HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 677 Electronic Payment Transactions
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Sellas	Hamon

SUMMARY ANALYSIS

Electronic payments through either a debit card or credit card involve many parties to authorize, settle, and fund the transaction between customer and merchant. A merchant will pay part of the transaction proceeds to these parties. This amount is known as a merchant discount fee, and typically amounts to 1-3% of the total transaction amount. The largest portion of the merchant discount fee is the interchange fee which is a fee charged by an issuing bank to the merchant bank. The interchange fee allows for card benefits to the cardholder but also reflects the risk of nonpayment from a cardholder as issuing banks will send out payments to merchant banks before the cardholder pays the issuing bank.

The bill prohibits the charge of interchange fees on the taxes and tips that are charged paid by a consumer through an electronic payment transaction. This applies to such transactions paid via debit card, credit card, or any other payment device and approved through a payment card network. A payment card network can comply with this prohibition by deducting the tax and tip portion of a transaction before calculating the interchange fee or by rebating the portion of the interchange fee attributable to taxes and tips.

Violations related to interchange fee amounts are subject to a $1,000 civil penalty per violation. Additionally, the improper fee amount must be refunded.

The bill also prohibits entities involved in facilitating or processing an electronic payment transaction from utilizing or exchanging the information collected except to facilitate the electronic payment transaction or as required by law. Violation of this provision will constitute a violation of the Florida Deceptive and Unfair Trade Practices Act and is enforceable by the Attorney General or local State Attorneys.

The bill has an indeterminate negative impact on state expenditures and no impact on state revenues and local government. It also has indeterminate negative impacts on the private sector.

The bill has an effective date of October 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Consumer Protection and the Florida Deceptive and Unfair Trade Practices Act

Generally, consumer protection laws focus on guarding against unfair and predatory trade practices that harm, or have the potential to harm, consumers in the marketplace.[1] Certain consumer protection laws are codified under ch. 501, F.S., which governs the regulation of trade, commerce, investments, and solicitations. It also regulates the sale and advertising of goods, services, and consumer financial products, such as credit cards, auto loans, and mortgages in the state. It includes several parts providing to consumer protections to Floridians and visitors, such as the Florida Deceptive and Unfair Trade Practices Act (FDUTPA),[2] the Aftermarket Crash Parts Act,[3] the Florida Telemarketing Act,[4] the Antifreeze Act of 1978,[5] and the Patent Troll Prevention Act.[6]

FDUTPA protects consumers from deceptive acts that mislead consumers, and protects the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce and broadly declares unlawful any unfair or deceptive acts or practices committed in the conduct of any trade or commerce. FDUTPA provides enforcement authority to either the office of the state attorney or to the DLA depending on the circumstances of the violation.[7] The applicable enforcing authority may bring an action to obtain a declaratory judgment, to enjoin any violator of FDUTPA, or on behalf of consumers or government entities for the actual damages caused by a violator of FDUTPA.[8]

Florida Attorney General

The Attorney General is the chief legal enforcement officer of the State and, absent express legislative restriction, may exercise such power and authority as the public interest may require. The Attorney General is a member of the Cabinet. As chief legal officer of the State, the Attorney General must be noticed in certain proceedings under Florida law and may bring actions on behalf of citizens of the state as provided for by law.[9]

The Attorney General is also the head of the Department of Legal Affairs (DLA). The DLA is responsible for providing all legal services required by any executive department unless otherwise provided by law. The Attorney General, however, may authorize other counsel where emergency circumstances exist and must authorize other counsel when a conflict of interest exists.

Electronic Payment Transactions and Interchange Fees

Even the smallest credit or debit card transactions involve a host of parties that facilitate the exchange between the merchant and customer.

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[1] Georgetown Law, *Consumer Protection*, https://www.law.georgetown.edu/your-life-career/career-exploration-professional-development/for-jd-students/explore-legal-careers/practice-areas/consumer-protection/ (last visited Apr. 7, 2023).
[2] Ch. 501, part II, F.S.
[3] Ch. 501, part III, F.S.
[4] Ch. 501, part IV, F.S.
[5] Ch. 501, part V, F.S.
[6] Ch. 501, part VII, F.S.
[7] s. 501.203(2), F.S.
[8] s. 501.207, F.S.
[9] *See e.g.*, s. 501.207.

