



February 13, 2015

The Honorable Lois Court
Chair
House Finance Committee
Colorado General Assembly
200 East Colfax
Denver, Colorado 80203

Re: HB 15-1154 RELATING TO INTERCHANGE FEES ON NON-FEDERAL TAXES

Dear Representative Court:

I write on behalf of the American Financial Services Association (AFSA),¹ to register our serious concerns with House Bill 15-1154 which seeks to prohibit the levying of the interchange element of a retailer's merchant discount fee on the sales tax portion of an electronic payment. We believe that this bill could have serious unintended consequences for Colorado consumers, retailers and the state itself.

As so often with laws that seek to upset the value-balance that interchange achieves for consumers, retailers, financial institutions and the card networks, HB 15-1154, is likely to harm the very people it is supposed to protect. Interchange is a value system, fundamental to the workings of electronic payments. It enables a fair balance to be struck between the interests of merchants, consumers, financial institutions and the card networks. It is interchange that allows merchants to derive the enormous value they receive from electronic payments.

The card networks set interchange at a level designed to maximize this merchant value, while partially compensating card issuers for the value they create and the risks they take. This level of interchange is proportionate to the value received by merchants who receive electronic payments and recognizes product differences to reflect different market segments.

Merchant value is derived from increased sales, reduced costs, e-commerce, significantly reduced susceptibility to theft, and simpler record keeping and tax preparation. Merchants also derive great value from the payment guarantee associated with the major card networks, which means the card issuer takes on the credit risk, not the merchant.

HB 15-1154 proposes to limit the interchange that is paid by the merchant's bank to the cardholder's bank on the proportion of the total transaction that represents non-federal taxes. This would be an unwieldy process that fails to take into account the fact that the systems that process these transactions recognize only the total transaction amount – and it is upon this amount upon that the merchant discount fee is based.

New systems which can differentiate between different elements of the transaction would be required for the law to be effective – or, we suppose, consumers could choose to pay sales tax by cash or check

¹The American Financial Services Association is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA member financial institutions offer vehicle financing, cards, personal installment loans and mortgage loans. The Association encourages and maintains ethical business practices and supports financial education for consumers of all ages.

as a separate payment. New payment systems would require a significant overhaul of retailer payments technology, with all of the costs and disruption that this would entail.

These additional costs would hit smaller merchants – those that need to keep overheads low to survive – the hardest. On top of this, a consumer’s bank would still bear the risk of default for the entire transaction, while being compensated only for bearing that risk for part of it. This additional risk could lead to higher costs for the merchant for each transaction, and diminish any value that lower overall interchange would bring them.

Of course, there is no guarantee that in the short-term new merchant costs from investing in new processing systems would not translate to higher prices at checkout for consumers, even if overall transaction costs for merchants went down. On top of this, the changeover of retailer systems and the added burden of complying with the law, is likely to act as a disincentive to accepting electronic payments for smaller merchants. Multiple studies have shown that consumers value electronic payments and like to shop where they are accepted. If small retailers begin to shun electronic payments, it will put Colorado out of step with the rest of the nation, at a time when new and innovative means of making electronic payments are becoming available.

Colorado lawmakers would do well to study closely the unintended consequences of Federal attempts to set government price controls on interchange, notably the Durbin Amendment to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which is widely considered to have resulted in a transfer of between \$1 billion and \$3 billion from poor households to the biggest retailers and their shareholders – while also pushing one million Americans out of the formal banking system, due to higher bank fees.² Colorado must ensure that it does not inadvertently create a similar slew of unintended consequences for its people.

We respectfully request that you give our concerns due consideration and vote against HB 15-1154. If you have further questions, I can be contacted by phone 952-922-6500 or email dfagre@afsamail.org.

Respectfully,



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Copy to:
House Finance Committee
Rep. Jon Becker
Rep. Alec Garnett

² The Economist, *Plastic stochastic*, available at <http://www.economist.com/news/finance-and-economics/21621882-capping-fees-card-transactions-has-not-worked-out-planned-plastic-stochastic> (Oct. 4, 2014).