

As Amended by House Committee

Session of 2003

HOUSE BILL No. 2347

By Representative O'Neal

2-12

10 AN ACT enacting the Kansas uniform securities act; amending K.S.A.
11 12-1675, 12-1677b, 12-4516, 16-214, 17-4632, 50-1009, 50-1016, 66-
12 1508, 74-8229 and 75-6302 and K.S.A. ~~2002~~ 2003 Supp. 17-49a01, 21-
13 4619, ~~21-4704~~ and 75-3170a and repealing the existing sections; also
14 repealing K.S.A. 17-1260, ~~17-1264, 17-1265~~, 17-1266, 17-1267, 17-
15 1269, 17-1273, 17-1274 and 17-1275 and K.S.A. ~~2002~~ 2003 Supp. 17-
16 1252, 17-1253, 17-1254, 17-1255, 17-1257, 17-1258, 17-1259, 17-1261,
17 17-1262, 17-1262a, 17-1263, **17-1264, 17-1264a, 17-1265, 17-**
18 **1265a**, 17-1266a, 17-1268, 17-1270, 17-1270a, 17-1270b, 17-1271 and
19 17-1272 .

20
21 *Be it enacted by the Legislature of the State of Kansas:*

22 New Section 1. Sections 1 through 52, and amendments thereto,
23 may be cited as the Kansas uniform securities act.

24 New Sec. 2. In this act, unless the context otherwise requires:

25 (1) "Administrator" means the securities commissioner of Kansas, ap-
26 pointed as provided in K.S.A. 75-6301, and amendments thereto.

27 (2) "Agent" means an individual, other than a broker-dealer, who
28 represents a broker-dealer in effecting or attempting to effect purchases
29 or sales of securities or represents an issuer in effecting or attempting to
30 effect purchases or sales of the issuer's securities, but a partner, officer,
31 or director of a broker-dealer or issuer, or an individual having a similar
32 status or performing similar functions is an agent only if the individual
33 otherwise comes within the term. The term does not include an individual
34 excluded by rule adopted or order issued under this act.

35 (3) "Bank" means:

36 (A) A banking institution organized under the laws of the United
37 States;

38 (B) a member bank of the federal reserve system;

39 (C) any other banking institution, whether incorporated or not, doing
40 business under the laws of a state or of the United States, a substantial
41 portion of the business of which consists of receiving deposits or exercis-
42 ing fiduciary powers similar to those permitted to be exercised by national
43 banks under the authority of the comptroller of the currency pursuant to

1 section 1 of Public Law 87-722 (12 U.S.C. section 92a), and which is
2 supervised and examined by a state or federal agency having supervision
3 over banks, and which is not operated for the purpose of evading this act;
4 and

5 (D) a receiver, conservator, or other liquidating agent of any insti-
6 tution or firm included in subparagraph (A), (B), or (C).

7 (4) “Broker-dealer” means a person engaged in the business of ef-
8 fecting transactions in securities for the account of others or for the per-
9 son’s own account. The term does not include:

10 (A) An agent;

11 (B) an issuer;

12 (C) a bank ~~or~~, savings institution, **or trust company** if :

13 (i) Its activities as a broker-dealer are limited to those specified in
14 subsections 3(a)(4)(B)(i) through (vi) and (viii) through (x); 3(a)(4)(B)(xi)
15 if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the
16 securities exchange act of 1934 (15 U.S.C. sections 78c(a)(4) and (5)); or

17 (ii) it is a bank that satisfies the conditions described in subsection
18 3(a)(4)(E) of the securities exchange act of 1934 (15 U.S.C. section
19 78c(a)(4));

20 (D) an international banking institution; or

21 (E) a person excluded by rule adopted or order issued under this act.

22 (5) “Depository institution” means:

23 (A) A bank; or

24 (B) a savings institution, trust company, credit union, or similar in-
25 stitution that is organized or chartered under the laws of a state or of the
26 United States, authorized to receive deposits, and supervised and exam-
27 ined by an official or agency of a state or the United States if its deposits
28 or share accounts are insured to the maximum amount authorized by
29 statute by the federal deposit insurance corporation, the national credit
30 union share insurance fund, or a successor authorized by federal law. The
31 term does not include:

32 (i) An insurance company or other organization primarily engaged in
33 the business of insurance;

34 (ii) a morris plan bank; or

35 (iii) an industrial loan company.

36 (6) “Federal covered investment adviser” means a person registered
37 under the investment advisers act of 1940.

38 (7) “Federal covered security” means a security that is, or upon com-
39 pletion of a transaction will be, a covered security under section 18(b) of
40 the securities act of 1933 (15 U.S.C. section 77r(b)) or rules or regulations
41 adopted pursuant to that provision.

42 (8) “Filing” means the receipt under this act of a record by the ad-
43 ministrator or a designee of the administrator.

- 1 (9) “Fraud,” “deceit,” and “defraud” are not limited to common law
2 deceit.
- 3 (10) “Guaranteed” means guaranteed as to payment of all principal
4 and all interest.
- 5 (11) “Institutional investor” means any of the following, whether act-
6 ing for itself or for others in a fiduciary capacity:
- 7 (A) A depository institution or international banking institution;
- 8 (B) an insurance company;
- 9 (C) a separate account of an insurance company;
- 10 (D) an investment company as defined in the investment company
11 act of 1940;
- 12 (E) a broker-dealer registered under the securities exchange act of
13 1934;
- 14 (F) an employee pension, profit-sharing, or benefit plan if the plan
15 has total assets in excess of \$10,000,000 or its investment decisions are
16 made by a named fiduciary, as defined in the employee retirement in-
17 come security act of 1974, that is a broker-dealer registered under the
18 securities exchange act of 1934, an investment adviser registered or ex-
19 empt from registration under the investment advisers act of 1940, an
20 investment adviser registered under this act, a depository institution, or
21 an insurance company;
- 22 (G) a plan established and maintained by a state, a political subdivi-
23 sion of a state, or an agency or instrumentality of a state or a political
24 subdivision of a state for the benefit of its employees, if the plan has total
25 assets in excess of \$10,000,000 or its investment decisions are made by a
26 duly designated public official or by a named fiduciary, as defined in the
27 employee retirement income security act of 1974, that is a broker-dealer
28 registered under the securities exchange act of 1934, an investment ad-
29 viser registered or exempt from registration under the investment advi-
30 sers act of 1940, an investment adviser registered under this act, a de-
31 pository institution, or an insurance company;
- 32 (H) a trust, if it has total assets in excess of \$10,000,000, its trustee
33 is a depository institution, and its participants are exclusively plans of the
34 types identified in subparagraph (F) or (G), regardless of the size of their
35 assets, except a trust that includes as participants self-directed individual
36 retirement accounts or similar self-directed plans;
- 37 (I) an organization described in section 501(c)(3) of the internal rev-
38 enue code (26 U.S.C. section 501(c)(3)), corporation, Massachusetts trust
39 or similar business trust, limited liability company, or partnership, not
40 formed for the specific purpose of acquiring the securities offered, with
41 total assets in excess of \$10,000,000;
- 42 (J) a small business investment company licensed by the small busi-
43 ness administration under Section 301(c) of the small business investment

1 act of 1958 (15 U.S.C. section 681(c)) with total assets in excess of
2 \$10,000,000;

3 (K) a private business development company as defined in section
4 202(a)(22) of the investment advisers act of 1940 (15 U.S.C. section 80b-
5 2(a)(22)) with total assets in excess of \$10,000,000;

6 (L) a federal covered investment adviser acting for its own account;

7 (M) a “qualified institutional buyer” as defined in rule 144A(a)(1),
8 other than rule 144A(a)(1)(i)(H), adopted under the securities act of 1933
9 (17 C.F.R. 230.144A);

10 (N) a “major U.S. institutional investor” as defined in rule 15a-
11 6(b)(4)(i) adopted under the securities exchange act of 1934 (17 C.F.R.
12 240.15a-6); ~~or~~

13 (O) **any other person, other than an individual, of institutional**
14 **character with total assets in excess of \$10,000,000 not organized**
15 **for the specific purpose of evading this act; or**

16 (P) any other person specified by rule adopted or order issued under
17 this act.

18 (12) “Insurance company” means a company organized as an insur-
19 ance company whose primary business is writing insurance or reinsuring
20 risks underwritten by insurance companies and which is subject to su-
21 pervision by the insurance commissioner or a similar official or agency of
22 a state.

23 (13) “Insured” means insured as to payment of all principal and all
24 interest.

25 (14) “International banking institution” means an international finan-
26 cial institution of which the United States is a member and whose secu-
27 rities are exempt from registration under the securities act of 1933.

28 (15) “Investment adviser” means a person that, for compensation,
29 engages in the business of advising others, either directly or through
30 publications or writings, as to the value of securities or the advisability of
31 investing in, purchasing, or selling securities or that, for compensation
32 and as a part of a regular business, issues or promulgates analyses or
33 reports concerning securities. The term includes a financial planner or
34 other person that, as an integral component of other financially related
35 services, provides investment advice to others for compensation as part
36 of a business or that holds itself out as providing investment advice to
37 others for compensation. The term does not include:

38 (A) An investment adviser representative;

39 (B) a lawyer, accountant, engineer, or teacher whose performance of
40 investment advice is solely incidental to the practice of the person’s
41 profession;

42 (C) a broker-dealer or its agents whose performance of investment
43 advice is solely incidental to the conduct of business as a broker-dealer

- 1 and that does not receive special compensation for the investment advice;
- 2 (D) a publisher of a bona fide newspaper, news magazine, or business
- 3 or financial publication of general and regular circulation;
- 4 (E) a federal covered investment adviser;
- 5 (F) a bank ~~or~~ savings institution, **or trust company**;
- 6 (G) any other person that is excluded by the investment advisers act
- 7 of 1940 from the definition of investment adviser; or
- 8 (H) any other person excluded by rule adopted or order issued under
- 9 this act.
- 10 (16) “Investment adviser representative” means an individual em-
- 11 ployed by or associated with an investment adviser or federal covered
- 12 investment adviser and who makes any recommendations or otherwise
- 13 gives investment advice regarding securities, manages accounts or port-
- 14 folios of clients, determines which recommendation or advice regarding
- 15 securities should be given, provides investment advice or holds herself or
- 16 himself out as providing investment advice, receives compensation to so-
- 17 licit, offer, or negotiate for the sale of or for selling investment advice, or
- 18 supervises employees who perform any of the foregoing. The term does
- 19 not include an individual who:
- 20 (A) Performs only clerical or ministerial acts;
- 21 (B) is an agent whose performance of investment advice is solely in-
- 22 cidental to the individual acting as an agent and who does not receive
- 23 special compensation for investment advisory services;
- 24 (C) is employed by or associated with a federal covered investment
- 25 adviser, unless the individual has a “place of business” in this state, **as**
- 26 **that term is defined by rule adopted under section 203A of the**
- 27 **investment advisers act of 1940 (15 U.S.C. section 80b-3a)**, and is:
- 28 (i) An “investment adviser representative” as that term is defined by
- 29 rule adopted under section 203A of the investment advisers act of 1940
- 30 (15 U.S.C. section 80b-3a); or
- 31 (ii) not a “supervised person” as that term is defined in Section
- 32 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. Section
- 33 80b-2(a)(25)); or
- 34 (D) is excluded by rule adopted or order issued under this act.
- 35 (17) “Issuer” means a person that issues or proposes to issue a se-
- 36 curity, subject to the following:
- 37 (A) The issuer of a voting trust certificate, collateral trust certificate,
- 38 certificate of deposit for a security, or share in an investment company
- 39 without a board of directors or individuals performing similar functions
- 40 is the person performing the acts and assuming the duties of depositor
- 41 or manager pursuant to the trust or other agreement or instrument under
- 42 which the security is issued.
- 43 (B) The issuer of an equipment trust certificate or similar security

1 serving the same purpose is the person by which the property is or will
2 be used or to which the property or equipment is or will be leased or
3 conditionally sold or that is otherwise contractually responsible for assur-
4 ing payment of the certificate.

5 (C) The issuer of a fractional undivided interest in an oil, gas, or other
6 mineral lease or in payments out of production under a lease, right, or
7 royalty is the owner of an interest in the lease or in payments out of
8 production under a lease, right, or royalty, whether whole or fractional,
9 that creates fractional interests for the purpose of sale.

10 (18) “Nonissuer transaction” or “nonissuer distribution” means a
11 transaction or distribution not directly or indirectly for the benefit of the
12 issuer.

13 (19) “Offer to purchase” includes an attempt or offer to obtain, or
14 solicitation of an offer to sell, a security or interest in a security for value.
15 The term does not include a tender offer that is subject to section 14(d)
16 of the securities exchange act of 1934 (15 U.S.C. 78n(d)).

17 (20) “Person” means an individual; corporation; business trust; estate;
18 trust; partnership; limited liability company; association; joint venture;
19 government; governmental subdivision, agency, or instrumentality; public
20 corporation; or any other legal or commercial entity.

21 (21) “Place of business” of a broker-dealer, an investment adviser, or
22 a federal covered investment adviser means:

23 (A) An office at which the broker-dealer, investment adviser, or fed-
24 eral covered investment adviser regularly provides brokerage or invest-
25 ment advice or solicits, meets with, or otherwise communicates with cus-
26 tomers or clients; or

27 (B) any other location that is held out to the general public as a lo-
28 cation at which the broker-dealer, investment adviser, or federal covered
29 investment adviser provides brokerage or investment advice or solicits,
30 meets with, or otherwise communicates with customers or clients.

31 (22) “Predecessor act” means the Kansas securities act repealed by
32 section 67.

33 (23) “Price amendment” means the amendment to a registration
34 statement filed under the securities act of 1933 or, if an amendment is
35 not filed, the prospectus or prospectus supplement filed under the se-
36 curities act of 1933 that includes a statement of the offering price, un-
37 derwriting and selling discounts or commissions, amount of proceeds,
38 conversion rates, call prices, and other matters dependent upon the of-
39 fering price.

40 (24) “Principal place of business” of a broker-dealer or an investment
41 adviser means the executive office of the broker-dealer or investment
42 adviser from which the officers, partners, or managers of the broker-
43 dealer or investment adviser direct, control, and coordinate the activities

1 of the broker-dealer or investment adviser.

2 (25) “Record,” except in the phrases “of record,” “official record,”
3 and “public record,” means information that is inscribed on a tangible
4 medium or that is stored in an electronic or other medium and is retriev-
5 able in perceivable form.

6 (26) “Sale” includes every contract of sale, contract to sell, or dis-
7 position of, a security or interest in a security for value, and “offer to sell”
8 includes every attempt or offer to dispose of, or solicitation of an offer to
9 purchase, a security or interest in a security for value.

10 (A) A security given or delivered with, or as a bonus on account of,
11 a purchase of securities or any other thing is considered to constitute part
12 of the subject of the purchase and to have been offered and sold for value.

13 (B) A gift of assessable stock is considered to involve an offer and
14 sale.

15 (C) A sale or offer of a warrant or right to purchase or subscribe to
16 another security of the same or another issuer, and a sale or offer of a
17 security that gives the holder a present or future right or privilege to
18 convert the security into another security of the same or another issuer,
19 is considered to include an offer of the other security.

20 (27) “Securities and exchange commission” means the United States
21 securities and exchange commission.

22 (28) “Security” means a note; stock; treasury stock; security future;
23 bond; debenture; evidence of indebtedness; certificate of interest or par-
24 ticipation in a profit-sharing agreement; collateral trust certificate; preor-
25 ganization certificate or subscription; transferable share; investment con-
26 tract; voting trust certificate; certificate of deposit for a security; fractional
27 undivided interest in oil, gas, or other mineral rights; put, call, straddle,
28 option, or privilege on a security, certificate of deposit, or group or index
29 of securities, including an interest therein or based on the value thereof;
30 put, call, straddle, option, or privilege entered into on a national securities
31 exchange relating to foreign currency; or, in general, an interest or in-
32 strument commonly known as a “security”; or a certificate of interest or
33 participation in, temporary or interim certificate for, receipt for, guar-
34 antee of, or warrant or right to subscribe to or purchase, any of the fore-
35 going. The term:

36 (A) Includes both a certificated and an uncertificated security;

37 (B) does not include an insurance or endowment policy or annuity
38 contract under which an insurance company promises to pay a fixed **or**
39 **variable** sum of money either in a lump sum or periodically for life or
40 other specified period;

41 (C) does not include an interest in a contributory or noncontributory
42 pension or welfare plan subject to the employee retirement income se-
43 curity act of 1974;

1 (D) includes as an “investment contract” an investment in a common
2 enterprise with the expectation of profits to be derived primarily from
3 the efforts of a person other than the investor. A “common enterprise”
4 means an enterprise in which the fortunes of the investor are interwoven
5 with those of either the person offering the investment, a third party, or
6 other investors; and

7 (E) ~~includes as an “investment contract,” among other contracts,~~
8 **may include** an interest in a limited partnership and a limited liability
9 company and ~~an investment in~~ **shall include** a viatical ~~settlement or~~
10 ~~similar agreement~~ **investment as defined by rule adopted or order**
11 **issued under this act.**

12 (29) “Self-regulatory organization” means a national securities
13 exchange registered under the securities exchange act of 1934, a national
14 securities association of broker-dealers registered under the securities
15 exchange act of 1934, a clearing agency registered under the securities
16 exchange act of 1934, or the municipal securities rulemaking board es-
17 tablished under the securities exchange act of 1934.

18 (30) “Sign” means, with present intent to authenticate or adopt a
19 record:

20 (A) To execute or adopt a tangible symbol; or

21 (B) to attach or logically associate with the record an electronic sym-
22 bol, sound, or process.

23 (31) “State” means a state of the United States, the District of Co-
24 lumbia, Puerto Rico, the United States Virgin Islands, or any territory or
25 insular possession subject to the jurisdiction of the United States.

26 (32) “Rules” when used in the context of the rules adopted by the
27 administrator, means rules and regulations adopted by the administrator
28 pursuant to this act.

29 New Sec 3. “Securities act of 1933” (15 U.S.C. section 77a et seq.),
30 “securities exchange act of 1934” (15 U.S.C. section 78a et seq.), “public
31 utility holding company act of 1935” (15 U.S.C. section 79 et seq.), “in-
32 vestment company act of 1940” (15 U.S.C. section 80a-1 et seq.), “in-
33 vestment advisers act of 1940” (15 U.S.C. section 80b-1 et seq.), “em-
34 ployee retirement income security act of 1974” (29 U.S.C. section 1001
35 et seq.), “national housing act” (12 U.S.C. section 1701 et seq.), “com-
36 modity exchange act” (7 U.S.C. Section 1 et seq.), “internal revenue code”
37 (26 U.S.C. section 1 et seq.), “securities investor protection act of 1970”
38 (15 U.S.C. section 78aaa et seq.), “securities litigation uniform standards
39 act of 1998” (112 Stat. 3227), “small business investment act of 1958” (15
40 U.S.C. section 661 et seq.), and “electronic signatures in global and na-
41 tional commerce act” (15 U.S.C. section 7001 et seq.) mean those statutes
42 and the rules and regulations adopted under those statutes, as in effect
43 on the date of the latest amendment to any provision of this act.

1 New Sec. 4. A reference in this act to an agency or department of
2 the United States is also a reference to a successor agency or department.

3 New Sec. 5. This act modifies, limits, and supersedes the federal
4 electronic signatures in global and national commerce act, but does not
5 modify, limit, or supersede section 101(c) of that act (15 U.S.C. section
6 7001(c)) or authorize electronic delivery of any of the notices described
7 in section 103(b) of that act (15 U.S.C. section 7003(b)). This act author-
8 izes the filing of records and signatures, when specified by provisions of
9 this act or by a rule adopted or order issued under this act, in a manner
10 consistent with section 104(a) of that act (15 U.S.C. section 7004(a)).

11 New Sec. 6. The following securities are exempt from the require-
12 ments of sections 11 through 16 and section 33, and amendments thereto:

13 (1) A security, including a revenue obligation or a separate security
14 as defined in Rule 131 (17 C.F.R. 230.131) adopted under the securities
15 act of 1933, issued, insured, or guaranteed by the United States; by a
16 state; by a political subdivision of a state; by a public authority, agency,
17 or instrumentality of one or more states; by a political subdivision of one
18 or more states; or by a person controlled or supervised by and acting as
19 an instrumentality of the United States under authority granted by the
20 congress; or a certificate of deposit for any of the foregoing;

21 (2) a security issued, insured, or guaranteed by a foreign government
22 with which the United States maintains diplomatic relations, or any of its
23 political subdivisions, if the security is recognized as a valid obligation by
24 the issuer, insurer, or guarantor;

25 (3) a security issued by and representing or that will represent an
26 interest in or a direct obligation of, or be guaranteed by:

27 (A) An international banking institution;

28 (B) a banking institution organized under the laws of the United
29 States; a member bank of the federal reserve system; or a depository
30 institution a substantial portion of the business of which consists or will
31 consist of receiving deposits or share accounts that are insured to the
32 maximum amount authorized by statute by the federal deposit insurance
33 corporation, the national credit union share insurance fund, or a successor
34 authorized by federal law or exercising fiduciary powers that are similar
35 to those permitted for national banks under the authority of the comp-
36 troller of currency pursuant to section 1 of public law 87-722 (12 U.S.C.
37 section 92a); or

38 (C) any other depository institution, unless by rule or order the ad-
39 ministrator proceeds under section 9, and amendments thereto;

40 (4) a security issued by and representing an interest in, or a debt of,
41 or insured or guaranteed by, an insurance company authorized to do
42 business in this state;

43 (5) a security issued or guaranteed by a railroad, other common car-

- 1 rier, public utility, or public utility holding company that is:
- 2 (A) Regulated in respect to its rates and charges by the United States
3 or a state;
- 4 (B) regulated in respect to the issuance or guarantee of the security
5 by the United States, a state, Canada, or a Canadian province or territory;
6 or
- 7 (C) a public utility holding company registered under the public util-
8 ity holding company act of 1935 or a subsidiary of such a registered hold-
9 ing company within the meaning of that act;
- 10 (6) (A) a federal covered security specified in section 18(b)(1) of the
11 securities act of 1933 (15 U.S.C. section 77r(b)(1)) or by rule adopted
12 under that provision;
- 13 (B) a security listed or approved for listing on another securities mar-
14 ket specified by rule under this act;
- 15 (C) a put or a call option contract; a warrant; or a subscription right
16 on or with respect to securities described in subsections (A) or (B);
- 17 (D) an option or similar derivative security on a security or an index
18 of securities or foreign currencies issued by a clearing agency registered
19 under the securities exchange act of 1934 and listed or designated for
20 trading on a national securities exchange, a facility of a national securities
21 exchange, or a facility of a national securities association registered under
22 the securities exchange act of 1934;
- 23 (E) an offer or sale of the underlying security in connection with the
24 offer, sale, or exercise of an option or other security that was exempt
25 when the option or other security was written or issued; or
- 26 (F) an option or a derivative security designated by the securities and
27 exchange commission under section 9(b) of the securities exchange act
28 of 1934 (15 U.S.C. section 78i(b));
- 29 (7) a security issued by a person organized and operated exclusively
30 for religious, educational, benevolent, fraternal, charitable, social, athletic,
31 or reformatory purposes, or as a chamber of commerce, and not for pe-
32 cuniary profit, no part of the net earnings of which inures to the benefit
33 of a private stockholder or other person, or a security of a company that
34 is excluded from the definition of an investment company under Section
35 3(c)(10)(B) of the investment company act of 1940 (15 U.S.C. section
36 80a-3(c)(10)(B)). With respect to the offer or sale of a note, bond, de-
37 benture, or other evidence of indebtedness issued by such a person, a
38 rule may be adopted under this act limiting the availability of this ex-
39 emption by classifying securities, persons, and transactions, imposing dif-
40 ferent requirements for different classes, specifying with respect to par-
41 agraph (B) the scope of the exemption and the grounds for denial or
42 suspension, and requiring an issuer:
- 43 (A) To file a notice specifying the material terms of the proposed

1 offer or sale and copies of any proposed sales and advertising literature
2 to be used and provide that the exemption becomes effective if the ad-
3 ministrator does not disallow the exemption within the period established
4 by the rule;

5 (B) to file a request for exemption authorization for which a rule
6 under this act may specify the scope of the exemption, the requirement
7 of an offering statement, the filing of sales and advertising literature, the
8 filing of consent to service of process complying with section 50, and
9 grounds for denial or suspension of the exemption; or

10 (C) to register under section 14;

11 (8) a member's or owner's interest in, or a retention certificate or like
12 security given in lieu of a cash patronage dividend issued by, a cooperative
13 organized and operated as a nonprofit membership cooperative under
14 the cooperative laws of a state, but not a member's or owner's interest,
15 retention certificate, or like security sold to persons other than bona fide
16 members of the cooperative; and

17 (9) an equipment trust certificate with respect to equipment leased
18 or conditionally sold to a person, if any security issued by the person
19 would be exempt under this section or would be a federal covered security
20 under Section 18(b)(1) of the securities act of 1933 (15 U.S.C. section
21 77r(b)(1)).

