

HOUSE BILL REPORT

ESHB 1870

As Passed House:
March 7, 2013

Title: An act relating to methods of payment.

Brief Description: Addressing methods of payment.

Sponsors: House Committee on Business & Financial Services (originally sponsored by Representatives Habib, Kirby, Ryu, Van De Wege, Takko, Hunter, Appleton, Tarleton, Sawyer, Seaquist, Pollet, Bergquist and Johnson).

Brief History:

Committee Activity:

Business & Financial Services: 2/19/13, 2/21/13 [DPS].

Floor Activity:

Passed House: 3/7/13, 68-29.

Brief Summary of Engrossed Substitute Bill

- Requires clear and conspicuous disclosure when a surcharge will be imposed on a cardholder who elects to use a credit card in lieu of payment by cash, check, or similar means.
- Requires clear and conspicuous disclosure when a discount is offered for use of a payment method other than a credit card.
- Requires any available discount for use of a payment method other than a credit card to be offered to all prospective customers.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Kirby, Chair; Ryu, Vice Chair; Blake, Chandler, Habib, Hudgins, Santos and Stanford.

Minority Report: Do not pass. Signed by 7 members: Representatives Parker, Ranking Minority Member; Vick, Assistant Ranking Minority Member; Hawkins, Hurst, Kochmar, MacEwen and O'Ban.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Jon Hedegard (786-7127).

Background:

A number of payment card networks contractually prohibited any person who accepts the networks' brands of credit card from adding a surcharge for the use of the credit card instead of another payment method. Several of those payment card networks and a number of card issuers were sued by a group of merchants regarding a host of credit card related issues in the United States District Court, Eastern District of New York. A settlement in the case, *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, has been preliminarily approved by the judge. As part of the settlement, those card issuers may not prohibit a surcharge on credit card purchases as long as the person imposing the surcharge meets certain requirements. The restrictions include:

- treating all credit cards similarly, regardless of issuer;
- disclosure to customers; and
- a cap on the fee of up to 4 percent of the amount of the transaction.

In 2010 The Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) was signed into law. The Dodd-Frank Act specifically prohibits a payment card network from preventing the offering of a discount to provide an incentive for the use of cash, debit cards, or credit cards. A discount is defined by the Dodd-Frank Act as a reduction made from the price that customers are informed is the regular price. A discount does not include any means of increasing the price that customers are informed is the regular price.

The Dodd-Frank Act provides that any discount:

- must not differentiate based on the card issuer or payment card network;
- must be offered to all prospective buyers;
- must be clearly and conspicuously disclosed; and
- must comply with state and federal law.

A number of states have prohibited surcharges for the use of a credit card instead of another payment method.

State law provides that a person that accepts credit cards or debit cards for the transaction of business may not print more than the last five numbers of an account number or print the expiration date on an electronic receipt that is retained by the person or is provided to the cardholder. This restriction does not apply if the means of recording the number is by imprint or handwriting.

Summary of Engrossed Substitute Bill:

Any person that imposes a surcharge on a cardholder who elects to use a credit card in lieu of payment by cash, check, or similar means must clearly and conspicuously disclose the surcharge. At a physical location, the disclosure must be posted and must be in a size and location that is easily seen and read by a consumer prior to a sale. In an electronic transaction, the disclosure must be provided prior to the point where a consumer is going to approve any final transaction.

Any person that provides a discount when a payment method other than a credit card is used must clearly and conspicuously disclose the availability of that discount. At a physical location, the disclosure must be posted and must be in a size and location that is easily seen and read by a consumer prior to a sale. In an electronic transaction, the disclosure must be provided prior to the point where a consumer is going to approve any final transaction. Any discount for use of a payment method other than a credit card must be offered to all prospective buyers.

The new requirements are located in the RCW chapter that addresses the truncation of credit card and debit card numbers. The definitions in that chapter are moved to a new definition section.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is a simple consumer protection bill. There is a concern that in the wake of the settlement, the state may start to see the use of surcharges on top of the disclosed price. This practice has been prohibited in a number of states, including California, New York, Texas, and Florida. Stakeholders have indicated that surcharges are not being applied today. It would not seem to impact the practices of the business community today. This bill codifies common sense. It requires a merchant to tell people what they are going to be charged.

(With concerns) Some taxpayers want to pay property taxes with a credit card. Existing law allows county treasurers to accept a credit card and recover the fee. That option should be preserved.

(Other) Retailers are discussing this issue but believe that this is better addressed at the federal level. There is a concern that if the surcharge is not charged by a government, the government will be gifting public funds to the credit card user. There should be a government exception to the general rule prohibiting surcharges.

(Opposed) The bill may have unintended consequences for Washington State University (WSU). The WSU accepts many payments by credit card. A third-party vendor collects credit card payments for the WSU and does charge a surcharge. Consumer behavior has changed after the surcharge was applied. Substantially fewer people charge their tuition today. The WSU does not want to return to a system where it has to absorb the fees. Institutions of higher education should be exempt from the prohibition on surcharges. The discussion about surcharges masks the real problems with federal law regarding interchange fees. The settlement is being challenged by some parties. This is a federal issue and should not be addressed on the state level. The grocery industry is involved in the lawsuit. The grocery industry has worked for changes in federal law. Seventy-five percent of grocery payments are by credit and debit cards. Interchange fees are growing despite improvements

in technology and increase in volume. Businesses do not impose surcharges today but this option should not be taken away.

Persons Testifying: (In support) Representative Habib, prime sponsor; and Jim Richards, Statewide Poverty Action Network.

(With concerns) Shawn Myers, County Treasurer's Association.

(Other) Mark Johnson, Washington Retail Association; and James McMahan, Association of County Officials.

(Opposed) Chris Mulick, Washington State University; Josh McDonald, Washington Restaurant Association; and Jan Gee, Washington Food Industry Association.

Persons Signed In To Testify But Not Testifying: None.