

**HOUSE BILL No. 2376**

By Committee on Appropriations

3-9

1 AN ACT concerning the Kansas uniform securities act; relating to  
2 adoption of federal statutes and rules by reference; registration; fees;  
3 securities act fee fund and investor education fund; amending K.S.A.  
4 17-12a103, 17-12a406, 17-12a410, 17-12a412 and 17-12a601 and  
5 repealing the existing sections.

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

8 Section 1. K.S.A. 17-12a103 is hereby amended to read as follows:  
9 17-12a103. "Securities act of 1933" (15 U.S.C. ~~section~~ § 77a et seq.),  
10 "securities exchange act of 1934" (15 U.S.C. ~~section~~ § 78a et seq.),  
11 "public utility holding company act of 1935" (15 U.S.C. ~~section~~ § 79 et  
12 seq.), "investment company act of 1940" (15 U.S.C. ~~section~~ § 80a-1 et  
13 seq.), "investment advisers act of 1940" (15 U.S.C. ~~section~~ § 80b-1 et  
14 seq.), "employee retirement income security act of 1974" (29 U.S.C.  
15 ~~section~~ § 1001 et seq.), "national housing act" (12 U.S.C. ~~section~~ § 1701  
16 et seq.), "commodity exchange act" (7 U.S.C. ~~Section~~ § 1 et seq.),  
17 "internal revenue code" (26 U.S.C. ~~section~~ § 1 et seq.), "securities  
18 investor protection act of 1970" (15 U.S.C. ~~section~~ § 78aaa et seq.),  
19 "securities litigation uniform standards act of 1998" (112 Stat. 3227),  
20 "small business investment act of 1958" (15 U.S.C. ~~section~~ § 661 et seq.),  
21 and "electronic signatures in global and national commerce act" (15  
22 U.S.C. ~~section~~ § 7001 et seq.) mean those statutes and the rules and  
23 regulations adopted under those statutes, as in effect on the date of the  
24 latest amendment to any provision of this act *or later versions as*  
25 *established in rules and regulations adopted by the administrator.*

26 Sec. 2. K.S.A. 17-12a406 is hereby amended to read as follows: 17-  
27 12a406. (a) *Application for initial registration.* A person shall register as a  
28 broker-dealer, agent, investment adviser, or investment adviser  
29 representative by filing an application and a consent to service of process  
30 complying with K.S.A. 17-12a611, and amendments thereto, and paying  
31 the fee specified in K.S.A. 17-12a410, and amendments thereto, and any  
32 reasonable fees charged by the designee of the administrator for  
33 processing the filing. The application must contain:

34 (1) The information or record required for the filing of a uniform  
35 application; and

36 (2) upon request by the administrator, any other financial or other

1 information or record that the administrator determines is appropriate.

2 (b) *Amendment.* If the information or record contained in an  
3 application filed under subsection (a) is or becomes inaccurate or  
4 incomplete in a material respect, the registrant shall promptly file a  
5 correcting amendment.

6 (c) *Effectiveness of registration.* If the administrator finds that the  
7 applicant and, if applicable, the officers, directors or partners of the  
8 applicant are of sufficient character and reputation to warrant the public  
9 trust, and an order is not in effect and a proceeding is not pending under  
10 K.S.A. 17-12a412, and amendments thereto, registration becomes  
11 effective at noon on the 45th day after a completed application is filed,  
12 unless the registration is denied or the administrator has given written  
13 notice of deficiencies that are unresolved and that would constitute  
14 grounds for denial under K.S.A. 17-12a412, and amendments thereto. A  
15 rule adopted or order issued under this act may set an earlier effective  
16 date or may defer the effective date until noon on the 45th day after the  
17 filing of any amendment completing the application.

