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SENATE BILL 21-091

BY SENATOR(S) Liston and Rodriguez, Coleman, Gardner, Holbert;
also REPRESENTATIVE(S) Bird and Larson, Lynch, Van Beber, Duran,
Jodeh, McCluskie, McCormick, Ortiz, Pico, Ricks, Young.

CONCERNING LIMITATIONS ON CREDIT TRANSACTION CHARGES.

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

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

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

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

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

card.

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

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

TO COVER THE COST OF PROCESSING A CREDIT OR CHARGE CARD TRANSACTION, AND PURSUANT TO SECTION 5-2-212, COLORADO REVISED STATUTES, A SELLER OR LESSOR MAY IMPOSE A PROCESSING SURCHARGE IN AN AMOUNT NOT TO EXCEED 2% OF THE TOTAL PAYMENT MADE FOR GOODS OR SERVICES PURCHASED OR LEASED BY USE OF A CREDIT OR CHARGE CARD. A SELLER OR LESSOR SHALL NOT IMPOSE A PROCESSING SURCHARGE ON PAYMENTS MADE BY USE OF CASH, A CHECK, OR A DEBIT CARD OR REDEMPTION OF A GIFT CARD.

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

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

TO COVER THE COST OF PROCESSING A CREDIT OR CHARGE

CARD TRANSACTION, AND PURSUANT TO SECTION 5-2-212, COLORADO REVISED STATUTES, A SELLER OR LESSOR MAY IMPOSE A PROCESSING SURCHARGE IN AN AMOUNT NOT TO EXCEED THE MERCHANT DISCOUNT FEE THAT THE SELLER OR LESSOR INCURS IN PROCESSING THE SALES OR LEASE TRANSACTION. A SELLER OR LESSOR SHALL NOT IMPOSE A PROCESSING SURCHARGE ON PAYMENTS MADE BY USE OF CASH, A CHECK, OR A DEBIT CARD OR REDEMPTION OF A GIFT CARD.

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

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

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

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

(I) USING CASH OR A CHECK;

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

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

(IV) REDEEMING A GIFT CARD.

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

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

(II) "MERCHANT DISCOUNT FEE" MEANS THE ACTUAL FEE, EXPRESSED AS A PERCENTAGE OR FIXED AMOUNT OF THE TOTAL TRANSACTION AMOUNT, THAT A SELLER OR LESSOR PAYS ITS PROCESSOR OR SERVICE PROVIDER TO PROCESS THE TRANSACTION.

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

(I) VIOLATES THE CODE; AND

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

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

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

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

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

SECTION 3. Act subject to petition - effective date. This act takes effect July 1, 2022; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be

held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Leroy M. Garcia
PRESIDENT OF
THE SENATE

Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO