

AGENDA

- Convenience Fees vs. Credit Card Surcharging
- States' Laws and Surcharging
- Interchange Optimization
- ACH Rules and Opportunities
- ▶ Level 4 Processing Discounts



Borges & Associates, LLC

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This communication, including any content herein and/or attachments hereto, is provided as a convenience only, does not constitute legal advice, does not create an attorney client relationship, and so not alter your current merchant services agreement. Because of the generality of this communication, the information provided herein may not be applicable in all situations and does not constitute a comprehensive list of issues that could impact your business.

All merchants, including UTA and Worldpay clients, are subject to the terms of their bank card merchant agreement, the card networks' operating regulations, and applicable federal, state, provincial and territorial laws.





WHAT IS A SURCHARGE?

A **SURCHARGE** is an additional fee that a merchant adds on to a transaction when a customer uses a credit card for payment.





CONVENIENCE FEES vs. SURCHARGES

The Convenience fee rules listed below are based on Visa's rules, as they are the strictest. Other rules apply if accepting only MC and AMEX.

CONVENIENCE FEES

- Allowed only on card not present transactions
- Through an alternative channel from merchant's normal payment channel
- Fee is a flat or fixed amount
- Applicable to all forms of payment
- Disclosed prior to the completion of the transaction and the cardholder is given the opportunity to cancel. Included as part of the total sale
- Allowed on credit and signature debit
- Special programs for government and higher education

SURCHARGES

- Allowed on card not present and card present transactions
- Fee is a percentage of the sale
- Applies only to credit cards, not
- Applies only to credit cards, no debit
- Competing brands should be surcharged, if contract allows
- Disclosure of surcharge policy
- Merchant must provide prior notice before implementation
- Be mindful of state laws



WHY IS IT DANGEROUS	S NOT TO KNOW?
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If a merchant does not remain in compliance with the Card Networks' Surcharging Rules, the merchant may be subject to monthly fines from \$5,000 (Visa) to \$25,000 (MasterCard).







SURCHARGING OPERATING RULES

MERCHANTS WHO SURCHARGE CREDIT CARD TRANSACTIONS ARE SUBJECT TO THE FOLLOWING REQUIREMENTS:

- VISA AND MASTERCARD permit surcharging of credit card transactions only
- The settlement does NOT change current restrictions on the surcharging of debit transactions (signature or PIN)
- Merchants that elect to surcharge must provide advance written notice to MasterCard 30 days prior to surcharging.



SURCHARGING OPERATING RULES

- Merchants are able to surcharge credit card transactions at the BRAND LEVEL OR CARD PRODUCT LEVEL
 - BRAND LEVEL = Merchant charges same % on all Visa and/or MC credit cards
 - PRODUCT LEVEL = Merchant charges a % on particular card types, such as Rewards Cards, Signature, World Cards, Business Cards, etc.



Merchants are only allowed to assess a surcharge that does not exceed their effective rate for the applicable credit card surcharged 0.0% 3.0%

SURCHARGING OPERATING RULES

EFFECTIVE APRIL 15, 2023, the Visa surcharge cap was decreased to 3%.

NOTE: In General, Colorado only permits a 2% surcharge pass through.





SURCHARGING OPERATING RULES

CALCULATING THE EFFECTIVE RATE/SURCHARGE AMOUNT:

- The average effective Interchange Reimbursement Fee rate plus the average of all fees imposed by Visa/MC on the Acquirer or Merchant, expressed as a percentage of the Transaction amount, applicable to Credit Card Transactions at the Merchant for the preceding twelve months or most recent month
- Merchants that elect to surcharge must provide advance written notice to MasterCard 30 days prior to surcharging.



Merchants will be required to disclose their surcharge policy at the point of store entry... We impose a surcharge on credit cards that is not greater than our cost of acceptance. We impose a surcharge of ___% on the transaction amount on Visa and MC payments. We do not surcharge Visa & MC debit cards.

SURCHARGING OPERATING RULES

- ▶ THE TRANSACTION RECEIPT must show the surcharge amount separately on the front of the receipt in the same type font and size as the other items, after the subtotal (allowing for any discounts) and before the final transaction amount.
- ▶ THE SURCHARGE AMOUNT must be included in both the Network Authorization Request and in Settlement.
- WITHIN A SINGLE MID a merchant must apply the surcharge policy consistently. A merchant is not allowed to discriminate against a cardholder.



