

# SB 470

Measure Title: RELATING TO CREDIT CARDS.  
Report Title: Credit Card Transactions; Surcharge  
Description: Prohibits retailers from imposing credit card surcharges in certain instances.  
Companion:  
Package: None  
Current Referral: CPN  
Introducer(s): ENGLISH, CHUN OAKLAND, DELA CRUZ, ESPERO, GALUTERIA, GREEN, KEITH-AGARAN, KIDANI, KOUCHI, RUDERMAN, Baker, Gabbard, Ige, Kahele, Nishihara, Shimabukuro, Solomon, L. Thielen, Tokuda, Wakai

<b><u>Sort by</u></b> <b><u>Date</u></b>		<b>Status Text</b>
1/18/2013	S	Introduced.
1/22/2013	S	Passed First Reading.
1/22/2013	S	Referred to CPN.
1/29/2013	S	The committee(s) on CPN has scheduled a public hearing on 02-14-13 9:00AM in conference room 229.



## HAWAII FOOD INDUSTRY ASSOCIATION (HFIA)

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**TO: COMMITTEE ON COMMERCE AND CONSUMER PROTECTION**

**Sen. Rosalyn H. Baker, Chair**

**Sen. Brickwood Galuteria, Vice Chair**

**FROM: HAWAII FOOD INDUSTRY ASSOCIATION**

**Lauren Zirbel, Executive Director**

**DATE: Thursday, February 14, 2013**

**TIME: 9:00 a.m.**

**PLACE: Conference Room 229**

**RE: SB 470**

### **Position: Comments**

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers and distributors of food and beverage related products in the State of Hawaii.

**As part of a proposed settlement agreement reached in antitrust litigation against Visa and MasterCard, and a number of large U.S. banks, both card brands agreed to relax their network rules regarding merchant prohibitions on surcharging on credit cards (debit is not included). The proposed settlement agreement was reached in July 2012, and granted preliminary approval by the Court in November. The card brands agreed to relax the surcharging prohibitions as of January 27, 2013. View the Visa rule changes [here](#) and the MasterCard rule changes [here](#).**

**Surcharging is not the answer to centrally price-fixed swipe fees that inflate prices for all merchants and all consumers. Merchants do not want to be the collection agents for over-inflated bank fees. Merchants want a competitive market. If we had that, then the fees would fall dramatically.**

The proposed settlement agreement is severely flawed and does very little, if anything, to fix a broken marketplace that's been negatively impacting the merchant community for well over a decade as we've seen per transaction costs triple over the last several years alone. Card acceptance fees are on average the second-highest operating cost for merchants across the country, and one of the fastest growing year over year

**Our members have emphatically said they're not interested in surcharging. Even if they wanted to, Visa and MasterCard have put barriers in place so it can't happen for most merchants.**

Merchants still don't know what the fees are on specific cards they get in their stores. Without knowing that, implementing the surcharging provisions is virtually impossible. In a 2009 report, GAO found that Visa had over 60 credit card interchange rates, and MasterCard has over 240. If anything, this system has become even more complicated since then.

Currently, ten states – California, Colorado, Connecticut, Florida, Kansas, Maine, Massachusetts, New York, Oklahoma, and Texas – prohibit surcharging. These states represent over 40% of total card sales across all industries. Merchants that operate in those ten states (virtually all national and many regional chains) will not be able to surcharge anywhere because Visa and MasterCard require merchants to surcharge all of their sales – or none at all.

Any merchant who accepts American Express will not be able to surcharge due to AmEx operating rules (which would require even debit cards to be surcharged in order for any cards to be surcharged)<sup>1</sup> that are currently the subject of litigation by the Department of Justice. That case is not expected to go to trial until 2014. If AmEx wins, the surcharging provisions negotiated in the antitrust litigation will remain completely unworkable.

Visa and MasterCard are requiring that merchants give them 30 days notice prior to surcharging. Surcharging is not going to happen overnight. Also, this will intimidate small merchants so that they won't want to surcharge.

The surcharging provisions of the proposed settlement are also intended to hurt new potential competitors to Visa and MasterCard. Merchants that want to surcharge, for example, will be prohibited from accepting (or will have to stop accepting) Paypal - or any other emerging payments options that prohibit surcharging - in their stores.

The surcharging provisions are just another example of Visa and MasterCard tricks and traps. In making these changes to their network rules, they also sneakily changed the definitions of their covered products applicable not just to surcharging, but to all facets of their merchant operating rules, including mobile payments. This creates a danger that Visa and MasterCard will require merchants to accept their preferred mobile payment solution and stifle innovation in an area that has the promise to bring some new ideas to market.

The last thing we want to see happen is a for the Visa/MasterCard duopoly to stifle the innovation we're seeing from new players in the mobile payments space, and cement their stranglehold and broken business model in this new, emerging marketplace. The types of tricks and traps we see here are all the more reason lawmakers and federal agencies need to more closely scrutinize the actions of these major companies now and in the future as they could be given significant immunity from private legal action if the proposed antitrust settlement were to be approved by the court.

Thank you for the opportunity to testify.

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<sup>1</sup> Mandelbaum, Robb. Visa and MasterCard Settle Lawsuit, but Merchants Aren't Celebrating. *New York Times*. August 8, 2012.

Senator Rosalyn H. Baker, Chair  
Senator Brickwood Galuteria, Vice Chair  
Committee on Commerce and Consumer Protection



HEARING      Thursday, February 14, 2013  
                  9:00 am  
                  Conference Room 229  
                  State Capitol, Honolulu, Hawaii 96813

RE:      SB470, Relating to Credit Cards

Chair Baker, Vice Chair Galuteria, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

RMH understands the Legislature's concerns about the surcharging issue and the desire to protect Hawaii's consumers. **We offer the following comments on SB470**, which prohibits retailers from imposing credit card surcharges in certain instances.

