

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 564

INTRODUCER: Senator Hutson

SUBJECT: Interchange Fees on Taxes

DATE: March 14, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Moody | Knudson | BI | Pre-meeting |
| 2. | | | CM | |
| 3. | | | RC | |

I. Summary:

Senate Bill 564 prohibits payment card networks from charging an interchange fee on any tax that is separately itemized on a sales invoice, sales slip, or other evidence of sale in any electronic payment transaction.

If the merchant or seller transmits to the payment card network the tax amount data of an electronic payment transaction before the settlement of funds, the payment card network must deduct the amount of tax imposed from the calculation of interchange fees specific to each form or type of electronic payment transaction. If not, the merchant or seller may thereafter submit to the payment card network proof of tax amounts collected on sales subject to an interchange fee and the payment card network must promptly rebate any interchange fee charged on the tax collected by crediting the merchant or seller's settlement account.

A payment card network that violates these provisions is subject to a civil penalty of up to \$1,000 per violation and must refund the interchange fees charged on any tax amount of an electronic payment transaction.

The bill defines several terms, including credit card, debit card, electronic payment transaction, interchange fee, issuer, payment card network, settlement, and tax.

See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2023.

II. Present Situation:

Financial Institutions Code

The Florida Office of Financial Regulation (OFR) is responsible for all activities of the Financial Services Commission relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry.¹ The OFR has three divisions: the Division of Consumer Finance, the Division of Financial Institutions, and the Division of Securities. The OFR also has a Bureau of Financial Investigations, which functions as a criminal justice agency and has a separate budget.²

Florida law defines the term “financial institution” as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. s. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.³

Financial institutions may be either state or federally chartered. OFR’s Division of Financial Institutions provides general supervision over all state financial institutions, their subsidiaries, and service corporations,⁴ and is charged with the administration of the financial institutions codes, which apply to all state-authorized or state-chartered financial institutions and to the enforcement of all laws relating to state-authorized or state-chartered financial institutions.⁵ The specific chapters under the financial institutions codes, which govern state-chartered financial institutions, are:

- Chapter 655, F.S. – Financial Institutions Generally
- Chapter 657, F.S. – Credit Unions
- Chapter 658, F.S. – Banks and Trust Companies
- Chapter 660, F.S. – Trust Business
- Chapter 662, F.S. – Family Trust Companies
- Chapter 663, F.S. – International Banking
- Chapter 665, F.S. – Capital Stock Associations
- Chapter 667, F.S. – Savings Banks⁶

As of June 30, 2020, the Division of Financial Institutions regulates 197 financial institutions:⁷

- 69 banks
- 66 credit unions
- 21 international bank offices

¹ Section 20.121(3)(a)2., F.S.

² *Id.*

³ Section 655.005(1)(i), F.S.

⁴ Section 655.012(1), F.S.

⁵ Sections 655.001(1) and 655.012(1), F.S.

⁶ Section 655.005(1)(k), F.S.

⁷ The OFR, *Fast Facts* (2021 ed.), available at: <https://flofr.gov/sitePages/documents/FastFacts.pdf> (last visited Mar. 14, 2023).

- 15 trust companies
- 16 family trust companies
- 10 qualified limited service affiliates

Payment card networks or card associations, such as Visa and MasterCard, do not meet the definition of financial institution and, therefore, are not currently regulated by the OFR.⁸

Electronic Payment Transactions

In 1958, Bank of America launched the first credit card⁹ payment program with revolving credit known as BankAmericard in the U.S.¹⁰ In 1966, the Bank of Delaware launched the first debit card¹¹ pilot program.¹² Over time credit card and debit cards have become a common way to pay for goods and services. Several key players are involved in processing credit card and debit card transactions, including acquiring banks or contracted processors,¹³ payment card networks or bank card associations,¹⁴ and issuers or issuing banks.¹⁵ Processing credit card or debit card transactions requires several steps, including gathering sales information from the merchant, obtaining authorization for the transaction, collecting funds from the issuing bank, and making payment to the merchant.¹⁶

⁸ The OFR, *Agency Analysis for SB 564 (2023)*, p. 2, Mar. 14, 2023 (on file with the Senate Committee on Banking and Insurance).