SURCHARGING OPERATING RULES

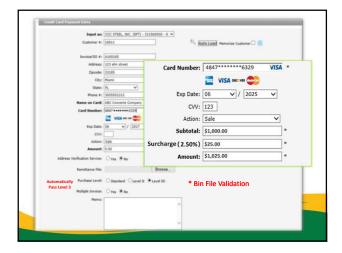
AMERICAN EXPRESS

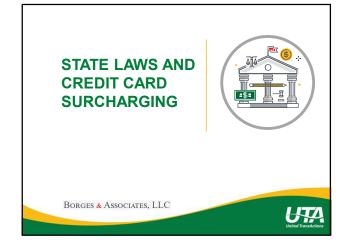
A merchant must not impose a fee when the card is presented unless that fee is imposed equally on all other payment products, except for electronic funds transfer, cash, or check. No registration required, no separate sur

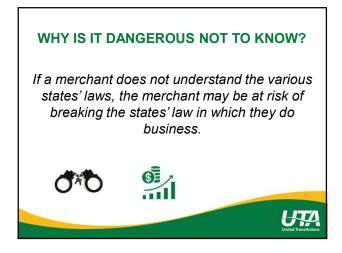
DISCOVER

A merchant may assess a surcharge on a card sale provided that (a) the amount of the surcharge does not exceed the merchant fee paid to Discover for the card sale and (b) the merchant also assesses surcharges on card sales conducted using other cards accepted by the merchant. Same authorization/settlement requirements as Visa/MC.









LEGAL DISCLAIMER

The content provided regarding State's laws and Canadian laws on surcharging is provided for educational and general reference purposes only. As states are updating and changing their laws regarding credit card surcharging from time to time, the Contents are not intended to serve as legal or other advice. This information is not intended to be a full and exhaustive explanation of the law regarding credit card surcharges, nor should it be used to replace the advice of your own legal counsel.





STATES' LAWS AND SURCHARGING

- ► TEN STATES HAD LAWS PROHIBITING OR RESTRICT SURCHARGING AT THE TIME OF THE CREDIT CARD ANTITRUST LAWSUIT SETTLEMENT: CA, CO, CT, FL, KS, ME, MA, NY, OK, TX.
 - · Some laws have been declared unconstitutional in court
 - Some states' Attorneys General have declared the prohibition to be unconstitutional
 - · Some states have changed their laws
- ▶ LEGAL EXPERTS indicate that these states' laws (except CT) apply only to consumer purchases (purchases for individual/household use) and the laws do not apply to B2B purchases.
- ▶ CONNECTICUT'S PROHIBITION on credit card surcharging is absolute
- MAINE AND MASSACHUSETTS PERMIT A DISCOUNT to be offered for cash payment but do not permit a surcharge to be imposed for payment by credit and
 - Both Maine and Massachusetts state laws fall under the "consumer" category.



SEVEN OF THE TEN ORIGINAL PROHIBITIVE STATES NOW COMPLETELY PERMIT SURCHARGING

- SCOTUS RULINGS have led to merchants being permitted to surcharge in Florida, New York and Texas.
- 9TH CIRCUIT COURT OF APPEALS RULING led to merchants being permitted surcharge in California
- Kansas changed its law effective January 1, 2025
- COLORADO revised its statutes effective 7/1/2022 to permit surcharging
- OKLAHOMA permits credit card surcharging as a result of the Oklahoma Attorney General Opinion in December 2019
 - Consult legal counsel regarding any state laws that may be applicable to where or how you are doing business.





STATES WHERE THE SURCHARGE PROHIBITION WAS CHALLENGED IN THE COURTS

CALIFORNIA:

- 1. In the **COMMERCIAL BUSINESS-TO-BUSINESS** context, there is no prohibition on surcharging.
- In the CONSUMER context, a merchant may pass the surcharge on to its
 customers as long as merchant make the surcharge and thus the total cost to a
 consumer CLEARLY VISIBLE, IN CONSPICUOUS AND PLAIN LANGUAGE
 before the consumer pays or seeks to pay for an item.
- 3. NEW LAW EFFECTIVE JULY 1, 2024
 - Consumers Legal Remedies Act has been amended so that it is unlawful to
 - Advertise, Display, or offer a price for a good or service that does not include all mandatory fees or charges other than taxes.



