

SENATE BILL No. 23

By Committee on Financial Institutions and Insurance

1-12

1 AN ACT concerning certain state officers and employees; relating to the
2 attorney general, the state bank commissioner, the secretary of labor,
3 the commissioner of insurance and the securities commissioner;
4 criminal investigations and prosecutions by the attorney general;
5 creating the fraud and abuse criminal prosecution fund; establishing the
6 office of the securities commissioner as a division under the
7 jurisdiction of the commissioner of insurance; amending K.S.A. 50-
8 1013 and K.S.A. 2016 Supp. 9-2209, 17-12a508, 40-113, 44-5,122, 44-
9 5,124, 44-719 and 75-6301 and repealing the existing sections.

10

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

12 New Section 1. (a) There is hereby established in the state treasury
13 the fraud and abuse criminal prosecution fund which shall be administered
14 by the attorney general. All expenditures from such fund shall be made in
15 accordance with appropriation acts upon warrants of the director of
16 accounts and reports issued pursuant to vouchers approved by the attorney
17 general or the attorney general's designee. All moneys credited to the fraud
18 and abuse criminal prosecution fund shall be expended for the prevention
19 and detection of fraud and abuse and for support of criminal investigations
20 and prosecutions within the jurisdiction of the attorney general. In
21 expending moneys from the fund, the attorney general shall give priority
22 to criminal cases referred to the attorney general for investigation or
23 prosecution by or pursuant to:

24 (1) The office of the securities commissioner of Kansas, established
25 by K.S.A. 75-6301, and amendments thereto;

26 (2) the criminal anti-fraud division of the department of insurance,
27 established by K.S.A. 40-113, and amendments thereto; and

28 (3) the abuse, neglect and exploitation unit established by K.S.A. 75-
29 723, and amendments thereto.

30 (b) On July 1 of each year, or as soon thereafter as unencumbered
31 funds are available, the director of accounts and reports shall transfer to
32 the fraud and abuse criminal prosecution fund an amount equal to: (1)
33 \$200,000 from the securities act fee fund created by K.S.A. 17-12a601,
34 and amendments thereto; and (2) \$200,000 from the insurance department
35 service regulation fund created by K.S.A. 40-112, and amendments
36 thereto. Upon making any such transfer, the director of accounts and

1 reports shall give notice thereof to the attorney general, the commissioner
2 of insurance and the securities commissioner who shall make the proper
3 entries on the records of their respective offices to show such transfers.

4 (c) The attorney general may apply for, receive and accept moneys
5 from any source for the purposes for which moneys in the fraud and abuse
6 criminal prosecution fund may be expended. Upon receipt of any such
7 moneys, the attorney general shall remit the entire amount to the state
8 treasurer in accordance with the provisions of K.S.A. 75-4215, and
9 amendments thereto. Upon receipt of each such remittance, the state
10 treasurer shall deposit the entire amount in the state treasury to the credit
11 of the fraud and abuse criminal prosecution fund.

12 New Sec. 2. To promote efficiency in staffing and operations and
13 consistency in enforcement of the criminal law, it is declared to be the
14 public policy of this state that the prosecuting attorneys who bring criminal
15 actions in the name of the state of Kansas, other than county and district
16 attorneys, should, to the extent practicable, be located in the attorney
17 general's office under the jurisdiction of the attorney general.

18 New Sec. 3. (a) The attorney general, the commissioner of insurance
19 and the securities commissioner shall coordinate and cooperate to prevent,
20 detect, investigate and criminally prosecute crimes related to insurance and
21 securities.

22 (b) The criminal anti-fraud unit of the department of insurance and
23 the office of the securities commissioner of Kansas shall, upon request of
24 the attorney general, provide the attorney general access to all records,
25 reports, filings, investigation documents and other records that the attorney
26 general has reasonable suspicion to believe are relevant to any criminal
27 investigation or prosecution of suspected insurance fraud or securities
28 fraud.

29 (c) The attorney general may, in the attorney general's discretion,
30 assist in any criminal investigation conducted: (1) By the criminal anti-
31 fraud unit of the department of insurance of suspected insurance fraud; or
32 (2) by the office of the securities commissioner of Kansas of suspected
33 securities fraud.

