

Representative Wayne A. Harper proposes the following substitute bill:

CREDIT CARD OR DEBIT CARD

CONTRACTS ACT

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts the Credit Card or Debit Card Contracts Act within provisions related to contracts and obligations in general.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides for severability;
- ▶ requires depository institutions and credit card companies to share specified information as part of a contractual relationship; and
- ▶ provides penalties.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

15-11-101, Utah Code Annotated 1953



- 26 15-11-102, Utah Code Annotated 1953
- 27 15-11-103, Utah Code Annotated 1953
- 28 15-11-201, Utah Code Annotated 1953
- 29 15-11-202, Utah Code Annotated 1953
- 30 15-11-203, Utah Code Annotated 1953
- 31 15-11-301, Utah Code Annotated 1953
- 32 15-11-302, Utah Code Annotated 1953



34 *Be it enacted by the Legislature of the state of Utah:*

35 Section 1. Section 15-11-101 is enacted to read:

36 **CHAPTER 25. CREDIT CARD OR DEBIT CARD CONTRACTS ACT**

37 **Part 1. General Provisions**

38 **15-11-101. Title.**

39 This chapter is known as the "Credit Card or Debit Card Contracts Act."

40 Section 2. Section 15-11-102 is enacted to read:

41 **15-11-102. Definitions.**

42 As used in this chapter:

43 (1) "Acquiring institution" means a depository institution that provides a merchant
44 account.

45 (2) "Chargeback" means a transaction that is:

46 (a) conducted using a:

47 (i) credit card; or

48 (ii) debit card; and

49 (b) (i) billed back to a merchant; or

50 (ii) deducted from a merchant's merchant account.

51 (3) (a) "Credit card" means:

52 (i) an instrument or device that is issued by an issuer:

53 (A) with or without a fee;

54 (B) for the use of the cardholder in obtaining:

55 (I) money;

56 (II) a good;

- 57 (III) a service; or
- 58 (IV) anything of value; and
- 59 (C) if the item listed in Subsection (3)(a)(i)(B) is obtained:
- 60 (I) on credit; or
- 61 (II) in possession or in consideration of an undertaking or guaranty by the issuer of a
- 62 payment drawn by the cardholder on a promise to pay in part or in full at a future time, whether
- 63 or not all or any part of the indebtedness represented by the promise to make a deferred
- 64 payment is secured or unsecured; and
- 65 (ii) a number assigned to an instrument or device described in Subsection (3)(a)(i) even
- 66 if the physical instrument or device is not used or presented.
- 67 (b) An instrument or device described in Subsection (3)(a) is a credit card whether
- 68 known as:
- 69 (i) a credit card;
- 70 (ii) a charge card;
- 71 (iii) a credit plate;
- 72 (iv) a courtesy card;
- 73 (v) an identification card; or
- 74 (vi) another name.
- 75 (4) "Credit card company" means a person that operates an electronic payment system
- 76 that makes use of a credit card or debit card to initiate a transaction.
- 77 (5) "Credit card or debit card transaction" means a transaction under which a
- 78 cardholder uses a credit card or debit card as payment to obtain:
- 79 (a) a good;
- 80 (b) a service; or
- 81 (c) any thing of value.
- 82 (6) (a) Except as provided in Subsection (6)(c), "debit card" means:
- 83 (i) an instrument or device that:
- 84 (A) is signed by the cardholder or other authorized signatory on a deposit account; and
- 85 (B) draws monies from the deposit account to obtain:
- 86 (I) money;
- 87 (II) a good;

- 88 (III) a service; or
- 89 (IV) anything of value;
- 90 (ii) an instrument or device that enables a person to obtain through the use of value
- 91 stored on the instrument or device:
- 92 (A) a good;
- 93 (B) a service; or
- 94 (C) anything of value; or
- 95 (iii) a number assigned to an instrument or device described in Subsection (6)(a)(i) or
- 96 (ii) even if the physical instrument or device is not used or presented.
- 97 (b) An instrument or device described in Subsection (6)(a) is a debit card whether
- 98 known as:
- 99 (i) a debit card;
- 100 (ii) an electronic benefit transfer card;
- 101 (iii) a stored value card;
- 102 (iv) a smart card; or
- 103 (v) another access instrument or benefit card.
- 104 (c) "Debit card" does not mean a check.
- 105 (7) "Depository institution" is as defined in Section 7-1-103.
- 106 (8) "Fee" means:
- 107 (a) an interchange fee;
- 108 (b) a chargeback; or
- 109 (c) a transaction pass through fee.
- 110 (9) "Interchange fee" means a fee that a merchant pays to an issuing institution when
- 111 the merchant accepts as payment a credit card or debit card issued by the issuing institution.
- 112 (10) "Issuing institution" means a depository institution that issues to a cardholder:
- 113 (a) a credit card; or
- 114 (b) a debit card.
- 115 (11) "Merchant" means a person who:
- 116 (a) is engaged in a regularly organized business in this state; and
- 117 (b) sells or leases the following in this state to an end user and not for resale or
- 118 sublease:

- 119 (i) a good;
- 120 (ii) a service; or
- 121 (iii) a thing of value.

