

# SENATE BILL REPORT

## ESHB 1870

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As Reported by Senate Committee On:  
Commerce & Labor, April 3, 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:** Passed House: 3/07/13, 68-29.

**Committee Activity:** Commerce & Labor: 3/27/13, 4/03/13 [DPA].

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### SENATE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass as amended.

Signed by Senators Holmquist Newbry, Chair; Braun, Vice Chair; Conway, Ranking Member; Hasegawa, Hewitt, Keiser and King.

**Staff:** Edith Rice (786-7444)

**Background:** As the result of a settlement in a recent federal court case, credit card companies may not prohibit a surcharge on credit card purchases as long as the person imposing the surcharge meets certain requirements. These include the following:

- 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;

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- 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 prohibit surcharges for the use of a credit card instead of another payment method.

**Summary of Bill (Recommended Amendments):** Any person imposing a surcharge on use of a credit card for payment rather than payment by cash or check or similar means, must disclose the surcharge clearly and conspicuously. At a physical location, the surcharge must be disclosed continuously and in a size and location that is easily seen and read by the consumer.

If the surcharge is imposed in an electronic transaction, the surcharge must be disclosed prior to the consumer's approval of any final transaction.

Any person accepting credit cards for payment may offer discounts to those who use other means of payment not involving use of a credit card. The discount must be offered to all prospective buyers and must be clearly and conspicuously disclosed at the physical location.

If the discount for use of a payment method other than a credit card is allowed in an electronic transaction, this must be disclosed prior to the consumer's approval of any final transaction.

If any part of this act conflicts with a federal court decision, order, or statute, that part is deemed inoperative.

**EFFECT OF CHANGES MADE BY COMMERCE & LABOR COMMITTEE (Recommended Amendments):** A severability clause is added.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Engrossed Substitute House Bill:** PRO: Other states have similar legislation or prohibit a surcharge. This bill only requires that consumers be informed if there is a surcharge. It does not interfere with any federal lawsuit. This is about consumer protection and fairness. It tells a consumer the cost of using a product ahead of time. This is part of financial literacy.

CON: Credit card cost issues have been going on for years. This is a national issue. Discussions are ongoing. State legislation is premature, we expect a decision from the courts in September. We do not want to come back next year to do another bill. Our members are involved in the national settlement. Please hold off on doing anything on this issue.

OTHER: This should be dealt with at the federal level, not at the state level.

**Persons Testifying:** PRO: Representative Habib, prime sponsor, Jim Richards, Statewide Poverty Action Network.

CON: Denny Eliason, WA Bankers Assn., Carolyn Logue, WA Food Industry Assn., Holly Chisa, NW Grocery Assn., Josh McDonald WA Restaurant Assn.

OTHER: Mark Johnson, WA Retail Assn.