

Approved: January 28, 1997
Date

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS.

The meeting was called to order by Chairperson Les Donovan at 3:30 p.m. on January 21, 1997 in Room 527-S of the Capitol.

All members were present except: Representative Tom Bradley
Representative Gerry Ray
Representative Dennis Wilson

Committee staff present: Bill Wolff, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Maggie Breen, Committee Secretary

Conferees appearing before the committee: Chuck Stones, Kansas Bankers Association
David Brant, Securities Commissioner of Kansas

Others attending: See attached list

The chairman recognize **Chuck Stones**, with the KBA, who requested the introduction of a bill that would delete provisions requiring bank directors and members of the board of directors to own \$500 of stock in the bank in order to be on the board of directors. (Attachment 1) Representative Correll made a motion for the committee to introduce this legislation, seconded by Representative Humerickhouse, and the motion carried.

The chairman recognized **David Brant**, Securities Commissioner, who requested a bill be introduced which would make amendments to the Kansas Securities Act in response to the changes made by the National Securities Market Improvement Act of 1996. (Attachment 2) Representative Cox made a motion for the committee to introduce this legislation, seconded by Representative Correll, and the motion carried.

The minutes of the Financial Institutions Committee for January 16, 1997 were presented for approval. Representative Samuelson made a motion to approve the minutes as presented, seconded by Representative Gilbert, and the motion carried.

The meeting was adjourned at 4:02 p.m.

The date of the next meeting will be determined later.

9-1118. Oath of directors and president.

Each director shall take and subscribe an oath that such director will administer the affairs of such bank or trust company diligently and honestly and that such director will not knowingly or willfully permit any of the laws relating to banks or trust companies to be violated. ~~and each director and the president of a bank or trust company shall swear that such director or president is the owner in good faith of shares of common stock having a par value of at least \$500 of such bank or trust company or in the parent corporation of such bank or trust company standing in such director's or president's name and that the same has not been pledged or assigned, except as authorized by K.S.A. 9-1117, and amendments thereto.~~ A copy of such oath shall be filed with the commissioner.

History: L. 1947, ch. 102, § 47; L. 1972, ch. 34, § 1; L. 1975, ch. 44, § 21; L. 1979, ch. 44, § 2; L. 1982, ch. 50, § 3; L. 1989, ch. 48, § 31; July 1.

Source or prior law:
9-109.

Research and Practice Aids:
Banks and Banking ⇄ 51.
C.J.S. Banks and Banking § 110 et seq.
Am.Jur.2d Banks § 78.

House Financial Institutions

1-21-97

Attachment 1



KANSAS

Bill Graves
Governor

OFFICE OF THE SECURITIES COMMISSIONER

David R. Brant
Securities Commissioner

1997 LEGISLATIVE PROPOSAL NUMBER 1

BILL TITLE: An act relating to securities, amending K.S.A. 17-1252, 17-1254, 17-1255, 17-1259, 17-1263, 17-1268, 17-1270, 17-1272, and 75-6308.

BILL SUMMARY: The bill conforms the Kansas Securities Act ("the Act") to the requirements of recent federal legislation, The National Securities Markets Improvement Act ("NSMIA"), which was signed by the President on October 11, 1996. That law amended various federal acts regulating securities, broker-dealers, investment companies and investment advisers.

NSMIA preempts federal "covered securities" from state registration review. "Covered securities" are defined by NSMIA to include certain exchange listed securities, mutual funds, and certain securities exempt from registration under the Securities Act of 1933. States are still allowed to require notice filings and collect fees for such securities.

NSMIA also precludes a state from imposing requirements on broker-dealers regarding net capital, margin, financial responsibility, books and records, or bonding or financial or operational reporting which differs from the requirements imposed by the Securities Exchange Act of 1934. It also exempts agents of broker-dealers from the requirement of state registration if they confine themselves to parameters of a de minimis transaction defined in NSMIA.

NSMIA also preempts the states from regulating investment adviser firms who have \$25 million or more in assets under management. Those adviser firms with less than \$25 million in assets under management will be exclusively registered by the states. Under the NSMIA, the states will maintain licensing authority over all individual representatives of investment advisory firms regardless of size.

The proposed amendments, which are highly technical in nature, conform the Kansas Securities Act to this new federal preemption scheme and provide for specific authority to require notice filings and collect fees from this new category of "federal covered securities." They also address the dual regulatory scheme for investment advisers and investment adviser representatives, which delineates the role of the state versus the role of the federal Securities and Exchange Commission. Further, there is an amendment to provide the de minimis transaction exemption for agents mandated by NSMIA.

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Attachment 2

The proposed bill also provides some additional technical amendments to the Kansas Securities Act which are not related to the recent federal legislation. These additional amendments eliminate obsolete provisions of the Act and correct certain perceived inadequacies in the application of the Act.

The definition of agent under K.S.A. 17-1252(b) excludes certain individuals who represent issuers in selling certain securities exempted from registration under K.S.A. 17-1261. This definition is amended to add to that list of exclusions individuals representing issuers in selling three additional securities exempt under K.S.A. 17-1261(e), (g), and (k). These securities are exempt securities issued by insurance companies, by exchange listed issuers, and by agricultural cooperatives. Staff felt that the protection of public investors and sound regulatory policy did not require such individuals be registered as agents.

The bill also proposes to repeal K.S.A. 17-1256 which provides for "registration by notification" (an abbreviated form of registration) for certain seasoned, high-quality issues. This form of registration has not been used since 1979 and has been rendered obsolete by the exchange listing exemption, blue chip exemption for general issuers and mutual funds, and now by the preemption of federal covered securities.

The bill also amends the requirements for filing a consent to service of process, to exempt from this requirement certain additional issuers of securities exempt under K.S.A. 17-1261(g), primarily exchange listed securities. Again, staff felt that investor protection and sound regulatory policy did not justify such a filing for those issuers.

K.S.A. 17-1268(d) provides, in part, that any agreement to waive compliance with the Kansas Securities Act is void. The current language is limited to ". . . any person acquiring any security . . ." The amendment would extend this protection to persons ". . . receiving any investment advice . . ." The Act was amended in 1979 to regulate investment advisers, but this section was never amended to reflect this change.

FISCAL IMPACT: The proposed legislation will have no material effect on agency operations or revenues. The referenced federal legislation was specifically designed so as to not effect the flow of state revenues from issuers of securities and investment advisers who are now preempted from state registration and regulation.

POLICY IMPLICATIONS/BACKGROUND: The policy implications and background have already been stated in the bill summary. The amendments conform our state securities act to the new federal legislation. The additional amendments eliminate unnecessary filing requirements which do not effect the protection of the public and which are consistent with sound regulatory policy.

IMPACT ON OTHER STATE AGENCIES: The bill has no impact on other state agencies.

Section 1. K.S.A. 17-1252 is hereby amended to read as follows: 17-1252.

When used in this act, unless the context otherwise requires:

(a) "Commissioner" means the securities commissioner of Kansas, appointed as provided in K.S.A. 17-1270, and amendments thereto.

(b) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer only in transactions in securities exempted by subsections (a), (b), (c), (e), (f), (g), (i), (j), (k), (l) or (p) of K.S.A. 17-1261, and amendments thereto, or who represents a broker-dealer in effecting transactions in this state limited to those transactions described in section 15(h)(2) of the securities and exchange act of 1934. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if such person otherwise comes within this definition.

(c) "Broker-dealer" means any person engaged in the business of purchasing, offering for sale or selling securities for the account of others or for such person's own account; but the term does not include an agent, issuer, bank, savings institution, insurance company, or a person who effects transactions in this state exclusively with the issuer of the securities involved in the transactions or with any person to whom a sale is exempt under subsection (f) of K.S.A. 17-1262, and amendments thereto.

(d) "Guaranteed" means guaranteed as to payment of principal, interest or dividends.

(e) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates or collateral trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management or unit type; the term "issuer" also means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued. The issuer of a certificate of interest in an oil and gas royalty, lease or mineral deed is the owner of the interest in the oil and gas royalty, lease or mineral deed who creates the certificate of interest for purpose of sale.

(f) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(g) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government or a political subdivision of a government.

(h) (1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

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

(4) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, and every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(5) A purported gift of assessable stock is considered to involve an offer and sale of such stock.

(i) "Securities act of 1933," "securities exchange act of 1934," "public utility holding company act of 1935," and "investment company act of 1940" mean the federal statutes of those names.

(j) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificates; thrift certificates or investment certificates, or thrift notes issued by investment companies; certificate of deposit for a security; certificate of interest in oil and gas royalties, leases or mineral deeds; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

(k) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(l) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term does not include:

(1) An investment adviser representative;

~~(1) A~~ (2) a bank, savings and loan association, credit union institution, or trust company;

~~(2)~~ (3) a lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of the individual's profession;

~~(3)~~ (4) a broker-dealer or its agent whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for them;

~~(4)~~ (5) a publisher of any bona fide newspaper, news column, news magazine, newsletter, or business or financial publication of general, regular, and paid circulation or service, whether communicated in hardy copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

~~(5)~~ a person who has no place of business in this state if (A) such person's only clients in this state are other investment advisers, broker-dealers, banks, savings and loan associations, credit unions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) during any period of 12 consecutive months such person does not direct business communications into this state in any manner to more than five clients other than those specified in subsection (1)(5)(A), whether or not such person or any of the persons to whom the communications are directed is then present in this state; or

~~(6)~~ any person that is a federal covered adviser; or

~~(6)~~ (7) such other persons not within the intent of this definition as the commissioner designates by order or by rules and regulations.

