

STORAGE NAME: h0181.fs

DATE: April 8, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
ANALYSIS**

BILL #: HB 181

RELATING TO: Automatic Teller Machine ("ATM") Surcharges

SPONSOR(S): Representative Diaz de la Portilla

COMPANION BILL(S): SB 1786 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCIAL SERVICES
 - (2) GENERAL GOVERNMENT APPROPRIATIONS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The bill prohibits financial institutions from imposing a surcharge for ATM transactions.

According to an analysis by the Department of Banking and Finance, the fiscal impact of this bill on the state is indeterminate.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 655, Florida Statutes, governs the regulation of state-authorized or state-chartered financial institutions in a general sense.¹ As defined by statute, financial institutions include a state or federal association, bank, savings bank, trust company, international bank agency, representative office or international administrative office, or credit union.²

The stated purposes of the financial institution codes are to provide for and to promote:

- The safety and soundness of financial institutions that are subject to the codes;
- The prudent conservation of assets;
- The maintenance of public confidence in the financial institutions;
- The protection of the interests of the public (both depositors and creditors) in the safety and soundness, and the preservation, of the financial institution system;
- The protection of the interests of the public in the proper conduct of fiduciary functions (trust business);
- Institution and regulatory competition (promotion of the dual banking system)
- The opportunity for financial institutions to serve the convenience and needs of the public and participate in the economic progress of the state and the country;
- The opportunity for financial institutions to govern their own affairs and to exercise their own business judgement to the extent they are compatible with the purpose of the code;
- The modernization of state law governing financial institutions; and
- Adequate rule making authority to the Department of Banking and Finance (DBF) so that regulation and supervision of financial institutions may be flexible and responsive to economic conditions, technology and industry practices.

Regulation of ATMs - Florida

Section 658.65, F.S., makes provisions regarding remote financial service units, or Automatic Teller Machines (ATMs). In 1994, the Legislature passed HB 2043 (Chapter 94-343, Laws of Florida) which established safety (lighting and landscaping) standards for the areas surrounding ATMs, required ATM operators to comply with these standards, and exempted ATMs located inside of a building, and ATMs located in any area which is not controlled by the operator from these standards.³

Florida does not regulate how much a financial institution may charge a bank member or non-member for using its ATMs. Typically, surcharges are levied when a customer of one bank uses another's ATM machines. The consumer's own bank may charge an

¹The financial institution code includes Florida Statute Chapters 657 (credit unions), 658 (banks and trust companies), 660 (trust business), 663 (international banking corporations), 665 (associations), and 667 (savings banks).

² s. 655.005 (h), F.S.

³s. 655.960, F.S., et seq.

additional fee since it is billed by the other bank as well as the computer network for the transaction. Table 1 outlines some of the more common ATM terms and definitions.

<i>Table 1: Common ATM terms and definitions</i>	
Terms	Definitions
ATM access fee	Fee charged in addition to the individual account fees for an account holder to gain access to the ATM system. Can be monthly, weekly, or annual fee.
ATM card fee	Fee charged in addition to individual account fees to obtain ATM card, NOT A DEBIT CARD FEE , this may be an annual fee or a monthly fee. Note if the fee is per card or per account. For instance, if an account is jointly held, does the bank charge for the second person to hold a card or does it charge one fee for all the cards on an account.
ATM surcharge	Fee charged for a non-account holder to use bank-owned ATM. Example: You have an account at Bank A but use Bank B's ATM. Bank B will charge you a surcharge. Make sure to review what your bank charges for you to use another bank's ATM system. You may have to pay a surcharge to Bank B and a non-bank owned ATM charge to Bank A.
ATM card replacement fee	Fee charged to account holder to replace a lost or stolen ATM card
ATM fee charged at bank-owned machines	Fee charged to account holder to use an ATM owned by the customer's bank to access an account. Often referred to as a proprietary ATM.
ATM fee charged for non-bank-owned ATM in local market	Fee charged to account holder who uses an ATM not owned by the bank where the customer's account is held. This doesn't include fees the ATM's owner bank may charge. Often referred to as a non-proprietary ATM.
ATM fee - national ATM	Transaction fee charged to account holders who use an ATM, through networks, such as the Plus system, Cirrus, MAC etc, to access their account
ATM fee - international ATM	Transaction fee charged to an account holder to use an ATM outside the U.S.

