

# Protect Your Financial Institution from ATM Fee Reg E Lawsuits

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Lawsuits against financial institutions that own and operate ATMs, that do not display surcharge-fee disclosure stickers are on the rise.

Over the past two years, federal lawsuits have been filed in 16 states against banks and credit unions for violating the Electronics Transfer Act and Regulation E.

The Electronics Transfer Act, passed by Congress in 1978 to establish consumer rights and liabilities, and implemented by Regulation E through the Federal Reserve Board, requires ATM operators to provide a fee notice on the external facing of the ATM and the ATM screen.

## Lawsuits: A New Cottage Industry

Filing federal lawsuits against ATM owners over non-disclosure of fee notices has given birth to a nationwide cottage industry, according to the *Detroit Free Press*.

It has been reported that a retired couple from Michigan, Nancy Kinder and Ray Harrison, has filed 36 lawsuits in federal courts. In these lawsuits they are alleging that financial institutions are violating the Electronic Fund Transfer Act and Regulation E by not posting notices on ATMs, alerting customers about surcharge fees.

And, they are winning these lawsuits. In April, Independent Bank of Ionia, Mich., settled a lawsuit for \$350,000 involving more than 40 ATMs deployed throughout the state. Court records also show that JPMorgan Chase settled a similar lawsuit in 2009 in Wisconsin for \$2.1 million, according to *ATMarketplace*.

"In almost all instances, the pleadings are almost identical and the plaintiffs' lawyers have moved for a class action status," said Jack Milford Ford, a Portland, Ore.-based attorney that specializes in ATM law. The basic allegation in most all lawsuits are that the ATM operator did not post the required sticker before the plaintiff did a balance inquiry or withdrew cash and a transaction fee was subsequently imposed.

"Furthermore, plaintiffs allege that defendants continuously charged and collected a transaction fee against thousands of users of the ATM that are not the result of a bona fide error by the ATM operator," Ford continues.

The Electronic Fund Transfer Act statute of limitations is one year from the date of the violation.

**“Over the past two years, federal lawsuits have been filed in 16 states against banks and credit unions for violating the Electronics Transfer Act and Regulation E for not displaying ATM surcharge-fee notices.”**

Vance Rowland  
President, GetBranded.com

## Steps to Protect Your Financial Institution

In the event that the fee notice sticker deteriorates and falls off or is removed by a customer, and you find yourself involved in a lawsuit taking the suggested steps outlined below will help you to demonstrate that you are following the law and that it was not an intentional omission.

### 1. Switch to an All-In-One Topper with Fee Notices Built In.

All-in-one toppers do not deteriorate or fall off, and can't easily be removed by consumers unlike stickers. Affordable toppers and ATM branding are also a great way to attract more customers and encourage use of the ATM, which will increase your ATM fee income. Studies show that branding of an off-premise ATM by financial institutions can increase usage by as much as 40 percent.

### 2. Address Signage Requirements in your Policies & Procedures.

Make sure that your implementation, service call and cash drop checklists includes instructions for checking that the sticker is in place.



### 3. Purchase Quality Stickers.

In the event that you are sued, by being able to show that you have purchased quality stickers with a strong adhesive, the better your chances of beating it.

### 4. Document that Stickers have been Affixed during Installation.

During the installation process, take a date-stamped photo of the sticker being placed on the machine and file it away. Also make sure to take photos if you move the ATM to a different location.

### 5. Conduct Periodic Reviews of your ATMs.

Check your ATMs on a regular basis to make sure that the sticker is in good shape and take date-stamped photos of each terminal during your regular reviews. A great time to do this is during service calls or when a cash drop is made.

### 6. Supply Your Technicians with Extra Stickers.

Supply your technicians with extra fee notice stickers so that they can quickly and easily replace stickers that are in bad shape or may have been removed. Make sure to document that the sticker has been removed by taking photos of the sticker residue left behind and that it has been replaced.

### 7. Check Your Contract.

If you are under contract with an Independent ATM deployer (IAD), review your contract. Find out what your responsibilities are in terms of posting fee disclosure notices or reviewing that the notice is in place on a regular basis.

**“All-in-one toppers are a great solution for financial institutions. They do not deteriorate or fall off, and can't easily be removed like stickers. Plus affordable toppers and ATM branding are also a great way to attract more customers and increase usage of the ATM.”**

**ABOUT GETBRANDED:** GetBranded.com specializes in custom-designed ATM branding solutions for financial institutions, retailers and independent ATM deployers. To help ATM owners differentiate their ATMs and increase transaction volume, Get Branded provides ATM wraps, signage, fee and network notices, and custom screens for all off-premise model ATMs. Visit us online at [www.GetBranded.com](http://www.GetBranded.com) or call 1-800-503-0314 to learn more.

*This information is being provided as a guide only. Financial Institutions should consult with their legal counsel on how to best comply with the Electronic Fund Transfer Act and Regulation E.*

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