

HOUSE BILL No. 2106

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

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

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

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

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

Sec. 2. K.S.A. 2014 Supp. 17-12a508 is hereby amended to read as follows: 17-12a508. (a) *Criminal penalties.* (1) Except as provided in subsections (a)(2) through (a)(4), a conviction for an intentional violation of the Kansas uniform securities act, or a rule adopted or order issued under this act, except K.S.A. 17-12a504, and amendments thereto, or the notice filing requirements of K.S.A. 17-12a302 or 17-12a405, and amendments thereto, is a severity level 7, nonperson felony. An individual convicted of violating a rule or order under this act may be fined, but may not be imprisoned, if the individual did not have knowledge of the rule or order.

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

- (A) \$1,000,000 or more is a severity level 2, nonperson felony;
- (B) at least \$250,000 but less than \$1,000,000 is a severity level 3, nonperson felony;
- (C) at least \$100,000 but less than \$250,000 is a severity level 4, nonperson felony;
- (D) at least \$25,000 but less than \$100,000 is a severity level 5, nonperson felony; or
- (E) less than \$25,000 is a severity level 6, nonperson felony.

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

- (A) A severity level 5, nonperson felony if the violation resulted in a loss of \$100,000 or more;
- (B) a severity level 6, nonperson felony if the violation resulted in a loss of at least \$25,000 but less than \$100,000; or
- (C) a severity level 7, nonperson felony if the violation resulted in a loss of less than \$25,000.

(4) A conviction for an intentional violation of:

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

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

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

(5) Any violation of K.S.A. 17-12a301, 17-12a401(a), 17-12a402(a), 17-12a403(a), 17-12a404(a), 17-12a501 or 17-12a502, and amendments

thereto, resulting in a loss of \$25,000 or more shall be presumed imprisonment.

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

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

(b) *Statute of limitations.* (1) Except as provided by ~~subsection (c) of~~ K.S.A. 2014 Supp. 21-5107(e), and amendments thereto, no prosecution for any crime under this act may be commenced more than 10 years after the alleged violation if the victim is the Kansas public employees retirement system and no prosecution for any other crime under this act may be commenced more than five years after the alleged violation.

(2) *If a crime under this act is a continuing offense, the statute of limitations does not begin to run until the last act in the scheme or course of business is completed. Nothing in this subsection shall prevent the exclusion of a time period pursuant to K.S.A. 2014 Supp. 21-5107(e), and amendments thereto.*

(3) A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution, except that no prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.

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

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

Sec. 3. K.S.A. 2014 Supp. 17-12a601 is hereby amended to read as follows: 17-12a601. (a) *Administration.* (1) This act shall be administered by the securities commissioner of Kansas.

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

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

state general fund and, except as provided in subsection (d), the balance shall be credited to the securities act fee fund.

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

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

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

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

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

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

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

New Sec. 4. (a) At any preliminary examination pursuant to K.S.A. 22-2902, and amendments thereto, in which business records that have been obtained pursuant to K.S.A. 17-12a602, and amendments thereto, are to be introduced as evidence, the business records shall be admissible into evidence in the preliminary examination in the same manner and with the same force and effect as if the individuals who made the record, and the records custodian who keeps the record, had testified in person.

(b) This section shall be part of and supplemental to the Kansas code of criminal procedure.

Sec. 5. K.S.A. 17-12a204 and K.S.A. 2014 Supp. 17-12a508, 17-12a601 and 17-12a601a are hereby repealed.

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

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.