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David L. Herndon, Bank Commissioner

Laura Kelly, Governor

**Testimony to the Senate Committee on Financial Institutions and Insurance
on SB 104
February 9, 2023**

The Office of the State Bank Commissioner (OSBC) appreciates the opportunity to provide written testimony regarding Senate Bill 104. The OSBC is neutral on this bill.

The OSBC has enforcement authority over K.S.A. 16a-2-403. K.S.A. 16a-2-403 is in the Uniform Consumer Credit Code and this statute only applies to consumer sales and lease transactions. K.S.A. 16a-2-403 prohibits a merchant from imposing a credit or debit card surcharge above a regular price available for other payment methods. As stated by Kansas Comment 2010 #1 to K.S.A. 16a-2-403, merchants are permitted to offer a cash discount provided the credit card payment method is charged at the displayed regular price.

A decision was issued in *CardX LLC v. Schmidt*, 522 F.Supp.3d 929 (D. Kan. 2021) ("*CardX*") which has caused confusion, evidenced by calls to our agency received from the public and merchants who are unaware that *CardX* modified K.S.A. 16a-2-403's applicability. *CardX* displayed a different cash price and credit card price on the same sticker. The *CardX* case ruled K.S.A. 16a-2-403 as an unconstitutional violation of *CardX*'s freedom of speech. The court did not decide if other displays of cash and credit prices were unconstitutional violations of a merchant's freedom of speech, such as a sign at the register stating credit card transactions are subject to a surcharge.

As stated earlier, the OSBC is neutral on this bill. Amending K.S.A. 16-2-403 in some manner, either by repeal as requested by Senate Bill 104 or by removing from K.S.A. 16a-2-403 regulating the merchant's freedom of speech would help reduce confusion from merchants and the public.

Thank you again for the opportunity to present written testimony related to Senate Bill 104.

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February 9, 2023**

The Office of the State Bank Commissioner (OSBC) appreciates the opportunity to provide written testimony regarding Senate Bill 104. The OSBC is neutral on this bill.

The OSBC has enforcement authority over K.S.A. 16a-2-403. K.S.A. 16a-2-403 is in the Uniform Consumer Credit Code and this statute only applies to consumer sales and lease transactions. K.S.A. 16a-2-403 prohibits a merchant from imposing a credit or debit card surcharge above a regular price available for other payment methods. As stated by Kansas Comment 2010 #1 to K.S.A. 16a-2-403, merchants are permitted to offer a cash discount provided the credit card payment method is charged at the displayed regular price.

A decision was issued in *CardX LLC v. Schmidt*, 522 F.Supp.3d 929 (D. Kan. 2021) ("*CardX*") which has caused confusion, evidenced by calls to our agency received from the public and merchants who are unaware that *CardX* modified K.S.A. 16a-2-403's applicability. *CardX* displayed a different cash price and credit card price on the same sticker. The *CardX* case ruled K.S.A. 16a-2-403 as an unconstitutional violation of *CardX*'s freedom of speech. The court did not decide if other displays of cash and credit prices were unconstitutional violations of a merchant's freedom of speech, such as a sign at the register stating credit card transactions are subject to a surcharge.

As stated earlier, the OSBC is neutral on this bill. Amending K.S.A. 16-2-403 in some manner, either by repeal as requested by Senate Bill 104 or by removing from K.S.A. 16a-2-403 regulating the merchant's freedom of speech would help reduce confusion from merchants and the public.

Thank you again for the opportunity to present written testimony related to Senate Bill 104.

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David L. Herndon, Bank Commissioner

Laura Kelly, Governor

**Testimony to the Senate Committee on Financial Institutions and Insurance
on SB 104
February 9, 2023**

The Office of the State Bank Commissioner (OSBC) appreciates the opportunity to provide written testimony regarding Senate Bill 104. The OSBC is neutral on this bill.

The OSBC has enforcement authority over K.S.A. 16a-2-403. K.S.A. 16a-2-403 is in the Uniform Consumer Credit Code and this statute only applies to consumer sales and lease transactions. K.S.A. 16a-2-403 prohibits a merchant from imposing a credit or debit card surcharge above a regular price available for other payment methods. As stated by Kansas Comment 2010 #1 to K.S.A. 16a-2-403, merchants are permitted to offer a cash discount provided the credit card payment method is charged at the displayed regular price.

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**Testimony to the Senate Committee on Financial Institutions and Insurance
on SB 104
February 9, 2023**

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**Testimony to the Senate Committee on Financial Institutions and Insurance
on SB 104
February 9, 2023**

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**Testimony to the Senate Committee on Financial Institutions and Insurance
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February 9, 2023**

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**Testimony to the Senate Committee on Financial Institutions and Insurance
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February 9, 2023**

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**Testimony to the Senate Committee on Financial Institutions and Insurance
on SB 104
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February 9, 2023**

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The OSBC has enforcement authority over K.S.A. 16a-2-403. K.S.A. 16a-2-403 is in the Uniform Consumer Credit Code and this statute only applies to consumer sales and lease transactions. K.S.A. 16a-2-403 prohibits a merchant from imposing a credit or debit card surcharge above a regular price available for other payment methods. As stated by Kansas Comment 2010 #1 to K.S.A. 16a-2-403, merchants are permitted to offer a cash discount provided the credit card payment method is charged at the displayed regular price.

A decision was issued in *CardX LLC v. Schmidt*, 522 F.Supp.3d 929 (D. Kan. 2021) ("*CardX*") which has caused confusion, evidenced by calls to our agency received from the public and merchants who are unaware that *CardX* modified K.S.A. 16a-2-403's applicability. *CardX* displayed a different cash price and credit card price on the same sticker. The *CardX* case ruled K.S.A. 16a-2-403 as an unconstitutional violation of *CardX*'s freedom of speech. The court did not decide if other displays of cash and credit prices were unconstitutional violations of a merchant's freedom of speech, such as a sign at the register stating credit card transactions are subject to a surcharge.

As stated earlier, the OSBC is neutral on this bill. Amending K.S.A. 16-2-403 in some manner, either by repeal as requested by Senate Bill 104 or by removing from K.S.A. 16a-2-403 regulating the merchant's freedom of speech would help reduce confusion from merchants and the public.

Thank you again for the opportunity to present written testimony related to Senate Bill 104.

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David L. Herndon, Bank Commissioner

Laura Kelly, Governor

**Testimony to the Senate Committee on Financial Institutions and Insurance
on SB 104
February 9, 2023**

The Office of the State Bank Commissioner (OSBC) appreciates the opportunity to provide written testimony regarding Senate Bill 104. The OSBC is neutral on this bill.

The OSBC has enforcement authority over K.S.A. 16a-2-403. K.S.A. 16a-2-403 is in the Uniform Consumer Credit Code and this statute only applies to consumer sales and lease transactions. K.S.A. 16a-2-403 prohibits a merchant from imposing a credit or debit card surcharge above a regular price available for other payment methods. As stated by Kansas Comment 2010 #1 to K.S.A. 16a-2-403, merchants are permitted to offer a cash discount provided the credit card payment method is charged at the displayed regular price.

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As stated earlier, the OSBC is neutral on this bill. Amending K.S.A. 16-2-403 in some manner, either by repeal as requested by Senate Bill 104 or by removing from K.S.A. 16a-2-403 regulating the merchant's freedom of speech would help reduce confusion from merchants and the public.

Thank you again for the opportunity to present written testimony related to Senate Bill 104.

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