These parties include the cardholder, merchant, merchant bank, payment processor, issuing bank, and card association.[10] In a typical transaction, a cardholder will purchase a good or service from a merchant through the use of a credit or debit card. At this time the merchant will send a payment authorization request to the merchant's payment processor who in turn submits the transaction to the correct card association.[11] The card association will then send this authorization request to the issuing bank where the transaction will either be approved or denied.[12] The issuing bank's response will then be sent back to the card association which sends the information to the merchant bank who sends the information to the merchant.[13]

The parties:

- The cardholder is the buyer in the transaction and has a line of credit or a debit account with an issuing bank.
- The merchant is the seller in the transaction and in choosing to accept debit card and credit card purchases will partner with a payment processor.
- A payment processor sends payment information to the customer's card association.
- A card association[14] acts as an intermediary between the issuing bank (customer's bank) and the merchant bank as they relay both payment information to the issuing bank and the issuing bank's response to the merchant bank.
- The issuing bank receives purchase information from the card association and either approves or denies the transaction. It will inform the card association of its determination. Upon determination from the issuing bank for a transaction the card association will inform the merchant bank.
- The merchant bank is the bank of the merchant and will inform the merchant of the issuing bank's determination.[15]

A credit card transaction is made up of three processes, the authorization process, the settlement process, and the funding process.[16] The authorization process happens near instantaneously and results in either approval or denial.[17] The authorization process reflects the issuing bank's approval or denial of a transaction which is then relayed through the card association's payment network to the merchant, as described above.

The settlement and funding process reflect the movement of funds from the issuing bank to the merchant.[18] Here, the merchant will send authorized transactions to their payment processor who sends this information to the card association, who in turn sends this information to the issuing bank.[19] The issuing bank then charges the cardholder for the amount of the transaction.[20] At this time the issuing bank transfers the transaction amount to the merchant bank, minus the interchange fee.[21] Finally, the merchant bank deposits the transaction amount (minus interchange fees and other service fees) into the merchant's account.[22]

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[10] FIS Global, *How Credit Card Processing Works*, https://www.fisglobal.com/en/insights/merchant-solutions-worldpay/article/how-credit-card-processing-works (last visited Mar. 7, 2023).
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Card associations are also referred to as card networks. Examples of card associations include Visa, Mastercard, and Discover.
[15] *Id.*
[16] *Id.*
[17] This process plays out in full when a debit or credit card is either accepted or rejected at a payment terminal.
[18] FIS Global, *How Credit Card Processing Works*, https://www.fisglobal.com/en/insights/merchant-solutions-worldpay/article/how-credit-card-processing-works (last visited Mar. 7, 2023).
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*

In a debit or credit card transaction, a merchant will pay a portion of their sales to the various parties that facilitate the use of the card. This payment is known as a merchant discount fee and is made of three parts; the interchange fee, the acquirer fee, and the network processing fee.[23] The:

- Interchange fee is paid to the issuing bank of the card in the transaction,
- Acquirer fee is paid to the merchant's bank, and
- Network processing fee is paid to the card association.[24]

The interchange fee is charged against the merchant bank by the issuing bank, but the merchant bank will typically pass this cost onto the merchant.[25] The default interchange fee amount is set by the card association,[26] but issuing and merchant banks can negotiate rates that differ from the default amount.[27] The interchange fee is typically a percentage of the underlying transaction amount, a flat fee, or a combination of both.[28] Typically, interchange fees will vary from 1-3% of the total transaction amount.[29] Interchange fees cover the cost and risks that issuing banks face in facilitating the transaction as well as funding the issuing bank's cardholder reward programs.[30]

In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act. An amendment to this act, the Durbin Amendment, was adopted which mandated the Federal Reserve Board of Governors (the Board) to reduce debit card interchange fees.[31] Following this mandate the Board issued Regulation II (Debit Card Interchange Fees and Routing) which established a cap on the debit card interchange fees certain financial institutions can charge a merchant bank.[32] Regulation II limited the debit card interchange fee for these financial institutions to a base fee of $0.21, per transaction, to cover the issuer's processing cost, 0.05% of the transaction cost as a fee to cover fraud losses, as well as a $0.01 fee, per transaction, to cover fraud prevention costs.[33] On average, this regulation cut the debit card interchange fee rate in half.[34]

