



IntelliPay™

# The Only Guide You'll Ever Need for Surcharging

July 2021



***According to Bloomberg merchants spend \$100 billion annually on interchange fees. The cost has been on the rise in recent years as premium cards, which have heftier fees, grow in popularity among consumers.***

Forbes February 14, 2020

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### **Why Are You Paying For Someone Else's Perks?**

Consumers love their premium or reward credit cards and the airline miles, cash back and other perks. Who doesn't like free airfare or hotel rooms?

Card issuers are in a hyper-competitive market. Each year it takes ever more lavish rewards to lure customers to their cards. Card issuers aren't paying for the perks, you the merchant are. The higher interchange fees on rewards cards pay for the rewards. So every time one of your customers chooses to pay using a reward card for the points, your margins take a hit.

If that wasn't enough, many merchant agreements "discourage" merchants from suggesting their customer use lower-cost traditional credit cards if the merchants wants to retain the privilege of accepting their cards.

### **No Clue**

Most of your customers don't know, don't care or assume the card company is paying for their perks.

Similarly few merchants realize there is a way for them to accept rewards credit cards and pass the credit card processing fees along to their customers who choose reward credit cards at time of payment. Some think its illegal to add a fee for credit card payments to a customer's bill. Some think their customers will balk and never come back. Others think it is too complicated and not worth the hassle. The truth lies elsewhere.

*The amount U.S. merchants pay in  
interchange fees has increased  
77% since 2012*

## Backstory

Major retailers fed up with the high fees and card brand rules that prohibited them from steering customers to lower-cost cards or adding fees to offset their costs took VISA and Mastercard to court.

After years of fighting, a March 2017 Supreme court decision in the case of *Expressions Hair Design v. Schneiderman* favored the merchants. The opinion, written by Chief Justice John Roberts, sympathized with the merchants' argument and appeared to lay down doctrine concerning whether state (surcharging prohibition) statutes go beyond price regulation to violate free-speech rights.



## State Level Challenges

While the Supreme Court ruling and card association rule changes permit surcharging on the Federal level, two states have laws prohibit surcharging. As of July 2021, the following states prohibit surcharging:

- Connecticut
- Massachusetts

Legal challenges in six other states that had made the practice illegal opened up surcharging to 94% of the U.S. population.

Surcharge laws generally apply to consumer-facing businesses. If you sell to other businesses, you can add a surcharge fee to all credit card transactions. The fee can be added in states where consumer surcharging is prohibited.



## Not All Transactions

Surcharge fees can only be added to credit card transactions and not to debit or prepaid cards.

Signature debit card and pin debit transactions run as credit are still debit transactions and therefore are prohibited from having surcharges added.

The limitations on debit cards have their roots in the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The Durbin amendment of the Dodd-Frank Act placed restrictions on debit transactions, including a cap on debit interchange fees.

## **Pandemic Effect**

COVID-19 impacted the profitability and margins of many businesses, forcing owners to take a hard look at all their costs including processing fees and see if recouping some or all of the fees makes sense.

The pandemic has changed the way people see their local businesses, whether it's the addition of online ordering, curbside pickup, the use of protective gear, or other measures, many people realize the cost of doing business has increased while sales revenues have remained depressed.

"Due to the pandemic, paying a surcharge today is generally more accepted than it was in the recent past. Consumers are more open to paying a surcharge to offset an increase on costs" said Casey Leloux, CEO of IntelliPay. "But it needs to be done the right way with a compliant program through an experienced provider like IntelliPay" added Leloux.

Shifting rules and state regulations make it difficult for merchants to remain compliant on their own. "Our payment suite keeps track of state regulations and card association rule changes and applies that logic to every transaction to ensure compliance." added Leloux.

## **Surcharges and Cash Discounts Are Not the Same Thing**

In those states where surcharging is prohibited, merchants can offer a cash discount to their customers. Here is brief explanation highlighting the differences between the cash discount and surcharges.

### **Definitions**

A cash discount is when you post credit card prices and offer a discount on that price for customers who pay with cash. A surcharge is when you post cash prices and charge an additional fee on top of that price for customers who pay with a card.

Visa adds the following to their definition explanation:

"A discount for cash is different from a surcharge. The rule states the posted price must be for cards; however, merchants can provide a lower price for cash acceptance. Discounts for cash are allowed by VISA. However, merchants are not permitted to post a cash price and then charge a higher price for cards." A non-compliant cash discount program is one where the merchant posts a price then adds a surcharge at the point-of-sale.

