

HOUSE BILL No. 2770

By Committee on Appropriations

3-2

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 section.

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 the*
23 *capitalism-based Kansas economy.*

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

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

11 (3) "Bank" means:

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

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

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

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

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

29 (A) An agent;

30 (B) an issuer;

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

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

36 (ii) it is a bank that satisfies the conditions described in subsection
37 3(a)(4)(E) of the securities exchange act of 1934 (15 U.S.C. ~~section~~ §
38 78c(a)(4));

39 (D) an international banking institution; or

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

41 (5) "Depository institution" means:

42 (A) A bank; or

43 (B) a savings institution, trust company, credit union, or similar

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

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

10 (ii) a morris plan bank; or

11 (iii) an industrial loan company.

12 (6) "Federal covered investment adviser" means a person registered
13 under the investment advisers act of 1940.

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

18 (8) "Filing" means the receipt under this act of a record by the
19 administrator or a designee of the administrator.

20 (9) "Fraud," "deceit," and "defraud" are not limited to common law
21 deceit.

22 (10) "Guaranteed" means guaranteed as to payment of all principal
23 and all interest.

24 (11) "Institutional investor" means any of the following, whether
25 acting for itself or for others in a fiduciary capacity:

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

27 (B) an insurance company;

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

29 (D) an investment company as defined in the investment company
30 act of 1940;

31 (E) a broker-dealer registered under the securities exchange act of
32 1934;

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

41 (G) a plan established and maintained by a state, a political
42 subdivision of a state, or an agency or instrumentality of a state or a
43 political subdivision of a state for the benefit of its employees, if the plan

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

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

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

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

22 (K) a private business development company as defined in section
23 202(a)(22) of the investment advisers act of 1940 (15 U.S.C. ~~section~~ §
24 80b-2(a)(22)) with total assets in excess of \$10,000,000;

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

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

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

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

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

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

42 (13) "Insured" means insured as to payment of all principal and all
43 interest.

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

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

14 (A) An investment adviser representative;

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

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

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

23 (E) a federal covered investment adviser;

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

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

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

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

39 (A) Performs only clerical or ministerial acts;

40 (B) is an agent whose performance of investment advice is solely
41 incidental to the individual acting as an agent and who does not receive
42 special compensation for investment advisory services;

43 (C) is employed by or associated with a federal covered investment

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

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

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

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

11 (17) "Issuer" means a person that issues or proposes to issue a
12 security, subject to the following:

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

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

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

29 (18) "Nonissuer transaction" or "nonissuer distribution" means a
30 transaction or distribution not directly or indirectly for the benefit of the
31 issuer.

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

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

40 (21) "Place of business" of a broker-dealer, an investment adviser, or
41 a federal covered investment adviser means:

42 (A) An office at which the broker-dealer, investment adviser, or
43 federal covered investment adviser regularly provides brokerage or

1 investment advice or solicits, meets with, or otherwise communicates with
2 customers or clients; or

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

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

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

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

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

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

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

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

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

38 (27) "Securities and exchange commission" means the United States
39 securities and exchange commission.

40 (28) "Security" means a note; stock; treasury stock; security future;
41 bond; debenture; evidence of indebtedness; certificate of interest or
42 participation in a profit-sharing agreement; collateral trust certificate;
43 preorganization certificate or subscription; transferable share; investment

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

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

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

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

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

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

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

34 (30) "Sign" means, with present intent to authenticate or adopt a
35 record:

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

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

39 (31) "State" means a state of the United States, the District of
40 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or
41 insular possession subject to the jurisdiction of the United States.

42 (32) "Rules" when used in the context of the rules adopted by the
43 administrator, means rules and regulations adopted by the administrator

1 pursuant to this act.

2 (33) "Act" means the Kansas uniform securities act.

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

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

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

15 (3) *Investment advisers*. A person shall pay a fee of not more than
16 \$300 when filing an application for registration as an investment adviser
17 and when filing a renewal of registration as an investment adviser. If the
18 filing results in a denial or withdrawal, the administrator shall retain the
19 fee.

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

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

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

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

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

42 (2) All fees herein provided for shall be collected by the
43 administrator. *Except as otherwise provided under this act*, all salaries and

1 expenses necessarily incurred in the administration of this act shall be paid
2 from the securities act fee fund.

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

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

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

29 (A) *The administrator may make or authorize transfers from the*
30 *securities act fee fund to other special revenue or special purpose funds*
31 *established in the state treasury for use by the administrator to carry out*
32 *responsibilities as specified under this act, or for other executive branch*
33 *agencies with responsibilities reasonably related to investment of capital,*
34 *creation of jobs or other programs within the state of Kansas for which the*
35 *benefits of securities regulation and preservation of the integrity of the*
36 *capital formation process can be realized as determined by the*
37 *administrator in consultation with heads of such other agencies. Subject to*
38 *the provisions of subparagraph (B), the maximum aggregate amount*
39 *transferred to special revenue or special purpose funds for other executive*
40 *branch agencies pursuant to this paragraph shall be \$3,000,000 in any*
41 *fiscal year.*

42 (B) *The maximum amount of such transfers specified in subsection*
43 *(a)(5)(A) may be exceeded by the administrator with the approval of the*

1 *state finance council acting on this matter which is hereby characterized*
2 *as a matter of legislative delegation and subject to the guidelines*
3 *prescribed in subsection (c) of K.S.A. 75-3711c, and amendments thereto,*
4 *except that such approval also may be given while the legislature is in*
5 *session.*

6 (6) *At the end of each fiscal year, the administrator or a person*
7 *designated by the administrator shall ensure that an unencumbered fund*
8 *balance of at least \$250,000 is retained in the securities act fee fund to*
9 *carry forward for use in the following fiscal year in accordance with*
10 *appropriation acts for administration and enforcement of this act.*

11 (b) *Prohibited conduct.* (1) It is unlawful for the administrator or an
12 officer, employee, or designee of the administrator to use for personal
13 benefit or the benefit of others records or other information obtained by or
14 filed with the administrator that are not public under K.S.A. 17-12a607(b),
15 and amendments thereto. This act does not authorize the administrator or
16 an officer, employee, or designee of the administrator to disclose the
17 record or information, except in accordance with K.S.A. 17-12a602, 17-
18 12a607(c), or 17-12a608, and amendments thereto.

