

1 S.138

2 Introduced by Senators Sears and Campbell

3 Referred to Committee on Judiciary

4 Date: April 2, 2009

5 Subject: Banking and insurance; financial institution; credit card

6 Statement of purpose: This bill proposes to prohibit a credit card company
7 from contacting a credit card holder who is disputing a debt or late fee and has
8 retained legal counsel. The bill also requires credit card companies to give a
9 card holder written notice when it modifies a credit term; sets a cap on late
10 charges that can be assessed by the credit card company; and prohibits the
11 inclusion of universal default clauses in a credit card agreement.

12 ~~An act relating to credit card fees~~ *An act relating to unfair business*
13 *practices of credit card companies and fraudulent use of scanning devices*
14 *and re-encoders.*

15 It is hereby enacted by the General Assembly of the State of Vermont:

16 ~~Sec. 1. 8 V.S.A. § 14304 is added to read:~~

17 ~~§ 14304. CARD HOLDER REPRESENTED BY LEGAL COUNSEL~~

18 ~~(a) A credit card company or its creditor shall not contact a card holder~~
19 ~~regarding a debt, late fee, or other charge once informed that the card holder is~~
20 ~~disputing the debt, late fee, or other charge and is represented by legal counsel~~
21 ~~in the dispute.~~

1 ~~(b) A credit card company or its creditor that violates subsection (a) of this~~
2 ~~section shall be fined not more than \$10,000.00.~~

3 ~~(c) Each violation of subsection (a) of this section shall be considered a~~
4 ~~separate offense.~~

5 Sec. 2. 8 V.S.A. § 14305 is added to read:

6 § 14305. DISCLOSURE OF MODIFICATION OF CREDIT TERMS

7 (a) For purposes of this section:

8 (1) "Annual percentage rate" means each periodic rate that may be used
9 to compute the finance charge on an outstanding balance for purchases,
10 expressed as an annual percentage rate.

11 (2) "Balance computation method" means the method used to determine
12 the balance for purchases on which the finance charge is computed.

13 (3) "Cash advance fee" means any fee imposed for an extension of
14 credit in the form of cash.

15 (4) "Charge card" means a credit card on an account for which no
16 periodic rate is used to compute the finance charge.

17 (5) "Fees for issuance or availability" means any annual or other
18 periodic fees, expressed as an annualized amount, or any other fees that may be
19 imposed for the issuance or availability of a credit or charge card, including
20 any fees based on account activity or inactivity.

1 ~~(6) "Grace period" means the date by which or the period within which~~
2 ~~any credit extended for purchases may be repaid without incurring a finance~~
3 ~~charge.~~

4 (7) "Late payment fee" means any fee imposed for a late payment.

5 (8) "Minimum finance charge" means any minimum or fixed finance
6 charge that could be imposed during a billing cycle.

7 (9) "Over-the-limit fee" means any fee imposed for exceeding a credit
8 limit.

9 (10) "Renewal fee" means any annual or other periodic fee to renew a
10 credit or charge card account.

11 (11) "Transaction charges" means any transaction charge imposed for
12 the use of the credit or charge card for purchases.

13 (b) If the issuer of a credit or charge card modifies the annual percentage
14 rate, fees for issuance or availability, minimum finance charge, transaction
15 charges, grace period, balance computation method, cash advance fee, late
16 payment fee, or renewal fee or the over-the-limit fee of a credit or charge card,
17 the issuer shall disclose to the card holder the modification of the credit term or
18 terms clearly and conspicuously, in writing and in a separate mailing sent to
19 the holder sixty days in advance of any such modification or modifications
20 taking effect.

1 ~~(c) An issuer of a credit or charge card that violates subsection (b) of this~~
2 ~~section shall be fined not more than \$10,000.00.~~

3 Sec. 3. 8 V.S.A. § 14306 is added to read:

4 § 14306. LATE CHARGES

5 (a) No issuer of a credit card shall assess charges for late payment in excess
6 of one and one-half percent of the unpaid balance of any bill, including any
7 interest thereon, or \$15.00, whichever amount is less.

8 (b) A credit card company that violates subsection (a) of this section shall
9 be fined not more than \$10,000.00.

10 Sec. 4. 8 V.S.A. § 14307 is added to read:

11 § 14307. PROHIBITION OF UNIVERSAL DEFAULT CLAUSES

12 (a) For purposes of this section, “universal default clause” means any
13 clause or provision included within a credit card agreement or contract which
14 allows an issuer to increase the interest rate on the issuer’s credit card if a
15 holder is late with a payment to another credit card issuer or creditor.

16 (b) No issuer of a credit card shall include in a credit card contract or
17 agreement a universal default clause.

18 (c) No issuer of a credit card shall increase the interest rate upon a credit
19 card holder if the holder is late with a payment to another credit card issuer or
20 creditor, unless the holder is also late with a credit card payment to such issuer.

