

## HOUSE BILL No. 2582

By Committee on Commerce and Economic Development

1-31

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1 AN ACT relating to the office of the securities commissioner of Kansas;  
2 relating to duties and establishing certain special revenue funds and  
3 prescribing functions therefor; employees of the securities  
4 commissioner; relating to the Kansas uniform securities act; amending  
5 K.S.A. 17-12a101, 17-12a102 and 17-12a410 and K.S.A. 2011 Supp.  
6 17-12a601 and 75-6301 and repealing the existing sections.  
7

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

9 New Section 1. For purposes of administrative proceedings of the  
10 office of the securities commissioner of Kansas, “agency head” means the  
11 securities commissioner of Kansas, the executive director of the office of  
12 the securities commissioner of Kansas, or any other person duly appointed  
13 by the securities commissioner of Kansas, when acting on behalf of the  
14 commissioner.

15 Sec. 2. K.S.A. 17-12a101 is hereby amended to read as follows: 17-  
16 12a101. (a) K.S.A. 17-12a101 through 17-12a703, and amendments  
17 thereto, may be cited as the Kansas uniform securities act.

18 (b) *This act is intended to preserve the integrity and efficiency of the*  
19 *capital formation process and to ensure fairness and full disclosure in*  
20 *securities markets so that investors will have confidence to invest and*  
21 *pursue the financial benefits that are possible through financing the*  
22 *development and growth of businesses and organizations in our Kansas*  
23 *economy that are based on capitalism.*

24 (c) *In order to accomplish its intended purpose, this act provides for:*

25 (1) *Preventive and corrective regulation of securities and persons*  
26 *involved with securities transactions and investment advice so that capital*  
27 *formation and securities transactions are free from fraudulent or abusive*  
28 *practices;*

29 (2) *education of investors and persons participating in capital*  
30 *formation and securities markets; and*

31 (3) *cooperation and coordination with other programs and*  
32 *organizations within Kansas in order to foster capital formation for*  
33 *businesses and organizations in Kansas and to enhance the economy of*  
34 *Kansas.*

35 Sec. 3. K.S.A. 17-12a102 is hereby amended to read as follows: 17-  
36 12a102. In this act, unless the context otherwise requires:

1 (1) "Act" means the Kansas uniform securities act.

2 ~~(+)~~ (2) "Administrator" means the securities commissioner of Kansas,  
3 appointed as provided in K.S.A. 75-6301, and amendments thereto.

4 ~~(=)~~ (3) "Agent" means an individual, other than a broker-dealer, who  
5 represents a broker-dealer in effecting or attempting to effect purchases or  
6 sales of securities or represents an issuer in effecting or attempting to  
7 effect purchases or sales of the issuer's securities, but a partner, officer, or  
8 director of a broker-dealer or issuer, or an individual having a similar  
9 status or performing similar functions is an agent only if the individual  
10 otherwise comes within the term. The term does not include an individual  
11 excluded by rule adopted or order issued under this act.

12 ~~(=)~~ (4) "Bank" means:

13 (A) A banking institution organized under the laws of the United  
14 States;

15 (B) a member bank of the federal reserve system;

16 (C) any other banking institution, whether incorporated or not, doing  
17 business under the laws of a state or of the United States, a substantial  
18 portion of the business of which consists of receiving deposits or  
19 exercising fiduciary powers similar to those permitted to be exercised by  
20 national banks under the authority of the comptroller of the currency  
21 pursuant to section 1 of Public Law 87-722 (12 U.S.C. ~~section~~ § 92a), and  
22 which is supervised and examined by a state or federal agency having  
23 supervision over banks, and which is not operated for the purpose of  
24 evading this act; and

25 (D) a receiver, conservator, or other liquidating agent of any  
26 institution or firm included in subparagraph (A), (B), or (C).

