

Assembly Bill No. 746

CHAPTER 426

An act to amend Section 1748.1 of the Civil Code, and to add Section 755 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 30, 2005. Filed with
Secretary of State September 30, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

AB 746, Blakeslee. Public utilities: payment of billings.

Existing law authorizes the Public Utilities Commission to supervise and regulate every public utility in the state, including electrical, gas, or water corporations. Existing law authorizes the commission to establish rules for all public utilities, subject to control by the Legislature. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable.

Existing law prohibits any retailer in a sales, service, or lease transaction with a consumer, from imposing a surcharge on a cardholder who elects to use a credit card in lieu of payment by cash, check, or similar means.

This bill would require the commission to authorize an electrical, gas, or water corporation to offer credit card and debit card bill payment options. The bill would authorize an electrical, gas, or water corporation to recover reasonable transaction costs incurred by the electrical, gas, or water corporation from those customers that choose to pay by those payment options. The bill would require the commission to determine the reasonableness of transaction costs charged to customers that choose to pay by a credit card or debit card bill payment option. The bill would require the commission to determine how any associated costs or potential savings as a result of customers choosing to pay by a credit card or debit card bill payment option shall be passed on to electrical, gas, or water corporation customers.

The bill would exclude from the existing prohibition upon a retailer imposing a surcharge on a cardholder who elects to use a credit card in lieu of payment by cash, check, or similar means, a charge by an electrical, gas, or water corporation that is approved by the commission pursuant to the provisions that would be added by this bill.

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

SECTION 1. Section 1748.1 of the Civil Code is amended to read:

1748.1. (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 credit 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 credit 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 credit 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.

A cause of action under this section may be brought in small claims court, if it does not exceed the jurisdiction of that court, or in any other appropriate court.

(c) A consumer shall not be deemed to have elected to use a credit card in lieu of another means of payment for purposes of this section in a transaction with a retailer if only credit 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 credit 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 credit 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 credit 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. 2. Section 755 is added to the Public Utilities Code, to read:

755. (a) It is the intent of the Legislature that:

(1) An electrical, gas, or water corporation that offers customers credit card or debit card payment options, may recover the reasonable expenses incurred by the electrical, gas, or water corporation for providing the customers the option of paying their bills by credit card or debit card.

(2) Only the customers that choose to use these payment options incur the additional charge and that no portion of the expense is shifted to customers that do not choose to pay a bill by credit card or debit card, unless and until the commission determines that the savings to ratepayers exceeds the net cost of accepting those cards.

(3) The acceptance of credit cards or debit cards neither increases nor decreases the profitability of the electrical, gas, or water corporation.

(b) An electrical, gas, or water corporation may offer credit card and debit card bill payment options, if approved by the commission. The

electrical, gas, or water corporation may recover reasonable transaction costs incurred by the electrical, gas, or water corporation only from those customers that choose to pay by those payment options.

(c) The commission shall determine through existing regulatory mechanisms the reasonableness of transaction costs charged to customers that choose to pay an electrical, gas, or water corporation by a credit card or debit card bill payment option pursuant to this section. The commission shall determine how any associated costs or potential savings as a result of those customers paying by the credit card or debit card payment option shall be passed on to electrical, gas, or water corporation customers. In determining how these savings or costs are passed on to customers, the commission shall do the following:

(1) The transaction costs that are passed on to customers pursuant to subdivision (b) shall be offset by any savings in transaction costs the electrical, gas, or water corporation derives as a result of those customers paying by credit card and debit card.

(2) If the commission determines that the use of credit cards and debit cards results in no net cost to the electrical, gas, or water corporation, there shall be no individual customer transaction fee as provided for in subdivision (b).

(3) If the commission determines that the savings to the electrical, gas, or water corporation exceeds the costs to the electrical, gas, or water corporation, the net savings shall be passed on to electrical, gas, or water corporation customers.