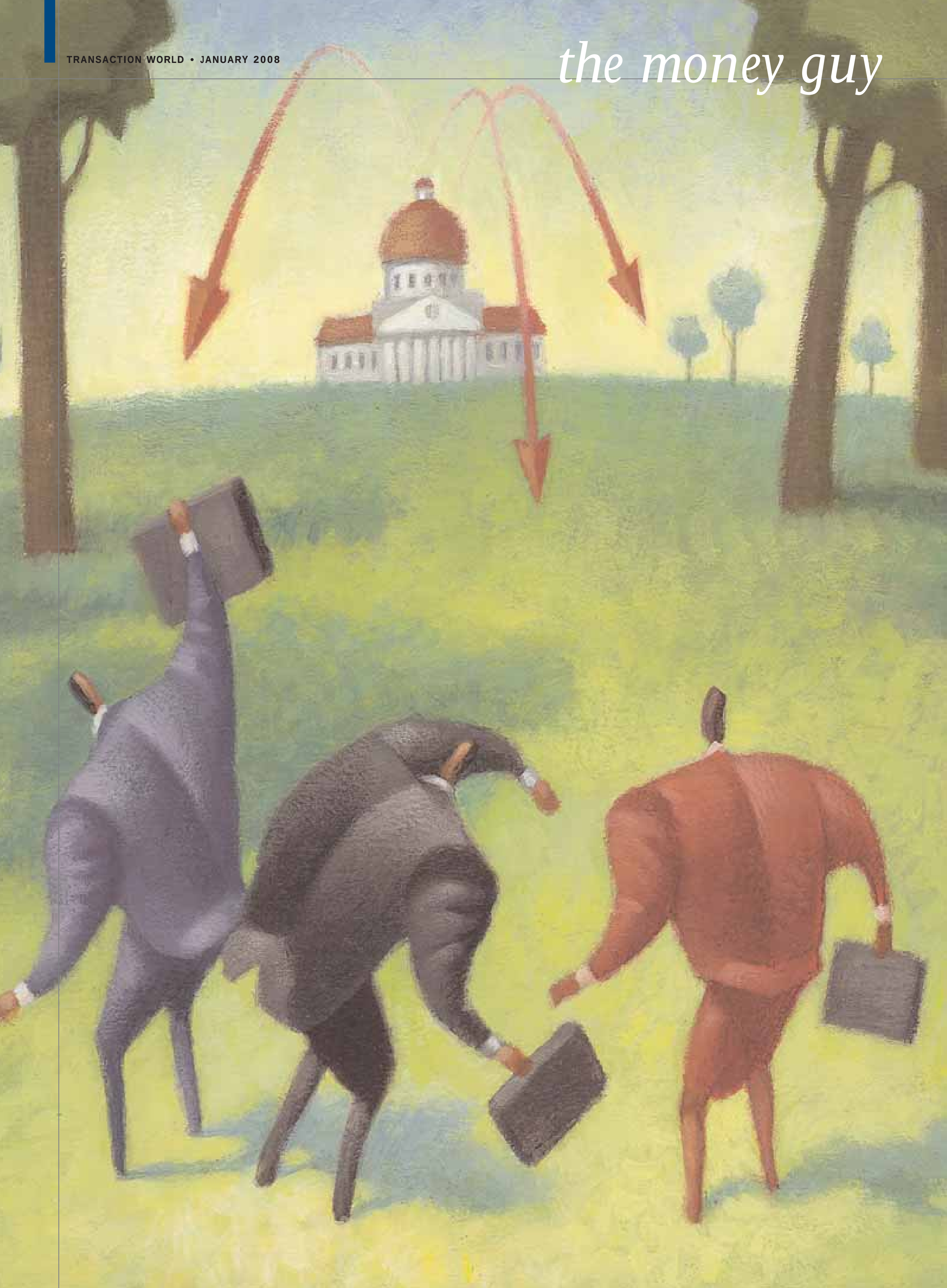
the money guy



WHAT DO CHANGES IN STATE LAW MEAN TO ISOs?

by Harold Montgomery

If you have been reading recent industry press, you have heard about two state legislatures taking the initiative to change the way credit card services are disclosed, sold, managed and priced. Notably, Arkansas passed a law dictating disclosure rules, cancellation fees and capping certain fixed charges commonly seen in the merchant agreement. California considered similar legislation, but it was not passed. Most state lawmakers consider it only a matter of time.

Generally, once something hits this stage of the legislative process, it doesn't go away completely, but finds its way through the law making maze either as a piece of legislation in its own right, or as an add on to another larger bill perhaps in a related area such as banking reform. I think we can expect more such initiatives in the future, and probably more regulation.

You might ask why the Money Guy is focusing on this issue and the reason is simple – money! Your money and mine. Now that the state of Arkansas requires special disclosure and contract language in all credit card processing contracts, processors will have to generate a special contract or form for merchants in the state of Arkansas. Local ISOs would have to use it and would be liable if they didn't. This creates another layer of paperwork and complexity for those doing business in Arkansas, and that means costs go up and so does risk.

Those of us who do business in Arkansas but are not focused on it as our home territory will naturally ask if there are enough merchants there to support the required changes. I doubt that there are, so the choice will be to pay the increased costs of doing business there or abandon the state. A decision to abandon the state by out of state providers would benefit the local providers (ISO's and banks), but not the local customers who will wind up paying all the costs of the new regulations.

Who wins with this kind of legislation? I think it's the local banks which are entrenched in the state. They have a great deal of experience in regulatory compliance, which ISO's generally do not. Raising the regulatory walls is a great way to look like you're protecting the customer while building barriers to entry at the same time. They have every reason to grab every piece of business occurring on their home turf.

The part of this new legislative interest that surprises me is that it came up at all. I have previously (and naively) thought that our industry was well below anyone's radar screen. The merchant community is not that large overall, and not that politically organized. For this issue to make it onto anyone's legislative agenda, there had to be many complaints of price irregularities or bad service over a long period of time. Legislative initiatives don't happen overnight. It takes months of staff time and thought to craft even the simplest of bills. Politicians have limited resources to apply to pressing problems and generally don't bother with things that affect only a few people. They are looking for issues with voter traction. They need to solve problems that affect a large enough group of voters so they can say they did something worthwhile.

For credit card reform to hit their agenda and stay there long enough to result in legislation means that a lot of people complained loudly enough and for a long enough period of time to get the issue on the agenda. That's remarkable to me.

Remarkable and bad. This is a sign of a brewing backlash against the cost of processing, the indifference of processors to merchants, and the counterproductive sales tactics of some ISOs in the market. Those industry players who are acting to maximize short term profitability at the expense of what's best for their customer will generate negative publicity and a negative image for themselves and the rest of us in the business.

If legislators are going to take their cues from the retail community without checking with the acquiring community's side of the story, then what could be next on the agenda? Perhaps regulation of charges in excess of interchange? Perhaps licensing of ISOs and other providers? There's a host of things I can think of that might qualify.

I think we should be going out of our way to give regulators and legislators reasons to respect our industry and leave us alone. If we give them reasons to intervene and take control, they will. And we won't like it. ■

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