

HOUSE BILL No. 2294

By Committee on Financial Institutions

2-12

1 AN ACT concerning the Kansas uniform securities act; amending K.S.A.
2 17-12a302, 17-12a402 and 17-12a411 and repealing the existing
3 sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 17-12a302 is hereby amended to read as follows:
7 17-12a302. (a) *Required filing of records.* With respect to a federal covered
8 security, as defined in section 18(b)(2) of the securities act of 1933 (15
9 U.S.C. ~~section~~ § 77r(b)(2)), that is not otherwise exempt under K.S.A. 17-
10 12a201 through 17-12a203, and amendments thereto, a rule adopted or
11 order issued under this act may require the filing of any or all of the
12 following records:

13 (1) Before the initial offer of a federal covered security in this state,
14 all records that are part of a federal registration statement filed with the
15 securities and exchange commission under the securities act of 1933 and a
16 consent to service of process complying with K.S.A. 17-12a611, and
17 amendments thereto, signed by the issuer and the payment of a fee not to
18 exceed \$2,500;

19 (2) after the initial offer of the federal covered security in this state,
20 all records that are part of an amendment to a federal registration statement
21 filed with the securities and exchange commission under the securities act
22 of 1933; and

23 (3) to the extent necessary or appropriate to compute fees, a report of
24 the value of the federal covered securities sold or offered to persons
25 present in this state, if the sales data are not included in records filed with
26 the securities and exchange commission and payment of a fee not to
27 exceed \$2,500.

28 (b) *Notice filing effectiveness and renewal.* A notice filing under
29 subsection (a) is effective for one year commencing on the later of the
30 notice filing or the effectiveness of the offering filed with the securities
31 and exchange commission. On or before expiration, the issuer may renew
32 a notice filing by filing a copy of those records filed by the issuer with the
33 securities and exchange commission that are required by rule or order
34 under this act to be filed and by paying a renewal fee not to exceed \$2,500.
35 A previously filed consent to service of process complying with K.S.A.
36 17-12a611, and amendments thereto, may be incorporated by reference in

1 a renewal. A renewed notice filing becomes effective upon the expiration
2 of the filing being renewed.

3 (c) *Notice filings for federal covered securities under Section 18(b)*
4 ~~(4)(D)(E)~~. With respect to a security that is a federal covered security
5 under section 18(b)(4)~~(D)(E)~~ of the securities act of 1933 (15 U.S.C.
6 ~~section~~ § 77r(b)(4)~~(D)(E)~~), a rule under this act may require: (1) A notice
7 filing by or on behalf of an issuer to include a copy of form D, including
8 the appendix, as promulgated by the securities and exchange commission,
9 and a consent to service of process complying with K.S.A. 17-12a611, and
10 amendments thereto, signed by the issuer, not later than 15 days after the
11 first sale of the federal covered security in this state; and (2) the payment
12 of a fee not to exceed \$2,500 for a timely filing and the payment of a fee
13 not to exceed \$5,000 for any late filing.

14 (d) *Stop orders*. Except with respect to a federal security under
15 section 18(b)(1) of the securities act of 1933 (15 U.S.C. ~~section~~ § 77r(b)
16 (1)), if the administrator finds that there is a failure to comply with a notice
17 or fee requirement of this section, the administrator may issue a stop order
18 suspending the offer and sale of a federal covered security in this state. If
19 the deficiency is corrected, the stop order is void as of the time of its
20 issuance and no penalty may be imposed by the administrator other than a
21 late filing fee.

22 Sec. 2. K.S.A. 17-12a402 is hereby amended to read as follows: 17-
23 12a402. (a) *Registration requirement*. It is unlawful for an individual to
24 transact business in this state as an agent unless the individual is registered
25 under this act as an agent or is exempt from registration as an agent under
26 subsection (b).

