

## **BILL ANALYSIS**

Senate Research Center

S.B. 560  
By: Hancock  
Business & Commerce  
6/8/2017  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, the Texas Finance Code prohibits sellers of goods and services from imposing a credit card surcharge. This means that a seller is not allowed to add an extra amount to the regular price of a good or service when the buyer pays by credit card, as opposed to some other payment method. Ten other states currently have laws that prohibit merchants from charging consumers with surcharges on credit card transactions.

The bill would transfer enforcement authority for the credit card surcharge prohibition to the Office of the Attorney General (OAG) from the Office of Consumer Credit Commissioner.

Similar legislation was passed in 2015 (S.B. 641—84R; Senator Schwertner), where the enforcement authority for the debit card surcharge prohibition was transferred from the Texas Department of Banking to OAG.

This bill would ensure that the surcharge prohibitions for both debit cards and credit cards are enforced by the same state agency.

S.B. 560 amends current law relating to surcharges imposed for the use of a credit card, and provides a civil penalty.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Finance Commission of Texas is rescinded in SECTION 9 (Section 604A.0021, Business & Commerce Code, formerly numbered as Section 339.001, Finance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 604A.001, Business & Commerce Code, by adding Subdivision (1-a) and amending Subdivision (5), as follows:

(1-a) Defines "credit card."

(5) Redefines "surcharge."

SECTION 2. Amends Sections 604A.003(a), (b), and (b-1), Business & Commerce Code, as follows:

(a) Provides that a person who knowingly violates Section 604A.002 (Imposition of Surcharge for Use of Debit or Stored Value Card) or 604A.0021 is liable to the state for a civil penalty in an amount not to exceed \$500 for each violation.

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

(1) makes no change to this subdivision;

(2) advise the person of the prohibitions under Sections 604A.002 and 604A.0021, rather than 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 or 604A.0021.

(b-1) Makes conforming changes.

SECTION 3. Amends Section 14.101, Finance Code, as follows:

Sec. 14.101. GENERAL DUTIES OF COMMISSIONER. Deletes existing text requiring the consumer credit commissioner (commissioner) to enforce Section 339.001 in person or through an assistant commissioner, examiner, or other employee of the Office of the Consumer Credit Commissioner.

SECTION 4. Amends Section 14.201, Finance Code, to delete existing text providing that investigative and enforcement authority under this subchapter applies only to Section 339.001.

SECTION 5. Amends Section 14.2015(a), Finance Code, to delete existing text referring to Section 339.001 and make conforming changes.

SECTION 6. Amends Section 14.251(b), Finance Code, to delete existing references to Section 339.001.

SECTION 7. Amends Section 14.261(a), Finance Code, as follows:

(a) Authorizes the commissioner, in administering this chapter (Consumer Credit Commissioner), to accept assurance of voluntary compliance from a person who is engaging in or has engaged in an act or practice in violation of:

(1) deletes existing Subdivision (1), which referenced Section 339.001, and redesignates existing Subdivision (2) as Subdivision (1);

(2) redesignates existing Subdivision (3) as Subdivision (2); or

(3) redesignates existing Subdivision (4) as Subdivision (3).

SECTION 8. Amends Section 14.262, Finance Code, as follows:

Sec. 14.262. EFFECT OF ASSURANCE. (a) Provides that an assurance of voluntary compliance is not an admission of a violation of:

(1) deletes existing Subdivision (1), which referenced Section 339.001, and redesignates existing Subdivision (2) as Subdivision (1);

(2) redesignates existing Subdivision (3) as Subdivision (2); or

(3) redesignates existing Subdivision (4) as Subdivision (3).

(b) Makes conforming changes.

SECTION 9. Transfers Section 339.001, Finance Code, to Chapter 604A, Business & Commerce Code, redesignates it as Section 604A.0021, Business & Commerce Code, and amends it, as follows:

Sec. 604A.0021. IMPOSITION OF SURCHARGE FOR USE OF CREDIT CARD. (a) Makes no change to this subsection.

(b) Makes a nonsubstantive change.

(c) Deletes existing text of Subsections (c) and (d) relating to the exclusive jurisdiction of the commissioner and granting rulemaking authority to the Finance Commission of Texas. Redesignates existing Subsection (e) as Subsection (c).

SECTION 10. Effective date: September 1, 2017.