

AMENDMENT NO. _____ Calendar No. _____

Purpose: To prohibit credit card networks and certain card-issuing financial institutions from requiring network exclusivity on credit cards.

IN THE SENATE OF THE UNITED STATES—119th Cong., 1st Sess.

S. _____

To provide for a system of regulation of the offer and sale of digital commodities by the Commodity Futures Trading Commission, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. MARSHALL
(for himself and Mr. DURBIN)

Viz:  and Mr. WELCH

1 At the appropriate place, insert the following:

2 **SEC. _____. PROHIBITING CREDIT CARD NETWORKS**
3 **AND CERTAIN FINANCIAL INSTITUTIONS**
4 **FROM PREVENTING NETWORK COMPETITION**
5 **ON CREDIT CARDS.**

6 (a) DEFINITIONS.—In this section:

7 (1) AFFILIATE; PAYMENT CARD NETWORK.—

8 The terms “affiliate” and “payment card network”

9 have meanings given the terms in section 921 of the

10 Electronic Fund Transfer Act (15 U.S.C. 1693o–2).

1 (2) CARD ISSUER; CREDIT CARD; CREDITOR.—

2 The terms “card issuer”, “credit card”, and “cred-
3 itor” have the meanings given the terms in section
4 103 of the Truth in Lending Act (15 U.S.C. 1602).

5 (3) COVERED CARD ISSUER.—The term “cov-
6 ered card issuer”—

7 (A) means a card issuer that, together
8 with any affiliates, had consolidated worldwide
9 banking and nonbanking assets, including as-
10 sets of affiliates, other than trust assets under
11 management, of more than \$100,000,000,000
12 at any point during the previous calendar year;
13 and

14 (B) does not include a card issuer with re-
15 spect to credit cards issued by the card issuer
16 if the card issuer also serves as the payment
17 card network for the credit cards.

18 (4) ELECTRONIC CREDIT TRANSACTION.—The
19 term “electronic credit transaction”—

20 (A) means a transaction in which a person
21 uses a credit card; and

22 (B) includes a transaction in which a per-
23 son does not physically present a credit card for
24 payment, including a transaction involving the
25 entry of credit card information onto, or use of

1 credit card information in conjunction with, a
2 website interface, mobile telephone application,
3 or any other digital method or device.

4 (5) LICENSED MEMBER.—The term “licensed
5 member” includes, with respect to a payment card
6 network—

7 (A) a creditor or card issuer that is au-
8 thorized to issue credit cards bearing any logo
9 of the payment card network; and

10 (B) any person, including any financial in-
11 stitution and any person that may be referred
12 to as an acquirer, that is authorized to—

13 (i) screen and accept any person into
14 any program under which that person may
15 accept, for payment for goods or services,
16 a credit card bearing any logo of the pay-
17 ment card network;

18 (ii) process transactions on behalf of
19 any person who accepts credit cards for
20 payments; and

21 (iii) complete financial settlement of
22 any transaction on behalf of a person who
23 accepts credit cards for payments.

24 (b) PROHIBITIONS.—It shall be unlawful for any cov-
25 ered card issuer or payment card network that is engaged

1 in commerce to, with respect to any credit card issued by
2 a covered card issuer—

3 (1) directly or through any agent, processor, or
4 licensed member of a payment card network, by con-
5 tract, requirement, condition, penalty, technological
6 specification, or otherwise, restrict the number of
7 payment card networks on which an electronic credit
8 transaction may be processed to—

9 (A) 1 such network;

10 (B) 2 or more such networks, if—

11 (i) each such network is owned, con-
12 trolled, or otherwise operated by—

13 (I) affiliated persons; or

14 (II) networks affiliated with such
15 issuer;

16 (ii) any such network is owned, oper-
17 ated, or sponsored by a foreign state entity
18 or has been identified by the Board of
19 Governors of the Federal Reserve System
20 as a network that poses a risk to the na-
21 tional security of the United States; or

22 (iii) there are only 2 such networks
23 and those networks hold the 2 largest mar-
24 ket shares as measured by the number of
25 credit cards issued in the United States by

1 licensed members of such networks (and
2 enabled to be processed through such net-
3 works) as of the most recent calculation of
4 market shares made pursuant to sub-
5 section (c); or

6 (2) directly or through any agent, processor, or
7 licensed member of a payment card network, by con-
8 tract, requirement, condition, penalty, technological
9 specification, or otherwise—

10 (A) inhibit the ability of any person who
11 accepts credit cards for payments to direct the
12 routing of electronic credit transactions for
13 processing over any payment card network that
14 may process such transactions and that is not
15 a network described in paragraph (1)(B)(ii);

