

SESSION OF 2012

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE
BILL NO. 64**

As Recommended by Senate Committee on
Financial Institutions and Insurance

Brief*

Sub. for SB 64 would amend provisions in the State Banking Code to permit either The State Bank Commissioner or the State Banking Board to require fingerprinting and completion of a criminal background check for certain individuals related to an application for a money transmitter license, filing a notice for a proposed acquisition of a bank by a trust company, and application for a new trust company.

Specifically, the bill would amend The Kansas Money Transmitter Act to permit the State Bank Commissioner to require fingerprinting of any individual, officer, director, partner, member, shareholder, or any other person related to the application deemed necessary by the Commissioner. The bill would exempt applicants who are a publicly traded corporation or a subsidiary of a publicly traded corporation from the fingerprint check.

The bill also would allow, in instances where notice is given for the acquisition of a bank by a trust company, the Commissioner the authority (permissive) to require fingerprinting of any proposed officer, director, shareholder or any other person deemed necessary by the Commissioner.

The bill would permit the State Banking Board to require fingerprinting of any officer, director, incorporator, or any other person of the proposed trust company related to the application deemed necessary by the Board.

*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>

The bill would allow the submission of an applicant's fingerprints to the Kansas Bureau of Investigation, the Federal Bureau of Investigation or other law enforcement agency for the purposes of verifying the identity of the applicant and obtaining a record of the person's criminal arrests and convictions. The bill would require that all costs associated with the fingerprinting and criminal background checks be paid by the applicant or the parties to the application.

Background

The Senate Committee on Financial Institutions and Insurance recommended the adoption of a substitute bill. The substitute bill incorporates some provisions of the bill, as introduced, with the following exceptions: deletes fingerprinting and criminal background check requirements on applicants for a new bank charter or applicants acquiring a bank or bank holding company and inserts an amendment to exempt applicants who are publicly traded corporations from the requirements for money transmitters. The Senate Committee deleted shareholder from the list of individuals subject to the fingerprint check in the provision applicable to new trust company applicants and also made technical corrections to the submitted balloon amendment.

The bill was introduced at the request of the Office of the State Bank Commissioner (OSBC) whose representative indicated at a 2011 Senate Committee hearing that the Commissioner or Banking Board, prior to acting on certain applications (specified in the bill), is required to conduct a thorough review of an applicant's character and qualifications, their general business experience, activities and affiliations, their financial standing, any legal proceedings of which they are a party to, and any criminal indictments or convictions. Allowing the agency the ability to perform fingerprint checks, on an as-needed basis, the representative continued, would enhance the agency's ability to meet the statutory requirements. The representative also noted that the Kansas

Bureau of Investigation has advised the agency that in order to do a complete check of all criminal records throughout the United States, the agency would need to access the NCIC (National Crime Information Center) database and that requires individuals to be fingerprinted. A representative of American Express Corporation offered neutral testimony to the bill stating that the fingerprinting requirements are not needed for publicly traded corporations under the federal securities law enforced by the U.S. Securities and Exchange Commission (these corporations are subject to Regulation S-K, 17 CFR Part 229). Other states with fingerprinting requirements, the representative noted, have exempted publicly traded corporations for many years and there have been no issues. There were no opponents at the time of the Senate Committee hearing.

Following the conclusion of discussion on the bill, the Senate Committee on Financial Institutions requested the Legislative Coordinating Council approve an interim study of the fingerprinting and criminal history record checks in the bill and another bill in the Committee (amendments to SB 71). The topic was approved and assigned to the Special Committee on Financial Institutions and Insurance. The Special Committee recommended the Senate Committee schedule a hearing on SB 64 (including the amendments submitted by the OSBC and the amendment to exclude publicly traded corporations and their subsidiaries from fingerprinting/background checks) at a date that would allow time for consideration during the 2012 Session by the House Financial Institutions Committee. The Senate Committee held a hearing on the bill. The Deputy Bank Commissioner submitted an amendment to the bill that would remove the requirements associated with fingerprinting and criminal background checks from the bill and insert an amendment discussed during the 2011 hearing and interim. The official indicated that the agency would work with the Conference of State Bank Supervisors to facilitate dialogue on the federal level regarding the sharing of fingerprint results obtained for applications filed with the federal banking agencies. Written testimony in support of the bill was submitted by the Money

Services Round Table. Representatives of the Community Bankers Association and the Kansas Bankers Association (KBA) submitted written testimony neutral to the bill. The KBA representative indicated that the association was now neutral on the bill because the initial objections to the bill have been removed; the KBA would oppose any efforts to reinstate a fingerprint requirement for banks in the bill.

The fiscal note prepared by the Division of the Budget prior to the 2011 hearing states the Office of the State Bank Commissioner indicates that the bill would have no fiscal effect on its operations. The agency indicates it would require less than ten applicants per year to submit to fingerprinting and criminal background checks (the bill requires applicants to pay all associated costs). The Kansas Bureau of Investigation indicates the fingerprinting and criminal background checks would be performed by existing staff and that the fees collected would be negligible and would be used to offset the costs associated with completing the criminal background checks. Any fiscal effect associated with the bill is not reflected in *The FY 2012 Governor's Budget Report*.