

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Steven M. Walsh

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act Relative to Fair Delaing in Credit Card Agreements.

PETITION OF:

NAME:

Steven M. Walsh

DISTRICT/ADDRESS:

11th Essex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO FAIR DELAING IN CREDIT CARD AGREEMENTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 **SECTION 1.** The General Laws are hereby amended by inserting after chapter 140D the
2 following chapter:--

3 **CHAPTER 140E**

4 **CREDIT CARD MERCHANT AGREEMENTS**

5
6 Section 1. As used in this chapter, inclusive, the following words shall, unless the context clearly
7 requires otherwise, have the following meanings:--

8 “Acquiring bank”, a financial institution licensed to do business in the Commonwealth providing
9 merchant accounts.

10 “Chargeback”, a credit card or debit card transaction that is either billed back to a merchant or
11 deducted from a merchant’s account.

12 “Credit card”, (a) any instrument or device, whether known as a credit card, charge card, credit
13 plate, courtesy card or identification card or by any other name, issued with or without a fee by an

14 issuer for the use of the cardholder in obtaining money, goods, services or anything else of value, either
15 on credit or in possession or in consideration of an undertaking or guaranty by the issuer of the payment
16 of a check drawn by the cardholder on a promise to pay in part or in full at a future time, whether or not
17 all or any part of the indebtedness represented by this promise to make deferred payment is secured or
18 unsecured; (b) any stored value card, smart card or other instrument or device that enables a person to
19 obtain goods, services or anything else of value through the use of value stored on the instrument or
20 device; and (c) the number assigned to an instrument or device described in clause (a) or (b) of this
21 paragraph even if the physical instrument or device is not used or presented.

22 "Debit Card", (a) any instrument or device whether known as a debit card, ATM card, check
23 card, electronic benefit transfer card or any other access instrument or device, other than a check, that
24 is signed by the holder or other authorized signatory on the deposit account that draws monies from a
25 deposit account in order to obtain money, goods, services or anything else of value; and (b) the number
26 assigned to an instrument or device described in clause (a), of this paragraph even if the physical
27 instrument or device is not used or presented.

28 "Financial institution", (a) any bank, banking association, trust company, federal or state savings
29 and loan association, including all banks for cooperatives organized under the United States Farm Credit
30 Act of nineteen hundred and thirty-three, existing by authority of the United States, or any state, or a
31 foreign country, or any law of the commonwealth; (b) any other institution, association or entity, the
32 deposits or accounts of which are insured under the Federal Deposit Insurance Act or by the Federal
33 Deposit Insurance Corporation, any institution, association or entity, which is a member of a federal
34 Home Loan Bank, any other bank or thrift institution incorporated or organized under the laws of a state
35 which is engaged in the business of receiving deposits; (c) any corporation subject to chapter one
36 hundred and sixty-seven A, or registered under the Federal Bank Holding Company Act of nineteen

37 hundred and fifty-six, or registered as a savings and loan holding company under the Federal National
38 Housing Act, as amended, including any subsidiary which participates in the filing of a consolidated
39 return of income to the federal government; (d) any corporation subject to supervision by the division of
40 banks including but not limited to corporations described in section twenty-four of chapter ninety-three;
41 sections ninety-six to one hundred and four or section one hundred and fourteen C of chapter one
42 hundred and forty; section thirty-eight of chapter one hundred and sixty-seven; section five of chapter
43 one hundred and sixty-seven B; chapter one hundred and sixty-nine A; chapter two hundred and fifty-
44 five B; chapter two hundred and fifty-five C; chapter two hundred and fifty-five D; and chapter two
45 hundred and fifty-five E; or (e) any other corporation organized under the laws of the United States, the
46 commonwealth or any other state or a foreign country which, in substantial competition with financial
47 institutions as defined in any or all of clauses (a) to (d), inclusive, derives more than ten percent of its
48 gross income, excluding nonrecurring, extraordinary items, from credit card and debit card activities.

