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COMPETITIVE ENTERPRISE INSTITUTE
Advancing Liberty from the Economy to Ecology

July 27, 2026

The Honorable Paul R. Feeney and The Honorable James M. Murphy
Joint Committee on Financial Services, Massachusetts General Court
Attention: S. 688
Massachusetts State House
24 Beacon Street, Boston, MA 02108

An Act Prohibiting Card Interchange Fees on Tax and Gratuity (S. 688)

Comments of the Competitive Enterprise Institute

Dear Chairmen Feeney and Murphy,

The Competitive Enterprise Institute (CEI) respectfully submits these comments in response to Commonwealth of Massachusetts' Bill S.688, *An Act Prohibiting Card Interchange Fees on Tax or Gratuity.*[1]

Founded in 1984, CEI is a nonpartisan public policy organization whose mission is to reform America's unaccountable regulatory state by advancing policies that eliminate unnecessary government burdens and promote a freer, healthier, and more prosperous nation.[2] Consistent with that mission, CEI opposes financial regulations that distort competitive markets, increase costs for consumers and businesses, and inhibit innovation.

S.688 would impose a new form of government price regulation on the electronic payments system by prohibiting interchange fees on the sales tax and gratuity portions of payment card transactions. Although intended to reduce merchants' costs, the bill would most likely increase regulatory burdens, fragment the nationally integrated payments system, and shift costs onto consumers and financial institutions while primarily benefiting the largest retailers. For these reasons, CEI respectfully urges the Committee to reject S.688.

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[1] Massachusetts General Court, *An Act Prohibiting Card Interchange Fees on Tax or Gratuity*, S. 688, 194th Gen. Ct. (Mass. 2025–2026), accessed July 20, 2026, https://malegislature.gov/Bills/194/S688.
[2] Competitive Enterprise Institute. "About CEI." Accessed July 20, 2026. https://cei.org/about/.

Key provisions of S. 688

S.688 would establish a new regulatory framework governing the assessment of interchange fees in Massachusetts. Specifically, the bill prohibits issuers, payment card networks, acquiring banks, and processors from charging or receiving interchange fees on the sales tax and gratuity portions of electronic payment transactions when merchants transmit those amounts during the authorization or settlement process.[3] For purposes of the bill, "tax" includes sales, use, occupancy, and excise taxes imposed by the Commonwealth or its political subdivisions.[4]

Where merchants do not provide that information during processing, the bill creates a statutory reimbursement mechanism allowing merchants to submit tax documentation for up to 180 days after the transaction. Issuers would then be required to refund any interchange fees attributable to taxes or gratuities within 30 days.[5]

The legislation further prohibits payment system participants from offsetting the restriction by increasing interchange fees on the remaining transaction amount and establishes a civil penalty of $1,000 for each transaction found to violate the statute.[6]

Implementing these provisions would require coordinated actions by merchants, issuers, payment card networks, acquiring banks, and payment processors. Evaluating the likely effects of these requirements first requires understanding the economic role that interchange fees play in supporting the electronic payments system.

Interchange fees support the electronic payments system

Interchange fees are transaction fees paid by a merchant's acquiring bank to the bank or credit union that issued the customer's payment card. They help finance the operation of electronic payment networks, including fraud prevention, transaction processing, cybersecurity, dispute resolution, and other services necessary to support secure electronic commerce.[7]

Unlike most businesses, payment networks operate as two-sided markets. Their success depends on attracting both merchants and consumers simultaneously. Merchants benefit when more consumers carry payment cards, while consumers benefit when more merchants accept them. This creates cross-side network effects in which participation on one side increases value for the other.[8]

Because of these network effects, pricing decisions cannot be evaluated from only one side of the market. Interchange fees help balance incentives among cardholders, merchants, financial institutions, and payment networks while supporting the infrastructure necessary to process billions of transactions safely and efficiently.

