

By: Parker

H.B. No. 2176

A BILL TO BE ENTITLED

AN ACT

relating to surcharges imposed for the use of a credit card;
providing a civil penalty.

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

SECTION 1. Section 604A.001, Business & Commerce Code, is
amended by adding Subdivision (1-a) and amending Subdivision (5) to
read as follows:

(1-a) "Credit card" has the meaning assigned by
Section 502.001.

(5) "Surcharge" means an increase in the price charged
for goods or services imposed on a buyer who pays with a credit,
debit, or stored value card that is not imposed on a buyer who pays
by other means. The term does not include a discounted price
charged for goods or services to a buyer who pays with cash.

SECTION 2. Sections 604A.003(a), (b), and (b-1), Business &
Commerce Code, are amended to read as follows:

(a) A person who knowingly violates Section 604A.002 or
604A.0021 is liable to the state for a civil penalty in an amount
not to exceed \$500 for each violation. The attorney general or the
prosecuting attorney in the county in which the violation occurs
may bring:

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

(2) an action in the name of the state to restrain or

1 enjoin a person from violating this chapter.

2 (b) Before bringing the action, the attorney general or
3 prosecuting attorney shall give the person notice of the person's
4 noncompliance and liability for a civil penalty. The notice must:

5 (1) contain guidance to assist the person in complying
6 with this chapter;

7 (2) advise the person of the prohibitions
8 ~~[prohibition]~~ under Sections ~~[Section]~~ 604A.002 and 604A.0021; and

9 (3) state that the person may be liable for a civil
10 penalty for a subsequent violation of Section 604A.002 or
11 604A.0021.

12 (b-1) If the person complies with Sections ~~[Section]~~
13 604A.002 and 604A.0021 not later than the 30th day after the date of
14 the notice under Subsection (b), the violation is cured and the
15 person is not liable for the civil penalty. A person who has
16 previously received notice of noncompliance under Subsection (b) is
17 not entitled to notice of or the opportunity to cure a subsequent
18 violation of Section 604A.002 or 604A.0021.

19 SECTION 3. Section 14.101, Finance Code, is amended to read
20 as follows:

21 Sec. 14.101. GENERAL DUTIES OF COMMISSIONER. The
22 commissioner shall enforce ~~[Section 339.001]~~ this chapter,
23 Subtitles B and C of Title 4, Chapter 393 with respect to a credit
24 access business, and Chapter 394 in person or through an assistant
25 commissioner, examiner, or other employee of the office.

26 SECTION 4. Section 14.201, Finance Code, is amended to read
27 as follows:

1 Sec. 14.201. INVESTIGATION AND ENFORCEMENT AUTHORITY.
2 Investigative and enforcement authority under this subchapter
3 applies only to [~~Section 339.001,~~] this chapter, Subtitles B and C
4 of Title 4, Chapter 393 with respect to a credit access business,
5 and Chapter 394.

6 SECTION 5. Section 14.2015(a), Finance Code, is amended to
7 read as follows:

8 (a) Except as provided by Subsection (b), information or
9 material obtained or compiled by the commissioner in relation to an
10 examination or investigation by the commissioner or the
11 commissioner's representative of a license holder, registrant,
12 applicant, or other person under [~~Section 339.001,~~] Subtitle B or
13 C, Title 4, Subchapter G of Chapter 393, or Chapter 394 is
14 confidential and may not be disclosed by the commissioner or an
15 officer or employee of the Office of Consumer Credit Commissioner,
16 including:

17 (1) information obtained from a license holder,
18 registrant, applicant, or other person examined or investigated
19 under [~~Section 339.001,~~] Subtitle B or C, Title 4, Subchapter G of
20 Chapter 393, or Chapter 394;

21 (2) work performed by the commissioner or the
22 commissioner's representative on information obtained from a
23 license holder, registrant, applicant, or other person for the
24 purposes of an examination or investigation conducted under
25 [~~Section 339.001,~~] Subtitle B or C, Title 4, Chapter 393 with
26 respect to a credit access business, or Chapter 394;

27 (3) a report on an examination or investigation of a

1 license holder, registrant, applicant, or other person conducted
2 under [~~Section 339.001,~~] Subtitle B or C, Title 4, Chapter 393 with
3 respect to a credit access business, or Chapter 394; and

4 (4) any written communications between the license
5 holder, registrant, applicant, or other person, as applicable, and
6 the commissioner or the commissioner's representative relating to
7 or referencing an examination or investigation conducted under
8 [~~Section 339.001,~~] Subtitle B or C, Title 4, Chapter 393 with
9 respect to a credit access business, or Chapter 394.

