

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 HOUSE BILL 3667

By: Munson

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5
6 AS INTRODUCED

7 An Act relating to the Consumer Credit Code; amending
8 14A O.S. 2021, Section 2-417, which relates to
9 surcharges; allowing surcharges in certain
10 transactions; limiting surcharge amount; requiring
11 certain disclosures; limiting application of
12 surcharge in single transaction; prohibiting
13 surcharges in certain transactions; creating
14 liability for violation; allowing surcharges under
15 certain agreements; defining terms; exempting certain
16 entities from limitations; amending 14A O.S. 2021,
17 Section 2-211, which relates to discounts; deleting
18 surcharge limitation; deleting electronic funds
19 transmission service exception; deleting definition;
20 deleting certain exception; defining terms;
21 prohibiting electronic payment fees; providing for
22 codification; and providing an effective date.

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

24 SECTION 1. AMENDATORY 14A O.S. 2021, Section 2-417, is
amended to read as follows:

Section 2-417. A. ~~No~~ In accordance with this section, a seller
or lessor in any sales or lease transaction may impose a surcharge
on a ~~cardholder~~ buyer or lessee who elects to use a credit card or

1 ~~debit~~ charge card in lieu of payment by cash, check or similar
2 means.

3 B. A seller or lessor may impose a surcharge that is the lesser
4 of either:

5 1. An amount not to exceed two percent (2%) of the total cost
6 to the buyer or lessee for the sales or lease transaction. A seller
7 or lessor that imposes a surcharge on credit cards or charge cards
8 shall post signage at the seller's or lessor's premises in a manner
9 that is visible to customers or, for a sales or lease transaction
10 made online, display before an online customer's completion of the
11 sales or lease transaction in a manner that is visible to the online
12 customer, the following language:

13 "TO COVER THE COST OF PROCESSING A CREDIT OR CHARGE CARD
14 TRANSACTION, AND PURSUANT TO SECTION 2-417 OF TITLE 14A OF THE
15 OKLAHOMA STATUTES, A SELLER OR LESSOR MAY IMPOSE A PROCESSING
16 SURCHARGE IN AN AMOUNT NOT TO EXCEED TWO PERCENT (2%) OF THE TOTAL
17 PAYMENT MADE FOR GOODS OR SERVICES PURCHASED OR LEASED BY USE OF A
18 CREDIT OR CHARGE CARD. A SELLER OR LESSOR MAY NOT IMPOSE A
19 PROCESSING SURCHARGE ON PAYMENTS MADE BY USE OF CASH, CHECK, OR
20 DEBIT CARD OR REDEMPTION OF A GIFT CARD."; or

21 2. An amount not to exceed the merchant discount fee that the
22 seller or lessor incurs in processing the sales or lease
23 transaction. The seller or lessor or the seller's or lessor's
24 processor or service provider shall calculate the surcharge at an

1 amount not to exceed the actual amount paid to the processor or
2 service provider to process the transaction. A seller or lessor
3 shall post signage at the seller's or lessor's premises in a manner
4 that is visible to customers or, for a sales or lease transaction
5 made online, display before an online customer's completion of the
6 sales or lease transaction in a manner that is visible to the online
7 customer, the following language:

8 "TO COVER THE COST OF PROCESSING A CREDIT OR CHARGE CARD
9 TRANSACTION, AND PURSUANT TO SECTION 2-417 OF TITLE 14A OF THE
10 OKLAHOMA STATUTES, A SELLER OR LESSOR MAY IMPOSE A PROCESSING
11 SURCHARGE IN AN AMOUNT NOT TO EXCEED THE MERCHANT DISCOUNT FEE THAT
12 THE SELLER OR LESSOR INCURS IN PROCESSING THE SALES OR LEASE
13 TRANSACTION. A SELLER OR LESSOR MAY NOT IMPOSE A PROCESSING
14 SURCHARGE ON PAYMENTS MADE BY USE OF CASH, CHECK, OR DEBIT CARD OR
15 REDEMPTION OF A GIFT CARD."

16 The processor or service provider may provide the seller or
17 lessor with the means to make the disclosure required by this
18 paragraph.

19 C. For any goods or services purchased or leased through
20 payment by credit card or charge card, the seller, lessor,
21 processor, or service provider shall provide as a separate line item
22 on the customer's receipt the surcharge amount imposed.

23 D. A seller or lessor may impose only a single credit card or
24 charge card surcharge per sales or lease transaction.

1 E. A seller or lessor shall not impose a surcharge if a
2 customer elects to pay for goods or services by:

3 1. Using cash or check;

4 2. Using a debit card, whether or not a personal identification
5 number is used;

6 3. Processing a payment as a debit payment; or

7 4. Redeeming a gift card.

8 F. A seller or lessor who violates this section violates the
9 Consumer Credit Code and is subject to liability under the Code.

10 G. A seller or lessor may impose a surcharge under this section
11 regardless of any contract or agreement that the seller or lessor
12 enters into on or after the effective date of this act.

