

CITY COUNCIL
CITY OF NEW YORK

----- X

TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON CONSUMER AFFAIRS

----- X

January 12, 2017
Start: 10:10 a.m.
Recess: 11:57 a.m.

HELD AT: 250 Broadway - Committee Room
16th Fl

B E F O R E: RAFAEL L. ESPINAL, JR.
Chairperson

COUNCIL MEMBERS: Vincent J. Gentile
Julissa Ferreras-Copeland
Karen Koslowitz
Rory L. Lancman

A P P E A R A N C E S (CONTINUED)

James Hearst, Director of Enforcement
NYC Department of Consumer Affairs

Casey Adams, Director of City Legislative Affairs
NYC Department of Consumer Affairs

Mary Cooley, Assistant Commissioner
NYC Department of Consumer Affairs

Alba Pico, First Deputy Commissioner
NYC Department of Consumer Affairs

Abe Ayesh, Chief Executive Officer
ATM World

George Sarantopoulos, CEO and Founder
Access One

Mike Keller, Co-Chair
Government Relations Council
ATM Industry Association, ATMI
Special Counsel to Cardtronics

Jim Shrayef, Northeast ATM Association
Everything ATM, Dumbo, Brooklyn

Bruce Renard, Executive Director
National ATM Council

Robert Wilkenshaft (sp?)

Robert Toitman
Access One ATM

2 [sound check, pause] [gavel]

3 CHAIRPERSON ESPINAL: Good morning. My
4 name is Rafael Espinal. I'm the Chair of the
5 Consumer Affairs Committee. Today the committee will
6 hold a hearing on Intro 1406, a Local Law that would
7 require the implementation of certain security
8 measures at non-bank ATMs. The committee will also
9 hold a vote on Intro 1061, a Local Law to amend to
10 the Administrative Code of the city of New York in
11 relation to the sale of plants, and flowers during
12 the Asian Lunar New Year. Automated televisions,
13 ATMs, allow customer-consumers convenient access to
14 their cash. Most bank branches maintain an ATM
15 vestibule that is available for use at any time.
16 Regulated by state and federal law, these bank-owned
17 ATMs are safe, well lit, and continuously monitored.
18 The wide distribution of non-bank ATMs beyond bank
19 branch locations has further facilitated consumer
20 access to their money. This is particularly true in
21 low-low-income communities where there are few bank
22 branches available. Unfortunately, the regulations
23 that apply to bank ATMs do not cover non-bank ATMs in
24 our city. Non-bank ATMs are those commonly found at
25 corner stores, gas stations, smoke shops, delis,

2 hospitals, restaurants, and convenience stores across
3 the city. And I have to admit I uses those probably
4 90% of the time. They are estimated to compromise of
5 50% of the ATM market nationwide. Security is not a
6 mandated factor in the placement of non-bank ATMs and
7 consequently they are often vulnerable to tampering
8 and fraud. ATMs have become major targets of
9 identity theft and fraud particularly in the form of
10 skimming. ATM skimming usually involves the
11 placement of an illicit card-reading device over or
12 even into the ATM's legitimate card swipe mechanisms.
13 These card-reading devices, card-reading devices scan
14 the magnetic strip on the consumer's debit or credit
15 card. Additionally, thieves may place a small visual
16 (sic) detect camera to record the unsuspecting victim
17 and change their PIN number. FICO, which monitors
18 hundreds of thousands of ATMs in the US reported that
19 in the 2015, the number of ATMs compromised by
20 criminals rose by 546%. The company also noted that
21 60% of the targeted machines were non-bank ATMs. The
22 NYPD has long put out flyers warning consumers to the
23 dangers of ATM skimming including according to news
24 reports placing them among ATMS in some neighborhoods
25 in Queens. In the 115 precincts, the number of

2 skimming incidents quadrupled in 2015. The Police
3 Department has been posting signs on ATMs
4 particularly in non-bank locations warning of the
5 dangers of skimming and advising consumers to yank on
6 the card readers before using them. This past
7 November, police used video-video surveillance
8 footage to identify individuals suspected of placing
9 ATM skimming devices on ATMs at four hospitals across
10 the city. During the same month police and media
11 circulated video surveillance of four young adults
12 who had placed a skimming device on an ATM in an
13 Upper East Side deli. Luckily, these non-bank ATMs
14 were under the surveillance of security camera
15 cameras, and the bad actors were caught on tape. In
16 the best case scenario, consumers usually get most of
17 their money back. Federal law caps a debit card
18 holder's liability at \$50 if the losses are
19 discovered and reported within two days. However,
20 debit card fraudsters may clean out the victim's
21 checking account. Consumers who are victims of debit
22 card fraud must wait until the financial institution
23 concludes its investigation to receive reimbursement.
24 This may take as long as 10 days. In the meantime,
25 bills are due and consumers suffer financial

2 hardship. If the losses are not discovered quickly,
3 the consumer's liability rises potentially increasing
4 their financial harm. Intro 1406 will require
5 security measures similar to those that apply for
6 banks to non-bank ATMs. These include adequate
7 lighting, surveillance cameras, and regular
8 inspection of the non-bank ATM. The bill requires
9 that the distributor, the person who owns or leases
10 the non-bank ATM and the merchants, the owner who
11 lessee of the establishment where the non-bank ATM is
12 located enter into an agreement regarding placement
13 of the ATM in accordance with these security
14 measures. The expectation is that these practical
15 measures will reduce consumer vulnerability to ATM
16 fraud. Additionally, the committee will hold a vote
17 on Intro 1061. Asian Lunar New Year is an important
18 cultural tradition for many New York City residents.
19 Celebration of new year involves the sale of
20 particular flowers and plants. Under current city
21 law, only persons licensed as general vendors may
22 sell plants and flowers on the streets. Intro 1061
23 by Council Member Chin will create one week of
24 exemption to the General Vendor Laws to allow any
25 persons to sell plants or flowers on the day of the

2 Asian Lunar New York, and for seven days prior
3 without first obtaining a license. This year, Asian
4 Lunar New Year falls on January 28th, right around
5 the corner, and the committee is happy to vote this
6 bill out in time for the festivities. I would like
7 to invite Council Member Chin to say a few words on
8 her bill.

9 COUNCIL MEMBER CHIN: Thank you, Chair.
10 Good morning. I am Council Member Margaret Chin. I
11 represent Council District 1 in Lower Manhattan,
12 which includes only Tribeca and Chinatown. Today, we
13 will vote on Intro 1061, legislation that will allow
14 individuals to sell flowers for seven days prior to
15 the Asian-Asiana Lunar New York and on the day
16 itself, without having to go through the impossible
17 process of securing a general vending license. I
18 want to thank the Chair of the Committee on Consumer
19 Affairs, Council Member Rafael Espinal for bringing
20 this bill to a vote. Flowers are important symbols
21 for many cultures for the Lunar New York. For many
22 Asian cultures the blooming of flowers symbolize a
23 new start to the new year bringing good luck and good
24 fortune to friends and family. In many districts
25 with large Asian and Asian-American residents

2 including Chinatown in my Council District, people
3 provide service to the community by selling to
4 traditional flowers during the Lunar New Year often
5 times at a very affordable price. Unfortunately,
6 this packet is illegal for anyone without a general
7 vending license including those with a food vendor
8 license, and sometimes enforcement agents would
9 arrest these food vendors taking them away from their
10 families during one of the most important cultural
11 holidays of the year. Intro 1061 will allow
12 individuals to sell plants and flowers on the day of,
13 and seven days prior to the Asian Lunar New Year. We
14 hope this bill will give the vendors some reprieve
15 and ensure that enforcement is sensitive to the needs
16 of this cultural holiday and that it's celebrated by
17 a growing number of Asian-American New Yorkers. Once
18 again, I want to thank our Chair Espinal for his
19 support of this bill. I also want to thank Committee
20 Counsel Lavoni Wyman (sic) and Rob Newman for all the
21 work they put into this bill, and I ask my fellow
22 council members on this committee to vote for Intro
23 1061. Thank you very much, and I wish everyone a
24 happy Lunar New Year, and full of good luck and

2 fortune, and make sure you buy some flowers.

3 [laughter] Thank you.

4 CHAIRPERSON ESPINAL: Thank you, Council
5 Member Margaret Chin. I'm wishing you a great
6 holiday and to your constituents as well. We're
7 going to vote this bill out at some point during the
8 hearing. Oh, we have a bill—a bill to announce.
9 Okay. So we're going to vote it now. We actually
10 have a quorum. We are joined by Council Member Rory
11 Lancman from Queens and Council Member Karen
12 Koslowitz from Queens. So will you please call the
13 roll.

14 CLERK: William Martin, Committee Clerk.
15 Roll call vote Committee on Consumer Affairs,
16 Introduction 1061. Chair Espinal.

17 CHAIRPERSON ESPINAL: I vote aye.

18 CLERK: Koslowitz.

19 COUNCIL MEMBER KOSLOWITZ: I vote aye.

20 CLERK: Lancman.

21 COUNCIL MEMBER LANCMAN: Aye.

22 CLERK: Aye.

23 CLERK: By a vote of 3 in the
24 affirmative, 0 in the negative, and no abstentions,
25 the item has been adopted by the committee.

2 CHAIRPERSON ESPINAL: Thank you. Can we
3 leave the roll open for another 15 minutes. Council
4 Member and colleagues just to vote. Thank you, thank
5 you, thank you. Thank you, now—now back to the non-
6 bank ATMs. I would like to invite up the first
7 panel, which his the Administration. We have James
8 Hearst, Director of Enforcement; Casey Adams.
9 They're all from DCA, but Casey Adams, the Director
10 of City Legislative Affairs. We have Mary Cooley
11 from—the Assistant Commissioner of DCA; Alba Pico,
12 First Deputy Commissioner of DCA. Will you please
13 raise you right hands so we can administer the oath.
14 Do you affirm to tell the truth, the whole truth, and
15 nothing but the truth in your testimony before this
16 committee, and to respond honestly to Council
17 Members' questions?

18 PANEL MEMBERS: [off mic] Yes.

19 CHAIRPERSON ESPINAL: You may begin.

20 JAMES HEARST: Good morning. My name is
21 James Hearst, and I am the Director of Enforcement in
22 the New York City Department of Consumer Affairs.
23 I'm joined today by my colleagues Alba Pico, Mary
24 Cooley and Casey Adams. I would like to thank the
25 Committee for the opportunity to testify on

2 Introduction 1406, which would mandate certain
3 security measures and other practices for owners and
4 operators of ATMs that are not affiliated with
5 banking institutions. DCA shares the Council's goal
6 of making non-ATMs safer, and more secure as well as
7 improving the options available for low-income New
8 Yorkers to access their hard earned assets. We look
9 forward to discussing the best way to achieve these
10 goals with the committee. DCA's new mission is to
11 protect and enhance the daily economic lives of New
12 Yorkers to create thriving communities. We serve New
13 York City's consumers, businesses, and working
14 families enforcing laws and providing services that
15 address the need of New Yorkers from their wallets to
16 their work places. DCA also operates the Office of
17 Financial Empowerment, the first local government
18 initiative in the country with a mission to educate
19 empower and protect New Yorkers and neighborhoods
20 with low incomes so they can build assets, and make
21 the most of their financial resources. OFE conducts
22 research to better understand the issues facing low-
23 income New Yorkers, and potential barriers to
24 accessing safe and affordable financial services.
25 Since they first appeared in 1996, non-bank ATMs have

2 become a common sight in New York City's corner
3 bodegas, bars and restaurants. Indeed, many of the
4 types of businesses that host ATMs like bodegas and
5 gas stations, are already regulated and inspected by
6 DCA. New Yorkers rely on these machines for fast
7 access to their cash and are willing to pay a premium
8 in the form of out-of-network fees for the service.
9 However, the fees associated with this convenience
10 may be more burdensome to lower-income New Yorkers
11 who also tend to have fewer options for accessing
12 their money. In a recent study, DCA found that there
13 are currently 360,000 households in New York City who
14 do not have access to a bank or credit union account.
15 Moreover, there are an additional 780,000 households
16 who are under-banked meaning they have a bank account
17 but continue to use check cashers, non-bank money
18 orders and prepaid cards. For many unbanked New
19 Yorkers like those with only pre-paid or payroll card
20 and under-banked New Yorkers, access to cash is
21 extremely important. Many of these New Yorkers must
22 rely on the type of non-bank ATMs, this bill
23 addresses. Most banks allow customers to access
24 their cash at affiliated ATMs without added fees.
25 Under current law, ATMs owned or operated by

