

Retail Payment System (Ban on Merchant Surcharges) Amendment Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Retail Payment System (Ban on Merchant Surcharges) Amendment Bill and recommends by majority that it be passed. We recommend our one amendment unanimously.

About the bill as introduced

This bill would amend the Retail Payment System Act 2022 (the primary Act) to ban payment surcharges on certain in-store transactions. The ban would apply to surcharges on in-store EFTPOS, Visa, and Mastercard debit and credit payments.

The bill would also:

- enable the Commerce Commission to enforce the ban and issue a corrective notice or seek a pecuniary penalty in the event of a breach
- provide that any surcharge in contravention of the ban would be unenforceable and the consumer would be entitled to a refund from the merchant
- continue to allow the Commerce Commission to issue merchant surcharging standards for payments that are not subject to the ban
- provide regulation-making powers to enable the ban to be extended in the future, for example to online payments or other payment networks.

The bill's proposed changes are intended to increase transparency, improve the retail payment system for consumers, and allow substandard surcharging practices to be more easily remedied.

About merchant surcharges

At present, no law prevents merchants from setting surcharges to recover their costs of accepting payments. Merchants are permitted to pass surcharges on to customers who choose to pay using a method that is more expensive for the merchant to offer. Under the primary Act, the Commerce Commission can issue merchant surcharging standards for the purpose of ensuring that surcharges are no more than the cost to the merchant of accepting that payment method. The Commerce Commission has not yet issued any merchant surcharging standards.

Merchant surcharges often apply to credit card and contactless debit card transactions, generally ranging from 0.7 to 2 percent. The Commerce Commission estimates that consumers pay up to \$150 million in payment surcharges each year, of which an estimated \$45–65 million likely exceeds merchants' reasonable costs. On a per-transaction basis, for the use of electronic cards in New Zealand, this means consumers are paying around 3 cents per transaction in surcharges that exceed merchants' reasonable costs.¹

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We wish to bring the House's attention to the regulation-making power in clause 13, which we discuss below.

Proposed amendment to new regulation-making power

We recommend just one amendment, in response to comments we received from the Regulations Review Committee about the new regulation-making power proposed in the bill.

The bill includes a “Henry VIII” provision

Clause 13 of the bill as introduced would amend the regulation-making power in section 54 of the principal Act so that regulations could also be made for the purposes of new section 28B. This new section (inserted by clause 7 of the bill) comprises two elements:

- New section 28B(1)(a) specifies the ban as announced. It would prohibit merchants from charging a payment surcharge for any in store payments made using the EFTPOS, Visa, or Mastercard payment networks.
- New section 28B(1)(b) would allow the ban to be extended to cover “any other circumstances” prescribed by regulations made under section 54.

This second part of the provision is what is known as a Henry VIII power: it would allow secondary legislation to be made to extend the scope of the primary legislation. While such provisions can be a cause for concern, they need not be if safeguards are

¹ Electronic card transactions: September 2025 | Stats NZ (see Table 4 of spreadsheet).

included to prevent the misuse of the power. The Regulations Review Committee noted that the bill includes several safeguards to limit the misuse of the new Henry VIII power. It recommended that we require officials to justify the use of the power and consider whether more safeguards should be inserted.

The provision's justification and safeguards

We have looked carefully at the proposed regulation-making power and consider that it is justified. The power is intended to provide flexibility to extend the circumstances in which it is appropriate for a prohibition on payment surcharges to apply. It also reflects the dynamic nature of the retail payment system and the potential need to move swiftly to address any unintended circumstances. The ban could be extended, for example, to include online payments or American Express payments.

We note that the Minister's delegated regulation-making power would be subject to several layers of safeguards. In addition to the controls currently specified in Cabinet policy and in section 54(2) of the principal Act, clause 13 of the bill would insert further statutory safeguards as new section 54(2A). Before recommending the making of regulations to extend the ban, the Minister would need to:

- consult with persons considered likely to be significantly affected by the regulations, or representatives of those persons (section 54(2) of the principal Act)
- consult with the Commerce Commission (new section 54(2A)(a), inserted by clause 13)
- have regard to the purpose set out in section 3 of the primary Act (new section 54(2A)(b)(i), inserted by clause 13)
- have regard to any merchant surcharging standards that may be affected by the proposed regulations (new section 54(2A)(b)(ii), inserted by clause 13).

In addition, the Minister may only make a recommendation if it is for the purpose set out in new section 28A, which is to prohibit surcharges in certain circumstances where it is in the interests of transparency, certainty, and convenience for consumers. Finally, any resulting regulation would be secondary legislation subject to the normal requirements including publication, and review and disallowance by the Regulations Review Committee.