27 ~~(+)~~ (5) "Broker-dealer" means a person engaged in the business of  
28 effecting transactions in securities for the account of others or for the  
29 person's own account. The term does not include:

30 (A) An agent;

31 (B) an issuer;

32 (C) a bank, savings institution, or trust company if:

33 (i) Its activities as a broker-dealer are limited to those specified in  
34 subsections 3(a)(4)(B)(i) through (vi) and (viii) through (x); 3(a)(4)(B)(xi)  
35 if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the  
36 securities exchange act of 1934 (15 U.S.C. ~~sections~~ §§ 78c(a)(4) and (5));  
37 or

38 (ii) it is a bank that satisfies the conditions described in subsection  
39 3(a)(4)(E) of the securities exchange act of 1934 (15 U.S.C. ~~section~~ §  
40 78c(a)(4));

41 (D) an international banking institution; or

42 (E) a person excluded by rule adopted or order issued under this act.

43 ~~(=)~~ (6) "Depository institution" means:

1 (A) A bank; or

2 (B) a savings institution, trust company, credit union, or similar  
3 institution that is organized or chartered under the laws of a state or of the  
4 United States, authorized to receive deposits, and supervised and examined  
5 by an official or agency of a state or the United States if its deposits or  
6 share accounts are insured to the maximum amount authorized by statute  
7 by the federal deposit insurance corporation, the national credit union  
8 share insurance fund, or a successor authorized by federal law. The term  
9 does not include:

10 (i) An insurance company or other organization primarily engaged in  
11 the business of insurance;

12 (ii) a morris plan bank; or

13 (iii) an industrial loan company.

14 ~~(6)~~ (7) "Federal covered investment adviser" means a person  
15 registered under the investment advisers act of 1940.

16 ~~(7)~~ (8) "Federal covered security" means a security that is, or upon  
17 completion of a transaction will be, a covered security under section 18(b)  
18 of the securities act of 1933 (15 U.S.C. ~~section~~ § 77r(b)) or rules or  
19 regulations adopted pursuant to that provision.

20 ~~(8)~~ (9) "Filing" means the receipt under this act of a record by the  
21 administrator or a designee of the administrator.

22 ~~(9)~~ (10) "Fraud," "deceit," and "defraud" are not limited to common  
23 law deceit.

24 ~~(10)~~ (11) "Guaranteed" means guaranteed as to payment of all  
25 principal and all interest.

26 ~~(11)~~ (12) "Institutional investor" means any of the following, whether  
27 acting for itself or for others in a fiduciary capacity:

28 (A) A depository institution or international banking institution;

29 (B) an insurance company;

30 (C) a separate account of an insurance company;

31 (D) an investment company as defined in the investment company act  
32 of 1940;

33 (E) a broker-dealer registered under the securities exchange act of  
34 1934;

35 (F) an employee pension, profit-sharing, or benefit plan if the plan  
36 has total assets in excess of \$10,000,000 or its investment decisions are  
37 made by a named fiduciary, as defined in the employee retirement income  
38 security act of 1974, that is a broker-dealer registered under the securities  
39 exchange act of 1934, an investment adviser registered or exempt from  
40 registration under the investment advisers act of 1940, an investment  
41 adviser registered under this act, a depository institution, or an insurance  
42 company;

43 (G) a plan established and maintained by a state, a political

1 subdivision of a state, or an agency or instrumentality of a state or a  
2 political subdivision of a state for the benefit of its employees, if the plan  
3 has total assets in excess of \$10,000,000 or its investment decisions are  
4 made by a duly designated public official or by a named fiduciary, as  
5 defined in the employee retirement income security act of 1974, that is a  
6 broker-dealer registered under the securities exchange act of 1934, an  
7 investment adviser registered or exempt from registration under the  
8 investment advisers act of 1940, an investment adviser registered under  
9 this act, a depository institution, or an insurance company;

10 (H) a trust, if it has total assets in excess of \$10,000,000, its trustee is  
11 a depository institution, and its participants are exclusively plans of the  
12 types identified in subparagraph (F) or (G), regardless of the size of their  
13 assets, except a trust that includes as participants self-directed individual  
14 retirement accounts or similar self-directed plans;

15 (I) an organization described in section 501(c)(3) of the internal  
16 revenue code (26 U.S.C. ~~section~~ § 501(c)(3)), corporation, Massachusetts  
17 trust or similar business trust, limited liability company, or partnership, not  
18 formed for the specific purpose of acquiring the securities offered, with  
19 total assets in excess of \$10,000,000;

20 (J) a small business investment company licensed by the small  
21 business administration under Section 301(c) of the small business  
22 investment act of 1958 (15 U.S.C. ~~section~~ § 681(c)) with total assets in  
23 excess of \$10,000,000;