2 financial institutions must provide security measures
3 similar to those that would be required for non-ATMs
4 by Intro 1406. For example, bank ATMs must be
5 monitored by security cameras and be adequately lit
6 for consumers during both daytime and night time
7 hours. Because these are not—these—because there are
8 no similar requirements for non-bank ATMs, unbanked
9 or underbanked consumers face a situation where they
10 may be charged more than a banked individual to use
11 an ATM that is less safe and secure. In addition,
12 the variety and decentralization of non-date—non-bank
13 ATM deployment, may make them particularly attractive
14 targets for those who seek to steal personal and
15 banking information using skimmer devices. These
16 devices, which vary widely in terms of physical
17 appearance, technical sophistication and ease of
18 identification, are attached to ATMs in order to
19 harvest sensitive information from unsuspecting
20 consumers. Some of these devices can be identified
21 simply by jiggling the card receiver slot to see if
22 any foreign objects are attached, while other are so
23 well concealed that only an expert would be able to
24 spot them. In a recent report, FICO found that the
25 number of ATMs compromised by criminals rose

2 dramatically in 2015, and that non-bank ATMs were the
3 main targets. Intro 1406 would combat this problem
4 by putting the burden of regularly inspecting ATMs
5 and reporting any suspicious devices on the merchants
6 who host the machines, and the distributors who
7 provide them. DCA supports the intent of the Intro
8 1406, which is to make non-bank ATMs safer and more
9 secure, and protect consumers from skimming and
10 identity theft. At this time, the Law Department is
11 still conducting its review of the bill, and all
12 relevant legal issues. We look forward to discussing
13 the specifics of how this legislation would operate,
14 the type of inspection and enforcement actions DCA
15 could take, and how the requirements of Intro 1406
16 would interact with existing state and local laws.
17 We also seek to continue the conversation about how
18 DCA and the Council can work together to expand the
19 options available to low-income New Yorkers who want
20 to improve their financial health, and plan for
21 successful futures. My colleagues and I will be
22 happy to answer any question you may have.

23 CHAIRPERSON ESPINAL: [pause] Thank you
24 for your testimony. So I—I don't it was made clear
25 in your testimony. So are you supportive of the

2 bill? Do you think it's a good idea? Do you think
3 it's something we should move forward with? You
4 know, do you have any issues that you think we'll see
5 in the foreseeable future?

6 JAMES HEARST: We support the—the intent
7 of Intro 1406, and as I mentioned in the testimony,
8 the bill is still being reviewed.

9 CHAIRPERSON ESPINAL: Okay, does the—does
10 the Administration have figures for reported or
11 certain cases of ATM skimming in the city?

12 JAMES HEARST: The Police Department has
13 provided some information that I can share with you
14 today. The New York Police Department's Financial
15 Crimes Task Force has reported that they've seen an
16 increase in the number of ATM skimmers recovered
17 citywide. In 2016, the department recovered 75
18 skimming devices, and in 2015, they recovered 47.
19 While the majority of skimming devices are affixed to
20 ATMs, this data—data also includes skimming devices
21 affixed to other card readers.

22 CHAIRPERSON ESPINAL: Now, we—we've seen
23 incidents where the perpetrators have been caught on
24 camera. Do we have statistics on how many arrests
25 were made?

2 JAMES HEARST: Well, we—we don't have
3 specific statistics on the number of arrests, but we
4 can provide that information working with the New
5 Yorkers Police Department as it involves looking at
6 the arrests related to larceny, and—and look—and
7 digging deep into—doing a deeper dive into the data
8 on the various crimes that might comprise ATM fraud.

9 CHAIRPERSON ESPINAL: So—so the
10 administration would agree that non-bank ATMs have—
11 are—are more vulnerable than banking—banking ATMs to—
12 to fraud or tampering? Where they are--

13 JAMES HEARST: [interposing] Yes.

14 CHAIRPERSON ESPINAL: --certainly less
15 safe than using those ATMs than they are using bank's
16 ATM.

17 JAMES HEARST: There are certainly fewer
18 security features in place on non-bank ATMs than
19 there are on bank ATMs. Bank ATMs are regulated by
20 the state. There are a number of security features
21 that are required under state regulations, and FICO
22 has identified an increase in the—in the incidents
23 of—of skimming activity. The rate at which non-ATM—
24 non-bank ATMs are targeted has increased from
25 approximately 40% to 60% between 2014 and 2015.

2 CHAIRPERSON ESPINAL: I-I know in the
3 past this issue was-was-was raise by the Council. I
4 believe there was a bill requiring these ATMs to be
5 registered. Could you speak onto why you-you don't
6 think that was a-that was a good idea, and why that
7 wouldn't work?

8 JAMES HEARST: Well, that was a-a
9 different bill at the time. It required registration
10 and decals, and I think the-at the time the
11 department had a concern that the decals would be
12 ineffective, and they would leave the impression that
13 that particular non-bank ATM was safe, and I don't
14 believe at the time that bill included all of the
15 safety and security features that this bill includes.

16 CHAIRPERSON ESPINAL: So it didn't have
17 the security features this includes? So this bill
18 pretty much just-just matches state law to how banks
19 are required to monitor their ATMs? So it's-it's
20 requiring the same amount of-of protection and the
21 same amount of surveillance on the street ATMs and
22 non-bank ATMs as current-currently banks do. Do you
23 agree that we should have the same level of
24 protection on both-on both sides-on both ends?

2 JAMES HEARST: It includes the
3 requirement to include—have the cameras installed and
4 the lighting requirements, and we believe that that—
5 the intent of that is—is appropriate and having the
6 similar requirements is good.

7 CHAIRPERSON ESPINAL: I guess my only
8 concern personally is the burden this might put on
9 the small business. Will be able to give us an
10 estimate on how much this will cost a deli or—or any
11 other sort of business? Do you just put up—put up an
12 extra camera or maybe some extra lighting?

13 JAMES HEARST: I don't have that
14 information right now, but we can do research and get
15 back to you on that in the future. [background
16 comments, pause]

17 CASEY ADAMS: I should say we do have
18 some ballpark estimates just from cursory research,
19 but there are members of the industry here today who
20 may be able to give more specific information of the
21 cost of cameras, the cost of lighting. It's just
22 that, you know, the depth and the—the requirement of
23 the security features is not something we're ending
24 the relation right away. (sic) [pause]

2 CHAIRPERSON ESPINAL: I guess so my
3 question is how—how would DCA enforce this bill? So
4 you're going around from business to business. Like
5 what would be DCA's job? What—what is it that you
6 will be looking for when you walk into an
7 establishment?

8 JAMES HEARST: Well, non-bank ATMs are
9 not currently required to be registered, and so we
10 don't know all the exact locations of non-bank ATMs
11 within the city. However, we do know, anecdotally
12 that many of these non-bank ATMs are in bodegas, and
13 in grocery stores, and at gas stations, and other
14 locations that the Department of Consumer Affairs
15 routinely inspects. So we will inspect say our
16 retail dealers and gas stations on average once per
17 year, and we would need to take a close look at what
18 the requirements would be in terms of recordkeeping
19 for this, and what would be involved with the
20 inspection. But we see incorporating the inspection
21 in non-bank—non-bank ATMs into those regular
22 inspections of those locations. Now, there are a
23 number of non-bank ATMs that are not part—that are in
24 businesses that we don't routinely inspect. For

2 example restaurants and bars, and we would not be
3 entering those locations.

4 CHAIRPERSON ESPINAL: Okay, so the answer
5 is part of my questions. I—I guess with, you know,
6 with DCA let's say you have one of your inspectors go
7 and traveling around a particular neighborhood, and
8 you see an ATM out in the street where they're
9 frankly gong to come out to their vehicle and—and
10 approach that ATM and see whether the ATM has the
11 certain—certain security measures in place?

12 JAMES HEARST: I think the majority of
13 these non-bank ATMs are found inside the businesses
14 themselves. So they would be identified during the
15 inspection. While we're inside the bodega, we would
16 notice that there's a non-bank ATM, and then be able
17 to identify whether the lighting in the camera is
18 located. But, of course, we need to take a close
19 look at the—at the law, and identify what the
20 inspection requirements are, and make a determination
21 about how we would incorporate it into our regular
22 inspection practices.

23 CHAIRPERSON ESPINAL: You know, there—
24 there—a lot of them are inside businesses, but there
25 are lot that are outside. You know, just last night

2 I used one that was outside a business, and there
3 wasn't no camera, right. So the--the ATM did have
4 certain--a certain lighting component to it, but
5 besides that, no one can actually monitor what's
6 going on with the machine. You know, I myself
7 jiggled the--the card swipe reader to make sure that
8 it wasn't, you know, compromised. So, I guess my--
9 again my question is will DCA, will your inspectors
10 be able to--well, if they're driving down a particular
11 neighborhood and pull out there--come out of their
12 vehicle once they see an ATM, and just check for
13 security features that we're requiring on this bill.

14 DEPUTY COMMISSIONER PICO: I mean most of
15 our inspectors are now by car, and most of our
16 inspectors are by foot, and--and they--they walk and
17 they use transportation, public transportation, but
18 they do go to many businesses that they're going to
19 set it on site, and--and of they're require any that
20 they have to inspect, then we would add that to their
21 inspection requirements.

22 CHAIRPERSON ESPINAL: [pause] I guess
23 one--one idea we had was that when DCA goes into a--a
24 business in general or sees an ATM, whoever the owner
25 of the ATM is, they would have some sort of like I

2 guess placement agreement, and they would be able to—
3 DCA would respect that agreement and make sure that
4 all the security measures are in place, and that—that
5 the merchant himself is taking care of this machine.
6 Do you think that's something that would—that could
7 work for the agency?

8 DEPUTY COMMISSIONER PICO: It would. It
9 adds time to the inspection, of course, because we
10 have to go in more than just, you know, the ATM. It
11 does add time, and so I just want to make sure that
12 you know that. Also, when you spoke about the
13 lighting we're going to need the special lighting,
14 you know, like vices that measures the—the lighting,
15 but it's requested. And we also have our legal
16 office that, you know, our counsel's office that
17 subpoenas records. So we have to look at the records
18 that may have to be kept based on the rules that get
19 promulgated they will be doing that also.

20 CHAIRPERSON ESPINAL: Yeah, I—I
21 understand this adds timing, and maybe some cost to
22 buy some gadgets, but then, you know, I think we
23 should worry more about the—the—the interest of the
24 public to make sure that they feel comfortable, you
25 know, using these machines when they—when they—when

2 they do decide to put their debit card into them,
3 right? You know, I—I feel like a lot of people are
4 losing their money especially in low-income
5 communities where we don't find banks on every
6 corner. You know, their—they have no other choice
7 but to use these machines. So, I want to make sure
8 at the end of the day that they feel comfortable
9 putting their credit card or their debit information
10 into the machines, and know that they're not going to
11 lose their money or become victors—victims of fraud.

12 CHAIRPERSON ESPINAL: I know, Council
13 Member Koslowitz has a few questions she wants to
14 ask.

15 COUNCIL MEMBER KOSLOWITZ: Thank you, Mr.
16 Chair. [coughs] So I understand you don't have a
17 number of how many of these machines are out there.