22 New Sec. 7. The following transactions are exempt from the require-
23 ments of sections 11 through 16 and section 33, and amendments thereto:

24 (1) An isolated nonissuer transaction, whether effected by or through
25 a broker-dealer or not;

26 (2) a nonissuer transaction by or through a broker-dealer registered,
27 or exempt from registration under this act, and a resale transaction by a
28 sponsor of a unit investment trust registered under the investment com-
29 pany act of 1940, in a security of a class that has been outstanding in the
30 hands of the public for at least 90 days, if, at the date of the transaction:

31 (A)(i) The issuer of the security is engaged in business, the issuer is not
32 in the organizational stage or in bankruptcy or receivership, and the issuer
33 is not a blank check, blind pool, or shell company that has no specific
34 business plan or purpose or has indicated that its primary business plan
35 is to engage in a merger or combination of the business with, or an ac-
36 quisition of, an unidentified person;

37 (ii) the security is sold at a price reasonably related to its current
38 market price;

39 (iii) the security does not constitute the whole or part of an unsold
40 allotment to, or a subscription or participation by, the broker-dealer as
41 an underwriter of the security or a redistribution; and

42 (iv) a nationally recognized securities manual or its electronic equiv-
43 alent designated by rule adopted or order issued under this act or a record

- 1 filed with the securities and exchange commission that is publicly avail-
2 able contains:
- 3 (a) A description of the business and operations of the issuer;
 - 4 (b) the names of the issuer's executive officers and the names of the
5 issuer's directors, if any;
 - 6 (c) an audited balance sheet of the issuer as of a date within 18
7 months before the date of the transaction or, in the case of a reorgani-
8 zation or merger when the parties to the reorganization or merger each
9 had an audited balance sheet, a pro forma balance sheet for the combined
10 organization; and
 - 11 (d) an audited income statement for each of the issuer's two imme-
12 diately previous fiscal years or for the period of existence of the issuer,
13 whichever is shorter, or, in the case of a reorganization or merger when
14 each party to the reorganization or merger had audited income state-
15 ments, a pro forma income statement; or
- 16 (B) (i) the issuer of the security has a class of equity securities listed
17 on a national securities exchange registered under the securities exchange
18 act of 1934 or designated for trading on the national association of se-
19 curities dealers automated quotation system, unless the issuer of the se-
20 curity is a unit investment trust registered under the investment company
21 act of 1940;
- 22 (ii) the issuer of the security, including its predecessors, has been
23 engaged in continuous business for at least three years; and
 - 24 (iii) the issuer of the security has total assets of at least \$2,000,000 based
25 on an audited balance sheet as of a date within 18 months before the date
26 of the transaction or, in the case of a reorganization or merger when the
27 parties to the reorganization or merger each had the audited balance
28 sheet, a pro forma balance sheet for the combined organization;
- 29 (3) a nonissuer transaction by or through a broker-dealer registered
30 or exempt from registration under this act in a security of a foreign issuer
31 that is a margin security defined in regulations or rules adopted by the
32 board of governors of the federal reserve system;
- 33 (4) a nonissuer transaction by or through a broker-dealer registered
34 or exempt from registration under this act in an outstanding security if
35 the guarantor of the security files reports with the securities and exchange
36 commission under the reporting requirements of section 13 or 15(d) of
37 the securities exchange act of 1934 (15 U.S.C. 78m or 78o(d));
 - 38 (5) a nonissuer transaction by or through a broker-dealer registered
39 or exempt from registration under this act in a security that:
- 40 (A) Is rated at the time of the transaction by a nationally recognized
41 statistical rating organization in one of its four highest rating categories;
42 or
 - 43 (B) has a fixed maturity or a fixed interest or dividend, if:

- 1 (i) A default has not occurred during the current fiscal year or within
2 the three previous fiscal years of the issuer and any predecessor in the
3 payment of principal, interest, or dividends on the security; and
- 4 (ii) the issuer is engaged in business, is not in the organizational stage
5 or in bankruptcy or receivership, and is not and has not been within the
6 previous 12 months a blank check, blind pool, or shell company that has
7 no specific business plan or purpose or has indicated that its primary
8 business plan is to engage in a merger or combination of the business
9 with, or an acquisition of, an unidentified person;
- 10 (6) a nonissuer transaction by or through a broker-dealer registered
11 or exempt from registration under this act effecting an unsolicited order
12 or offer to purchase;
- 13 (7) a nonissuer transaction executed by a bona fide pledgee without
14 the purpose of evading this act;
- 15 (8) a nonissuer transaction by a federal covered investment adviser
16 with investments under management in excess of \$100,000,000 acting in
17 the exercise of discretionary authority in a signed record for the account
18 of others;
- 19 (9) a transaction in a security, whether or not the security or trans-
20 action is otherwise exempt, in exchange for one or more bona fide out-
21 standing securities, claims, or property interests, or partly in such
22 exchange and partly for cash, if the terms and conditions of the issuance
23 and exchange or the delivery and exchange and the fairness of the terms
24 and conditions have been approved by the administrator after a hearing
25 or otherwise;
- 26 (10) a transaction between the issuer or other person on whose behalf
27 the offering is made and an underwriter, or among underwriters;
- 28 (11) a transaction in a note, bond, debenture, or other evidence of
29 indebtedness secured by a mortgage or other security agreement if:
- 30 (A) The note, bond, debenture, or other evidence of indebtedness is
31 offered and sold with the mortgage or other security agreement as a unit;
- 32 (B) a general solicitation or general advertisement of the transaction
33 is not made; and
- 34 (C) a commission or other remuneration is not paid or given, directly
35 or indirectly, to a person not registered under this act as a broker-dealer
36 or as an agent;
- 37 (12) a transaction by an executor, administrator of an estate, sheriff,
38 marshal, receiver, trustee in bankruptcy, guardian, or conservator;
- 39 (13) a sale or offer to sell to:
- 40 (A) An institutional investor;
- 41 (B) a federal covered investment adviser; or
- 42 (C) any other person exempted by rule adopted or order issued under
43 this act;

- 1 (14) a sale or an offer to sell securities by an issuer, if the transaction
2 is part of a single issue in which:
- 3 (A) Not more than 25 purchasers are present in this state during any
4 12 consecutive months, other than those designated in paragraph (13);
- 5 (B) a general solicitation or general advertising is not made in con-
6 nection with the offer to sell or sale of the securities;
- 7 (C) a commission or other remuneration is not paid or given, directly
8 or indirectly, to a person other than a broker-dealer registered under this
9 act or an agent registered under this act for soliciting a prospective pur-
10 chaser in this state; and
- 11 (D) the issuer reasonably believes that all the purchasers in this state,
12 other than those designated in paragraph (13), are purchasing for
13 investment;
- 14 (15) a transaction under an offer to existing security holders of the
15 issuer, including persons that at the date of the transaction are holders
16 of convertible securities, options, or warrants, if a commission or other
17 remuneration, other than a standby commission, is not paid or given,
18 directly or indirectly, for soliciting a security holder in this state;
- 19 (16) an offer to sell, but not a sale, of a security not exempt from
20 registration under the securities act of 1933 if:
- 21 (A) A registration or offering statement or similar record as required
22 under the securities act of 1933 has been filed, but is not effective, or the
23 offer is made in compliance with rule 165 adopted under the securities
24 act of 1933 (17 C.F.R. 230.165); and
- 25 (B) a stop order of which the offeror is aware has not been issued
26 against the offeror by the administrator or the securities and exchange
27 commission, and an audit, inspection, or proceeding that is public and
28 that may culminate in a stop order is not known by the offeror to be
29 pending;
- 30 (17) an offer to sell, but not a sale, of a security exempt from regis-
31 tration under the securities act of 1933 if:
- 32 (A) A registration statement has been filed under this act, but is not
33 effective;
- 34 (B) a solicitation of interest is provided in a record to offerees in
35 compliance with a rule adopted by the administrator under this act; and
- 36 (C) a stop order of which the offeror is aware has not been issued by
37 the administrator under this act and an audit, inspection, or proceeding
38 that may culminate in a stop order is not known by the offeror to be
39 pending;
- 40 (18) a transaction involving the distribution of the securities of an
41 issuer to the security holders of another person in connection with a
42 merger, consolidation, exchange of securities, sale of assets, or other re-
43 organization to which the issuer, or its parent or subsidiary and the other

- 1 person, or its parent or subsidiary, are parties;
- 2 (19) a rescission offer, sale, or purchase under section 39, and amend-
- 3 ments thereto;
- 4 (20) **an offer or sale of a security through a broker-dealer reg-**
- 5 **istered under this act to a person not a resident of this state and**
- 6 **not present in this state if the offer or sale does not constitute a**
- 7 **violation of the laws of the state or foreign jurisdiction in which**
- 8 **the offeree or purchaser is present and is not part of an unlawful**
- 9 **plan or scheme to evade this act;**
- 10 (21) employees' stock purchase, savings, option, profit-sharing, pen-
- 11 sion, or similar employees' benefit plan, including any securities, plan
- 12 interests, and guarantees issued under a compensatory benefit plan or
- 13 compensation contract, contained in a record, established by the issuer,
- 14 its parents, its majority-owned subsidiaries, or the majority-owned sub-
- 15 sidiaries of the issuer's parent for the participation of their employees
- 16 including offers or sales of such securities to:
- 17 (A) Directors; general partners; trustees, if the issuer is a business
- 18 trust; officers; consultants; and advisors;
- 19 (B) family members who acquire such securities from those persons
- 20 through gifts or domestic relations orders;
- 21 (C) former employees, directors, general partners, trustees, officers,
- 22 consultants, and advisors if those individuals were employed by or pro-
- 23 viding services to the issuer when the securities were offered; and
- 24 (D) insurance agents who are exclusive insurance agents of the issuer,
- 25 or the issuer's subsidiaries or parents, or who derive more than 50% of
- 26 their annual income from those organizations;
- 27 ~~(21)~~ (22) a transaction involving:
- 28 (A) A stock dividend or equivalent equity distribution, whether the
- 29 corporation or other business organization distributing the dividend or
- 30 equivalent equity distribution is the issuer or not, if nothing of value is
- 31 given by stockholders or other equity holders for the dividend or equiv-
- 32 alent equity distribution other than the surrender of a right to a cash or
- 33 property dividend if each stockholder or other equity holder may elect to
- 34 take the dividend or equivalent equity distribution in cash, property, or
- 35 stock;
- 36 (B) an act incident to a judicially approved reorganization in which a
- 37 security is issued in exchange for one or more outstanding securities,
- 38 claims, or property interests, or partly in such exchange and partly for
- 39 cash; or
- 40 (C) the solicitation of tenders of securities by an offeror in a tender
- 41 offer in compliance with rule 162 adopted under the securities act of
- 42 1933 (17 C.F.R. 230.162); or
- 43 ~~(22)~~ (23) a nonissuer transaction in an outstanding security by or

1 through a broker-dealer registered or exempt from registration under this
2 act, if the issuer is a reporting issuer in a foreign jurisdiction designated
3 by this paragraph or by rule adopted or order issued under this act; has
4 been subject to continuous reporting requirements in the foreign juris-
5 diction for not less than 180 days before the transaction; and the security
6 is listed on the foreign jurisdiction's securities exchange that has been
7 designated by this paragraph or by rule adopted or order issued under
8 this act, or is a security of the same issuer that is of senior or substantially
9 equal rank to the listed security or is a warrant or right to purchase or
10 subscribe to any of the foregoing. For purposes of this paragraph, Canada,
11 together with its provinces and territories, is a designated foreign juris-
12 diction and the Toronto stock exchange, inc., is a designated securities
13 exchange. After an administrative hearing in compliance with the Kansas
14 administrative procedure act, the administrator, by rule adopted or order
15 issued under this act, may revoke the designation of a securities exchange
16 under this paragraph, if the administrator finds that revocation is neces-
17 sary or appropriate in the public interest and for the protection of
18 investors.

19 New Sec. 8. A rule adopted or order issued under this act may ex-
20 empt a security, transaction, or offer; a rule under this act may exempt a
21 class of securities, transactions, or offers from any or all of the require-
22 ments of sections 11 through 16 and section 33, and amendments thereto;
23 and an order under this act may waive, in whole or in part, any or all of
24 the conditions for an exemption or offer under sections 6 and 7, and
25 amendments thereto.

26 New Sec. 9. (a) Except with respect to a federal covered security or
27 a transaction involving a federal covered security, an order under this act
28 may deny, suspend application of, condition, limit, or revoke an exemp-
29 tion created under section 6 (3)(C), (7) or (8) or section 7, and amend-
30 ments thereto, or an exemption or waiver created under section 8, and
31 amendments thereto, with respect to a specific security, transaction, or
32 offer. An order under this section may be issued only pursuant to the
33 procedures in section 16(d) or section 43, and amendments thereto, and
34 only prospectively.

35 (b) **Knowledge of order required. A person does not violate**
36 **section 11, 13 through 16, 33 or 39, and amendments thereto, by**
37 **an offer to sell, offer to purchase, sale, or purchase effected after**
38 **the entry of an order issued under this section if the person did**
39 **not know, and in the exercise of reasonable care could not have**
40 **known, of the order.**

41 New Sec. 10. The administrator may by rules and regulations set a
42 fee not to exceed \$2,500 for an application or filing made in connection
43 with any exemption from securities registration.

1 New Sec. 11. It is unlawful for a person to offer or sell a security in
2 this state unless:

3 (1) The security is a federal covered security ~~and, if required by sec-~~
4 ~~tion 12, and amendments thereto, notice or documents have been filed~~
5 ~~and the fee has been paid;~~

6 (2) the security, transaction, or offer is exempted from registration
7 under sections 6 through 8, and amendments thereto; or

8 (3) the security is registered under this act.

9 New Sec. 12. (a) *Required filing of records.* With respect to a federal
10 covered security, as defined in section 18(b)(2) of the securities act of
11 1933 (15 U.S.C. section 77r(b)(2)), that is not otherwise exempt under
12 sections 6 through 8, and amendments thereto, a rule adopted or order
13 issued under this act may require the filing of any or all of the following
14 records:

15 (1) Before the initial offer of a federal covered security in this state,
16 all records that are part of a federal registration statement filed with the
17 securities and exchange commission under the securities act of 1933 and
18 a consent to service of process complying with section 50, and amend-
19 ments thereto, signed by the issuer and the payment of a fee not to exceed
20 \$2,500;

21 (2) after the initial offer of the federal covered security in this state,
22 all records that are part of an amendment to a federal registration state-
23 ment filed with the securities and exchange commission under the se-
24 curities act of 1933; and

25 (3) to the extent necessary or appropriate to compute fees, a report
26 of the value of the federal covered securities sold or offered to persons
27 present in this state, if the sales data are not included in records filed
28 with the securities and exchange commission and payment of a fee not
29 to exceed \$2,500.

30 (b) *Notice filing effectiveness and renewal.* A notice filing under sub-
31 section (a) is effective for one year commencing on the later of the notice
32 filing or the effectiveness of the offering filed with the securities and
33 exchange commission. On or before expiration, the issuer may renew a
34 notice filing by filing a copy of those records filed by the issuer with the
35 securities and exchange commission that are required by rule or order
36 under this act to be filed and by paying a renewal fee not to exceed \$2,500.
37 A previously filed consent to service of process complying with section
38 50, and amendments thereto, may be incorporated by reference in a re-
39 newal. A renewed notice filing becomes effective upon the expiration of
40 the filing being renewed.

41 (c) *Notice filings for federal covered securities under Section*
42 *18(b)(4)(D).* With respect to a security that is a federal covered security
43 under section 18(b)(4)(D) of the securities act of 1933(15 U.S.C. section

1 77r(b)(4)(D)), a rule under this act may require: (1) A notice filing by or
2 on behalf of an issuer to include a copy of form D, including the appendix,
3 as promulgated by the securities and exchange commission, and a consent
4 to service of process complying with section 50, and amendments thereto,
5 signed by the issuer, not later than 15 days after the first sale of the federal
6 covered security in this state; and (2) the payment of a fee not to exceed
7 \$2,500 for a timely filing and the payment of a fee not to exceed \$5,000
8 for any late filing.

9 (d) *Stop orders.* Except with respect to a federal security under sec-
10 tion 18(b)(1) of the securities act of 1933 (15 U.S.C. section 77r(b)(1)),
11 if the administrator finds that there is a failure to comply with a notice
12 or fee requirement of this section, the administrator may issue a stop
13 order suspending the offer and sale of a federal covered security in this
14 state. If the deficiency is corrected, the stop order is void as of the time
15 of its issuance and no penalty may be imposed by the administrator other
16 than a late filing fee.

17 New Sec. 13. (a) *Registration permitted.* A security for which a reg-
18 istration statement has been filed under the securities act of 1933 in
19 connection with the same offering may be registered by coordination
20 under this section.

21 (b) *Required records.* A registration statement and accompanying re-
22 cords under this section must contain or be accompanied by the following
23 records in addition to the information specified in section 15, and amend-
24 ments thereto, and a consent to service of process complying with section
25 50, and amendments thereto:

26 (1) A copy of the latest form of prospectus filed under the securities
27 act of 1933;

28 (2) a copy of the articles of incorporation and bylaws or their sub-
29 stantial equivalents currently in effect; a copy of any agreement with or
30 among underwriters; a copy of any indenture or other instrument gov-
31 erning the issuance of the security to be registered; and a specimen, copy,
32 or description of the security **that is required by rule adopted or order
33 issued under this act;**

34 (3) copies of any other information or any other records filed by the
35 issuer under the securities act of 1933 **requested by the administrator;**
36 and

37 (4) an undertaking to forward each amendment to the federal pro-
38 spectus, other than an amendment that delays the effective date of the
39 registration statement, promptly after it is filed with the securities and
40 exchange commission.

41 (c) *Conditions for effectiveness of registration statement.* A registra-
42 tion statement under this section becomes effective simultaneously with
43 or subsequent to the federal registration statement when all the following

1 conditions are satisfied:

2 (1) A stop order under subsection (d) or section 16, and amendments
3 thereto, or issued by the securities and exchange commission is not in
4 effect, and a proceeding is not pending against the issuer under section
5 16, and amendments thereto, and the administrator has not given written
6 notice of deficiencies that are unresolved and that would constitute
7 grounds for a stop order under section 16, and amendments thereto; and

8 (2) the registration statement has been on file for at least 20 days or
9 a shorter period provided by rule adopted or order issued under this act.

10 (d) *Notice of federal registration statement effectiveness.* The regis-
11 trant shall promptly notify the administrator in a record of the date when
12 the federal registration statement becomes effective and the content of
13 any price amendment and shall promptly file a record containing the price
14 amendment. If the notice is not timely received, the administrator may
15 issue a stop order, without prior notice or hearing, retroactively denying
16 effectiveness to the registration statement or suspending its effectiveness
17 until compliance with this section. The administrator shall promptly notify
18 the registrant of an order by telephone or electronic means and promptly
19 confirm this notice by a record. If the registrant subsequently complies
20 with the notice requirements of this section, the stop order is void as of
21 the date of its issuance.

22 (e) *Effectiveness of registration statement.* If the federal registration
23 statement becomes effective before each of the conditions in this section
24 is satisfied or is waived by the administrator, the registration statement is
25 automatically effective under this act when all the conditions are satisfied
26 or waived. If the registrant notifies the administrator of the date when
27 the federal registration statement is expected to become effective, the
28 administrator shall promptly notify the registrant by a record, indicating
29 whether all the conditions are satisfied or waived and whether the ad-
30 ministrator intends the institution of a proceeding under section 16, and
31 amendments thereto. The notice by the administrator does not preclude
32 the institution of such a proceeding.

33 New Sec. 14. (a) *Registration permitted.* A security may be regis-
34 tered by qualification under this section.

35 (b) *Required records.* A registration statement under this section
36 must contain the information or records specified in section 15, and
37 amendments thereto, a consent to service of process complying with sec-
38 tion 50, and amendments thereto, and the following information or re-
39 cords unless waived by the administrator for good cause shown:

40 (1) With respect to the issuer and any significant subsidiary, its name,
41 address, and form of organization; the state or foreign jurisdiction and
42 date of its organization; the general character and location of its business;
43 a description of its physical properties and equipment; and a statement

1 of the general competitive conditions in the industry or business in which
2 it is or will be engaged;

3 (2) with respect to each director and officer of the issuer, and other
4 person having a similar status or performing similar functions, the per-
5 son's name, address, and principal occupation for the previous five years;
6 the amount of securities of the issuer held by the person as of the 30th
7 day before the filing of the registration statement; the amount of the
8 securities covered by the registration statement to which the person has
9 indicated an intention to subscribe; and a description of any material
10 interest of the person in any material transaction with the issuer or a
11 significant subsidiary effected within the previous three years or proposed
12 to be effected;

13 (3) with respect to persons covered by paragraph (2), the aggregate
14 sum of the remuneration paid to those persons during the previous 12
15 months and estimated to be paid during the next 12 months, directly or
16 indirectly, by the issuer and all predecessors, parents, subsidiaries, and
17 affiliates of the issuer;

18 (4) with respect to a person owning of record or owning beneficially,
19 if known, 10% or more of the outstanding shares of any class of equity
20 security of the issuer, the information specified in paragraph (2) other
21 than the person's occupation;

22 (5) with respect to a promoter, if the issuer was organized within the
23 previous three years, the information or records specified in paragraph
24 (2), any amount paid to the promoter within that period or intended to
25 be paid to the promoter, and the consideration for the payment;

26 (6) with respect to a person on whose behalf any part of the offering
27 is to be made in a nonissuer distribution, the person's name and address;
28 the amount of securities of the issuer held by the person as of the date
29 of the filing of the registration statement; a description of any material
30 interest of the person in any material transaction with the issuer or any
31 significant subsidiary effected within the previous three years or proposed
32 to be effected; and a statement of the reasons for making the offering;

33 (7) the capitalization and long term debt, on both a current and pro
34 forma basis, of the issuer and any significant subsidiary, including a de-
35 scription of each security outstanding or being registered or otherwise
36 offered, and a statement of the amount and kind of consideration,
37 whether in the form of cash, physical assets, services, patents, goodwill,
38 or anything else of value, for which the issuer or any subsidiary has issued
39 its securities within the previous two years or is obligated to issue its
40 securities;

41 (8) the kind and amount of securities to be offered; the proposed
42 offering price or the method by which it is to be computed; any variation
43 at which a proportion of the offering is to be made to a person or class

1 of persons other than the underwriters, with a specification of the person
2 or class; the basis on which the offering is to be made if otherwise than
3 for cash; the estimated aggregate underwriting and selling discounts or
4 commissions and finder's fees, including separately cash, securities, con-
5 tracts, or anything else of value to accrue to the underwriters or finders
6 in connection with the offering or, if the selling discounts or commissions
7 are variable, the basis of determining them and their maximum and min-
8 imum amounts; the estimated amounts of other selling expenses, includ-
9 ing legal, engineering, and accounting charges; the name and address of
10 each underwriter and each recipient of a finder's fee; a copy of any un-
11 derwriting or selling group agreement under which the distribution is to
12 be made or the proposed form of any such agreement whose terms have
13 not yet been determined; and a description of the plan of distribution of
14 any securities that are to be offered otherwise than through an under-
15 writer;

16 (9) the estimated monetary proceeds to be received by the issuer
17 from the offering; the purposes for which the proceeds are to be used by
18 the issuer; the estimated amount to be used for each purpose; the order
19 or priority in which the proceeds will be used for the purposes stated; the
20 amounts of any funds to be raised from other sources to achieve the
21 purposes stated; the sources of the funds; and, if a part of the proceeds
22 is to be used to acquire property, including goodwill, otherwise than in
23 the ordinary course of business, the names and addresses of the vendors,
24 the purchase price, the names of any persons that have received com-
25 missions in connection with the acquisition, and the amounts of the com-
26 missions and other expenses in connection with the acquisition, including
27 the cost of borrowing money to finance the acquisition;

28 (10) a description of any stock options or other security options out-
29 standing, or to be created in connection with the offering, and the amount
30 of those options held or to be held by each person required to be named
31 in paragraph (2), (4), (5), (6), or (8) and by any person that holds or will
32 hold 10% or more in the aggregate of those options;

33 (11) the dates of, parties to, and general effect concisely stated of
34 each managerial or other material contract made or to be made otherwise
35 than in the ordinary course of business to be performed in whole or in
36 part at or after the filing of the registration statement or that was made
37 within the previous two years, and a copy of the contract;

38 (12) a description of any pending litigation, action, or proceeding to
39 which the issuer is a party and that materially affects its business or assets,
40 and any litigation, action, or proceeding known to be contemplated by
41 governmental authorities;

42 (13) a copy of any prospectus, pamphlet, circular, form letter, adver-
43 tisement, or other sales literature intended as of the effective date to be

- 1 used in connection with the offering and any solicitation of interest used
2 in compliance with section 7 (17)(B), and amendments thereto;
- 3 (14) a specimen or copy of the security being registered, unless the
4 security is uncertificated; a copy of the issuer's articles of incorporation
5 and bylaws or their substantial equivalents, in effect; and a copy of any
6 indenture or other instrument covering the security to be registered;
- 7 (15) a signed or conformed copy of an opinion of counsel concerning
8 the legality of the security being registered, with an English translation if
9 it is in a language other than English, which states whether the security
10 when sold will be validly issued, fully paid, and nonassessable and, if a
11 debt security, a binding obligation of the issuer;
- 12 (16) a signed or conformed copy of a consent of any accountant, en-
13 gineer, appraiser, or other person whose profession gives authority for a
14 statement made by the person, if the person is named as having prepared
15 or certified a report or valuation, other than an official record that is
16 public, which is used in connection with the registration statement;
- 17 (17) a balance sheet of the issuer as of a date within four months
18 before the filing of the registration statement; a statement of income and
19 a statement of cash flows for each of the three fiscal years preceding the
20 date of the balance sheet and for any period between the close of the
21 immediately previous fiscal year and the date of the balance sheet, or for
22 the period of the issuer's and any predecessor's existence if less than three
23 years; and, if any part of the proceeds of the offering is to be applied to
24 the purchase of a business, the financial statements that would be re-
25 quired if that business were the registrant; and
- 26 (18) any additional information or records required by rule adopted
27 or order issued under this act.
- 28 (c) *Conditions for effectiveness of registration statement.* A registra-
29 tion statement under this section becomes effective 30 days, or any
30 shorter period provided by rule adopted or order issued under this act,
31 after the date the registration statement or the last amendment other
32 than a price amendment is filed, if:
- 33 (1) A stop order is not in effect and a proceeding is not pending under
34 section 16, and amendments thereto;
- 35 (2) the administrator has not issued an order under section 16, and
36 amendments thereto, delaying effectiveness; and
- 37 (3) the applicant or registrant has not requested that effectiveness be
38 delayed.
- 39 (d) *Delay of effectiveness of registration statement.* The administrator
40 may delay effectiveness once for not more than 90 days if the adminis-
41 trator determines the registration statement is not complete in all material
42 respects and promptly notifies the applicant or registrant of that deter-
43 mination. The administrator may also delay effectiveness for a further

1 period of not more than 30 days if the administrator determines that the
2 delay is necessary or appropriate.

3 (e) *Prospectus distribution may be required.* A rule adopted or order
4 issued under this act may require as a condition of registration under this
5 section that a prospectus containing a specified part of the information
6 or record specified in subsection (b) be sent or given to each person to
7 which an offer is made, before or concurrently, with the earliest of:

8 (1) The first offer made in a record to the person otherwise than by
9 means of a public advertisement, by or for the account of the issuer or
10 another person on whose behalf the offering is being made or by an
11 underwriter or broker-dealer that is offering part of an unsold allotment
12 or subscription taken by the person as a participant in the distribution;

13 (2) the confirmation of a sale made by or for the account of the
14 person;

15 (3) payment pursuant to such a sale; or

16 (4) delivery of the security pursuant to such a sale.

17 New Sec. 15. (a) *Who may file.* A registration statement may be filed
18 by the issuer, a person on whose behalf the offering is to be made, or a
19 broker-dealer registered under this act.

20 (b) *Filing fee.* A person filing a registration statement shall pay a fee
21 established by the administrator by rule or order, but not more than
22 \$2,500 for each year that the registration statement is effective. If a reg-
23 istration statement is withdrawn before the effective date or a preeffective
24 stop order is issued under section 16, and amendments thereto, the ad-
25 ministrator shall retain an amount of the fee established by the admin-
26 istrator by rule or order.

27 (c) *Status of offering.* A registration statement filed under section 13
28 or 14, and amendments thereto, must specify:

29 (1) The amount of securities to be offered in this state;

30 (2) the states in which a registration statement or similar record in
31 connection with the offering has been or is to be filed; and

32 (3) any adverse order, judgment, or decree issued in connection with
33 the offering by a state securities regulator, the securities and exchange
34 commission, or a court.

35 (d) *Incorporation by reference.* A record filed under this act or the
36 predecessor act within five years preceding the filing of a registration
37 statement may be incorporated by reference in the registration statement
38 to the extent that the record is currently accurate.

39 (e) *Nonissuer distribution.* In the case of a nonissuer distribution,
40 information or a record may not be required under subsection (i) or sec-
41 tion 14, and amendments thereto, unless it is known to the person filing
42 the registration statement or to the person on whose behalf the distri-
43 bution is to be made or unless it can be furnished by those persons with-

1 out unreasonable effort or expense.

2 (f) *Escrow and impoundment.* A rule adopted or order issued under
3 this act may require as a condition of registration that a security issued
4 within the previous five years or to be issued to a promoter for a consid-
5 eration substantially less than the public offering price or to a person for
6 a consideration other than cash be deposited in escrow; and that the
7 proceeds from the sale of the registered security in this state be im-
8 poundment until the issuer receives a specified amount from the sale of the
9 security either in this state or elsewhere. The conditions of any escrow
10 or impoundment required under this subsection may be established by
11 rule adopted or order issued under this act, but the administrator may
12 not reject a depository institution solely because of its location in another
13 state.

14 (g) *Form of subscription.* A rule adopted or order issued under this
15 act may require as a condition of registration that a security registered
16 under this act be sold only on a specified form of subscription or sale
17 contract and that a signed or conformed copy of each contract be filed
18 under this act or preserved for a period specified by the rule or order,
19 which may not be longer than five years.

