

BILL ANALYSIS

C.S.H.B. 3619
By: Capriglione
Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties have expressed concern that certain consumer protection restrictions on surcharges for credit card transactions have not been established for debit cards and stored value cards. C.S.H.B. 3619 seeks to remedy this issue.

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. 3619 transfers certain provisions of the Finance Code to the Business & Commerce Code and redesignates and amends those provisions to require the attorney general, if the attorney general has reason to believe that a person has violated the prohibition against the imposition of a surcharge for use of a debit or stored value card, to send a warning letter to the person alleged to have committed the violation. The bill requires the letter to contain guidance to assist the person to become compliant with statutory provisions prohibiting such surcharges. The bill requires the letter to advise the person of the requirements of the prohibition on the imposition of a surcharge and state that the person may be liable for a civil penalty for subsequent violations.

C.S.H.B. 3619 prohibits the attorney general from sending to a person more than one letter for each day on which the attorney general believes the person has violated the prohibition. The bill makes a person who violates the prohibition after receiving a warning letter from the attorney general for a previous alleged violation liable to the state for a maximum civil penalty of \$250 for each instance of a violation that occurs after the person receives the letter. The bill authorizes the attorney general or the prosecuting attorney in the county in which the violation occurs to bring an action to recover the civil penalty or an action in the name of the state to restrain or enjoin a person from violating the prohibition. The bill entitles the attorney general or the prosecuting attorney in the county in which the violation occurs, as appropriate, to recover reasonable expenses incurred in obtaining civil penalties, injunctive relief, 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. 3619 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

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.

Sec. 604A.002 [59.402]. IMPOSITION OF
SURCHARGE FOR USE OF DEBIT OR
STORED VALUE CARD.

Sec. 604A.003. CIVIL PENALTY;
INJUNCTIVE RELIEF. (a) If the attorney
general has reason to believe that a person
has violated this chapter, the attorney
general shall send a warning letter to the
person alleged to have committed the
violation.

The letter must advise the person of the
requirements of Section 604A.002 and state
that the person may be liable for a civil
penalty under this chapter for subsequent
violations.

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

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

- (1) an action to recover the civil penalty
imposed by this section; or
- (2) an action in the name of the state to
restrain or enjoin a person from violating

HOUSE COMMITTEE SUBSTITUTE

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.

Sec. 604A.002 [59.402]. IMPOSITION OF
SURCHARGE FOR USE OF DEBIT OR
STORED VALUE CARD.

Sec. 604A.003. CIVIL PENALTY;
INJUNCTIVE RELIEF. (a) If the attorney
general has reason to believe that a person
has violated this chapter, the attorney
general shall send a warning letter to the
person alleged to have committed the
violation. The letter must contain guidance
to assist the person to become compliant
with this chapter.

The letter must advise the person of the
requirements of Section 604A.002 and state
that the person may be liable for a civil
penalty under this chapter for subsequent
violations.

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

(c) A person who violates this chapter after
receiving a warning letter under Subsection
(a) for a previous alleged violation is liable
to the state for a civil penalty in an amount
not to exceed \$250 for each instance of a
violation that occurs after the person
receives the letter. The attorney general or
the prosecuting attorney in the county in
which the violation occurs may bring:

- (1) an action to recover the civil penalty
imposed by this section; or
- (2) an action in the name of the state to
restrain or enjoin a person from violating

this chapter.

(d) 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 civil penalties, injunctive relief, or both under this section, including reasonable attorney's fees, court costs, and investigatory costs.

SECTION 2. 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 that occurred before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

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

this chapter.

(d) 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 civil penalties, injunctive relief, 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.