

**CREDIT CARD OR DEBIT CARD
TRANSACTIONS 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 Transactions Act within the Financial Institutions Act.

Highlighted Provisions:

- This bill:
- ▶ defines terms;
 - ▶ provides for severability;
 - ▶ requires depository institutions and credit card companies to share specified information; and
 - ▶ provides penalties.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

7-25-101, Utah Code Annotated 1953

7-25-102, Utah Code Annotated 1953

7-25-103, Utah Code Annotated 1953



- 28 7-25-201, Utah Code Annotated 1953
- 29 7-25-202, Utah Code Annotated 1953
- 30 7-25-203, Utah Code Annotated 1953
- 31 7-25-301, Utah Code Annotated 1953
- 32 7-25-302, Utah Code Annotated 1953



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

35 Section 1. Section 7-25-101 is enacted to read:

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

37 **Part 1. General Provisions**

38 **7-25-101. Title.**

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

40 Section 2. Section 7-25-102 is enacted to read:

41 **7-25-102. 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) "Fee" means:
- 106 (a) an interchange fee;
- 107 (b) a chargeback; or
- 108 (c) a transaction pass through fee.
- 109 (8) "Interchange fee" means a fee that a merchant pays to an issuing institution when
- 110 the merchant accepts as payment a credit card or debit card issued by the issuing institution.
- 111 (9) "Issuing institution" means a depository institution that issues to a cardholder:
- 112 (a) a credit card; or
- 113 (b) a debit card.
- 114 (10) "Merchant" means a person who:
- 115 (a) is engaged in a regularly organized business in this state; and
- 116 (b) sells or leases the following in this state to an end user and not for resale or
- 117 sublease:
- 118 (i) a good;
- 119 (ii) a service; or
- 120 (iii) a thing of value.

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

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

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

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

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

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

145 Section 3. Section **7-25-103** is enacted to read:

146 **7-25-103. Severability.**

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

150 Section 4. Section **7-25-201** is enacted to read:

151 **Part 2. Disclosure of Information**

152 7-25-201. Access to issuer's rules.

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

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

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

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

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

162 (i) directly to a merchant; or

163 (ii) through an acquiring institution; and

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

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

168 (A) change in the operating rule; or

169 (B) new operating rule; and

170 (ii) provide the merchant access to the:

171 (A) changed operating rule; or

172 (B) new operating rule.

173 Section 5. Section **7-25-202** is enacted to read:

174 **7-25-202. Schedule of fees and rates.**

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

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

178 (a) a fee;

179 (b) a penalty; or

180 (c) a rate; and

181 (2) an explanation of:

182 (a) which rates apply to the merchant; and

183 (b) a situation in which a rate applies.

184 Section 6. Section **7-25-203** is enacted to read:

185 **7-25-203. Confidentiality provisions prohibited.**

186 A contract that authorizes a merchant to accept a credit card or debit card may not
187 require a merchant to agree as a condition of receiving access to the information described in
188 Section 7-25-201 or 7-25-202 that the merchant not disclose:

189 (1) an operating rule to which the contract specifies the merchant is bound; or

190 (2) a rate or fee under the contract.

191 Section 7. Section **7-25-301** is enacted to read:

192 **Part 3. Penalties**

193 **7-25-301. Penalty for not providing required information.**

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

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

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

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

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

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

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

208 Section 8. Section **7-25-302** is enacted to read:

209 **7-25-302. Private right of action.**

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

Legislative Review Note
as of 1-11-08 1:41 PM

Office of Legislative Research and General Counsel

H.B. 308 - Credit Card or Debit Card Transactions Act

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.
