

1-1 By: Hancock S.B. No. 560  
 1-2 (In the Senate - Filed January 20, 2017; February 8, 2017,  
 1-3 read first time and referred to Committee on Business & Commerce;  
 1-4 April 10, 2017, reported favorably by the following vote: Yeas 9,  
 1-5 Nays 0; April 10, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Hancock	X			
1-8 Creighton	X			
1-9 Campbell	X			
1-10 Estes	X			
1-11 Nichols	X			
1-12 Schwertner	X			
1-13 Taylor of Galveston	X			
1-14 Whitmire	X			
1-15 Zaffirini	X			

1-17 A BILL TO BE ENTITLED  
 1-18 AN ACT

1-19 relating to surcharges imposed for the use of a credit card;  
 1-20 providing a civil penalty.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 604A.001, Business & Commerce Code, is  
 1-23 amended by adding Subdivision (1-a) and amending Subdivision (5) to  
 1-24 read as follows:

1-25 (1-a) "Credit card" has the meaning assigned by  
 1-26 Section 502.001.

1-27 (5) "Surcharge" means an increase in the price charged  
 1-28 for goods or services imposed on a buyer who pays with a credit,  
 1-29 debit, or stored value card that is not imposed on a buyer who pays  
 1-30 by other means. The term does not include a discounted price  
 1-31 charged for goods or services to a buyer who pays with cash.

1-32 SECTION 2. Sections 604A.003(a), (b), and (b-1), Business &  
 1-33 Commerce Code, are amended to read as follows:

1-34 (a) A person who knowingly violates Section 604A.002 or  
 1-35 604A.0021 is liable to the state for a civil penalty in an amount  
 1-36 not to exceed \$500 for each violation. The attorney general or the  
 1-37 prosecuting attorney in the county in which the violation occurs  
 1-38 may bring:

1-39 (1) a suit to recover the civil penalty imposed under  
 1-40 this section; and

1-41 (2) an action in the name of the state to restrain or  
 1-42 enjoin a person from violating this chapter.

1-43 (b) Before bringing the action, the attorney general or  
 1-44 prosecuting attorney shall give the person notice of the person's  
 1-45 noncompliance and liability for a civil penalty. The notice must:

1-46 (1) contain guidance to assist the person in complying  
 1-47 with this chapter;

1-48 (2) advise the person of the prohibitions  
 1-49 [~~prohibition~~] under Sections [~~Section~~] 604A.002 and 604A.0021; and

1-50 (3) state that the person may be liable for a civil  
 1-51 penalty for a subsequent violation of Section 604A.002 or  
 1-52 604A.0021.

1-53 (b-1) If the person complies with Sections [~~Section~~]  
 1-54 604A.002 and 604A.0021 not later than the 30th day after the date of  
 1-55 the notice under Subsection (b), the violation is cured and the  
 1-56 person is not liable for the civil penalty. A person who has  
 1-57 previously received notice of noncompliance under Subsection (b) is  
 1-58 not entitled to notice of or the opportunity to cure a subsequent  
 1-59 violation of Section 604A.002 or 604A.0021.

1-60 SECTION 3. Section 14.101, Finance Code, is amended to read  
 1-61 as follows:

2-1           Sec. 14.101. GENERAL DUTIES OF COMMISSIONER. The  
 2-2 commissioner shall enforce [~~Section 339.001,~~] this chapter,  
 2-3 Subtitles B and C of Title 4, Chapter 393 with respect to a credit  
 2-4 access business, and Chapter 394 in person or through an assistant  
 2-5 commissioner, examiner, or other employee of the office.

2-6           SECTION 4. Section 14.201, Finance Code, is amended to read  
 2-7 as follows:

2-8           Sec. 14.201. INVESTIGATION AND ENFORCEMENT AUTHORITY.  
 2-9 Investigative and enforcement authority under this subchapter  
 2-10 applies only to [~~Section 339.001,~~] this chapter, Subtitles B and C  
 2-11 of Title 4, Chapter 393 with respect to a credit access business,  
 2-12 and Chapter 394.

2-13           SECTION 5. Section 14.2015(a), Finance Code, is amended to  
 2-14 read as follows:

2-15           (a) Except as provided by Subsection (b), information or  
 2-16 material obtained or compiled by the commissioner in relation to an  
 2-17 examination or investigation by the commissioner or the  
 2-18 commissioner's representative of a license holder, registrant,  
 2-19 applicant, or other person under [~~Section 339.001,~~] Subtitle B or  
 2-20 C, Title 4, Subchapter G of Chapter 393, or Chapter 394 is  
 2-21 confidential and may not be disclosed by the commissioner or an  
 2-22 officer or employee of the Office of Consumer Credit Commissioner,  
 2-23 including:

2-24           (1) information obtained from a license holder,  
 2-25 registrant, applicant, or other person examined or investigated  
 2-26 under [~~Section 339.001,~~] Subtitle B or C, Title 4, Subchapter G of  
 2-27 Chapter 393, or Chapter 394;

