

# DIVISION OF CONSUMER PROTECTION

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All New York State Local Government Leaders:

On December 13, 2023, Governor Kathy Hochul signed Chapter 723 of the Laws of 2023 to update New York's law relating to credit card surcharges.<sup>1</sup> Effective February 11, 2024, the new law serves to increase clarity regarding the cost of credit expense for businesses and surcharges for consumers.

The New York Department of State's Division of Consumer Protection ("the Division") is providing all local governments throughout New York State with this legal update. Consumers across New York have consistently complained about the number of restaurants, stores, service providers, medical professionals and many other entities charging a surcharge at the point of sale when a consumer presents a credit card for payment. The range of fees reported tends to range from 3% to 5%. The Division has provided the attached "NYS General Business Law § 518 Practical Guidance" to help local governments apply the new law. The guidance includes examples of compliant and non-compliant practices.

Effective February 11, 2024, the new law will state:

§ 518. 1. Credit card surcharge notice requirement. 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. Nothing in this subdivision shall be deemed to prohibit merchants from offering a two-tier pricing system. For the purposes of this section, "two-tier pricing system" shall mean the tagging or posting of two different prices in which the credit card price, inclusive of any surcharge, is posted alongside the cash price.

2. Any seller who violates the provisions of this section shall be liable for a civil penalty, recoverable in an action or proceeding brought in a court of competent jurisdiction not to exceed five hundred dollars for each such violation. The provisions of this subdivision may be enforced concurrently by the director or commissioner of a municipal consumer affairs office, or by the town attorney, city corporation counsel, or other lawful designee of a municipality or local government, and all moneys collected thereunder shall be retained by such municipality or local government."

<sup>1</sup> General Business Law §518



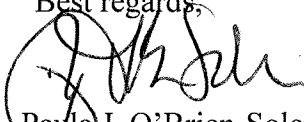
Local governments will now be able to enforce the new law. This new enforcement ability provides an opportunity for localities to promote consumer protection. The Division also hopes that the new law can better position local governments to encourage compliant practices and deter noncompliant behavior.

The Division welcomes the opportunity to be a partner in protecting New York State consumers. You may wish to help in this regard. The Division often receives consumer complaints from people throughout the state on a variety of matters and provides information and assistance to consumers along with complaint referrals to the entities with enforcement authority on a particular matter. To help facilitate that process, the Division requests contact information for any local government agency, office or individual designated in your jurisdiction, if any, to enforce this law, along with any associated referral instructions.

Additionally, if you are planning or are interested in pursuing any local educational outreach/programming on this law to raise awareness among businesses and consumers to help deter future violations, please feel free to reach out to our office for information and to discuss potential partnership opportunities.

Thank you for your support in assisting and protecting New York State consumers.

Best regards,



Paula J. O'Brien-Soler,  
Director

## NYS General Business Law § 518

### Practical Guidance

Just because a business has posted signs to make consumers aware of an additional fee, it does not make it compliant. These practices and the following examples DO NOT COMPLY with the law:

- ⊗ The business posts a sign on the door and at the register stating an additional 3.9% surcharge will apply for credit card purchases.
- ⊗ The business has a 4% cash discount incentive built into all pricing and posts a notice stating that any purchases made with a credit or debit card will not receive the cash discount and an adjustment in price will be displayed on the receipt.
- ⊗ A convenience fee, service fee, administration fee, non-cash adjustment, technology fee, processing fee, etc., is charged to credit card users and added as a separate line item on a customer receipt.
- ⊗ The price tag of an item shows “\$10.00, + 4% if paying with a credit card.”

However, businesses still have several options to recoup the credit card transaction costs while complying with the law. The following practices and examples DO COMPLY with the credit surcharge law:

- ✓ The business clearly lists both the credit card price and cash price.
- ✓ The business lists the higher credit card price for items and services and offers customers a discount for paying with cash.
- ✓ The business charges the same price for cash and credit transactions.