

Department of Finance and Administration

Legislative Impact Statement

Bill: SB291

Bill Subtitle: AN ACT TO PROHIBIT THE COLLECTION OF CREDIT CARD SURCHARGES.

Basic Change :

Sponsor: Senator J. English

Currently, a taxpayer may choose to pay state vehicle registration fees and taxes, and purchase Driver's License and reinstatement fees due to the state by credit card. This would also impact fees charged for payment of Child Support Obligations, and Individual Income Tax. Fees charged by credit card companies for use of credit cards to make such payments are collected and remitted to the credit card companies by vendors providing the service for the state. The bill provides that a seller may not impose a surcharge on a buyer if a credit card is used for an extension of credit instead of cash, a check, or other means of payment. Therefore, the bill as written could be construed to not allow these vendors to charge a service fee.

Revenue Impact :

The Department of Finance & Administration (DFA) does not charge fees to the taxpayers for the use of a credit card, but is a conduit for the vendors who process the credit cards and charge fees for the convenience of online services or the use of credit. Also, DFA does not pay the vendors to process credit cards. Credit card payments represent approximately \$35,100,000 in taxes or fees and service charges paid by taxpayers of approximately \$1,500,000.

Taxpayer Impact :

Taxpayers may no longer have the option to pay for state taxes or fees with a credit card if the vendors who process the credit cards are unable to charge fees for their service. This loss of the use of a credit card with some online services may result in the taxpayer making more trips to the Revenue Office where they would be required to pay with cash or check.

Resources Required :

It will require approximately \$10,000 for programming to disable the current credit card processing applications if credit cards were no longer offered as a payment option.

Time Required :

Additional time would be required to program if credit card payment were no longer an option.

Procedural Changes :

If credit cards were no longer a payment option, procedural changes would be minimal since cash and checks are already accepted.

Other Comments :

This bill contains no emergency clause or effective date. The bill does not define who is a "seller".

Legal Analysis :

SB291 amends the provisions of Ark. Code Ann. §4-107-201 et seq. (concerning consumer protection, credit cards, and the transfer of credit card debt) to provide that a seller may not impose a surcharge on a buyer if a credit card is used for an extension of credit instead of cash, a check, or other means of

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payment. The bill does not define seller, surcharge, or buyer and these terms are not defined within the definitions found at Ark. Code Ann. §4-107-201.

Until January 27, 2013, credit card companies had prohibited merchants from passing on surcharges (also known as swipe fees) to consumers. However, as part of a 7.2 billion dollar settlement, retailers are now allowed to pass that fee on to consumers using a Visa or MasterCard for purchases made on or after January 27, 2013. Ten states (California, Colorado, Connecticut, Florida, Kansas, Maine, Massachusetts, New York, Oklahoma, and Texas) currently prohibit the imposition of credit card surcharges. In light of the change taking effect this year, other states (including Rhode Island and New Jersey in addition to Arkansas) are filing legislation to prohibit the imposition of surcharges. These bills generally prohibit retailers from imposing a surcharge on cardholders who elect to use a credit card in lieu of payment by cash, check, or similar means. Some of these bills (Rhode Island's 2013-H5213 in particular) define a retailer, what constitutes a surcharge for purpose of the bill, and they provide enforcement mechanisms (such as penalties).

There are provisions in Arkansas law that authorize the Department of Finance (as well as other state and local governmental entities) to accept payment of taxes, costs, and fees by credit card. These provisions authorize the imposition and collection of transaction, convenience, or other fees associated with the convenience of using a credit card to make such payments. Because SB291 does not define certain terms or contain enforcement mechanisms, its application to DFA is unclear.

The bill does not contain an emergency clause and would be effective 90 days following adjournment.