20 (h) *Effective period.* Except while a stop order is in effect under sec-
21 tion 16, and amendments thereto, a registration statement is effective for
22 one year after its effective date, or for any longer period designated by
23 rule adopted or order issued under this act during which the security is
24 being offered or distributed in a nonexempted transaction by or for the
25 account of the issuer or other person on whose behalf the offering is
26 being made or by an underwriter or broker-dealer that is still offering
27 part of an unsold allotment or subscription taken as a participant in the
28 distribution. For the purposes of a nonissuer transaction, all outstanding
29 securities of the same class identified in the registration statement as a
30 security registered under this act are considered to be registered while
31 the registration statement is effective. If any securities of the same class
32 are outstanding, a registration statement may not be withdrawn until one
33 year after its effective date. A registration statement may be withdrawn
34 only with the approval of the administrator.

35 (i) *Periodic reports.* While a registration statement is effective, a rule
36 adopted or order issued under this act may require the person that filed
37 the registration statement to file reports, not more often than quarterly,
38 to keep the information or other record in the registration statement
39 reasonably current and to disclose the progress of the offering.

40 (j) *Posteffective amendments.* A registration statement shall be
41 amended after its effective date if there are material changes in infor-
42 mation or documents in the registration statement or if there is an in-
43 crease in the aggregate amount of securities offered or sold in this state.

1 The posteffective amendment becomes effective when the administrator
2 provides written notice that the amendment has been accepted. If a pos-
3 teffective amendment is made to increase the number of securities spec-
4 ified to be offered or sold, the person filing the amendment shall pay a
5 registration fee based upon the increase in such price calculated in ac-
6 cordance with the rate and fee specified in subsection (b). ~~A posteffective~~
7 ~~amendment relates back to the date of the offering of the additional~~
8 ~~securities being registered if, within one year after the date of the sale,~~
9 ~~the amendment is filed and the additional registration fee is paid.~~ If a
10 posteffective amendment for registration of additional securities and pay-
11 ment of additional fees is not filed in a timely manner, there shall be no
12 penalty assessed if the amendment is filed and the additional registration
13 fee is paid within one year after the date the additional securities are sold
14 in this state.

15 New Sec. 16. (a) *Stop orders.* The administrator may issue a stop
16 order denying effectiveness to, or suspending or revoking the effective-
17 ness of, a registration statement if the administrator finds that the order
18 is in the public interest and that:

19 (1) The registration statement as of its effective date or before the
20 effective date in the case of an order denying effectiveness, an amend-
21 ment under section 15 (j), and amendments thereto, as of its effective
22 date, or a report under section 15 (i), and amendments thereto, is incom-
23 plete in a material respect or contains a statement that, in the light of the
24 circumstances under which it was made, was false or misleading with
25 respect to a material fact;

26 (2) this act or a rule adopted or order issued under this act or a
27 condition imposed under this act has been willfully violated, in connection
28 with the offering, by:

29 (A) The person filing the registration statement, but only if such per-
30 son is directly or indirectly controlled by or acting for the issuer;

31 (B) the issuer, a partner, officer, or director of the issuer or a person
32 having a similar status or performing a similar function;

33 (C) a promoter of the issuer;

34 (D) a person directly or indirectly controlling or controlled by the
35 issuer; or

36 (E) an underwriter;

37 (3) the security registered or sought to be registered is the subject of
38 a permanent or temporary injunction of a court of competent jurisdiction
39 or an administrative stop order or similar order issued under any federal,
40 foreign, or state law other than this act applicable to the offering, but the
41 administrator may not institute a proceeding against an effective registra-
42 tion statement under this paragraph more than one year after the date of
43 the order or injunction on which it is based, and the administrator may

- 1 not issue an order under this paragraph on the basis of an order or in-
2 junction issued under the securities act of another state unless the order
3 or injunction was based on conduct that would constitute, as of the date
4 of the order, a ground for a stop order under this section;
- 5 (4) the issuer's enterprise or method of business includes or would
6 include activities that are unlawful where performed or in this state;
- 7 (5) with respect to a security sought to be registered under section
8 13, and amendments thereto, there has been a failure to comply with the
9 undertaking required by section 13(b)(4), and amendments thereto;
- 10 (6) the applicant or registrant has not paid the filing fee, but the
11 administrator shall void the order if the deficiency is corrected;
- 12 (7) the offering:
- 13 (A) Will work or tend to work a fraud upon purchasers or would so
14 operate;
- 15 (B) has been or would be made with unreasonable amounts of un-
16 derwriters' and sellers' discounts, commissions, or other compensation,
17 or promoters' profits or participations, or unreasonable amounts or kinds
18 of options; or
- 19 (C) is being made on terms that are unfair, unjust, or inequitable;
- 20 (b) *Enforcement of subsection (a)(7)*. To the extent practicable, the
21 administrator by rule adopted or order issued under this act shall publish
22 standards that provide notice of conduct that violates subsection (a)(7).
- 23 (c) *Institution of stop order*. The administrator may not institute a
24 stop order proceeding against an effective registration statement on the
25 basis of conduct or a transaction known to the administrator when the
26 registration statement became effective unless the proceeding is insti-
27 tuted within 30 days after the registration statement became effective.
- 28 (d) *Summary process*. The administrator may summarily revoke,
29 deny, postpone, or suspend the effectiveness of a registration statement
30 pending final determination of an administrative proceeding. Upon the
31 issuance of the order, the administrator shall promptly notify each person
32 specified in subsection (e) that the order has been issued, the reasons for
33 the revocation, denial, postponement, or suspension, and that within 15
34 days after the receipt of a request in a record from the person the matter
35 will be scheduled for a hearing. If a hearing is not requested and none is
36 ordered by the administrator, within 30 days after the date of service of
37 the order, the order becomes final. If a hearing is requested or ordered,
38 the administrator, after notice of and opportunity for hearing for each
39 person subject to the order, may modify or vacate the order or extend
40 the order until final determination.
- 41 (e) *Procedural requirements for stop order*. (1) A stop order may not
42 be issued under this section without:
- 43 (A) Appropriate notice to the applicant or registrant, the issuer, and

1 the person on whose behalf the securities are to be or have been offered;
2 (B) an opportunity for hearing; and
3 (C) findings of fact and conclusions of law in a record.

4 (2) Any proceeding under this section shall be done in accordance
5 with the Kansas administrative procedure act.

6 (f) *Modification or vacation of stop order.* The administrator may
7 modify or vacate a stop order issued under this section if the administrator
8 finds that the conditions that caused its issuance have changed or that it
9 is necessary or appropriate in the public interest or for the protection of
10 investors.

11 New Sec. 17. The administrator may waive or modify, in whole or in
12 part, any or all of the requirements of sections 12, 13, and 14(b), and
13 amendments thereto, or the requirement of any information or record in
14 a registration statement or in a periodic report filed pursuant to section
15 ~~15(f)(i)~~, and amendments thereto.

16 New Sec. 18. (a) *Registration requirement.* It is unlawful for a person
17 to transact business in this state as a broker-dealer unless the person is
18 registered under this act as a broker-dealer or is exempt from registration
19 as a broker-dealer under subsection (b) or (d).

20 (b) *Exemptions from registration.* The following persons are exempt
21 from the registration requirement of subsection (a):

22 (1) A broker-dealer without a place of business in this state if its only
23 transactions effected in this state are with:

24 (A) The issuer of the securities involved in the transactions;

25 (B) a broker-dealer registered under this act or not required to be
26 registered as a broker-dealer under this act;

27 (C) an institutional investor;

28 (D) a nonaffiliated federal covered investment adviser with invest-
29 ments under management in excess of \$100,000,000 acting for the ac-
30 count of others pursuant to discretionary authority in a signed record;

31 (E) a bona fide preexisting customer whose principal place of resi-
32 dence is not in this state and the broker-dealer is registered as a broker-
33 dealer under the securities exchange act of 1934 or not required to be
34 registered under the securities exchange act of 1934 and is registered
35 under the securities act of the state in which the customer maintains a
36 principal place of residence;

37 (F) a bona fide preexisting customer whose principal place of resi-
38 dence is in this state but was not present in this state when the customer
39 relationship was established, if:

40 (i) The broker-dealer is registered under the securities exchange act
41 of 1934 or not required to be registered under the securities exchange
42 act of 1934 and is registered under the securities laws of the state in
43 which the customer relationship was established and where the customer

- 1 had maintained a principal place of residence; and
- 2 (ii) within 45 days after the customer's first transaction in this state,
- 3 the person files an application for registration as a broker-dealer in this
- 4 state and a further transaction is not effected more than 75 days after the
- 5 date on which the application is filed, or, if earlier, the date on which the
- 6 administrator notifies the person that the administrator has denied the
- 7 application for registration or has stayed the pendency of the application
- 8 for good cause;
- 9 (G) not more than three customers in this state during the previous
- 10 12 months, in addition to those customers specified in subparagraphs (A)
- 11 through (F) and under subparagraph (H), if the broker-dealer is regis-
- 12 tered under the securities exchange act of 1934 or not required to be
- 13 registered under the securities exchange act of 1934 and is registered
- 14 under the securities act of the state in which the broker-dealer has its
- 15 principal place of business; and
- 16 (H) any other person exempted by rule adopted or order issued un-
- 17 der this act; and
- 18 (2) a person that deals solely in United States government securities
- 19 and is supervised as a dealer in government securities by the board of
- 20 governors of the federal reserve system, the comptroller of the currency,
- 21 the federal deposit insurance corporation, or the office of thrift
- 22 supervision.
- 23 (c) *Limits on employment or association.* It is unlawful for a broker-
- 24 dealer, or for an issuer engaged in offering, offering to purchase, pur-
- 25 chasing, or selling securities in this state, directly or indirectly, to employ
- 26 or associate with an individual to engage in an activity related to securities
- 27 transactions in this state if the registration of the individual is suspended
- 28 or revoked or the individual is barred from employment or association
- 29 with a broker-dealer, an issuer, an investment adviser, or a federal covered
- 30 investment adviser by an order of the administrator under this act, the
- 31 securities and exchange commission, or a self-regulatory organization. A
- 32 broker-dealer or issuer does not violate this subsection if the broker-
- 33 dealer or issuer did not know and in the exercise of reasonable care could
- 34 not have known, of the suspension, revocation, or bar. Upon request from
- 35 a broker-dealer or issuer and for good cause, an order under this act may
- 36 modify or waive, in whole or in part, the application of the prohibitions
- 37 of this subsection to the broker-dealer.
- 38 (d) *Foreign transactions.* A rule adopted or order issued under this
- 39 act may permit:
- 40 (1) A broker-dealer that is registered in Canada or other foreign ju-
- 41 risdiction and that does not have a place of business in this state to effect
- 42 transactions in securities with or for, or attempt to effect the purchase or
- 43 sale of any securities by:

1 (A) An individual from Canada or other foreign jurisdiction who is
2 temporarily present in this State and with whom the broker-dealer had a
3 bona fide customer relationship before the individual entered the United
4 States;

5 (B) an individual from Canada or other foreign jurisdiction who is
6 present in this state and whose transactions are in a self-directed tax
7 advantaged retirement plan of which the individual is the holder or con-
8 tributor in that foreign jurisdiction; or

9 (C) an individual who is present in this state, with whom the broker-
10 dealer customer relationship arose while the individual was temporarily
11 or permanently resident in Canada or the other foreign jurisdiction; and

12 (2) an agent who represents a broker-dealer that is exempt under this
13 subsection to effect transactions in securities or attempt to effect the
14 purchase or sale of securities in this state as permitted for a broker-dealer
15 described in paragraph (1).

16 New Sec. 19. (a) *Registration requirement.* It is unlawful for an in-
17 dividual to transact business in this state as an agent unless the individual
18 is registered under this act as an agent or is exempt from registration as
19 an agent under subsection (b).

20 (b) *Exemptions from registration.* The following individuals are ex-
21 empt from the registration requirement of subsection (a):

22 (1) An individual who represents a broker-dealer in effecting trans-
23 actions in this state limited to those described in section 15(h)(2) of the
24 securities exchange act of 1934 (15 U.S.C. section 78(o)(2));

25 (2) an individual who represents a broker-dealer that is exempt under
26 section 18 (b) or (d), and amendments thereto;

27 (3) an individual who represents an issuer with respect to an offer or
28 sale of the issuer's own securities or those of the issuer's parent or any of
29 the issuer's subsidiaries, and who is not compensated in connection with
30 the individual's participation by the payment of commissions or other
31 remuneration based, directly or indirectly, on transactions in those
32 securities;

33 (4) an individual who represents an issuer and who effects transac-
34 tions in the issuer's securities exempted by section 7, and amendments
35 thereto, other than section 7 (11) and (14), and amendments thereto;

36 (5) an individual who represents an issuer that effects transactions
37 solely in federal covered securities of the issuer, but an individual who
38 effects transactions in a federal covered security under section 18(b)(3)
39 or 18(b)(4)(D) of the securities act of 1933 (15 U.S.C. section 77r(b)(3)
40 or 77r(b)(4)(D)) is not exempt if the individual is compensated in con-
41 nection with the agent's participation by the payment of commissions or
42 other remuneration based, directly or indirectly, on transactions in those
43 securities;

1 (6) an individual who represents a broker-dealer registered in this
2 state under section 18 (a), and amendments thereto, or exempt from
3 registration under section 18 (b), and amendments thereto, in the offer
4 and sale of securities for an account of a nonaffiliated federal covered
5 investment adviser with investments under management in excess of
6 \$100,000,000 acting for the account of others pursuant to discretionary
7 authority in a signed record;

8 (7) an individual who represents an issuer in connection with the
9 purchase of the issuer's own securities;

10 (8) an individual who represents an issuer and who restricts partici-
11 pation to performing clerical or ministerial acts; or

12 (9) any other individual exempted by rule adopted or order issued
13 under this act.

14 (c) *Registration effective only while employed or associated.* The reg-
15 istration of an agent is effective only while the agent is employed by or
16 associated with a broker-dealer registered under this act or an issuer that
17 is offering, selling, or purchasing its securities in this state.

18 (d) *Limit on employment or association.* It is unlawful for a broker-
19 dealer, or an issuer engaged in offering, selling, or purchasing securities
20 in this state, to employ or associate with an agent who transacts business
21 in this state on behalf of broker-dealers or issuers unless the agent is
22 registered under subsection (a) or exempt from registration under sub-
23 section (b).

24 (e) *Limit on affiliations.* An individual may not act as an agent for
25 more than one broker-dealer or one issuer at a time, unless the broker-
26 dealer or the issuer for which the agent acts are affiliated by direct or
27 indirect common control or are authorized by rule or order under this
28 act.

29 New Sec. 20. (a) *Registration requirement.* It is unlawful for a person
30 to transact business in this state as an investment adviser unless the person
31 is registered under this act as an investment adviser or is exempt from
32 registration as an investment adviser under subsection (b).

33 (b) *Exemptions from registration.* The following persons are exempt
34 from the registration requirement of subsection (a):

35 (1) A person without a place of business in this state that is registered
36 under the securities act of the state in which the person has its principal
37 place of business if its only clients in this state are:

38 (A) Federal covered investment advisers, investment advisers regis-
39 tered under this act, or broker-dealers registered under this act;

40 (B) institutional investors;

41 (C) bona fide preexisting clients whose principal places of residence
42 are not in this state if the investment adviser is registered under the
43 securities act of the state in which the clients maintain principal places

1 of residence; or

2 (D) any other client exempted by rule adopted or order issued under
3 this act;

4 (2) a person without a place of business in this state if the person has
5 had, during the preceding 12 months, not more than five clients that are
6 resident in this state in addition to those specified under paragraph (1);
7 or

8 (3) any other person exempted by rule adopted or order issued under
9 this act .

10 (c) *Limits on employment or association.* It is unlawful for an invest-
11 ment adviser, directly or indirectly, to employ or associate with an indi-
12 vidual to engage in an activity related to investment advice in this state if
13 the registration of the individual is suspended or revoked or the individual
14 is barred from employment or association with an investment adviser,
15 federal covered investment adviser, or broker-dealer by an order under
16 this act, the securities and exchange commission, or a self-regulatory or-
17 ganization, unless the investment adviser did not know, and in the exercise
18 of reasonable care could not have known, of the suspension, revocation,
19 or bar. Upon request from the investment adviser and for good cause,
20 the administrator, by order, may waive, in whole or in part, the application
21 of the prohibitions of this subsection to the investment adviser.

22 (d) *Investment adviser representative registration required.* It is un-
23 lawful for an investment adviser to employ or associate with an individual
24 required to be registered under this act as an investment adviser repre-
25 sentative who transacts business in this state on behalf of the investment
26 adviser unless the individual is registered under section 21 (a), and
27 amendments thereto, or is exempt from registration under section 21 (b),
28 and amendments thereto.

29 New Sec. 21. (a) *Registration requirement.* It is unlawful for an in-
30 dividual to transact business in this state as an investment adviser rep-
31 resentative unless the individual is registered under this act as an invest-
32 ment adviser representative or is exempt from registration as an
33 investment adviser representative under subsection (b).

34 (b) *Exemptions from registration.* The following individuals are ex-
35 empt from the registration requirement of subsection (a):

36 (1) An individual who is exclusively employed by or associated with
37 an investment adviser that is exempt from registration under section 20
38 (b), and amendments thereto, or a federal covered investment adviser
39 that is excluded from the notice filing requirements of section 22, and
40 amendments thereto; and

41 (2) any other individual exempted by rule adopted or order issued
42 under this act.

43 (c) *Registration effective only while employed or associated.* The reg-

1 istration of an investment adviser representative is not effective while the
2 investment adviser representative is not employed by or associated with
3 an investment adviser registered under this act or a federal covered in-
4 vestment adviser that has made or is required to make a notice filing
5 under section 22, and amendments thereto.

6 (d) *Limit on affiliations.* An individual may transact business as an
7 investment adviser representative for more than one investment adviser
8 or federal covered investment adviser unless a rule adopted or order
9 issued under this act prohibits or limits an individual from acting as an
10 investment adviser representative for more than one investment adviser
11 or federal covered investment adviser.

12 (e) *Limits on employment or association.* It is unlawful for an indi-
13 vidual acting as an investment adviser representative, directly or indi-
14 rectly, to conduct business in this state on behalf of an investment adviser
15 or a federal covered investment adviser if the registration of the individual
16 as an investment adviser representative is suspended or revoked or the
17 individual is barred from employment or association with an investment
18 adviser or a federal covered investment adviser by an order under this
19 act, the securities and exchange commission, or a self-regulatory organi-
20 zation. Upon request from a federal covered investment adviser and for
21 good cause, the administrator, by order issued, may waive, in whole or in
22 part, the application of the requirements of this subsection to the federal
23 covered investment adviser.

24 (f) *Referral fees.* An investment adviser registered under this act, a
25 federal covered investment adviser that has filed a notice under section
26 22, and amendments thereto, or a broker-dealer registered under this act
27 is not required to employ or associate with an individual as an investment
28 adviser representative if the only compensation paid to the individual for
29 a referral of investment advisory clients is paid to an investment adviser
30 registered under this act, a federal covered investment adviser who has
31 filed a notice under section 22, and amendments thereto, or a broker-
32 dealer registered under this act with which the individual is employed or
33 associated as an investment adviser representative.

34 New Sec. 22 (a) *Notice filing requirement.* Except with respect to a
35 federal covered investment adviser described in subsection (b), it is un-
36 lawful for a federal covered investment adviser to transact business in this
37 state as a federal covered investment adviser unless the federal covered
38 investment adviser complies with subsection (c).

39 (b) *Notice filing requirement not required.* The following federal cov-
40 ered investment advisers are not required to comply with subsection (c):

41 (1) A federal covered investment adviser without a place of business
42 in this state if its only clients in this state are:

43 (A) Federal covered investment advisers, investment advisers regis-

- 1 tered under this act, and broker-dealers registered under this act;
- 2 (B) institutional investors;
- 3 (C) bona fide preexisting clients whose principal places of residence
- 4 are not in this state; or
- 5 (D) other clients specified by rule adopted or order issued under this
- 6 act;
- 7 (2) a federal covered investment adviser without a place of business
- 8 in this state if it has had, during the preceding 12 months, not more than
- 9 five clients that are resident in this state in addition to those specified
- 10 under paragraph (1); and
- 11 (3) any other person excluded by rule adopted or order issued under
- 12 this act.
- 13 (c) *Notice filing procedure.* A person acting as a federal covered in-
- 14 vestment adviser, not excluded under subsection (b), shall file a notice, a
- 15 consent to service of process complying with section 50, and amendments
- 16 thereto, and such records as have been filed with the securities and
- 17 exchange commission under the investment advisers act of 1940 required
- 18 by rule adopted or order issued under this act and pay the fees specified
- 19 in section 27 (e), and amendments thereto.
- 20 (d) *Effectiveness of filing.* The notice under subsection (c) becomes
- 21 effective upon its filing, and shall expire on December 31 each year,
- 22 unless renewed.
- 23 New Sec. 23. (a) *Application for initial registration.* A person shall
- 24 register as a broker-dealer, agent, investment adviser, or investment ad-
- 25 viser representative by filing an application and a consent to service of
- 26 process complying with section 50, and amendments thereto, and paying
- 27 the fee specified in section 27, and amendments thereto, and any reason-
- 28 able fees charged by the designee of the administrator for processing the
- 29 filing. The application must contain:
- 30 (1) The information or record required for the filing of a uniform
- 31 application; and
- 32 (2) upon request by the administrator, any other financial or other
- 33 information or record that the administrator determines is appropriate.
- 34 (b) *Amendment.* If the information or record contained in an appli-
- 35 cation filed under subsection (a) is or becomes inaccurate or incomplete
- 36 in a material respect, the registrant shall promptly file a correcting
- 37 amendment.
- 38 (c) *Effectiveness of registration.* If an order is not in effect and a
- 39 proceeding is not pending under section 29, and amendments thereto,
- 40 registration becomes effective at noon on the 45th day after a completed
- 41 application is filed, unless the registration is denied **or the administrator**
- 42 **has given written notice of deficiencies that are unresolved and**
- 43 **that would constitute grounds for denial under section 29, and**

1 **amendments thereto.** A rule adopted or order issued under this act may
2 set an earlier effective date or may defer the effective date until noon on
3 the 45th day after the filing of any amendment completing the
4 application.

5 (d) *Registration renewal.* A registration is effective until midnight on
6 December 31 of the year for which the application for registration is filed.
7 Unless an order is in effect under section 29, and amendments thereto,
8 a registration may be automatically renewed each year by filing such re-
9 cords as are required by rule adopted or order issued under this act, by
10 paying the fee specified in section 27, and amendments thereto, and by
11 paying costs charged by the designee of the administrator for processing
12 the filings.

13 (e) *Additional conditions or waivers.* A rule adopted or order issued
14 under this act may impose other conditions not inconsistent with the
15 national securities markets improvement act of 1996. An order issued
16 under this act may waive, in whole or in part, specific requirements in
17 connection with registration as are in the public interest and for the pro-
18 tection of investors.

19 New Sec. 24. (a) *Succession.* A broker-dealer or investment adviser
20 may succeed to the current registration of another broker-dealer or in-
21 vestment adviser or a notice filing of a federal covered investment adviser,
22 and a federal covered investment adviser may succeed to the current
23 registration of an investment adviser or notice filing of another federal
24 covered investment adviser, by filing as a successor an application for
25 registration pursuant to section 18 or 20, and amendments thereto, or a
26 notice pursuant to section 22, and amendments thereto, for the unexpired
27 portion of the current registration or notice filing.

28 (b) *Organizational change.* A broker-dealer or investment adviser
29 that changes its form of organization or state of incorporation or organi-
30 zation may continue its registration by filing an amendment to its regis-
31 tration if the change does not involve a material change in its financial
32 condition or management. The amendment becomes effective when filed
33 or on a date designated by the registrant in its filing. The new organization
34 is a successor to the original registrant for the purposes of this act. If
35 there is a material change in financial condition or management, the bro-
36 ker-dealer or investment adviser shall file a new application for registra-
37 tion. A predecessor registered under this act shall stop conducting its
38 securities business other than winding down transactions and shall file for
39 withdrawal of broker-dealer or investment adviser registration within 45
40 days after filing its amendment to effect succession.

41 (c) *Name change.* A broker-dealer or investment adviser that changes
42 its name may continue its registration by filing an amendment to its reg-
43 istration. The amendment becomes effective when filed or on a date

1 designated by the registrant.

2 (d) *Change of control.* A change of control of a broker-dealer or in-
3 vestment adviser may be made in accordance with a rule adopted or order
4 issued under this act.

5 New Sec. 25 (a) *Notice of termination.* If an agent registered under
6 this act terminates employment by or association with a broker-dealer or
7 issuer, or if an investment adviser representative registered under this act
8 terminates employment by or association with an investment adviser or
9 federal covered investment adviser, or if either registrant terminates ac-
10 tivities that require registration as an agent or investment adviser repre-
11 sentative, the broker-dealer, issuer, investment adviser, or federal covered
12 investment adviser shall promptly file a notice of termination. If the reg-
13 istrant learns that the broker-dealer, issuer, investment adviser, or federal
14 covered investment adviser has not filed the notice, the registrant may
15 do so.

16 (b) *Transfer of employment or association.* If an agent registered un-
17 der this act terminates employment by or association with a broker-dealer
18 registered under this act and begins employment by or association with
19 another broker-dealer registered under this act; or if an investment ad-
20 viser representative registered under this act terminates employment by
21 or association with an investment adviser registered under this act or a
22 federal covered investment adviser who has filed a notice under section
23 22, and amendments thereto, and begins employment by or association
24 with another investment adviser registered under this act or a federal
25 covered investment adviser who has filed a notice under section 22, and
26 amendments thereto, then upon the filing by or on behalf of the regis-
27 trant, within 30 days after the termination, of an application for registra-
28 tion that complies with the requirement of section 23 (a), and amend-
29 ments thereto, and payment of the filing fee required under section 27,
30 and amendments thereto, the registration of the agent or investment ad-
31 viser representative is:

32 (1) Immediately effective as of the date of the completed filing, if the
33 agent's central registration depository record or successor record or the
34 investment adviser representative's investment adviser registration de-
35 pository record or successor record does not contain a new or amended
36 disciplinary disclosure within the previous 12 months; or

37 (2) temporarily effective as of the date of the completed filing, if the
38 agent's central registration depository record or successor record or the
39 investment adviser representative's investment adviser registration de-
40 pository record or successor record contains a new or amended discipli-
41 nary disclosure within the preceding 12 months.

42 (c) *Withdrawal of temporary registration.* The administrator may
43 withdraw a temporary registration if there are or were grounds for dis-

1 cipline as specified in section 29, and amendments thereto, and the ad-
2 ministrator does so within 30 days after the filing of the application. If
3 the administrator does not withdraw the temporary registration within
4 the 30 day period, registration becomes automatically effective on the
5 31st day after filing.

6 (d) *Power to prevent registration.* The administrator may prevent the
7 effectiveness of a transfer of an agent or investment adviser representative
8 under subsection (b)(1) or (2) based on the public interest and the pro-
9 tection of investors.

10 (e) *Termination of registration or application for registration.* The
11 administrator may cancel a registration or deny an application for regis-
12 tration in accordance with the provisions of the Kansas administrative
13 procedure act if the administrator finds that a registrant or applicant for
14 registration is no longer in existence or has ceased to act as a broker-
15 dealer, agent, investment adviser, or investment adviser representative,
16 or is the subject of an adjudication of incapacity or is subject to the control
17 of a committee, conservator, or guardian, or cannot reasonably be located.
18 The administrator may reinstate a canceled or terminated registration,
19 with or without hearing, and may make the registration retroactive.

20 New Sec. 26. Withdrawal of registration by a broker-dealer, agent,
21 investment adviser, or investment adviser representative becomes effec-
22 tive 60 days after the filing of the application to withdraw or within any
23 shorter period as provided by rule adopted or order issued under this act
24 unless a revocation or suspension proceeding is pending when the appli-
25 cation is filed. If a proceeding is pending, withdrawal becomes effective
26 when and upon such conditions as required by rule adopted or order
27 issued under this act. The administrator may institute a revocation or
28 suspension proceeding under section 29, and amendments thereto, within
29 one year after the withdrawal became effective automatically and issue a
30 revocation or suspension order as of the last date on which registration
31 was effective if a proceeding is not pending.

