

By: Capriglione

H.B. No. 3395

Substitute the following for H.B. No. 3395:

By: Bhojani

C.S.H.B. No. 3395

A BILL TO BE ENTITLED

AN ACT

relating to the charging of swipe fees on certain electronic payment transactions; authorizing a civil penalty.

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

SECTION 1. Title 12, Business & Commerce Code, is amended by adding Chapter 610 to read as follows:

CHAPTER 610. CHARGING OF SWIPE FEES

Sec. 610.001. DEFINITIONS. In this chapter:

(1) "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.

(2) "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.

(3) "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.

(4) "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

1 value.

2 (5) "Payment card issuer" means a lender, including a  
3 financial institution, or a merchant that receives applications and  
4 issues payment cards to individuals.

5 (6) "Payment card network" means an entity that  
6 directly, or through a licensed member, processor, or agent,  
7 provides the proprietary services, infrastructure, and software  
8 that route information and data to conduct debit card or credit card  
9 transaction authorization, clearance, and settlement, and that an  
10 entity uses in order to accept as a form of payment a brand of debit  
11 card, credit card, or other device that may be used to carry out  
12 debit or credit transactions.

13 (7) "State or local tax" includes a tax imposed by this  
14 state or a unit of local government of this state, including the  
15 sales, excise, and use tax, motor fuels tax, hotel occupancy tax,  
16 mixed beverage sales tax, and tax imposed on the rental of a motor  
17 vehicle, other than a tax returned to a taxpayer in the form of a  
18 deduction or discount under Section 151.423 or 151.424, Tax Code.

19 (8) "Swipe fee" means the interchange fee and, if  
20 applicable, the assessment fee.

21 Sec. 610.002. APPLICABILITY. This chapter applies only to  
22 electronic payment transactions conducted by a merchant that is a  
23 small business as defined by the United States Small Business  
24 Administration on September 1, 2023.

25 Sec. 610.003. EXCLUSION OF STATE OR LOCAL TAXES FROM SWIPE  
26 FEES; MERCHANT DEDUCTION OR REBATE. (a) The amount of state or  
27 local tax that is calculated as a percentage of the amount of an

1 electronic payment transaction and listed separately on a payment  
2 invoice or other demand for payment must be excluded from the total  
3 amount on which a swipe fee is charged for that transaction.

4 (b) A payment card network shall with respect to each form  
5 or type of electronic payment transaction:

6 (1) deduct the amount of state or local tax imposed  
7 from the calculation of swipe fees attributable to the transaction  
8 at the time of settlement; or

9 (2) rebate the merchant an amount equal to the amount  
10 of swipe fees attributable to the state or local tax imposed on the  
11 transaction.

12 (c) A deduction or, subject to Subsection (d), a rebate  
13 under this section must occur at the time of settlement when the  
14 merchant is able to capture and transmit state or local tax or fee  
15 amounts relevant to the sale at the time of sale as part of the  
16 transaction finalization.

17 (d) If a payment card network does not capture or transmit  
18 tax or fee amounts relevant to a sale at the time of sale under  
19 Subsection (c), a merchant may, not later than the 180th day after  
20 the date of the sale, submit to the payment card network a request  
21 for a rebate under Subsection (b)(2) together with proof of the tax  
22 or fee amounts collected on the sale subject to a swipe fee. The  
23 payment card network must accept a copy of filed tax returns or  
24 sales data provided by the merchant as proof of the tax or fee  
25 amounts collected on the sale. Not later than the 30th day after  
26 the date a payment card network receives proof of the tax or fee  
27 amounts collected on the sale from a merchant under this

1 subsection, the payment card network shall, in accordance with  
2 Subsection (b)(2), rebate the merchant an amount equal to the  
3 amount of swipe fees attributable to the state or local tax imposed  
4 on the sale.

5 Sec. 610.004. CIVIL PENALTY; RESTITUTION. (a) A person who  
6 violates this chapter is liable to this state for a civil penalty in  
7 an amount not to exceed \$1,000 for each violation.

8 (b) The attorney general may bring an action to:

9 (1) recover the civil penalty imposed under this  
10 section; or

11 (2) obtain a temporary or permanent injunction to  
12 restrain the violation.

13 (c) An action under this section may be brought in a  
14 district court in:

15 (1) Travis County; or

16 (2) a county in which any part of the violation occurs.

17 (d) The attorney general shall deposit a civil penalty  
18 collected under this section in the state treasury to the credit of  
19 the general revenue fund.

20 (e) A person who violates this chapter shall refund a  
21 merchant any swipe fees charged in violation of this chapter.

22 SECTION 2. This Act takes effect September 1, 2023.