Cash discounts are legal in all 50 states per the Durbin Amendment (part of the 2010 Dodd-Frank Law), which states that businesses are permitted to offer a discount to customers as an incentive for paying with cash.

The cash discount formula is as follows:

Cash discount = gross amount x discount percentage.

Payment amount = gross amount - cash discount.

### **Key Points for Compliance with Cash Discounting**

- Posted prices are those that a business puts on shelves or advertises the posted price must be for credit cards.
- Cash paying customers must pay less than the posted price at point-of-sale

### **Maine and New York Disclosure Requirements**

Maine and New York require merchants to post both the cost of paying with cash and the cost of paying with credit in dollars and cents.



### Card Association Requirements for Surcharging

If it is legal for your business to impose a surcharge fee, there is still more to be done. You can start by looking at the cards you accept.

- Does your business accept both VISA and Mastercard?
- Does your business accept American Express or Discover cards?

Each card network has specific rules for merchants charging a surcharge fee, including not discouraging customers from using their card over other brands. You will need to meet the guidelines for each specific card brand. Fortunately, card network rules tend to be generally the same:

#### 1. Notification requirement

Thirty-days before beginning to surcharging, you must notify the association and your ISO/merchant account provider. American Express does not have the notification requirement if you comply with their other guidelines.

#### 2. Surcharge Fee is limited to your effective rate

You can only recoup your effective rate up to 4%. IntelliPay has a free online calculator to help you determine your effective rate. <https://intellipay.com/surcharge-calculator/>

#### 3. Display notices

You will need to post notices at the point-of-entrance and the point of sale. Ecommerce sites must post a notice on the checkout page. Visa Approved signage can be downloaded here: <https://usa.visa.com/dam/VCOM/download/merchants/sample-surcharge-disclosure-signage.pdf>

#### 4. Surcharge fee must be on a separate line

The surcharge fee must be a line item on the receipt. American Express is the only exception. The surcharge fee needs to be included in the network authorization request.

## **Card Association Requirements for Surcharging cont.**

5. Choose between brand-level or product level surcharges. Select one or the other - you can't do both.
6. Ensure you return surcharge fees when issuing refunds.

### **Note: Brand and Product Level Surcharges**

Technically merchants are permitted to surcharge at the “brand level” or at the “product level.” A brand-level surcharge applies the same surcharge to all credit card transactions for a particular brand (Visa or MasterCard).

A product-level surcharge applies the surcharge to a particular type of Visa or MasterCard product (like Visa Signature or World MasterCard).

Surcharging at the product level is complicated and is not practical for most merchants. For that reason this guide only focused on brand-level surcharging, which is what most merchants (businesses who accept credit cards for payment) will be applying.

### **Is Surcharging Right For Your Business?**

Deciding to surcharge is not an easy decision. Surcharging can be complicated, and the rules and regulations are continually changing. Surcharging may be the right decision if your primary business is:

- B2B products, warehouse or distribution
- Charity or non-profit
- Business or professional services
- Consumer services
  - Auto
  - Legal
  - Construction/restoration
  - Towing
  - Veterinary

You might NOT want to surcharge if:

- It is easy to find alternatives to your business nearby. If a consumer can get a similar product or service for the same or lower price nearby, and that merchant that doesn't surcharge, why would they go to the one who does?
- Your typical transactions are higher dollar amounts. Consumers won't likely object to 3% added to a small purchase, but 3% added to a big-ticket is a different story. The higher ticket price, the more likely a surcharge fee will be an objection and the reason for consumers to buy less — or not purchase from you all.
- You serve consumers who are particularly averse to surcharges.

## How to Get Started On Your Own

If you are interested in getting started with surcharging and doing it on your own, we've listed the steps below. However, you might want to consider a processor who can handle the transactions automatically and ensure compliance down the road.

### DIY Steps

If decided surcharging is right for you and your state permits surcharging, here are the steps to get started:

1. Notify the card networks. VISA and Mastercard have online forms to complete. VISA and Mastercard require 30 days' notice before you can add surcharge fees to credit card transactions.
2. Inform your acquiring bank of your intent to surcharge as well. Different banks have different procedures; most require 30 days' notice as well.
3. Decide whether you want to charge for only specific types of cards (such as rewards cards, which tend to carry higher costs for businesses) or for all cards issued under a brand. You must choose one or the other — you cannot charge a fee for all cards and an additional fee for card products which have higher processing costs.

