

1 State of Arkansas *As Engrossed: S3/7/13 S3/12/13 S3/14/13 S4/3/13*

2 89th General Assembly

A Bill

3 Regular Session, 2013

SENATE BILL 607

4

5 By: Senator J. Hutchinson

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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.

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Subtitle

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TO CREATE THE ELECTRONIC PAYMENT

16

TRANSACTION PROTECTION ACT; TO PROHIBIT

17

THE COLLECTION OF INTERCHANGE FEES ON

18

CERTAIN TAXES AND FEES; AND TO DECLARE AN

19

EMERGENCY.

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

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

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Subchapter 2 – Electronic Payment Transaction Protection Act

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28

26-19-201. Title.

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

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26-19-202. Definitions.

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As used in this subchapter:

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(1) “Electronic payment transaction” means a transaction in

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which a person uses a debit card, credit card, or other payment code or

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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.

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

21 (a) 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 (b) This subchapter does not affect the amount of an interchange fee
29 established, charged, or received by payment card networks, issuers, or other
30 vendors for authorizing an electronic payment transaction to pay state and
31 local taxes, fees, child support, costs, fines, or any other payment to state
32 and local government agencies, boards, and commissions.

33
34 26-19-204. Alteration or manipulation of interchange fee prohibited.

35 A person shall not alter or manipulate the computation and imposition
36 of interchange fees by increasing the rate or amount of a fee applicable to

1 or imposed on the portion of an electronic payment transaction that is not
2 attributable to a state or local tax or fee in order to circumvent the effect
3 of this subchapter.

4
5 26-19-205. Deduction or rebate – Settlement procedure.

6 (a) A payment card network shall either:

7 (1) Deduct the amount of a tax or fee levied as described in §
8 26-19-203 from the calculation of the interchange fees specific to each form
9 or type of electronic payment transaction at the time of settlement; or

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

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

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

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

23 (2) Promptly credit the merchant or seller's settlement account
24 for the amount of the rebate due under this section.

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26 26-19-206. Enforcement – Penalties.

27 (a) The *Chief Fiscal Officer of the State* shall bring the necessary
28 actions to enforce this subchapter.

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

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

35 (2) In an action brought under subdivision (c)(1) of this
36 section, a court may order equitable relief, including temporary and

1 permanent injunctive relief, in addition to or in lieu of the person's actual
2 damages.

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4 26-19-207. Applicability.

5 This subchapter applies to:

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

9 (2) Electronic payment transactions processed on or after July
10 1, 2013.

11
12 *SECTION 2. Arkansas Code § 3-4-404(9) concerning Class B violations*
13 *under the alcoholic beverages laws, is amended to read as follows:*

14 *(9) Sales for anything other than cash, ~~or~~ check, or any*
15 *instrument defined in § 4-107-302;*

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17 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
18 General Assembly of the State of Arkansas that the imposition of interchange
19 fees on the portion of a sale that is attributable to a tax or fee levied by
20 a state or local government places an undue burden on the Arkansas businesses
21 that are charged with collecting and remitting the taxes and fees to the
22 state and local governments; that state and local governments have an
23 interest in protecting a business's ability to collect and remit these taxes
24 and fees; and that this act is necessary because the imposition of
25 interchange fees on the portion of a sale that is attributable to a tax or
26 fee levied by a state or local government costs Arkansas businesses
27 significant amounts of money, which is detrimental to the Arkansas economy
28 because it has a negative effect on the ability of state and local
29 governments to collect and use the full amount of revenues derived from these
30 taxes and fees. Therefore, an emergency is declared to exist, and this act
31 being necessary for the preservation of the public peace, health, and safety
32 shall become effective on July 1, 2013.

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34 */s/J. Hutchinson*