

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; **the Kansas uniform**
8 **securities act; updating references to the federal securities act of**
9 **1933; amending K.S.A. 50-1013 and K.S.A. 2016 Supp. 9-2209, 17-**
10 **12a302, 17-12a402, 17-12a508, 40-113, 44-5,122, 44-5,124, 44-719**
11 **and 75-6301 and repealing the existing sections.**
12

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

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

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

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

30 (3) the abuse, neglect and exploitation unit established by K.S.A. 75-
31 723, and amendments thereto.

32 (b) On July 1 of each year, or as soon thereafter as unencumbered
33 funds are available, the director of accounts and reports shall transfer to
34 the fraud and abuse criminal prosecution fund an amount equal to: (1)

1 \$200,000 from the securities act fee fund created by K.S.A. 17-12a601,
2 and amendments thereto; and (2) \$200,000 from the insurance department
3 service regulation fund created by K.S.A. 40-112, and amendments
4 thereto. Upon making any such transfer, the director of accounts and
5 reports shall give notice thereof to the attorney general, the commissioner
6 of insurance and the securities commissioner who shall make the proper
7 entries on the records of their respective offices to show such transfers.

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

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

22 New Sec. 3. (a) The attorney general, the commissioner of insurance
23 and the securities commissioner shall coordinate and cooperate to prevent,
24 detect, investigate and criminally prosecute crimes related to insurance and
25 securities.

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

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

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

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

43 **{New Sec. 4. The securities commissioner and any attorney**

1 **licensed to practice law in the state of Kansas who works in the office**
2 **of the securities commissioner of Kansas shall be prohibited from**
3 **having any outside additional professional employment.}**

4 ~~Sec. 4.~~ {5.} K.S.A. 2016 Supp. 9-2209 is hereby amended to read as
5 follows: 9-2209. (a) The commissioner may exercise the following
6 powers:

7 (1) Adopt rules and regulations as necessary to carry out the intent
8 and purpose of this act and to implement the requirements of applicable
9 federal law;

10 (2) make investigations and examinations of the licensee's or
11 registrant's operations, books and records as the commissioner deems
12 necessary for the protection of the public and control access to any
13 documents and records of the licensee or registrant under examination or
14 investigation;

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

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

24 (5) exchange any information regarding the administration of this act
25 with any agency of the United States or any state which regulates the
26 licensee or registrant or administers statutes, rules and regulations or
27 programs related to mortgage business and to enter into information
28 sharing arrangements with other governmental agencies or associations
29 representing governmental agencies which are deemed necessary or
30 beneficial to the administration of this act;

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

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

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

42 (9) require that any applicant, registrant, licensee or other person
43 successfully passes a standardized examination designed to establish such

1 person's knowledge of mortgage business transactions and all applicable
2 state and federal law. Such examinations shall be created and administered
3 by the commissioner or the commissioner's designee, and may be made a
4 condition of application approval or application renewal;

5 (10) require that any applicant, licensee, registrant or other person
6 complete a minimum number of prelicensing education hours and
7 complete continuing education hours on an annual basis. Prelicensing and
8 continuing education courses shall be approved by the commissioner, or
9 the commissioner's designee, and may be made a condition of application
10 approval and renewal;

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

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

42 (13) issue and apply to enforce subpoenas in this state at the request
43 of a comparable official of another state if the activities constituting an

1 alleged violation for which the information is sought would be a violation
2 of the Kansas mortgage business act if the activities had occurred in this
3 state;

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

8 (15) establish relationships or contracts with the nationwide mortgage
9 licensing system and registry or other entities to collect and maintain
10 records and process transaction fees or other fees related to applicants,
11 licensees, registrants or other persons subject to this act and to take such
12 other actions as may be reasonably necessary to participate in the
13 nationwide mortgage licensing system and registry. The commissioner
14 shall regularly report violations of law, as well as enforcement actions and
15 other relevant information to the nationwide mortgage licensing system
16 and registry;

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

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

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

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

40 (20) issue, amend and revoke written administrative guidance
41 documents in accordance with the applicable provisions of the Kansas
42 administrative procedure act.

43 (b) For the purpose of any examination, investigation or proceeding

1 under this act, the commissioner or any officer designated by the
2 commissioner may administer oaths and affirmations, subpoena witnesses,
3 compel such witnesses' attendance, adduce evidence and require the
4 production of any matter which is relevant to the examination or
5 investigation, including the existence, description, nature, custody,
6 condition and location of any books, documents or other tangible things
7 and the identity and location of persons having knowledge of relevant
8 facts, or any other matter reasonably calculated to lead to the discovery of
9 relevant information or items.

