

BILL ANALYSIS

Senate Research Center
83R14647 DDT-F

H.B. 2548
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Business & Commerce
4/26/2013
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Finance Commission of Texas (finance commission) oversees the activities of three agencies: the Office of Consumer Credit Commissioner, the Texas Department of Banking, and the Department of Savings and Mortgage Lending. The finance commission has broad rulemaking authority with regards to financial services, but because the finance commission lacks a legal or investigative department, the Finance Code generally grants related enforcement authority to one of the three agencies under its purview.

Section 339.001 (Imposition of Surcharge for Use of Credit Card), Finance Code, provides that a seller may not impose a surcharge on a buyer who uses a credit card for an extension of credit instead of cash, a check, or a similar means of payment. The Office of Consumer Credit Commissioner regulates this kind of activity in the state, but Section 339.001 mistakenly delegates enforcement authority with regards to this specific provision to the finance commission.

H.B. 2548 removes the finance commission's statutory authority to enforce this provision relating to credit card surcharges and clarifies that this authority is properly housed with the Office of Consumer Credit Commissioner.

H.B. 2548 amends current law relating to the enforcement of a provision regarding the imposition of a surcharge for the use of a credit card.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 1 (Section 339.001, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 339.001, Finance Code, by amending Subsection (c) and adding Subsections (d) and (e), as follows:

- (c) Provides that the consumer credit commissioner (commissioner) has exclusive jurisdiction to enforce this section, rather than requiring that the Finance Commission of Texas have exclusive jurisdiction to enforce and adopt rules relating to this section.
- (d) Creates this subsection from existing text. Authorizes the Finance Commission of Texas to adopt rules relating to this section.
- (e) Creates this subsection from existing text and makes no further change.

SECTION 2. Amends Section 14.101, Finance Code, to require the commissioner to enforce Section 339.001 (Imposition of Surcharge for Use of Credit Card) in person or through an assistant commissioner, examiner, or other employee of the Office of Consumer Credit Commissioner.

SECTION 3. Amends Section 14.201, Finance Code, to add Section 339.001, as follows:

Sec. 14.201. INVESTIGATION AND ENFORCEMENT AUTHORITY. Provides that investigative and enforcement authority under this subchapter (Investigation and Enforcement) applies only to Section 339.001, this chapter (Consumer Credit Commissioner), Subtitles B (Loans and Financed Transactions) and C (Pawnshops) of Title 4, Chapter 393 (Credit Services Organizations) with respect to a credit access business, and Chapter 394 (Debtor Assistance).

SECTION 4. Reenacts Section 14.2015(a), Finance Code, as amended by Chapters 1182 (H.B. 3453) and 1302 (H.B. 2594), Acts of the 82nd Legislature, Regular Session, 2011, and amends it as follows:

(a) Prohibits, except as provided by Subsection (b) (relating to authorizing the commissioner or the commissioner's representative to disclose certain confidential information or material under certain circumstances if the commissioner considers it to be necessary or proper to the enforcement of the laws of this state or the United States and in the best interest of the public, if the person to whom the information or material relates consents to the release, or if the release of the information is required for an administrative hearing), certain information or material obtained or compiled by the commissioner in relation to an examination or investigation by the commissioner or the commissioner's representative of a person under Section 339.001 from being disclosed by the commissioner or an officer or employee of the Office of Consumer Credit Commissioner. Makes conforming changes.

SECTION 5. Amends Section 14.251(b), Finance Code, as follows:

(b) Authorizes the commissioner to order a person who violates or causes a violation of Section 339.001, this chapter (Consumer Credit Commissioner), Chapter 394, or Subtitle B, Title 4, or a rule adopted under Section 339.001, this chapter, Chapter 394, or Subtitle B, Title 4, or a credit access business who violates or causes a violation of Chapter 393 or a rule adopted under Chapter 393, to make restitution to an identifiable person injured by the violation.

SECTION 6. Amends Section 14.261(a), Finance Code, as follows:

(a) Authorizes the commissioner, in administering this chapter, to accept assurance of voluntary compliance from a person who is engaging in or has engaged in an act or practice in violation of certain provisions or rules, including Section 339.001. Makes nonsubstantive changes.

SECTION 7. Amends Section 14.262, Finance Code, as follows:

Sec. 14.262. EFFECT OF ASSURANCE. (a) Provides that an assurance of voluntary compliance is not an admission of a violation of certain provisions, including Section 339.001. Makes nonsubstantive changes.

(b) Provides that a subsequent failure to comply with the assurance is prima facie evidence of a violation of certain provisions or rules, including Section 339.001, unless an assurance of voluntary compliance is rescinded by agreement or voided by a court for good cause. Makes nonsubstantive changes.

SECTION 8. Provides that the change in law made by this Act applies only to a violation of Section 339.001, Finance Code, as amended by this Act, that occurs on or after the effective date of this Act. Provides that a violation that occurs before that date is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 9. Provides that to the extent of any conflict, this Act prevails over another Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 10. Effective date: September 1, 2013.