

SESSION OF 2004

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2347**

As Agreed to March 30, 2004

Brief *

HB 2347 establishes the new Kansas Uniform Securities Act to replace the current act. Provisions of the new Act contain the following:

- ! **Registration of securities.** Three forms of securities registration - notice, coordination and qualification - clarify and simplify the process for both the regulators and the industry. The requirements give investors assurance that the marketplace will be fair, the playing field level, and the estimations of value based on real information.
- ! **Regulation of broker-dealers, investment advisors, their agents and representatives.** Investment professionals must register in states where they do business. Federal covered investment advisors have notice filing obligations, whereas other investment professionals are subject to more comprehensive registrations. For the most part, securities administrators are authorized to establish these requirements by rule or order.
- ! **Expanded enforcement powers.** Enforcement provisions are more comprehensive and include civil and criminal actions against those who perpetrate frauds through appropriate courts of law and through administrative actions such as cease and desist orders.
- ! **Investigatory and subpoena powers.** Securities administrators will have the power to conduct investigations, backed by subpoena powers and with the contempt powers of a court with jurisdiction.

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- ! **Criminal penalties set by states.** The USA 2002 provides that a state sets its own criminal penalties for violations, including for basic anti-fraud provisions. Persons violating the act are subject to civil liability against any injured party. Damages and equitable relief are generally equivalent to those available in actions under federal law.
- ! **Investor education.** The act creates an optional fund to support investor education programs highlighting the need to help investors protect themselves against fraud.
- ! **Electronic filing facilitation.** The act facilitates the electronic filing of documents and the movement toward a more technologically effective system of capital formation and securities regulation.

Specifically, the bill:

- ! increases the maximum rate for a late filing fee from \$2,500 to \$5,000
- ! contains a change in the exclusion of banks from the definition of “broker-dealer”;
- ! contains an exemption for sales to “institutional investors”;
- ! contains a definition of a security with regard to treatment of investment contracts, variable annuities, limited liability companies, and viaticals;
- ! contains an exemption for fixed income securities;
- ! contains a loophole for sales from Kansas to out-of-state investors;

The effective date is July 1, 2005.

The Senate Committee amended the bill in New Section 6, Subsection 8 dealing with exemptions from requirements for registration and sale of securities for cooperatives organized under KSA 17-1601 *et seq.*, to clarify this exemption and make this provision more similar to prior law. The Senate Committee also amended section 39, subsection 3 dealing with persons who may not bring an action under

the Uniform Securities Act when a rescission offer has been made. The amendment requires a disclosure of the issuer's ability to repay investors rather than a requirement that the issuer has this ability to repay all investors.

Conference Committee Action

The Conference Committee agreed to all the Senate amendments to the bill and made further technical amendments. In addition, the statute of limitations was set back to one year from the two year provision inserted earlier.

Background

The subject matter of the bill was studied by the 2003 interim Special Committee on Judiciary that recommended passage of the measure.

The Securities Commissioner and an attorney appeared in favor of the bill. A conferee with the Kansas Bar Association also expressed support for the bill, with recommendations.

The original fiscal note no longer reflects any added costs associated with passage of the bill since the primary financial impact would have been the increased bed space requirements due to the enhanced criminal penalties in the original bill. The criminal penalties for securities law violations were changed by the 2003 Legislature and the bill merely incorporates these changes which have already been made.