

Cash Shortages and Credit Only – Are Businesses Allowed to Refuse Cash Payments?

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07.29.2020

Have you seen the Internet memes concerning CASH SHORTAGES and CREDIT ONLY payment policies? Lately there has been confusion regarding whether businesses have the ability to refuse cash payments for goods and services, instead opting to rely solely on credit card transactions or electronic funds transfers such as mobile payment apps. This switch to “cashless” has left many people confused on just what these businesses are allowed to do.

Federal Law, 31 U.S.C. § 5103, states:

United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts.

However, federal law does not mandate that private businesses must accept cash for payment. The Federal Reserve has stated that private businesses are free to develop their own policies on whether to accept cash - unless there is a state law that says otherwise.

For example, The United States Department of the Treasury has said bus lines may prohibit payments in coins or dollar bills. Additionally, private businesses such as movie theaters, convenience stores and gas stations have the ability to refuse large bills as a matter of policy, which often serves to protect employees against thieves. Many businesses claim that the time and labor costs associated with reconciling cash transactions to drawers, providing security for cash collectors and transportation to the bank, and time spent waiting on customers to count bills and change is worth the price the credit card companies charge for credit transactions.

Without federal monetary policy on the issue, the states are left to make their own decisions. Only four states have passed legislation forcing businesses to accept cash payments - Massachusetts, New Jersey, Rhode Island and Connecticut. Additionally, cities including San Francisco, Philadelphia and New York have also prohibited cashless policies by

businesses.

The movement of banning cashless business is not a new concept arising as a potential COVID-19 precaution. The Massachusetts state law, which provides that “no retail establishment offering goods or services for sale shall discriminate against a cash buyer by the use of credit,” was passed in 1978. Also, New York City legislators’ concerns arose over discrimination issues, as lower income households are less likely to have bank accounts. Two bills were introduced in the U.S. House in 2019, both intending to ban cashless-only transactions in brick-and-mortar retail establishments. There, Rep. Cicilline (D-R.I.) used FDIC data to illustrate how 8.4 million American households do not have a bank account and 32 million households, largely made up of working class Americans, do not use a credit card. Neither bill has progressed since 2019.

Atlanta’s Mercedes Benz Stadium has recently gone cashless, offering lower food prices as a trade-off, and providing cash to card kiosks around the stadium: <https://mercedesbenzstadium.com/mercedes-benz-stadium-cuts-food-prices-second-time/>

So, if private businesses do not have to accept cash payments for goods and services provided unless a state law mandates it, what happens if a consumer has already “incurred the debt,” such as eating a meal at a restaurant or filling a gas tank with fuel?

Professor Clayton Gillette, of New York University School of Law, explains, if a business alerts a consumer they do not accept cash, and the consumer proceeds to consume or possess goods or services, then that consumer has agreed to the terms the business has offered them. It can be viewed as a contract - where a business offers a good or service for a price with terms, and the consumer acts upon the contract to receive the benefit, then the consumer effectively agrees to the conditions set. By making the required payment method known in advance, (i.e., posting a sign on the front door or on a menu) if a customer proceeds in requesting a service or consuming a product, the customer also agrees to the payment term.

Local ordinances in the Carolinas are sparse, but examples include the following:

- **Myrtle Beach, SC:** Art. IX, Sec. 14-152, requires business establishments that sell gasoline/diesel to require full payment in advance before activating the pumps, with payment options including purchase by any legal means: cash, credit card, debit card, checks or otherwise.
- **Charleston, SC:** Art. XIII, Sec. 19-401, requires every vehicle storage facility doing business within the corporate limits of the city to accept major credit cards in addition to cash. There shall be no additional fee charged for the use of credit cards.
- **Raleigh, NC:** Chapter 7, Sec. 12-7015(b) and Durham, NC: Art. IV, Sec. 50-391: require fees for non-consensual towing of a motor vehicle be payable by cash, debit card or major national credit card at no extra cost.

Neither North nor South Carolina has legislation regarding cashless payments or payment policies, leaving private businesses free to create payment policies without restriction. However, North Carolina’s Attorney General, Josh Stein, has gone on record stating businesses do not have to put up signs alerting customers of cashless policies, but that it was “the right thing to do.” Also important to investigate when evaluating a cashless policy is the fact that many states have “no-surcharge” laws which prohibit business owners from passing along the credit card company’s transaction

charge, to the consumer. Without specific legislative guidance, developing and publicizing payment policies should be carefully considered.

These and other practical tips are the kind of help businesses can receive as part of a package of customized and budgeted legal work, when you engage Nexsen Pruet to provide gc360 General Counsel services. If you have further questions, or would like advice on payment policies in your location, please reach out to Yolanda Davis.