

By: Representative Roberson

To: Banking and Financial Services

HOUSE BILL NO. 1428

1 AN ACT TO CREATE THE RETAILER TAX FAIRNESS ACT; TO DEFINE
 2 CERTAIN TERMS RELATING TO ELECTRONIC PAYMENT TRANSACTIONS; TO
 3 PROVIDE THAT THE AMOUNT OF ANY STATE AND LOCAL TAXES THAT ARE
 4 CALCULATED AS A PERCENTAGE OF AN ELECTRONIC PAYMENT TRANSACTION
 5 AMOUNT AND LISTED SEPARATELY ON THE PAYMENT INVOICE OR OTHER
 6 DEMAND FOR PAYMENT MUST BE EXCLUDED FROM THE AMOUNT ON WHICH AN
 7 INTERCHANGE FEE IS CHARGED FOR THAT ELECTRONIC PAYMENT
 8 TRANSACTION; TO PROVIDE CERTAIN REQUIREMENTS FOR PAYMENT CARD
 9 NETWORKS; TO PROVIDE THAT A PAYMENT CARD NETWORK IN VIOLATION OF
 10 THIS ACT IS SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN ONE
 11 THOUSAND DOLLARS PER VIOLATION, PAYABLE TO THE PLAINTIFF;
 12 TO PROVIDE THAT IT IS UNLAWFUL TO ALTER OR MANIPULATE THE
 13 COMPUTATION AND IMPOSITION OF INTERCHANGE FEES BY INCREASING THE
 14 RATE OR AMOUNT OF FEE APPLICABLE TO OR IMPOSED UPON THAT PORTION
 15 OF AN ELECTRONIC PAYMENT TRANSACTION NOT ATTRIBUTABLE TO A STATE
 16 OR LOCAL TAX TO CIRCUMVENT THE EFFECT OF THIS ACT; AND FOR RELATED
 17 PURPOSES.

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

19 **SECTION 1.** This act shall be known and may be cited as the
 20 "Retailer Tax Fairness Act."

21 **SECTION 2.** The following words and phrases shall have the
 22 meanings as defined in this section unless the context clearly
 23 indicates otherwise:



24 (a) "Credit card" means any card, plate, coupon book,
25 or other credit device existing for the purpose of obtaining
26 money, property, labor, or services on credit.

27 (b) "Debit card" means any card, or other payment code
28 or device, issued or approved for use through a payment card
29 network to debit an asset account, regardless of the purpose for
30 which the account is established, whether authorization is based
31 on signature, personal identification number, or other means. The
32 term "debit card" includes a general-use prepaid card, as defined
33 in 15 USC Section 16931-1(a)(2)(A), and does not include paper
34 checks.

35 (c) "Electronic payment transaction" means a
36 transaction in which a person uses a debit card, credit card, or
37 other payment code or device, issued or approved through a payment
38 card network to debit a deposit account or use a line of credit,
39 whether authorization is based on a signature, personal
40 identification number, or other means.

41 (d) "Interchange fee" means a fee established, charged,
42 or received by a payment card network for the purpose of
43 compensating the issuer for its involvement in an electronic
44 payment transaction.

45 (e) "Issuer" means any entity issuing a debit card or
46 credit card, or the issuer's agent.

47 (f) "Payment card network" means an entity that:



48 (i) Directly, or through licensed members,
49 processors, or agents, provides the proprietary services,
50 infrastructure, and software that routes information and data to
51 conduct debit card or credit card transaction authorization,
52 clearance, and settlement; and

53 (ii) A merchant or seller uses in order to accept
54 as a form of payment a brand of debit card, credit card, or other
55 device that may be used to carry out debit or credit transactions.

56 (g) "Settlement" means the transfer of funds from a
57 customer's account to a seller or merchant upon electronic
58 submission of finalized sales transactions to the payment card
59 network.

60 **SECTION 3.** (1) The amount of any state and local taxes that
61 are calculated as a percentage of an electronic payment
62 transaction amount and listed separately on the payment invoice or
63 other demand for payment must be excluded from the amount on which
64 an interchange fee is charged for that electronic payment
65 transaction.

66 For purposes of this section, the term "state taxes" includes
67 the amount of any taxes imposed under Chapter 65, Title 27,
68 Mississippi Code of 1972, as amended, and the amount of all state
69 taxes imposed under Sections 27-55-11, 27-55-519, 27-59-11,
70 49-17-407 and 65-33-47, Mississippi Code of 1972.

71 For purposes of this section, the term "local tax" includes
72 any tax levied and collected under the authority of any local and



73 private law of the State of Mississippi upon hotels, motels,
74 restaurants or otherwise.

75 (2) A payment card network shall either:

76 (a) Deduct the amount of any tax imposed from the
77 calculation of interchange fees specific to each form or type of
78 electronic payment transaction at the time of settlement; or

79 (b) Rebate an amount of interchange fee proportionate
80 to the amount attributable to the tax.

81 (3) Any deduction or rebate must occur at the time of
82 settlement when the merchant or seller is able to capture and
83 transmit tax amounts relevant to the sale at the time of sale as
84 part of the transaction finalization.

85 (4) If a merchant or seller is unable to capture and
86 transmit tax amounts relevant to the sale at the time of sale, the
87 payment card network shall accept proof of tax amounts collected
88 on sales subject to an interchange fee upon the submission of
89 sales data by the merchant or seller and promptly credit the
90 merchant or seller's settlement account.

91 (5) A payment card network that violates this act is subject
92 to a civil penalty of not more than One Thousand Dollars
93 (\$1,000.00) per violation, payable to the plaintiff, and shall
94 refund the surcharge to each merchant or seller.

95 (6) It is unlawful to alter or manipulate the computation
96 and imposition of interchange fees by increasing the rate or
97 amount of fee applicable to or imposed upon that portion of an



98 electronic payment transaction not attributable to a state or
99 local tax to circumvent the effect of this act.

100 **SECTION 4.** This act shall take effect and be in force from
101 and after July 1, 2022.

