HB 3068 – Relating to Debit Card Surcharges

The 69th Texas Legislature, in 1985, enacted legislation prohibiting surcharges on credit card transactions. At that time, the use of debit cards for purchase transactions was limited at best.

As debit cards have become the preferred method of payment for a growing number of consumers, H.B. 3068 would extend the same protections to those individuals choosing to utilize this form of payment.

Further, recent changes in federal law (the “Durbin Amendment” to the Wall Street Reform and Consumer Protection Act, aka “Dodd – Frank Act”) allow “steering” of consumers to a particular form of payment, or a particular payment vehicle offered by specific financial institutions. This is potentially discriminatory against smaller banks, the majority of which issue debit cards – but not credit cards – to their customers. Financial alliances between “big box stores” and the largest banks could “steer” consumers toward those particular banks by creating financial disincentives for those wishing to utilize the debit cards of smaller community banks.

There are no disclosure requirements in place to ensure the consumer will be aware of additional transaction charges until – or perhaps subsequent to - the point of purchase.

A recent (June 18, 2012) Texas AG opinion (GA-0951) surmised that (from the summary) “No statute or constitutional provision prohibits a private retail establishment in Texas from charging an itemized and disclosed ‘service fee’ on a consumer transaction, provided that the fee is not limited to the use of a credit card. (emphasis added) If, however, the fee is not itemized and disclosed in advance of the transaction, the consumer may not be contractually bound to pay it.”

We believe that this opinion opens the door for a retail establishment to charge a service fee – or surcharge – on a debit card, check or any other method of payment other than a credit card.

The bill exempts various government entities from this prohibition, allowing them to charge a surcharge on debit card transactions in the same manner they now are authorized to charge a surcharge for credit card transactions.

As proposed, H.B. 3068 would extend the same level of consumer protection now in statute regarding credit card surcharges to debit card transactions. This is especially important as not every consumer will qualify for a credit card, or based upon past experiences, may not wish to utilize this form of payment. Not extending the same consumer protections to debit cards could result in these consumers being assessed a surcharge for using debit cards, and will likely have a disparate impact on lower income and young customers.

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