



# Kansas Bureau of Investigation

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Chairman Longbine and Members of the Committee:

My name is Robert Jacobs and I serve as the Executive Officer of the Kansas Bureau of Investigation (KBI). Thank you for the opportunity to provide neutral testimony on Senate Bill (SB) 51, which proposes changes to the technology-enabled fiduciary financial institutions act.

Proposed changes to K.S.A. 9-2301 include additional definitions for the terms “director”, “officer”, “organizer”, and “private entity” (pages 2-3). Furthermore, in section two, on page seven of the bill, it states,

*“The state banking board or the commissioner shall not authorize receipt of a state and national criminal history record check from a private entity unless the Kansas bureau of investigation or the federal bureau of investigation is unable to supply such state and national criminal history record check through the Kansas central repository of criminal history records or subsequent repository system provided for by law.”*

These definitions, and the use of a private entity to conduct criminal history record checks, are the two issues at the center of our testimony today. First, I would like to provide the committee with some background regarding a bill currently being prepared by the KBI and the revisor’s office for this legislative session.

*Background:*

In 1978 the KBI was statutorily conferred the responsibility of maintaining the state’s criminal history records through K.S.A. 22-4705. Per K.S.A. 21-2501, fingerprint and palm prints are to be taken by local law enforcement agencies if a person is wanted for the commission of a felony or a class A or B misdemeanor or assault as defined in K.S.A. 21-3408. Those fingerprint and palm prints are to be provided to and maintained by the KBI. The KBI shall forward one set of the fingerprints to the Federal Bureau of Investigation (FBI).

The KBI offers criminal history record checks to both *criminal justice* and *non-criminal justice* entities. Presently, there are approximately 77 state statutes that authorize criminal history record checks for non-criminal justice entities. Some examples of non-criminal justice entities who are authorized to receive criminal history record checks are: State Bank Commissioner, Kansas

Department of Aging and Disability Services (KDADS), Kansas Real Estate Commission, State Board of Nursing, Department of Education, Kansas Department of Health and Environment, and the Kansas Department of Children and Families (DCF). Many of these entities request criminal history record checks on applicants, employees, and volunteers who work in positions of trust or work with vulnerable populations such as children, the elderly, and disabled individuals.

When a criminal history record check is requested the KBI searches not only the state criminal history record repository, but also the national criminal history repository, which is maintained by the FBI. The national repository includes arrests and convictions of crimes committed in Kansas as well as all other states and US territories.

As such, the FBI has stringent rules regarding specific language that must be cited in state statute to allow a non-criminal justice agency to receive national criminal history record information. Following each legislative session, the KBI forwards the newly passed bills that include civil criminal history checks to the FBI for their approval. Unfortunately, the KBI is often advised that the language in the bill does not meet the requirements of the FBI to permit national record checks. The bill language must then be amended the following legislative session to become compliant with FBI standards.

Specifically speaking, one concern of the FBI was the lack of “definitions” in state statute for individuals whom fingerprint record checks would be performed. **SB 51 does attempt to provide a definition for director, officer, and organizer as required by the FBI.**

However, the state banking board is just one of many entities being affected by the consistently changing statutory language requirements of the FBI.

#### *Current Plans:*

**Therefore, the KBI embarked on an effort to change the structure of the civil fingerprint background check statutes to create a single statute, which defines the required language necessary for conducting a civil fingerprint background check, while updating the language in the approximately 77 different statutes that refer to civil fingerprint criminal history record checks.**

The legislative change proposed by the KBI is extremely important. This statutory update will prevent the State of Kansas from being prohibited in the future from conducting national fingerprint criminal history record checks and providing that information to the Department of Nursing when licensing nurses, the Department of Education when licensing teachers, the Department of Children and Families when employing workers at day care centers and authorizing foster care parents, as well as those directors, officers, and organizers who work in the banking industry. State and national criminal history record checks are vital to ensuring the safety of our population and the security of our finances.

The final revisions to the draft bill are being completed now and the KBI hopes to introduce this new bill very soon.

#### *Private Entity Record Checks:*

Finally, I would like to discuss our concern over the use of “private entity” record checks. While SB 51 does state that a private entity will be used to conduct criminal history record checks *only* when the KBI or the FBI is unable to supply such state and national criminal history information, it is important to remember that **only criminal justice agencies can perform fingerprint record checks.**

The primary means of knowing whether a criminal history record is associated with a particular applicant, employee, or volunteer is through the collection and match of his or her fingerprints. Fingerprints provided to the KBI are matched against fingerprints collected at the time of arrest. Because an individual’s fingerprints do not change over the course of his or her lifetime, the fingerprint record check ensures the most accurate association between a criminal history record and the individual providing the fingerprints for the criminal history record check. Name checks done through private entities, who do not have legal access to fingerprint records, are unreliable and potentially inaccurate.

Two concerns with name checks are the ease of mistaken identity and the exclusion of expunged records. Record checks based on names and dates of birth can be inaccurate by mistakenly providing the wrong individual’s information based on similar names. The addition of date of birth information is helpful and could potentially provide a more accurate record check, but there are individuals with the same name and similar birthdates in the public.

Furthermore, the second concern is that name checks do not take into consideration expungements. The databases used by private entities do not take into account expunged criminal convictions. Therefore, a person who is applying for a position within the banking industry could potentially be denied that position because the private entity used a name check database which indicated a conviction on the individual’s record when in fact his or her record had been expunged through the courts. This could prevent someone from getting a job in which he or she is rightfully and legally eligible to have.

Private entity criminal history checks are generally much less reliable and less accurate than fingerprint criminal history record checks.

In summary, the KBI will soon be introducing a bill that will correct the issues in statutory language that has in the past prevented the state banking commission and several other entities from receiving national criminal history record check information. We believe our bill will alleviate the need for SB 51, however if the committee and the legislature as a whole believe the passage of SB 51 is in the best interest of the state, the KBI will continue to provide timely state and national criminal history record check information and thus avoid the need for private entity criminal history checks.

Thank you for your consideration of this testimony in your deliberation of SB 51.