COLORADO PASSES LAW ALLOWING SURCHARGING

COLORADO

- Colorado Revised Statute 2017 has been revised effective 7/1/2022
- The revised law requires that the merchant shall provide the surcharge amount as a separate line item
- The revised statute, generally, limits the permissible surcharge to 2%



STATES WHERE THE SURCHARGE PROHIBITION WAS CHALLENGED IN THE COURTS

FLORIDA:

- It is completely permissible for a merchant to pass surcharges on to any customer (consumer and commercial business-to-business). THE ANTI-SURCHARGE LAW HAS BEEN DEEMED UNCONSTITUTIONAL AND UNENFORCEABLE.
- Although the original statute still appears on the Florida law books ("Dead Letter Law") the Florida Attorney General issued a statement acknowledging that the law was declared unconstitutional and therefore surcharging by merchants is permissible in Florida.



STATES WHERE THE SURCHARGE PROHIBITION WAS **CHALLENGED IN THE COURTS**

KANSAS:

- The U.S. District Court, District of Kansas held that Kansas's no-surcharge statute regulated speech and violated a credit card processing company's commercial speech rights, and thus was unconstitutional. The district court declined to consider the issue of vagueness.
 - · CardX, LLC v. Schmidt, No. 2:20-cv-02274, 2021 WL 736322 (D. Kan. Feb. 25, 2021).
- Kansas amended its statute: 16a-2-403 effective January 1, 2025 now permits surcharging.
 - Following the USCD decision, the statute permits surcharging PROVIDED the retailer discloses the amount of such surcharge through a clear and conspicuous notice to the customer at the point of entry or the point of sale in advance of such transaction.



STATES WHERE THE SURCHARGE PROHIBITION WAS CHALLENGED IN THE COURTS

NEW YORK:

- On December 13, 2023, Gov. Hochul signed the law amending the NYS Section 518 of its General Business Law so that any merchant imposing a surcharge on a customer who elects to use a credit card in lieu of payment by cash, check, or similar means
 - shall clearly and conspicuously post the TOTAL PRICE for using a credit card in such transaction, inclusive of surcharge
 - Any surcharge may NOT exceed the amount charged to the merchant by the credit card company
 - . The FINAL SALES PRICE shall not amount to a price greater that the posted price for such
- Merchants may offer a two-tier pricing system meaning the posting of two different prices in which the
 credit card price, inclusive of any surcharge is posted alongside the cash price.
- · Law became Effective February 11, 2024
 - Although the change was made to the General Business Law, every indication is that this is applicable to B2C transactions



ATTORNEY GENERAL OPINION

OKLAHOMA

- · Oklahoma's Attorney General has overturned the surcharge ban.
- RECOMMENDATION: As of 2020, so long as the price differences are shown clearly and conspicuously and it is clear that the cash price is the lower price, surcharging is permitted in Oklahoma.
- · Bills were introduced in the Oklahoma House and Senate in 2022 regarding credit card surcharges but none passed. No such bills have been introduced recently.





STATES WHERE THE SURCHARGE PROHIBITION
WAS CHALLENGED IN THE COURTS

TEXAS:

 Following the SCOTUS Opinion on the New York statute, the U.S. District Court in Austin, Texas ruled that the anti-surcharge law was unconstitutional. It is completely permissible for a merchant to pass surcharges on to any customer (consumer and commercial business-to-business). THE ANTI-SURCHARGE LAW IS UNENFORCEABLE.



MINNESOTA – Latest State to Change its Credit Card Surcharge Rules

MINNESOTA:

- NEW LAW EFFECTIVE JANUARY 1, 2025
 - It is a deceptive trade practice when, in the course of business, goods or services are advertised, displayed or offered at a price that does NOT include all mandatory fees or surcharges
 - Itemization of fees associated with the transaction must be Clear and Conspicuous
 - Discounts are allowable
 - This new law relates to consumer protection and is applicable to B2C transactions



CONTRACTING AROUND THE ANTI-SURCHARGE STATUTES

CONTRACTUAL AGREEMENT AS TO PLACE OF TRANSACTION

- It is agreed that all credit card transactions between [Merchant/Trade Credit Grantor] and [Customer] shall be deemed to take place in the State of [] and shall be governed by the statutes of the State of [].
- The above Forum Selection verbiage is provided by Borges & Associates, LLC for the purpose of this educational program, in connection with B2B transactions; and is not intended to be legal advice. Trade credit grantors are advised to consult with their own legal counsel.



