

- 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, Landgraf, Stephenson
0 nays
1 absent — Pickett
- WITNESSES:** For — Stephen Scurlock, Independent Bankers Association of Texas;
(*Registered, but did not testify:* Melodie Durst, Credit Union Coalition of Texas; John Heasley, Texas Bankers Association; Jeff Huffman, Texas Credit Union Association)
Against — 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 3442 would transfer Finance Code, ch. 59, subch. E, which prohibits surcharges on debit and stored-value cards, to Business and Commerce Code, 604A and would add an enforcement mechanism to the prohibition.

A person who knowingly violated the surcharge prohibition would be liable for a civil penalty not to exceed \$1,000. The Office of the Attorney General or the prosecutor in the county where the violation occurred could seek fines or an injunction for a violation and could recover reasonable expenses incurred during this process.

Before filing suit, the prosecuting attorney would be required to give the violators notice of their noncompliance and liability. A violator who complied with the law within 30 days after the notice no longer would be liable. A person who previously had received notice of noncompliance

would not in the future be entitled to receive notice of noncompliance or the opportunity to cure the noncompliance.

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. A discount for paying with cash would not be considered a surcharge.

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:**

CSHB 3442 would ensure that merchants complied with current law's prohibition on debit and stored-value card surcharges. The original prohibition on debit cards was meant to protect consumers from unexpected fees and to prevent large banks from collaborating with large retailers to steer clients to particular banks. 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. By providing businesses 30 days to cure a violation of the law, the bill would provide a safe harbor for merchants who simply were unaware of the law. The bill explicitly would permit cash discounts to consider the needs of businesses that rely on small purchases for the bulk of their revenue. By providing a definition of what constitutes a surcharge, the bill would clarify that dual pricing is legal, but surcharge fees are not.

**OPPONENTS
SAY:**

CSHB 3442 is an unnecessary measure that could lead to the imposition of substantial fines on small business owners. Most businesses that impose debit and stored-value card surcharges are businesses that receive the bulk of their revenue from small purchases, such as convenience

stores. The banks that provide debit and stored value cards typically charge a 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, these fees can have a significant impact on the business's operating cost.

The businesses that impose surcharges often are trying to create a discount for paying with cash. HB 3442 should clarify what constitutes a cash discount and should provide more compliance guidance to merchants.

NOTES:

The Senate companion bill, SB 641 by Schwertner, was approved by the Senate on April 15.