

Swipe Fee Saga Continues: OCC and Trade Groups Clash with Illinois AG

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The banking industry's efforts to challenge a new Illinois law banning interchange fees, also known as "swipe fees," on tax and tip payments gained significant momentum when the OCC criticized the law as an "ill-conceived" threat to the "efficient and effective" operation of the banking system in an [amicus brief](#) filed in Illinois federal court on October 2.

The Interchange Fee Prohibition Act (the "Act"), is embedded as Section 150-10 of the state's recent [revenue bill](#), and prohibits card issuers, payment card networks, acquirer banks and payment processors from charging retailers for swipe fees on gratuities and "any use and occupation tax or excise tax" imposed by the State or a local government (see [here](#) for our initial discussion of this development).

The lawsuit challenging the new law was originally [filed](#) by several banking and credit union associations seeking a preliminary injunction to bar enforcement of the Act. Plaintiffs and the OCC claim that the Act conflicts with federal laws and oversteps the state's regulatory purview.

The OCC's amicus brief contends that swipe fees are crucial for banks to manage fraud risks, cover transaction costs, and provide consumer services. The OCC further argued that enforcing the Act would burden banks with operational costs which would likely be passed on to consumers through higher fees and reduced services, and would also hinder banks' ability to monitor transaction data for fraud detection, ultimately weakening consumer protections and public trust in the banking industry.

Most recently, on October 7, the Illinois Attorney General responded to the plaintiffs' bid to obtain a preliminary injunction. In the [motion](#), the Attorney General argued that the trade groups lack standing to bring their claims because they have not demonstrated an immediate or concrete injury. Moreover, the Attorney General argued that sovereign immunity bars plaintiffs' claims because they have not shown that the Attorney General has enforcement authority under the Act. Further, per Illinois law, each of the state's 102 elected attorneys is obligated to pursue action and proceedings for the recovery of penalties accruing to the state or the county. Because of this, simply enjoining the Attorney General would not completely shield plaintiffs from enforcement, and would be ineffective in providing the relief to plaintiffs.

The Illinois Attorney General's response further argues that the plaintiffs' claimed injuries are too speculative. Furthermore, in response to preemption arguments made by the plaintiffs and OCC, the Attorney General argued that the Act does not conflict with federal laws, including the National Bank Act, Federal Credit Union Act, or the Durbin Amendment.

Putting It Into Practice: Illinois is the first state to enact a swipe fee ban. It is uncertain whether other states will adopt similar measures or if additional parties will bring legal challenges to prevent the Act from taking effect. If implemented as scheduled in July 2025, the Act will force payment processors, card issuers, and merchants alike to spend substantial time and resources to adapt to a new set of norms for transaction reporting.

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