

By: Capriglione

H.B. No. 3619

A BILL TO BE ENTITLED

AN ACT

relating to a surcharge imposed for the use of a debit card or stored value card; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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 [~~7, 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) [~~7, Business & Commerce Code~~].

(5) "Surcharge" means an increase in the price charged

1 for goods or services imposed on a buyer who pays with a debit or
2 stored value card that is not imposed on a buyer who pays by other
3 means.

4 Sec. 604A.002 [~~59.402~~]. IMPOSITION OF SURCHARGE FOR USE OF
5 DEBIT OR STORED VALUE CARD. (a) In a sale of goods or services, a
6 merchant may not impose a surcharge on a buyer who uses a debit or
7 stored value card instead of cash, a check, credit card, or a
8 similar means of payment.

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

13 Sec. 604A.003. CIVIL PENALTY; INJUNCTIVE RELIEF. (a) If
14 the attorney general has reason to believe that a person has
15 violated this chapter, the attorney general shall send a warning
16 letter to the person alleged to have committed the violation. The
17 letter must advise the person of the requirements of Section
18 604A.002 and state that the person may be liable for a civil penalty
19 under this chapter for subsequent violations.

20 (b) The attorney general may not send to a person more than
21 one letter for each day on which the attorney general believes the
22 person has violated this chapter.

23 (c) A person who violates this chapter after receiving three
24 or more warning letters under Subsection (a) for previous alleged
25 violations is liable to the state for a civil penalty of \$2,000 for
26 each instance of a violation that occurs after the third letter.
27 The attorney general or the prosecuting attorney in the county in

1 which the violation occurs may bring:

2 (1) an action to recover the civil penalty imposed by
3 this section; or

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

6 (d) The attorney general or the prosecuting attorney in the
7 county in which the violation occurs, as appropriate, is entitled
8 to recover reasonable expenses incurred in obtaining civil
9 penalties, injunctive relief, or both under this section, including
10 reasonable attorney's fees, court costs, and investigatory costs.

11 SECTION 2. The changes in law made by this Act apply only to
12 a sale of goods or services occurring on or after the effective date
13 of this Act. A sale of goods or services that occurred before the
14 effective date of this Act is governed by the law as it existed
15 immediately before the effective date of this Act, and the former
16 law is continued in effect for that purpose.

17 SECTION 3. This Act takes effect September 1, 2015.