122 (12) "Operating rule" means the following governing the acceptance of a credit card or
123 a debit card by a merchant:

- 124 (a) a bylaw;
- 125 (b) a rule;
- 126 (c) a policy;
- 127 (d) an operating regulation; or
- 128 (e) an operating procedure.

129 (13) "Penalty" means a charge imposed by a depository institution or credit card
130 company against a merchant for the merchant not meeting the depository institution's or credit
131 card company's operating rules, including:

- 132 (a) a fee;
- 133 (b) a surcharge;
- 134 (c) a fine; or
- 135 (d) a transaction downgrade.

136 (14) (a) "Transaction pass through fee" means a fee other than an interchange fee that
137 is:

- 138 (i) paid by the merchant; and
- 139 (ii) not solely set by an acquiring institution.
- 140 (b) "Transaction pass through fee" includes:
 - 141 (i) a settlement fee;
 - 142 (ii) a risk fee;
 - 143 (iii) an access fee;
 - 144 (iv) a due; or
 - 145 (v) an assessment.

146 Section 3. Section **15-11-103** is enacted to read:

147 **15-11-103. Severability.**

148 If a provision of this chapter or the application of a provision to a person or
149 circumstance is held invalid, the invalidity may not affect other provisions or applications of

150 this chapter. The provisions of this chapter are severable.

151 Section 4. Section **15-11-201** is enacted to read:

152 **Part 2. Disclosure of Information Related to Contracts**

153 **15-11-201. Access to issuer's rules.**

154 (1) A depository institution shall comply with Subsection (2)(b) if the depository
155 institution or credit card company with whom the depository institution contracts is party to a
156 contract that:

157 (a) authorizes a merchant to accept a credit card or debit card; and

158 (b) specifies that the merchant is bound by the operating rules of the depository
159 institution.

160 (2) If the conditions of Subsection (1) are met, a depository institution shall:

161 (a) provide a merchant access in this state to the operating rules referenced in the
162 contract described in Subsection (1)(b):

163 (i) directly to a merchant; or

164 (ii) through an acquiring institution; and

165 (b) if a rule described in Subsection (2)(a)(i) is changed or a new operating rule added
166 in accordance with the contract described in Subsection (1)(a):

167 (i) at least five business days before the effective date of the change or new operating
168 rule, notify the merchant of the:

169 (A) change in the operating rule; or

170 (B) new operating rule; and

171 (ii) provide the merchant access to the:

172 (A) changed operating rule; or

173 (B) new operating rule.

174 Section 5. Section **15-11-202** is enacted to read:

175 **15-11-202. Schedule of fees and rates.**

176 A depository institution or credit card company that is a party to a contract authorizing a
177 merchant to accept a credit card or debit card shall include in the contract:

178 (1) a complete schedule of the following imposed under the contract:

179 (a) a fee;

180 (b) a penalty; or

- 181 (c) a rate; and
- 182 (2) an explanation of:
- 183 (a) which rates apply to the merchant; and
- 184 (b) a situation in which a rate applies.

185 Section 6. Section **15-11-203** is enacted to read:

186 **15-11-203. Confidentiality provisions prohibited.**

187 (1) A contract that authorizes a merchant to accept a credit card or debit card may not
188 as a condition of receiving access to the information described in Section 15-11-201 or
189 15-11-202 prohibit a merchant from disclosing to a person listed in Subsection (2):

190 (a) an operating rule to which the contract specifies the merchant is bound; or

191 (b) a rate, fee, or penalty under the contract.

192 (2) Subsection (1) applies to a disclosure to:

193 (a) an employee of the merchant;

194 (b) an attorney, accountant, or consultant of the merchant; or

195 (c) except for a judge standing for retention election, an individual elected to:

196 (i) a state office;

197 (ii) an office of a county, city, or town; or

198 (iii) a federal office.

199 Section 7. Section **15-11-301** is enacted to read:

200 **Part 3. Penalties**

201 **15-11-301. Penalty for not providing required information.**

202 If a depository institution or credit card company violates this chapter:

203 (1) a merchant is not liable for a fee associated with a credit card or debit card
204 transaction:

205 (a) beginning the day on which the depository institution or credit card company
206 violates this chapter; and

207 (b) ending the day on which the depository institution or credit card company comes
208 into compliance with this chapter; and

209 (2) the depository institution or credit card company is liable to the merchant for a civil
210 penalty of \$10,000 for each charge the depository institution or credit card company imposes
211 on the merchant:

212 (a) beginning the day on which the depository institution or credit card company
213 violates this chapter; and

214 (b) ending the day on which the depository institution or credit card company comes
215 into compliance with this chapter.

216 Section 8. Section **15-11-302** is enacted to read:

217 **15-11-302. Private right of action.**

218 A merchant whose right under this chapter is violated may maintain a civil action in a
219 court of competent jurisdiction for damages or equitable relief as provided in this part.

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Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or local governments. Some financial institutions may be affected if found to be in non-compliance of the proposed legislation.
