

**Report of the
Special Committee on Financial
Institutions and Insurance
to the
2012 Kansas Legislature**

CHAIRPERSON: Senator Ruth Teichman

VICE-CHAIRPERSON: Representative Clark Shultz

OTHER MEMBERS: Senators Jeff Longbine, Ty Masterson, Allen Schmidt, and Vicki Schmidt; and Representatives TerriLois Gregory, Brenda Landwehr, Ann Mah, Melody McCray-Miller, and Susan Mosier

CHARGE

- **Uninsured Motorists.** Conduct a comprehensive study on the issue of uninsured motorists in Kansas, including methods to determine which vehicles are not insured. The study would include: (1) Determining what electronic method is best for Kansas in determining whether a vehicle is uninsured, including a review of electronic verification databases maintained by the state or direct queries of insurance company databases; (2) Review steps to encourage Kansans to purchase vehicle insurance, including a study of low cost basic liability policies as provided in selected other states; (3) Determine if additional penalties would be effective in prompting non-complying Kansans to acquire vehicle insurance; and (4) Study alternatives to address uninsured vehicles that also are not registered.
- **Criminal History Record Checks and Fingerprinting of Certain Financial Service Representatives.** Study the possible authorization of fingerprinting and criminal history record checks of certain financial services representatives in Kansas. Review the potential impact on financial regulatory agencies and their licensees, as well as the Kansas Bureau of Investigation.
- **State Implementation of the Federal Patient Protection and Affordable Care Act.** Study the federal Patient Protection and Affordable Care Act for any required corresponding state implementation legislation. Review options for a Kansas health insurance exchange that will comply with the federal health care legislation.

December 2011

*Attachment 9
HF1 3-1-12*



Special Committee on Financial Institutions and Insurance

CRIMINAL HISTORY RECORD CHECKS AND FINGERPRINTING

CONCLUSIONS AND RECOMMENDATIONS

With regard to fingerprinting and criminal history record checks for certain individuals, the Special Committee on Financial Institutions and Insurance requested its report be directed to the House Financial Institutions and the Senate Financial Institutions and Insurance committees, and include the following:

The Special Committee recognizes testimony was heard on SB 64 during the 2011 Legislative Session, and amendments were offered at that time; no action was taken on the bill. The Special Committee recommends that the Senate Financial Institutions and Insurance Committee schedule a hearing on SB 64 (including the amendments submitted by the Office of the State Bank Commissioner [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 by the House Financial Institutions Committee; and

The Committee recognizes testimony was heard on SB 71 during the 2011 Legislative Session, and amendments were offered at that time; no action was taken. The Committee recommends the Senate Financial Institutions and Insurance Committee schedule time to review SB 71, including its fingerprinting amendment offered by the Kansas Insurance Department (KID), prior to the 2012 Committee bill deadline, to allow time for consideration by the House Insurance Committee.

Proposed Legislation: None.

BACKGROUND

The charge to the Special Committee on Financial Institutions and Insurance was to study, review and report on three assigned topics: uninsured motorists, criminal history record checks and fingerprinting requirements for certain financial services representatives, and implementation of the Patient Protection and Affordable Care Act in Kansas.

On the subject of criminal history record checks and fingerprinting requirements, the Committee was directed to:

Study the possible authorization of fingerprinting and criminal history record checks of certain financial services representatives in Kansas. Review the potential impact on financial regulatory agencies and their licensees, as well as the Kansas Bureau of Investigation.

The topic was requested by the Senate Committee on Financial Institutions and Insurance and was assigned by the Legislative Coordinating Council for study and review.

COMMITTEE ACTIVITIES

In September, the Committee received an overview of the assigned topic including relevant legislation considered during the 2011 Session. The Committee also received testimony from representatives of the Office of the State Bank Commissioner (OSBC), the American Express Corporation, the Kansas Insurance Department (KID), and the Kansas Bureau of Investigation (KBI). Comments also were provided by representatives of the Community Bankers Association and the Kansas Bankers Association.

Topic Overview. Committee staff provided an overview of 2011 SB 64, which would permit the State Bank Commissioner to require fingerprinting and a criminal background check for certain individuals related to an application for a money transmitter license, an application for a bank holding company, a notice of a proposed bank acquisition, and an application for charter of a new bank or trust company. (The Bank Commissioner requested the bill's introduction.) The Senate Committee on Financial Institutions and Insurance held a hearing on the bill. The overview included a review of the bill's associated fiscal note. Staff of the Kansas Legislative Research Department noted the Senate Committee also considered SB 71 (continuing education requirements for resident insurance agents) and, during the bill's review, the KID submitted a conceptual amendment that, among other things, would require fingerprinting of each applicant for a resident insurance agent license and each applicant for a public adjuster license on and after July 1, 2013. The Insurance Commissioner would be authorized to submit the fingerprint to a state and national criminal history record check. The amendment, the Department indicated, was proposed to conform with the Uniform Resident Licensing Standards (National Association of Insurance Commissioners). After consideration of both bills, the Senate Committee on Financial Institutions and Insurance requested an Interim

study to review current fingerprinting and licensure requirements for certain professionals in Kansas law, and further comment from the KBI and those agencies requesting fingerprinting authorization.

