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## **New York State Credit Card Surcharge Law**

Last year, New York implemented a consumer protection law (the “Credit Card Surcharge Law”)<sup>1</sup> that aims to provide greater transparency and consumer protection in credit card transactions. The Credit Card Surcharge Law prohibits any surprise surcharges applied to credit card transactions at checkout.<sup>2</sup> This Legal Alert highlights what nonprofits need to know about the current law and how it might apply to them.

### **What is the Credit Card Surcharge Law?**

It is not uncommon for merchants across the country to pass on to their customers a portion of the payment processing fees owed to the merchants’ financial institutions for each credit card transaction.<sup>3</sup> Although the legality of this practice varies by state, the most recent update to the Credit Card Surcharge Law is New York’s response to the consistent complaints by consumers across the State about the number of service providers and business entities charging a surcharge (typically reported to range from 3% to 5%) at the point of sale when presented a credit card for payment.<sup>4</sup>

The Credit Card Surcharge Law<sup>5</sup> now explicitly permits businesses to pass along the actual cost of credit card processing fees as surcharges to customers, subject to two main requirements:

1. **Credit card surcharge notice:** A seller must clearly and conspicuously post the total price for using a credit card, inclusive of any surcharge, or alternatively display both the credit card price alongside the cash price; and
2. **Limit on credit card surcharge amount:** Any credit card surcharge amount imposed on the customer cannot exceed the amount charged to the seller by the credit card company.

Any seller in violation of the law is liable for a civil penalty up to \$500 for each violation (that is, each non-compliant transaction), enforceable by the New York State Attorney General and municipal and local government officials.

### **Does the Credit Card Surcharge Law apply to nonprofit organizations operating in New York?**

The Credit Card Surcharge Law applies to “any seller in any sales transaction imposing a surcharge on a customer who elects to use a credit card in lieu of payment by cash, check, or similar means.”<sup>6</sup>

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<sup>1</sup> The 2024 amendment rewrote and essentially revived Section 518 of the General Business Law after a 2018 court challenge. See the 2024 amendment <https://www.governor.ny.gov/news/governor-hochul-announces-new-law-clarify-disclosure-credit-card-surcharges-goes-effect-sunday>. See also the full surcharge law <https://www.nysenate.gov/legislation/laws/GBS/518>.

<sup>2</sup> Note that this law does not apply to debit card transactions.

<sup>3</sup> For an educational video on how credit card surcharges work and merchants’ underlying motivation, visit <https://dos.ny.gov/business-resources>.

<sup>4</sup> See the Department of State’s Division of Consumer Protection legal update letter at <https://www.governor.ny.gov/sites/default/files/2024-02/Credit-Card-Surcharge-Law-Notice.pdf>.

<sup>5</sup> See New York General Business Law Section 518 at <https://www.nysenate.gov/legislation/laws/GBS/518>.

<sup>6</sup> *Id.*

A “seller” is broadly defined as “any person who honors credit cards or debit cards which may be used to purchase or lease property or services.”<sup>7</sup> This definition does not distinguish among entity types (for example, nonprofit versus for-profit organizations) and, absent any further clarification from State authorities, appears generally applicable to *any* entity that accepts credit card payments in exchange for goods and services. Accordingly, if a nonprofit organization sells any merchandise or products and accepts credit card payments for such sales, the Credit Card Surcharge Law would likely apply.

Many nonprofit organizations charge fees payable by credit cards for their programming or membership, which may be deemed as services “sold” by the organization.<sup>8</sup> Erring on the side of caution, these organizations can ensure maximum compliance with the law by following the credit card surcharge notice and limit requirements when posting the programming or membership fee amounts.

### **What are the best practices under the Credit Card Surcharge Law?**

The Division of Consumer Protection from the New York Department of State has issued a “Credit Card Surcharge Guidance” (the “Guidance”)<sup>9</sup> indicating the following acceptable practices:

- Clearly displaying both the credit card price and the cash price on the same post;
- Listing the higher credit card price and advertising a cash discount of a certain percentage;
- Using the same price for both credit card and cash purchases.

Be mindful that the credit card surcharge price imposed on customers cannot exceed the actual cost of credit card processing fees charged to the organization by the credit card company or the associated financial institution.

### **What are some examples of prohibited practices under the Credit Card Surcharge Law?**

The Guidance also included the following non-compliant practices under the law:

- Putting up signs (for example, on the wall or at registers) that broadly state a certain percentage of processing fee is applied to all credit card sales;
- Charging a separate line item that shows up on the customer receipt as a convenience fee, service fee, administration fee, non-cash adjustment, technology fee, or generic processing fee;
- Advertising that all listed prices include a certain percentage of cash discount not applicable to credit card purchases (in other words, listing the (lower) cash or debit card price only and not posting the (higher) total amount after the credit card surcharge is applied);
- Listing the non-credit card pricing with a credit card surcharge warning note (such as “+ 4% fee if paying by credit card”) on the item price tag and/or post.

### **Bottom Line**

While the rules for compliant price displays may seem complex, a rule of thumb for sellers imposing a credit card surcharge that will result in a higher overall price to the purchaser relative to a cash or debit card payment option is to always ensure the *higher* total dollar amount *inclusive* of the surcharge is posted. It is acceptable for the seller to advertise incentives for cash discounts in percentage terms, but

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<sup>7</sup> See New York General Business Law Section 511 at <https://www.nysenate.gov/legislation/laws/GBS/511>.

<sup>8</sup> Donations and charitable contributions to nonprofit organizations without any corresponding services or programming in exchange may be distinguishable from a “sales transaction” as defined under the Credit Card Surcharge Law.

<sup>9</sup> See <https://dos.ny.gov/system/files/documents/2024/04/2024-04-10-dos-dcp-credit-card-surcharge-one-page-reference-guide.pdf>

not the other way around, by displaying a percentage of credit card surcharge levied on top of a lower cash price that is posted. The goal of the Credit Card Surcharge Law is to make the highest possible price immediately clear to a potential credit card user so that they are not surprised at checkout.

If you have additional questions about the Credit Card Surcharge Law in the context of specific scenarios, you should consult an attorney. Lawyers Alliance for New York can provide general legal information and resources through its Resource Call Hotline at (212) 219-1800 ext. 224 or email at [ResourceCall@lawyersalliance.org](mailto:ResourceCall@lawyersalliance.org).

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