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The Honorable Terryl Brown Clemons
Acting Counsel to the Governor
Executive Chamber
State Capitol
Albany, NY 12224

RE: S-632-A (Marcellino)/A. 319-A (Pheffer) AN ACT to amend the general business law, in relation to prohibiting the charging of fees at automated teller machines when transactions are denied

Dear Ms. Brown Clemons:

The New York Bankers Association **opposes** this legislation that would prohibit automated teller machine (ATM) operators, including banks, from charging fees when transactions are denied or terminated. The legislation is overly broad, could prohibit banks from charging fees that are elsewhere authorized by law, and would not apply to national banks or federally chartered thrift institutions which operate most of the bank-owned ATMs in the State of New York. We urge that this bill be **disapproved**. Our Association is comprised of the community, regional and money center commercial and savings banks doing business in New York State, whose aggregate assets exceed \$9 trillion and which have more than 300,000 New York employees.

This legislation would prohibit ATM operators from charging fees for transactions which are not completed, either because the transaction is denied or the transaction is abandoned or terminated. Currently, both federal and State law require banks to ask non-customers if they are willing to pay an ATM surcharge when they use an ATM machine belonging to a bank that does not hold their account. If the customer chooses to discontinue the transaction, no fee may be charged. This legislation is therefore unnecessary with regard to ATM surcharges.

With regard to fees by a customer's own bank, this legislation would preclude ATM machines from imposing a fee when a customer attempts to make a withdrawal that would overdraw the customer's account as well as a withdrawal

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that would exceed an ATM machine's daily withdrawal limit. The legislation is so broadly drafted that it could prohibit the imposition of legitimate insufficient funds fees even though New York Banking Law section 108(8) specifically recognizes the legitimacy of banks charging such fees when customers overdraw their accounts. We oppose this legislation because it is too broadly drafted and because it would limit fees that are authorized elsewhere in statute.

In addition, under federal law and regulations and a host of federal court decisions, up to and including unanimous decisions by the United States Supreme Court, national banks, in connection with customer accounts, are free to charge any fees appropriately calculated and disclosed. (See 12 CFR section 7.4002.) Under traditional preemption analysis, therefore, this legislation would not apply to national banks or federally chartered thrift institutions. Currently, seven of the ten largest banks in the State are federally chartered. In aggregate, they operate significantly more ATMs than State-chartered banks and thrifts. As a result, this legislation would place State-chartered banks and thrifts at a pricing disadvantage with regard to federally chartered institutions.

This legislation is also contrary to the stated policy of the State of New York Banking Law. Chapter 322 of the Laws of 2007, extending and amending the State's "wild card" law, stated that "The legislature finds and declares that the rapid expansion of federal banking powers requires a means to ensure parity...between [State and federal banks and thrifts] in order to preserve and enhance the powers of state chartered banking institutions and preserve the relevance of the state banking charter as a charter under which any banking institution may conduct banking activities. It is the intention of the legislature that this act be construed in such a manner as to ensure state chartered banking institutions may exercise the same rights and powers and engage in the same activities as their respective federally chartered counterparts, on substantially the same terms and conditions as such federally chartered banking institutions." This legislation, by restricting the ability of State-chartered banks and thrifts to charge certain ATM fees, is contrary to this State policy.

For these reasons, the New York Bankers Association **opposes** this legislation and urges that it be **disapproved**.

Sincerely,



Michael P. Smith