

# NEWS BULLETIN

## Maine Automobile Dealers Association

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2021-7

### DISTRIBUTION

- General Manager
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- Sales Manager
- Service Manager

## CREDIT CARDS AND SURCHARGING (NO)

The issue of the acceptance of credit cards for purchases at a dealership generates questions from time to time. The questions usually revolve around the obligation to accept a card for the full purchase price, and the ability to impose a surcharge on the customer for paying with a credit or debit card.

As to the question of imposing a limit on the amount which can be paid with a credit card, the answer is that your agreement/contract with the credit card company or processor will govern any such limitation.

As to the question of imposing a surcharge, provisions of the Maine Consumer Credit Code (Title 9-A, Section 8 – 509, Subsection 1 of the Maine statutes) govern this answer. That Subsection reads as follows:

A seller in a sales transaction may not impose a surcharge on a cardholder who elects to use a credit card or debit card in lieu of payment by cash, check or similar means. For purposes of this section, "surcharge" means any means of increasing the regular price to a cardholder that is not imposed on a customer paying by cash, check or similar means. A discount or reduction from the regular price is not a surcharge.

Governmental entities are the only exception to this prohibition on surcharges. We have also included with this News Bulletin an explanatory letter from the Maine Bureau of Consumer Credit Protection. A discount for cash or check payment is allowed, but a surcharge for use of a credit or debit card is NOT allowed.

## 2021 MADA CONVENTION CANCELLED – ANNUAL MEETING POSTPONED

Thank you to the many dealers who responded to a dealer principal survey regarding MADA's annual convention. Those responses, together with the realities associated with the COVID-19 pandemic, have resulted in the cancellation of our 2021 convention in Bar Harbor. The persistence of the infection rate, the continuation on limitations on gatherings, mask usage and social distancing just did not make it reasonable to hold our Bar Harbor event.

Your MADA Board of Directors continues to work on the potential for a virtual or in-person one-day annual meeting, perhaps in late Summer or early Fall at a convenient location. As discussions continue, we will keep you informed.

## EEO-1 DATA COLLECTION BEGINS APRIL 26

The federal Equal Employment Opportunity Commission (EEOC) requires dealerships with more than 100 employees to file annually an Employer Information Report (**EEO-1 Report**). The EEO-1 Report asks for the number of employees sorted by job category, race, ethnicity and gender. Dealerships must also display an “**EEO is the Law**” poster. MADA has provided laminated “All-in-One” Labor law posters to all dealerships, and the EEO is the Law portion is located in the upper left of the laminated poster.

After delaying the opening of the 2019 EEO-1 Component 1 data collection because of the COVID-19 public health emergency, the EEOC has announced that the 2019 and 2020 EEO-1 Component 1 Data Collection will open on Monday, April 26, 2021. Filers should begin preparing to submit 2019 and 2020 data in anticipation of this opening. The deadline for submitting both 2019 and 2020 data will be Monday, July 19, 2021.

When the collection opens, resources to assist filers with their submissions will be available on a new dedicated website for the EEOC’s data collection at <https://EEOCdata.org>. The EEOC Filer Support Team will also be available to respond to filer inquiries and to provide additional filling assistance. Filers will receive notification emails. A notification letter will also be sent to EEO-1 Component 1 filers closer to the data collection opening.

## MOTION PICTURE LICENSING CORPORATION

Yes, this can pertain to your dealership. The Motion Picture Licensing Corporation (MPLC) is a legitimate entity, similar in its purpose to the organization which looks out for musicians as it relates to use of copyrighted music. The MPLC appears to be on a national campaign to contact dealerships.

The MPLC represents copyright holders of movies and television programs. If a business plays copyrighted material such as movies and/or TV programs in a public forum (showroom, customer or employee lounge, etc.) then the dealership facility **MAY NEED** a license from the copyright holder, which MPLC represents. Since there are hefty financial penalties for copyright infringement, there is reason to pay attention to any communications you might receive.

