To amend the Truth in Lending Act to prohibit unfair practices in electronic payment system networks, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 13, 2009

Mr. Welch (for himself, Mr. Shuster, Mr. Barrow, Mr. Carney, Mr. Ellison, Mr. Kagen, Ms. Zoe Lofgren of California, and Mr. Platts) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Truth in Lending Act to prohibit unfair practices in electronic payment system networks, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Credit Card Interchange Fees Act of 2009”.
SEC. 2. PROHIBITION ON CERTAIN UNFAIR CREDIT AND FUND TRANSFER PRACTICES.

(a) In general.—The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by adding at the end the following new chapter:

"CHAPTER 6—PROHIBITION ON UNFAIR PRACTICES IN ELECTRONIC PAYMENT SYSTEM NETWORKS"

"Sec. 191. Definitions.

"Sec. 192. Additional charges on merchants and consumers for premium payment cards prohibited.

"Sec. 193. Certain creditor or credit card network-imposed restrictions on merchants prohibited.

"Sec. 194. Fair and transparent transactions.

"Sec. 195. Enforcement."

"SEC. 191. DEFINITIONS.

“For purposes of this title, the following definitions shall apply:

“(1) CHARGE CARD.—The term charge card has the same meaning as in section 127(c)(4)(E).

“(2) DEBIT CARD.—The term ‘debit card’ means any card or other device issued by a financial institution (as defined in section 903(8)) to a consumer for use in initiating electronic fund transfers (as defined in section 903(6)) from the account of the consumer at such financial institution for the purpose of transferring money between accounts or obtaining money, property, labor, or services.
“(3) Electronic payment system network.—The term ‘electronic payment system network’ means a network that provides, through licensed members, processors, or agents—

“(A) for the issuance of payment cards (by credit card issuers in the case of a credit card, charge card issuers in the case of a charge card, or financial institutions (as defined in section 903(8)) in the case of debit cards) bearing any logo of the network;

“(B) the proprietary services and infrastructure that route information and data to facilitate transaction authorization, clearance, and settlement that merchants must access in order to accept payment cards bearing any logo of the network as payment for goods and services; and

“(C) for the screening and acceptance of merchants into the network in order to allow such merchants to accept payment cards bearing any logo of the network as payment for goods and services.

“(4) Licensed member.—The term ‘licensed member’, in connection with any electronic payment system network, includes—
“(A) any creditor or charge card issuer that is authorized to issue credit cards or charge cards bearing any logo of the network;

“(B) any financial institution (as defined in section 903(8)) that is authorized to issue debit cards to consumers who maintain accounts at such institution; and

“(C) any person, including any financial institution, on occasion referred to as an ‘acquirer’ that is authorized—

“(i) to screen and accept merchants into any program under which any payment card bearing any logo of such network may be accepted by the merchant for payment for goods or services;

“(ii) to process transactions on behalf of any such merchant for payment; and

“(iii) to complete financial settlement of any such transaction on behalf of such merchant.

“(5) MERCHANT.—The term ‘merchant’ means any person in the business of selling or providing any good or service for consideration.
“(6) Payment card.—The term ‘payment card’ means a credit card, a charge card, or a debit card.

“SEC. 192. ADDITIONAL CHARGES ON MERCHANTS AND CONSUMERS FOR PREMIUM PAYMENT CARDS PROHIBITED.

“(a) In General.—An electronic payment system network may not, directly or through any agent, processor, or licensed member of the network, require or permit any merchant to pay any interchange, processing, or other fee in connection with any payment card transaction initiated through a premium payment card in any amount in excess of the amount of any such interchange, processing, or other fee that would be imposed in connection with such payment card transactions if initiated through a nonpremium payment card.

“(b) Premium Definition.—For purposes of subsection (a), the following definitions shall apply:

“(1) Premium Payment Card.—The term ‘premium payment card’ means a payment card that provides rewards or other cardholder benefits or services for the use of the card other than those benefits offered to any customer within the electronic payment system network.
“(2) NONPREMIUM PAYMENT CARD.—The term ‘nonpremium payment card’ means a payment card bearing any logo of an electronic payment system network that is not a premium payment card.

“SEC. 193. CERTAIN CREDITOR OR CREDIT CARD NETWORK-IMPOSED RESTRICTIONS ON MERCHANTS PROHIBITED.

