

SENATE BILL REPORT

SB 5070

As of January 17, 2025

Title: An act relating to prohibiting fees on certain acts of commerce to protect tipped wages for workers while reducing the financial burden on employers.

Brief Description: Concerning prohibiting fees on certain acts of commerce to protect tipped wages for workers while reducing the financial burden on employers.

Sponsors: Senators Saldaña, Hasegawa, Conway, Cortes, Fortunato, Krishnadasan, Lovelett, Nobles, Orwall, Stanford, Trudeau, Valdez, Wellman and Wilson, J..

Brief History:

Committee Activity: Labor & Commerce: 1/17/25.

Brief Summary of Bill

- Prohibits certain entities involved in processing electronic payment transactions from receiving or charging a merchant an interchange fee on the sales and use tax or gratuity amount of a transaction, and imposes a \$1,000 penalty for each violation.
- Bars an employer from reducing an employee's tips, gratuities, or service charges by the amount of any interchange fees.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Marlon Llanes (786-7423)

Background: A merchant is charged fees by certain entities, including credit card companies, that are involved in processing electronic payment transactions. One of these fees, known as an interchange fee, may range between 1.5 to 3.5 percent of the total amount of a sale. A merchant is charged an interchange fee when a customer pays with a debit or credit card.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Under the federal Fair Labor Standards Act, when tips are charged on a customer's credit card, a merchant is allowed to deduct the percentage of the interchange fee from the employee's tip.

Washington law requires an employer to pay its employees all tips, gratuities, and service charges, with limited exceptions. Washington law does not address the deduction of interchange fees from an employee's tips, gratuities, or service charges. A Department of Labor and Industries policy allows an employer to deduct interchange fees on a prorated basis based on the percentage of the credit card fee.

In Maine and California, employers are prohibited from deducting any credit card fees from tips. In 2024, the state of Illinois passed a law banning interchange fees assessed on sales taxes or tipped wages. The law is pending litigation.

Summary of Bill: An issuer, payment card network, acquirer bank, or processor is prohibited from receiving or charging a merchant an interchange fee on the sales and use tax or gratuity amount of a transaction if the merchant transmits tax or gratuity amount data as part of the electronic payment transaction process. If the merchant submits the data within 180 days of the transaction, the issuer must issue a credit to the merchant within 30 days of the submittal.

An issuer, payment card network, acquirer bank, or processor may not avoid the prohibition by increasing the amount of interchange fees on other portions of the transaction not related to taxes or other fees charged to the merchant.

An issuer, payment card network, acquirer bank, or processor that receives the tax or gratuity amount data and charges a fee or fails to provide a credit is subject to a \$1,000 civil penalty per electronic payment transaction. The issuer must also refund the merchant the interchange fees charged.

An employer is prohibited from reducing an employee's tips, gratuities, or service charges by the amount of any interchange fees.

A payment card network is required to provide a mechanism by June 30, 2028, for merchants to transmit the tax or gratuity amount data as part of the electronic payment transaction process.

Definitions are provided, including the definitions of issuer, payment card network, acquirer bank, and processor. "Interchange fee" means a fee established, charged, or received by a payment card network for the purpose of compensating the issuer for its involvement in an electronic payment transaction.

Legislative findings and intent are provided.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on July 1, 2026.

Staff Summary of Public Testimony: PRO: Many small businesses are still recovering from the pandemic, and this bill would provide relief to them without burdening workers. Members of the public who are tipped workers shared experiences of recent difficulties due to inflation. Many workers depend on tips to make ends meet and any deduction from their paycheck is significant. Employers are doing a job on behalf of the state by collecting sales taxes and are being penalized for it with fees. For small businesses, interchange fees are nearly equal to their bottom line and often represent the highest operating expense after labor. The current payment system is capable of being adjusted to determine tax and tip amounts for payments. This bill does not require new technology.

CON: There is no opposition to the provisions related to employee tips, only to the prohibition on interchange fees. Consumers and merchants benefit from the current system. Credit cards are convenient for customers and merchants. Customers are protected from fraud and receive credit card rewards. When merchants accept credit card payments, it often leads to greater sales and tips. The current payment system was not designed to determine tax and tip amounts of an individual payment. The only information that is transmitted during a payment is the owner of the card, location of the transaction, and total amount. It will be costly and difficult to change a global payment system. The Legislature should consider a different approach such as compensating retailers for collecting sales tax.

Persons Testifying: PRO: Senator Rebecca Saldaña, Prime Sponsor; Evan Gallo; Eunice How, UNITE HERE Local 8; Otis Williams, UNITE HERE Local 8; William Matteo, UNITE HERE Local 8; Katie Beeson, Washington Food Industry Association (WFIA); Don Rhoads, The Convenience Group; Dan Alsaker, The Broadway Group ; Crystal Leatherman, Washington Retail Association; Julia Gorton, Washington Hospitality Association; Samantha Burdman, Glass Bottle Creamery; Clayton Krueger, Farrelli's Wood Fire Pizza ; Barry Galen, Collector's Choice Restaurant; Danielle Alvarado, Fair Work Center.

CON: Glen Simecek, Washington Bankers Association; Steve Rauschenberger, Electronic Payments Coalition; Brad Tower, Community Bankers of Washington; Joe Adamack, GoWest Credit Union Association.

Persons Signed In To Testify But Not Testifying: No one.