

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 HOUSE BILL 3321

By: Lindley

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5
6 AS INTRODUCED

7 An Act relating to contracts; creating the Credit
8 Card Fairness Act; defining terms; prohibiting
9 certain credit card companies, financial
10 institutions, and card processors from imposing
11 certain requirements, conditions, penalties, or
12 fines; providing civil penalty; authorizing merchant
13 to maintain civil action; providing requirements if
14 merchant is bound by certain rules; providing
15 requirements for contract; authorizing merchant to
16 accept credit cards; prohibiting contract from
17 containing certain nondisclosure requirement;
18 providing that merchant is not liable for certain
19 chargebacks or fees; providing civil penalty;
20 authorizing merchant to maintain civil action;
21 prohibiting certain contract provisions; authorizing
22 merchant to maintain civil action; authorizing the
23 Attorney General to enforce certain penalties;
24 providing civil penalty; prohibiting application of
certain, rates, charges, or fees to the tax portion
of any credit card or debit sales; authorizing
merchant to maintain civil action; authorizing the
Attorney General to enforce certain penalties;
providing civil penalty; providing for codification;
and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 791.1 of Title 15, unless there
is created a duplication in numbering, reads as follows:

1 Sections 1 through 6 of this act shall be known and may be cited
2 as the "Credit Card Fairness Act".

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 791.2 of Title 15, unless there
5 is created a duplication in numbering, reads as follows:

6 As used in the Credit Card Fairness Act:

7 1. "Acquiring bank" means a financial institution licensed to
8 do business in this state providing merchant accounts;

9 2. "Chargeback" means a credit card or debit card transaction
10 that is either billed back to a merchant or deducted from a
11 merchant's account;

12 3. "Credit card" means:

13 a. any instrument or device, whether known as a credit
14 card, charge card, credit plate, courtesy card or
15 identification card or by any other name, issued with
16 or without a fee by an issuer for the use of the
17 cardholder in obtaining money, goods, services, or
18 anything else of value, either on credit or in
19 possession or in consideration of an undertaking or
20 guaranty by the issuer of the payment of a check drawn
21 by the cardholder on a promise to pay in part or in
22 full at a future time, whether or not all or any part
23 of the indebtedness represented by this promise to
24 make deferred payment is secured or unsecured,

1 b. any stored value card, smart card, or other instrument
2 or device that enables a person to obtain goods,
3 services or anything else of value through the use of
4 value stored on the instrument or device, and

5 c. the number assigned to an instrument or device
6 described in subparagraph a or b of this paragraph
7 even if the physical instrument or device is not used
8 or presented;

9 4. "Debit card" means:

10 a. any instrument or device whether known as a debit
11 card, ATM card, electronic benefit transfer card, or
12 any other access instrument or device, other than a
13 check, that is signed by the holder or other
14 authorized signatory on the deposit account that draws
15 monies from a deposit account in order to obtain
16 money, goods, services, or anything else of value, and

17 b. the number assigned to an instrument or device
18 described in subparagraph a of this paragraph even if
19 the physical instrument or device is not used or
20 presented;

21 5. "Financial institution" means any bank, savings association,
22 savings bank, credit union, or industrial loan company;

1 6. "Interchange fee" means the fee that an acquiring bank pays
2 to an issuing bank when a cardholder uses a credit card or debit
3 card as payment during a retail transaction;

4 7. "Issuing bank" means a financial institution which issues
5 credit cards to cardholders;

6 8. "Merchant account" means a bank account that allows a
7 merchant to accept credit card or debit card payments; and

8 9. "Merchant" means a person or entity licensed to do business
9 in this state which offers goods or services for sale in this state.

10 SECTION 3. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 791.3 of Title 15, unless there
12 is created a duplication in numbering, reads as follows:

13 A. No credit card company, financial institution, or card
14 processor shall impose any requirement, condition, penalty, or fine
15 on a merchant relating to that merchant's acceptance of credit or
16 debit cards other than that specifically set in the actual terms of
17 a contract with the merchant or in a copy of the rules provided to
18 the merchant and incorporated by reference in the contract.

