

Introduced by

Senators Vedaa, Hogue, Kannianen

Representatives Bosch, Dockter, Lefor

1 A BILL for an Act to create and enact a new section to chapter 51-07 of the North Dakota  
2 Century Code, relating to the calculation of interchange fees for electronic payment  
3 transactions; and to provide a penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 51-07 of the North Dakota Century Code is created  
6 and enacted as follows:

7 **Taxes excluded from calculation of interchange fee applied to an electronic payment**  
8 **transaction - Damages for violation - Penalty.**

9 1. For purposes of this section:

- 10 a. "Card issuer" means a person issuing a debit card or credit card, or the card  
11 issuer's agent.
- 12 b. "Credit card" means any card, plate, coupon book, or other credit device existing  
13 for the purpose of obtaining money, property, labor, or services on credit.
- 14 c. "Debit card" means a card, or other payment code or device, issued or approved  
15 for use through a payment card network to debit an asset account, regardless of  
16 the purpose for which the account is established, whether authorization is based  
17 on signature, personal identification number, or other means. The term includes a  
18 general use prepaid credit card, as defined in 15 U.S.C. 1693I-1. The term does  
19 not include paper checks.
- 20 d. "Electronic payment transaction" means a transaction in which a person uses a  
21 debit card, credit card, or other payment code or device, issued or approved  
22 through a payment card network to debit a deposit account or use a line of credit,  
23 whether authorization is based on a signature, personal identification number, or  
24 other means.

- 1           e. "Interchange fee" means a fee established, charged, or received by a payment  
2           card network for the purpose of compensating the card issuer for its involvement  
3           in an electronic payment transaction.
- 4           f. "Payment card network" means an entity that:
- 5           (1) Directly, or through licensed members, processors, or agents provides the  
6           proprietary services, infrastructure, and software that routes information and  
7           data to conduct debit card or credit card transaction authorization,  
8           clearance, and settlement; and
- 9           (2) A merchant or seller uses to accept as a form of payment a brand of debit  
10          card, credit card, or other device that may be used to carry out debit or  
11          credit transactions.
- 12          g. "Settlement" means the transfer of funds from a customer's account to a  
13          merchant or seller upon electronic submission of finalized sales transactions to  
14          the payment card network.
- 15          h. "Tax or fee" means a state or local tax or fee levied or imposed under state or  
16          local law, rule, ordinance, or resolution, which is calculated at the time a  
17          customer makes a payment to a merchant or seller.
- 18          2. The amount of a tax or fee on an electronic payment transaction must be excluded  
19          from the amount on which an interchange fee is charged for the electronic payment  
20          transaction.
- 21          3. A payment card network shall:
- 22          a. Deduct the amount of any tax or fee imposed from the calculation of interchange  
23          fees specific to each form or type of electronic payment transaction at the time of  
24          settlement; or
- 25          b. Rebate an amount of interchange fee proportionate to the amount attributable to  
26          the tax or fee.
- 27          4. A deduction or rebate must occur at the time of settlement when the merchant or seller  
28          is able to capture and transmit tax or fee amounts relevant to the sale at the time of  
29          sale as part of the transaction finalization.
- 30          5. If a merchant or seller is unable to capture and transmit tax or fee amounts relevant to  
31          the sale at the time of sale, the payment card network shall accept proof of tax or fee

- 1           amounts collected on sales subject to an interchange fee upon the submission of  
2           sales data by the merchant or seller and credit the settlement account of the merchant  
3           or seller without delay.
- 4        6. A payment card network that violates this section is liable to each merchant or seller  
5        that remitted interchange fees charged in violation of this section for:
- 6           a. The amount of interchange fees paid to the payment card network in violation of  
7           this section;
- 8           b. Punitive damages not to exceed one thousand dollars per violation; and
- 9           c. Court costs and reasonable attorney's fees.