24 (K) a private business development company as defined in section  
25 202(a)(22) of the investment advisers act of 1940 (15 U.S.C. ~~section~~ §  
26 80b-2(a)(22)) with total assets in excess of \$10,000,000;

27 (L) a federal covered investment adviser acting for its own account;

28 (M) a "qualified institutional buyer" as defined in rule 144A(a)(1),  
29 other than rule 144A(a)(1)(i)(H), adopted under the securities act of 1933  
30 (17 C.F.R. § 230.144A);

31 (N) a "major U.S. institutional investor" as defined in rule 15a-6(b)(4)  
32 (i) adopted under the securities exchange act of 1934 (17 C.F.R. § 240.15a-  
33 6);

34 (O) any other person, other than an individual, of institutional  
35 character with total assets in excess of \$10,000,000 not organized for the  
36 specific purpose of evading this act; or

37 (P) any other person specified by rule adopted or order issued under  
38 this act.

39 ~~(12)~~ (13) "Insurance company" means a company organized as an  
40 insurance company whose primary business is writing insurance or  
41 reinsuring risks underwritten by insurance companies and which is subject  
42 to supervision by the insurance commissioner or a similar official or  
43 agency of a state.

1       ~~(13)~~ (14) "Insured" means insured as to payment of all principal and  
2 all interest.

3       ~~(14)~~ (15) "International banking institution" means an international  
4 financial institution of which the United States is a member and whose  
5 securities are exempt from registration under the securities act of 1933.

6       ~~(15)~~ (16) "Investment adviser" means a person that, for  
7 compensation, engages in the business of advising others, either directly or  
8 through publications or writings, as to the value of securities or the  
9 advisability of investing in, purchasing, or selling securities or that, for  
10 compensation and as a part of a regular business, issues or promulgates  
11 analyses or reports concerning securities. The term includes a financial  
12 planner or other person that, as an integral component of other financially  
13 related services, provides investment advice to others for compensation as  
14 part of a business or that holds itself out as providing investment advice to  
15 others for compensation. The term does not include:

16       (A) An investment adviser representative;

17       (B) a lawyer, accountant, engineer, or teacher whose performance of  
18 investment advice is solely incidental to the practice of the person's  
19 profession;

20       (C) a broker-dealer or its agents whose performance of investment  
21 advice is solely incidental to the conduct of business as a broker-dealer and  
22 that does not receive special compensation for the investment advice;

23       (D) a publisher of a *bona fide* newspaper, news magazine, or business  
24 or financial publication of general and regular circulation;

25       (E) a federal covered investment adviser;

26       (F) a bank, savings institution or trust company;

27       (G) any other person that is excluded by the investment advisers act  
28 of 1940 from the definition of investment adviser; or

29       (H) any other person excluded by rule adopted or order issued under  
30 this act.

31       ~~(16)~~ (17) "Investment adviser representative" means an individual  
32 employed by or associated with an investment adviser or federal covered  
33 investment adviser and who makes any recommendations or otherwise  
34 gives investment advice regarding securities, manages accounts or  
35 portfolios of clients, determines which recommendation or advice  
36 regarding securities should be given, provides investment advice or holds  
37 herself or himself out as providing investment advice, receives  
38 compensation to solicit, offer, or negotiate for the sale of or for selling  
39 investment advice, or supervises employees who perform any of the  
40 foregoing. The term does not include an individual who:

41       (A) Performs only clerical or ministerial acts;

42       (B) is an agent whose performance of investment advice is solely  
43 incidental to the individual acting as an agent and who does not receive

1 special compensation for investment advisory services;

2 (C) is employed by or associated with a federal covered investment  
3 adviser, unless the individual has a "place of business" in this state, as that  
4 term is defined by rule adopted under section 203A of the investment  
5 advisers act of 1940 (15 U.S.C. ~~section~~ § 80b-3a), and is:

6 (i) An "investment adviser representative" as that term is defined by  
7 rule adopted under section 203A of the investment advisers act of 1940 (15  
8 U.S.C. ~~section~~ § 80b-3a); or

9 (ii) not a "supervised person" as that term is defined in Section 202(a)  
10 (25) of the Investment Advisers Act of 1940 (15 U.S.C. ~~Section~~ § 80b-2(a)  
11 (25)); or

12 (D) is excluded by rule adopted or order issued under this act.

