



Ohio Revised Code

Section 113.40 Authorizing acceptance of payments by financial transaction device to pay for state expenses.

Effective: June 24, 2008

Legislation: House Bill 562 - 127th General Assembly

(A) As used in this section:

- (1) "Financial transaction device" includes a credit card, debit card, charge card, prepaid or stored value card, or automated clearinghouse network credit, debit, or e-check entry that includes, but is not limited to, accounts receivable and internet-initiated, point of purchase, and telephone-initiated applications, or any other device or method for making an electronic payment or transfer of funds.
- (2) "State expenses" includes fees, costs, taxes, assessments, fines, penalties, payments, or any other expense a person owes to a state office under the authority of a state elected official or to a state entity.
- (3) "State elected official" means the governor, lieutenant governor, attorney general, secretary of state, treasurer of state, and auditor of state.
- (4) "State entity" includes any state department, agency, board, or commission that deposits funds into the state treasury.

(B) Notwithstanding any other section of the Revised Code and subject to division (D) of this section, the board of deposit may adopt a resolution authorizing the acceptance of payments by financial transaction device to pay for state expenses. The resolution shall include all of the following:

- (1) A designation of those state elected officials and state entities authorized to accept payments by financial transaction device;
- (2) A list of state expenses that may be paid by the use of a financial transaction device;



(3) Specific identification of financial transaction devices that a state elected official or state entity may authorize as acceptable means of payment for state expenses. Division (B)(3) of this section does not require that the same financial transaction devices be accepted for the payment of different types of state expenses.

(4) The amount, if any, authorized as a surcharge or convenience fee under division (E) of this section for persons using a financial transaction device. Division (B)(4) of this section does not require that the same surcharges or convenience fees be applied to the payment of different types of state expenses.

(5) A specific requirement, as provided in division (G) of this section, for the payment of a penalty if a payment made by means of a financial transaction device is returned or dishonored for any reason.

The board of deposit's resolution also shall designate the treasurer of state as the administrative agent to solicit proposals, within guidelines established by the board of deposit in the resolution and in compliance with the procedures provided in division (C) of this section, from financial institutions, issuers of financial transaction devices, and processors of financial transaction devices; to make recommendations about those proposals to the state elected officials; and to assist state offices in implementing the state's financial transaction device acceptance and processing program.

(C) The administrative agent shall follow the procedures provided in this division whenever it plans to contract with financial institutions, issuers of financial transaction devices, or processors of financial transaction devices for the purposes of this section. The administrative agent shall request proposals from at least three financial institutions, issuers of financial transaction devices, or processors of financial transaction devices, as appropriate in accordance with the resolution adopted under division (B) of this section. Prior to sending any financial institution, issuer, or processor a copy of any such request, the administrative agent shall advertise its intent to request proposals in a newspaper of general circulation in the state once a week for two consecutive weeks. The notice shall state that the administrative agent intends to request proposals; specify the purpose of the request; indicate the date, which shall be at least ten days after the second publication, on which the request for proposals will be mailed to financial institutions, issuers, or processors; and require that any financial institution, issuer, or processor, whichever is appropriate, interested in receiving the



request for proposals submit written notice of this interest to the administrative agent not later than noon of the day on which the request for proposals will be mailed.

Upon receiving the proposals, the administrative agent shall review them and make a recommendation to the board of deposit regarding which proposals to accept. The board of deposit shall consider the agent's recommendation and review all proposals submitted, and then may choose to contract with any or all of the entities submitting proposals, as appropriate. The board of deposit shall provide any financial institution, issuer, or processor that submitted a proposal, but with which the board does not enter into a contract, notice that its proposal is rejected.

