

HOUSE BILL No. 2106

By Committee on Corrections and Juvenile Justice

1-23

1 AN ACT concerning the Kansas uniform securities act; relating to criminal
2 penalties; fees; amending K.S.A. 17-12a204 and K.S.A. 2014 Supp. 17-
3 12a508 and 17-12a601 and repealing the existing sections; also
4 repealing K.S.A. 2014 Supp. 17-12a601a.
5

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

7 Section 1. K.S.A. 17-12a204 is hereby amended to read as follows:
8 17-12a204. (a) Except with respect to a federal covered security or a
9 transaction involving a federal covered security, an order under this act
10 may deny, suspend application of, condition, limit, or revoke an exemption
11 created under K.S.A. 17-12a201(3)(C), (7) or (8) or 17-12a202, and
12 amendments thereto, or an exemption or waiver created under K.S.A. 17-
13 12a203, and amendments thereto, with respect to a specific security,
14 transaction, or offer. An order under this section may be issued only
15 pursuant to the procedures in K.S.A. 17-12a306(d) or 17-12a604, and
16 amendments thereto, and only prospectively.

17 (b) Knowledge of order required. A person does not violate K.S.A.
18 17-12a301, 17-12a303 through 17-12a306, 17-12a504 or 17-12a510, and
19 amendments thereto, by an offer to sell, offer to purchase, sale, or purchase
20 effected after the entry of an order issued under this section if the person
21 did not know, and in the exercise of reasonable care could not have known,
22 of the order.

23 (c) *Nothing in this section shall be construed to exempt any person*
24 *from the anti-fraud provisions of K.S.A. 17-12a501, and amendments*
25 *thereto, nor shall any exemption contained in K.S.A. 17-12a201 through*
26 *17-12a203, and amendments thereto, be construed to provide relief from*
27 *any other provision of this article if the sale of such security would violate*
28 *the provisions of K.S.A. 17-12a501, and amendments thereto.*

29 Sec. 2. K.S.A. 2014 Supp. 17-12a508 is hereby amended to read as
30 follows: 17-12a508. (a) *Criminal penalties.* (1) Except as provided in
31 subsections (a)(2) through (a)(4), a conviction for an intentional violation
32 of the Kansas uniform securities act, or a rule adopted or order issued
33 under this act, except K.S.A. 17-12a504, and amendments thereto, or the
34 notice filing requirements of K.S.A. 17-12a302 or 17-12a405, and
35 amendments thereto, is a severity level 7, nonperson felony. An individual
36 convicted of violating a rule or order under this act may be fined, but may

1 not be imprisoned, if the individual did not have knowledge of the rule or
2 order.

3 (2) A conviction for an intentional violation of K.S.A. 17-12a501 or
4 17-12a502, and amendments thereto, if the violation resulted in a loss of
5 an amount of:

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

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

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

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

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

14 (3) A conviction for an intentional violation of K.S.A. 17-12a301, 17-
15 12a401(a), 17-12a402(a), 17-12a403(a) or 17-12a404(a), and amendments
16 thereto, is:

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

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

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

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

24 (A) K.S.A. 17-12a404(e) or 17-12a505, and amendments thereto, or
25 an order to cease and desist issued by the administrator pursuant to K.S.A.
26 17-12a412(c) or 17-12a604(a), and amendments thereto, is a severity level
27 5, nonperson felony.

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

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

32 (5) Any violation of K.S.A. 17-12a301, 17-12a401(a), 17-12a402(a),
33 17-12a403(a), 17-12a404(a), 17-12a501 or 17-12a502, and amendments
34 thereto, resulting in a loss of \$25,000 or more shall be presumed
35 imprisonment.

36 (6) A conviction for an intentional violation of the Kansas uniform
37 securities act, K.S.A. 17-12a101 et seq., and amendments thereto,
38 committed against an elder person, as defined in K.S.A. 50-676, and
39 amendments thereto, shall be ranked on the nondrug scale at one severity
40 level above the appropriate level for the underlying or completed crime, if
41 the trier of fact finds that the victim was an elder person at the time of the
42 crime. It shall not be a defense under this paragraph that the defendant did
43 not know the age of the victim or reasonably believed that the victim was

1 not an elder person.