⁹ 15 U.S.C. s. 1602(l) defines “credit card” as any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

¹⁰ Visa, Inc., *What We Do*, available at: [What we do | Unlocking opportunities for everyone | Visa](#) (last visited Mar. 12, 2023).

¹¹ 15 U.S.C. s. 1693o-2.(c)(2) defines “debit card” as (A) any 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), whether authorization is based on signature, PIN, or other means; (B) includes a general-use prepaid card, as that term is defined in s. 15 U.S.C. s. 1693l-1(a)(2)(A); and (C) does not include paper checks.

¹² Hyashi, F., Sullivan, R., & Weiner, S., *A Guide to the ATM and Debit Card Industry*, Federal Reserve Bank of Kansas City, 2003, pg. 13, available at: [A Guide to the ATM and Debit Card Industry \(kansascityfed.org\)](#) (last visited Mar. 12, 2023).

¹³ An “acquiring bank,” also known as the merchant bank, is a member of a card association that contracts with merchants for the settlement of card transactions. An acquiring bank must sponsor a merchant that accepts as a form of payment card association brand payment cards, and may contract directly with merchants or indirectly through agent banks or other third-party organizations to process card transactions. Office of the Comptroller of the Currency, *Comptroller’s Handbook: Safety and Soundness: Merchant Processing*, Vol. 1, pg. 2, Aug. 2014, available at: [OCC Merchant Processing Handbook.pdf](#) (hereinafter cited as “OCC Merchant Processing Handbook”) (last visited Mar. 12, 2023).

¹⁴ “Payment card network” or “bank card associations” are entities that directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that route information and data to conduct debit card or credit card transaction authorization, clearance, and settlement, and that a person uses in order to accept as a form of payment a brand of debit card, credit card or other device that may be used to carry out debit or credit transactions. 15 U.S.C. s. 1693o-2.(c)(11). Examples of the major payment card networks include Visa, Inc. (Visa), MasterCard, Inc. (MasterCard), Discover Global Network (Discover), and American Express (AmEx). See Visa, *What We Do*, available at: [What we do | Unlocking opportunities for everyone | Visa](#) (last visited Mar. 12, 2023); MasterCard, *Who We Are*, available at: [About Mastercard | Who We Are | Who We Serve](#) (last visited Mar. 12, 2012); Discover, *Our Network*, available at: [Our Unique Payments Network | Discover Global Network](#) (last visited Mar. 12, 2023); AmEx, *American Express Network: The Network That Backs You*, available at: [GNW-Home \(americanexpress.com\)](#) (last visited Mar. 12, 2023).

¹⁵ “Issuer” or “issuing bank” is any person or entity who issues a debit card, or credit card, or the agent of such person with respect to such card. 15 U.S.C. s. 1693o-2.(c)(9).

¹⁶ OCC Merchant Processing Handbook at pg. 1.

Network Infrastructure, Technology, and Security

In 2006, certain major payment card networks established the PCI Security Standards Council (PCI SSC) which created standards that set out technical requirements for their respective compliance programs for payments made worldwide.¹⁷ Participating organizations include merchant, processors, developers, and point of sale vendors.¹⁸ There are 12 requirements for securing cardholder data that is stored, processed or transmitted by participating members, such as encrypting transmission of cardholder data across open public networks, and developing and maintaining secure systems and applications.¹⁹ Payment card networks or processors are responsible for enforcement of such requirements.²⁰

Authorization Process

These secured networks are used to process the authorization of credit card and debit card transactions. Authorization is the process of approval or decline of a transaction prior to the transaction being finalized.²¹ A merchant may obtain an estimated/initial authorization to place a hold for a transaction amount for transactions in certain types of industries when the actual amount of a transaction is unknown.²² Typically, authorization for a transaction to be paid by credit card or debit card is requested electronically for the transaction amount from a merchant's point of sale system through the merchant's bank or processor (via the payment card network) to the issuer in a matter of seconds.²³ An illustration of the authorization process is shown below.²⁴

¹⁷ PCI SSC, *About Us*, available at: [Official PCI Security Standards Council Site - Verify PCI Compliance, Download Data Security and Credit Card Security Standards](#) (hereinafter cited as "PCI SSC Governance Website") (last visited Mar. 12, 2023).

¹⁸ PCI SSC, *The Prioritized Approach to Pursue PCI DSS Compliance*, pg. 2, available at: [PCI DSS Prioritized Approach for PCI DSS 3.2 \(pcisecuritystandards.org\)](#) (last visited Mar. 12, 2023).

