

*Visa Reduces Its Merchant Surcharge Cap to 3%  
Effective April 15, 2023: Merchants Should  
Ensure They Are in Compliance to Avoid Fines,  
Fees and Litigation*

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**Abstract**

*This article will explain the differences between merchant credit card surcharge fees, cash discounts, how states differ, and the consequences and penalties for non-compliance to these complex and evolving regulations.*

Effective April 15, 2023 Visa has implemented a reduction in the permissible merchant surcharge to the lower of: (a) the merchant discount rate (“MDR”)<sup>1</sup> for the applicable credit card or (b) 3%. This effectively caps the permissible merchant surcharge for Visa customers at 3%, down from the previous cap of 4%. For Mastercard customers, the surcharge cap remains 4%.

The majority of states permit surcharges. However, there are full bans in effect in Connecticut, Maine, Massachusetts, and Oklahoma, and several other states have imposed some restrictions or have partial bans in effect.<sup>2</sup> While state statutes banning or restricting surcharges are clearly focused on consumer protection, most state laws do not distinguish between individual consumer transactions and business to business transactions. Thus, any entity imposing a surcharge needs to be in compliance with the credit card’s own regulations but also with applicable state law. Merely operating one or more locations in a state that bans surcharges, however, will not prohibit the entire company from imposing surcharges on transactions that occur outside that state. This is because a state’s laws generally apply only to transactions and operations in that state. As such, companies are free to move as much of their processing and fulfillment as possible to states that do not impose restrictions on surcharges.

### **Explanation of Merchant Surcharges and Consequences for Non-Compliance**

A merchant surcharge is the fee added to a customer’s bill by the merchant, which is not charged on other accepted forms of payment (e.g., cash, check, debit cards, prepaid cards, etc....). Surcharges allow businesses to...

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<sup>1</sup> The merchant discount rate is the fee charged to the merchant by the payment processor for credit card transactions. This is also called the cost of acceptance.

<sup>2</sup> Colorado, for example, limits all merchant surcharges to 2% regardless of the regulations imposed by the credit card companies.