

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

HOUSE BILL 4351

By: Hill

AS INTRODUCED

An Act relating to the Uniform Consumer Credit Code; defining terms; allowing surcharges in certain transactions; limiting surcharge amount; requiring certain disclosures; limiting application of surcharge in a single transaction; prohibiting surcharges in certain transactions; creating liability for violation; allowing surcharges under certain agreements; repealing 14A O.S. 2021, Section 2-417, which prohibits surcharges; amending 14A O.S. 2021, Section 2-211, which relates to discounts; deleting surcharge prohibition; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-418 of Title 14A, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Debit card" means any instrument or device, whether known as a debit card or by any other name, issued with or without fee by an issuer for the use of the cardholder in depositing, obtaining, or transferring funds from a consumer banking electronic facility;

1 2. "Charge card" includes cards on which unpaid balances are
2 payable on demand;

3 3. "Merchant discount fee" means the actual fee, expressed as a
4 percentage or fixed amount of the total transaction amount, that a
5 seller or lessor pays its processor or service provider to process
6 the transaction; and

7 4. "Surcharge" means any additional amount imposed at the time
8 of the sales or lease transaction by the seller or lessor that
9 increases the charge to the buyer or lessee for the privilege of
10 using a credit or charge card.

11 B. In accordance with this section, a seller or lessor in any
12 sales or lease transaction may impose a surcharge on a buyer or
13 lessee who elects to use a credit card or charge card in lieu of
14 payment by cash, check, or similar means.

15 C. A seller or lessor may impose a surcharge of either:

16 1. An amount not to exceed two percent (2%) of the total cost
17 to the buyer or lessee for the sales or lease transaction. A seller
18 or lessor that imposes a surcharge on credit cards or charge cards
19 shall post signage at the seller's or lessor's premises in a manner
20 that is visible to customers or, for a sales or lease transaction
21 made online, display before an online customer's completion of the
22 sales or lease transaction in a manner that is visible to the online
23 customer, the following language:

1 "TO COVER THE COST OF PROCESSING A CREDIT OR CHARGE CARD
2 TRANSACTION, AND PURSUANT TO SECTION 2-418 OF TITLE 14A OF THE
3 OKLAHOMA STATUTES, A SELLER OR LESSOR MAY IMPOSE A PROCESSING
4 SURCHARGE IN AN AMOUNT NOT TO EXCEED TWO PERCENT (2%) OF THE TOTAL
5 PAYMENT MADE FOR GOODS OR SERVICES PURCHASED OR LEASED BY USE OF A
6 CREDIT OR CHARGE CARD. A SELLER OR LESSOR MAY NOT IMPOSE A
7 PROCESSING SURCHARGE ON PAYMENTS MADE BY USE OF CASH, CHECK, OR
8 DEBIT CARD OR REDEMPTION OF A GIFT CARD."; or

9 2. An amount not to exceed the merchant discount fee that the
10 seller or lessor incurs in processing the sales or lease
11 transaction. The seller or lessor or the seller's or lessor's
12 processor or service provider shall calculate the surcharge at an
13 amount not to exceed the actual amount paid to the processor or
14 service provider to process the transaction. A seller or lessor
15 shall post signage at the seller's or lessor's premises in a manner
16 that is visible to customers or, for a sales or lease transaction
17 made online, display before an online customer's completion of the
18 sales or lease transaction in a manner that is visible to the online
19 customer, the following language:

20 "TO COVER THE COST OF PROCESSING A CREDIT OR CHARGE CARD
21 TRANSACTION, AND PURSUANT TO SECTION 2-418 OF TITLE 14A OF THE
22 OKLAHOMA STATUTES, A SELLER OR LESSOR MAY IMPOSE A PROCESSING
23 SURCHARGE IN AN AMOUNT NOT TO EXCEED THE MERCHANT DISCOUNT FEE THAT
24 THE SELLER OR LESSOR INCURS IN PROCESSING THE SALES OR LEASE

1 TRANSACTION. A SELLER OR LESSOR MAY NOT IMPOSE A PROCESSING
2 SURCHARGE ON PAYMENTS MADE BY USE OF CASH, CHECK, OR DEBIT CARD OR
3 REDEMPTION OF A GIFT CARD."

