

**SENATE BILL No. 375**

By Committee on Judiciary

1-22

AN ACT concerning consumer protection; relating to investments; enacting the proxy advisor transparency act; providing legislative findings and definitions; requiring proxy advisors to make certain disclosures when recommending an action against company management; authorizing the attorney general to investigate and take enforcement actions against violators; ~~establishing a private right of action for a declaratory judgment or injunctive relief.~~

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

Section 1. The provisions of sections 1 through 6, and amendments thereto, shall be known and may be cited as the proxy advisor transparency act.

Sec. 2. The legislature of the state of Kansas finds the following:

(a) When shareholders hire professionals to manage investments, such shareholders reasonably expect that the service provider will perform those services in the financial interest of the shareholders, and that the service provider will make recommendations based on financial analysis of what actions would enhance investment value;

(b) there is a particular need for disclosures for proxy voting advice, because such advice is often provided for hundreds or thousands of shareholder votes each year and, with few investors having the resources to research every shareholder vote, investors often use proxy advisors for guidance on how to exercise fiduciary duties;

(c) many companies hire proxy advisors pursuant to the United States department of labor's long-standing conclusion that, under the employee retirement income security act, the "fiduciary obligations of prudence and loyalty to plan participants and beneficiaries require the responsible fiduciary to vote proxies on issues that may affect the value of the plan's investment";

(d) directors of publicly held companies owe fiduciary duties to shareholders and make recommendations in line with such fiduciary duties;

(e) nevertheless, proxy advisors have recommended votes against company management, including votes for shareholder proposals related to environmental, social or governance (ESG) issues, diversity, equity or inclusion (DEI) issues and social credit and sustainability scores, but have

1 not disclosed to clients that the recommendations were made without  
2 conducting a financial analysis to determine how these votes would affect  
3 shareholder value;

4 (f) the chief operating officer of Glass Lewis, a major proxy advisor,  
5 stated under penalty of perjury that Glass Lewis does not conduct a written  
6 financial analysis before recommending votes on shareholder proposals  
7 and that other proxy advisors also do not do so. Proxy advisors, however,  
8 have advertised that the purpose of their recommendations is maximizing,  
9 increasing or protecting shareholder value;

10 (g) these facts raise concern that proxy advisors are engaged in  
11 fraudulent or deceptive practices and are not disclosing material  
12 information to their clients, who otherwise would reasonably believe that  
13 they are choosing between recommendations of management and a proxy  
14 advisor that are based on dueling financial analyses;

15 (h) investors purchasing proxy voting services should be informed  
16 when recommendations against management are or are not being based on  
17 financial analyses that consider the effect on the value of the plan's  
18 investment. Investors also should be able to access such analyses upon  
19 request in order to assess whether the analyses were sufficient to uphold  
20 fiduciary standards;

21 (i) requiring proxy advisors to provide clear and factual disclosures  
22 under these circumstances helps investors evaluate whether the proxy  
23 advisor's recommendations uphold investors' fiduciary duties of prudence  
24 and loyalty; and

25 (j) requiring proxy advisors to inform companies of these  
26 recommendations also promotes disclosures in accordance with fiduciary  
27 duties. An example of which is a company that is the subject of a  
28 shareholder proposal often has additional information regarding whether a  
29 proposal is in the shareholder's financial interests or regarding the costs of  
30 a proposal, and notice of a proxy advisor's recommendation allows the  
31 company to provide additional responsive information to shareholders  
32 seeking to uphold their fiduciary duties.

33 Sec. 3. As used in this act:

34 (a) "Act" means the proxy advisor transparency act.

35 (b) *"Affiliated group" means a group of one or more entities in*  
36 *which a controlling interest is owned by a common owner or owners,*  
37 *either corporate or noncorporate, or by one or more of the member*  
38 *entities.*

39 (c) *"Charitable organization" means an organization that is*  
40 *exempt from federal income taxation under section 501(c)(3) of the*  
41 *internal revenue code of 1986.*

42 (d) *"Company" means a publicly traded, for-profit corporation,*  
43 *limited liability company, partnership or other business entity.*

1       ~~(e)}~~**(e)}** "Company proposal" means any proposal made by a company  
2 to such company's shareholders that is included in the company's proxy  
3 statement, including, but not limited to, director nominations or elections,  
4 or any proposal relating to director nominations or elections, executive  
5 compensation, corporate transactions, corporate structure, auditor selection  
6 or company policy on any subject.

7       ~~(f)}~~**(f)}** "Default recommendation or policy" means a system, set of  
8 rules, principles or guidelines designed to assist with voting decisions on  
9 any company proposals or proxy proposals.

10       ~~(g)}~~**(g)}** "Proxy advisor" means a person who, for compensation,  
11 provides a proxy advisory service to shareholders of a company or to other  
12 persons with authority to vote on behalf of the shareholders of a company.

13       ~~(h)(1)}~~**(h)(1)}** "Proxy advisory service" means any of the following  
14 services that are provided in connection with or in relation to a company,  
15 or are provided to any person in this state:

16       ~~(A)}~~**(A)}** Advice or a recommendation on how to vote on a company  
17 proposal or proxy proposal;

18       ~~(B)}~~**(B)}** proxy statement research and analysis regarding a company  
19 proposal or proxy proposal; or

20       ~~(C)}~~**(C)}** development of proxy voting recommendations or policies,  
21 including establishing default recommendations or policies.

22       **{(2) "Proxy advisory service" does not mean a service that is  
23 provided by a charitable organization if:**

24       **(A) Such charitable organization's gross annual revenue from  
25 proxy advisory services is less than \$500,000; and**

26       **(B) if applicable, each affiliated group of such charitable  
27 organization has combined gross annual revenue from proxy advisory  
28 services that is less than \$500,000.}**

29       ~~(i)}~~**(i)}** "Proxy proposal" means any proposal made by a shareholder  
30 of a company that is included in the company's proxy statement or has  
31 been submitted for inclusion in the company's proxy statement, including,  
32 but not limited to, a proposal relating to any of the subjects that could be  
33 covered by a company proposal.

34       ~~(j)}~~**(j)}** "Shareholder" means a shareholder, unitholder, limited  
35 partner or other equity owner of a company.

36       ~~(k)}~~**(k)}** "Written financial analysis" means a written document that:

37       (1) Analyzes the expected short-term and long-term financial benefits  
38 and costs to the company regarding the implementation of a company  
39 proposal or proxy proposal;

40       (2) concludes what vote or course of action is most likely to  
41 positively affect shareholder value; and

42       (3) explains the methods and processes used to prepare the analysis,  
43 including the experience and geographic location of the personnel who

1 formed the recommendation.

2 Sec. 4. (a) If a proxy advisor makes a recommendation against  
3 company management on a company proposal or proxy proposal, or makes  
4 a default recommendation or policy involving votes against company  
5 management on company proposals or proxy proposals, and such proxy  
6 advisor does not make such recommendation based on a written financial  
7 analysis, such proxy advisor shall:

8 (1) Concurrently with providing the proxy advisory service, include a  
9 clear and conspicuous disclosure to each shareholder, or entity or other  
10 person acting on behalf of a shareholder, receiving the proxy advisory  
11 service that:

12 (A) Identifies the service being provided;

13 (B) identifies the recommendation or policy at issue; and

14 (C) states that the proxy advisor has made the recommendation or  
15 policy without basing such recommendation on a written financial analysis  
16 regarding the impact of such recommended action on company investors  
17 that:

18 (i) Analyzes the expected short-term and long-term financial benefits  
19 and costs to the company regarding the implementation of the company  
20 proposal or proxy proposal;

21 (ii) concludes what vote or course of action is most likely to  
22 positively affect shareholder value; and

23 (iii) explains the methods and processes used to prepare the analysis,  
24 including the experience and geographic location of the personnel who  
25 formed the recommendation;

26 (2) provide, concurrently with providing a proxy advisory service  
27 under section 3~~(f)(1)~~**{(h)(1)(A)}** or ~~(2)~~ **{(1)(B)}**, and amendments thereto,  
28 the disclosure under subsection (a)(1) to the board of directors of each  
29 company that is the subject of the proxy advisory service; and

30 (3) while any proxy advisory services are being provided, publicly  
31 and conspicuously disclose on the home or front page of the proxy  
32 advisor's website a statement that the proxy advisor's proxy advisory  
33 services include one or more services that include recommendations or  
34 policies against company management on company proposals or proxy  
35 proposals that are not made based on a written financial analysis regarding  
36 the impact of such recommended action on company investors that:

37 (A) Analyzes the expected short-term and long-term financial  
38 benefits and costs to the company regarding the implementation of the  
39 company proposal or proxy proposal;

40 (B) concludes what vote or course of action is most likely to  
41 positively affect shareholder value; and

42 (C) explains the methods and processes used to prepare the analysis,  
43 including the experience and geographic location of the personnel who

1 formed the recommendation.

2 (b) If a proxy advisor makes a recommendation against company  
3 management on a company proposal or proxy proposal, or makes a default  
4 recommendation or policy involving votes against company management  
5 on company proposals or proxy proposals, and such proxy advisor makes  
6 such recommendation based on a written financial analysis, such proxy  
7 advisor shall:

8 (1) Concurrently with providing the proxy advisory service, include a  
9 clear and conspicuous disclosure to each shareholder, or entity or other  
10 person acting on behalf of a shareholder, receiving the proxy advisory  
11 service that:

12 (A) Identifies the proxy advisory service being provided;

13 (B) identifies the recommendation or policy at issue;

14 (C) states that the proxy advisor has made the recommendation or  
15 policy based on a written financial analysis that:

16 (i) Analyzes the expected short-term and long-term financial benefits  
17 and costs to the company regarding the implementation of the company  
18 proposal or proxy proposal;

19 (ii) concludes what vote or course of action is most likely to  
20 positively affect shareholder value; and

21 (iii) explains the methods and processes used to prepare the analysis,  
22 including the experience and geographic location of the personnel who  
23 formed the recommendation; and

24 (D) states that the analysis is available upon request;

25 (2) make such analysis available within a reasonable time to any  
26 client of the proxy advisory service upon request; and

27 (3) provide, concurrently with providing a proxy advisory service  
28 under section 3~~(f)(1)~~~~{(h)(1)(A)}~~ or ~~(2) {(1)(B)}~~, and amendments thereto, a  
29 copy of such analysis to the board of directors of each company that is the  
30 subject of the service.

31 Sec. 5. (a)~~{(1)}~~ A violation of this act is a deceptive and  
32 unconscionable act or practice under the Kansas consumer protection act  
33 and shall be subject to any and all of the enforcement provisions of the  
34 Kansas consumer protection act~~{ except as provided in paragraph (2)}~~.  
35 The attorney general may exercise all investigative powers under the  
36 Kansas consumer protection act if the attorney general has reason to  
37 believe that a violation has occurred, is occurring or is about to occur.

38 *~~{(2) Notwithstanding any provision of the Kansas consumer~~*  
39 *~~protection act to the contrary, only the attorney general or the attorney~~*  
40 *~~general's designee may bring a civil action alleging a violation of the~~*  
41 *~~Kansas consumer protection act pursuant to this section. This section~~*  
42 *~~shall not be construed as creating or allowing a private right of action~~*  
43 *~~under K.S.A. 50-634, and amendments thereto.~~*

1 (b) For the purposes of the remedies and penalties provided by the  
2 Kansas consumer protection act:

3 (1) The person committing the conduct prohibited by this act shall be  
4 deemed the supplier, and the person who is the victim of such conduct  
5 shall be deemed the consumer; and

6 (2) proof of a consumer transaction shall not be required.

7 ~~(e) In addition to enforcement under subsection (a), any person~~  
8 ~~aggrieved by a violation of this act may bring an action seeking a~~  
9 ~~declaratory judgment or injunctive relief against a proxy advisor who~~  
10 ~~violates this act. Not later than the seventh calendar day after the date on~~  
11 ~~which an action is brought under this subsection, the plaintiff shall provide~~  
12 ~~written notice to the attorney general, who shall have a right to intervene~~  
13 ~~in the action. For purposes of this section, an aggrieved person includes:~~

14 ~~(1) A recipient of proxy advisory services provided by the proxy~~  
15 ~~advisor;~~

16 ~~(2) a company that is the subject of a proxy advisory service under~~  
17 ~~section 3(f)(1)(h)(1)(A) or (2) (1)(B), and amendments thereto, provided~~  
18 ~~by the proxy advisor; or~~

19 ~~(3) any shareholder of a company under subsection (e)(2).~~

20 Sec. 6. The provisions of this act are severable. If any portion of the  
21 act is declared unconstitutional or invalid, or the application of any portion  
22 of the act to any person or circumstance is held unconstitutional or invalid,  
23 the invalidity shall not affect other portions of the act that can be given  
24 effect without the invalid portion or application, and the applicability of  
25 such other portions of the act to any person or circumstance shall remain  
26 valid and enforceable.

27 Sec. 7. This act shall take effect and be in force from and after its  
28 publication in the statute book.