13 ~~(17)~~ (18) "Issuer" means a person that issues or proposes to issue a  
14 security, subject to the following:

15 (A) The issuer of a voting trust certificate, collateral trust certificate,  
16 certificate of deposit for a security, or share in an investment company  
17 without a board of directors or individuals performing similar functions is  
18 the person performing the acts and assuming the duties of depositor or  
19 manager pursuant to the trust or other agreement or instrument under  
20 which the security is issued.

21 (B) The issuer of an equipment trust certificate or similar security  
22 serving the same purpose is the person by which the property is or will be  
23 used or to which the property or equipment is or will be leased or  
24 conditionally sold or that is otherwise contractually responsible for  
25 assuring payment of the certificate.

26 (C) The issuer of a fractional undivided interest in an oil, gas, or other  
27 mineral lease or in payments out of production under a lease, right, or  
28 royalty is the owner of an interest in the lease or in payments out of  
29 production under a lease, right, or royalty, whether whole or fractional,  
30 that creates fractional interests for the purpose of sale.

31 ~~(18)~~ (19) "Nonissuer transaction" or "nonissuer distribution" means a  
32 transaction or distribution not directly or indirectly for the benefit of the  
33 issuer.

34 ~~(19)~~ (20) "Offer to purchase" includes an attempt or offer to obtain, or  
35 solicitation of an offer to sell, a security or interest in a security for value.  
36 The term does not include a tender offer that is subject to section 14(d) of  
37 the securities exchange act of 1934 (15 U.S.C. § 78n(d)).

38 ~~(20)~~ (21) "Person" means an individual; corporation; business trust;  
39 estate; trust; partnership; limited liability company; association; joint  
40 venture; government; governmental subdivision, agency, or  
41 instrumentality; public corporation; or any other legal or commercial  
42 entity.

43 ~~(21)~~ (22) "Place of business" of a broker-dealer, an investment

1 adviser, or a federal covered investment adviser means:

2 (A) An office at which the broker-dealer, investment adviser, or  
3 federal covered investment adviser regularly provides brokerage or  
4 investment advice or solicits, meets with, or otherwise communicates with  
5 customers or clients; or

6 (B) any other location that is held out to the general public as a  
7 location at which the broker-dealer, investment adviser, or federal covered  
8 investment adviser provides brokerage or investment advice or solicits,  
9 meets with, or otherwise communicates with customers or clients.

10 ~~(22)~~ (23) "Predecessor act" means the Kansas securities act repealed  
11 by K.S.A. 17-12a703, and amendments thereto.

12 ~~(23)~~ (24) "Price amendment" means the amendment to a registration  
13 statement filed under the securities act of 1933 or, if an amendment is not  
14 filed, the prospectus or prospectus supplement filed under the securities act  
15 of 1933 that includes a statement of the offering price, underwriting and  
16 selling discounts or commissions, amount of proceeds, conversion rates,  
17 call prices, and other matters dependent upon the offering price.

18 ~~(24)~~ (25) "Principal place of business" of a broker-dealer or an  
19 investment adviser means the executive office of the broker-dealer or  
20 investment adviser from which the officers, partners, or managers of the  
21 broker-dealer or investment adviser direct, control, and coordinate the  
22 activities of the broker-dealer or investment adviser.

23 ~~(25)~~ (26) "Record," except in the phrases "of record," "official  
24 record," and "public record," means information that is inscribed on a  
25 tangible medium or that is stored in an electronic or other medium and is  
26 retrievable in perceivable form.

27 ~~(26)~~ (27) "Sale" includes every contract of sale, contract to sell, or  
28 disposition of, a security or interest in a security for value, and "offer to  
29 sell" includes every attempt or offer to dispose of, or solicitation of an  
30 offer to purchase, a security or interest in a security for value.

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

34 (B) A gift of assessable stock is considered to involve an offer and  
35 sale.

36 (C) A sale or offer of a warrant or right to purchase or subscribe to  
37 another security of the same or another issuer, and a sale or offer of a  
38 security that gives the holder a present or future right or privilege to  
39 convert the security into another security of the same or another issuer, is  
40 considered to include an offer of the other security.

41 ~~(27)~~ (28) "Securities and exchange commission" means the United  
42 States securities and exchange commission.

43 ~~(28)~~ (29) "Security" means a note; stock; treasury stock; security

1 future; bond; debenture; evidence of indebtedness; certificate of interest or  
2 participation in a profit-sharing agreement; collateral trust certificate;  
3 preorganization certificate or subscription; transferable share; investment  
4 contract; voting trust certificate; certificate of deposit for a security;  
5 fractional undivided interest in oil, gas, or other mineral rights; put, call,  
6 straddle, option, or privilege on a security, certificate of deposit, or group  
7 or index of securities, including an interest therein or based on the value  
8 thereof; put, call, straddle, option, or privilege entered into on a national  
9 securities exchange relating to foreign currency; or, in general, an interest  
10 or instrument commonly known as a "security"; or a certificate of interest  
11 or participation in, temporary or interim certificate for, receipt for,  
12 guarantee of, or warrant or right to subscribe to or purchase, any of the  
13 foregoing. The term:

14 (A) Includes both a certificated and an uncertificated security;

15 (B) does not include an insurance or endowment policy or annuity  
16 contract under which an insurance company promises to pay a fixed or  
17 variable sum of money either in a lump sum or periodically for life or  
18 other specified period;

19 (C) does not include an interest in a contributory or noncontributory  
20 pension or welfare plan subject to the employee retirement income  
21 security act of 1974;

22 (D) includes as an "investment contract" an investment in a common  
23 enterprise with the expectation of profits to be derived primarily from the  
24 efforts of a person other than the investor. A "common enterprise" means  
25 an enterprise in which the fortunes of the investor are interwoven with  
26 those of either the person offering the investment, a third party or other  
27 investors; and

28 (E) "investment contract" may include an interest in a limited  
29 partnership and a limited liability company and shall include a viatical  
30 investment as defined by rule adopted or order issued under this act.

31 ~~(29)~~ (30) "Self-regulatory organization" means a national securities  
32 exchange registered under the securities exchange act of 1934, a national  
33 securities association of broker-dealers registered under the securities  
34 exchange act of 1934, a clearing agency registered under the securities  
35 exchange act of 1934, or the municipal securities rulemaking board  
36 established under the securities exchange act of 1934.

37 ~~(30)~~ (31) "Sign" means, with present intent to authenticate or adopt a  
38 record:

39 (A) To execute or adopt a tangible symbol; or

40 (B) to attach or logically associate with the record an electronic  
41 symbol, sound, or process.

42 ~~(31)~~ (32) "State" means a state of the United States, the District of  
43 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or



1 insular possession subject to the jurisdiction of the United States.

2 ~~(32)~~ (33) "Rules" when used in the context of the rules adopted by the  
3 administrator, means rules and regulations adopted by the administrator  
4 pursuant to this act.

5 Sec. 4. K.S.A. 17-12a410 is hereby amended to read as follows: 17-  
6 12a410. (a) *Filing fees*. The administrator shall establish fees by rules and  
7 regulations, subject to the following limitations:

8 (1) *Broker-dealers*. A person shall pay a fee of not more than \$300  
9 when initially filing an application for registration as a broker-dealer and  
10 filing a renewal of registration as a broker-dealer. If the filing results in a  
11 denial or withdrawal, the administrator shall retain the fee.

12 (2) *Agents*. The fee for an individual is not more than \$100 when  
13 filing an application for registration as an agent, when filing a renewal of  
14 registration as an agent, and when filing for a change of registration as an  
15 agent. If the filing results in a denial or withdrawal, the administrator shall  
16 retain the fee.

17 (3) *Investment advisers*. A person shall pay a fee of not more than  
18 \$300 when filing an application for registration as an investment adviser  
19 and when filing a renewal of registration as an investment adviser. If the  
20 filing results in a denial or withdrawal, the administrator shall retain the  
21 fee.

22 (4) *Investment adviser representatives*. The fee for an individual is  
23 not more than \$100 when filing an application for registration as an  
24 investment adviser representative, when filing a renewal of registration as  
25 an investment adviser representative, and when filing a change of  
26 registration as an investment adviser representative. If the filing results in  
27 a denial or withdrawal, the administrator shall retain the fee.

28 (5) *Federal covered investment advisers*. A federal covered  
29 investment adviser required to file a notice under K.S.A. 17-12a405, and  
30 amendments thereto, shall pay an initial fee and an annual notice fee of not  
31 more than \$300.

32 (6) *Exemption filings*. *The administrator may require the filing of a*  
33 *notice as a condition of any exemption adopted under subsection (b)(1)(H)*  
34 *of K.S.A. 17-12a401, subsection (b)(9) of K.S.A. 17-12a402, subsection (b)*  
35 *(3) of K.S.A. 17-12a403 or subsection (b)(2) of K.S.A. 17-12a404, and*  
36 *amendments thereto. The administrator may require a notice filing fee of*  
37 *not more than \$300 annually for any such exemption.*

38 (b) *Payment*. A person required to pay a filing or notice fee under this  
39 section may transmit the fee through or to a designee as a rule or order  
40 provides under this act.

41 Sec. 5. K.S.A. 2011 Supp. 17-12a601 is hereby amended to read as  
42 follows: 17-12a601. (a) *Administration*. (1) This act shall be administered  
43 by the securities commissioner of Kansas.

1       (2) *Except as otherwise provided in this act*, all fees herein provided  
2 for shall be collected by the administrator. All salaries and expenses  
3 necessarily incurred in the administration of this act shall be paid from the  
4 securities act fee fund.

5       (3) The administrator shall remit all moneys received from all fees,  
6 charges, deposits or penalties which have been collected under this act or  
7 other laws of this state regulating the issuance, sale or disposal of  
8 securities or regulating dealers in this state or under the uniform land sales  
9 practices act, to the state treasurer at least monthly. Upon receipt of any  
10 such remittance, the state treasurer shall deposit the entire amount thereof  
11 in the state treasury. In accordance with K.S.A. 75-3170a, and  
12 amendments thereto, 10% of each such deposit shall be credited to the  
13 state general fund and, except as provided in subsection (d), the balance  
14 shall be credited to the securities act fee fund.

15       (4) ~~On the last day of each fiscal year, the director of accounts and~~  
16 ~~reports shall transfer from the securities act fee fund to the state general~~  
17 ~~fund any remaining unencumbered amount in the securities act fee fund~~  
18 ~~exceeding \$50,000 so that the beginning unencumbered balance in the~~  
19 ~~securities act fee fund on the first day of each fiscal year is \$50,000. All~~  
20 ~~expenditures from the securities act fee fund shall be made in accordance~~  
21 ~~with appropriation acts upon warrants of the director of accounts and~~  
22 ~~reports issued pursuant to vouchers approved by the administrator or by a~~  
23 ~~person or persons designated by the administrator.~~

24       (5) ~~All amounts transferred from the securities act fee fund to the~~  
25 ~~state general fund under paragraph (4) are to reimburse the state general~~  
26 ~~fund for accounting, auditing, budgeting, legal, payroll, personnel and~~  
27 ~~purchasing services and any other governmental services which are~~  
28 ~~performed on behalf of the state agency involved by other state agencies~~  
29 ~~which receive appropriations from the state general fund to provide such~~  
30 ~~services. The administrator may make or authorize transfers from the~~  
31 ~~securities act fee fund to one or more special revenue funds established in~~  
32 ~~the state treasury for use by the administrator to carry out responsibilities~~  
33 ~~as specified under this act, or to a special revenue fund of other executive~~  
34 ~~branch agencies with responsibilities reasonably related to investment of~~  
35 ~~capital, creation of jobs or other programs within the state of Kansas for~~  
36 ~~which the benefits of securities regulation and preservation of the integrity~~  
37 ~~of the capital formation process can be realized as determined by the~~  
38 ~~administrator in consultation with heads of such other agencies. At the~~  
39 ~~end of each fiscal year, the administrator or a person designated by the~~  
40 ~~administrator shall ensure that an unencumbered fund balance of at least~~  
41 ~~\$250,000 is retained in the securities act fee fund to carry forward for use~~  
42 ~~in the following fiscal year in accordance with appropriation acts for~~  
43 ~~administration and enforcement of this act.~~

1 (b) *Prohibited conduct.* (1) It is unlawful for the administrator or an  
2 officer, employee, or designee of the administrator to use for personal  
3 benefit or the benefit of others records or other information obtained by or  
4 filed with the administrator that are not public under K.S.A. 17-12a607(b),  
5 and amendments thereto. This act does not authorize the administrator or  
6 an officer, employee, or designee of the administrator to disclose the  
7 record or information, except in accordance with K.S.A. 17-12a602, 17-  
8 12a607(c), or 17-12a608, and amendments thereto.