~~(m)~~ "Investment adviser representative" means any partner, officer, director of (or a person occupying a similar status or performing similar functions) or other individual except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is registered or required to be registered under this act, or who has a place of business located in this state and is employed by or associated with a federal covered adviser; and who does any of the following: (1) makes any recommendations or otherwise renders advice regarding securities, (2) manages accounts or portfolios of clients, (3) determines which recommendation or advice regarding securities should be given, (4) solicits, offers, or negotiates for the sale of or sells investment advisory services, or (5) supervises employees who perform any of the foregoing.

~~(n)~~ "Federal covered security" means any security that is a covered security under section 18(b) of the securities act of 1933 or rules or regulations promulgated thereunder, except that, until October 10, 1999 or such other date as may be legally permissible, a covered security for which a fee has not been paid and promptly remedied following

written notification to the issuer of the nonpayment or underpayment of such fees, as required by this act, shall not be a federal covered security.

(o) "Federal covered adviser" means a person who is registered under section 203 of the investment advisers act of 1940 or excluded from the definition of "investment adviser" under section 202(a)(11) of the investment advisers act of 1940, except that, until October 10, 1999 or such other date as may be legally permissible, a person so registered or excluded for which a fee has not been paid and promptly remedied following written notification to the adviser of such nonpayment or underpayment of such fees, as required by this act, shall not be a federal covered adviser.

Section 2. K.S.A. 17-1254 is hereby amended to read as follows. 17-1254.

(a) It is unlawful for any person to engage in business in this state as a broker-dealer, except in transactions exempt under K.S.A. 17-1262 and amendments thereto, unless such person is registered as a broker-dealer under this section. It is unlawful for any person to engage in business in this state as an agent, except in transactions exempt under K.S.A. 17-1262 and amendments thereto, unless such person is registered under this section as an agent for a specified broker-dealer registered under this section or for a specified issuer. It is unlawful for any person to transact business in this state as an investment adviser unless such person is registered under this section as an investment adviser or as a broker-dealer or such person's only clients in this state are investment companies, as defined in the federal investment company act of, or insurance companies. A conviction for a violation of this subsection is a severity level 7, nonperson felony. Any violation of this section committed on or after July 1, 1993, resulting in a loss of \$25,000 or more, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment. It is unlawful for any person to transact business in this state as a broker-dealer or agent unless that person is registered under this act, except in transactions exempt under K.S.A. 17-1262 and amendments thereto.

(b) It is unlawful for any broker-dealer registered under this act or issuer to employ or associate with an agent transacting business in this state unless the agent is registered under this act. The registration of an agent is not effective during any period when the agent is not associated with a particular broker-dealer registered under this act or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make the person an agent, the agent as well as the broker-dealer or issuer shall promptly notify the commissioner.

(c) It is unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless (1) the person is so registered under this act, or (2) the person has no place of business in this state and (A) the person's only clients in this state are investment companies as defined in the investment company act of 1940, other investment advisers, federal covered advisers, broker-dealers, banks, trust companies, savings institutions, insurance companies, employee benefit plans with assets of not less than one million dollars (\$1,000,000), and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the commissioner; or (B) during the preceding twelve-month period has had not more than five clients, other than those specified in subparagraph (A), who are residents of this state.

(d)(1) It is unlawful for any person required to be registered as an investment adviser under this act to employ or associate with an investment adviser representative unless the investment adviser representative is registered under this act. The registration of an investment adviser representative is not effective during any period when such person is not associated with an investment adviser registered under this act. (2) It is unlawful for any federal covered adviser to employ, or associate with an investment adviser representative having a place of business located in this state, unless such

investment adviser representative is registered under this act, or is exempt from registration. When an investment adviser representative described in subparagraphs (1) or (2) begins or terminates employment or association with an investment adviser, the investment adviser shall promptly notify the commissioner.

(e) Except with respect to federal covered advisers whose only clients are those described in K.S.A. 17-1254(c)(2), it is unlawful for any federal covered adviser to conduct advisory business in this state unless such person files with the commissioner such documents as have been filed with the securities and exchange commission together with a consent to service of process, and pays an initial and renewal notice filing fee, if the commissioner by rule or order requires. Each notice filing under this section shall expire on December 31 each year, unless renewed.

(f) A conviction for an intentional violation of subsection (a) through (e) of this section is a severity level 7, nonperson felony. Any violation of this section committed on or after July 1, 1993, resulting in a loss of \$25,000 or more, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment. This subsection shall not apply to a failure to notify the commissioner of termination of employment or association as an agent or investment adviser representative.

