

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 21-0359.01 Jennifer Berman x3286

SENATE BILL 21-091

SENATE SPONSORSHIP

Liston and Rodriguez, Coleman, Gardner, Holbert

HOUSE SPONSORSHIP

Bird and Larson, Lynch, Van Beber

Senate Committees

Business, Labor, & Technology
Appropriations

House Committees

Business Affairs & Labor
Appropriations

A BILL FOR AN ACT

101 **CONCERNING LIMITATIONS ON CREDIT TRANSACTION CHARGES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Under current law, a seller, lessor, or company issuing a credit or charge card is prohibited from imposing a surcharge against a person who elects to pay for a sales or lease transaction by using a credit or charge card. The bill:

- Repeals the prohibition; and
- Limits the maximum surcharge amount per transaction to 2% of the total cost to the buyer for the sales or lease transaction.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
3rd Reading Unamended
May 13, 2021

SENATE
Amended 2nd Reading
May 12, 2021

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 5-2-212, **amend (1)**;
3 **and add (3) and (4)** as follows:

4 **5-2-212. Surcharges on credit transactions - enforcement -**
5 **definitions.** (1) (a) Except as otherwise provided in sections 24-19.5-103
6 (3) and 29-11.5-103 (3), ~~C.R.S., no~~ A seller or lessor in any sales or lease
7 ~~transaction or any company issuing credit or charge cards~~ may impose a
8 surcharge on a ~~holder~~ BUYER OR LESSEE who elects to use a credit or
9 charge card in lieu of payment by cash, check, or similar means IN
10 ACCORDANCE WITH SUBSECTION (1)(c) OF THIS SECTION.

11 (b) A surcharge is any additional amount imposed at the time of
12 the sales or lease transaction by the merchant, seller, or lessor that
13 increases the charge to the buyer or lessee for the privilege of using a
14 credit or charge card.

15 (c) A SELLER OR LESSOR MAY IMPOSE A SURCHARGE PURSUANT TO
16 EITHER SUBSECTION (1)(c)(I) OR (1)(c)(II) AS FOLLOWS:

17 (I) AN AMOUNT NOT TO EXCEED TWO PERCENT OF THE TOTAL COST
18 TO THE BUYER OR LESSEE FOR THE SALES OR LEASE TRANSACTION. A
19 SELLER OR LESSOR THAT IMPOSES A SURCHARGE ON CREDIT OR CHARGE
20 CARDS SHALL POST SIGNAGE AT THE SELLER'S OR LESSOR'S PREMISES IN A
21 MANNER THAT IS VISIBLE TO CUSTOMERS OR, FOR A SALES OR LEASE
22 TRANSACTION MADE ONLINE, DISPLAY BEFORE AN ONLINE CUSTOMER'S
23 COMPLETION OF THE SALES OR LEASE TRANSACTION IN A MANNER THAT IS
24 VISIBLE TO THE ONLINE CUSTOMER, THE FOLLOWING LANGUAGE:

25 **TO COVER THE COST OF PROCESSING A CREDIT OR**
26 **CHARGE CARD TRANSACTION, AND PURSUANT TO SECTION**

1 **5-2-212, COLORADO REVISED STATUTES, A SELLER OR**
2 **LESSOR MAY IMPOSE A PROCESSING SURCHARGE IN AN**
3 **AMOUNT NOT TO EXCEED 2% OF THE TOTAL PAYMENT**
4 **MADE FOR GOODS OR SERVICES PURCHASED OR LEASED**
5 **BY USE OF A CREDIT OR CHARGE CARD. A SELLER OR**
6 **LESSOR SHALL NOT IMPOSE A PROCESSING SURCHARGE**
7 **ON PAYMENTS MADE BY USE OF CASH, A CHECK, OR A**
8 **DEBIT CARD OR REDEMPTION OF A GIFT CARD.**

9 **(II) (A) AN AMOUNT NOT TO EXCEED THE MERCHANT DISCOUNT**
10 **FEE THAT THE SELLER OR LESSOR INCURS IN PROCESSING THE SALES OR**
11 **LEASE TRANSACTION. THE SELLER OR LESSOR OR THE SELLER'S OR**
12 **LESSOR'S SERVICE PROVIDER SHALL CALCULATE THE SURCHARGE AT AN**
13 **AMOUNT NOT TO EXCEED THE ACTUAL AMOUNT PAID TO THE PROCESSOR**
14 **OR SERVICE PROVIDER TO PROCESS THE TRANSACTION.**

15 **(B) A SELLER OR LESSOR SHALL POST SIGNAGE AT THE SELLER'S OR**
16 **LESSOR'S PREMISES IN A MANNER THAT IS VISIBLE TO CUSTOMERS OR, FOR**
17 **A SALES OR LEASE TRANSACTION MADE ONLINE, DISPLAY BEFORE AN**
18 **ONLINE CUSTOMER'S COMPLETION OF THE SALES OR LEASE TRANSACTION**
19 **IN A MANNER THAT IS VISIBLE TO THE ONLINE CUSTOMER, THE FOLLOWING**
20 **LANGUAGE:**

