

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
89th General Assembly  
Regular Session, 2013

As Engrossed: S3/25/13  
**A Bill**

SENATE BILL 1135

By: Senator J. Hutchinson

### **For An Act To Be Entitled**

AN ACT TO REGULATE THE BUSINESS PRACTICES OF A CREDIT CARD COMPANY; TO PROHIBIT UNFAIR BUSINESS PRACTICES BY A CREDIT CARD COMPANY IN THIS STATE; AND FOR OTHER PURPOSES.

### **Subtitle**

TO REGULATE THE BUSINESS PRACTICES OF A CREDIT CARD COMPANY AND TO PROHIBIT UNFAIR BUSINESS PRACTICES BY A CREDIT CARD COMPANY IN THIS STATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

*SECTION 1. DO NOT CODIFY. Findings.*

*The General Assembly finds that:*

*(1) Courts have found that the electronic payment system networks Visa and Mastercard and their member banks have market power;*

*(2) Electronic payment system networks set the level of credit and debit card interchange fees charged by their member banks even though those banks are supposed to be competitors;*

*(3) These fees inflate the prices consumers pay for goods and services;*

*(4) Competing banks should set their own interchange fees and compete on that basis;*

*(5) Consumers increasingly use credit and debit cards to purchase goods and services;*



(6) In order to provide the desired convenience to consumers, most merchants must agree to accept credit and debit cards;

(7) Some electronic payment system networks market themselves as providers of currency and promote use of their products as though they were a complete substitute for legal tender;

(8) Due to the market power of the two (2) largest electronic payment system networks, merchants do not have the power to negotiate with regard to the contract for acceptance of credit and debit cards and the cost of the interchange fees for such acceptance;

(9) Merchants are subject to contracts that allow the electronic payment system networks to change the terms without notice, subject merchants to staggering fines, or reinterpret the rules and hold the merchant responsible; and

(10) Merchants have expressed interest in working with customers to give customers the types of pricing options they would like but that are currently blocked by the terms or interpretations of the contracts necessary to accept credit and debit cards.

SECTION 2. Arkansas Code Title 4, Chapter 107, is amended to add an additional subchapter to read as follows:

Subchapter 4 – Prevention of Credit Card Company Unfair Business Practices Act

4-107-401. Title.

This subchapter shall be known and may be cited as the "Prevention of Credit Card Company Unfair Business Practices Act".

4-107-402. Definitions.

As used in this subchapter:

(1) "Electronic payment system" means an entity, other than a national bank, that:

(A) 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

(B) A merchant uses in order to accept a brand of general-purpose credit cards, charge cards, debit cards, or stored value cards as a form of payment for goods or services; and

(2) "Merchant" means a person or entity doing business in this state and that offers goods or services for sale in this state.

4-107-403. Protection of retail competition.

An electronic payment system shall not, directly or through a member, a processor, an agent, or an acquirer of the electronic payment system:

(1) Impose a 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 a merchant to offer its customers a discount or other in-kind incentives for using a debit or credit card of another electronic payment system;

(3) Inhibit the ability of a merchant to decide whether or not to accept the products of an electronic payment system at one (1) of its locations;

(4) Prevent a merchant from setting a minimum or maximum dollar value for its acceptance of a credit card;

(5) Limit the number of electronic payment systems that process a credit or debit card transaction to one (1) electronic payment system or to affiliated electronic payment systems; or

(6) Inhibit a merchant from choosing the electronic payment system that processes a credit or debit card transaction other than as allowed in this subdivision (4).

4-107-404. Cartel price setting – Prohibited.

An electronic payment system shall not establish a required, suggested, or default rate for the fees to be charged by its credit card issuer, member, processor, or agent of the electronic payment system for transactions in this state unless the credit card issuer, member, processor, or agent of the electronic payment system is the electronic payment system itself and not a separate legal entity.

4-107-405. Penalties.

(a) An electronic payment system that is found to have violated § 4-107-403 or § 4-107-404 of this subchapter shall:

(1) Reimburse the affected merchants for all chargebacks, fees, and fines collected from affected merchants directly or through any member, processor, or agent of the electronic payment system during the time that the electronic payment system was in violation of this subchapter; and

(2) Be liable for a civil penalty of ten thousand dollars (\$10,000) per chargeback, fee, or fine levied for violating this subchapter.

(b) A merchant who is harmed by a violation of § 4-72-207 is entitled to:

(1) Recover treble damages in a civil action;

(2) If appropriate, obtain injunctive relief; and

(3) Be reimbursed for reasonable attorney's fees and the cost of litigation.

(c) The Attorney General or his or her designee may maintain a civil action for damages or equitable relief under this section to protect against violations of this subchapter.

4-107-406. Severability.

If a court determines that a provision of this subchapter or the application of this subchapter is invalid, the determination shall not affect the provisions or applications of this subchapter that can be given effect without the invalid provision or application, and to that end the provisions of this subchapter are severable.

/s/J. Hutchinson