49 "Interchange fee", the fee that an acquiring bank pays to an issuing bank when a cardholder
50 uses a credit card or debit card as payment during a retail transaction.

51 "Issuing bank", a financial institution which issues credit cards or debit cards to cardholders.

52 "Merchant account", a bank account that allows a merchant to accept credit card or debit card
53 payments.

54 "Merchant", a person licensed to do business in the Commonwealth who offers goods or
55 services for sale in the Commonwealth.

56 "Person", a natural person, business organization, financial institution or any other legal entity,
57 however formed.

58

59 **Disclosure of Rules**

60 Section 2. (a) Whenever a contract authorizing a merchant to accept a credit card or debit card
61 specifies that the merchant is bound by the rules of a financial institution, the contracting financial
62 institution must promptly: (i) provide the merchant access to the complete rules referenced in the
63 contract, either individually or through an acquiring bank; (ii) notify the merchant whenever a rule is
64 modified or a new rule added, specifically referencing and explaining the substance of the modification
65 or new rule; and (iii) provide a copy of any new or modified rule.

66 (b) A contract authorizing a merchant to accept a credit card must contain: (i) the contracting
67 financial institution’s complete schedule of interchange fees, credit card and debit card transaction rates
68 and any other fees that the financial institution charges to merchants; and (ii) an explanation of which
69 rates apply to the merchant and the situations in which those rates apply.

70 (c) A contract authorizing a merchant to accept a credit card or debit card may not require a
71 merchant to agree not to disclose the contracting financial institution’s rules or rates as a condition of
72 receiving access to the rules or rates.

73 (d) A merchant shall not be liable for any charge, chargeback or other fees associated with its credit
74 card or debit card transactions under any rule, rate or fee schedule unless the contracting financial
75 institution has complied with the provisions of this section relative to the charge, chargeback or other
76 fee imposed.

77

78 **Certain Charges Prohibited**

79 Section 3. A contract authorizing a merchant to accept a credit card or debit card may not give a
80 financial institution the right to impose a chargeback or otherwise charge a merchant or deduct from

81 the merchant's account the cost of a credit card or debit card transaction because the amount of the
82 transaction exceeds a predetermined amount.

83

84 **Application of Fees to Taxes Prohibited**

85 Section 4. Discount rates, transaction charges, interchange rates, or any other charges or fees
86 charged to merchants or deducted from credit card or debit card sales for processing credit card or debit
87 card transactions shall not be applied to that portion of the credit card or debit card sales transaction
88 representing the tax or excise collected by the merchant incident to a sale of any goods, meals,
89 commodities, or services in accordance with chapters 64A, 64C, 64E, 64G, 64H, 64I, 64J, or 64K.

90

91 **Waivers Prohibited**

92 Section 5. A contract authorizing a merchant to accept a credit card or debit card may not
93 require a merchant to limit or waive its rights under this chapter.

94

95 **Remedies; Penalties**

96 Section 6. (a) In addition to any other common law or statutory remedy provided by law, any
97 violation of this chapter shall be deemed to be a prohibited practice under section 2(a) of chapter 93A.

98 (b) The superior court shall have jurisdiction of any complaint to restrain and enjoin any violation of
99 this chapter.

100 (c) Any person who violates any of the provisions of this chapter shall be punished by a fine of not
101 less than \$1,000 or more than \$10,000. Each charge, chargeback or other fee imposed or levied in
102 violation of this chapter and each day of noncompliance with the provisions of sections 2, 3 or 5 shall
103 constitute a separate offense.

104

105 **Application; severability**

106 Section 7. (a) This chapter, being necessary for the welfare of the Commonwealth and its
107 inhabitants, shall be liberally construed to effect its purposes.

108 (b) If any section, subsection, sentence, clause or phrase of this legislation, or any application of such
109 provision to any person or circumstance shall for any reason be held invalid, the remaining portions of
110 the chapter or the application of such provision to a person or circumstance other than that as to which
111 it is held to be invalid, shall not be affected thereby.

112

113 **SECTION 2.** This act shall take effect on January 1, 2008