Electronic Payments Coalition

April 7, 2025

STATEMENT IN OPPOSITION TO H.B. 171

Dear Co-Chair Fields, Co-Chair Hall, and members of the Alaska House of Representatives House Labor & Commerce Committee:

We write on behalf of Electronic Payments Coalition (EPC) in opposition to H.B. 171. 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.

H.B. 171 would prohibit the collection of interchange on the sales tax and gratuity portion of electronic transactions.[1] The bill harms Alaska consumers and small businesses, benefits corporate mega-retailers, and could reduce tax revenue in those jurisdictions which impose sales tax.

This fundamentally flawed legislation attempts to do what has never been done. Similar proposals to prohibit the collection of interchange on the sales tax and gratuity 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."

On December 20, 2024, a federal judge for the United States District Court for the Northern District of Illinois issued a Preliminary Injunction of the Illinois Interchange Fee Protection Act, due to conflicts with the National Bank Act (NBA) and Homeowners Credit Loan Act (HOLA). The decision states that the banking industry is "likely to prevail on the merits of their claim" of federal preemption.[2]

In a subsequent February 6, 2025 order, the same judge expanded the Preliminary Injunction to include out-of-state state-chartered banks. However, industry observers commenting on the injunction noted that while "relief was expanded this week to out-of-state banks doing business in Illinois," other entities "including…in-state banks remain subject to the law."[3] **The result raised concerns about the highly negative disproportionate impact on state chartered financial institutions versus federally chartered ones.** These tend to be small institutions serving specific communities, and this would just further pressure an already challenging business model.

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[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 1.82% average local sales tax, the interchange fee on the sales tax portion of a $100 transaction amounts to only $0.03276.) Average combined local sales tax data taken from Tax Foundation: Taxes in Alaska.
https://taxfoundation.org/location/alaska/#:~:text=Alaska%20does%20not%20have%20a,estate%20tax%20or%20inheritance%20tax.

[2] *Illinois Bankers Association et al. v. Kwame Raoul*. Memorandum Opinion and Order, United States District Judge Virginia M. Kendall. December 20, 2024. p. 22

[3] *Chicago Tribune*, "Banks opposing state's landmark credit card fees law keep up arguments in court, Springfield." February 7, 2025.

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

To provide vendors remuneration for the collection of state sales tax, nearly 30 states offer a vendor collection discount.[4] In contrast to H.B. 171'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 or gratuity 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 and tip collected.

Were H.B. 171 enacted, Alaska merchants would face one of two options:

1. At point of sale, collect sales tax as a separate transaction, essentially requiring *two* transactions for *every* taxable sale. This would force consumers to pay the sales tax and gratuity portion via cash or check.

2. Merchants would have 180 days to send payment companies every detail of a person's shopping habits, creating an enormous consumer privacy issue. The current system is designed so that payment networks see very little of a consumer's personal information to process a payment. This bill would fundamentally change that, exposing consumers' private purchases through both intentional sharing – and worse – accidental exposure of sensitive consumer da-ta through increasingly common data breaches. The danger of exposure falls especially hard on the low-income, elderly, and survivors of identity theft – exposing vulnerable individuals to the very real threat of data breaches and misuse.

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 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 Alaska's smallest and most vulnerable businesses to shoulder these new costs, which would ultimately be passed onto consumers – all the while adding to environmental concerns associated with separate transactions for sales tax collection leading to longer checkout lines, more paper waste, and a regressive system that disproportionately impacts lower-income Alaskans.

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.[5] 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 and gratuity.)

[4] Avalara. "Vendor discounts for filing sales tax on time, a state-by-state guide." December 30, 2024.
[5] Electronic Payments Coalition. "EPC Q4 2022 Data Dashboard." January 25, 2023.

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.[6]

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.[7] Moreover, U.S. retailers lose $40 billion each year to cash theft – a risk avoided when accepting electronic payment.

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 megastores 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 Alaska 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, it is important to understand that we all care about small business and that banks large and small are not their problem; we are all under pressure from the dominance of the big box retailers—far and away the major beneficiaries of this type of legislation. Community banks and credit unions are not responsible for the hollowing out of main street—as one community banker put it, "show me a healthy main street, and I will show you a healthy bank." Years of low interest rates enabled big box stores to relentlessly attack the margins of small business, developing scale that simultaneously enabled them to pressure suppliers—including banks—into the most aggressive possible pricing arrangements, resulting in increased competition for small business while at the same time increasing their costs due to the disparity in bargaining power with suppliers.

This effect was compounded at the beginning of the pandemic when big box stores were deemed essential and permitted to stay open, while small businesses had to close, resulting in a wealth transfer of $250 billion—10 years' worth of small business revenue—in a few months.[8] Ironically, given the attempts of bill proponents to demonize credit card issuers, many small businesses were able to survive only because of electronic payments, which permitted them to switch to digital online transactions and "curbside" operations.

If enacted, Alaska consumers and small merchants would bear the brunt of the consequences of a less

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[6] 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.
[7] IHL Group. 2018.
https://www.ihlservices.com/news/analyst-corner/2020/06/the-greatest-wealth-transfer-in-the-history-of-retail-ever/

efficient, less secure, less private payments system. Safety and security have never been more important. Continuing to invest in secure payments technology is critical toward ensuring the U.S. economy and Alaska small business community are given the necessary resources they need to operate and thrive, especially during these particularly challenging times.

Again, it's important for lawmakers to have accurate facts when making important decisions affecting the citizens of Alaska.

For the above stated reasons and more, we strongly encourage you to reject H.B. 171.

Sincerely,

RICHARD HUNT
Executive Chairman