“(a) PRICING DISPLAY RESTRICTIONS.—With respect to any credit card which may be used for extensions of credit through an electronic payment system network in connection with sales transactions in which the merchant is a person other than the card issuer, the electronic payment system network may not, directly or through any agent, processor, or licensed member of the network, by contract, or otherwise, restrict the merchant’s discretion as to how to display or advertise the merchant’s prices.

“(b) HONOR ALL CARDS RULE.—An electronic payment system network may not, directly or through any agent, processor, or licensed member of the network, prohibit any merchant that otherwise accepts payment cards bearing any logo of the network from refusing to accept any particular type of card due to its cost, except that the seller may be prohibited from refusing to accept a payment card issued by a particular creditor or financial institution without respect to any cost differences.
“(c) Steering Consumers.—An electronic payment system network may not, directly or through any agent, processor, or licensed member of the network, by contract, or otherwise, inhibit the ability of any merchant to direct consumers to the merchant’s preferred form of payment.

“(d) Single Entity Rule.—An electronic payment system network may not, directly or through any agent, processor, or licensed member of the network, by contract, or otherwise, require any merchant to accept payment cards at 1 or more business locations in order to be able to accept payment cards at another business location.

“(e) Chargebacks for Transactions on Certain POS Terminals That Exceed the Allowable Amount on Such Devices.—An electronic payment system network may not, directly or through any agent, processor, or licensed member of the network, by contract, or otherwise, allow or require a chargeback to any merchant for any payment involving any payment and transfer initiated by the consumer at a point-of-sale terminal operated by the merchant on the basis that the amount of the transaction exceeded any preauthorized or predetermined amount for such terminal.

“(f) Merchants Permitted to Establish Minimum or Maximum Amounts for Payment by Payment Cards.—An electronic payment system network
may not, directly or through any agent, processor, or licensed member of the network, by contract, or otherwise, prohibit any merchant from setting any maximum amount or minimum amount for the use of a payment card bearing any logo of such network by a consumer to pay for a transaction with such merchant.

“(g) Restrictions on Network Routing Prohibited.—An electronic payment system network may not, directly or through any agent, processor, or licensed member of the network, by contract, or otherwise, prohibit any merchant from directing the routing of payment card transactions for processing in the way chosen by the merchant.

“(h) Prohibition on Any Minimum Requirement for Number of Transactions.—An electronic payment system network may not, directly or through any agent, processor, or licensed member of the network, by contract, or otherwise—

“(1) impose a requirement on any merchant to meet any minimum number of transactions, in any period, in which the consumers pay for such transactions using a payment card bearing any logo of such network; or

“(2) impose a fee on, or take any other action that is adverse to the interests of, a merchant for
the failure of the merchant to meet any minimum number of such transactions in any period.

"SEC. 194. FAIR AND TRANSPARENT TRANSACTIONS.

“(a) Disclosure of Contract Terms.—An electronic payment system network, and any agent, processor, or licensed member of the network, may not establish or maintain, directly or indirectly by contract or through a licensing arrangement, any agreement with a merchant, unless the network, agent, processor, or licensed member has made available to the merchant all of the rules, terms, and conditions to which such merchant will be bound under such agreement, including the complete operating rules of the relevant payment system using payment cards bearing any logo of such network, without restrictions on the merchant’s use of any such information.

“(b) Review of Rules, Terms, and Agreements.—The Federal Trade Commission shall—

“(1) prescribe regulations to—

“(A) ensure that all of the rules, terms, and conditions to which a merchant or consumer is subject under an agreement with an electronic payment system network, or any agent, processor, or licensed member of the network, directly or indirectly, by contract or through a licensing arrangement, are not unfair
or deceptive to consumers and merchants and
are not anticompetitive; and

“(B) prohibit any unfair or deceptive act
or practice or anticompetitive act or practice
that may otherwise be permitted under or result
from any rule, term, or condition described in
subparagraph (A); and

“(2) regularly review all of the rules, terms, and
conditions described in paragraph (1)(A) established
by each electronic payment system network, or any
agent, processor, or licensed member of the network.