[3] S. 688, 194th Gen. Ct. (Mass. 2025–2026), § 37(b).
[4] S. 688, 194th Gen. Ct. (Mass. 2025–2026), § 37(a).
[5] S. 688, 194th Gen. Ct. (Mass. 2025–2026), § 37(c).
[6] S. 688, 194th Gen. Ct. (Mass. 2025–2026), § 37(e), (f).
[7] Steve Swedberg, *The Hidden Costs of Interchange Fee Bans* (Competitive Enterprise Institute, June 18, 2026), p. 2, https://cei.org/studies/the-hidden-costs-of-interchange-fee-bans/.
[8] International Center for Law & Economics, *Issue Spotlight: Two-Sided Markets*, accessed July 20, 2026, https://laweconcenter.org/spotlights/two-sided-markets.

S.688 would replace this market-based pricing mechanism with a government mandate prohibiting interchange fees on portions of electronic transactions. Such intervention would extend well beyond merchant processing costs and ultimately affect consumers, financial institutions, and the operation of the electronic payments system itself.

Interchange fee caps do not benefit consumers

The strongest evidence regarding the likely effects of S.688 comes from the Durbin Amendment, which was enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act signed into law in 2010.

The Durbin Amendment capped debit card interchange fees for issuers with consolidated assets of at least $10 billion beginning in 2011.[9] Proponents argued that merchants would pass their savings on to consumers through lower prices.[10] More than a decade later, the evidence indicates that those promised benefits largely failed to materialize.

The Federal Reserve Bank of Richmond found that only 1 percent of merchants reported reducing prices following implementation of the Durbin Amendment. By contrast, 77 percent made no pricing changes, while 22 percent actually increased prices.[11] Likewise, the Progressive Policy Institute concluded that interchange fee regulation did not produce meaningful savings for consumers.[12]

Financial institutions, however, did experience substantial revenue losses. The Durbin Amendment reduced annual interchange revenue by approximately $6.5 billion, which required banks to recover those losses elsewhere.[13] Subsequent research examining the effects of the Durbin Amendment provides evidence of how affected institutions adjusted their products and pricing in response to the change in interchange revenue.

Research from the University of Pennsylvania found that free checking availability fell from approximately 60 percent of covered banks to about 20 percent following implementation.[14] George Mason University researchers similarly found that monthly fees doubled, minimum balance requirements nearly tripled, and as many as one million consumers lost access to bank accounts.[15]

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[9] Dodd–Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1075, 124 Stat. 2068 (2010), https://www.govinfo.gov/content/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf.

[10] Sen. Richard J. Durbin, "Durbin Statement on TCF's Court Challenge of Interchange Law," US Senate, October 12, 2010, https://www.durbin.senate.gov/newsroom/press-releases/durbin-statement-on-tcfs-court-challenge-of-interchange-law.

[11] Renee Haltom and Zhu Wang, "Did the Durbin Amendment Reduce Merchant Costs? Evidence from Survey Results," Federal Reserve Bank of Richmond, *Economic Brief* No. 15-12, December 2015, p. 3, https://www.richmondfed.org/-/media/RichmondFedOrg/publications/research/economic_brief/2015/pdf/eb_15-12.pdf.

[12] Robert J. Shapiro and Jerome Davis, *The Unanticipated Costs and Consequences of Federal Reserve Regulation of Debit Card Interchange Fees* (Progressive Policy Institute, December 11, 2015), p. 15, https://www.progressivepolicy.org/the-unanticipated-costs-and-consequences-of-federal-reserve-regulation-of-debit-card-interchange-fees.

[13] Vladimir Mukharlyamov and Natasha Sarin, *The Impact of the Durbin Amendment on Banks, Merchants, and Consumers*, University of Pennsylvania Law School, January 2019, https://www.law.nyu.edu/sites/default/files/Mukharlyamov_Sarin_2.4.2019_0.pdf.

[14] Vladimir Mukharlyamov and Natasha Sarin, *The Impact of the Durbin Amendment on Banks, Merchants, and Consumers*, p. 18.