¹⁹ *Id.* at pgs. 1, 8-9.

²⁰ PCI SSC Governance Website.

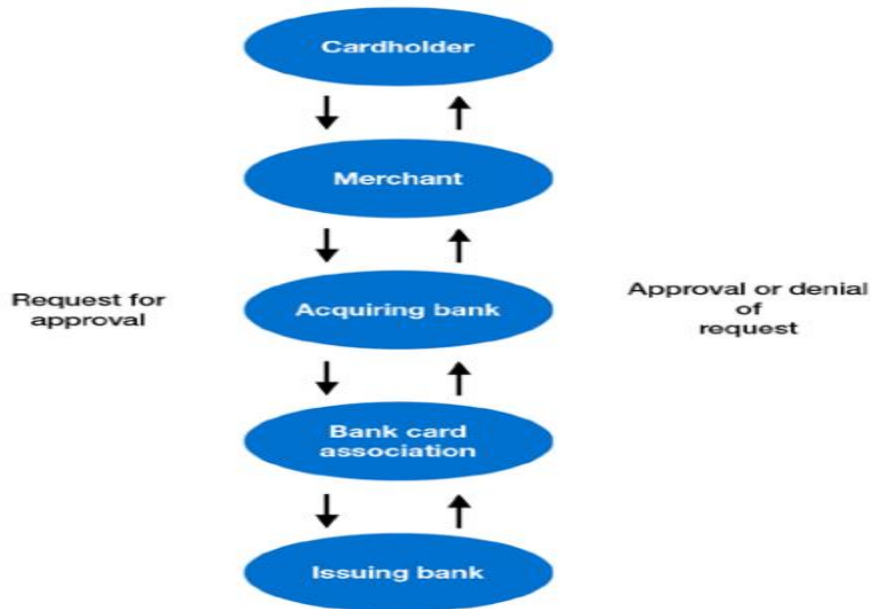
²¹ OCC Merchant Processing Handbook at pg. 7.

²² See, Visa, *Authorization and Reversal Processing Requirements for Merchants*, available at: [Authorization and Reversal Processing Requirements for Merchants \(visa.com\)](#) (last visited Mar. 12, 2023).

²³ OCC Merchant Processing Handbook at pg. 8.

²⁴ *Id.*

Figure 1: Authorization Process



Source: OCC

Clearing and Settlement Process

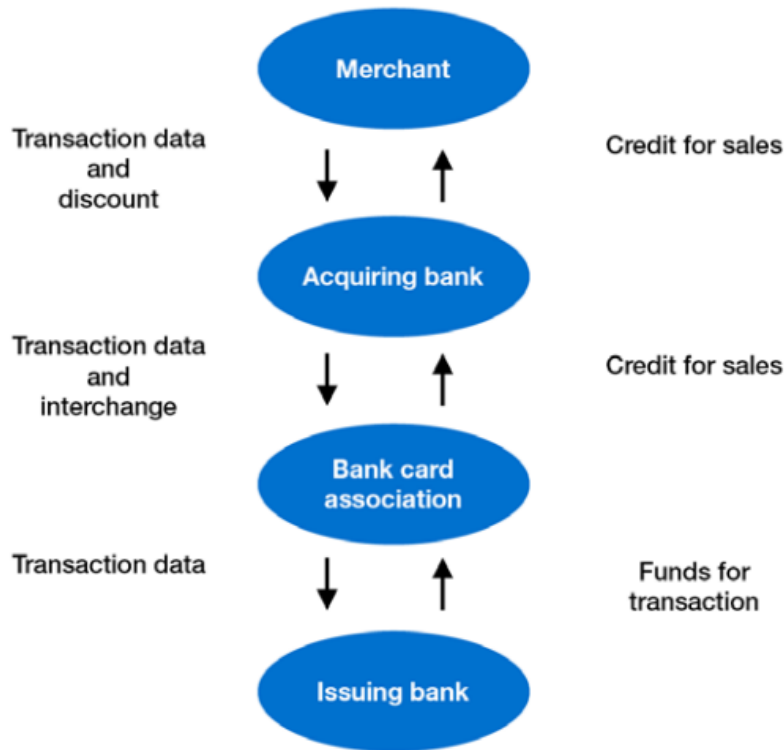
Clearing is the process of transmitting final transaction data from merchants to issuers for posting to the cardholder’s account, and the calculation of certain fees and charges that apply to the issuer and acquirer.²⁵ The settlement process includes transmitting sales information to the issuing bank for collection and reimbursement of funds to the merchant, and the process of calculating and reporting the net financial position of issuers and acquirers for all transactions that are cleared.²⁶ An illustration of the clearing and settlement process is shown below.²⁷

²⁵ OCC Merchant Processing Handbook at pg. 9.

