



2009 SENATE BILL 105

March 11, 2009 - Introduced by Senators LASSA, LEHMAN, TAYLOR, COWLES, VINEHOUT and ERPENBACH, cosponsored by Representatives CULLEN, BERCEAU, A. WILLIAMS, BIES, VOS, TOWNSEND and MURSAU. Referred to Committee on Veterans and Military Affairs, Biotechnology, and Financial Institutions.

- 1 **AN ACT to create** 224.50 of the statutes; **relating to:** payment card network fees
2 for merchants and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill prohibits a depository institution, such as a bank, savings and loan association, or credit union, or another processor of payment cards, which include credit cards and certain debit cards and gift cards, from entering into an agreement with a merchant related to acquiring or processing payment card transactions unless the depository institution or other processor provides the merchant with a complete schedule of all service and transaction fees and rates applicable to the merchant's transactions and a copy of all payment card association rules, regulations, and bylaws applicable to the merchant's transactions. A similar prohibition is imposed on payment card issuers that own or operate their own payment card processing network. A depository institution, other payment card processor, or payment card issuer that violates this prohibition may not charge back to the merchant any reversed transaction of the merchant. A depository institution, other payment card processor, or payment card issuer that willfully and knowingly violates either of these prohibitions may be fined not more than \$2,000.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a

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report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 224.50 of the statutes is created to read:

2 **224.50 Agreements related to payment card merchant transactions.**

3 **(1) DEFINITIONS.** In this section:

4 (a) “Card issuer” means an issuer of a credit card, debit card, or other card.

5 (b) “Credit card” means any card, plate, coupon book, charge card, or other
6 similar credit device existing for the purpose of obtaining money, property, or services
7 on credit under an open-end credit plan, but does not include any card or similar
8 credit device issued by a merchant primarily for transactions with the merchant or
9 the merchant’s affiliates.

10 (c) “Debit card” means a card or other similar access device, signed by the
11 person to whom the card or device is issued or by another authorized user, issued for
12 the purpose of enabling the person or authorized user to obtain money, property, or
13 services by means of electronic funds transfer from the person’s account at a
14 depository institution, which electronic funds transfer is initiated through an
15 intermediary network.

16 (d) “Depository institution” has the meaning given in 12 USC 1813 (c) (1), but
17 also includes any federal credit union or state credit union, as defined in 12 USC
18 1752.

19 (e) “Intermediary network” means any of the following:

20 1. A network, owned or operated by an association whose members are
21 composed exclusively or primarily of depository institutions, that facilitates the

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1 processing of transactions involving the use of credit cards, debit cards, or other
2 cards to obtain property or services from merchants by providing
3 telecommunications, authorization, clearing, and settlement services to association
4 members who are card issuers or merchants' banks.

5 2. A network, owned or operated by a card issuer and subscribed to by
6 merchants, that facilitates the processing of transactions involving the use of the
7 card issuer's credit cards, debit cards, or other cards to obtain property or services
8 from merchants that subscribe to the network.

9 (f) "Merchant" means a person, located in this state, that is in the business of
10 selling property or services and that accepts credit card, debit card, or other card
11 payment for property or services sold.

12 (g) "Merchant's bank" means any depository institution, or any other member
13 of an intermediary network described in par. (e) 1., that has entered into an
14 agreement with a merchant to do all of the following:

15 1. Provide an account to the merchant that allows the merchant to accept credit
16 card, debit card, or other card payments.

17 2. Either purchase sales slips or otherwise acquire transactions from the
18 merchant arising from the merchant's acceptance of credit cards, debit cards, or
19 other cards or facilitate the processing of the merchant's transactions involving the
20 acceptance of credit cards, debit cards, or other cards by providing the merchant's
21 transaction information to a card issuer through an intermediary network.

22 (h) "Open-end credit plan" means a plan under which credit is extended on an
23 account and under which all of the following apply:

SENATE BILL 105**SECTION 1**

1 1. The debtor may make purchases or obtain loans, from time to time, directly
2 from the creditor or indirectly by use of a credit card, check, or other device, as the
3 plan may provide.

4 2. The debtor has the privilege of paying the balance in full or in installments.

5 3. The creditor may from time to time assess a finance charge, computed on any
6 outstanding unpaid balance.

7 4. The creditor has treated the transaction as an open-end credit plan.

8 (i) “Other card” means any stored value card, smart card, gift card, or other
9 similar device that enables a person to obtain property or services in a transaction
10 with a merchant, the payment for which is initiated through an intermediary
11 network.

12 **(2) NOTICE OF TRANSACTION FEES FOR ASSOCIATION NETWORKS AND PROHIBITED**
13 **CHARGES.** (a) No merchant’s bank may enter into an agreement with a merchant
14 related to acquiring or processing credit card, debit card, or other card transactions
15 unless the merchant’s bank provides the merchant with all of the following:

16 1. A copy of all intermediary network operating rules, regulations, and bylaws
17 applicable to the merchant’s credit card, debit card, or other card transactions
18 processed by the merchant’s bank.

19 2. A complete schedule of all service and transaction fees and rates applicable
20 to the merchant’s credit card, debit card, or other card transactions processed by the
21 merchant’s bank.

22 (b) If a merchant’s bank violates par. (a) and a card issuer reverses any
23 transaction processed by the merchant’s bank and initiated by a merchant, the
24 merchant’s bank may not charge back to the merchant, or offset any account of the
25 merchant, any amount related to the reversed transaction or otherwise assess any

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1 charge or fee against the merchant related to the transaction. If a merchant's bank
2 subsequently complies with par. (a), this paragraph applies only with respect to
3 transactions initiated by the merchant prior to the time that the merchant's bank
4 complies with par. (a).

5 **(3) NOTICE OF TRANSACTION FEES FOR CARD ISSUER NETWORKS AND PROHIBITED**
6 **CHARGES.** (a) No card issuer that owns or operates an intermediary network
7 described in sub. (1) (e) 2. may enter into an agreement with a merchant related to
8 acquiring or processing credit card, debit card, or other card transactions unless the
9 card issuer provides the merchant with a complete schedule of all service and
10 transaction fees and rates applicable to the merchant's credit card, debit card, or
11 other card transactions processed through the intermediary network.

12 (b) If a card issuer violates par. (a) and the card issuer reverses any transaction
13 initiated by a merchant, the card issuer may not charge back to the merchant, or
14 offset any account of the merchant, any amount related to the reversed transaction
15 or otherwise assess any charge or fee against the merchant related to the
16 transaction. If a card issuer subsequently complies with par. (a), this paragraph
17 applies only with respect to transactions initiated by the merchant prior to the time
18 that the card issuer complies with par. (a).

19 **(4) PENALTY.** Any merchant's bank or card issuer that willfully and knowingly
20 engages in conduct in violation sub. (2) or (3) may be fined not more than \$2,000 for
21 each violation.

SECTION 2. Initial applicability.

22
23 (1) This act first applies to agreements entered into on the effective date of this
24 subsection.

SECTION 3. Effective date.

