HOUSE DOCKET, NO. 2664 FILED ON: 1/21/2011

HOUSE . . . . . No. 3125

The Commonwealth of Massachusetts

PRESENTED BY:

John J. Binienda

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:

An Act to amend chapter 140E credit card merchant agreements.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
John J. Binienda	*17th Worcester*

HOUSE DOCKET, NO. 2664 FILED ON: 1/21/2011

HOUSE . . . . . No. 3125

By Mr. Binienda of Worcester, a petition (accompanied by bill, House, No. 3125) of John J. Binienda relative to credit card agreements between merchants and financial insitutions. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *949* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act to amend chapter 140E credit card merchant agreements.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1. As used in this chapter, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:--

"Acquiring bank", a financial institution licensed to do business in the Commonwealth providing merchant accounts.

"Chargeback", a credit card or debit card transaction that is either billed back to a merchant or deducted from a merchant's account.

"Credit card", (a) any instrument or device, whether known as a credit card, charge card, credit plate, courtesy card or identification card or by any other name, issued with or without a fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value, either on credit or in possession or in consideration of an undertaking or guaranty by the issuer of the payment of a check drawn by the cardholder on a promise to pay in part or in full at a future time, whether or not all or any part of the indebtedness represented by this promise to make deferred payment is secured or unsecured; (b) any stored value card, smart card or other instrument or device that enables a person to obtain goods, services or anything else of value through the use of value stored on the instrument or device; and (c) the number assigned to an instrument or device described in clause (a) or (b) of this paragraph even if the physical instrument or device is not used or presented.

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

24 “Financial institution”, (a) any bank, banking association, trust company, federal or state
25 savings and loan association, including all banks for cooperatives organized under the United
26 States Farm Credit Act of nineteen hundred and thirty-three, existing by authority of the United
27 States, or any state, or a foreign country, or any law of the commonwealth; (b) any other
28 institution, association or entity, the deposits or accounts of which are insured under the Federal
29 Deposit Insurance Act or by the Federal Deposit Insurance Corporation, any institution,
30 association or entity, which is a member of a federal Home Loan Bank, any other bank or thrift
31 institution incorporated or organized under the laws of a state which is engaged in the business of
32 receiving deposits; (c) any corporation subject to chapter one hundred and sixty-seven A, or
33 registered under the Federal Bank Holding Company Act of nineteen hundred and fifty-six, or
34 registered as a savings and loan holding company under the Federal National Housing Act, as
35 amended, including any subsidiary which participates in the filing of a consolidated return of
36 income to the federal government; (d) any corporation subject to supervision by the division of
37 banks including but not limited to corporations described in section twenty-four of chapter
38 ninety-three; sections ninety-six to one hundred and four or section one hundred and fourteen C
39 of chapter one hundred and forty; section thirty-eight of chapter one hundred and sixty-seven;
40 section five of chapter one hundred and sixty-seven B; chapter one hundred and sixty-nine A;
41 chapter two hundred and fifty-five B; chapter two hundred and fifty-five C; chapter two hundred
42 and fifty-five D; and chapter two hundred and fifty-five E; or (e) any other corporation organized
43 under the laws of the United States, the commonwealth or any other state or a foreign country
44 which, in substantial competition with financial institutions as defined in any or all of clauses (a)
45 to (d), inclusive, derives more than ten percent of its gross income, excluding nonrecurring,
46 extraordinary items, from credit card and debit card activities.

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

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

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

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

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

57 Disclosure of Rules

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

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

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

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

77 Certain Charges Prohibited

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

82 Application of Fees to Taxes Prohibited

83 Section 4. Discount rates, transaction charges, interchange rates, or any other charges or
84 fees charged to merchants or deducted from credit card or debit card sales for processing credit
85 card or debit card transactions shall not be applied to that portion of the credit card or debit card
86 sales transaction representing the tax or excise collected by the merchant incident to a sale of any
87 goods, meals, commodities, or services in accordance with chapters 64A, 64C, 64E, 64G, 64H,
88 64I, 64J, or 64K.

89 Waivers Prohibited

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

92 Remedies; Penalties

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

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

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

102 Application; severability

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

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

109 SECTION 2. This act shall take effect on January 1, 2010.