

Department of Legislative Services  
 Maryland General Assembly  
 2017 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 1364 (Delegate McMillan, *et al.*)  
 Health and Government Operations

State Government - eCheck Payments - Prohibition on Convenience Fee

This bill prohibits a unit of State government from charging a convenience fee for any payment made by a person to the unit via electronic funds transfer (EFT) or eCheck that uses an automated clearinghouse network (ACH) to process the payment.

Fiscal Summary

**State Effect:** General/special fund expenditures increase by at least \$41,300 in FY 2018 and by at least \$55,000 annually thereafter for several State agencies to pay the vendor that provides services under the Department of Information Technology’s (DoIT) master contract, as the vendor can no longer collect convenience fees for certain transactions. Additional agencies contracting with separate vendors for eGovernment (eGov) services are also likely affected. Revenues are not directly affected because users currently pay the vendor directly.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
GF/SF Exp.	41,300	55,000	55,000	55,000	55,000
Net Effect	(\$41,300)	(\$55,000)	(\$55,000)	(\$55,000)	(\$55,000)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** The bill does not directly affect local governmental operations or finances.

**Small Business Effect:** Minimal.

## Analysis

### Current Law:

*Electronic Fund Transfers and EChecks:* “eCheck” is not defined in statute, but “electronic check” is referred to in the Insurance Article as a form of payment in which a fund transfer is made electronically from a payor’s bank account to a premium finance company’s bank account. There is no definition of “electronic funds transfer” in State law. Section 4A-108 of the Commercial Law Article governs “funds transfers” but only as they relate to transfers between two commercial parties. The Federal Electronic Fund Transfer Act of 1978, which is intended to cover individual consumers engaging in wire transfers, defines EFT as any transfer of funds, other than specified commercial paper, which is initiated through specified electronic means “so as to order, instruct, or authorize a financial institution to debit or credit an account.” The term includes, among other things, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone. According to the Federal Reserve’s guidance, this definition includes debit cards and other access devices with EFT capabilities, such as credit cards with EFT features and access devices whose only credit feature is a preexisting agreement to extend credit to cover account overdrafts or to maintain a minimum account balance. The bill only applies to transactions over the ACH network, which involves a payor providing an account routing number to the payee, and does not apply to debit card transactions.

*Surcharges on Payments:* Chapter 109 of 2016 authorizes an insurer, health maintenance organization, or other health service plan to pay a health insurance claim using a credit card or EFT that imposes a fee or other similar charge on the provider to process the payment only if (1) the insurer makes specified notifications to the provider; (2) the insurer offers an alternate payment method without a fee; and (3) the provider elects to accept payment using the credit/EFT method.

### Background:

*ACH Network:* According to the nonprofit Electronic Payments Association (NACHA), which manages ACH, ACH is a batch processing system in which financial institutions move money and information from one bank account to another through credit and debit transactions. Instead of using paper to carry necessary transaction information, such as with paper checks, ACH network transactions are transmitted electronically, allowing for faster processing times. NACHA operating rules require that ACH credits settle in one to two business days and that ACH debits settle on the next business day. Recent changes to the rules now enable same-day settlement of virtually all ACH transactions.

*Credit/Debit Card Surcharges:* In 2012, Mastercard and Visa reached an agreement with retailers to allow a retailer to charge a convenience fee or surcharge on credit transactions subject to a cap. However, 10 states prohibit surcharges on credit and/or debit cards: California, Connecticut, Colorado, Florida, Kansas, Maine, Massachusetts, New York, Oklahoma, and Texas. In Georgia, surcharges on payments by “electronic means,” including electronic checks, are prohibited unless a fee-free alternate payment option is available, such as cash, paper check, or money order. California and Texas specifically exclude state and local government agencies from the surcharge prohibition.

*Electronic Payments to State Agencies:* Thirty-three State agencies offer access to electronic payment through a master contract with DoIT. The actual electronic payment system/service is provided by an eGov services contractor that provides the necessary software development, hosting platform, security services, and support. The contractor is responsible for any network access fees imposed by credit card companies. According to DoIT’s contractor, the cost of providing these services is either paid for by the agency or by the individual making a payment to the agency on the eGov platform, the latter of which is the case in the majority of circumstances. In 2016, the service provider under this master contract collected nearly \$1,000,000 in convenience fees from users, \$55,000 of which is from EFT or eCheck transactions. Other State agencies may also be using eGov services provided by vendors outside of the master contract with DoIT.

**State Expenditures:** This estimate assumes that the bill applies to agencies who use third-party vendors, even though users pay the convenience fees directly to the vendor, and not to State agencies. As mentioned above, 33 agencies under the DoIT master contract make online payment processing available to payors through the use of a vendor. Approximately 6% of these agencies offer payment by EFT or eCheck via the ACH network, and most of them pass this cost on to the user. Under the bill, the vendor is no longer able to charge convenience fees to users for these types of transactions; thus, assuming State agencies continue to offer these payment options, it is assumed that the affected State agencies absorb this loss and pay the vendor accordingly. Thus, general and/or special fund expenditures increase by at least \$41,250 in fiscal 2018 (which accounts for the bill’s October 1, 2017 effective date) and by at least \$55,000 annually thereafter, reflecting payments to the vendor.

Assuming that the trends experienced through DoIT’s vendor are indicative of other agency contracts with eGov vendors, EFT’s and eChecks likely account for between an estimated 5% and 8% of the total convenience fees generated by the remaining State agencies that contract with various eGov vendors outside of the master contract with DoIT. There is no way to reliably estimate any exact dollar amount, but expenditures for these additional agencies affected by the bill likely increase as well. For example, the Judiciary advises that its general fund expenditures increase to pay its vendor \$1 per eCheck transaction once

the component of the Judiciary's Maryland Electronic Courts system that involves eChecks is functional.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Secretary of State; University System of Maryland; Maryland Department of Agriculture; Maryland Department of the Environment; Department of Health and Mental Hygiene; Department of Labor, Licensing, and Regulation; Department of Natural Resources; Department of State Police; Maryland Department of Transportation; State Department of Assessments and Taxation; Maryland State Archives; State Ethics Commission; Maryland Insurance Administration; Judiciary (Administrative Office of the Courts); NIC Corporation; National Conference of State Legislatures; Department of Legislative Services

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