18 JAMES HEARST: No.

19 COUNCIL MEMBER KOSLOWITZ: So, there's
20 no—nobody watches these machines at all? They're on
21 their own?

22 JAMES HEARST: So non-bank ATMs are not
23 required to be registered by the City of New York or
24 by the state or federal regulations. We—we can make
25 an estimate about the number based on looking at the

2 number of non-bank ATMs in Westchester County. They
3 are required to be registered in Westchester County.
4 They have approximately 500, and if we apply the same
5 ratio of non-bank ATMs to residents, then we can
6 estimate that we might have approximately 5,000 non-
7 bank ATMs in the city of New York. Because there
8 potentially are a higher density of commercial
9 activity in New York City, there may be—it may be a
10 low estimate, and we know that are approximately
11 nearly 8,000 licensed cigarette dealers, and many of
12 them have non-bank ATMs that may be associated with
13 their—their place of business. So again, we have
14 approximate numbers, but in terms of regulations,
15 there are—there are not many specific safety
16 regulations for non-bank ATMs. There's an agreement
17 between the merchant and the distributor.

18 COUNCIL MEMBER KOSLOWITZ: Okay, because
19 certainly I would not want to hurt, you know, small
20 business in any way. What about the ATMs on banks
21 that are outside? There's—in my community there are
22 many that you can just walk over. I don't do it, but
23 you can—on the outside you can go in and get money,
24 and just go on your merry way. Who regulates that?

2 JAMES HEARST: That's regulated by the-by
3 the Department of Financial Services from New York
4 State, and they conduct routine inspections of bank
5 ATMs, and they have very specific regulations in
6 terms of the safety requirements for both in-door and
7 outdoor bank ATMs.

8 COUNCIL MEMBER KOSLOWITZ: Well, I bank
9 at Citibank, and I've been banking at Citibank for 15
10 years, and this year my card was compromised by going
11 to the ATM. So, you know, they have devices also in
12 the bank because I'm not the only one that it
13 happened to. What-what was good about it is that
14 they called me almost immediately. Like it happened
15 on a Friday night, and Saturday morning early in the
16 morning they called to tell me that my card was
17 compromised. But in the meantime, whoever
18 compromised my card, did it the whole, you know-they
19 charged quite a bit of money. So, you know, I guess
20 it happens all over and the bank-and in this case the
21 bank is lit up to-you know to a degree. I don't
22 think they can put another light bulb in there. So,
23 you know, I just don't want the small businesses
24 being hurt by, you know, having to do so much. I
25 mean there has to be-people have to be safe. They

2 have to feel safe going in there and taking out money
3 but, you know, I think we have to have some kind of
4 happy medium here.

5 CASEY ADAMS: Yeah, I mean we—we don't
6 actually know the—the cost to city, and we don't know
7 that it would be incredibly astronomical. I mean
8 some of these businesses may already have security
9 cameras, and they may already have lighting in their
10 establishments, but again it vary business by
11 business, and I—I don't—I don't think we would think
12 that it would be an extremely high cost, but again we
13 don't have a part—we don't specific information--

14 COUNCIL MEMBER KOSLOWITZ: [interposing]
15 Okay, but what I think we have to do is find out
16 exactly if we're going to [coughs] do a law and find
17 out how many machines are out there, you know, that
18 are going to be affected by this and, of course, the
19 cost of what it will cost people. We have to have
20 more information about, you know, about this, and how
21 many people's lives will be affected by this. You
22 know, the people that own the machines and, you know,
23 all that. So I think we have to find out a little
24 more before we do anything, or decide anything.
25 Thank you.

2 CHAIRPERSON ESPINAL: Thank you. So you
3 mentioned earlier there has been a significant
4 increase in the amount of ATM skimming incidents in
5 the city, right? Last year the NYPD reported 47.
6 This year it jumped up with—well last—well sorry.
7 2015 and it's '17 now. In 2015, it was 47. In 2016
8 that's 75, right? Do we know what kind of outreach
9 the NYPD is doing with communities to warn them of
10 the—of the—of the—the dangers of using some of these
11 machines?

12 JAMES HEARST: Yes, NYPD has reported to
13 us that the Community Affairs Bureau provides tips to
14 the public about protecting themselves from skimming
15 devices and fraud on their website, and this info is
16 distributed at community precincts and Council
17 meetings. We have samples of those tips here today.
18 I should also note that our own External Affairs
19 Division, Department of Consumer Affairs has produced
20 a consumer beware. We'll show you an example. Ten
21 tips on what to look out for in terms of fraud, and
22 one of those tips regards skimming devices.

23 CASEY ADAMS: Yeah, I should also note
24 that, you know, that DCA produces tips on identity
25 theft in general, and we distribute those widely year

2 round at types of events including Shrayef, which is
3 our annual event to-to help people shed their
4 personal documents to prevent-to prevent identity
5 theft. And so obviously we incorporate identity
6 theft, tips about ATM skimmers and a lot of our tips
7 right now, and we'd be happy to work with the Council
8 on your ideas on how we can increase the word and
9 spread the word about how-how can consumers can be
10 alert for whatever dangers.

11 CHAIRPERSON ESPINAL: So I will put this
12 hearing on pause. I know we've been joined by
13 Council Member Julissa Ferreras and Vinny Gentile,
14 and I also want to go back-I want to go back to roll
15 and vote out--engaging sic)in our bill. (sic)

16 CLERK: Introduction 1061, Council Member
17 Ferreras-Copeland.

18 COUNCIL MEMBER FERRERAS-COPELAND: I vote
19 aye.

20 COUNCIL MEMBER GENTILE: I vote aye.

21 CLERK: The final vote on this item is
22 now 5 in the affirmative, 0 in the negative and no
23 abstentions. Thank you.

24

25

2 CHAIRPERSON ESPINAL: Thank you. We'll
3 close the roll and get back to ATMs. Julissa, you
4 have a few questions?

5 COUNCIL MEMBER FERRERAS-COPELAND: Thank
6 you, Chair and thank you for holding this committee
7 meeting. I represent Council District 21 in Corona,
8 Queens, the Corona, Jackson Heights, Elmhurst and
9 Elmhurst, and I feel like every other month we're
10 working with a local precinct about a news city of
11 skimming. So I get very much the intention of this
12 bill, and the importance of this bill. So my
13 question is about privacy in areas where there may be
14 a clinics. You know, we have paper protections. Why
15 did this—why didn't—why didn't—why wouldn't portend
16 to be triggering an issues if there's security or an
17 observation? I understand. So I'm kind of debating
18 against myself because I understand why it's needed
19 but, you know, are there any privacy concerns that
20 have come up, and if—and if they've been addressed
21 can you tell me how? You know, from clinics—from,
22 let's say as someone who's getting a particular
23 service that they want to keep private, and/or just
24 something as simple as a hair salon. Not everybody
25 wants to see themselves pre-product, right or like,

2 you know, right? So like the ATM at my hair salon is
3 way in the back past the stations where women are
4 doing all types of stuff and pulling all types of
5 hair. So, can you walk me through the privacy
6 concerns perhaps?

7 CASEY ADAMS: Yes, I mean I would say
8 we'd have to consult with the Law Department. I mean
9 in a lot of these establishments there may already be
10 security cameras. We're not immediately familiar
11 with the security, and—and the privacy rules which
12 you're referencing for those cameras. So I think
13 your concern is very valid. I think we would just
14 have to take a look at the current landscape, and
15 what this—what this would lay on.

16 COUNCIL MEMBER JULISSA-FERRERAS:
17 [interposing] And perhaps it's also creating a rule
18 that maybe ATMs need to be placed away from certain—
19 so if it's by the entrance and people are walking in
20 and out, you don't know where they're going or what's
21 happening as opposed to having it in the back or by
22 the doctor's desk or in a specific clinic.

23 JAMES HEARST: Okay, I just want to add
24 that the law requires that the cameras are directed
25 at the machine. So it's—it's only looking at a

2 certain area of these merchants' locations, and in
3 addition, it requires that the cameras are not
4 position in such a way that it can record any--

5 COUNCIL MEMBER JULISSA-FERRERAS:

6 [interposing] Right.

7 JAMES HEARST: --of the personal bank
8 information that's being entered by the consumers in
9 the ATM.

10 COUNCIL MEMBER JULISSA-FERRERAS: Right

11 and I get that, but you've testified that in some
12 cases business owners can use existing security
13 camera, and the existing security camera may not have
14 those specific details that you request or require.
15 So, some systems I know that the NYPD is always
16 asking bodega owners can we look at your cameras that
17 have been live recording for an incident that
18 happened across the street, right. Because it's
19 recording. So, if that's the case, would that be
20 asked of a clinic or a health clinic or--I just would
21 like to kind of have more information on that
22 especially we're going to potentially be relying on
23 already existing security cameras in some cases? And
24 then my--my other question was, you know, do you
25 potentially see that fees, you know, when you go--I

2 don't know what the proper term is, but maybe the
3 non-affiliated banking whatever these ATMs are
4 called. I'm sure there's a very proper term that I
5 don't have right now, but you can pay anywhere
6 between \$2.00 to \$5.00. So that we're tagging on
7 this new security measurement or these agreements
8 that have to be established, do you potentially see
9 an increase to the consumer when they go withdraw
10 money because there could be an additional fiscal
11 impact? I love it when there's like no words coming
12 out of your mouth.

13 CASEY ADAMS: No, again--again, we--I mean
14 we don't--we don't know the precise cost that is of
15 what it will take for these businesses to comply.
16 So, we can't say for certain how much it will cost,
17 and that's something probably--probably will be--

18 COUNCIL MEMBER JULISSA-FERRERAS:
19 [interposing] Is there a--is there a--a--what is this
20 term? Is there a cap that can be charged by these
21 private entities on the fee?

22 [background comments, pause]

23 ASSISTANT COMMISSIONER COOLEY: I can
24 tell you I don't think so. Yeah.

2 JAMES HEARST: So-so again, we don't
3 think that the cost of installing these cameras is
4 going to be very high or have a significant impact in
5 terms of changing the nature of these agreements that
6 are entered into between the-the providers of the
7 non-bank ATM machines and the merchants. But again,
8 we can look into that and-and identify if we can
9 obtain data and work with you going forward to
10 identify those costs.

11 COUNCIL MEMBER JULISSA-FERRERAS: That
12 would be great and then just finally the intention of
13 the bill is to-is to protect consumers from either if
14 it's identify theft and-and other crimes. But in most
15 cases I would think at least the ones when I've
16 worked with my local businesses. My local businesses
17 aren't the ones doing the-the scamming right? It's
18 usually someone that comes, walks by and saw the-but
19 this fine, if these rules aren't adhered to would be
20 to the small business?

21 JAMES HEARST: For not complying with the
22 law to install the camera.

23 COUNCIL MEMBER FERRERAS-COPLAND: Right.
24 So it's like we're fining the small business because
25

2 someone else is put—because someone else is
3 committing a crime.

4 JAMES HEARST: No, for not complying with
5 the—the law that's put in place about the security
6 and safety measures they have to put in place to
7 protect consumers and residents of New York City.

8 COUNCIL MEMBER JULISSA-FERRERAS: Okay.

9 JAMES HEARST: And Council Member, I
10 would note that there's a—this bill is modeled I
11 understand on the state law regarding security with
12 bank and ATMs and in cases where financial
13 institutions fail to provide similar security
14 measures those fines are—are directed to those
15 institutions as well. Obviously, the burden may fall
16 differently on a banking institution as opposed to
17 the small business, but--

18 COUNCIL MEMBER JULISSA-FERRERAS:
19 [interposing] Right, a banking institution is
20 probably raking in a lot more money than the local
21 bodega.

22 JAMES HEARST: But this--

23 COUNCIL MEMBER JULISSA-FERRERAS:
24 [interposing] But again, I—I—I totally understand and
25 I—and I want to work with the Chair because I get the

2 intention, and we need to-- These are constituents
3 that we're all trying to protect, but the small
4 businesses are also our constituents. So it's the
5 kind of constant balance that we have to-- So I am
6 concerned about adding additional fines with the best
7 of intentions of this bill what could potentially--
8 And any time we say we don't expect this to be too
9 much, it ends up being a little bit more than zero.