SB 64 and Current Statutory Authorization for Fingerprinting and Criminal History Record Checks. Deputy Bank Commissioner Judi Stork, OSBC, provided background information specific to the fingerprinting component included in the bill. Currently, the agency [Consumer and Mortgage and Lending Division] has statutory authority to require fingerprint checks on owners and officers of mortgage companies, supervised lenders (such as finance companies and pay day lenders), and credit service organizations. Background checks for these applicants are completed by the KBI, using the National Crime Information Center (NCIC), and have provided a range of criminal convictions.

In contrast, the criminal checks for new banks and trust companies, new money transmitter licenses or for acquisitions of existing banks and trust companies [entities subject to SB 64 requirements] are limited to looking for criminal convictions that have occurred in Kansas. Therefore, Ms. Stork indicated, these checks are ineffective in revealing federal crimes or crimes committed in other states. In order to provide a complete background check through the NCIC, an individual must be fingerprinted. The Deputy Bank Commissioner spoke in support of SB 64 and provided the number of anticipated fingerprint/background checks for each category of organization. It also was clarified that in cases where fingerprint checks are completed by another banking regulatory agency, the OSBC would not duplicate that work as long as the information is communicated to the OSBC.

In response to questions from the Committee, Ms. Stork indicated that:

- The proposed legislation would require the applicant or the parties to the application to be responsible for the cost of the fingerprinting and background checks;
- In the process currently administered by the OSBC [for Division of Consumer and Mortgage Lending applicants], the background check information obtained from NCIC is not shared with other entities outside the OSBC or with regulatory agencies in other states;
- When another agency such as the Federal Deposit Insurance Corporation (FDIC) conducts fingerprinting/background checks and an applicant is denied, a notice of the denial is provided to the OSBC with reasons for the denial of the application omitted. The OSBC is required to act on the information received in the application submitted at the state level; therefore, the FDIC notice would not provide evidence sufficient to deny an applicant in the State of Kansas;
- The National Mortgage Licensing System is a national system for mortgage companies which share background check information when an applicant has applied in numerous states. Information from this system is shared with regulatory agencies across state boundaries. This system has been implemented within the past two years; and
- Information sharing from the national level to the state level is difficult. Generally, bank and trust companies are licensed and chartered in one state. Money transmitters usually operate in multiple states. Currently, the OSBC is the only regulatory agency in Kansas for money transmitters and trust companies.

Ms. Stork's written testimony also included other states' fingerprinting and background check requirements for the principals, directors, and

officers (money transmitter regulators), by the type of service the applicant wants to provide. Applicant services included money orders, check cashing, and currency exchange.

Staff summarized written testimony submitted by a representative of the American Express Corporations (because the conferee was ill) and the discussion on SB 64 during the Senate Committee hearing. Staff indicated that the conferee had appeared as a neutral party on 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 (because these corporations are subject to Regulation S-K, 17 CFR Part 229). The representative submitted an amendment that would specifically exempt publicly held corporations from the fingerprinting requirements provided in the bill, with the testimony before the Senate Committee stating that other states with fingerprinting requirements in money transmitter laws have exempted publicly traded corporations "for many years and there have been no issues." Two of the states cited in the representative's testimony were Maryland and Idaho. Staff stated that the conferee's amendment would add a new sentence to the bill: "If the applicant is a publicly traded corporation or a subsidiary of a publicly traded corporation, a fingerprint check of any such person of the applicant shall not be required."

Proposed Criminal History Record Checks and Fingerprinting Requirements for Insurance Agents. A KID representative, Kris Kellim, then spoke to the amendments submitted during the Senate Committee hearing on SB 71, which would provide for fingerprinting and criminal history record checks of resident insurance agent license applicants. Mr. Kellim described the license examination process and indicated the current process includes review of only criminal history records from Kansas. An information gap is created when the KID cannot identify resident agent applicants with

criminal histories from other states. The KID desires to replace the state-limited name search with a nationwide background check through the KBI and Federal Bureau of Investigation based on an applicant's fingerprints. The proposed requirement, the representative's testimony continued, would not apply to a person applying for renewal, continuation, or adding additional lines of authority to an existing resident or non-resident agent. The Department estimates that the fingerprinting requirement would add between 2,500 and 3,750 applicant fingerprint jobs per year for the KBI.

Mr. Kellim replied to Committee members' questions as follows:

- Existing insurance agents would be grandfathered; only new agents would be required to undergo fingerprinting and background checks;
- The problem is growing with applicants from out-of-state applying for Kansas licensure; and
- There is a fingerprinting cost and a cost for the background check from the KBI.

