

2009 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2328

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2328

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 26, 2009

Recorder Job Number: 7719

Committee Clerk Signature

*Cassie Kron*

Minutes:

**Sen. Klein** opened the hearing on SB 2328 a bill relating to assessment of automated teller machine access fees for foreign cardholder transactions. Members present (7).

**Sen. Wanzek** testified in favor of the bill.

**Sen. Wanzek**- I brought this bill before you on behalf of the independent bankers, it is my understanding that if you own a foreign account card and you use it in this country you do not get charged a fee but that most of use that live here do get charged that fee.

**Jack McDonald** testified on behalf of the Independent Community Banks of ND, see attachment #1.

**Sen. Klein**- who do the charges go too?

**Jack McDonald**- they would go to you. There are different fees there is not a standard fee but the lowest is usually one dollar. This way we could charge a fee if the bank would wish to to the foreign user just as they do to the US citizens.

**Sen. Nodland**- do you know what it costs for a ATM machine?

**Jack McDonald**- I am not quite sure.

**Sen. Nodland**- what is the monthly maintenance fee to service that?

**Jack McDonald**- I do not have that information.

**Sen. Andrist-** a lot of the bank cards are like Visa card and stuff correct?

**Jack McDonald-** yes.

**Sen. Potter-** what we are doing is prohibiting terms in a contract really correct?

**Jack McDonald-** right now the way that the Visa regulations read say that you can't do this unless there is a law in your state that says you can. 21 other states have chose to do that.

**Sen. Potter-** so we are protecting the banks with this legislation?

**Jack McDonald-** I guess we are, we are still going to make the contract this is just taking a advantage to a provision in that contract.

**Sen. Horne-** are credit unions covered under the same situation in ND and if this bill was approved would credit unions be able to charge a fee also.

**Jack McDonald-** I believe that they would be covered.

**Sen. Behm-** who absorbs this cost?

**Jack McDonald-** whoever maintains the machine is the entire cost of the bank right now, the bank recovers some of that by charging you a fee to use it but this will allow us to charge the foreign people a fee as well to keep up with the cost of the maintenance.

**Sen. Andrist-** the fee that they would charge foreigners would it be the same or would it vary.

**Jack McDonald-** I believe it could vary since this is optional as it is right now, so I believe they could do a different charge.

**Donald Foreseberg**, Executive Vice President for Independent community banks of ND, testified in favor of the bill.

**Donald Foreseberg-** A couple points of clarification there are 2 separate issues here. One the normal access some banks do not charge for use of their ATM and some charge a fee and then will recover that if you show that you have been charged. That fee is to cover the cost of operating that ATM. That doesn't matter if you are in country or out of country that is the way

recent rules state that you have to treat everyone the same unless you are a foreign card holder and you use a in country ATM in the US you can not charge or pass on what the ATM owners are charged unless you pass a law, that is a loop hole that we are trying to fix.

**Sen. Andrist-** we use to go to Canada and charge on our credit cards but now we get charged a fee is this the same thing?

**Donald Foreseberg-** yes it is similar except that with credit cards there is no cash involved they are charging you for the exchange rate.

**Sen. Horne-** why does visa have this rule that you can't charge the fee in the US?

**Donald Foreseberg-** I believe the reason was to get maximum acceptance of their card and encourage the card.

**Marilyn Foss**, ND Bankers association, testified in favor of the bill.

**Marilyn Foss-** I think the others explained the issues and to let everyone know that we also are in support of the bill.

**Greg Tscheider**, American Credit Union Association, testified in favor of the bill.

**Greg Tscheider-** I too stand here in support of this bill. The general cost of a ATM machine is around \$20,000, you have to understand that a lot of these are outside and have to be heated which is another great cost. There is a substantial amount in maintain these machines.

**Sen. Wanzek** motioned for a Do Pass and was seconded by **Sen. Nodland**, vote 7 yea, 0 nay, 0 absent and not voting. **Sen. Wanzek** was designated to carry the bill to the floor.

