



# House of Representatives

## File No. 473

General Assembly

February Session, 2000

**(Reprint of File No. 129)**

Substitute House Bill No. 5014  
As Amended by House Amendment  
Schedules "A" and "B"

Approved by the Legislative Commissioner  
April 7, 2000

***An Act Prohibiting Certain Fees Charged For The Use Of  
Automated Teller Machines By Noncustomers And Fees  
Charged Mortgagees For The Production Of A Payoff Letter.***

Be it enacted by the Senate and House of Representatives in General  
Assembly convened:

1 Section 1. Section 36a-156 of the general statutes is repealed and the  
2 following is substituted in lieu thereof:

3 (a) One or more banks, Connecticut credit unions or federal credit  
4 unions which have established a satellite device or point of sale  
5 terminal shall make the satellite device or point of sale terminal  
6 available on a nondiscriminatory basis for use by any other bank,  
7 Connecticut credit union or federal credit union, upon payment by  
8 each such other bank or credit union of a reasonably proportionate  
9 share of all acquisition, installation and operating costs of the satellite  
10 device or point of sale terminal. The satellite device or point of sale  
11 terminal shall identify with equal prominence all of the banks, credit  
12 unions or network systems which use the satellite device or point of  
13 sale terminal.

14 (b) Any bank, Connecticut credit union or federal credit union  
15 which has established an automated teller machine which is not a  
16 satellite device may, in its discretion, permit any other bank,  
17 Connecticut credit union or federal credit union to use such automated  
18 teller machine, provided, (1) if such permission is granted to any other  
19 bank, Connecticut credit union or federal credit union, the automated  
20 teller machine is made available on a nondiscriminatory basis for use  
21 by any other bank, Connecticut credit union or federal credit union,  
22 upon payment of reasonably proportionate costs as described under  
23 subsection (a) of this section, and (2) such use is otherwise in  
24 accordance with subsection (a) of this section.

25 (c) No bank, Connecticut credit union or federal credit union that  
26 has established or acquired and that uses any automated teller  
27 machine in this state may impose any fee for the use of any such  
28 automated teller machine on any consumer residing in this state if the  
29 consumer using such automated teller machine does not maintain a  
30 deposit account with such bank, Connecticut credit union or federal  
31 credit union. No bank, Connecticut credit union or federal credit  
32 union, and no out-of-state bank or out-of-state credit union that is  
33 authorized under the laws of this state or federal law to accept  
34 deposits within this state, may debit or permit the debiting of any  
35 deposit account of a customer of any such institution for the purpose  
36 of paying any fee prohibited by this subsection. As used in this  
37 subsection, "deposit account" has the same meaning as provided in  
38 section 36a-316 and includes such accounts accepted or acquired in this  
39 state by an out-of-state bank or out-of-state credit union that is  
40 authorized under the laws of this state or federal law to accept  
41 deposits within this state.

42 Sec. 2. Section 36a-158 of the general statutes is repealed and the  
43 following is substituted in lieu thereof:

44 (a) Except as provided in subsection (b) of this section, no out-of-  
45 state bank or out-of-state credit union may directly or indirectly  
46 establish or use an automated teller machine or point of sale terminal

47 in this state. This prohibition does not apply to an out-of-state bank or  
48 out-of-state credit union that is authorized under the laws of this state  
49 or federal law to accept deposits within this state.

50 (b) An out-of-state bank or out-of-state credit union may use an  
51 automated teller machine or point of sale terminal located in this state  
52 provided: (1) Such bank or credit union obtains permission to use the  
53 automated teller machine or point of sale terminal in this state from the  
54 owner of such automated teller machine or point of sale terminal; (2)  
55 such bank or credit union uses the automated teller machine in this  
56 state on a transaction fee basis; (3) unless such bank or credit union or  
57 an affiliate of such bank or credit union is otherwise authorized under  
58 the laws of this state or federal law to accept deposits within the state,  
59 the transactions available to customers of such bank or credit union on  
60 any such automated teller machine shall be limited to withdrawals,  
61 advances and transfers and shall not include deposit transactions; and  
62 (4) any such automated teller machine is established and used in  
63 accordance with the provisions of sections 36a-155 and 36a-156, as  
64 amended by this act.

