

By: Carona

S.B. No. 1322

A BILL TO BE ENTITLED

AN ACT

relating to a merchant's acceptance of a credit card or debit card.

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

SECTION 1. Title 4, Business & Commerce Code, is amended by adding Chapter 51 to read as follows:

CHAPTER 51. CREDIT OR DEBIT CARD MERCHANT AGREEMENTS

Sec. 51.01. DEFINITIONS. (a) In this chapter:

(1) "Acquiring bank" means a financial institution licensed to do business in this state that provides merchant accounts.

(2) "Chargeback" means a credit card or debit card transaction that is billed back to a merchant or deducted from the merchant account of a merchant.

(3) "Credit card" means:

(A) an instrument or device, referred to as a "credit card," "charge card," "credit plate," "courtesy card," "identification card," or by another name, issued with or without a fee for use by the cardholder in obtaining money, goods, services, or another thing of value, on credit or in consideration of an undertaking by the issuing bank to pay or a guaranty by the issuing bank of the payment of a check drawn by the cardholder, regardless of whether the indebtedness represented by the check is secured; or

(B) an instrument or device referred to as a "stored value card," "smart card," or by another name, that enables

1 a person to obtain goods, services, or another thing of value
2 through the use of value stored on the instrument or device.

3 (4) "Debit card" means an instrument or device
4 referred to as a "debit card," "ATM card," "electronic benefit
5 transfer card," or by another name, other than a check or similar
6 paper instrument, that:

7 (A) is signed by the holder or other authorized
8 signatory on the deposit account; and

9 (B) draws money from a deposit account to obtain
10 money, goods, services, or another thing of value.

11 (5) "Financial institution" means a bank, savings
12 association, savings bank, credit union, or industrial loan
13 company.

14 (6) "Interchange fee" means the fee that an acquiring
15 bank pays to an issuing bank when a cardholder uses a credit card or
16 debit card as payment during a retail transaction.

17 (7) "Issuing bank" means a financial institution that
18 issues credit cards to cardholders.

19 (8) "Merchant account" means an account with a
20 financial institution that allows a merchant to accept credit card
21 or debit card payments.

22 (9) "Merchant" means a person who holds a tax permit
23 and offers goods or services for sale in this state.

24 (b) For purposes of this chapter, "credit card" and "debit
25 card" include the number assigned to a credit card or debit card
26 used in place of the instrument or device at the time of ordering or
27 obtaining the thing of value.

1 Sec. 51.02. MERCHANT ACCESS TO BINDING RULES AND RATES. (a)

2 If a merchant account specifies that the merchant is bound by the
3 rules of a financial institution, the contracting financial
4 institution must:

5 (1) provide the merchant with a complete written copy
6 of the contract and the rules referenced in the contract, through
7 the contracting financial institution or an acquiring bank; and

8 (2) notify the merchant when a referenced rule is
9 changed or a new rule is adopted, and provide a copy of the new or
10 modified rule.

11 (b) A merchant account must include:

12 (1) the contracting financial institution's complete
13 schedule of interchange fees, credit card and debit card
14 transaction rates, and any other fees that the financial
15 institution charges to merchants; and

16 (2) an explanation of which rates apply to the
17 merchant, and the situations in which those rates apply.

18 (c) A merchant account may not require a merchant to agree
19 not to disclose the contracting financial institution's rules or
20 rates as a condition of receiving access to the rules or rates.

21 Sec. 51.03. NOTIFICATION OF RULE CHANGE. If a financial
22 institution changes its rules regarding the authorization of a
23 merchant to accept a credit card or debit card, and the change would
24 result in a chargeback to the merchant, the financial institution
25 shall notify the merchant of the change not later than the seventh
26 business day before the date the change takes effect.

27 Sec. 51.04. PENALTY FOR CASH PURCHASE DISCOUNT PROHIBITED.

1 A merchant account may not prohibit a merchant from providing a
2 discounted sales price to a customer for the customer's purchase
3 with cash of a good, including motor fuel, or service.

4 Sec. 51.05. PENALTIES. (a) If a financial institution
5 fails to provide a merchant with a copy of its contract, rules, or
6 rates, or to notify the merchant of a rule change as required by
7 Section 51.02 or 51.03, the merchant is not liable for any
8 chargeback or fees associated with the merchant's credit card or
9 debit card transactions for the period beginning on the date the
10 contract was executed and ending on the date the rules or rates are
11 provided to the merchant.

12 (b) A merchant is not liable for any chargeback or fees
13 associated with the merchant's credit card or debit card
14 transactions that arise under a contract provision that violates
15 Section 51.04.

16 (c) A violation of this chapter is a deceptive trade
17 practice under Subchapter E, Chapter 17. A merchant affected by the
18 violation of this chapter may maintain a civil action for damages or
19 equitable relief under Subchapter E, Chapter 17, as if the merchant
20 were a consumer as defined by that subchapter. This subsection may
21 not be waived.

22 SECTION 2. Section 339.001(a), Finance Code, is amended to
23 read as follows:

24 (a) In a sale of goods or services, a seller may not impose a
25 surcharge on a buyer who uses a credit card for an extension of
26 credit instead of cash, a check, or a similar means of payment.
27 Providing a discounted price to a buyer who uses cash is not

1 considered a surcharge on a buyer who uses a credit card.

2 SECTION 3. Chapter 51, Business & Commerce Code, as added by
3 this Act, applies only to a contract executed or renewed on or after
4 September 1, 2007.

5 SECTION 4. This Act takes effect September 1, 2007.