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SENATE BILL 26-134

BY SENATOR(S) Lindstedt and Jodeh, Amabile, Roberts, Weissman, Ball, Daugherty;
also REPRESENTATIVE(S) Duran and McCluskie, Brooks, Brown, Froelich, Garcia, Nguyen, Smith, Story, Willford, Woodrow, McCormick, Rutinel, Sirota, Zokaie.

CONCERNING THE IMPOSITION OF FEES BY PAYMENT CARD NETWORKS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add 5-2-215** as follows:

5-2-215. Payment card networks - interchange fees - prohibited conduct - exemption - compliance - penalties - use of savings - definitions.

(1) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "AUTHORIZATION" MEANS THE PROCESS THROUGH WHICH A MERCHANT REQUESTS APPROVAL FOR AN ELECTRONIC PAYMENT

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

TRANSACTION FROM AN ISSUER.

(b) "BAD FAITH CONDUCT" MEANS FRAUDULENT, WILLFUL, KNOWING, OR INTENTIONAL CONDUCT THAT CAUSES INJURY.

(c) "CARDHOLDER" MEANS A PERSON TO WHICH A DEBIT CARD OR CREDIT CARD IS ISSUED BY AN ISSUER OR AN ISSUER'S AGENT.

(d) "CLEARANCE" MEANS THE PROCESS OF:

(I) TRANSMITTING FINAL TRANSACTION DATA FROM A MERCHANT TO AN ISSUER FOR POSTING TO A CARDHOLDER'S ACCOUNT; AND

(II) CALCULATING FEES AND CHARGES, INCLUDING INTERCHANGE FEES, THAT APPLY TO AN ISSUER AND A MERCHANT.

(e) "DEBIT CARD" HAS THE MEANING SET FORTH IN 15 U.S.C. SEC. 1693o-2 (c)(2).

(f) "ELECTRONIC PAYMENT TRANSACTION" OR "TRANSACTION" MEANS A TRANSACTION IN WHICH A PERSON USES A DEBIT CARD, A CREDIT CARD, OR ANOTHER PAYMENT CODE OR DEVICE ISSUED OR APPROVED FOR USE THROUGH A PAYMENT CARD NETWORK TO DEBIT A CARDHOLDER'S ACCOUNT OR LINE OF CREDIT.

(g) "EXEMPTED TRANSACTION" MEANS AN ELECTRONIC PAYMENT TRANSACTION INVOLVING A DEBIT CARD OR CREDIT CARD ISSUED BY AN ISSUER THAT:

(I) DID NOT, DURING ANY POINT IN THE PREVIOUS CALENDAR YEAR, HOLD CONSOLIDATED WORLDWIDE BANKING AND NONBANKING ASSETS, INCLUDING ASSETS OF AFFILIATES, OTHER THAN TRUST ASSETS UNDER MANAGEMENT, OF MORE THAN SIXTY BILLION DOLLARS; OR

(II) AS OF FEBRUARY 1, 2026, HAD CONTRACTED TO BRAND THE CARD WITH THE BRAND OF A FINANCIAL INSTITUTION CHARTERED OR AUTHORIZED TO DO BUSINESS IN THIS STATE THAT DID NOT, DURING ANY POINT IN THE PREVIOUS CALENDAR YEAR, HOLD CONSOLIDATED WORLDWIDE BANKING AND NONBANKING ASSETS, INCLUDING ASSETS OF AFFILIATES, OTHER THAN TRUST ASSETS UNDER MANAGEMENT, OF MORE THAN SIXTY

BILLION DOLLARS.

(h) "FEE SCHEDULE" MEANS A SCHEDULE, LIST, TABLE, CHART, AGREEMENT, COMMUNICATION, OR OTHER DOCUMENT THAT:

(I) SETS FORTH AN AMOUNT OR A FORMULA FOR DETERMINING ONE OR MORE FEES; AND

(II) MAY OR MAY NOT BE MADE PUBLICLY AVAILABLE.

(i) "INTERCHANGE FEE" MEANS A FEE ESTABLISHED, CHARGED, OR RECEIVED BY A PAYMENT CARD NETWORK FOR THE PURPOSE OF COMPENSATING AN ISSUER FOR ITS INVOLVEMENT IN AN ELECTRONIC PAYMENT TRANSACTION.

