

SESSION OF 2023

SUPPLEMENTAL NOTE ON SENATE BILL NO. 104

As Amended by Senate Committee on Financial
Institutions and Insurance

Brief*

SB 104, as amended, would repeal the prohibition on imposing a surcharge on payments made by credit or debit cards. The bill would also establish notification requirements on persons and retailers who opt to impose a surcharge on credit card payments.

Surcharge Prohibition Repeal

The bill would repeal the statute within the Uniform Consumer Credit Code (KSA 16a-2-403) that prohibits the imposition of this surcharge and amend other sections of law to remove references to the statute.

Notification Requirements

The bill would prohibit persons or retailers doing business in Kansas in any sales, service, or lease transaction with a consumer from imposing a surcharge unless the entity complies with these requirements:

- A notice must be posted that explains the imposition of the surcharge, the amount of the surcharge, and which credit cards are subject to the surcharge;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- The notice must be clearly and conspicuously posted at the point of entry and the point of sale;
- If the transaction is processed through a website or mobile device, the person or retailer must post the notice on the home page and the point of sale webpage; and
- The notice must be prominently and conspicuously posted at the required locations in a minimum size of 16-point font.

Background

The bill was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Kansas Chamber. [Note: A companion bill, HB 2133, has been introduced in the House.]

Senate Committee on Financial Institutions and Insurance

In the Senate Committee hearing, **proponent** testimony was provided by representatives of the Kansas Chamber, Kansas Association of Beverage Retailers, Kansas Funeral Directors Association, Kansas Restaurant & Hospitality Association, and National Federation of Independent Business–Kansas and business representatives for Meineke Car Care Centers and Tech Incorporated. Written-only proponent testimony was submitted by representatives of Fuel True Independent Energy and Convenience; the Kansas Association of Counties; Kansas Cooperative Council; Kansas Grain and Feed Association and the Kansas Agribusiness Retailers Association; Overland Park Chamber of Commerce; and Wichita Regional Chamber of Commerce.

The proponents generally indicated the bill would allow retailers the flexibility to collect a surcharge to help cover credit and debit card fee expenses, which have increased

over time as consumers have shifted from the use of cash to credit and debit cards. Conferees also noted Kansas is one of four states with the prohibition on credit card surcharges. The Kansas Chamber representative also noted a 2017 U.S. Supreme Court decision (*Expressions Hair Design v. Schneiderman*), in which the Court ruled to vacate a surcharge prohibition similar to the one in Kansas law.

Neutral testimony provided by a representative of American Express requested consideration of two amendments to establish clear criteria to address risks associated with surcharging, capping surcharges at a reasonable level, and requiring clear and conspicuous disclosure of any surcharge. A representative of the Office of the State Bank Commissioner (OSBC) submitted written-only neutral testimony noting the 2021 *CardX LLC v. Schmidt* decision, a case which ruled KSA 16a-2-403 as an unconstitutional violation of CardX's freedom of speech. The representative noted there has been confusion from the public and merchants regarding CardX's modification to the applicability of the surcharge prohibition statute.

The Senate Committee amended the bill to add notification requirements to consumers about the imposition of a surcharge on those who elect to use a credit card for payment.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Departments of Education, Labor, and Revenue and the OSBC indicate the bill would have no fiscal effect. The Kansas Association of Counties states the bill would allow counties to offset fees charged for credit and debit card processing.

Uniform Consumer Credit Code; surcharge prohibition repeal; credit and debit card transactions; notification to consumers