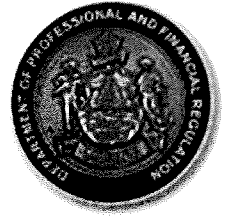




STATE OF MAINE
DEPARTMENT OF PROFESSIONAL & FINANCIAL
REGULATION
BUREAU OF CONSUMER CREDIT PROTECTION



Janet T. Mills
Governor

Linda Conti
Superintendent

Joan F. Cohen
Commissioner

**Testimony of Linda Conti
Superintendent
Bureau of Consumer Credit Protection
Department of Professional and Financial Regulations
Neither for nor Against LD 151**

“An Act to Allow Businesses to Impose a Surcharge on Credit Card and Debit Card Transactions”

Before the Committee on Health Coverage, Insurance and Financial Services

Tuesday, March 25, 2025; 1:00 P.M.

Senator Bailey, Representative Gramlich and Members of the Committee on Health Coverage, Insurance and Financial Services, I am Linda Conti and I serve as the Superintendent of the Bureau of Consumer Credit Protection (BCCP).

While the Bureau of Consumer Credit Protection is neither for nor against L.D.151, we wanted to share some information that could be helpful to you. In most states it is legal to surcharge credit cards. According to federal law, there's a 4% maximum allowable surcharge on credit card transactions. Debit card surcharging is illegal in all 50 states.

Maine is one of four states where it is illegal to surcharge credit card transactions:

- Connecticut
- Maine
- Massachusetts
- California (effective July 1, 2024)

Other states have laws that allow surcharging but with some contingencies.

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Bureau of Consumer Credit Protection

- Colorado allows credit card surcharging up to 2%.
- New York, New Jersey, Nevada, and South Dakota prohibit surcharges from exceeding the cost that the merchant pays to accept the card.
- Texas law prohibits surcharging but allows merchants to impose convenience fees, service fees, and cash discounts (and federal courts have previously ruled against Texas surcharge laws).
- Kansas also has anti-surcharging laws that were overturned by federal courts, but merchants must include the credit card fees in the listed price to legally impose a surcharge.
- Georgia allows convenience fees on credit card transactions, but only if the merchant accepts alternative types of payments.
- Minnesota allows credit card surcharging (with some contingencies) but requires mandatory fees to be included in the advertised price of a purchase unless it can be reasonably avoided by the consumer (effective January 1, 2025).

Merchants in the remaining 37 states can likely surcharging credit card transactions without breaking the law.

A 2012 settlement involving anti-competitive practices by Visa and Mastercard allowing merchants (i.e. businesses) to begin charging surcharge credit card transactions in some circumstances seems to have been the genesis of surcharge, aka swipe fees.

Since that time, there have been more related lawsuits (and as noted above, there are still pending lawsuits) and proposed legislation such as the Credit Card Competition Act of 2022. According to Fortune, one significant lawsuit resulted in a 2017 U.S. Supreme Court ruling that “paved the way for more widespread use of surcharges.” The bottom line is that these fees appear to becoming more of the norm, at least for certain types of businesses and likely aren’t going away anytime soon. Though virtually unheard of a decade ago, 23% of small merchants now report that they charge an extra fee to credit card users, according to a 2022 article by The Strawhecker Group.

Finally, a word on how the ban actually works in Maine. The ban on credit card surcharges applies to all merchants. However, the ban is codified in Maine Consumer Credit Code at Title 9-A M.R.S. § 8-509. Title 9-A article 8 includes the Truth-in-Lending act. It generally applies to supervised lenders. The surcharge section, added in 2011, applies to “sellers” not lenders which extends far beyond entities that this Bureau exams and regulates. For example, the Bureau frequently gets calls regarding restaurants. The enforcement provisions of Title 9-A apply to creditors. A restaurant is not a creditor, so the Bureau has no authority to compel compliance with the surcharge ban. We do reach out and inform businesses we get complaints about as to the requirement of the statute, but that is all we can do which frustrates consumers. If the legislature wants to keep the ban

on surcharges, please consider removing it from the consumer credit code and adding a public or private enforcement mechanism.

Thank you for your time and I would be happy to answer any questions now or at the work session.