Our proposed amendment

While we consider these safeguards satisfactory, we agree with the suggestion by the Regulations Review Committee that they could be supplemented by requiring publication of the Minister's reasons for recommending regulations under the new empowering provision.

We therefore recommend amending clause 13 to insert new subsection (2C) into section 54. This would require the Minister's reasons for making regulations related to new section 28B(1)(b) to be published together with the regulations.

ACT New Zealand differing view

ACT is concerned that the bill as drafted may have unintended consequences. It could create higher prices for consumers, undermine existing free payments systems (e.g., EFTPOS), and disadvantage innovative payment methods being developed by the fin-tech sector.

The committee heard from a range of businesses, retailers, and industry representatives who expressed serious reservations about the practical impacts of a surcharge ban. Many noted that such measures would likely require them to either absorb transaction costs directly, pass those costs on to consumers in other ways, or, in some cases, discontinue the use of contactless payments altogether. These outcomes would ultimately undermine consumer choice and innovation in the payment market.

ACT wrote to the select committee and discussed ways to ameliorate some of these issues. We will continue to discuss these issues with our coalition Government partners.

New Zealand Labour Party differing view

Labour agrees with the principle that consumers should pay the price they see on the shelf. However, we do not support adding costs to small business. We have drafted amendments to be considered at the committee of the whole House stage that we encourage MPs from around the House to support, in order to reduce costs for retail and hospitality businesses facing higher fees because of this law change.

Appendix

Committee process

The Retail Payment System (Ban on Merchant Surcharges) Amendment Bill was referred to this committee on 16 September 2025. The House instructed us to report the bill back no later than 17 January 2026.

We called for submissions on the bill with a closing date of 12 October 2025. We received and considered submissions from 89 interested groups and individuals. We heard oral evidence from 10 submitters at hearings in Wellington and via videoconference. We wish to acknowledge the efforts of all submitters and thank them for their engagement.

Advice on the bill was provided by the Ministry of Business, Innovation and Employment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee reported to us on the powers contained in clause 13.

Committee membership

Cameron Brewer (Chairperson)

Dan Bidois

Hon Barbara Edmonds

Ryan Hamilton

Nancy Lu

Hon Dr Deborah Russell

Todd Stephenson

Chlöe Swarbrick

Dr David Wilson

Hon Dr Megan Woods

Arena Williams participated in our consideration of this bill.

Related resources

The documents we received as advice and evidence are available on the Parliament website.

**Retail Payment System (Ban on Merchant Surcharges)
Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

Hon Scott Simpson

Retail Payment System (Ban on Merchant Surcharges) Amendment Bill

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10	Section 34 amended (Amendment and revocation of merchant surcharging standards)	5
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12	Section 41 amended (Pecuniary penalties for contravention of notice to take corrective action)	5
13	Section 54 amended (Regulations)	5
The Parliament of New Zealand enacts as follows:		
1	Title This Act is the Retail Payment System (Ban on Merchant Surcharges) Amendment Act 2025 .	
2	Commencement This Act comes into force 1 month after Royal assent.	5
3	Principal Act This Act amends the Retail Payment System Act 2022.	
Part 1 Amendments to preliminary provisions		10
4	Section 3 amended (Purpose) In section 3, insert as subsection (2): (2) However, <i>see</i> section 28A .	
5	Section 4 amended (Purpose and principles of exercising functions and powers under this Act) In section 4(1), after “for the purpose set out in section 3”, insert “(but <i>see</i> section 28A)”.	15
6	Section 5 amended (Overview of this Act) Replace section 5(c) with: (c) prohibits merchants from charging payment surcharges in certain circumstances; and (ca) in cases where payment surcharges are not prohibited, enables the Commission to regulate them; and	20

Part 2

Payment surcharge prohibited in certain circumstances

7 New subpart 1AA inserted in Part 3

In Part 3, before subpart 1, insert:

Subpart 1AA—Payment surcharge prohibited in certain circumstances 5

28A Purpose of this subpart

- (1) The purpose of this subpart is to prohibit payment surcharges in certain circumstances where it is in the interests of transparency, certainty, and convenience for consumers.
- (2) In this subpart, the purpose set out in **subsection (1)** applies in place of the purpose set out in section 3. 10
- (3) The functions and powers of the Commission and the Minister in relation to this subpart must be exercised for the purpose set out in **subsection (1)**.