32 New Sec. 27. (a) *Filing fees.* The administrator shall establish fees by
33 rules and regulations, subject to the following limitations:

34 (1) *Broker-dealers.* A person shall pay a fee of not more than \$300
35 when initially filing an application for registration as a broker-dealer and
36 filing a renewal of registration as a broker-dealer. If the filing results in
37 a denial or withdrawal, the administrator shall retain the fee.

38 (2) *Agents.* The fee for an individual is not more than \$100 when
39 filing an application for registration as an agent, when filing a renewal of
40 registration as an agent, and when filing for a change of registration as an
41 agent. If the filing results in a denial or withdrawal, the administrator
42 shall retain the fee.

43 (3) *Investment advisers.* A person shall pay a fee of not more than

1 \$300 when filing an application for registration as an investment adviser
2 and when filing a renewal of registration as an investment adviser. If the
3 filing results in a denial or withdrawal, the administrator shall retain the
4 fee.

5 (4) *Investment adviser representatives.* The fee for an individual is
6 not more than \$100 when filing an application for registration as an in-
7 vestment adviser representative, when filing a renewal of registration as
8 an investment adviser representative, and when filing a change of regis-
9 tration as an investment adviser representative. If the filing results in a
10 denial or withdrawal, the administrator shall retain the fee.

11 (5) *Federal covered investment advisers.* A federal covered invest-
12 ment adviser required to file a notice under section 22, and amendments
13 thereto, shall pay an initial fee and an annual notice fee of not more than
14 \$300.

15 (b) *Payment.* A person required to pay a filing or notice fee under
16 this section may transmit the fee through or to a designee as a rule or
17 order provides under this act.

18 New Sec. 28. (a) *Financial requirements.* Subject to section 15(h) of
19 the securities exchange act of 1934 (15 U.S.C. section 78o(h)) or Section
20 222 of the investment advisers act of 1940 (15 U.S.C. section 80b-22), a
21 rule adopted or order issued under this act may establish minimum fi-
22 nancial requirements for broker-dealers registered or required to be reg-
23 istered under this act and investment advisers registered or required to
24 be registered under this act.

25 (b) *Financial reports.* Subject to section 15(h) of the securities
26 exchange act of 1934 (15 U.S.C. section 78o(h)) or section 222(b) of the
27 investment advisers act of 1940 (15 U.S.C. section 80b-22), a broker-
28 dealer registered or required to be registered under this act and an in-
29 vestment adviser registered or required to be registered under this act
30 shall file such financial reports as are required by a rule adopted or order
31 issued under this act. If the information contained in a record filed under
32 this subsection is or becomes inaccurate or incomplete in a material re-
33 spect, the registrant shall promptly file a correcting amendment.

34 (c) *Recordkeeping.* Subject to section 15(h) of the securities exchange
35 act of 1934 (15 U.S.C. section 78o(h)) or section 222 of the investment
36 advisers act of 1940 (15 U.S.C. section 80b-22):

37 (1) A broker-dealer registered or required to be registered under this
38 act and an investment adviser registered or required to be registered
39 under this act shall make and maintain the accounts, correspondence,
40 memoranda, papers, books, and other records required by rule adopted
41 or order issued under this act;

42 (2) broker-dealer records required to be maintained under paragraph
43 (1) may be maintained in any form of data storage acceptable under sec-

1 tion 17(a) of the securities exchange act of 1934 (15 U.S.C. section 78q(a))
2 if they are readily accessible to the administrator; and

3 (3) investment adviser records required to be maintained under par-
4 agraph (1) may be maintained in any form of data storage required by
5 rule adopted or order issued under this act.

6 (d) *Audits or inspections.* The records of every person issuing or guar-
7 anteeing any securities subject to the provisions of this act and of every
8 broker-dealer, agent, investment adviser or investment adviser represen-
9 tative registered or required to be registered under this act are subject
10 to such reasonable periodic, special, or other audits or inspections by a
11 representative of the administrator, within or without this state, as the
12 administrator considers necessary or appropriate in the public interest
13 and for the protection of investors. An audit or inspection may be made
14 at any time and without prior notice. The administrator may copy, and
15 remove for audit or inspection copies of, all records the administrator
16 reasonably considers necessary or appropriate to conduct the audit or
17 inspection. The administrator may assess a reasonable charge for con-
18 ducting an audit or inspection under this subsection.

19 (e) *Custody and discretionary authority bond or insurance.* Subject
20 to section 15(h) of the securities exchange act of 1934 (15 U.S.C. section
21 78o(h)) or section 222 of the investment advisers act of 1940 (15 U.S.C.
22 section 80b-22), a rule adopted or order issued under this act may require
23 a broker-dealer or investment adviser that has custody of or discretionary
24 authority over funds or securities of a customer or client to obtain insur-
25 ance or post a bond or other satisfactory form of security. The adminis-
26 trator may determine the requirements of the insurance, bond, or other
27 satisfactory form of security. Insurance or a bond or other satisfactory
28 form of security may not be required of a broker-dealer registered under
29 this act whose net capital exceeds, or of an investment adviser registered
30 under this act whose minimum financial requirements exceed, the
31 amounts required by rule or order under this act. The insurance, bond,
32 or other satisfactory form of security must permit an action by a person
33 to enforce any liability on the insurance, bond, or other satisfactory form
34 of security if instituted within the time limitations in section 38 (j)(2), and
35 amendments thereto.

36 (f) *Requirements for custody.* Subject to section 15(h) of the securi-
37 ties exchange act of 1934 (15 U.S.C. section 78o(h)) or section 222 of the
38 investment advisers act of 1940 (15 U.S.C. section 80b-22), an agent may
39 not have custody of funds or securities of a customer except under the
40 supervision of a broker-dealer and an investment adviser representative
41 may not have custody of funds or securities of a client except under the
42 supervision of an investment adviser or a federal covered investment ad-
43 viser. A rule adopted or order issued under this act may prohibit, limit,

1 or impose conditions on a broker-dealer regarding custody of funds or
2 securities of a customer and on an investment adviser regarding custody
3 of securities or funds of a client.

4 (g) *Investment adviser brochure rule.* With respect to an investment
5 adviser registered or required to be registered under this act, a rule
6 adopted or order issued under this act may require that information or
7 other record be furnished or disseminated to clients or prospective clients
8 in this state as necessary or appropriate in the public interest and for the
9 protection of investors and advisory clients.

10 (h) *Continuing education.* A rule adopted or order issued under this
11 act may require an individual registered under section 19 or 21, and
12 amendments thereto, to participate in a continuing education program
13 approved by the securities and exchange commission and administered
14 by a self-regulatory organization or, in the absence of such a program, a
15 rule adopted or order issued under this act may require continuing ed-
16 ucation for an individual registered under section 21, and amendments
17 thereto.

18 New Sec. 29. (a) *Disciplinary conditions-applicants.* An order issued
19 under this act may deny an application, or may condition or limit regis-
20 tration of an applicant to be a broker-dealer, agent, investment adviser,
21 or investment adviser representative if the administrator finds that the
22 order is in the public interest and that there is a ground for discipline
23 under subsection (d) against the applicant or, if the applicant is a broker-
24 dealer or investment adviser, against any partner, officer, director, person
25 having a similar status or performing similar functions, or person directly
26 or indirectly controlling the broker-dealer or investment adviser.

27 (b) *Disciplinary conditions — registrants.* An order issued under this
28 act may revoke, suspend, condition, or limit the registration of a registrant
29 if the administrator finds that the order is in the public interest and that
30 there is a ground for discipline under subsection (d) against the registrant
31 or, if the registrant is a broker-dealer or investment adviser, against any
32 partner, officer, or director, any person having a similar status or per-
33 forming similar functions, or any person directly or indirectly controlling
34 the broker-dealer or investment adviser. However, the administrator:

35 (1) May not institute a revocation or suspension proceeding under
36 this subsection based on an order issued by another state that is reported
37 to the administrator or designee later than one year after the date of the
38 order on which it is based; and

39 (2) under subsection (d)(5)(A) and (B), may not issue an order on the
40 basis of an order under the state securities act of another state unless the
41 other order was based on conduct for which subsection (d) would au-
42 thorize the action had the conduct occurred in this state.

43 (c) *Disciplinary penalties — registrants.* If the administrator finds

1 that the order is in the public interest and that there is a ground for
2 discipline under subsection (d)(1) through (6), (8), (9), (10), (12) or (13)
3 against a registrant or, if the registrant is a broker-dealer or investment
4 adviser, against any partner, officer, or director, any person having similar
5 functions, or any person directly or indirectly controlling the broker-
6 dealer or investment adviser, then the administrator may enter an order
7 against the registrant containing one or more of the following sanctions
8 or remedies:

- 9 (1) A censure;
- 10 (2) a bar or suspension from association with a broker-dealer or in-
11 vestment adviser registered in this state;
- 12 (3) a civil penalty up to ~~a maximum of \$10,000~~ **\$25,000** for each
13 violation. **If any person is found to have violated any provision of**
14 **this act, and such violation is committed against elder or disabled**
15 **persons, as defined in K.S.A. 50-676, and amendments thereto, in**
16 **addition to any civil penalty otherwise provided by law, the ad-**
17 **ministrator may impose an additional penalty not to exceed**
18 **\$15,000 for each such violation. The total penalty against a person**
19 **shall not exceed \$1,000,000;**
- 20 (4) an order requiring the registrant to pay restitution for any loss or
21 disgorge any profits arising from a violation, including, in the administra-
22 tor's discretion, the assessment of interest ~~not to exceed 15% per annum~~
23 from the date of the violation **at the rate provided for interest on**
24 **judgments by K.S.A. 16-204, and amendments thereto;**
- 25 (5) an order charging the registrant with the actual cost of an inves-
26 tigation or proceeding; or
- 27 (6) an order requiring the registrant to cease and desist from any
28 action that constitutes a ground for discipline, or to take other action
29 necessary or appropriate to comply with this Act.

30 (d) *Grounds for discipline.* A person may be disciplined under sub-
31 sections (a) through (c) if the person:

- 32 (1) has filed an application for registration in this state under this act
33 or the predecessor act within the previous 10 years, which, as of the
34 effective date of registration or as of any date after filing in the case of
35 an order denying effectiveness, was incomplete in any material respect
36 or contained a statement that, in light of the circumstances under which
37 it was made, was false or misleading with respect to a material fact;
- 38 (2) willfully violated or willfully failed to comply with this act or the
39 predecessor act or a rule adopted or order issued under this act or the
40 predecessor act within the previous 10 years;
- 41 (3) has been convicted of a felony or within the previous 10 years has
42 been convicted of a misdemeanor involving a security, a commodity fu-
43 ture or option contract, or an aspect of a business involving securities,

- 1 commodities, investments, franchises, insurance, banking, or finance;
- 2 (4) is enjoined or restrained by a court of competent jurisdiction in
3 an action instituted by the administrator under this act or the predecessor
4 act, a state, the securities and exchange commission, or the United States
5 from engaging in or continuing an act, practice, or course of business
6 involving an aspect of a business involving securities, commodities, in-
7 vestments, franchises, insurance, banking, or finance;
- 8 (5) is the subject of an order, issued after notice and opportunity for
9 hearing by:
- 10 (A) The securities, depository institution, insurance, or other financial
11 services regulator of a state or by the securities and exchange commission
12 or other federal agency denying, revoking, barring, or suspending regis-
13 tration as a broker-dealer, agent, investment adviser, federal covered in-
14 vestment adviser, or investment adviser representative;
- 15 (B) the securities regulator of a state or by the securities and exchange
16 commission against a broker-dealer, agent, investment adviser, invest-
17 ment adviser representative, or federal covered investment adviser;
- 18 (C) the securities and exchange commission or by a self-regulatory
19 organization suspending or expelling the registrant from membership in
20 the self-regulatory organization;
- 21 (D) a court adjudicating a United States postal service fraud order;
- 22 (E) the insurance regulator of a state denying, suspending, or revok-
23 ing the registration of an insurance agent; or
- 24 (F) a depository institution regulator suspending or barring a person
25 from the depository institution business;
- 26 (6) is the subject of an adjudication or determination, after notice and
27 opportunity for hearing, by the securities and exchange commission, the
28 commodity futures trading commission, the federal trade commission, a
29 federal depository institution regulator, or a depository institution, insur-
30 ance, or other financial services regulator of a state that the person will-
31 fully violated the securities act of 1933, the securities exchange act of
32 1934, the investment advisers act of 1940, the investment company act
33 of 1940, or the commodity exchange act, the securities or commodities
34 law of a state, or a federal or state law under which a business involving
35 investments, franchises, insurance, banking, or finance is regulated;
- 36 (7) is insolvent, either because the person's liabilities exceed the per-
37 son's assets or because the person cannot meet the person's obligations
38 as they mature, but the administrator may not enter an order against an
39 applicant or registrant under this paragraph without a finding of insol-
40 vency as to the applicant or registrant;
- 41 (8) refuses to allow or otherwise impedes the administrator from con-
42 ducting an audit or inspection under section 28 (d), and amendments
43 thereto, refuses access to a registrant's office to conduct an audit or in-

1 spection under section 28 (d), and amendments thereto, fails to keep or
2 maintain sufficient records to permit an audit disclosing the condition of
3 the registrant's business, or fails willfully and without cause to comply
4 with a request for information by the administrator or person designated
5 by the administrator in conducting investigations or examinations under
6 this act;

7 (9) has failed to reasonably supervise an agent, investment adviser
8 representative, or other individual, if the agent, investment adviser rep-
9 resentative, or other individual was subject to the person's supervision
10 and committed a violation of this act or the predecessor act or a rule
11 adopted or order issued under this act or the predecessor act within the
12 previous 10 years;

13 (10) has not paid the proper filing fee within 30 days after having
14 been notified by the administrator of a deficiency, but the administrator
15 shall vacate an order under this paragraph when the deficiency is
16 corrected;

17 (11) after notice and opportunity for a hearing, has been found within
18 the previous 10 years:

19 (A) By a court of competent jurisdiction to have willfully violated the
20 laws of a foreign jurisdiction under which the business of securities, com-
21 modities, investment, franchises, insurance, banking, or finance is
22 regulated;

23 (B) to have been the subject of an order of a securities regulator of
24 a foreign jurisdiction denying, revoking, or suspending the right to engage
25 in the business of securities as a broker-dealer, agent, investment adviser,
26 investment adviser representative, or similar person; or

27 (C) to have been suspended or expelled from membership by or par-
28 ticipation in a securities exchange or securities association operating un-
29 der the securities laws of a foreign jurisdiction;

30 (12) is the subject of a cease and desist order issued by the securities
31 and exchange commission or issued under the securities, commodities,
32 investment, franchise, banking, finance, or insurance laws of a state;

33 (13) has engaged in dishonest or unethical practices in the securities,
34 commodities, investment, franchise, banking, finance, or insurance busi-
35 ness within the previous 10 years; or

36 (14) is not qualified on the basis of factors such as training, experi-
37 ence, and knowledge of the securities business. However, in the case of
38 an application by an agent for a broker-dealer that is a member of a self-
39 regulatory organization or by an individual for registration as an invest-
40 ment adviser representative, a denial order may not be based on this
41 paragraph if the individual has successfully completed all examinations
42 required by subsection (e). The administrator may require an applicant
43 for registration under section 19 or 21, and amendments thereto, who

1 has not been registered in a state within the two years preceding the filing
2 of an application in this state to successfully complete an examination.

3 (e) *Examinations.* A rule adopted or order issued under this act may
4 require that an examination, including an examination developed or ap-
5 proved by an organization of securities regulators, be successfully com-
6 pleted by a class of individuals or all individuals. An order issued under
7 this act may waive, in whole or in part, an examination as to an individual
8 and a rule adopted under this act may waive, in whole or in part, an
9 examination as to a class of individuals if the administrator determines
10 that the examination is not necessary or appropriate in the public interest
11 and for the protection of investors.

12 (f) *Summary process.* In accordance with the Kansas administrative
13 procedures act, the administrator may use summary or emergency pro-
14 ceedings to suspend or deny an application; restrict, condition, limit, or
15 suspend a registration; or censure, bar, or impose a civil penalty or cease
16 and desist order on a registrant before final determination of an admin-
17 istrative proceeding. If a hearing is not requested and none is ordered by
18 the administrator within 30 days after the date of service of the order,
19 the order becomes final by operation of law. If a hearing is requested or
20 ordered, the administrator, after notice of and opportunity for hearing to
21 each person subject to the order, may modify or vacate the order or
22 extend the order until final determination.

23 (g) *Procedural requirements.* (1) An order issued may not be issued
24 under this section, except under subsection (f), without:

25 (A) Appropriate notice to the applicant or registrant;

26 (B) opportunity for hearing; and

27 (C) findings of fact and conclusions of law in a record.

28 (2) Proceedings under this subsection shall be conducted in accord-
29 ance with the Kansas administrative procedures act.

30 (h) *Control person liability.* A person that controls, directly or indi-
31 rectly, a person not in compliance with this section may be disciplined by
32 order of the administrator under subsections (a) through (c) to the same
33 extent as the noncomplying person, unless the controlling person did not
34 know, and in the exercise of reasonable care could not have known, of
35 the existence of conduct that is a ground for discipline under this section.

36 (i) *Limit on investigation or proceeding.* The administrator may not
37 institute a proceeding under subsection (a), (b), or (c) based solely on
38 material facts actually known by the administrator unless an investigation
39 or the proceeding is instituted within one year after the administrator
40 actually acquires knowledge of the material facts.

41 New Sec. 30. It is unlawful for a person, in connection with the offer,
42 sale, or purchase of a security, directly or indirectly:

43 (1) To employ a device, scheme, or artifice to defraud;

1 (2) to make an untrue statement of a material fact, or omit to state a
2 material fact necessary in order to make a statement made, in the light
3 of the circumstances under which it is made, not misleading; or

4 (3) to engage in an act, practice, or course of business that operates
5 or would operate as a fraud or deceit upon another person.

6 New Sec. 31. (a) *Fraud in providing investment advice.* It is unlawful
7 for a person that advises others for compensation, either directly or in-
8 directly or through publications or writings, as to the value of securities
9 or the advisability of investing in, purchasing, or selling securities or that,
10 for compensation and as part of a regular business, issues or promulgates
11 analyses or reports relating to securities:

12 (1) To employ a device, scheme, or artifice to defraud another person;
13 or

14 (2) to engage in an act, practice, or course of business that operates
15 or would operate as a fraud or deceit upon another person.

16 (b) *Rules defining fraud.* A rule adopted under this act may define
17 an act, practice, or course of business of an investment adviser or an
18 investment adviser representative, other than a supervised person of a
19 federal covered investment adviser, as fraudulent, deceptive, or manip-
20 ulative, and prescribe means reasonably designed to prevent investment
21 advisers and investment adviser representatives, other than supervised
22 persons of a federal covered investment adviser, from engaging in acts,
23 practices, and courses of business defined as fraudulent, deceptive, or
24 manipulative.

25 (c) *Rules specifying contents of advisory contract.* A rule adopted un-
26 der this act may specify the contents of an investment advisory contract
27 entered into, extended, or renewed by an investment adviser.

28 New Sec. 32. (a) *Civil.* In a civil action or administrative proceeding
29 under this act, a person claiming an exemption, exception, preemption,
30 or exclusion has the burden to prove the applicability of the claim.

31 (b) *Criminal.* In a criminal proceeding under this act, a person claim-
32 ing an exemption, exception, preemption, or exclusion has the burden of
33 going forward with evidence of the claim.

34 New Sec. 33. (a) *Filing requirement.* Except as otherwise provided
35 in subsection (b), a rule adopted or order issued under this act may re-
36 quire the filing of a prospectus, pamphlet, circular, form letter, adver-
37 tisement, sales literature, or other advertising record relating to a security
38 or investment advice, addressed or intended for distribution to prospec-
39 tive investors, including clients or prospective clients of a person regis-
40 tered or required to be registered as an investment adviser under this act.

41 (b) *Excluded communications.* This section does not apply to sales
42 and advertising literature specified in subsection (a) which relates to a
43 federal covered security, a federal covered investment adviser, or a se-

1 curity or transaction exempted by section 6, 7, or 8, and amendments
2 thereto, except as required for a notice filing under section 6, 7, or 8, and
3 amendments thereto.

4 New Sec. 34. (a) It is unlawful for a person to make or cause to be
5 made, in a record that is used in an action or proceeding or filed under
6 this act, a statement that, at the time and in the light of the circumstances
7 under which it is made, is false or misleading in a material respect, or, in
8 connection with the statement, to omit to state a material fact necessary
9 to make the statement made, in the light of the circumstances under
10 which it was made, not false or misleading.

11 (b) It is unlawful for any person to **intentionally** influence, coerce,
12 manipulate or mislead any person in connection with financial statements
13 or appraisals to be used in the offer, sale or purchase of securities for the
14 purpose of rendering such financial statements or appraisals materially
15 misleading.

16 (c) It is unlawful for any person to:

17 (1) Alter, destroy, shred, mutilate, conceal, cover up or falsify any
18 record with the intent to impede, obstruct or influence any investigation
19 by the administrator or the administrator's designee;

20 (2) alter, destroy, shred, mutilate or conceal a record with the intent
21 to impair the object's integrity or availability for use in a proceeding be-
22 fore the administrator or a proceeding brought by the administrator; or

23 (3) take action harmful to a person with the intent to retaliate, in-
24 cluding, but not limited to, interference with lawful employment of such
25 person, for providing truthful information relating to a violation of this
26 act.

27 New Sec. 35. The filing of an application for registration, a registra-
28 tion statement, a notice filing under this act, the registration of a person,
29 the notice filing by a person, or the registration of a security under this
30 act does not constitute a finding by the administrator that a record filed
31 under this act is true, complete, and not misleading. The filing or regis-
32 tration or the availability of an exemption, exception, preemption, or ex-
33 clusion for a security or a transaction does not mean that the administrator
34 has passed upon the merits or qualifications of, or recommended or given
35 approval to, a person, security, or transaction. It is unlawful to make, or
36 cause to be made, to a purchaser, customer, client, or prospective cus-
37 tomer or client a representation inconsistent with this section.

38 New Sec. 36. A broker-dealer, agent, investment adviser, federal
39 covered investment adviser, or investment adviser representative is not
40 liable to another broker-dealer, agent, investment adviser, federal covered
41 investment adviser, or investment adviser representative for defamation
42 relating to a statement that is contained in a record required by the ad-
43 ministrator, or designee of the administrator, the securities and exchange

1 commission, or a self-regulatory organization, unless the person knew, or
 2 should have known at the time that the statement was made, that it was
 3 false in a material respect or the person acted in reckless disregard of the
 4 statement's truth or falsity.

5 New Sec. 37. (a) *Criminal penalties.* (1) Except as provided in sub-
 6 sections (a)(2) through (a)(4), a conviction for an intentional violation of
 7 this act, or a rule adopted or order issued under this act, except section
 8 33, and amendments thereto, or the notice filing requirements of section
 9 12 or 22, and amendments thereto, is a severity level 7, nonperson felony.
 10 An individual convicted of violating a rule or order under this act may be
 11 fined, but may not be imprisoned, if the individual did not have knowl-
 12 edge of the rule or order.

13 (2) A conviction for an intentional violation of section 30 or 31, and
 14 amendments thereto, is:

15 (A) a severity level ~~3~~ **4**, nonperson felony if the violation resulted in
 16 a loss of ~~\$1,000,000~~ **\$100,000** or more;

17 (B) a severity level ~~4~~, nonperson felony if the violation resulted in a
 18 loss of at least ~~\$100,000~~ but less than ~~\$1,000,000~~;

19 ~~(C)~~ a severity level 5, nonperson felony if the violation resulted in a
 20 loss of at least \$25,000 but less than \$100,000; or

21 ~~(D)~~ **(C)** a severity level ~~6~~ **7**, nonperson felony if the violation resulted
 22 in a loss of less than \$25,000.

23 (3) A conviction for an intentional violation of section 11, 18 (a), 18
 24 (c), 19 (a), 19 (d), 20 (a), 20 (c), 20 (d), 21 (a), or 21 (e), and amendments
 25 thereto, is:

26 (A) a severity level ~~4~~ **5**, nonperson felony if the violation resulted in
 27 a loss of ~~\$1,000,000~~ **\$100,000** or more;

28 (B) a severity level ~~5~~, nonperson felony if the violation resulted in a
 29 loss of at least ~~\$100,000~~ but less than ~~\$1,000,000~~;

30 ~~(C)~~ a severity level 6, nonperson felony if the violation resulted in a
 31 loss of at least \$25,000 but less than \$100,000; or

32 ~~(D)~~ **(C)** a severity level 7, nonperson felony if the violation resulted
 33 in a loss of less than \$25,000.

34 (4) A conviction for an intentional violation of section 34 or 35, and
 35 amendments thereto, is a severity level 8, nonperson felony.

36 **(5) Any violation of section 11, 18 (a), 18 (c), 19 (a), 19 (d), 20**
 37 **(a), 20 (c), 20 (d), 21 (a), 21 (e), 30 or 31, and amendments thereto,**
 38 **resulting in a loss of \$25,000 or more shall have a presumptive**
 39 **sentence of imprisonment regardless of its location on the sen-**
 40 **tencing grid block.**

41 (b) *Statute of Limitations.* ~~No~~ Except as provided by subsection
 42 **(9) of K.S.A. 21-3106, and amendments thereto, no prosecution for**
 43 **any crime under this act may be commenced more than 10 years**

1 **after the alleged violation if the victim is the Kansas public em-**
2 **ployees retirement system and no** prosecution for any **other** crime
3 under this act may be commenced more than five years after the alleged
4 violation, ~~except that no prosecution for any crime under this act may be~~
5 ~~commenced more than 10 years after the alleged violation if the victim~~
6 ~~is the Kansas public employees retirement system.~~ A prosecution is com-
7 menced when a complaint or information is filed, or an indictment re-
8 turned, and a warrant thereon is delivered to the sheriff or other officer
9 for execution, except that no prosecution shall be deemed to have been
10 commenced if the warrant so issued is not executed without unreasonable
11 delay.

12 (c) *Criminal reference.* The administrator may refer such evidence as
13 may be available concerning violations of this act or of any rules and
14 regulations or order hereunder to the attorney general or the proper
15 county or district attorney, who may in the prosecutor's discretion, with
16 or without such a reference, institute the appropriate criminal proceed-
17 ings under this act. Upon receipt of such reference, the attorney general
18 or the county attorney or district attorney may request that a duly em-
19 ployed attorney of the administrator prosecute or assist in the prosecution
20 of such violation or violations on behalf of the state. Upon approval of the
21 administrator, such employee shall be appointed a special prosecutor for
22 the attorney general or the county attorney or district attorney to serve
23 without compensation from the attorney general or the county attorney
24 or district attorney. Such special prosecutor shall have all the powers and
25 duties prescribed by law for assistant attorneys general or assistant county
26 or district attorneys and such other powers and duties as are lawfully
27 delegated to such special prosecutor by the attorney general or the county
28 attorney or district attorney. **If an attorney employed by the admin-**
29 **istrator acts as a special prosecutor, the administrator may pay**
30 **extradition and witness expenses associated with the case.**

31 (d) *No limitation on other criminal enforcement.* This act does not
32 limit the power of this state to punish a person for conduct that constitutes
33 a crime under other laws of this state.

34 New Sec. 38. (a) *Securities litigation uniform standards act.* En-
35 forcement of civil liability under this section is subject to the securities
36 litigation uniform standards act of 1998.

