

HOUSE BILL No. 2089

By Committee on Commerce, Labor and Economic Development

Requested by Dan Murray on behalf of National federation of Independent
Business

1-23

AN ACT concerning electronic payment transactions; exempting the portion of a credit card transaction constituting a tax or gratuity from assessment of the fee charged by the card issuer; enacting the consumer inflation reduction and tax fairness act.

Be it enacted by the Legislature of the State of Kansas:

Section 1. The provisions of sections 1 through 5, and amendments thereto, shall be known and may be cited as the consumer inflation reduction and tax fairness act.

Sec. 2. As used in the consumer inflation reduction and tax fairness act:

(a) "Acquirer bank" means a member of a payment card network that contracts with a merchant for the settlement of electronic payment transactions. "Acquirer bank" includes payment card network members that contract directly with merchants or indirectly through a processor to process electronic payment transactions.

(b) "Act" means the consumer inflation reduction and tax fairness act, sections 1 through 5, and amendments thereto.

(c) "Authorization" means the process through which a merchant requests approval for an electronic payment transaction from an issuer.

(d) "Cardholder" means a person that uses a credit card or a debit card for an electronic payment transaction with a merchant.

(e) "Clearance" means the process of transmitting final electronic payment transaction data from a merchant to an issuer for posting to the cardholder's account and the calculation of fees and charges, including interchange fees, that apply to the issuer and the merchant.

(f) "Credit card" means a card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor or services on credit.

(g) "Debit card" means a card or other payment code or device issued or approved for use through a payment card network to debit an asset account, regardless of the purpose for which the account is established or whether authorization is based on a signature, a personal identification number or other means. "Debit card" includes a general-use prepaid card

1 or other electronic payment device that is issued by a bank or other
2 financial institution in a fixed limit amount useable at multiple,
3 unaffiliated merchants and includes general-use prepaid cards as defined in
4 15 U.S.C. § 1693l-1 on July 1, 2025. "Debit card" does not include paper
5 checks.

6 (h) "Electronic payment transaction" means a transaction in which a
7 person uses a debit card, credit card or other payment code or device
8 issued or approved through a payment card network to debit a deposit
9 account or use a line of credit, whether authorization is based on a
10 signature, a personal identification number or other means.

11 (i) "Gratuity" means a voluntary monetary contribution to an
12 employee from a guest, patron or customer in connection with services
13 rendered.

14 (j) "Interchange fee" means a fee established, charged or received by
15 a payment card network for the purpose of compensating the issuer for its
16 involvement in an electronic payment transaction.

17 (k) "Issuer" means a person issuing a debit card or credit card or the
18 issuer's agent.

19 (l) "Merchant" means a person that collects and remits a tax in
20 connection with an electronic payment transaction with a cardholder.

21 (m) "Payment card network" means a person that:

22 (1) Directly or through licensed members, processors or agents,
23 provides the proprietary services, infrastructure and software to route
24 information and data for the purpose of conducting electronic payment
25 transaction authorization, clearance and settlement; and

26 (2) a merchant uses to accept a brand of debit card, credit card or
27 other device that may be used to carry out electronic payment transactions
28 as a form of payment from a cardholder.

29 (n) "Person" means any individual, firm, public or private
30 corporation, government, partnership, association or any other
31 organization or entity.

32 (o) "Processor" means a person that facilitates, services, processes or
33 manages the debit or credit authorization, billing, transfer, payment
34 procedures or settlement with respect to any electronic payment
35 transaction.

36 (p) "Settlement" means the process of transmitting sales information
37 to the issuing bank for collection and reimbursement of funds to the
38 merchant and calculating and reporting the net transaction amount to the
39 issuer and merchant for an electronic payment transaction that is cleared.

40 (q) "Tax" means any sales, use or occupation tax or, except as
41 otherwise provided, any other excise tax imposed by the state of Kansas or
42 any unit of local government of the state of Kansas that is collected and
43 remitted by a merchant in connection with an electronic payment

1 transaction with a cardholder. "Tax" does not include the tax on income
2 imposed by the Kansas income tax act, the privilege tax imposed upon any
3 national banking association, state bank, trust company or savings and
4 loan association pursuant to article 11 of chapter 79 of the Kansas Statutes
5 Annotated, and amendments thereto, or the premiums tax and privilege
6 fees imposed upon an insurance company pursuant to K.S.A. 40-252, and
7 amendments thereto.

8 (r) "Tax documentation" means documentation sufficient for the
9 payment card network to determine the total amount of the electronic
10 payment transaction and the tax or gratuity amount of the transaction. "Tax
11 documentation" may be related to a single electronic payment transaction
12 or multiple electronic payment transactions aggregated over a period of
13 time. "Tax documentation" includes, but is not limited to, invoices,
14 receipts, journals, ledgers or tax returns filed with the Kansas department
15 of revenue or local taxing authorities.

