

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairman Ruth Teichman at 9:30 A.M. on February 9, 2005 in Room 234-N of the Capitol.

All members were present.

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department
Terri Weber, Kansas Legislative Research Department
Ken Wilke, Office of Revisor of Statutes
Sandy Yingling, Committee Secretary

Conferees appearing before the committee:

Jarrold Forbes, KID
Judi Stork, OSBC
Doug Wareham, KBA

Others attending:

See attached list.

Madam Chair announced today's business would be hearings on **SB 102** and **SB 114**.

Madam Chair opened the hearing on **SB 102**.

SB 102 - Insurance; closing a block of business; notice to policyholders required

Melissa Calderwood provided an overview of **SB 102**.

Jarrold Forbes, Kansas Insurance Department, testified before the committee in support of **SB 102**. (Attachment 1) Jarrold explained the bill requires a written notice of the carrier's decision to close a block of business to each existing policyholder. **SB 102** also places a 60-day time limit for the consumer to purchase like coverage. Chair Teichman offered her understanding that some do notify but not in writing. Jarrold stated that is correct. Senator Brungardt questioned the like coverage, if a person has major medical with Company A and they are no longer going to write me, do they have to tell about Company B's policy? Jarrold answered no, there is a negotiation conference between the company and the department to determine if the company they were with still has like coverage and the department and the companies agree that there is not like coverage in that company, they do not have to recommend it to their competitors.

Chair Teichman stated that the only change in what the law is right now is to notify by writing the policyholder. Ken Wilke, asked if this allows a company to change the coverage during the contract agreed policy? Chair Teichman asked if in Company A, B & C an agent drops C and they have no like coverage, do they have to continue it? Jarrold answered most times when a company closes a block of business it is effective at the renewal dates of the policyholders. Ken stated that the closed block takes effect when it comes time for renewal.

Madam Chair asked for other questions, there were none and the hearing on **SB 102** was closed.

Madam Chair opened the hearing on **SB 114**.

SB 114 - Banks and banking; civil penalty authority for state bank commissioner.

Melissa Calderwood, Kansas Legislative Research Department, provided an overview.

Judi Stork, Deputy Bank Commission, offered testimony in favor of **SB 114**. (Attachment 2) Judi stated that the office of the bank commission's primary goal is for the protection of the consumer. The civil money penalties would deter the individual employees and officers as well as banks and trust companies from violating the law. Judi stated that 36 states have the power to levy civil money penalties and it is only to be used to enforce compliance or very wrongful conduct.

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on February 9, 2005 in Room 234-N of the Capitol.

Judi provided written testimony from Richard D. Rucker, President of Home Bank & Trust Company, in favor of **SB 114** (Attachment 3). Also, testimony from Neil Milner, Conference of State Bank Supervisors, in favor of **SB 114**. (Attachment 4)

Madam Chair offered as a matter of clarification when the banking commissioner's office is talking about the banking board, they are talking about the state banking board, not a local banking board. Judi offered further clarification stating the banking board is made up of nine members. There were no other questions.

Doug Wareham, KBA, testified on **SB 114** by taking a formal position as neutral. (Attachment 5) The KBA does agree that the commissioner does need the appropriate tools to enforce the banking laws to insure that he banks are safe and sound. One concern is the possibility of multiple fines by multiple regulators being imposed for the same violation. Doug provided a balloon amendment (attached) that adds language in line 29. Also, lines 37 through 39 have been stricken. Doug stood for questions.

Chair Teichman asked if Doug's balloon, by replacing lines 37 through 39, would clarify what the OSBC banks will do. Doug believes that the KBA's proposal is much clearer. Ken Wilke questioned if the KBA's proposed amendment would prevent the bank commissioner's office from imposing the civil penalty for something that may have been considered a violation of other acts. Does this prevent stacking by other agencies? Doug deferred comments to their associate general counsel, Kathy Olsen.

Chair Teichman asked if when you have multiple agencies looking to fine banks, would it not be acceptable for them to do their own fining? Ken stated that they do their own fining. Chair Teichman stated in that case, a bank or financial institution deserves to have a fine from the other regulatory agencies, the bank or other financial institutions. Ken stated the current language allows the bank commissioner to take those other factors into consideration.

Senator Wysong asked if the FDIC is first in fining, does this mean they cannot stack and will there be stacking after them? Ken answered that this would prevent the FDIC from stacking on to what the other has already done, but does not prevent the others from stacking. Chair Teichman asked if it would be advisable to add the balloon and add language back into lines 37 through 39? Ken stated, if you leave the language in lines 37 through 39, giving the bank commissioner discretion, it would basically bar them from doing anything at all if another agency has an action.