²⁶ *Id.*

²⁷ *Id.*

Figure 2: Clearing and Settlement Process



Source: OCC

Transaction Fees

Merchants are charged network fees,²⁸ processor fees,²⁹ and interchange fees for using network infrastructure and technology, and accepting credit card and debit cards as a form of payment for transactions. An “interchange transaction fee” is any fee established, charged or received by a payment card network for the purpose of compensating an issuer for its involvement in an electronic payment transaction.³⁰ Payment card networks base the fees on the type or tier of the merchant, and interchange fees includes a flat rate plus a percentage of the transaction value.³¹

²⁸ 15 U.S.C. s. 1693o-2.(c)(10) defines “network fee” as a fee charged and received by a payment card network with respect to an electronic debit transaction, other than an interchange transaction fee. These fees may also be referred to as “assessment fees.” See Leonard, K., & Bottorff, C., *Credit Card Processing Fees (2023 Guide)*, Forbes Advisor, Aug. 19, 2022, available at: [Credit Card Processing Fees \(2023 Guide\) – Forbes Advisor](#) (hereinafter cited as “Forbes Article”) (last visited Mar. 12, 2023). 15 U.S.C. s. 1693o-2.(c)(5) defines “electronic debit transaction” as a transaction in which a person uses a debit card.

²⁹ Forbes Article (noting that payment process fees may include monthly fees, per-transaction fees, equipment lease fees and statement fees).

³⁰ See 15 U.S.C. s. 1693o-2.(c)(8).

³¹ See Visa, *The Visa System: Rates, Fees and Rules*, available at: [Visa USA Interchange Reimbursement Fees](#) (last visited Mar. 10, 2023); MasterCard, *MasterCard Interchange Rates and Fees*, available at: [U.S. Region Interchange, 22 April 2022 \(mastercard.us\)](#) (last visited Mar. 10, 2023); O’Keefe, C., *Discover Interchange Rates (2023)*, Merchant Cost Consulting, Jan. 8, 2023, available at: [Discover Interchange Rates \(2023\) | Merchant Cost Consulting](#) (last visited Mar. 10, 2023); Rej, M., *Amex Interchange Rates and Processing Fees*, Merchant Cost Consulting, Sept. 16, 2022, available at: [Amex Interchange Rates and Processing Fees \(2023\) | Merchant Cost Consulting](#) (last visited Mar. 10, 2023).

Credit Card Transactions

No federal or state regulations were identified that restrict the maximum amount of interchange fees that may be charged to a merchant for credit card transactions. The average interchange fees for credit card transactions with major payment card networks is as follows:

- Visa: 1.4% to 2.5%
- MasterCard: 1.5% to 2.6%
- Discover: 1.55% to 2.5%
- AmEx: 2.3% to 3.5%³²

Debit Card Transactions

The Electronic Fund Transfer Act (EFTA)³³ was established with a primary objective of individual consumer's rights regarding the electronic fund and remittance transfer systems.³⁴ The EFTA provides that an amount of any interchange transaction fee that an issuer³⁵ may receive or charge with respect to an electronic debit transaction must be "reasonable and proportional to the cost incurred by the issuer" with respect to the transaction.³⁶ The EFTA provides for certain exemptions from these provisions, such as exemptions for small issuers, including issuers³⁷ that have less than \$10 billion in assets,³⁸ and exemptions for government-administered payment programs and reloadable prepaid cards.³⁹

The Board of Governors of the Federal Reserve System (Board) may regulate any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction.⁴⁰ The Board must consider the following factors when issuing standards and prescribing regulations:

- The nature, type, and occurrence of fraud in electronic debit transactions;
- The extent to which the occurrence of fraud depends on whether authorization in an electronic debit transaction is based on signature, PIN, or other means;
- The available and economical means by which fraud on electronic debit transactions may be reduced;
- The fraud prevention and data security costs expended by each party involved in electronic debit transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers and payment card networks);

³² Forbes Article.