10 (c) In case of contumacy by, or refusal to obey a subpoena issued to
11 any person, any court of competent jurisdiction, upon application by the
12 commissioner, may issue to that person an order requiring the person to
13 appear before the commissioner, or the officer designated by the
14 commissioner, there, to produce documentary evidence if so ordered or to
15 give evidence touching the matter under investigation or in question. Any
16 failure to obey the order of the court may be punished by the court as a
17 contempt of court.

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

31 (e) Except for refund of an excess charge, no liability is imposed
32 under the Kansas mortgage business act for an act done or omitted in
33 conformity with a rule and regulation or written administrative
34 interpretation of the commissioner in effect at the time of the act or
35 omission, notwithstanding that after the act or omission, the rule and
36 regulation or written administrative interpretation may be determined by
37 judicial or other authority to be invalid for any reason.

38 ~~Sec. 5.~~ {6.} K.S.A. 2016 Supp. 17-12a508 is hereby amended to read
39 as follows: 17-12a508. (a) *Criminal penalties.* (1) Except as provided in
40 subsections (a)(2) through (a)(4), a conviction for an intentional violation
41 of the Kansas uniform securities act, or a rule adopted or order issued
42 under this act, except K.S.A. 17-12a504, and amendments thereto, or the
43 notice filing requirements of K.S.A. 17-12a302 or 17-12a405, and

1 amendments thereto, is a severity level 7, nonperson felony. An individual
2 convicted of violating a rule or order under this act may be fined, but may
3 not be imprisoned, if the individual did not have knowledge of the rule or
4 order.

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

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

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

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

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

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

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

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

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

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

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

26 (A) K.S.A. 17-12a404(e) or 17-12a505, and amendments thereto, or
27 an order to cease and desist issued by the administrator pursuant to K.S.A.
28 17-12a412(c) or 17-12a604(a), and amendments thereto, is a severity level
29 5, nonperson felony.

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

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

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

38 (6) A conviction for an intentional violation of the Kansas uniform
39 securities act, K.S.A. 17-12a101 et seq., and amendments thereto,
40 committed against an elder person, as defined in K.S.A. 50-676, and
41 amendments thereto, shall be ranked on the nondrug scale at one severity
42 level above the appropriate level for the underlying or completed crime, if
43 the trier of fact finds that the victim was an elder person at the time of the

1 crime. It shall not be a defense under this paragraph that the defendant did
2 not know the age of the victim or reasonably believed that the victim was
3 not an elder person.

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

8 (b) *Statute of limitations.* (1) Except as provided by K.S.A. 2016
9 Supp. 21-5107(e), and amendments thereto, no prosecution for any crime
10 under this act may be commenced more than 10 years after the alleged
11 violation if the victim is the Kansas public employees retirement system
12 and no prosecution for any other crime under this act may be commenced
13 more than five years after the alleged violation.

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

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

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

1 *The administrator and persons employed by the administrator shall assist*
2 *in the prosecution of criminal cases as requested by the attorney general*
3 *or county or district attorney.*

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

7 ~~Sec. 6 {7.}~~ K.S.A. 2016 Supp. 40-113 is hereby amended to read as
8 follows: 40-113. (a) There is hereby established within the insurance
9 department a criminal anti-fraud division of the Kansas insurance
10 department. The criminal anti-fraud division shall accept information and
11 complaints regarding possible insurance fraud. The criminal anti-fraud
12 division shall also investigate possible violations of Kansas criminal
13 statutes pertaining to and related to insurance fraud. The criminal anti-
14 fraud division shall prepare *and refer* criminal cases ~~for prosecution by~~
15 ~~special assistant attorneys general and shall assist in prosecution of those~~
16 ~~cases to the attorney general, or in consultation with the attorney general~~
17 *to the proper county or district attorney, who may, in such prosecutor's*
18 *discretion, with or without such a reference, institute the appropriate*
19 *criminal proceedings under the laws of this state. The commissioner may*
20 *pay extradition and witness expenses and other costs associated with the*
21 *case.*

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

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

36 ~~Sec. 7 {8.}~~ K.S.A. 2016 Supp. 44-5,122 is hereby amended to read as
37 follows: 44-5,122. (a) If the director or the assistant attorney general
38 assigned to the division of workers compensation has probable cause to
39 believe a fraudulent or abusive act or practice or any other violation of the
40 workers compensation act is of such significance as to constitute a crime, a
41 copy of any order, all investigative reports and any evidence in the
42 possession of the division of workers compensation which relates to such
43 act, practice or violation may be forwarded to the prosecuting attorney of

1 the county in which the act or any of the acts were performed which
2 constitute the fraudulent or abusive act or practice or other violation. Any
3 case which a county *or district* attorney fails to prosecute within 90 days
4 shall be returned promptly to the director. The assistant attorney general
5 assigned to the division of workers compensation shall then ~~prosecute the~~
6 ~~case~~ *notify the attorney general* and if, in the opinion of the ~~assistant~~
7 attorney general, the acts or practices involved ~~still~~ warrant prosecution,
8 *the attorney general shall prosecute the case.*

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

22 ~~Sec. 8.~~ {9.} K.S.A. 2016 Supp. 44-5,124 is hereby amended to read as
23 follows: 44-5,124. The attorney general shall appoint, with the approval of
24 the secretary of labor, an assistant attorney general who shall be within the
25 division of workers compensation of the department of labor and who shall
26 receive an annual salary fixed by the attorney general with the approval of
27 the secretary of labor and the governor. The operating expenditures for the
28 assistant attorney general shall be financed by funds available for the
29 administration of the workers compensation act. The duties of the assistant
30 attorney general shall include directing or assisting in the investigation and
31 administrative prosecution of alleged fraudulent or abusive acts or
32 practices or other violations of K.S.A. 44-5,120 through 44-5,122, and
33 amendments thereto, or of any other provisions of the workers
34 compensation act, and in the investigation and *referral to the attorney*
35 *general for* criminal prosecution of any such acts, practices or violations
36 which constitute crimes.

37 ~~Sec. 9.~~ {10.} K.S.A. 2016 Supp. 44-719 is hereby amended to read as
38 follows: 44-719. (a) Any person who makes a false statement or
39 representation knowing it to be false or knowingly fails to disclose a
40 material fact, to obtain or increase any benefit or other payment under this
41 act, either for such person or for any other person, shall be guilty of theft
42 and shall be punished in accordance with the provisions of K.S.A. 2016
43 Supp. 21-5801, and amendments thereto.

1 (b) Any employing unit or any officer or agent for any employing
2 unit or any other person who makes a false statement or representation
3 knowing it to be false, or who knowingly fails to disclose a material fact,
4 to prevent or reduce the payment of benefits to any individual entitled
5 thereto, or to avoid becoming or remaining subject hereto or to avoid or
6 reduce any contribution or other payment required from an employing unit
7 under this act, or who willfully fails or refuses to make any such
8 contributions or other payment or to furnish any reports required
9 hereunder or to produce or permit the inspection or copying of records as
10 required hereunder, shall be punished by a fine of not less than \$20 nor
11 more than \$200, or by imprisonment for not longer than 60 days, or both
12 such fine and imprisonment. Each such false statement or representation or
13 failure to disclose a material fact and each day of such failure or refusal
14 shall constitute a separate offense.

15 (c) Any person who willfully violates any provision of this act or any
16 rule and regulation adopted by the secretary hereunder, the violation of
17 which is made unlawful or the observance of which is required under the
18 terms of this act, and for which a penalty is neither prescribed herein or
19 provided by any other applicable statute, shall be punished by a fine of not
20 less than \$20 nor more than \$200, or by imprisonment for not longer than
21 60 days, or by both such fine and imprisonment, and each day such
22 violation continues shall be deemed to be a separate offense.

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

42 (2) Any benefit erroneously paid which is not repaid shall bear
43 interest at the rate of 1.5% per month or fraction of a month. If the benefit

1 was received as a result of fraud, misrepresentation or willful
2 nondisclosure of required information, interest shall accrue from the date
3 of the final determination of overpayment until repayment plus interest is
4 received by the secretary. If the overpayment was without fraud,
5 misrepresentation or willful nondisclosure of required information, interest
6 shall accrue upon any balance which remains unpaid two years after the
7 final determination of overpayment is made and shall continue until
8 payment plus accrued interest is received by the secretary. Interest
9 collected pursuant to this section shall be paid into the special employment
10 security fund, except that interest collected on federal administrative
11 programs shall be returned to the federal government. Upon written
12 request and for good cause shown, the secretary may abate any interest or
13 portion thereof provided for by this subsection (d)(2). Interest accrued may
14 not be paid by money deducted from any future benefits payable to such
15 persons liable for any overpayment.

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

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

28 (e) Any employer or person who willfully fails or refuses to pay
29 contributions, payments in lieu of contributions or benefit cost payments
30 or attempts in any manner to evade or defeat any such contributions,
31 payments in lieu of contributions or benefit cost payments or the payment
32 thereof, shall be liable for the payment of such contributions, payments in
33 lieu of contributions or benefit cost payments and, in addition to any other
34 penalties provided by law, shall be liable to pay a penalty equal to the total
35 amount of the contributions, payments in lieu of contributions or benefit
36 cost payments evaded or not paid.