13 H. As used in this section, ~~"debit:~~

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

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

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

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

5 ~~C. For purposes of this section,~~ I. The limitations provided
6 for in this section shall not apply to a private educational
7 institution as defined in paragraph (e) of Section 3102 of Title 70
8 of the Oklahoma Statutes, a private school defined as a nonpublic
9 entity conducting an educational program for at least one grade
10 between prekindergarten through twelve, a municipality as defined in
11 paragraph 5 of Section 1-102 of Title 11 of the Oklahoma Statutes or
12 a public trust with a municipality as its beneficiary. Such
13 entities may charge a service fee. The service fee may be applied
14 to online or in-person transactions and shall be used to offset bank
15 processing fees, financial transaction fees, the cost of providing
16 for secure transaction, portal fees, and fees necessary to
17 compensate for increased bandwidth incurred as a result of providing
18 the transaction.

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

21 Section 2-211. ~~A.~~ With respect to all sales transactions, a
22 discount which a seller offers, allows or otherwise makes available
23 for the purpose of inducing payment by cash, check or similar means
24 rather than by use of an open-end credit card account shall not

1 constitute a credit service charge as determined under Section 2-109
2 of this title if the discount is offered to all prospective buyers
3 clearly and conspicuously in accordance with regulations of the
4 Administrator of Consumer Affairs Credit. ~~No seller in any sales~~
5 ~~transaction may impose a surcharge on a cardholder who elects an~~
6 ~~open-end credit card or debit card account instead of paying by~~
7 ~~cash, check or similar means.~~ There is no limit on the discount
8 which may be offered by the seller. A seller who provides a
9 discount otherwise than in accordance with the regulations of the
10 Administrator must make the disclosures required by those
11 regulations.

12 ~~B. A seller who is registered with the United States Treasury~~
13 ~~Department as a money transmitter pursuant to 31 CFR, Section~~
14 ~~103.41, and who provides an electronic funds transmission service,~~
15 ~~including service by telephone and the Internet, may charge a~~
16 ~~different price for a funds transmission service based on the mode~~
17 ~~of transmission used in the transaction without violating this~~
18 ~~section so long as the price charged for a service paid for with an~~
19 ~~open-end credit card or debit card account is not greater than the~~
20 ~~price charged for such service if paid for with currency or other~~
21 ~~similar means accepted within the same mode of transmission.~~

22 ~~C. Any seller subject to the provisions of subsection B of this~~
23 ~~section shall either conduct business at a location in this state or~~
24

1 ~~comply with the provisions of Section 1022 of Title 18 of the~~
2 ~~Oklahoma Statutes.~~

3 ~~D. As used in this section, "debit card" means any instrument~~
4 ~~or device, whether known as a debit card or by any other name,~~
5 ~~issued with or without fee by an issuer for the use of the~~
6 ~~cardholder in depositing, obtaining or transferring funds from a~~
7 ~~consumer banking electronic facility.~~

8 ~~E. For purposes of this section, a private educational~~
9 ~~institution as defined in paragraph (c) of Section 3102 of Title 70~~
10 ~~of the Oklahoma Statutes, a private school defined as a nonpublic~~
11 ~~entity conducting an educational program for at least one grade~~
12 ~~between prekindergarten through twelve, a municipality as defined in~~
13 ~~paragraph 5 of Section 1-102 of Title 11 of the Oklahoma Statutes or~~
14 ~~a public trust with a municipality as its beneficiary may charge a~~
15 ~~service fee. The service fee shall be limited to bank processing~~
16 ~~fees and financial transaction fees, the cost of providing for~~
17 ~~secure transaction, portal fees, and fees necessary to compensate~~
18 ~~for increased bandwidth incurred as a result of providing for an~~
19 ~~online transaction.~~

20 SECTION 3. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 2-418 of Title 14A, unless there
22 is created a duplication in numbering, reads as follows:

23 A. As used in this section:
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1 1. "Electronic payment fee" means any additional amount, in
2 excess of a surcharge authorized pursuant to Section 2-417 of this
3 title and taxes, imposed at the time of the sales or lease
4 electronic transaction by the seller or lessor that increases the
5 charge to the buyer or lessee;

6 2. "Electronic transaction" means a transaction which is
7 initiated and processed using electronic means. "Electronic
8 transaction" does not include paper-based transactions such as paper
9 checks or cash; and

10 3. "Ordinary and necessary expenses" include, but are not
11 limited to, rent payments, mortgage payments, utility payments,
12 maintenance expenses, food expenses, clothing expenses, life, health
13 and accident insurance, taxes, installment payments, medical
14 expenses, support expenses when the individual is legally
15 responsible, higher education tuition, and expenses for state
16 government issued documents and licenses.

17 B. Unless specifically authorized by law, no seller or lessor
18 shall impose an electronic payment fee on a buyer or lessee in any
19 sales or lease electronic transaction for ordinary and necessary
20 expenses.

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

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23 58-2-10252 AQH 01/19/22

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