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DLCA to Start Enforcing Law Mandating Credit Card as Payment Option, With Hefty Fines for Violators

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The Dept. of Licensing and Consumer Affairs on January 1, 2022 will commence enforcement of a law that mandates credit card as one of two payment options that businesses grossing more than \$50,000 a year must offer.

DLCA suggested in a release that the law, which took effect in February 2020, needed to be enforced now more than ever because of the Covid-19 pandemic and the push toward minimizing paper transactions. "When Act 8205 was signed into law in 2019, the existence of the Coronavirus was not contemplated and neither was the uncertainty of whether the virus was spread via the handling of cash, either paper or coin on the date the law was to take effect. Fast forward 21 months to November 2021 and we are more aware of what we must do to protect ourselves as much as possible from Covid-19. As such, on or about January 1, 2022, DLCA shall commence to

enforce the requirement for establishments to accept at least two forms of payment: Cash and either Credit Card or Debit Card," the department said.

The law exempts some businesses, including mobile vendors (those selling food at events), farmers certified with the Dept. of Agriculture, fishermen certified with the Dept. of Licensing and Consumer Affairs (D.L.C.A.), and businesses grossing less than \$50,000 annually. Taxi drivers are also exempt from this law as well.

The bill, sponsored by Senator Kurt Vialet, had received strong pushback from some members of the community and some lawmakers, who contended that no business should be forced to offer alternative forms of payment aside from cash.

But Mr. Vialet during various hearings defended his legislation. "We have become a society that utilizes technology a real lot and for some reason we utilize technology in the confines of our home and when we go on a plane. But then we have different expectations here in the Virgin Islands. This bill would allow a number of entities to become competitive," Mr. Vialet said while defending the measure before it was signed into law.

The senator also sees a boon for the Government of the Virgin Islands relative to the collection of taxes, as the Bureau of Internal Revenue (B.I.R.) currently has a difficult time determining how much money cash-only operations make — and therefore struggles with taxing these operations. "The bill goes on to provide certain transparency methods that can be utilized by the Bureau of Internal Revenue, including posting requirements (letting customers know that more than one form of payment is offered)... and receipts," Mr. Vialet said. "A number of jurisdictions do mandate that customers must receive a receipt, and this bill says [for] any purchase of over \$5 a customer must be given a receipt."

According to the law, businesses can impose a minimum purchase requirement of up to \$10. Businesses must also clearly display signs with methods of payment for customers to see. Additionally, businesses must keep a daily record of transactions, which shall be maintained for a minimum of 7 years and be made available to B.I.R. for inspection if the need arises.

The law also urges individuals who visit businesses and notice that the businesses lack the credit card option, to file a complaint with D.L.C.A. The Dept. of Licensing and Consumer Affairs can perform unannounced site inspections to see whether businesses are complying with the new law. If businesses are not in compliance, they will receive a first penalty of \$1,000; for the second violation the penalty will be \$3,000, and for subsequent violations businesses will be fined \$5,000.

Some in the community have contended that the law runs afoul of the U.S. Constitution, in that it not only forces a business to take an action that this business should choose to offer, it also imposes fines for violations.

"There is no federal statute that would directly impede a state from enacting a law that mandates credit and debit card acceptance," said Myriam Gilles, a professor of law at Cardozo Law School in New York City, speaking to CreditCards.com.

Ms. Gilles, however, said that she would expect constitutional challenges if a state tried to mandate credit card payments. "Remember how the big Obamacare case turned into a debate over broccoli, which was mentioned 12 times in the decision?" Ms. Gilles asked. "To be sure, the issue there was whether Congress could mandate broccoli purchases (or insurance), and the question

here concerns state law. But there has been much debate about whether states could enact this kind of mandate.” In this case, the state would be forcing merchants to do business with the card networks. Ms. Gilles anticipates that merchants would protest this. “I imagine that objecting merchants would try to force the state to justify its law as a commercial speech restrictions, because the law abridges their rights to free association,” Ms. Gilles wrote.

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