18 (d) *Registration renewal.* A registration is effective until midnight on  
19 December 31 of the year for which the application for registration is filed.  
20 Unless an order is in effect under K.S.A. 17-12a412, and amendments  
21 thereto, a registration may be automatically renewed each year by filing  
22 such records as are required by rule adopted or order issued under this  
23 act, by paying the fee specified in K.S.A. 17-12a410, and amendments  
24 thereto, and by paying costs charged by the designee of the administrator  
25 for processing the filings.

26 (e) *As part of an original application for or reinstatement of any*  
27 *registration or in connection with any investigation of any holder of a*  
28 *registration, the administrator may require a person to be fingerprinted*  
29 *and submit to a state and national criminal history record check. The*  
30 *fingerprints shall be used to identify the person and to determine whether*  
31 *the person has a record of criminal history in this state or other*  
32 *jurisdiction. The administrator is authorized to submit the fingerprints to*  
33 *the Kansas bureau of investigation and the federal bureau of*  
34 *investigation for a state and national criminal history record check. The*  
35 *administrator may use the information obtained from fingerprinting and*  
36 *the criminal history for purposes of verifying the identification of the*  
37 *person and in the official determination of the qualifications and fitness*  
38 *of the person to be issued or to maintain a registration.*

39 (f) *The administrator may fix and collect a fee as may be required by*  
40 *the administrator for the cost of fingerprinting and the criminal history*  
41 *record check. Any moneys collected under this subsection shall be*  
42 *deposited in the state treasury and credited to the securities act fee fund.*

43 (g) *Additional conditions or waivers.* A rule adopted or order issued

1 under this act may impose other conditions not inconsistent with the  
2 national securities markets improvement act of 1996. An order issued  
3 under this act may waive, in whole or in part, specific requirements in  
4 connection with registration as are in the public interest and for the  
5 protection of investors.

6 Sec. 3. K.S.A. 17-12a410 is hereby amended to read as follows: 17-  
7 12a410. (a) *Filing Registration fees*. The administrator shall establish  
8 *registration* fees by rules and regulations, subject to the following  
9 limitations:

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

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

19 (3) *Investment advisers*. A person shall pay a fee of not more than  
20 ~~\$300~~ \$1,000 when filing an application for registration as an investment  
21 adviser and when filing a renewal of registration as an investment  
22 adviser. If the filing results in a denial or withdrawal, the administrator  
23 shall retain the fee.

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

30 ~~(5)~~ (b) *Notice filing fees*. *The administrator shall establish notice*  
31 *filing fees by rules and regulations, subject to the following limitations:*

32 (1) *Federal covered investment advisers*. A federal covered  
33 investment adviser required to file a notice under K.S.A. 17-12a405, and  
34 amendments thereto, shall pay an initial fee and an annual notice fee of  
35 not more than ~~\$300~~ \$1,000.

36 (2) *Exemption filings*. *The administrator may require the filing of a*  
37 *notice as a condition of any exemption adopted under K.S.A. 17-*  
38 *12a401(b)(1)(H), 17-12a402(b)(9), 17-12a403(b)(3), or 17-12a404(b)*  
39 *(2), and amendments thereto, and the administrator may impose an*  
40 *initial fee and annual notice fee of not more than \$1,000.*

41 (c) *Graduated fees*. *Subject to the limits set forth in this section, the*  
42 *administrator may establish fees that are based upon the amount of*  
43 *assets under management by the persons required to pay the fees.*

1       ~~(b)~~ (d) *Payment*. A person required to pay a filing or notice fee under  
2 this section may transmit the fee through or to a designee as a rule or  
3 order provides under this act.

4       Sec. 4. K.S.A. 17-12a412 is hereby amended to read as follows: 17-  
5 12a412. (a) *Disciplinary conditions — applicants*. An order issued under  
6 this act may deny an application, or may condition or limit registration of  
7 an applicant to be a broker-dealer, agent, investment adviser, or  
8 investment adviser representative if the administrator finds that the order  
9 is in the public interest and that there is a ground for discipline under  
10 subsection (d) against the applicant or, if the applicant is a broker-dealer  
11 or investment adviser, against any partner, officer, director, person having  
12 a similar status or performing similar functions, or person directly or  
13 indirectly controlling the broker-dealer or investment adviser.

14       (b) *Disciplinary conditions — registrants*. An order issued under this  
15 act may revoke, suspend, condition, or limit the registration of a  
16 registrant if the administrator finds that the order is in the public interest  
17 and that there is a ground for discipline under subsection (d) against the  
18 registrant or, if the registrant is a broker-dealer or investment adviser,  
19 against any partner, officer, or director, any person having a similar status  
20 or performing similar functions, or any person directly or indirectly  
21 controlling the broker-dealer or investment adviser. However, the  
22 administrator:

23       (1) May not institute a revocation or suspension proceeding under  
24 this subsection based on an order issued by another state that is reported  
25 to the administrator or designee later than one year after the date of the  
26 order on which it is based; and

27       (2) under subsection (d)(5)(A) and (B), may not issue an order on  
28 the basis of an order under the state securities act of another state unless  
29 the other order was based on conduct for which subsection (d) would  
30 authorize the action had the conduct occurred in this state.

31       (c) *Disciplinary penalties — registrants*. If the administrator finds  
32 that the order is in the public interest and that there is a ground for  
33 discipline under subsection (d)(1) through (6), (8), (9), (10), (12) or (13)  
34 against a registrant or, if the registrant is a broker-dealer or investment  
35 adviser, against any partner, officer, or director, any person having similar  
36 functions, or any person directly or indirectly controlling the broker-  
37 dealer or investment adviser, then the administrator may enter an order  
38 against the registrant containing one or more of the following sanctions or  
39 remedies:

40       (1) A censure;

41       (2) a bar or suspension from association with a broker-dealer or  
42 investment adviser registered in this state;

43       (3) a civil penalty up to \$25,000 for each violation. If any person is

1 found to have violated any provision of this act, and such violation is  
2 committed against elder or disabled persons, as defined in K.S.A. 50-676,  
3 and amendments thereto, in addition to any civil penalty otherwise  
4 provided by law, the administrator may impose an additional penalty not  
5 to exceed \$15,000 for each such violation. The total penalty against a  
6 person shall not exceed \$1,000,000;

7 (4) an order requiring the registrant to pay restitution for any loss or  
8 disgorge any profits arising from a violation, including, in the  
9 administrator's discretion, the assessment of interest from the date of the  
10 violation at the rate provided for interest on judgments by K.S.A. 16-204,  
11 and amendments thereto;

12 (5) an order charging the registrant with the actual cost of an  
13 investigation or proceeding; or

14 (6) an order requiring the registrant to cease and desist from any  
15 action that constitutes a ground for discipline, or to take other action  
16 necessary or appropriate to comply with this act.

17 (d) *Grounds for discipline.* A person may be disciplined under  
18 subsections (a) through (c) if the person:

19 (1) Has filed an application for registration in this state under this act  
20 or the predecessor act within the previous 10 years, which, as of the  
21 effective date of registration or as of any date after filing in the case of an  
22 order denying effectiveness, was incomplete in any material respect or  
23 contained a statement that, in light of the circumstances under which it  
24 was made, was false or misleading with respect to a material fact;

25 (2) willfully violated or willfully failed to comply with this act or the  
26 predecessor act or a rule adopted or order issued under this act or the  
27 predecessor act within the previous 10 years;

28 (3) has been convicted of a felony or within the previous 10 years  
29 has been convicted of a misdemeanor involving a security, a commodity  
30 future or option contract, or an aspect of a business involving securities,  
31 commodities, investments, franchises, insurance, banking; or finance;

32 (4) is enjoined or restrained by a court of competent jurisdiction in  
33 an action instituted by the administrator under this act or the predecessor  
34 act, a state, the securities and exchange commission, or the United States  
35 from engaging in or continuing an act, practice; or course of business  
36 involving an aspect of a business involving securities, commodities,  
37 investments, franchises, insurance, banking; or finance;

