

July 12, 2011

Maine Bureau of Financial Institutions

Maine Bureau of Consumer Credit Protection

Joint Advisory Ruling #119-A

Further guidance, re: implementation of 9-A MRS §8-509(1), "Credit Card and Debit Card Surcharge Prohibition"

Dear:

You have requested further clarification with respect to our agencies' Joint Advisory Ruling #119, issued July 12, 2011, in which we stated that it is permissible for a merchant to offer discounts from the regular price to consumers who use payment methods other than credit or debit cards.

In discussions with the committee, two specific questions emerged, and we answer them below.

Question 1: May a retailer post both the "regular" un-discounted price that's available to consumers using credit or debit cards, as well as the discounted "cash" price for those who use other payment methods?

Answer: Yes, a retailer can post both the regular price and the discounted cash price. If a merchant opts to disclose both prices, then the regular price must be as prominent as, or more prominent than, the discounted cash price, and the discounted price should be labeled as a "Cash" or "Cash Discount" price. A merchant may also choose to express the cash discount as a percentage, either on the label or on a display at the point of sale or other prominent location.

Question 2: May a retailer negotiate prices with a customer without violating the prohibition against credit or debit card surcharges, especially in a transaction in which the parties have agreed to a lower discounted cash price and the customer subsequently changes his or her mind and decides to use a credit or debit card for all or a portion of the purchase?

Answer: Yes, so long as the regular price is properly disclosed at the outset of negotiations, the parties may negotiate a final price without violating the statute. In other words, the Bureau will not consider "un-discounting" a previously agreed-upon discounted cash price, as a surcharge for use of a credit or debit card.

We believe the legislative purpose and intent behind 9-A **MRS** §8-509(1) is to avoid unfair surprise to a consumer who expresses an intent to purchase a good or service at a disclosed price, only to be told that the disclosed price must be increased if the consumer pays with a credit or debit card. Such an increase would constitute an impermissible surcharge. The important factor in each of the above scenarios is that the consumer must have a clear understanding of the regular price, and of any lower discounted cash price. The consumer will gain this understanding through the use of clear price stickers, labels and/or signage.

Sincerely,

/s/ Lloyd P. LaFountain III
Superintendent

Bureau of Financial Institutions

Sincerely,

/s/ William N. Lund
Superintendent

Bureau of Consumer Credit
Protection