SURCHARGES ARE PROHIBITED but discounts
FOR PAYMENT BY CASH are permitted so long
as the discount is clearly shown IN:

CONNECTICUT – both B2C and B2B

MAINE & MASSACHUSETTS – B2C
(B2B permits surcharging)



CANADA'S ABILITY TO SURCHARGE

- Canadian Credit Card Processing
- Canadian Surcharge





CANADA MERCHANT CLASS ACTION SETTLEMENT

MERCHANTS NOW PERMITTED TO PASS THROUGH SURCHARGES

- •Effective Date: OCTOBER 6, 2022
- •Maximum amount allowable: 2.40%





CAUTIONS IN CANADA

- SETTLEMENT IS FEDERAL so applicable throughout the Provinces and Territories of Canada
- STILL SUBJECT TO PROVINCIAL OR TERRITORIAL LAWS



APPLICABLE LAW AND CASELAW IN QUEBEC

- ► CONSUMER PROTECTION ACT, CQLR C P-40.1 §224-C
 - No merchant, manufacturer or advertiser may, by any means whatever,
 - charge, for goods or services, a higher price than that advertised
- STRATOS PIZZERIA (1992) INC.C. GALARNEAU, 2015 QCCS 2353
 - Held a surcharge to be a violation of the Consumer Protection Act



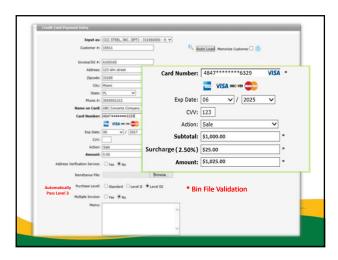
WHAT THIS MEANS FOR THE MERCHANT

- ► SURCHARGING IS NOT PERMITTED in the Province of Quebec for B2C transactions
- SURCHARGING IN THE PROVINCE OF QUEBEC IS QUESTIONABLE FOR B2B TRANSACTIONS
- SOME OTHER PROVINCES OR TERRITORIES HAVE CONSUMER PROTECTION ACTS but none have been determined to apply to credit card surcharges.

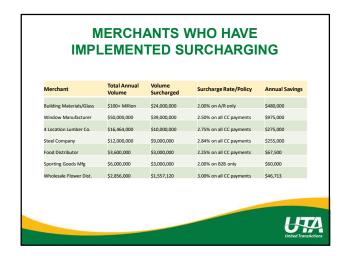


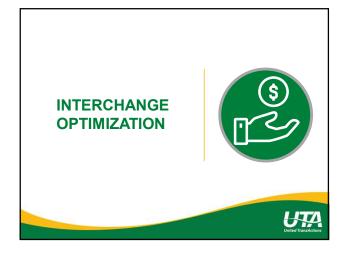


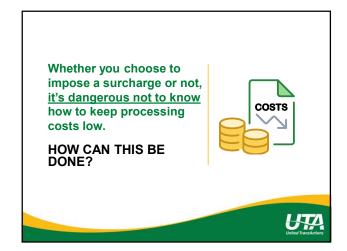
TECHNOLOGY & SURCHARGING If a merchant does not have the technology to help remain in compliance with the Card Networks' Surcharging Rules, the merchant may be subject to monthly fines from \$5,000 (Visa) to \$25,000 (MasterCard). THE UTA-WORLDPAY SOLUTION ANSWERS YES TO THE FOLLOWING: ✓ Does the solution pass the surcharge amount as a separate field within the transaction authorization and settlement? ✓ Is the surcharge amount added in automatically? ✓ Does the solution recognize the card type? ✓ Does the solution only surcharge credit cards and not debit cards? ✓ Does the receipt reflect the surcharge amount in the same font size and font style as the rest of the receipt? ✓ Is the surcharge amount reflected after the subtotal (allowing for any discounts) and before the final transaction amount? ✓ Does the solution incorporate State Surcharging Laws? ✓ Does the solution pass Level 3 data? (doesn't impact surcharging, but impacts the fees)

