

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 174**

Introduced By: Janssen, 15;  
Read first time: January 8, 2007  
Committee: Banking, Commerce and Insurance

A BILL

1       FOR AN ACT relating to financial institutions; to provide duties  
2               for and prohibit certain actions by issuers of credit and  
3               debit cards; to provide penalties; and to provide  
4               severability.

5       Be it enacted by the people of the State of Nebraska,

1           Section 1. For purposes of sections 1 to 3 of this act:

2           (1) Acquiring bank means a financial institution authorized  
3 to do business in this state providing merchant accounts;

4           (2) Chargeback means a credit card or debit card  
5 transaction that is either billed back to a merchant or deducted from  
6 a merchant's account;

7           (3) Credit card means:

8           (a) Any instrument or device, whether known as a credit  
9 card, charge card, credit plate, courtesy card, or identification card  
10 or by any other name, issued with or without a fee by an issuing bank  
11 for the use of the cardholder in obtaining money, goods, services, or  
12 anything else of value, either on credit or in consideration of an  
13 undertaking or guaranty by the issuing bank of the payment of a check  
14 drawn by the cardholder on a promise to pay in part or in full at a  
15 future time, whether or not all or any part of the indebtedness  
16 represented by this promise to make deferred payment is secured or  
17 unsecured;

18           (b) Any stored value card, smart card, or other instrument  
19 or device that enables a person to obtain goods, services, or anything  
20 else of value through the use of value stored on the instrument or  
21 device; or

22           (c) The number assigned to an instrument or device  
23 described in subdivision (3)(a) or (b) of this section even if the  
24 physical instrument or device is not used or presented;

25           (4) Debit card means:

26           (a) Any instrument or device, whether known as a debit  
27 card, automatic teller machine card, electronic benefit transfer card,

1 or any other access instrument or device, other than a check, that is  
2 signed by the holder or other authorized signatory on the deposit  
3 account and that draws money from a deposit account in order to  
4 obtain money, goods, services, or anything else of value; or

5 (b) The number assigned to an instrument or device  
6 described in subdivision (4)(a) of this section even if the physical  
7 instrument or device is not used or presented;

8 (5) Financial institution means any bank, savings bank,  
9 savings and loan association, building and loan association, credit  
10 union, or industrial loan and investment company;

11 (6) Interchange fee means the fee that an acquiring bank  
12 pays to an issuing bank when a cardholder uses a credit card or debit  
13 card as payment during a retail transaction;

14 (7) Issuing bank means a financial institution which issues  
15 credit cards or debit cards to cardholders;

16 (8) Merchant means a person or entity doing business in  
17 this state which offers goods or services for sale in this state; and

18 (9) Merchant account means a bank account that allows a  
19 merchant to accept credit card or debit card payments.

20 Sec. 2. (1) Whenever a contract authorizing a merchant to  
21 accept a credit card or debit card specifies that the merchant is  
22 bound by the rules of an issuing bank, the contracting issuing bank  
23 shall:

24 (a) Give the merchant access in this state to the complete  
25 rules referenced in the contract, either directly or through an  
26 acquiring bank;

27 (b) Notify the merchant when a referenced rule has been

1 changed or a new rule added; and

2 (c) Provide a copy of the new or modified rule to the  
3 merchant.

4 (2) A contract authorizing a merchant to accept a credit  
5 card shall contain:

6 (a) The contracting issuing bank's complete schedule of  
7 interchange fees, credit card and debit card transaction rates, and  
8 any other fees that the issuing bank charges to merchants; and

9 (b) An explanation of which rates apply to the merchant and  
10 the situations in which those rates apply.

11 (3) A contract authorizing a merchant to accept a credit  
12 card or debit card may not require a merchant to agree not to disclose  
13 the contracting issuing bank's rules or rates as a condition of  
14 receiving access to the rules or rates.

15 Sec. 3. (1) If an issuing bank fails to give a merchant  
16 access to its rules or rates as required by section 2 of this act,  
17 then:

18 (a) The merchant shall not be liable for any chargeback or  
19 fees associated with its credit card or debit card transactions from  
20 the time the contract was executed until the rules and rates are  
21 provided; and

22 (b) The issuing bank shall be liable for a civil penalty of  
23 ten thousand dollars per each violation of a failure to provide the  
24 rules.

25 (2) Any merchant may maintain a civil action for damages or  
26 equitable relief for breach of contract under sections 2 and 3 of this  
27 act.

