# Department of Legislative Services
Maryland General Assembly
2013 Session

## FISCAL AND POLICY NOTE

House Bill 1167 (Delegate Hixson)
Economic Matters

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**Consumer Protection - Credit Cards - Surcharge on Sales Transactions - Prohibition**

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This bill prohibits a seller from imposing a surcharge, in any sales transaction, on a cardholder who elects to use a credit card instead of a payment by cash, check, or similar means.

Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

## Fiscal Summary

**State Effect:** The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

**Local Effect:** The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

**Small Business Effect:** Meaningful.

## Analysis

**Bill Summary:** The bill defines "credit card" as a card or device issued under an agreement by which the credit card issuer gives to a cardholder residing in the State the privilege of obtaining credit from the credit card issuer or another person in connection with the purchase or lease of goods or services. A "credit card issuer" is defined as a financial institution, a lender other than a financial institution, or a merchant that receives applications and issues credit cards to individuals.

The bill also defines "surcharge" as a (1) separate and additional charge or (2) discount offered by the seller for the purpose of inducing payment by cash, check, or similar means, rather than by credit card.

**Current Law:** An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, hold a public hearing, seek an injunction, or bring an action for damages. A merchant who violates MCPA is subject to a fine of up to $1,000 for the first violation and up to $5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to $1,000 and/or imprisonment for up to one year.

**Background:** In July 2012, Visa and MasterCard announced a settlement with retailers. The settlement addresses complaints from retailers that the two credit card issuers prohibited retailers from imposing a surcharge on customers using the issuers' credit cards. As part of the settlement, Visa and MasterCard agreed to pay the retailers more than $6 billion as well as allow the retailers to impose a surcharge on credit transactions, subject to a cap. According to the Kiplinger *Personal Finance Newsletter*, the National Retail Federation has stated that those merchants that add the surcharge for Visa and MasterCard would have to add a surcharge to other cards with an equal or higher surcharge fee, such as American Express. Since American Express prohibits retailers from charging swipe fees, businesses that accept all three cards would not be able to impose the fee.

The retailers must meet several requirements before a surcharge can be imposed, including providing notice at the store entrance, point of sale, or on receipts of the imposition of the surcharge. Any notice on a receipt must show the fee amount and state that the amount is equal to the credit card issuer's processing fee. The surcharge may also not be imposed on debit cards.

The settlement does not affect 10 states that already prohibit credit card surcharges. Those 10 states are California, Connecticut, Colorado, Florida, Kansas, Maine, Massachusetts, New York, Oklahoma, and Texas. Also, existing Visa and MasterCard rules require companies to employ the same credit card surcharge policy in all stores. As a result, national retailers with stores in the 10 states that prohibit credit card surcharges would not be able to impose the surcharge in any of their stores. Additionally, in 2013, legislation was introduced in New Jersey to prohibit retailers from charging a surcharge on credit card purchases.

**Small Business Effect:** The bill has a meaningful detrimental impact on sellers that impose a surcharge on credit card transactions, some of which may be small businesses. A retailer typically pays credit card issuers a processing fee anywhere from 1.5% to 3% of a total purchase in a credit card transaction. As of January 27, 2013, the aforementioned settlement allows a retailer to charge only the amount it pays to process a card, up to a maximum of 4%.

While it is reasonable to assume that a retailer may impose the surcharge to recoup the processing fee charged by the credit card issuer, there are several reasons why a retailer might not choose to pass the cost onto the customer. As noted above, there are disclosure requirements. A retailer may not want to communicate to a customer that the retailer is voluntarily choosing to impose a surcharge on the customer. Additionally, a retailer that chooses to impose the surcharge may have difficulty competing with one that does not.

Finally, the settlement also requires that if a retailer imposes a surcharge on Visa or MasterCard transactions, the retailer must also impose a surcharge on all other transactions involving a credit card issuer that charges a processing fee that is equal to or higher than the fee charged by Visa or MasterCard. One such credit card issuer is American Express. However, American Express prohibits a retailer from charging customers an extra fee to use their cards. Therefore, the retailer will not be able to impose a surcharge on any credit card transaction.

Because there are restrictions on a retailer's ability to impose a surcharge and incentives why a retailer may choose to not do so, the number of retailers that will impose a surcharge on the applicable credit card transactions is unknown. The bill has a meaningful detrimental impact on those that otherwise would choose to impose a surcharge.

Additionally, the bill has a meaningful detrimental impact on sellers that offer a discount to induce the payment by method other than by credit card. Offering such a discount is a common practice among gas stations; 5% to 10% of the nation's 115,000 independent gas stations offered a cash discount in 2010. Under the bill, the revenues of these businesses decrease if the price for credit card transactions is lowered to meet the price for payment by other means.

**Additional Comments:** HB 1218 similarly prohibits a merchant from imposing a surcharge on credit card transactions. However, HB 1218 does not prohibit the offer of a discount for the purpose of inducing payment by cash, check, or similar means not involving the use of a credit card.

## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General (Consumer Protection Division), *Kiplinger*, *Reuters*, National Public Radio, www.NorthJersey.com, Bankrate.com, Department of Legislative Services

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