

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

State of Arkansas  
90th General Assembly  
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*As Engrossed: H3/13/15*  
**A Bill**

HOUSE BILL 1775

By: Representatives J. Mayberry, Branscum

By: Senator J. Hutchinson

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

AN ACT CONCERNING TAXES RELEVANT TO BUSINESSES IN THE STATE; TO CREATE THE ELECTRONIC PAYMENT TRANSACTION PROTECTION ACT; TO PROHIBIT THE COLLECTION OF INTERCHANGE FEES ON CERTAIN TAXES AND FEES; TO DEDICATE CERTAIN TAX REVENUE FOR EDUCATIONAL PURPOSES; TO AMEND THE LAW CONCERNING THE DISCOUNT AVAILABLE TO TAXPAYERS FOR PROMPT SUBMISSION OF SALES TAXES RETURNS AND PAYMENTS; AND FOR OTHER PURPOSES.

### **Subtitle**

TO PROHIBIT THE COLLECTION OF INTERCHANGE FEES ON CERTAIN TAXES AND FEES; AND TO AMEND THE DISCOUNT AVAILABLE TO TAXPAYERS FOR PROMPT SUBMISSION OF SALES TAXES RETURNS.

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

SECTION 1. Arkansas Code Title 26, Chapter 19, is amended to add an additional subchapter to read as follows:

Subchapter 2 – Electronic Payment Transaction Protection Act

26-19-201. Title.

This subchapter shall be known and may be cited as the “Electronic Payment Transaction Protection Act”.



26-19-202. Definitions.As used in this subchapter:

(1) "Electronic payment transaction" means a transaction in which a person uses a debit card, credit card, or other payment code or device, issued or approved through a payment card network to debit an asset account or use a line of credit regardless of whether authorization is based on a signature, personal identification number, or other means;

(2) "Interchange fee" means a fee established, charged, or received by a payment card network to compensate an issuer for its involvement in an electronic payment transaction;

(3) "Issuer" means a person who issues a debit card or credit card or the agent of a person who issues a debit card or credit card;

(4) "Payment card network" means an entity that:

(A) Directly or through licensed members, processors, or agents provides the proprietary services, infrastructure, and software that route information and data to conduct a debit card or credit card transaction authorization, clearance, and settlement; and

(B) A merchant or seller uses in order to accept as a form of payment a brand of debit card, credit card, or other device that may be used to carry out debit or credit transactions; and

(5) "Settlement" means a transfer of funds from a customer's account to a seller or merchant upon electronic submission of a finalized sales transaction to a payment card network.

26-19-203. Interchange fees – Limitation.

(a) The following are excluded from the amount of an interchange fee charged for an electronic payment transaction:

(1) A tax or fee levied by a state or local government that is calculated as a percentage of an electronic payment transaction amount and listed separately on a payment invoice or other demand for payment; and

(2) A tax levied under the Motor Fuel Tax Law, § 26-55-201 et seq., or the Special Motor Fuels Tax Law, § 26-56-101 et seq.

(b) This subchapter does not affect the amount of an interchange fee established, charged, or received by payment card networks, issuers, or other vendors for authorizing an electronic payment transaction to pay state and local taxes, fees, child support, costs, fines, or any other payment to state

and local government agencies, boards, and commissions.

26-19-204. Alteration or manipulation of interchange fee prohibited.

A person shall not alter or manipulate the computation and imposition of interchange fees by increasing the rate or amount of a fee applicable to or imposed on the portion of an electronic payment transaction that is not attributable to a state or local tax or fee in order to circumvent the effect of this subchapter.

26-19-205. Deduction or rebate – Settlement procedure.

(a) A payment card network shall either:

(1) Deduct the amount of a tax or fee levied as described in § 26-19-203 from the calculation of the interchange fees specific to each form or type of electronic payment transaction at the time of settlement; or

(2) Rebate the amount of the interchange fee that is proportionate to the amount attributable to a tax or fee levied as described in § 26-19-203.

(b) A deduction or rebate under subsection (a) of this section shall be given at the time of settlement when the merchant or seller is able to capture and transmit the tax or fee relevant to a sale at the time of sale as part of the finalization of the sales transaction.

(c) If a merchant or seller is unable to capture and transmit a tax or fee relevant to a sale at the time of the sale, the payment card network shall:

(1) Accept proof of the tax or fee collected on the sale subject to an interchange fee upon submission of sales data by the seller or merchant; and

(2) Promptly credit the merchant or seller's settlement account for the amount of the rebate due under this section.

