

Client Alert.

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No More Sticker Shock — Congress Eliminates the External Fee Notice Requirement in the Electronic Fund Transfer Act

By Rebekah Kaufman

Congress gave banks and other ATM operators an early holiday present this year. On December 11, the Senate unanimously passed S. 3204, which eliminates the external fee notice requirement in the Electronic Fund Transfer Act, 15 U.S.C. § 1693, *et seq.* (“EFTA”). The House passed an identical bill, H. 4367, last July. The President is expected to sign the measure into law.

The EFTA currently requires ATM operators to post an external fee notice on or near the machine that a fee will or may be charged for use of the ATM as well as either on the screen of the ATM or on a paper printout before the user is committed to paying a fee. See 15 U.S.C. § 1693b(d)(3); 12 C.F.R. § 205.16(c). The new legislation will amend the EFTA to eliminate this external fee notice requirement. Congress determined the requirement “is unnecessary because ATM operators are required to disclose fees on ATM screens and consumers have the right to decline the transaction without being charged.”

The legislation provides welcome relief to ATM operators who have faced an uptick in frivolous class action lawsuits in the past few years over the external fee notice requirement. Under the current version of the EFTA, a consumer who uses an ATM that does not have a notice of a transaction fee posted on or near the ATM, and is charged a fee, can bring an action against the ATM operator and recover statutory damages between \$100 and \$1,000 for each transaction and up to \$500,000 in a class action — regardless of whether the consumer suffered any actual injury. Congress recognized that the legislation “will protect ATM operators from frivolous lawsuits related to this fee notice requirement.” Once the President signs the legislation, ATM operators will only be required to post the on-screen notice before the fee is charged.

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