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COURT FINDS KANSAS SURCHARGE LAW VIOLATES FIRST AMENDMENT

The U.S. District Court for the District of Kansas recently held the Kansas surcharge statute (Section 16a-2-403) to be an unconstitutional restriction on a merchant's freedom of speech. *CardX, LLC v. Schmidt*, No. 20-2274-JWB (D. Kan. Feb. 25, 2021).

In this case, a technology software company brought an action against the Kansas Attorney General challenging the statute that prohibits sellers from imposing a "surcharge" at the time of sale on consumers who pay by credit card rather than cash. The statute at issue prohibits a surcharge but permits sellers to offer a discount to consumers who pay by cash. The technology software company argued that the Kansas law is an unconstitutional restriction on commercial speech in violation of its First Amendment rights. In this case, the company wanted to post a single sticker price, including the display of a price and a percentage or dollar amount fee added on to the price for credit card purchases.

The court determined that as applied to the technology software company, the surcharge statute is unconstitutional as it violates the company's rights under the First Amendment. The court reasoned that the speech restrictions arising from the statute do not advance substantial state interest in a direct and material way and in proportion to those interests, such that it improperly infringes on the company's right of free speech.

Kansas joins California, Florida, New York, Oklahoma and Texas by having case law or formal regulatory opinions that contradict, overturn or limit the scope of their surcharge statutes. See our prior Alerts dated [Jan. 5, 2018](#), [Apr. 4, 2017](#) and [Mar. 29, 2017](#). After this decision, only a few states remain with statutes that prohibit surcharges. If you have any questions, please let us know. □

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