**Sen. Klein** closed the hearing.

Date: 1/26/2009  
 Roll Call Vote #: 1

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO.**

Senate

Committee

**Industry, Business and Labor**

Check here for Conference Committee 2328

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  **Pass**  **Do Not Pass**  **Amended**

Motion Made By Senator Wanzek Seconded By Senator Nodland

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek - V.Chair	✓		Senator Robert M. Horne	✓	
Senator John M. Andrist	✓		Senator Tracy Potter	✓	
Senator George Nodland	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Wanzek

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
January 26, 2009 1:05 p.m.

**Module No: SR-15-0925**  
**Carrier: Wanzek**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2328: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2328 was placed on the Eleventh order on the calendar.**

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2328

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2328

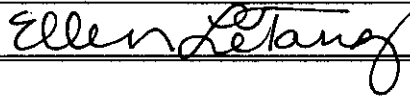
## House Industry, Business and Labor Committee

Check here for Conference Committee

**Hearing Date:** March 10, 2009

**Recorder Job Number:** 10621

Committee Clerk Signature



**Chairman Keiser:** Opened the hearing on SB 2328 relating to assessment of automated teller machine access fees for foreign cardholder transactions.

**Jack McDonald~Independent Community Banks of North Dakota.** See testimony attachment.

**Representative N Johnson:** This would only apply to someone from a foreign country that their bank system where they are covered is using one here? This wouldn't apply to any US Citizen?

**McDonald:** It would apply to someone who came over here from a foreign country and use their ATM card to get American currency out of machine. If we go over to Europe and do the same thing, we get charged a fee for doing that. We feel that perhaps that the Canadians will be using it the most. This allows the banks that option.

**Rick Clayburgh~North Dakota Bankers Association.** We have looked at this issue for a number of years. We support the efforts of the Independent Community Banks in putting this forward and we support SB 2328.

**Chairman Keiser:** What this is going to do, currently the bank or ATM operator cannot charge them a fee?



**Clayburgh:** That is correct. If the state law allows it, they can then charge a fee.

**Chairman Keiser:** Will our state financial institutions have to change their contract or do they already contain that clause?

**Clayburgh:** There are two parts to that question. First of all, with the change the VISA network is making where they are purportedly going to be allowing this, that's a contract change between the two parties. In this particular situation the way it is written in the agreement, if a state law allows it, it will not be a contract change.

**Representative Nottestad:** On the exchange in these machines, is that preordained by the bank or VISA that day?

**Clayburgh:** It an exchange rate but that could be an established rate with a fee associated.

**Representative Nottestad:** That exchange rate would be set by the particular bank.

**Clayburgh:** Yes.

**Vice Chairman Kasper:** I noticed sets no minimum or maximum fee, who is going to set the fee?

**Clayburgh:** That will be set by the bank based on market conditions.

**Vice Chairman Kasper:** It would be the ATM owner, it might be the bank or it might not be the bank?

**Clayburgh:** It would be the same like the internal transactions of ATM in the US. This is an issue specific to our northern tier banks, primarily the Canadian traffic that comes down. The customer wants the convenience of US currency and the banks have been footing the cost. This way the customer will pay for the convenience of using their card.

**Representative Vigesaa:** Along with the currency exchange, that would be in addition to the other fees we already pay. Is that going to be two separate fees to that foreign card holder?

**Clayburgh:** I don't know the internal on how that would be billed out.

**Don Porsborg~Executive Vice President of Independent Community Banks of North**

**Dakota.** We run a credit card administration program for 50 Banks in four states. Basically, they do the data input. We don't handle any credit decisions or handle the cash, we take care computer input. When we put together this bill the intent was to allow all ATM owners to be able to pass on a fee they are being charged. VISA has since then has decided because of the numbers of states that are changing their law to allow the passing on of this fee. Yes, this is an additional fee for those users of ATM's for which a bank is charging an access fee.