1           Sec. 4. For purposes of sections 4 to 6 of this act:

2           (1) Acquiring bank means a financial institution licensed  
3 to do business in this state providing merchant accounts;

4           (2) Credit card means:

5           (a) Any instrument or device, whether known as a credit  
6 card, charge card, credit plate, courtesy card, or identification card  
7 or by any other name, issued with or without a fee by an issuing bank  
8 for the use of the cardholder in obtaining money, goods, services, or  
9 anything else of value, either on credit or in consideration of an  
10 undertaking or guaranty by the issuing bank of the payment of a check  
11 drawn by the cardholder on a promise to pay in part or in full at a  
12 future time, whether or not all or any part of the indebtedness  
13 represented by this promise to make deferred payment is secured or  
14 unsecured;

15           (b) Any stored value card, smart card, or other instrument  
16 or device that enables a person to obtain goods, services, or anything  
17 else of value through the use of value stored on the instrument or  
18 device; or

19           (c) The number assigned to an instrument or device  
20 described in subdivision (2)(a) or (b) of this section even if the  
21 physical instrument or device is not used or presented;

22           (3) Debit card means:

23           (a) Any instrument or device, whether known as a debit  
24 card, automatic teller machine card, electronic benefit transfer card,  
25 or any other access instrument or device, other than a check, that is  
26 signed by the holder or other authorized signatory on the deposit  
27 account and that draws money from a deposit account in order to

1 obtain money, goods, services, or anything else of value; or

2 (b) The number assigned to an instrument or device  
3 described in subdivision (3)(a) of this section even if the physical  
4 instrument or device is not used or presented;

5 (4) Financial institution means any bank, savings bank,  
6 savings and loan association, building and loan association, credit  
7 union, or industrial loan and investment company;

8 (5) Issuing bank means a financial institution which issues  
9 credit cards or debit cards to cardholders;

10 (6) Merchant means a person or entity licensed to do  
11 business in this state which offers goods or services for sale in this  
12 state; and

13 (7) Merchant account means a bank account that allows a  
14 merchant to accept credit card or debit card payments.

15 Sec. 5. A contract authorizing a merchant to accept a  
16 credit card or debit card shall not give an issuing bank the authority  
17 to charge a merchant or deduct from the merchant's account the cost  
18 of a credit card or debit card transaction because the cost of the  
19 transaction exceeds a predetermined amount or require a merchant to  
20 limit or waive such a provision.

21 Sec. 6. (1) Any merchant may maintain a civil action for  
22 damages or equitable relief for breach of contract under section 5 of  
23 this act.

24 (2) The Attorney General also may maintain a civil action  
25 for a violation of section 5 of this act and any issuing bank that  
26 violates section 5 of this act shall be subject to a civil penalty of  
27 five thousand dollars per violation.

1           Sec. 7. For purposes of sections 7 to 9 of this act:

2           (1) Credit card means:

3           (a) Any instrument or device, whether known as a credit  
4 card, charge card, credit plate, courtesy card, or identification card  
5 or by any other name, issued with or without a fee by an issuing bank  
6 for the use of the cardholder in obtaining money, goods, services, or  
7 anything else of value, either on credit or in consideration of an  
8 undertaking or guaranty by the issuing bank of the payment of a check  
9 drawn by the cardholder on a promise to pay in part or in full at a  
10 future time, whether or not all or any part of the indebtedness  
11 represented by this promise to make deferred payment is secured or  
12 unsecured;

13           (b) Any stored value card, smart card, or other instrument  
14 or device that enables a person to obtain goods, services, or anything  
15 else of value through the use of value stored on the instrument or  
16 device; or

17           (c) The number assigned to an instrument or device  
18 described in subdivision (1)(a) or (b) of this section even if the  
19 physical instrument or device is not used or presented;

20           (2) Debit card means:

21           (a) Any instrument or device, whether known as a debit  
22 card, automatic teller machine card, electronic benefit transfer card,  
23 or any other access instrument or device, other than a check, that is  
24 signed by the holder or other authorized signatory on the deposit  
25 account and that draws money from a deposit account in order to  
26 obtain money, goods, services, or anything else of value; or

27           (b) The number assigned to an instrument or device

1 described in subdivision (2)(a) of this section even if the physical  
2 instrument or device is not used or presented; and

3 (3) Interchange fee means the fee that an acquiring bank  
4 pays to an issuing bank when a cardholder uses a credit card or debit  
5 card as payment during a retail transaction.

6 Sec. 8. Discount rates, transaction charges, interchange  
7 fees, or any other charges or fees charged to merchants or deducted  
8 from credit card or debit card sales for processing credit card or  
9 debit card transactions shall not be applied to the tax portion of  
10 any credit card or debit card sales.

11 Sec. 9. (1) Any merchant may maintain a civil action for  
12 damages or equitable relief for breach of contract under section 8 of  
13 this act.

14 (2) The Attorney General also may maintain a civil action  
15 for a violation of section 8 of this act, and any person issuing a  
16 credit card or debit card who violates section 8 of this act shall be  
17 subject to a civil penalty of five thousand dollars per violation.

18 Sec. 10. If any section in this act or any part of any  
19 section is declared invalid or unconstitutional, the declaration shall  
20 not affect the validity or constitutionality of the remaining  
21 portions.