³³ 15 U.S.C. s. 1693 et. seq.

³⁴ 15 U.S.C. s. 1693(b); 12 C.F.R. s. 205.1(b).

³⁵ 15 U.S.C. s. 1693o-2.(c)(9) defines "issuer" as any person who issues a debit card, or credit card, or the agent of such person with respect to such card.

³⁶ 15 U.S.C. s. 1693o-2.(a)(2); 12 C.F.R. s. 235.3(a).

³⁷ 15 U.S.C. s. 1693o-2.(a)(6)(B) limits the definition of "issuer," for purposes of this provision, to the person holding the asset account that is debited through an electronic debit transaction.

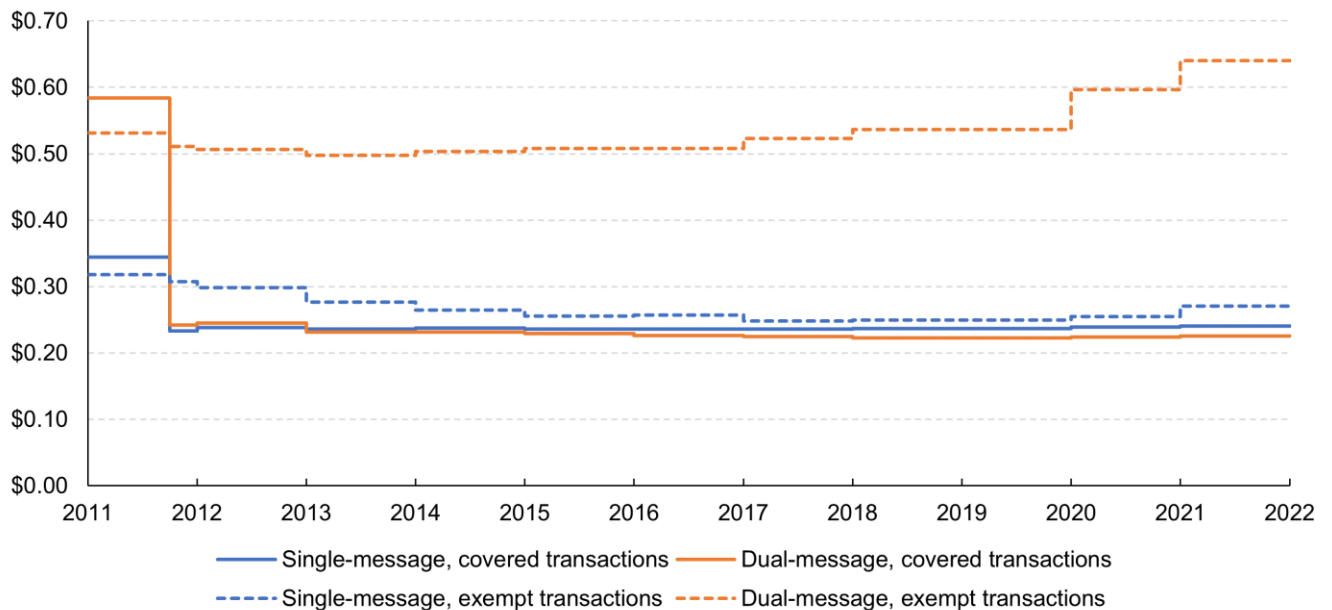
³⁸ 15 U.S.C. s. 1693o-2.(a)(6)(A).

³⁹ 12 C.F.R. s. 1693o-2.(a)(7) (providing that exemptions relating to certain transactions when debit and general-use prepaid card are used by a person pursuant to a Federal, State, or local government-administered payment program).

⁴⁰ 15 U.S.C. s. 1693o-2.(a)(1).

