

Fiscal Estimate — 2001 Session

- Original Updated
 Corrected Supplemental

LRB Number - 1502/1	Amendment Number if Applicable
Bill Number AB 128	Administrative Rule Number

Subject
Automatic Teller Machine Fees

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected
 GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations
20.144(1)(g)

Assumptions Used in Arriving at Fiscal Estimate

This bill requires the Department of Financial Institutions and the Office of Credit Unions to promulgate rules that would prohibit state and national financial institutions from charging customers fees for the use of automated teller machines (ATM's). On the face of the bill, there is no fiscal effect to the Department. However, based on recent court cases, federal law will pre-empt these rules for federally chartered financial institutions.

Court cases addressing the application of state and local laws to national banks have found that the laws do not apply to national institutions. For instance, in *Bank One, Utah v. Guttan* 190 F.3d 884, 1999 WL 681652 (8th Cir. 1999) the court determined that Iowa law affecting restrictions on national bank ATM's was preempted by federal law. Likewise, in *First Union National Bank v. Burke*, 48 F. Supp 2d 132 (D. Conn 1999), Connecticut was enjoined from asserting enforcement over national bank ATM's.

Similarly for savings institutions, in the *Bank of America v. City and County of San Francisco*, the U. S. District Court for the Northern District of California found that local government ordinances that attempted to prohibit a nationally chartered thrift from charging a fee to non-customers who used the thrift's ATM's were pre-empted by the Home Owners Loan Act and Office of Thrift Supervision regulations.

Additionally, two Office of the Comptroller of Currency (OCC) opinion letters confirm that national banks are statutorily authorized to exercise their discretion to charge access fees to non-accountholders using their ATM's. These letters are the October 25, 1999 letter to Bank of America, N.A. and the October 27, 1999 letter to Wells Fargo Bank, N.A.

Credit Unions will likewise be effected. Throughout the federal credit union act and the NCUA rules and regulations, it says that state laws are not applicable to federal credit unions.

If federally chartered institutions are exempt from this legislation, it is likely that a number of large financial institutions, including banks, savings institutions, and credit unions with ATM networks will convert to a federal charter to avoid having to

Long-Range Fiscal Implications

Prepared By: Susan Dietzel	Telephone No. 267-0399	Agency DFI
Authorized Signature <i>Susan Dietzel</i>	Telephone No.	Date (mm/dd/ccyy) 02/22/2001

comply. This would significantly reduce the amount of revenue received by the Department in the form of annual assessment and fees and would increase the cost of regulation to remaining institutions. It may be too expensive for some and they may also convert.