10 CHAIRPERSON ESPINAL: Yeah, I guess--I
11 guess I just want to add, you know, as--as the author
12 of the bill, and the Chair of the committee, I love
13 small businesses, and--and--

14 COUNCIL MEMBER JULISSA-FERRERAS:
15 [interposing] Of course.

16 CHAIRPERSON ESPINAL: --I took the
17 committee hoping to find ways to ease the burden,
18 some of the burden that these small businesses
19 already face, but, you know, the ATMs are income
20 generators for the small businesses as well, and--and
21 we have to find a way we can find that day so we are
22 protecting our consumers, and making sure that the
23 business is providing protections to the--to the
24 consumer as well. So, you know, I will make sure
25 that it's not heavily burdensome. You know, I'm--I'm--

2 I'm only envisioning this to be a law where that
3 would just require for them to install an extra
4 camera, and extra light bulb and, you know, that-that
5 would be it, but, um, just--just requires them to,
6 you know, right now every day come into work and
7 check the ATM to see if whether or not there was a
8 skimming device placed and within that time frame
9 they--they can go back to the cameras and see who
10 placed the--the skimming device. So, I'm hoping to
11 achieve that balance here. I-I have to say I'm a
12 little disappointed with the amount of information
13 I'm receiving from DCA because I wish we had more to
14 talk about and more to say. So I-I think from--does
15 anyone else have any questions? No. No, I guess
16 that's--that's it. Yeah. You guys are free to go.
17 Thank you. [background comments, pause

18 CHAIRPERSON ESPINAL: I'd like to call up
19 the next panel. Okay. Just one second.

20 SERGEANT-AT-ARMS: Everyone quiet down
21 please. Quiet down. We're still in session. Thank
22 you. [background comments, pause]

23 CHAIRPERSON ESPINAL: I would like to
24 call up the next panel. We have Mike Keller from
25 ATMIA and Cardtronics. We have Abe Ayesh from the

2 ATM World, and George Sarantopoulos from Access One.

3 So we have George, Abe and Mike. [background
4 comments pause] Hi, Mike. [background comments,
5 pause] Alright, whenever you're ready, you can
6 begin.

7 ABE AYESH: Thanks. Good morning to the
8 Council. My name is Abe Ayesh. I'm the CEO of ATM
9 World. We're a large deployer of ATMs. We—we work
10 with our local merchants to deploy ATMs in New York
11 City. Oh, that. We work with our—the bodegas and
12 the retailers out there for ATMs for them. After
13 reading this proposed bill, we—we strongly oppose it
14 because skimming is not done on the retail ATMs, and
15 if you guys look at it, it's mostly done on the
16 banking ATMs. With all their security measures, with
17 all the cameras, if we have and we could give you
18 guys statistics.

19 CHAIRPERSON ESPINAL: Yeah, you have—you
20 have to show me that because the data--

21 ABE AYESH: [interposing] Yes.

22 CHAIRPERSON ESPINAL: --we have shows a
23 546% increase across the country on non-bank ATMs.

24 ABE AYESH: Right.

25 CHAIRPERSON ESPINAL: Yeah.

2 ABE AYESH: So we have--

3 CHAIRPERSON ESPINAL: [interposing] I'd
4 like it, yeah.

5 ABE AYESH: We have—we—we have some data
6 that can show otherwise. We—we have some data to
7 show up there. We have 7,000 machines in the five
8 boroughs of New York we operate, and we—we've had one
9 incident of skimming in the last 12 years. So,
10 we've—we've never seen it. Second of all, they're
11 putting the cameras and the lights. It's going to
12 be—it's going to be a big cost, and the only way for
13 us to recoup the cost especially after just going
14 through a whole ENB upgrade for all the machines for
15 the chip card upgrade, and it costs millions of
16 dollars for this industry. We're going to have to
17 pass on the cost. We didn't pass on the cost for the
18 ENB and New York—New York benefits from the lowest
19 surcharge in the country for non-bank ATMs. It's
20 under the \$2.00 mark. The national average is over
21 \$3.00. So in New York we've been able to keep the
22 cost down, and with these laws look I mean we're
23 willing to, you know, put something on the machine
24 like a sticker. Please make sure the, you know,
25 check for anything abnormal on the machine where, you

2 know, we can even support you by giving you data any
3 time there's a skimming device on the machine just to
4 show that if it gets out of control, we're willing to
5 do something more, you know. But right now, it's—
6 it's a non-event.

7 CHAIRPERSON ESPINAL: Okay. Thank you.

8 GEORGE SARANTOPOULOS Hello. My name is
9 George Sarantopoulos. I'm the CEO and founder of
10 Access One. We're based here in Bay Ridge,
11 Brooklyn. I just want to go over four quick points
12 that might have not been covered by the City Council.
13 I would say the number one consideration that you
14 have to think about is the surcharges that are
15 generated don't go to, you know, just me and Abe and
16 other distributors. Typically, that's shared 50%.
17 Approximately 50% gets shared by the bodega owners,
18 the grocery store, the convenience store. A lot of
19 times that makes the difference for that operator to
20 pay the rent, to upgrade their store, to, you know,
21 make—expand their store and make it look it better,
22 to do a lot of things. That money, 50%, you know, on
23 average stays in the community, and I want to stress
24 that enough. That's your local bodega guy. That's
25 your local convenience store. That's your local gas

2 station. Fifty percent of that money is staying in
3 the community. So that's, you know, that's one
4 consideration. The second thing that I want to talk
5 about, which was never talked about, we're very
6 focused on the bodegas and convenience stores. A lot
7 of times our ATMs are placed in night clubs, bars, in
8 settings like that where the light bulb thing makes
9 really no sense in the lighting. You know, no
10 offense toward to whoever came up with that, but in
11 the—in the night clubs and bars, a lot of times we're
12 a safe place for somebody to get cash at 2:00 or 3:00
13 in the morning instead of going back out on the
14 street, go using an ATM. So that's something you
15 guys want to consider. I would say the third thing
16 is, you know, after speaking to the Police Department
17 off the record, you know, the number one thing, and
18 this law doesn't really cover is there's really no
19 steep penalties for somebody caught skimming. Now,
20 that guy that got caught skimming, if he got caught
21 one time, chances are he's not some young kid in
22 Bushwick or he's underprivileged and he's just trying
23 to make buck. He's probably some Eastern European
24 gangs that have been doing this for a long time. So,
25 and as you got them, if we got them caught, there's

2 really no steep penalties. There's no penalties in
3 this law to, you know, give them a mandatory let's
4 say five years or three years or whatever. And the
5 final thing is as Abe, my colleague in the industry
6 was talking, this giving thing is kind of getting
7 covered by our upgrades to ENB, which has cost the
8 industry millions of dollars over the last couple of
9 years, and will probably cost millions of dollars in
10 the next couple of years as all the ATMs are upgraded
11 to handle chip card and ENB. So, you know, I just
12 want to give enough time for everybody to speak, but
13 those are the four points that I feel needed to be
14 considered today if you guys craft something. So, I
15 accede my time to Mike Keller here.

16 MIKE KELLER: Good morning, Chairman
17 Espinal and members of the committee. Thank you for
18 the opportunity to testify today on Intro 1406
19 related to ATM safety. My name is Michael Keller.
20 I'm the Co-Chair of the Government Relations Council
21 for the ATM Industry Association, ATMI, and I'm also
22 the Special Counsel to Cardtronics, one of the
23 nation's largest owner and operator of deployed ATMs,
24 non-bank ATMs. It is important to note that captured
25 or—I'm sorry. ATMI supports the Council's goal of

2 defeating skimming. However, skimming is a national
3 or international problem not a city problem. It
4 requires international and national approaches and
5 ATMI has done that over the years as other members of
6 the committee industry have done through best
7 practices, ENB and other items, and we continue to do
8 that and would welcome the opportunity to work with
9 the City to come up with ways to—to defeat skimming
10 on all ATMs, and also skimming on point of sale
11 devices that are at gas tanks—gas tanks and
12 restaurants. We believe—Abe and I believe firmly
13 that a merchant who has installed an ATM within the
14 interior of his business need not have a surveillance
15 camera focused on the ATM. If the city sees fit that
16 all retail establishments must have a video camera
17 recording each customer in or leaving a store, that's
18 a different issue, but to have one focused
19 specifically on the ATM, we object to this as an
20 increased cost and expense for operating the ATM
21 because it's important to keep in mind that not only
22 do you have to install the—the camera, you have to
23 maintain the—the log of it so you can produce the
24 video when it's requested. All that just as an added
25 cost to the merchant. Most importantly, we believe

2 the period inspection of the ATM is very problematic.

3 The current bill says at least once every 24 hours at

4 a minimum, and—and, you know, that suggests that any

5 merchant who wants to do more than the minimum would

6 have to inspect his machine more than once a day.

7 And—and again, the term ATM stands for Automated

8 Teller Machine. The economic viability of an ATM is

9 derived from its automated nature. Requiring a

10 merchant or a distributor to inspect the ATM at least

11 daily severely increases the cost of operating that

12 ATM. For that reason, if this bill moves forward and

13 if there is an inspection requirement, we suggest

14 that the frequency of ATM inspections be limited to

15 each time the ATM is replenished with cash or

16 otherwise receives a maintenance call. And, of

17 course, we have no objection to the bill's

18 requirement that if a skimming device is discovered,

19 that it be reported to the local Police Department.

20 Indeed, we follow that procedure now today. Finally,

21 again, if the bill is passed, currently the—the

22 resolution—the legislation suggests that 120 days be

23 allowed for it to be effective. I think this law is

24 going to affect whatever point it comes in. Over

25 5,000 merchants in New York City. 120 days is just

2 woefully inadequate to—to do the changes that are
3 required by this law. So we would respectfully
4 suggest whatever is implemented that we at least be
5 given a year to do that. And other than that, we're
6 happy to answer any questions that the Council may
7 have of the ATM Industry and its operations in the
8 city that—that they have.

9 CHAIRPERSON ESPINAL: Thank you. So,
10 Mike, it sounds to me like you don't want any
11 regulation at all on the local level of these ATM
12 machines?

13 MIKE KELLER: No, that's—that's—that's—
14 we—we want regulations that make sense, and—and that
15 do not put us at a—a competitive disadvantage to bank
16 ATMs, you know, and again ATMs, as stated by George,
17 you know, they're—they're a stand-alone economic
18 unit. If they don't succeed economically for the
19 merchant, they will disappear. And then the
20 convenience for your consumers to have access to
21 their cash will also disappear and, in fact,
22 Cardtronics, the company that I worked with for 15
23 years and now I'm Special Counsel to, last year in
24 New York City we dispensed \$1.1 billion from non-bank
25 ATMs, and almost half of that—of those transactions

2 were surcharge-free transactions, but we didn't
3 charge a single surcharge because those cardholders
4 who went to our ATMs were members of Allpoint or the
5 merchant just, you know, decided not to charge a
6 surcharge because of competitive issues, and as was
7 mentioned before, New York City has one of the lowest
8 surcharges, and—and that's unique. You know, where—
9 where else in this country does New York City rank at
10 the bottom of cost and items? And the ATM is—is one
11 of those.

12 CHAIRPERSON ESPINAL: I just—I just don't
13 see how this would be heavily burdensome to a small
14 business, right. When the shop owner every day has
15 to wake up every morning and lift his gate up, and I
16 don't think that him going to his machine and swiping
17 his finger around the—the card entry would add any
18 sort of like burden or anything of that nature that—
19 that can kind of—this—put—this little—kind of hurt
20 his business or make it difficult for him to do
21 business. Also, you know, in New York City I feel a
22 lot of our shops already have security cameras in
23 place. You know, what would it cost to for them to
24 maybe turn the angle of a camera to point towards a

2 machine or maybe just add one more camera onto-onto
3 their-onto their mainframe or database?

4 MIKE KELLER: Well, I'll let other
5 members talk about the cost of what that is to the
6 merchant, but if a merchant does have a camera, I
7 suspect he has the camera aimed at-at a place where
8 he believes it's most critical to the safety of-of
9 his business and his employees not the ATM. And
10 again, to suggest that doubling the number of cameras
11 he adds is any significant cost, well again, I'll let
12 others talk to that but, you know-

13 GEORGE SARANTOPOULOS: The, you know, one
14 of the things that the sponsor banks have always told
15 us is one of the requirements is not to put the
16 camera on to the ATM and the key pad. So the
17 transaction is not recorded. So I just felt that
18 also needs to be addressed here, and put out there.
19 Anyone who's-

20 CHAIRPERSON ESPINAL: This is actually in
21 the bill.

22 GEORGE SARANTOPOULOS: Okay, okay.

23 CHAIRPERSON ESPINAL: It can't point
24 towards-towards the key pad so that the merchant
25 won't know what is-what is the person's PIN is.

