

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 641  
By: Schwertner  
Business & Commerce  
3/17/2015  
Committee Report (Substituted)

### **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.

C.S.S.B. 641 amends current law relating to debit card surcharges or stored value card 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. Amends Section 59.401, Finance Code, by adding Subdivision (5) to define "surcharge."

SECTION 2. Amends Subchapter E, Chapter 59, Finance Code, by adding Section 59.403, as follows:

Sec. 59.403. CIVIL PENALTY. (a) Provides that a person who knowingly violates Section 59.402 (Imposition of Surcharge for Use of Debit or Stored Value Card) is liable to the state for a civil penalty in an amount not to exceed \$1,000 for each violation. Authorizes the attorney general or the prosecuting attorney in the county in which the violation occurs to bring a suit to recover the civil penalty imposed under this section, and 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. Provides that if the person complies with Section 59.402 not later than the 30th day after the date of the notice, the violation is cured and the person is not liable for the civil penalty.

(c) Entitles the attorney general or 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 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2015.