9 (2) Neither the administrator nor any employee of the administrator  
10 shall be interested as an officer, director, or stockholder in securing any  
11 authorization to sell securities under the provisions of this act.

12 (c) *No privilege or exemption created or diminished.* This act does  
13 not create or diminish a privilege or exemption that exists at common law,  
14 by statute or rule, or otherwise.

15 (d) *Investor education.* (1) The administrator may develop and  
16 implement investor education initiatives to inform the public about  
17 ~~investing in securities, with particular emphasis on the prevention and~~  
18 ~~detection of securities fraud~~ *personal financial literacy and investments.* In  
19 developing and implementing these initiatives, the administrator may  
20 collaborate with public and nonprofit organizations with an interest in  
21 *financial literacy and investor education.* The administrator may accept a  
22 grant or donation from a person that is not affiliated with the securities  
23 industry or from a nonprofit organization, regardless of whether the  
24 organization is affiliated with the securities industry, to develop and  
25 implement investor education initiatives. This subsection does not  
26 authorize the administrator to require participation or monetary  
27 contributions of a registrant in an investor education program.

28 (2) There is hereby established in the state treasury the investor  
29 education fund. ~~Such fund shall be administered by the administrator for~~  
30 ~~the purposes described in subsection (d)(1) and for the education of~~  
31 ~~registrants, including official hospitality.~~ Moneys collected as civil  
32 penalties under this act shall be credited to the investor education fund.  
33 The administrator may also receive payments designated to be credited to  
34 the investor education fund as a condition in settlements of cases arising  
35 out of investigations or examinations. All expenditures from the investor  
36 education fund shall be made in accordance with appropriation acts upon  
37 warrants of the director of accounts and reports issued pursuant to  
38 vouchers approved by the administrator or by a person or persons  
39 designated by the administrator. ~~Two years after the effective date of this~~  
40 ~~act, the administrator shall conduct a review and submit a report to the~~  
41 ~~governor and the legislature concerning the expenditures from the investor~~  
42 ~~education fund and the results achieved from the investor education~~  
43 ~~program~~ *The investor education fund shall be administered by the*

1 administrator for the purposes described in subsection (d)(1) or for the  
2 following purposes at the discretion of the administrator:

3 (A) Education of applicants for registration under this act and  
4 registrants or their representatives including official hospitality;

5 (B) training of the administrator's staff; or

6 (C) grants to public or private schools or universities in Kansas for  
7 education in personal or business finance and related subjects.

8 (3) The administrator may make or authorize transfers from the  
9 securities act fee fund to the investor education fund when necessary to  
10 replenish the investor education fund for operations as deemed  
11 appropriate by the administrator up to an aggregate maximum amount of  
12 \$500,000 in any fiscal year. The maximum aggregate amount of such  
13 transfers specified in this subsection may be exceeded by the administrator  
14 with the approval of the state finance council acting on this matter which  
15 is hereby characterized as a matter of legislative delegation and subject to  
16 the guidelines prescribed in subsection (c) of K.S.A. 75-3711c, and  
17 amendments thereto, except that such approval also may be given while  
18 the legislature is in session.

