Session of 2025

HOUSE BILL No. 2089

By Committee on Commerce, Labor and Economic Development

Requested by Dan Murray on behalf of National federation of Independent Business

1-23

AN ACT concerning electronic payment transactions; exempting the portion of a credit card transaction constituting a tax or gratuity from assessment of the fee charged by the card issuer; enacting the consumer inflation reduction and tax fairness act.

Be it enacted by the Legislature of the State of Kansas:

Section 1. The provisions of sections 1 through 5, and amendments thereto, shall be known and may be cited as the consumer inflation reduction and tax fairness act.

Sec. 2. As used in the consumer inflation reduction and tax fairness act:

(a) "Acquirer bank" means a member of a payment card network that contracts with a merchant for the settlement of electronic payment transactions. "Acquirer bank" includes payment card network members that contract directly with merchants or indirectly through a processor to process electronic payment transactions.

(b) "Act" means the consumer inflation reduction and tax fairness act, sections 1 through 5, and amendments thereto.

(c) "Authorization" means the process through which a merchant requests approval for an electronic payment transaction from an issuer.

(d) "Cardholder" means a person that uses a credit card or a debit card for an electronic payment transaction with a merchant.

(e) "Clearance" means the process of transmitting final electronic payment transaction data from a merchant to an issuer for posting to the cardholder's account and the calculation of fees and charges, including interchange fees, that apply to the issuer and the merchant.

(f) "Credit card" means a card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor or services on credit.

(g) "Debit card" means a card or other payment code or device issued or approved for use through a payment card network to debit an asset account, regardless of the purpose for which the account is established or whether authorization is based on a signature, a personal identification number or other means. "Debit card" includes a general-use prepaid card

or other electronic payment device that is issued by a bank or other financial institution in a fixed limit amount useable at multiple, unaffiliated merchants and includes general-use prepaid cards as defined in 15 U.S.C. § 1693l-1 on July 1, 2025. "Debit card" does not include paper checks.

(h) "Electronic payment transaction" means a transaction in which a person uses a debit card, credit card or other payment code or device issued or approved through a payment card network to debit a deposit account or use a line of credit, whether authorization is based on a signature, a personal identification number or other means.

(i) "Gratuity" means a voluntary monetary contribution to an employee from a guest, patron or customer in connection with services rendered.

(j) "Interchange fee" means a fee established, charged or received by a payment card network for the purpose of compensating the issuer for its involvement in an electronic payment transaction.

(k) "Issuer" means a person issuing a debit card or credit card or the issuer's agent.

(l) "Merchant" means a person that collects and remits a tax in connection with an electronic payment transaction with a cardholder.

(m) "Payment card network" means a person that:

(1) Directly or through licensed members, processors or agents, provides the proprietary services, infrastructure and software to route information and data for the purpose of conducting electronic payment transaction authorization, clearance and settlement; and

(2) a merchant uses to accept a brand of debit card, credit card or other device that may be used to carry out electronic payment transactions as a form of payment from a cardholder.

(n) "Person" means any individual, firm, public or private corporation, government, partnership, association or any other organization or entity.

(o) "Processor" means a person that facilitates, services, processes or manages the debit or credit authorization, billing, transfer, payment procedures or settlement with respect to any electronic payment transaction.

(p) "Settlement" means the process of transmitting sales information to the issuing bank for collection and reimbursement of funds to the merchant and calculating and reporting the net transaction amount to the issuer and merchant for an electronic payment transaction that is cleared.

(q) "Tax" means any sales, use or occupation tax or, except as otherwise provided, any other excise tax imposed by the state of Kansas or any unit of local government of the state of Kansas that is collected and remitted by a merchant in connection with an electronic payment

transaction with a cardholder. "Tax" does not include the tax on income imposed by the Kansas income tax act, the privilege tax imposed upon any national banking association, state bank, trust company or savings and loan association pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, or the premiums tax and privilege fees imposed upon an insurance company pursuant to K.S.A. 40-252, and amendments thereto.

