

CHAPTER 92

HOUSE Substitute for SENATE BILL No. 458

AN ACT concerning crimes, punishment and criminal procedure; relating to violations of the Kansas uniform securities act; amending K.S.A. 17-12a508 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 17-12a508 is hereby amended to read as follows: 17-12a508. (a) *Criminal penalties.* (1) Except as provided in subsections (a)(2) through (a)(4), a conviction for an intentional violation of ~~this the~~ *Kansas uniform securities act*, or a rule adopted or order issued under this act, except K.S.A. 17-12a504, and amendments thereto, or the notice filing requirements of K.S.A. 17-12a302 or 17-12a405, and amendments thereto, is a severity level 7, nonperson felony. An individual convicted of violating a rule or order under this act may be fined, but may not be imprisoned, if the individual did not have knowledge of the rule or order.

(2) A conviction for an intentional violation of K.S.A. 17-12a501 or 17-12a502, and amendments thereto, is:

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

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

~~—(C) a severity level 7, nonperson felony if the violation resulted in a loss of less than \$25,000; if the violation resulted in a loss of an amount of:~~

(A) \$1,000,000 or more is a severity level 2, nonperson felony;

(B) at least \$250,000 but less than \$1,000,000 is a severity level 3, nonperson felony;

(C) at least \$100,000 but less than \$250,000 is a severity level 4, nonperson felony;

(D) at least \$25,000 but less than \$100,000 is a severity level 5, nonperson felony; or

(E) less than \$25,000 is a severity level 6, nonperson felony.

(3) A conviction for an intentional violation of K.S.A. 17-12a301, 17-12a401(a), ~~17-12a401(e)~~, 17-12a402(a), ~~17-12a402(d)~~, 17-12a403(a), ~~17-12a403(c)~~, ~~17-12a403(d)~~, or 17-12a404(a), or ~~17-12a404(e)~~, and amendments thereto, is:

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

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

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

(4) A conviction for an intentional violation of ~~K.S.A. 17-12a505 or 17-12a506~~, and amendments thereto, is a severity level 8, nonperson felony:

(A) K.S.A. 17-12a404(e) or 17-12a505, and amendments thereto, or an order to cease and desist issued by the administrator pursuant to K.S.A. 17-12a412(c) or 17-12a604(a), and amendments thereto, is a severity level 5, nonperson felony.

(B) K.S.A. 17-12a401(c), 17-12a403(c) or 17-12a506, and amendments thereto, is a severity level 6, nonperson felony.

(C) K.S.A. 17-12a402(d) or 17-12a403(d), and amendments thereto, is a severity level 7, nonperson felony.

(5) Any violation of K.S.A. 17-12a301, 17-12a401(a), ~~17-12a401(e)~~, 17-12a402(a), ~~17-12a402(d)~~, 17-12a403(a), ~~17-12a403(c)~~, ~~17-12a403(d)~~, 17-12a404(a), ~~17-12a404(e)~~, 17-12a501 or 17-12a502, and amendments thereto, resulting in a loss of \$25,000 or more shall have a presumptive sentence of imprisonment regardless of its location on the sentencing grid ~~block~~ *be presumed imprisonment.*

(b) *Statute of Limitations.* Except as provided by subsection ~~(9)~~ (5) of K.S.A. 21-3106, and amendments thereto, no prosecution for any crime under this act may be commenced more than 10 years after the alleged violation if the victim is the Kansas public employees retirement system and no prosecution for any other crime under this act may be commenced more than five years after the alleged violation. A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer

for execution, except that no prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.

(c) *Criminal reference.* The administrator may refer such evidence as may be available concerning violations of this act or of any rules and regulations or order hereunder to the attorney general or the proper county or district attorney, who may in the prosecutor's discretion, with or without such a reference, institute the appropriate criminal proceedings under this act. Upon receipt of such reference, the attorney general or the county attorney or district attorney may request that a duly employed attorney of the administrator prosecute or assist in the prosecution of such violation or violations on behalf of the state. Upon approval of the administrator, such employee shall be appointed a special prosecutor for the attorney general or the county attorney or district attorney to serve without compensation from the attorney general or the county attorney or district attorney. Such special prosecutor shall have all the powers and duties prescribed by law for assistant attorneys general or assistant county or district attorneys and such other powers and duties as are lawfully delegated to such special prosecutor by the attorney general or the county attorney or district attorney. If an attorney employed by the administrator acts as a special prosecutor, the administrator may pay extradition and witness expenses associated with the case.

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

Sec. 2. K.S.A. 17-12a508 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 8, 2010.