



**Government of the Virgin Islands  
of the United States of America  
Department of Licensing and Consumer Affairs**

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**H. Nathalie Hodge  
Commissioner**

**Testimony Before the  
36<sup>th</sup> Legislature of the Virgin Islands**

**Hon. Hubert L. Frederick, Chair  
Committee on Economic Development and Agriculture**

**April 16, 2025**

*"Serving Businesses & Assisting, Educating and Protecting Consumers"*

1           Good morning, Honorable Senator Hubert L. Frederick, Chair of the Committee  
2           on Economic Development and Agriculture, esteemed members of the 36th Legislature  
3           of the Virgin Islands, other Committee and non-Committee members present, and the  
4           listening and viewing audience.

5           My name is Horace Graham, Assistant Commissioner of the Department of  
6           Licensing and Consumer Affairs (DLCA). I am here today representing H. Nathalie  
7           Hodge, Commissioner of DLCA. I am joined by General Counsel Geraldine Vaval and  
8           we are honored to appear before you today to offer testimony on Bill No. 36-0019, an  
9           act proposing to amend Title 12A, Chapter 2, Section 101 of the Virgin Islands Code.  
10          This bill seeks to prohibit the imposition of surcharges for the use of credit or debit cards  
11          and to authorize merchants to offer discounts to consumers who choose to pay with cash,  
12          check, or other similar non-credit methods.

13          The DLCA is the primary enforcement agency for business regulations and  
14          consumer protection in the Territory. As such, we are deeply committed to ensuring  
15          transparency, fairness, and compliance in commercial transactions, and we support the  
16          overall intent and direction of Bill No. 36-0019. The bill's prohibition on credit and debit  
17          card surcharges is consistent with the Department's ongoing efforts to safeguard  
18          consumers from unfair or deceptive payment practices. Similarly, the bill's express  
19          allowance of cash discounts provides much-needed clarity in an area that has, until now,  
20          remained somewhat ambiguous in our statutory framework.

21          Currently, 12A V.I.C. § 452(a)(1) requires that all businesses and governmental  
22          agencies offer at least two payment methods - one of which must be cash, and the other

23 a credit or debit card. More importantly, subsection (a)(2) of the same section prohibits  
24 any business from inducing or coercing a customer to use a specific payment method.  
25 While this provision reflects a clear legislative intent to protect the consumer's right to  
26 choose, it does not provide guidance on whether a business's offer of a discount for cash  
27 payments constitutes a lawful incentive or a prohibited form of pressure.

28 It is also important to note that the allowance of cash discounts is not unique to  
29 the Virgin Islands or this proposed legislation. At the federal level, the Durbin  
30 Amendment to the Dodd-Frank Wall Street Reform and Consumer Protection Act of  
31 2010 expressly permits merchants to offer discounts to customers who choose to pay  
32 using methods other than credit cards, including cash, check, or debit card. This federal  
33 law was enacted to provide businesses with flexibility in managing transaction costs and  
34 to encourage transparent pricing. Critically, the Durbin Amendment requires that such  
35 discounts be clearly disclosed and uniformly offered to all customers, a standard that  
36 aligns with the language and purpose of Bill No. 36-0019. By aligning the Territory's  
37 law with this federal provision, this bill reinforces well-established national standards  
38 and reduces the risk of legal inconsistency or confusion among merchants and  
39 consumers.

40 Bill No. 36-0019 directly addresses the current ambiguity by stating that  
41 merchants may offer discounts to encourage payment by cash or other non-credit  
42 methods, provided those discounts are clearly disclosed and offered to all potential  
43 customers. This clarification is significant. It distinguishes between coercive practices—  
44 such as hidden fees or the denial of card-based payment—and lawful pricing incentives

45 that provide consumers with transparent choices. In this respect, the bill strikes a  
46 reasonable balance between protecting consumer rights and affording businesses the  
47 flexibility to manage their operational costs.

48 While the Department supports the clarity this bill brings to the legality of cash  
49 discounts, we acknowledge concerns regarding potential abuse of this provision. The  
50 fear that merchants may adopt "dual pricing" systems—advertising a discounted cash  
51 price while charging a higher price for credit or debit card use—raises a legitimate  
52 enforcement challenge. Such practices, if not clearly regulated, may create a de facto  
53 surcharge that undermines both the consumer protection intent of 12A V.I.C. § 452 and  
54 the revenue transparency goals of Act No. 8205.

55 To reconcile these concerns, DLCA recommends the consideration of  
56 amendments to Bill No. 36-0019 or to § 452 that:

- 57 • Require that any advertised price must reflect the highest price charged—typically  
58 the card price—with the cash discount shown as a deduction, not the other way  
59 around.
- 60 • Reinforce clear signage and receipt transparency, consistent with 12A V.I.C. § 454,  
61 to prevent deceptive practices.
- 62 • Reinforce DLCA's authority to investigate any pricing scheme that has the effect of  
63 inducing or coercing payment by a specific method, even under the guise of a  
64 discount.

65 It's important to note that these strategies should not discourage the lawful use  
66 of cash or penalize consumers for using it. Instead, they should aim to ensure that when

67 cash is used, it is properly recorded and reported. By addressing these issues, we can  
68 preserve the consumer's right to transparency and choice while safeguarding against  
69 practices that would evade the original intent of Act No. 8205.

70 DLCA is currently engaged in investigations to ensure that businesses are  
71 adhering to the existing requirements of § 452. These investigations often involve  
72 reviewing whether surcharges are being unlawfully imposed and whether certain pricing  
73 practices conflict with the prohibition on inducement. If Bill No. 36-0019 is enacted, our  
74 enforcement efforts will shift toward ensuring that cash discounts are properly disclosed,  
75 applied uniformly, and do not serve as a proxy for concealed surcharges. To achieve this,  
76 DLCA will need to update its investigative protocols, provide additional training to staff,  
77 and issue formal guidance to both the business community and the general public.

78 While the Department supports the bill's substance, we respectfully request the  
79 Committee's consideration on the matter of statutory placement. Bill No. 36-0019  
80 amends Section 101 of Chapter 2, Subchapter I of Title 12A, which falls under the  
81 general consumer protection provisions. However, there are compelling reasons to  
82 consider incorporating the amendments directly into 12A V.I.C. § 452. This section  
83 already governs the acceptance of payment methods, the requirement to offer consumers  
84 a choice, and the prohibition against inducing or coercing that choice. Incorporating the  
85 surcharge and cash discount provisions into § 452 would place all payment-related  
86 obligations and allowances within a single, cohesive statutory framework. This would  
87 simplify statutory interpretation, enforcement, and compliance for DLCA staff, business  
88 owners, and consumers alike. It would also reduce the risk of conflicting interpretations

89 or legal confusion that might arise from having related provisions split across two  
90 separate chapters of the Code.

91 Additionally, we recommend incorporating statutory definitions of “surcharge”  
92 and “discount” into either § 451 or § 452 to support consistent application and public  
93 understanding.

94 In conclusion, the Department of Licensing and Consumer Affairs supports the  
95 objectives of Bill No. 36-0019. We welcome the opportunity to work collaboratively  
96 with the Committee on refining the bill’s language and placement to ensure that it is as  
97 effective and enforceable as possible.

98 Thank you once again for the opportunity to provide testimony. I am available to  
99 respond to any questions the Committee may have.