38 (5) is the subject of an order, issued after notice and opportunity for  
39 hearing by:

40 (A) The securities, depository institution, insurance; or other  
41 financial services regulator of a state or by the securities and exchange  
42 commission or other federal agency denying, revoking, barring; or  
43 suspending registration as a broker-dealer, agent, investment adviser,

- 1 federal covered investment adviser; or investment adviser representative;
- 2 (B) the securities regulator of a state or by the securities and  
3 exchange commission against a broker-dealer, agent, investment adviser,  
4 investment adviser representative; or federal covered investment adviser;
- 5 (C) the securities and exchange commission or by a self-regulatory  
6 organization suspending or expelling the registrant from membership in  
7 the self-regulatory organization;
- 8 (D) a court adjudicating a United States postal service fraud order;
- 9 (E) the insurance regulator of a state denying, suspending; or  
10 revoking the registration of an insurance agent; or
- 11 (F) a depository institution regulator suspending or barring a person  
12 from the depository institution business;
- 13 (6) is the subject of an adjudication or determination, after notice  
14 and opportunity for hearing, by the securities and exchange commission,  
15 the commodity futures trading commission, the federal trade commission,  
16 a federal depository institution regulator; or a depository institution,  
17 insurance; or other financial services regulator of a state that the person  
18 willfully violated the securities act of 1933, the securities exchange act of  
19 1934, the investment advisers act of 1940, the investment company act of  
20 1940, or the commodity exchange act, the securities or commodities law  
21 of a state; or a federal or state law under which a business involving  
22 investments, franchises, insurance, banking; or finance is regulated;
- 23 (7) is insolvent, either because the person's liabilities exceed the  
24 person's assets or because the person cannot meet the person's obligations  
25 as they mature, but the administrator may not enter an order against an  
26 applicant or registrant under this paragraph without a finding of  
27 insolvency as to the applicant or registrant;
- 28 (8) refuses to allow or otherwise impedes the administrator from  
29 conducting an audit or inspection under K.S.A. 17-12a411(d), and  
30 amendments thereto, refuses access to a registrant's office to conduct an  
31 audit or inspection under K.S.A. 17-12a411(d), and amendments thereto,  
32 fails to keep or maintain sufficient records to permit an audit disclosing  
33 the condition of the registrant's business, or fails willfully and without  
34 cause to comply with a request for information by the administrator or  
35 person designated by the administrator in conducting investigations or  
36 examinations under this act;
- 37 (9) has failed to reasonably supervise an agent, investment adviser  
38 representative; or other individual, if the agent, investment adviser  
39 representative; or other individual was subject to the person's supervision  
40 and committed a violation of this act or the predecessor act or a rule  
41 adopted or order issued under this act or the predecessor act within the  
42 previous 10 years;
- 43 (10) has not paid the proper filing fee within 30 days after having

1 been notified by the administrator of a deficiency, but the administrator  
2 shall vacate an order under this paragraph when the deficiency is  
3 corrected;

4 (11) after notice and opportunity for a hearing, has been found  
5 within the previous 10 years:

6 (A) By a court of competent jurisdiction to have willfully violated  
7 the laws of a foreign jurisdiction under which the business of securities,  
8 commodities, investment, franchises, insurance, banking; or finance is  
9 regulated;

10 (B) to have been the subject of an order of a securities regulator of a  
11 foreign jurisdiction denying, revoking; or suspending the right to engage  
12 in the business of securities as a broker-dealer, agent, investment adviser,  
13 investment adviser representative; or similar person; or

14 (C) to have been suspended or expelled from membership by or  
15 participation in a securities exchange or securities association operating  
16 under the securities laws of a foreign jurisdiction;

17 (12) is the subject of a cease and desist order issued by the securities  
18 and exchange commission or issued under the securities, commodities,  
19 investment, franchise, banking, finance; or insurance laws of a state;

