

# **OPEN SESSION AGENDA ITEM**

**701 JAN 18**

**DATE:** January 27, 2018  
**TO:** Members, Board of Trustees  
**FROM:** Kevin Harper, Interim Chief Financial Officer  
**SUBJECT:** Credit Card Fee Cost Recovery

---

## **EXECUTIVE SUMMARY**

On December 5, 2016, the Board of Trustees adopted State Bar Rule, Title 2, Division 2, Rule 2.18, authorizing the State Bar to implement processing fee cost recovery with respect to the payment of annual licensing fees via credit card or debit card. Staff proposes to extend cost recovery to all payments via credit card or debit card effective February 1, 2018. The State Bar would not charge cost recovery for payments made via electronic funds transfer.

---

## **BACKGROUND**

On December 5, 2016, the Board of Trustees adopted State Bar Rule, Title 2, Division 2, Rule 2.18, authorizing the State Bar to charge a processing fee for the use of a credit card, debit card, or electronic funds transfer for payment of annual licensing fees:

Rule 2.18 - Payment by credit card, debit card, or electronic funds transfer

The State Bar is authorized to charge members who choose to pay annual membership fees by credit card, debit card, or electronic funds transfer an additional fee to defray the costs incurred by that election. The State Bar's Executive Director or his or her designee is authorized to set the amount of any additional fee the State Bar is authorized to charge members under this rule.

The State Bar began collecting such processing fees on December 7, 2016, and has collected \$928,000 through December 31, 2017. This savings has been invested in the State Bar's discipline system, furthering the State Bar's primary mission of public protection.

## **DISCUSSION**

Staff proposes to extend credit card processing fee cost recovery to all payments. The State Bar

currently provides for payments by credit card, debit card, or electronic check. The primary collections by the State Bar via credit card and debit card are:

My State Bar Profile – annual licensing fees	\$37 million
My State Bar Profile – other	2
Admissions	21
Physical terminals (primarily MCLE and licensing fees))	<u>2</u>
Total	<u>\$62</u> million

When these payments are received, the State Bar is required to pay a processing fee. A processing fee is the amount the recipient of the payment is required to pay to process the transaction, and results from arrangements that can involve financial institutions, credit card companies, and third-party processors. The State Bar currently absorbs the processing fees for all payments received other than annual licensing fees.

When the State Bar imposed credit card processing fees to defray the cost related to the payment of annual licensing fees, it relied on Business and Professions Code section 6140, which allows a processing fee if the Board of Trustees provides a rule for the payment. Therefore, the Board of Trustees adopted State Bar Rule 2.18, authorizing the State Bar to implement credit card processing fee cost recovery with respect to the payment of annual licensing fees.

However, for payments other than the annual license fees, the State Bar is not required to adopt a rule in order to defray a credit card processing fee. Government Code section 6159, subd. (h)(1) allows the State Bar to impose a fee for the use of a credit card, as long as the fee does not exceed the cost incurred by the State Bar and the fee is approved by the Board of Trustees. Because (1) the State Bar, as a public corporation, falls within the definition of a public agency; and (2) Government Code § 6159, subd. (h)(1) is discretionary (it does not restrict the State Bar from charging a fee for the use of a credit card or require the State Bar to do so); the State Bar may elect to impose a fee not to exceed the costs incurred, subject to the approval of the Board of Trustees. Also, the Business and Professions Code sections and Rules of Court that provide the State Bar with authority for the imposition of fees and penalties do not prohibit the use of payment by credit cards or a fee for the use of a credit card to defray the cost.

Thus, the State Bar may impose a processing fee for all payments made by credit card or debit card as long as the Board of Trustees approves the processing fee. Also, there would be no additional charge if attorneys pay using an electronic funds transfer, which is a payment method with minimal transaction costs. It is recommended that the electronic funds payment option always remain available.

This proposal is not a profit-making endeavor. The proposal will simply permit the State Bar to charge processing fees that it would otherwise be required to absorb. The associated savings will support the State Bar's discipline and regulatory functions, furthering the State Bar's primary mission of public protection.

## **FISCAL/PERSONNEL IMPACT**

Following is the estimated amount of credit card fees the State Bar paid in 2017 and the estimated annual savings for charging credit card fees to licensees:

General Fund	\$1,035,000
Admissions Fund	285,000
Legal Specialization	<u>10,000</u>
Total	1,330,000
Less amount collected from annual licensing (General Fund)	<u>(785,000)</u>
Expected additional annual savings	<u>\$545,000</u>

The final 2018 budget submitted to the Board for approval on January 27, 2018 assumes that credit card cost recovery has been approved.

## **RULE AMENDMENTS**

None

## **BOARD BOOK IMPACT**

None

## **STRATEGIC PLAN GOALS & OBJECTIVES 2017-2022**

Goal: 3. Improve the fiscal and operational management of the State Bar, emphasizing integrity, transparency, accountability, and excellence.

Objective: d. Reallocate funds to support the discipline system based on expenditure review, revenue enhancement measures, implementation of the Bar's reserve policy, and other reengineering efforts.

## **RECOMMENDATION**

It is recommended that the Board of Trustees approve that a fee may be charged to defray credit card and debit card processing fees with respect to the payment of any fees in addition to licensing fees. It is also recommended that the State Bar provide an electronic funds transfer payment option, for which a processing fee would not be charged.

It is further recommended that the Board of Trustees approve the following resolutions:

**RESOLVED**, that the State Bar is authorized to charge licensees and the public who elect to pay any fee by credit card or debit card a processing fee to defray the costs incurred by that election; and it is

**FURTHER RESOLVED**, that the State Bar provide an electronic funds transfer payment option for which a processing fee would not be charged.

**ATTACHMENT(S) LIST**

None