“(c) INTERCHANGE AND OTHER FEES.—

“(1) COLLECTION AND DISSEMINATION OF IN-
FORMATION.—The Board shall collect, publish, and
disseminate to the public—

“(A) complete information on the inter-
change, processing and other fees charged by
each electronic payment system network, or any
agent, processor, or licensed member of the net-
work, in connection with any aspect of trans-
actions initiated by consumers using payment
cards bearing any logo of such network, includ-
ing fees imposed by the payment card issuer in
connection with any such transaction; and
“(B) all of the rules, terms, and conditions
to which a merchant or a consumer is subject
under an agreement with an electronic payment
system network, or any agent, processor, or li-
censed member of the network, directly or indi-
rectly by contract or through a licensing ar-
rangement for transactions indicated by con-
sumers using payment cards bearing any logo
of such network.

“(2) REGULATIONS.—For purposes of this sub-
section, the Board may prescribe regulations and
issue orders requiring any electronic payment system
network, and any agent, processor, or licensed mem-
ber of any such network, to submit any information,
including rules, agreements, and contracts, that the
Board determines to be necessary or appropriate for
the Board to meet the requirements of paragraph
(1).

“SEC. 195. ENFORCEMENT.

“Subsections (a), (b), and (h) of section 130 shall be
applied for purposes of this chapter by substituting the
term ‘an electronic payment system network, or any agent,
processor, or licensed member of any such network’ for
‘creditor’ each place such term appears in such sub-
sections.”.
(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 127(a) of the Truth in Lending Act (U.S.C. 1637(a)) is amended by inserting after paragraph (8) the following new paragraph:

“(9) In the case of any account under which a credit card issued in connection with the account bears the logo of any electronic payment system network, the amounts of any fees charged by the network, or any agent, processor, or licensed member of the network, in connection with any aspect of transactions initiated by the consumers using such credit card, including any interchange, processing, or other fees.”.

(2) Section 127(b) of the Truth in Lending Act (U.S.C. 1637(b)) is amended by adding at the end the following new paragraph:

“(13) In the case of any account under which a credit card issued in connection with the account bears the logo of any electronic payment system network, if any fee was charged by the network, or any agent, processor, or licensed member of the network, in connection with any aspect of a transaction which resulted in an extension of credit reported on such statement, the amount of such fee, including any interchange, processing, or other fee.”.
(3) Section 127(c)(1)(A) of the Truth in Lending Act (U.S.C. 1637(c)(1)(A)) is amended by adding at the end the following new clause:

“(v) INTERCHANGE AND OTHER FEES.—In the case of an application or solicitation to open an account under which a credit card issued in connection with the account would bear the logo of any electronic payment system network, the amounts of any fees charged by the network, or any agent, processor, or licensed member of the network, in connection with any aspect of any transaction initiated by the consumer using such credit card, including any interchange, processing, or other fees.”.

(4) Section 127(c)(4)(A) of the Truth in Lending Act (U.S.C. 1637(c)(4)(A)) is amended by adding at the end the following new clause:

“(iv) In the case of an application or solicitation to open an account under which a charge card issued in connection with the account would bear the logo of any electronic payment system network, the amounts of any fees charged by the
network, or any agent, processor, or licensed member of the network, in connection with any aspect of transactions initiated by the consumer using such charge card, including any interchange, processing, or other fees.”.

(5) Section 130(a) of the Truth in Lending Act (U.S.C. 1640(a)) is amended by striking “chapter 4 or 5” and inserting “chapter 4, 5, or 6”.

(6) Section 130(b) of the Truth in Lending Act (U.S.C. 1640(b)) is amended by inserting “or 6” after “chapter 5”.

(7) Section 130(g) of the Truth in Lending Act (U.S.C. 1640(g)) is amended by striking “chapter 4 or 5” and inserting “chapter 4, 5, or 6”.

(8) Section 906(e) of the Electronic Fund Transfer Act (U.S.C. 1693d(e)) is amended—

(A) in paragraph (3), by striking “and” after the semicolon at the end;

(B) in paragraph (4), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new paragraph:

“(5) in the case of an account under which an electronic fund transfer may be initiated by the con-
sumer by means of any card or other device issued by the financial institution which bears the logo of any electronic payment system network, if any fee was charged by the network, or any agent, processor, or licensed member of the network, in connection with any aspect of a transaction which resulted in an electronic fund transfer reported on such statement, the amount of such fee, including any interchange, processing, or other fee.”.

(c) CLERICAL AMENDMENT.—The table of chapters for the Truth in Lending Act is amended by inserting after the item relating to chapter 5 the following new item:

“6. PROHIBITION ON UNFAIR PRACTICES IN ELECTRONIC PAYMENT SYSTEM NETWORKS......................................................................................................................... 191”.

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