### Prepare you place of business

1. Both VISA and Mastercard require merchants notices at point-of-entrance and point-of-sale, notifying customers that their credit card purchases will be surcharged. The signs at the point-of-entrance need to inform customers that you charge surcharge fees. The point-of-sale signs must disclose the percentage added to each credit card transaction.
  - VISA provides signage that you can print out and use.
  - Online merchants have to let customers know about surcharge fees on the first page of their website that references card brands.
2. Surcharge fees need to appear as a separate item on receipts. In many cases, you will need to program your point-of-sale terminals to meet this requirement, and you will need to contact the equipment provider.

If your business operates in Connecticut and Massachusetts whose state laws prohibit surcharging, you can not charge surcharge fees in that state. However, if you do business in multiple states, you can surcharge credit card transactions in those states where the practice is not prohibited.

## The Alternative to DIY Surcharging

There are processing platforms that offer a complete turn-key solution that is 100% legal and card rules-compliant. IntelliPay's intelligent payment platform handles all the details, including card network notification and equipment set up. The only thing you need to do is complete the application and post notifications on your website and in your business.

## Surcharging FAQs

Q. Is it legal to add a surcharge to card payments?

A. Yes. A court ruling in 2013 made it possible to surcharge card transactions at the federal level. All major card brands permit surcharging if certain requirements are met. However, there are currently seven states that limit the practice.

Q. Which states limit surcharging?

A. Currently, these two states; Connecticut and Massachusetts. Merchants should consult with their legal counsel about the laws regarding adding surcharge fees for their state.

Q. Can a merchant assess a surcharge fee on debit card transactions when the cardholder using a debit card chooses “credit” on the point of sale terminal?

A. Under no circumstances is a merchant to surcharge a debit card. Many merchants believe that debit card transactions authorized by a signature are credit card transactions. This is not true. Debit cards can be authorized by a PIN or by a signature and are still debit card transactions and you cannot add a surcharge fee any debit transaction.

Q. Can a merchant pick and choose the card types to which they will add a surcharge?

A. Merchants must add the same surcharge fee to all credit card transactions. The surcharge fee applies to any card type, whether the card is a consumer card, rewards card, business card, corporate card, or purchase card.

Q. Will a merchant’s current equipment and terminals need to change?

A. Yes. Our support team is ready to help you successfully transition to new equipment. If you have other questions about surcharge fees or surcharging in general, talk to one of our knowledgeable consultants.

Q. What are the rules for “brand level” surcharges?

A: Here are the general requirements:

- The surcharge fee must be the same for all credit card transactions of that brand, regardless of the issuer.
- The surcharge fee can be no greater than the merchant’s average discount rate for that brand’s credit card transactions.
- The surcharge fee cannot exceed 4%

Q. What are the rules for “product level” surcharges?

A: Here are the general requirements:

- The surcharge fee must be the same for all transactions of that particular credit card, regardless of who issued the card.
- The surcharge fee can not be greater than the merchant’s average discount rate for credit card transactions minus the debit interchange rate and the surcharge fee charged can not exceed 4%.

## **Surcharging FAQs cont.**

Q. Will a merchant need to make changes to the accounting process or software for surcharging?

A. Possibly. Merchants will need to talk to their accounting professional and software provider about how to account for surcharge fees.

Q. Does a merchant have to provide their customers notice before they start surcharging?

A. Yes. Merchants will be required to place signs at the point of entry and point of service.

### **Surcharging Laws and Requirements**

Q. What are the requirements for adding a surcharge fee?

A. Surcharging can be complex and staying compliant can be challenging for even the most technology savvy organizations. IntelliPay handles the complexity and ensures that your organization is always in compliance. To learn more, please reach out to one of our consultants.

Q. Is there anything else I need to do before I can start surcharging card transactions?

A. Yes. IntelliPay's experts and our intelligent platform handle the myriad of requirements behind the scenes. We also ensure you are always in compliance with the latest rule changes and regulations. Talk to a consultant to learn how to get started with surcharging today.

Q. Will a merchant's current equipment and terminals need to change?

A. Yes. Our support team is ready to help you successfully transition to new equipment.

### **Additional Resources**

[Visa Small Business Center](#)

[Mastercard Surcharging Rules](#)

[American Express Merchant Reference Guide](#)

[Discover Merchant Acceptance Page](#)