- The costs of fraudulent transactions absorbed by each party involved in such transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers and payment card networks);
- The extent to which interchange transaction fees have in the past reduced or increased incentives for parties involved in electronic debit transactions to reduce fraud on such transactions; and
- Such other factors as the Board considers appropriate.⁴¹

The Board issued regulations which limit the amount of interchange transaction fee that an issuer may receive or charge for any electronic debit transaction to no more than \$0.21 plus 0.05 percent multiplied by the value of the transaction,⁴² plus a \$0.01 fraud prevention adjustment.⁴³ The Federal Reserve has published data on the average debit card interchange fee from 2011 to 2022, which is summarized in the table below.⁴⁴



The Board reports that Visa, MasterCard, and Discover (exempt and covered transactions)⁴⁵ have an average debit card interchange fee per transaction of \$0.36, \$0.46, and \$0.44, respectively, with an interchange fee as a percentage of the average debit card transaction value of 0.76%, 0.94%, and 1.35%, respectively.⁴⁶

⁴¹ 15 U.S.C. s. 1693o-2.(a)(5)(B)(ii).

⁴² 12 C.F.R. s. 235.3(b).

⁴³ 12 C.F.R. s. 235.4(a).

⁴⁴ The Board, *Regulation II (Debit Card Interchange Fees and Routing): Average Debit Card Interchange Fee by Payment Card Network*, available at: [Federal Reserve Board - Regulation II - Average Debit Card Interchange Fee by Payment Card Network](#) (last visited Mar. 10, 2023).

⁴⁵ *Id.* (noting that covered transaction are transactions processed by issuers that are subject to the interchange fee standard that do not qualify for an exemption).

⁴⁶ *Id.* (providing a table of detailed

The EFTA does not annul, alter, or affect the laws of any State⁴⁷ relating to, amongst other things, electronic funds transfers⁴⁸ except to the extent that the laws are inconsistent with the provisions under the EFTA, and then only to the extent of the inconsistency.⁴⁹ The Bureau of Consumer Financial Protection may exempt from the provisions of the EFTA any class of electronic fund transfers in State law if the Bureau determines that such law is “substantially similar” to the EFTA and that there is adequate provision of enforcement.⁵⁰ No state laws regulating the amount of interchange fees that may be charged to the merchant for electronic debit transactions have been identified.

Florida Taxes

Sales and Use Tax

Florida levies a 6 percent sales and use tax on the sale⁵¹ or rental of most tangible personal property,⁵² admissions,⁵³ transient rentals,⁵⁴ and a limited number of services. Chapter 212, F.S., contains provisions authorizing the levy and collection of Florida’s sales and use tax, as well as

⁴⁷ 15 U.S.C. s. 1693a.(11) defines “State” as any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

⁴⁸ 15 U.S.C. s. 1693a.(7) defines “electronic fund transfer” as any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone. Such term does not include (A) any check guarantee or authorization service which does not directly result in a debit or credit to a consumer’s account; (B) any transfer of funds, other than those processed by automated clearinghouse, made by a financial institution on behalf of a consumer by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer; (C) any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission; (D) any automatic transfer from a savings account to a demand deposit account pursuant to an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed upon minimum balance in the consumer’s demand deposit account; or (E) any transfer of funds which is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution which is not pursuant to a prearranged plan and under which periodic or recurring transfers are not contemplated; as determined under regulation of the Bureau. 15 U.S.C. s. 1693a.(9) defines “financial institution” as a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer.

⁴⁹ 15 U.S.C. s. 1693q; 12 C.F.R. s. 205.12(b)(1).

⁵⁰ 15 U.S.C. s. 1693r; 12 C.F.R. s. 205.12(c)(1).

⁵¹ Section 212.02(15), F.S., defines “sale” as (a) any transfer of title or possession, or both, exchange

⁵² Section 212.05(1)(a)1.a., F.S. Section 212.02(19), F.S., defines “tangible personal property” as personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses, including electric power or energy, boats, motor vehicles and mobile homes as defined in s. 320.01(1) and (2), aircraft as defined in s. 330.27, and all other types of vehicles.

⁵³ Section 212.04(1)(b), F.S. Section 212.02(1), F.S., defines “admissions” as the net sum of money after deduction of any federal taxes for admitting a person or vehicle or persons to any place of amusement, sport, or recreation or for the privilege of entering or staying in any place of amusement, sport, or recreation, including, but not limited to, theaters, outdoor theaters, shows, exhibits, games, races, or any place where charge is made by way of sale or tickets, gate charges, seat charges, box charges, season pass charges, cover charges, greens fees, participation fees, entrance fees or other fees or receipts of anything of value measured on an admission or entrance or length of stay or seat box accommodations in any place where there is any exhibition, amusement, sport, or recreation, and all dues and fees paid to private clubs and membership clubs providing recreational or physical fitness facilities, including, but not limited to, golf, tennis, swimming, yachting, boating athletic, exercise, and fitness facilities, except physical fitness facilities owned or operated by any hospital licensed under ch. 395, F.S.

⁵⁴ Section 212.03(1)(a), F.S.

the exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.⁵⁵

Counties are authorized to impose local discretionary sales surtaxes in addition to the state sales tax.⁵⁶ A surtax applies to “all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202.”⁵⁷ The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold or delivered. Discretionary sales surtax rates currently levied vary by county in a range of 0.5 to 1.5 percent.⁵⁸

Generally, tangible personal property that is sold in an isolated or occasional sale is exempt from the state sales tax.⁵⁹ A seller makes an isolated or occasional sale if the sale or series of sales occurs no more than twice during any 12-month period.⁶⁰ A seller is required to register as a dealer if he or she completes more than three sales of the same type of item during a 12-month period. The sale of mobile homes, aircrafts, boats, and motor vehicles are expressly excluded from the isolated or occasional state sales and use tax exemption if certain circumstances are met.⁶¹

According to estimates prepared by CMPSI, Revenue Estimating Conference reports suggest that Florida sales tax revenue for FY 2020-2021 and FY 2021-2022 were \$30.4 billion and \$38.6 billion, respectively.⁶² CMSPI estimated the interchange fees on these taxes during the same period to be \$208.5 million and \$288.2 million, respectively.⁶³

Tourist Development Tax⁶⁴

A tourist development tax is a county tax on consideration paid on residential rentals of six months or less.⁶⁵ The tax funds tourism-related uses specified in the authorizing statute. The Local Option Tourist Development Act⁶⁶ authorizes counties to levy five separate taxes on transient rental transactions. Depending on a county’s eligibility to levy such taxes, the maximum tax rate varies from a minimum of 3 percent to a maximum of 6 percent:

⁵⁵ Section 212.07(2), F.S.

⁵⁶ Section 212.055, F.S.

⁵⁷ Section 212.054(2)(a), F.S.

⁵⁸ Office of Economic and Demographic Research, *Florida Tax Handbook*, 227-228 (2021), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2021.pdf> (last visited Mar. 10, 2023).

⁵⁹ Fla. Admin. Code R. 12A01.037(1). See also, s. 212.02(2), defining “business” as activity engaged in by a person with the object of private or public gain, benefit, or advantage.

⁶⁰ Fla. Admin. Code R. 12A-1.037(3)(b).

⁶¹ See, s. 212.05(1)(a)1.b., and Fla. Admin. Code R. 12A-1.037(2)(a)1.

⁶² Email from French Brown, Attorney at Dean Mead, to Jacqueline Moody, Florida Senate Committee on Banking and Insurance Senior Attorney, *HB 677/SB 564*, (Feb. 24, 2023) (on file with the Senate Committee on Banking and Insurance).

⁶³ *Id.*

⁶⁴ Section 125.0104, F.S.

⁶⁵ Section 125.0104(3)(a)1., F.S.

⁶⁶ Section 125.0104, F.S.

- The original tourist development taxes may be levied at the rate of 1 or 2 percent.^{67,68}
- An additional 1 percent tax may be levied by counties that have previously levied a tourist development tax at the 1 or 2 percent rate for at least three years.⁶⁹
- A high tourism impact tax may be levied at an additional 1 percent.⁷⁰
- A professional sports franchise facility tax may be levied up to an additional 1 percent.⁷¹
- An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.⁷²

Prior to the authorization of the original 1 or 2 percent tourist development tax, the levy must be approved by a countywide referendum,⁷³ and additional tourist development tax levies must be authorized by a vote of the county's governing authority or by voter approval of a countywide referendum.⁷⁴ The original tax may be repealed by a referendum initiated by a petition signed by 15 percent of voters⁷⁵ subject to the interest of the holders of any revenue bonds repayment of which is secured by the tax. Once the tax is in place, additional taxes may be levied by a vote of the county commissioners.⁷⁶

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 655.969, F.S., in the Financial Institutions Code that prohibits payment card networks from charging interchange fees on tax amounts collected in electronic payment transactions.