37 (b) *Liability of seller to purchaser.* A person is liable to the purchaser
38 if the person sells a security in violation of section 11, and amendments
39 thereto, or by means of an untrue statement of a material fact or an
40 omission to state a material fact necessary in order to make a statement
41 made, in light of the circumstances under which it is made, not mislead-
42 ing, the purchaser not knowing the untruth or omission and the seller not
43 sustaining the burden of proof that the seller did not know and, in the

1 exercise of reasonable care, could not have known of the untruth or omis-
2 sion. An action under this subsection is governed by the following:

3 (1) The purchaser may maintain an action to recover the considera-
4 tion paid for the security, less the amount of any income received on the
5 security, and interest at ~~15% per annum~~ from the date of the purchase
6 **at the rate provided for interest on judgments by K.S.A. 16-204,**
7 **and amendments thereto**, costs, and reasonable attorneys' fees deter-
8 mined by the court, upon the tender of the security, or for actual damages
9 as provided in paragraph (3).

10 (2) The tender referred to in paragraph (1) may be made any time
11 before entry of judgment. Tender requires only notice in a record of
12 ownership of the security and willingness to exchange the security for the
13 amount specified. A purchaser that no longer owns the security may re-
14 cover actual damages as provided in paragraph (3).

15 (3) Actual damages in an action arising under this subsection are the
16 amount that would be recoverable upon a tender less the value of the
17 security when the purchaser disposed of it, and interest at ~~15% per annum~~
18 **at the rate provided for interest on**
19 **judgments by K.S.A. 16-204, and amendments thereto**, costs, and
20 reasonable attorneys' fees determined by the court.

21 (c) *Liability of purchaser to seller.* A person is liable to the seller if
22 the person buys a security by means of an untrue statement of a material
23 fact or omission to state a material fact necessary in order to make the
24 statement made, in light of the circumstances under which it is made,
25 not misleading, the seller not knowing of the untruth or omission, and
26 the purchaser not sustaining the burden of proof that the purchaser did
27 not know, and in the exercise of reasonable care, could not have known
28 of the untruth or omission. An action under this subsection is governed
29 by the following:

30 (1) The seller may maintain an action to recover the security, and any
31 income received on the security, costs, and reasonable attorneys' fees
32 determined by the court, upon the tender of the purchase price, or for
33 actual damages as provided in paragraph (3).

34 (2) The tender referred to in paragraph (1) may be made any time
35 before entry of judgment. Tender requires only notice in a record of the
36 present ability to pay the amount tendered and willingness to take delivery
37 of the security for the amount specified. If the purchaser no longer owns
38 the security, the seller may recover actual damages as provided in para-
39 graph (3).

40 (3) Actual damages in an action arising under this subsection are the
41 difference between the price at which the security was sold and the value
42 the security would have had at the time of the sale in the absence of the
43 purchaser's conduct causing liability, and interest at ~~15% per annum~~ from

1 the date of the sale of the security **at the rate provided for interest on**
2 **judgments by K.S.A. 16-204, and amendments thereto**, costs, and
3 reasonable attorneys' fees determined by the court.

4 (d) *Liability of unregistered broker-dealer and agent.* A person acting
5 as a broker-dealer or agent that sells or buys a security in violation of
6 section 18 (a), 19 (a), or 35, and amendments thereto, is liable to the
7 customer. The customer, if a purchaser, may maintain an action for re-
8 covery of actual damages as specified in subsections (b)(1) through (3),
9 or, if a seller, for a remedy as specified in subsections (c)(1) through (3).

10 (e) *Liability of unregistered investment adviser and investment ad-*
11 *viser representative.* A person acting as an investment adviser or invest-
12 ment adviser representative that provides investment advice for compen-
13 sation in violation of section 20 (a), 21 (a), or 35, and amendments thereto,
14 is liable to the client. The client may maintain an action to recover the
15 consideration paid for the advice, interest ~~at 15% per annum~~ from the
16 date of payment **at the rate provided for interest on judgments by**
17 **K.S.A. 16-204, and amendments thereto**, costs, and reasonable attor-
18 neys' fees determined by the court.

19 (f) *Liability for investment advice.* A person that receives directly or
20 indirectly any consideration for providing investment advice to another
21 person and that employs a device, scheme, or artifice to defraud the other
22 person or engages in an act, practice, or course of business that operates
23 or would operate as a fraud or deceit on the other person, is liable to the
24 other person. An action under this subsection is governed by the
25 following:

26 (1) The person defrauded may maintain an action to recover the con-
27 sideration paid for the advice and the amount of any actual damages
28 caused by the fraudulent conduct, interest ~~at 15% per annum~~ from the
29 date of the fraudulent conduct **at the rate provided for interest on**
30 **judgments by K.S.A. 16-204, and amendments thereto**, costs, and
31 reasonable attorneys' fees determined by the court, less the amount of
32 any income received as a result of the fraudulent conduct.

33 (2) This subsection does not apply to a broker-dealer or its agents if
34 the investment advice provided is solely incidental to transacting business
35 as a broker-dealer and no special compensation is received for the in-
36 vestment advice.

37 (g) *Joint and several liability.* The following persons are liable jointly
38 and severally with and to the same extent as persons liable under subsec-
39 tions (b) through (f):

40 (1) A person that directly or indirectly controls a person liable under
41 subsections (b) through (f), unless the controlling person sustains the
42 burden of proof that the person did not know, and in the exercise of
43 reasonable care could not have known, of the existence of conduct by

- 1 reason of which the liability is alleged to exist;
- 2 (2) an individual who is a managing partner, executive officer, or di-
3 rector of a person liable under subsections (b) through (f), including an
4 individual having a similar status or performing similar functions, unless
5 the individual sustains the burden of proof that the individual did not
6 know and, in the exercise of reasonable care could not have known, of
7 the existence of conduct by reason of which the liability is alleged to exist;
- 8 (3) an individual who is an employee of or associated with a person
9 liable under subsections (b) through (f) and who materially aids the con-
10 duct giving rise to the liability, unless the individual sustains the burden
11 of proof that the individual did not know and, in the exercise of reasonable
12 care could not have known, of the existence of conduct by reason of which
13 the liability is alleged to exist; and
- 14 (4) a person that is a broker-dealer, agent, investment adviser, or
15 investment adviser representative that materially aids the conduct giving
16 rise to the liability under subsections (b) through (f), unless the person
17 sustains the burden of proof that the person did not know and, in the
18 exercise of reasonable care could not have known, of the existence of
19 conduct by reason of which liability is alleged to exist.
- 20 (h) *Right of contribution.* A person liable under this section has a
21 right of contribution as in cases of contract against any other person liable
22 under this section for the same conduct.
- 23 (i) *Survival of cause of action.* A cause of action under this section
24 survives the death of an individual who might have been a plaintiff or
25 defendant.
- 26 (j) *Statute of limitations.* A person may not obtain relief:
- 27 (1) Under subsection (b) for violation of section 11, and amendments
28 thereto, or under subsection (d) or (e), unless the action is instituted
29 within ~~one year~~ **two years** after the violation occurred; or
- 30 (2) under subsection (b), other than for violation of section 11, and
31 amendments thereto, or under subsection (c) or (f), unless the action is
32 instituted within the earlier of two years after discovery of the facts con-
33 stituting the violation or five years after the violation.
- 34 (k) *No enforcement of violative contract.* A person that has made, or
35 has engaged in the performance of, a contract in violation of this act or
36 a rule adopted or order issued under this act, or that has acquired a
37 purported right under the contract with knowledge of conduct by reason
38 of which its making or performance was in violation of this act, may not
39 base an action on the contract.
- 40 (l) *No contractual waiver.* A condition, stipulation, or provision bind-
41 ing a person purchasing or selling a security or receiving investment ad-
42 vice to waive compliance with this act or a rule adopted or order issued
43 under this act is void.

1 (m) *Survival of other rights or remedies.* The rights and remedies
2 provided by this act are in addition to any other rights or remedies that
3 may exist, but this act does not create a cause of action not specified in
4 this section or section 28 (e), and amendments thereto.

5 New Sec. 39. A purchaser, seller, or recipient of investment advice
6 may not maintain an action under section 38, and amendments thereto,
7 if:

8 (1) The purchaser, seller, or recipient of investment advice receives
9 in a record, before the action is instituted:

10 (A) An offer stating the respect in which liability under section 38,
11 and amendments thereto, may have arisen and fairly advising the pur-
12 chaser, seller, or recipient of investment advice of that person's rights in
13 connection with the offer, and any financial or other information neces-
14 sary to correct all material misrepresentations or omissions in the infor-
15 mation that was required by this act to be furnished to that person at the
16 time of the purchase, sale, or investment advice;

17 (B) if the basis for relief under this section may have been a violation
18 of section 38 (b), and amendments thereto, an offer to repurchase the
19 security for cash, payable on delivery of the security, equal to the consid-
20 eration paid, and interest ~~at 15% per annum~~ from the date of the purchase
21 **at the rate provided for interest on judgments by K.S.A. 16-204,**
22 **and amendments thereto**, less the amount of any income received on
23 the security, or, if the purchaser no longer owns the security, an offer to
24 pay the purchaser upon acceptance of the offer damages in an amount
25 that would be recoverable upon a tender, less the value of the security
26 when the purchaser disposed of it, and interest ~~at 15% per annum~~ from
27 the date of the purchase **at the rate provided for interest on judg-**
28 **ments by K.S.A. 16-204, and amendments thereto** in cash equal to
29 the damages computed in the manner provided in this subsection;

30 (C) if the basis for relief under this section may have been a violation
31 of section 38 (c), and amendments thereto, an offer to tender the security,
32 on payment by the seller of an amount equal to the purchase price paid,
33 less income received on the security by the purchaser and interest ~~at 15%~~
34 ~~per annum~~ from the date of the sale **at the rate provided for interest**
35 **on judgments by K.S.A. 16-204, and amendments thereto**; or if the
36 purchaser no longer owns the security, an offer to pay the seller upon
37 acceptance of the offer, in cash, damages in the amount of the difference
38 between the price at which the security was purchased and the value the
39 security would have had at the time of the purchase in the absence of the
40 purchaser's conduct that may have caused liability and interest ~~at 15%~~
41 ~~per annum~~ from the date of the sale **at the rate provided for interest**
42 **on judgments by K.S.A. 16-204, and amendments thereto**;

43 (D) if the basis for relief under this section may have been a violation

1 of section 38 (d), and amendments thereto; and if the customer is a pur-
2 chaser, an offer to pay as specified in subparagraph (B); or, if the customer
3 is a seller, an offer to tender or to pay as specified in subparagraph (C);

4 (E) if the basis for relief under this section may have been a violation
5 of section 38 (e), and amendments thereto, an offer to reimburse in cash
6 the consideration paid for the advice and interest ~~at 15% per annum~~ from
7 the date of payment **at the rate provided for interest on judgments**
8 **by K.S.A. 16-204, and amendments thereto;** or

9 (F) if the basis for relief under this section may have been a violation
10 of section 38 (f), and amendments thereto, an offer to reimburse in cash
11 the consideration paid for the advice, the amount of any actual damages
12 that may have been caused by the conduct, and interest ~~at 15% per annum~~
13 from the date of the violation causing the loss **at the rate provided for**
14 **interest on judgments by K.S.A. 16-204, and amendments thereto;**

15 (2) the offer under paragraph (1) states that it must be accepted by
16 the purchaser, seller, or recipient of investment advice within 30 days
17 after the date of its receipt by the purchaser, seller, or recipient of in-
18 vestment advice or any shorter period, of not less than three days, that
19 the administrator, by order, specifies;

20 (3) the offeror has the present ability to pay the amount offered or
21 to tender the security under paragraph (1);

22 (4) the offer under paragraph (1) is delivered to the purchaser, seller,
23 or recipient of investment advice, or sent in a manner that ensures receipt
24 by the purchaser, seller, or recipient of investment advice; and

25 (5) the purchaser, seller, or recipient of investment advice that ac-
26 cepts the offer under paragraph (1) in a record within the period specified
27 under paragraph (2) is paid in accordance with the terms of the offer.

28 New Sec. 40. (a) *Administration.* (1) This act shall be administered
29 by the securities commissioner of Kansas.

30 (2) All fees herein provided for shall be collected by the administra-
31 tor. All salaries and expenses necessarily incurred in the administration
32 of this act shall be paid from the securities act fee fund.

33 (3) The administrator shall remit all moneys received from all fees,
34 charges, deposits or penalties which have been collected under this Act
35 or other laws of this state regulating the issuance, sale or disposal of
36 securities or regulating dealers in this state or under the uniform land
37 sales practices act, to the state treasurer at least monthly. Upon receipt
38 of any such remittance, the state treasurer shall deposit the entire amount
39 thereof in the state treasury. In accordance with subsection (a) of K.S.A.
40 75-3170, and amendments thereto, 20% of each such deposit shall be
41 credited to the state general fund and, except as provided in subsection
42 (d), the balance shall be credited to the securities act fee fund.

43 (4) On the last day of each fiscal year, the director of accounts and

1 reports shall transfer from the securities act fee fund to the state general
2 fund any remaining unencumbered amount in the securities act fee fund
3 exceeding \$50,000 so that the beginning unencumbered balance in the
4 securities act fee fund on the first day of each fiscal year is \$50,000. All
5 expenditures from the securities act fee fund shall be made in accordance
6 with appropriation acts upon warrants of the director of accounts and
7 reports issued pursuant to vouchers approved by the administrator or by
8 a person or persons designated by the administrator.

9 (5) All amounts transferred from the securities act fee fund to the
10 state general fund under paragraph (4) are to reimburse the state general
11 fund for accounting, auditing, budgeting, legal, payroll, personnel and
12 purchasing services and any other governmental services which are per-
13 formed on behalf of the state agency involved by other state agencies
14 which receive appropriations from the state general fund to provide such
15 services. Such reimbursements are in addition to those authorized by
16 K.S.A. 75-3170a and amendments thereto.

17 (b) *Prohibited conduct.* (1) It is unlawful for the administrator or an
18 officer, employee, or designee of the administrator to use for personal
19 benefit or the benefit of others records or other information obtained by
20 or filed with the administrator that are not public under section 46 (b),
21 and amendments thereto. This act does not authorize the administrator
22 or an officer, employee, or designee of the administrator to disclose the
23 record or information, except in accordance with section 41, 46 (c), or
24 47, and amendments thereto.

25 (2) Neither the administrator nor any employee of the administrator
26 shall be interested as an officer, director, or stockholder in securing any
27 authorization to sell securities under the provisions of this act.

28 (c) *No privilege or exemption created or diminished.* This act does
29 not create or diminish a privilege or exemption that exists at common
30 law, by statute or rule, or otherwise.

31 (d) *Investor education.* (1) The administrator may develop and im-
32 plement investor education initiatives to inform the public about investing
33 in securities, with particular emphasis on the prevention and detection of
34 securities fraud. In developing and implementing these initiatives, the
35 administrator may collaborate with public and nonprofit organizations
36 with an interest in investor education. The administrator may accept a
37 grant or donation from a person that is not affiliated with the securities
38 industry or from a nonprofit organization, regardless of whether the or-
39 ganization is affiliated with the securities industry, to develop and imple-
40 ment investor education initiatives. This subsection does not authorize
41 the administrator to require participation or monetary contributions of a
42 registrant in an investor education program.

43 (2) There is hereby established in the state treasury the investor ed-

1 ucation fund. Such fund shall be administered by the administrator for
2 the purposes described in subsection (d)(1) **and for the education of**
3 **registrants, including official hospitality.** Moneys collected as civil
4 penalties under this act shall be credited to the investor education fund.
5 The administrator may also receive payments designated to be credited
6 to the investor education fund as a condition in settlements of cases aris-
7 ing out of investigations or examinations. All expenditures from the in-
8 vestor education fund shall be made in accordance with appropriation
9 acts upon warrants of the director of accounts and reports issued pursuant
10 to vouchers approved by the administrator or by a person or persons
11 designated by the administrator. **Five Two** years after the effective date
12 of this act, the administrator shall conduct a review and submit a report
13 to the governor and the legislature concerning the expenditures from the
14 investor education fund and the results achieved from the investor edu-
15 cation program.

16 New Sec. 41. (a) *Authority to investigate.* The administrator may:

17 (1) Conduct public or private investigations within or outside of this
18 state which the administrator considers necessary or appropriate to de-
19 termine whether a person has violated, is violating, or is about to violate
20 this act or a rule adopted or order issued under this act, or to aid in the
21 enforcement of this act or in the adoption of rules and forms under this
22 act;

23 (2) require or permit a person to testify, file a statement, or produce
24 a record, under oath or otherwise as the administrator determines, as to
25 all the facts and circumstances concerning a matter to be investigated or
26 about which an action or proceeding is to be instituted;

27 (3) publish a record concerning an action, proceeding, or an investi-
28 gation under, or a violation of, this act or a rule adopted or order issued
29 under this act if the administrator determines it is necessary or appro-
30 priate in the public interest and for the protection of investors; and

31 (4) appoint special investigators to aid in investigations conducted
32 pursuant to this act. Such special investigators shall have authority to make
33 arrests, serve subpoenas and all other process, conduct searches and sei-
34 zures, store evidence, and carry firearms, concealed or otherwise while
35 investigating violations of this act and to generally enforce all the criminal
36 laws of the state as violations of those laws are encountered by such special
37 investigators. The director of police training at the law enforcement train-
38 ing center is authorized to offer and carry out a special course of instruc-
39 tion for special investigators performing law enforcement duties under
40 authority of this subsection. Such special investigators shall not carry fire-
41 arms without having first successfully completed such special law enforce-
42 ment training course.

43 (b) *Administrator powers to investigate.* For the purpose of an in-

1 vestigation under this act, the administrator or its designated officer may
2 administer oaths and affirmations, subpoena witnesses, seek compulsion
3 of attendance, take evidence, require the filing of statements, and require
4 the production of any records that the administrator considers relevant
5 or material to the investigation.

6 (c) *Procedure and remedies for noncompliance.* If a person does not
7 appear or refuses to testify, file a statement, produce records, or otherwise
8 does not obey a subpoena as required by the administrator under this act,
9 the administrator may apply to any court of competent jurisdiction or a
10 court of another state to enforce compliance. The court may:

- 11 (1) Hold the person in contempt;
- 12 (2) order the person to appear before the administrator;
- 13 (3) order the person to testify about the matter under investigation
14 or in question;
- 15 (4) order the production of records;
- 16 (5) grant injunctive relief, including restricting or prohibiting the of-
17 fer or sale of securities or the providing of investment advice;
- 18 (6) impose a civil penalty of not greater than ~~\$10,000~~ **\$25,000** for
19 each violation; and
- 20 (7) grant any other necessary or appropriate relief.

21 (d) *Application for relief.* This section does not preclude a person
22 from applying to any court of competent jurisdiction or a court of another
23 state for relief from a request to appear, testify, file a statement, produce
24 records, or obey a subpoena.

25 (e) *Use immunity procedure.* An individual is not excused from at-
26 tending, testifying, filing a statement, producing a record or other evi-
27 dence, or obeying a subpoena of the administrator under this act or in an
28 action or proceeding instituted by the administrator under this act on the
29 ground that the required testimony, statement, record, or other evidence,
30 directly or indirectly, may tend to incriminate the individual or subject
31 the individual to a criminal fine, penalty, or forfeiture. If the individual
32 refuses to testify, file a statement, or produce a record or other evidence
33 on the basis of the individual's privilege against self-incrimination, the
34 administrator may compel the testimony, the filing of the statement, the
35 production of the record, or the giving of other evidence. The testimony,
36 record, or other evidence compelled under such an order may not be
37 used, directly or indirectly, against the individual in a criminal case, except
38 in a prosecution for perjury or contempt or otherwise failing to comply
39 with the order.

40 (f) *Assistance to securities regulator of another jurisdiction.* At the
41 request of the securities regulator of another state or a foreign jurisdic-
42 tion, the administrator may provide assistance if the requesting regulator
43 states that it is conducting an investigation to determine whether a person

1 has violated, is violating, or is about to violate a law or rule of the other
2 state or foreign jurisdiction relating to securities matters that the request-
3 ing regulator administers or enforces. The administrator may provide the
4 assistance by using the authority to investigate and the powers conferred
5 by this section as the administrator determines is necessary or appropri-
6 ate. The assistance may be provided without regard to whether the con-
7 duct described in the request would also constitute a violation of this act
8 or other law of this state if occurring in this state. In deciding whether to
9 provide the assistance, the administrator may consider whether the re-
10 questing regulator is permitted and has agreed to provide assistance re-
11 ciprocally within its state or foreign jurisdiction to the administrator on
12 securities matters when requested; whether compliance with the request
13 would violate or prejudice the public policy of this state; and the availa-
14 bility of resources and employees of the administrator to carry out the
15 request for assistance.

16 New Sec. 42. (a) *Civil action instituted by administrator.* If the ad-
17 ministrator believes that a person has engaged, is engaging, or is about
18 to engage in an act, practice, or course of business constituting a violation
19 of this act or a rule adopted or order issued under this act or that a person
20 has, is, or is about to engage in an act, practice, or course of business that
21 materially aids a violation of this act or a rule adopted or order issued
22 under this act, the administrator may maintain an action in any court of
23 competent jurisdiction to enjoin the act, practice, or course of business
24 and to enforce compliance with this act or a rule adopted or order issued
25 under this act.

26 (b) *Relief available.* In an action under this section and on a proper
27 showing, the court may:

28 (1) Issue a permanent or temporary injunction, restraining order, or
29 declaratory judgment;

30 (2) order other appropriate or ancillary relief, which may include:

31 (A) An asset freeze, accounting, writ of attachment, writ of general
32 or specific execution, and appointment of a receiver or conservator, that
33 may be the administrator, for the defendant or the defendant's assets;

34 (B) ordering the administrator to take charge and control of a de-
35 fendant's property, including investment accounts and accounts in a de-
36 pository institution, rents, and profits; to collect debts; and to acquire and
37 dispose of property;

38 (C) imposing a civil penalty up to ~~\$10,000~~ **per 25,000 for each** vi-
39 **olation. If any person is found to have violated any provision of this**
40 **act, and such violation is committed against elder or disabled per-**
41 **sons, as defined in K.S.A. 50-676, and amendments thereto, in ad-**
42 **dition to any civil penalty otherwise provided by law, the court may**
43 **impose an additional penalty not to exceed \$15,000 for each such**

1 **violation. The total penalty against a person shall not exceed**
2 **\$1,000,000;**

3 (D) an order of rescission, restitution, or disgorgement directed to a
4 person that has engaged in an act, practice, or course of business consti-
5 tuting a violation of this act or the predecessor act or a rule adopted or
6 order issued under this act or the predecessor act; and

7 (E) ordering the payment of prejudgment and postjudgment interest;
8 or

9 (3) order such other relief as the court considers appropriate.

10 (c) *No bond required.* The administrator may not be required to post
11 a bond in an action or proceeding under this act.

12 New Sec. 43. (a) *Cease and desist order.* If the administrator finds
13 that a person has engaged, is engaging, or is about to engage in an act,
14 practice, or course of business constituting a violation of this act or a rule
15 adopted or order issued under this act or that a person has materially
16 aided, is materially aiding, or is about to materially aid an act, practice,
17 or course of business constituting a violation of this act or a rule adopted
18 or order issued under this act, the administrator may:

19 (1) Issue an order directing the person to cease and desist from en-
20 gaging in the act, practice, or course of business or to take other action
21 necessary or appropriate to comply with this act;

22 (2) issue an order denying, suspending, revoking, or conditioning the
23 exemptions for a broker-dealer under section 18 (b)(1)(D) or (F), and
24 amendments thereto, or an investment adviser under section 20 (b)(1)(C),
25 and amendments thereto; or

26 (3) issue an order under section 9, and amendments thereto.

27 (b) *Additional administrative sanctions and remedies.* If the admin-
28 istrator finds, by written findings of fact and conclusions of law, that a
29 person has violated this act or a rule adopted or order issued under this
30 act, the administrator, in addition to any other power granted under this
31 act, may enter an order against the ~~registrant~~ **person** containing one or
32 more of the following sanctions or remedies:

33 (1) A civil penalty up to ~~a maximum of \$10,000~~ **\$25,000** for each
34 violation. **If any person is found to have violated any provision of**
35 **this act, and such violation is committed against elder or disabled**
36 **persons, as defined in K.S.A. 50-676, and amendments thereto, in**
37 **addition to any civil penalty otherwise provided by law, the ad-**
38 **ministrator may impose an additional penalty not to exceed**
39 **\$15,000 for each such violation. The total penalty against a person**
40 **shall not exceed \$1,000,000;**

41 (2) a bar or suspension from association with a broker-dealer or in-
42 vestment adviser registered in this state;

43 (3) an order requiring the person to pay restitution for any loss or

1 disgorge any profits arising from the violation, including, in the admin-
2 istrator's discretion, the assessment of interest ~~not to exceed 15% per~~
3 ~~annum~~ from the date of the violation **at the rate provided for interest**
4 **on judgments by K.S.A. 16-204, and amendments thereto;** or

5 (4) an order charging the person with the actual cost of the investi-
6 gation or proceeding.

7 (c) *Procedures for orders.* (1) An order under subsection (b) shall not
8 be entered unless the administrator first provides notice and opportunity
9 for hearing in accordance with the provisions of the Kansas administrative
10 procedures act.

11 (2) An order under subsection (a) is effective on the date of issuance.
12 Upon issuance of the order, the administrator shall promptly serve each
13 person subject to the order with a copy of the order. The order must
14 include a statement of the reasons for the order and notice that upon
15 receipt of a written request the matter will be set for a hearing which
16 shall be conducted in accordance with the provisions of the Kansas ad-
17 ministrative procedures act. If a person subject to the order does not
18 request a hearing and none is ordered by the administrator within 30 days
19 after the date of service of the order, the order becomes final as to that
20 person by operation of law. If a hearing is requested or ordered, the
21 administrator, after notice of and opportunity for hearing to each person
22 subject to the order, may modify or vacate the order or extend it until
23 final determination.

24 (3) An order under subsection (a) may contain a notice of the admin-
25 istrator's intent to seek administrative sanctions or remedies under sub-
26 section (b). If the person subject to the order does not request a hearing
27 and none is ordered by the administrator within 30 days after service of
28 the order, the administrator may modify the order to include sanctions
29 or remedies under subsection (b). If a hearing is requested or ordered,
30 the administrator, after notice and opportunity for hearing, shall by writ-
31 ten findings of fact and conclusions of law vacate, modify, or make per-
32 manent the order, and the administrator may modify the order to include
33 sanctions or remedies under subsection (b).

34 (d) *Filing of certified final order with court; effect of filing.* If a petition
35 for judicial review of a final order is not filed in accordance with section
36 48, and amendments thereto, the administrator may file a certified copy
37 of the final order with the clerk of a court of competent jurisdiction. The
38 order so filed has the same effect as a judgment of the court and may be
39 recorded, enforced, or satisfied in the same manner as a judgment of the
40 court.

41 (e) *Enforcement by court; further civil penalty.* If a person does not
42 comply with an order under this section, the administrator may petition
43 a court of competent jurisdiction to enforce the order. The court may not

1 require the administrator to post a bond in an action or proceeding under
2 this section. If the court finds, after service and opportunity for hearing,
3 that the person was not in compliance with the order, the court may
4 adjudge the person in civil contempt of the order. The court may impose
5 a further civil penalty against the person for contempt in an amount not
6 greater than \$25,000 for each violation and may grant any other relief the
7 court determines is just and proper in the circumstances.

