

- SUBJECT:** Prohibiting a surcharge on debit card purchases
- COMMITTEE:** Investments and Financial Services —favorable, without amendment
- VOTE:** 7 ayes — Villarreal, Flynn, Anderson, Burkett, Laubenberg, Longoria, Phillips  
0 nays
- WITNESSES:** For — Steve Scurlock, Independent Bankers Association of Texas; (*Registered, but did not testify*: Don Baylor, Center for Public Policy Priorities; John Heasley, Texas Bankers Association; Jeff Huffman, Texas Credit Union League; Emily Rickers, Alliance for Texas Families)  
  
Against — Ronnie Volkening, Texas Retailers Association; (*Registered but did not testify*: Doug Dubois, Jr., Texas Food and Fuel Association)  
  
On — (*Registered, but did not testify*: Leslie Pettijohn, Office of the Consumer Credit Commissioner)
- BACKGROUND:** Finance Code, sec. 339.001 prohibits a merchant from imposing a surcharge on a buyer who uses a credit card instead of cash, a check, or similar means of payment.  
  
Atty. Gen. Opinion, No. GA-0951, June 18, 2012 found that no statute or constitutional provision prohibits a private retail establishment in Texas from charging an itemized and disclosed “service fee” on a consumer transaction, provided that the fee is not limited to the use of a credit card.  
  
Business and Commerce Code, sec. 502.001 defines a debit card as a device authorizing a designated person to communicate a request to an ATM machine or other terminal or to buy property or services by debit to an account at a financial institution.  
  
Business and Commerce Code, sec. 604.001(1) defines a stored value card as a record that contains a microprocessor chip or magnetic strip that evidences a promise made for money by the seller that goods or services will be provided to the owner in the value shown, that is prefunded, and the value of which is reduced upon redemption. Sec. 604.001(2) includes

in the definition of stored-value card a gift card or gift certificate.

**DIGEST:** HB 3068 would prohibit a merchant from charging a customer a surcharge for using a debit card or stored-value card instead of paying with cash, a check, or a credit card. The bill's provision definition of stored-value card would not apply to a gift card or gift certificate.

The bill would not apply to a state agency, county, local governmental entity, or other governmental entity that accepts a debit or stored value card to pay for fees, taxes, or other charges.

The bill would take effect September 1, 2013.

**SUPPORTERS SAY:** HB 3068 would protect consumers from unfair surcharges, while protecting small banks from potentially discriminatory practices of large banks.

Debit cards were largely unknown in 1985 when the 69th Legislature enacted HB 1558 by Blanton, prohibiting a surcharge for the use of a credit card. HB 3068 would update the law and extend the same protection going forward to consumers using a debit card.

Many low-income consumers prefer to use a debit card to make purchases directly from their checking accounts or do not have access to a credit card. The bill would ensure that this responsible payment method did not incur an additional cost and safeguard continued access to affordable banking for those who need it most.

Recent federal legislation could open the door for large retailers to further steer consumers toward payment devices from their preferred large banks by creating disincentives to use debit cards, which small and community banks issue far more than credit cards. The bill would give debit cards the same standing in Texas as other payment methods, ensure that customers of small banks were treated fairly, and ensure that community banks vital to local businesses remained strong.

**OPPONENTS SAY:** HB 3068 is not necessary and would impose unnecessary regulation on Texas businesses. Merchants and retailers in Texas do not place surcharges on debit card transactions, and there have been no reported incidents of such surcharges.

OTHER  
OPPONENTS  
SAY:

Interchange fees are one the largest components of the cost of doing business for retailers, and those fees continue to change with federal legislation and court decisions, often increasing. Given the uncertain future of the price of interchange fees, businesses should retain the freedom to charge or not charge a fee for different payment methods in order to operate profitably. The bill would constrain Texas businesses while banks lobby to be able charge higher fees to their commercial customers.