

July 12, 2011

Maine Bureau of Financial Institutions
Maine Bureau of Consumer Credit Protection
Joint Advisory Ruling #119
Joint Advisory Ruling of the Bureau of Financial Institutions and the
Bureau of Consumer Credit Protection

Dear:

You have asked the Bureau of Financial Institutions and the Bureau of Consumer Credit Protection to clarify Maine law with respect to a merchant's ability to offer discounts to consumers to encourage them to use alternative forms of payment in lieu of debit or credit cards. We understand that the interest in discounting arises, in part, from the recent federal Dodd Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). Under section 1075(b) of the Dodd-Frank Act, payment card networks may not directly or indirectly inhibit the ability of merchants to provide discounts for payment by the use of cash, check, debit cards or credit cards.

It is our view that neither Article 8 of the Maine Consumer Credit Code, nor the new Article 8-A, effective September 28, 2011, and found in Public Law 2011, chapter 427, limit a merchant's ability to offer discounts to consumers to encourage them to use alternative forms of payment in lieu of debit or credit cards. Maine's surcharge prohibition, found in 9-A M.R.S.A. § 8-303(2), and in the new Article 8-A at 9-A M.R.S.A. § 8-509(1), provides that a seller in a sales transaction may not impose a surcharge on a cardholder who elects to use a credit or debit card in lieu of payment by cash, check or similar means. A surcharge is an increase in the "regular" price to a card holder that is not imposed on a customer paying by cash or check. A discount, on the other hand, is a reduction made from the "regular" price and, by definition, does not result in a surcharge. See 9-A M.R.S.A. § 8-103 (1-A)(M), and the new Article 8-A, 9-A M.R.S.A. §8-509(1). Therefore, merchant discounts do not violate the prohibition on payment surcharges found in the Maine Consumer Credit Code.

Please note that section 1075(b) of the federal Dodd-Frank Act provides that if the discount is used to encourage payment by the use of a debit or credit card, the discount may not differentiate on the basis of the issuer or the payment card network. Further, under the federal law, any discount must be offered to all buyers and disclosed clearly and conspicuously.

Finally, to avoid confusing discounts with prohibited surcharges, merchants should clearly display the amount of the regular price and the amount of the discounted price.

Sincerely,

/s/ Lloyd P. LaFountain III
Superintendent

Bureau of Financial Institutions

Sincerely,

/s/ William N. Lund
Superintendent

Bureau of Consumer Credit
Protection