8 New Sec. 44. (a) *Issuance and adoption of forms, orders, and rules.*
9 The administrator may:

10 (1) Issue forms and orders and, after notice and comment, may adopt
11 and amend rules necessary or appropriate to carry out this act and may
12 repeal rules, including rules and forms governing registration statements,
13 applications, notice filings, reports, and other records;

14 (2) by rule, define terms, whether or not used in this act, but those
15 definitions may not be inconsistent with this act; and

16 (3) by rule, classify securities, persons, and transactions and adopt
17 different requirements for different classes.

18 (b) *Findings and cooperation.* Under this act, a rule or form may not
19 be adopted or amended, or an order issued or amended, unless the ad-
20 ministrator finds that the rule, form, order, or amendment is necessary
21 or appropriate in the public interest or for the protection of investors and
22 is consistent with the purposes intended by this act. In adopting, amend-
23 ing, and repealing rules and forms, section 47, and amendments thereto,
24 applies in order to achieve uniformity among the states and coordination
25 with federal laws in the form and content of registration statements, ap-
26 plications, reports, and other records, including the adoption of uniform
27 rules, forms, and procedures.

28 (c) *Financial statements.* Subject to section 15(h) of the securities
29 exchange act and section 222 of the investment advisers act of 1940, the
30 administrator may require that a financial statement filed under this act
31 be prepared in accordance with generally accepted accounting principles
32 in the United States and comply with other requirements specified by
33 rule adopted or order issued under this act. A rule adopted or order issued
34 under this act may establish:

35 (1) Subject to section 15(h) of the securities exchange act and section
36 222 of the investment advisers act of 1940, the form and content of fi-
37 nancial statements required under this act;

38 (2) whether unconsolidated financial statements must be filed; and

39 (3) whether required financial statements must be audited by an in-
40 dependent certified public accountant.

41 (d) *Interpretative opinions.* The administrator may provide interpre-
42 tative opinions or issue determinations that the administrator will not
43 institute a proceeding or an action under this act against a specified per-

1 son for engaging in a specified act, practice, or course of business if the
2 determination is consistent with this act. A rule adopted or order issued
3 under this act may establish a reasonable charge for interpretative opin-
4 ions or determinations that the administrator will not institute an action
5 or a proceeding under this act.

6 (e) *Effect of compliance.* No provision of this act imposing any liability
7 applies to any act done or omitted in good faith in conformity with any
8 rules and regulations, form, or order of the commissioner, notwithstand-
9 ing that the rules and regulations, form or order may later be amended,
10 revoked or rescinded or be determined by judicial or other authority to
11 be invalid for any reason.

12 (f) *Presumption for public hearings.* A hearing in an administrative
13 proceeding under this act must be conducted in public unless the admin-
14 istrator for good cause consistent with this act determines that the hearing
15 will not be so conducted.

16 New Sec. 45. (a) *Public register of filings.* The administrator shall
17 maintain, or designate a person to maintain, a register of applications for
18 registration of securities; registration statements; notice filings; applica-
19 tions for registration of broker-dealers, agents, investment advisers, and
20 investment adviser representatives; notice filings by federal covered in-
21 vestment advisers that are or have been effective under this act or the
22 predecessor act; notices of claims of exemption from registration or notice
23 filing requirements contained in a record; orders issued under this act or
24 the predecessor act; and interpretative opinions or no action determina-
25 tions issued under this act.

26 (b) *Public availability.* The administrator shall make all rules, forms,
27 interpretative opinions, and orders available to the public.

28 (c) *Copies of public records.* The administrator shall furnish a copy
29 of a record that is a public record or a certification that the public record
30 does not exist to a person that so requests. A rule adopted under this act
31 may establish a reasonable charge for furnishing the record or certifica-
32 tion. A copy of the record certified or a certificate by the administrator
33 of a record's nonexistence is prima facie evidence of a record or its
34 nonexistence.

35 New Sec. 46. (a) *Presumption of public records.* Except as otherwise
36 provided in subsection (b), records obtained by the administrator or filed
37 under this act, including a record contained in or filed with a registration
38 statement, application, notice filing, or report, are public records and are
39 available for public examination in accordance with the open records act.

40 (b) *Nonpublic records.* The following records are not public records
41 and are not available for public examination under subsection (a):

42 (1) a record obtained by the administrator in connection with an audit
43 or inspection under section 28 (d), and amendments thereto, or an in-

- 1 vestigation under section 41, and amendments thereto;
- 2 (2) a part of a record filed in connection with a registration statement
3 under sections 11 and 13 through 15, and amendments thereto, or a
4 record under section 28 (d), and amendments thereto, that contains trade
5 secrets or confidential information if the person filing the registration
6 statement or report has asserted a claim of confidentiality or privilege that
7 is authorized by law;
- 8 (3) a record that is not required to be provided to the administrator
9 or filed under this act and is provided to the administrator only on the
10 condition that the record will not be subject to public examination or
11 disclosure;
- 12 (4) a nonpublic record received from a person specified in section 47
13 (a), and amendments thereto; and
- 14 (5) any social security number, residential address unless used as a
15 business address, and residential telephone number contained in a record
16 that is filed.
- 17 (c) *Administrator discretion to disclose.* If disclosure is for the pur-
18 pose of a civil, administrative, or criminal investigation, action, or pro-
19 ceeding or to a person specified in section 47(a), and amendments
20 thereto, the administrator may disclose a record obtained in connection
21 with an audit or inspection under section 28 (d), and amendments
22 thereto, or a record obtained in connection with an investigation under
23 section 41, and amendments thereto.
- 24 New Sec. 47. (a) *Objective of uniformity.* The administrator may co-
25 operate, coordinate, consult, and, subject to section 46, and amendments
26 thereto, share records and information with the securities regulator of
27 another state, Canada, a Canadian province or territory, a foreign juris-
28 diction, the securities and exchange commission, the United States de-
29 partment of justice, the commodity futures trading commission, the fed-
30 eral trade commission, the securities investor protection corporation, a
31 self-regulatory organization, a national or international organization of
32 securities regulators, a federal or state banking or insurance regulator,
33 and a governmental law enforcement or regulatory agency to effectuate
34 greater uniformity in securities matters among the federal government,
35 self-regulatory organizations, states, and foreign governments.
- 36 (b) *Policies to consider.* In cooperating, coordinating, consulting, and
37 sharing records and information under this section and in acting by rule,
38 order, or waiver under this act, the administrator, in the administrator's
39 discretion, shall take into consideration in carrying out the public interest
40 the following general policies:
- 41 (1) Maximizing effectiveness of regulation for the protection of
42 investors;
- 43 (2) maximizing uniformity in federal and state regulatory standards;

1 and

2 (3) minimizing burdens on the business of capital formation, without
3 adversely affecting essentials of investor protection.

4 (c) *Subjects for cooperation.* The cooperation, coordination, consul-
5 tation, and sharing of records and information authorized by this section
6 includes:

7 (1) Establishing or employing one or more designees as a central
8 depository for registration and notice filings under this act and for records
9 required or allowed to be maintained under this act;

10 (2) developing and maintaining uniform forms;

11 (3) conducting a joint examination or investigation;

12 (4) holding a joint administrative hearing;

13 (5) instituting and prosecuting a joint civil or administrative
14 proceeding;

15 (6) sharing and exchanging personnel;

16 (7) coordinating registrations under sections 13, 14 and 18 through
17 21, and amendments thereto, and exemptions under section 8, and
18 amendments thereto;

19 (8) sharing and exchanging records, subject to section 46, and amend-
20 ments thereto;

21 (9) formulating rules, statements of policy, guidelines, forms, and in-
22 terpretative opinions and releases;

23 (10) formulating common systems and procedures;

24 (11) notifying the public of proposed rules, forms, statements of pol-
25 icy, and guidelines;

26 (12) attending conferences and other meetings among securities reg-
27 ulators, which may include representatives of governmental and private
28 sector organizations involved in capital formation, deemed necessary or
29 appropriate to promote or achieve uniformity; and

30 (13) developing and maintaining a uniform exemption from registra-
31 tion for small issuers, and taking other steps to reduce the burden of
32 raising investment capital by small businesses.

33 New Sec. 48. A final order issued by the administrator under this act
34 is subject to judicial review in accordance with the provisions of the act
35 for judicial review and civil enforcement of agency actions.

36 New Sec. 49. (a) *Sales and offers to sell.* Sections 11, 12, 18 (a), 19
37 (a), 20 (a), 21 (a), 30, 35, 38, and 39, and amendments thereto, do not
38 apply to a person that sells or offers to sell a security unless the offer to
39 sell or the sale is made in this state or the offer to purchase or the purchase
40 is made and accepted in this state.

41 (b) *Purchases and offers to purchase.* Sections 18 (a), 19 (a), 20 (a),
42 21 (a), 30, 35, 38, and 39, and amendments thereto, do not apply to a
43 person that purchases or offers to purchase a security unless the offer to

1 purchase or the purchase is made in this state or the offer to sell or the
2 sale is made and accepted in this state.

3 (c) *Offers in this State.* For the purpose of this section, an offer to
4 sell or to purchase a security is made in this state, whether or not either
5 party is then present in this state, if the offer:

6 (1) Originates from within this state; or

7 (2) is directed by the offeror to a place in this state and received at
8 the place to which it is directed.

9 (d) *Acceptances in this State.* For the purpose of this section, an offer
10 to purchase or to sell is accepted in this state, whether or not either party
11 is then present in this state, if the acceptance:

12 (1) Is communicated to the offeror in this state and the offeree rea-
13 sonably believes the offeror to be present in this state and the acceptance
14 is received at the place in this state to which it is directed; and

15 (2) has not previously been communicated to the offeror, orally or in
16 a record, outside this state.

17 (e) *Publications, radio, television or electronic communications.* **An**
18 **offer to sell or to purchase is not made in this state when a pub-**
19 **lisher circulates or there is circulated on the publisher's behalf in**
20 **this state a bona fide newspaper or other publication of general,**
21 **regular and paid circulation that is not published in this state, or**
22 **that is published in this state but has had more than two-thirds of**
23 **its circulation outside this state during the previous 12 months or**
24 **when a radio or television program or other electronic communi-**
25 **cation originating outside this state is received in this state. A radio**
26 **or television program, or other electronic communication is con-**
27 **sidered as having originated in this state if either the broadcast**
28 **studio or the originating source of transmission is located in this**
29 **state, unless:**

30 (1) **The program or communication is syndicated and distrib-**
31 **uted from outside this state for redistribution to the general public**
32 **in this state;**

33 (2) **the program or communication is supplied by a radio, tel-**
34 **evision or other electronic network with the electronic signal orig-**
35 **inating from outside this state for redistribution to the general**
36 **public in this state;**

37 (3) **the program or communication is an electronic communi-**
38 **cation that originates outside this state and is captured for redis-**
39 **tribution to the general public in this state by a community an-**
40 **tenna or cable, radio, cable television or other electronic system;**
41 **or**

42 (4) **the program or communication consists of an electronic**
43 **communication that originates in this state, but which is not in-**

1 **tended for distribution to the general public in this state.**

2 (f) *Investment advice and misrepresentations.* Sections 20 (a), 21 (a),
3 22 (a), 31, 34, and 35, and amendments thereto, apply to a person if the
4 person engages in an act, practice, or course of business instrumental in
5 effecting prohibited or actionable conduct in this state, whether or not
6 either party is then present in this state.

7 New Sec. 50. (a) *Signed consent to service of process.* A consent to
8 service of process required by this act must be signed and filed in the
9 form required by a rule or order under this act. A consent appointing the
10 administrator the person's agent for service of process in a noncriminal
11 action or proceeding against the person, or the person's successor or per-
12 sonal representative under this act or a rule adopted or order issued under
13 this act after the consent is filed, has the same force and validity as if the
14 service were made personally on the person filing the consent. A person
15 that has filed a consent complying with this subsection in connection with
16 a previous application for registration or notice filing need not file an
17 additional consent.

18 (b) *Conduct constituting appointment of agent for service.* If a per-
19 son, including a nonresident of this state, engages in an act, practice, or
20 course of business prohibited or made actionable by this act or a rule
21 adopted or order issued under this act and the person has not filed a
22 consent to service of process under subsection (a), the act, practice, or
23 course of business constitutes the appointment of the administrator as
24 the person's agent for service of process in a noncriminal action or pro-
25 ceeding against the person or the person's successor or personal
26 representative.

27 (c) *Procedure for service of process.* Service under subsection (a) or
28 (b) may be made by providing a copy of the process to the office of the
29 administrator, but it is not effective unless:

30 (1) The plaintiff, which may be the administrator, promptly sends
31 notice of the service and a copy of the process, return receipt requested,
32 to the defendant or respondent at the address set forth in the consent to
33 service of process or, if a consent to service of process has not been filed,
34 at the last known address, or takes other reasonable steps to give notice;
35 and

36 (2) the plaintiff files an affidavit of compliance with this subsection
37 in the action or proceeding on or before the return day of the process, if
38 any, or within the time that the court, or the administrator in a proceeding
39 before the administrator, allows.

40 (d) *Service in administrative proceedings or civil actions by admin-
41 istrator.* Service pursuant to subsection (c) may be used in a proceeding
42 before the administrator or by the administrator in a civil action in which
43 the administrator is the moving party. In an administrative proceeding

1 under this act, service of process may also be made in accordance with
2 the Kansas administrative procedure act.

3 (e) *Opportunity to defend.* If process is served under subsection (c),
4 the court, or the administrator in a proceeding before the administrator,
5 shall order continuances as are necessary or appropriate to afford the
6 defendant or respondent reasonable opportunity to defend.

7 New Sec. 51. If any provision of this act or its application to any
8 person or circumstances is held invalid, the invalidity does not affect other
9 provisions or applications of this act that can be given effect without the
10 invalid provision or application, and to this end the provisions of this act
11 are severable.

12 New Sec. 52. The Kansas securities act, K.S.A. 17-1252 through 17-
13 1275, is hereby repealed subject to the following limitations:

14 (a) *Applicability of predecessor act to pending proceedings and exist-*
15 *ing rights.* The predecessor act exclusively governs all actions or pro-
16 ceedings that are pending on the effective date of this act or may be
17 instituted on the basis of conduct occurring before the effective date of
18 this act, but a civil action may not be maintained to enforce any liability
19 under the predecessor act unless instituted within any period of limitation
20 that applied when the cause of action accrued or within five years after
21 the effective date of this act, whichever is earlier.

22 (b) *Continued effectiveness under predecessor act.* All effective reg-
23 istrations under the predecessor act, all administrative orders relating to
24 the registrations, rules, statements of policy, interpretative opinions, de-
25 claratory rulings, no action determinations, and conditions imposed on
26 the registrations under the predecessor act remain in effect while they
27 would have remained in effect if this act had not been enacted. They are
28 considered to have been filed, issued, or imposed under this act, but are
29 exclusively governed by the predecessor act.

30 (c) *Applicability of predecessor act to offers or sales.* The predecessor
31 act exclusively applies to an offer or sale made within one year after the
32 effective date of this act pursuant to an offering made in good faith before
33 the effective date of this act on the basis of an exemption available under
34 the predecessor act.

35 Sec. 53. K.S.A. 12-1675 is hereby amended to read as follows: 12-
36 1675. (a) The governing body of any county, city, township, school district,
37 area vocational-technical school, community college, firemen's relief as-
38 sociation, community mental health center, community facility for the
39 mentally retarded or any other governmental entity, unit or subdivision
40 in the state of Kansas having authority to receive, hold and expend public
41 moneys or funds may invest any moneys which are not immediately re-
42 quired for the purposes for which the moneys were collected or received,
43 and the investment of which is not subject to or regulated by any other

1 statute.

2 (b) Such moneys shall be invested only:

3 (1) In temporary notes or no-fund warrants issued by such investing
4 governmental unit;

5 (2) in time deposit, open accounts, certificates of deposit or time cer-
6 tificates of deposit with maturities of not more than two years: (A) In
7 banks, savings and loan associations and savings banks, which have main
8 or branch offices located in such investing governmental unit; or (B) if
9 no main or branch office of a bank, savings and loan association or savings
10 bank is located in such investing governmental unit, then in banks, savings
11 and loan associations and savings banks, which have main or branch of-
12 fices in the county or counties in which all or part of such investing gov-
13 ernmental unit is located;

14 (3) in repurchase agreements with: (A) Banks, savings and loan as-
15 sociations and savings banks, which have main or branch offices located
16 in such investing governmental unit, for direct obligations of, or obliga-
17 tions that are insured as to principal and interest by, the United States
18 government or any agency thereof; or (B) (i) if no main or branch office
19 of a bank, savings and loan association or savings bank, is located in such
20 investing governmental unit; or (ii) if no such bank, savings and loan
21 association or savings bank having a main or branch office located in such
22 investing governmental unit is willing to enter into such an agreement
23 with the investing governmental unit at an interest rate equal to or greater
24 than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a,
25 *and amendments thereto*, then such repurchase agreements may be en-
26 tered into with banks, savings and loan associations or savings banks which
27 have main or branch offices in the county or counties in which all or part
28 of such investing governmental unit is located; or (C) if no bank, savings
29 and loan association or savings bank, having a main or branch office in
30 such county or counties is willing to enter into such an agreement with
31 the investing governmental unit at an interest rate equal to or greater
32 than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a,
33 then such repurchase agreements may be entered into with banks, savings
34 and loan associations or savings banks;

35 (4) in United States treasury bills or notes with maturities as the gov-
36 erning body shall determine, but not exceeding two years. Such invest-
37 ment transactions shall only be conducted with banks, savings and loan
38 associations and savings banks; the federal reserve bank of Kansas City,
39 Missouri; or with primary government securities dealers which report to
40 the market report division of the federal reserve bank of New York, or
41 any broker-dealer engaged in the business of selling government securi-
42 ties which is registered in compliance with the requirements of section
43 15 or 15C of the securities exchange act of 1934 and registered pursuant

1 to ~~K.S.A. 17-1254~~ *section 18*, and amendments thereto;
2 (5) in the municipal investment pool fund established in K.S.A. 12-
3 1677a, and amendments thereto;
4 (6) in the investments authorized and in accordance with the condi-
5 tions prescribed in K.S.A. 12-1677b, and amendments thereto; or
6 (7) in multiple municipal client investment pools managed by the
7 trust departments of banks which have main or branch offices located in
8 the county or counties where such investing governmental unit is located
9 or with trust companies incorporated under the laws of this state which
10 have contracted to provide trust services under the provisions of K.S.A.
11 9-2107, and amendments thereto, with banks which have main or branch
12 offices located in the county or counties in which such investing govern-
13 mental unit is located. Public moneys invested under this paragraph shall
14 be secured in the same manner as provided for under K.S.A. 9-1402, and
15 amendments thereto. Pooled investments of public moneys made by trust
16 departments under this paragraph shall be subject to the same terms,
17 conditions and limitations as are applicable to the municipal investment
18 pool established by K.S.A. 12-1677a, and amendments thereto.
19 (c) The investments authorized in paragraphs (4), (5), (6) or (7) of
20 subsection (b) shall be utilized only if the banks, savings and loan asso-
21 ciations and savings banks eligible for investments authorized in para-
22 graph (2) of subsection (b), cannot or will not make the investments au-
23 thorized in paragraph (2) of subsection (b) available to the investing
24 governmental unit at interest rates equal to or greater than the investment
25 rate, as defined in subsection (g) of K.S.A. 12-1675a, *and amendments*
26 *thereto*.
27 (d) In selecting a depository pursuant to paragraph (2) of subsection
28 (b), if a bank, savings and loan association or savings bank eligible for an
29 investment deposit thereunder has an office located in the investing gov-
30 ernmental unit and such financial institution will make such deposits avail-
31 able to the investing governmental unit at interest rates equal to or greater
32 than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a,
33 *and amendments thereto*, and such financial institution otherwise qualifies
34 for such deposit, the investing governmental unit shall select one or more
35 of such eligible financial institutions for deposit of funds pursuant to this
36 section. If no such financial institution qualifies for such deposits, the
37 investing governmental unit shall select for such deposits one or more
38 eligible banks, savings and loan associations or savings banks which have
39 offices in the county or counties in which all or a part of such investing
40 governmental unit is located which will make such deposits available to
41 the investing governmental unit at interest rates equal to or greater than
42 the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, *and*
43 *amendments thereto*, and which otherwise qualify for such deposits.

1 (e) (1) All security purchases and repurchase agreements shall occur
2 on a delivery versus payment basis.

3 (2) All securities, including those acquired by repurchase agreements,
4 shall be perfected in the name of the investing governmental unit and
5 shall be delivered to the purchaser or a third-party custodian which may
6 be the state treasurer.

7 Sec. 54. K.S.A. 12-1677b is hereby amended to read as follows: 12-
8 1677b. (a) The governing body of any city or county which has a written
9 investment policy approved by the governing body of such city or county
10 and approved by the pooled money investment board may invest and
11 reinvest pursuant to the approved investment policy in the following in-
12 vestments, as authorized under paragraph (6) of subsection (b) of K.S.A.
13 12-1675, and amendments thereto:

14 (1) Direct obligations of, or obligations that are insured as to principal
15 and interest by, the United States of America or any agency thereof and
16 obligations and securities of United States sponsored enterprises which
17 under federal law may be accepted as security for public funds, except
18 that such investments shall not be in mortgage-backed securities;

19 (2) interest-bearing time deposits in any banks, savings and loan as-
20 sociations and savings banks; or

21 (3) repurchase agreements with banks, savings and loan associations
22 and savings banks, or with a primary government securities dealer which
23 reports to the market reports division of the federal reserve bank of New
24 York for direct obligations of, or obligations that are insured as to principal
25 and interest by, the United States government or any agency thereof and
26 obligations and securities of United States government sponsored enter-
27 prises which under federal law may be accepted as security for public
28 funds.

29 (b) The investment policy of any city or county approved by the
30 pooled money investment board under this section shall be reviewed and
31 approved at least annually by such board or when such city or county
32 makes changes in such investment policy.

33 (c) City and county investment policies shall address liquidity, diver-
34 sification, safety of principal, yield, maturity and quality, and capability of
35 investment management staff.

36 (d) (1) All security purchases shall occur on a delivery versus pay-
37 ment basis.

38 (2) All securities shall be perfected in the name of the city or county
39 and shall be delivered to the purchaser or a third party custodian which
40 may be the state treasurer.

41 (3) Investment transactions shall only be conducted with banks, sav-
42 ings and loan associations and savings banks; or with primary government
43 securities dealers which report to the market report division of the federal

1 reserve bank of New York; or any broker-dealer which is registered in
2 compliance with the requirements of section 15C of the securities
3 exchange act of 1934 and registered pursuant to ~~K.S.A. 17-1254~~ section
4 18, and amendments thereto.

5 (4) The maximum maturity for investments under subsection (a) shall
6 be four years.

7 (e) Investments in securities under paragraph (1) of subsection (a)
8 shall be limited to securities which do not have any more interest rate
9 risk than do direct United States government obligations of similar ma-
10 turities. For purposes of this subsection, “interest rate risk” means market
11 value changes due to changes in current interest rates.

12 (f) A city or county which violates subsection (c) or (d) of K.S.A. 12-
13 1675 and amendments thereto or the rules and regulations of the pooled
14 money investment board shall forfeit its rights under this section for a
15 two year period and shall be reinstated only after a complete review of
16 its investment policy as provided for in subsection (b). Such forfeiture
17 shall be determined by the pooled money investment board after notice
18 and opportunity to be heard in accordance with the Kansas administrative
19 procedure act.

20 Sec. 55. K.S.A. 12-4516 is hereby amended to read as follows: 12-
21 4516. (a) (1) Except as provided in subsection (b), any person who has
22 been convicted of a violation of a city ordinance of this state may petition
23 the convicting court for the expungement of such conviction and related
24 arrest records if three or more years have elapsed since the person:

25 (A) Satisfied the sentence imposed; or
26 (B) was discharged from probation, parole or a suspended sentence.

27 (2) Except as provided in subsection (b), any person who has fulfilled
28 the terms of a diversion agreement based on a violation of a city ordinance
29 of this state may petition the court for the expungement of such diversion
30 agreement and related arrest records if three or more years have elapsed
31 since the terms of the diversion agreement were fulfilled.

32 (b) No person may petition for expungement until five or more years
33 have elapsed since the person satisfied the sentence imposed or the terms
34 of a diversion agreement or was discharged from probation, parole, con-
35 ditional release or a suspended sentence, if such person was convicted of
36 the violation of a city ordinance which would also constitute:

37 (1) Vehicular homicide, as defined by K.S.A. 21-3405, and amend-
38 ments thereto;

39 (2) a violation of K.S.A. 8-1567, and amendments thereto;

40 (3) driving while the privilege to operate a motor vehicle on the public
41 highways of this state has been canceled, suspended or revoked, as pro-
42 hibited by K.S.A. 8-262, and amendments thereto;

43 (4) perjury resulting from a violation of K.S.A. 8-261a, and amend-

- 1 ments thereto;
- 2 (5) a violation of the provisions of the fifth clause of K.S.A. 8-142,
3 and amendments thereto, relating to fraudulent applications;
- 4 (6) any crime punishable as a felony wherein a motor vehicle was
5 used in the perpetration of such crime;
- 6 (7) failing to stop at the scene of an accident and perform the duties
7 required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto;
- 8 (8) a violation of the provisions of K.S.A. 40-3104, and amendments
9 thereto, relating to motor vehicle liability insurance coverage; or
- 10 (9) a violation of K.S.A. 21-3405b, and amendments thereto.
- 11 (c) When a petition for expungement is filed, the court shall set a
12 date for a hearing of such petition and shall cause notice of such hearing
13 to be given to the prosecuting attorney and the arresting law enforcement
14 agency. The petition shall state: (1) The defendant's full name;
- 15 (2) the full name of the defendant at the time of arrest, conviction or
16 diversion, if different than the defendant's current name;
- 17 (3) the defendant's sex, race and date of birth;
- 18 (4) the crime for which the defendant was arrested, convicted or
19 diverted;
- 20 (5) the date of the defendant's arrest, conviction or diversion; and
- 21 (6) the identity of the convicting court, arresting law enforcement
22 agency or diverting authority. A municipal court may prescribe a fee to
23 be charged as costs for a person petitioning for an order of expungement
24 pursuant to this section. Any person who may have relevant information
25 about the petitioner may testify at the hearing. The court may inquire
26 into the background of the petitioner and shall have access to any reports
27 or records relating to the petitioner that are on file with the secretary of
28 corrections or the Kansas parole board.
- 29 (d) At the hearing on the petition, the court shall order the peti-
30 tioner's arrest record, conviction or diversion expunged if the court finds
31 that:
- 32 (1) The petitioner has not been convicted of a felony in the past two
33 years and no proceeding involving any such crime is presently pending
34 or being instituted against the petitioner;
- 35 (2) the circumstances and behavior of the petitioner warrant the
36 expungement; and
- 37 (3) the expungement is consistent with the public welfare.
- 38 (e) When the court has ordered an arrest record, conviction or di-
39 version expunged, the order of expungement shall state the information
40 required to be contained in the petition. The clerk of the court shall send
41 a certified copy of the order of expungement to the Kansas bureau of
42 investigation which shall notify the federal bureau of investigation, the
43 secretary of corrections and any other criminal justice agency which may

1 have a record of the arrest, conviction or diversion. After the order of
2 expungement is entered, the petitioner shall be treated as not having been
3 arrested, convicted or diverted of the crime, except that:

4 (1) Upon conviction for any subsequent crime, the conviction that
5 was expunged may be considered as a prior conviction in determining the
6 sentence to be imposed;

7 (2) the petitioner shall disclose that the arrest, conviction or diversion
8 occurred if asked about previous arrests, convictions or diversions:

9 (A) In any application for employment as a detective with a private
10 detective agency, as defined by K.S.A. 75-7b01, and amendments thereto;
11 as security personnel with a private patrol operator, as defined by K.S.A.
12 75-7b01, and amendments thereto; or with an institution, as defined in
13 K.S.A. 76-12a01, and amendments thereto, of the department of social
14 and rehabilitation services;

15 (B) in any application for admission, or for an order of reinstatement,
16 to the practice of law in this state;

17 (C) to aid in determining the petitioner's qualifications for employ-
18 ment with the Kansas lottery or for work in sensitive areas within the
19 Kansas lottery as deemed appropriate by the executive director of the
20 Kansas lottery;

21 (D) to aid in determining the petitioner's qualifications for executive
22 director of the Kansas racing commission, for employment with the com-
23 mission or for work in sensitive areas in parimutuel racing as deemed
24 appropriate by the executive director of the commission, or to aid in
25 determining qualifications for licensure or renewal of licensure by the
26 commission;

27 (E) upon application for a commercial driver's license under K.S.A.
28 8-2,125 through 8-2,142, and amendments thereto;

29 (F) to aid in determining the petitioner's qualifications to be an em-
30 ployee of the state gaming agency;

31 (G) to aid in determining the petitioner's qualifications to be an em-
32 ployee of a tribal gaming commission or to hold a license issued pursuant
33 to a tribal-state gaming compact; or

34 (H) in any application for registration as a broker-dealer, agent, in-
35 vestment adviser or investment adviser representative all as defined in
36 ~~K.S.A. 17-1252~~ *section 2*, and amendments thereto;

37 (3) the court, in the order of expungement, may specify other cir-
38 cumstances under which the arrest, conviction or diversion is to be dis-
39 closed; and

40 (4) the conviction may be disclosed in a subsequent prosecution for
41 an offense which requires as an element of such offense a prior conviction
42 of the type expunged.

