

Exhibit D5

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Credit card bill watered down to study, then killed

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An effort to provide relief to small businesses from fees they pay to banks for the authority to use credit cards has been watered down from "relief" to a study, but even as a study it turned into a big fight on Wednesday. In the end, members of the House Finance Committee voted the bill down on a 2-9 vote, citing concerns expressed by the agency that was likely to do the study as the reason to kill the bill.

As introduced, House Bill 15-1154 would ban credit card companies and banks from assessing the credit card fees to the state and/or local sales tax portion of a transaction.

Current law requires businesses to send sales tax to the state or to local municipalities. When those businesses accept credit cards, they are charged a percentage, usually 2 to 3 percent, as a fee by the credit card companies and banks. That fee is charged on the sales tax as well as the goods purchased. But since the sales tax goes to the state, the business is in effect paying the credit card company to collect taxes for the state, according to bill supporters.

In 2014, the state collected \$2.1 billion in sales tax revenues. Of that, about 60 percent came from credit, prepaid cards or debit cards. Assuming the low end of the credit card fee, at 2 percent, the credit card companies, banks and credit unions could have collected about \$25 million in fees just on the sales tax.

Not surprising, HB 1154 drew strong opposition from the financial services industry, which wound up delaying the hearing for four weeks, and they arrived in force to fight the bill when it finally got into the House Finance Committee this week.

The opposition prompted the sponsors, Reps. Jon Becker, R-Fort Morgan and Alec Garnett, D-Denver, to strike the original bill and turn the issue into a study.

Garnett told the finance committee that the original idea was



me it's a fairness issue. These are voluntary business contracts, and where does it stop?" He also questioned whether so complex a study could be done within the timeframe provided: Oct. 15, 2015. The short timeframe also concerned DORA. Brian Tobias of DORA's Office of Policy, Research and Regulatory Reform said the study is likely not "doable" in seven months, the agency would struggle to find the funding to cover the costs, and more importantly, the strike-below as written did not guarantee confidentiality of information nor are the federal or state chartered banks required to participate, and the agency questioned whether it would even be able to get the data required.

On the other side of the issue, retailers lined up to support HB 1154. Loren Bauman, owner of Jared's Nursery of Littleton, said his 35-year old business generates 100,000 transactions per year. While interchange fees are a necessary part of business, he loses 2 to 3 percent of every sale to those fees. HB 1154 as introduced would have saved his business about \$4,000 per year, he said. "It does impact every small business." Grier Bailey of the Colorado Wyoming Petroleum Marketers Association estimated the credit card companies made \$11 million last year by charging the interchange fees on excises taxes for Colorado gas stations.

When it came time for amendments, things got messier. Rep. Jim Wilson, R-Salida, called it "the most convoluted bill of the session," and he removed the requirement that it be funded by gifts, grants and donations or done within DORA's existing resources.

It wasn't enough to sway the votes to get it out of committee. Several committee members cited DORA's concerns that they could not do the study in the time allotted. Court, however, said she believed the issue is important and encouraged the sponsors to keep at it.

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Credit Card Transaction/Interchange Fees

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ISSUE: The Florida Retail Federation supports legislation that would allow a retailer or other sales tax collector to be held harmless for credit card transaction fees that are applied to the sales tax collected as part of a credit card transaction.

When retailers accept credit cards for payment, the retailers pay the credit card issuer (for example, a financial institution) transaction / interchange fees, which can be as high as 3 percent of the entire amount of the transaction. Interchange fees are usually calculated on the total transaction, which includes any applicable sales taxes. In other words, a retailer must pay the financial institution a percentage of all the sales taxes it collects and remits to the state of Florida. When the credit card transaction is settled and funds are distributed to the merchant's account, the transaction processing fee is subtracted from these funds, causing the net distribution to be reduced by the transaction fee charge.

Even though the financial institution takes a percentage of the taxes collected on the sale, the state still receives 100 percent of the taxes due. The retailer is forced to make up the difference. Under current law, a retailer may not charge a surcharge to any customer electing to use a credit card instead of cash.

Governmental entities have already enacted a remedy for this situation. Currently, the state of Florida authorizes a governmental entity to accept credit cards for the payment of taxes or fees with the addition of a "convenience fee" surcharge. This surcharge is imposed to offset the transaction / interchange fees associated with processing the transaction, which guarantees that the governmental entity receives the total amount of the tax or fee, not a discounted amount resulting from the transaction fee assessment. The provision in the credit card companies' master processing agreement which allows for this treatment, however, does not allow a commercial entity to implement the treatment.

This situation results in a cash subsidy to the state of Florida on all sales taxes collected as a part of a credit card transaction. Retailers are out of pocket for the fees that financial institutions charge on sales taxes when purchasers use credit cards instead of cash.

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Interchange Fees

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What it is:

The term **interchange fees**, also known as swipe fees, refers to the hidden cost paid by merchants to card-issuing banks and credit card companies for processing credit card and debit card transactions.

How it works:

For example, when you use your debit card or credit card at a store or online, there is a hidden fee that is charged by the card-issuing banks to process this transaction. For debit card transactions processed as "credit," this fee is 2-3% of the total purchase price; for transactions run as "debit," it is roughly 1% of the total purchase price. For purchases using a regular credit card, the interchange fee can be as much as 3% or higher, depending on the extended rewards associated with your card.

Banks work out legal agreements with one of the major credit card companies such as Visa, MasterCard or Discover, as well as EFT networks such as Star, Interlink and NYCE, to become a member bank within their network. The banks then charge a fee to merchants to process these debit and credit card transactions -- a certain percentage of which goes to the credit card company and a smaller percentage is paid to the merchant's bank.

Why it matters:

\$20.5 billion in *interchange fees* were charged to merchants in 2010. Now they are at the center of debate among lawmakers, banks and merchant unions in the U.S. On one side of the argument are the banks, which claim the interchange fees are necessary to cover the costs of processing transactions and providing fraud protection. On the other side are the merchants and vendors, who claim the rising interchange fees are increasingly cutting into their profits, forcing them to raise the prices of their goods and services.

In July 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act was passed by Congress, and included in the Act was an amendment to address interchange fee reform (the Durbin Amendment). Under this amendment the Federal Reserve is now authorized to review and reform debit card transaction fees. One such proposal will cap interchange fees at \$0.12 per transaction, a 73% reduction from the average charge of \$0.44 per transaction.

As a consequence, consumers can expect a loss of financial perks like free checking accounts, the end of rewards programs for debit cards and an increase in fees for ATM withdrawals from out-of-network banks.

If interchange fee reform is not passed, the cost of the fees will be borne by the consumer, as merchants continue to increase the prices on their goods and services to make up for profits lost to fees.

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