

1 HOUSE BILL 476

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO TRADE PRACTICES; ENACTING THE PRICE FIXING
12 PROHIBITION, CONSUMER TRANSPARENCY AND TAX FAIRNESS ACT;
13 PROHIBITING NETWORK INTERCHANGE PRICE FIXING; PROHIBITING
14 INTERCHANGE FEES ON TAXES AND GRATUITIES; CREATING PENALTIES.

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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. A new section of Chapter 57 NMSA 1978 is
18 enacted to read:

19 "[NEW MATERIAL] SHORT TITLE.--This act may be cited as the
20 "Price Fixing Prohibition, Consumer Transparency and Tax
21 Fairness Act"."

22 SECTION 2. A new section of Chapter 57 NMSA 1978 is
23 enacted to read:

24 "[NEW MATERIAL] DEFINITIONS.--As used in the Price Fixing
25 Prohibition, Consumer Transparency and Tax Fairness Act:

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1 A. "acquirer bank" means a member of a payment card
2 network that contracts with a merchant for the settlement of
3 electronic payment transactions. An acquirer bank may contract
4 directly with merchants or indirectly through a processor to
5 process electronic payment transactions;

6 B. "authorization" means the process through which
7 a merchant requests approval for an electronic payment
8 transaction from the issuer;

9 C. "clearance" means the process of transmitting
10 final transaction data from a merchant to an issuer for posting
11 to a cardholder's account and the calculation of fees and
12 charges, including interchange fees, that apply to the issuer
13 and the merchant;

14 D. "consumer" means a person who has been issued a
15 credit card or debit card or who purchases goods or services
16 using an electronic payment transaction or another method of
17 payment;

18 E. "covered credit card issuer" means a credit card
19 issuer that, together with any affiliates, had consolidated
20 worldwide banking and nonbanking assets, including assets of
21 affiliates, other than trust assets under management, of more
22 than eighty-five billion dollars (\$85,000,000,000) at any point
23 during the previous calendar year;

24 F. "credit card" means a card, plate, coupon book
25 or other credit device existing for the purpose of obtaining

1 money, property, labor or services on credit;

2 G. "debit card" means a card or other payment code
3 or device issued or approved for use through a payment card
4 network to debit an asset account, regardless of the purpose
5 for which the account is established, whether authorization is
6 based on a signature, a personal identification number or other
7 means. "Debit card" includes general-use prepaid cards, but
8 does not include paper checks;

9 H. "electronic payment transaction" means a
10 transaction in which a person uses a debit card, a credit card
11 or other payment code or device issued or approved through a
12 payment card network to debit a deposit account or use a line
13 of credit, whether authorization is based on a signature, a
14 personal identification number or other means;

15 I. "fee schedule" means a schedule, list, table,
16 chart or similar document or agreement, whether publicly
17 disclosed or not, that sets forth or fixes the amount or the
18 formula for determining the amount of one or more fee rates;

19 J. "gratuity" means a voluntary monetary
20 contribution to an employee from a guest, patron or customer in
21 connection with services rendered;

22 K. "interchange fee" means a fee established,
23 charged or received by a payment card network for the purpose
24 of compensating an issuer for the issuer's involvement in an
25 electronic payment transaction;

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1 L. "issuer" means a person that issues a debit card
2 or credit card or the issuer's agent;

3 M. "merchant" means a person that accepts
4 electronic payment transactions and collects and remits a tax;

5 N. "payment card network" means an entity that:

6 (1) directly or through licensed members,
7 processors or agents provides the proprietary services,
8 infrastructure and software to route information and data
9 for the purpose of conducting electronic payment transaction
10 authorization, clearance and settlement; and

11 (2) a merchant uses to accept as a form of
12 payment a brand of debit card, credit card or other device that
13 may be used to carry out electronic payment transactions;

14 O. "processor" means an entity that facilitates,
15 services, processes or manages the debit or credit
16 authorization, billing, transfer, payment procedures or
17 settlement with respect to an electronic payment transaction;

18 P. "settlement" means the process of transmitting
19 sales information to an issuing bank for collection and
20 reimbursement of funds to a merchant and calculating and
21 reporting the net transaction amount to the issuer and the
22 merchant for an electronic payment transaction that is cleared;

23 Q. "tax" means the gross receipts tax and a local
24 option gross receipts tax imposed by a municipality or county;
25 and

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1 R. "tax documentation" means documentation
2 sufficient for a payment card network to determine the total
3 amount of an electronic payment transaction and the tax or
4 gratuity amount of the transaction. Tax documentation may be
5 related to a single electronic payment transaction or multiple
6 electronic payment transactions aggregated over a period of
7 time. Tax documentation may include invoices, receipts,
8 journals, ledgers and tax returns filed with the taxation and
9 revenue department or local taxing authorities."

10 SECTION 3. A new section of Chapter 57 NMSA 1978 is
11 enacted to read:

12 "[NEW MATERIAL] PROHIBITION ON NETWORK INTERCHANGE PRICE
13 FIXING--OTHER UNFAIR CREDIT CARD PRACTICES.--

14 A. It is unlawful for a payment card network to
15 directly, or indirectly through an agent, a processor, a
16 contract, a requirement, a condition, a penalty, a
17 technological specification, an inducement or otherwise:

18 (1) fix or conspire to fix an interchange fee
19 with, or on behalf of, another covered credit card issuer or
20 payment card network;

21 (2) require a person to accept as payment a
22 credit card issued by a covered credit card issuer if the
23 person accepts as payment other credit cards that are enabled
24 for processing over the payment card network;

25 (3) charge a consumer or a merchant a fee or

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1 assessment due to a disputed credit card transaction unless a
2 finding of fact concludes that the consumer or merchant is
3 responsible for the disputed transaction and the consumer or
4 merchant is provided written notification of the finding of
5 fact; or

6 (4) impose a penalty on a merchant based upon
7 the way the merchant lawfully sets prices for goods or
8 services.