(r) "Tax documentation" means documentation sufficient for the payment card network to determine the total amount of the electronic payment transaction and the tax or gratuity amount of the transaction. "Tax documentation" may be related to a single electronic payment transaction or multiple electronic payment transactions aggregated over a period of time. "Tax documentation" includes, but is not limited to, invoices, receipts, journals, ledgers or tax returns filed with the Kansas department of revenue or local taxing authorities.

(s) "Transaction" means the sale, rental or lease of personal property or goods, including, but not limited to, software and computer programs, the sale of food, rendering or furnishing of services or provision of admission, entry, membership or right of participation by a merchant to a cardholder.

Sec. 3. (a) An issuer, payment card network, acquirer bank or processor shall not receive or charge a merchant any interchange fee on the tax amount or gratuity amount of an electronic payment transaction if the merchant informs the acquirer bank or its designee of the tax or gratuity amount as part of the authorization or settlement process for the electronic payment transaction. Except as provided by subsection (b), the merchant shall transmit the tax or gratuity amount data as part of the authorization or settlement process to avoid being charged interchange fees on the tax or gratuity amount of an electronic payment transaction.

(b) A merchant that does not transmit the tax or gratuity amount data in accordance with subsection (a) may submit tax documentation for the electronic payment transaction to the acquirer bank or its designee not later than 180 days after the date of the electronic payment transaction. Within 30 days after the merchant submits such tax documentation, the issuer shall credit to the merchant the amount of interchange fees charged on the tax or gratuity amount of the electronic payment transaction.

(c) This section shall not create liability for a payment card network regarding the accuracy of the tax or gratuity data reported by the merchant.

Sec. 4. (a) It shall be unlawful for an issuer, a payment card network, an acquirer bank or a processor that has received tax or gratuity amount data to willfully with the intent to circumvent the provisions of section 3, and amendments thereto, alter or manipulate the computation and imposition of interchange fees charged to a merchant by increasing the rate

or amount of such fees applicable to or imposed upon the portion of an electronic payment transaction not attributable to such taxes or gratuities. An issuer, payment card network, acquirer bank or processor that violates this subsection shall be subject to civil penalties as provided by subsection (b).

(b) (1) An issuer, payment card network, acquirer bank or processor that violates the provisions of subsection (a) shall be liable to the aggrieved merchant, state or county for the payment of a civil penalty, recoverable in an individual action, including an action brought by the attorney general, a county or district attorney, in a sum set by the court of up to $1,000 for each electronic payment transaction involving interchange fees charged unlawfully as the result of such violation. Such civil penalty shall be in addition to any other relief that may be granted, including, but not limited to, the refund of unlawful fees as provided by paragraph (3) or other damages.

(2) In addition to, commensurate with or in lieu of an action as provided by paragraph (1), an aggrieved merchant, the attorney general or a county or district attorney may bring an action to enjoin or obtain a restraining order against an issuer, payment card network, acquirer bank or processor that has violated, is violating or is likely to violate this act.

(3) The issuer of the credit or debit card involved in an electronic payment transaction affected by a violation of paragraph (1) shall refund the merchant the interchange fee calculated on the tax or gratuity amount relative to such electronic payment transaction and shall be liable to the merchant for any such interchange fee amount. In any action brought by the attorney general or county or district attorney pursuant to this act, the attorney general or county or district attorney may enforce the provisions of this paragraph and, as ordered by the court, any such interchange fee collected from the issuer shall be paid over to the merchant.

(4) In administering and pursuing any actions under this act, the attorney general or the county or district attorney is authorized to sue for and collect reasonable expenses and investigation fees as determined by the court. Civil penalties or contempt penalties sued for and recovered by the attorney general shall be paid into the general fund of the state. Civil penalties and contempt penalties sued for and recovered by the county or district attorney shall be paid into the general fund of the county where the proceedings were instigated. An aggrieved merchant is not a required party in actions brought by the attorney general or a county or district attorney pursuant to this act. No bond shall be required of the attorney general or a county or district attorney in any action brought pursuant to this act.

Sec. 5. If any provision or clause of this act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act that can be given effect without

the invalid provision or application, and to this end, the provisions of this act are declared to be severable.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.