

By: Raney

H.B. No. 3442

Substitute the following for H.B. No. 3442:

By: Capriglione

C.S.H.B. No. 3442

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. The term does not include a discounted price charged for
4 goods or services to a buyer who pays with cash.

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

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

14 Sec. 604A.003. CIVIL PENALTY. (a) A person who knowingly
15 violates Section 604A.002 is liable to the state for a civil penalty
16 in an amount not to exceed \$1,000 for each violation. The attorney
17 general or the prosecuting attorney in the county in which the
18 violation occurs may bring:

19 (1) a suit to recover the civil penalty imposed under
20 this section; and

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

23 (b) Before bringing the action, the attorney general or
24 prosecuting attorney shall give the person notice of the person's
25 noncompliance and liability for a civil penalty. If the person
26 complies with Section 604A.002 not later than the 30th day after the
27 date of the notice, the violation is cured and the person is not

1 liable for the civil penalty. A person who has previously received
2 notice of noncompliance under this subsection is not entitled to
3 notice of or the opportunity to cure a subsequent violation of
4 Section 604A.002.

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

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

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