Source: BankRate.com - <http://www.bankrate.com/brm/green/define/atmdef.asp>

Consumer issues

According to the Florida Public Interest Research Group (FPIRG), in its annual study of ATM fees, every one of the 21 banks they surveyed in Florida, from large banks like NationsBank to smaller institutions like BankAtlantic, charged an ATM surcharge, which is the fee banks charge non-customers for using their ATMs. Consumer advocates insist these fees force consumers to pay twice for the same transaction because the bank also charges an interchange fee to a user's home bank to cover the same withdrawal. That charge is also passed on to the consumer.

According to the FPIRG report, the average price for the surcharge in Florida is \$1.37 per transaction, up nine cents from last year's study. The state average is the same as the national average.

Financial service provider issues

According to the banking industry, such machines are a convenience for consumers who need cash and do not want to spend the time standing in a teller line or for consumers who need cash after the banks have closed. Representatives for the Florida Bankers Association (FBA) report that financial institutions need to charge the ATM fees to recover a variety of costs, including the estimated \$30,000 price tag on ATMs and the expensive armored car service needed to replenish the cash machines, lease costs for off-site machines, and maintenance costs. The FBA suggests that consumers should explore options for avoiding the fees, such as using the debit card system in supermarket check-out lanes and then ask for extra cash back. Banks also point out that, notwithstanding previously agreed-upon contractual restrictions, ATM use is free if customers use their own bank's network instead of the machines owned by rival institutions.

Nationwide, financial institutions generate an estimated \$500 - 700 million in surcharge revenues. It is estimated that the same amount is generated by non- financial institution affiliated providers.

Other states' actions

Connecticut and Iowa have banned ATM surcharges. A lawsuit filed in Connecticut in 1997 has not yet been decided. The Iowa Banking Commissioner has filed at least one suit to enforce its law against a retailer that attempted to impose surcharges.

ATM surcharge ban or fee cap or moratorium legislation is or has been under consideration by at least 25 legislatures in 1997 and 1998, including Alabama, Alaska, Arizona, California, Connecticut, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Missouri, Minnesota, Montana, New Hampshire, New Jersey, New York, North Carolina, Oregon, Ohio, Rhode Island, Tennessee, Texas, Washington, Wisconsin, and West Virginia.

B. EFFECT OF PROPOSED CHANGES:

The bill prohibits financial institutions from imposing a surcharge for ATM transactions.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

- e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. Persons would be permitted to utilize ATM machines and not be charged a surcharge fee.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. The bill prohibits financial institutions from imposing a surcharge for use of their ATMs.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates s. 655.996, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 655.996, F.S., prohibiting financial institutions from imposing a surcharge fee on the use of their ATMs.

Section 2. Provides the act will take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

According to an analysis by the Department of Banking and Finance, the non-recurring effect of this bill is negligible.

2. Recurring Effects:

According to an analysis by the Department of Banking and Finance, the recurring effect of this bill is negligible.

3. Long Run Effects Other Than Normal Growth:

According to an analysis by the Department of Banking and Finance, there appears to be no long term effect other than normal growth.

4. Total Revenues and Expenditures:

According to an analysis by the Department of Banking and Finance, this amount, if any, is negligible.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

According to an analysis by the Department of Banking and Finance, the non-recurring effect of this bill is unknown.

2. Recurring Effects:

According to an analysis by the Department of Banking and Finance, the recurring effect of this bill is unknown.

3. Long Run Effects Other Than Normal Growth:

According to an analysis by the Department of Banking and Finance, there appears to be no long term effect other than normal growth.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Financial institutions will be prohibited from imposing a surcharge on ATM usage and, therefore, will lose this fee base. A logical consequence may include imposing higher fees for other financial services.

According to an analysis by the Department of Banking and Finance, the direct private sector cost is unknown.

2. Direct Private Sector Benefits:

Consumers will no longer be required to pay a surcharge for ATM usage.

According to an analysis by the Department of Banking and Finance, the direct private sector benefit is indeterminate.

3. Effects on Competition, Private Enterprise and Employment Markets:

According to an analysis by the Department of Banking and Finance, the effect on competition, private enterprise and employment markets is indeterminate.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require cities or counties to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not affect the amount of state tax shared with counties and municipalities.

V. COMMENTS:

State efforts to ban or limit ATM fees, to the extent that a federal law does not exist, stand a good chance of being preempted by the OCC.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

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