ASSEMBLY, No. 1472

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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SYNOPSIS

Concerns credit card interchange fees and consumer protection.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning credit card interchange fees and costs to consumers and supplementing Title 56 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. The Legislature finds and declares that:

a. The credit card companies Visa and MasterCard and their member banks have market power over the entire credit card industry, on a national level and within this State.

b. There is little competition in the credit card industry regarding credit card interchange fees because electronic payment system networks set the fees charged by their member banks.

c. While the "Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010," (Pub.L.111-203) acts to regulate debit card interchange fees, the federal law does not address credit card interchange fees.

d. Owing to the market power of the two largest electronic payment system networks, merchants do not have negotiating power with regard to the contract for acceptance of credit cards and the cost of interchange fees for such acceptance.

e. As consumers increasingly use debit and credit cards to purchase goods and services, merchants must agree to accept these cards as a form of payment in order to stay in business.

f. Accordingly, interchange fees, particularly the unregulated credit card interchange fees, can inflate the prices of goods and services as merchants often pass along the costs to consumers.

g. Merchants have long expressed interest in working with customers to provide discounts for using certain credit cards, but currently are often blocked from doing so by the terms or interpretations of the unfairly negotiated contracts to which they are subject in order to accept credit cards. Federal law provides merchants with this discounting ability with regard to debit card transactions, but does not extend it to credit card transactions.

h. As the costs of credit card interchange fees are being unfairly passed onto all consumers, even those consumers who do not use credit cards as a method of payment by way of inflated prices for goods and services, it is all together fitting and proper to establish restrictions which allow for more transparency in the pricing of consumer goods and services and which promote competition with the credit card interchange fee market.

2. As used in this act:

"Electronic payment system" means an entity, which is not a national bank, that directly, or through licensed members, processors or agents, provides the proprietary services, infrastructure, and software that route information and data to facilitate transaction authorization, clearance, and settlement, and

that merchants access in order to accept a brand of general-purpose credit cards, charge cards, debit cards or stored-value cards as payments for goods or services.

"Merchant" means a person or entity doing business in this State which offers goods or services for sale in this State.

3. a. No electronic payment system may, directly or through any agent, acquirer, processor or member of the system:

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

(2) inhibit the ability of any merchant to offer its customers discounts or in-kind incentives for using cash or a debit card or credit card of another electronic payment system;

(3) inhibit the ability of any merchant to decide not to accept the products of an electronic payment system at one of its locations while still accepting the products of that electronic payment system at other locations;

(4) prevent any merchant from setting a minimum dollar value, provided the minimum is not set below $10, or a maximum dollar value for its acceptance of a credit card;

(5) limit the number of electronic payment systems through which a credit card transaction may be processed to only one or only affiliated electronic payment systems; or

(6) inhibit any merchant from choosing the electronic payment system through which a credit card transaction is processed.

b. (1) A violation of subsection a. of this section is an unlawful practice pursuant to P.L.1960, c.39 (C.56:8-1 et seq.).

(2) In addition to the penalties provided by P.L.1960, c.39 (C.56:8-1 et seq.), an electronic payment system found to be in violation of subsection a. of this section shall reimburse all affected merchants for all chargebacks, fees, and fines collected from the affected merchants directly or through any agent, processor or member of the system during the period of time in which the electronic payment system was in violation.

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

STATEMENT

This bill regulates credit card interchange fees. An interchange fee, commonly referred to as a "swipe fee," is a fee paid by a merchant's acquiring bank to a customer-cardholder's issuing bank as part of an electronic payment card transaction. The merchant's bank then passes this fee onto the merchant.

There is little competition regarding credit card interchange fee pricing as Visa and MasterCard, the two largest companies in the industry, set the pricing with their member banks and smaller merchants have no negotiating power to change pricing. As consumers increasingly use debit and credit cards to purchase goods and services, merchants must agree to accept these cards as a form of payment in order to stay in business, but often pass along the costs of the interchange fees onto consumers which inflates the prices of goods and services. Current federal law regulates debit card interchange fees but does not address the fees associated with credit card transactions.

This bill regulates credit card interchange fees by prohibiting an electronic payment system from:

- imposing any requirement, condition, penalty, or fine in a contract with a merchant relating to the display of pricing for goods or services for sale by the merchant;
- inhibiting the ability of any merchant to offer its customers discounts or in-kind incentives for using cash or a debit card or credit card of another electronic payment system;
- inhibiting the ability of any merchant to decide not to accept the products of an electronic payment system at one of its locations while still accepting the products of that electronic payment system at other locations;
- preventing any merchant from setting a minimum dollar value, provided the minimum is not set below $10, or a maximum dollar value for its acceptance of a credit card;
- limiting the number of electronic payment systems through which a credit card transaction may be processed to only one or only affiliated electronic payment systems; or
- inhibiting any merchant from choosing the electronic payment system through which a credit card transaction is processed.

Under the bill, an electronic payment system is defined as, “an entity which is not a national bank that directly, or through licensed members, processors or agents, provides the proprietary services, infrastructure, and software that route information and data to facilitate transaction authorization, clearance, and settlement, and that merchants access in order to accept a brand of general-purpose credit cards, charge cards, debit cards or stored-value cards as payments for goods or services.”

A violation of the bill’s provisions is an unlawful practice under the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.) An unlawful practice is punishable by a monetary penalty of not more than $10,000 for a first offense and not more than $20,000 for any subsequent offense. In addition, a violation can result in cease and desist orders issued by the Attorney General, the assessment of punitive damages, and the awarding of treble damages and costs to the injured.

The bill further specifies that an electronic payment system found to be in violation must reimburse all affected merchants for all chargebacks, fees, and fines collected from the affected merchants during the period of time in which the electronic payment system was in violation.