65 (c) No out-of-state bank or out-of-state credit union that is  
66 authorized under the laws of this state or federal law to accept  
67 deposits within this state and has established or acquired and that uses  
68 any automated teller machine in this state may impose any fee for the  
69 use of any such automated teller machine on any consumer residing in  
70 this state if the consumer using such automated teller machine does  
71 not maintain a deposit account with such out-of-state bank or out-of-  
72 state credit union. No bank, Connecticut credit union or federal credit  
73 union, and no out-of-state bank or out-of-state credit union that is  
74 authorized under the laws of this state or federal law to accept  
75 deposits within this state, may debit or permit the debiting of any  
76 deposit account of a customer of any such institution for the purpose  
77 of paying any fee prohibited by this subsection. As used in this  
78 subsection, "deposit account" has the same meaning as provided in  
79 section 36a-316 and includes such accounts accepted or acquired in this  
80 state by an out-of-state bank or out-of-state credit union that is

81 authorized under the laws of this state or federal law to accept  
82 deposits within this state.

83       Sec. 3. (NEW) The provisions of subsection (c) of section 36a-156 of  
84 the general statutes, as amended by this act, and subsection (c) of  
85 section 36a-158 of the general statutes, as amended by this act, shall be  
86 ineffective on (1) the date a court of competent jurisdiction issues a  
87 final judgment that such provisions do not apply to national banking  
88 associations, federal savings banks, federal savings and loan  
89 associations or federal credit unions, or (2) the date the Comptroller of  
90 the Currency or the National Credit Union Administration issues a  
91 ruling, or the effective date of regulations promulgated by said  
92 Comptroller or the National Credit Union Administration, specifying  
93 that such provisions do not apply to national banking associations or  
94 federal credit unions. For the purposes of this section, "date of final  
95 judgment" means the date on which a judgment is entered and no  
96 appeal is possible or, if an appeal is possible and no appeal is taken,  
97 the date on which the right to appeal expires.

98       Sec. 4. Section 49-10a of the general statutes is repealed and the  
99 following is substituted in lieu thereof:

100       (a) A mortgagee shall, upon written request of the mortgagor or the  
101 mortgagor's attorney or other authorized agent provide a payoff  
102 statement in writing free of charge to the person requesting such  
103 statement on or before the date specified in such request, provided  
104 such request date is at least ten business days from the date of receipt  
105 of the written request for a payoff statement. If the mortgagee fails to  
106 provide such payoff statement on or before such request date, the  
107 mortgagee shall not be entitled to the payment of any interest on the  
108 mortgage loan which is secured by such mortgage which accrues after  
109 the expiration of such request date. If the mortgagee provides the  
110 payoff statement to the person requesting the same after the expiration  
111 of such request date, interest on the mortgage loan which accrues after  
112 the receipt of such payoff statement by the person who has requested it  
113 shall again be payable. The burden of proof shall be on the mortgagor

114 with respect to the receipt by the mortgagee of the mortgagor's request  
115 for a payoff statement of the mortgage loan, and thereafter shall be on  
116 the mortgagee with respect to the receipt of the payoff statement by  
117 the mortgagor or the mortgagor's attorney or other authorized agent.

118 (b) If a mortgagee tries to charge a fee of a person making a request  
119 for the payoff statement pursuant to subsection (a) of this section that  
120 exceeds the cost of transmitting such payoff statement to such person,  
121 such attempt to charge a fee shall be deemed an unfair or deceptive  
122 trade practice under subsection (a) of section 42-110b.

123 Sec. 5. This act shall take effect from its passage.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:** See Explanation Below

**Affected Agencies:** Department of Banking, Department of Consumer Protection

**Municipal Impact:** None

**Explanation**

**State Impact:**

There will be no fiscal impact for the Department of Banking as a result of the passage of this bill. The bill prohibits banks, credit unions, and federal credit unions from imposing a fee on any consumer using an automated teller machine if the consumer does not maintain a deposit account with the bank or credit union.

The bill specifies that when a mortgagee tries to charge a fee to a person requesting a payoff statement that exceeds the cost of transmitting the statement, that attempt to charge such fee is an unfair trade practice.

A violation of provisions of this bill is deemed an unfair trade practice. Under the Unfair Trade Practices Act, the Department of Consumer Protection (DCP) has two methods for resolving complaints, 1) formal administrative hearings; or 2) forwarding the complaint to the Attorney General's office for litigation. If most of the cases are handled administratively by DCP, the workload increase to the Office of the Attorney General is expected to be minimal and can

be handled within the agency's anticipated budgetary resources. Under the Unfair Trade Practices Act, civil penalties can be imposed for violations, the extent of the additional revenue cannot be determined, as it would depend upon the number of violations which occurred and the amount of the penalties that are imposed. There would be a minimal workload increase for the DCP associated with increased consumer inquiries and complaints and the possible hearings as a result of this bill. This, along with other minimal cost bills, could cause the Department of Consumer Protection to go beyond the anticipated budgetary resources of the agency.

