

1 INTERIM STUDY PROPOSAL 2013-116

2 State of Arkansas

*As Engrossed: S3/25/13*

3 89th General Assembly

# A Bill

4 Regular Session, 2013

SENATE BILL 1135

5  
6 By: Senator J. Hutchinson

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8 Filed with: Interim Senate Committee on Insurance and Commerce  
9 pursuant to A.C.A. §10-3-217.

## For An Act To Be Entitled

10 AN ACT TO REGULATE THE BUSINESS PRACTICES OF A CREDIT  
11 CARD COMPANY; TO PROHIBIT UNFAIR BUSINESS PRACTICES  
12 BY A CREDIT CARD COMPANY IN THIS STATE; AND FOR OTHER  
13 PURPOSES.  
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### Subtitle

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17 TO REGULATE THE BUSINESS PRACTICES OF A  
18 CREDIT CARD COMPANY AND TO PROHIBIT  
19 UNFAIR BUSINESS PRACTICES BY A CREDIT  
20 CARD COMPANY IN THIS STATE.  
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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26 *SECTION 1. DO NOT CODIFY. Findings.*

27 *The General Assembly finds that:*

28 *(1) Courts have found that the electronic payment system*  
29 *networks Visa and Mastercard and their member banks have market power;*

30 *(2) Electronic payment system networks set the level of credit*  
31 *and debit card interchange fees charged by their member banks even though*  
32 *those banks are supposed to be competitors;*

33 *(3) These fees inflate the prices consumers pay for goods and*  
34 *services;*

35 *(4) Competing banks should set their own interchange fees and*  
36 *compete on that basis;*



1 route information and data to facilitate transaction authorization,  
2 clearance, and settlement; and

3 (B) A merchant uses in order to accept a brand of general-  
4 purpose credit cards, charge cards, debit cards, or stored value cards as a  
5 form of payment for goods or services; and

6 (2) "Merchant" means a person or entity doing business in this  
7 state and that offers goods or services for sale in this state.

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9 4-107-403. Protection of retail competition.

10 An electronic payment system shall not, directly or through a member, a  
11 processor, an agent, or an acquirer of the electronic payment system:

12 (1) Impose a requirement, condition, penalty, or fine in a  
13 contract with a merchant relating to the display of pricing for goods or  
14 services for sale by the merchant;

15 (2) Inhibit the ability of a merchant to offer its customers a  
16 discount or other in-kind incentives for using a debit or credit card of  
17 another electronic payment system;

18 (3) Inhibit the ability of a merchant to decide whether or not  
19 to accept the products of an electronic payment system at one (1) of its  
20 locations;

21 (4) Prevent a merchant from setting a minimum or maximum dollar  
22 value for its acceptance of a credit card;

23 (5) Limit the number of electronic payment systems that process  
24 a credit or debit card transaction to one (1) electronic payment system or to  
25 affiliated electronic payment systems; or

26 (6) Inhibit a merchant from choosing the electronic payment  
27 system that processes a credit or debit card transaction other than as  
28 allowed in this subdivision (4).

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30 4-107-404. Cartel price setting – Prohibited.

31 An electronic payment system shall not establish a required, suggested,  
32 or default rate for the fees to be charged by its credit card issuer, member,  
33 processor, or agent of the electronic payment system for transactions in this  
34 state unless the credit card issuer, member, processor, or agent of the  
35 electronic payment system is the electronic payment system itself and not a  
36 separate legal entity.

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4-107-405. Penalties.

(a) An electronic payment system that is found to have violated § 4-107-403 or § 4-107-404 of this subchapter shall:

(1) Reimburse the affected merchants for all chargebacks, fees, and fines collected from affected merchants directly or through any member, processor, or agent of the electronic payment system during the time that the electronic payment system was in violation of this subchapter; and

(2) Be liable for a civil penalty of ten thousand dollars (\$10,000) per chargeback, fee, or fine levied for violating this subchapter.

(b) A merchant who is harmed by a violation of § 4-72-207 is entitled to:

(1) Recover treble damages in a civil action;

(2) If appropriate, obtain injunctive relief; and

(3) Be reimbursed for reasonable attorney's fees and the cost of litigation.

(c) The Attorney General or his or her designee may maintain a civil action for damages or equitable relief under this section to protect against violations of this subchapter.

4-107-406. Severability.

If a court determines that a provision of this subchapter or the application of this subchapter is invalid, the determination shall not affect the provisions or applications of this subchapter that can be given effect without the invalid provision or application, and to that end the provisions of this subchapter are severable.

/s/J. Hutchinson

Referred by the Arkansas Senate  
Prepared by: ANS/VJF