(D) The board of deposit shall send a copy of the resolution adopted under division (B) of this section to each state elected official and state entity authorized to accept payments for state expenses by financial transaction device. After receiving the resolution and before accepting such payments by financial transaction device, such a state elected official or state entity shall provide written notification to the administrative agent of the official's or entity's intent to implement the resolution within the official's or entity's office. Each state office or entity subject to the board's resolution adopted under division (B) of this section shall use only the financial institutions, issuers of financial transaction devices, and processors of financial transaction devices with which the board of deposit contracts, and each such office or entity is subject to the terms of those contracts.

If a state entity under the authority of a state elected official is directly responsible for collecting one or more state expenses and the state elected official determines not to accept payments by financial transaction device for one or more of those expenses, the office is not required to accept payments by financial transaction device for those expenses, notwithstanding the adoption of a resolution by the board of deposit under division (B) of this section.

Any state entity that prior to March 18, 1999, accepted financial transaction devices may continue to accept such devices until June 30, 2000, without being subject to any resolution adopted by the board of deposit under division (B) of this section, or any other oversight by the board of the entity's financial transaction device program. Any such entity may use surcharges or convenience fees in any manner the state elected official or other official in charge of the entity determines to be appropriate, and, if the administrative agent consents, may appoint the administrative agent to be the entity's administrative agent for purposes of accepting financial transaction devices. In order to be



exempt from the resolution of the board of deposit under division (B) of this section, a state entity shall notify the board in writing within thirty days after March 18, 1999, that it accepted financial transaction devices prior to March 18, 1999. Each such notification shall explain how processing costs associated with financial transaction devices are being paid and shall indicate whether surcharge or convenience fees are being passed on to consumers.

(E) The board of deposit may establish a surcharge or convenience fee that may be imposed upon a person making payment by a financial transaction device. The surcharge or convenience fee shall not be imposed unless authorized or otherwise permitted by the rules prescribed under a contract, between the financial institution, issuer, or processor and the administrative agent, governing the use and acceptance of the financial transaction device.

The establishment of a surcharge or convenience fee shall follow the guidelines of the financial institution, issuer of financial transaction devices, or processor of financial transaction devices with which the board of deposit contracts.

If a surcharge or convenience fee is imposed, every state entity accepting payment by a financial transaction device, regardless of whether that entity is subject to a resolution adopted by the board of deposit, shall clearly post a notice in the entity's office, and shall notify each person making a payment by such a device, about the surcharge or fee. Notice to each person making a payment shall be provided regardless of the medium used to make the payment and in a manner appropriate to that medium. Each notice shall include all of the following:

- (1) A statement that there is a surcharge or convenience fee for using a financial transaction device;
- (2) The total amount of the charge or fee expressed in dollars and cents for each transaction, or the rate of the charge or fee expressed as a percentage of the total amount of the transaction, whichever is applicable;
- (3) A clear statement that the surcharge or convenience fee is nonrefundable.

(F) If a person elects to make a payment by a financial transaction device and a surcharge or convenience fee is imposed, the payment of the surcharge or convenience fee is not refundable.



(G) If a person makes payment by a financial transaction device and the payment is returned or dishonored for any reason, the person is liable to the state for the state expense and any reimbursable costs for collection, including banking charges, legal fees, or other expenses incurred by the state in collecting the returned or dishonored payment. The remedies and procedures provided in this section are in addition to any other available civil or criminal remedies provided by law.

(H) No person making any payment by a financial transaction device to a state office shall be relieved from liability for the underlying obligation, except to the extent that the state realizes final payment of the underlying obligation in cash or its equivalent. If final payment is not made by the financial transaction device issuer or other guarantor of payment in the transaction, the underlying obligation survives and the state shall retain all remedies for enforcement that would have applied if the transaction had not occurred.

(I) A state entity or employee who accepts a financial transaction device payment in accordance with this section and any applicable state or local policies or rules is immune from personal liability for the final collection of such payments as specified in section 9.87 of the Revised Code.

(J) The administrative agent, in cooperation with the office of budget and management, may adopt, amend, and rescind rules in accordance with section 111.15 of the Revised Code to implement this section.