~~(b)~~ (g) A broker-dealer, agent, ~~or investment adviser, or investment adviser representative~~ may be registered after filing with the commissioner, or the commissioner's designee as permitted by subsection ~~(j)~~ (p), a written application containing such relevant information and in such form as the commissioner may require. The applicant shall be registered if the commissioner finds that the applicant and, if applicable, the officers, directors or partners are of good character and reputation, that the applicant's knowledge of the securities business and the applicant's financial responsibility are such that the applicant is suitable to engage in the business, that the applicant has supplied all information required by the commissioner and that the applicant has paid the necessary fee. The commissioner may require as a condition of registration that the applicant and any officers, directors or partners or, in the case of an investment adviser, any persons who represent or will represent the investment adviser in doing or performing any acts or functions which make such person an investment adviser pass a written examination as evidence of knowledge of the securities business. In determining the character and reputation of the applicant, the commissioner shall take into consideration any felony conviction of such person, but such a conviction shall not automatically operate as a bar to registration.

~~(e) Before registering any broker-dealer, agent or investment adviser the commissioner may by rules and regulations require such broker-dealer, agent or investment adviser to enter into and file in the office of the commissioner a bond in a sum of not less than \$5,000 and not more than \$25,000 and may determine its conditions. No bond shall be required of any investment adviser who does not maintain custody of customers' moneys, securities or property, or any registrant whose net capital, which shall be defined by rules and regulations, exceeds \$100,000, nor shall a bond be required of~~

any agent of such registrant. Any bond required shall run to the state of Kansas, insuring the faithful compliance with the provisions of this act by the broker-dealer, agent or investment adviser, such bond to be executed as surety by a surety company authorized to do business in this state. Such bond may be so drawn as to cover the original registration and any renewal thereof. Every bond shall provide for suit thereon by any person who has a cause of action under K.S.A. 17-1268 and amendments thereto and, if the commissioner by rules and regulations requires, by any person who has a cause of action not arising under this act the total liability of the surety to all persons shall not exceed the amount specified in the bond. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within three years after the sale or other act upon which it is based.

(h) The commissioner may, by rule or order, require a minimum capital for registered broker-dealers, subject to the limitations of section 15 of the securities exchange act of 1934, and establish minimum financial requirements for investment advisers, subject to the limitations of section 222 of the investment advisers act of 1940, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over the same and those investment advisers who do not.

(i) The commissioner may, by rule or order, require registered broker-dealers, agents, and investment advisers who have custody of or discretionary authority over client funds or securities, to post bonds in amounts as the commissioner may prescribe, subject to the limitations of section 15 of the securities and exchange act of 1934 (for broker-dealers) and section 222 of the investment advisers act of 1940 (for investment advisers), and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any registrant whose net capital, or, in the case of an investment adviser, whose minimum financial requirements, which may be defined by rule, exceeds the amounts required by the commissioner. Every bond shall provide for suit thereon by any person who has a cause of action under K.S.A. 17-1268 and, if the commissioner by rule or order requires, by any person who has a cause of action not arising under this act. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within the time limitations provided by law.

(j)(1) Every registered broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the commissioner prescribes by rule or order, subject to the limitations provided by section 15 of the securities exchange act of 1934 (in the case of a broker-dealer) and section 222 of the investment advisers act of 1940 (in the case of an investment adviser). All records so required with respect to an investment adviser, shall be preserved for such period as the commissioner prescribes by rule or order.

(2) With respect to investment advisers, the commissioner may require that certain information be furnished or disseminated as necessary or appropriate in the public

interest or for the protection of investors and advisory clients. To the extent determined by the commissioner, information furnished to clients or prospective clients of an investment adviser that would be in compliance with the investment advisers act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement.

~~(d) (k) The names and addresses of all persons approved for registration as broker-dealers, agents investment advisers and all of the orders in respect thereto shall be recorded in a "register of broker dealers and agents" kept in the office of the commissioner. The commissioner shall maintain records of registrations, notice filings, and orders pertaining to broker-dealers, agents, investment advisers, and investment adviser representatives. Unless the commissioner has designated alternative registration expiration dates as permitted by subsection (j) (p), every registration under this section shall expire on the first day of January in December 31 each year, but any registration for the succeeding year shall be renewed upon written application and payment of the fee as herein provided without filing a further statement or furnishing any further information unless specifically required by the commissioner. Unless the commissioner has designated alternative registration renewal dates as permitted by subsection (j) (p), application for renewals must be made not later than December 31 in each year; otherwise, they shall be treated as original applications.~~

~~(e) When a registered agent terminates the agent's connection with the issuer or registered broker dealer specified in the application of such agent, the registration of such agent shall terminate immediately and the specified issuer or registered broker dealer shall promptly notify the commissioner. When changes in the personnel of a partnership or in the principals, copartners, officers or directors of any broker dealer involve a majority of the capital of such broker dealer, the commissioner shall be promptly notified of such changes; but when such changes involve less than a majority of the capital of such broker dealer, the commissioner shall be notified of such changes by not later than the next annual renewal of registration of such broker dealer.~~

~~For purposes of this subsection, notices received by the commissioner from any designee selected pursuant to subsection (j) shall constitute notice from the issuer or registered broker dealer to the commissioner.~~