1 ~~(d) No issuer of a credit card shall increase the interest rate upon a credit~~
2 ~~card holder where the card holder has incurred additional debt pursuant to a~~
3 ~~home equity line of credit or home equity loan, but has continued to make~~
4 ~~payments to the issuer of the credit card on a timely basis.~~

5 ~~(e) A credit card company that violates this section shall be fined not more~~
6 ~~than \$10,000.00.~~

Sec. 1. FINDINGS

~~(a) While credit card use offers benefits to consumers and merchants, including safety of financial information, convenience, and guaranteed payment to merchants, courts have found that Visa and MasterCard and their member banks have major market power.~~

~~(b) Electronic payment system networks, such as those incorporated by Visa and MasterCard, set the level of credit and debit card interchange fees charged by their member banks, even though those banks are supposed to be competitors.~~

~~(c) Credit and debit card interchange fees inflate the prices consumers pay for goods and services. Competitors should set their own prices and compete on that basis.~~

~~(d) Consumers are increasingly using credit and debit card electronic payment systems to purchase goods and services.~~

~~(e) In order to provide the desired convenience to consumers, most merchants must agree to accept credit and debit cards.~~

~~(f) Some electronic payment system networks market themselves as currency and promote use of their products as though they were a complete substitution for legal tender.~~

~~(g) Due to the market power of the two largest electronic payment system networks, merchants do not have negotiating power with regard to the contract for acceptance of credit and debit cards and the cost of the interchange fees for such acceptance.~~

~~(h) Merchants are subject to contracts that allow the electronic payment system networks to change the terms without notice, subject merchants to staggering fines, or reinterpret the rules and hold the merchant responsible.~~

~~(i) Merchants have expressed interest in working with customers to give customers the types of pricing options they would like but that are currently blocked by the terms or interpretations of unfair contracts necessary to accept credit and debit cards.~~

~~(j) Small businesses in Vermont are often treated as consumers. The protections of this bill are intended to apply to consumers as well as to businesses in Vermont.~~

~~Sec. 2. 9 V.S.A. chapter 63, subchapter 4 is added to read:~~

~~Subchapter 4. Prevention of Credit Card Company Unfair Business Practices
§ 2480o. DEFINITIONS~~

~~For purposes of this subchapter:~~

~~(1) "Electronic payment system" means an entity that directly or through licensed members, processors, or agents provides the proprietary services, infrastructure, and software that route information and data to facilitate transaction authorization, clearance, and settlement, and that merchants are required to access in order to accept a specific brand of general-purpose credit cards, charge cards, debit cards, or stored-value cards as payment for goods and services.~~

~~(2) "Merchant" means a person or entity that, in Vermont:~~

~~(A)(i) does business; or~~

~~(ii) offers goods or services for sale; and~~

~~(B) has a physical presence.~~

~~§ 2480p. ELECTRONIC PAYMENT SYSTEMS~~

~~(a) With respect to transactions involving Vermont merchants, no electronic payment system may directly or through any agent, processor, or member of the system:~~

~~(1) Impose any requirement, condition, penalty, or fine in a contract with a merchant relating to the display of pricing for goods or services for sale by the merchant. This includes a display for a discount to be provided to a consumer for using a form of payment that carries lower fees for the merchant.~~

~~(2) Prevent any merchant from setting a minimum or maximum dollar value for its acceptance of a form of payment.~~

~~(3) Inhibit the ability of any merchant to decide not to accept the products of an electronic payment system at one of its locations.~~

~~(b) On or before December 15, 2011, the department of banking, insurance, securities, and health care administration shall report to the senate~~

~~committee on judiciary the possible economic impacts on Vermont banks, credit unions, merchants, and consumers of prohibiting electronic payment systems from setting required, suggested, or default rates for the fees to be charged by any issuer of its payment cards, agent, processor, or member of the system unless such issuer, agent, or processor is the electronic payment system itself and not a separate legal entity.~~

~~§ 2480q. PENALTIES~~

~~(a) The following penalties shall apply to violations of this subchapter:~~

~~(1) Any electronic payment system found to have violated subsection 2480p(a) or (b) of this subchapter shall reimburse all affected merchants for all chargebacks, fees, and fines collected from affected merchants directly or through any agent, processor, or member of the system during the period of time in which the electronic payment system was in violation and be liable for a civil penalty of \$10,000.00 per chargeback, fee, or fine levied in violation of subsection 2480p(a) or (b) of this subchapter.~~

~~(2) Any merchant whose rights under this subchapter have been violated may maintain a civil action for damages or equitable relief as provided for in this section, including attorney's fees, if any.~~

~~(3) A violation of subsection 2480p(a) or (b) of this subchapter shall be deemed a violation of the Consumer Fraud Act, chapter 63 of this title. The attorney general has the same authority to conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as provided under subchapter 1 of chapter 63 of this title.~~

