

March 6, 2023

Re: Statement in Opposition to North Dakota SB. 2217

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

Encouraged by large out-of-state retailer groups supported by big box merchants, SB. 2217 would prohibit the collection of interchange on the sales tax portion of electronic transactions.¹ This would come at the expense of North Dakota consumers and small businesses alike.

This fundamentally flawed legislation attempts to do what has never been done. No other state in the nation has ever implemented such a program, due to technical hurdles, consumer privacy concerns, and other barriers.

In fact, similar proposals have been considered in nearly 30 states over the past 15 years and, without exception, after full and careful consideration, no measure has successfully passed out of the committee of original reference.

To provide vendors remuneration for the collection of state sales tax, nearly 30 states offer a vendor collection discount.² In contrast to SB. 2217's proposal to upend the current well-functioning system, these states have chosen a workable policy that is more sound, practical, and fair in providing desired relief to small businesses from the burden of collecting and remitting state sales tax.

Despite retailer group false claims to the contrary, neither the software nor POS hardware exists to separate out sales tax from the underlying cost of goods or services sold. When a retailer makes a sale via electronic payment, the system that processes the transaction recognizes only the final purchase amount on which the merchant discount fee is based. The system transmits neither information regarding the product, nor services sold, nor the amount of sales tax collected.

Were SB.2217 enacted, North Dakota merchants (alone in the nation) would be faced with one of two options:

¹ Interchange is a small fee (an average of 1.8%) paid by merchants on electronic credit transactions to cover handling costs, fraud and bad debt costs, the risk involved in approving the payment, and the operation of the payment network. Assuming such a rate with a 6% sales tax, the interchange fee on a \$100 transaction amounts to only \$0.108.)

² Avalara. "[Vendor discounts for filing sales tax on time, a state-by-state guide.](#)" July 20, 2022.

1. Collect sales tax as a separate transaction, essentially requiring *two* transactions for *every* taxable sale. This would force consumers to pay the sales tax portion via cash or check.

2. Merchants would send payment companies every detail of a person's shopping habits, creating an enormous consumer privacy issue. The current system is designed so that payment networks see very little of a consumer's personal information to process a payment. This bill would fundamentally change that, exposing consumer's private purchases through both intentional sharing – and worse – accidental exposure of sensitive consumer data through increasingly common data breaches.³

Should this proposal be enacted, both merchants and consumers would be negatively impacted because, as noted above, 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 especially hurt small businesses which do not have sufficient volume to offset the costs any new system would impose.

Retailer claims that interchange rates have increased over recent years are also false. [According to Verisk Financial Research](#), the average U.S. credit interchange rate has remained steady (1.8%) dating back to at least 2016.⁴ In the same period of time, merchants and retailers have seen their sales volumes rapidly increase, resulting in an increase in total *volume*.

Recent retailer arguments referenced chargebacks on electronic payments. It's important to note that chargebacks are, of course, important consumer protections. The current chargeback rate is 2.55%.⁵ That figure exceeds even credit interchange. In 2020, issuers were financially liable for more than \$37 billion in charge-offs, making them, effectively, free sales to merchants, as issuers had to cover the entire portion of these costs, not just sales taxes.

For these reasons and more, the following groups joined in signing a letter opposing SB. 2217 and we urge you to do the same:

- North Dakota Bankers Association
- Independent Community Banks of North Dakota
- Dakota Credit Union Association
- American Bankers Association
- American Financial Services Association
- American Transaction Processors Coalition
- Card Coalition
- Credit Union National Association

³ Law360. "[Wawa Data Breach Is Warning On Swipe Payment Tech Risks](#)." September 19, 2022.

⁴ Electronic Payments Coalition. "[EPC Q4 2022 Data Dashboard](#)." January 25, 2023.

⁵ Federal Reserve Bank of St. Louis. "[Charge-Off Rate on Credit Card Loans, All Commercial Banks](#)." February 21, 2023.

- Electronic Payments Coalition
- Electronic Transactions Association
- Independent Community Bankers of America
- Innovative Payments Association
- National Association of Federally-Insured Credit Unions
- TechNet

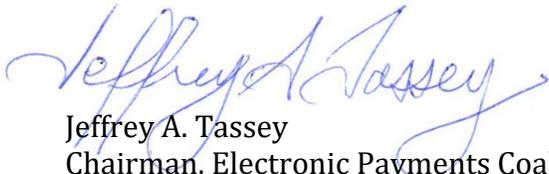
Simply put, government should not be in the business of interfering in a working, private market by intervening in private contracts between willing parties to pick winners and losers. The U.S. Department of Justice has conducted multiple exhaustive, multi-year reviews of the electronic payments system and concluded – retailer claims notwithstanding – that there was no anti-competitive behavior. And retailer legal arguments of similar claims have likewise been rejected by the U.S. Supreme Court no fewer than four times.

It should be noted that like electricity and other business expenses, interchange is deductible on taxes as a cost of doing business. Presumably, many retailers are already claiming these deductions.

Even were such an ill-advised proposal implemented, ultimately, consumers and small merchants would bear the brunt of the consequences of a less efficient, less secure, less private payments system. Safety and security have never been more important. Continuing to invest in secure payments technology is critical toward ensuring the U.S. economy and our North Dakota small business community are given the necessary resources they need to operate and thrive, especially during these particularly challenging times.

For the above stated reasons and more, we strongly encourage you to vote “no” on SB. 2217.

Sincerely,

A handwritten signature in blue ink that reads "Jeffrey A. Tasse". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jeffrey A. Tasse
Chairman, Electronic Payments Coalition