2 GEORGE SARANTOPOULOS: Okay, okay. I did
3 want to make sure that's covered because we-if-if
4 that's-that already would be in immediate conflict,
5 you know.

6 ABE AYESH: Also, this bill if it's
7 passed will force us to pick up some of the locations
8 that don't do enough volume for-for us to to justify
9 the expenses of spending on the camera and lighting
10 because, you know, in the city of New York or any of
11 the boroughs, any time you-you want to add wiring or-
12 or add more lighting somewhere you have to go pull
13 permits and there's a real cost to this. So, what-
14 there's going to be a amount of-a lot of analysis and
15 a lot of locations. So a lot of consumers are going
16 to suffer. They're going to-because we will pull the
17 location.

18 CHAIRPERSON ESPINAL: Well consumers are
19 suffering already because they're being ripped off,
20 you know. Again, these machines are income
21 generators for-for the banks and even the small
22 business. You know, what-you know, we need to put
23 something in place to protect our consumers. You
24 know, I may-I mean you may not told-well, you don't
25 agree with most of the bill, but, you know, and I'm

2 very flexible making some changes that make sense for
3 the small business, but at the same time we have to
4 make sure that our consumers in the city are
5 protected.

6 ABE AYESH: You know, Councilman, we
7 invite you to sit with us, and we can work together
8 and come in—come to a point where it makes sense for
9 both us, and where we think we'll protect the
10 consumer and we'll protect us and will not affect the
11 industry. Just so you know, this industry employs a
12 lot of people from Armored Cars to technicians to—to
13 to people who just do their rigging for the machines.
14 So I—I know that Armored Car use has 160 employees in
15 New York City that just service the machine. So once
16 we start—if—if we're forced to start pulling some of
17 this business, it will affect jobs.

18 CHAIRPERSON ESPINAL: My—my question to
19 you, Abe, is you mentioned earlier that you had info
20 on the amount of incidents of skimmings that happen
21 in your machines?

22 ABE AYESH: Yes, we have—we have info.

23 GEORGE SARANTOPOULOS: We have somebody
24 who is going to testify with our—from my industry and
25 they can give you a little more accurate information.

2 CHAIRPERSON ESPINAL: Okay, how is that
3 info pulled, do we know?

4 ABE AYESH: I'll let him testify to that.
5 I don't want to speak for him.

6 CHAIRPERSON ESPINAL: Okay, but would you
7 be able to say that, you know, it's possible that not
8 every instance where there is skimming involved is
9 captured by—by your company?

10 ABE AYESH: No, I—any time there's
11 skimming involved and it's reported, it goes to the
12 sponsor and bank and we find out about.

13 CHAIRPERSON ESPINAL: Every time it's
14 reported?

15 ABE AYESH: Yes.

16 CHAIRPERSON ESPINAL: But it—it is
17 possible for someone to, you know, breach the
18 machine, put the skimming device, walk away, go to
19 another machine and do this numerous times up until a
20 point where he gets caught, and then that one
21 incident is reported?

22 ABE AYESH: That—that also could happen
23 to a bank, right?

24 CHAIRPERSON ESPINAL: Yeah, of course.
25 Yeah, for the bank.

2 ABE AYESH: And not caught the guy.

3 CHAIRPERSON ESPINAL: [interposing] I
4 could happen to the bank. It could happen to the
5 bank, but the banks already have these security
6 measures in place. I'm—I'm trying to put in place
7 for these street ATMs.

8 ABE AYESH: Yes, I—I think some of the
9 data we could show will show that the banks have the
10 majority of the skimming issues.

11 CHAIRPERSON ESPINAL: Okay, I would love—
12 I would love to see that data. I haven't seen that
13 data, but please.

14 MIKE KELLER: And certainly banks have
15 the majority of skim cards because the skimmer wants
16 to put his skimming device in a location that's going
17 to maximize his capturing of data in a minimum amount
18 of time, and is Abe mentioned, you know, a lot of
19 locations in—in the city of New York here may only
20 have two or three hundred transactions a month.
21 Whereas they grab an ATM or a bank-ATM at a bank
22 vestibule may have two or three hundred transactions
23 in the morning.

24 CHAIRPERSON ESPINAL: Yeah.

25

2 MIKE KELLER: So they're in and out
3 quickly, and that's what skimmers want. They want to
4 get in and out quickly.

5 CHAIRPERSON ESPINAL: Yeah. I-I-I-I
6 guess I hear what you're saying, but I-I feel like
7 the banks, not to defend banks, but I think that
8 there's more stringent measures in place. Like if
9 there was an incident we are able to capture, you
10 know, who-who-who breached the machine and put the
11 skimming device in. In the ATMs that we have on our
12 streets and delis, you now, maybe some of the delis
13 or maybe some of these businesses do have cameras
14 onto-to the machines, but a lot of them don't. You
15 know the one I was using last night they didn't-they
16 didn't have a camera. So, I-I think that what will
17 do is dissuade someone from approaching an ATM and
18 putting this machine in, and we will have far less
19 incidents happening, occurring in the city.

20 MIKE KELLER: Well, after the meeting I
21 went and quickly talked to the DCA, and-and they
22 indicated that during the presentation they said that
23 56% of skimming, their data that they have received,
24 50%--it's 56% of skimming had occurred at non-bank
25 ATMs, which means that 44% of skimming events

2 occurred at bank ATMs with these added security
3 measures, and I'd suggest 56/44 isn't a--a big split.
4 You know, if the security measures were effective,
5 the split should be 80/20 perhaps. Not 56/44, which
6 was their data not--not our.

7 CHAIRPERSON ESPINAL: Right. So--so I
8 have data. The Wall Street Journal actually reported
9 back in May 2016 that while overall crime in the city
10 has--has dropped significantly, you know, thieves are
11 moving away from banks and they're targeting ATM
12 locations that do not have surveillance cameras. So,
13 it isn't that it isn't occurring, it is a real issue,
14 you know because they are targeting these ATMs that
15 don't have cameras.

16 ABE AYESH: You now what they're
17 targeting, they're targeting breaking into our
18 machines. Even with cameras in the stores, we are
19 at--we're averaging six, seven losses--my--our company
20 alone I think probably may be up to 20, and we--we've
21 been working with the NYPD on it. People--they're
22 just--I'll give you an example. Pay-O-Matic store
23 last--two weeks ago, the store is open. They walked,
24 had put it on, kicked the machine. Cameras
25 everywhere. Picked the machine and rolled out with

2 it. The store is open. This is happening whether
3 you have cameras. A motivated criminal will do it no
4 matter what's there.

5 CHAIRPERSON ESPINAL: Yeah, of course,
6 there are people who are going to do it no matter
7 what's there, and they're going to end up in jail,
8 but there are people out there who will be more
9 reluctant to do it if they know there's surveillance
10 camera there. You know, I think this is another way
11 to also raise this—raise this awareness across the
12 city and saying listen, you know, there are cameras
13 pointing towards the ATM that you're planning on
14 targeting later on today.

15 ABE AYESH: Most of our robberies, and
16 you can check with NYPD, all have video, and has not
17 deterred anybody.

18 GEORGE SARANTOPOULOS: We have beautiful
19 video of people coming in and stealing a machine.

20 ABE AYESH: I—I can—you know, I invite
21 you, Councilman, to come and sit with us, and we'd
22 love to just show you what we're going through on a
23 daily basis. I'm trying to protect.

24

25

2 CHAIRPERSON ESPINAL: Have you spoken to
3 consumers who have lost their identity or have been
4 ripped off and lost a lot—all of their money?

5 ABE AYESH: Yeah, absolutely, absolutely.

6 CHAIRPERSON ESPINAL: And have they
7 spoken to you, you know, what—what can help them feel
8 safer?

9 GEORGE SARANTOPOULOS: Well, what happens
10 is, the minute—just so you know, if a consumer gets
11 their compromise their thing and they calculate it,
12 they're insured by their bank. They automatically
13 put that money back in there the minute they file a
14 dispute, right? So if somebody saying, you know, hey
15 I didn't do this transaction—

16 CHAIRPERSON ESPINAL: I wouldn't—I
17 wouldn't say immediately. It might take a few days
18 or a few weeks. Advisory Board A few days, yeah.

19 CHAIRPERSON ESPINAL: But you know, a few
20 days or few weeks to a low-income family that's—
21 that's an eternity especially when you have to pay
22 your bills, and you have a landlord who is trying to
23 push you out of your apartment, and can use that as
24 an excuse. There's a lot of instances where—where—

2 where these consumers, you know, they're—they're just
3 facing very tough times especially in the city.

4 ABE AYESH: Right, but if there's a real
5 cost to us, any more than we dared already in the
6 industry, we will have to raise costs. We will have
7 to dip to the national averages and we've been lower
8 than the national average.

9 CHAIRPERSON ESPINAL: So what—what are
10 the costs that the city requires from you right now
11 besides the fact that there was a federal move to
12 change—to change the machines to cards to have the
13 chip readers. Besides that, what does the city
14 require you to do?

15 ABE AYESH: Well, look, so we have real
16 costs right? Cost of cash, cost of armor, cost of
17 communication, cost of insurance on the machine. So,
18 once we give the retailer half the money, the other
19 half, about 80% of it covers or 90% of it covers
20 cost. So sometimes once we put a machine in, we're
21 not like the bank where they can get their money back
22 in—nine or ten months because they have so much
23 volume on their machine, and it makes sense for them
24 because it decreases cost of labor and retro factors
25 that go with it. For us, sometimes it takes three,

2 three and a half year just to recoup the cost of the
3 machines. So if you put a \$500 burden with cameras
4 and stuff, I will tell you some of these locations
5 might take a year just to recoup that, and I—there's
6 going to be hundreds of machines taken out when this
7 law passes, and—and if we can't—if we choose not to
8 raise surcharges, but we are the lowest national
9 average. For the most expensive city in the United
10 States, we have the lowest cost of transactions. If
11 you go to a bank, and you have banking with it right
12 now, they will charge you \$3.00 to \$3.50. Our average
13 is \$2.00, \$1.75 in some boroughs, and even 99 cents
14 in places like the Bronx.

15 CHAIRPERSON ESPINAL: Hey, listen I'm—I'm
16 willing to have further conversations after the
17 hearing, and—and seeing where—where we can make
18 improvements on the bill, or where we can come to
19 some common ground. But again, you know, there is an
20 issue out there, and we have to find the best way to
21 tackle that issue.

22 ABE AYESH: And we'd love to work with
23 you, sit down with you and collectively come up with
24 something that does make sense. We—we don't want to
25 be robbed. We don't want our consumers to be robbed.

2 At the end of the day we're all trying to work
3 together here. We all have the same goal. We're
4 just--let's just have a goal that really works, and
5 not something that's going to put a patch on
6 something because a guy can wear a hoodie and
7 eventually put a skimmer on it, right.

8 CHAIRPERSON ESPINAL: Yeah, and
9 unfortunately we--we didn't have cost analysis from--
10 from the administration on what this will cost a
11 small business. So again, we have to have further
12 conversations on the issue.

13 MIKE KELLER: One of the things we can
14 do, we've done this in other cities in the past when
15 we've been faced with a--a--you know, a sudden increase
16 in robberies at ATMs is to work with local police
17 departments and create task force and go out and try
18 to target, you know, decide where these--this gang is
19 working, and help this one there, and and--and help
20 police find the criminal and--because they all work in
21 gangs. You know, these are not someone, you know,
22 looking at the Internet and say I'll go out and skim
23 a machine today. That's not the guy we're working--
24 these were Eastern Europeans. They are well trained,
25 well organized. They know how to, you know, they--the

2 know how to put the machine—the skimming device on
3 quickly, discretely.