(j) "ISSUER" MEANS:

(I) A PERSON THAT ISSUES A DEBIT CARD OR CREDIT CARD TO A CARDHOLDER; OR

(II) THE AGENT OF A PERSON THAT ISSUES A DEBIT CARD OR CREDIT CARD TO A CARDHOLDER.

(k) "MERCHANT" MEANS A PERSON THAT ACCEPTS ELECTRONIC PAYMENT TRANSACTIONS AND COLLECTS AND REMITS A TAX.

(l) "PAYMENT CARD NETWORK" MEANS AN ENTITY THAT:

(I) DIRECTLY OR THROUGH LICENSED MEMBERS, PROCESSORS, OR AGENTS, PROVIDES THE PROPRIETARY SERVICES, INFRASTRUCTURE, AND SOFTWARE TO ROUTE INFORMATION AND DATA FOR THE PURPOSE OF CONDUCTING ELECTRONIC PAYMENT TRANSACTION AUTHORIZATION, CLEARANCE, AND SETTLEMENT; AND

(II) A MERCHANT USES IN ORDER TO ACCEPT A DEBIT CARD, A CREDIT CARD, OR OTHER DEVICE AS PART OF AN ELECTRONIC PAYMENT TRANSACTION.

(m) "PROCESSOR" MEANS AN ENTITY THAT FACILITATES, SERVICES, PROCESSES, OR MANAGES DEBIT CARD OR CREDIT CARD AUTHORIZATION,

BILLING, TRANSFER, PAYMENT PROCEDURES, OR SETTLEMENT WITH RESPECT TO AN ELECTRONIC PAYMENT TRANSACTION.

(n) "SETTLEMENT" MEANS THE PROCESS OF:

(I) TRANSMITTING SALES INFORMATION TO AN ISSUER FOR COLLECTION AND REIMBURSEMENT OF FUNDS TO A MERCHANT; AND

(II) CALCULATING AND REPORTING A NET TRANSACTION AMOUNT TO AN ISSUER AND A MERCHANT FOR AN ELECTRONIC PAYMENT TRANSACTION THAT IS CLEARED.

(o) "TAX" MEANS ANY SALES, USE, OCCUPATION, OR EXCISE TAX IMPOSED BY THE STATE OR A UNIT OF LOCAL GOVERNMENT IN THE STATE.

(2) Prohibition on certain payment card network practices. EXCEPT AS DESCRIBED ELSEWHERE IN THIS SECTION, A PAYMENT CARD NETWORK, WHETHER DIRECTLY OR INDIRECTLY THROUGH AN AGENT, CONTRACT, REQUIREMENT, CONDITION, PENALTY, TECHNOLOGICAL SPECIFICATION, OR INDUCEMENT OR OTHERWISE, SHALL NOT:

(a) ESTABLISH, CHARGE, OR INCLUDE IN A FEE SCHEDULE AN INTERCHANGE FEE IF:

(I) THE INTERCHANGE FEE IS OR INCLUDES A PERCENTAGE MULTIPLIED BY THE GROSS DOLLAR AMOUNT OF A TRANSACTION CONDUCTED WITH A DEBIT CARD OR CREDIT CARD; AND

(II) THE FEE DOES NOT EXCLUDE FROM THE GROSS DOLLAR AMOUNT OF THE TRANSACTION ANY AMOUNT ATTRIBUTABLE TO A TAX ON THE TRANSACTION; OR

(b) INCREASE THE RATE OR AMOUNT OF FEES THAT APPLY TO A PORTION OF A TRANSACTION OTHER THAN THE PORTION DESCRIBED IN SUBSECTION (2)(a)(II) OF THIS SECTION IN AN ATTEMPT TO, OR IN A MANNER THAT WOULD, CIRCUMVENT THE PROHIBITION SET FORTH IN SUBSECTION (2)(a) OF THIS SECTION.

(3) Exemption.

(a) SUBSECTION (2)(a) OF THIS SECTION DOES NOT APPLY TO AN INTERCHANGE FEE THAT A PAYMENT CARD NETWORK ESTABLISHES, CHARGES, OR INCLUDES IN A FEE SCHEDULE SOLELY FOR USE IN EXEMPTED TRANSACTIONS.