43 (f) Whenever a person is convicted of an ordinance violation, pleads

1 guilty and pays a fine for such a violation, is placed on parole or probation
2 or is granted a suspended sentence for such a violation, the person shall
3 be informed of the ability to expunge the arrest records or conviction.
4 Whenever a person enters into a diversion agreement, the person shall
5 be informed of the ability to expunge the diversion.

6 (g) Subject to the disclosures required pursuant to subsection (e), in
7 any application for employment, license or other civil right or privilege,
8 or any appearance as a witness, a person whose arrest records, conviction
9 or diversion of an offense has been expunged under this statute may state
10 that such person has never been arrested, convicted or diverted of such
11 offense.

12 (h) Whenever the record of any arrest, conviction or diversion has
13 been expunged under the provisions of this section or under the provi-
14 sions of any other existing or former statute, the custodian of the records
15 of arrest, conviction, diversion and incarceration relating to that crime
16 shall not disclose the existence of such records, except when requested
17 by:

18 (1) The person whose record was expunged;

19 (2) a private detective agency or a private patrol operator, and the
20 request is accompanied by a statement that the request is being made in
21 conjunction with an application for employment with such agency or op-
22 erator by the person whose record has been expunged;

23 (3) a court, upon a showing of a subsequent conviction of the person
24 whose record has been expunged;

25 (4) the secretary of social and rehabilitation services, or a designee of
26 the secretary, for the purpose of obtaining information relating to em-
27 ployment in an institution, as defined in K.S.A. 76-12a01, and amend-
28 ments thereto, of the department of social and rehabilitation services of
29 any person whose record has been expunged;

30 (5) a person entitled to such information pursuant to the terms of the
31 expungement order;

32 (6) a prosecuting attorney, and such request is accompanied by a
33 statement that the request is being made in conjunction with a prosecu-
34 tion of an offense that requires a prior conviction as one of the elements
35 of such offense;

36 (7) the supreme court, the clerk or disciplinary administrator thereof,
37 the state board for admission of attorneys or the state board for discipline
38 of attorneys, and the request is accompanied by a statement that the
39 request is being made in conjunction with an application for admission,
40 or for an order of reinstatement, to the practice of law in this state by the
41 person whose record has been expunged;

42 (8) the Kansas lottery, and the request is accompanied by a statement
43 that the request is being made to aid in determining qualifications for

1 employment with the Kansas lottery or for work in sensitive areas within
2 the Kansas lottery as deemed appropriate by the executive director of the
3 Kansas lottery;

4 (9) the governor or the Kansas racing commission, or a designee of
5 the commission, and the request is accompanied by a statement that the
6 request is being made to aid in determining qualifications for executive
7 director of the commission, for employment with the commission, for
8 work in sensitive areas in parimutuel racing as deemed appropriate by
9 the executive director of the commission or for licensure, renewal of
10 licensure or continued licensure by the commission;

11 (10) the state gaming agency, and the request is accompanied by a
12 statement that the request is being made to aid in determining qualifi-
13 cations: (A) To be an employee of the state gaming agency; or (B) to be
14 an employee of a tribal gaming commission or to hold a license issued
15 pursuant to a tribal-state gaming compact; or

16 (11) the Kansas securities commissioner, or a designee of the com-
17 missioner, and the request is accompanied by a statement that the request
18 is being made in conjunction with an application for registration as a
19 broker-dealer, agent, investment adviser or investment adviser represen-
20 tative by such agency and the application was submitted by the person
21 whose record has been expunged.

22 Sec. 56. K.S.A. 16-214 is hereby amended to read as follows: 16-214.
23 Whenever advances of money, repayable on demand, are made upon any
24 securities, as defined in K.S.A. 84-8-102(1)(a), *and amendments thereto*,
25 pledged as collateral for repayment of such advances and in which such
26 advances are used by the borrower only for the purpose of the purchasing
27 or the carrying of such securities, it shall be lawful for a broker-dealer,
28 as defined by ~~K.S.A. 17-1252~~ *section 2, and amendments thereto*, to
29 charge, receive or contract to receive and collect, as compensation for
30 making such advances, a rate of interest not to exceed the higher of ~~ten~~
31 ~~percent (10%)~~ 10% per annum, or the rate of interest last obtained from
32 a commercial lender by the broker-dealer plus an annual percentage rate
33 of not to exceed ~~one and one-half percent (1 1/2%)~~ 1 1/2%, which rate
34 shall be established by written notification to the borrower. Any such
35 advances shall not be subject to any of the provisions of articles 1 through
36 9, inclusive, of chapter 16a of the Kansas Statutes Annotated, *and amend-*
37 *ments thereto*.

38 Sec. 57. K.S.A. 17-4632 is hereby amended to read as follows: 17-
39 4632. The provisions of the Kansas *uniform* securities act shall not apply
40 to any note, bond or other evidence of indebtedness issued by any co-
41 operative doing business in this state pursuant to this act to *the* United
42 States of America or any agency or instrumentality thereof, or to any
43 mortgage, deed of trust or other instrument executed to secure the same.

1 The provisions of ~~said~~ *such* securities act shall not apply to the issuance
2 of membership certificates by any cooperative.

3 Sec. 58. K.S.A. ~~2002~~ **2003** Supp. 17-49a01 is hereby amended to
4 read as follows: 17-49a01. As used in ~~this~~ *the uniform TOD security reg-*
5 *istration* act:

6 (a) “Beneficiary form” means a registration of a security which iden-
7 tifies the present owner of the security and the intention of the owner
8 regarding the person or persons who will become the owner or owners
9 of the security upon the death of the owner.

10 (b) “Person” means an individual, a corporation, a partnership, an
11 association, trust or an organization.

12 (c) “Register” including its derivatives, means to issue a certificate
13 showing the ownership of a certificated security or, in the case of an
14 uncertificated security, to initiate or transfer an account showing own-
15 ership of securities.

16 (d) “Registering entity” means a person who originates or transfers a
17 security title by registration, and includes a broker maintaining security
18 accounts for customers and a transfer agent or other person acting for or
19 as an issuer of securities.

20 (e) “Security” means a certificated or uncertificated security as de-
21 fined in K.S.A. 84-8-102 and amendments thereto or as defined in ~~K.S.A.~~
22 ~~17-1252~~ *section 2*, and amendments thereto.

23 (f) “Security account” means (1) a reinvestment account associated
24 with a security, a securities account with a broker, an agency account with
25 a bank or trust company, a cash balance in a brokerage account, cash,
26 interest, earnings or dividends earned or declared on a security in an
27 account, a reinvestment account or a brokerage account, whether or not
28 credited to the account before the owner’s death, or (2) a cash balance
29 or other property held for or due to the owner of a security as a replace-
30 ment for or product of an account security, whether or not credited to
31 the account before the owner’s death.

32 (g) “State” includes any state of the United States, the District of
33 Columbia, the Commonwealth of Puerto Rico and any territory or pos-
34 session subject to the legislative authority of the United States.

35 Sec. 59. K.S.A. ~~2002~~ **2003** Supp. 21-4619 is hereby amended to read
36 as follows: 21-4619. (a) (1) Except as provided in subsections (b) and (c),
37 any person convicted in this state of a traffic infraction, cigarette or to-
38 bacco infraction, misdemeanor or a class D or E felony, or for crimes
39 committed on or after July 1, 1993, nondrug crimes ranked in severity
40 levels 6 through 10 or any felony ranked in severity level 4 of the drug
41 grid, may petition the convicting court for the expungement of such con-
42 viction or related arrest records if three or more years have elapsed since
43 the person: (A) Satisfied the sentence imposed; or (B) was discharged

1 from probation, a community correctional services program, parole, post-
2 release supervision, conditional release or a suspended sentence.

3 (2) Except as provided in subsections (b) and (c), any person who has
4 fulfilled the terms of a diversion agreement may petition the district court
5 for the expungement of such diversion agreement and related arrest re-
6 cords if three or more years have elapsed since the terms of the diversion
7 agreement were fulfilled.

8 (b) Except as provided in subsection (c), no person may petition for
9 expungement until five or more years have elapsed since the person sat-
10 isfied the sentence imposed, the terms of a diversion agreement or was
11 discharged from probation, a community correctional services program,
12 parole, postrelease supervision, conditional release or a suspended sen-
13 tence, if such person was convicted of a class A, B or C felony, or for
14 crimes committed on or after July 1, 1993, if convicted of an off-grid
15 felony or any nondrug crime ranked in severity levels 1 through 5 or any
16 felony ranked in severity levels 1 through 3 of the drug grid, or:

17 (1) Vehicular homicide, as defined by K.S.A. 21-3405 and amend-
18 ments thereto or as prohibited by any law of another state which is in
19 substantial conformity with that statute;

20 (2) a violation of K.S.A. 8-1567 and amendments thereto, or a viola-
21 tion of any law of another state, which declares to be unlawful the acts
22 prohibited by that statute;

23 (3) driving while the privilege to operate a motor vehicle on the public
24 highways of this state has been canceled, suspended or revoked, as pro-
25 hibited by K.S.A. 8-262 and amendments thereto or as prohibited by any
26 law of another state which is in substantial conformity with that statute;

27 (4) perjury resulting from a violation of K.S.A. 8-261a and amend-
28 ments thereto or resulting from the violation of a law of another state
29 which is in substantial conformity with that statute;

30 (5) violating the provisions of the fifth clause of K.S.A. 8-142 and
31 amendments thereto, relating to fraudulent applications or violating the
32 provisions of a law of another state which is in substantial conformity with
33 that statute;

34 (6) any crime punishable as a felony wherein a motor vehicle was
35 used in the perpetration of such crime;

36 (7) failing to stop at the scene of an accident and perform the duties
37 required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto,
38 or required by a law of another state which is in substantial conformity
39 with those statutes;

40 (8) violating the provisions of K.S.A. 40-3104 and amendments
41 thereto, relating to motor vehicle liability insurance coverage; or

42 (9) a violation of K.S.A. 21-3405b, prior to its repeal.

43 (c) There shall be no expungement of convictions for the following

1 offenses or of convictions for an attempt to commit any of the following
2 offenses: (1) Rape as defined in subsection (a)(2) of K.S.A. 21-3502 and
3 amendments thereto; (2) indecent liberties with a child as defined in
4 K.S.A. 21-3503 and amendments thereto; (3) aggravated indecent liber-
5 ties with a child as defined in K.S.A. 21-3504 and amendments thereto;
6 (4) criminal sodomy as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-
7 3505 and amendments thereto; (5) aggravated criminal sodomy as defined
8 in K.S.A. 21-3506 and amendments thereto; (6) indecent solicitation of a
9 child as defined in K.S.A. 21-3510 and amendments thereto; (7) aggra-
10 vated indecent solicitation of a child as defined in K.S.A. 21-3511 and
11 amendments thereto; (8) sexual exploitation of a child as defined in K.S.A.
12 21-3516 and amendments thereto; (9) aggravated incest as defined in
13 K.S.A. 21-3603 and amendments thereto; (10) endangering a child as
14 defined in K.S.A. 21-3608 and amendments thereto; (11) abuse of a child
15 as defined in K.S.A. 21-3609 and amendments thereto; (12) capital mur-
16 der as defined in K.S.A. 21-3439 and amendments thereto; (13) murder
17 in the first degree as defined in K.S.A. 21-3401 and amendments thereto;
18 (14) murder in the second degree as defined in K.S.A. 21-3402 and
19 amendments thereto; (15) voluntary manslaughter as defined in K.S.A.
20 21-3403 and amendments thereto; (16) involuntary manslaughter as de-
21 fined in K.S.A. 21-3404 and amendments thereto; (17) involuntary man-
22 slaughter while driving under the influence of alcohol or drugs as defined
23 in K.S.A. ~~2002~~ **2003** Supp. 21-3442 and amendments thereto; (18) sexual
24 battery as defined in K.S.A. 21-3517 and amendments thereto; (19) ag-
25 gravated sexual battery as defined in K.S.A. 21-3518 and amendments
26 thereto; or (20) any conviction for any offense in effect at any time prior
27 to the effective date of this act, that is comparable to any offense as
28 provided in this subsection.

29 (d) When a petition for expungement is filed, the court shall set a
30 date for a hearing of such petition and shall cause notice of such hearing
31 to be given to the prosecuting attorney and the arresting law enforcement
32 agency. The petition shall state: (1) The defendant's full name;

33 (2) the full name of the defendant at the time of arrest, conviction or
34 diversion, if different than the defendant's current name;

35 (3) the defendant's sex, race and date of birth;

36 (4) the crime for which the defendant was arrested, convicted or
37 diverted;

38 (5) the date of the defendant's arrest, conviction or diversion; and

39 (6) the identity of the convicting court, arresting law enforcement
40 authority or diverting authority. There shall be no docket fee for filing a
41 petition pursuant to this section. All petitions for expungement shall be
42 docketed in the original criminal action. Any person who may have rel-
43 evant information about the petitioner may testify at the hearing. The

1 court may inquire into the background of the petitioner and shall have
2 access to any reports or records relating to the petitioner that are on file
3 with the secretary of corrections or the Kansas parole board.

4 (e) At the hearing on the petition, the court shall order the peti-
5 tioner's arrest record, conviction or diversion expunged if the court finds
6 that:

7 (1) The petitioner has not been convicted of a felony in the past two
8 years and no proceeding involving any such crime is presently pending
9 or being instituted against the petitioner;

10 (2) the circumstances and behavior of the petitioner warrant the
11 expungement; and

12 (3) the expungement is consistent with the public welfare.

13 (f) When the court has ordered an arrest record, conviction or diver-
14 sion expunged, the order of expungement shall state the information re-
15 quired to be contained in the petition. The clerk of the court shall send
16 a certified copy of the order of expungement to the Kansas bureau of
17 investigation which shall notify the federal bureau of investigation, the
18 secretary of corrections and any other criminal justice agency which may
19 have a record of the arrest, conviction or diversion. After the order of
20 expungement is entered, the petitioner shall be treated as not having been
21 arrested, convicted or diverted of the crime, except that:

22 (1) Upon conviction for any subsequent crime, the conviction that
23 was expunged may be considered as a prior conviction in determining the
24 sentence to be imposed;

25 (2) the petitioner shall disclose that the arrest, conviction or diversion
26 occurred if asked about previous arrests, convictions or diversions:

27 (A) In any application for licensure as a private detective, private
28 detective agency, certification as a firearms trainer pursuant to K.S.A.
29 ~~2002~~ 2003 Supp. 75-7b21, and amendments thereto, or employment as
30 a detective with a private detective agency, as defined by K.S.A. 75-7b01
31 and amendments thereto; as security personnel with a private patrol op-
32 erator, as defined by K.S.A. 75-7b01 and amendments thereto; or with
33 an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of
34 the department of social and rehabilitation services;

35 (B) in any application for admission, or for an order of reinstatement,
36 to the practice of law in this state;

37 (C) to aid in determining the petitioner's qualifications for employ-
38 ment with the Kansas lottery or for work in sensitive areas within the
39 Kansas lottery as deemed appropriate by the executive director of the
40 Kansas lottery;

41 (D) to aid in determining the petitioner's qualifications for executive
42 director of the Kansas racing commission, for employment with the com-
43 mission or for work in sensitive areas in parimutuel racing as deemed

1 appropriate by the executive director of the commission, or to aid in
2 determining qualifications for licensure or renewal of licensure by the
3 commission;

4 (E) upon application for a commercial driver's license under K.S.A.
5 8-2,125 through 8-2,142, and amendments thereto;

6 (F) to aid in determining the petitioner's qualifications to be an em-
7 ployee of the state gaming agency;

8 (G) to aid in determining the petitioner's qualifications to be an em-
9 ployee of a tribal gaming commission or to hold a license issued pursuant
10 to a tribal-state gaming compact;

11 (H) in any application for registration as a broker-dealer, agent, in-
12 vestment adviser or investment adviser representative all as defined in
13 ~~K.S.A. 17-1252~~ *section 2*, and amendments thereto; or

14 (I) in any application for a commercial guide permit or associate
15 guide permit under K.S.A. 32-964, and amendments thereto;

16 (3) the court, in the order of expungement, may specify other cir-
17 cumstances under which the conviction is to be disclosed;

18 (4) the conviction may be disclosed in a subsequent prosecution for
19 an offense which requires as an element of such offense a prior conviction
20 of the type expunged; and

21 (5) upon commitment to the custody of the secretary of corrections,
22 any previously expunged record in the possession of the secretary of cor-
23 rections may be reinstated and the expungement disregarded, and the
24 record continued for the purpose of the new commitment.

25 (g) Whenever a person is convicted of a crime, pleads guilty and pays
26 a fine for a crime, is placed on parole, postrelease supervision or proba-
27 tion, is assigned to a community correctional services program, is granted
28 a suspended sentence or is released on conditional release, the person
29 shall be informed of the ability to expunge the arrest records or convic-
30 tion. Whenever a person enters into a diversion agreement, the person
31 shall be informed of the ability to expunge the diversion.

32 (h) Subject to the disclosures required pursuant to subsection (f), in
33 any application for employment, license or other civil right or privilege,
34 or any appearance as a witness, a person whose arrest records, conviction
35 or diversion of a crime has been expunged under this statute may state
36 that such person has never been arrested, convicted or diverted of such
37 crime, but the expungement of a felony conviction does not relieve an
38 individual of complying with any state or federal law relating to the use
39 or possession of firearms by persons convicted of a felony.

40 (i) Whenever the record of any arrest, conviction or diversion has
41 been expunged under the provisions of this section or under the provi-
42 sions of any other existing or former statute, the custodian of the records
43 of arrest, conviction, diversion and incarceration relating to that crime

1 shall not disclose the existence of such records, except when requested
2 by:

3 (1) The person whose record was expunged;

4 (2) a private detective agency or a private patrol operator, and the
5 request is accompanied by a statement that the request is being made in
6 conjunction with an application for employment with such agency or op-
7 erator by the person whose record has been expunged;

8 (3) a court, upon a showing of a subsequent conviction of the person
9 whose record has been expunged;

10 (4) the secretary of social and rehabilitation services, or a designee of
11 the secretary, for the purpose of obtaining information relating to em-
12 ployment in an institution, as defined in K.S.A. 76-12a01 and amend-
13 ments thereto, of the department of social and rehabilitation services of
14 any person whose record has been expunged;

15 (5) a person entitled to such information pursuant to the terms of the
16 expungement order;

17 (6) a prosecuting attorney, and such request is accompanied by a
18 statement that the request is being made in conjunction with a prosecu-
19 tion of an offense that requires a prior conviction as one of the elements
20 of such offense;

21 (7) the supreme court, the clerk or disciplinary administrator thereof,
22 the state board for admission of attorneys or the state board for discipline
23 of attorneys, and the request is accompanied by a statement that the
24 request is being made in conjunction with an application for admission,
25 or for an order of reinstatement, to the practice of law in this state by the
26 person whose record has been expunged;

27 (8) the Kansas lottery, and the request is accompanied by a statement
28 that the request is being made to aid in determining qualifications for
29 employment with the Kansas lottery or for work in sensitive areas within
30 the Kansas lottery as deemed appropriate by the executive director of the
31 Kansas lottery;

32 (9) the governor or the Kansas racing commission, or a designee of
33 the commission, and the request is accompanied by a statement that the
34 request is being made to aid in determining qualifications for executive
35 director of the commission, for employment with the commission, for
36 work in sensitive areas in parimutuel racing as deemed appropriate by
37 the executive director of the commission or for licensure, renewal of
38 licensure or continued licensure by the commission;

39 (10) the Kansas sentencing commission;

40 (11) the state gaming agency, and the request is accompanied by a
41 statement that the request is being made to aid in determining qualifi-
42 cations: (A) To be an employee of the state gaming agency; or (B) to be
43 an employee of a tribal gaming commission or to hold a license issued

1 pursuant to a tribal-gaming compact;
2 (12) the Kansas securities commissioner or a designee of the com-
3 missioner, and the request is accompanied by a statement that the request
4 is being made in conjunction with an application for registration as a
5 broker-dealer, agent, investment adviser or investment adviser represen-
6 tative by such agency and the application was submitted by the person
7 whose record has been expunged; or
8 (13) the department of wildlife and parks and the request is accom-
9 panied by a statement that the request is being made to aid in determining
10 qualifications for a permit as a commercial guide or associate guide under
11 K.S.A. 32-964, and amendments thereto.
12 ~~Sec. 60. K.S.A. 2002 Supp. 21-4704 is hereby amended to read as~~
13 ~~follows. 21-4704. (a) For purposes of sentencing, the following sentencing~~
14 ~~guidelines grid for nondrug crimes shall be applied in felony cases for~~
15 ~~crimes committed on or after July 1, 1993.~~
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SENTENCING RANGE — NONDRUG OFFENSES

Category	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43
Severity Level 1	1-1	1-2	1-3	1-4	1-5	1-6	1-7	1-8	1-9	1-10	1-11	1-12	1-13	1-14	1-15	1-16	1-17	1-18	1-19	1-20	1-21	1-22	1-23	1-24	1-25	1-26	1-27	1-28	1-29	1-30	1-31	1-32	1-33	1-34	1-35	1-36	1-37	1-38	1-39	1-40	1-41	1-42	1-43
1	1-1	1-2	1-3	1-4	1-5	1-6	1-7	1-8	1-9	1-10	1-11	1-12	1-13	1-14	1-15	1-16	1-17	1-18	1-19	1-20	1-21	1-22	1-23	1-24	1-25	1-26	1-27	1-28	1-29	1-30	1-31	1-32	1-33	1-34	1-35	1-36	1-37	1-38	1-39	1-40	1-41	1-42	1-43
2	2-1	2-2	2-3	2-4	2-5	2-6	2-7	2-8	2-9	2-10	2-11	2-12	2-13	2-14	2-15	2-16	2-17	2-18	2-19	2-20	2-21	2-22	2-23	2-24	2-25	2-26	2-27	2-28	2-29	2-30	2-31	2-32	2-33	2-34	2-35	2-36	2-37	2-38	2-39	2-40	2-41	2-42	2-43
3	3-1	3-2	3-3	3-4	3-5	3-6	3-7	3-8	3-9	3-10	3-11	3-12	3-13	3-14	3-15	3-16	3-17	3-18	3-19	3-20	3-21	3-22	3-23	3-24	3-25	3-26	3-27	3-28	3-29	3-30	3-31	3-32	3-33	3-34	3-35	3-36	3-37	3-38	3-39	3-40	3-41	3-42	3-43
4	4-1	4-2	4-3	4-4	4-5	4-6	4-7	4-8	4-9	4-10	4-11	4-12	4-13	4-14	4-15	4-16	4-17	4-18	4-19	4-20	4-21	4-22	4-23	4-24	4-25	4-26	4-27	4-28	4-29	4-30	4-31	4-32	4-33	4-34	4-35	4-36	4-37	4-38	4-39	4-40	4-41	4-42	4-43
5	5-1	5-2	5-3	5-4	5-5	5-6	5-7	5-8	5-9	5-10	5-11	5-12	5-13	5-14	5-15	5-16	5-17	5-18	5-19	5-20	5-21	5-22	5-23	5-24	5-25	5-26	5-27	5-28	5-29	5-30	5-31	5-32	5-33	5-34	5-35	5-36	5-37	5-38	5-39	5-40	5-41	5-42	5-43
6	6-1	6-2	6-3	6-4	6-5	6-6	6-7	6-8	6-9	6-10	6-11	6-12	6-13	6-14	6-15	6-16	6-17	6-18	6-19	6-20	6-21	6-22	6-23	6-24	6-25	6-26	6-27	6-28	6-29	6-30	6-31	6-32	6-33	6-34	6-35	6-36	6-37	6-38	6-39	6-40	6-41	6-42	6-43
7	7-1	7-2	7-3	7-4	7-5	7-6	7-7	7-8	7-9	7-10	7-11	7-12	7-13	7-14	7-15	7-16	7-17	7-18	7-19	7-20	7-21	7-22	7-23	7-24	7-25	7-26	7-27	7-28	7-29	7-30	7-31	7-32	7-33	7-34	7-35	7-36	7-37	7-38	7-39	7-40	7-41	7-42	7-43
8	8-1	8-2	8-3	8-4	8-5	8-6	8-7	8-8	8-9	8-10	8-11	8-12	8-13	8-14	8-15	8-16	8-17	8-18	8-19	8-20	8-21	8-22	8-23	8-24	8-25	8-26	8-27	8-28	8-29	8-30	8-31	8-32	8-33	8-34	8-35	8-36	8-37	8-38	8-39	8-40	8-41	8-42	8-43
9	9-1	9-2	9-3	9-4	9-5	9-6	9-7	9-8	9-9	9-10	9-11	9-12	9-13	9-14	9-15	9-16	9-17	9-18	9-19	9-20	9-21	9-22	9-23	9-24	9-25	9-26	9-27	9-28	9-29	9-30	9-31	9-32	9-33	9-34	9-35	9-36	9-37	9-38	9-39	9-40	9-41	9-42	9-43
10	10-1	10-2	10-3	10-4	10-5	10-6	10-7	10-8	10-9	10-10	10-11	10-12	10-13	10-14	10-15	10-16	10-17	10-18	10-19	10-20	10-21	10-22	10-23	10-24	10-25	10-26	10-27	10-28	10-29	10-30	10-31	10-32	10-33	10-34	10-35	10-36	10-37	10-38	10-39	10-40	10-41	10-42	10-43
11	11-1	11-2	11-3	11-4	11-5	11-6	11-7	11-8	11-9	11-10	11-11	11-12	11-13	11-14	11-15	11-16	11-17	11-18	11-19	11-20	11-21	11-22	11-23	11-24	11-25	11-26	11-27	11-28	11-29	11-30	11-31	11-32	11-33	11-34	11-35	11-36	11-37	11-38	11-39	11-40	11-41	11-42	11-43
12	12-1	12-2	12-3	12-4	12-5	12-6	12-7	12-8	12-9	12-10	12-11	12-12	12-13	12-14	12-15	12-16	12-17	12-18	12-19	12-20	12-21	12-22	12-23	12-24	12-25	12-26	12-27	12-28	12-29	12-30	12-31	12-32	12-33	12-34	12-35	12-36	12-37	12-38	12-39	12-40	12-41	12-42	12-43
13	13-1	13-2	13-3	13-4	13-5	13-6	13-7	13-8	13-9	13-10	13-11	13-12	13-13	13-14	13-15	13-16	13-17	13-18	13-19	13-20	13-21	13-22	13-23	13-24	13-25	13-26	13-27	13-28	13-29	13-30	13-31	13-32	13-33	13-34	13-35	13-36	13-37	13-38	13-39	13-40	13-41	13-42	13-43
14	14-1	14-2	14-3	14-4	14-5	14-6	14-7	14-8	14-9	14-10	14-11	14-12	14-13	14-14	14-15	14-16	14-17	14-18	14-19	14-20	14-21	14-22	14-23	14-24	14-25	14-26	14-27	14-28	14-29	14-30	14-31	14-32	14-33	14-34	14-35	14-36	14-37	14-38	14-39	14-40	14-41	14-42	14-43
15	15-1	15-2	15-3	15-4	15-5	15-6	15-7	15-8	15-9	15-10	15-11	15-12	15-13	15-14	15-15	15-16	15-17	15-18	15-19	15-20	15-21	15-22	15-23	15-24	15-25	15-26	15-27	15-28	15-29	15-30	15-31	15-32	15-33	15-34	15-35	15-36	15-37	15-38	15-39	15-40	15-41	15-42	15-43
16	16-1	16-2	16-3	16-4	16-5	16-6	16-7	16-8	16-9	16-10	16-11	16-12	16-13	16-14	16-15	16-16	16-17	16-18	16-19	16-20	16-21	16-22	16-23	16-24	16-25	16-26	16-27	16-28	16-29	16-30	16-31	16-32	16-33	16-34	16-35	16-36	16-37	16-38	16-39	16-40	16-41	16-42	16-43
17	17-1	17-2	17-3	17-4	17-5	17-6	17-7	17-8	17-9	17-10	17-11	17-12	17-13	17-14	17-15	17-16	17-17	17-18	17-19	17-20	17-21	17-22	17-23	17-24	17-25	17-26	17-27	17-28	17-29	17-30	17-31	17-32	17-33	17-34	17-35	17-36	17-37	17-38	17-39	17-40	17-41	17-42	17-43
18	18-1	18-2	18-3	18-4	18-5	18-6	18-7	18-8	18-9	18-10	18-11	18-12	18-13	18-14	18-15	18-16	18-17	18-18	18-19	18-20	18-21	18-22	18-23	18-24	18-25	18-26	18-27	18-28	18-29	18-30	18-31	18-32	18-33	18-34	18-35	18-36	18-37	18-38	18-39	18-40	18-41	18-42	18-43
19	19-1	19-2	19-3	19-4	19-5	19-6	19-7	19-8	19-9	19-10	19-11	19-12	19-13	19-14	19-15	19-16	19-17	19-18	19-19	19-20	19-21	19-22	19-23	19-24	19-25	19-26	19-27	19-28	19-29	19-30	19-31	19-32	19-33	19-34	19-35	19-36	19-37	19-38	19-39	19-40	19-41	19-42	19-43
20	20-1	20-2	20-3	20-4	20-5	20-6	20-7	20-8	20-9	20-10	20-11	20-12	20-13	20-14	20-15	20-16	20-17	20-18	20-19	20-20	20-21	20-22	20-23	20-24	20-25	20-26	20-27	20-28	20-29	20-30	20-31	20-32	20-33	20-34	20-35	20-36	20-37	20-38	20-39	20-40	20-41	20-42	20-43
21	21-1	21-2	21-3	21-4	21-5	21-6	21-7	21-8	21-9	21-10	21-11	21-12	21-13	21-14	21-15	21-16	21-17	21-18	21-19	21-20	21-21	21-22	21-23	21-24	21-25	21-26	21-27	21-28	21-29	21-30	21-31	21-32	21-33	21-34	21-35	21-36	21-37	21-38	21-39	21-40	21-41	21-42	21-43
22	22-1	22-2	22-3	22-4	22-5	22-6	22-7	22-8	22-9	22-10	22-11	22-12	22-13	22-14	22-15	22-16	22-17	22-18	22-19	22-20	22-21	22-22	22-23	22-24	22-25	22-26	22-27	22-28	22-29	22-30	22-31	22-32	22-33	22-34	22-35	22-36	22-37	22-38	22-39	22-40	22-41	22-42	22-43
23	23-1	23-2	23-3	23-4	23-5	23-6	23-7	23-8	23-9	23-10	23-11	23-12	23-13	23-14	23-15	23-16	23-17	23-18	23-19	23-20	23-21	23-22	23-23	23-24	23-25	23-26	23-27	23-28	23-29	23-30	23-31	23-32	23-33	23-34	23-35	23-36	23-37	23-38	23-39	23-40	23-41	23-42	23-43
24	24-1	24-2	24-3	24-4	24-5	24-6	24-7	24-8	24-9	24-10	24-11	24-12	24-13	24-14	24-15	24-16	24-17	24-18	24-19	24-20	24-21	24-22	24-23	24-24	24-25	24-26	24-27	24-28	24-29	24-30	24-31	24-32	24-33	24-34	24-35	24-36	24-37	24-38	24-39	24-40	24-41	24-42	24-43
25	25-1	25-2	25-3	25-4	25-5	25-6	25-7	25-8	25-9	25-10																																	

