHMAN, BLACK, COGGS, HASENOHRL and POCAN. Referred to Privacy, Electronic Commerce and Financial Institutions.

REGEN

1 AN ACT to amend 186.113 (15) (a), 214.04 (21) (b), 215.13 (46) (a) 1. and 221.0303
2 (2) of the statutes; relating to: automatic teller machine fees and requiring the
3 exercise of rule making-authority.

Analysis by the Legislative Reference Bureau

Under current law, banks, credit unions, savings banks, and savings and loan associations (financial institutions) are authorized to operate customer bank communications terminals, remote service units, or remote terminals, commonly referred to as automatic teller machines (ATMs). Financial institutions are required to make their ATMs available for use, on a nondiscriminatory basis, upon request by another financial institution or by customers designated by a financial institution using the terminal, subject to joint rules established by the division of savings and loan, the division of banking, and the office of credit unions in the department of financial institutions.

This bill requires these joint rules to prohibit a state, national, or federal financial institution from charging a person a fee for a transaction using an ATM, unless the transaction relates to or affects an account held by that person with that financial institution. ~~Federal law may preempt these rules with regard to national and federal financial institutions~~

SENATE BILL 325

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 186.113 (15) (a)[√] of the statutes is amended to read:

2 186.113 (15) (a) Directly or indirectly, acquire, place and operate, or participate
3 in the acquisition, placement and operation of, at locations other than its offices,
4 remote terminals, in accordance with rules established by the office of credit unions.

5 The rules shall provide that any remote terminal shall be available for use, on a

6 nondiscriminatory basis, by any state or federal credit union ^{that} which has its principal
7 place of business in this state, by any other credit union obtaining the consent of a

8 state or federal credit union ^{that} which has its principal place of business in this state and
9 is using the terminal and by all members designated by a credit union using the

10 terminal. This ^{paragraph} subsection does not authorize a credit union ^{that} which has its principal
11 place of business outside the state to conduct business as a credit union in this state.

12 The remote terminals also shall be available for use, on a nondiscriminatory basis,

13 by any state or national bank, state or federal savings bank or state or federal savings
14 and loan association, whose home office is located in this state, if the bank, savings

15 bank or savings and loan association requests to share its use, subject to the joint
16 rules established under s. 221.0303 (2). The joint rules under s. 221.0303 (2) shall

17 prohibit a state or federal credit union from imposing a charge on a person for making
18 a transaction at a remote terminal, unless the transaction relates to an account

19 owned by the person and held by the state or federal credit union imposing the

20 charge. The office of credit unions by order may authorize the installation and

SENATE BILL 325

1 operation of a remote terminal in a mobile facility, after notice and hearing upon the
2 proposed service stops of the mobile facility.

3 SECTION 2. 214.04 (21) (b)[✓] of the statutes is amended to read:

4 214.04 (21) (b) The rules of the division shall provide that any remote service
5 unit shall be available for use, on a nondiscriminatory basis, by any state or federal
6 savings bank ^{that} which has its principal place of business in this state, by any other state
7 or federal savings bank obtaining the consent of a state or federal savings bank that
8 has its principal place of business in this state and is using the terminal and by all
9 customers designated by a savings bank using the unit. This paragraph does not
10 authorize a savings bank ^{that} which has its principal place of business outside this state
11 to conduct business as a savings bank in this state. A remote service unit shall be
12 available for use, on a nondiscriminatory basis, by any credit union, state or national
13 bank ^{or} state or federal savings and loan association, whose home office is located
14 in this state, if the credit union, bank ^{or} savings and loan association requests to
15 share its use, subject to joint rules established by ~~the division of banking, the office~~
16 ~~of credit unions and the division~~ under s. 221.0303 (2)[✓]. The joint rules under s.
17 221.0303 (2) shall prohibit a state or federal savings bank from imposing a charge
18 on a person for making a transaction at a remote service unit, unless the transaction
19 relates to an account owned by the person and held by the state or federal savings
20 bank imposing the charge. The division by order may authorize the installation and
21 operation of a remote service unit in a mobile facility, after notice and hearing upon
22 the proposed service stops of the mobile facility.

23 SECTION 3. 215.13 (46) (a) 1.[✓] of the statutes is amended to read:

24 215.13 (46) (a) 1. Directly or indirectly, acquire, place ^{and} and operate, or
25 participate in the acquisition, placement ^{and} and operation of, at locations other than its

SENATE BILL 325

SECTION 3

1 home or branch offices, remote service units, in accordance with rules established by
 2 the division. Remote service units established in accordance with such rules are not
 3 subject to sub. (36), (39), (40) or (47) or s. 215.03 (8). The rules of the division shall
 4 provide that any such remote service unit shall be available for use, on a
 5 nondiscriminatory basis, by any state or federal savings and loan association ~~which~~ ^{that}
 6 has its principal place of business in this state, by any other savings and loan
 7 association obtaining the consent of a state or federal savings and loan association
 8 ~~which~~ ^{that} has its principal place of business in this state and is using the terminal and
 9 by all customers designated by a savings and loan association using the unit. This
 10 ~~paragraph~~ ^{subdivision} does not authorize a savings and loan association ~~which~~ ^{that} has its principal
 11 place of business outside this state to conduct business as a savings and loan
 12 association in this state. The remote service units also shall be available for use, on
 13 a nondiscriminatory basis, by any credit union, state or national bank ^{or} state or
 14 federal savings bank, whose home office is located in this state, if the credit union,
 15 bank ^{or} savings bank requests to share its use, subject to the joint rules established
 16 under s. 221.0303 (2). The joint rules under s. 221.0303 (2) shall prohibit a state or
 17 federal savings and loan association from imposing a charge on a person for making
 18 a transaction at a remote service unit, unless the transaction relates to an account
 19 owned by the person and held by the state or federal savings and loan association
 20 imposing the charge. The division by order may authorize the installation and
 21 operation of a remote service unit in a mobile facility, after notice and hearing upon
 22 the proposed service stops of the mobile facility.