(b) AN ISSUER THAT SATISFIES THE DESCRIPTION IN SUBSECTION (1)(g)(I) OR (1)(g)(II) OF THIS SECTION SHALL IDENTIFY TO A PAYMENT CARD NETWORK ALL OF THE ISSUER'S DEBIT CARDS AND CREDIT CARDS THAT ARE USED FOR EXEMPTED TRANSACTIONS, AND THE PAYMENT CARD NETWORK SHALL NOT, WHETHER DIRECTLY OR INDIRECTLY THROUGH AN AGENT, CONTRACT, REQUIREMENT, CONDITION, PENALTY, TECHNOLOGICAL SPECIFICATION, OR INDUCEMENT OR OTHERWISE:

(I) DENY SUCH A CARD ACCESS TO TRANSACTION PROCESSING SYSTEMS; OR

(II) IMPOSE ANY FEE INCREASE OR PENALTY ON THE ISSUER OR ON A FINANCIAL INSTITUTION BRANDED ON THE CARD FOR ANY COSTS OF UPGRADES OR CONFIGURATIONS TO PAYMENT AND PROCESSING SYSTEMS THAT MAY BE NECESSARY TO COMPLY WITH THIS SECTION WITH RESPECT TO SUCH CARDS.

(4) **Compliance.** A PAYMENT CARD NETWORK IS DEEMED TO BE IN COMPLIANCE WITH SUBSECTION (2)(a) OF THIS SECTION IF THE PAYMENT CARD NETWORK ENSURES ANY OF THE FOLLOWING:

(a) AT THE TIME OF SETTLEMENT OF AN ELECTRONIC PAYMENT TRANSACTION, THAT THE CALCULATION OF ANY INTERCHANGE FEE EXCLUDES THE AMOUNT ATTRIBUTABLE TO ANY TAX IMPOSED ON THE TRANSACTION;

(b) WITHIN THIRTY DAYS AFTER THE DATE OF SETTLEMENT OF AN ELECTRONIC PAYMENT TRANSACTION, THAT FOR ANY INTERCHANGE FEE CHARGED ON THE TRANSACTION, A PORTION OF THE INTERCHANGE FEE IS REBATED TO THE MERCHANT'S ACCOUNT IN AN AMOUNT EQUAL TO THE REDUCTION IN THE INTERCHANGE FEE THAT WOULD HAVE OCCURRED HAD THE CALCULATION OF THE INTERCHANGE FEE AT THE TIME OF SETTLEMENT EXCLUDED THE AMOUNT ATTRIBUTABLE TO ANY TAX IMPOSED ON THE TRANSACTION;

(c) IF A MERCHANT IS UNABLE TO CAPTURE AND TRANSMIT TAX INFORMATION RELEVANT TO THE ELECTRONIC PAYMENT TRANSACTION AT THE TIME OF SETTLEMENT, THAT THE MERCHANT MAY, WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE DATE OF THE TRANSACTION, SUBMIT DOCUMENTATION IDENTIFYING ANY TAX IMPOSED ON THE TRANSACTION AND THAT, WITHIN THIRTY DAYS AFTER THE SUBMISSION OF SUCH DOCUMENTATION, THE MERCHANT'S ACCOUNT SHALL BE CREDITED AN AMOUNT EQUAL TO THE REDUCTION IN THE INTERCHANGE FEE THAT WOULD HAVE OCCURRED HAD THE CALCULATION OF THE INTERCHANGE FEE AT THE TIME OF SETTLEMENT EXCLUDED THE AMOUNT ATTRIBUTABLE TO ANY TAX IMPOSED ON THE TRANSACTION;

(d) THAT NO INTERCHANGE FEE ESTABLISHED, CHARGED, OR INCLUDED IN A FEE SCHEDULE BY THE PAYMENT CARD NETWORK IS OR INCLUDES A PERCENTAGE MULTIPLIED BY THE GROSS DOLLAR AMOUNT OF A TRANSACTION UNLESS THE AMOUNT OF ANY TAX IS EXCLUDED FROM SUCH GROSS DOLLAR AMOUNT; OR

(e) THAT NO INTERCHANGE FEES ESTABLISHED, CHARGED, OR INCLUDED IN A FEE SCHEDULE BY THE PAYMENT CARD NETWORK ARE DEDUCTED BEFORE SETTLEMENT FROM THE TRANSACTION AMOUNT OF ANY ELECTRONIC PAYMENT TRANSACTION AND THAT SUCH INTERCHANGE FEES ARE INSTEAD CUMULATIVELY CHARGED ON A REGULAR BILLING CYCLE AFTER TRANSACTIONS HAVE SETTLED AND AFTER ALL TAX AMOUNTS HAVE BEEN IDENTIFIED AND EXCLUDED FROM TRANSACTION AMOUNTS IN THE CALCULATION OF INTERCHANGE FEES.

