



**AMERICAN EXPRESS TESTIMONY ON SB 104
KANSAS SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE
FEBRUARY 9, 2023**

American Express appreciates the opportunity to comment on SB 104. 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. Considering the Kansas court’s ruling and similar decisions in other states, American Express supports careful reexamination of K.S.A. 16-a-2-403 by the Legislature.

As with the original statute, the Legislature’s reexamination should prioritize first and foremost protecting consumers. Yet unfortunately, SB 104 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, automobile repair and maintenance 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 SB 104 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 harmful to the customer experience. Mandating clear, conspicuous, and accurate advance price disclosure benefits consumers and merchants alike.

American Express respectfully suggests amending SB 104 to require clear and conspicuous disclosure of any credit card surcharge. We propose the same language that was in SB 462 from 2022, which is as follows:

No person or retailer doing business in Kansas in any sales, service or lease transaction with a consumer may impose a surcharge on a consumer who elects to use a credit card as payment unless such person or retailer complies with the following requirements:

(1) A notice shall be posted that explains the imposition of the surcharge, the amount of the surcharge and which credit cards are subject to the surcharge;

(2) such notice shall be clearly and conspicuously posted at the point of entry and the point of sale;

(3) if the sales, service or lease transaction is processed through a website or mobile device, the person or retailer shall post such notice on the home page and the point-of-sale webpage; and

(4) the notice required by this section shall be prominently and conspicuously posted at the required locations in a minimum size of 16-point font.

(b) All entities accepting credit cards for payment shall be subject to the notice requirements of subsection (a). No such entity may impose a surcharge on a person or card holder who elects to use a credit card as payment unless such entity complies with such requirements.

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, SB 104 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 many 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 SB 104 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.

SB 104 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. Careful consideration is warranted to protect consumers and businesses from the impacts of repealing existing law. Other states with statutes like K.S.A. 16-a-2-403 have taken steps to modify or replace those laws with new protections for consumers and businesses through pending or passed legislation.

American Express appreciates the opportunity to comment on this important legislation.