23 SECTION 4. 221.0303 (2) ^v of the statutes is amended to read:

24 221.0303 (2) OPERATION AND ACQUISITION OF CUSTOMER BANK COMMUNICATIONS
 25 TERMINALS. A bank may, directly or indirectly, acquire, place ^{and} operate, or

LPS: Please proof w/ stats.

SENATE BILL 325

1 participate in the acquisition, placement and operation of, at locations other than its
 2 main or branch offices, customer bank ⁵communications terminals, in accordance
 3 with rules established by the division. The rules of the division shall provide that
 4 any such customer bank communications terminal shall be available for use, on a
 5 nondiscriminatory basis, by any state or national bank and by all customers
 6 designated by a bank using the terminal. This subsection does not authorize a bank
 7 ~~which~~ ^{that} has its principal place of business outside this state to conduct banking
 8 business in this state. The customer bank communications terminals also shall be
 9 available for use, on a nondiscriminatory basis, by any credit union, savings and loan
 10 association ⁵ or savings bank, if the credit union, savings and loan association ⁵ or
 11 savings bank requests to share its use, subject to rules jointly established by the
 12 division of banking, the office of credit unions and the division of savings ~~and loan~~ ^{plus institutions}
 13 The joint rules shall prohibit a state or national bank from imposing a charge on a
 14 person for making a transaction at a customer bank communications terminal,
 15 unless the transaction relates to ~~an~~ an account owned by the person and held
 16 by the state or national bank imposing the charge. The division by order may
 17 authorize the installation and operation of a customer bank communications
 18 terminal in a mobile facility, after notice and hearing upon the proposed service stops
 19 of the mobile facility.

SECTION 5. Effective date.

20
 21 (1) This act takes effect on the first day of the ~~6th~~ ^{7th} month beginning after
 22 publication.

(END)

LPS: Please proof w/ stats. Thanks.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1647/1dn
RJM:wjg/1/99

February 1, 1999

1502/An

clarifies that the prohibition established by
the bill applies to

banking

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 8554; *Bank One v. Guttan*, 1998 U.S. Dist. LEXIS 14880. 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.

Robert J. Marchant
Legislative Attorney
261-4454

[Ital.]

See *Bank of America v. City and County of San Francisco*, 2000 U.S. Dist. LEXIS 12587 (N.D. Cal. 2000); *Bank One v. Guttan*, 190 F.3d 844 (8th Cir. 1999).

The draft also contains nonsubstantive,
technical changes to 1999 AB-131.

[Ital.]

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

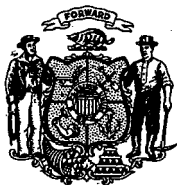
LRB-1502/1dn
RJM:wlj:jf

December 18, 2000

This draft clarifies that the prohibition established by the bill applies to all state, national, and federal banking institutions. However, it is unclear whether and to what extent the state may regulate the fees charged by national and federal banking 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. See *Bank of America v. City and County of San Francisco*, 2000 U.S. Dist. LEXIS 12587 (N.D. Cal. 2000); *Bank One v. Guttau*, 190 F. 3d 844 (8th Cir. 1999).

The draft also contains nonsubstantive, technical changes to 1999 AB-131. If you desire to further discuss these or other issues, please feel free to contact me.

Robert J. Marchant
Legislative Attorney
261-4454



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

December 18, 2000

MEMORANDUM

To: Representative J. Lehman

From: Robert J. Marchant, Legislative Attorney

Re: LRB-1502 ATM fees

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 261-4454 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.

Barman, Mike

From: Marchant, Robert
Sent: Thursday, January 18, 2001 9:04 AM
To: Barman, Mike
Subject: FW: LRB 1502

Mike:

Can you forward this draft and the drafter's note for me?

Thanks.

Robert J. Marchant

Legislative Attorney
State of Wisconsin Legislative Reference Bureau
robert.marchant@legis.state.wi.us

-----Original Message-----

From: OBrien, Tim
Sent: Thursday, January 18, 2001 8:32 AM
To: Marchant, Robert
Subject: LRB 1502

Could you please send me a copy of LRB 1502 as a PDF

Thanks,

Tim O'Brien, Legislative Aide
For State Rep. John Lehman

Barman, Mike

From: Barman, Mike
Sent: Thursday, January 18, 2001 9:28 AM
To: OBrien, Tim
Subject: LRB 01-1502/1 (per your request)



01-1502/1



01-1502/1dn

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

Barman, Mike

From: OBrien, Tim
Sent: Thursday, January 18, 2001 9:35 AM
To: Barman, Mike
Subject: RE: LRB 01-1502/1 (per your request)

Sorry about this but is it possible to send it as a word document?

Thanks

Tim

-----Original Message-----

From: Barman, Mike
Sent: Thursday, January 18, 2001 9:28 AM
To: OBrien, Tim
Subject: LRB 01-1502/1 (per your request)

<< File: 01-1502/1 >> << File: 01-1502/1dn >>

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

Barman, Mike

From: Barman, Mike
Sent: Thursday, January 18, 2001 10:55 AM
To: OBrien, Tim
Subject: LRB 01-1502/1 (word format)



01-1502/1



01-1502/1dn

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.barman@legis.state.wi.us) (FAX: 608-264-6948)

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