



**AMERICAN EXPRESS TESTIMONY ON HB 2316 – NEUTRAL
KANSAS SENATE COMMITTEE ON AUDIT AND TAXATION
JANUARY 20, 2022**

American Express appreciates the opportunity to comment on HB 2316. This bill would repeal K.S.A. 16-a-2-403, existing law that prohibits levying an additional fee (surcharge) on consumers who elect to pay with a credit card.

Kansas enacted its existing surcharge ban law in 1986 to protect consumers. In 2021 a federal court declared the law to be unconstitutional as applied to one plaintiff. Considering the court's ruling and similar decisions in other states, American Express supports careful reexamination of K.S.A. 16-a-2-403 by the Kansas Legislature.

As with the original statute, the Legislature's reexamination should prioritize first and foremost protecting consumers. Yet unfortunately, HB 2316 as it is currently drafted would repeal the surcharge ban law without providing any statutory constraints or consumer protections. As such, the bill as drafted would invite unregulated surcharging in Kansas that poses risk of consumer harm and disruption to commerce:

- Kansas consumers, small business owners and local government agencies that rely on credit cards to make purchases will be confronted with added costs for the first time in over three decades.
- Purchases for which cash is impractical – online commerce, large ticket items, an after-hours fill-up of gasoline – will become more expensive.
- High priced necessities including rent, childcare and health care may be subject to especially costly fees.
- Purchasers may not be provided adequate or timely notice of surcharges before deciding what to buy, where to buy and how to pay.

To address these risks, the Kansas Legislature should amend HB 2316 to offer clear “guardrails” around surcharging, rather than merely repeal the existing ban. American Express respectfully recommends two such amendments.

1. Legislation should require clear and conspicuous disclosure of any surcharge

American Express believes that before making a purchase, consumers are entitled to know the full price of goods and services inclusive of any surcharge that may apply. Pricing transparency is vital to avoiding a surprise extra fee that is costly to the consumer and harms the customer experience. Mandating clear, conspicuous, and accurate advance price disclosure benefits consumers and merchants alike.

American Express respectfully suggests amending HB 2316 to require clear and conspicuous disclosure of any credit card surcharge. We propose the following language be added to the bill to address disclosure:

“If a credit card surcharge applies to a sales transaction, the seller must disclose the surcharge clearly, conspicuously, and accurately at the point of entry, at the beginning of the payment transaction, and on every receipt. The disclosure must identify the amount of such surcharge and its relationship to the cost of accepting credit cards.”

2. Credit card surcharges should be capped at a reasonable level

All forms of payment require the seller to absorb some cost. Cash may be costly to handle, inconvenient to process, impractical to transact online and carry risk of counterfeiting and theft. Credit cards solve for many of these problems while providing additional value to merchants who elect to accept them.

By repealing the ban on credit card surcharges in Kansas, HB 2316 would allow all merchants (small and large, local and national) to assess fees on credit card users, ostensibly to offset the merchant’s cost of accepting credit cards. While such practice is currently permissible in certain states, there are several reasons why the credit card surcharge should be capped at an amount below the full cost of acceptance.

Consumers who choose credit should not be singled out to pay the merchant’s full cost of doing business. Rather, credit card surcharges should be capped at a reasonable limit that reflects the approximate cost of accepting credit card transactions over and above transactions using other forms of payment. American Express respectfully suggests amending HB 2316 to cap the allowable rate of surcharge on credit card transactions at no more than the merchant’s actual cost of acceptance, not to exceed 2% of the transaction amount.

HB 2316 would impact consumers and businesses in Kansas. Its impact may be dramatic after decades during which credit card surcharging has been prohibited by law in Kansas. American Express appreciates the opportunity to comment on this important legislation.