

118TH CONGRESS
1ST SESSION

S. 1838

To amend the Electronic Fund Transfer Act to require the Board of Governors of the Federal Reserve system to prescribe regulations relating to network competition in credit card transactions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 7, 2023

Mr. DURBIN (for himself, Mr. MARSHALL, Mr. WELCH, and Mr. VANCE) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Electronic Fund Transfer Act to require the Board of Governors of the Federal Reserve system to prescribe regulations relating to network competition in credit card transactions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Credit Card Competi-
5 tion Act of 2023”.

1 **SEC. 2. COMPETITION IN CREDIT CARD TRANSACTIONS.**

2 (a) IN GENERAL.—Section 921 of the Electronic
3 Fund Transfer Act (15 U.S.C. 1693o–2) is amended—

4 (1) in subsection (b)—

5 (A) by redesignating paragraphs (2), (3),
6 and (4) as paragraphs (3), (4), and (5), respec-
7 tively; and

8 (B) by inserting after paragraph (1) the
9 following:

10 “(2) COMPETITION IN CREDIT CARD TRANS-
11 ACTIONS.—

12 “(A) NO EXCLUSIVE NETWORK.—

13 “(i) IN GENERAL.—Not later than 1
14 year after the date of enactment of the
15 Credit Card Competition Act of 2023, the
16 Board shall prescribe regulations providing
17 that a covered card issuer or payment card
18 network shall not directly or through any
19 agent, processor, or licensed member of a
20 payment card network, by contract, re-
21 quirement, condition, penalty, technological
22 specification, or otherwise, restrict the
23 number of payment card networks on
24 which an electronic credit transaction may
25 be processed to—

26 “(I) 1 such network;

1 “(II) 2 or more such networks,
2 if—

3 “(aa) each such network is
4 owned, controlled, or otherwise
5 operated by—

6 “(AA) affiliated per-
7 sons; or

8 “(BB) networks affili-
9 ated with such issuer; or

10 “(bb) any such network is
11 identified on the list established
12 and updated under subparagraph
13 (D); or

14 “(III) subject to clause (ii), the 2
15 such networks that hold the 2 largest
16 market shares with respect to the
17 number of credit cards issued in the
18 United States by licensed members of
19 such networks (and enabled to be
20 processed through such networks), as
21 determined by the Board on the date
22 on which the Board prescribes the
23 regulations.

24 “(ii) DETERMINATIONS BY BOARD.—

1 “(I) IN GENERAL.—The Board,
2 not later than 3 years after the date
3 on which the regulations prescribed
4 under clause (i) take effect, and not
5 less frequently than once every 3
6 years thereafter, shall determine
7 whether the 2 networks identified
8 under clause (i)(III) have changed, as
9 compared with the most recent such
10 determination by the Board.

11 “(II) EFFECT OF DETERMINA-
12 TION.—If the Board, under subclause
13 (I), determines that the 2 networks
14 described in clause (i)(III) have
15 changed (as compared with the most
16 recent such determination by the
17 Board), clause (i)(III) shall no longer
18 have any force or effect.

19 “(B) NO ROUTING RESTRICTIONS.—Not
20 later than 1 year after the date of enactment of
21 the Credit Card Competition Act of 2023, the
22 Board shall prescribe regulations providing that
23 a covered card issuer or payment card network
24 shall not—

1 “(i) directly or through any agent,
2 processor, or licensed member of the net-
3 work, by contract, requirement, condition,
4 penalty, or otherwise—

5 “(I) inhibit the ability of any per-
6 son who accepts credit cards for pay-
7 ments to direct the routing of elec-
8 tronic credit transactions for proc-
9 essing over any payment card network
10 that—

11 “(aa) may process such
12 transactions; and

13 “(bb) is not on the list es-
14 tablished and updated by the
15 Board under subparagraph (D);

16 “(II) require any person who ac-
17 cepts credit cards for payments to ex-
18 clusively use, for transactions associ-
19 ated with a particular credit card, an
20 authentication, tokenization, or other
21 security technology that cannot be
22 used by all of the payment card net-
23 works that may process electronic
24 credit transactions for that particular
25 credit card; or

1 “(III) inhibit the ability of an-
2 other payment card network to handle
3 or process electronic credit trans-
4 actions using an authentication,
5 tokenization, or other security tech-
6 nology for the processing of those
7 electronic credit transactions; or

8 “(ii) impose any penalty or disadvan-
9 tage, financial or otherwise, on any person
10 for—

11 “(I) choosing to direct the rout-
12 ing of an electronic credit transaction
13 over any payment card network on
14 which the electronic credit transaction
15 may be processed; or

16 “(II) failing to ensure that a cer-
17 tain number, or aggregate dollar
18 amount, of electronic credit trans-
19 actions are handled by a particular
20 payment card network.