4 The processor or service provider may provide the seller or
5 lessor with the means to make the disclosure required by this
6 paragraph.

7 D. For any goods or services purchased or leased through
8 payment by credit card or charge card, the seller, lessor,
9 processor, or service provider shall provide the surcharge amount
10 imposed as a separate line item on the customer's receipt.

11 E. A seller or lessor may impose only a single credit card or
12 charge card surcharge per sales or lease transaction.

13 F. A seller or lessor shall not impose a surcharge if a
14 customer elects to pay for goods or services by:

- 15 1. Using cash or check;
- 16 2. Using a debit card, whether or not a personal identification
17 number is used;
- 18 3. Processing a payment as a debit payment; or
- 19 4. Redeeming a gift card.

20 G. A seller or lessor who violates this section violates the
21 Uniform Consumer Credit Code and is subject to liability under the
22 Code.

1 H. A seller or lessor may impose a surcharge under this section
2 regardless of any contract or agreement that the seller or lessor
3 enters into on or after the effective date of this act.

4 SECTION 2. REPEALER 14A O.S. 2021, Section 2-417, is
5 hereby repealed.

6 SECTION 3. AMENDATORY 14A O.S. 2021, Section 2-211, is
7 amended to read as follows:

8 Section 2-211. A. With respect to all sales transactions, a
9 discount which a seller offers, allows or otherwise makes available
10 for the purpose of inducing payment by cash, check or similar means
11 rather than by use of an open-end credit card account shall not
12 constitute a credit service charge as determined under Section 2-109
13 of this title if the discount is offered to all prospective buyers
14 clearly and conspicuously in accordance with regulations of the
15 Administrator of Consumer Affairs. ~~No seller in any sales~~
16 ~~transaction may impose a surcharge on a cardholder who elects an~~
17 ~~open-end credit card or debit card account instead of paying by~~
18 ~~cash, check or similar means.~~ There is no limit on the discount
19 which may be offered by the seller. A seller who provides a
20 discount otherwise than in accordance with the regulations of the
21 Administrator must make the disclosures required by those
22 regulations.

23 B. A seller who is registered with the United States Treasury
24 Department as a money transmitter pursuant to 31 CFR, Section

1 103.41, and who provides an electronic funds transmission service,
2 including service by telephone and the Internet, may charge a
3 different price for a funds transmission service based on the mode
4 of transmission used in the transaction without violating this
5 section so long as the price charged for a service paid for with an
6 open-end credit card or debit card account is not greater than the
7 price charged for such service if paid for with currency or other
8 similar means accepted within the same mode of transmission.

9 C. Any seller subject to the provisions of subsection B of this
10 section shall either conduct business at a location in this state or
11 comply with the provisions of Section 1022 of Title 18 of the
12 Oklahoma Statutes.

13 D. As used in this section, "debit card" means any instrument
14 or device, whether known as a debit card or by any other name,
15 issued with or without fee by an issuer for the use of the
16 cardholder in depositing, obtaining or transferring funds from a
17 consumer banking electronic facility.

18 E. For purposes of this section, a private educational
19 institution as defined in paragraph (e) of Section 3102 of Title 70
20 of the Oklahoma Statutes, a private school defined as a nonpublic
21 entity conducting an educational program for at least one grade
22 between prekindergarten through twelve, a municipality as defined in
23 paragraph 5 of Section 1-102 of Title 11 of the Oklahoma Statutes or
24 a public trust with a municipality as its beneficiary may charge a

1 service fee. The service fee shall be limited to bank processing
2 fees and financial transaction fees, the cost of providing for
3 secure transaction, portal fees, and fees necessary to compensate
4 for increased bandwidth incurred as a result of providing for an
5 online transaction.

6 SECTION 4. This act shall become effective November 1, 2022.

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