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**Testimony to the House Committee on
Financial Institutions and Pensions
HB 2133
January 30, 2023**

The Office of the State Bank Commissioner (OSBC) appreciates the opportunity to provide written testimony regarding House Bill 2133. 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 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. We believe it is appropriate for the legislature to amend K.S.A. 16-2-403 in some manner, either by repeal as requested by House Bill 2133 or by removing the language regulating the merchant's freedom of speech.

Thank you again for the opportunity to present written testimony related to House Bill 2133.

A handwritten signature in cursive script that reads "Brock Roehler".

Brock Roehler
General Counsel