

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

SENATE BILL 607

5 By: Senator J. Hutchinson
6

For An Act To Be Entitled

8 AN ACT TO CREATE THE ELECTRONIC PAYMENT TRANSACTION
9 PROTECTION ACT; TO PROHIBIT THE COLLECTION OF
10 INTERCHANGE FEES ON CERTAIN TAXES AND FEES; TO
11 DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.
12
13

Subtitle

14 TO CREATE THE ELECTRONIC PAYMENT
15 TRANSACTION PROTECTION ACT; TO PROHIBIT
16 THE COLLECTION OF INTERCHANGE FEES ON
17 CERTAIN TAXES AND FEES; AND TO DECLARE AN
18 EMERGENCY.
19
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code Title 26, Chapter 19, is amended to add an
25 additional subchapter to read as follows:

26 Subchapter 2 – Electronic Payment Transaction Protection Act
27

28 26-19-201. Title.

29 This subchapter shall be known and may be cited as the “Electronic
30 Payment Transaction Protection Act”.
31

32 26-19-202. Definitions.

33 As used in this subchapter:

34 (1) “Electronic payment transaction” means a transaction in
35 which a person uses a debit card, credit card, or other payment code or
36 device, issued or approved through a payment card network to debit an asset



1 account or use a line of credit regardless of whether authorization is based
2 on a signature, personal identification number, or other means;

3 (2) "Interchange fee" means a fee established, charged, or
4 received by a payment card network to compensate an issuer for its
5 involvement in an electronic payment transaction;

6 (3) "Issuer" means a person who issues a debit card or credit
7 card or the agent of a person who issues a debit card or credit card;

8 (4) "Payment card network" means an entity that:

9 (A) Directly or through licensed members, processors, or
10 agents provides the proprietary services, infrastructure, and software that
11 route information and data to conduct a debit card or credit card transaction
12 authorization, clearance, and settlement; and

13 (B) A merchant or seller uses in order to accept as a form
14 of payment a brand of debit card, credit card, or other device that may be
15 used to carry out debit or credit transactions; and

16 (5) "Settlement" means a transfer of funds from a customer's
17 account to a seller or merchant upon electronic submission of a finalized
18 sales transaction to a payment card network.

19
20 26-19-203. Interchange fees – Limitation.

21 The following are excluded from the amount of an interchange fee
22 charged for an electronic payment transaction:

23 (1) A tax or fee levied by a state or local government that is
24 calculated as a percentage of an electronic payment transaction amount and
25 listed separately on a payment invoice or other demand for payment; and

26 (2) A tax levied under the Motor Fuel Tax Law, § 26-55-201 et
27 seq., or the Special Motor Fuels Tax Law, § 26-56-101 et seq.

28
29 26-19-204. Alteration or manipulation of interchange fee prohibited.

30 A person shall not alter or manipulate the computation and imposition
31 of interchange fees by increasing the rate or amount of a fee applicable to
32 or imposed on the portion of an electronic payment transaction that is not
33 attributable to a state or local tax or fee in order to circumvent the effect
34 of this subchapter.

35
36 26-19-205. Deduction or rebate – Settlement procedure.

1 (a) A payment card network shall either:

2 (1) Deduct the amount of a tax or fee levied as described in §
3 26-19-203 from the calculation of the interchange fees specific to each form
4 or type of electronic payment transaction at the time of settlement; or

5 (2) Rebate the amount of the interchange fee that is
6 proportionate to the amount attributable to a tax or fee levied as described
7 in § 26-19-203.

8 (b) A deduction or rebate under subsection (a) of this section shall
9 be given at the time of settlement when the merchant or seller is able to
10 capture and transmit the tax or fee relevant to a sale at the time of sale as
11 part of the finalization of the sales transaction.

12 (c) If a merchant or seller is unable to capture and transmit a tax or
13 fee relevant to a sale at the time of the sale, the payment card network
14 shall:

15 (1) Accept proof of the tax or fee collected on the sale subject
16 to an interchange fee upon submission of sales data by the seller or
17 merchant; and

18 (2) Promptly credit the merchant or seller’s settlement account
19 for the amount of the rebate due under this section.

20
21 26-19-206. Enforcement – Penalties.

22 (a) The Attorney General shall bring the necessary actions to enforce
23 this subchapter.

24 (b) If a court finds in an action brought under subsection (a) of this
25 section that a person has intentionally violated this subchapter, the person
26 shall be subject to a civil penalty of at least one thousand dollars (\$1,000)
27 but not more than five thousand dollars (\$5,000) for each violation.

28 (c)(1) A person paying an interchange fee imposed in violation of this
29 subchapter may bring an action at law to recover the person’s actual damages.

30 (2) In an action brought under subdivision (c)(1) of this
31 section, a court may order equitable relief, including temporary and
32 permanent injunctive relief, in addition to or in lieu of the person’s actual
33 damages.

34
35 26-19-207. Applicability.

36 This subchapter applies to:

1 (1) The computation of an interchange fee established, charged,
2 or received by a payment card network to compensate the issuer for the
3 issuer's involvement in an electronic payment transaction; and

4 (2) Electronic payment transactions processed on or after July
5 1, 2013.

6
7 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
8 General Assembly of the State of Arkansas that the imposition of interchange
9 fees on the portion of a sale that is attributable to a tax or fee levied by
10 a state or local government places an undue burden on the Arkansas businesses
11 that are charged with collecting and remitting the taxes and fees to the
12 state and local governments; that state and local governments have an
13 interest in protecting a business's ability to collect and remit these taxes
14 and fees; and that this act is necessary because the imposition of
15 interchange fees on the portion of a sale that is attributable to a tax or
16 fee levied by a state or local government costs Arkansas businesses
17 significant amounts of money, which is detrimental to the Arkansas economy
18 because it has a negative effect on the ability of state and local
19 governments to collect and use the full amount of revenues derived from these
20 taxes and fees. Therefore, an emergency is declared to exist, and this act
21 being necessary for the preservation of the public peace, health, and safety
22 shall become effective on July 1, 2013.