20 (13) has engaged in dishonest or unethical practices in the securities,  
21 commodities, investment, franchise, banking, finance; or insurance  
22 business within the previous 10 years;

23 (14) is not qualified on the basis of factors such as training,  
24 experience, and knowledge of the securities business. However, in the  
25 case of an application by an agent for a broker-dealer that is a member of  
26 a self-regulatory organization or by an individual for registration as an  
27 investment adviser representative, a denial order may not be based on this  
28 paragraph if the individual has successfully completed all examinations  
29 required by subsection (e). The administrator may require an applicant for  
30 registration under K.S.A. 17-12a402 or 17-12a404, and amendments  
31 thereto, who has not been registered in a state within the two years  
32 preceding the filing of an application in this state to successfully  
33 complete an examination; ~~or~~

34 (15) *has failed to pay a state or federal tax obligation that is due or*  
35 *comply with any administrative or court order directing payment of tax,*  
36 *or has failed to comply with any administrative or court order imposing a*  
37 *child support obligation; or*

38 (16) lacks sufficient character or reputation to warrant the public  
39 trust.

40 (e) *Examinations.* A rule adopted or order issued under this act may  
41 require that an examination, including an examination developed or  
42 approved by an organization of securities regulators, be successfully  
43 completed by a class of individuals or all individuals. An order issued

1 under this act may waive, in whole or in part, an examination as to an  
2 individual and a rule adopted under this act may waive, in whole or in  
3 part, an examination as to a class of individuals if the administrator  
4 determines that the examination is not necessary or appropriate in the  
5 public interest and for the protection of investors.

6 (f) *Summary process.* In accordance with the Kansas administrative  
7 procedures act, the administrator may use summary or emergency  
8 proceedings to suspend or deny an application; restrict, condition, limit,  
9 or suspend a registration; or censure, bar, or impose a civil penalty or  
10 cease and desist order on a registrant before final determination of an  
11 administrative proceeding. If a hearing is not requested and none is  
12 ordered by the administrator within 30 days after the date of service of  
13 the order, the order becomes final by operation of law. If a hearing is  
14 requested or ordered, the administrator, after notice of and opportunity for  
15 hearing to each person subject to the order, may modify or vacate the  
16 order or extend the order until final determination.

17 (g) *Procedural requirements.* (1) An order issued may not be issued  
18 under this section, except under subsection (f), without:

- 19 (A) Appropriate notice to the applicant or registrant;
- 20 (B) opportunity for hearing; and
- 21 (C) findings of fact and conclusions of law in a record.

22 (2) Proceedings under this subsection shall be conducted in  
23 accordance with the Kansas administrative procedures act.

24 (h) *Control person liability.* A person that controls, directly or  
25 indirectly, a person not in compliance with this section may be disciplined  
26 by order of the administrator under subsections (a) through (c) to the  
27 same extent as the noncomplying person, unless the controlling person  
28 did not know, and in the exercise of reasonable care could not have  
29 known, of the existence of conduct that is a ground for discipline under  
30 this section.

31 (i) *Limit on investigation or proceeding.* The administrator may not  
32 institute a proceeding under subsection (a), (b), or (c) based solely on  
33 material facts actually known by the administrator unless an investigation  
34 or the proceeding is instituted within one year after the administrator  
35 actually acquires knowledge of the material facts.

36 Sec. 5. K.S.A. 17-12a601 is hereby amended to read as follows: 17-  
37 12a601. (a) *Administration.* (1) This act shall be administered by the  
38 securities commissioner of Kansas.

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

42 (3) The administrator shall remit all moneys received from all  
43 fees, charges, deposits or penalties which have been collected under this



1 act or other laws of this state regulating the issuance, sale or disposal of  
2 securities or regulating dealers in this state or under the uniform land  
3 sales practices act, to the state treasurer at least monthly. Upon receipt of  
4 any such remittance, the state treasurer shall deposit the entire amount  
5 thereof in the state treasury. In accordance with subsection (a) of K.S.A.  
6 75-3170 75-3170a, and amendments thereto, 20% of each such deposit  
7 shall be credited to the state general fund and, except as provided in  
8 subsection (d), the balance shall be credited to the securities act fee fund.

