

March 7, 2023

RE: Testimony in Opposition to North Dakota SB 2217

Dear Chairman Headland, Vice Chair Hager and Members of the North Dakota House Finance and Taxation Committee:

I represent Bread Financial in OPPOSITION to Senate Bill 2217 pertaining to credit card interchange fees. Bread Financial is a tech-forward financial services company that many of you probably recognize by its former name, Comenity Bank. Bread Financial offers a number of products including private label and co-branded credit cards, SplitPay™ or buy now, pay later options, and a variety of offerings designed to benefit merchants through loyalty programs and benefit customers by providing access to a variety of financing options.

The current system of sales tax collection is and has been from the very start inherently unfair to merchants that collect sales taxes on behalf of the State of North Dakota. Without the work of these merchants, it would be much more difficult for the State of North Dakota to realize those revenues. It has been argued that credit card companies benefit from price increases and inflation as the interchange fee is calculated as a percentage of the overall transaction. Inflation does not make credit card companies and the associated financial intuitions bad actors. The charges they may be directly corollary to the risk that they are exposed to. In fact, they are in the exact same position as the State of North Dakota who collects greater revenue from its sales tax as prices increase. Despite inflation and an overall very healthy North Dakota economy, the deduction that the State of North Dakota offers to merchants that have been conscripted into North Dakota's tax collection department has not kept pace. In fact, the cap on the deduction in NDCC 57-39.2-12.1 and 57-40.2-07.1 was last increased in 2013 from \$93.00 to a whopping \$110.00 per return and has not been touched since. If you really want to make an impact on small businesses, raise the cap.

Senate Bill 2217 does not offer a solution to this inherent unfairness, it merely shifts the financial burden to someone else, while the merchants continue to receive the deduction from the State of North Dakota, and continue to happily display credit card decals in their windows to attract customers and generate more business.

First, from Bread Financial's perspective, not all credit cards are the same. Merchant specific cards, that cards that you find at our local furniture stores, and flooring centers, and a number of

other businesses, are negotiated between the card servicer and the merchant specifically to enhance the payment options that the merchant may provide. This helps those small, often family run businesses, compete with their national competitors. The contractual arrangements between merchants and branded cards are different than the run of the mill transaction. They may include unique fees associated with such a contractual arrangement that would currently fall under the proposed definition of “interchange fee.” If this proposal proceeds any further, these cards should be specifically omitted from the definition of interchange fee. This is just one way in which this “one-size fits all” mentality interferes with the free-market system that this country is founded upon.

There are a number of unintended consequences that result from this bill, and state legislators in almost 30 different states over the last 15 years have rejected similar proposals in the committee of origin. Adopting this legislation would make North Dakota an island in a nationwide payment system. Retailers would be required to create and implement new payment systems and operational mechanisms to ensure compliance, which would be both costly and burdensome. While the proponents are saying its possible the question is when is it possible and at what cost is it possible?

The card network is a transmitting system that does not change rapidly, and there is good reason for that. Completing the transaction safely, securely, quickly, with ease, and perhaps most importantly correctly far outweigh the risk of demanding a change to the method in which transactions are completed for the sake of a few North Dakota merchants. Ultimately it is the constituents of North Dakota that reap the benefit from a well-run, secure system provided by fintech companies, card networks, banks and credit unions and the significant investments that have made to insure that those transactions occur seamlessly.

As proponents of this proposal have indicated there are a variety of different POS systems, with different operating systems and software programs. They appreciate the competition that exists in that market and it allows them to find a system that works for them at a cost they can live with. This proposal would require all systems to make updates to hardware, operating systems and software in order to be compliant. Not just the few that have testified “it’s possible.” No one that has testified in favor of this bill has specifically laid out how exactly this is going to be accomplished. It becomes someone else’s problem to figure out. We would be foolish to believe that this can be accomplished without cost to those that will need to use it.

Should this proposal be enacted, both merchants and consumers would be negatively impacted. Merchants would need new, yet-to-be-developed, specialized terminals and software to itemize and communicate segmented data to the card networks at the time of sale. This would be especially hard on small businesses which do not have sufficient volume to offset the costs the new system would impose.

Currently, to accomplish this transaction the sales tax would have to be collected as a separate transaction. Imagine receiving your credit card statement reflecting a purchase and a number of small denomination corresponding sales tax charges. How does a consumer look at that

statement and confirm that some scam artist hasn't been charging your card five or six dollars at a time. This opens pandoras box when it comes to fraud.

This proposal will negatively impact the cost of doing business in North Dakota. Attempts to displace revenue from card providers for the services which they provide will only result in the interchange fees being raised for all merchants in North Dakota. Instead of an average of 2%, it will become 2.25% or 2.5% to make up for the lost revenue.

Payment card networks are highly specialized and operate under national processing rules to facilitate almost instantaneous acceptance. To change these processing rules for solely one state and establishing a precedent of designating that certain types of payments must be handled in a unique way increases costs to the financial institution and the consumer, and has the potential to extend to other types of transactions beyond sales tax. It will result in higher compliance costs when new regulatory requirements are imposed.

Bread Financial strongly recommends that this committee recommend a DO NOT PASS.

Sincerely,

CROWLEY FLECK PLLP

Blaine T. Johnson
ND Lobbyist 1462