

Colorado State Legislation

While prohibiting surcharges on credit cards, Colorado does allow merchants to offer cash discounts:

Colo. Rev. Stat. §5-2-212 (Surcharging)

(1) Except as otherwise provided in §§24-19.5-103 (3) and 29-11.5-103 (3), C.R.S., no seller or lessor in any sales or lease transaction or any company issuing credit or charge cards may impose a surcharge on a holder who elects to use a credit or charge card in lieu of payment by cash, check, or similar means. 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 card. For purposes of this section, charge card includes those cards pursuant to which unpaid balances are payable on demand.

Colo. Rev. Stat. §5-2-212 (Cash Discounts)

(2) A discount offered by a seller or lessor for the purpose of inducing payment by cash, check, or other means not involving the use of a seller or lender credit card shall not constitute a finance charge if such discount is offered to all prospective buyers and its availability is disclosed to all prospective buyers clearly and conspicuously in accordance with regulations of the administrator.

Federal Legislation

“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 20, 2011.**

Caveats:

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 and
- (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, as long as 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