

SESSION OF 2005

SUPPLEMENTAL NOTE ON SENATE BILL NO. 114

As Amended by Senate Committee on
Financial Institutions and Insurance

Brief*

SB 114 would enact new law relating to the Bank Commissioner and the issuance of civil penalties. The bill provides that after notice and an opportunity for a public hearing in accordance with the Kansas Administrative Procedure Act, the Bank Commissioner, with the approval of the State Banking Board, assess and collect a civil money penalty from any bank or trust company, or any executive director, director, employee, agent, or other persons participating in the conduct of affairs of the bank or trust company, who:

- Engages or participates in any unsafe or unsound practice in connection with a bank or trust company; or
- Violates or knowingly permits any person to violate the provisions of the state banking code or any rule or regulation of the code, or any order of the Bank Commissioner or state banking board. A violation is defined as an act a person alone or with another person that causes, brings about or results in the participation in, counseling of, or aiding and abetting of a violation.

The bill provides that the civil money penalty not exceed \$1,000 per day for each day the violation continues. The Commissioner is to consider the good faith of the bank, trust company, or person assessed the penalty, the gravity of the violation, any previous violations and the nature and extent of any past violations, whether any government agency has taken similar action, and other matters deemed appropriate when considering the amount of the money penalty. A waiver also would be established to allow a respondent to waive the right to public

*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>

hearing. Portions of the hearing may be closed when concerns arise about prompt withdrawal of moneys from or the safety and soundness of the bank or trust company. The act also requires that no bank or trust company indemnify persons participating in the conduct of affairs against civil money penalties. Funds from collected civil money penalties would be credited to the Bank Commissioner Fee Fund.

Background

The bill was requested by the Office of the State Bank Commissioner whose representative indicated that the Commissioner should have adequate enforcement tools to ensure compliance with state laws. The bill was supported by a State Banking Board member and the Conference of State Bank Supervisors.

The Kansas Bankers Association was neutral to the bill and requested an amendment to address its concern about the potential for stacking, or multiple fines by multiple regulators being imposed for the same violation.

The Senate Committee amendments would make technical changes to clarify civil money penalties and also would allow that a civil money penalty not be assessed for the same act or practice if another government agency has taken similar action against a bank, trust company, or person addressed in the action.

The fiscal note prepared by the Division of the Budget indicates that passage of the bill could increase revenues to the Bank Commissioner Fee Fund. The fiscal note further states the Banking Department has no information upon which an estimate can currently be made.