26-19-206. Enforcement – Penalties.

(a) The Chief Fiscal Officer of the State shall bring the necessary actions to enforce this subchapter.

(b) If a court finds in an action brought under subsection (a) of this section that a person has intentionally violated this subchapter, the person shall be subject to a civil penalty of at least one thousand dollars (\$1,000)

but not more than five thousand dollars (\$5,000) for each violation.

(c)(1) A person paying an interchange fee imposed in violation of this subchapter may bring an action at law to recover the person's actual damages.

(2) In an action brought under subdivision (c)(1) of this section, a court may order equitable relief, including temporary and permanent injunctive relief, in addition to or in lieu of the person's actual damages.

26-19-207. Applicability.

This subchapter applies to:

(1) The computation of an interchange fee established, charged, or received by a payment card network to compensate the issuer for the issuer's involvement in an electronic payment transaction; and

(2) Electronic payment transactions processed on or after the effective date of this subchapter.

SECTION 2. DO NOT CODIFY. Legislative findings and intent.

(a) The General Assembly finds that:

(1) The practice of compensating retailers for collecting sales taxes originated in the 1930s;

(2) At the time that this practice originated, records were kept mainly by hand, and as a result, it made sense to compensate retailers for the costs associated with collecting and remitting sales taxes;

(3) Retailers today use electronic cash registers and computers to track their gross receipts and sales tax collections, which reduces the time and resources required to collect and remit sales taxes; and

(4) As a result, there is less need to compensate retailers for the costs associated with collecting and remitting sales taxes.

(b) The General Assembly intends for this act to more appropriately compensate retailers today for the costs associated with collecting and remitting sales taxes while providing funding for:

(1) The College and Career Coaches Program, § 6-1-601 et seq., which will help create a more skilled work force for businesses in the state to utilize in growing and expanding their businesses;

(2) Additional positions for school nurses;

(3) School nursing facilities and equipment; and

(4) The panic button alert systems required for public schools under § 6-15-1302.

SECTION 3. Arkansas Code § 26-52-503 is amended to read as follows:

26-52-503. Discount for ~~prompt~~ early payment.

(a) At the time of transmitting the returns required under this chapter to the Director of the Department of Finance and Administration, the taxpayer shall remit with the returns to the director ~~ninety-eight percent (98%)~~ ninety-eight and five-tenths percent (98.5%) of the state tax due under ~~the applicable provisions of this chapter and ninety-eight percent (98%)~~ ninety-eight and five-tenths percent (98.5%) of the city and county gross receipts taxes collected by the director.

(b) Failure of the taxpayer to remit the tax on or before the twentieth day of the applicable month shall cause the taxpayer to forfeit his or her claim to the discount, and the taxpayer ~~must~~ shall remit to the director one hundred percent (100%) of the amount of tax plus any penalty and interest due.

(c)(1)(A) ~~For tax payments made on or after February 1, 1993, the~~ The discount for ~~prompt~~ early payment of state tax shall not exceed ~~one thousand dollars (\$1,000)~~ fifty dollars (\$50.00) per month for a taxpayer filing monthly gross receipts tax reports.

(B) A taxpayer filing a tax report on a quarterly, annual, or occasional basis ~~shall be~~ is entitled to the discount for state tax, which shall not exceed ~~one thousand dollars (\$1,000)~~ fifty dollars (\$50.00) for each month included in the tax report.

(2)(A) The aggregate state tax discount available to a taxpayer who operates more than one (1) permitted business location within this state and who does not file a consolidated monthly gross receipts tax report for all locations shall not exceed ~~one thousand dollars (\$1,000)~~ fifty dollars (\$50.00) per month.

(B) In the case of a corporate taxpayer, parent corporation, that holds fifty percent (50%) or more of the outstanding shares of one (1) or more corporations, subsidiaries, that are subject to the tax imposed by this chapter, the aggregate state tax discount available to the parent corporation and all subsidiaries shall not exceed ~~one thousand dollars (\$1,000)~~ fifty dollars (\$50.00) per month.

(C) ~~There shall be no limitation~~ The limitations on the discount for stated for state taxes under this section apply to prompt early payment of city and county gross receipts taxes collected by the director.

SECTION 4. EFFECTIVE DATE. Section 3 of this act is effective on the first day of the calendar quarter following the effective date of this act.

*/s/J. Mayberry*