34 (d) The attorney general may enter into agreements with the
35 commissioner of insurance, the securities commissioner, or both, as
36 deemed necessary to carry out the provisions of this section.

37 (e) The attorney general may adopt rules and regulations as deemed
38 appropriate for the administration of this section.

39 Sec. 4. K.S.A. 2016 Supp. 9-2209 is hereby amended to read as
40 follows: 9-2209. (a) The commissioner may exercise the following
41 powers:

42 (1) Adopt rules and regulations as necessary to carry out the intent
43 and purpose of this act and to implement the requirements of applicable

1 federal law;

2 (2) make investigations and examinations of the licensee's or
3 registrant's operations, books and records as the commissioner deems
4 necessary for the protection of the public and control access to any
5 documents and records of the licensee or registrant under examination or
6 investigation;

7 (3) charge reasonable costs of investigation, examination and
8 administration of this act, to be paid by the applicant, licensee or
9 registrant. The commissioner shall establish such fees in such amounts as
10 the commissioner may determine to be sufficient to meet the budget
11 requirements of the commissioner for each fiscal year. Charges for
12 administration of this act shall be based on the licensee's loan volume;

13 (4) order any licensee or registrant to cease any activity or practice
14 which the commissioner deems to be deceptive, dishonest, violative of
15 state or federal law or unduly harmful to the interests of the public;

16 (5) exchange any information regarding the administration of this act
17 with any agency of the United States or any state which regulates the
18 licensee or registrant or administers statutes, rules and regulations or
19 programs related to mortgage business and to enter into information
20 sharing arrangements with other governmental agencies or associations
21 representing governmental agencies which are deemed necessary or
22 beneficial to the administration of this act;

23 (6) disclose to any person or entity that an applicant's, licensee's or
24 registrant's application, license or registration has been denied, suspended,
25 revoked or refused renewal;

26 (7) require or permit any person to file a written statement, under oath
27 or otherwise as the commissioner may direct, setting forth all the facts and
28 circumstances concerning any apparent violation of this act, or any rule
29 and regulation promulgated thereunder or any order issued pursuant to this
30 act;

31 (8) receive, as a condition in settlement of any investigation or
32 examination, a payment designated for consumer education to be
33 expended for such purpose as directed by the commissioner;

34 (9) require that any applicant, registrant, licensee or other person
35 successfully passes a standardized examination designed to establish such
36 person's knowledge of mortgage business transactions and all applicable
37 state and federal law. Such examinations shall be created and administered
38 by the commissioner or the commissioner's designee, and may be made a
39 condition of application approval or application renewal;

40 (10) require that any applicant, licensee, registrant or other person
41 complete a minimum number of prelicensing education hours and
42 complete continuing education hours on an annual basis. Prelicensing and
43 continuing education courses shall be approved by the commissioner, or

1 the commissioner's designee, and may be made a condition of application
2 approval and renewal;

3 (11) require fingerprinting of any applicant, registrant, licensee,
4 members thereof if a copartnership or association, or officers and directors
5 thereof if a corporation, or any agent acting on their behalf, or other person
6 as deemed appropriate by the commissioner. The commissioner or the
7 commissioner's designee, may submit such fingerprints to the Kansas
8 bureau of investigation, federal bureau of investigation or other law
9 enforcement agency for the purposes of verifying the identity of such
10 persons and obtaining records of their criminal arrests and convictions. For
11 the purposes of this section and in order to reduce the points of contact
12 which the federal bureau of investigation may have to maintain with the
13 individual states, the commissioner may use the nationwide mortgage
14 licensing system and registry as a channeling agent for requesting
15 information from and distributing information to the department of justice
16 or any governmental agency;