28B Payment surcharge prohibited in certain circumstances

- (1) A merchant must not charge a payment surcharge to a consumer in any of the following circumstances: 15
 - (a) the consumer, using a debit or credit card, makes a retail payment using a card-present payment method transacted via an EFTPOS network, a Mastercard network, or a Visa network;
 - (b) in any other circumstances prescribed in regulations made under section 54. 20
- (2) **Subsection (1)(a)** does not limit the circumstances that may be prescribed for the purpose of **subsection (1)(b)**.
- (3) In this section,—

card means any physical, digital, or tokenised payment credential 25

card-present payment method means a payment method where—

 - (a) the consumer and their card are present at the merchant's physical point-of-sale device (including any unattended point-of-sale device) at the time the payment is initiated; and
 - (b) the consumer's card is electronically read by the merchant's physical point-of-sale device 30

EFTPOS network means a retail payment network known as EFTPOS to the extent that it facilitates transactions made using a debit card by—

 - (a) swiping a magnetic stripe on the card, or inserting the card, in the point-of-sale device; and 35
 - (b) selecting a cheque or a savings account; and

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	(c) then entering a personal identification number (PIN) Mastercard network means a retail payment network known as Mastercard debit or Mastercard credit of which the person known as Mastercard International Incorporated is a network operator Visa network means a retail payment network known as Visa debit or Visa credit of which the person known as Visa Worldwide Pte. Limited is a network operator.	5
28C	Consumer’s right of redress If a merchant charges a payment surcharge in contravention of section 28B,— (a) any provision of a contract requiring the consumer to pay the surcharge is unenforceable; and (b) the contract for the purposes of which the payment is made is treated as providing for the surcharge to be repaid to the consumer.	10
28D	Pecuniary penalty for contravention (1) A merchant who contravenes section 28B is liable to a pecuniary penalty. (2) See subpart 3 for further provisions about pecuniary penalties.	15
28E	Notice to take corrective action (1) If satisfied that a merchant has failed to comply with section 28B, the Commission may, by written notice given to the merchant, require the merchant to take any steps specified in the notice to— (a) remedy the non-compliance; or (b) ensure that the non-compliance is not continued or repeated. (2) The notice must specify a reasonable period (a specified period) within which the required steps must be taken. (3) A merchant given a notice must comply with the notice within the specified period. (4) A merchant that contravenes a notice is liable to a pecuniary penalty. (5) See subpart 3 for further provisions about pecuniary penalties.	20 25
8	Section 29 amended (Purpose of this subpart) Replace section 29(1) with: (1) The purpose of this subpart is to ensure that, where payment surcharges for payment services are not prohibited under section 28B, payment surcharges are no more than the cost to the merchant of the payment services used for accepting retail payments.	30 35

- 9 Section 30 amended (Commission may issue merchant surcharging standards)**
After section 30(3), insert:
(3A) A merchant surcharging standard does not apply to any circumstances in which a merchant is prohibited under **section 28B** from charging a payment surcharge. 5
- 10 Section 34 amended (Amendment and revocation of merchant surcharging standards)**
In section 34(a), after “minor nature only”, insert “or is necessary or desirable for consistency with regulations made for the purpose of **section 28B**”. 10
- 11 Section 40 amended (Pecuniary penalty orders for contraventions of merchant surcharging standards)**
(1) In the heading to section 40, after “**contraventions of**”, insert “**the prohibition in section 28B and**”.
(2) Replace section 40(1)(a) with: 15
(a) contravened the prohibition in **section 28B** or a merchant surcharging standard; or
(3) Replace section 40(1)(b) with:
(b) been involved in a contravention of the prohibition in **section 28B** or a merchant surcharging standard. 20
- 12 Section 41 amended (Pecuniary penalties for contravention of notice to take corrective action)**
In section 41(1), replace “section 35(1)” with “**section 28E(1)** or 35(1)”.
13 Section 54 amended (Regulations)
(1) After section 54(1)(a), insert: 25
(aa) prescribing, for the purposes of **section 28B**, other circumstances in which a merchant must not charge a payment surcharge:
(2) After section 54(2), insert:
(2A) The Minister may make a recommendation for regulations under **subsection (1)(aa)** only if, in addition to the consultation required by subsection (2), the Minister— 30
(a) has consulted the Commission; and
(b) has had regard to—
(i) the purpose set out in section 3; and
(ii) any merchant surcharging standards that may be affected by the proposed regulations. 35

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(2B)	Circumstances prescribed under subsection (1)(aa) may relate to any 1 or more of the following: (a) a particular payment method or class of payment method (for example, using a card online): (b) a particular payment product or class of payment product: (c) a particular payment network or class of payment network: (d) a particular merchant or class of merchant (for example, its size or type): (e) any other circumstances of the retail payment.	5
(2C)	<u>If the Minister recommends the making of regulations under subsection (1)(aa), the Minister’s reasons must be published together with the regulations.</u>	10

Legislative history

16 September 2025	Introduction (Bill 205–1), first reading and referral to Finance and Expenditure Committee
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