While the Durbin Amendment reduced the interchange fee rate it is unclear what the overall effect was on merchants.[35] An unintended effect of this bill was that small value transactions, that had been charged a reduced rate in order to incentivize debit card adoption amongst merchants, now had their rates raised to the maximum amount allowed to offset the amount lost due to reduced fees on large value transactions.[36] This led to interchange fee cost increasing for merchants with small value transactions such as the fast food and delivery service industry.[37] Generally, it is unclear whether the Durbin Amendment reduced debit card interchange fee costs on merchants in more than just a limited manner.[38]

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[23] Electronic Payments Coalition, *Overview of Interchange and its Value*, https://electronicpaymentscoalition.org/resources/overview-of-interchange-and-its-value/ (last visited Mar. 7, 2023).
[24] *Id.*
[25] Testimony from Sarah Bloom Raskin, Governor, Board of Governors of the Federal Reserve System, Testimony regarding Interchange fees from Feb. 17, 2011, https://www.federalreserve.gov/newsevents/testimony/raskin20110217a.htm (last visited Mar. 7, 2023).
[26] *Id.*
[27] Electronic Payments Coalition, *Overview of Interchange and its Value*, https://electronicpaymentscoalition.org/resources/overview-of-interchange-and-its-value/ (last visited Mar. 7, 2023).
[28] Julia Kagan, *Interchange Rate: Definition, calculation Factors, Examples*, https://www.investopedia.com/terms/i/interchange-rate.asp#:~:text=Interchange%20rates%20are%20set%20by%20credit%20card%20companies%20such%20as,might%20set%20their%20rates%20annually. (last visited Mar. 7, 2023).
[29] *Id.*
[30] Payment Depot, *A Practical Guide to Understanding Interchange Fees*, https://paymentdepot.com/blog/interchange-fees/ (last visited Mar. 7, 2023).
[31] Renee Haltom and Zhu Wang, *Did the Durbin Amendment Reduce Merchant Costs? Evidence from Survey Results*, Federal Reserve Bank of Richmond, Dec. 2015, at 1.
[32] *Id*. This restriction applies to financial institutions with more than $10 billion in assets.
[33] *Id.* at 2.
[34] *Id.*
[35] *Id.*
[36] *Id*.
[37] *Id*. at 3.
[38] *Id.* at 2.

Effect of the Bill

The bill prohibits payment card networks from charging interchange fees on tips and fees on taxes levied under s. 125.0104 and Chapter 212, F.S.[39]

The payment card network must deduct the applicable tip and tax amount from the calculation of the interchange fee or rebate the amount attributable to the tip and tax amount. The deduction or rebate must occur at the time of the settlement when the merchant submits the relevant tip and tax information at the time of sale. If the merchant is unable to transmit the relevant tip and tax information at the time of sale, the bill provides a merchant 180 days after the time of sale to submit tip amounts and proof of tax amounts to the payment card network for the rebate. The payment card network must rebate the amount of interchange fee attributable to the tip and tax amount to the merchant or credit the merchant's settlement account within 30 days of the merchant submitting the proof of the tip and tax amount.

The bill creates a civil penalty of up to $1,000, per violation, for violations of the bill's requirements. In addition, the payment card network must refund the portion of the interchange fee derived from the tip and tax portion of the electronic payment transaction.

The bill also prohibits entities that facilitate or process an electronic payment transaction from utilizing or exchanging the information collected except to facilitate the electronic payment transaction or as required by law. Violation of this provision will constitute a violation of the Florida Deceptive and Unfair Trade Practices Act and is subject to civil actions by the enforcing authority under the Act.[40]

The bill provides an effective date of October 1, 2023.

B. SECTION DIRECTORY:

Section 1: Creates s. 501.0119, F.S., relating to restrictions on electronic payment transactions.

Section 2: Provides an effective date of October 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill has an indeterminate, negative fiscal impact on DLA for possible enforcement of the bill's requirements.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

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[39] Chapter 212, F.S., establishes the tax on sales, use, and other transactions, while s. 125.0104, F.S., establishes the tourist development tax.

[40] This does not include the private right of action otherwise authorized by FDUPTA.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may require the implementation of new point of sale hardware and software and transaction processing software by the various participants in the transaction process to implement the bills requirements.

D. FISCAL COMMENTS:

State and local government, when making purchases or processing payments using credit or debit cards will be impacted in the same fashion as the general public.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES