A Long Line of Rejected Legislation

North Dakota SB 2217 unwisely proposes to prohibit the levying of interchange fees on any portion of a credit card or debit card sale representing any state or local taxes.

Following is a list of similar proposals that have been carefully considered in previous years in other states. Each proposal was uniformly rejected in its committee of reference due to harm to consumers, loss of sales tax revenue, legal deficiencies, and operational hurdles.

2006
Kentucky HB 592
New York AB 11193

2007
Florida SB 1724
Kansas SB 348
New York AB 1020
Washington SB 5884
Washington SB 5885

2008
Kansas HB 2862
Louisiana HB 673
Louisiana SB 516
New Jersey SB 1138
New Jersey AB 2261
Rhode Island HB 7509

2009
Connecticut HB 6311
Massachusetts HB 1025
Nebraska LB 186
North Carolina HB 1576

2010
New Jersey SB 1631

2012
Iowa HSB 666

2013
Arkansas SB 607

2014
Nebraska LB 991

2015
Arkansas HB 1775
Colorado HB15-1154

2016
Minnesota HF 302

2017
Nebraska LB 559

2018
New Jersey SB 2577

2019
New Jersey S 2577

2020
Tennessee HB 2500

2021
Alabama SB 316
Illinois SB 2083
Indiana HB 1493
Iowa HF 627
Maine LD 1544
Mississippi HB 1076
Mississippi SB 2856
Oklahoma HB 2181
Oklahoma SB 798
Tennessee HB 375
Tennessee SB 880
Wisconsin SB 572

2022
Idaho SB 1293
Mississippi HB 1428
Mississippi SB 2742
Virginia HB 152

North Dakota SB 2217 would prohibit the levying of any portion of the merchant discount fee, including interchange, on the sales tax portion of a credit or debit card transaction.

This proposal will increase operational burdens and administrative costs for North Dakota retailers

- When a retailer makes a sale using a customer's electronic payment card, the system that processes the transaction recognizes only the final purchase amount, on which the merchant discount fee is based.
- In order to realize the sales tax portion of each item purchased – noting that some items are not even subject to tax – retailers would be required to create and implement new systems and operational mechanisms to ensure compliance with the legislation. Implementing such systems and operations would impose significant burdens to retailers and increase their administrative costs.
- Because the card issuer bears the credit risk for the entire transaction, retailers may see their costs increase for the underlying transaction.
- Smaller businesses that require the lowest overhead costs would be burdened most. In turn, these added overhead costs would likely raise overall prices for consumers.

North Dakota consumers will be harmed

- The creation of new operational systems will result in higher fees for retailers, which will result in higher costs at the register – something for which the consumer ultimately will have to pay.
- Consumers will be required to pay for a separate transaction— one for the sale of the product or service and the other for the tax portion of the sale.
- A separate cash or check transaction for the tax portion of a sale will be a huge burden to consumers when paying for large ticket items, such as computers and electronics.
- The increased costs associated with the requirements imposed by the legislation would lead small businesses to reconsider accepting electronic payments, thus reducing payment options for consumers.

North Dakota will lose sales tax revenue

- Consumers frustrated with having to pay cash for sales taxes may shift their purchases to merchants outside the state.
- The state would lose an important audit trail to ensure that merchants are remitting the proper amount of sales tax owed.

What the real plan is

- This legislation is nothing more than an appeal for government price controls on the electronic payments industry, including community banks and credit unions.
- Some retailers are attempting to shift the debate by making it look like interchange is a fee that consumers pay.
- The reality is that interchange is a retailer's cost of doing business—the cost of accepting payment cards.

Why North Dakota legislators should reject this plan

- Retailers reap huge benefits from accepting payment cards, including more sales, less fraud, and faster payment.
- Retailers welcome the opportunity to offer consumers the convenience of electronic payments, but now they want to shift their business costs to bolster their profits.
- The fact is that some retail groups are trying to use the government to shift costs from one industry to another, and in the end the consumer will lose.

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INTERCHANGE

The Issue

A proposed bill supported by certain merchant trade groups would prohibit financial institutions from charging an interchange fee on the sales tax portion of credit and debit card transactions. Interchange is the fee merchants pay to transmit their payments electronically.

5 REASONS IT DOESN'T WORK

1. **Systems don't support it:** When a retailer makes a sale using a customer's electronic payment card, the systems that process the transaction recognize only the final purchase amount. U.S. infrastructure does not support a system where multiple amounts (taxes) can be excluded from the interchange fee.

2. **New systems are costly to business:** Because the structure to support this proposal does not exist, it would impose severe and costly burdens on all business, including retailers.

3. **Fraud/credit risks remain:** The financial institution must advance the total funds, including the tax portion, to the retailer regardless if the transaction is collectable.

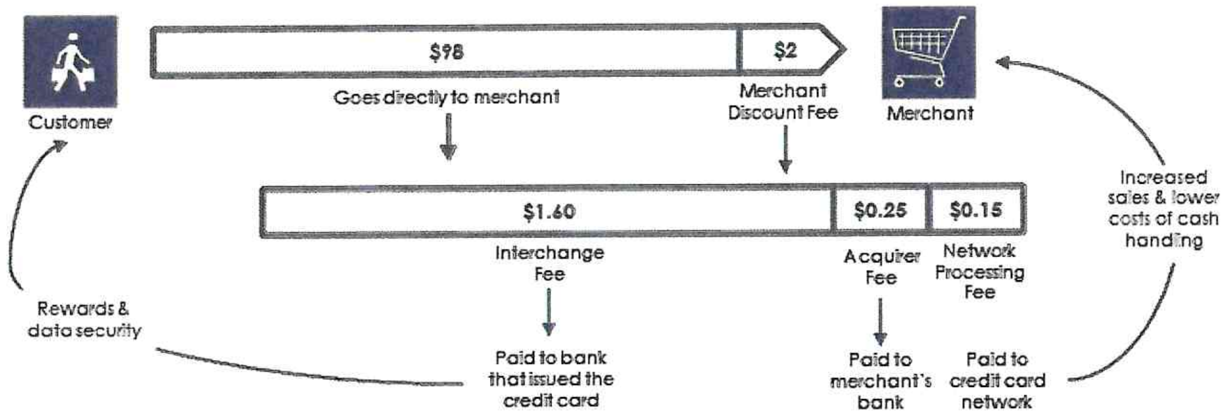
4. **Hurts small retailers:** Merchants will need specialized terminals and software to itemize and communicate segmented data to the card networks at the time of sale. Small retailers do not have sufficient volume to offset the costs the new system would impose.

5. **Consumers lose convenience:** If the bill passes, the best solution for the problems created would be to require consumers to pay in two transactions – one for the sale of the product or service and another for the tax portion of the sale, or to pay the tax with cash or check.

The Bottom Line

If passed, these bills would make North Dakota an island in the nationwide payment system. The infrastructure these bills require does not exist, and it is uncertain if the many businesses involved in the electronic transfer of money, many of which are not located here, would even be required to support the requirements of North Dakota law – and if so, at what cost? With all the different tax iterations that exist around the country, one can only imagine the mess it would create.

WHAT IS INTERCHANGE?



5 BENEFITS RETAILERS RECEIVE FROM ELECTRONIC PAYMENTS

1. Accepting cards increases sales and profits for retailers.
2. Unlike checks, electronic transactions guarantee merchants are paid for purchases made.
3. Cards save consumers valuable time and make retail transactions more efficient.
4. Merchants benefit from accepting cards because their customers prefer to buy things using their cards.
5. Merchants pay less for accepting cards than for accepting cash or checks.

The fee retailers pay to electronically transmit money is a cost of doing business. It is voluntary. They do not have to accept cards.

However, the real cost of handling cash ranges from 4.7 to 15 percent. If retailers were to automate some of the cash handling process, they could recapture between 100 to 500 labor hours a month per store.

The benefits far outweigh the fee. They include guaranteed payment, fraud protection, cash flow, and increased sale opportunities.

The payment system today transfers most fraud losses from the merchant to the payment system.

The penalties in the bill are absurd and could easily amount to millions a week from a single merchant.

The bill does not take into account out-of-state merchants who are doing business in North Dakota. Will they have the burden of changing their systems to accommodate this standalone law?

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The Truth about Interchange and Card Acceptance

There are a lot of misconceptions about card acceptance, interchange fees, and the electronic payments system. It's important that legislators have the facts – straightforward and up front – in order to make the best decisions that will impact the people of North Dakota. Below, we take a look behind the curtain and reveal the truth behind some of the top myths about interchange fees and electronic payments.

Merchant Myth #1: Merchants can't negotiate their interchange fees.

FACT: Merchants can – and do – directly negotiate with the networks to lower their interchange costs through a variety of incentive arrangements, including deals in which the savings are rebated to the merchant. Some merchants prefer to handle the negotiation through their association or other group arrangement. Entire categories of merchants have obtained lower interchange rates based on their particular business needs.

> →For example, Visa and MasterCard capped interchange on gasoline sales and established lower interchange rates for categories of merchants such as grocery stores, utilities, and convenience purchases. Also, merchants routinely switch processors for a better package and price – and, therefore, have a much greater ability to negotiate card acceptance costs than they do for most other business services, such as electricity, postage, water, or trash collection.

Merchant Myth #2: Merchants can't offer a cash discount.

FACT: There is nothing prohibiting merchants from offering a cash discount. In fact, federal law allows merchants to offer cash discounts, and the card networks all make very clear in their rules that discounts for cash, checks, debit, or other credit cards are also allowed.

Merchant Myth #3: Merchants prefer all customers to pay with cash.

FACT: Merchants are increasingly moving away from cash and check acceptance because of the many benefits electronic payments offer over other forms of payment, including increased sales opportunities, higher profit, guaranteed payment and cash flow. Airlines, grocery stores[1], restaurants, and other industries have adopted this cashless model with success.

For instance, by accepting cards, the Salvation Army "cashless kettles" average donations went from $2 to around $15 when using credit or debit, a 650% increase. New York City cab drivers saw overall ridership and revenue increase and tips double over "pre-plastic" days.

Recent studies also show that many merchants prefer electronic payment over cash payment due to the high costs of handling cash. For instance, in 2017 alone, $96 billion was spent in the U.S. and Canada on cash-handling activities, greater than the annual GDP of Ukraine.[2] Simply closing out cash drawers cost $38.5 billion in 2017. The average cost of cash is 9.1% per transaction across all retail segments. In contrast, credit and debit cards cost approximately only 1% - 2.5% per transaction.[3]

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[1] *The News Observer.* "No Checks at the Checkout." October 20, 2011.

[2] IHL Group. 2018.

[3] Ibid.

Merchant Myth #4: Interchange fees are higher in U.S. than in any other country

FACT: The **total** amount merchants pay for the benefit of accepting credit or debit cards – the merchant discount fee – is, in fact, roughly the same in the U.S. and Europe. In some countries, the "interchange" portion of the merchant discount fee might be lower, but the total amount merchants pay still remains about the same. In some countries, these fees are lower than in the U.S. because the government has interfered with the market and imposed price controls on interchange. These countries consequently have less innovative debit systems – often relying on PIN debit, making online debit purchases impossible or at a merchant without a PIN pad.

Merchant Myth #5: The Durbin amendment impacted only large banks because small banks and credit unions are exempt from the fallout from these price controls on debit interchange fees.

FACT: The so-called "exemption" for small financial institutions does not work. In fact, studies have shown that credit unions have suffered erosion in their interchange revenues, as these smaller financial institutions were not exempted from the routing and exclusivity portions of the Durbin amendment – only the price caps. The cost of providing multiple networks falls most heavily on smaller institutions.