Ten states have similar statutes in place and at least fourteen others have bills under consideration. In conversations with our members, RMH has determined that while there may be exceptions, retailers in general have no intention of imposing surcharges on our customers. Even if allowed, doing so will put any retailer at a disadvantage in this highly competitive arena.

- Existing merchant agreements with VISA/MasterCard require retailers to handle credit cards the same in all states wherein they have a presence. This provision automatically bars any retailer that has even one location in a state with a surcharge ban.
- The settlement states that if a merchant is going to surcharge VISA/MasterCard they must also surcharge any other card with an equal or higher swipe fee, i.e., American Express. However, merchant contracts with American Express prohibit surcharging, so merchants that accept all three cards cannot surcharge.
- Stores that are not included in the previously noted points and that are inclined to impose surcharges must comply with the settlement's requirements: 1) notify VISA/MasterCard of their intent to do so; 2) inform customers of the surcharge; 3) post their surcharge policy; 4) comply with the VISA/MasterCard rules on surcharging; and 5) risk losing customers because of this action. The process is cumbersome, time-consuming, and will most likely alienate their customers.

The Credit Card Fees lawsuit was filed by merchants in an attempt to lower credit card swipe fees, and in turn, operational costs that contribute to higher consumer prices. The much-touted settlement is still in dispute, and in reality does nothing to control swipe fees.

Thank you for your consideration and for the opportunity to comment on this measure.

  
Carol Pregill, President

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Testimony to the House Committee on Commerce and Consumer Protection  
February 14, 2013

Testimony in support of SB 470, Relating to Credit Cards

To: The Honorable Rosalyn Baker, Chair  
The Honorable Brickwood Galuteria, Vice-Chair  
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 78 Hawaii credit unions, representing approximately 804,000 credit union members across the state.

We are in support of SB 470, which would prohibit retailers from imposing credit card surcharges. In today's environment of e-commerce, credit cards have become among the most convenient methods of payment. Credit cards are an easy, efficient, and safe way to pay. Consumers should not be penalized for using credit cards, and should have ample freedom to use any method of payment that they choose. Allowing retailers to charge a fee to use credit cards would only discourage consumers from using credit cards.

Thank you for the opportunity to testify.



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Presentation to  
Committee on Commerce and Consumer Protection  
February 14, 2013 at 9:00 am  
State Capitol Conference Room 229

**Testimony in SUPPORT of S. B. 470**

TO: The Honorable Rosalyn H. Baker, Chair  
The Honorable Brickwood Galuteria, Vice Chair  
Members of the Committee

My name is Edward Pei and I am the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing all FDIC insured depository institutions operating in the State of Hawaii.

Since its inception, MasterCard and Visa has prohibited the surcharging of credit card transactions to assure that credit card users were not penalized by the merchant for using a credit card to make their purchase. Effective January 28, 2013, this ban was lifted, allowing merchants now to add a "Checkout Fee" to the transaction, should their customer opt to use a credit card as their payment device. While the ban has been lifted by the bank card associations, 10 states have instituted a ban on surcharging and at least six other states have bills pending to implement the ban. We believe Hawaii should also implement this ban against surcharging.

Customers have many choices today at the point of sale but one of the most convenient is the credit card. It is also easier and safer to use than other payment devices. Implementing a surcharge, or "checkout fee", will discourage and prevent some customers from using their credit cards. Customers should continue to have the freedom and the option to choose whatever payment device works best for them, without any financial penalties influencing their decision. Some merchants, like hotels, rental cars and many online merchants, virtually require a credit card for their purchases and giving them the ability to assess an additional fee for the transaction would simply provide unjust enrichment for the merchant.

In summary, we support SB 470 and the right of our consumers to use their payment device of choice to complete transactions at the point of sale. Please let us know if you would like any further information on this matter.

Edward Y. W. Pei  
(808) 524-5161

**JULIE-BETH AKO**  
*P.O. Box 787 • Hilo, Hawai'i 96721-0787*

Senator Rosalyn H. Baker, Chair  
Senator Brickwood Galuteria, Vice Chair  
Committee on Commerce and Consumer Protection

Thursday, February 14, 2013

**Support for S. B. No. 470, Relating to Credit Cards**

Thank you for the opportunity to provide testimony in support of S. B. No. 470, Relating to Credit Cards. My name is Julie-Beth Ako and I am a resident of Hawai'i Island.

As a consumer, I am used to paying general excise taxes on all of my purchases; however, the revenue from these taxes are used to improve local infrastructure, and has a benefit to our state's population. A credit card surcharge *would only benefit the retailer*. Merchants who want to protect their profit margins have already inflated their prices to accommodate for the fees levied against them by credit card companies; a credit card surcharge would only encourage them to further increase their profit margin and pad their bottom line.

In the National Retail Federation's report entitled Quick Facts: Interchange Fees, the organization purports that swipe fees already cost the average U.S. household \$427 a year. Allowing retailers to recoup swipe fees by passing the cost on to consumers like you and me would increase our costs at checkout by 1.5% to 4% per use.

For the reasons stated above, I am in support of S. B. No. 470 and urge the committee to pass S. B. No. 470. Thank you for this opportunity to testify.

SB470

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
R Tenno	WestSide Service Provider Network	Support	No
Javier Mendez-Alvarez	Individual	Support	No
Troy Abraham	Individual	Support	No
COREEN WILLIAMS	Individual	Support	No