(5) Penalties.

(a) IF A PAYMENT CARD NETWORK VIOLATES SUBSECTION (2) OR (3) OF THIS SECTION, A MERCHANT, CONSUMER, OR OTHER PERSON THAT IS INJURED AS A RESULT OF THE VIOLATION MAY BRING A CIVIL ACTION AGAINST THE PAYMENT CARD NETWORK. EXCEPT IN A CERTIFIED CLASS ACTION, AND NOTWITHSTANDING ANY OTHER LAW, A PAYMENT CARD NETWORK THAT IS FOUND IN A CIVIL ACTION TO HAVE VIOLATED THIS SECTION IS LIABLE IN AN AMOUNT EQUAL TO THE SUM OF:

(I) THE GREATER OF:

(A) THE AMOUNT OF ACTUAL DAMAGES SUSTAINED OR, IF IT IS

ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT THE PAYMENT CARD NETWORK ENGAGED IN BAD FAITH CONDUCT, THREE TIMES THE AMOUNT OF ACTUAL DAMAGES. ACTUAL DAMAGES INCLUDES PREJUDGMENT INTEREST OF EITHER EIGHT PERCENT PER YEAR OR AT THE RATE PROVIDED IN SECTION 13-21-101, WHICHEVER IS GREATER, FROM THE DATE THE CLAIM ACCRUED.

(B) FIVE HUNDRED DOLLARS; AND

(II) IN THE CASE OF ANY SUCCESSFUL ACTION TO ENFORCE A LIABILITY ESTABLISHED IN SUBSECTION (5)(a)(I) OF THIS SECTION, THE COSTS OF THE ACTION TOGETHER WITH REASONABLE ATTORNEY FEES AS DETERMINED BY THE COURT.

(b) IN A CASE CERTIFIED AS A CLASS ACTION, A SUCCESSFUL PLAINTIFF MAY RECOVER ACTUAL DAMAGES, AS DESCRIBED IN SUBSECTION (5)(a)(I)(A) OF THIS SECTION; INJUNCTIVE RELIEF ALLOWED BY LAW; AND REASONABLE ATTORNEY FEES AND COSTS.

(c) A PERSON THAT BRINGS AN ACTION UNDER THIS SECTION THAT IS FOUND BY THE COURT TO BE FRIVOLOUS, GROUNDLESS, AND BROUGHT IN BAD FAITH OR FOR THE PURPOSE OF HARASSMENT IS LIABLE TO THE DEFENDANT FOR THE COSTS OF THE ACTION TOGETHER WITH REASONABLE ATTORNEY FEES AS DETERMINED BY THE COURT.

(6) **Antitrust authority.** NOTHING IN THIS SECTION LIMITS OR OTHERWISE AFFECTS THE ATTORNEY GENERAL'S AUTHORITY TO ENFORCE THE "COLORADO STATE ANTITRUST ACT OF 2023", ARTICLE 4 OF TITLE 6.

(7) **Use of savings.** FOR THE 2026-27 STATE FISCAL YEAR AND EACH STATE FISCAL YEAR THEREAFTER, A RETAIL BUSINESS THAT HAS MORE THAN FIVE HUNDRED EMPLOYEES STATEWIDE ON THE EFFECTIVE DATE OF THIS SECTION SHALL APPLY ANY SAVINGS RESULTING FROM THIS SECTION TO REDUCING PRICES FOR CONSUMERS OR INVESTING IN EMPLOYEE WAGES OR BENEFITS.

(8) FOR THE PURPOSES OF SUBSECTION (7) OF THIS SECTION, THE FIVE-HUNDRED-EMPLOYEE THRESHOLD DESCRIBED IN SUBSECTION (7) OF THIS SECTION IS BASED ON A RETAIL BUSINESS'S PARENT COMPANY AND NOT ON A SINGLE LOCATION OF THE PARENT COMPANY.

SECTION 2. Act subject to petition - effective date - applicability. (1) This act takes effect January 1, 2028; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2026 and, in such case, will

take effect January 1, 2028, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

(2) This act applies to conduct occurring on or after the applicable effective date of this act.

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO