

MINUTES OF THE HOUSE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman Michael R. O'Neal at 3:30 p.m. on March 10, 2003 in Room 313-S of the Capitol.

All members were present except:

- Representative Dale Swenson - Excused
- Representative Dan Williams - Excused

Committee staff present:

- Jerry Ann Donaldson, Legislative Research Department
- Jill Wolters, Revisor of Statutes
- Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

- David Brant, Kansas Securities Commissioner
- Rick Fleming, General Counsel, Kansas Security Commission

Hearing on **SB 110 - criminal & civil penalties for unlawful acts relating to securities**, were opened.

David Brant, Kansas Securities Commissioner, explained that the proposed bill would create graduated penalties for certain existing crimes depending on the dollar amount:

- \$1,000,000 or more would move from a severity level 6 nonperson felony to a severity level 3 nonperson felony
- \$100,000 but less than \$1,000,000 would be a severity level 4 nonperson felony
- \$25,000 to \$100,000 would be a severity level 5 nonperson felony
- and for loss less than \$25,000 would be a severity level 6 nonperson felony

The bill would also create a new severity level 8 nonperson felony which would be for those who alter, destroy, shred, conceal, cover up or falsify any record with the intent to impede an investigation. (Attachment 1)

Barbara Tombs, Executive Director Kansas Sentencing Commission, provided the committee with a bed space impact for **SB 110** (Attachment 2). She estimated that the proposed bill would increase admissions by four and four additional beds by the year 2004 and will increase to five offenders per year with an increase in 13 additional bed space by 2013.

The Sentencing Commission was concerned with the severity level three, nonperson felony provisions. A severity level three is reserved to those crimes such as: aggravated robbery, kidnaping and voluntary manslaughter. Another concern is with the pattern beginning to evolve with the placement of nonperson felony classification on a severity level, which till last year was purely person felonies.

The final concern is with the modifications to the special sentencing rules relating to boarder boxes. Special sentencing rules were developed to provide discretion to judges whether the circumstances of the offense warranted imprisonment when the offender has no or limited criminal history. Modifications to special sentencing rules relating to boarder boxes do not represent sound sentencing policy.

Rick Fleming, General Counsel, Kansas Security Commission, pointed out that there is "no treatment programs" for those who commit securities fraud. He suggested that increasing the severity levels would only result in one or two beds per year.

The hearing on **SB 110** was closed.

The committee discussed whether or not they wanted to take up the issue of variable annuities in **HB 2347 - Kansas Uniform Securities Act**, on a vote 7-6 the committee started discussion on the bill.

Committee discussion centered on the fact that the during the hearings the only thing conferees testified on was the issue of variable annuities and were not sure what was in the remainder of the bill. Many suggested that the Kansas Bar Association and the Legislature should take more time to study the issue. It was

CONTINUATION SHEET

MINUTES OF THE HOUSE JUDICIARY COMMITTEE at 3:30 p.m. on March 10, 2003 in Room 313-S of the Capitol.

announced that the Commissioner's on Insurance were taking up the issue of dual regulations and variable annuities at their spring meeting and would be able to report back what is happening across the United State.

Representative Patterson made the motion to table the bill. Representative Owens seconded the motion. The Chairman determined that the motion was debatable. Some members wanted to continue to work the bill, while others requested that the Chairman direct the Speaker to have an interim study on the issue. The motion carried.

**Representative Long made the motion to approve the committee minutes from February 10, 11, 12 & 13. Representative Owens seconded the motion. The motion carried.**

The committee meeting adjourned at 4:45 p.m. The next meeting was scheduled from Tuesday, March 11, 2003 at 3:30 p.m. in room 313-S.



# K A N S A S

DAVID BRANT, COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR

OFFICE OF THE SECURITIES COMMISSIONER

## TESTIMONY IN SUPPORT OF SENATE BILL 110

### Securities Penalties Amendments

Judiciary Committee Kansas House

**DAVID BRANT**

**Securities Commissioner**

March 10, 2003

Mr. Chairman and members of the committee, thank you for this opportunity to testify in support of Senate Bill 110 which would enact harsher criminal and administrative penalties for securities fraud and violations of the Kansas Securities Act. I would like to acknowledge and thank Scott Schultz, Associate General Counsel, and Rick Fleming, General Counsel, for their expertise and assistance with this important legislation.

Last fall, we announced that we would ask the 2003 Legislature to consider these amendments. Attached for your information are news clips about that announcement from *USA Today* and *The Topeka Capital Journal*.

Unfortunately, it has been a volatile and historic last several years for Wall Street, securities regulators, and for Main Street investors due to the financial scandals which have revealed corporate greed, accounting fraud, conflicts of interest, and tainted analyst research. In late July, the President and the Congress agreed on the Sarbanes-Oxley Act of 2002 which enacts sweeping reforms and tougher penalties which hopefully will work to require corporate executives, accountants, and research analysts to be honest with investors.

While we should all be supportive of this renewed emphasis on regulation -- we must not forget the victims -- and the devastating impact that securities fraud can have on a retiree's savings. Effective enforcement and criminal punishment are the best deterrents for those who would defraud investors. Con artists and white-collar criminals should be held accountable and punished accordingly. It is time to update Kansas laws so that our securities penalties are tougher and more effective.

Under current Kansas law, a two-bit robber who grabs and steals a purse with \$30 from a woman in a grocery store parking lot is punished more severely than a white-collar crook who defrauds an elderly widow out of \$300,000 of her retirement savings. Currently, the crime of robbery is a level 5 felony as compared to the lesser crime of securities fraud, a level 6 felony.

618 S. KANSAS AVENUE, TOPEKA, KS 6660  
Voice 785-296-3307 Fax 785-296-6872 Investor Services  
<http://www.securities.state.ks.us>

H. JUDICIARY

3-10-03

Attachment: /

Senate Bill 110  
Kansas Securities Commissioner  
March 10, 2003  
Page 2

It's time that the punishment fit the crime... particularly when financial crimes often have a devastating impact on the victims. We increasingly handle serious cases where older victims have suffered substantial losses.

Senate Bill 110 would increase securities criminal penalties to four severity levels based upon the amount of loss. Under current Kansas law, a defendant who defrauds investors out of \$1 million is treated the same as a defendant who steals \$25,000.

In a recent case, Phillip McGuckin of Wichita was convicted of securities fraud on September 25<sup>th</sup> in Sherman County. McGuckin operated an oil and gas scheme which defrauded 51 investors out of \$1.2 million. One of McGuckin's victims, an 85-year-old Navy veteran, invested \$54,800 with McGuckin to provide investment income for the care of his bed-ridden wife who is suffering from Alzheimer's disease. Under current law, the maximum sentence that McGuckin could receive was 19 months in prison for the securities fraud conviction.

Another example would be the 2001 conviction of Verdell Tassler, a broker from Abilene who was convicted for selling \$1.3 million in bogus investments to his clients including an elderly Herington couple who lost \$295,000. Tassler was sentenced under current law to serve 19 months in jail. Under the proposed amendments, Tassler could have been sentenced to a term of 5 years.

We also would propose two new laws which are modeled after similar provisions in the Sarbanes-Oxley Act: 1) New Section 8 would make it a crime to influence or mislead an appraiser or an auditor in the preparation of appraisals or financial statements; and 2) New Section 9 would prohibit the destruction or falsifying of records and would protect whistleblowers from retaliation for providing truthful information.

Shawnee County District Attorney Robert Hecht (see attached letter) and Johnson County District Attorney Paul Morrison are supportive of these proposed amendments.

We will be glad to answer any questions and we thank you for your consideration.

Attachments:

Outline and Brief Explanation of Provisions in Senate Bill 110 and House Bill 2347

Sentencing Guidelines Grid

Letter of Support from Shawnee County District Attorney Robert Hecht

11/11/02 news clip from *USA Today*

11/12/02 news clip from *The Topeka Capital Journal*

**SENATE BILL 110 and HOUSE BILL 2347**  
**PROPOSED 2003 SECURITIES PENALTIES AMENDMENTS**  
**Kansas Securities Commissioner**

Senate House  
110    2347

1        37(a)(2)    Securities Fraud: Amend K.S.A. 17-1253(f) to increase criminal penalties to severity levels 3 through 6 based upon the amount of loss rather than a single severity level 6 felony.

SECURITIES FRAUD	Current Severity Level with Sentencing Range for Defendant with No Prior Convictions		Proposed Severity Level with Sentencing Range for Defendant with No Prior Convictions	
\$1,000,000 or more	Level 6	17-19 months	Level 3	55-61 months
\$100,000 but less than \$1,000,000	Level 6	17-19 months	Level 4	38-43 months
\$25,000 but less than \$100,000	Level 6	17-19 months	Level 5	31-34 months
Less than \$25,000	Level 6	17-19 months	Level 6	17-19 months

2        37(a)(3)    Unregistered Agents: Amend K.S.A. 17-1254(f) to increase criminal penalties for offering or selling securities without being registered as a broker-dealer, agent, investment adviser or investment adviser representative to severity levels 4 through 7 based upon the amount of loss rather than a single severity level 7 felony.

3        37(a)(3)    Unregistered Securities: Amend K.S.A. 17-1255(b) to increase the criminal penalties for unlawfully offering or selling securities to severity levels 4 through 7 based upon amount of loss rather than a single severity level 7 felony.

4        34(a)  
37(a)(4)    False Filings: Amend K.S.A. 17-1264 to increase the criminal penalty for the filing of a false and misleading statement from level 10 to level 8.

5        41(a)(4)    Scope of Investigations: Amend K.S.A. 17-1265 to enable securities investigators to investigate other criminal acts if discovered during the course of securities investigation. This type of authority is already granted to law enforcement officers with other state agencies (Revenue, Lottery, and Racing and Gaming).

6        29(c)(3)  
43(b)(1)    Fines: Amend K.S.A. 17-1266a to increase the maximum fine from \$5,000 to \$25,000 in administrative proceedings.

7        60        Sentencing Guidelines Grid: Addition of subsection (m) to retain the current \$25,000 threshold for presumptive imprisonment.

