

Senate Bill No. 933

Passed the Senate June 3, 2010

Secretary of the Senate

Passed the Assembly August 12, 2010

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1748.30 of, and to add Section 1748.33 to, the Civil Code, relating to debit cards.

LEGISLATIVE COUNSEL'S DIGEST

SB 933, Oropeza. Debit cards: service fees.

Existing law prohibits a retailer from imposing a surcharge on a credit cardholder who elects to use a credit card instead of paying by cash, check or similar means, as provided. Existing law also provides that any retailer who imposes a surcharge and who fails to pay that amount to the cardholder within 30 days of written demand is liable for 3 times the amount at which actual damages are assessed. The cardholder is entitled to recover reasonable attorney's fees and costs incurred in the action. Existing law exempts from these provisions charges for payment made to an electrical, gas, or water corporation. Existing law also regulates the use of debit cards, as defined.

This bill would make these provisions applicable to a retailer in any sales, service, or lease transaction with a consumer who elects to use a debit card instead of paying by cash, check, or similar means. This bill would also include a prepaid card or other means of access to prepaid funds, as provided, in the definition of debit card.

The people of the State of California do enact as follows:

SECTION 1. Section 1748.30 of the Civil Code is amended to read:

1748.30. For purposes of this title, the following definitions shall apply:

(a) "Accepted debit card" means any debit card which the debit cardholder has requested and received or has signed, or has used, or has authorized another person to use, for the purpose of obtaining money, property, labor, or services. Any debit card issued in renewal of, or in substitution for, an accepted debit card becomes an accepted debit card when received by the debit cardholder,

whether the debit card is issued by the same or by a successor card issuer.

(b) “Account” means a demand deposit (checking), savings, or other consumer asset account, other than an occasional or incidental credit balance in a credit plan, established primarily for personal, family, or household purposes.

(c) “Adequate notice” has the same meaning as found in subdivision (k) of Section 1747.02.

(d) “Debit card” means an accepted debit card or other means of access to a debit cardholder’s account that may be used to initiate electronic funds transfers and may be used without unique identifying information such as a personal identification number to initiate access to the debit cardholder’s account. Debit card also includes a prepaid card or other means of access to prepaid funds that may be used to initiate electronic funds transfers and may be used without identifying information such as a personal identification number to initiate access to prepaid funds.

(e) “Debit card issuer” means any person who issues a debit card or the agent of that person for that purpose.

(f) “Debit cardholder” means a natural person to whom a debit card is issued.

(g) “Unauthorized use” means the use of a debit card by a person, other than the debit cardholder, to initiate an electronic fund transfer from the debit cardholder’s account without actual authority to initiate the transfer and from which the debit cardholder receives no benefit. The term does not include an electronic fund transfer initiated in any of the following manners:

(1) By a person who was furnished the debit card to the debit cardholder’s account by the debit cardholder, unless the debit cardholder has notified the debit card issuer that transfers by that person are no longer authorized.

(2) With fraudulent intent by the debit cardholder or any person acting in concert with the debit cardholder.

(3) By the debit card issuer or its employee.

SEC. 2. Section 1748.33 is added to the Civil Code, to read:

1748.33. (a) No retailer in any sales, service, or lease transaction with a consumer may impose a surcharge on a cardholder who elects to use a debit card in lieu of payment by cash, check, or similar means. A retailer may, however, offer discounts for the purpose of inducing payment by cash, check, or

other means not involving the use of a debit card, provided that the discount is offered to all prospective buyers.

(b) Any retailer who willfully violates this section by imposing a surcharge on a cardholder who elects to use a debit card and who fails to pay that amount to the cardholder within 30 days of a written demand by the cardholder to the retailer by certified mail, shall be liable to the cardholder for three times the amount at which actual damages are assessed. The cardholder shall also be entitled to recover reasonable attorney's fees and costs incurred in the action.

(c) A consumer shall not be deemed to have elected to use a debit card in lieu of another means of payment for purposes of this section in a transaction with a retailer if only debit cards are accepted by that retailer in payment for an order made by a consumer over a telephone, and only cash is accepted at a public store or other facility of the same retailer.

(d) Charges for third-party debit card guarantee services, when added to the price charged by the retailer if cash were to be paid, shall be deemed surcharges for purposes of this section even if they are payable directly to the third party or are charged separately.

(e) It is the intent of the Legislature to promote the effective operation of the free market and protect consumers from deceptive price increases for goods and services by prohibiting debit card surcharges and encouraging the availability of discounts by those retailers who wish to offer a lower price for goods and services purchased by some form of payment other than debit card.

(f) This section does not apply to charges for payment by credit card or debit card that are made by an electrical, gas, or water corporation and approved by the Public Utilities Commission pursuant to Section 755 of the Public Utilities Code.

SEC. 3. It is the intent of the Legislature in enacting this act to not remove the ability of a cardholder to bring an action in small claims court, or in any other appropriate court, under the provisions of this act.

Approved _____, 2010

Governor