

By: Senator(s) Sparks, Boyd, McCaughn, Suber To: Finance

SENATE BILL NO. 2742

1 AN ACT TO CREATE THE RETAILER TAX FAIRNESS ACT; TO DEFINE
 2 TERMS; TO EXCLUDE THE AMOUNT OF CERTAIN STATE AND LOCAL TAXES AND
 3 FEES FROM THE AMOUNT ON WHICH AN INTERCHANGE FEE IS CHARGED FOR AN
 4 ELECTRONIC PAYMENT TRANSACTION; TO REQUIRE A PAYMENT CARD NETWORK
 5 EITHER TO DEDUCT THE AMOUNT OF ANY TAX IMPOSED FROM THE
 6 CALCULATION OF INTERCHANGE FEES SPECIFIC TO EACH FORM OR TYPE OF
 7 ELECTRONIC PAYMENT TRANSACTION AT THE TIME OF SETTLEMENT, OR TO
 8 REBATE PROMPTLY AN AMOUNT OF INTERCHANGE FEE PROPORTIONATE TO THE
 9 AMOUNT ATTRIBUTABLE TO THE TAX OR FEE; TO PROVIDE THAT A PAYMENT
 10 CARD NETWORK THAT VIOLATES THIS ACT SHALL BE SUBJECT TO A CIVIL
 11 PENALTY OF NOT MORE THAN \$1,000.00 PER VIOLATION, PAYABLE TO THE
 12 PLAINTIFF, AND SHALL REFUND THE SURCHARGE TO EACH MERCHANT OR
 13 SELLER; TO PROHIBIT THE ALTERATION OR MANIPULATION OF THE
 14 COMPUTATION AND IMPOSITION OF INTERCHANGE FEES BY INCREASING THE
 15 RATE OR AMOUNT OF THE FEE APPLICABLE TO OR IMPOSED UPON THAT
 16 PORTION OF AN ELECTRONIC PAYMENT TRANSACTION NOT ATTRIBUTABLE TO A
 17 STATE OR LOCAL TAX OR FEE TO CIRCUMVENT THE EFFECT OF THIS ACT;
 18 AND FOR RELATED PURPOSES.

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

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

22 **SECTION 2.** For purposes of this act:

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

26 (b) "Debit card":



27 (i) Means any card, or other payment code or
28 device, issued or approved for use through a payment card network
29 to debit an asset account, regardless of the purpose for which the
30 account is established, whether authorization is based on
31 signature, personal identification number or other means;

32 (ii) Includes a general-use prepaid card, as
33 defined in 15 USC Section 16931-1(a)(2)(A); and

34 (iii) Does not include paper 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 a person 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 and
61 fees that 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, including the amount of any taxes
64 imposed under Title 27, Chapter 65, Mississippi Code of 1972, and
65 any tax levied and collected under the authority of any local and
66 private law of the State of Mississippi upon hotels, motels,
67 restaurants or otherwise, must be excluded from the amount on
68 which an interchange fee is charged for that electronic payment
69 transaction.

70 (2) There shall be excluded from the amount on which an
71 interchange fee is charged the amount of all state taxes and fees
72 imposed under Sections 27-55-11, 27-55-519, 27-59-11, 49-17-407
73 and 65-33-47.

74 **SECTION 4.** A payment card network shall either deduct the
75 amount of any tax imposed from the calculation of interchange fees



76 specific to each form or type of electronic payment transaction at
77 the time of settlement, or rebate an amount of interchange fee
78 proportionate to the amount attributable to the tax or fee.

79 Any deduction or rebate must occur at the time of settlement,
80 when the merchant or seller is able to capture and transmit tax or
81 fee amounts relevant to the sale at the time of sale as part of
82 the transaction finalization.

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

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

93 **SECTION 6.** It shall be unlawful to alter or manipulate the
94 computation and imposition of interchange fees by increasing the
95 rate or amount of the fee applicable to or imposed upon that
96 portion of an electronic payment transaction not attributable to a
97 state or local tax or fee to circumvent the effect of this act.

98 **SECTION 7.** This act shall take effect from and after July 1,
99 2022.