37 (f) (1) It shall be unlawful for an employing unit to knowingly obtain
38 or attempt to obtain a reduced liability for contributions under ~~subsection~~
39 ~~(b)(1)~~ of K.S.A. 44-710a(b)(1), and amendments thereto, through
40 manipulation of the employer's workforce, or for an employing unit that is
41 not an employing unit at the time it acquires the trade or business, to
42 knowingly obtain or attempt to obtain a reduced liability for contributions
43 under ~~subsection (b)(5)~~ of K.S.A. 44-710a(b)(5), and amendments thereto,

1 or any other provision of K.S.A. 44-710a, and amendments thereto, related
2 to determining the assignment of a contribution rate, when the sole or
3 primary purpose of the business acquisition was for the purpose of
4 obtaining a lower rate of contributions, or for a person to knowingly advise
5 an employing unit in such a way that results in such a violation, such
6 employing unit or person shall be subject to the following penalties:

7 (A) If the person is an employer, then such employer shall be
8 assigned the highest rate assignable under K.S.A. 44-710a, and
9 amendments thereto, for the rate year during which such violation or
10 attempted violation occurred and the three rate years immediately
11 following this rate year. However, if the employer's business is already at
12 such highest rate for any year, or if the amount of increase in the
13 employer's rate would be less than 2% for such year, then a penalty rate of
14 contributions of 2% of taxable wages shall be imposed for such year. Any
15 moneys resulting from the difference of the computed rate and the penalty
16 rate shall be remitted to the state treasurer in accordance with the
17 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
18 each such remittance, the state treasurer shall deposit the entire amount in
19 the state treasury to the credit of the special employment security fund.

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

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

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

33 (4) (A) In addition to, or in lieu of, any civil penalty imposed by
34 paragraph (1) if, the director of employment security or a special assistant
35 attorney general assigned to the department of labor, has probable cause to
36 believe that a violation of this subsection (f) should be prosecuted as a
37 crime, a copy of any order, all investigative reports and any evidence in the
38 possession of the division of employment security which relates to such
39 violation, may be forwarded to the prosecuting attorney in the county in
40 which the act or any of the acts were performed which constitute a
41 violation of this subsection (f). Any case which a county or district
42 attorney fails to prosecute within 90 days shall be returned promptly to the
43 director of employment security. The special assistant attorney general

1 assigned to the Kansas department of labor shall then ~~prosecute the case,~~
2 *notify the attorney general and* if, in the opinion of the ~~special assistant~~
3 attorney general, the acts or practices involved ~~still~~ warrant prosecution,
4 *the attorney general shall prosecute the case.*

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

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

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

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

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

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

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

18 ~~Sec. 10.~~ {11.} K.S.A. 50-1013 is hereby amended to read as follows:
19 50-1013. (a) Any person who willfully violates any provision of this act or
20 knowingly violates any cease and desist order issued under this act
21 commits a severity level 7, nonperson felony. Any violation of this act
22 committed on or after July 1, 1993, resulting in a loss of \$25,000 or more,
23 regardless of its location on the sentencing grid block, shall have a
24 presumptive sentence of imprisonment.

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

31 (c) The commissioner ~~may~~ *shall prepare and* refer such evidence as
32 may be available concerning *criminal* violations of this act or of any rule
33 and regulation or order hereunder to the attorney general, or *in*
34 *consultation with the attorney general* to the proper county or district
35 attorney, who may, in ~~the~~ *such* prosecutor's discretion, with or without
36 such a reference, institute the appropriate criminal proceedings under ~~this~~
37 ~~act~~ *the laws of this state.* ~~Upon receipt of such reference, the attorney~~
38 ~~general or the county attorney or district attorney may request that a duly~~
39 ~~employed attorney of the commissioner prosecute or assist in the~~
40 ~~prosecution of such violation or violations on behalf of the state. Upon~~
41 ~~approval of the commissioner, such employee shall be appointed special~~
42 ~~prosecutor for the attorney general or the county attorney or district~~
43 ~~attorney to serve without compensation from the attorney general or the~~

1 county attorney or district attorney. Such special prosecutor shall have all
2 the powers and duties prescribed by law for assistant attorneys general or
3 assistant county or district attorneys, and such other powers and duties as
4 are lawfully delegated to such special prosecutors by the attorney general
5 or the county attorney or district attorney. *The commissioner may pay*
6 *extradition and witness expenses and other costs associated with the case.*
7 *The commissioner and persons employed by the administrator shall assist*
8 *in the prosecution of criminal cases as requested by the attorney general*
9 *or county or district attorney.*

