

New York Will Soon Require Merchants to Provide Additional Credit Card Surcharge Disclosures

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On December 13, 2023, New York Governor Kathy Hochul signed into law [Assembly Bill 2672](#), which has significant implications for merchants in that it imposes disclosure requirements with respect to credit card surcharges for transactions with New York customers. Specifically, effective February 11, 2024, (i) merchants will be required to post the highest price that a consumer might pay in connection with a purchase using a credit card, along with the price that is offered when the customer uses another payment method (such as cash, check or debit card); and (ii) any surcharge so imposed must be no more than the amount charged to the business by its credit card processor (as in, such charge may only be assessed on a pass-through basis). Failure to do so can lead to a penalty of up to \$500 per violation.

Codified at NY General Business Law § 518, the “Disclosure Law” provides in relevant part as follows:

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 shall clearly and conspicuously post the total price for using a credit card in such transaction, inclusive of surcharge, provided however, any such surcharge may not exceed the amount of the surcharge charged to the business by the credit card company for such credit card use. The final sales price of any such sales transaction, inclusive of such surcharge, shall not amount to a price greater than the posted price for such sales transaction.¹

The term “seller” is defined as “any person who honors credit cards or debit cards which may be used to purchase or lease property or services.”²

From a policy perspective, the law’s premise is that the immediate disclosure of the “credit card price” for a good or service will result in greater transparency for the consumer/purchaser who otherwise is not made aware of a surcharge until the “checkout” process. As noted by Assemblymember Amy Paulin, “[c]redit card surcharges now have to be disclosed clearly so that consumers are fully aware of them upfront and not just when they go to pay. The legislation is about transparency, fairness, and preventing consumers from being misled when making purchases using credit cards.”³

In Practice

The Disclosure Law requires merchants to post the highest price that a consumer might pay in connection with the use of a credit card to purchase a product. The result for merchants that impose credit card surcharges⁴ will

¹ [\(NY Gen. Bus. Law § 518\)](#) (Disclosure Law)

² [\(NY Gen. Bus. Law § 511\)](#)

³ See [“Governor Hochul Signs Four New Laws to Protect Consumers from Price Gouging, Medical Debt and Unfair Business Practices.”](#)

⁴ Credit card networks typically do not allow the imposition of a surcharge on debit cards. See Visa – [“Surcharging Credit Cards – Q&A for Merchants,”](#) (“The ability to surcharge only applies to credit card purchases, and only under certain conditions. U.S. merchants cannot surcharge debit card or prepaid card purchases.”)

be that a two-tiered pricing disclosure will need to be made for each product or service offered for sale. What is not clear, however, is how the Disclosure Law will impact “sellers” who are not located in New York but make their products and services available to New York residents. Specifically, will the law expose merchants/”sellers” in California or Texas (or any other state) that offer their products to New Yorkers via the Internet to liability under the Disclosure Law if such two-tiered pricing is not disclosed? Further, it appears that Visa has recently announced enforcement efforts related to credit card surcharging with payment processors informing their clients that compliance with their standards will be enforced and that lapses could result in fines “between \$500,000 and \$1 million.”⁵

Given (i) the size of potential penalties and the numerous operational requirements merchants must satisfy to comply with this provision⁶ and (ii) the continuing state law requirements that make uniform operational practices challenging,⁷ it appears likely that many merchants that *had* adopted a surcharging program may abandon it to ensure that the potential liability that may arise with a broad reading of the Disclosure Law and other state laws are not triggered.

⁵ “[Visa cracks down on surcharge programs.](#)” *Payments Dive*

⁶ For example, merchants must register with Visa and their acquirer at least 30 days in advance of beginning to surcharge. Additionally, Visa caps credit card surcharges at the lesser of (i) the merchant discount rate for the applicable credit card or (ii) 3 percent.

⁷ For example, in August 2023, New Jersey enacted a law that limits the amount of a credit card surcharge to “the actual cost to the seller to process the credit card payment.” [NJ Stat. § 56:8-156.2.](#)

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