10 SECTION 6. Section 14.251(b), Finance Code, is amended to
11 read as follows:

12 (b) The commissioner may order a person who violates or
13 causes a violation of [~~Section 339.001,~~] this chapter, Chapter 394,
14 or Subtitle B, Title 4, or a rule adopted under [~~Section 339.001,~~]
15 this chapter, Chapter 394, or Subtitle B, Title 4, or a credit
16 access business who violates or causes a violation of Chapter 393 or
17 a rule adopted under Chapter 393, to make restitution to an
18 identifiable person injured by the violation.

19 SECTION 7. Section 14.261(a), Finance Code, is amended to
20 read as follows:

21 (a) In administering this chapter, the commissioner may
22 accept assurance of voluntary compliance from a person who is
23 engaging in or has engaged in an act or practice in violation of:

24 (1) [~~Section 339.001,~~
25 ~~(2)~~] this chapter or a rule adopted under this
26 chapter;

27 (2) [~~(3)~~] Chapter 393, if the person is a credit

1 access business, or Chapter 394; or

2 (3) [~~(4)~~] Subtitle B, Title 4, or a rule adopted under
3 Subtitle B, Title 4.

4 SECTION 8. Section 14.262, Finance Code, is amended to read
5 as follows:

6 Sec. 14.262. EFFECT OF ASSURANCE. (a) An assurance of
7 voluntary compliance is not an admission of a violation of:

8 (1) [~~Section 339.001,~~
9 ~~(2)~~] this chapter or a rule adopted under this
10 chapter;

11 (2) [~~(3)~~] Chapter 393 with respect to a credit access
12 business or Chapter 394; or

13 (3) [~~(4)~~] Subtitle B, Title 4, or a rule adopted under
14 Subtitle B, Title 4.

15 (b) Unless an assurance of voluntary compliance is
16 rescinded by agreement or voided by a court for good cause, a
17 subsequent failure to comply with the assurance is prima facie
18 evidence of a violation of:

19 (1) [~~Section 339.001,~~
20 ~~(2)~~] this chapter or a rule adopted under this
21 chapter;

22 (2) [~~(3)~~] Chapter 393 with respect to a credit access
23 business or Chapter 394; or

24 (3) [~~(4)~~] Subtitle B, Title 4, or a rule adopted under
25 Subtitle B, Title 4.

26 SECTION 9. Section 339.001, Finance Code, is transferred to
27 Chapter 604A, Business & Commerce Code, redesignated as Section

1 604A.0021, Business & Commerce Code, and amended to read as
2 follows:

3 Sec. 604A.0021 [~~339.001~~]. IMPOSITION OF SURCHARGE FOR USE
4 OF CREDIT CARD. (a) In a sale of goods or services, a seller may
5 not impose a surcharge on a buyer who uses a credit card for an
6 extension of credit instead of cash, a check, or a similar means of
7 payment.

8 (b) This section does not apply to:

9 (1) a state agency, county, local governmental entity,
10 or other governmental entity that accepts a credit card for the
11 payment of fees, taxes, or other charges; or

12 (2) a private school that accepts a credit card for the
13 payment of fees or other charges, as provided by Section 111.002[~~7~~
14 ~~Business & Commerce Code~~].

15 (c) [~~The consumer credit commissioner has exclusive~~
16 ~~jurisdiction to enforce this section.~~

17 [~~(d) The Finance Commission of Texas may adopt rules~~
18 ~~relating to this section. Rules adopted pursuant to this section~~
19 ~~shall be consistent with federal laws and regulations governing~~
20 ~~credit card transactions described by this section.~~

21 [~~(e)~~] This section does not create a cause of action against
22 an individual for violation of this section.

23 SECTION 10. This Act takes effect September 1, 2017.