

**ASSEMBLY, No. 577**

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**STATE OF NEW JERSEY**

**218th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

**Sponsored by:**

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**District 4 (Camden and Gloucester)**

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**Assemblyman REED GUSCIORA**

**District 15 (Hunterdon and Mercer)**

**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:*

6

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.

36  
37 4. This act shall take effect on the first day of the fourth month  
38 next following enactment.

39  
40  
41 STATEMENT

42  
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.

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.