

HOUSE BILL ANALYSIS

ON

SSB 5813

Brief Description: Regulating automated teller machines.

BACKGROUND: There are approximately 4,000 Automated Teller Machines (ATMs) in Washington, with 71 percent being owned by banks (including commercial banks, thrift institutions and credit unions) and 29 percent being owned by nonbank companies. They provide an array of banking services in addition to dispensing cash. In addition to conventional ATMs, many grocery stores, gas stations, and other retail outlets provide point of sale cash-back service.

Bank-owned ATMs are located both at branch banks and nonbranch sites, such as large grocery stores, shopping malls and airports. Initially, ATMs were proprietary, and customers' access cards would only work in machines owned and maintained by their bank. Then networks emerged that allow consumers to use an access card in virtually any ATM in the state. Banks defray the cost of use of network ATMs by noncustomers by an interchange fee charged to the bank that issued the noncustomer access card. Some banks absorb part or all of the interchange fee, and some pass the fee along to their customers.

For many years, ATM network rules have prohibited the imposition of surcharges on noncustomer use of ATMs. Last April, the rule was changed by the networks to allow these fees; some banks began imposing surcharges on noncustomers at their ATMs. These fees are typically \$1 or \$1.50.

The four largest banks in Washington, measured by share of deposits and total assets, own approximately 67 percent of bank-owned ATMs.

The federal constitution may limit the ability of states to regulate under some circumstances. For instance, the Commerce Clause precludes states from improperly interfering with interstate commerce. Generally, a state law that affects interstate commerce must address an important state interest, cannot protect intra-state businesses from competition by out-of-state businesses, must take the least intrusive approach, and must not unduly burden interstate commerce. The Supremacy Clause precludes states from passing laws that directly contradict federal law or that regulate in an area that the federal government has claimed exclusive jurisdiction. Equal Protection provisions generally preclude states from treating like persons or businesses differently; for non-suspect classes, the state can treat persons or businesses differently provided there is a rational basis for doing so.

SUMMARY: Dominant banking institutions and their affiliates are prohibited from imposing user surcharges on automated teller machines that they own or operate, unless they are located at one of their branches. This prohibition ends March 31, 1998. Dominant banking institutions— are defined as a banking institution with total assets exceeding \$1 billion whose market share of automated teller machines exceeds that bank's deposit market share. Surcharge— is a fee directly imposed on a consumer by the owner of an automated teller machine when such a fee does not impact an account the consumer has with the owner of the ATM.

Surcharges imposed by other banks must be disclosed to the consumer on the ATM with an opportunity to cancel the transaction without incurring any obligation.

Violation of the act is made an express violation of the Consumer Protection Act. If a federal chartering authority or a court declares the act to be invalid with respect to a federally chartered bank, the act automatically becomes invalid to the same extent with other banking institutions located within the state.

The chairs of the House and Senate committees on financial institutions are directed to appoint a study task force which will examine the extent to which the ATM market is competitive, the potential anti-competitive effect surcharges may have on the deposit base of small banks, the ways the ATM market may become more competitive, and the potential barriers to promoting an efficient competitive ATM market. The study task force may propose legislation to promote an efficient and competitive ATM market. The task force report must be made by December 1, 1997.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Rulemaking: No specific authority.