

BILL ANALYSIS

C.S.H.B. 3442
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Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are concerns that the prohibition against the use of surcharges on customers who use debit cards and stored value cards when paying for goods and services lacks an enforcement mechanism. C.S.H.B. 3442 seeks to provide such a mechanism.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3442 transfers specified provisions of the Finance Code to the Business & Commerce Code and amends those provisions to make a person who knowingly violates the prohibition against the imposition of a surcharge for the use of a debit or stored value card liable to the state for a maximum civil penalty of \$1,000 for each violation. The bill defines "surcharge" as an increase in the price charged for goods or services imposed on a buyer who pays with a debit or stored value card that is not imposed on a buyer who pays by other means and specifies that the term does not include a discounted price charged for goods or services to a buyer who pays with cash. The bill 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 and to bring an action in the name of the state to restrain or enjoin a person from violating statutory provisions prohibiting the imposition of such surcharges.

C.S.H.B. 3442 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 and establishes that the violation is cured and the person is not liable for the civil penalty if the person complies with the prohibition against imposing a surcharge for the use of a debit or stored value card not later than the 30th day after the date of such notice. The bill establishes that a person who has previously received notice of noncompliance is not entitled to notice of, or the opportunity to cure, a subsequent violation. The bill entitles the attorney general or the prosecuting attorney, as appropriate, to recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including reasonable attorney's fees, court costs, and investigatory costs.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3442 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 59.401, Finance Code, is amended by adding Subdivision (5) to read as follows:

(5) "Surcharge" means any increase in the price charged for goods or services imposed on a customer who pays with a debit or stored value card that is not imposed on a customer who pays by other means.

SECTION 1. Subchapter E, Chapter 59, Finance Code, is transferred to Title 12, Business & Commerce Code, redesignated as Chapter 604A, Business & Commerce Code, and amended to read as follows:

CHAPTER 604A [SUBCHAPTER E].
PROHIBITION OF CERTAIN
SURCHARGES [SURCHARGE]

Sec. 604A.001 [~~59.401~~]. DEFINITIONS. In this chapter [~~subchapter~~]:

(1) "Cardholder" means the person named on the face of a debit or stored value card to whom or for whose benefit the card is issued.

(2) "Debit card" has the meaning assigned by [~~in~~] Section 502.001[~~, Business & Commerce Code~~].

(3) "Merchant" means a person in the business of selling or leasing goods or services.

(4) "Stored value card" has the meaning assigned by [~~as defined in~~] Section 604.001(1), [~~Business & Commerce Code~~], but does not include the meaning assigned by [~~as defined in~~] Section 604.001(2)[~~, Business & Commerce Code~~].

(5) "Surcharge" means an increase in the price charged for goods or services imposed on a buyer who pays with a debit or stored value card that is not imposed on a buyer who pays by other means. The term does not include a discounted price charged for goods or services to a buyer who pays with cash.

Sec. 604A.002 [~~59.402~~]. IMPOSITION OF SURCHARGE FOR USE OF DEBIT OR STORED VALUE CARD. (a) In a sale of goods or services, a merchant may not impose 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.

(b) 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.

SECTION 2. Subchapter E, Chapter 59, Finance Code, is amended by adding Section 59.403 to read as follows:

Sec. 59.403. CIVIL PENALTY. (a) A person who knowingly violates this subchapter is liable to the state for a civil penalty in an amount not to exceed \$1,000 for each violation. The attorney general or the prosecuting attorney in the county in which the violation occurs may 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) The attorney general or the prosecuting attorney in the county in which the violation occurs, as appropriate, is entitled 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. The changes in law made by this Act apply only to a sale of goods or services occurring on or after the effective date of this Act. A sale of goods or services occurring before the effective date of this Act is governed by the law in effect on the date the sale occurred, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2015.

Sec. 604A.003. CIVIL PENALTY. (a) A person who knowingly violates Section 604A.002 is liable to the state for a civil penalty in an amount not to exceed \$1,000 for each violation. The attorney general or the prosecuting attorney in the county in which the violation occurs may 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) Before bringing the action, the attorney general or prosecuting attorney shall give the person notice of the person's noncompliance and liability for a civil penalty. If the person complies with Section 604A.002 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. A person who has previously received notice of noncompliance under this subsection is not entitled to notice of or the opportunity to cure a subsequent violation of Section 604A.002.

(c) The attorney general or the prosecuting attorney, as appropriate, is entitled 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. Same as introduced version.

SECTION 3. Same as introduced version.