

Credit Card Surcharges Frequently Asked Questions

consumer**brief**

In 2023, Governor Murphy signed P.L. 2023, c.146 (N.J.S.A. 56:8-156.1 and -156.2) into law, which, among other things, prohibits sellers from imposing a credit card surcharge that is greater than the actual cost to the seller to process the credit card payment. The Division of Consumer Affairs understands that consumers and merchants alike may have questions about the law. These FAQs are intended to help consumers and merchants understand their rights and obligations under the law.

What notices does the law require?

If a seller of good or services imposes a surcharge on a consumer using a credit card, the seller must notify the consumer of the *amount of the surcharge*. Disclosing the amount of the surcharge by stating a percentage is permissible, but in all cases the surcharge must be disclosed *prior to the consumer incurring any charge* for goods or services.

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. For example, it is not enough for a seller to post a sign stating: “We impose a credit card surcharge that does not exceed our processing costs.”

For in-person transactions, where and in what manner must the notice about any credit card surcharges be posted?

For sellers other than restaurants, the amount of the surcharge must be disclosed on a sign at both the point of entry **and** the point of sale (e.g., the cash register or wherever payment is collected).

For restaurants, the amount of the surcharge must be disclosed on signs both in the customer service area **and** on the menu, including menu-boards and menus posted online or accessed through QR codes.

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.

Are there different disclosure requirements for online or telephone-based transactions?

Yes. Sellers processing a credit card payment through a website, mobile application, or electronic kiosk (like a self-serve checkout) and imposing a surcharge must provide

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clear and conspicuous electronic notice of the surcharge on the checkout page of that website, mobile application, or electronic kiosk.

If a seller processes a credit card payment over the telephone and imposes a surcharge, the seller must provide verbal notice of the surcharge prior to processing the transaction.

The amount of the surcharge may not be greater than the actual cost to the seller to process the credit card payment, regardless of whether the transaction is in-person, online, or telephone-based.

Is a credit card surcharge mandatory?

No, sellers are not required to impose any type of surcharge.

Credit card processing fees can vary depending on the credit card used or the type of store. Can sellers impose a standard surcharge (i.e., a “flat” rate) for all credit card transactions?

Businesses are prohibited from imposing any surcharge that is greater than the actual cost to process the credit card payment. A seller must disclose the amount of each credit card surcharge in a manner that complies with the law, as described in questions above, as applicable, even if the surcharges vary. Thus, 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, a sign posted in the appropriate locations

stating the following would be in compliance: “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 store may impose a flat rate surcharge so long as the rate charged does not exceed the actual costs of processing that transaction. For example, a seller may impose a 2% surcharge for all credit card transactions, even if its costs of processing exceed 2%.

Which transactions are covered under the law?

N.J.S.A. 56:8-156.1 and -156.2 apply only to credit card transactions. While other types of fees or charges that sellers may choose to impose are not addressed under this law, such fees and charges are still required to be clearly and conspicuously disclosed at or near the point of sale prior to the transaction.

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If you suspect deception or fraud in your dealings with individuals or businesses, you may write to the Office of Consumer Protection, Division of Consumer Affairs, P.O. Box 45025, Newark, New Jersey 07101 or call **800-242-5846**, or if outside New Jersey, **973-504-6200**, and ask for a complaint form. You may also download a complaint form at the Division’s website listed below.

New Jersey Office of the Attorney General DIVISION OF CONSUMER AFFAIRS

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