

TESTIMONY: STATEMENT IN OPPOSITION TO H.B. 8212

Dear Chair Solomon, First Vice Chair O'Brien, Second Vice Chair Caldwell, and Members of the Rhode Island House Corporations Committee:

We write on behalf of Electronic Payments Coalition (EPC) in opposition to H.B. 8212. EPC is a coalition of payments industry stakeholders, including credit unions, community banks, trade associations, payment card networks, and banks that speaks on behalf of the payments industry to protect the value, innovation, convenience, security, and competition that exists in the modern electronic payments system. EPC educates policymakers, consumers, and the media on the system's role in economic growth and the importance of consumer choice, security, innovation, and stability for the continued growth of global commerce.

PROHIBITION OF THE COLLECTION OF INTERCHANGE ON THE SALES TAX PORTION PORTION OF ELECTRONIC TRANSACTIONS

H.B. 8212 would prohibit the collection of interchange on the sales tax portion of electronic transactions.¹ The bill harms Rhode Island consumers and small businesses, benefits corporate mega-retailers, and could reduce Rhode Island's state sales tax revenue.

This fundamentally flawed legislation attempts to do what has never been done. Similar proposals to prohibit the collection of interchange on the sales tax portion of electronic transactions were considered and rejected in over 30 states over the past 15 years. In 2024, Illinois incorporated the language into its state budget, resulting in a federal lawsuit. The U.S. Office of the Comptroller of the Currency characterized Illinois' law as an "ill conceived, highly unusual, and largely unworkable state law that threatens to fragment and disrupt this efficient and effective system," while also weakening financial institutions' abilities to "prevent fraud, manage risk, and provide critical services to consumers."

That proposal – similar proposal to H.B. 8212 – is in active litigation in the federal court system and the District Court decision has been appealed to the Seventh Circuit. While the legal issue before the courts involves federal preemption under the National Bank Act, the District Court noted, "Compliance with the IFPA will be costly, with declarations indicating potentially business-ending consequences for some members of the market..."

The Court went on to note, "There is no doubt that the IFPA [Interchange Fee Prohibition Act] presents complicated compliance challenges." The Court continued, "The Interchange Fee Provision is indisputably disruptive, requiring additional investments, hires, and new procedures to replace the current process for authorizing and settling debit and credit card transactions..."

We strongly believe there is no reason for Rhode Island or any other state to take up this bill while it is being litigated in Federal Court.

¹ Interchange is a small fee (an average of 1.8%) paid by merchants on electronic credit transactions to cover handling costs, fraud and bad debt costs, the risk involved in approving the payment, and the operation of the payment network. Assuming such a rate with a 7.0% state sales tax, the interchange fee on the sales tax portion of a \$100 transaction amounts to only \$0.126)

To provide vendors remuneration for the collection of state sales tax, nearly 30 states offer a vendor collection discount.² In contrast to H.B. 8212's proposal to upend the current well-functioning system, these states have chosen a workable policy that is more sound, practical, and fair in providing desired relief to small businesses from the burden of collecting and remitting state sales tax.

Despite retailer group false claims, neither the software nor point-of-sale hardware exists to separate out sales tax from the underlying cost of goods or services purchased on consumer debit and credit cards. When a retailer makes a sale via electronic payment, the system that processes the transaction recognizes only the final purchase amount on which the merchant discount fee is based. The system does not transmit information regarding the product or services sold, or the amount of sales tax collected.

Were H.B. 8212 enacted, Rhode Island merchants would face the burden at the point of sale of collecting sales tax as a separate transaction, essentially requiring *two* transactions for *every* taxable sale. This would force consumers to pay the sales tax portion of every transaction by cash or check.

Should this bill pass, both merchants and consumers would be negatively impacted because, as noted above, merchants would need new, yet-to-be developed, specialized terminals and software to itemize and communicate segmented data to the card networks at the time of sale. This would especially hurt small businesses – particularly those in rural and underserved areas – which do not have sufficient volume to offset the costs any new system would impose. This would result in rewarding mega-retailers while leaving Rhode Island's smallest and most vulnerable businesses to shoulder these new costs, which would ultimately be passed onto consumers.

Retailer claims that interchange rates have increased over recent years are also false. According to [Verisk Financial Research](#) and the Nilson Report, the average U.S. credit interchange rate has remained steady (1.8%) dating back to at least 2016.³ In the same period of time, merchants and retailers have seen their sales volumes rapidly increase, resulting in an increase in total *volume*. (Retailers also ignore that interchange is deductible on federal and state taxes as a cost of doing business. The tax deductions are applicable to the entire interchange expense, including tax.)

Claims and comparisons of gross profit margins of credit card networks versus retailers are highly misleading and miss the point regarding electronic acceptance. Small business owners know best what works for their businesses. Unnecessary, disruptive government intervention in a working payments system that merchants prefer is bad policy regardless of profit margins.⁴

Recent studies show that many merchants prefer electronic payment over cash payment due to the high costs of handling cash. In fact, on average, the cost of cash accounts for 9.1% of the cash a business receives—far greater than the 1% – 3% in fees charged for electronic transactions. In 2017 alone, \$96 billion was spent in the U.S. and Canada on cash-handling activities – more than the GDP of numerous nations.⁵ Moreover, U.S. retailers lose \$40 billion each year to cash theft – a risk avoided when accepting electronic payment.

² Avalara. "[Vendor discounts for filing sales tax on time, a state-by-state guide](#)." December 30, 2024.

³ Electronic Payments Coalition. "[EPC Q4 2022 Data Dashboard](#)." January 25, 2023.

⁴ Looking at the margins of card issuers, retailers, and the networks voluntarily participating in the two-sided market, retail and credit card issuance are both low margin businesses – retailers say their **overall** margins are around 3 percent, but credit card margins are frequently negative for thousands of community bank and credit union issuers, and only slightly better for large institutions; **overall profit margins for all banks are even lower**. Board of Governors of the Federal Reserve System. "[Report to Congress: Profitability of Credit Card Operations of Depository Institutions](#)." July 2022.

⁵ IHL Group. 2018.

CONCLUSIONS

Government should not interfere in a working, private market by disrupting private contracts between willing parties, thereby picking winners and losers. The U.S. Department of Justice has conducted multiple exhaustive, multi-year reviews of the electronic payments system and concluded – retailer claims notwithstanding – that there was no anti-competitive behavior. Retailer legal arguments of similar claims have likewise been rejected by the U.S. Supreme Court no fewer than four times.

It's critical to note that such a proposal would do nothing to help small businesses. Unlike corporate mega-stores who have internal staff and technological expertise along with sales volume allowing them to be among the few retailers who benefit financially, small businesses would actually incur net costs in updating hardware and software to accommodate the implementation of such a proposal. The vast majority of Rhode Island small businesses would take *years* to recoup the costs of implementation. And, at the very least, such retailers would need to run taxable transactions twice – once for the underlying cost of goods or services and a second to capture sales tax.

Finally, Rhode Island's local banks and credit unions are not supporting this bill because it would create chaos and uncertainty for them – and the customers they serve. Data from the Federal Reserve shows that, despite similar exemptions for community banks and credit unions, interchange revenue for these supposedly exempted entities decreased after legislation known as the Durbin Amendment placed mandates on debit cards. This revenue is critical to provide services for members, including access to free and low-cost credit.

If enacted, this proposal would create untold chaos for Rhode Island small businesses, consumers, and state-chartered financial institutions.

For the above stated reasons and more, we strongly encourage you to reject H.B. 8212.

Sincerely,

RICHARD HUNT
Executive Chairman