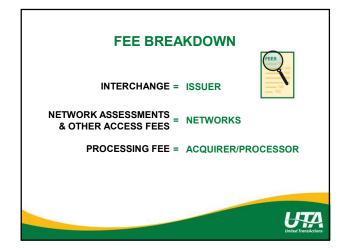


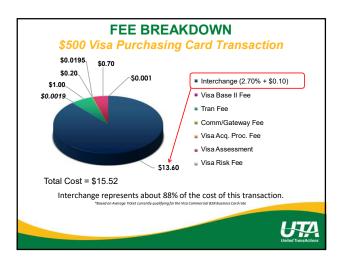






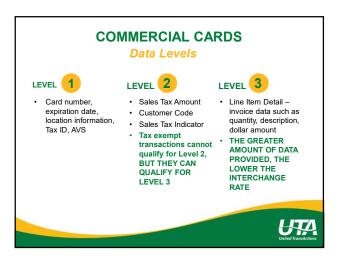


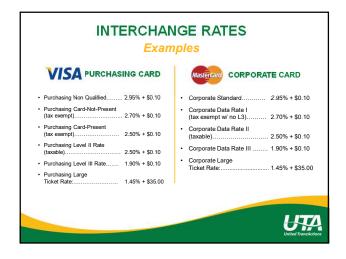


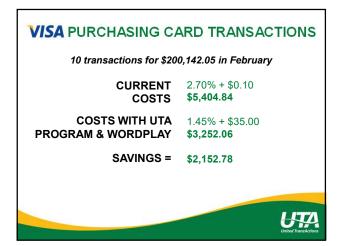


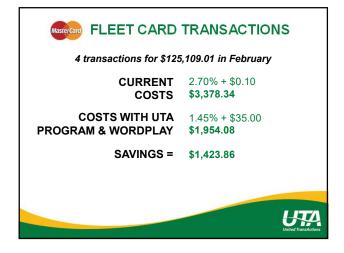
VISA REWARDS CARDNOT PRESENT TRANSACTION: With AVS (Address Verification) = Rewards CNP 1.95% + \$0.10 Without AVS = Non Qualified 3.15% + \$0.10 1.20% Downgrade

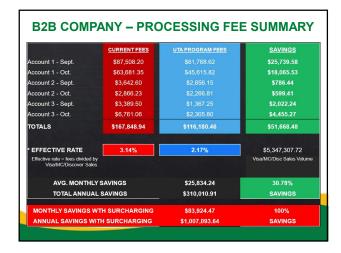
INTERCHANGE MANAGEMENT Incentive Program COMMERCIAL CARDS: LEVEL II / III COMMERCIAL CARDS: LARGE TICKET Savings Opportunity Decreased expenses Increased profits



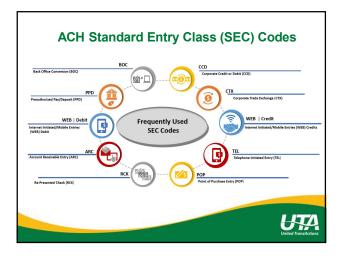


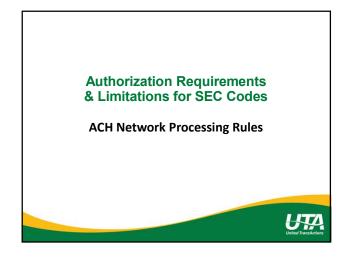












BOC (Back Office Conversion)	Written or electronic authorization at the point of purchase.	Maximum of \$25,000 per transaction.	Consumer and business checking accounts.
CCD (Corporate Credit or Debit)	Written agreement/ authorization required between businesses	No standard transaction amount limit.	Business accounts only.
CTX (Corporate Trade Exchange)	Similar to CCD, governed by agreements.	No standard transaction amount limit.	Business accounts only.
PPD (Preauthorized Payment and Deposit)	Written or phone recorded authorization required	No standard transaction amount limit.	Consumer and some business accounts.
WEB (Internet- Initiated/Mobile Entries)	Debit Authorization via the internet or mobile device required.	No standard transaction amount limit.	Consumer and business checking accounts.

