

**LD 160, An Act To Allow Insurance Producers To Refer to Third Parties for
Credit Card and Debit Card Payments**

SUMMARY:

This bill permits an insurance producer to refer clients to an authorized 3rd-party payment service provider for the purpose of accepting a credit card or debit card to pay the client's insurance premium. The bill also authorizes the 3rd party to impose a surcharge for payments made with a credit card or debit card.

CURRENT LAW:

[9-A MRSA §8-509](#) prohibits the seller in a sales transaction from imposing a surcharge on a cardholder who pays using a credit card or debit card. Governmental entities are permitted to impose a surcharge for payments made by credit or debit card as long as the surcharge is clearly disclosed and does not exceed the costs associated with providing the credit card or debit card service. Current law does not prohibit sellers from offering a discount or other incentive to customers to use means of payment other than credit or debit cards.

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ISSUES FOR CONSIDERATION:

1. Legislative History; legal challenges to laws in other states. The HCIFS Committee considered a proposal to allow sellers to impose a surcharge and repeal 9-A MRSA §8-509 in the 128th Legislature (LD 660, An Act To Allow Credit and Debit Card Surcharges) and voted the bill “Ought Not to Pass.” There have been legal challenges to similar laws in other states. In March 2017, the U.S. Supreme Court decided *Expressions Hair Design v. Schneiderman*, a case challenging a New York statute that prohibits merchants from imposing a surcharge for using a credit or debit card, but does not prohibit cash discounts. In a unanimous decision (although with 2 concurring written opinions), the case was remanded to the 2nd Circuit Court of Appeals so the court could analyze whether the law violated the First Amendment. The Supreme Court viewed the statute as a regulation of the communication of prices rather than a regulation of the prices themselves. The case was dismissed by the 2nd Circuit Court in 2019 without a decision.
2. Consider financial impact on insurance producers given prohibition in current law? Testimony indicated commission structure and model for determining fees for credit card and debit card transactions makes it cost-prohibitive. Testimony also indicated not all insurers accept credit card and debit cards directly. Under the Insurance Code, fees may not be added to premiums by producers as only insurers may set rates for premiums.
3. Consider need to provide consumers choice about how to pay for insurance premiums?

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ISSUES FOR CONSIDERATION (cont'd):

4. Consider that bill proposes an exception for one particular industry? Consider expanding scope to include all merchants as suggested by Retail Association of Maine and Maine Grocers and Food Producers Association?
5. As drafted, the bill does not cap or limit the amount of the surcharge. Consider adding language to prohibit surcharge from exceeding costs associated with providing the credit card or debit card service?
6. Consider impact on existing contractual relationships and federal law requirements for debit card transactions? Debit card transactions capped at 21 cents; credit card fees range between 2% and 4%
7. If bill moves forward, the Bureau of Insurance suggested technical amendments to move provision to a more appropriate section of Title 24-A, to add a cross-reference to another provision related to producer fees and to clarify language in the bill related to affiliations between the referring producer and the 3rd-party payment service.
8. Insurance company representatives did not support suggestion to expand scope of bill to require all insurers to take payments by credit card and debit card.

FISCAL INFORMATION:

Not yet determined