**Representative Vigesaa:** Do you know approximately what that fee will be?

**Clayburgh:** I do not know because it's a foreign exchange fee, it varies day to day.

**Representative N Johnson:** This would not be a fee that would be retained by the bank; it would be the VISA, which the group charges the bank or owner of the ATM to do that? It would cover those costs or an additional cost that the ATM owner could keep?

**Clayburgh:** It would allow the banks to pass on the fee they are already being charged. If the bank is being charged two dollars for the transaction by VISA, they currently have to absorb that fee. When they get their monthly fee from VISA, they have to settle up for all the transactions that took place in addition to for the ATM filling the cash and insurance. That fee, two dollars, potentially could be passed on to the user of the ATM and it would have to be a foreign user other than a US citizen.

**Representative N Johnson:** If there is a two dollar to use it, when the owner of the ATM put a three dollar on and keep the one dollar, does this allow them to do that?

**Clayburgh:** Yes, there is nothing that fixed a fee or charge a fee at all.

**Chairman Keiser:** I go in and take \$50 out; VISA could charge the bank two dollars for the transaction. My bill would show \$52, but in addition the bank is making that ATM available to me, could add another dollar or two. When I see my account, it could be \$54. Is that correct?

**Clayburgh:** That is correct but we are mixing two fees here. This bill is specific to a foreign user of that ATM.

**Vice Chairman Kasper:** It appears that there could be four fees. VISA, owner of the ATM machine, bank & if you are a foreign customer, be charged a fee. Am I correct?

**Clayburgh:** I'm not current, you are correct, the potential for each of those fees. The fee is already being charged to the owner of the ATM and they are absorbing that.

**Chairman Keiser:** You keep referring to VISA, are there any other entities like VISA.

**Clayburgh:** Each card holder network would have their own rules, for example Discover or American Express but they are often similar.

**Chairman Keiser:** Is there anyone to testify in opposition to SB 2328, neutral? Closes the hearing and what are the wishes of the committee?

**Vice Chairman Kasper:** Moves a Do Pass.

**Representative Vigesaa:** Second.

**Chairman Keiser:** Further discussion?

**Voting roll call was taken on SB 2328 for a Do Pass with 10 ayes, 3 nays, 0 absent and Representative N Johnson is the carrier.**

Date: Mar 10, 2009

Roll Call Vote # 1

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

**BILL/RESOLUTION NO.** 2328

House House, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  As Amended

Motion Made By Kasper Seconded By Vigesaa

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓✓		Representative Boe		✓
Representative Clark	✓✓		Representative Gruchalla	✓	
Representative N Johnson	✓		Representative Schneider	✓	
Representative Nottestad	✓	✓	Representative Thorpe		✓
Representative Ruby	✓✓				
Representative Sukut	✓✓				
Representative Vigesaa	✓				

Total (Yes) 10 No 3

Absent 0

Floor Assignment N Johnson

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2328: Industry, Business and Labor Committee (Rep. Kelser, Chairman) recommends DO PASS (10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2328 was placed on the Fourteenth order on the calendar.**

2009 TESTIMONY

SB 2328

Attachment #1

Same testimony +  
handouts given to  
House.

January 26, 2009

SENATE INDUSTRY, BUSINESS & LABOR COMMITTEE  
SB 2328

CHAIRMAN KLEIN AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of the Independent Community Banks of North Dakota (ICBND). We strongly support SB 2328 and urge a do pass.

The purpose of this bill is to give the owners and operators of automated teller machines (ATMs) the option to charge a fee to recover the costs of dispensing U.S. currency to "foreign" or out of country VISA and Master Card holders who use their ATMs.

Why do we need this bill? ATM machines are often owned by a financial institution but a number are also owned by private businesses. Each ATM is capable of dispensing cash in the currency of the country in which it is located. ATMs must capture the information from the card holder in order to process the requested transaction and then send this information to be processed through a processing system. ATMs can (and most are) programmed to be available to the broadest possible number of transactions which means they are usually tied to the VISA and Master Card network.