27 (b) *Exemptions from registration*. The following individuals are
28 exempt from the registration requirement of subsection (a):

29 (1) An individual who represents a broker-dealer in effecting
30 transactions in this state limited to those described in section 15~~(h)(2)(i)(3)~~
31 of the securities exchange act of 1934 (15 U.S.C. ~~section~~ § 78~~(o)(2)(i)(3)~~);

32 (2) an individual who represents a broker-dealer that is exempt under
33 K.S.A. 17-12a401(b) or (d), and amendments thereto;

34 (3) an individual who represents an issuer with respect to an offer or
35 sale of the issuer's own securities or those of the issuer's parent or any of
36 the issuer's subsidiaries, and who is not compensated in connection with
37 the individual's participation by the payment of commissions or other
38 remuneration based, directly or indirectly, on transactions in those
39 securities;

40 (4) an individual who represents an issuer and who effects
41 transactions in the issuer's securities exempted by K.S.A. 17-12a202, and
42 amendments thereto, other than K.S.A. 17-12a202 (11) and (14), and
43 amendments thereto;

1 (5) an individual who represents an issuer that effects transactions
2 solely in federal covered securities of the issuer, but an individual who
3 effects transactions in a federal covered security under section 18(b)(3) or
4 18(b)(4)(~~D~~)(E) of the securities act of 1933 (15 U.S.C. ~~section~~§ 77r(b)(3)
5 or 77r(b)(4)(~~D~~)(E)) is not exempt if the individual is compensated in
6 connection with the agent's participation by the payment of commissions
7 or other remuneration based, directly or indirectly, on transactions in those
8 securities;

9 (6) an individual who represents a broker-dealer registered in this
10 state under K.S.A. 17-12a401(a), and amendments thereto, or exempt from
11 registration under K.S.A. 17-12a401(b), and amendments thereto, in the
12 offer and sale of securities for an account of a nonaffiliated federal covered
13 investment adviser with investments under management in excess of
14 \$100,000,000 acting for the account of others pursuant to discretionary
15 authority in a signed record;

16 (7) an individual who represents an issuer in connection with the
17 purchase of the issuer's own securities;

18 (8) an individual who represents an issuer and who restricts
19 participation to performing clerical or ministerial acts; or

20 (9) any other individual exempted by rule adopted or order issued
21 under this act.

22 (c) *Registration effective only while employed or associated.* The
23 registration of an agent is effective only while the agent is employed by or
24 associated with a broker-dealer registered under this act or an issuer that is
25 offering, selling, or purchasing its securities in this state.

26 (d) *Limit on employment or association.* It is unlawful for a broker-
27 dealer, or an issuer engaged in offering, selling, or purchasing securities in
28 this state, to employ or associate with an agent who transacts business in
29 this state on behalf of broker-dealers or issuers unless the agent is
30 registered under subsection (a) or exempt from registration under
31 subsection (b).

32 (e) *Limit on affiliations.* An individual may not act as an agent for
33 more than one broker-dealer or one issuer at a time, unless the broker-
34 dealer or the issuer for which the agent acts are affiliated by direct or
35 indirect common control or are authorized by rule or order under this act.

36 Sec. 3. K.S.A. 17-12a411 is hereby amended to read as follows: 17-
37 12a411. (a) *Financial requirements.* Subject to section 15(~~h~~)(i) of the
38 securities exchange act of 1934 (15 U.S.C. ~~section~~§ 78o(~~h~~)(i)) or section
39 222 of the investment advisers act of 1940 (15 U.S.C. ~~section~~ 80b-22§
40 80b-18a), a rule adopted or order issued under this act may establish
41 minimum financial requirements for broker-dealers registered or required
42 to be registered under this act and investment advisers registered or
43 required to be registered under this act.

1 (b) *Financial reports.* Subject to section 15(~~h~~)(i) of the securities
2 exchange act of 1934 (15 U.S.C. ~~section~~§ 78o(~~h~~)(i)) or section 222(b) of
3 the investment advisers act of 1940 (15 U.S.C. ~~section 80b-22~~§ 80b-18a),
4 a broker-dealer registered or required to be registered under this act and an
5 investment adviser registered or required to be registered under this act
6 shall file such financial reports as are required by a rule adopted or order
7 issued under this act. If the information contained in a record filed under
8 this subsection is or becomes inaccurate or incomplete in a material
9 respect, the registrant shall promptly file a correcting amendment.