19 (e) There is hereby established in the state treasury the securities  
20 litigation fund. The securities litigation fund shall be administered by the  
21 administrator for the purpose of enforcing provisions of this act through  
22 administrative hearings and actions in state and federal courts to resolve  
23 alleged violations of this act or a rule and regulation adopted or order  
24 issued under this act. All expenditures from the securities litigation fund  
25 shall be made in accordance with appropriation acts upon warrants of the  
26 director of accounts and reports issued pursuant to vouchers approved by  
27 the administrator or by a person or persons designated by the  
28 administrator. The administrator may make or authorize transfers from the  
29 securities act fee fund to the securities litigation fund when necessary to  
30 replenish the securities litigation fund for operations as deemed  
31 appropriate by the administrator up to an aggregate maximum amount of  
32 \$500,000 in any fiscal year. The maximum aggregate amount of such  
33 transfers specified in this subsection may be exceeded by the administrator  
34 with the approval of the state finance council acting on this matter which  
35 is hereby characterized as a matter of legislative delegation and subject to  
36 the guidelines prescribed in subsection (c) of K.S.A. 75-3711c, and  
37 amendments thereto, except that such approval also may be given while  
38 the legislature is in session.

39 (f) There is hereby established in the state treasury the securities  
40 restitution fund. The securities restitution fund shall be administered by  
41 the administrator for the purpose of receiving and disbursing restitution  
42 payments in connection with settlements of enforcement cases and other  
43 legal proceedings under this act. The administrator may authorize

1 *restitution to be paid to Kansas residents who have been awarded*  
2 *damages in connection with alleged or adjudicated violations of this act.*  
3 *Such restitution payments may be made at the discretion of the*  
4 *administrator or as agreed upon or ordered in settlements of cases or*  
5 *other legal proceedings under this act. The administrator may make or*  
6 *authorize transfers from the securities act fee fund to the securities*  
7 *restitution fund when necessary to provide sufficient funding to enable*  
8 *restitution as deemed appropriate by the administrator. Such transfers at*  
9 *the discretion of the administrator shall be limited to aggregate maximum*  
10 *amount of \$500,000 in any fiscal year. The maximum aggregate amount of*  
11 *such transfers specified in this subsection may be exceeded by the*  
12 *approval of the administrator with the approval of the state finance*  
13 *council acting on this matter which is hereby characterized as a matter of*  
14 *legislative delegation and subject to the guidelines prescribed in*  
15 *subsection (c) of K.S.A. 75-3711c, and amendments thereto, except that*  
16 *such approval also may be given while the legislature is in session.*

17 *(g) By rules and regulations adopted or order issued under this act,*  
18 *the administrator shall specify definitions, forms, procedures and*  
19 *limitations for payment of restitution awards from the securities restitution*  
20 *fund.*

21 Sec. 6. K.S.A. 2011 Supp. 75-6301 is hereby amended to read as  
22 follows: 75-6301. (a) There is hereby established the office of the  
23 securities commissioner of Kansas. The office shall be administered by the  
24 securities commissioner of Kansas who shall be in the unclassified service  
25 under the Kansas civil service act and shall serve at the pleasure of the  
26 governor. The securities commissioner shall be appointed by the governor,  
27 subject to confirmation by the senate as provided in K.S.A. 75-4315b, and  
28 amendments thereto, shall have special training and qualifications for such  
29 position and shall receive such compensation as may be fixed by the  
30 governor. Except as provided by K.S.A. 46-2601, and amendments thereto,  
31 no person appointed as securities commissioner shall exercise any power,  
32 duty or function as securities commissioner until confirmed by the senate.

33 (b) The securities commissioner may appoint directors *and other*  
34 *professional staff* within the office of the securities commissioner as  
35 determined necessary by the securities commissioner to effectively carry  
36 out the mission of the office. All directors *and other professional staff*  
37 appointed after the effective date of this act shall be in the unclassified  
38 service under the Kansas civil service act, shall have special training and  
39 qualifications for such positions *as deemed necessary by the securities*  
40 *commissioner*; shall serve at the pleasure of the securities commissioner  
41 and shall receive compensation fixed by the securities commissioner and  
42 approved by the governor.

43 (c) Nothing in subsection (b) shall affect the classified status of any

1 person employed in the office of the securities commissioner on the day  
2 immediately preceding the effective date of this act. The provisions of this  
3 subsection shall not be construed to limit the powers of the securities  
4 commissioner pursuant to K.S.A. 75-2948, and amendments thereto.

5 Sec. 7. K.S.A. 17-12a101, 17-12a102 and 17-12a410 and K.S.A.  
6 2011 Supp. 17-12a601 and 75-6301 are hereby repealed.

7 Sec. 8. This act shall take effect and be in force from and after its  
8 publication in the Kansas register.

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