Senator Barone asked what the other states have done? Ms. Stork answered, 6 out of the 7 states they looked into, do not have the balloon provision in their law and this particular law is modeled after the Colorado law. Doug Wareham stated the Banking Commissioner's office has given some level of comfort that there would not be multiple fines for the same violation. Chair Teichman asked Ms. Stork, how many banks are affected today with this problem and was it a fund raising effort by the commissioner's office? Ms. Stork answered, none. They already have a fee fund, an education fund and a separate consumer education fund. Chair Teichman asked if this bill was an intermediate move made before the commission would pull a charter? Ms. Stork stated, that this is the enforcement action that exists.

Commissioner Norris stated two things of importance. The commissioner cannot go wild, there has to be approval by the Banking Board. Secondly, the bank fee account would be set up from fines collected because we felt this money could be used for enforcement costs and for their education program. It was not to be spent on whatever.

Ken Wilke, in following up on Senator Barone's comments. stated that he has been involved in civil penalties in various situations. The state has some statutes directing where it goes into fee funds. Some go into the general fund and one or two that go into the education fund. Ken stated that they could deal with that issue.

Madam Chair directed the committee to think about SB 114 and closed the hearing on SB 114.

Madam Chair reopened the hearing **SB 101**.

SB 101 - Banks and banking; prohibition of employment of officers or directors who have been

CONTINUATION SHEET

MINUTES OF THE Senate Financial Institutions and Insurance Committee at 9:30 A.M. on February 9, 2005 in Room 234-N of the Capitol.

removed for cause.

Questions, there were none.

Senator Wysong moved to pass **SB 101** out favorable, seconded by Senator Steineger. The motion carried.

Madam Chair announced next the committee would have action on **SB 104**;

SB 104 -Banks and banking; examination of certain business entities affiliated with banks or trust companies.

Senator Wysong questioned the definition of what was grandfather affiliate relationship and were there any problems with the actual intent of the parent and its affiliates. Madam Chair pointed out that this will give the same ability that national banks have now at the state level.

Senator Brownlee moved to pass **SB 104** out favorable, seconded by Senator Wysong. The motion carried.

Meeting adjourned at 10:06 a.m.

FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: February 9, 2005

NAME	REPRESENTING
Katie Gonzales	Federico Consulting
Alex Kobyanetz	PIA
Reece Murray	CBA
Amy Salisbury	DOB
Romy Ann Rauer	KAHP
Janet	KID
Clancy Ferris	OSBO
Tony Allen	OSBC
Bill Sneed	AHIP
Judi Stork	OSBC
Jim May	Foulston-Sepher LLP



K a n s a s I n s u r a n c e D e p a r t m e n t

Sandy Praeger COMMISSIONER OF INSURANCE

COMMENTS ON
SB 102—RELATING TO A CLOSED BLOCK OF BUSINESS
SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE
February 9, 2005

Madam Chair and Members of the Committee:

Thank you for the opportunity to visit with you on behalf of the Kansas Insurance Department. Senate Bill 102 would require insurers to provide written notice of the carrier's decision to close a block of business to each existing policyholder or contract holder affected.

As you will notice current law requires insurers to offer like coverage to the affected policy or contract holders. This bill would also place a 60-day time limit for the consumer to purchase the offered like coverage. We believe the 60-day timeline is appropriate and beneficial to all involved.

Quite simply, we believe it is important consumers who are affected by these underwriting changes have a clear understanding as to why their policies are being non-renewed and the options available to them.

Thank for the opportunity to speak today I would be happy to stand for any questions the committee may have.

Jarrold Forbes
Assistant Director
Government Affairs

*Attachment 1
2-9-05
FI&I*



KANSAS

KATHLEEN SEBELIUS, GOVERNOR

OFFICE OF THE STATE BANK COMMISSIONER
CLARENCE W. NORRIS, *Bank Commissioner*

February 9, 2005

SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

Madame Chairman and Members of the Committee:

I am Judi Stork, the Deputy Bank Commissioner for the Office of the State Bank Commissioner. I am here today to testify in support of **Senate Bill 114**. This bill creates a new statute in the state banking code, authorizing the commissioner, with the approval of the state banking board, to impose civil money penalties on state banks or trust companies, or the officers, directors, employees or agents of state banks or trust companies, who engage in unsafe or unsound practices or other activities which constitute violations of the banking code. The entities or individuals who are assessed such penalties, which are limited to a maximum of \$1,000.00 per day, are given a right to a hearing pursuant to the Kansas Administrative Procedure Act, and any final order of a penalty would be subject to review by the district court under the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions.

