

January 16, 2025

Re: Statement in Opposition to H.B. 29

Dear Chair Wilson, Vice Chair Crosby, and members of the Maryland House of Representatives Economic Matters Committee:

We write to oppose H.B. 29, which prohibits the collection of interchange on the sales tax and gratuity portion of electronic transactions.¹ The bill harms Maryland consumers and small businesses, benefits mega-retailers, and could reduce Maryland's sales tax revenue.

This fundamentally flawed legislation attempts to do what has never been done. Similar proposals to prohibit the collection of interchange on the sales tax (and gratuity) portions of electronic transactions were considered and rejected in nearly 30 states over the past 15 years. In 2024, Illinois incorporated the language into its state budget, resulting in a federal lawsuit. The U.S. Office of the Comptroller of the Currency characterized Illinois' law as an "ill conceived, highly unusual, and largely unworkable state law that threatens to fragment and disrupt this efficient and effective system," while also weakening financial institutions' abilities to "prevent fraud, manage risk, and provide critical services to consumers."

On December 20, 2024, Chief Judge Virginia M. Kendall of the United States District Court for the Northern District of Illinois issued a Preliminary Injunction of the Illinois Interchange Fee Protection Act, due to conflicts with the National Bank Act (NBA) and Homeowners Credit Loan Act (HOLA). The decision states that the banking industry is likely to prevail on its claim of federal preemption.

We strongly believe there is no reason for Maryland or any other state to take up this bill while it is being litigated in Federal Court.

To provide vendors remuneration for the collection of state sales tax, nearly 30 states (Maryland included) offer a vendor collection discount.² In contrast to H.B. 29's proposal to upend the current well-functioning system, these states have chosen a workable policy that is more sound, practical, and fair to provide targeted a partial offset to retailer's costs of collecting and remitting state sales tax.

Despite retailer group false claims, neither the software nor point-of-sale hardware exists to separate out sales tax or gratuity from the underlying cost of goods or services purchased on consumer debit and credit cards. 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 does not transmit information regarding the product or services sold, or the amount of sales tax and tip collected.

If H.B. 29 is enacted, Maryland merchants would face one of two options:

1. At point of sale, collect sales tax as a separate transaction, essentially requiring *two*

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.](#)" December 30, 2024.

transactions for *every* taxable sale. This would force consumers to pay the sales tax and gratuity portion via cash or check.

2. Merchants would have 180 days to 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 consumers' private purchases through both intentional sharing – and worse – accidental exposure of sensitive consumer data through increasingly common data breaches.³

Should this bill pass, 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](#) and the Nilson Report, 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*.

Government should not interfere in a working, private market by disrupting private contracts between willing parties and picking 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. Retailer legal arguments of similar claims have likewise been rejected by the U.S. Supreme Court no fewer than four times.

Finally, retailers completely ignore that interchange is deductible on federal and state taxes as a cost of doing business. The tax deductions are applicable to the entire interchange expense, including tax and gratuity.

If enacted, Maryland 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 Maryland 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 reject H.B.29.

Sincerely,

RICHARD HUNT
Executive Chairman

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.