

HOUSE BILL No. 2106

By Committee on Corrections and Juvenile Justice

1-23

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

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

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

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

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

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

1 convicted of violating a rule or order under this act may be fined, but may
2 not be imprisoned, if the individual did not have knowledge of the rule or
3 order.

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

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

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

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

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

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

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

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

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

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

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

25 (A) K.S.A. 17-12a404(e) or 17-12a505, and amendments thereto, or
26 an order to cease and desist issued by the administrator pursuant to K.S.A.
27 17-12a412(c) or 17-12a604(a), and amendments thereto, is a severity level
28 5, nonperson felony.

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

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

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

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

1 not know the age of the victim or reasonably believed that the victim was
2 not an elder person.

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

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

13 (2) *If a crime under this act is a continuing offense, the statute of*
14 *limitations does not begin to run until the last act in the scheme or*
15 *course of business is completed. Nothing in this subsection shall prevent*
16 *the exclusion of a time period pursuant to K.S.A. 2014 Supp. 21-*
17 *5107(e), and amendments thereto.*

18 (3) A prosecution is commenced when a complaint or information is
19 filed, or an indictment returned, and a warrant thereon is delivered to the
20 sheriff or other officer for execution, except that no prosecution shall be
21 deemed to have been commenced if the warrant so issued is not executed
22 without unreasonable delay. ~~*If a crime under this act is a continuing*~~
23 ~~*offense, the statute of limitations does not begin to run until the last act in*~~
24 ~~*the scheme or course of business is completed.*~~

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

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

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

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

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

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

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

36 (b) *Prohibited conduct.* (1) It is unlawful for the administrator or an
37 officer, employee, or designee of the administrator to use for personal
38 benefit or the benefit of others records or other information obtained by or
39 filed with the administrator that are not public under K.S.A. 17-12a607(b),
40 and amendments thereto. This act does not authorize the administrator or
41 an officer, employee, or designee of the administrator to disclose the
42 record or information, except in accordance with K.S.A. 17-12a602, 17-
43 12a607(c), or 17-12a608, and amendments thereto.

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

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

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

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

34 ***New Sec. 4. (a) At any preliminary examination pursuant to K.S.A.***
35 ***22-2902, and amendments thereto, in which business records that have***
36 ***been obtained pursuant to K.S.A. 17-12a602, and amendments thereto,***
37 ***are to be introduced as evidence, the business records shall be***
38 ***admissible into evidence in the preliminary examination in the same***
39 ***manner and with the same force and effect as if the individuals who***
40 ***made the record, and the records custodian who keeps the record, had***
41 ***testified in person.***

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

1 Sec.~~4~~ **5**. K.S.A. 17-12a204 and K.S.A. 2014 Supp. 17-12a508, 17-
2 12a601 and 17-12a601a are hereby repealed.

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