



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not implicate any House principles.

### B. EFFECT OF PROPOSED CHANGES:

#### Present Situation:

In 2006, the Legislature passed SB 704, which was enacted as Chapter 2006-216, Laws of Florida. This law created s. 655.966, F.S., relating to Automatic Teller Machines; surcharges. The law took effect July 1, 2006. The bill passed to allow ATM owners and operators to charge an access fee or a surcharge to a customer conducting transactions using an account drawn from a financial institution located outside the United States.

Information provided to staff conveyed that the internal policies and practices of the two international Electronic Funds Transfer (EFT) networks, MasterCard/Cirrus and VISA/Plus, prohibited ATM owners or operators from assessing a fee or a surcharge against ATM users who withdrew funds from within the United States using a card issued by a bank outside the United States. There is an exception to the EFT policies that a state law must specifically permit such fees on international transactions.

Section 655.966, F.S., provides that:

The operator of an automated teller machine, as defined in s. 655.960(3)<sup>1</sup>, may charge an access fee or surcharge, not otherwise prohibited under state or federal law, to a customer conducting a transaction using an account from a financial institution, as defined in s. 655.005(1)(h)<sup>2</sup>, which is located outside of the United States.

As the section reads, a fee “may” be charged on international transactions. Additionally the provisions did not specifically address contracts or agreements that might prohibit these fees. It also was not a requirement of the section that an owner disclose the amount of the fees; however, the Federal Reserve Board Regulation E, which implements the federal EFT Act does require disclosure of the amount of fees to be charged (see 12 C.F.R. s. 205.16).<sup>3</sup>

#### Effect of Proposed Changes

HB 249 requires that an owner or operator of an ATM provide prior electronic disclosure of any and all access fees or surcharges related to a transaction. This disclosure is to be displayed on the ATM. Additionally, a transaction cancellation alternative shall be offered prior to any fee or surcharge payment obligation.

Subject to the disclosure requirements, this bill may not “prohibit, limit, or restrict” the right of an ATM owner or operator from charging an access fee or surcharge on customers conducting transactions

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<sup>1</sup> (3) “Automated teller machine” means any electronic information processing device located in this state which accepts or dispenses cash in connection with a credit, deposit, checking, or convenience account. The term 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.

<sup>2</sup> (1) As used in the financial institutions codes, unless the context otherwise requires, the term:

(h) “Financial institution” means a state or federal association, bank, savings bank, trust company, international bank agency, international branch, representative office or international administrative office, or credit union.

<sup>3</sup> Copy available through staff.

involving a financial institution outside of the United States, that is not otherwise prohibited by state or federal law.

Moreover, the bill provides that nothing in its provisions shall prohibit or limit an ATM operator or owner from voluntarily entering into a fee-free or surcharge-free network agreement.

This act shall take effect July 1, 2007.

C. SECTION DIRECTORY:

Section 1: Provides for disclosure of fees or surcharges; allows for certain fees or surcharges; provides for fee-free or surcharge-free agreements.

Section 2: Provides effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminable positive impact on ATM owners and operators by creating an opportunity to impose a fee or surcharge on customers conducting international transactions on their machines.

Conversely, customers with cards issued by foreign banks who were not being charged an access fee or surcharge may be charged a fee or surcharge for use of an ATM.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

#### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**