8        34(b)        Financial Statements and Appraisals: Add new state law to prohibit influencing or misleading persons in the preparation of financial statements or appraisals.

9        34(c)        Destruction of Documents and Retaliation against Informants: Add new state law to prohibit the destruction or falsifying of records and protect whistleblowers from retaliation for providing truthful information.

1-1

### SENTENCING RANGE - NONDRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	Misdemeanor 2+	Misdemeanor 1 No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

**Probation Terms are:**

- 36 months recommended for felonies classified in Severity Levels 1 – 5
- 24 months recommended for felonies classified in Severity Levels 6 – 7
- 18 months (up to) for felonies classified in Severity Level 8
- 12 months (up to) for felonies classified in Severity Levels 9 - 10

**Postrelease terms are:**

- 36 months for felonies classified in Severity Levels 1 – 4
- 24 months for felonies classified in Severity Level 5 – 6
- 12 months for felonies classified in Severity Levels 7 - 10

**Postrelease for felonies committed before 4/20/95**

- 24 months for felonies classified in Severity Levels 1 - 6
- 12 months for felonies classified in Severity Level 7 - 10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

LAW OFFICES OF  
DISTRICT ATTORNEY  
Third Judicial District  
Shawnee Co. Courthouse, 200 SE 7<sup>th</sup> Street  
Second Floor, Suite 214  
TOPEKA, KANSAS 66603



ROBERT D. HECHT  
District Attorney

TELEPHONE (785) 233-8200 Ext. 4330  
FAX (785) 291 -4909

February 18, 2003

Mr. David Brant  
Securities Commissioner  
Office of the Kansas Securities Commissioner  
618 S. Kansas Avenue  
Topeka, Kansas 66603

Re: Kansas Security Laws/Senate Bill 110/House Bill 2347

Dear Mr. Brant:

This will acknowledge yours of February 13, 2003. Although I have not had the opportunity to review HB 2347, being a total rewrite of the Kansas securities laws, I'm sufficiently familiar with the existing statutes, as to be persuaded that a total rewrite is most appropriate. Far too many Kansans, particularly the elderly and those less versed in the nuances of investment, securities and the regulations thereof, are victimized by unscrupulous, unethical, and even criminal purveyors of alleged investments which are really nothing but quick rich schemes for the purveyor. It has been my observation over about the last 20 years that the penalties for the violating of such laws are insufficient.

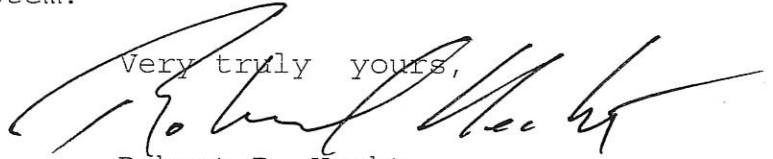
In addressing the penalties, I would hope that there would be provision made for the pursuit of the fruits of illegal activity to be available, to include whatever real or personal property was obtained, in whole or in part, with the proceeds of illegal activity, so that their profits cannot be "squirreled away" and unavailable to be recouped for the benefit of their victims, and/or for the payment of fines and penalties. Law enforcement has found the "forfeiture" laws in regards to drug trafficking to be an extremely valuable tool. A similar concept would be most appropriate in white collar crime situations. One needs only to look at Enron, et al. to see the gross injustice, and the outrage of the victims, when the corporate criminal is living in \$5, \$10, \$20 million dollar homes, driving 2, 3, 4 imported luxury vehicles, having ski lodges in Aspen, etc., while their victims have been made impecunious.

February 18, 2003  
Page Two

Of course, not only should their profits be taken from them, but prison time should be available and, in my judgment, the prison time should be available and the offenses should be classified in the Sentencing Guidelines as presumptive imprisonment.

I thank you for your efforts in attempting to improve the civil and criminal laws that provide for the regulation of the securities and investment industries, for neither they nor the Kansas economy can succeed unless people have the credible reliance upon the integrity of the system.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert D. Hecht". The signature is fluid and cursive, with a large initial "R" and "H".

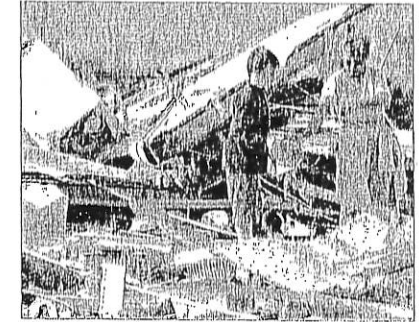
Robert D. Hecht  
District Attorney

RDH/clk



# Newsline

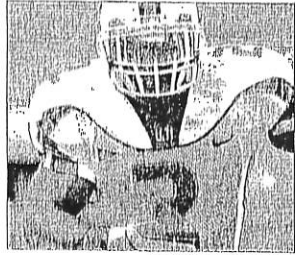
News Money Sports Life



Clarksville, Tenn.: Aftermath on Sunday.

**'Intense and sustained' deadly storms strike Tenn.**

## FINAL SPORTS



By Andy Lyons, Getty Images

Willis McGahee: Miami's potent back.

## By all counts, Miami's No. 1

Every voter in latest USA TODAY/ESPN Coaches Poll thinks so. Title picture could become really fuzzy, even with Oklahoma's stunning loss **1, 12C**



# States seek stiffer penalties for securities fraud

By Edward Iwata  
USA TODAY

SAN FRANCISCO — Eager to jail more corporate crooks, state enforcers are seeking to strengthen state laws against financial fraud.

Their moves come as federal and state authorities continue to investigate scandals such as Enron's that have cost investors billions of dollars.

Securities regulators, attorneys general and lawmakers in California, Oregon, Kansas,

Ohio and Pennsylvania are proposing longer prison terms and higher fines for corporate wrongdoers.

"White-collar criminals should be held accountable and punished accordingly," Kansas Securities Commissioner David Brant says.

In Kansas, proposed laws would more severely punish those who perpetrate securities fraud. For instance, a stockbroker who was convicted for peddling \$1.3 million in bogus investments could be serving a

five-year maximum term — not the 19-month maximum that he received.

California Attorney General Bill Lockyer is seeking laws to permit his office to take on all civil and criminal securities cases. Only state prosecutors in New York, New Jersey, Maryland and Delaware can do both now. Elsewhere, securities regulators handle civil cases that may result in fines and license revocations for wrongdoers. They refer criminal actions, which carry harsher penalties,

to state prosecutors and local district attorneys.

Lockyer and other state prosecutors hope to wield the same legal clout as New York Attorney General Eliot Spitzer, who has won fame for investigations of Wall Street banks. New York's 1921 Martin Act is touted as the strongest state securities law in the nation.

"We can't afford to be lapdogs," says Lockyer, president-elect of the National Association of Attorneys General.

Some legal experts say more

state laws will overburden a highly regulated industry and cause clashes between state and federal authorities. "Enacting 52 different laws and policies isn't the answer," says New York attorney Mark Astarita of Beam & Astarita.

The key problem is a dearth of staffing and money, not weak laws, says Indiana Securities Commissioner Brad Skolnik. "Unfortunately," he says, "white-collar crime still isn't as high on our national agenda as it needs to be."

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# Business

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THE CAPITAL JOURNAL  
NOVEMBER 12, 2002

## Security commissioner proposes crackdown on fraud

**Scandals:** Penalties for investment-related crimes would be upped under new law

By Chris Grenz  
*The Capital Journal*

Securities Commissioner David Brant is capitalizing on the current climate of high-profile investor fraud to push for tougher penalties in Kansas.

Brant recently unveiled a proposal that would increase criminal sentences based on a victim's financial losses, toughen punishments for selling securities without being registered with the state and make it easier to go after individuals at the top of a

company when they know about or should have known about fraud committed by lower-ranking employees.

"We've been concerned for some time about the criminal penalties in Kansas," Brant said in an interview Monday. "Somebody who causes a \$1 million loss to an investor gets off easier under the criminal code than someone who robs a little old lady in the parking lot of a grocery store. It's time for the punishment to fit the crime."

It has been a record year for securities fraud, with shockwaves being felt from Wall Street to Main Street, Brant said. Scandals have rocked Enron, Tyco International, Adelphia and ImClone. Even Martha Stewart has been implicated in a trading crime.

Closer to home, a Wichita man — Phillip

McGuekin — was convicted of defrauding 51 investors out of \$1.2 million. He is awaiting sentencing and faces 19 months in prison. Also, Verdell Tassler, a broker from Abilene, was convicted of selling \$1.3 million in bogus investments. One elderly couple from Herington lost \$295,000. Tassler was sentenced to 19 months in jail.

Under Brant's new proposals, both men could have been sentenced to five years in prison, Brant said.

"I'm concerned that there are some targets out there right now that laugh at the criminal penalties," he said. "They look at it as a risk and a cost of doing business. If we do toughen the penalties and are able to get a prosecution, hopefully its going to have some effect on those that right now dismiss

the risk of going to jail as fairly minimal."

The Kansas proposal comes after Congress in July passed sweeping reforms and tougher penalties at the federal level that were designed to require corporate executives, accountants and research analysts to be honest with investors, Brant said.

Brant, whom Gov. Bill Graves appointed as securities commissioner in 1996, will take his proposal to the 2003 Legislature, where he is optimistic about its chances. Sen. John Vratil, R-Leawood, who is chairman of the Senate Judiciary Committee, has said he will sponsor the legislation.

"I think I've got solid support," Brant said.

Chris Grenz can be reached at  
(785) 295-1190 or [cgrenz@cjonline.com](mailto:cgrenz@cjonline.com).

### Investigate

The Securities Commissioner urges all Kansans to "investigate before you invest." Call (800) 232-9580 to check whether an investment opportunity is registered and if the broker or investment adviser is licensed.

### Online

Hear the Kansas securities commissioner discuss a proposed penalty increase to clamp down on securities fraud.  
[www.cjonline.com](http://www.cjonline.com)

## KANSAS SENTENCING COMMISSION

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**JAYHAWK TOWER  
700 S.W. JACKSON, SUITE 501  
TOPEKA, KS 66603  
(785) 296-0923 Fax: (785) 296-0927  
FAX TRANSMISSION COVER SHEET**

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**Date:** March 5, 2003  
**To:** Representative Mike O'Neal  
**Fax:** 6-7594  
**Subject:** Impact for HB 2347  
**Sender:** Barbara Tombs, Executive Director

**MESSAGE:**

*Representative O'Neal:*

*Attached is the impact for SB 110 which contains the exact same criminal penalties and sentencing directives as HB 2347. I have no real problem with the bedspace impact of this bill however, there are some sentencing rules and modification to sentencing rules that concern me. They are listed under the "Summary of SB 110 Impact" on the last page. I just wanted to make sure you were aware of these issues.*

*Thanks  
Barb Tombs*

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**YOU SHOULD RECEIVE 4 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL (785) 296-0923**

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H. JUDICIARY

3-10-03

Attachment: 2




State of Kansas

KANSAS SENTENCING COMMISSION

Honorable Ernest L. Johnson, Chairman  
District Attorney Paul Morrison, Vice Chairman  
Barbara S. Tombs, Executive Director

MEMORANDUM

To: Duane A. Goossen, Director of the Budget  
ATTN: Jin Liu

From: Barbara S. Tombs   
Executive Director

Date: February 6, 2003

RE: Fiscal Note on SB 110

SUMMARY OF BILL:

- AN ACT concerning securities; relating to certain unlawful acts and penalties therefor; investigation by commission; civil penalties; amending K.S.A. 17-1264 and 17-1265 and K.S.A. 2002 Supp. 17-1253, 17-1254, 17-1255, 17-1266a and 21-4704 and repealing the existing sections.
- These amendments to the Kansas Securities Act would create 11 new nonperson felony offenses, increase the severity level of 4 present nonperson felony offenses, modify one special sentencing rule and create a new special sentencing rule.
- Section 1 of this Bill would amend K.S.A. 2002 Supp. 17-1253 (the securities fraud statute) to modify the penalty for an intentional violation resulting in a loss of \$1,000,000 or more from a severity level 6, nonperson felony to a severity level 3, nonperson felony offense. In addition, it would also create three new nonperson felony offenses for other intentional violations as follows: for a loss of at least \$100,000 but less than \$1,000,000, a severity level 4, nonperson felony offense; for a loss of at least \$25,000 but less than \$100,000, a severity level 5, nonperson felony offense; and a loss of less than \$25,000, a severity level 6, nonperson felony offense.
- It would also repeal the present special sentencing rule under this statute which is a presumption of imprisonment and create a new special sentencing rule that just covers violations of the new subsection (f)(3). The "border boxes" would not apply to violations of the new subsection (f)(3). See the amendment to K.S.A. 2002 Supp. 21-4704.
- Section 2 of this Bill would amend K.S.A. 17-1254 (the broker-dealer or agent registration statute) to modify the penalty for an intentional violation resulting in a loss of \$1,000,000 or more from a severity level 7, nonperson felony to a severity level 4, nonperson felony

offense. In addition, it would create three new nonperson felony offenses for other intentional violations as follows: for a loss of at least \$100,000 but less than \$1,000,000, a severity level 5, nonperson felony offense; for a loss of at least \$25,000 but less than \$100,000, a severity level 6, nonperson felony offense; and a loss of less than \$25,000, a severity level 7, nonperson felony offense.

- It would also repeal the present special sentencing rule under this statute which is a presumption of imprisonment and create a new special sentencing rule for violations of the new subsection ((f)(3). A violation of the new subsection (f)(3) would be a presumption of imprisonment. In addition, a new special sentencing rule would be created for violations of subsections (f)(2) and (f)(3) in that the "border boxes" would not apply to these two subsections. See the amendment to K.S.A. 2002 Supp. 21-4704.
- Section 3 of this Bill would amend K.S.A. 2002 Supp. 17-1255 (another securities fraud statute) to modify the penalty for an intentional violation resulting in a loss of \$1,000,000 or more from a severity level 7, nonperson felony to a severity level 4, nonperson felony offense. In addition, it would create three new nonperson felony offenses for other intentional violations as follows: for a loss of at least \$100,000 but less than \$1,000,000, a severity level 5, nonperson felony; for a loss of at least \$25,000 but less than \$100,000, a severity level 6, nonperson felony; and a loss of less than \$25,000, a severity level 7, nonperson felony.
- It would also repeal the present special sentencing rule for this statute which is a presumption of imprisonment and create a new special sentencing rule that just covers violations of the new subsection (f)(3). A violation of the new (f)(3) would be a presumption of imprisonment. In addition, a new special sentencing rule would be created for violations of subsections (b)(2) and (b)(3) in that the "border boxes" would not apply to violations of these subsections. See the amendment to K.S.A. 2002 Supp. 21-4704.
- Section 4 of this Bill would amend K.S.A. 17-1264 (the false or misleading statements statute) to modify the penalty for an intentional violation from a severity level 10, nonperson felony to a severity level 8, nonperson felony offense.
- In addition, it would also repeal the special sentencing rule for this statute which is presumptive imprisonment.
- Section 5 of this Bill would amend K.S.A. 17-1265 (the investigations statute) to expand the authority any special investigators appointed to investigate violations of the Kansas Securities Act to carry concealed weapons while investigating violations of this Act and to generally enforce all the criminal state laws as such violations are encountered.
- Section 6 of this Bill would amend K.S.A. 2002 Supp. 17-1266a to increase the civil penalty from \$5,000 to \$10,000 for violations of the Kansas Securities Act, or rules, regulations or orders of the Kansas Securities Commissioner.
- Section 7 of this Bill would amend K.S.A. 2002 Supp. 21-4704 to create a special sentencing rule regarding violations of subsection (f)(3) of K.S.A. 17-1254 and subsection (b)(3) of K.S.A. 17-1255. A violation of each of these subsections would be a presumption of imprisonment. In addition, a second special sentencing rule would be created for violations of subsections (f)(3) of K.S.A. 17-1253, (f)(2) and (f)(3) of K.S.A. 17-1254 and subsections (b)(2) and (b)(3) of K.S.A. 17-1255, in that any sentence made by a sentencing court regarding an optional nonprison sanction for a "border box" grid would be considered a departure and subject to the statutes related to departures.

- New Section 8 of this Bill would create a new severity level 8, nonperson felony offense for the crime of intentionally influencing, coercing, manipulating or misleading any person in connection with financial statements or appraisals to be used in the offer, sale or purchase of securities for the purpose of rendering such financial statements or appraisals materially misleading.
- New Section 9 of this Bill would create a new severity level 8, nonperson felony offense for the crimes of: altering, destroying, shredding, mutilating, concealing, covering up or falsifying any record with the intent to impede an investigation; altering, destroying, shredding, mutilating, or concealing any record with the intent to impair the object's integrity or availability for use in any proceeding before the Kansas Securities Commissioner; or to take any action harmful to a person with the intent to retaliate against a person for providing truthful information relating to a violation of the Kansas Securities Act.
- Section 10 of this Bill repeals the present version of K.S.A. 17-1264, 17-1265 and K.S.A. 2002 Supp. 17-1253, 17-1254, 17-1255, 17-1266a and 21-4704.
- Section 11 of this Bill sets an effective date for this act to be from and after its publication in the statute book.

**IMPACT ON KANSAS SENTENCING COMMISSION:**

Based on the current duties of the Kansas Sentencing Commission, the change proposed in this bill will affect the following:

1. **The current operation or responsibilities of the Commission** - This proposed bill will have significant impact on the responsibilities of the agency. The bill creates 11 new nonperson felonies and elevates the severity level for 4 current felonies, and modifies one special sentencing rule and creates another special sentencing rule. These proposed changes would all result in modifications to the sentencing database to represent the 11 new felonies plus the reclassification of 4 current felonies. This would be required even if there were limited prosecutions and convictions for these new felonies. In addition, the simulation projection model would need to be reprogrammed due proposed exceptions or modifications to the current special sentencing rules - the exceptions would require new programming specifically. In addition, the new sentencing rule would have to be included also. All felony criminal offense listings in the desk reference manual would also have to be amended. Due to the modifications to the projection model that would have to be made from the changes to the special sentencing rules, it is anticipated that it would cost between \$5,000 and \$8,000 for software reprogramming.
2. The current budget of the Commission.
3. The current staffing and operating expenditure levels of the Commission.
4. The long-range fiscal estimates of the Commission.

**IMPACT ON PRISON ADMISSIONS:**

- Increase by an estimated: **A total of 4 to 5 admissions per year**
- Potential to increase but cannot quantify
- Decrease by an estimated:
- Potential to decrease but cannot quantify
- Remain the same

Note: The proposed legislation focuses on various levels of criminal penalties for securities fraud and broker-dealer or agent registration violation issues and illegal activities associated with financial statements or records. The severity level of the offense appears to be determined by the specific amount of fraud or dollar amount involved in the illegal transaction. This would be considered a "white-collar" category of crime and it would not be anticipated to be committed with any great frequency. In completing the projection, convictions and subsequent incarceration are based upon the likelihood of a conviction for a specific fraud amount occurring. Thus random year of convictions are designated over a ten year forecast period. Listed below is a summary of admission rate by offense by year of the forecast period.

#### Projected Prison Admissions

K.S.A. 17-1253	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
N3	0	0	0	0	1	0	0	0	0	0
N4	1	0	0	0	1	0	1	0	0	0
N5	1	1	1	1	1	1	1	1	1	1
N6	1	2	2	2	2	2	2	2	2	2
<b>17-1253 Admits</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>5</b>	<b>3</b>	<b>4</b>	<b>3</b>	<b>3</b>	<b>3</b>
K.S.A. 17-1254										
N3	0	0	0	0	0	0	0	0	1	0
N4	0	1	0	0	0	0	0	0	0	1
N5	1	0	1	0	0	0	0	0	0	1
<b>17-1254 Admits</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>2</b>
K.S.A. 17-1255										
N3	0	1	0	0	0	0	0	0	0	0
N4	0	0	0	0	0	1	0	0	0	0
N5	0	0	0	1	0	0	0	1	0	0
<b>17-1255 Admits</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>
<b>Total Admissions</b>	<b>4</b>	<b>5</b>	<b>4</b>	<b>4</b>	<b>5</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>5</b>

#### IMPACT ON OFFENDER POPULATION LEVELS:

- have impact on offender population 4 to 13 prison beds per year over the projection period  
 have the potential to impact offender population as noted below.  
 have minimal or no impact on offender population.  
 have impact but cannot be quantified with data available.

Note: This is a very complex prison bed impact to project due the number of new felonies proposed and the various severity levels involved, plus the modifications to the special sentencing rules, especially given the limited number of offenders anticipated to be convicted under these proposed changes. For violations involving extremely large dollar amounts, there is a high likelihood the offenders would be prosecuted at the federal level. Thus for those offense, frequency of convictions over the projection period is very limited. Outlined below are the assumptions made and the sentence lengths utilized to complete the prison bed impact.

**KEY ASSUMPTIONS**

- The target inmates as defined in this bill include any offenders convicted of an offense listed under K.S.A. 17-1253, 17-1254, 17-1255, 17-1266a, 17-1262 and 17-1265.
  - Projected admission to prison is assumed to increase by an annual average of one point five percent. Bed space impacts are in relation to the baseline forecast produced in September 2002 by the Kansas Sentencing Commission.
  - Percentage of target inmate sentences served in prison is assumed to be 85 percent, which is consistent with the official projections released in September 2002.
1. **K.S.A. 17-1253 (Securities: Intentional Unlawful Offer, Sale Or Purchase)**
    - A conviction for an intentional violation of this statute resulting in a loss of \$1,000,000 or more is defined as a severity level 3, nonperson felony. It is assumed that one person will be convicted of such crime every ten years and the conviction will randomly occur in the fifth year of the ten-year forecast period. The average length of sentence is assumed to be 88 months.
    - A conviction for an intentional violation of this statute resulting in a loss of at least \$100,000 but less than \$1,000,000 is defined as a severity level 4, nonperson felony. It is assumed that 3 persons will be convicted of such crime every ten years and convictions will randomly occur in the first, the fifth and the seventh year of the ten-year forecast period. The average length of sentence is assumed to be 60 months.
    - A conviction for an intentional violation of this statute resulting in a loss of at least \$25,000 but less than \$100,000 is defined as a severity level 5, nonperson felony. It is assumed that one person will be convicted of such crime every year. The average length of sentence is assumed to be 49 months.
    - A conviction for an intentional violation of this statute resulting in a loss of less than \$25,000 is defined as a severity level 6, nonperson felony. It is assumed that 2 persons will be convicted of such crime every year. The average length of sentence is assumed to be 30 months.
  2. **K.S.A. 17-1254 (Securities: Intentional Unlawful Sale by an Unregistered Dealer)**
    - A conviction for an intentional violation of this statute resulting in a loss of \$1,000,000 or more is defined as a severity level 4, nonperson felony. It is assumed that one person will be convicted of such crime every ten years and the conviction will randomly occur in the ninth year of the ten-year forecast period. The average length of sentence is assumed to be 60 months.
    - A conviction for an intentional violation of this statute resulting in a loss of at least \$100,000 but less than \$1,000,000 is defined as a severity level 5, nonperson felony. It is assumed that 2 persons will be convicted of such crime every ten years and the convictions will randomly occur in the second and the tenth year of the ten-year forecast period. The average length of



sentence is assumed to be 49 months.

- A conviction for an intentional violation of this statute resulting in a loss of at least \$25,000 but less than \$100,000 is defined as a severity level 6, nonperson felony. It is assumed that three persons will be convicted of such crime every ten years and convictions will randomly occur in the first, third, and the tenth year of the ten-year forecast period. The average length of sentence is assumed to be 30 months.
  - A conviction for an intentional violation of this statute resulting in a loss of less than \$25,000 is defined as a severity level 7, nonperson felony. It is assumed that one person will be convicted of such crime every two years and receive a presumptive nonprison sentence.
3. **K.S.A. 17-1255 (Securities: Intentional Unlawful Sale by an Unregistered Securities)**
- A conviction for an intentional violation of this statute resulting in a loss of \$1,000,000 or more is defined as a severity level 4, nonperson felony. It is assumed that one person will be convicted of such crime every ten years and the conviction will randomly occur in the second year of the ten-year forecast period. The average length of sentence is assumed to be 60 months.
  - A conviction for an intentional violation of this statute resulting in a loss of at least \$100,000 but less than \$1,000,000 is defined as a severity level 5, nonperson felony. It is assumed that one person will be convicted of such crime every ten years and the conviction will randomly occur in the sixth year of the ten-year forecast period. The average length of sentence is assumed to be 49 months.
  - A conviction for an intentional violation of this statute resulting in a loss of at least \$25,000 but less than \$100,000 is defined as a severity level 6, nonperson felony. It is assumed that two persons will be convicted of such crime every ten years and convictions will randomly occur in the fourth and the eighth year of the ten-year forecast period. The average length of sentence is assumed to be 30 months.
  - A conviction for an intentional violation of this statute resulting in a loss of less than \$25,000 is defined as a severity level 7, nonperson felony. It is assumed that one person will be convicted of such crime every three years and receive a presumptive nonprison sentence.
4. **K.S.A. 17-1264 (Securities: Filing False or Misleading Statements)**
- A conviction for an intentional violation of this statute is defined as a severity level 8, nonperson felony. It is assumed that one person will be convicted of such crime every three years and receive a presumptive nonprison sentence. This section of the bill may have no direct impact on prison admissions but an indirect impact is possible from probation violations resulting in revocation to prison.
5. **New Section 8 (Unlawful Influencing, Coercing, Manipulating, Misleading Person)**
- A conviction for an intentional violation of this statute is a severity level 8, nonperson felony. It is assumed that one person will be convicted of such crime every three years and receive a

