

**HOUSE . . . . . No. 3888**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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An Act further regulating credit card fees..

*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. Chapter 140 of the General Laws is hereby amended by inserting after  
2 section 114C the following section:-

3 Section 114D. (a) In this section the following words shall have the following meanings:

4 “Acquiring bank”, a financial institution licensed to do business in this state providing  
5 merchant accounts.

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

8 “Credit card”, (1) any instrument or device, whether known as a credit card, charge card,  
9 credit plate, courtesy card or identification card or by any other name, issued with or without a  
10 fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything  
11 else of value, either on credit or in possession or in consideration of an undertaking or guaranty  
12 by the issuer of the payment of a check drawn by the cardholder on a promise to pay in part or in  
13 full at a future time, whether or not all or any part of the indebtedness represented by this

14 promise to make deferred payment is secured or unsecured; (2) any stored value card smart card  
15 or other instrument or device that enables a person to obtain goods, services or anything else of  
16 value through the use of value stored on the instrument or device; and (3) the number assigned to  
17 an instrument or device described in clauses (1) or (2) even if the physical instrument or device  
18 is not used or presented.

19 “Debit card”, (1) any instrument or device whether known as a debit card, ATM card,  
20 electronic benefit transfer card or any other access instrument or device, other than a check, that  
21 is signed by the holder or other authorized signatory on the deposit account that draws moneys  
22 from a deposit account in order to obtain money, goods, services or anything else of value; and  
23 (2) the number assigned to an instrument or device described in clause (1) even if the physical  
24 instrument or device is not used or presented.

25 “Financial institution”, any bank, savings association, savings bank, credit union or  
26 industrial loan company.

27 “Interchange fee”, the fee that an acquiring bank pays to an issuing bank when a  
28 cardholder uses a credit card or debit as payment during a retail transaction.

29 “Issuing bank”, a financial institution which issues credit cards to cardholders.

30 “Merchant account”, a bank account that allows a merchant to accept credit card or debit  
31 card payments.

32 “Merchant”, a person or entity licensed to business in this state which offers goods or  
33 services for sale in this state.

34 (b) Whenever a contract authorizing a merchant to accept a credit card or debit card  
35 specifies that the merchant is bound by the rules of a financial institution, the contracting  
36 financial institution must: (i) give the merchant access in this state to the complete rules  
37 referenced in the contract, either individually or through an acquiring bank; (ii) notify the  
38 merchant when a referenced rule has been changed or new rule added; and (iii) provide a  
39 copy of the new or modified rule.

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

44 A contract authorizing a merchant to accept a credit card or debit card may not require a  
45 merchant to agree not to disclose the contracting financial institution's rules or rates as a  
46 condition access to the rules or rates.

47 (c) If an issuing bank or credit card company fails to give a merchant access to its rules,  
48 then: (i) the merchant shall not be liable for any chargeback or fees associated with its credit  
49 debit card transaction from the time the contract was executed until the rules and regulations  
50 provided; and (ii) the issuing bank or credit card company will be liable for a civil penalty of  
51 \$10,000 levied prior to providing the rules.

52 Any merchant whose rights under this act have been violated may maintain a civil action  
53 for damages or equitable relief as provided for in this section.