

February 18, 2015

The Honorable John Barker, Chairperson
House Committee on Judiciary
Statehouse, Room 149-S
Topeka, Kansas 66612

Dear Representative Barker:

SUBJECT: Fiscal Note for HB 2302 by House Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2302 is respectfully submitted to your committee.

HB 2302 would enact the Kansas Right to Financial Privacy Act to protect the customer's right to financial privacy. The bill prohibits a government authority from accessing financial records of any customer unless they are authorized by the customer, in response to a subpoena, or relevant to a government investigation. The bill details the procedures for a government authority to obtain a subpoena to access financial records and allows a customer to make financial records unavailable under certain conditions. The bill provides a three-year limitation period to bring an action for a violation of the Act and establishes penalty and damages amounts for any violations. The Act would take effect on January 1, 2016.

The Attorney General indicates the direct costs associated with HB 2302 would come from the defense of an action brought under the law as the Attorney General may be required to defend any state agency or department that is sued for violating the Act. The Attorney General estimates the costs to defend any state agency or department could be as high as \$100,000 from the State General Fund in FY 2016. The Attorney General indicates that the bill would have a significant effect on cases under investigation, particularly in the areas of consumer protection, Medicaid fraud, and criminal litigation. While exemptions are made for subpoenas issued under the code of civil procedure and code of criminal procedure, the bill requires these to be in connection with litigation, meaning the Attorney General's ability to issue subpoenas while a case is still in the investigation phase and before litigation is filed. The effect of the limiting of this investigative authority would be a significant decrease in the number of cases that the Attorney General is able to file. For consumer protection and Medicaid fraud cases this would mean a corresponding decrease in the revenues that those cases produce. The Consumer Protection Division recovered nearly \$6.0 million in penalties, fees, and recoveries for the state in calendar year 2013, the last year for which data is available. The Attorney General estimates that revenue from penalties, fees, and recoveries could be decreased by approximately \$200,000 due to the inability to use pre-filing subpoenas.

The bill has the potential for increasing litigation in the courts because of the new procedure for issuing a subpoena to obtain financial records, allowing individuals to make financial records unavailable under certain conditions, and new violations created by the bill. If it does, the Office of Judicial Administration indicates that there would be a fiscal effect on the operations of the court system. However, it is not possible to predict the number of additional court cases that would arise

or how complex and time-consuming they would be. Therefore, a precise fiscal effect cannot be determined. In any case, the fiscal effect would most likely be accommodated within the existing schedule of court cases and would not require additional resources.

The Office of the Securities Commissioner indicates the bill may limit its ability to administer and enforce the Kansas Uniform Securities Act. The bill could increase staff time and administration costs in conducting investigations and serving subpoenas to obtain financial records. The bill includes extended timeframes for obtaining financial records and the costs to prepare and present applications to the district court could be significant. However, the agency does not have data to precisely estimate the additional expenditures or staff time that would be devoted for preparing and processing applications to the district court.

The Department of Revenue indicates the bill may limit its ability to conduct investigations and to serve subpoenas to obtain financial records in tax delinquency cases. However, the agency does not have data to precisely estimate the additional expenditures or staff time that would be necessary for preparing and processing subpoena applications to the district court or the amount of taxes that would not be recovered as a result of this bill.

The Office of the State Bank Commissioner indicates that the bill would not have a fiscal effect on its operations. The bill includes language that allows for financial examinations and the regulation of financial institutions, and exempts supervisory agencies from exchanging examination reports or other information with another supervisory agency.

The Department of Credit Unions would have a negligible fiscal effect on agency operations. The Department anticipates that it would be required to provide each regulated credit union with documentation that the Department has the right to specific financial information regarding any individual member/customer during a financial examination. However, the Department is unable to estimate the additional expenditures or staff time in order to comply with the provision of the Act. Any fiscal effect associated with HB 2302 is not reflected in *The FY 2016 Governor's Budget Report*.

Sincerely,



Shawn Sullivan,
Director of the Budget

cc: Jack Smith, Department of Revenue
Judi Stork, Banking
Steve Wassom, Office of the Securities Commissioner
Mike Baugh, Credit Unions
Glenda Haverkamp, Insurance
Mary Rinehart, Judiciary
Willie Prescott, Attorney General's Office