

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not implicate any House principles.

B. EFFECT OF PROPOSED CHANGES:

Background

In 2006, the Legislature passed SB 704, which was enacted as Chapter 2006-216, Laws of Florida. The law created s. 655.966, F.S., relating to Automatic Teller Machines; surcharges, and it took effect July 1, 2006. Provisions in the law allowed ATM owners and operators to charge customers an access fee, or a surcharge, whenever customers conducted transactions using a foreign account.

According to staff information, the internal policies and practices of Visa and MasterCard do not allow ATM owners or operators to collect surcharges from international cardholders at ATMs in the United States, except in states where it is expressly allowed by law.

Section 655.966, F.S., provides that:

The operator of an automated teller machine, as defined in s. 655.960(3)¹, 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)², which is located outside of the United States.

As the section reads, a fee “may” be charged on international transactions. Additionally, the provisions of Chapter 2006-216, Laws of Florida, did not address contracts or agreements entered into voluntarily that might prohibit these fees. It also was not a requirement that an owner disclose the amount of the fees; however, the Federal Reserve Board Regulation E, which implements the federal EFT Act does require fee disclosure. (See 12 C.F.R. s. 205.16).

Regulation E: Electronic Fund Transfers³

Regulation E provides a basic framework that establishes the rights, liabilities, and responsibilities of participants in electronic fund transfer systems, such as automated teller machine transactions. The term “electronic fund transfer” generally refers to a transaction initiated through an electronic terminal, telephone, computer, or magnetic tape that instructs a financial institution to either credit or to debit a consumer's asset account.

The regulation also requires financial institutions to provide consumers with initial disclosures of the terms and conditions of EFT services. Institutions must disclose the consumer's liability for unauthorized EFTs, the types of EFTs the consumer may make, and any limit on the frequency or dollar amount; fees charged by the institution; and error-resolution procedures. An institution is required to disclose all fees for EFTs or the right to make them. An institution is not required to disclose fees for inquiries made at an ATM since no transfer of funds is involved. A per-item fee for EFTs must be disclosed even if the same fee is imposed on non-electronic transfers. If a per-item fee is imposed only under certain conditions, such as when the transactions in the cycle exceed a certain number, those

¹ (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.

² (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.

³ CS/SB 744, Banking and Insurance Committee, 2007

conditions must be disclosed. Itemization of the various fees may be provided on the disclosure statement or on an accompanying document that is referenced in the statement.

Effect of Proposed Changes

HB 187 codifies the fee or surcharge disclosure requirements of 12 C.F.R., part 205 as amended relating to the ability of an operator or owner of an ATM to charge an access fee or surcharge to customers who use their machines. Disclosure of any fee or surcharge is to be displayed on the ATM and the option to cancel a transaction prior to fee assessment is to also be provided.

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 involving a financial institution located 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, 2008.

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 authorizing them to charge a fee or surcharge to customers accessing accounts on an ATM. Conversely, such customers may have the added cost of a fee or surcharge.

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

None.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES