

By: Elkins

H.B. No. 2069

A BILL TO BE ENTITLED

AN ACT

relating to a merchant's duties with respect to the use of a credit card, debit card, stored value card, or other access device.

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

SECTION 1. Title 12, Business & Commerce Code, as effective April 1, 2009, is amended by adding Chapter 606 to read as follows:

CHAPTER 606. ACCEPTANCE OF CREDIT CARD, DEBIT CARD, STORED VALUE CARD, OR OTHER ACCESS DEVICE

Sec. 606.001. DEFINITIONS. In this chapter:

(1) "Access device" means a card or device issued by a financial institution that contains a magnetic stripe, microprocessor chip, or other means for storing information. The term includes a credit card, debit card, or stored value card.

(2) "Financial institution" means a bank, savings association, savings bank, or credit union maintaining an office, branch, or agency office in this state.

(3) "Merchant" means a person, other than a financial institution, transacting business in this state who accepts an access device in connection with a transaction.

Sec. 606.002. DUTY OF MERCHANT TO VERIFY IDENTITY OF ACCESS DEVICE USER. A merchant shall implement and maintain reasonable procedures, including taking appropriate corrective action, to comply with best industry practices and standards with regard to:

(1) verifying the identity of an individual conducting

1 a transaction using an access device; and

2 (2) verifying that the individual conducting the  
3 transaction is an authorized holder and user of the access device.

4 Sec. 606.003. DUTY OF MERCHANT TO COOPERATE WITH  
5 INVESTIGATION. (a) When a fraudulent or unauthorized transaction  
6 or activity is reported, the merchant who accepted the access  
7 device in connection with the transaction shall reasonably  
8 cooperate with the financial institution that issued the access  
9 device or another related party in the investigation of that  
10 fraudulent or unauthorized transaction or activity. For purposes  
11 of this subsection, reasonable cooperation includes:

12 (1) producing relevant documents;

13 (2) facilitating an interview of relevant personnel;

14 and

15 (3) producing security or surveillance information  
16 with regard to the unauthorized transaction.

17 (b) A merchant must comply with this section, regardless of  
18 whether federal, state, or local law enforcement are involved in  
19 the investigation of the fraudulent or unauthorized transaction or  
20 activity.

21 Sec. 606.004. ACTION AGAINST MERCHANT. (a) A financial  
22 institution may bring an action against a merchant who accepts an  
23 access device in connection with a fraudulent or unauthorized  
24 transaction if:

25 (1) at the time of the transaction, the merchant was  
26 not in compliance with Section 606.002; or

27 (2) at the time of the investigation, the merchant did

1 not cooperate as required under Section 606.003.

2 (b) A financial institution that brings an action under this  
3 section may obtain actual damages arising from the merchant's  
4 violation of this chapter, costs, and attorney's fees. Actual  
5 damages include any cost incurred by the financial institution in  
6 connection with:

7 (1) the cancellation or reissuance of an access device  
8 affected by the fraudulent or unauthorized transaction or activity;

9 (2) the closing of a deposit, transaction, share  
10 draft, or other account affected by the fraudulent or unauthorized  
11 transaction or activity and any action to stop payment or block a  
12 transaction with respect to the account;

13 (3) the opening or reopening of a deposit,  
14 transaction, share draft, or other account affected by the  
15 fraudulent or unauthorized transaction or activity; and

16 (4) a refund or credit made to an account holder to  
17 cover the cost of any fraudulent or unauthorized transaction or  
18 activity.

19 SECTION 2. This Act takes effect September 1, 2009.