9 (4) On the last day of each fiscal year, the director of accounts and  
10 reports shall transfer from the securities act fee fund to the state general  
11 fund any remaining unencumbered amount in the securities act fee fund  
12 exceeding ~~\$50,000~~ \$250,000 so that the beginning unencumbered balance  
13 in the securities act fee fund on the first day of each fiscal year is ~~\$50,000~~  
14 \$250,000. All expenditures from the securities act fee fund shall be made  
15 in accordance with appropriation acts upon warrants of the director of  
16 accounts and reports issued pursuant to vouchers approved by the  
17 administrator or by a person or persons designated by the administrator.

18 (5) All amounts transferred from the securities act fee fund to the  
19 state general fund under paragraph (4) are to reimburse the state general  
20 fund for accounting, auditing, budgeting, legal, payroll, personnel and  
21 purchasing services and any other governmental services which are  
22 performed on behalf of the state agency involved by other state agencies  
23 which receive appropriations from the state general fund to provide such  
24 services. Such reimbursements are in addition to those authorized by  
25 K.S.A. 75-3170a, and amendments thereto.

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

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

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

40 (d) *Investor education.* (1) The administrator may develop and  
41 implement investor education initiatives to inform the public about  
42 ~~investing in securities, with particular emphasis on the prevention and~~  
43 ~~detection of securities fraud.~~ *personal financial literacy and investments.*

1 In developing and implementing these initiatives, the administrator may  
2 collaborate with public and nonprofit organizations with an interest in  
3 investor education. The administrator may accept a grant or donation  
4 from a person that is not affiliated with the securities industry or from a  
5 nonprofit organization, regardless of whether the organization is affiliated  
6 with the securities industry, to develop and implement investor education  
7 initiatives. This subsection does not authorize the administrator to require  
8 participation or monetary contributions of a registrant in an investor  
9 education program.

10 (2) There is hereby established in the state treasury the investor  
11 education fund. ~~Such fund shall be administered by the administrator for~~  
12 ~~the purposes described in subsection (d)(1) and for the education of~~  
13 ~~registrants, including official hospitality.~~ Moneys collected as civil  
14 penalties under this act shall be credited to the investor education fund.  
15 The administrator may also receive payments designated to be credited to  
16 the investor education fund as a condition in settlements of cases arising  
17 out of investigations or examinations. All expenditures from the investor  
18 education fund shall be made in accordance with appropriation acts upon  
19 warrants of the director of accounts and reports issued pursuant to  
20 vouchers approved by the administrator or by a person or persons  
21 designated by the administrator. ~~Two years after the effective date of this~~  
22 ~~act, the administrator shall conduct a review and submit a report to the~~  
23 ~~governor and the legislature concerning the expenditures from the~~  
24 ~~investor education fund and the results achieved from the investor~~  
25 ~~education program. The investor education fund shall be administered by~~  
26 ~~the administrator for the purposes described in subsection (d)(1) or for~~  
27 ~~the following purposes:~~

28 (A) *Education of registrants, including official hospitality;*

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

30 (C) *restitution for victims of securities crimes, to be dispersed in*  
31 *accordance with criteria established by rules and regulations of the*  
32 *administrator; or*

33 (D) *grants to the state board of regents or public universities in*  
34 *Kansas for instruction in business finance, investments or business*  
35 *ethics.*

36 Sec. 6. K.S.A. 17-12a103, 17-12a406, 17-12a410, 17-12a412 and  
37 17-12a601 are hereby repealed.

38 Sec. 7. This act shall take effect and be in force from and after its  
39 publication in the Kansas register.