

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 15-0655.01 Duane Gall x4335

HOUSE BILL 15-1154

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A BILL FOR AN ACT

101 **CONCERNING A PROHIBITION AGAINST THE IMPOSITION OF AN**
102 **INTERCHANGE FEE ON THE PORTION OF THE TOTAL AMOUNT OF**
103 **AN ELECTRONIC PAYMENT TRANSACTION THAT REPRESENTS**
104 **NONFEDERAL TAXES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill prohibits the collection of an interchange fee, defined as a fee established by a payment card network for the purpose of compensating the issuer of a credit or debit card for its involvement in an

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

electronic payment transaction, on the portion of the total price that represents taxes imposed by the state or a local government. A 2-year grace period allows for the continuation of existing contracts and software that do not separately account for taxes, but the bill applies to all transactions on and after July 1, 2017.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 5-2-212.5 as
3 follows:

4 **5-2-212.5. Interchange fee on sales tax portion of payment**
5 **prohibited - enforcement - definitions - applicability.** (1) A PERSON
6 SHALL NOT APPLY AN INTERCHANGE FEE TO THE PORTION OF THE TOTAL
7 AMOUNT OF A CREDIT CARD OR DEBIT CARD SALE REPRESENTING ANY
8 STATE, LOCAL, OR DISTRICT TAXES THAT APPLY TO THE SALE.

9 (2) IT IS UNLAWFUL TO ALTER OR MANIPULATE THE COMPUTATION
10 OR IMPOSITION OF INTERCHANGE FEES BY INCREASING THE RATE OR
11 AMOUNT OF INTERCHANGE FEES APPLICABLE TO OR IMPOSED UPON THE
12 PORTION OF A CREDIT CARD OR DEBIT CARD SALE NOT REPRESENTING ANY
13 STATE, LOCAL, OR DISTRICT TAXES TO CIRCUMVENT THE EFFECT OF
14 SUBSECTION (1) OF THIS SECTION.

15 (3) **Enforcement and penalties.** (a) THE ATTORNEY GENERAL OR
16 A DISTRICT ATTORNEY MAY BRING A CIVIL ACTION ON BEHALF OF THE
17 STATE TO SEEK THE IMPOSITION OF CIVIL PENALTIES AS FOLLOWS:

18 (I) IF THE COURT FINDS THAT A PERSON HAS INTENTIONALLY
19 VIOLATED SUBSECTION (1) OF THIS SECTION, THE PERSON IS SUBJECT TO A
20 CIVIL PENALTY OF NOT LESS THAN ONE THOUSAND DOLLARS NOR MORE
21 THAN FIVE THOUSAND DOLLARS FOR EACH VIOLATION.

22 (II) IN ADDITION, AND REGARDLESS OF WHETHER THE VIOLATION
23 WAS INTENTIONAL, THE COURT MAY ORDER SUCH EQUITABLE RELIEF AS IT

1 DEEMS NECESSARY, INCLUDING TEMPORARY AND PERMANENT INJUNCTIVE
2 RELIEF.

3 (III) WHEN SEEKING AN INJUNCTION UNDER THIS PARAGRAPH (a),
4 THE ATTORNEY GENERAL OR DISTRICT ATTORNEY IS NOT REQUIRED TO
5 ALLEGE OR PROVE THE INADEQUACY OF ANY REMEDY AT LAW OR THAT
6 SUBSTANTIAL OR IRREPARABLE DAMAGE IS LIKELY TO RESULT FROM A
7 CONTINUED VIOLATION OF THIS SECTION.

8 (b) A PERSON WHO WAS REQUIRED TO PAY AN INTERCHANGE FEE
9 IMPOSED IN VIOLATION OF THIS SECTION MAY BRING AN ACTION AT LAW TO
10 RECOVER THE GREATER OF THE ACTUAL DAMAGES SUSTAINED OR FIVE
11 HUNDRED DOLLARS FOR EACH VIOLATION.

12 (4) **Definitions.** AS USED IN THIS SECTION:

13 (a) "CREDIT CARD" MEANS:

14 (I) ANY INSTRUMENT OR DEVICE, WHETHER KNOWN AS A CREDIT
15 CARD, CHARGE CARD, CREDIT PLATE, COURTESY CARD, IDENTIFICATION
16 CARD, OR BY ANY OTHER NAME, ISSUED WITH OR WITHOUT A FEE BY AN
17 ISSUER FOR THE USE OF THE CARDHOLDER IN OBTAINING MONEY, GOODS,
18 SERVICES, OR ANYTHING ELSE OF VALUE, EITHER ON CREDIT OR IN
19 POSSESSION OR IN CONSIDERATION OF AN UNDERTAKING OR GUARANTY BY
20 THE ISSUER OF THE PAYMENT OF A CHECK DRAWN BY THE CARDHOLDER ON
21 A PROMISE TO PAY IN PART OR IN FULL AT A FUTURE TIME, WHETHER ALL
22 OR ANY PART OF THE INDEBTEDNESS REPRESENTED BY THIS PROMISE TO
23 MAKE DEFERRED PAYMENT IS SECURED OR UNSECURED;