10 (c) *Recordkeeping.* Subject to section 15(~~h~~)(i) of the securities
11 exchange act of 1934 (15 U.S.C. ~~section~~§ 78o(~~h~~)(i)) or section 222 of the
12 investment advisers act of 1940 (15 U.S.C. ~~section 80b-22~~§ 80b-18a):

13 (1) A broker-dealer registered or required to be registered under this
14 act and an investment adviser registered or required to be registered under
15 this act shall make and maintain the accounts, correspondence,
16 memoranda, papers, books, and other records required by rule adopted or
17 order issued under this act;

18 (2) broker-dealer records required to be maintained under paragraph
19 (1) may be maintained in any form of data storage acceptable under
20 section 17(a) of the securities exchange act of 1934 (15 U.S.C. ~~section~~§
21 78q(a)) if they are readily accessible to the administrator; and

22 (3) investment adviser records required to be maintained under
23 paragraph (1) may be maintained in any form of data storage required by
24 rule adopted or order issued under this act.

25 (d) *Audits or inspections.* The records of every person issuing or
26 guaranteeing any securities subject to the provisions of this act and of
27 every broker-dealer, agent, investment adviser or investment adviser
28 representative registered or required to be registered under this act are
29 subject to such reasonable periodic, special, or other audits or inspections
30 by a representative of the administrator, within or without this state, as the
31 administrator considers necessary or appropriate in the public interest and
32 for the protection of investors. An audit or inspection may be made at any
33 time and without prior notice. The administrator may copy, and remove for
34 audit or inspection copies of, all records the administrator reasonably
35 considers necessary or appropriate to conduct the audit or inspection. The
36 administrator may assess a reasonable charge for conducting an audit or
37 inspection under this subsection.

38 (e) *Custody and discretionary authority bond or insurance.* Subject to
39 section 15(~~h~~)(i) of the securities exchange act of 1934 (15 U.S.C. ~~section~~§
40 78o(~~h~~)(i)) or section 222 of the investment advisers act of 1940 (15 U.S.C.
41 ~~section 80b-22~~§ 80b-18a), a rule adopted or order issued under this act
42 may require a broker-dealer or investment adviser that has custody of or
43 discretionary authority over funds or securities of a customer or client to

1 obtain insurance or post a bond or other satisfactory form of security. The
2 administrator may determine the requirements of the insurance, bond, or
3 other satisfactory form of security. Insurance or a bond or other
4 satisfactory form of security may not be required of a broker-dealer
5 registered under this act whose net capital exceeds, or of an investment
6 adviser registered under this act whose minimum financial requirements
7 exceed, the amounts required by rule or order under this act. The
8 insurance, bond, or other satisfactory form of security must permit an
9 action by a person to enforce any liability on the insurance, bond, or other
10 satisfactory form of security if instituted within the time limitations in
11 K.S.A. 17-12a509(j)(2), and amendments thereto.

12 (f) *Requirements for custody.* Subject to section 15(~~h~~)(i) of the
13 securities exchange act of 1934 (15 U.S.C. ~~section~~ § 78o(~~h~~)(i)) or section
14 222 of the investment advisers act of 1940 (15 U.S.C. ~~section 80b-22~~ §
15 ~~80b-18a~~), an agent may not have custody of funds or securities of a
16 customer except under the supervision of a broker-dealer and an
17 investment adviser representative may not have custody of funds or
18 securities of a client except under the supervision of an investment adviser
19 or a federal covered investment adviser. A rule adopted or order issued
20 under this act may prohibit, limit, or impose conditions on a broker-dealer
21 regarding custody of funds or securities of a customer and on an
22 investment adviser regarding custody of securities or funds of a client.

23 (g) *Investment adviser brochure rule.* With respect to an investment
24 adviser registered or required to be registered under this act, a rule adopted
25 or order issued under this act may require that information or other record
26 be furnished or disseminated to clients or prospective clients in this state
27 as necessary or appropriate in the public interest and for the protection of
28 investors and advisory clients.

29 (h) *Continuing education.* A rule adopted or order issued under this
30 act may require an individual registered under K.S.A. 17-12a402 or 17-
31 12a404, and amendments thereto, to participate in a continuing education
32 program approved by the securities and exchange commission and
33 administered by a self-regulatory organization or, in the absence of such a
34 program, a rule adopted or order issued under this act may require
35 continuing education for an individual registered under K.S.A. 17-12a404,
36 and amendments thereto.

37 Sec. 4. K.S.A. 17-12a302, 17-12a402 and 17-12a411 are hereby
38 repealed.

39 Sec. 5. This act shall take effect and be in force from and after its
40 publication in the statute book.