This means that not only could a bank's debit cards be used at the ATM to withdraw cash but so can "any" VISA or Master Card credit card. One advantage for travelers is that they do not have to worry about carrying a lot foreign currency if they are visiting another country. By using their VISA or Master Card to make cash withdrawals once in the country they are visiting they get the very latest currency conversion at no cost to them! However, there is a cost for the conversion of the transaction by VISA or Master Card and it is charged to the owner of the ATM...in this case, banks in North Dakota.

VISA and Master Card Operating regulations state that if the owner of the ATM wants to process any VISA or Master Card transactions they are prohibited from charging a fee to recover any part of the fee from the card holder. This means the bank or ATM owner...again our North Dakota banks...absorb this transaction fee. They have done so for years, but would rather not continue.

The access fee is often the only income for ND banks related to the transaction to pay for the purchase and installation of the ATM, programming, maintenance, insurance and costs associated with keeping the machine filled with cash and supplies, reconciled and up to date with the latest in rules and regulations.

(OVER)

However, VISA and Master Card do have a section in the prohibition against charging fees to recover the currency exchange charges which allows for exceptions provided by state law. This exception is noted in the VISA USA Inc. Operating Regulation Manual Volume I, November 15, 2008, that I have included with my testimony. Twenty-one other states have used this exception to pass their own laws similar to SB 2328. The 21 states with similar laws are also included in your handout. The language used in Senate Bill 2328 is modeled after Wisconsin's law. This is the most recent state to pass such legislation.

This bill does not REQUIRE that an ATM owner assess these fees, but merely gives them this option. Last week we learned that VISA will be changing its regulations to allow the charging of a fee to recover the foreign currency exchange fee they impose except for those countries covered by VISA Europe which is a separate organization from VISA USA. While this latest information is good news, this bill is still needed to be able to give owners of ATMs the option to recover exchange fees imposed on those countries covered by VISA Europe.

Therefore, we still urge you to give this bill a DO PASS. If you have any questions, I will be happy to try to answer them.

THANK YOU FOR YOUR TIME AND CONSIDERATION.



**5.5.B.7 Prohibition (Effective May 15, 2008)**

5.5.B.7.a An Acquirer must submit a Transaction for Clearing at the same value as the cash dispensed to the Cardholder.

5.5.B.7.b With the exception of taxes or other charges imposed by local law, the Acquirer must **not** add any surcharge, commission, or fee for the sale of Visa Travelers Cheques or Foreign Currency to the Transaction amount.

**5.5.B.8 Card Security Features**

5.5.B.8.a When a Cardholder presents a Card, an Acquirer must, at the request of Visa U.S.A., check one or more Card security features prior to completing a Manual Cash Disbursement.

5.5.B.8.b For a Visa Card, the Acquirer must:

- Compare the first four digits of the embossed or printed Account Number to the four digits printed above or below the Account Number **and**
- Record the printed four digits as follows:
  - Write the digits in the space provided on the *80-Column Cash Disbursement Transaction Receipt (Exhibit F)* **or**
  - Key enter and electronically print the digits on the Cash Disbursement Transaction Record in the designated space, if using a Point-of-Transaction Terminal capable of printing key-entered numbers

If the digits do **not** match, the Acquirer should attempt to recover the Card, as specified in *Section 5.2.L*.

- Authorize all Manual Cash Disbursements via an Account-Number-Verifying Terminal.

5.5.B.8.c In addition to the requirements specified above, when a Cardholder presents a Visa Mini Card, a Merchant/Acquirer must request the corresponding full-sized card prior to completing a Manual Cash Disbursement.

# Wisconsin Allows Foreign Cardholder Fees at ATMs

**W**isconsin has recently joined the ranks of states that now permit the assessment of ATM access fees for foreign (non-U.S.) cardholder transactions.