24 (II) ANY STORED-VALUE CARD, SMART CARD, OR OTHER
25 INSTRUMENT OR DEVICE THAT ENABLES A PERSON TO OBTAIN GOODS,
26 SERVICES, OR ANYTHING ELSE OF VALUE THROUGH THE USE OF VALUE
27 STORED ON THE INSTRUMENT OR DEVICE; AND

1 (III) THE NUMBER ASSIGNED TO AN INSTRUMENT OR DEVICE
2 DESCRIBED IN SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH (a) EVEN IF
3 THE PHYSICAL INSTRUMENT OR DEVICE IS NOT USED OR PRESENTED.

4 (b) "DEBIT CARD" MEANS:

5 (I) ANY INSTRUMENT OR DEVICE, WHETHER KNOWN AS A DEBIT
6 CARD, ATM CARD, OR ELECTRONIC BENEFIT TRANSFER CARD OR ANY
7 OTHER ACCESS INSTRUMENT OR DEVICE, OTHER THAN A CHECK, THAT IS
8 SIGNED BY THE HOLDER OR OTHER AUTHORIZED SIGNATORY ON THE
9 DEPOSIT ACCOUNT THAT DRAWS MONEYS FROM A DEPOSIT ACCOUNT IN
10 ORDER TO OBTAIN MONEY, GOODS, SERVICES, OR ANYTHING ELSE OF
11 VALUE; AND

12 (II) THE NUMBER ASSIGNED TO AN INSTRUMENT OR DEVICE
13 DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), EVEN IF THE
14 PHYSICAL INSTRUMENT OR DEVICE IS NOT USED OR PRESENTED.

15 (c) "INTERCHANGE FEE" MEANS ANY FEE ESTABLISHED, CHARGED,
16 OR RECEIVED BY A PAYMENT CARD NETWORK FOR THE PURPOSE OF
17 COMPENSATING THE ISSUER FOR ITS INVOLVEMENT IN AN ELECTRONIC
18 PAYMENT TRANSACTION. "INTERCHANGE FEE" INCLUDES ANY DISCOUNT
19 RATE, TRANSACTION CHARGE, OR OTHER RATE, CHARGE, OR FEE IMPOSED
20 UPON A MERCHANT OR DEDUCTED FROM A SALE THAT IS COMPLETED
21 THROUGH USE OF A CREDIT CARD OR DEBIT CARD FOR PROCESSING OF THE
22 TRANSACTION.

23 (d) "PAYMENT CARD NETWORK" MEANS AN ENTITY THAT,
24 DIRECTLY OR THROUGH LICENSED MEMBERS, PROCESSORS, OR AGENTS,
25 PROVIDES THE PROPRIETARY SERVICES, INFRASTRUCTURE, AND SOFTWARE
26 THAT ROUTE INFORMATION NECESSARY TO CONDUCT DEBIT CARD OR
27 CREDIT CARD TRANSACTION AUTHORIZATION, CLEARANCE, AND

1 SETTLEMENT AND THAT A MERCHANT OR SELLER USES IN ORDER TO
2 ACCEPT A PARTICULAR CREDIT CARD OR DEBIT CARD AS A FORM OF
3 PAYMENT.

4 (5) **Application to existing contracts - repeal.**

5 (a) NOTWITHSTANDING SUBSECTIONS (1) TO (3) OF THIS SECTION, A
6 LICENSED RETAILER MAY VOLUNTARILY CONTINUE TO PAY INTERCHANGE
7 FEES ON THE TOTAL AMOUNT OF SALES, INCLUDING STATE, LOCAL, AND
8 DISTRICT TAXES, UNDER A CONTRACT THAT WAS IN EFFECT ON JULY 1,
9 2015. HOWEVER, THE RETAILER MAY NOT BE REQUIRED TO PAY
10 INTERCHANGE FEES ON THE TAX PORTION OF ANY SALE,
11 NOTWITHSTANDING ANY CONTRACTUAL PROVISION TO THE CONTRARY.

12 (b) THIS SUBSECTION (5) IS REPEALED, EFFECTIVE JULY 1, 2017.

13 **SECTION 2. Effective date - applicability.** This act takes effect
14 July 1, 2015, and applies to credit card and debit card transactions
15 occurring on or after said date.

16 **SECTION 3. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, and safety.