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

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

25 (d) *Investor education.* (1) The administrator may develop and
26 implement investor education initiatives to inform the public about
27 ~~investing in securities, with particular emphasis on the prevention and~~
28 ~~detection of securities fraud~~ *personal financial literacy and investments.* In
29 developing and implementing these initiatives, the administrator may
30 collaborate with public and nonprofit organizations with an interest in
31 *financial literacy and investor education.* The administrator may accept a
32 grant or donation from a person that is not affiliated with the securities
33 industry or from a nonprofit organization, regardless of whether the
34 organization is affiliated with the securities industry, to develop and
35 implement investor education initiatives. This subsection does not
36 authorize the administrator to require participation or monetary
37 contributions of a registrant in an investor education program.

38 (2) There is hereby established in the state treasury the investor
39 education fund. ~~Such fund shall be administered by the administrator for~~
40 ~~the purposes described in subsection (d)(1) and for the education of~~
41 ~~registrants, including official hospitality.~~ Moneys collected as civil
42 penalties under this act shall be credited to the investor education fund.
43 The administrator may also receive payments designated to be credited to

1 the investor education fund as a condition in settlements of cases arising
2 out of investigations or examinations. All expenditures from the investor
3 education fund shall be made in accordance with appropriation acts upon
4 warrants of the director of accounts and reports issued pursuant to
5 vouchers approved by the administrator or by a person or persons
6 designated by the administrator. ~~Two years after the effective date of this~~
7 ~~act, the administrator shall conduct a review and submit a report to the~~
8 ~~governor and the legislature concerning the expenditures from the investor~~
9 ~~education fund and the results achieved from the investor education~~
10 ~~program~~ *The investor education fund shall be administered by the*
11 *administrator for the purposes described in subsection (d)(1) or for the*
12 *following purposes at the discretion of the administrator:*

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

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

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

18 *(3) The administrator may make or authorize transfers from the*
19 *securities act fee fund to the investor education fund when necessary to*
20 *replenish the investor education fund for operations as deemed*
21 *appropriate by the administrator up to an aggregate maximum amount of*
22 *\$750,000 in any fiscal year. The maximum aggregate amount of such*
23 *transfers specified in this subsection may be exceeded by the administrator*
24 *with the approval of the state finance council acting on this matter which*
25 *is hereby characterized as a matter of legislative delegation and subject to*
26 *the guidelines prescribed in subsection (c) of K.S.A. 75-3711c, and*
27 *amendments thereto, except that such approval also may be given while*
28 *the legislature is in session.*

29 *(e) There is hereby established in the state treasury the securities*
30 *litigation fund. The securities litigation fund shall be administered by the*
31 *administrator for the purpose of enforcing provisions of this act through*
32 *administrative hearings and actions in state and federal courts to resolve*
33 *alleged violations of this act or a rule and regulation adopted or order*
34 *issued under this act. All expenditures from the securities litigation fund*
35 *shall be made in accordance with appropriation acts upon warrants of the*
36 *director of accounts and reports issued pursuant to vouchers approved by*
37 *the administrator or by a person or persons designated by the*
38 *administrator. The administrator may make or authorize transfers from the*
39 *securities act fee fund to the securities litigation fund when necessary to*
40 *replenish the securities litigation fund for operations as deemed*
41 *appropriate by the administrator up to an aggregate maximum amount of*
42 *\$500,000 in any fiscal year. The maximum aggregate amount of such*
43 *transfers specified in this subsection may be exceeded by the administrator*

1 with the approval of the state finance council acting on this matter which
2 is hereby characterized as a matter of legislative delegation and subject to
3 the guidelines prescribed in subsection (c) of K.S.A. 75-3711c, and
4 amendments thereto, except that such approval also may be given while
5 the legislature is in session.

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

27 (g) By rules and regulations adopted or order issued under this act,
28 the administrator shall specify definitions, forms, procedures and
29 limitations for payment of restitution awards from the securities restitution
30 fund.

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

43 (b) The securities commissioner may appoint directors *and other*

1 *professional staff* within the office of the securities commissioner as
2 determined necessary by the securities commissioner to effectively carry
3 out the mission of the office. All directors *and other professional staff*
4 appointed after the effective date of this act shall be in the unclassified
5 service under the Kansas civil service act, shall have special training and
6 qualifications for such positions *as deemed necessary by the securities*
7 *commissioner*, shall serve at the pleasure of the securities commissioner
8 and shall receive compensation fixed by the securities commissioner and
9 approved by the governor.

10 (c) Nothing in subsection (b) shall affect the classified status of any
11 person employed in the office of the securities commissioner on the day
12 immediately preceding the effective date of this act. The provisions of this
13 subsection shall not be construed to limit the powers of the securities
14 commissioner pursuant to K.S.A. 75-2948, and amendments thereto.

15 Sec. 7. K.S.A. 17-12a101, 17-12a102 and 17-12a410 and K.S.A.
16 2011 Supp. 17-12a601 and 75-6301 is hereby repealed.

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