2-28           (2) work performed by the commissioner or the  
 2-29 commissioner's representative on information obtained from a  
 2-30 license holder, registrant, applicant, or other person for the  
 2-31 purposes of an examination or investigation conducted under  
 2-32 [~~Section 339.001,~~] Subtitle B or C, Title 4, Chapter 393 with  
 2-33 respect to a credit access business, or Chapter 394;

2-34           (3) a report on an examination or investigation of a  
 2-35 license holder, registrant, applicant, or other person conducted  
 2-36 under [~~Section 339.001,~~] Subtitle B or C, Title 4, Chapter 393 with  
 2-37 respect to a credit access business, or Chapter 394; and

2-38           (4) any written communications between the license  
 2-39 holder, registrant, applicant, or other person, as applicable, and  
 2-40 the commissioner or the commissioner's representative relating to  
 2-41 or referencing an examination or investigation conducted under  
 2-42 [~~Section 339.001,~~] Subtitle B or C, Title 4, Chapter 393 with  
 2-43 respect to a credit access business, or Chapter 394.

2-44           SECTION 6. Section 14.251(b), Finance Code, is amended to  
 2-45 read as follows:

2-46           (b) The commissioner may order a person who violates or  
 2-47 causes a violation of [~~Section 339.001,~~] this chapter, Chapter 394,  
 2-48 or Subtitle B, Title 4, or a rule adopted under [~~Section 339.001,~~]  
 2-49 this chapter, Chapter 394, or Subtitle B, Title 4, or a credit  
 2-50 access business who violates or causes a violation of Chapter 393 or  
 2-51 a rule adopted under Chapter 393, to make restitution to an  
 2-52 identifiable person injured by the violation.

2-53           SECTION 7. Section 14.261(a), Finance Code, is amended to  
 2-54 read as follows:

2-55           (a) In administering this chapter, the commissioner may  
 2-56 accept assurance of voluntary compliance from a person who is  
 2-57 engaging in or has engaged in an act or practice in violation of:

2-58           (1) [~~Section 339.001,~~  
 2-59 ~~(2)~~] this chapter or a rule adopted under this  
 2-60 chapter;

2-61           (2) [~~(3)~~] Chapter 393, if the person is a credit  
 2-62 access business, or Chapter 394; or

2-63           (3) [~~(4)~~] Subtitle B, Title 4, or a rule adopted under  
 2-64 Subtitle B, Title 4.

2-65           SECTION 8. Section 14.262, Finance Code, is amended to read  
 2-66 as follows:

2-67           Sec. 14.262. EFFECT OF ASSURANCE. (a) An assurance of  
 2-68 voluntary compliance is not an admission of a violation of:

2-69           (1) [~~Section 339.001,~~

3-1                    [~~2~~] this chapter or a rule adopted under this  
3-2 chapter;  
3-3                    (2) [~~3~~] Chapter 393 with respect to a credit access  
3-4 business or Chapter 394; or  
3-5                    (3) [~~4~~] Subtitle B, Title 4, or a rule adopted under  
3-6 Subtitle B, Title 4.

3-7                    (b) Unless an assurance of voluntary compliance is  
3-8 rescinded by agreement or voided by a court for good cause, a  
3-9 subsequent failure to comply with the assurance is prima facie  
3-10 evidence of a violation of:

3-11                    (1) [~~Section 339.001,~~  
3-12 [~~2~~] this chapter or a rule adopted under this  
3-13 chapter;

3-14                    (2) [~~3~~] Chapter 393 with respect to a credit access  
3-15 business or Chapter 394; or

3-16                    (3) [~~4~~] Subtitle B, Title 4, or a rule adopted under  
3-17 Subtitle B, Title 4.

3-18                    SECTION 9. Section 339.001, Finance Code, is transferred to  
3-19 Chapter 604A, Business & Commerce Code, redesignated as Section  
3-20 604A.0021, Business & Commerce Code, and amended to read as  
3-21 follows:

3-22                    Sec. 604A.0021 [~~339.001~~]. IMPOSITION OF SURCHARGE FOR USE  
3-23 OF CREDIT CARD. (a) In a sale of goods or services, a seller may  
3-24 not impose a surcharge on a buyer who uses a credit card for an  
3-25 extension of credit instead of cash, a check, or a similar means of  
3-26 payment.

3-27                    (b) This section does not apply to:

3-28                    (1) a state agency, county, local governmental entity,  
3-29 or other governmental entity that accepts a credit card for the  
3-30 payment of fees, taxes, or other charges; or

3-31                    (2) a private school that accepts a credit card for the  
3-32 payment of fees or other charges, as provided by Section 111.002[~~7~~  
3-33 ~~Business & Commerce Code~~].

3-34                    (c) [~~The consumer credit commissioner has exclusive~~  
3-35 ~~jurisdiction to enforce this section.~~

3-36                    [~~(d) The Finance Commission of Texas may adopt rules~~  
3-37 ~~relating to this section. Rules adopted pursuant to this section~~  
3-38 ~~shall be consistent with federal laws and regulations governing~~  
3-39 ~~credit card transactions described by this section.~~

3-40                    [~~(e)~~] This section does not create a cause of action against  
3-41 an individual for violation of this section.

3-42                    SECTION 10. This Act takes effect September 1, 2017.

3-43                    \* \* \* \* \*