

ASSEMBLY, No. 577

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

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Co-Sponsored by:

**Assemblyman Schaer, Assemblywomen N.Munoz, Caride, Assemblyman
Dancer, Assemblywoman Jasey, Assemblymen Johnson and Mejia**

SYNOPSIS

Concerns credit card interchange fees and consumer protection.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 5/8/2018)

1 AN ACT concerning credit card interchange fees and costs to
2 consumers and supplementing Title 56 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. The Legislature finds and declares that:

8 a. The credit card companies Visa and MasterCard and their
9 member banks have market power over the entire credit card
10 industry, on a national level and within this State.

11 b. There is little competition in the credit card industry
12 regarding credit card interchange fees because electronic payment
13 system networks set the fees charged by their member banks.

14 c. While the “Dodd-Frank Wall Street Reform and Consumer
15 Protection Act of 2010,” (Pub.L.111-203) acts to regulate debit card
16 interchange fees, the federal law does not address credit card
17 interchange fees.

18 d. Owing to the market power of the two largest electronic
19 payment system networks, merchants do not have negotiating power
20 with regard to the contract for acceptance of credit cards and the
21 cost of interchange fees for such acceptance.

22 e. As consumers increasingly use debit and credit cards to
23 purchase goods and services, merchants must agree to accept these
24 cards as a form of payment in order to stay in business.

25 f. Accordingly, interchange fees, particularly the unregulated
26 credit card interchange fees, can inflate the prices of goods and
27 services as merchants often pass along the costs to consumers.

28 g. Merchants have long expressed interest in working with
29 customers to provide discounts for using certain credit cards, but
30 currently are often blocked from doing so by the terms or
31 interpretations of the unfairly negotiated contracts to which they are
32 subject in order to accept credit cards. Federal law provides
33 merchants with this discounting ability with regard to debit card
34 transactions, but does not extend it to credit card transactions.

35 h. As the costs of credit card interchange fees are being
36 unfairly passed onto all consumers, even those consumers who do
37 not use credit cards as a method of payment by way of inflated
38 prices for goods and services, it is all together fitting and proper to
39 establish restrictions which allow for more transparency in the
40 pricing of consumer goods and services and which promote
41 competition with the credit card interchange fee market.

42

43 2. As used in this act:

44 “Electronic payment system” means an entity, which is not a
45 national bank, that directly, or through licensed members,
46 processors or agents, provides the proprietary services,
47 infrastructure, and software that route information and data to
48 facilitate transaction authorization, clearance, and settlement, and

1 that merchants access in order to accept a brand of general-purpose
2 credit cards, charge cards, debit cards or stored-value cards as
3 payments for goods or services.

4 “Merchant” means a person or entity doing business in this State
5 which offers goods or services for sale in this State.

6
7 3. a. No electronic payment system may, directly or through
8 any agent, acquirer, processor or member of the system:

9 (1) impose any requirement, condition, penalty, or fine in a
10 contract with a merchant relating to the display of pricing for goods
11 or services for sale by the merchant;

12 (2) inhibit the ability of any merchant to offer its customers
13 discounts or in-kind incentives for using cash or a debit card or
14 credit card of another electronic payment system;

15 (3) inhibit the ability of any merchant to decide not to accept the
16 products of an electronic payment system at one of its locations
17 while still accepting the products of that electronic payment system
18 at other locations;

19 (4) prevent any merchant from setting a minimum dollar value,
20 provided the minimum is not set below \$10, or a maximum dollar
21 value for its acceptance of a credit card;

22 (5) limit the number of electronic payment systems through
23 which a credit card transaction may be processed to only one or
24 only affiliated electronic payment systems; or

25 (6) inhibit any merchant from choosing the electronic payment
26 system through which a credit card transaction is processed.

27 b. (1) A violation of subsection a. of this section is an unlawful
28 practice pursuant to P.L.1960, c.39 (C.56:8-1 et seq.).

29 (2) In addition to the penalties provided by P.L.1960, c.39
30 (C.56:8-1 et seq.), an electronic payment system found to be in
31 violation of subsection a. of this section shall reimburse all affected
32 merchants for all chargebacks, fees, and fines collected from the
33 affected merchants directly or through any agent, processor or
34 member of the system during the period of time in which the
35 electronic payment system was in violation.

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37 4. This act shall take effect on the first day of the fourth month
38 next following enactment.

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41 STATEMENT

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43 This bill regulates credit card interchange fees. An interchange
44 fee, commonly referred to as a “swipe fee,” is a fee paid by a
45 merchant’s acquiring bank to a customer-cardholder’s issuing bank
46 as part of an electronic payment card transaction. The merchant’s
47 bank then passes this fee onto the merchant.

1 There is little competition regarding credit card interchange fee
2 pricing as Visa and MasterCard, the two largest companies in the
3 industry, set the pricing with their member banks and smaller
4 merchants have no negotiating power to change pricing. As
5 consumers increasingly use debit and credit cards to purchase goods
6 and services, merchants must agree to accept these cards as a form
7 of payment in order to stay in business, but often pass along the
8 costs of the interchange fees onto consumers which inflates the
9 prices of goods and services. Current federal law regulates debit
10 card interchange fees but does not address the fees associated with
11 credit card transactions.

12 This bill regulates credit card interchange fees by prohibiting an
13 electronic payment system from:

- 14 • imposing any requirement, condition, penalty, or fine in a
15 contract with a merchant relating to the display of pricing for
16 goods or services for sale by the merchant;
- 17 • inhibiting the ability of any merchant to offer its customers
18 discounts or in-kind incentives for using cash or a debit card
19 or credit card of another electronic payment system;
- 20 • inhibiting the ability of any merchant to decide not to accept
21 the products of an electronic payment system at one of its
22 locations while still accepting the products of that electronic
23 payment system at other locations;
- 24 • preventing any merchant from setting a minimum dollar
25 value, provided the minimum is not set below \$10, or a
26 maximum dollar value for its acceptance of a credit card;
- 27 • limiting the number of electronic payment systems through
28 which a credit card transaction may be processed to only one
29 or only affiliated electronic payment systems; or
- 30 • inhibiting any merchant from choosing the electronic
31 payment system through which a credit card transaction is
32 processed.

33 Under the bill, an electronic payment system is defined as, “an
34 entity which is not a national bank that directly, or through licensed
35 members, processors or agents, provides the proprietary services,
36 infrastructure, and software that route information and data to
37 facilitate transaction authorization, clearance, and settlement, and
38 that merchants access in order to accept a brand of general-purpose
39 credit cards, charge cards, debit cards or stored-value cards as
40 payments for goods or services.”

41 A violation of the bill’s provisions is an unlawful practice under
42 the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.) An
43 unlawful practice is punishable by a monetary penalty of not more
44 than \$10,000 for a first offense and not more than \$20,000 for any
45 subsequent offense. In addition, a violation can result in cease and
46 desist orders issued by the Attorney General, the assessment of
47 punitive damages, and the awarding of treble damages and costs to
48 the injured.

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1 The bill further specifies that an electronic payment system
2 found to be in violation must reimburse all affected merchants for
3 all chargebacks, fees, and fines collected from the affected
4 merchants during the period of time in which the electronic
5 payment system was in violation.