16 (B) require any person who accepts credit
17 cards for payments to exclusively use, for trans-
18 actions associated with the particular credit
19 card, an authentication, tokenization, or other
20 security technology that cannot be used by all
21 of the payment card networks that may process
22 electronic credit transactions for that particular
23 credit card;

24 (C) inhibit the ability of another payment
25 card network to handle or process electronic

1 credit transactions using an authentication,
2 tokenization, or other security technology for
3 the processing of those electronic credit trans-
4 actions; or

5 (D) impose any penalty or disadvantage,
6 financial or otherwise, on any person who ac-
7 cepts credit cards for payment for—

8 (i) choosing to direct the routing of an
9 electronic credit transaction over any pay-
10 ment card network on which the electronic
11 credit transaction may be processed; or

12 (ii) failing to ensure that a certain
13 number, or aggregate dollar amount, of
14 electronic credit transactions are handled
15 by a particular payment card network.

16 (c) DETERMINATION OF MARKET SHARES.—Not
17 later than 60 days after the date of enactment of this Act
18 and not less frequently than once every 3 years thereafter,
19 the Board of Governors of the Federal Reserve System
20 shall—

21 (1) calculate the relative market shares of pay-
22 ment card networks as measured by the number of
23 credit cards issued in the United States by licensed
24 members of such networks (and enabled to be proc-
25 essed through such networks); and

1 (2) submit to the Department of Justice and
2 make publicly available a report containing the cal-
3 culation required under paragraph (1).

4 (d) ENFORCEMENT.—

5 (1) IN GENERAL.—The several district courts of
6 the United States are invested with jurisdiction to
7 prevent and restrain violations of this section, and it
8 shall be the duty of the several United States attor-
9 neys, in their respective districts, under the direction
10 of the Attorney General, to institute proceedings in
11 equity to prevent and restrain such violations. Such
12 proceedings may be by way of petition setting forth
13 the case and praying that such violation shall be en-
14 joined or otherwise prohibited. When the parties
15 complained of shall have been duly notified of such
16 petition the court shall proceed, as soon as may be,
17 to the hearing and determination of the case; and
18 pending such petition and before final decree, the
19 court may at any time make such temporary re-
20 straining order or prohibition as shall be deemed
21 just in the premises.

22 (2) STATE ATTORNEYS GENERAL.—Any attor-
23 ney general of a State—

24 (A) may bring a civil action in the name
25 of such State, as *parens patriae* on behalf of

1 natural persons residing in such State, in any
2 district court of the United States having juris-
3 diction of the defendant, to secure monetary re-
4 lief for injury sustained by such natural persons
5 to their property by reason of any violation of
6 this section; and

7 (B) shall be entitled to sue for and have
8 injunctive relief, in any court of the United
9 States having jurisdiction over the parties,
10 against threatened loss or damage by a viola-
11 tion of this section, when and under the same
12 conditions and principles as injunctive relief
13 against threatened conduct that will cause loss
14 or damage is granted by courts of equity, under
15 the rules governing such proceedings, and upon
16 the execution of proper bond against damages
17 for an injunction improvidently granted and a
18 showing that the danger of irreparable loss or
19 damage is immediate, a preliminary injunction
20 may issue.

21 (e) APPLICATION OF ANTITRUST LAWS.—In any ac-
22 tion or proceeding to enforce this section with respect to
23 conduct that may be covered by this section, no court or
24 adjudicatory body may find that compliance or noncompli-
25 ance with this section precludes application of the anti-

1 trust Laws, as defined in subsection (a) of the first section
2 of the Clayton Act (15 U.S.C. 12), to the conduct.

3 (f) EFFECTIVE DATE.—The section shall take effect
4 on the date that is 180 days after the date of enactment
5 of this Act.

6 (g) APPLICABILITY.—If the most recent calculation
7 of market shares made pursuant to subsection (c) after
8 the effective date of this Act determines that the networks
9 holding the 2 largest market shares have changed from
10 the immediately prior calculation of such market shares,
11 covered card issuers that have issued credit cards enabled
12 to be processed over only 2 networks that now have been
13 determined to hold the 2 largest market shares shall have
14 180 days to come into compliance with this section.

15 (h) SEVERABILITY.—If any provision of this section
16 or the application of such provision to any person or cir-
17 cumstance is held to be unconstitutional, the remainder
18 of this section, and the application of the remaining provi-
19 sions of this section to any person or circumstance shall
20 not be affected.