



CREDIT CARD SURCHARGES

THURSDAY – JUNE 20, 2024

Greyson P. Hannigan

Director of Legal & Regulatory Affairs

- 
- 1. GENERAL CREDIT CARD SURCHARGE RULES**
 - 2. NEW JERSEY CREDIT CARD SURCHARGE LAW**
 - 3. SALES TAX IMPLICATIONS**
 - 4. BEST PRACTICES**



- **GENERAL CREDIT CARD SURCHARGE RULES**

- Credit Card surcharges have been allowed in New Jersey since 2013. Prior to 2013, businesses could not charge a fee for acceptance of a credit card.
- This prohibition spurred businesses to bring a class action lawsuit against Visa and Mastercard.
- The settlement of the lawsuit allowed businesses to pass the cost of fees they were charged by credit card companies and payment processors on to their customers.



- **GENERAL CREDIT CARD SURCHARGE RULES (CONT'D)**

- As part of the settlement, certain rules must be followed before a surcharge can be charged to a customer, namely:
 - A requirement to **display a sign at the point-of-sale** alerting customers about the credit card surcharge.
 - A requirement to **tell the customer** about the surcharge before they make the purchase.
 - The surcharge must be a **separate line item on any receipt**, both in person and online.
 - Credit Card companies must be **notified 30 days in advance** that a business is implementing a policy of charging a surcharge.
 - The amount of the surcharge must not be more than 4% **OR** the actual cost to the business for processing the payment, whichever is smaller. (On 4/15/23, Visa's limit is 3%).



- **NEW JERSEY CREDIT CARD SURCHARGE LAW –P.L. 2023, c. 146**

- A seller cannot impose on a customer who uses a credit card for a transaction occurring in New Jersey a surcharge that is greater than the **actual cost to the seller to process the credit card payment.**
 - A seller that imposes a surcharge on a customer to process a credit card payment **must disclose the amount of the surcharge to a customer**, prior to the customer incurring any charge for goods or services.
 - In the case of a seller, other than a restaurant, **posting clear and conspicuous notice on a sign at the point of entry and point of sale.**
 - The seller must provide **clear and conspicuous electronic notice on the checkout page of the Internet website, mobile application, or electronic kiosk** prior to processing the transaction.
 - If the seller is processing a credit card payment for a transaction that will occur **over the telephone, the seller must provide verbal notice prior to processing the transaction.**



- **SALES TAX IMPLICATIONS**

- In New Jersey, “sales price” is defined as the measure subject to Sales Tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, **without any deduction for the following:**
 - The seller's cost of the property sold.
 - The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and ***any other expense of the seller.***
 - Charges by the seller for any services necessary to complete the sale.
 - Delivery charges.



- **BEST PRACTICES**

- New Jersey law applies to credit cards only. **No surcharge on debit cards.**
- Disclosing only that a surcharge will be applied, without also disclosing the amount prior to the consumer incurring a charge, is not sufficient to comply with the law. **Can't just say surcharge will be charged.**
- **There is no particular form of signage required.** Handwritten notes, homemade signs, and stickers (on menus, for example) can be sufficient, so long as they clearly and conspicuously display the amount of the surcharge prior to the transaction and are posted in the required locations.
- If a seller's costs vary depending on the credit card used by the customer, each surcharge must be disclosed in accordance with the law.
 - **For Example:** "We impose a credit card surcharge of 2% for using Credit Card X and a surcharge of 2.25% for using Credit Card Y."
- A business may impose a **flat rate surcharge** so long as the rate charged does not exceed the actual costs of processing that transaction.



CONTACT INFORMATION

GREYSON P. HANNIGAN

DIRECTOR OF LEGAL & REGULATORY AFFAIRS

PHONE: (609) 883-5056 EXT. 340

EMAIL: GHANNIGAN@NJCAR.ORG