[15] Todd J. Zywicki, Geoffrey A. Manne, and Julian Morris, "Price Controls on Payment Card Interchange Fees: The U.S. Experience," George Mason University Law & Economics, *Research Paper Series* No. 14–18, June 1, 2014, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2446080.

More recent modeling of similar interchange restrictions points to similar results. The Common Sense Institute estimated that such a policy would reduce Colorado's GDP by $1.43 billion annually, lower personal income by more than $1.1 billion, eliminate approximately 8,800 jobs, and generate merchant savings that were only a fraction of the broader economic losses.[16]

The available empirical evidence therefore provides little basis for expecting S.688 to produce meaningful consumer benefits. Instead, the historical record indicates that such policies primarily shift costs throughout the payments system while leaving consumers worse off.

S.688 would increase costs and operational complexity

S.688 would require payment networks, financial institutions, payment processors, and merchants to distinguish the sales tax and gratuity portions of individual card transactions, even though payment card systems generally process transactions as a single aggregate amount.[17] Because this information is not routinely transmitted through existing payment networks, compliance would require substantial changes to transaction processing and settlement systems.

The bill itself recognizes these implementation challenges by establishing two compliance pathways. Under Section 37(b), merchants may avoid interchange fees on taxes and gratuities by transmitting that information during the authorization or settlement process.

Under Section 37(c), merchants that do not transmit the data may instead submit tax documentation for up to 180 days after the transaction, after which the issuer must refund the applicable interchange fees within 30 days.

This statutory reimbursement process necessarily requires merchants to maintain transaction records and financial institutions and payment processors to review documentation, verify claims, and issue refunds. These additional administrative processes would increase costs throughout the payments ecosystem.

These changes would be especially burdensome for community banks, credit unions, and smaller payment processors that lack extensive compliance resources. Section 37(f) of the bill imposes a civil penalty of $1,000 for each violation involving a transaction where the required tax or gratuity information has been provided but the statutory restriction is not followed. Although this penalty applies only after the required information has been transmitted, the per-transaction structure could still create substantial exposure.

A routine software error or systems failure affecting thousands of transactions could expose an institution to substantial financial liability.[18] Moreover, the bill does not clearly identify the entity responsible for enforcing this penalty, the procedures governing adjudication, or whether it creates a private right of action, adding further uncertainty regarding how the provision would operate in practice.

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[16] Zachary Milne, *The Economic Impact of State Restrictions on Interchange Fees* (Common Sense Institute, January 29, 2025), https://www.commonsenseinstituteus.org/colorado/research/taxes-and-fees/the-economic-impact-of-state-restrictions-on-interchange-fees.
[17] Sumati Mehta, "How Settlement Processing Delivers the Financial Precision Card Programs Need to Close Faster and Scale Further," Litchic, March 9, 2026, https://www.lithic.com/blog/what-is-settlement-processing.
[18] LegalClarity, "How to Process and Account for a Batch Refund," accessed July 20, 2026, https://legalclarity.org/how-to-process-and-account-for-a-batch-refund.

S.688 would also contribute to the fragmentation of the national payments system. Card networks operate under uniform national standards that allow transactions to be processed seamlessly across state lines. A Massachusetts-specific interchange rule would require payment networks to embed state-specific processing logic into systems designed to operate uniformly nationwide.[19]

As additional states consider similar legislation, payment networks would face an increasingly complex patchwork of jurisdiction-specific requirements, thereby increasing costs and operational risks for all participants in the electronic payments systems.

S.688 would burden small businesses while favoring large retailers

Although interchange fee bans like S.688 are intended to reduce merchants' payment-processing costs, its benefits are unlikely to be distributed evenly. Every merchant accepting payment cards would either need to modify its systems to transmit tax and gratuity data during the authorization or settlement process or participate in the bill's post-transaction documentation and reimbursement process.

