

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 917
Finance

(Senator Kramer)

Electronic Payment Transactions - Interchange Fees - Calculation and Use of Data

This bill requires entities that process electronic payment transactions to exclude, under certain circumstances, the amount of tax and gratuity included in the transaction from the amount on which an interchange fee is charged. The bill also requires credit and debit card issuers to credit a merchant who provides specified documentation with the amount of the interchange fee charged on the amount of tax and gratuity included in the transaction. In addition, the bill imposes limitations on the use of electronic payment transaction data. Violation of the bill is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

Fiscal Summary

State Effect: The bill's imposition of new and existing penalty provisions is not anticipated to have a material impact on State finances or operations. The Office of the Attorney General, Consumer Protection Division, can handle the bill's requirements with existing resources.

Local Effect: The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Definitions

- “Acquirer bank” means a member of a payment card network that contracts with a merchant or processor for the settlement of electronic payment transactions.
- “Electronic payment transaction” means a transaction in which a person uses a debit card, a credit card, or any other payment code or device issued (or approved) through a payment card network to debit a deposit account or use a line of credit, regardless of whether the authorization is based on a signature, a personal identification number, or any other means.
- “Interchange fee” means a fee established, charged, or received by a payment card network for the purpose of compensating the issuer for its involvement in an electronic payment transaction.
- “Issuer” means a person using a debit card or credit card or the issuer’s agent.
- “Payment card network” means an entity that (1) directly or through licensed members, processors, or agents provides the proprietary services, infrastructure, and software to route information and data for the purpose of conducting electronic payment transaction authorization, clearance, and settlement and (2) a merchant uses to accept as a form of payment a brand of debit card, credit card, or any other device that may be used to carry out electronic payment transactions.
- “Processor” means an entity that facilitates, services, processes, or manages the debit or credit authorization, billing, transfer, payment procedure, or settlement with respect to any electronic payment transaction.

Merchant Request for Exclusion of Amount of Tax or Gratuity

The bill authorizes a merchant to request that an issuer, a payment card network, an acquirer bank, or a processor exclude the amount of tax or gratuity included in the electronic payment transaction from the amount on which an interchange fee is charged by transmitting the relevant documentation *as part of the authorization or settlement process* for such a transaction. If a merchant does so, then an issuer, a payment card network, an acquirer bank, or a processor must exclude the amount of tax and gratuity included in the electronic payment transaction from the amount on which an interchange fee is charged. Alternatively, documentation may be submitted *separately* to the acquirer bank or its designee at a later time (but within 180 days after the date of the transaction); within 30 days of the submission, the issuer must credit the merchant by the required amount.

The bill does not create liability for a payment card network regarding the accuracy of the documentation reported by the merchant.

Penalty Provisions and Use of Electronic Payment Data

An issuer, a payment card network, an acquirer bank, or a processor that does not make the required exclusion is subject to a civil penalty of \$1,000 for *each* transaction. Likewise, an issuer that does not credit the merchant the amount of the interchange fees charged (*i.e.*, after the required documentation is submitted) is also subject to a civil penalty of \$1,000 for *each* transaction. These entities may not alter or manipulate the computation and imposition of interchange fees by increasing the rate or amount of the fees applicable to (or imposed on) the portion of a credit or debit card transaction that is not attributable to taxes or gratuities.

An entity other than a merchant may not distribute, exchange, transfer, disseminate, or use electronic payment transaction data except (1) to facilitate or process the transaction; (2) to monitor for, detect, or prevent fraud; (3) to support a loyalty, rewards, or promotional offering; (4) to tailor products and services to serve customer needs; or (5) as otherwise required by law. A violation of these provisions is explicitly deemed as an unfair, abusive, or deceptive trade practice under MCPA and subject to MCPA's enforcement and penalty provisions.

Current Law: An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$10,000 for each violation and up to \$25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Small Business Effect: The bill likely affects small business in multiple ways. The bill's requirement that tax and gratuity amounts be excluded from interchange fee calculations – along with the requirement that an issuer credit the merchant after specified documentation is provided (*i.e.*, as an alternative to the first method) – likely meaningfully benefits small businesses in the State, as these fees can represent a significant cost of doing business. However, the Maryland Department of Labor notes that the bill may also affect the payment ecosystem in other ways. For example, the bill may necessitate technological changes or upgrades to existing point-of-sale terminals, which may not be equipped to differentiate sales tax from the transaction total during payment authorization. Additionally, it is unclear if the bill only applies to State-chartered financial institutions; in that case, the bill may impose a separate set of requirements on Maryland-chartered financial institutions (*i.e.*, distinct from federally chartered financial institutions). The bill also may result in new reporting requirements to ensure accurate separation of sales tax/gratuities.

Additional Comments: The bill explicitly designates a violation of § 12-1405(d)(1) of the Commercial Law Article (as established under the bill) as an unfair, abusive, or deceptive trade practice. However, the bill also amends § 13-301(14) of the Commercial Law Article – which lists numerous statutory provisions that are deemed as unfair, abusive, or deceptive trade practices under MCPA – to include any violation of a provision of § 12-1405 (as established under the bill).

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 29 (Delegates T. Morgan and Crosby) - Economic Matters.

Information Source(s): Comptroller's Office; Maryland Department of Labor; Office of the Attorney General (Consumer Protection Division); Department of Legislative Services

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Analysis by: Eric F. Pierce

Direct Inquiries to:
(410) 946-5510
(301) 970-5510