~~(f) (l) The fee for original or renewal registration of each broker-dealer and each investment adviser shall be not more than \$300. The fee for an original or renewal notice filing of each federal covered adviser shall be not more than \$300. and the fee for renewal of each broker dealer registration shall be not more than \$300. The fee for original registration of each investment adviser, other than an individual investment adviser who does not have custody of customers' moneys, securities or other property, shall be not more than \$300 and the fee for renewal of each such investment adviser registration shall be not more than \$300. The fee for original or renewal registration of an each agent and each investment adviser representative shall be not more than \$50, and the fee for renewal of any agent's registration shall be not more than \$50. The fee for original registration of an individual investment adviser who does not have custody of customers' moneys;~~

~~securities or other property shall be not more than \$50, and the fee for renewal of the registration of any individual investment adviser who does not have custody of customers' moneys, securities or other property shall be not more than \$50.~~ Each fee for original registration shall be payable with the application for original registration and each fee for renewal of registration shall be payable with the application for renewal and, in either case, the fee shall not be returned if the application is withdrawn. The commissioner shall establish such fees by rules and regulations.

~~(g)~~ (m) The commissioner may by order deny, suspend or revoke the registration of any broker-dealer, agent, ~~or investment adviser,~~ or investment adviser representative if the commissioner finds that such an order is in the public interest and that the applicant or registrant, or, in the case of a broker-dealer or investment adviser, any partner, officer or director or any person occupying a similar status or performing similar functions:

(1) Has filed an application for registration which as of its effective date (or as of any date after filing in the case of an order denying effectiveness) was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) has willfully violated or willfully failed to comply with any provision of this act or a predecessor act or any rules and regulations or order under this act or a predecessor act;

(3) has been convicted, within the past 10 years, of any misdemeanor involving a security or any aspect of the securities business or of any felony if the commissioner determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust;

(4) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice as an investment adviser, broker-dealer, or as an affiliated person or employee of an investment company, depository institution, insurance company, or involving any aspect of the securities business or commodities investment business;

(5) is the subject of an order of the commissioner denying, suspending or revoking registration as a broker-dealer, agent, ~~or investment adviser,~~ or investment adviser representative;

(6) is the subject of an order entered within the past five years by the securities administrator of any other state or by the securities and exchange commission denying, suspending or revoking registration as a broker-dealer, agent, ~~or investment adviser,~~ or investment adviser representative (or the substantial equivalent of those terms as defined in this act), or is the subject of an order of the securities and exchange commission suspending or expelling the person from a national securities exchange or national securities association registered under the federal securities exchange act of 1934, or is

the subject of an order by the commodities futures trading commission denying, suspending or revoking registration under the commodities exchange act, or is the subject of an order suspending or expelling from membership in or association with a member of a self-regulatory organization registered under the securities exchange act of 1934 or the commodities exchange act, or is the subject of a United States post office fraud order; but the commissioner may not enter any order under this clause on the basis of an order under any other state act unless that order was based on facts which would currently constitute a ground for an order under this section;

(7) has engaged in dishonest or unethical practices in the securities business;

(8) in the case of a broker-dealer or investment adviser, is insolvent, either in the sense that such person's liabilities exceed such person's assets or in the sense that such person cannot meet such person's obligations as they mature;

(9) is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, but the commissioner may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both;

(10) is failing to keep or maintain sufficient records to permit an audit disclosing the condition of the registrant's business;

(11) has failed to pay the proper registration fee; but the commissioner may not enter a revocation order under this clause, and the commissioner shall vacate any denial order entered under this clause when the deficiency has been corrected;

(12) has failed reasonably to supervise the sales representative or employees; or

(13) has willfully and without cause failed to comply with a request for information by the commissioner or person designated by the commissioner in conducting investigations or examinations under this act.

(h) (n) The commissioner may by emergency order suspend registration pending final determination of any proceeding under this section. Upon the entry of any order under this section, the commissioner shall promptly notify the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent) that it has been entered and of the reasons therefor and that upon written request the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(i) (o) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent or investment adviser, is an adjudged incapacitated person, or cannot be located after reasonable search,

the commissioner may cancel the registration or application in accordance with the provisions of the Kansas administrative procedure act.

~~(j)~~(p)(1) The commissioner may participate, in whole or in part, with any national securities association or national securities exchange registered with the United States securities and exchange commission under the federal securities exchange act of 1934 or with any association of state securities administrators in a central registration depository where the broker-dealer, agent and investment adviser registrations required by subsection ~~(b)~~ (g) may be centrally or simultaneously effected and the accompanying registration fees may be centrally collected for all states that require the registration of such persons and participate in such a central registration depository.