Similar implementation challenges have been identified in connection with Illinois' comparable interchange fee legislation.[20] Its legal status has been evolving. Although the OCC's federal preemption determination[21] and a federal district court injunction[22] have limited enforcement against certain covered institutions, the law has not been eliminated in its entirety. Further appellate proceedings remain pending.

The experience with Illinois illustrates that interchange fee restrictions requiring transaction-level identification of taxes and gratuities can create significant compliance obligations, regardless of whether the resulting interchange savings ultimately justify those costs. Similar obligations would apply to merchants and payment system participants under S.688.

Large retailers are generally better equipped to satisfy these requirements because they maintain sophisticated payment systems and dedicated compliance resources. Many small businesses do not. Instead, they depend on standardized payment software and outside vendors, which makes fixed compliance costs proportionally much larger.[23]

Experience with the Durbin Amendment demonstrates that interchange regulation often produces uneven outcomes. The Federal Reserve Bank of Richmond found that only 11.1 percent of merchants experienced lower payment costs, while 31.3 percent experienced higher costs and most experienced no measurable benefit.[24]

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[19] Steve Swedberg, *The Hidden Costs of Interchange Fee Bans,* pp. 5-7.

[20] PricewaterhouseCoopers LLP, "Federal Court Upholds Illinois Interchange Fee Ban on State and Local Tax and Gratuities, Enjoins Data Use Restrictions," *State and Local Tax Insights*, February 2026, https://www.pwc.com/us/en/state-local-tax/newsletters/salt-insights/assets/pwc-federal-court-upholds-illinois-interchange-fee-ban%20on-state-tax.pdf.

[21] Office of the Comptroller of the Currency, "Order Preempting the Illinois Interchange Fee Prohibition Act," *Federal Register* 91, no. 82 (April 29, 2026), pp. 23150–23158, https://www.federalregister.gov/documents/2026/04/29/2026-08341/order-preempting-the-illinois-interchange-fee-prohibition-act.

[22] *Illinois Bankers Association v. Raoul*, (Kendall, V.M.), Memorandum Opinion & Order, https://storage.courtlistener.com/recap/gov.uscourts.ilnd.463030/gov.uscourts.ilnd.463030.115.0.pdf.

[23] Julian Morris and Ben Sperry, *Regulating State Interchange Fees: Evaluating the Likely Effects of the IFPA* (International Center for Law & Economics, July 7, 2025), https://laweconcenter.org/resources/regulating-state-interchange-fees-evaluating-the-likely-effects-of-the-ifpa.

[24] Haltom and Wang, *Did the Durbin Amendment Reduce Merchant Costs?* p. 3.

The Electronic Payments Coalition's 2024 analysis of the Illinois Interchange Fee Prohibition Act likewise projects that the ten largest retailers would capture 21.4 percent of all interchange savings, while retailers outside the forty largest would receive average gross savings of only about $56.[25]

For many Massachusetts small businesses, compliance costs would likely exceed any savings generated by S.688. Meanwhile, the largest retailers would most probably end up being the principal beneficiaries of the legislation.

Conclusion: Reject S.688

The evidence does not support the conclusion that S.688 would meaningfully benefit consumers or most merchants. Instead, the bill would impose significant compliance costs, increase operational complexity throughout the payments system, and concentrate any economic gains among the largest retailers. Public policy should promote competitive markets and efficient payment systems.

As such, the Commonwealth should reject S.688 and allow payment networks and market participants to continue operating under nationally uniform rules.

Thank you for this opportunity to present the views of the Competitive Enterprise Institute. If you or your staff should have any questions, please feel free to contact me by phone or email.

Sincerely,

Steve Swedberg
Finance and Monetary Policy Analyst
Competitive Enterprise Institute

[25] Electronic Payments Coalition, *New Illinois Law Creates Windfall for Largest Corporate Mega-Stores, Bear Costs on Small Businesses*, October 2024, pp. 2-3, https://electronicpaymentscoalition.org/wp-content/uploads/2024/10/Illinois-State-Sales-Tax-Interchange-Report-9.24.24-1.pdf.