

**HOUSE . . . . . No. 3564**

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By Mr. Walsh of Lynn, a petition (accompanied by bill, House, No. 3564) of Steven M. Walsh and others for legislation to further regulate certain credit card agreements. Financial Services.

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Steven M. Walsh**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act Relative to Fair Dealing in Credit Card Agreements.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Steven M. Walsh	11th Essex
Thomas P. Kennedy	Second Plymouth and Bristol
Denise Provost	27th Middlesex
Michael F. Rush	10th Suffolk
Bruce E. Tarr	First Essex and Middlesex



16 any part of the indebtedness represented by this promise to make deferred payment is secured or  
17 unsecured; (b) any stored value card, smart card or other instrument or device that enables a person to  
18 obtain goods, services or anything else of value through the use of value stored on the instrument or  
19 device; and (c) the number assigned to an instrument or device described in clause (a) or (b) of this  
20 paragraph even if the physical instrument or device is not used or presented.

21 "Debit Card", (a) any instrument or device whether known as a debit card, ATM card, check card,  
22 electronic benefit transfer card or any other access instrument or device, other than a check, that is signed  
23 by the holder or other authorized signatory on the deposit account that draws monies from a deposit  
24 account in order to obtain money, goods, services or anything else of value; and (b) the number assigned  
25 to an instrument or device described in clause (a), of this paragraph even if the physical instrument or  
26 device is not used or presented.

27 "Financial institution", (a) any bank, banking association, trust company, federal or state savings  
28 and loan association, including all banks for cooperatives organized under the United States Farm Credit  
29 Act of nineteen hundred and thirty-three, existing by authority of the United States, or any state, or a  
30 foreign country, or any law of the commonwealth; (b) any other institution, association or entity, the  
31 deposits or accounts of which are insured under the Federal Deposit Insurance Act or by the Federal  
32 Deposit Insurance Corporation, any institution, association or entity, which is a member of a federal  
33 Home Loan Bank, any other bank or thrift institution incorporated or organized under the laws of a state  
34 which is engaged in the business of receiving deposits; (c) any corporation subject to chapter one hundred  
35 and sixty-seven A, or registered under the Federal Bank Holding Company Act of nineteen hundred and  
36 fifty-six, or registered as a savings and loan holding company under the Federal National Housing Act, as  
37 amended, including any subsidiary which participates in the filing of a consolidated return of income to  
38 the federal government; (d) any corporation subject to supervision by the division of banks including but  
39 not limited to corporations described in section twenty-four of chapter ninety-three; sections ninety-six to  
40 one hundred and four or section one hundred and fourteen C of chapter one hundred and forty; section

41 thirty-eight of chapter one hundred and sixty-seven; section five of chapter one hundred and sixty-seven  
42 B; chapter one hundred and sixty-nine A; chapter two hundred and fifty-five B; chapter two hundred and  
43 fifty-five C; chapter two hundred and fifty-five D; and chapter two hundred and fifty-five E; or (e) any  
44 other corporation organized under the laws of the United States, the commonwealth or any other state or a  
45 foreign country which, in substantial competition with financial institutions as defined in any or all of  
46 clauses (a) to (d), inclusive, derives more than ten percent of its gross income, excluding nonrecurring,  
47 extraordinary items, from credit card and debit card activities.

48 "Interchange fee", the fee that an acquiring bank pays to an issuing bank when a cardholder uses  
49 a credit card or debit card as payment during a retail transaction.

50 "Issuing bank", a financial institution which issues credit cards or debit cards to cardholders.

51 "Merchant account", a bank account that allows a merchant to accept credit card or debit card  
52 payments.

53 "Merchant", a person licensed to do business in the Commonwealth who offers goods or services  
54 for sale in the Commonwealth.

55 "Person", a natural person, business organization, financial institution or any other legal entity,  
56 however formed.

## 57 **Disclosure of Rules**

58 Section 2. (a) Whenever a contract authorizing a merchant to accept a credit card or debit card  
59 specifies that the merchant is bound by the rules of a financial institution, the contracting financial  
60 institution must promptly: (i) provide the merchant access to the complete rules referenced in the contract,  
61 either individually or through an acquiring bank; (ii) notify the merchant whenever a rule is modified or a  
62 new rule added, specifically referencing and explaining the substance of the modification or new rule; and  
63 (iii) provide a copy of any new or modified rule.

64 (b) A contract authorizing a merchant to accept a credit card must contain: (i) the contracting financial  
65 institution's complete schedule of interchange fees, credit card and debit card transaction rates and any  
66 other fees that the financial institution charges to merchants; and (ii) an explanation of which rates apply  
67 to the merchant and the situations in which those rates apply.

68 (c) A contract authorizing a merchant to accept a credit card or debit card may not require a merchant  
69 to agree not to disclose the contracting financial institution's rules or rates as a condition of receiving  
70 access to the rules or rates.

71 (d) A merchant shall not be liable for any charge, chargeback or other fees associated with its credit  
72 card or debit card transactions under any rule, rate or fee schedule unless the contracting financial  
73 institution has complied with the provisions of this section relative to the charge, chargeback or other fee  
74 imposed.

#### 75 **Certain Charges Prohibited**

76 Section 3. A contract authorizing a merchant to accept a credit card or debit card may not give a  
77 financial institution the right to impose a chargeback or otherwise charge a merchant or deduct from the  
78 merchant's account the cost of a credit card or debit card transaction because the amount of the  
79 transaction exceeds a predetermined amount.

#### 80 **Application of Fees to Taxes Prohibited**

81 Section 4. Discount rates, transaction charges, interchange rates, or any other charges or fees  
82 charged to merchants or deducted from credit card or debit card sales for processing credit card or debit  
83 card transactions shall not be applied to that portion of the credit card or debit card sales transaction  
84 representing the tax or excise collected by the merchant incident to a sale of any goods, meals,  
85 commodities, or services in accordance with chapters 64A, 64C, 64E, 64G, 64H, 64I, 64J, or 64K.

#### 86 **Waivers Prohibited**

87           Section 5. A contract authorizing a merchant to accept a credit card or debit card may not require  
88 a merchant to limit or waive its rights under this chapter.

89           **Remedies; Penalties**

90           Section 6. (a) In addition to any other common law or statutory remedy provided by law, any  
91 violation of this chapter shall be deemed to be a prohibited practice under section 2(a) of chapter 93A.

92           (b) The superior court shall have jurisdiction of any complaint to restrain and enjoin any violation of  
93 this chapter.

94           (c) Any person who violates any of the provisions of this chapter shall be punished by a fine of not less  
95 than \$1,000 or more than \$10,000. Each charge, chargeback or other fee imposed or levied in violation of  
96 this chapter and each day of noncompliance with the provisions of sections 2, 3 or 5 shall constitute a  
97 separate offense.

98           **Application; severability**

99           Section 7. (a) This chapter, being necessary for the welfare of the Commonwealth and its  
100 inhabitants, shall be liberally construed to effect its purposes.

101           (b) If any section, subsection, sentence, clause or phrase of this legislation, or any application of such  
102 provision to any person or circumstance shall for any reason be held invalid, the remaining portions of the  
103 chapter or the application of such provision to a person or circumstance other than that as to which it is  
104 held to be invalid, shall not be affected thereby.

105           **SECTION 2.** This act shall take effect on January 1, 2008