- 1 —(b) ~~The provisions of this section shall be applicable to the sentencing~~
2 ~~guidelines grid for nondrug crimes. Sentences expressed in such grid~~
3 ~~represent months of imprisonment.~~
- 4 —(c) ~~The sentencing guidelines grid is a two-dimensional crime severity~~
5 ~~and criminal history classification tool. The grid's vertical axis is the crime~~
6 ~~severity scale which classifies current crimes of conviction. The grid's~~
7 ~~horizontal axis is the criminal history scale which classifies criminal~~
8 ~~histories.~~
- 9 —(d) ~~The sentencing guidelines grid for nondrug crimes as provided in~~
10 ~~this section defines presumptive punishments for felony convictions, sub-~~
11 ~~ject to judicial discretion to deviate for substantial and compelling reasons~~
12 ~~and impose a different sentence in recognition of aggravating and miti-~~
13 ~~gating factors as provided in this act. The appropriate punishment for a~~
14 ~~felony conviction should depend on the severity of the crime of conviction~~
15 ~~when compared to all other crimes and the offender's criminal history.~~
- 16 —(e) (1) ~~The sentencing court has discretion to sentence at any place~~
17 ~~within the sentencing range. The sentencing judge shall select the center~~
18 ~~of the range in the usual case and reserve the upper and lower limits for~~
19 ~~aggravating and mitigating factors insufficient to warrant a departure.~~
- 20 —(2) ~~In presumptive imprisonment cases, the sentencing court shall~~
21 ~~pronounce the complete sentence which shall include the prison sen-~~
22 ~~tence, the maximum potential reduction to such sentence as a result of~~
23 ~~good time and the period of postrelease supervision at the sentencing~~
24 ~~hearing. Failure to pronounce the period of postrelease supervision shall~~
25 ~~not negate the existence of such period of postrelease supervision.~~
- 26 —(3) ~~In presumptive nonprison cases, the sentencing court shall pro-~~
27 ~~nounce the prison sentence as well as the duration of the nonprison sanc-~~
28 ~~tion at the sentencing hearing.~~
- 29 —(f) ~~Each grid block states the presumptive sentencing range for an~~
30 ~~offender whose crime of conviction and criminal history place such of-~~
31 ~~fender in that grid block. If an offense is classified in a grid block below~~
32 ~~the dispositional line, the presumptive disposition shall be nonimprison-~~
33 ~~ment. If an offense is classified in a grid block above the dispositional~~
34 ~~line, the presumptive disposition shall be imprisonment. *Except as pro-*~~
35 ~~*vided in subsection (m) and otherwise provided by law,* if an offense is~~
36 ~~classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional~~
37 ~~nonprison sentence upon making the following findings on the record:~~
- 38 —(1) ~~An appropriate treatment program exists which is likely to be~~
39 ~~more effective than the presumptive prison term in reducing the risk of~~
40 ~~offender recidivism; and~~
- 41 —(2) ~~the recommended treatment program is available and the of-~~
42 ~~fender can be admitted to such program within a reasonable period of~~
43 ~~time; or~~

1 ~~—(3) the nonprison sanction will serve community safety interests by~~
2 ~~promoting offender reformation.~~

3 ~~—Any decision made by the court regarding the imposition of an optional~~
4 ~~nonprison sentence if the offense is classified in grid blocks 5-II, 5-I or~~
5 ~~6-G shall not be considered a departure and shall not be subject to appeal.~~

6 ~~—(g) The sentence for the violation of K.S.A. 21-3411, and amend-~~
7 ~~ments thereto, aggravated assault against a law enforcement officer or~~
8 ~~K.S.A. 21-3415, and amendments thereto, aggravated battery against a~~
9 ~~law enforcement officer and amendments thereto which places the de-~~
10 ~~fendant's sentence in grid block 6-II or 6-I shall be presumed impris-~~
11 ~~onment. The court may impose an optional nonprison sentence upon~~
12 ~~making a finding on the record that the nonprison sanction will serve~~
13 ~~community safety interests by promoting offender reformation. Any de-~~
14 ~~cision made by the court regarding the imposition of the optional non-~~
15 ~~prison sentence, if the offense is classified in grid block 6-II or 6-I, shall~~
16 ~~not be considered departure and shall not be subject to appeal.~~

17 ~~—(h) When a firearm is used to commit any person felony, the of-~~
18 ~~fender's sentence shall be presumed imprisonment. The court may im-~~
19 ~~pose an optional nonprison sentence upon making a finding on the record~~
20 ~~that the nonprison sanction will serve community safety interests by pro-~~
21 ~~moting offender reformation. Any decision made by the court regarding~~
22 ~~the imposition of the optional nonprison sentence shall not be considered~~
23 ~~a departure and shall not be subject to appeal.~~

24 ~~—(i) The sentence for the violation of the felony provision of K.S.A. S-~~
25 ~~1567 and, subsection (b)(3) of K.S.A. 21-3412a, and subsections (b)(3)~~
26 ~~and (b)(4) of K.S.A. 21-3710, and amendments thereto, shall be as pro-~~
27 ~~vided by the specific mandatory sentencing requirements of that section~~
28 ~~and shall not be subject to the provisions of this section or K.S.A. 21-4707~~
29 ~~and amendments thereto. If because of the offender's criminal history~~
30 ~~classification the offender is subject to presumptive imprisonment or if~~
31 ~~the judge departs from a presumptive probation sentence and the of-~~
32 ~~fender is subject to imprisonment, the provisions of this section and~~
33 ~~K.S.A. 21-4707, and amendments thereto, shall apply and the offender~~
34 ~~shall not be subject to the mandatory sentence as provided in K.S.A. 21-~~
35 ~~3710, and amendments thereto. Notwithstanding the provisions of any~~
36 ~~other section, the term of imprisonment imposed for the violation of the~~
37 ~~felony provision of K.S.A. S-1567, subsection (b)(3) of K.S.A. 21-3412a~~
38 ~~and subsections (b)(3) and (b)(4) of K.S.A. 21-3710, and amendments~~
39 ~~thereto shall not be served in a state facility in the custody of the secretary~~
40 ~~of corrections.~~

41 ~~—(j) The sentence for any persistent sex offender whose current con-~~
42 ~~victed crime carries a presumptive term of imprisonment shall be double~~
43 ~~the maximum duration of the presumptive imprisonment term. The sen-~~

1 tence for any persistent sex offender whose current conviction carries a
2 presumptive nonprison term shall be presumed imprisonment and shall
3 be double the maximum duration of the presumptive imprisonment term.
4 Except as otherwise provided in this subsection, as used in this subsection,
5 “persistent sex offender” means a person who: (1) Has been convicted in
6 this state of a sexually violent crime, as defined in K.S.A. 22-3717 and
7 amendments thereto; and (2) at the time of the conviction under subsec-
8 tion (1) has at least one conviction for a sexually violent crime, as defined
9 in K.S.A. 22-3717 and amendments thereto in this state or comparable
10 felony under the laws of another state, the federal government or a fore-
11 ign government. The provisions of this subsection shall not apply to any
12 person whose current convicted crime is a severity level 1 or 2 felony.

13 —(k) If it is shown at sentencing that the offender committed any felony
14 violation for the benefit of, at the direction of, or in association with any
15 criminal street gang, with the specific intent to promote, further or assist
16 in any criminal conduct by gang members, the offender’s sentence shall
17 be presumed imprisonment. Any decision made by the court regarding
18 the imposition of the optional nonprison sentence shall not be considered
19 a departure and shall not be subject to appeal. As used in this subsection,
20 “criminal street gang” means any organization, association or group of
21 three or more persons, whether formal or informal, having as one of its
22 primary activities the commission of one or more person felonies or felony
23 violations of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*,
24 and amendments thereto, which has a common name or common iden-
25 tifying sign or symbol, whose members, individually or collectively engage
26 in or have engaged in the commission, attempted commission, conspiracy
27 to commit or solicitation of two or more person felonies or felony viola-
28 tions of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and
29 amendments thereto, or any substantially similar offense from another
30 jurisdiction.

31 —(l) The sentence for a violation of subsection (a) of K.S.A. 21-3715
32 and amendments thereto when such person being sentenced has a prior
33 conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-
34 3716 and amendments thereto shall be presumed imprisonment.

35 —(m) *The sentence for a violation of subsection (a)(2)(C), (a)(3)(B) or*
36 *(a)(3)(C) of section 37, and amendments thereto, shall be presumed im-*
37 *prisonment. The provisions of subsection (f) relating to an offense classi-*
38 *fied in grid blocks 5-H, 5-I or 6-G shall not be applicable to a violation*
39 *of subsection (a)(2)(C), (a)(3)(B) or (a)(3)(C) of section 37, and amend-*
40 *ments thereto, and any decision made by the court regarding an imposi-*
41 *tion of an optional nonprison sanction if the offense is classified in grid*
42 *blocks 5-H, 5-I or 6-G shall be considered a departure and subject to the*
43 *appropriate provisions of law related to departures.*

- 1 Sec. ~~61~~ **60**. K.S.A. 50-1009 is hereby amended to read as follows:
2 50-1009. (a) The commissioner may do the following:
- 3 (1) Adopt rules and regulations to implement this act;
 - 4 (2) make investigations and examinations:
 - 5 (A) In connection with any application for registration of any loan
6 broker or any registration already granted; or
 - 7 (B) whenever it appears to the commissioner, upon the basis of a
8 complaint or information, that reasonable grounds exist for the belief that
9 an investigation or examination is necessary or advisable for the more
10 complete protection of the interests of the public;
 - 11 (3) appoint special investigators to aid in investigations conducted
12 pursuant to this act. Such special investigators shall have the same au-
13 thority with respect to enforcement of this act as specified for special
14 investigators appointed under subsection ~~(b)~~ of K.S.A. ~~17-1265~~ *(a)* of sec-
15 tion *41*, and amendments thereto, in enforcing the Kansas *uniform* se-
16 curities act;
 - 17 (4) charge as costs of investigation or examination all reasonable ex-
18 penses, including a per diem prorated upon the salary of the commis-
19 sioner or employee and actual traveling and hotel expenses. All reasonable
20 expenses are to be paid by the party or parties under investigation or
21 examination;
 - 22 (5) issue notices and orders, including cease and desist notices and
23 orders, after making an investigation or examination under paragraph (2).
24 The commissioner may also bring an action on behalf of the state to enjoin
25 a person from violating this act. The commissioner shall notify the person
26 that an order or notice has been issued, the reasons for it and that a
27 hearing will be set in accordance with the provisions of the Kansas ad-
28 ministrative procedures act after the commissioner receives a written re-
29 quest from the person requesting a hearing;
 - 30 (6) sign all orders, official certifications, documents or papers issued
31 under this act or delegate the authority to sign any of those items to a
32 deputy;
 - 33 (7) hold and conduct hearings;
 - 34 (8) hear evidence;
 - 35 (9) conduct inquiries with or without hearings;
 - 36 (10) receive reports of investigators or other officers or employees of
37 the state of Kansas or of any municipal corporation or governmental sub-
38 division within the state;
 - 39 (11) administer oaths or cause them to be administered;
 - 40 (12) subpoena witnesses and compel them to attend and testify;
 - 41 (13) compel the production of books, records and other documents;
 - 42 and
 - 43 (14) order depositions to be taken of any witness residing within or

1 without the state. The depositions shall be taken in the manner prescribed
2 by law for depositions in civil actions and made returnable to the
3 commissioner.

4 (b) If any person refuses to obey a subpoena issued under this act,
5 the commissioner may make application to any court of competent juris-
6 diction to order the person to appear before the commissioner and pro-
7 duce documentary evidence or give evidence as directed in the subpoena.
8 The failure to obey the order of the court shall be subject to punishment
9 by the court as contempt of court.

10 (c) No person shall be excused from complying with a subpoena on
11 the ground that the testimony or evidence required may tend to incrim-
12 inate the person or subject the person to a penalty or forfeiture. No
13 individual may be prosecuted or subject to any penalty or forfeiture for
14 or on account of any transaction, matter or thing which the individual is
15 compelled to testify or produce evidence, after claiming the privilege
16 against self-incrimination. However, the individual so testifying shall not
17 be exempt from prosecution and punishment for perjury committed in
18 so testifying.

19 (d) In any prosecution, action, suit or proceeding based upon or aris-
20 ing out of this act, the commissioner may sign a certificate showing com-
21 pliance or noncompliance with this act by any loan broker. This shall
22 constitute prima facie evidence of compliance or noncompliance with this
23 act and shall be admissible in evidence in any action at law or in equity
24 to enforce this act.

25 ~~Sec. 62.~~ **61.** K.S.A. 50-1016 is hereby amended to read as follows:
26 50-1016. (a) The following persons are exempt from the requirements of
27 K.S.A. 50-1002, 50-1003, 50-1004, 50-1006, 50-1007, 50-1008, 50-1014
28 and 50-1015, *and amendments thereto*:

29 (1) Any attorney while engaging in the practice of law;

30 (2) any certified public accountant with a permit to practice under
31 K.S.A. 1-310, and amendments thereto, while engaged in practice as a
32 certified public accountant or any independent public accountant en-
33 gaged in the practice of public accounting whose service in relation to
34 procurement of a loan is incidental to their practice;

35 (3) any person licensed as a real estate broker or salesperson under
36 K.S.A. 58-3039, and amendments thereto, while rendering services in the
37 ordinary course of a transaction in which a license as a real estate broker
38 or salesperson is required;

39 (4) any broker-dealer, agent ~~or~~, *investment adviser or investment ad-*
40 ~~viser~~ *adviser representative* registered under ~~K.S.A. 17-1254~~ *section 18,*
41 *19, 20 or 21,* and amendments thereto;

42 (5) any person whose fee is wholly contingent on the successful pro-
43 curement of a loan from a third party and to whom no fee, other than a

- 1 bona fide third party fee, is paid before the procurement;
- 2 (6) any person who is a creditor, or proposed to be a creditor, for any
- 3 loan; and
- 4 (7) any feedlot operator licensed under K.S.A. 47-1503, and amend-
- 5 ments thereto.
- 6 (b) As used in this section, “bona fide third party fee” includes fees
- 7 for:
- 8 (1) Credit reports, appraisals and investigations; and
- 9 (2) if the loan is to be secured by real property, title examinations,
- 10 an abstract of title, title insurance, a property survey and similar purposes.
- 11 (c) As used in this section, “successful procurement of a loan” means
- 12 that a binding commitment from a creditor to advance money has been
- 13 received and accepted by the borrower.
- 14 (d) The burden of proof of any exemption or classification provided
- 15 in this act shall be on the party claiming the exemption or classification.
- 16 ~~Sec. 63.~~ **62.** K.S.A. 66-1508 is hereby amended to read as follows:
- 17 66-1508. (a) Except as otherwise provided in subsection (b), the assess-
- 18 ments provided for under the provisions of this act shall not apply to
- 19 motor carriers, nor shall they apply to public utilities or common carriers
- 20 which are under the jurisdiction of the commission solely in connection
- 21 with the administration of ~~the Kansas securities act or~~ the oil proration
- 22 or oil and gas conservation acts, the expenditures in connection with such
- 23 regulations being otherwise provided for by fees and assessments levied
- 24 under other acts against such public utilities or common carriers.
- 25 (b) Notwithstanding the provisions of subsection (a), motor carriers
- 26 shall be subject to the assessment provided for in K.S.A. 66-1502, *and*
- 27 *amendments thereto.*
- 28 ~~Sec. 64.~~ **63.** K.S.A. 74-8229 is hereby amended to read as follows:
- 29 74-8229. (a) Any investor that is not subject to taxation under the provi-
- 30 sions of the Kansas income, privilege or premium tax that makes a cer-
- 31 tified capital investment shall be deemed to acquire an interest in the
- 32 nature of a transferable 50% tax credit. The credit established pursuant
- 33 to this act may be sold or transferred subject to approval by the secretary.
- 34 An investor as described in this section shall not be allowed a refund for
- 35 the interest herein created. Only the full amount of the credit for any one
- 36 investment may be transferred, and the credit may be transferred only
- 37 one time. Documentation of any credit transfer shall be provided to the
- 38 secretary. The secretary shall transmit a copy of such documentation to
- 39 the secretary of revenue.
- 40 (b) The secretary, after consulting with the secretary of revenue, shall
- 41 develop such rules and regulations as are necessary to facilitate the op-
- 42 eration of the transfer program consistent with the interest of the state
- 43 in tracking the transfer of ownership and the use of tax credits earned by

1 the transferee.

2 (c) Any such sale or transfer shall not affect the time schedule for
3 taking the tax credit, as provided in this act. Any tax credits recaptured
4 pursuant to K.S.A. 74-8226, and amendments thereto, shall be the liability
5 of the taxpayer which actually claimed the tax credit. In approving the
6 sale or transfer of the tax credit pursuant to this section, the secretary
7 may require the transferor or the transferee or both to execute guarantees
8 or post bonds with respect to any potential tax credit recapture.

9 (d) Any payment received for tax credits pursuant to this section is
10 taxable income of the transferor of the credit and the amount equal to
11 the difference the dollar value of the tax credit transferred minus the
12 sales price of the tax credit shall be taxable income of the transferee.

13 (e) The secretary shall make and promulgate rules and regulations
14 consistent with the provisions of this act as are necessary or useful to carry
15 out the provisions of this act.

16 (f) Every final order, decision, license or other official act of the sec-
17 retary pursuant to this act is subject to review in accordance with the act
18 for judicial review and civil enforcement of agency actions, K.S.A. 77-601
19 et seq. and amendments thereto.

20 (g) In view of the objectives of these requirements and the underlying
21 policies of the act, the act is not available with respect to any transaction
22 or series of transactions that, although in technical compliance with these
23 rules, is part of a plan or scheme to evade the requirements of this act or
24 to distort the benefits entitled to be realized under the act. In such cases,
25 no investor in any CFC shall be entitled to the benefit of any tax credits
26 provided for hereunder.

27 (h) The offer or sale of a security by a CFC pursuant to this act shall
28 be subject to the registration requirements of ~~K.S.A. 17-1254, 17-1255,~~
29 ~~17-1257, 17-1258, 17-1259 and 17-1260~~ sections 11, 12, 13, 14, 15, 18,
30 19, 20 and 21, and amendments thereto.

31 Sec. ~~65~~ **64**. K.S.A. ~~2002~~ **2003** Supp. 75-3170a is hereby amended
32 to read as follows: 75-3170a. (a) The 20% credit to the state general fund
33 required by K.S.A. 1-204, 9-1703, 16-609, 16a-2-302, ~~17-1271~~ section 40,
34 17-2236, 17-5609, 17-5610, 17-5612, 17-5701, 20-1a02, 20-1a03, 31-133a,
35 31-134, 44-324, 44-926, 47-820, 49-420, 55-155, 55-176, 55-609, 55-711,
36 55-901, 58-2011, 58-3074, 58-4107, 65-6b10, 65-1718, 65-1817a, 65-
37 2011, 65-2855, 65-2911, 65-4610, 65-5413, 65-5513, 66-1,155, 66-1503,
38 74-715, 74-1108, 74-1405, 74-1503, 74-1609, 74-2704, 74-3903, 74-5805,
39 74-7009, 74-7506, 75-1119b, 75-1308 and 75-1514 and 2-3506, 84-9-411
40 and 84-9-413, and amendments thereto, is to reimburse the state general
41 fund for accounting, auditing, budgeting, legal, payroll, personnel and
42 purchasing services, and any and all other state governmental services,
43 which are performed on behalf of the state agency involved by other state

1 agencies which receive appropriations from the state general fund to provide such services.

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3 (b) Nothing in this act or in the sections amended by this act or referred to in subsection (a), shall be deemed to authorize remittances to be made less frequently than is authorized under K.S.A. 75-4215 and amendments thereto.

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7 (c) Notwithstanding any provision of any statute referred to in or amended by this act or referred to in subsection (a), whenever in any fiscal year such 20% credit to the state general fund in relation to any particular fee fund is \$200,000, in that fiscal year the 20% credit no longer shall apply to moneys received from sources applicable to such fee fund and for the remainder of such year the full 100% so received shall be credited to such fee fund, except as otherwise provided in subsection (d) and except that during the fiscal year ending June 30, 1993, with respect to the fire marshal fee fund, when the 20% credit to the state general fund prescribed by K.S.A. 31-133a, 31-134 and 75-1514 and amendments thereto, in the aggregate, is \$400,000, then in that fiscal year such 20% credit no longer shall apply to moneys received from sources applicable to the fire marshal fee fund and for the remainder of such fiscal year the full 100% so received shall be credited to the fire marshal fee fund.

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21 Sec. ~~66~~ 65. K.S.A. 75-6302 is hereby amended to read as follows:
22 75-6302. (a) On July 1, 1982, the office of the securities commissioner of
23 Kansas provided for by K.S.A. 17-1270, prior to its amendment ~~by this~~
24 ~~act in 1982, and prior to its repeal by this act~~, shall be and is hereby
25 abolished and all of the powers, duties and functions of such securities
26 commissioner shall be and are hereby transferred to and conferred and
27 imposed upon the securities commissioner of Kansas provided for by this
28 act.

29 (b) Except as otherwise provided in this act, the securities commissioner provided for by this act shall be the successor in every way to the powers, duties and functions of the securities commissioner, in which the same were vested prior to the effective date of this act.

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32 (c) Whenever the securities commissioner of Kansas, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the securities commissioner provided for by this act.

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36 (d) All rules and regulations and all orders and directives of the securities commissioner of Kansas in existence immediately prior to the effective date of this act shall continue to be effective and shall be deemed to be the rules and regulations and orders or directives of the securities commissioner of Kansas provided for by this act, until revised, amended, repealed or nullified pursuant to law.

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43 Sec. ~~67~~ 66. K.S.A. 12-1675, 12-1677b, 12-4516, 16-214, 17-1260,

1 17-1264, 17-1265, 17-1266, 17-1267, 17-1269, 17-1273, 17-1274, 17-
2 1275, 17-4632, 50-1009, 50-1016, 66-1508, 74-8229 and 75-6302 and
3 K.S.A. ~~2002~~ **2003** Supp. 17-1252, 17-1253, 17-1254, 17-1255, 17-1257,
4 17-1258, 17-1259, 17-1261, 17-1262, 17-1262a, 17-1263, **17-1264, 17-**
5 **1264a, 17-1265, 17-1265a**, 17-1266a, 17-1268, 17-1270, 17-1270a, 17-
6 1270b, 17-1271, 17-1272, 17-49a01, 21-4619, ~~21-4704~~ and 75-3170a are
7 hereby repealed.

8 Sec. ~~68~~ **67**. This act shall take effect and be in force from and after
9 July 1, ~~2004~~ **2005**, and its publication in the statute book.