

HOUSE BILL No. 2433

AN ACT concerning the Kansas uniform securities act; relating to criminal penalties; investor education and protection; amending K.S.A. 2013 Supp. 17-12a508 and 17-12a601 and repealing the existing sections.

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

Section 1. K.S.A. 2013 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.*

(b) *Statute of limitations.* Except as provided by subsection (e) of K.S.A. 2013 Supp. 21-5107, 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. 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. 2. K.S.A. 2013 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, ~~with 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 ~~and~~ 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. ~~Two years after the effective date of this act, the administrator shall conduct a review and submit a report to the governor and the legislature concerning the expenditures from the investor education fund and the results achieved from the investor education program.~~

Sec. 3. K.S.A. 2013 Supp. 17-12a508 and 17-12a601 are hereby repealed.

Sec. 4. 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 was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.