The bill prohibits interchange fees from being charged on tax amounts that are listed separately on the payment invoice, sales slip, or other evidence of sale for any electronic payment transaction. If a merchant or seller informs the payment card networks of the tax amounts at the time of the sale, the tax amount must be deducted from the amount of the electronic payment transaction before the interchange fee is calculated on such transaction. If the merchant does not inform the payment card network of the amount of tax on such transaction at the time of the sale, the payment card network must accept proof of tax amounts collected on sales after the

⁶⁷ Section 125.0104(3)(c), F.S.

⁶⁸ During Fiscal Year 2021-22, the 62 counties currently levying this tax will realize an estimated \$445 million in revenue. Office of Economic & Demographic Research (EDR), 2021 Local Financial Information Handbook at 255, *available at* <http://edr.state.fl.us/Content/local-government/reports/lgfi21.pdf> (hereinafter cited as "2021 Local Financial Information Handbook") (last visited Mar. 10, 2023).

⁶⁹ Section 125.0104(3)(d), F.S. Fifty-six of the eligible 59 counties levy this tax, with an estimated 2021-22 state fiscal year collection of \$185 million. 2021 Local Financial Information Handbook at 259.

⁷⁰ Section 125.0104(3)(m), F.S. Eight of the nine eligible counties levy this tax, with an estimated 2021-22 state fiscal year collection of \$102 million. 2021 Local Financial Information Handbook at 265.

⁷¹ Section 125.0104(3)(l), F.S. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities or professional sports franchises, and convention centers and to promote and advertise tourism. Forty-five of the 67 eligible counties levy this additional tax, with an estimated 2021-22 state fiscal year collection of \$205 million. 2021 Local Financial Information Handbook at 263.

⁷² Section 125.0104(3)(n) F.S. Thirty-one of the eligible 65 counties levy the additional professional sports franchise facility tax, with an estimated 2021-22 state fiscal year collection of \$150 million. 2021 Local Financial Information Handbook at 269.

⁷³ Section 125.0104(6), F.S.

⁷⁴ Section 125.0104(3)(d), F.S.

⁷⁵ Section 125.0104(6)(d), F.S.

⁷⁶ Section 125.0104(3)(l), (m), and (n), F.S.

transaction is finalized and promptly credit the merchant or seller's settlement account. This provision may be relied upon by smaller businesses that may not have the technology to transmit the tax amount data electronically at the time of the sale.

A payment card network that fails to comply with the provisions under the bill is subject to a civil penalty of up to \$1,000 per violation and must refund to the merchant the amount of interchange fees charged on the tax of an electronic payment transaction.

The following terms are defined for purposes of the section created under the bill:

- “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.
- “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, whether authorization is based on signature, personal identification number, or other means;
 - Includes a general-use prepaid card⁷⁷; and
 - Excludes paper checks.
- “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, personal identification number, or other means.
- “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.
- “Issuer” means a person, or the person’s agent, issuing a debit card or credit card.
- “Payment card network” means an entity that:
 - Directly or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that routes information and data to conduct debit card or credit card transaction authorization, clearance, and settlement; and
 - A merchant or seller uses to accept as a form of payment a brand of debit card, credit card, or other device that may be used to carry out debit or credit transactions.
- “Settlement” means the transfer of funds from a customer’s account to a seller or merchant upon electronic submission of finalized sales transactions to the payment card network.
- “Tax” means all taxes and fees levied under chs. 125 and 212, F.S.

Section 2 of the bill provides for an effective date of July 1, 2023

⁷⁷ 15 U.S.C. s. 16931-1 defines “general-use prepaid card” to mean a card or other payment code or device issued by any person that is (i) redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines; (ii) issued in a requested amount, whether or not that amount may, at the option of the issuer, be increased in value or reloaded if requested by the holder; (iii) purchased or loaded on a prepaid basis; and (iv) honored, upon presentation, by merchants for goods or services, or at automated teller machines.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that the key players in processing credit card and debit card transactions may be required to upgrade technology and security measures to be able to transmit tax amount data, there is an indeterminate negative fiscal impact on them. To the extent that merchants submit tax amount data to payment card networks, there is an indeterminate positive fiscal impact on merchants and an indeterminate negative fiscal impact on issuing banks because of the reduced interchange fees on tax amounts for credit card and debit card transactions.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 655.969 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
