

# Legislation

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## State Legislation

### 10 States Have Passed Legislation Prohibiting Surcharges

California, Colorado, Connecticut, Maryland, Massachusetts, Nevada, Oklahoma, Washington, Wisconsin, and Wyoming—and Puerto Rico have similar laws allowing merchants to give discounts to encourage consumers to use forms of payment other than credit or debit cards.

<http://www.ncsl.org/research/financial-services-and-commerce/credit-or-debit-card-surcharges-statutes.aspx>

(c) Nothing in this section shall prohibit any seller from offering a discount to a buyer to induce such buyer to pay by cash, debit card, check or similar means rather than by credit card. In furtherance of the legislative findings contained in §42-133j, no existing or future contract or agreement shall prohibit a gasoline retailer or distributor from offering a discount to a buyer based upon the method of payment by such buyer for such gasoline. Any provision in such contract or agreement prohibiting such retailer or distributor from offering such discount is void and without effect as contrary to public policy.

- **Connecticut General Statute §42-133ff**

## Federal Legislation

### The Durbin Amendment within the Dodd-Frank Financial Reform Act

“EFTA Sections 920(b)(2) and (3) impose certain limits on the ability of payment card networks to restrict merchants and other persons in establishing the terms and conditions under which they may accept payment cards. Specifically, EFTA Section 920(b)(2) prohibits a payment card network from establishing rules that prevent merchants from offering discounts or in-kind incentives based on the method of payment tendered to the extent that such discounts or incentives do not differentiate on the basis of the issuer or payment card network”.

- **Federal Registrar, Volume 76, No. 139, July 2011. Part II Federal Reserve System  
12 CFR Part 235 Debit Card Interchange Fees and Routing; Final Rule**

### Caveats

- (i) a discount for use of debit or credit cards does not discriminate on the basis of the issuer or network
- (ii) any discount insofar as required by other applicable law is offered to all customers and is conspicuously disclosed and prohibits networks for penalizing retailers for providing discounts that are permitted by federal and state law”

### Further Reading

“Section 920 of the EFTA also addresses discounts at the point of sale and transaction minimums. Specifically, section 920 prohibits networks from inhibiting the ability of merchants to provide discounts or in-kind incentives for payments by cash, check, debit card, or credit card”.

- **Board of Governors for the Central Reserve System, Compliance Guide to Small Entities, Regulation II: Debit Card Interchange Fees and Routing 12 CFR 235**

“Discounts to Customers. A PCN cannot stop you from offering your customers a discount or another incentive for using a certain method of payment, if you offer it to all your customers and disclose the offer clearly and conspicuously. For example, you can offer your customers a discount or a coupon if they pay with cash or a debit-card rather than a credit card”.

- **Federal Trade Commission Facts for Business, New Rules on Electronic Payments Lower Costs for Retailers**