16 (s) "Transaction" means the sale, rental or lease of personal property
17 or goods, including, but not limited to, software and computer programs,
18 the sale of food, rendering or furnishing of services or provision of
19 admission, entry, membership or right of participation by a merchant to a
20 cardholder.

21 Sec. 3. (a) An issuer, payment card network, acquirer bank or
22 processor shall not receive or charge a merchant any interchange fee on the
23 tax amount or gratuity amount of an electronic payment transaction if the
24 merchant informs the acquirer bank or its designee of the tax or gratuity
25 amount as part of the authorization or settlement process for the electronic
26 payment transaction. Except as provided by subsection (b), the merchant
27 shall transmit the tax or gratuity amount data as part of the authorization or
28 settlement process to avoid being charged interchange fees on the tax or
29 gratuity amount of an electronic payment transaction.

30 (b) A merchant that does not transmit the tax or gratuity amount data
31 in accordance with subsection (a) may submit tax documentation for the
32 electronic payment transaction to the acquirer bank or its designee not later
33 than 180 days after the date of the electronic payment transaction. Within
34 30 days after the merchant submits such tax documentation, the issuer
35 shall credit to the merchant the amount of interchange fees charged on the
36 tax or gratuity amount of the electronic payment transaction.

37 (c) This section shall not create liability for a payment card network
38 regarding the accuracy of the tax or gratuity data reported by the merchant.

39 Sec. 4. (a) It shall be unlawful for an issuer, a payment card network,
40 an acquirer bank or a processor that has received tax or gratuity amount
41 data to willfully with the intent to circumvent the provisions of section 3,
42 and amendments thereto, alter or manipulate the computation and
43 imposition of interchange fees charged to a merchant by increasing the rate

1 or amount of such fees applicable to or imposed upon the portion of an
2 electronic payment transaction not attributable to such taxes or gratuities.
3 An issuer, payment card network, acquirer bank or processor that violates
4 this subsection shall be subject to civil penalties as provided by subsection
5 (b).

6 (b) (1) An issuer, payment card network, acquirer bank or processor
7 that violates the provisions of subsection (a) shall be liable to the
8 aggrieved merchant, state or county for the payment of a civil penalty,
9 recoverable in an individual action, including an action brought by the
10 attorney general, a county or district attorney, in a sum set by the court of
11 up to \$1,000 for each electronic payment transaction involving interchange
12 fees charged unlawfully as the result of such violation. Such civil penalty
13 shall be in addition to any other relief that may be granted, including, but
14 not limited to, the refund of unlawful fees as provided by paragraph (3) or
15 other damages.

16 (2) In addition to, commensurate with or in lieu of an action as
17 provided by paragraph (1), an aggrieved merchant, the attorney general or
18 a county or district attorney may bring an action to enjoin or obtain a
19 restraining order against an issuer, payment card network, acquirer bank or
20 processor that has violated, is violating or is likely to violate this act.

21 (3) The issuer of the credit or debit card involved in an electronic
22 payment transaction affected by a violation of paragraph (1) shall refund
23 the merchant the interchange fee calculated on the tax or gratuity amount
24 relative to such electronic payment transaction and shall be liable to the
25 merchant for any such interchange fee amount. In any action brought by
26 the attorney general or county or district attorney pursuant to this act, the
27 attorney general or county or district attorney may enforce the provisions
28 of this paragraph and, as ordered by the court, any such interchange fee
29 collected from the issuer shall be paid over to the merchant.

30 (4) In administering and pursuing any actions under this act, the
31 attorney general or the county or district attorney is authorized to sue for
32 and collect reasonable expenses and investigation fees as determined by
33 the court. Civil penalties or contempt penalties sued for and recovered by
34 the attorney general shall be paid into the general fund of the state. Civil
35 penalties and contempt penalties sued for and recovered by the county or
36 district attorney shall be paid into the general fund of the county where the
37 proceedings were instigated. An aggrieved merchant is not a required party
38 in actions brought by the attorney general or a county or district attorney
39 pursuant to this act. No bond shall be required of the attorney general or a
40 county or district attorney in any action brought pursuant to this act.

41 Sec. 5. If any provision or clause of this act or application thereof to
42 any person or circumstance is held invalid, such invalidity shall not affect
43 other provisions or applications of this act that can be given effect without

1 the invalid provision or application, and to this end, the provisions of this
2 act are declared to be severable.

3 Sec. 6. This act shall take effect and be in force from and after its
4 publication in the statute book.