

SUBJECT: Creating a civil penalty for surcharges on debit and stored-value cards

COMMITTEE: Investments and Financial Services — committee substitute recommended

VOTE: 6 ayes — Parker, Longoria, Capriglione, Flynn, Pickett, Stephenson
0 nays
1 absent — Landgraf

WITNESSES: For — Stephen Scurlock, Independent Bankers Association of Texas;
(*Registered, but did not testify:* Melodie Durst, Credit Union Coalition of Texas; Jeff Huffman, Texas Credit Union Association)
Against — None
On — Ronnie Volkening, Texas Retailers Association

BACKGROUND: HB 3068 by Menéndez, enacted by the 83rd Legislature in 2013, amended Finance Code, ch. 59 to prohibit merchants from adding a surcharge to purchases made with a debit or a stored-value card.

DIGEST: CSHB 3619 would transfer Finance Code, ch. 59, subch. E, which prohibits surcharges on debit and stored-value cards, to Business and Commerce Code, ch. 604A and would add an enforcement mechanism to the prohibition.

The bill would define a surcharge as an increase in the price charged for a buyer who paid with a debit or stored-value card that was not imposed on a buyer who paid by other means.

If the attorney general had reason to believe that someone had been imposing surcharges for goods or services paid for with a debit or stored-value card, the attorney general would be required to send a warning letter to that person. The letter would have to advise the person about the requirements of the surcharge prohibition, provide guidance to assist the

violation on how to become compliant, and state that the person could be liable for a civil penalty for subsequent violations. The attorney general could not send more than one letter for each day on which the attorney general believed the person had imposed a prohibited surcharge.

A person who violated the surcharge prohibition after receiving a warning letter for a previous alleged violation would be liable for a civil penalty not to exceed \$250 for each violation that occurred after receiving the letter. The attorney general or the prosecutor in the county where the violation occurred could bring an action to recover the penalty or seek an injunction for a violation. They also could recover reasonable expenses incurred in obtaining penalties or seeking injunctive relief.

The bill would take effect September 1, 2015, and would apply only to the sale of goods or services occurring on or after that date.

**SUPPORTERS
SAY:**

HB 3619 would ensure that merchants complied with current law's prohibition on debit and stored-value card surcharges while providing merchants who might be unclear on the law with guidance on how to comply. The original prohibition on debit cards was meant to protect consumers from unexpected fees. Despite efforts by the Texas Department of Banking to educate the business community on the prohibition against surcharges, some businesses continue to impose surcharges on purchases made with debit and stored-value cards. The Department of Banking has received numerous complaints from consumers who discovered surcharges on their bank statements, but because these surcharges are typically 50 cents or less, it is hard to estimate how many surcharges go unnoticed.

The bill would protect small businesses. The attorney general or prosecuting attorney would be required to provide a warning letter for a violation before seeking fines or an injunction for a violation that occurred after the notice. This letter would provide guidance for merchants who simply were unaware of the law, and the penalty imposed for subsequent violations would be moderate.

OPPONENTS
SAY:

While CSHB 3619 might contain comparatively light penalties for surcharge violations, it still would place small business owners at risk of facing substantial fines out of proportion to the problem this bill seeks to address.

Most businesses are compliant with the prohibition on surcharges. In fact, large businesses have in-house counsel to ensure their practices are in compliance with the law. The businesses that do impose debit and stored-value card surcharges are those that receive most of their revenue from small purchases and are recovering costs they incur from interchange fees. Banks that provide debit and stored-value cards typically charge merchants an interchange fee of 22 cents plus 0.5 percent of the purchase price for every transaction. For businesses that depend on small purchases for the bulk of their revenue, such as convenience stores, these fees can have a significant impact on the business's profit margin.

Some businesses that impose a surcharge on debit card transactions are small businesses that are trying to create a discount for paying with cash but are unclear on the law. For this reason, HB 3619 at least should provide explicit language allowing discounts for paying with cash.

NOTES:

CSHB 3442 by Raney, a similar bill, also would add an enforcement mechanism to the prohibition against imposing surcharges on a debit or stored-value card purchase. It would provide a one-month grace period for merchants to cure noncompliance and would create a \$1,000 penalty for violations of the prohibition against surcharges. CSHB 3442 was placed on the general state calendar on April 23 and postponed until April 30.