2011 -- S 0318

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

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RELATING TO COMMERCIAL LAW--GENERAL REGULATORY PROVISIONS

It is enacted by the General Assembly as follows:

1   SECTION 1. Title 6 of the General Laws entitle 'COMMERCIAL LAW - GENERAL

2 REGULATORY PROVISIONS" is hereby amended by adding thereto the following chapter:

3   CHAPTER 26.2

4   PREVENTION OF CREDIT CARD COMPANY UNFAIR BUSINESS PRACTICES

5   **6-26.2-1. Findings. –** (a) Courts have found that Visa and MasterCard and their member

6 banks have significant market power.

7   (b) Electronic payment system networks set the level of credit and debit card interchange

8 fees charged by their member banks even though those banks are supposed to be competitors.

9   (c) Competitors should set their own fees and prices and compete on that basis.

10   (d) These fees inflate the prices consumers pay for goods and services and often subsidize

11 the rewards and benefits of the most affluent cardholders at the expense of less affluent customers

12 who do not receive such rewards, or use credit cards at all.

13   (e) Consumers are increasingly using credit and debit card electronic payment systems to

14 purchase goods and services.

15   (f) In order to provide the desired convenience to consumers, most merchants must agree

16 to accept credit and debit cards.

17   (g) Some electronic payment system networks market themselves as providers of

18 currency and promote use of their products as though they were a complete substitution for legal

19 tender.

1   (h) Due to the market power of the two largest electronic payment system networks,

2 merchants do not have the power to negotiate with regards to terms for acceptance of credit and

3 debit cards and the cost of the interchange fees for such acceptance.

4   (i) Merchants are subject to contracts that allow the electronic payment system networks

5 to change the terms without notice, subject merchants to staggering fines, require costly

6 operational changes, or changes in the cost of card acceptance.

7   (j) Merchants need the flexibility to price their goods and services in accordance with the

8 cost of accepting various types of payment.

9   **6-26.2-2. Definitions.** – As used in this chapter, the following terms have the following

10 meanings:

11   (1) "Electronic Payment System" means an entity which is not a national bank that

12 directly, or through licensed members, processors or agents, provides the proprietary services,

13 infrastructure, and software that route information and data to facilitate transaction authorization,

14 clearance, and settlement, and that merchants are required to access in order to accept a specific

15 brand of general-purpose credit cards, charge cards, debit cards or stored-value cards as payment

16 for goods or services.

17   (2) "Merchant" means a person or entity doing business in this state which offers goods

18 or services for sale in this state.

19   **6-26.2-3. Protection of retail competition from credit card company unfair practices.**

20 – No electronic payment system may, directly or through any agent, processor or member of the

21 system:

22   (1) Impose any requirement, condition, penalty, or fine in a contract with a merchant

23 relating to the display of pricing for goods or services for sale by the merchant. This shall include,

24 but not be limited to, a display for a discount to be provided to a consumer for using a form of

25 payment that carries lower fees for the merchant;

26   (2) Inhibit the ability of any merchant to offer its customers discounts or in-kind

27 incentives for using a form of payment (such as cash, check, debit card, or credit card);

28   (3) Inhibit the ability of any merchant to offer its customers discounts or in-kind

29 incentives for using a debit or credit card of another electronic payment system;

30   (4) Prevent any merchant from setting a minimum or maximum dollar value for its

31 acceptance of a credit card;

32   (5) Inhibit the ability of any merchant to decide not to accept the products of an electronic

33 payment system at one of its locations;

34   (6) Prevent any merchant from deciding not to accept certain products of an electronic

1 payment system based on the fees associated with such products while still accepting other

2 products of that electronic payment system; or

3   (7) Prevent any merchant from choosing how to route a transaction among any of the

4 electronic payment networks authorized to clear transactions on the card in question.

5   **6-26.2-4. Prohibition on cartel price-setting by credit card companies. –** No

6 electronic payment system may set required, suggested, or default rates for the fees to be charged

7 by any issuer of its payment cards, agent, processor or member of the system unless such issuer,

8 agent or processor is the electronic payment system itself and not a separate legal entity.

9   **6-26.2-5. Penalties. –** (a) Any electronic payment system found to have violated this

10 chapter shall reimburse all affected merchants for all chargebacks, fees, and fines collected from

11 affected merchants directly or through any agent, processor or member of the system during the

12 period of time in which the electronic payment system was in violation and be liable for a civil

13 penalty of ten thousand dollars ($10,000) per chargeback, fee or fine levied in violation of this

14 chapter.

15   (b) Any merchant whose rights under this chapter have been violated may maintain a

16 civil action for damages or equitable relief as provided for in this section.

17   (c) The attorney general may maintain a civil action for damages or equitable relief as

18 provided for in this section to protect against violations of this chapter.

19   **6-26.2-6. Severability. --** If any provision of this chapter, or of any rule or regulation

20 made under this chapter, or the application of this chapter to any person or circumstance, is held

21 invalid by a court of competent jurisdiction, the remainder of the chapter, rule, or regulation and

22 the application of that provision to other persons or circumstances shall not be affected. The

23 invalidity of any section or sections or parts of any section or sections of this chapter shall not

24 affect the validity of the remainder of the chapter.

25   SECTION 2. This act shall take effect upon passage.

EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

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RELATING TO COMMERCIAL LAW--GENERAL REGULATORY PROVISIONS

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1   This act would establish penalties for unfair practices by electronic payment systems.

2   This act would take effect upon passage.