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## THE CHANGING LANDSCAPE OF INTERCHANGE FEES AND SURCHARGES

*The authors provide an overview of the ongoing credit card interchange fee litigation and recent federal and state legislation that seeks to lower interchange fees. The authors also discuss state laws that restrict merchants from passing these fees on to consumers and concerns about the constitutionality and practical application of these laws.*

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When a customer makes a purchase using a credit card, either online or in person, a small percentage of the transaction compensates the payment processors, credit card networks, card-issuing banks, and acquiring banks involved in the transaction. These fees collectively called “swipe fees” have an average range between 1.5% to more than 3.5% per transaction. Typically, the merchant pays the fees, however merchants may choose to pass these costs to the consumer through higher prices, offering discounts for non-credit card payments, or by surcharging customers for credit card payments.

Regulators, consumers and politicians are increasingly scrutinizing payment processing fees, sparking a wave of restrictions on surcharges and fees. In addition, the courts have waded into the controversy, rejected proposed class action settlements that would lower interchange rates as inadequate, while also holding that state statutes that prohibit merchants from surcharging customers are unconstitutional. These developments present challenges to those seeking to navigate the electronic payments landscape.

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### OVERVIEW OF ELECTRONIC PAYMENTS INFRASTRUCTURE AND FEES

When a customer uses their credit card, their card information is transmitted through the merchant’s point-of-sale terminal to the appropriate credit card network via a payment processor. The credit card network requests authorization from the cardholder’s issuing bank which verifies the cardholder’s account for available credit and possible security concerns, such as potential fraud. Approval is relayed back to the merchant by the credit card network through the payment processor, allowing the merchant to then complete the transaction.<sup>1</sup>

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<sup>1</sup> Andrew Scott, *How the Credit Card Competition Act of 2023 Could Affect Consumers, Merchants, and Banks*, CONG. RES. SERV. (Dec. 13, 2023), <https://crsreports.congress.gov/product/pdf/IF/IF12548>.

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