21 “(C) APPLICABILITY.—The regulations
22 prescribed under subparagraphs (A) and (B)
23 shall not apply to a credit card issued in a 3-
24 party payment system model.

1 “(D) DESIGNATION OF NATIONAL SECUR-
2 RITY RISKS.—

3 “(i) IN GENERAL.—Not later than 1
4 year after the date of enactment of the
5 Credit Card Competition Act of 2023, the
6 Board, in consultation with the Secretary
7 of the Treasury, shall prescribe regulations
8 to establish a public list of any payment
9 card network—

10 “(I) the processing of electronic
11 credit transactions by which is deter-
12 mined by the Board to pose a risk to
13 the national security of the United
14 States; or

15 “(II) that is owned, operated, or
16 sponsored by a foreign state entity.

17 “(ii) UPDATING OF LIST.—Not less
18 frequently than once every 2 years after
19 the date on which the Board establishes
20 the public list required under clause (i),
21 the Board, in consultation with the Sec-
22 retary of the Treasury, shall update that
23 list.

24 “(E) DEFINITIONS.—In this paragraph—

1 “(i) the terms ‘card issuer’ and ‘cred-
 2 itor’ have the meanings given the terms in
 3 section 103 of the Truth in Lending Act
 4 (15 U.S.C. 1602);

5 “(ii) the term ‘covered card issuer’
 6 means a card issuer that, together with the
 7 affiliates of the card issuer, has assets of
 8 more than \$100,000,000,000;

9 “(iii) the term ‘credit card issued in a
 10 3-party payment system model’ means a
 11 credit card issued by a card issuer that
 12 is—

13 “(I) the payment card network
 14 with respect to the credit card; or

15 “(II) under common ownership
 16 with the payment card network with
 17 respect to the credit card;

18 “(iv) the term ‘electronic credit trans-
 19 action’—

20 “(I) means a transaction in
 21 which a person uses a credit card; and

22 “(II) includes a transaction in
 23 which a person does not physically
 24 present a credit card for payment, in-
 25 cluding a transaction involving the

1 entry of credit card information onto,
2 or use of credit card information in
3 conjunction with, a website interface
4 or a mobile telephone application; and
5 “(v) the term ‘licensed member’ in-
6 cludes, with respect to a payment card net-
7 work—

8 “(I) a creditor or card issuer that
9 is authorized to issue credit cards
10 bearing any logo of the payment card
11 network; and

12 “(II) any person, including any
13 financial institution and any person
14 that may be referred to as an
15 ‘acquirer’, that is authorized to—

16 “(aa) screen and accept any
17 person into any program under
18 which that person may accept,
19 for payment for goods or serv-
20 ices, a credit card bearing any
21 logo of the payment card net-
22 work;

23 “(bb) process transactions
24 on behalf of any person who ac-

1 cepts credit cards for payments;
 2 and
 3 “(cc) complete financial set-
 4 tlement of any transaction on be-
 5 half of a person who accepts
 6 credit cards for payments.”; and

7 (2) in subsection (d)(1), by inserting “, except
 8 that the Bureau shall not have authority to enforce
 9 the requirements of this section or any regulations
 10 prescribed by the Board under this section” after
 11 “section 918”.

12 (b) EFFECTIVE DATE.—Each set of regulations pre-
 13 scribed by the Board of Governors of the Federal Reserve
 14 System under paragraph (2) of section 921(b) of the Elec-
 15 tronic Fund Transfer Act (15 U.S.C. 1693o–2(b)), as
 16 amended by subsection (a) of this section, shall take effect
 17 on the date that is 180 days after the date on which the
 18 Board prescribes the final version of that set of regula-
 19 tions.

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