

**No. 116. An act relating to unfair business practices of credit card companies and fraudulent use of scanning devices and re-encoders.**

(S.138)

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

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.

Date on which the governor allowed the bill to become law without his signature: May 21, 2010