

HOUSE BILL No. 2857

By Representative Swenson

2-13

9 AN ACT relating to merchants; providing for access to certain credit and
10 debit card rate information.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. As used in sections 1 through 4, and amendments thereto,
14 the following terms have the following meanings:

15 (a) “Acquiring bank” means a financial institution licensed to do busi-
16 ness in this state providing merchant accounts;

17 (b) “chargeback” means a credit card or debit card transaction that
18 is either billed back to a merchant or deducted from a merchant’s account;

19 (c) “credit card” means:

20 (1) Any instrument or device, whether known as a credit card, charge
21 card, credit plate, courtesy card or identification card or by any other
22 name, issued with or without a fee by an issuer for the use of the card-
23 holder in obtaining money, goods, services or anything else of value, ei-
24 ther on credit or in possession or in consideration of an undertaking or
25 guaranty by the issuer of the payment of a check drawn by the cardholder
26 on a promise to pay in part or in full at a future time, whether or not all
27 or any part of the indebtedness represented by this promise to make
28 deferred payment is secured or unsecured;

29 (2) any stored value card, smart card or other instrument or device
30 that enables a person to obtain goods, services or anything else of value
31 through the use of value stored on the instrument or device; and

32 (3) the number assigned to an instrument or device described in par-
33 agraphs (1) or (2) even if the physical instrument or device is not used or
34 presented;

35 (d) “debit card” means:

36 (1) Any instrument or device whether known as a debit card, ATM
37 card, electronic benefit transfer card or any other access instrument or
38 device, other than a check, that is signed by the holder or other authorized
39 signatory on the deposit account that draws moneys from a deposit ac-
40 count in order to obtain money, goods, services or anything else of value;
41 and

42 (2) the number assigned to an instrument or device described in par-
43 agraph (1) even if the physical instrument or device is not used or

1 presented;

2 (e) “financial institution” means any bank, savings association, savings
3 bank, credit union or industrial loan company;

4 (f) “interchange fee” means the fee that an acquiring bank pays to an
5 issuing bank when a cardholder uses a credit card or debit card as pay-
6 ment during a retail transaction;

7 (g) “issuing bank” means a financial institution which issues credit
8 cards to cardholders;

9 (h) “merchant account” means a bank account that allows a merchant
10 to accept credit card or debit card payments; and

11 (i) “merchant” means a person or entity licensed to business in this
12 state which offers goods or services for sale in this state.

13 Sec. 2. (a) Whenever a contract authorizing a merchant to accept a
14 credit card or debit card specifies that the merchant is bound by the rules
15 of a financial institution, the contracting financial institution must:

16 (1) Give the merchant access in this state to the complete rules re-
17 ferenced in the contract, either individually or through an acquiring bank;

18 (2) notify the merchant when a referenced rule has been changed or
19 new rule added; and

20 (3) provide a copy of the new or modified rule.

21 (b) A contract authorizing a merchant to accept a credit card must
22 contain:

23 (1) The contracting financial institution’s complete schedule of inter-
24 change fees, credit card and debit card transaction rates and any other
25 fees that the financial institution charges to merchants; and

26 (2) an explanation of which rates apply to the merchant and the sit-
27 uations in which those rates apply.

28 (c) A contract authorizing a merchant to accept a credit card or debit
29 card may not require a merchant to agree not to disclose the contracting
30 financial institution’s rules or rates as a condition of receiving access to
31 the rules or rates.

32 Sec. 3. (a) If an issuing bank or credit card company fails to give a
33 merchant access to its rules or rates as required by section 2, and amend-
34 ments thereto, then:

35 (1) The merchant shall not be liable for any chargeback or fees as-
36 sociated with its credit card or debit card transactions from the time the
37 contract was executed until the rules and rates are provided; and

38 (2) the issuing bank or credit card company will be liable for a civil
39 penalty of \$10,000 per charge levied prior to providing the rules.

40 (b) Any merchant whose rights under this act have been violated may
41 maintain a civil action for damages or equitable relief as provided for in
42 this section.

43 Sec. 4. If any provision of this act or its application to any person or

1 circumstance is held invalid, the invalidity shall not affect any other pro-
2 vision or application of the act which can be given effect without the
3 invalid provision or application. To this end the provisions of this act are
4 severable.

5 Sec. 5. This act shall take effect and be in force from and after its
6 publication in the statute book.