



HOUSE OF REPRESENTATIVES

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AUGUSTA, MAINE 04333-0002

(207) 287-1400

TTY: MAINE RELAY 711

Melanie Sachs

84 Kelsey Ridge Road

Freeport, ME 04032

Residence: 207-299-6825

Melanie.Sachs@legislature.maine.gov

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Testimony of Representative Melanie Sachs, sponsor of LD 1544, "An Act Regarding Credit and Debit Card Merchant Fees", before the Joint Standing Committee on Health Coverage, Insurance and Financial Services

Senator Sanborn, Representative Tepler, and esteemed members of the Committee on Health Coverage, Insurance and Financial Services:

My name is Melanie Sachs, and I am honored to represent House District 48, which includes Freeport and part of Pownal. I am delighted to present to you LD 1544, "An Act Regarding Credit and Debit Card Merchant Fees".

As the Representative of Freeport, one of our state's largest retail economic centers, several of my constituents expressed strong interest in a legislative solution for costly and nonnegotiable swipe fees. Card companies and banks collect swipe fees, also known as interchange fees, on each transaction in which a customer uses a credit or debit card to make a purchase. The card brands, Visa, American Express, Discover and Mastercard to name a few, set both network and swipe fees that retailers must pay every time a card is swiped, dipped, tapped, or entered online.

The premise of today's electronic payments method is that retailers not only pay swipe fees on the base price of a transaction but also on the sales tax that they are collecting for the state. Retailers are collecting and remitting sales tax for the state at the retailers' expense and the credit card companies and banks are making additional profit from the tax portion of the receipt. For retailers, the sales tax is 5.5%. For our restaurants and lodging properties, the tax rate is 8 and 9%.

Because of COVID, retailers saw a seismic shift in 2020 in card spending, as consumers quickly changed their shopping habits in response to the pandemic. One business in my district, Pownal Veterinary Hospital, noted that they like so many service companies during the pandemic, they did not see any increase in customers but did see a significant rise in fees as customers moved from cash and check payment methods, to exclusively credit card use in an effort to be contactless and compliant.

Consumers continue to shift to card payments and expect their retailers to accept them. Cards account for more 63% of transactions and almost 100% for online. Visa and Mastercard hold over 70% of the card market volume. Consumers increased their online spending by a whopping 44% or \$861.12 billion, in the U.S. in 2020, and online merchants, including those brick-and-mortar retailers with an online component, pay even higher credit card interchange fees than brick and mortar merchants (because they are more susceptible to fraud – known as “card not present” transaction).

This legislation would exclude state and local taxes (and other fees) from the total in which an interchange fee is charged for an electronic credit or debit card transaction. The goal is to save the retailer money by processing the charge of the sales amount on the sale of the good or service only. This would stimulate economic activity and help lift a costly burden off businesses at a critical time and at absolutely no cost to the state.

Fortunately, the technology is in place to implement what this legislation is seeking to accomplish. Merchants will not need specialized equipment to implement. Consider how restaurants today can enter a sales amount followed by a separate tip amount into their PIN pads. Retailers’ systems can easily transmit the pre-tax purchase amount followed by the sales tax.

Systems already support the ability to differentiate sales and good totals from the sales tax or fee amount, “Credit card transactions fall into three different data levels — Level 1, Level 2, and Level 3. Each level requires a certain amount of information to qualify transactions, and the higher the level is, the more details it requires. The higher the data levels, the lower the interchange rates from most credit card companies.”¹ Cards and banks require that merchants pass Level 2 data in the transaction which already has sales tax separated from the purchase amount. For Level 2 processing, businesses are required to capture all Level 1 data (credit card number and expiration, billing address, and zip code) plus sales tax amount, customer code, merchant postal code, merchant tax identification number, invoice number and order number.² Visa and Mastercard mandate system updates twice per year, so any system changes can be implemented during these updates. Because today’s point of sale systems have the necessary level of transactional insight, there will not be additional administration fees that will be passed on to merchants nor consumers.

¹ <https://paymentdepot.com/blog/level-ii-processing/>

² <https://paymentdepot.com/blog/level-ii-processing/>

In addition, if the tax or fee cannot be deducted from the calculation of the interchange fee this bill allows for a rebate to be issued, providing two solutions for the processors.

Consumers are losing money because they must pay higher retail prices to cover the billions of dollars in swipe fees that merchants pay each year. Nationally, these fees amount to \$100 billion annually. It is likely that we'll hear from the credit card providers that their fees will increase to accommodate these modifications to continue to service these accounts with secured and reduce risks but Visa, Mastercard and the banks are already passing fraud costs back to merchants every year in the form of chargebacks and the banks charge cardholders interest to offset credit risk.

Luckily, states have the authority to prohibit the credit card companies from charging swipe fees on state sales tax. Prohibiting swipe fees on sales tax will keep dollars in the state, stimulating economic activity, versus sending the dollars to networks and banks in other states and countries. Maine collects approximately \$1.5 billion in sales taxes from retailers, restaurants, and lodging properties. If we assume that 63% of the transactions are with credit and debit cards, and that the swipe fees average 3.5%, this bill will save our businesses \$34-\$35 million annually³. It is important to think of this bill in totality for monthly or annual sales opposed to individual transactions. Every penny counts and our retailers' transactions in total are significant resulting in real savings for our merchants.

I am pleased to sponsor LD 1544 An Act Regarding Credit and Debit Card Merchant Fees to bring some financial relief to our Maine businesses who are handcuffed by the economic viable necessity to accept these payment types without the flexibility to negotiate or recuperate the costs.

³ <https://www.maine.gov/revenue/taxes/tax-policy-office/sales-tax-reports>