~~(b) These penalties shall not apply to entities acting exclusively as agents, processors, or members that are not electronic payment systems.~~

~~§ 2480r. SEVERABILITY~~

~~If any provision of this subchapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and, to this end, the provisions of this subchapter are severable.~~

~~Sec. 3. 13 V.S.A. § 1816 is added to read:~~

~~§ 1816. POSSESSION OR USE OF CREDIT CARD SKIMMING DEVICES AND REENCODERS~~

~~(a) A person who knowingly, wittingly, and with the intent to defraud possesses a scanning device, or who knowingly, wittingly, and with intent to defraud uses a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the computer chip or~~

~~magnetic strip of a payment card without the permission of the authorized user of the payment card shall be imprisoned not more than 10 years and fined not more than \$10,000.00, or both.~~

~~(b) A person who knowingly, wittingly, and with the intent to defraud possesses a reencoder, or who knowingly, wittingly, and with the intent to defraud uses a reencoder to place encoded information on the computer chip or magnetic strip or stripe of a payment card or any electronic medium that allows an authorized transaction to occur without the permission of the authorized user of the payment card from which the information is being reencoded shall be imprisoned not more than 10 years or fined not more than \$10,000.00, or both.~~

~~(c) Any scanning device or reencoder described in subsection (e) of this section allegedly possessed or used in violation of subsection (a) or (b) of this section shall be seized and upon conviction shall be forfeited. Upon forfeiture, any information on the scanning device or reencoder shall be removed permanently.~~

~~(d) Any computer, computer system, computer network, or any software or data owned by the defendant which are used during the commission of any public offense described in this section or any computer owned by the defendant which is used as a repository for the storage of software or data illegally obtained in violation of this section shall be subject to forfeiture.~~

~~(e) For purposes of this section:~~

~~(1) "Payment card" means a credit card, debit card, or any other card that is issued to an authorized user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value.~~

~~(2) "Reencoder" means an electronic device that places encoded information from the computer chip or magnetic strip or stripe of a payment card onto the computer chip or magnetic strip or stripe of a different payment card or any electronic medium that allows an authorized transaction to occur.~~

~~(3) "Scanning device" means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the computer chip or magnetic strip or stripe of a payment card.~~

~~(f) Nothing in this section shall preclude prosecution under any other provision of law.~~

Sec. 4. EFFECTIVE DATES

~~(a) Secs. 1 and 2 of this act shall take effect July 1, 2010.~~

~~(b) This section and Sec. 3 of this act shall take effect upon passage.~~

Sec. 1. FINDINGS

(a) While credit card use offers benefits to consumers and merchants, including safety of financial information, convenience, and guaranteed payment to merchants, courts have found that Visa and MasterCard and their member banks have major market power.

(b) Electronic payment system networks, such as those incorporated by Visa and MasterCard, set the level of credit and debit card interchange fees charged by their member banks, even though those banks are supposed to be competitors.

(c) Credit and debit card interchange fees inflate the prices consumers pay for goods and services. Competitors should set their own prices and compete on that basis.

(d) Consumers are increasingly using credit and debit card electronic payment systems to purchase goods and services.

(e) In order to provide the desired convenience to consumers, most merchants agree to accept credit and debit cards.

(f) Some electronic payment system networks market themselves as currency and promote use of their products as though they were a complete substitution for legal tender.

(g) Due to the market power of the two largest electronic payment system networks, merchants do not have negotiating power with regard to the contract for acceptance of credit and debit cards and the cost of the interchange fees for such acceptance.

(h) Merchants are subject to contracts that allow the electronic payment system networks to change the terms without notice, subject merchants to substantial fines, or reinterpret the rules and hold the merchant responsible.

(i) Merchants have expressed interest in working with customers to give customers the types of pricing options they would like but that are currently blocked by the terms or interpretations of contracts necessary to accept credit and debit cards.

(j) Businesses in Vermont are also consumers. The protections of this bill are intended to apply to all consumers, including businesses, in Vermont.

Sec. 2. 9 V.S.A. chapter 63, subchapter 4 is added to read:

*Subchapter 4. Prevention of Credit Card Company Unfair
Business Practices*

§ 2480o. DEFINITIONS

For purposes of this subchapter:

(1) "Electronic payment system" means an entity that directly or through licensed members, processors or agents provides the proprietary services, infrastructure and software that route information and data to facilitate transaction authorization, clearance and settlement, and that merchants are required to access in order to accept a specific brand of general-purpose credit cards, charge cards, debit cards or stored-value cards as payment for goods and services.

(2) "Merchant" means a person or entity that, in Vermont:

(A)(i) does business; or

(ii) offers goods or services for sale; and

(B) has a physical presence.