Kansas Bureau of Investigation (KBI) Briefing on Fingerprint Record Checks. The Deputy Director of the KBI and the Information Services Division Manager addressed the requirements for accessing criminal history records. Accessing criminal history records is regulated, the Deputy Director noted, under both federal law and the Kansas Criminal History Record Information Act (KSA 22-4701 *et seq.*). The Kansas act details what activities are to be reported, who is required to report records, where the records are to be reported, and restrictions to criminal history records. Deputy Director Kyle Smith briefly highlighted:

- Two types of record checks (name-based and fingerprint-based);

- The applicant fingerprint card process;
- Current workload for the KBI. The agency currently receives an average of 725 applicant fingerprint cards per week and the KBI tells its customers to anticipate 7 to 10 business days for processing fingerprint requests;
- Cost of a record check. The fee varies with the different requested services with a Kansas certified response including a notarized letter certifying that the KBI has conducted a search of the Kansas Central Repository for a criminal history record pertaining to the individual named [a name request for certified Kansas only response is \$30.00; a fingerprint request for a certified Kansas response and a federal response is \$60.00]; and
- RapBack – a service that permits an agency to receive notification when there is activity in the criminal history record for an applicant to the agency. An agency is required to submit a request to enroll in RapBack.

Committee Discussion, Comments from Bankers' Representatives. There was considerable Committee discussion concerning policy decisions relating to how far down a corporate structure fingerprinting should be required. The Deputy Bank Commissioner was asked to further comment, at a later Committee meeting, on the possibility of sharing information gained through background checks (*e.g.*, by the FDIC or the Office of the Comptroller of the Currency [OCC]) with states. A Committee member asked the KBI Deputy Director about the permissive language in SB 64's requirement ("may require") for fingerprinting and whether the language should instead mandate ("shall require") fingerprinting; the Deputy Director affirmed the mandate would be the agency's preference.

The Committee discussion at the September meeting also focused on the potential impact on smaller banks, particularly those in rural communities. The Chairperson recognized two representatives present at the meeting and invited them to comment. The President of the Community Bankers Association of Kansas (CBA) indicated that the CBA supports the fingerprinting requirements for money transmitters. However, for well-known bankers, at existing and established banks already scrutinized by the FDIC or the OCC, the conferee said the process would not add value and he encouraged exemption. In the current economy, the CBA representative continued, bank mergers continue to increase (or charters into existing banks), which is another reason to exempt those whose applications were approved by the FDIC and OCC. The Senior Vice-President and General Counsel for the Kansas Bankers Association (KBA) indicated the KBA has not taken an official position on this issue, but stated that duplicated processes waste time and resources. It was indicated that if the entity has been regulated by the FDIC or the OCC, the entity should be exempt.

In November, the Committee reviewed the topic and considered possible recommendations on the fingerprinting requirements provided for in SB 64 and in the amendments submitted regarding insurance agents and public adjusters. Additional comments were received from both the OSBC and the KID prior to the Committee's discussion and recommendations for the Committee report on the assigned topic.

The Deputy Bank Commissioner provided an update to the Committee on discussions with other state banking officials, stating that there is agreement to support information sharing from the federal level to the state level in an effort to reduce duplication among various agencies. However, the official explained that, without statutory language, restrictions prohibit this process. Ms. Stork indicated her office would work toward this goal; however, limited time

would preclude any potential legislation being ready for consideration by the 2012 Session. Ms. Stork suggested that since SB 64 is still in the Senate Committee, the four statutes (regulatory duties assigned to the OSBC) could be amended. The Committee and Deputy Commissioner also discussed the proposed amendment to exclude publicly traded companies from the fingerprinting requirement for money transmitters.

The KID submitted a memorandum responding to the Committee's question: *How recurrent is the problem of licensing agents who have unknown out-of-state criminal histories.* The Department sampled applications from August 1, 2011, to October 31, 2011, in order to provide a snapshot of the criminal histories reported in insurance agent applications. The Department's figures show that of the 59 applications that were not immediately approved because of a KBI background report, at least 3 applicants indicated "no" to the criminal background question [Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?]. This information, the response continued, demonstrates that a number of Kansas resident applicants failed to report criminal background information and omissions were discovered only through the Kansas background check. Without a nationwide check, the Department anticipates there are unreported out-of-state criminal backgrounds, with individuals remaining unidentified and licensed. The Department's testimony concludes that the inability to check insurance applicants' out-of-state criminal histories poses a significant threat to Kansas insurance consumers and fingerprinting new resident applicants will enhance the integrity of the insurance agent profession.

Committee members briefly discussed the continuing education requirements issue contained in the original bill (SB 71). The Department's representative said the agency supports the replacement of the state-limited name search with a nationwide background

check and clarified, in response to a question, that the fingerprinting requirement would apply only to new agents, unless the agent reapplies after action on his or her license.

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