9 B. It is unlawful for a covered credit card issuer
10 to directly, or indirectly through an agent, processor,
11 contract, requirement, condition, penalty, inducement,
12 technological specification or otherwise:

13 (1) fix or conspire to fix an interchange fee
14 with or on behalf of another covered credit card issuer or
15 payment card network;

16 (2) receive or charge an interchange fee for a
17 credit card transaction in an amount that is included on or
18 determined by a fee schedule that:

19 (a) has been fixed, established or put
20 forward by a payment card network; or

21 (b) the covered credit card issuer knows
22 or reasonably should know is being used in the same calendar
23 year by another covered card issuer to determine the amount of
24 an interchange fee with respect to a credit card transaction
25 that the other covered credit card issuer receives or charges;

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1 (3) on or after one hundred eighty days after
2 the effective date of the Price Fixing Prohibition, Consumer
3 Transparency and Tax Fairness Act, issue a monthly statement to
4 a consumer who has been issued a credit card by the covered
5 credit card issuer without disclosing in a clear and
6 conspicuous manner for each credit card transaction listed in
7 the monthly statement:

8 (a) whether interchange fees were
9 charged on the credit card transaction; and

10 (b) the amount charged for each
11 interchange fee charged on each credit card transaction;

12 (4) charge a consumer or a merchant a fee or
13 assessment due to a disputed credit card transaction unless a
14 finding of fact concludes that the consumer or merchant is
15 responsible for the disputed transaction and the consumer or
16 merchant is provided written notification of the finding of
17 fact; or

18 (5) prohibit or penalize a merchant based upon
19 the way the merchant lawfully sets prices for goods or
20 services."

21 SECTION 4. A new section of Chapter 57 NMSA 1978 is
22 enacted to read:

23 "[NEW MATERIAL] INTERCHANGE FEES ON TAXES AND GRATUITIES
24 PROHIBITED.--

25 A. An issuer, payment card network, acquirer bank

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1 or processor shall not receive or charge a merchant an
2 interchange fee on the tax amount or gratuity of an electronic
3 payment transaction if the merchant informs the acquirer bank
4 or its designee of the tax or gratuity amount as part of the
5 authorization or settlement process for the electronic payment
6 transaction. A merchant shall transmit the tax or gratuity
7 amount data as part of the authorization or settlement process
8 to avoid being charged interchange fees on the tax or gratuity
9 amount of an electronic payment transaction.

10 B. A merchant that does not transmit the tax or
11 gratuity amount data in accordance with this section may submit
12 documentation for the electronic payment transaction to the
13 acquirer bank or its designee no later than one hundred eighty
14 days after the date of the electronic payment transaction and,
15 within thirty days after the merchant submits the necessary
16 documentation, the issuer shall credit to the merchant the
17 amount of interchange fees charged on the tax or gratuity
18 amount of the electronic payment transaction.

19 C. Nothing in this section creates liability for a
20 payment card network regarding the accuracy of the tax or
21 gratuity data reported by the merchant.

22 D. It is unlawful for an issuer, payment card
23 network, acquirer bank or processor to alter or manipulate the
24 computation and imposition of interchange fees by increasing
25 the rate or amount of the fees applicable to or imposed on the

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1 portion of a credit or debit card transaction not attributable
2 to taxes or gratuities in order to circumvent the effect of
3 this section."

4 SECTION 5. A new section of Chapter 57 NMSA 1978 is
5 enacted to read:

6 "[NEW MATERIAL] PENALTIES.--

7 A. The attorney general may file suit to seek
8 injunctive relief and, if appropriate, collect a civil penalty
9 from a covered credit card issuer or payment card network that
10 the attorney general believes has violated any of the
11 prohibitions in Sections 3 and 4 of the Price Fixing
12 Prohibition, Consumer Transparency and Tax Fairness Act.

13 B. An issuer, payment card network, acquirer bank,
14 processor or other designated entity that has received tax or
15 gratuity amount data from a merchant and violates Section 4 of
16 the Price Fixing Prohibition, Consumer Transparency and Tax
17 Fairness Act is subject to a civil penalty of one thousand
18 dollars (\$1,000) per electronic payment transaction conducted
19 in violation of the Price Fixing Prohibition, Consumer
20 Transparency and Tax Fairness Act, and the issuer shall refund
21 to the merchant the interchange fee calculated on the tax or
22 gratuity amount relative to the electronic payment transaction.

23 C. A person, other than a merchant, involved in
24 facilitating or processing an electronic payment transaction,
25 including an issuer, payment card network, an acquirer bank,

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1 processor or other designated entity, shall not distribute,
2 exchange, transfer, disseminate or use the electronic payment
3 transaction data except to facilitate or process the electronic
4 payment transaction; to monitor for, detect or prevent fraud;
5 to support loyalty, rewards or promotional offerings; to tailor
6 products and services to serve customer needs; or as required
7 by law. A violation of this subsection constitutes a violation
8 of the Unfair Practices Act."

9 SECTION 6. SEVERABILITY.--If a part or application of the
10 Price Fixing Prohibition, Consumer Transparency and Tax
11 Fairness Act is held invalid, the remainder or its application
12 to other situations or persons shall not be affected.