21 **TO COVER THE COST OF PROCESSING A CREDIT OR**
22 **CHARGE CARD TRANSACTION, AND PURSUANT TO SECTION**
23 **5-2-212, COLORADO REVISED STATUTES, A SELLER OR**
24 **LESSOR MAY IMPOSE A PROCESSING SURCHARGE IN AN**
25 **AMOUNT NOT TO EXCEED THE MERCHANT DISCOUNT FEE**
26 **THAT THE SELLER OR LESSOR INCURS IN PROCESSING THE**
27 **SALES OR LEASE TRANSACTION. A SELLER OR LESSOR**

1 SHALL NOT IMPOSE A PROCESSING SURCHARGE ON
2 PAYMENTS MADE BY USE OF CASH, A CHECK, OR A DEBIT
3 CARD OR REDEMPTION OF A GIFT CARD.

4 (C) THE SERVICE PROVIDER MAY PROVIDE THE SELLER OR LESSOR
5 WITH THE MEANS TO MAKE THE DISCLOSURE REQUIRED BY THIS
6 SUBSECTION (1)(c)(II).

7 (d) FOR ANY GOODS OR SERVICES PURCHASED OR LEASED
8 THROUGH PAYMENT BY CREDIT OR CHARGE CARD, THE SELLER, LESSOR, OR
9 SERVICE PROVIDER SHALL PROVIDE AS A SEPARATE LINE ITEM ON THE
10 CUSTOMER'S RECEIPT THE SURCHARGE AMOUNT IMPOSED PURSUANT TO
11 SUBSECTION (1)(c) OF THIS SECTION.

12 (e) A SELLER OR LESSOR MAY IMPOSE ONLY A SINGLE CREDIT OR
13 CHARGE CARD SURCHARGE PER SALES OR LEASE TRANSACTION PURSUANT
14 TO SUBSECTION (1)(a) OF THIS SECTION.

15 (f) A SELLER OR LESSOR SHALL NOT IMPOSE A SURCHARGE IF A
16 CUSTOMER ELECTS TO PAY FOR GOODS OR SERVICES BY:

17 (I) USING CASH OR A CHECK;

18 (II) USING A DEBIT CARD, WHETHER OR NOT A PERSONAL
19 IDENTIFICATION NUMBER IS USED;

20 (III) PROCESSING A PAYMENT AS A DEBIT PAYMENT; OR

21 (IV) REDEEMING A GIFT CARD.

22 (c) (g) For purposes of this section, AS USED IN THIS SUBSECTION
23 (1):

24 (I) "Charge card" includes those cards pursuant to which unpaid
25 balances are payable on demand.

26 (II) "MERCHANT DISCOUNT FEE" MEANS THE ACTUAL FEE,
27 EXPRESSED AS A PERCENTAGE OR FIXED AMOUNT OF THE TOTAL

1 TRANSACTION AMOUNT, THAT A SELLER OR LESSOR PAYS ITS PROCESSOR
2 OR SERVICE PROVIDER TO PROCESS THE TRANSACTION.

3 (3) (a) A SELLER OR LESSOR WHO VIOLATES THIS SECTION:

4 (I) VIOLATES THE CODE; AND

5 (II) IS SUBJECT TO LIABILITY AS A CREDITOR UNDER THE CODE.

6 (b) FOR PURPOSES OF LIABILITY FOR A VIOLATION OF THIS SECTION,
7 A BUYER OR LESSEE IS A CONSUMER.

8 (4) A SELLER OR LESSOR MAY IMPOSE A SURCHARGE UNDER THIS
9 SECTION REGARDLESS OF ANY CONTRACT OR AGREEMENT THAT THE
10 SELLER OR LESSOR ENTERS INTO ON OR AFTER THE EFFECTIVE DATE OF
11 THIS SUBSECTION (4).

12 **SECTION 2.** In Colorado Revised Statutes, 11-110-114, **amend**
13 (2) as follows:

14 **11-110-114. Multiple locations.** (2) Each licensee may, ~~without~~
15 ~~violating section 5-2-212,~~ notwithstanding whether ~~or not~~ a facility or
16 mode only accepts credit cards, conduct business through physical and
17 electronic facilities, including by telephone and internet, and may charge
18 a different price for the provision of services based upon the type of
19 facility or mode of services used in the transaction. ~~so long as the price~~
20 ~~for the service within a single such facility or mode is not greater for a~~
21 ~~credit card than for other forms of payment.~~

22 **SECTION 3. Act subject to petition - effective date.** This act
23 takes effect at 12:01 a.m. on the day following the expiration of the
24 ninety-day period after final adjournment of the general assembly; except
25 that, if a referendum petition is filed pursuant to section 1 (3) of article V
26 of the state constitution against this act or an item, section, or part of this
27 act within such period, then the act, item, section, or part will not take

1 effect unless approved by the people at the general election to be held in
2 November 2022 and, in such case, will take effect on the date of the
3 official declaration of the vote thereon by the governor.