

BILL ANALYSIS

Senate Research Center

S.B. 641
By: Schwertner
Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The 83rd Legislature passed H.B. 3068, which prohibits a merchant from imposing a surcharge on a customer who pays with a debit card, instead of cash, check, or credit card. This change in law was made to afford the same protections enjoyed by purchasers using credit cards to those using debit cards. Specifically, the statute protects consumers from surprise surcharges and discourages financial alliances between large stores and large banks that would steer consumers towards those particular banks.

Despite the passage of these protections, many merchants continue to impose surcharges on debit card users. Some merchants have even disregarded the attempts by the Texas Department of Banking to educate them about the law. Unfortunately, while H.B. 3068 prohibited debit card surcharges, it did not provide the Department of Banking or the attorney general with enforcement authority. As a result, the state lacks the ability to ensure merchants are complying with current law and consumers using debit cards are protected.

Senator Schwertner's office has received several complaints about the continuance of surprise surcharges, despite the passage of H.B. 3068. C.S.S.B. 641 grants the attorney general the authority to impose sanctions on merchants who disregard the law, thus protecting consumers.

S.B. 641 amends current law relating to debit card or stored value card surcharges and provides a civil penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Transfers Subchapter E, Chapter 59, Finance Code, to Title 12, Business & Commerce Code, redesignates it as Chapter 604A, Business & Commerce Code, and amends it as follows:

CHAPTER 604A. PROHIBITION OF CERTAIN SURCHARGES

Sec. 604A. 001. DEFINITIONS. Redesignates former Section 59.401, Business & Commerce Code, as Section 604A.001, Business & Commerce Code. Changes a reference to subchapter to chapter. Redefines "debit card" and "stored value card" and defines "surcharge."

Sec. 604A.002. IMPOSITION OF SURCHARGE FOR USE OF DEBIT OR STORED VALUE CARD. Redesignates former Section 59.401, Business & Commerce Code as Section 604A.001, Business & Commerce Code. (a) Prohibits a merchant from imposing a surcharge on a buyer who uses a debit or stored value card instead of cash, a check, credit card, or a similar means of payment in a sale of goods or services.

(b) Provides that this section does not apply to a state agency, county, local governmental entity, or other governmental entity that accepts a debit or stored value card for the payment of fees, taxes, or other charges.

Sec. 604A.003. CIVIL PENALTY. (a) Provides that a person who knowingly violates Section 604A.002 is liable to the state for a civil penalty in an amount not to exceed \$500 for each violation. Authorizes the attorney general or the prosecuting attorney in the county in which the violation occurs to bring:

(1) a suit to recover the civil penalty imposed under this section; and

(2) an action in the name of the state to restrain or enjoin a person from violating this chapter.

(b) Requires the attorney general or prosecuting attorney to give the person notice of the person's noncompliance and liability for a civil penalty before bringing the action. Requires that the notice:

(1) contain guidance to assist the person in complying with this chapter;

(2) advise the person of the prohibition under Section 604A.002; and

(3) state that the person may be liable for a civil penalty for a subsequent violation of Section 604A.002.

(b-1) Provides that, if the person complies with Section 604A.002 not later than the 30th day after the date of the notice under Subsection (b), the violation is cured and the person is not liable for the civil penalty. Provides that a person who has previously received notice of noncompliance under Subsection (b) is not entitled to notice of or the opportunity to cure a subsequent violation of Section 604A.002.

(c) Entitles the attorney general or the prosecuting attorney, as appropriate, to recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, under this section, including reasonable attorney's fees, court costs, and investigatory costs.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2015.