(2) If the commissioner finds that participation in such a central registration depository is in the public interest, the commissioner may by rules and regulations or by order require that:

(A) Applications for the registration or the renewal of the registration of any broker-dealer, agent or investment adviser as required by this section may be made or effected through or in conjunction or coordination with such a central registration depository;

(B) alternative registration expiration and renewal dates for registered broker-dealers, agents and investment advisers be utilized in lieu of the registration expiration and renewal dates provided under subsection ~~(d)~~ (k);

(C) all fees for the registration or the renewal of the registration of any broker-dealer, agent or investment adviser be collected by such a central registration depository in the dollar amounts required by subsection ~~(f)~~ (l), provided that such fees are subsequently submitted to the commissioner pursuant to K.S.A. 17-1270 and amendments thereto and remitted by the commissioner pursuant to K.S.A. 17-1271 and amendments thereto.

(3) Subsequent to the effective date of any rules and regulations or order of the commissioner that is adopted under subsection ~~(j)~~(p)(2):

(A) All applications for the registration or the renewal of the registration of any broker-dealer, agent or investment adviser, and all documents supporting such applications, which shall be filed with or received by such a central registration depository shall be deemed to be filed with or received by the commissioner pursuant to subsection ~~(b)~~ (g), when such applications or documents are received by such a central registration depository; and

(B) any statement which is contained in any application for the registration or the renewal of the registration of any broker-dealer, agent or investment adviser or contained in any document supporting such applications, which is filed with or received by such a central registration depository and which is, at the time and in light of the circumstances

under which it is made, false or misleading in any material respect shall constitute a violation of K.S.A. 17-1264 and amendments thereto.

Section 3. K.S.A. 17-1255 is hereby amended to read as follows: 17-1255.
(a) It is unlawful for any person to intentionally offer or sell any security in this state, ~~except securities exempt under K.S.A. 17-1261 and amendments thereto or when sold in transactions exempt under K.S.A. 12-1262 and amendments thereto, unless such security is registered by notification under K.S.A. 17-1256 and amendments thereto or by coordination under K.S.A. 17-1257 and amendments thereto or by qualification under K.S.A. 17-1258 and amendments thereto.~~ unless (1) it is registered under this act; (2) the security or transaction is exempt under K.S.A. 17-1261 or 17-1262 and amendments thereto; or (3) it is a federal covered security.

(b) A conviction for a violation of this section is a severity level 7, nonperson felony. Any violation of this section committed on or after July 1, 1993, resulting in a loss of \$25,000 or more, regardless of its location on the sentencing grid block, shall have a presumptive sentence of imprisonment.

Section 4. New Section. Federal covered security.

(a) The commissioner, by rule or order, may require the payment of a filing fee and the filing of documents with respect to a covered security under section 18(b)(2) of the securities act of 1933, as follows:

(1) Prior to the initial offer of such federal covered security in this state, all documents that are part of a federal registration statement filed with the U.S. securities and exchange commission under the securities act of 1933, together with a consent to service of process, and a fee not to exceed \$2,500.

(2) After the initial offer of such federal covered security in this state, all documents that are part of an amendment to a federal registration statement filed with the U.S. securities and exchange commission under the securities act of 1933, which shall be filed concurrently with the commissioner, together with a fee not to exceed \$100.

(3) An annual or periodic report of sales of such federal covered securities in this state.

(4) Each notice filing under this subsection (a) shall be effective for one year from its original filing date, or such other date required by the commissioner by rule or order, and shall be renewed annually, so long as the covered security continues to be offered in this state, by payment of an annual renewal fee not to exceed \$2,500.

(b) With respect to a covered security under section 18(b)(4)(D) of the securities act of 1933, the commissioner, by rule or order, may require the issuer to file a notice on form D together with a fee not to exceed the amount authorized by K.S.A. 17-1259(b)(3) and amendments thereto.

(c) The commissioner, by rule or otherwise, may require the filing of any document filed with the U.S. securities and exchange commission with respect to a covered security under section 18(b)(3) and (4) of the securities act of 1933, together with a fee not to exceed the amount authorized by K.S.A. 17-1259(b)(3) and amendments thereto.

(d) The commissioner may issue a stop order suspending the offer and sale of a federal covered security, except a covered security under section 18(b)(1) of the securities act of 1933, if it finds that (1) the order is in the public interest and (2) there is a failure to comply with any condition established under this section.

(e) The commissioner, by rule or order, may waive any or all of the provisions of this section.

Section 5. K.S.A. 17-1259 is hereby amended to read as follows: 17-1259.

(a) When securities are registered ~~by notification or~~ by coordination or by qualification, they may be offered and sold by a registered agent of the insurer or by any registered broker-dealer. Every registration shall remain effective for one year after its effective date unless the commissioner by rule or order extends the period of effectiveness or until terminated upon request of the registrant with the consent of the commissioner. No registration is effective while a stop order is in effect under K.S.A. 17-1260, and amendments thereto. So long as a registration remains effective, all outstanding securities of the same class shall be considered to be registered for the purpose of any nonissuer distribution. Any registration statement may be amended after its effective date so as to increase the securities specified therein as proposed to be offered. The commissioner may permit the omission of any document or item of information from any registration statement. Upon completion of a registered offering a registrant shall file a final report of sales.

