

SESSION OF 2023

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2133

As Recommended by House Committee on
Financial Institutions and Pensions

Brief*

HB 2133 would repeal the prohibition on imposing a surcharge on payments made by credit or debit cards.

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.

Background

The bill was introduced by the House Committee on Financial Institutions and Pensions at the request of the Kansas Chamber. [*Note:* A companion bill, SB 104, has been introduced in the Senate.]

House Committee on Financial Institutions and Pensions

In the House Committee hearing, **proponent** testimony was provided by representatives of the Kansas Chamber, Fuel True, Kansas Restaurant & Hospitality Association, and National Federation of Independent Business–Kansas. Written-only proponent testimony was submitted by representatives of the Kansas Association of Counties; Kansas Grain and Feed Association and the Kansas Agribusiness Retailers Association; and Overland Park Chamber. The proponents generally indicated the bill would

*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>

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 submitted 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.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, 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