

Legal Assistance Resource Center of Connecticut, Inc.

44 Capitol Avenue, Suite 301 ♦ Hartford, Connecticut 06106
(860) 278-5688 x203 ♦ cell (860) 836-6355 ♦ fax (860) 278-2957 ♦ RPodolsky@LARCC.org

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Gasoline purchases made by debit card

General Law Committee public hearing -- February 21, 2013

Testimony of Raphael L. Podolsky

Recommended Committee action: **JOINT FAVORABLE**

Prior to 2008, national gasoline companies could prohibit their Connecticut gasoline stations from charging different prices for payment by cash or credit. In 2008, at the urging of the retail gasoline industry, the legislature amended C.G.S. 42-133ff to permit differential charges for cash and credit purchases. However, it specifically inserted the phrase "debit card" into the statute so as to require that payment by debit card be priced the same as payment by cash, check, or other similar means. Thus, C.G.S. 42-133ff authorizes price discounts only "to induce such buyer to pay by cash, debit card, check or similar means" "rather than" by credit card. Unfortunately, the wording of the section was ambiguous, and the Department of Consumer Protection read it as permitting differential prices for each category -- cash, check, and debit. As a result, it has refused to stop gasoline stations from charging the credit price to purchasers using debit cards.

These bills make clear that debit purchases must be treated the same as cash. We support them for the following reasons:

- * Debit card payments do not involve credit. They are functionally the same as cash. Unlike a credit card, in which the cardholder borrows money to pay a bill, a debit card merely withdraws the debtor's money from the debtor's own bank account. It is essentially a method for using plastic to pay with cash.
- * Surcharging debit cards defeats the very purpose for using debit cards. That purpose is to pay bills out of existing funds, with no accumulation of debt, without having to carry around large sums of money.
- * Extensive misleading advertising by retail gasoline station compounds the problem. Notwithstanding DCP regulations to the contrary, gas stations routinely advertise a "credit" price and a "cash" price without disclosing that debit will be charged the same as credit, not the same as cash. This is plainly misleading, since no credit extension is involved in a debit card purchase. Similarly, it is not reasonable to expect a consumer paying by debit card to know that he or she is subject to a surcharge for using "credit."

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- * Surcharging debit card purchases is in conflict with important government programs for lower-income residents. The government either requires or actively promotes the use of debit cards for the receipt of welfare benefits, unemployment compensation, Social Security, Title IV-D child support, and similar matters. It particularly affects those without bank accounts, who tend to be especially poor.
- * It is immaterial that retailers may pay a fee for processing debit card payments through the credit card network. Most costs associated with inducing more customers to buy from a retailer are treated as overhead and built into the cost of the product. Their propriety should be judged from the perspective of the consumer. Regardless of what interchange fees the retailer may pay, the customer is not paying with credit.

Recommended language for fully drafted bill:

Subsection (c) of Section 42-133ff is repealed and the following is substituted in lieu thereof:

(c) Nothing in this section shall prohibit any seller from offering a discount to a buyer to induce such buyer to pay by cash, debit card, check or similar means, rather than by credit card, provided that such discount is offered equally to buyers paying by cash, debit card, check or similar means. In furtherance of the legislative findings contained in section 42-133j, as amended by this act, no existing or future contract or agreement shall prohibit a gasoline retailer or distributor from offering a discount to a buyer based upon the method of payment by such buyer for such gasoline. Any provision in such contract or agreement prohibiting such retailer or distributor from offering such discount is void and without effect as contrary to public policy.