4 CHAIRPERSON ESPINAL: You say Eastern
5 Europeans. Are data supporting—

6 MIKE KELLER: Yes, and—and according to
7 the NYPD, most of the ATM skimming in the city is
8 Eastern European, and they're kind of divided ATM
9 skimming, and then there's gas pump skimming and
10 restaurant skimming. Those were done by different
11 nationalities and—and I encourage you to talk the
12 NYPD. They can give you those statistics and stuff.

13 CHAIRPERSON ESPINAL: Yeah,
14 unfortunately, they weren't here today

15 ABE AYESH: And we've been working with
16 the NYPD on robberies and I think Tim will be able to
17 walk through, but we—we have been—we've had a very
18 close relationship with NYPD. I'll give you an
19 example. The biggest problem right is our ATMs being
20 robbed just in—we have hundreds of footages of just
21 people taking it. We've lost in my company alone
22 close to \$300,000 in the last two months alone. You
23 know, and we're eating a lot of deductibles because
24 remember the insurance only covers so much. And so
25 we had to cover this much. We're burying a lot of

2 cost right now, and trying to keep our cost down to
3 the consumer. So that—and—and just what I've learned
4 is the robber don't care whether they're on camera,
5 not camera. They will—they will do whatever it is.
6 They're driving through the stores' windows with
7 their cars walking out, and yanking machines out.

8 CHAIRPERSON ESPINAL: [interposing] I've
9 seen a lot of True TV.

10 ABE AYESH: Yes. [laughter] They're
11 walking—so there is a solution to—to—to—to improving
12 it, but I don't think we're ever as an industry going
13 to be able to get—get it to go away, but we'd love to
14 figure a better solution with you. Sit down and
15 collectively come up with a collective group of guys.
16 Maybe we'll get all the ATM companies in New York to
17 sit down with you. Let's—let's discuss what will
18 work and what will not.

19 CHAIRPERSON ESPINAL: I can't promise you
20 that I will scrap this bill because I like it. I—I
21 will commit to having a conversation how we can make
22 it better, and see what makes sense and what doesn't
23 make sense.

24 ABE AYESH: Okay.

2 CHAIRPERSON ESPINAL: But I—you—but
3 earlier you mentioned that 50% of the fees goes to
4 the business owner, right?

5 GEORGE SARANTOPOULOS: Traditionally at
6 least.

7 CHAIRPERSON ESPINAL: And I—I—I—I have to
8 agree. I do have a—a friend who's a business owner
9 who—who uses an ATM at—at his location. But I—I—
10 I've heard reports that there are businesses,
11 minority owned businesses usually with language
12 barriers that have ATMs in their business and
13 they're—they're told that they can't receive—they—
14 they don't receive a percentage of the fee. You
15 know, do you—do you know if—

16 GEORGE SARANTOPOULOS: [interposing] Give
17 them my phone number. [laughter] You know, I'll give
18 you my card after.

19 ABE AYESH: I will tell you I—I operate,
20 you know, by a—of course, 8,000 machines and I think
21 4,500 in the—in the Manhattan area, and I will tell I
22 don't think—and I could even come in and invite you
23 to look at all our contracts, and I don't think you
24 will ever see that case. I don't think there is

2 anybody that gets up 50%. In—in today's world,
3 they're even asking for 75%.

4 CHAIRPERSON ESPINAL: We heard of—we
5 heard of—we heard of one incident so maybe we do have
6 to circle back—

7 GEORGE SARANTOPOULOS: [off mic]
8 [interposing] It's probably one.

9 CHAIRPERSON ESPINAL: -and-and figure
10 that out.

11 GEORGE SARANTOPOULOS: It's probably—it's
12 probably what—what Gabe said. It's probably one-off,
13 a merchant who got taken advantage of by a
14 distributor or something or—or maybe, you know, what
15 happens sometimes if it's a mediocre location, the
16 guy will say look I'm going to pull the location out.
17 If you still want to have it. I've seen some
18 distributors do that, you know, because it just
19 didn't pay for the guy to keep it there, and the guy
20 is just happy to have a machine going there.

21 ABE AYESH: There's a real cost to having
22 a machine just there. You know, you're going to pay
23 for the interest, the communication, the—the integral
24 money that goes in their insurance, you know. So this
25 some kind of cost, and we're noticing the more ATMs

2 out there, that's—that's started to be deployed in
3 this—in the city, the lower our transaction for
4 location. Just—just so you know, the average
5 transaction I think for our machines throughout the
6 whole network of independent ATMs for us is probably
7 about 350 transactions. So there's a lot of lower
8 level machines we're keeping out there because the
9 neighborhood needs it, and we keep it out there. I
10 will tell you that I have machines that we make \$10 a
11 month after all costs are done, and we keep it out
12 there—out there just because, you know, it's a need,
13 and—and there's no more cause for us to deploy other
14 than just the cost of doing the service and all the
15 folks. So—

16 CHAIRPERSON ESPINAL: You don't think
17 there's consumers out there who are afraid of using
18 machines, and maybe if you made them a little bit—
19 they had—they had a little more security you'll see
20 an increase in business?

21 ABE AYESH: I don't think so.

22 CHAIRPERSON ESPINAL: You don't think so?

23 ABE AYESH: I don't think so.

24 CHAIRPERSON ESPINAL: Okay.

2 ABE AYESH: I-I-and I've been in the
3 industry since 1998, and we are-we are just like my
4 colleagues here, we operate a lot of machines, and we
5 see it, and it doesn't make a difference whether you
6 have-it's the location. It's-it's truly the location
7 where you have the machine is what makes the
8 difference.

9 MIKE KELLER: And, of course, I don't
10 think Abe is suggesting that, you know, consumers do
11 feel good if they see a machine that's a modern well
12 equipped --

13 CHAIRPERSON ESPINAL: [interposing] Yes.

14 MIKE KELLER: --machine. Obviously,
15 that's what we-our industry strives for. You know,
16 we comply with the ADA, and all of the network rules
17 and stuff. So there's a lot of expense going with
18 that, and-and one thing I would like to mention, you
19 talked about daily inspecting, how easy it is for the
20 bodegas guy that walked his machine and inspected it.
21 You know, I-I won't speak for-for that person, but,
22 you know, he probably has a checklist that's longer
23 than any of us can imagine to operate his business
24 everyday. But also the-the other top ATM were-were-
25 is a majority of ATMs from my company Cardtronics is

2 managed ATMs, and the larger national account stores,
3 and there, you know, our responsibility is, you know,
4 we put the machine. We do everything. Load the
5 cash, clean the machine, maintain the machine, pay
6 the telecommunications. The only thing that the
7 merchant provides is electricity for the machine.
8 That's it and they expect us to do everything on that
9 machine, everything, and to go out and inspect and we
10 have 1,000 of those here in the city. And to go out
11 every day to inspect those would be a huge additional
12 cost. It would be prohibitive.

13 ABE AYESH: Yeah.

14 MIKE KELLER: It would be hugely
15 expensive.

16 ABE AYESH: All our machines are operated
17 by our company so that, you know, to ask them—the
18 merchant is not going to touch them. So we're going
19 to have to do that at a cost of sending people to
20 inspect those machines on a daily basis. You know,
21 we have Armored Car companies that go there one—or
22 once, twice even four times a month to some locations
23 depending on the volume. We can—we can have the
24 Armored Car guys—we could have the Armored Car
25 company inspect it when they're loading the cash.

2 Check. We can put a checklist for the Armored Car
3 company to it when they're there.

4 CHAIRPERSON ESPINAL: And just--just for
5 this--just this final point I'm going to make. I
6 think the bill actually allows for you guys to
7 negotiate with the merchant on who will be
8 responsible for what when it comes to the securities
9 of--of the machines. Just--just so--just to point.

10 MIKE KELLER: I--I understand that fully,
11 Chairman, and I can guarantee what those merchants
12 are going to say: Your machine. You take care of
13 it.

14 GEORGE SARANTOPOULOS: [interposing] Your
15 problem.

16 MIKE KELLER: Your problem. [laughter]
17 Okay, now instead of getting 50% of the surcharge
18 they get 90% of the surcharges. So I--I understand
19 that, but--and again, at key locations the merchant is
20 the driver. You know, it's--it's--ATMs are like real
21 estate, location, location, location. You know, he
22 has a great location. He's going to make you do
23 everything. That's the nature of our game, and so
24 we'll lose those locations.

2 ABE AYESH: And, you know, a lot of
3 merchants depend on us to—to hardship, you know, to
4 get, you know, we get merchants that ask us for
5 loans, and we help a lot of businesses out there. I
6 can show you that we loan—we give loans at no
7 interest, just loans to—to merchants so they can like
8 pay their bills. Sometimes they're behind in their
9 rent. We—we do so much to help. They—every merchant
10 looks at the—the ATM as like their bank, right. They
11 come to us before they go to their bank to get a
12 loan. It's—it's—its' unbelievable and—and I will
13 tell you sometimes somebody will unplug the machine
14 by accident. That merchant will not go to that
15 machine and unplug the machine. Don't make them.
16 They'll call up, and we'll tell them to check.
17 They're like no, send somebody.

18 CHAIRPERSON ESPINAL: Got you. Thank you
19 guys. Thank you Mike. Thank Abe and thank you
20 George

21 GEORGE SARANTOPOULOS: Thank you for your
22 time.

23 ABE AYESH: Thank you for your time.

24 GEORGE SARANTOPOULOS: And, you know, and
25 we—we definitely take this seriously.

2 CHAIRPERSON ESPINAL: Yes, and—and the
3 invitation is open to you to—to meet with us any
4 time. You know, you can come to our facilities. We
5 can—we can show you, walk through some stuff we do.
6 We're your—it's an open door policy for you.

7 ABE AYESH: Alright, let's do that.

8 CHAIRPERSON ESPINAL: Thank you.

9 GEORGE SARANTOPOULOS: Thank you very
10 much.

11 CHAIRPERSON ESPINAL: Okay, thank you.
12 The final panel. [background comments] We have Jim
13 Shrayef from Northeast ATM Association. We have
14 Peter Wilkinslaw(sp?) from the Best Products. We
15 have Robert Toitman (sp?) from ATM. Sorry, I can't
16 read the last part. From ATM Industry, and we have
17 Bruce Renard the National ATM Council, Incorporated.
18 [background comments] One, two, three, four.

19 FEMALE SPEAKER: To us.

20 CHAIRPERSON ESPINAL: Yes.

21 FEMALE SPEAKER: Okay.

22 CHAIRPERSON ESPINAL: We have Bruce,
23 Robert, Peter and Jim. [background comments, pause]
24 Okay, whenever you're ready, you can just state your
25 name and give your testimony.

