

## FAQ on the Swipe Fee Fairness and Consumer Safeguards Act

**Question:** What does the Swipe Fee Fairness and Consumer Safeguards Act do?

**Answer:** **The bill will provide relief to Colorado businesses and consumers from excessive swipe fees by prohibiting certain anticompetitive fee practices by payment card network companies like Visa and Mastercard.** Visa and Mastercard, which control more than 80 percent of the market for credit cards and debit cards, have set up a system of excessive card transaction fees that are significantly burdening Colorado businesses and inflating the prices consumers pay. The bill prohibits Visa and Mastercard from continuing anticompetitive practices such as fixing swipe fee rates on behalf of giant credit card-issuing banks, establishing fee rates that apply to the tax and tip portion of card transaction amounts, inappropriately charging merchants and consumers fees for disputed transactions, and more.

**Question:** Who is subject to the bill's prohibitions?

**Answer:** **Payment card networks like Visa and Mastercard.** The dominant card network duopoly of Visa and Mastercard has created a cartel structure for credit and debit cards whereby the networks set the interchange fee rates that card-issuing banks receive from merchants each time a card is swiped. Under this cartel structure, Visa and Mastercard put forward fee schedules that all card-issuing financial institutions in their networks follow when charging fees. This centralized fee-fixing by Visa and Mastercard means that banks do not have to compete with each other over the fees they receive on card transactions. Merchants have no ability to negotiate these fee rates, nor can most merchants realistically refuse to accept Visa and Mastercard given their dominant market share, so the fees keep going up. The bill reins in numerous anticompetitive practices that Visa and Mastercard engage in as the central players in this cartel structure, and the bill provides that merchants and consumers who are harmed by the card networks' practices can bring civil suits against the networks for damages and injunctive relief. The bill does not provide for enforcement actions against card-issuing banks or other entities besides payment card networks.

**Question:** What would be the practical impact of the bill on swipe fees?

**Answer:** **The bill would reduce excessive swipe fees and enable businesses, workers, charities and consumers to keep more of their own money.** Swipe fees are often the second or third highest cost for businesses, and in 2023, Colorado businesses paid more than \$2 billion in credit card interchange fees alone. Swipe fees keep increasing, with a total of more than \$172 billion in swipe fees imposed nationwide in 2023. The bill would constrain excessive swipe fees in the following ways:

- Visa and Mastercard would be prohibited from setting credit card interchange fee rates on behalf of the nation's largest banks (those with \$50 billion or more in assets), which means those banks would have to come up with their own fee rates in a competitive market environment rather than simply using Visa's and Mastercard's fee schedules. And if a giant bank sets its own credit interchange fee rates too high, under the bill a merchant would have the choice whether to continue accepting cards issued by that giant bank (currently Visa and Mastercard have contractual rules that require merchants to accept all Visa and Mastercard cards no matter how high the fees might be, but the bill provides an exception to those rules). Smaller banks could continue to use Visa's and Mastercard's fee schedules as they do today and would remain subject to the networks' honor-all-cards rules.
- For those banks that continue to use Visa's and Mastercard's fee schedules for credit or debit transactions, Visa and Mastercard would be prohibited from continuing to set fee rates in a way that charges interchange fees on the tax and tip portion of the transaction. There is widespread recognition that the card industry should not unfairly profit from merchants' collection of taxes for the state, and also that workers should receive their tips from customers without the card industry taking a cut.
- When credit and debit cards are used to make charitable donations, Visa's and Mastercard's fee schedules impose high interchange fees on the donations, thus taking money away from the intended charitable purpose. The bill would prevent Visa and Mastercard's fee schedules from setting interchange fee rates for charitable donations that are higher than 0.3% for credit cards and 0.2% for debit cards. These fee amounts, which equal those charged for Visa and Mastercard credit and debit transactions in the European Union, are sufficient to cover transaction costs but protect charitable donations from excessive fees.