The Office of the State Bank Commissioner has as a primary goal the safety and soundness of the institutions we regulate for the protection of Kansas consumers. In order to accomplish this goal, the commissioner should have adequate enforcement tools to ensure compliance with state laws. We think that the existence of a potential civil money penalty will deter both individual officers/employees and banks/trust companies from habitually violating a law or from engaging in egregious misconduct. 36 states have the power to levy a civil money penalty, including Nebraska, Colorado, Missouri, Iowa, and Arkansas. Our office views the imposition of a civil money penalty as a last resort to force compliance or address egregious conduct. This legislation has built-in safeguards against the improper use of the power, in that anyone who is assessed a penalty is given a right to a hearing to dispute the charges and the imposition of the penalty.

I would ask for your support of this bill.

*Attachment 2
2-9-05
FI+I*

RECEIVED
FEB 07 2005
KANSAS BANK
COMMISSIONER



SENATE COMMITTEE ON FINANCIAL
INSTITUTIONS & INSURANCE

February 8, 2005

Madame Chairperson and Members of the Committee:

217 N. Main
Eureka, KS
67045
620-583-5516

My name is Richard D. Rucker. I'm currently the President and Chairman of Home Bank & Trust Company of Eureka. I have been in the banking business for 35 years. I currently serve on the State Bank Commission Board and in 2004 I was the Chairperson of that Board. I would like to express my support for Senate Bill 114.



101 S. Main
Eureka, KS
67045
620-583-7570

In my opinion, the State Bank Commissioner needs the authority to impose civil money penalties on state banks and trust companies and/or the officers, directors, employees or agents of the state banks and trust companies that engage in unsafe or unsound practices or other activities, which constitute violations of the banking code.



108 N. Kansas
Severy, KS
67137
620-736-2244

Per the OSBC comments obtaining this authority, the OSBC is not looking to piling on additional penalties involving other assessments by other Bank Regulators and this proposed legislation has built-in safeguards against the improper use of this power. I assure you Bank Commissioner Norris and Deputy Commissioner Judi Stork will see this power is used in a fair and just manner.



I urge you to support Senate Bill 114.

741 N. 4th
Clearwater, KS
67026
620-584-5000

Respectfully,

Richard D. Rucker
President/Chairman
Home Bank & Trust Company
PO Box 620
Eureka Kansas 67045



10421 W. Central
Wichita, KS
67212
316-773-6000

Attachment 3
2-9-05
FI & I



Testimony of Neil Milner
Chairman and CEO
Conference of State Bank Supervisors
On State Examination Authority

Attachment 4
2-9-05
FI+I

The Conference of State Bank Supervisors (CSBS) is the professional association of state officials who charter, regulate and supervise the nation's approximately 6,000 state-chartered commercial and savings banks, and more than 400 state-licensed foreign banking offices nationwide.

We appreciate the opportunity to submit testimony on the importance of a viable state banking system with appropriate supervisory and enforcement authority. The legislation being considered by the Committee on Financial Institutions and Insurance will give the Kansas Office of the State Bank Commissioner the additional tools they need to supervise a dynamic industry, serve the public needs and convenience, protect consumers from unscrupulous practices, and foster economic development and prevent economic instability. It is important to empower your state regulator in order to put them in a better position to defend against federal intervention. The Kansas Office of the State Bank Commissioner should have available to it powers similar to those of the federal agencies; otherwise it could be considered an abdication of appropriate state rights to the federal government.

Individual markets vary widely from state to state, or even from community to community. State banking laws and state enforcement allow state policymakers to determine how best to serve and protect their citizens. Chartering of financial institutions at the state level promotes the availability of capital in all communities, and local enforcement allows the state regulators to take into consideration conditions in the local markets before taking action. Without the appropriate tools at the state level, critical decisions are left to the federal bank regulators in Washington.

CSBS, through its accreditation program, has created a list of best practices for state banking departments, including the types of enforcement authority that should be available to the department. Included in the list of supervisory practices are:

- The department must have the authority and a sufficient number of qualified examiners to examine all specialty areas including bank holding companies.
- The department should also have the authority to remove officers, directors and employees; and to prohibit such individuals from serving in any capacity in any other financial institution that the department regulates.
- The department must also have the ability to assess civil money penalties sufficient to deter violations of laws and regulations and/or violations of orders or agreements. Civil money penalties should be per violation per day.

CSBS strongly endorses the legislation you have before you that improves the enforcement authority of your Office of the State Bank Commissioner. As the primary regulator of state institutions, the Office of the State Bank Commissioner should have the same remedies that the federal agencies have in order to have the flexibility, credibility and the power to adequately supervise the industry. Civil money penalties can effectively encourage correction of violations and serve as a deterrent to future violations, reckless or unsound practices and breaches of fiduciary duty. Being able to remove or suspend a person participating in the affairs of a financial institution gives the Office of the State Bank Commissioner the power to remove a problem without penalizing the entire institution. The authority to review holding company and bank affiliate activities helps to insure compliance with both state and federal laws and gives the Office of the State Bank Commissioner a better picture of the overall health of the bank itself.

