

By: Capriglione

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 and the tax imposed on the rental of a motor vehicle, other than a
17 tax returned to a taxpayer in the form of a deduction or discount
18 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. EXCLUSION OF STATE OR LOCAL TAXES FROM SWIPE
22 FEES; MERCHANT DEDUCTION OR REBATE. (a) The amount of state or
23 local tax that is calculated as a percentage of the amount of an
24 electronic payment transaction made in this state and listed
25 separately on a payment invoice or other demand for payment must be
26 excluded from the total amount on which a swipe fee is charged for
27 that transaction.

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

3 (1) deduct the amount of state or local tax imposed
4 from the calculation of swipe fees attributable to the transaction
5 at the time of settlement; or

6 (2) rebate the merchant an amount equal to the amount
7 of swipe fees attributable to the state or local tax imposed on the
8 transaction.

9 (c) A deduction or rebate under this section must occur at
10 the time of settlement when the merchant is able to capture and
11 transmit state or local tax or fee amounts relevant to the sale at
12 the time of sale as part of the transaction finalization. If a
13 merchant is unable to capture and transmit tax or fee amounts
14 relevant to the sale at the time of sale, then the payment card
15 network must accept proof of tax or fee amounts collected on sales
16 subject to a swipe fee on the submission of sales data by the
17 merchant.

18 Sec. 610.003. CIVIL PENALTY; RESTITUTION. (a) A person who
19 violates this chapter is liable to this state for a civil penalty in
20 an amount not to exceed \$1,000 for each violation.

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

22 (1) recover the civil penalty imposed under this
23 section; or

24 (2) obtain a temporary or permanent injunction to
25 restrain the violation.

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

1 (1) Travis County; or

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

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

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

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