# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Banking and Insurance Committee

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| BILL: | SB 704 |
| INTRODUCER: | Senator Alexander |
| SUBJECT: | Automated Teller Machine Transaction Charges |
| DATE: | January 27, 2006 REVISED: 4/21/06 |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Johnson | Deffenbaugh | BI | **Favorable** |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

## I. Summary:


The bill allows the owner of an automated teller machine (ATM) in Florida to charge a fee or surcharge on a customer accessing funds from an account held by a financial institution located outside of the United States. Currently, such fees or surcharges are not prohibited under current state law. However, such surcharges are prohibited by internal policies of the electronic funds networks, Visa, and MasterCard for the United States region, unless expressly authorized by state law. Presently, surcharges are authorized for transactions for accounts of financial institutions located in the United States, if the surcharge is not prohibited by law.

This bill creates an undesignated section of the Florida Statutes.


## II. Present Situation:

When a customer withdraws cash from an automated teller machine (ATM) not owned by his or her financial institution, the customer's financial institution must pay a fee for the transaction, comprised of: a "switching fee" to the ATM network and an "interchange fee" to an ATM not owned by the customer's financial institution.

A customer's financial institution has a choice regarding the imposition of fees. Most financial institutions set a specific limit to the number of interchange fees associated with transactions at ATMs not owned by the customer's financial institution they will pay without charging the customer. If the customer goes over the limit, the bank will then either charge a flat rate or a per transaction fee.

These fees have existed since the advent of the ATM networks. Financial institutions have always been allowed to pass interchange and switching fees on to their customers. The same is not true of surcharging. The ATM network operating rules historically prohibited surcharging by financial institutions, unless the state expressly authorized it by law. However, there is no state or federal law that prohibits such charges. In 1996, MasterCard/Cirrus and Visa/Plus repealed the rules that prohibited such a surcharge on financial institutions located within the United States.

Similar to domestic surcharging, the current prohibition against ATM operators or owners charging fees to persons who wish to access funds from accounts held by financial institutions located outside of the United States is not based on current Florida law, but rather is the result of the card association operating rules that provide an exception if a state's law expressly permits such fees on international transactions. Thirteen states have passed legislation allowing for the assessment of fees or surcharges on international cardholders, including Alabama, Arkansas, California, Georgia, Idaho, Louisiana, Maine, Mississippi, Montana, Nevada, Tennessee, Texas, Washington, and Wyoming.

The lack of fees on international cardholders was less significant in prior years because international interchange fees paid by VISA and MasterCard to ATM owners and operators for international transactions have been historically higher than the domestic interchange fees. However, in recent years, Visa and Mastercard have gradually reduced interchange fees for international transactions. Advocates of the legislation contend that these current international interchange fees do not adequately compensate ATM owners and operators for their inability to impose a surcharge on international transactions.

Section 655.005(1)(h), F.S., defines a "financial institution" as a state or federal association, bank, savings bank, trust company, international bank agency, international branch, representative office or international administrative office, or credit union. Section 655.960(3), F.S., defines an "automated teller machine" as any electronic information processing device located in Florida which accepts or dispenses cash in connection with a credit, deposit, checking, or convenience account. The definition does not include devices used solely to facilitate check guarantees or check authorizations or which are used in connection with the acceptance or dispensing of cash on a person-to-person basis, such as by a store cashier. An operator of an ATM is defined under s. 655.960(10), F.S., to mean a financial institution, other business entity, or any other person who controls the use or operation by a customer or other member of the general public of an ATM.

## III. Effect of Proposed Changes:

**Section 1** creates a new section of law that will allow the owner of an ATM to impose a fee or surcharge to a customer conducting a transaction using an account from a financial institution, as defined in s. 655.005, F.S., which is located outside the United States. Such surcharges are not prohibited under current law; rather the operating rules of the card companies prohibit such surcharges, unless expressly authorized by law.

**Section 2** provides that the bill would take effect July 1, 2006.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

### B. Public Records/Open Meetings Issues:

None.

### C. Trust Funds Restrictions:

None.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

The bill may impact ATM cardholders that have accounts outside of the United States, and conduct transactions in Florida since they may have to pay new fees or surcharges on these ATM transactions, if the ATM operator imposes the fee.

### B. Private Sector Impact:

The bill would have a positive effect on operators of automated teller machines, who will be able to impose a fee or surcharge on customers who are conducting transactions using an account from a financial institution located outside of the United States.

### C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

The Banking Code uses and defines the term, “operator”, rather than “owner” of an automated teller machine in s. 655.960(10), F.S.

## VII. Related Issues:

Currently, state law does not prohibit such a surcharge or fee on transactions using an account from a financial institution located outside of the United States.

## VIII. Summary of Amendments:

None.