MADA is aware of several Maine dealerships which have been contacted by MPLC representatives. The approach has essentially been a solicitation to purchase a license (\$289 per year per location) that would allow the copyrighted movies/TV programs to be played in a public forum. Before making that choice, a dealership might want to contact its cable/satellite provider to determine if the dealership’s contract/agreement with that provider covers the dealership need to have a license. Any decision to purchase a MPLC license should involve a complete understanding of what is, and what is not, covered by that license.

The most important aspects of any communication from MPLC are to know what is being addressed (a license solicitation or a demand for resolution of alleged copyright infringement), and to respond.

## COVID AND NEW EXTENSION OF FEDERAL PAID LEAVE

In the latest stimulus package from Washington is a new extension of the paid leave program for COVID – related absences from work. Unlike the extension covering January 1 through March 31 which was voluntary for employers, this extension covering April 1 through September 30 is mandatory for employers. Employers will reimburse themselves for any amounts appropriately paid to eligible employees, such reimbursement coming through a reduction in periodic federal tax deposits. MADA dealerships will receive an email with additional information.

STATE OF MAINE  
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

FOR ITS REVIEW 3/28

BUREAU OF FINANCIAL INSTITUTIONS  
36 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0036  
(207) 624-8570  
(207) 624-8590 (FAX)



BUREAU OF CONSUMER CREDIT PROTECTION  
35 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0035  
(207) 624-8527  
(207) 582-7699 (FAX)

LLOYD P. LAFOUNTAIN III  
SUPERINTENDENT

WILLIAM N. LUND  
SUPERINTENDENT

**Joint Advisory Ruling of the Bureau of Consumer Credit Protection and the Bureau of  
Financial Institutions #119-A**

March 28, 2018

Senator Rodney L. Whittemore, Chair  
Representative Mark Lawrence, Chair  
Joint Standing Committee on Insurance and Financial Services  
100 State House Station  
Augusta, ME 04333

Re: Further guidance, re: implementation of 9-A MRS §8-509(1), "Credit Card and Debit Card  
Surcharge Prohibition"

Dear Senator Whittemore, Representative Lawrence and Members of the Committee:

You have requested further clarification with respect to our agencies' Joint Advisory Ruling #119, issued July 12, 2011, in which we stated that it is permissible for a merchant to offer discounts from the regular price to consumers who use payment methods other than credit or debit cards.

In discussions with the committee, two specific questions emerged, and we answer them below.

*Question 1:* May a retailer post both the "regular" un-discounted price that's available to consumers using credit or debit cards, as well as the discounted "cash" price for those who use other payment methods?

*Answer:* Yes, a retailer can post both the regular price and the discounted cash price. If a merchant opts to disclose both prices, then the regular price must be as prominent as, or more prominent than, the discounted cash price, and the discounted price should be labeled as a "Cash" or "Cash Discount" price. A merchant may also choose to express the cash discount as a percentage, either on the label or on a display at the point of sale or other prominent location.

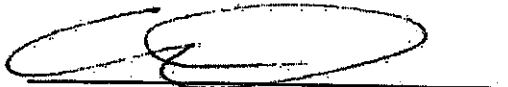


**Question 2:** May a retailer negotiate prices with a customer without violating the prohibition against credit or debit card surcharges, especially in a transaction in which the parties have agreed to a lower discounted cash price and the customer subsequently changes his or her mind and decides to use a credit or debit card for all or a portion of the purchase?

**Answer:** Yes, so long as the regular price is properly disclosed at the outset of negotiations, the parties may negotiate a final price without violating the statute. In other words, the Bureau will not consider "un-discounting" a previously agreed-upon discounted cash price, as a surcharge for use of a credit or debit card.

We believe the legislative purpose and intent behind 9-A MRS §8-509(1) is to avoid unfair surprise to a consumer who expresses an intent to purchase a good or service at a disclosed price, only to be told that the disclosed price must be increased if the consumer pays with a credit or debit card. Such an increase would constitute an impermissible surcharge. The important factor in each of the above scenarios is that the consumer must have a clear understanding of the regular price, and of any lower discounted cash price. The consumer will gain this understanding through the use of clear price stickers, labels and/or signage.

Sincerely,



William N. Lund  
Superintendent



Lloyd P. LaFountain III  
Superintendent