(b)(1) Every person filing a registration statement shall pay a fee of .05% of the maximum aggregate offering price at which the securities are to be offered in this state, but not less than \$100 or more than \$2,500 for each year of effectiveness. The commissioner shall establish registration fees by rules and regulations. The commissioner may by rule and regulation set the maximum amount of securities that may be registered at any one time by a face-amount certificate company or an open-end management company or unit investment trust, as those terms are defined in the investment company act of 1940. If a registration statement is voluntarily withdrawn prior to being examined by the staff of the commissioner, the commissioner may refund 50% of the fee so paid.

(2) The commissioner may by rules and regulations set a fee not to exceed \$100 for filing to amend an effective registration statement. If an application to amend increases the maximum aggregate offering price of securities to be offered in this state, an additional fee shall be paid based upon the increase in such price calculated in accordance with the rate and annual minimum and maximum fee specified in paragraph (1) of this section.

(3) The commissioner may by rule and regulation set a fee not to exceed \$2,500 for an application or filing made in connection with any exemption from securities registration.

(c) The commissioner at the time of the granting of the authorization to sell securities as herein provided, may determine and fix the maximum amount that may be paid as or in the way of commission, advertising expense and all other expenses from the sale of such securities.

(d) Before any authorization to sell securities shall be issued by the commissioner as herein provided, all stock or securities of any kind issued, or to be issued, for consideration less than the public offering price or for consideration other than cash may

be required to be deposited in escrow according to such conditions as the commissioner shall provide by rule and regulation.

(e) The commissioner shall keep a register showing the issuer, date of registration, amount in number of dollars, of the securities registered.

(f) Neither the commissioner nor any employee of the securities department shall be interested as an officer, director, or stockholder in securing any authorization to sell securities under the provisions of this act.

(g) Upon termination of a registration the filing of a final report as required by section (a) shall satisfy the filing requirements of subsection (m)(3) K.S.A. 17-1261, and amendments thereto.

Section 6. K.S.A. 17-1263 is hereby amended to read as follows: 17-1263.

Every nonresident applicant for registration under this act and every nonresident issuer which proposes to offer its securities in this state through an agent or broker-dealer on an agency basis, unless its securities are exempt under subsection (a), (b), (c), (e), (f), (g), (i), or (j), (k), (l), or (p) of K.S.A. 17-1261 or are offered in transactions exempt under K.S.A. 17-1262, shall file with the commissioner, in such form as he may by rule prescribe, an irrevocable consent appointing the secretary of state of Kansas or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor, executor or administrator which arises under this act or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Registration of securities by a broker-dealer shall not subject the issuer of such securities to the requirements of this section. A person who has filed such a consent in connection with a previous registration need not file another.

Service may be made by leaving a copy of the process in the office of the secretary of state of Kansas, and it is not effective unless (a) the plaintiff (who may be the commissioner in a suit, action, or proceeding instituted by him) forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the commissioner, and (b) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court may allow.

When process is served under this section, the court, or the commissioner in a proceeding before him, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

Section 7. K.S.A. 17-1268 is hereby amended to read as follows: 17-1268.

(a) Any person, who offers or sells a security in violation of K.S.A. 17-1254 or 17-1255 or offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made in the light of the circumstances under which they are made not misleading (the buyer not knowing of the untruth or omission) and who does not sustain the burden of proof that such person did not know and in the exercise of reasonable care could not have known of the untruth or omission, is liable to the person buying the security from such person, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at 15% per annum from the date of payment, costs, and reasonable attorney fees, less the amount of any income received on the security, upon the tender of the security, or for damages if the buyer no longer owns the security. Damages are the amount that would be recoverable upon a tender less (1) the value of the security when the buyer disposed of it, and (2) interest at 15% per annum from the date of disposition.

(b) Every person who directly or indirectly controls a seller liable under subsection (a), every partner, officer, or director (or person occupying a similar status or performing similar functions) or employee of such a seller who materially aids in the sale, and every broker-dealer or agent who materially aids in the sale is also liable jointly and severally with and to the same extent as the seller, unless the nonseller who is so liable sustains the burden of proof that such nonseller did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(c) Any tender specified in this section may be made at any time before entry of judgment. Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant. No person may sue under this section if (1) the buyer received a written offer, before suit and at a time when the buyer owned the security, to refund the consideration paid, together with interest at 15% per annum from the date of payment, less the amount of any income received on the security, and the buyer failed to accept the offer within 30 days of its receipt, or (2) the buyer received such an offer before suit and at a time when the buyer did not own the security, unless the buyer rejected the offer in writing within 30 days of its receipt.

(d) No person who has made or engaged in the performance of any contract in violation of any provision of this act or any rule and regulation or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security or receiving any investment advice to waive compliance with any provision of this act or any rule and regulation or order hereunder is void.