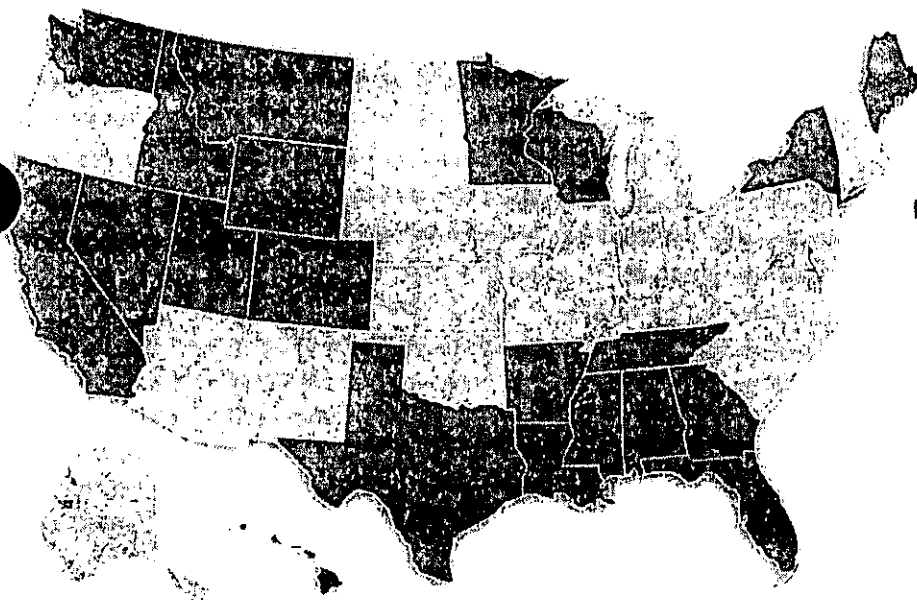
Under the 2007 Assembly Bill 239, an agreement to operate or share an ATM may not prohibit an owner or operator from imposing an access fee or surcharge on an individual conducting a transaction using an account with a financial institution

located outside of the U.S. Effective April 1, 2008, the legislation applies to any access fee or surcharge that is not otherwise prohibited under federal or state law.

States enacting this type of legislation are opening a new stream of revenue for their financial institutions and ATM acquirers. Previous restrictions and fines imposed by some national organizations, as well as clauses within shared operation

agreements, may have prohibited acquirers from levying such fees. Wisconsin's Assembly Bill 239 can supersede these restrictions in some cases, creating a new opportunity for increased profits.

For more information on implementing this fee, or for other related questions, contact Richard Barreiro with PULSE at 877-482-2020. Upon request, the PULSE Customer Service Team will complete an analysis and provide an estimate for the development of software changes to support this fee at applicable ATM terminals processed by PULSE.



## States Allowing Foreign (Non-U.S.) Cardholder Fees at ATMs

Alabama	Mississippi
Arkansas	Montana
California	Nevada
Colorado	New York
Florida	Tennessee
Georgia	Texas
Hawaii	Utah
Idaho	Washington
Louisiana	Wisconsin
Maine	Wyoming
Minnesota	

## Raising Awareness of Card Fraud Risk

**M**ore than 30 representatives of the Louisiana Bankers Association's (LBA) Anti-Fraud Task Force participated in a recent fraud prevention best practices discussion led by PULSE.

During the April 25 meeting in Baton Rouge, Jim Cichy, PULSE vice president of fraud management, provided an overview of current fraud threats related to debit

presentation was information about PULSE's DebitProtect<sup>SM</sup> fraud detection system and an update on system enhancements.

"The session was very informative and answered several questions about steps our member banks can take to fight fraud," said Ginger Laurent, chief operating officer of the LBA. "We appreciated PULSE taking

The LBA's Anti-Fraud Task Force was formed in 2007 and is composed of association staff and bank representatives. The task force meets quarterly to address fraud-related issues of concern to Louisiana banks.

For details on arranging a PULSE representative to speak on debit-related topics, contact PULSE's Denise Stigge at