2 JIM SHRAYEF: [off mic] My-my name is Jim
3 Shrayef. I'm-I'm with the

4 CHAIRPERSON ESPINAL: Is the mic on?

5 JIM SHRAYEF: Oh, my name is Jim Shrayef.
6 I'm with the Northeast ATM Association. Also part of
7 an organization called Everything ATM in Brooklyn in
8 the area of Dumbo. I want to thank you for the
9 opportunity to have this conversation. As I told my
10 colleagues, I am in support of the bill, but there
11 are things that need to be addressed, and there I'm
12 talking exact-precisely about practical things. One
13 of the issues that I learned when we were working
14 with the-when we are working with the NYPD is that
15 the frustration that the force has in-in doing their
16 job. Let's say they mentioned many times that we
17 have evidence against somebody, legal evidence
18 against somebody that broke into our ATM, destroyed
19 it. We have it recorded. Destroyed the storefront,
20 broke into our distributor's card and a bag with
21 \$60,000. We have all the videos. Now, in New York
22 City-in New York prosecution, okay, and what also the
23 DAs tell us they do not have the tools. They laws
24 are very lenient when it comes to prosecute non-
25 violent crimes. Installing a skimming device on an

2 ATM is considered a non-violent crime, and a camera
3 in front of the ATM will get you a very beautiful
4 smile over the temper plate (sic). He might wave at
5 you because he was—he's not going to jail. If he
6 might get arrested by the NYPD, but NYPD eventually
7 is going to get frustrated because the next day he's
8 going to be out, and another person hired by the same
9 eastern European gang, okay, he doesn't have to have
10 a name. They can pick anybody, and tell them you do
11 this for us. We'll—we'll pay you \$100, and this
12 person will do it, and who benefits is the person
13 that controls the—not the guy that put the device on
14 the ATM. Okay, that—that is the little fish. The
15 person that's outside receiving the radio
16 transactions is the one that does not get caught on
17 camera. Okay, we picked up many of those 75 devices
18 and—and locations. We have it in pictures where the
19 store own—store owner himself with a bat took a guy
20 and took the pictures, hold his idea, and the next
21 day the person came back to the store. So there are
22 in our beautiful city rights that we cherish and
23 appreciate, but when it comes to this kind of—of
24 crime, they—they do not—they do work. The police do
25 not have any tools. Okay, so that—that is the major

2 frustration of the-of the Police Department. On the
3 other hand, we want to say that even if you install a
4 camera, okay, in a device-in a location, it will be
5 very hard to get even a-a real picture of the person
6 in case if that works for anything. Okay, in case it
7 could works for anything. People can just on the
8 proper way and they will-you will not get him back.
9 You're talking about giving the person-of-of somebody
10 that's sent by a gang, a very well organized gang to
11 get information on a card. On the other hand, the-
12 the cards are changing. So, even with a skimmer,
13 those cards are-they cannot be used okay even with a
14 skimmer because they are changing into-with cards
15 that do not have-my names as set. (sic) And Mike
16 Keller said, this is not a city thing, it is
17 international. In Europe, they cards do not have a
18 max drive. Okay, that was the solution that they
19 came up with. They only have a chip. So no matter
20 how much skimming they have, skimmers they have, they
21 cannot-it's very hard for them to copy the
22 information on the chip. One last thing. I promise
23 this-this will be my last one, but since you opened
24 the door, you say that some of those bank ATMs they
25 have-they do not have-they have-they-they do not

2 charge the cardholder for the non-bank people. I-I
3 invited to--

4 CHAIRPERSON ESPINAL: Can you repeat that
5 again? Sorry, Mr. Shrayef.

6 JIM SHRAYEF: Okay.

7 CHAIRPERSON ESPINAL: What is it that I
8 said?

9 JIM SHRAYEF: You say--you said that those
10 are ATMs charge out-of-network fees, which is true.
11 Okay, but they are not charged by our ATMs. They are
12 charged by the banks. When the cardholder, your
13 consumer, my consumer calls the financial institution
14 they are told that those out-of-network fees, those
15 foreign fees that are charged literally--really by the
16 bank, they are charged by the ATM. That's--I find
17 that quite misleading, but I'm mentioning these
18 things out of the bill, but I have to mention since
19 you mention it during your--your testimony.

20 CHAIRPERSON ESPINAL: Okay. I will have
21 to go back and--and clarify and look in my testimony,
22 but I--I--I know personally as a--as a consumer, you do
23 get charged for using your ATM. Correct.

24 JIM SHRAYEF: Yeah.

2 CHAIRPERSON ESPINAL: Whether it be \$2.00
3 or

4 JIM SHRAYEF: [interposing] Correct.

5 CHAIRPERSON ESPINAL: --or \$5.00 somewhere
6 else--

7 JIM SHRAYEF: [interposing] Let's say in
8 New York

9 CHAIRPERSON ESPINAL: or a dollar
10 somewhere else. Look, right.

11 JIM SHRAYEF: In here you are charged
12 \$1.50 for--by the ATM owner, and \$3.00 by the bank for
13 using an outside ATM.

14 CHAIRPERSON ESPINAL: There not--there not
15 all \$1.50. There's--there's places that charge \$3.00.
16 I mean you get to decide. The business owner and you
17 decide how high or how low you want to go, correct?

18 JIM SHRAYEF: That's correct. The store
19 owner decides, but most of the fees coming from the
20 financial institution of the card, and we have to be
21 very careful where--where we get our information.

22 FICO and the Wall Street Journal are mostly
23 controlled by financial institutions, and they are I
24 would say as a--as a small business owner they are
25 scaling away their--the cardholder making this witch

2 hunt against our small ATMs saying that small ATMs
3 are more risky than the bank ATMs. Yes, the bank
4 ATMs have more light, but in this 43% of incidents in
5 the bank probably they get more data at—at a bank ATM
6 probably 100 times more at—at one bank ATM that can
7 get as one—on bodega ATM. So that creates a false a
8 real false sense of security. For the cardholder,
9 okay, they said if you use a bank ATM you are safe.
10 That is not the case. Thank you.

11 BRUCE RENARD: Good morning, Mr.
12 Chairman. Thank you so much for holding this hearing.
13 We really appreciate it. I'm Bruce Renard. I'm the
14 Executive Director of the National ATM Council, and
15 we represent the independent ATM providers throughout
16 America. The earlier comments from Mr. Keller on
17 behalf of ATMA—ATMI, represents both bank and non-
18 bank ATMs. We focus exclusively on the retail ATMs,
19 and there's been. There's a lot of misinformation
20 out there that I think has maybe mislead some of
21 what's in this bill that I want to try to share with
22 you to get—give you facts. First of all, [coughs]
23 the skimming issue. When we read about the FICO
24 study about this big increase in skimming, I
25 immediately [coughs] jumped on it and asked all our

2 major ATM providers throughout America many of which
3 are in the city here have you guys seen skimming? Is
4 this a problem? And everyone came back to me and
5 said no. I've never seen a skimmer. So, I-I
6 immediately [coughs] was trying to figure out what is
7 going on here. So we put—we did a survey, a national
8 survey with hundreds of ATM companies responding to
9 it about it skimming. And sure enough, 93% of the
10 ATM providers had never had one skimming incident
11 ever in their life. Half of them I've been in
12 business for 10 years or more. Okay. I've included
13 a copy of the survey results report in my testimony
14 that is filed with you. Okay. So then we started
15 thinking well, what is going on here? What is going
16 on here? And-and how do we explain this 500%
17 increase right, [coughing] and it's that you cited
18 earlier. It's what Jim said. They're trying to
19 scare people from using retail ATMs because when you
20 only have one skimming incident, right, a year, let's
21 say, well, 500%, guess what? Now there's five, you
22 know. It started with nothing. All the skimming has
23 happened historically on the bank ATMs. Why?
24 Because they're unmanned. There's nobody there to
25 watch you, right, and the volumes as has been said

2 are hugely bigger. So if you're a skimmer, you go in
3 for a bank ATM, and if you look at Krebs on skimming,
4 he's like the ultimate expert in the field that
5 everybody looks to. He has like listed 50 examples
6 of skimming over the last five years that he's been
7 covering this stuff. Not one of them is a retail
8 ATM. They're all bank ATMs. There are a couple of
9 point of sale devices on them. So what is this with
10 the retail skimming, right? Here is what it is. In
11 every country that has introduced ENB chip cards, the
12 bad guys see the window closing, and they jack up
13 their skimming. They want to use this ill gotten
14 data, and max stripe stuff before the chip comes in
15 fully. So all these countries you see this spike in
16 skimming. So that's what's happening right now.
17 Whereas, it was all bank before, now some of the guys
18 are going for some retail if they can. But the
19 numbers of retail ATMs are very small. Even with the
20 jump you cited earlier up to 50 or whatever it was,
21 it's a—it is such a drop in the bucket. Okay. Now,
22 to your question earlier could there be skimmers of
23 people we didn't catch? Yes, there could. But, you
24 know, these guys unlike the banks, right, the banks
25 their main business is the bank. ATMs to them are

2 just, you know, an aside. They're really a pain to
3 be honest with you. They ain't going to like it.
4 It's a dirty business for them. For us, it's our
5 total business. Okay, if consumers aren't
6 comfortable and feel safe and secure in using our
7 machines, we're out of business. So, we have every
8 incentive to have this safe secure environment. We
9 don't need any help. It's like saying, you know, let
10 me—let me help you when you when you need to go to
11 the bathroom when you get up in the morning. Okay,
12 you don't need any help. You get up and you got to
13 go. We have every incentive to protect because if
14 the consumers don't feel safe with our machines,
15 we're done. We're out of business. We have no other
16 business.

17 CHAIRPERSON ESPINAL: [interposing] Yeah,
18 and we're trying to help you out with this bill.

19 BRUCE RENARD: I'm with you. Now, here's
20 how you can help us.

21 CHAIRPERSON ESPINAL: It is important.
22 I'm trying to help out. I'm trying to make the
23 consumers feel safe to use the ATM.

24 BRUCE RENARD: We're there—when we're—and
25 I want you to know we're with you because check it

2 out. Before competition before the entrepreneurs got
3 into the ATM business, there were about 120,000 ATMs
4 in America. With competition there are about 420. So
5 there's guys are serving all the areas that the banks
6 don't want to go because they're not safe. You know,
7 they don't make as much money there, right, and we've
8 done mapping there, and we've mapped out communities.
9 I haven't done it for the city, but I will, and it's
10 amazing. It's like the banks had redlined these
11 communities. You look at the communities and the
12 bank machines are in the affluent areas. You look
13 into the poor areas, that's where our machines are.
14 These guys are hurting right now. The banks are
15 trying to put us out of business, quite frankly. We
16 have an anti-trust case pending about this right now.
17 It just went to the U.S. Supreme Court, and we went
18 in the Supreme Court. Now, so when you hear about
19 skimming, that's what's the real deal on skimming.
20 Let me talk to you about race. Okay. We've done a
21 study because FICO. No, it was FICO. It was Bank
22 Rate. The Bank Rate Study came out saying, you
23 remember this: Spike in ATM rates. ATM rates
24 skyrocketing, right? It's bull. Okay. Here's the
25 real—here's the reality. The reality is the average

2 ATM charge that the actual ATM only charges is about
3 \$2.60 a transaction nationally. So you've got, as I
4 said, you got to deal going in the city here, right?
5 The banks, the ten largest banks in the country eight
6 of them charge \$2.50 for their customer to use one of
7 our ATMs. Two of them charge \$3.00. They don't have
8 the cost of the ATM. That is the problem. Okay,
9 they should be—they shouldn't be charging their
10 customers penalizing them for using our—they should
11 paying us because we're taking the cost of the ATM
12 off their shoulders, and we taking them in the most
13 crime ridden toughest areas. They should be paying
14 us, not charging their own customers, penalizing them
15 and charging them more than the poor ATM charges, and
16 he has all the cost of the machine and the money and
17 everything you've heard today. That is [coughing] is
18 a real, real problem, but it's the bank's problem.
19 It's not the retail ATM guy's problem. Okay. So,
20 what have we done about this with skimming because
21 when—when I learned about DNB and how it's going to
22 increase skimming, I immediately went to the National
23 Association of Convenience Stores and Connexus who's
24 their standard body, right. They have most of these—
25 these stores in America, and said we need to get

2 ahead of this curve and we did. We put together a
3 skimming—Anti-Skimming Guide, which is also part of
4 my testimony, and we distribute it now to all of our
5 members, all the companies, all the stores. We're
6 with you on this. You know, if we can get that
7 information out there—we put it into a two-page
8 thing, two sides on one page that you could pat
9 behind the—the cash register at the bodega, and
10 actually use. And we did tell them to inspect just
11 what you said. So we have a little difference on—on
12 that issue because to me and to us it wasn't that big
13 a deal to go and jiggle the thing for 30 seconds. We
14 even said maybe each shift. Okay, but we don't—we
15 can't take a new level of government regulation. You
16 can't have every city coming and telling us do it
17 this way, do it that way. We need to work with, and
18 we have worked. We—yeah we have folks here who have
19 been with NYPD for decades, and we've worked with
20 them successfully to deal with other crimes. Okay,
21 but where we can really, really use the—the Council's
22 help is getting some penalties. Two things: Get the
23 penalties right. Make these people that if they mess
24 with an ATM or the people that we loading, they're
25 going to jail. Period. End of story. When that was

2 done in Australia, the crimes against ATM tanked.
3 See, because you hear it. If they think they can go
4 in and do this, and it's not just the skimming, it's—
5 it's taking machines. It's—it's getting, going after
6 consumers using machines. These criminals need to
7 know they're going to jail, and that's where we would
8 really like to work with you. Not just in the city,
9 but the whole state. Let's get this state safe for
10 consumers to use ATMs, all ATMs, and that will go a
11 long way. With that, communication. With us
12 working, you know, the actual guys in the trenches
13 that know where the real crimes are happening and how
14 to stop it. Work with the police and help us to work
15 with the police, and give the police the resources
16 they need to actually deal with these crimes. If you
17 really want to stop it, we can help you stop it. So,
18 thank you, and we're here needless to say for any
19 follow up meetings, anything you need to make things
20 safer for consumers in New York. We are totally with
21 you because if—if they're not feeling safe and
22 secure, we're out of business. Thank you.

