

BILL ANALYSIS

Senate Research Center
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S.B. 1322
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Business & Commerce
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Credit and debit card use has increased dramatically over the past 10 years and, today, more than 60 percent of all motor fuels sales are paid for using credit or debit cards. Merchants and credit card companies have a mutually beneficial relationship using credit and debit cards, since it is difficult to operate one business without the other. With the growing use of credit and debit cards many smaller merchants, however, are unable to negotiate favorable terms with credit card companies and are becoming subject to unfavorable contractual terms with credit card companies.

As proposed, S.B. 1322 requires credit card companies to provide merchants with written copies of the contract governing the terms and conditions of the merchant/credit card agreement as well as schedules of all fees and rates associated with the use and acceptance of credit cards by the merchant. The bill also allows merchants to offer price discounts to consumers who choose to purchase goods with cash.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 4, Business & Commerce Code, by adding Chapter 51, as follows:

CHAPTER 51. CREDIT OR DEBIT CARD MERCHANT AGREEMENTS

Sec. 51.01. DEFINITIONS. (a) Defines "acquiring bank," "chargeback," "credit card," "debit card," "financial institution," "interchange fee," "issuing bank," "merchant account," and "merchant."

(b) Provides that, for the purposes of this chapter, "credit card" and "debit card" include the number assigned to a credit card or debit card used in place of the instrument or device at the time of ordering or obtaining the thing of value.

Sec. 51.02. MERCHANT ACCESS TO BINDING RULES AND RATES. (a) Requires a financial institution, if a merchant account specifies that the merchant is bound by the rules of the financial institution, to take certain actions.

(b) Requires a merchant account to include certain information.

(c) Prohibits a merchant account from requiring a merchant to agree not to disclose the contracting financial institution's rules or rates as a condition of receiving access to the rules or rates.

Sec. 51.03. NOTIFICATION OF RULE CHANGE. Requires a financial institution, if the financial institution changes its rules regarding the authorization of a merchant to accept a credit card or debit card, and the change would result in a chargeback to the merchant, to notify the merchant of the change not later than the seventh business day before the date the change takes effect.

Sec. 51.04. PENALTY FOR CASH PURCHASE DISCOUNT PROHIBITED. Prohibits a merchant account from prohibiting a merchant from providing a discounted sales price to a customer for the customer's purchase with cash of a good, including motor fuel, or service.

Sec. 51.05. PENALTIES. (a) Provides that, if a financial institution fails to provide a merchant with a copy of its contract, rules, or rates, or to notify the merchant of a rule change as required by Section 51.02 or 51.03, the merchant is not liable for any chargeback or fees associated with the merchant's credit card or debit card transactions for the period beginning on the date the contract was executed and ending on the date the rules or rates are provided to the merchant.

(b) Provides that a merchant is not liable for any chargeback or fees associated with the merchant's credit card or debit card transactions that arise under a contract provision that violates Section 51.04.

(c) Provides that a violation of this chapter is a deceptive trade practice under Subchapter E, Chapter 17. Authorizes a merchant affected by the violation of this chapter to maintain a civil action for damages or equitable relief under Subchapter E (Deceptive Trade Practices and Consumer Protection), Chapter 17, as if the merchant were a consumer as defined by that subchapter. Prohibits this subsection from being waived.

SECTION 2. Amends Section 339.001(a), Finance Code, to provide that providing a discounted price to a buyer who uses cash is not considered a surcharge on a buyer who uses a credit card.

SECTION 3. Provides that Chapter 51, Business & Commerce Code, as added by this Act, applies only to a contract executed or renewed on or after September 1, 2007.

SECTION 4. Effective date: September 1, 2007.