17 (12) refer such evidence as may be available concerning any violation
18 of this act or of any rule and regulation or order hereunder to the attorney
19 general, or *in consultation with the attorney general* to the proper county
20 or district attorney, who may in ~~the~~ *such* prosecutor's discretion, with or
21 without such a referral, institute the appropriate criminal proceedings
22 under this act. Upon receipt of such referral, ~~the attorney general or the~~
23 ~~county attorney or district attorney may request that a duly employed~~
24 ~~attorney of the commissioner prosecute or assist in the prosecution of such~~
25 ~~violation or violations on behalf of the state. Upon approval of the~~
26 ~~commissioner, such employee shall be appointed a special prosecutor for~~
27 ~~the attorney general or the county attorney or district attorney to serve~~
28 ~~without compensation from the attorney general or the county attorney or~~
29 ~~district attorney. Such special prosecutor shall have all the powers and~~
30 ~~duties prescribed by law for assistant attorneys general or assistant county~~
31 ~~or district attorneys and such other powers and duties as are lawfully~~
32 ~~delegated to such special prosecutor by the attorney general or the county~~
33 ~~attorney or district attorney~~ *the laws of this state*;

34 (13) issue and apply to enforce subpoenas in this state at the request
35 of a comparable official of another state if the activities constituting an
36 alleged violation for which the information is sought would be a violation
37 of the Kansas mortgage business act if the activities had occurred in this
38 state;

39 (14) use the nationwide mortgage licensing system and registry as a
40 channeling agent for requesting and distributing any information regarding
41 loan originator or mortgage company licensing to and from any source so
42 directed by the commissioner;

43 (15) establish relationships or contracts with the nationwide mortgage

1 licensing system and registry or other entities to collect and maintain
2 records and process transaction fees or other fees related to applicants,
3 licensees, registrants or other persons subject to this act and to take such
4 other actions as may be reasonably necessary to participate in the
5 nationwide mortgage licensing system and registry. The commissioner
6 shall regularly report violations of law, as well as enforcement actions and
7 other relevant information to the nationwide mortgage licensing system
8 and registry;

9 (16) require any licensee or registrant to file reports with the
10 nationwide mortgage licensing system and registry in the form prescribed
11 by the commissioner or the commissioner's designee;

12 (17) receive and act on complaints, take action designed to obtain
13 voluntary compliance with the provisions of the Kansas mortgage business
14 act or commence proceedings on the commissioner's own initiative;

15 (18) provide guidance to persons and groups on their rights and duties
16 under the Kansas mortgage business act;

17 (19) enter into any informal agreement with any mortgage company
18 for a plan of action to address violations of law. The adoption of an
19 informal agreement authorized by this paragraph shall not be subject to the
20 provisions of K.S.A. 77-501 et seq., and amendments thereto, or K.S.A.
21 77-601 et seq., and amendments thereto. Any informal agreement
22 authorized by this paragraph shall not be considered an order or other
23 agency action, and shall be considered confidential examination material
24 pursuant to K.S.A. 9-2217, and amendments thereto. All such examination
25 material shall also be confidential by law and privileged, shall not be
26 subject to the open records act, K.S.A. 45-215 et seq., and amendments
27 thereto, shall not be subject to subpoena and shall not be subject to
28 discovery or admissible in evidence in any private civil action. The
29 provisions of this paragraph shall expire on July 1, 2021, unless the
30 legislature reviews and reenacts this provision pursuant to K.S.A. 45-229,
31 and amendments thereto, prior to July 1, 2021; and

32 (20) issue, amend and revoke written administrative guidance
33 documents in accordance with the applicable provisions of the Kansas
34 administrative procedure act.

35 (b) For the purpose of any examination, investigation or proceeding
36 under this act, the commissioner or any officer designated by the
37 commissioner may administer oaths and affirmations, subpoena witnesses,
38 compel such witnesses' attendance, adduce evidence and require the
39 production of any matter which is relevant to the examination or
40 investigation, including the existence, description, nature, custody,
41 condition and location of any books, documents or other tangible things
42 and the identity and location of persons having knowledge of relevant
43 facts, or any other matter reasonably calculated to lead to the discovery of

1 relevant information or items.

2 (c) In case of contumacy by, or refusal to obey a subpoena issued to
3 any person, any court of competent jurisdiction, upon application by the
4 commissioner, may issue to that person an order requiring the person to
5 appear before the commissioner, or the officer designated by the
6 commissioner, there, to produce documentary evidence if so ordered or to
7 give evidence touching the matter under investigation or in question. Any
8 failure to obey the order of the court may be punished by the court as a
9 contempt of court.

