

SESSION OF 2023

SUPPLEMENTAL NOTE ON SENATE BILL NO. 44

As Amended by House Committee of the Whole

Brief*

SB 44, as amended, would enact the Kansas Financial Institutions Information Security Act (Act). The bill would designate covered entities, define terms, outline requirements for covered entities, and provide for responsibilities of the State Bank Commissioner under the Act.

The bill would be in effect upon publication in the *Kansas Register*.

Covered Entities

The Act would apply to the handling of customer information by the following covered entities:

- Credit services organizations;
- Mortgage companies;
- Supervised lenders (e.g., persons authorized to make a consumer loan under the Uniform Consumer Credit Code);
- Financial institutions engaging in money transmission;
- Trust companies; and
- Technology-enabled fiduciary financial institutions.

*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>

Definitions

The bill would define terms, including:

- “Commissioner” would mean the State Bank Commissioner or the Commissioner’s designee;
- “Covered entity” would mean each person, applicant, registrant, or licensee subject to regulation by the Office of the State Bank Commissioner that is not directly regulated by a federal banking agency; and
- “Customer information” would mean any record containing nonpublic personal information about a customer of a covered entity, whether in paper, electronic, or other form, that is handled or maintained by or on behalf of the covered entity or its affiliates.

Covered Entity Requirements

The bill would require a covered entity to:

- Set forth standards for developing, implementing, and maintaining reasonable safeguards to protect the security, confidentiality, and integrity of customer information pursuant to the federal Standards for Safeguarding Consumer Information (16 CFR Part 314);
- Develop and organize its information security system into one or more readily accessible parts; and
- Maintain the program as part of the covered entity’s books and records in accordance with its record retention requirements.

Responsibilities of the State Bank Commissioner

The bill would specify the Act would be implemented, administered, and enforced by the Commissioner.

Under the Act, the Commissioner would be permitted to conduct routine examinations of the operations of a covered entity or investigations of its operations if the Commissioner has reason to believe the covered entity has been engaged or is engaging in any conduct in violation of the Act.

In conducting an investigation or examination or while enforcing the Act, the Commissioner would be able to:

- Issue subpoenas or seek their enforcement in a court of competent jurisdiction;
- Assess fines or civil penalties on a covered entity not to exceed \$5,000 per violation and assess costs of the investigation, examination, or enforcement activity;
- Censure a covered entity if it is registered or licensed;
- Enter into a memorandum of understanding or consent order with a covered entity;
- Issue a summary order to a covered entity;
- Revoke, suspend, or refuse to renew the registration or licensure of a covered entity;
- Order a covered entity to cease and desist from engaging in any conduct in violation of the Act or file an injunction to prohibit the covered entity from continuing such conduct; or
- Issue emergency orders if necessary to prevent harm to consumers.

The bill would also provide that any enforcement action required or requested under the Act would be conducted in accordance with the Kansas Administrative Procedure Act and would be subject to review in accordance with the Kansas Judicial Review Act.

Background

The bill was introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Office of the State Bank Commissioner (OSBC).

Senate Committee on Financial Institutions and Insurance

In the Senate Committee hearing, a representative of the OSBC provided **proponent** testimony, stating the bill would not increase regulatory burden and would not require additional employees or examinations. The representative noted all financial institutions are required to comply with federal Information Safety Standards, which implement sections of the Gramm-Leach-Bliley Act and set forth standards for implementing safeguards designated to protect the security, confidentiality, and integrity of customer information. The OSBC has found, during IT examinations, financial institutions doing business with Kansas consumers were not fully compliant with the Federal Trade Commission (FTC) Safeguards Rule.

Opponent testimony was provided by a representative of the Kansas Automobile Dealers Association, who stated the bill would replicate enforcement already in place under the FTC and asked that automobile dealers be exempted from the bill.

The Senate Committee amended the bill to, under the list of covered entities, replace “financial institutions engaging

in consumer credit transactions” with “supervised lenders” to better reflect the institutions covered by the bill.

House Committee on Financial Institutions and Pensions

In the House Committee hearing, a representative of the OSBC provided **proponent** testimony, stating the bill would cover all entities under the jurisdiction of the State Bank Commissioner outside of state-chartered banks and wholly-owned subsidiaries (subject to other information security regulations) and persons only required to file notification under the UCCC. No other testimony was provided.

The House Committee recommended the bill be passed favorably.

House Committee of the Whole

The House Committee of the Whole amended the bill to change its effective date to upon publication in the *Kansas Register*.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the OSBC indicates its enactment would have no fiscal effect on agency operations because the agency already performs information technology examinations of financial entities, which also check for compliance with the FTC Safeguards Rule. In addition, the agency indicates it would not generate fine revenues because financial entities already voluntarily make any necessary changes to come into compliance with the FTC Safeguards Rule and the agency expects continued cooperation from the entities.

The Kansas Judicial Branch indicates that enactment of the bill would allow the OSBC to enforce its subpoena power

in district court, and there would be an increase in time spent processing and researching cases by judicial and nonjudicial personnel. The bill could also result in the collection of docket fees that would be deposited to the State General Fund. However, the Judicial Branch is unable to estimate a fiscal effect.

The Office of the Attorney General indicates the bill would not have a fiscal effect on its operations. Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

Financial institutions; Kansas Financial Institutions Information Security Act; cybersecurity; information security; State Bank Commissioner