2 (7) *When amounts are obtained in violation of this act under one*
3 *scheme or continuing course of business, whether from the same or*
4 *several sources, the conduct may be considered as one continuing offense,*
5 *and the amounts aggregated in determining the grade of the offense.*

6 (b) *Statute of limitations.* Except as provided by ~~subsection (e) of~~
7 K.S.A. 2014 Supp. 21-5107(e), and amendments thereto, no prosecution
8 for any crime under this act may be commenced more than 10 years after
9 the alleged violation if the victim is the Kansas public employees
10 retirement system and no prosecution for any other crime under this act
11 may be commenced more than five years after the alleged violation. A
12 prosecution is commenced when a complaint or information is filed, or an
13 indictment returned, and a warrant thereon is delivered to the sheriff or
14 other officer for execution, except that no prosecution shall be deemed to
15 have been commenced if the warrant so issued is not executed without
16 unreasonable delay. *If a crime under this act is a continuing offense, the*
17 *statute of limitations does not begin to run until the last act in the scheme*
18 *or course of business is completed.*

19 (c) *Criminal reference.* The administrator may refer such evidence as
20 may be available concerning violations of this act or of any rules and
21 regulations or order hereunder to the attorney general or the proper county
22 or district attorney, who may in the prosecutor's discretion, with or without
23 such a reference, institute the appropriate criminal proceedings under this
24 act. Upon receipt of such reference, the attorney general or the county
25 attorney or district attorney may request that a duly employed attorney of
26 the administrator prosecute or assist in the prosecution of such violation or
27 violations on behalf of the state. Upon approval of the administrator, such
28 employee shall be appointed a special prosecutor for the attorney general
29 or the county attorney or district attorney to serve without compensation
30 from the attorney general or the county attorney or district attorney. Such
31 special prosecutor shall have all the powers and duties prescribed by law
32 for assistant attorneys general or assistant county or district attorneys and
33 such other powers and duties as are lawfully delegated to such special
34 prosecutor by the attorney general or the county attorney or district
35 attorney. If an attorney employed by the administrator acts as a special
36 prosecutor, the administrator may pay extradition and witness expenses
37 associated with the case.

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

41 Sec. 3. K.S.A. 2014 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) All fees herein provided for shall be collected by the
2 administrator. All salaries and expenses necessarily incurred in the
3 administration of this act shall be paid from the securities act fee fund.

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

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

23 (5) All amounts transferred from the securities act fee fund to the
24 state general fund under paragraph (4) are to reimburse the state general
25 fund for accounting, auditing, budgeting, legal, payroll, personnel and
26 purchasing services and any other governmental services which are
27 performed on behalf of the state agency involved by other state agencies
28 which receive appropriations from the state general fund to provide such
29 services.

30 (b) *Prohibited conduct.* (1) It is unlawful for the administrator or an
31 officer, employee, or designee of the administrator to use for personal
32 benefit or the benefit of others records or other information obtained by or
33 filed with the administrator that are not public under K.S.A. 17-12a607(b),
34 and amendments thereto. This act does not authorize the administrator or
35 an officer, employee, or designee of the administrator to disclose the
36 record or information, except in accordance with K.S.A. 17-12a602, 17-
37 12a607(c), or 17-12a608, and amendments thereto.

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

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

1 (d) *Investor education and protection.* (1) The administrator may
2 develop and implement investor education and protection initiatives to
3 inform the public about investing in securities and protect the public from
4 violations of the Kansas uniform securities act, K.S.A. 17-12a101 et seq.,
5 and amendments thereto. Such initiatives shall have a particular emphasis
6 on the prevention, detection, enforcement and prosecution of securities
7 fraud. In developing and implementing these initiatives, the administrator
8 may collaborate with public and nonprofit organizations with an interest in
9 investor education or protection. The administrator may accept a grant or
10 donation from a person that is not affiliated with the securities industry or
11 from a nonprofit organization, regardless of whether the organization is
12 affiliated with the securities industry, to develop and implement investor
13 education and protection initiatives. This subsection does not authorize the
14 administrator to require participation or monetary contributions of a
15 registrant in an investor education program.

16 (2) There is hereby established in the state treasury the investor
17 education and protection fund. Such fund shall be administered by the
18 administrator for the purposes described in subsection (d)(1) and for the
19 education of registrants, including official hospitality. Moneys collected as
20 civil penalties under this act shall be credited to the investor education and
21 protection fund. The administrator may also receive payments designated
22 to be credited to the investor education and protection fund as a condition
23 in settlements of cases arising out of investigations or examinations. All
24 expenditures from the investor education and protection fund shall be
25 made in accordance with appropriation acts upon warrants of the director
26 of accounts and reports issued pursuant to vouchers approved by the
27 administrator or by a person or persons designated by the administrator.

28 Sec. 4. K.S.A. 17-12a204 and K.S.A. 2014 Supp. 17-12a508, 17-
29 12a601 and 17-12a601a are hereby repealed.

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