

**American Financial Services Association Testimony
Opposing Washington Senate Bill 5070**

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For the record, the American Financial Services Association, known as AFSA, is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

We are deeply concerned about Senate Bill 5070, which seeks to artificially limit interchange fees – the fees merchant banks pay to card issuing banks – on the gratuity and sales tax portions of a transaction. We strongly oppose this bill, which serves simply to transfer the costs of processing gratuities and collecting sales tax on electronic payments, from retailers to financial institutions, including AFSA members.

SB 5070 is strikingly similar to the Illinois Interchange Fee Prohibition Act (IFPA), passed by that state’s legislature last year. This law is currently the subject of a lawsuit, and, last month, a federal district court granted a partial preliminary injunction against it. The court found Illinois Bankers and fellow plaintiffs have shown they are likely to prevail on the merits of their claim that the IFPA’s Interchange and Data Usage Prohibitions violate the federal rights of national banks and are preempted by the National Bank Act (NBA).

This means the IFPA might apply only to Illinois’ state chartered financial institutions. By passing it, Illinois has potentially put its own community banks and credit unions at a competitive disadvantage to national players, raising the specter that they will seek out federal charters to avoid its limitations. This could decimate state banking in Illinois and is surely not what policymakers intended. It should be a clear warning to Washington as it considers similar legislation.

The Office of the Comptroller of the Currency (OCC), the federal regulator tasked with ensuring the safety and soundness of financial institutions, filed an amicus opposing the IFPA and called it “ill-conceived, highly unusual, and largely unworkable.” The OCC wrote, “If the IFPA is

allowed to remain in effect, it is likely that fraud risk would increase significantly, consumers services would be constrained, and public trust would decline” and, if other states copied Illinois, it would create “a fractured, highly inefficient, and unworkable payment system that would materially affect interstate commerce.” All of these concerns apply to equally SB 5070.

At the most basic level, we respectfully contend that the collection of sales tax and the processing of gratuities in a retail transaction should not be the responsibility of a financial institution, simply because electronic payments are used at the point-of-sale. By removing the sales tax and gratuity element from a transaction for the purposes of calculating interchange, SB 5070 would leave financial institutions with two options: Either absorb the cost of collecting retailers’ sales tax and processing gratuities themselves, to the tune of millions of dollars annually, or decline to collect sale tax or process gratuities on electronic transactions, leaving customers to settle in a separate transaction using cash or check. Neither of these options are good ones.

Over the last 17 years, 29 states have introduced a total of 58 bills like SB 5070, none of which (apart from Illinois’ bill) have passed. Much of the debate around this legislation has centered on whether it is possible to develop the necessary technological infrastructure to exempt sales tax and gratuities from interchange fee calculations. Though this remains a legitimate concern, it might be better to focus on what developing and operationalizing such an infrastructure would cost the state, merchants and financial institutions. It is by no means clear that SB 5070 would make financial sense, given the investment required to set it up.

In conclusion, it is self-evidently unfair for retailers, restauranters and others to expect financial institutions to bear their costs for the collection of sales tax and the processing of gratuities. On top of this, however, is the remote likelihood that the bill will, upon passing, result in a workable and cost-effective system, operating as an outlier in the global payments system.

For these reasons, we oppose SB 5070 as written. Thank you for the opportunity to submit our testimony. If you have any, please do not hesitate to contact me at 952-922-6500 or dfagre@afsamail.org.