

{As Amended by House Committee of the Whole}

Session of 2014

HOUSE BILL No. 2433

By Committee on Corrections and Juvenile Justice

1-16

1 AN ACT concerning the Kansas uniform securities act; relating to criminal
2 penalties; investor education and protection; amending K.S.A. 2013
3 Supp. 17-12a508 and 17-12a601 and repealing the existing sections.
4

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

6 Section 1. K.S.A. 2013 Supp. 17-12a508 is hereby amended to read
7 as follows: 17-12a508. (a) *Criminal penalties.* (1) Except as provided in
8 subsections (a)(2) through (a)(4), a conviction for an intentional violation
9 of the Kansas uniform securities act, or a rule adopted or order issued
10 under this act, except K.S.A. 17-12a504, and amendments thereto, or the
11 notice filing requirements of K.S.A. 17-12a302 or 17-12a405, and
12 amendments thereto, is a severity level 7, nonperson felony. An individual
13 convicted of violating a rule or order under this act may be fined, but may
14 not be imprisoned, if the individual did not have knowledge of the rule or
15 order.

16 (2) A conviction for an intentional violation of K.S.A. 17-12a501 or
17 17-12a502, and amendments thereto, if the violation resulted in a loss of
18 an amount of:

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

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

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

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

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

27 (3) A conviction for an intentional violation of K.S.A. 17-12a301, 17-
28 12a401(a), 17-12a402(a), 17-12a403(a) or 17-12a404(a), and amendments
29 thereto, is:

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

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

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

36 (4) A conviction for an intentional violation of:

1 (A) K.S.A. 17-12a404(e) or 17-12a505, and amendments thereto, or
2 an order to cease and desist issued by the administrator pursuant to K.S.A.
3 17-12a412(c) or 17-12a604(a), and amendments thereto, is a severity level
4 5, nonperson felony.

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

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

9 (5) Any violation of K.S.A. 17-12a301, 17-12a401(a), 17-12a402(a),
10 17-12a403(a), 17-12a404(a), 17-12a501 or 17-12a502, and amendments
11 thereto, resulting in a loss of \$25,000 or more shall be presumed
12 imprisonment.

13 (6) *A conviction for an intentional violation of the Kansas uniform*
14 *securities act, K.S.A. 17-12a101 et seq., and amendments thereto,*
15 *committed against an elder person, as defined in K.S.A. 50-676, and*
16 *amendments thereto, shall be ranked on the nondrug scale at one severity*
17 *level above the appropriate level for the underlying or completed crime, if*
18 *the trier of fact finds that the victim was an elder person at the time of the*
19 *crime. ~~{It shall not be a defense under this paragraph that the individual~~*
20 *~~convicted did not know the age of the victim or reasonably believed that~~*
21 *~~the victim was not an elder person.}~~*

22 (b) *Statute of limitations.* Except as provided by subsection (e) of
23 K.S.A. 2013 Supp. 21-5107, and amendments thereto, no prosecution for
24 any crime under this act may be commenced more than 10 years after the
25 alleged violation if the victim is the Kansas public employees retirement
26 system and no prosecution for any other crime under this act may be
27 commenced more than five years after the alleged violation. A prosecution
28 is commenced when a complaint or information is filed, or an indictment
29 returned, and a warrant thereon is delivered to the sheriff or other officer
30 for execution, except that no prosecution shall be deemed to have been
31 commenced if the warrant so issued is not executed without unreasonable
32 delay.

33 (c) *Criminal reference.* The administrator may refer such evidence as
34 may be available concerning violations of this act or of any rules and
35 regulations or order hereunder to the attorney general or the proper county
36 or district attorney, who may in the prosecutor's discretion, with or without
37 such a reference, institute the appropriate criminal proceedings under this
38 act. Upon receipt of such reference, the attorney general or the county
39 attorney or district attorney may request that a duly employed attorney of
40 the administrator prosecute or assist in the prosecution of such violation or
41 violations on behalf of the state. Upon approval of the administrator, such
42 employee shall be appointed a special prosecutor for the attorney general
43 or the county attorney or district attorney to serve without compensation

1 from the attorney general or the county attorney or district attorney. Such
2 special prosecutor shall have all the powers and duties prescribed by law
3 for assistant attorneys general or assistant county or district attorneys and
4 such other powers and duties as are lawfully delegated to such special
5 prosecutor by the attorney general or the county attorney or district
6 attorney. If an attorney employed by the administrator acts as a special
7 prosecutor, the administrator may pay extradition and witness expenses
8 associated with the case.

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

12 Sec. 2. K.S.A. 2013 Supp. 17-12a601 is hereby amended to read as
13 follows: 17-12a601. (a) *Administration.* (1) This act shall be administered
14 by the securities commissioner of Kansas.

15 (2) All fees herein provided for shall be collected by the
16 administrator. All salaries and expenses necessarily incurred in the
17 administration of this act shall be paid from the securities act fee fund.

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

28 (4) On the last day of each fiscal year, the director of accounts and
29 reports shall transfer from the securities act fee fund to the state general
30 fund any remaining unencumbered amount in the securities act fee fund
31 exceeding \$50,000 so that the beginning unencumbered balance in the
32 securities act fee fund on the first day of each fiscal year is \$50,000. All
33 expenditures from the securities act fee fund shall be made in accordance
34 with appropriation acts upon warrants of the director of accounts and
35 reports issued pursuant to vouchers approved by the administrator or by a
36 person or persons designated by the administrator.

37 (5) All amounts transferred from the securities act fee fund to the
38 state general fund under paragraph (4) are to reimburse the state general
39 fund for accounting, auditing, budgeting, legal, payroll, personnel and
40 purchasing services and any other governmental services which are
41 performed on behalf of the state agency involved by other state agencies
42 which receive appropriations from the state general fund to provide such
43 services.

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 and protection.* (1) The administrator may
16 develop and implement investor education *and protection* initiatives to
17 inform the public about investing in securities, ~~with and protect the public~~
18 ~~from violations of the Kansas uniform securities act, K.S.A. 17-12a101 et~~
19 ~~seq., and amendments thereto. Such initiatives shall have a particular~~
20 ~~emphasis on the prevention and, detection, enforcement and prosecution of~~
21 ~~securities fraud. In developing and implementing these initiatives, the~~
22 ~~administrator may collaborate with public and nonprofit organizations with~~
23 ~~an interest in investor education or protection. The administrator may~~
24 ~~accept a grant or donation from a person that is not affiliated with the~~
25 ~~securities industry or from a nonprofit organization, regardless of whether~~
26 ~~the organization is affiliated with the securities industry, to develop and~~
27 ~~implement investor education and protection initiatives. This subsection~~
28 ~~does not authorize the administrator to require participation or monetary~~
29 ~~contributions of a registrant in an investor education program.~~

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

1 ~~concerning the expenditures from the investor education fund and the~~
2 ~~results achieved from the investor education program.~~

3 Sec. 3. K.S.A. 2013 Supp. 17-12a508 and 17-12a601 are hereby
4 repealed.

5 Sec. 4. This act shall take effect and be in force from and after its
6 publication in the statute book.