Section 8. K.S.A. 17-1272 is hereby amended to read as follows: 17-1272.
It will not be necessary to negative any of the exemptions or exclusions provided in
this act in any complaint, information, indictment, or any other writ or
proceedings laid or brought under this act, and the burden of proof of any
such exemption, exclusion, or of status as a federal covered security shall be upon the
party claiming the benefit of such exemption exclusion, or status.

Section 9. K.S.A. 17-1256 is hereby repealed.

Section 10. K.S.A. 17-1270 is hereby amended to read as follows: 17-1270.

(a) This act shall be administered by the securities commissioner of Kansas.

(b) All fees herein provided for shall be collected by the commissioner. All salaries and expenses necessarily incurred in the administration of this act shall be paid from the securities act fee fund.

(c) The commissioner may, ~~except with respect to securities exempt under K.S.A. 17-1261 and amendments thereto and transactions exempt under K.S.A. 17-1262 and amendments thereto,~~ by rules and regulations or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser unless the security or transaction is exempt under K.S.A. 17-1261 and 17-1262 and amendments thereto or is a federal covered security.

(d) The books and records of every person issuing or guaranteeing any securities subject to the provisions of this act and of every broker-dealer or investment adviser registered under this act shall, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors, be subject at any time, or from time to time, to such periodic or special examinations by the commissioner, or such accountant or examiner as the commissioner may determine. The commissioner, by rules and regulations, may set a fee to be paid by the person, broker-dealer or investment adviser subject to the examination at cost to the agency. For the purpose of avoiding unnecessary duplication of examinations, the commissioner may cooperate with other proper authorities.

(e) The commissioner may require any registered broker-dealer, registered investment adviser or issuer who has registered securities under this act to file a semiannual report containing such reasonable information, except with respect to securities exempt under K.S.A. 17-1261 and amendments thereto or transactions exempt under K.S.A. 17-1262 and amendments thereto, as the commissioner may believe necessary regarding the financial condition of such person and the securities sold in this state by such person. Each such report shall be accompanied by a filing fee of \$5.

(f) The commissioner may from time to time adopt, amend, and revoke such rules and regulations, orders and forms as may be necessary to carry out the provisions of this act. In prescribing rules and regulations and forms, the commissioner may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable. All rules and regulations and forms of the commissioner shall be published. No provision of this act imposing any liability applies to any act done or omitted in good faith in conformity with any rules and regulations, form, or order of the commissioner, notwithstanding that the rules and regulations, form or order may later be

amended, revoked or rescinded or be determined by judicial or other authority to be invalid for any reason. Every hearing in an administrative proceeding shall be public unless the commissioner in the commissioner's discretion grants a request joined in by all the respondents that the hearing be conducted privately.

(g) A document is filed when it is received by the commissioner. The commissioner may receive a document filed by electronic format that is submitted by direct digital transmission, magnetic tape or diskette, and may maintain and provide the document in such an electronic format. The commissioner shall keep a register of all applications for registration and registration statements which are or have ever been effective under this act and all denial, suspension, or revocation orders which have ever been entered under this act. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules and regulations as the commissioner may adopt. Upon request and after payment of a fee per page in an amount fixed by the commissioner and approved by the director of accounts and reports under K.S.A. 45-204, and amendments thereto, the commissioner shall furnish to any person photostatic or other copies of any entry in the register or any document which is a matter of public record, which copies shall be certified under the commissioner's seal of office if requested. In any proceeding or prosecution under this act, any copy so certified is prima facie evidence of the contents of the entry or document certified. The commissioner in the commissioner's discretion may honor requests from interested persons for interpretative opinions.

Section 11. K.S.A. 75-6308 is hereby amended to read as follows: 75-6308.

(a) To encourage uniform interpretation and administration of ~~this act~~ the Kansas securities act and effective securities regulation and enforcement, the commissioner may cooperate with the securities agencies or administrators of other states, Canadian provinces or territories, or other countries, the securities and exchange commission, the commodity futures trading commission, the securities investor protection corporation, any self-regulatory organization, any national or international organization of securities officials or agencies, and any governmental law enforcement or regulatory agency.

(b) The cooperation authorized by this section includes, but is not limited to, the following:

(1) Establishing a central depository for registration under ~~this act~~ the Kansas securities act and for documents and fees required under ~~this~~ that act. The commissioner shall by rules and regulations establish procedures and requirements for filing documents and fees;

(2) making a joint registration examination or enforcement investigation;

(3) holding a joint administrative hearing;

(4) filing and prosecuting a joint civil or administrative proceeding;

(5) sharing and exchanging personnel;

(6) sharing and exchanging information and documents subject to the restrictions of the Kansas open records act; and

(7) formulating, in accordance with the Kansas administrative procedure act, rules and regulations on matters such as statements of policy, guidelines and interpretive opinions and releases.

(c) This section shall be part of and supplemental to the Kansas securities act.