

By: Guillen, Morales of Maverick

H.B. No. 3941

A BILL TO BE ENTITLED

AN ACT

1
2 relating to surcharges imposed for the use of a credit card and to
3 certain reimbursements and discounts allowed for the collection and
4 payment of sales and use taxes.

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

6 SECTION 1. Section 604A.003, Business & Commerce Code, is
7 amended to read as follows:

8 Sec. 604A.003. CIVIL PENALTY. (a) A person who knowingly
9 violates Section 604A.002 [~~or 604A.0021~~] is liable to the state for
10 a civil penalty in an amount not to exceed \$500 for each violation.
11 The attorney general or the prosecuting attorney in the county in
12 which the violation occurs may bring:

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

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

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

20 (1) contain guidance to assist the person in complying
21 with this chapter;

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

24 (3) state that the person may be liable for a civil

1 penalty for a subsequent violation of Section 604A.002 [~~or~~
2 ~~604A.0021~~].

3 (b-1) If the person complies with Section [~~Sections~~
4 ~~604A.002~~ [~~and 604A.0021~~] not later than the 30th day after the date
5 of the notice under Subsection (b), the violation is cured and the
6 person is not liable for the civil penalty. A person who has
7 previously received notice of noncompliance under Subsection (b) is
8 not entitled to notice of or the opportunity to cure a subsequent
9 violation of Section 604A.002 [~~or 604A.0021~~].

10 (c) The attorney general or the prosecuting attorney, as
11 appropriate, is entitled to recover reasonable expenses incurred in
12 obtaining injunctive relief, civil penalties, or both, under this
13 section, including reasonable attorney's fees, court costs, and
14 investigatory costs.

15 SECTION 2. (a) Effective October 1, 2021, Section 151.423,
16 Tax Code, is amended to read as follows:

17 Sec. 151.423. REIMBURSEMENT TO TAXPAYER FOR TAX
18 COLLECTIONS. (a) In this section:

19 (1) "Credit card" means a card or equivalent device
20 used to make purchases based on the cardholder's promise to pay the
21 issuer of the card for the amount of the purchase and any associated
22 interest and fees.

23 (2) "Credit card sale" means a sale of a taxable item
24 paid for by the purchaser using a credit card.

25 (b) As reimbursement for the cost of collecting the taxes
26 imposed by this chapter, a [A] taxpayer may on a timely return
27 deduct and withhold:

1 (1) one-half of one percent of the amount of taxes due
2 from the taxpayer, other than taxes imposed on credit card sales;
3 and

4 (2) 2.5 percent of the amount of taxes imposed on
5 credit card sales due from the taxpayer [~~on a timely return as~~
6 ~~reimbursement for the cost of collecting the taxes imposed by this~~
7 ~~chapter~~].

8 (c) The comptroller shall provide a card with each form
9 distributed for the collection of taxes under this chapter. The
10 card may be inserted by the taxpayer with the tax payment to provide
11 for contribution of all or part of the reimbursement provided by
12 this section for use as grants under Subchapter **M**, Chapter **56**,
13 Education Code. If the taxpayer chooses to contribute the
14 reimbursement for the grants, the taxpayer shall include the amount
15 of the reimbursement contribution with the tax payment. The
16 comptroller shall transfer money contributed under this section for
17 grants under Subchapter **M**, Chapter **56**, Education Code, to the
18 appropriate fund.

19 (b) Effective October 1, 2021, Section **151.424**, Tax Code, is
20 amended by amending Subsection (a) and adding Subsection (a-1) to
21 read as follows:

22 (a) A taxpayer who prepays the taxpayer's tax liability of
23 taxes described by Section **151.423**(b)(1) on the basis of a
24 reasonable estimate of the tax liability for a quarter in which a
25 prepayment is made or for a month in which a prepayment is made may
26 deduct and withhold 1.25 percent of the amount of the prepayment in
27 addition to the amount permitted to be deducted and withheld under

1 that section [~~Section 151.423 of this code~~]. A reasonable estimate
2 of the tax liability must be at least 90 percent of that [~~the~~] tax
3 ultimately due or the amount of that tax paid in the same quarter,
4 or month, if a monthly prepayer, in the last preceding year. Failure
5 to prepay a reasonable estimate of the tax will result in the loss
6 of the entire prepayment discount.

7 (a-1) A taxpayer may not deduct or withhold any amount under
8 this section of a prepayment of the taxpayer's tax liability for
9 taxes described by Section 151.423(b)(2).

10 (c) Section 151.423, Tax Code, as amended by this section,
11 applies to a tax report due on or after October 1, 2021. A tax
12 report due before October 1, 2021, is governed by the law in effect
13 on the date the tax report was due, and the former law is continued
14 in effect for that purpose.

15 (d) Section 151.424, Tax Code, as amended by this section,
16 applies to a prepayment of tax liability made on or after October 1,
17 2021. A prepayment of tax liability made before October 1, 2021, is
18 governed by the law in effect on the date the prepayment was made,
19 and the former law is continued in effect for that purpose.

20 SECTION 3. Section 604A.0021, Business & Commerce Code, is
21 repealed.

22 SECTION 4. This Act takes effect September 1, 2021.