**Question:** How will the bill benefit consumers?

**Answer:** **Lower fees and more consumer safeguards.** The bill would benefit Colorado consumers by reducing excessive interchange fees which inflate retail prices; by protecting consumers' card transaction data from being used or shared by card networks except for specific purposes such as preventing fraud; by preventing card networks from charging consumers for a disputed card transaction unless the dispute has been resolved with a determination that the consumer is liable for the disputed transaction and the consumer has been provided written notice of the determination; and by allowing consumers to benefit from more merchant discount options, as the bill prevents card networks from penalizing merchants for lawfully setting prices (e.g., networks could no longer penalize merchants who want to discount among forms of payment in ways the networks don't like, such as discounting for debit over credit.).

**Question:** Will the bill make it so Visa, Mastercard and banks can no longer offer cards?

**Answer:** No. The current cartel structure that Visa and Mastercard have established for credit and debit cards has been extremely lucrative for them and their card-issuing banks. Visa and Mastercard recently testified before Congress that they each enjoy profit margins of around 50%, and large banks also recently reported record profits. (In contrast, most merchants operate with tight single-digit profit margins). The bill would modestly restrain certain fees established by card networks under the current system, to the benefit of Colorado businesses, charities, and consumers. Of course, if any card-issuing bank feels that the bill's restraints on network-established fees are too onerous, the bank could always simply set their own fee rates rather than letting Visa and Mastercard fix fee rates for them.

**Question:** Will the bill change how I use my card today or require a new card?

**Answer:** No. The bill does not change the operation of credit cards or debit cards or require cards to be reissued.

**Question:** Will the bill change rewards programs?

**Answer:** No. The bill prohibits certain practices by card networks, but networks do not establish consumer rewards programs—those programs are established by card-issuing banks, who use rewards to compete for cardholder business. Banks may claim that any change to the status quo could prompt those banks to change their rewards programs, but if any bank does actually reduce their rewards, they will likely lose customers to other banks. Market competition incentivizes the use of rewards programs to win consumer business, which is why merchants with far smaller profit margins than banks often offer robust rewards and loyalty programs for their customers.

Also, it bears repeating that banks make dramatically more in card revenue than they pay out in rewards. For example, in 2022, U.S. banks paid \$41.1 billion in credit card rewards but collected \$125 billion in credit card interest and fees from consumers as well as \$160 billion in swipe fees from merchants. Banks simply do not need to reduce rewards or increase fees to remain profitable even if their interchange revenue is somewhat diminished by excluding taxes and tips from interchange rate calculations. Additionally, other countries that have enacted far more restrictive interchange fee regulation, such as the European Union and Australia which cap overall interchange fees far below average U.S. rates, still have robust rewards options for consumers.

**Question:** Will the bill disproportionately hurt small banks and credit unions?

**Answer:** No, the bill actually gives small banks and credit unions a competitive advantage over giant banks. The bill permits small banks and credit unions to continue to allow Visa and Mastercard to set interchange fees on their behalf, which insulates those fees from competitive marketplace pressures, whereas the bill prohibits Visa and Mastercard from continuing to set fees on behalf of giant credit card-issuing banks so those giant banks will have to establish their own fee rates at levels that merchants are willing to accept. The bill's reforms on fees charged with respect to taxes, tips and charitable donations will apply to any financial institution that continues to use Visa and Mastercard's fee schedules, though under the bill any financial institution can choose not to use the fee schedules and to set its own fee rates, which would not be subject to the bill's prohibitions.

**Question:** Have swipe fee rates increased over the years?

**Answer:** Yes. The card industry claims credit card swipe fees have been stable over the past decade. In fact, the average rate for Visa and Mastercard credit cards has risen from 2 percent of the transaction amount to 2.26 percent. That's an increase of more than 10 percent that has a massive effect when multiplied against trillions of dollars in transactions each year. And while that is the average, far more credit cards today are premium rewards cards, which carry a swipe fee of 3 percent or even 4 percent. The number to look at is total swipe fees for credit and debit cards, which reached a record \$172 billion in 2023 and have more than doubled in the past decade. Visa and Mastercard credit card swipe fees made up the bulk of the total at \$100.8 billion – nearly triple the amount a decade earlier. Without competition, swipe fees continue to go nowhere but up and the U.S. now has the highest credit card swipe fees among major world economies.