Thank you again for this opportunity to submit testimony on what is a very important matter.



Date: February 9, 2005
To: Senate Financial Institutions & Insurance Committee
From: Doug Wareham, Vice President-Government Affairs
Re: Senate Bill 114

Madam Chairman and members of the Committee, I am Doug Wareham appearing on behalf of the Kansas Bankers Association (KBA). KBA's membership includes 360 Kansas banks, which operate more than 1,300 banking facilities in 440 towns and cities across the state. KBA appreciates the opportunity to appear on S.B. 114.

S.B. 114 authorizes the State Bank Commissioner, with the approval of the State Banking Board, to assesses and collect civil money penalties. The bill outlines that penalties can be applied to banks or trust companies that engage or participate in unsafe or unsound practices in connection with a bank or trust company or for violations of the state banking code, rules and regulations pertaining to the state banking code and also for violation of any lawful order of the commissioner or the state banking board.

KBA's formal position on S.B. 114 is neutral. The bankers that serve on our state affairs committee and KBA's Board of Directors did not take the topic of civil penalties lightly. I would be remiss if I did not mention that this topic does create some degree of trepidation on the part of Kansas bankers. KBA firmly believes that fines should never be viewed as a regular source of revenue and we believe the application of fines should be a matter of last resort. In response these concerns, Commission staff has assured us that this authority will be exercised judiciously and we are confident that will hold true.

One concern raised by our bankers, which we would like to raise for your consideration, was the possibility of multiple fines, by multiple regulators, being imposed for the same violation. Banks are also subject to fines from the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve, if they are a Federal Reserve member. In response to this concern, we are proposing an amendment that will prohibit the "stacking" of fines. We respectfully ask this committee to adopt this amendment when you work S.B. 114.

Thank you for the opportunity to appear on this issue and I would be happy to stand for questions.

*Attachment 5
2-9-05
FI+I*

SENATE BILL No. 114

By Committee on Financial Institutions and Insurance

1-26

9 AN ACT concerning the bank commissioner; relating to the issuance of
10 civil penalties.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) After providing a notice and an opportunity for a public
14 hearing in accordance with the Kansas administrative procedure act, the
15 commissioner may, with the approval of the state banking board, assess
16 against and collect a civil money penalty from any bank or trust company
17 that, or any executive officer, director, employee, agent, or other person
18 participating in the conduct of the affairs of such bank or trust company
19 who:

20 (1) Engages or participates in any unsafe or unsound practice in con-
21 nection with a bank or trust company; or

22 (2) violates or knowingly permits any person to violate any of the
23 provisions of:

24 (A) The state banking code;

25 (B) any rule or regulation promulgated pursuant to the state banking
26 code; or

27 (C) any lawful order of the commissioner or the state banking board.

28 (b) The civil money penalty shall not exceed \$1,000 per day for each
29 day such violation continues. In determining the amount of the civil
30 money penalty to be assessed, the commissioner shall consider:

31 (1) The good faith of the bank, trust company or person to be assessed
32 with such civil penalty;

33 (2) the gravity of the violation;

34 (3) any previous violations by the bank, trust company or person to
35 be assessed with such civil penalty;

36 (4) the nature and extent of any past violations; and

37 (5) ~~whether another government agency has taken similar action~~
38 ~~against the bank, trust company or person to be assessed with such civil~~
39 ~~penalty for the same act or practice, and~~

40 (6) such other matters as the commissioner may deem appropriate.

41 (c) Upon waiver by the respondent of the right to a public hearing
42 concerning an assessment of a civil money penalty, the hearing or portions
43 thereof may be closed to the public when concern arises about prompt

No such penalty shall be assessed if another government agency has taken similar action against the bank, trust company or person to be assessed with such civil penalty for the same act or practice.

and

1 withdrawal of moneys from or the safety and soundness of the bank or
2 trust company.

3 (d) For the purposes of this section, a violation shall include, but is
4 not limited to, any action, by any person alone or with another person,
5 that causes, brings about, or results in the participation in, counseling of,
6 or aiding or abetting of a violation.

7 (e) The commissioner, with approval of the state banking board, may
8 modify or set aside any order assessing a civil money penalty. Any civil
9 money penalty collected pursuant to this section shall be transmitted to
10 the state treasurer, who shall credit it to the bank commissioner fee fund.

11 (f) Notwithstanding any other provision of law, no bank or trust com-
12 pany shall indemnify or insure any executive officer, director, employee,
13 agent or person participating in the conduct of affairs of such bank or
14 trust company against civil money penalties.

15 Sec. 2. This act shall take effect and be in force from and after its
16 publication in the statute book.