23 [background comments, pause]

24 PETER WILKENSCHAFT: Hello.

25 CHAIRPERSON ESPINAL: How you doing?

2 PETER WILKENSHAFT: Good. My name is
3 Peter Wilkenshaft. (sic) I represented a small
4 company on Long Island. We have several thousand
5 machines basically the majority of, you know, five
6 boroughs New York City. I think most of my
7 colleagues and Bruce just go—gave over most of it—you
8 know, my objections to the—to the bill. I'm not
9 necessarily against it. I just think there are
10 certain things that could be modified. One thing I
11 know you're tying this a lot into banks, and bringing
12 their regulations at New York State banks face
13 already into the retail space. The biggest thing
14 here is ATMs are not in the vestibule in a bank lobby
15 that doesn't have somebody looking at that machine.
16 All—I—not all of our machines but the majority of our
17 machines are facing the—the clerk at the register.
18 They are—they have eyes on it 24 hours a day if—if
19 they're open 24 hours. One thing that we do in
20 particular, we've never had a single instance of
21 skimming on retail machines. We have had instances
22 on bank machines that we the processing for. Again,
23 because that's what the—the thieves go after. We
24 send out a periodic statement mailer to all of our
25 customers just to inform them of what to look for.

2 Keep the eyes on the machine, you know, inspect it on
3 a daily basis. Keep it clean. Keep it well lit.
4 Just kind of best practices so people do feel safe in
5 using the machines. You know, that doesn't cost us
6 anything really to do other than, you know, to print
7 out a piece of paper. So, maybe that goes a long way
8 in-in preventing that because like I said, we've
9 been-been in business since '98. We haven't had a
10 single instance of skimming ever. Never seen a
11 skimmer on a retail machine whatsoever. That's
12 basically all I have to add to this, but that's my
13 point of view. Another thing I think somebody else
14 also addressed it. If this does go into place, the
15 cost would definitely get passed onto the consumer.
16 Somebody has to pay for this, and like everybody has
17 said here over and over again, New York surcharges
18 are the largest, you know, the lowest in the country.
19 They only have one direction to go, and that's-that's
20 really just up, and the more costs that people wrap
21 in, somebody has to eventually pay that bill. It
22 can't always come out of the-that ATM deployer's
23 pocket or whoever owns that machine. That's
24 basically it. [pause]

2 ROBERT TOITMAN: How are you, Chairman.

3 My name is Robert. I am the representative of Access
4 One ATM. We're a Brooklyn based ATM company. My CEO
5 spoke earlier before. I'm also a former attorney or
6 a current attorney, but much to the chagrin of my
7 mother, I left being a lawyer to work in the ATM
8 industry, and one of the main reasons that I-I left
9 was because I really enjoy working with small
10 businesses in the community. I just didn't get that
11 satisfaction when I was an attorney working for tons
12 of rich dudes buying real estate and it just didn't
13 fulfill me. I love that every morning I wake up, and
14 I visit small businesses. I visit bodegas. I visit
15 convenience stores. That is very fulfilling to me.
16 The reality is this proposed bill with all due
17 respect I believe is casting a very wide net to try
18 and address a very detailed and small problem for our
19 industry. All of the statistics that you mentioned
20 before that are brought by FICO, which is basically
21 in bed with all the banks. You know, I want to
22 emphasize that I've been in this business a lot
23 shorter than these guys, but I've-I still have seven
24 or eight years. I've only seen and heard of one
25 skimming device on one of the machines that I've

2 deployed in eight years. If I'm a sophisticated
3 entity that is trying to put skimmers, there's no way
4 I'm going to a retail ATM. There's just not enough
5 data. Why would I go for ten transactions a day when
6 I could go a Citibank machine that probably does, I
7 don't know, 5,000 transactions a day. I mean I'm
8 doing the same amount of work for 100 to 200 times
9 less money to steal. So I think that you really need
10 to analyze those statistics and realize that
11 obviously FICO has a vested interest in scaring
12 people on retail ATMs because they're basically in
13 bed with the banks and funded by the banks.

14 CHAIRPERSON ESPINAL: And Wall Street.

15 ROBERT TOITMAN: Yeah, and the Wall
16 Street Journal as well. So, basically the reality on
17 the ground is that if-if this wide net is
18 implemented, there's two situations that are going to
19 happen. One is that the local bodega owner and the
20 local merchant is going to have to front the cost of
21 this, which again we don't believe will make any
22 significant inroads in either making the consumer
23 feel comfortable and actually catching the criminal.
24 The consumers won't know that these cameras exist.
25 Bodegas and convenience stores already are very well

2 lit and already have significant security systems in
3 place. And like the said, unfortunately, even when
4 you get a criminal on camera, unless you have blood
5 DNA or catch them at the scene, it's very hard to
6 catch these guys. So either the—the merchant is
7 going to have to pay, or the ATM company will have to
8 pay in which case we'll have to analyze whether or
9 not to remove the machine. We work on really small
10 margins in this business. We're not Citibank. We're
11 not Chase. We're not HSBC. Sometimes it's been the
12 difference between three to five cents a transaction
13 is the difference between us keeping the machine or
14 not. I think this—this proposed bill will lead to a
15 lot of ATMs being removed from communities and stores
16 that really need it, and really depend on us, and
17 like—like they said, we're—if consumers don't feel
18 comfortable, we're—we're out of business. So we are
19 really aware of this. We work with the NYPD and—and,
20 you know, hopefully we'll have some conversations in
21 the future to work together and fix—fix this issue.

22 CHAIRPERSON ESPINAL: Well, yeah, thank
23 you guys all for—for your testimony. Is there
24 anything you want to add?

2 BRUCE RENARD: If I can, Mr. Chairman. I
3 forgot one thing that I think you'll find important.
4 With these foreign bank fees that are more—as much or
5 more than the ATM guys actually charge, right? The
6 other huge problem from the consumer standpoint is
7 they in addition to telling—when you call they tell
8 you it's the ATM fee, and so the consumer calls these
9 guys complaining when, in fact, it's the bank's fee.
10 But if you look on the bank statement, the bank's are
11 purposefully misleading consumers right now. We're
12 working in Washington on this, but I'd love to see
13 you get ahead of us, okay. When you look on your
14 bank statement they do one of two things. Either
15 they put—like if you go take 200 bucks out the
16 machine--

17 CHAIRPERSON ESPINAL: [off mic] Where you
18 see—where you see those. (sic)

19 BRUCE RENARD: You're going to get one
20 line on your statement, and your bank statement is
21 going to be—and he's charging \$2.00. You're going to
22 get a \$202.00 line item. On the bill it will either
23 say the name of the company, the name of the bodega,
24 right. Then below that, you're going to see another
25 line item and that's going to say \$2.50 or \$3.00 on

2 it, and it ought to say Bank of America or it ought
3 to say Chase, but what they're doing is they're
4 putting either the same name as the ATM guy that goes
5 on the line that is actually his charges, or they're
6 putting on a non-Bank of America ATM fee, and they
7 trick you into thinking it's not really their fee.
8 Okay. so if you really want to help at least stop
9 the--the, you know, the rate gouging what the banks
10 are doing on people now, make them put their name on
11 it, on the statement when they send you your bank
12 statement so people will know what their bank is
13 doing is doing to them. [laughs] Because right now
14 they're tricking people, and they're getting a lot of
15 money from this, a lot---billions of dollars on these
16 charges making you think it's these guys' charges.
17 So that--that could be a great help.

18 CHAIRPERSON ESPINAL: Okay, that's
19 something I would love to talk about as well.

20 BRUCE RENARD: Thank you.

21 CHAIRPERSON ESPINAL: A great issue, but
22 that--you want to add anything else?

23 JAY SHRAYEF: I want to say talking about
24 us getting customers, those fees scare customers a
25 lot more.

2 CHAIRPERSON ESPINAL: UH-HUH.

3 JAY SHRAYEF: And the possibility of
4 those foreign fees scare customers a lot more than
5 the possibility of him skimming. So you talk about
6 only 75 units out of thousands and thousands of
7 machines. Those—those were caught immediately.

8 CHAIRPERSON ESPINAL: Right.

9 JAY SHRAYEF: Okay, but the—again the
10 police cannot prosecute those.

11 CHAIRPERSON ESPINAL: I appreciate it.
12 You all have given testimony that is very insightful,
13 and we'll—we'll go back and do our homework, and
14 hopefully have a conversation with you guys as well.

15 BRUCE RENARD: Thank you so much, Mr.
16 Chairman. We really appreciate it. One of my—I—I
17 think a—a skimming device is kind of like getting
18 your credit card stolen. It—it seems a lot scarier
19 than it actually is when it actually happens. You
20 know, I've lost my credit card or somebody has used
21 it. I—I don't think there's ever been a case where a
22 consumer has had their bank account skimmed where the
23 banks aren't totally receptive to giving their money
24 back almost immediately. So, I think in—in theory
25 you feel very violated, which you should, but in

2 reality like nobody is ever losing, you know, their
3 savings account or any money in their checking
4 account when their bank account gets compromised.

5 CHAIRPERSON ESPINAL: Yeah, I've been—I
6 mean I've been—I've been skimmed personally just
7 last. I got a call from my bank saying that my card
8 was used at ten different Rite Aids for 100 over \$100
9 at each Rite Aid within a span of an hour.

10 BRUCE RENARD: Yes.

11 CHAIRPERSON ESPINAL: So I know what it
12 feels like, and you lose all that money. It does
13 take a little bit of time to get your money back--

14 BRUCE RENARD: [interposing] Sure.

15 CHAIRPERSON ESPINAL: --you know, it's--
16 it's an inconvenience--

17 BRUCE RENARD: [interposing] It is.

18 CHAIRPERSON ESPINAL: --a while to be
19 able to, you know, stop it from happening to my--to
20 the consumers of the city.

21 BRUCE RENARD: We are--

22 CHAIRPERSON ESPINAL: [interposing] I
23 understand what--what--what your--what your point is,
24 but, you know, at the end of the day, I want to make
25 sure that consumers feel safe, and they're not being

2 victims of fraud, and these criminals out there are
3 feel like there's a risk to—to what they're doing.

4 BRUCE RENARD: As do we--

5 CHAIRPERSON ESPINAL: department Yeah.

6 BRUCE RENARD: --Mr. Chairman.

7 CHAIRPERSON ESPINAL: You know, and
8 hopefully at the end of the day people will be able
9 to say, you know, ATM is safe. I can use it.

10 JAY SHRAYEF: Absolutely, and--and the
11 same—I would like to extend the same invitation that
12 Mr. Abe from ATM Works gave to you. We are in Dumbo,
13 Everything ATM. Community located as his well, and
14 we would like to invite you and try to work to the
15 best solutions to make this bill a success. Again,
16 I—I support the bill.

17 CHAIRPERSON ESPINAL: Okay.

18 JAY SHRAYEF: And again, everybody know
19 about that.

20 CHAIRPERSON ESPINAL: Thank you guys.
21 Appreciate it.

22 BRUCE RENARD: Thank you.

23 CHAIRPERSON ESPINAL: Have a great day,
24 and with that said, we will conclude this hearing.
25 [gavel] Thank you.

1 COMMITTEE ON CONSUMER AFFAIRS

92

2 BRUCE RENARD: Thank you.

3 CHAIRPERSON ESPINAL: Thank you guys.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date January 16, 2017