

BILL ANALYSIS

C.S.H.B. 3395
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Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Merchants such as restaurants, hotels, retail stores, and many other small businesses pay banks and payment card companies like Visa and Mastercard an interchange fee and a network or assessment fee when customers pay for a transaction using a credit or debit card. Commonly referred to as "swipe fees," these fees typically range from three percent to five percent for credit card transactions according to the Brookings Institute. Since swipe fees are calculated as a percentage of the entire transaction—including any sales, alcohol, hotel occupancy, or other taxes that the merchant is required by law to collect—merchants are actually paying card processors a significant fee to be the government's tax collector. These swipe fees have become incredibly expensive for merchants, particularly in today's inflationary market. For example, a small merchant with \$1 million in credit and debit card sales could pay about \$30,000 in swipe fees a year, and nearly \$2,500 of those fees will be paid to card processors solely to collect and remit taxes. According to CMSPI, Texas merchants paid a combined total of over \$587 million in swipe fees collected from sales tax in 2021 alone. C.S.H.B. 3395 seeks to shield small businesses from costly swipe fees that are collected on the government's behalf by providing for a rebate of swipe fees that are attributable to state and local taxes.

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. 3395 amends the Business & Commerce Code to require the exclusion from the total amount on which a swipe fee, including an interchange fee and any applicable assessment fee, is charged for an electronic payment transaction the amount of state or local tax calculated as a percentage of the transaction amount and listed separately on a payment invoice or other demand for payment. The bill establishes that a state or local tax includes the sales, excise, and use tax, motor fuels tax, hotel occupancy tax, mixed beverage sales tax, and tax imposed on the rental of a motor vehicle, other than a tax returned to a taxpayer in the form of certain deductions or discounts.

C.S.H.B. 3395 requires a payment card network, with respect to each form or type of electronic payment transaction, to deduct the amount of state or local tax imposed from the calculation of swipe fees attributable to the transaction at the time of settlement or to rebate the merchant an amount equal to the amount of swipe fees attributable to the state or local tax imposed on the transaction. Such a deduction or rebate must occur at the time of settlement when the merchant

is able to capture and transmit state or local tax or fee amounts relevant to the sale at the time of sale as part of the transaction finalization.

C.S.H.B. 3395 authorizes a merchant, not later than the 180th day after the date of a sale, to submit to a payment card network that does not capture or transmit relevant tax or fee amounts at the time of sale a request for a rebate together with proof of the tax or fee amounts collected on the sale subject to a swipe fee. The bill requires the payment card network to accept a copy of filed tax returns or sales data provided by the merchant as proof of the tax or fee amounts collected on the sale. The bill requires a payment card network to rebate the merchant an amount equal to the amount of swipe fees attributable to the state or local tax imposed on the sale not later than the 30th day after the date the payment card network receives proof of the tax or fee amounts collected on the sale from a merchant.

C.S.H.B. 3395 makes a person who violates the bill's provisions liable to the state for a civil penalty in an amount capped at \$1,000 for each violation and requires the person to refund a merchant any swipe fees charged in violation of the bill's provisions. The bill authorizes the attorney general to bring an action in a district court in Travis County or a county in which any part of the violation occurs to recover the civil penalty or to obtain a temporary or permanent injunction to restrain the violation. The attorney general must deposit a civil penalty collected under these provisions in the state treasury to the credit of the general revenue fund.

C.S.H.B. 3395 defines the following terms for purposes of its provisions:

- "assessment fee" means a fee, usually based on the total amount of monthly sales, paid directly to the payment card network for allowing a merchant to use a payment card or other payment code or device in an electronic payment transaction;
- "electronic payment transaction" means a transaction in which a person uses a payment card or other payment code or device issued or approved through a payment card network to debit a deposit account or use a line of credit, whether authorization is based on a signature, personal identification number, or other means;
- "interchange fee" means a fee charged to a merchant for the purpose of compensating the payment card issuer for the issuer's involvement in an electronic payment transaction;
- "payment card" means a credit card, debit card, check card, or other card that is issued to an authorized user to purchase or obtain goods, services, money, or any other thing of value;
- "payment card issuer" means a lender, including a financial institution, or a merchant that receives applications and issues payment cards to individuals; and
- "payment card network" means an entity that directly, or through a licensed member, processor, or agent, provides the proprietary services, infrastructure, and software that route information and data to conduct debit card or credit card transaction authorization, clearance, and settlement, and that an entity uses in order to accept as a form of payment a brand of debit card, credit card, or other device that may be used to carry out debit or credit transactions.

C.S.H.B. 3395 applies only to electronic payment transactions conducted by a merchant that is a small business as defined by the U.S. Small Business Administration on September 1, 2023.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 3395 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes the mixed beverage sales tax in the bill's definition of "state or local tax," which the introduced did not.

The substitute removes a specification in the introduced that the exclusion for the amount of applicable taxes is for electronic payment transactions made in Texas.

The substitute includes a provision not in the introduced making the bill applicable only to electronic payment transactions conducted by a merchant that is a small business as defined by the U.S. Small Business Administration on September 1, 2023.

While both the introduced and substitute provide for a rebate of relevant tax or fee amounts that are not captured or transmitted at the time of sale, the introduced required the payment card network to accept proof of those amounts subject to a swipe fee on the submission of sales data by a merchant who is unable to capture and transmit the tax or fee. The substitute omits that provision and instead sets out provisions that do the following:

- authorize the merchant to submit a rebate request by a certain deadline to a payment card network that does not capture or transmit the relevant tax or fee amounts at the time of sale together with proof of the amounts collected subject to a swipe fee;
- require the payment card network to accept a copy of filed tax returns or sales data provided by the merchant as such proof; and
- require the payment card network to rebate the merchant the amount of swipe fees attributable to the applicable tax imposed on the sale by a certain deadline.