10 (d) No person is excused from attending and testifying or from
11 producing any document or record before the commissioner or in
12 obedience to the subpoena of the commissioner or any officer designated
13 by the commissioner or in any proceeding instituted by the commissioner,
14 on the ground that the testimony or evidence, documentary or otherwise,
15 required of the person may tend to incriminate the person or subject the
16 person to a penalty or forfeiture. No individual may be prosecuted or
17 subjected to any penalty or forfeiture for or on account of any transaction,
18 matter or thing concerning which such person is compelled, after claiming
19 privilege against self-incrimination, to testify or produce evidence,
20 documentary or otherwise, except that the individual so testifying shall not
21 be exempt from prosecution and punishment for perjury committed in so
22 testifying.

23 (e) Except for refund of an excess charge, no liability is imposed
24 under the Kansas mortgage business act for an act done or omitted in
25 conformity with a rule and regulation or written administrative
26 interpretation of the commissioner in effect at the time of the act or
27 omission, notwithstanding that after the act or omission, the rule and
28 regulation or written administrative interpretation may be determined by
29 judicial or other authority to be invalid for any reason.

30 Sec. 5. K.S.A. 2016 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
37 convicted of violating a rule or order under this act may be fined, but may
38 not be imprisoned, if the individual did not have knowledge of the rule or
39 order.

40 (2) A conviction for an intentional violation of K.S.A. 17-12a501 or
41 17-12a502, and amendments thereto, if the violation resulted in a loss of
42 an amount of:

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

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

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

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

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

8 (3) A conviction for an intentional violation of K.S.A. 17-12a301, 17-
9 12a401(a), 17-12a402(a), 17-12a403(a) or 17-12a404(a), and amendments
10 thereto, is:

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

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

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

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

18 (A) K.S.A. 17-12a404(e) or 17-12a505, and amendments thereto, or
19 an order to cease and desist issued by the administrator pursuant to K.S.A.
20 17-12a412(c) or 17-12a604(a), and amendments thereto, is a severity level
21 5, nonperson felony.

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

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

26 (5) Any violation of K.S.A. 17-12a301, 17-12a401(a), 17-12a402(a),
27 17-12a403(a), 17-12a404(a), 17-12a501 or 17-12a502, and amendments
28 thereto, resulting in a loss of \$25,000 or more shall be presumed
29 imprisonment.

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

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

43 (b) *Statute of limitations.* (1) Except as provided by K.S.A. 2016

1 Supp. 21-5107(e), and amendments thereto, no prosecution for any crime
2 under this act may be commenced more than 10 years after the alleged
3 violation if the victim is the Kansas public employees retirement system
4 and no prosecution for any other crime under this act may be commenced
5 more than five years after the alleged violation.

6 (2) If a crime under this act is a continuing offense, the statute of
7 limitations does not begin to run until the last act in the scheme or course
8 of business is completed. Nothing in this subsection shall prevent the
9 exclusion of a time period pursuant to K.S.A. 2016 Supp. 21-5107(e), and
10 amendments thereto.

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

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

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

42 Sec. 6. K.S.A. 2016 Supp. 40-113 is hereby amended to read as
43 follows: 40-113. (a) There is hereby established within the insurance

1 department a criminal anti-fraud division of the Kansas insurance
2 department. The criminal anti-fraud division shall accept information and
3 complaints regarding possible insurance fraud. The criminal anti-fraud
4 division shall also investigate possible violations of Kansas criminal
5 statutes pertaining to and related to insurance fraud. The criminal anti-
6 fraud division shall prepare *and refer* criminal cases ~~for prosecution by~~
7 ~~special assistant attorneys general and shall assist in prosecution of those~~
8 ~~cases to the attorney general, or in consultation with the attorney general~~
9 ~~to the proper county or district attorney, who may, in such prosecutor's~~
10 ~~discretion, with or without such a reference, institute the appropriate~~
11 ~~criminal proceedings under the laws of this state. The commissioner may~~
12 ~~pay extradition and witness expenses and other costs associated with the~~
13 ~~case.~~

14 (b) Complaints of insurance fraud shall be accepted from Kansas
15 consumers, other divisions within the insurance department, other state
16 and federal law enforcement agencies, and insurance companies. The
17 criminal anti-fraud division's investigators shall prepare clear and concise
18 reports concerning investigations and preserve evidence.

19 (c) The criminal anti-fraud division ~~will~~ *shall* assist in the preparation
20 and presentation of criminal cases ~~and as requested by the attorney~~
21 ~~general or county or district attorney. The criminal anti-fraud division~~
22 ~~shall perform other such duties in the prevention, detection, investigation~~
23 ~~and prosecution of insurance fraud as may be necessary. Said preparation~~
24 ~~should. Such preparation may include affidavits, interviews, preservation~~
25 ~~of evidence and securing the attendance of individuals involved in the~~
26 ~~case. In presenting the prosecution's case, members of the criminal anti-~~
27 ~~fraud division shall may testify as to the facts of the case.~~

28 Sec. 7. K.S.A. 2016 Supp. 44-5,122 is hereby amended to read as
29 follows: 44-5,122. (a) If the director or the assistant attorney general
30 assigned to the division of workers compensation has probable cause to
31 believe a fraudulent or abusive act or practice or any other violation of the
32 workers compensation act is of such significance as to constitute a crime, a
33 copy of any order, all investigative reports and any evidence in the
34 possession of the division of workers compensation which relates to such
35 act, practice or violation may be forwarded to the prosecuting attorney of
36 the county in which the act or any of the acts were performed which
37 constitute the fraudulent or abusive act or practice or other violation. Any
38 case which a county *or district* attorney fails to prosecute within 90 days
39 shall be returned promptly to the director. The assistant attorney general
40 assigned to the division of workers compensation shall then ~~prosecute the~~
41 ~~case notify the attorney general and~~ if, in the opinion of the ~~assistant~~
42 ~~attorney general, the acts or practices involved still warrant prosecution,~~
43 *the attorney general shall prosecute the case.*

1 (b) Any person who believes a violation of the workers compensation
2 act has been or is being committed may notify the division of workers
3 compensation of the department of labor immediately after discovery of
4 the alleged violation. The person shall send to the division of workers
5 compensation, in a manner prescribed by the director, the information
6 describing the facts of the alleged violation and such additional
7 information relating to the alleged violation as the director may require.
8 The director shall cause an evaluation of the facts surrounding the alleged
9 violation to be made to determine the extent, if any, to which violations of
10 the workers compensation act exist, which shall include a review and
11 investigation by the assistant attorney general assigned to the division to
12 the extent as may be deemed necessary to determine whether there has
13 been a violation of the workers compensation act.

14 Sec. 8. K.S.A. 2016 Supp. 44-5,124 is hereby amended to read as
15 follows: 44-5,124. The attorney general shall appoint, with the approval of
16 the secretary of labor, an assistant attorney general who shall be within the
17 division of workers compensation of the department of labor and who shall
18 receive an annual salary fixed by the attorney general with the approval of
19 the secretary of labor and the governor. The operating expenditures for the
20 assistant attorney general shall be financed by funds available for the
21 administration of the workers compensation act. The duties of the assistant
22 attorney general shall include directing or assisting in the investigation and
23 administrative prosecution of alleged fraudulent or abusive acts or
24 practices or other violations of K.S.A. 44-5,120 through 44-5,122, and
25 amendments thereto, or of any other provisions of the workers
26 compensation act, and in the investigation and *referral to the attorney*
27 *general for* criminal prosecution of any such acts, practices or violations
28 which constitute crimes.

29 Sec. 9. K.S.A. 2016 Supp. 44-719 is hereby amended to read as
30 follows: 44-719. (a) Any person who makes a false statement or
31 representation knowing it to be false or knowingly fails to disclose a
32 material fact, to obtain or increase any benefit or other payment under this
33 act, either for such person or for any other person, shall be guilty of theft
34 and shall be punished in accordance with the provisions of K.S.A. 2016
35 Supp. 21-5801, and amendments thereto.

36 (b) Any employing unit or any officer or agent for any employing
37 unit or any other person who makes a false statement or representation
38 knowing it to be false, or who knowingly fails to disclose a material fact,
39 to prevent or reduce the payment of benefits to any individual entitled
40 thereto, or to avoid becoming or remaining subject hereto or to avoid or
41 reduce any contribution or other payment required from an employing unit
42 under this act, or who willfully fails or refuses to make any such
43 contributions or other payment or to furnish any reports required

1 hereunder or to produce or permit the inspection or copying of records as
2 required hereunder, shall be punished by a fine of not less than \$20 nor
3 more than \$200, or by imprisonment for not longer than 60 days, or both
4 such fine and imprisonment. Each such false statement or representation or
5 failure to disclose a material fact and each day of such failure or refusal
6 shall constitute a separate offense.

7 (c) Any person who willfully violates any provision of this act or any
8 rule and regulation adopted by the secretary hereunder, the violation of
9 which is made unlawful or the observance of which is required under the
10 terms of this act, and for which a penalty is neither prescribed herein or
11 provided by any other applicable statute, shall be punished by a fine of not
12 less than \$20 nor more than \$200, or by imprisonment for not longer than
13 60 days, or by both such fine and imprisonment, and each day such
14 violation continues shall be deemed to be a separate offense.

15 (d) (1) Any person who has received any amount of money as
16 benefits under this act while any conditions for the receipt of benefits
17 imposed by this act were not fulfilled in such person's case, or while such
18 person was disqualified from receiving benefits, shall in the discretion of
19 the secretary, either be liable to have such amount of money deducted from
20 any future benefits payable to such person under this act or shall be liable
21 to repay to the secretary for the employment security fund an amount of
22 money equal to the amount so received by such person. After a period of
23 five years, the secretary may waive the collection of any such amount of
24 money when the secretary has determined that the payment of such
25 amount of money was not due to fraud, misrepresentation, or willful
26 nondisclosure on the part of the person receiving such amount of money,
27 and the collection thereof would be against equity or would cause extreme
28 hardship with regard to such person. The collection of benefit
29 overpayments which were made in the absence of fraud, misrepresentation
30 or willful nondisclosure of required information on the part of the person
31 who received such overpayments, may be waived by the secretary at any
32 time if such person met all eligibility requirements of the employment
33 security law during the weeks in which the overpayments were made.

34 (2) Any benefit erroneously paid which is not repaid shall bear
35 interest at the rate of 1.5% per month or fraction of a month. If the benefit
36 was received as a result of fraud, misrepresentation or willful
37 nondisclosure of required information, interest shall accrue from the date
38 of the final determination of overpayment until repayment plus interest is
39 received by the secretary. If the overpayment was without fraud,
40 misrepresentation or willful nondisclosure of required information, interest
41 shall accrue upon any balance which remains unpaid two years after the
42 final determination of overpayment is made and shall continue until
43 payment plus accrued interest is received by the secretary. Interest

1 collected pursuant to this section shall be paid into the special employment
2 security fund, except that interest collected on federal administrative
3 programs shall be returned to the federal government. Upon written
4 request and for good cause shown, the secretary may abate any interest or
5 portion thereof provided for by this subsection (d)(2). Interest accrued may
6 not be paid by money deducted from any future benefits payable to such
7 persons liable for any overpayment.

8 (3) Unless collection is waived by the secretary, any such amount
9 shall be collectible in the manner provided in K.S.A. 44-717, and
10 amendments thereto, for the collection of past due contributions. The
11 courts of this state shall in like manner entertain actions to collect amounts
12 of money erroneously paid as benefits, or unlawfully obtained, for which
13 liability has accrued under the employment security law of any other state
14 or of the federal government.

15 (4) In cases involving the collection of debts arising from the
16 employment security law, the actual amount received from the United
17 States department of treasury under the treasury offset program or its
18 successor shall be credited to the overpayment and any fee charged by the
19 department of treasury shall be borne by the debtor.

20 (e) Any employer or person who willfully fails or refuses to pay
21 contributions, payments in lieu of contributions or benefit cost payments
22 or attempts in any manner to evade or defeat any such contributions,
23 payments in lieu of contributions or benefit cost payments or the payment
24 thereof, shall be liable for the payment of such contributions, payments in
25 lieu of contributions or benefit cost payments and, in addition to any other
26 penalties provided by law, shall be liable to pay a penalty equal to the total
27 amount of the contributions, payments in lieu of contributions or benefit
28 cost payments evaded or not paid.

29 (f) (1) It shall be unlawful for an employing unit to knowingly obtain
30 or attempt to obtain a reduced liability for contributions under ~~subsection~~
31 ~~(b)(1) of~~ K.S.A. 44-710a(b)(1), and amendments thereto, through
32 manipulation of the employer's workforce, or for an employing unit that is
33 not an employing unit at the time it acquires the trade or business, to
34 knowingly obtain or attempt to obtain a reduced liability for contributions
35 under ~~subsection (b)(5) of~~ K.S.A. 44-710a(b)(5), and amendments thereto,
36 or any other provision of K.S.A. 44-710a, and amendments thereto, related
37 to determining the assignment of a contribution rate, when the sole or
38 primary purpose of the business acquisition was for the purpose of
39 obtaining a lower rate of contributions, or for a person to knowingly advise
40 an employing unit in such a way that results in such a violation, such
41 employing unit or person shall be subject to the following penalties:

42 (A) If the person is an employer, then such employer shall be
43 assigned the highest rate assignable under K.S.A. 44-710a, and

1 amendments thereto, for the rate year during which such violation or
2 attempted violation occurred and the three rate years immediately
3 following this rate year. However, if the employer's business is already at
4 such highest rate for any year, or if the amount of increase in the
5 employer's rate would be less than 2% for such year, then a penalty rate of
6 contributions of 2% of taxable wages shall be imposed for such year. Any
7 moneys resulting from the difference of the computed rate and the penalty
8 rate shall be remitted to the state treasurer in accordance with the
9 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
10 each such remittance, the state treasurer shall deposit the entire amount in
11 the state treasury to the credit of the special employment security fund.

12 (B) If the person is not an employer, such person shall be subject to a
13 civil money penalty of not more than \$5,000. All fines assessed and
14 collected under this section shall be remitted to the state treasurer in
15 accordance with the provisions of K.S.A. 75-4215, and amendments
16 thereto. Upon receipt of each such remittance, the state treasurer shall
17 deposit the entire amount in the state treasury to the credit of the special
18 employment security fund.

19 (2) For purposes of this subsection, the term "knowingly" means
20 having actual knowledge of or acting with deliberate ignorance or reckless
21 disregard for the prohibition involved.

22 (3) For purposes of this subsection, the term "violates or attempts to
23 violate" includes, but is not limited to, any intent to evade,
24 misrepresentation or willful nondisclosure.

25 (4) (A) In addition to, or in lieu of, any civil penalty imposed by
26 paragraph (1) if, the director of employment security or a special assistant
27 attorney general assigned to the department of labor, has probable cause to
28 believe that a violation of this subsection (f) should be prosecuted as a
29 crime, a copy of any order, all investigative reports and any evidence in the
30 possession of the division of employment security which relates to such
31 violation, may be forwarded to the prosecuting attorney in the county in
32 which the act or any of the acts were performed which constitute a
33 violation of this subsection (f). Any case which a county or district
34 attorney fails to prosecute within 90 days shall be returned promptly to the
35 director of employment security. The special assistant attorney general
36 assigned to the Kansas department of labor shall then ~~prosecute the case,~~
37 *notify the attorney general and* if, in the opinion of the ~~special assistant~~
38 attorney general, the acts or practices involved ~~still~~ warrant prosecution,
39 *the attorney general shall prosecute the case.*

40 (B) Violation of this subsection (f) shall be a level 9, nonperson
41 felony.

42 (5) The secretary shall establish procedures to identify the transfer or
43 acquisition of a business for purposes of this section.

1 (6) For purposes of subsection (f):

2 (A) "Person" has the meaning given such term by section 7701(a)(1)
3 of the internal revenue code of 1986;

4 (B) "trade or business" shall include the employer's workforce; and

5 (C) the provisions of K.S.A. 2016 Supp. 21-5211 and 21-5212, and
6 amendments thereto, shall apply.

7 (7) This subsection (f) shall be interpreted and applied in such a
8 manner as to meet the minimum requirements contained in any guidance
9 or regulation issued by the United States department of labor.

10 Sec. 10. K.S.A. 50-1013 is hereby amended to read as follows: 50-
11 1013. (a) Any person who willfully violates any provision of this act or
12 knowingly violates any cease and desist order issued under this act
13 commits a severity level 7, nonperson felony. Any violation of this act
14 committed on or after July 1, 1993, resulting in a loss of \$25,000 or more,
15 regardless of its location on the sentencing grid block, shall have a
16 presumptive sentence of imprisonment.

17 (b) Prosecution for any crime under this act must be commenced
18 within five years after the alleged violation. A prosecution is commenced
19 when a complaint or information is filed, or an indictment returned, and a
20 warrant thereon is delivered to the sheriff or other officer for execution.
21 No such prosecution shall be deemed to have been commenced if the
22 warrant so issued is not executed without unreasonable delay.

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

1 *or county or district attorney.*

2 Sec. 11. K.S.A. 2016 Supp. 75-6301 is hereby amended to read as
3 follows: 75-6301. (a) There is hereby established *under the jurisdiction of*
4 *the commissioner of insurance a division to be known as* the office of the
5 securities commissioner of Kansas. The office shall be administered by the
6 securities commissioner of Kansas who shall be in the unclassified service
7 under the Kansas civil service act ~~and shall serve at the pleasure of the~~
8 ~~governor~~. The securities commissioner shall be appointed by the ~~governor~~
9 *commissioner of insurance*, subject to confirmation by the senate as
10 provided in K.S.A. 75-4315b, and amendments thereto, shall have special
11 training and qualifications for such position and shall receive such
12 compensation as may be fixed by the ~~governor~~ *commissioner of insurance*.
13 *The commissioner of insurance may remove the securities commissioner*
14 *for official misconduct*. Except as provided by subsection (b) and K.S.A.
15 46-2601, and amendments thereto, no person appointed as securities
16 commissioner shall exercise any power, duty or function as securities
17 commissioner until confirmed by the senate.

18 (b) *A duly-confirmed securities commissioner currently serving on*
19 *July 1, 2017, shall continue in office for an initial term ending on January*
20 *14, 2019. Upon the expiration of the initial term under this section, and*
21 *upon the expiration of each term thereafter, the commissioner of insurance*
22 *shall appoint a person as securities commissioner to serve a four-year*
23 *term running concurrently with the term of such commissioner of*
24 *insurance as provided by K.S.A. 40-106, and amendments thereto. Upon*
25 *occurrence of a vacancy in the office of securities commissioner, the*
26 *commissioner of insurance shall appoint a successor. If the vacancy*
27 *occurs before the expiration of a term of office, the appointment shall be*
28 *for the unexpired term. Any person currently serving as a duly-confirmed*
29 *securities commissioner who is reappointed to a subsequent term shall not*
30 *be subject to confirmation by the senate.*

31 (c) The securities commissioner may appoint directors *and other*
32 *employees* within the office of the securities commissioner as determined
33 necessary by the securities commissioner to effectively carry out the
34 mission of the office. All directors appointed after the effective date of this
35 act shall be in the unclassified service under the Kansas civil service act,
36 shall have special training and qualifications for such positions, shall serve
37 at the pleasure of the securities commissioner and shall receive
38 compensation fixed by the securities commissioner and approved by the
39 ~~governor~~ *commissioner of insurance*.

40 ~~(e)~~ (d) Nothing in subsection ~~(b)~~ (c) shall affect the classified status
41 of any person employed in the office of the securities commissioner on the
42 day immediately preceding the effective date of this act. The provisions of
43 this subsection shall not be construed to limit the powers of the securities

1 commissioner pursuant to K.S.A. 75-2948, and amendments thereto.

2 *(e) The office of the securities commissioner of Kansas shall*
3 *cooperate with the insurance department to consolidate administrative*
4 *functions and cross-appoint such employees as deemed necessary to*
5 *provide efficiency. The commissioner of insurance and the securities*
6 *commissioner are hereby authorized to enter into agreements and adopt*
7 *rules and regulations as necessary to administer the provisions of this*
8 *subsection.*

9 Sec. 12. K.S.A. 50-1013 and K.S.A. 2016 Supp. 9-2209, 17-12a508,
10 40-113, 44-5,122, 44-5,124, 44-719 and 75-6301 are hereby repealed.

11 Sec. 13. This act shall take effect and be in force from and after its
12 publication in the statute book.