

9-1809. Civil penalties. (a) After providing a notice and an opportunity for a public hearing in accordance with the Kansas administrative procedure act, the commissioner may, with the approval of the state banking board, assess against and collect a civil money penalty from any bank or trust company that, or any executive officer, director, employee, agent, or other person participating in the conduct of the affairs of such bank or trust company who:

- (1) Engages or participates in any unsafe or unsound practice in connection with a bank or trust company; or
- (2) violates or knowingly permits any person to violate any of the provisions of:
 - (A) The state banking code;
 - (B) any rule or regulation promulgated pursuant to the state banking code; or
 - (C) any lawful order of the commissioner or the state banking board.
- (b) The civil money penalty shall not exceed \$1,000 per day for each day such violation continues. No civil money penalty shall be assessed for the same act or practice if another government agency has taken similar action against the bank, trust company or person to be assessed such civil money penalty. In determining the amount of the civil money penalty to be assessed, the commissioner shall consider:
 - (1) The good faith of the bank, trust company or person to be assessed with such civil money penalty;
 - (2) the gravity of the violation;
 - (3) any previous violations by the bank, trust company or person to be assessed with such civil money penalty;
 - (4) the nature and extent of any past violations; and
 - (5) such other matters as the commissioner may deem appropriate.
- (c) Upon waiver by the respondent of the right to a public hearing concerning an assessment of a civil money penalty, the hearing or portions thereof may be closed to the public when concern arises about prompt withdrawal of moneys from or the safety and soundness of the bank or trust company.
- (d) For the purposes of this section, a violation shall include, but is not limited to, any action, by any person alone or with another person, that causes, brings about, or results in the participation in, counseling of, or aiding or abetting of a violation.
- (e) The commissioner, with approval of the state banking board, may modify or set aside any order assessing a civil money penalty. Any civil money penalty collected pursuant to this section shall be transmitted to the state treasurer, who shall credit it to the bank commissioner fee fund.
- (f) Notwithstanding any other provision of law, no bank or trust company shall indemnify or insure any executive officer, director, employee, agent or person participating in the conduct of affairs of such bank or trust company against civil money penalties.

History: L. 2005, ch. 7, § 1; July 1.