§ 2480p. ELECTRONIC PAYMENT SYSTEMS

With respect to transactions involving Vermont merchants, no electronic payment system may directly or through any agent, processor or member of the system:

(1) Impose any requirement, condition, penalty or fine in a contract with a merchant to inhibit the ability of any merchant to provide a discount or other benefit for payment through the use of a card of another electronic payment system, cash, check, debit card, stored-value card, charge card or credit card rather than another form of payment.

(2) Impose any requirement, condition, penalty or fine in a contract with a merchant to prevent the ability of any merchant to set a minimum dollar value of no more than \$10.00 for its acceptance of a form of payment, provided that if a minimum dollar value is set by a merchant, it shall be prominently displayed and printed in not less than 16-point boldface type at the point of sale.

(3) Impose any requirement, condition, penalty or fine in a contract with a merchant to inhibit the ability of any merchant to decide to accept an electronic payment system at one or more of its locations but not at others.

§ 2480q. PENALTIES

(a) The following penalties shall apply to violations of this subchapter:

(1) Any electronic payment system found to have violated section 2480p of this subchapter shall reimburse all affected merchants for all fines related to the prohibitions described in section 2480p which were collected from affected merchants directly or through any agent, processor or member of the system during the period of time in which the electronic payment system was in violation and shall be liable for a civil penalty of \$10,000.00 per fine levied in violation of section 2480p of this subchapter.

(2) Any merchant whose rights under this subchapter have been violated may maintain a civil action for damages or equitable relief as provided for in this section, including attorney's fees, if any.

(3) A violation of section 2480p of this subchapter shall be deemed a violation of chapter 63 of this title, the Consumer Fraud Act. The attorney general has the same authority to conduct civil investigations, enter into assurances of discontinuance, and bring civil actions as provided under subchapter 1 of chapter 63 of this title.

(b) These penalties shall not apply to entities acting exclusively as agents, processors or members that are not electronic payment systems.

§ 2480r. SEVERABILITY

If any provision of this subchapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and, to this end, the provisions of this subchapter are severable.

Sec. 3. 13 V.S.A. § 1816 is added to read:

§ 1816. POSSESSION OR USE OF CREDIT CARD SKIMMING DEVICES AND RE-ENCODERS

(a) A person who knowingly, wittingly and with the intent to defraud possesses a scanning device, or who knowingly, wittingly and with intent to defraud uses a scanning device to access, read, obtain, memorize or store, temporarily or permanently, information encoded on the computer chip or magnetic strip of a payment card without the permission of the authorized user of the payment card shall be imprisoned not more than 10 years and fined not more than \$10,000.00, or both.

(b) A person who knowingly, wittingly and with the intent to defraud possesses a re-encoder, or who knowingly, wittingly and with the intent to defraud uses a re-encoder to place encoded information on the computer chip or magnetic strip or stripe of a payment card or any electronic medium that allows an authorized transaction to occur without the permission of the authorized user of the payment card from which the information is being re-

encoded shall be imprisoned not more than 10 years or fined not more than \$10,000.00, or both.

(c) Any scanning device or re-encoder described in subsection (e) of this section allegedly possessed or used in violation of subsection (a) or (b) of this section shall be seized and upon conviction shall be forfeited. Upon forfeiture, any information on the scanning device or re-encoder shall be removed permanently.

(d) Any computer, computer system, computer network, or any software or data owned by the defendant which are used during the commission of any public offense described in this section or any computer owned by the defendant which is used as a repository for the storage of software or data illegally obtained in violation of this section shall be subject to forfeiture.

(e) For purposes of this section:

(1) "Payment card" means a credit card, debit card or any other card that is issued to an authorized user and that allows the user to obtain, purchase or receive goods, services, money or anything else of value.

(2) "Re-encoder" means an electronic device that places encoded information from the computer chip or magnetic strip or stripe of a payment card onto the computer chip or magnetic strip or stripe of a different payment card or any electronic medium that allows an authorized transaction to occur.

(3) "Scanning device" means a scanner, reader or any other electronic device that is used to access, read, scan, obtain, memorize or store, temporarily or permanently, information encoded on the computer chip or magnetic strip or stripe of a payment card.

(f) Nothing in this section shall preclude prosecution under any other provision of law.

Sec. 4. STUDY; REPORT

On or before December 15, 2011, the department of banking, insurance, securities, and health care administration shall:

(1) collect, examine, organize and categorize by author entity, such as government or private, the available studies that have been performed on credit card interchange fees; and

(2) report to the senate committees on judiciary and on finance and the house committees on commerce and economic development and on judiciary its findings, recommendations and legislative proposals, if any, relating to its findings.

Sec. 5. EFFECTIVE DATES

(a) Secs. 1, 2 and 4 of this act shall take effect January 1, 2011.

(b) This section and Sec. 3 of this act shall take effect upon passage.