19 B. No credit card company, financial institution, or card
20 processor shall require a merchant to agree not to disclose any of
21 the rules or rates to which the merchant is subject.

22 C. Any credit card company, financial institution, or card
23 processor found to have violated this section shall reimburse all
24 affected merchants for all chargebacks, fees, and fines collected

1 from those merchants during the period of time in which the credit
2 card company, financial institution, or card processor was in
3 violation and be liable for a civil penalty of Ten Thousand Dollars
4 (\$10,000.00) per chargeback, fee, or fine levied in this section.

5 D. Any merchant whose rights pursuant to this section have been
6 violated may maintain a civil action for damages or equitable relief
7 as provided for in this section.

8 SECTION 4. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 791.4 of Title 15, unless there
10 is created a duplication in numbering, reads as follows:

11 A. Whenever a contract authorizing a merchant to accept a
12 credit card or debit card specifies that the merchant is bound by
13 the rules of a financial institution, the contracting financial
14 institution shall:

15 1. Give the merchant access in this state to the complete rules
16 referenced in the contract, either individually or through an
17 acquiring bank;

18 2. Notify the merchant when a referenced rule has been changed
19 or a new rule added; and

20 3. Provide a copy of the new or modified rule.

21 B. A contract authorizing a merchant to accept a credit card
22 shall contain:

23 1. The contracting financial institution's complete schedule of
24 interchange fees, credit card and debit card transaction rates, and

1 any other fees that the financial institution charges to merchants;
2 and

3 2. An explanation of which rates apply to the merchant and the
4 situations in which those rates apply.

5 C. A contract authorizing a merchant to accept a credit card or
6 debit card shall not require a merchant to agree not to disclose the
7 contracting financial institution's rules or rates as a condition of
8 receiving access to the rules or rates.

9 D. If an issuing bank or credit card company fails to give a
10 merchant access to its rules or rates as required by this section:

11 1. The merchant shall not be liable for any chargeback or fees
12 associated with its credit card or debit card transactions from the
13 time the contract was executed until the rules and rates are
14 provided; and

15 2. The issuing bank or credit card company will be liable for a
16 civil penalty of Ten Thousand Dollars (\$10,000.00) per charge levied
17 prior to providing the rules.

18 E. Any merchant whose rights under this section have been
19 violated may maintain a civil action for damages or equitable relief
20 as provided for in this section.

21 SECTION 5. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 791.5 of Title 15, unless there
23 is created a duplication in numbering, reads as follows:

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1 A. A contract authorizing a merchant to accept a credit card or
2 debit card shall not:

3 1. Give a financial institution the right to charge a merchant
4 or deduct from the merchant's account the cost of a credit card or
5 debit card transaction because the cost of the transaction exceeds a
6 predetermined amount; or

7 2. Require a merchant to limit or waive its rights under the
8 Credit Card Fairness Act.

9 B. Right of Action.

10 1. Any merchant whose rights under this section have been
11 violated may maintain a civil action for damages or equitable relief
12 as provided for in this section.

13 2. The Attorney General shall have the power to maintain an
14 action to enforce the penalties provided for in this section.

15 C. Any person who violates this section shall be subject to a
16 civil penalty of Five Thousand Dollars (\$5,000.00) per violation.

17 SECTION 6. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 791.6 of Title 15, unless there
19 is created a duplication in numbering, reads as follows:

20 A. Discount rates, transaction charges, interchange rates, or
21 any other charges or fees charged to merchants or deducted from
22 credit card or debit card sales for processing credit card or debit
23 card transactions shall not be applied to the tax portion of any
24 credit card or debit card sales.

1 B. Right of Action.

2 1. Any merchant whose rights under this section have been
3 violated may maintain a civil action for damages or equitable relief
4 as provided for in this section.

5 2. The Attorney General shall have the power to maintain an
6 action to enforce the penalties provided for in this section.

7 C. Any person who violates this section shall be subject to a
8 civil penalty of Five Thousand Dollars (\$5,000.00) per violation.

9 SECTION 7. This act shall become effective November 1, 2008.

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