presumptive nonprison sentence. This section of the bill may have no direct impact on prison admissions but an indirect impact is possible from probation violations resulting in revocation to prison.

**New Section 9 (Unlawful Altering, Destroying, Shredding, Covering Up Record)**

- A conviction for an intentional violation of this statute is a severity level 8, nonperson felony. It is assumed that one person will be convicted of such crime every three years and receive a presumptive nonprison sentence. This section of the bill may have no direct impact on prison admissions but an indirect impact is possible from probation violations resulting in revocation to prison.

**FINDINGS**

- During FY 2002, 3 offenders were convicted of the crime of unlawful offer, sale or purchase of securities (K.S.A. 17-1253). One offender received a presumptive prison sentence and two received presumptive non prison sentences. During FY 2002, one offender was convicted of the crime of unlawful sale securities as unregistered dealer and received a presumptive prison sentence.
- The total impact of this bill will result in additional 4 prison admissions and 4 additional prison beds by the year 2004. By the year 2013, prison admissions will increase to 5 offenders per year and prison beds required will increase to 13 additional beds.

**Prison Bed Space Impact Assessment**

K.S.A. 17-1253	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
N3	0	0	0	0	1	1	1	1	1	1
N4	1	1	1	1	1	1	2	2	1	1
N5	1	2	3	3	4	4	4	3	4	4
N6	1	3	4	4	4	4	4	4	4	4
<b>Subtotal 17-1253 Beds</b>	<b>3</b>	<b>6</b>	<b>8</b>	<b>8</b>	<b>10</b>	<b>10</b>	<b>11</b>	<b>10</b>	<b>10</b>	<b>10</b>
<b>K.S.A. 17-1254</b>										
N4	0	0	0	0	0	0	0	0	1	1
N5	0	1	1	1	0	0	0	0	0	1
N6	1	1	1	1	0	0	0	0	0	1
<b>Subtotal 17-1254 beds</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>3</b>
<b>K.S.A. 17-1255</b>										
N4	0	1	1	1	1	0	0	0	0	0
N5	0	0	0	0	0	1	1	1	0	0
N6	0	0	0	1	1	0	0	1	1	0
<b>Subtotal 17-1255 beds</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>0</b>
<b>Total Additional Beds</b>	<b>4</b>	<b>9</b>	<b>11</b>	<b>12</b>	<b>12</b>	<b>11</b>	<b>12</b>	<b>12</b>	<b>12</b>	<b>13</b>

## SUMMARY OF SB 110 IMPACT

The proposed legislation creates amendments to the Kansas Securities Act that result in the creation of 11 new nonperson felony offenses, increase the severity level of 4 present nonperson felony offenses, modify one special sentencing rule and create a new special sentencing rule. The frequency of convictions under these statutes is somewhat limited since white collar crime generally does not result in large number of convictions when compared to other criminal offenses such as burglary. Thus the impact on admissions is projected to be 4 to 5 new admissions annually with a projected 1 to 13 additional prison beds over the forecast period. Since several of these offenses are classified as severity level 3 and 4 offenses, there will be some stacking affect even with the limited number of convictions due to the sentence lengths.

The Sentencing Commission expresses several concerns with this bill. Although philosophically the Commission supports increased penalties for white collar criminal activity, the classification of a severity level three nonperson felony raises two issues. One is the proportionality equating the harm to a person which is represents the majority of person felony offenses on that level for crimes such as aggravated robbery, kidnapping and voluntary manslaughter with a financial loss, even a significant one. Harm to a person should always take precedent over loss of property or financial loss. The other issue is the pattern that is beginning to evolve with the placement of nonperson felony classification on a severity level, which until last year were purely person felonies.

In addition, modifications to the special sentencing rules relating to border boxes are of great concern to the Sentencing Commission. That specific sentencing rule was developed to provide discretion to the judge whether the circumstances of the offense warranted imprisonment when the offender has no or a limited criminal history. Given that the court currently has that discretion for offenses on those severity level that directly cause harm to a person, it would seem rather irrational to take that discretion away when the offense is monetary in nature. Modifications to the special sentencing rule relating to border boxes do not represent sound sentencing policy.