House "A" is technical in nature and has no fiscal impact.

House " B " specifies that a mortgagee charging an excessive fee for a payoff statement that is requested by a mortgagor is an unfair and deceptive trade practice. The amendment has a potential revenue and workload increase impact.

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**OLR Amended Bill Analysis**

sHB 5014 (as amended by House "A" and "B")\*

**AN ACT PROHIBITING CERTAIN FEES CHARGED FOR THE USE OF AUTOMATED TELLER MACHINES BY NONCUSTOMERS.****SUMMARY:**

This bill explicitly prohibits banks and credit unions that have automated teller machines (ATMs) in Connecticut from imposing a surcharge for use of the ATM on Connecticut residents who do not have accounts at that bank. It also prohibits banks from debiting their own customers' accounts for other banks' ATM surcharges. It does not limit the banks' authority to charge their own customers a fee for using the banks' own or another bank's ATMs. The bill applies to in-state and out-of-state state and federally chartered banks.

But the bill makes the ban on surcharge fees ineffective for all banks and credit unions on (1) the date a court of competent jurisdiction issues a final judgment stating that its provisions do not apply to federally chartered banks or credit unions or (2) the date the U.S. Comptroller of the Currency or the National Credit Union Administration issues a ruling, or the effective date of regulations issued by them, specifying that such provisions do not apply to national banks (the federally chartered banks the Comptroller regulates) or federal credit unions. The bill defines "date of final judgment" as the date on which a judgment is entered and no appeal is possible or, if an appeal is possible and no appeal is taken, the date on which the right to appeal expires.

Finally, the bill prohibits any mortgage holder from charging a borrower who requests a payoff statement more than the actual cost of sending it. It makes the mortgagee's attempt to charge a fee above the transmittal cost an unfair trade practice.

\*House Amendment "A" adds court decisions on federal credit unions and rulings or regulations by the National Credit Union Administration as a basis for making the surcharge ban ineffective for

all banks and credit unions.

\*House Amendment "B" adds the provision concerning fees for mortgage payoff statements.

EFFECTIVE DATE: Upon passage

## **BACKGROUND**

### ***Connecticut Unfair Trade Practices Act***

Under the Unfair Trade Practices Act, the consumer protection commissioner may investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, accept voluntary statements of compliance, and issue regulations defining what constitutes an unfair trade practice. The act also allows individuals to bring suit. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties up to \$5,000 for willful violations and \$25,000 for violating restraining orders.

### ***Connecticut Supreme Court Decision***

On December 20, 1999, the Connecticut Supreme Court decided that the state statute, as currently written, does not prohibit banks from imposing ATM surcharges on nondepositors. The Court did not address whether, if the statute did prohibit ATM surcharges, federally chartered banks would be exempt from the ban because of federal preemption, since they are chartered and supervised by federal banking regulators (*John Burke, Commissioner of Banking, et al. v. Fleet National Bank, et al* (252 Conn. 1 (1999))).

### ***Related Federal Regulations***

Comptroller of the Currency regulations currently specify that national banks' non-interest charges and fees, including deposit account service charges, are a business decision that each bank, in its discretion, must make according to sound banking judgment and federal standards of safety and soundness. The federal rules provide national banks with a few general guidelines for setting these fees (12 C.F.R. § 7.4002(a) and (b)).

The regulations also state that the Office of the Comptroller of the Currency evaluates whether a national bank may establish non-interest charges or fees on a case-by-case basis, notwithstanding a contrary state law that purports to limit or prohibit such charges or fees (12 C.F.R. § 7.4002(d)).

Federal law gives national banks broad authority to exercise all incidental powers necessary to carry on the business of banking (12 U.S.C.A. § 24). It generally preempts state laws that might try to regulate the national banks' legitimate business decisions.

### ***Related Bill***

sSB 11 (File 159), favorably reported by the Banks Committee, allows entities that are not banks or credit unions to establish cash dispensing machines in Connecticut, but limits their fees to \$1.50 per transaction and requires certain disclosures at the machines. These machines let consumers make withdrawals from their bank accounts and engage in several other functions, but do not let them deposit money in their accounts. The bill also expands the authority of out-of-state banks and credit unions to establish and use ATMs in the state, requires all banks and credit unions that surcharge other banks' customers to disclose this at the ATMs, and clarifies several other aspects of the state's ATM law.

On April 5, the Senate referred the bill to the Finance, Revenue and Bonding Committee.

### **COMMITTEE ACTION**

Banks Committee

Joint Favorable Substitute

Yea 11    Nay 6