10 Sec. ~~11~~ {12.} K.S.A. 2016 Supp. 75-6301 is hereby amended to read
11 as follows: 75-6301. (a) There is hereby established *under the jurisdiction*
12 *of the commissioner of insurance a division to be known as the office of*
13 *the securities commissioner of Kansas. The office shall be administered by*
14 *the securities commissioner of Kansas who shall be in the unclassified*
15 *service under the Kansas civil service act and shall serve at the pleasure of*
16 ~~the governor.~~ *The securities commissioner shall be appointed by the*
17 ~~governor~~ *commissioner of insurance*, subject to confirmation by the senate
18 as provided in K.S.A. 75-4315b, and amendments thereto, shall have
19 special training and qualifications for such position and shall receive such
20 compensation as may be fixed by the ~~governor~~ *commissioner of insurance.*
21 *The commissioner of insurance may remove the securities commissioner*
22 *for official misconduct. Except as provided by subsection (b) and K.S.A.*
23 *46-2601, and amendments thereto, no person appointed as securities*
24 *commissioner shall exercise any power, duty or function as securities*
25 *commissioner until confirmed by the senate.*

26 (b) *A duly-confirmed securities commissioner currently serving on*
27 *July 1, 2017, shall continue in office for an initial term ending on January*
28 *14, 2019. Upon the expiration of the initial term under this section, and*
29 *upon the expiration of each term thereafter, the commissioner of insurance*
30 *shall appoint a person as securities commissioner, **subject to***
31 ***confirmation by the senate as provided in K.S.A. 75-4315b, and***
32 ***amendments thereto, to serve a four-year term running concurrently with***
33 ***the term of such commissioner of insurance as provided by K.S.A. 40-106,***
34 ***and amendments thereto. Upon occurrence of a vacancy in the office of***
35 ***securities commissioner, the commissioner of insurance shall appoint a***
36 ***successor. If the vacancy occurs before the expiration of a term of office,***
37 ***the appointment shall be for the unexpired term and shall be subject to***
38 ***confirmation by the senate as provided in K.S.A. 75-4315b, and***
39 ***amendments thereto.*** ~~*Any person currently serving as a duly-confirmed*~~
40 ~~*securities commissioner who is reappointed to a subsequent term shall not*~~
41 ~~*be subject to confirmation by the senate.*~~

42 (c) The securities commissioner may appoint directors *and other*
43 *employees* within the office of the securities commissioner as determined

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

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

13 *(e) The office of the securities commissioner of Kansas shall*
14 *cooperate with the insurance department to consolidate administrative*
15 *functions and cross-appoint such employees as deemed necessary to*
16 *provide efficiency. The commissioner of insurance and the securities*
17 *commissioner are hereby authorized to enter into agreements and adopt*
18 *rules and regulations as necessary to administer the provisions of this*
19 *subsection.*

20 **Sec. ~~12~~ {13.}** K.S.A. 2016 Supp. 17-12a302 is hereby amended to
21 read as follows: 17-12a302. **(a) Required filing of records.** With respect
22 to a federal covered security, as defined in section 18(b)(2) of the
23 securities act of 1933 (15 U.S.C. § 77r(b)(2)), that is not otherwise
24 exempt under K.S.A. 17-12a201 through 17-12a203, and amendments
25 thereto, a rule adopted or order issued under this act may require the
26 filing of any or all of the following records:

27 **(1)** Before the initial offer of a federal covered security in this
28 state, all records that are part of a federal registration statement filed
29 with the securities and exchange commission under the securities act
30 of 1933 and a consent to service of process complying with K.S.A. 17-
31 12a611, and amendments thereto, signed by the issuer and the
32 payment of a fee not to exceed \$2,500;

33 **(2)** after the initial offer of the federal covered security in this
34 state, all records that are part of an amendment to a federal
35 registration statement filed with the securities and exchange
36 commission under the securities act of 1933; and

37 **(3)** to the extent necessary or appropriate to compute fees, a
38 report of the value of the federal covered securities sold or offered to
39 persons present in this state, if the sales data are not included in
40 records filed with the securities and exchange commission and
41 payment of a fee not to exceed \$2,500.

42 **(b) Notice filing effectiveness and renewal.** A notice filing under
43 subsection (a) is effective for one year commencing on the later of the

1 notice filing or the effectiveness of the offering filed with the securities
2 and exchange commission. On or before expiration, the issuer may
3 renew a notice filing by filing a copy of those records filed by the
4 issuer with the securities and exchange commission that are required
5 by rule or order under this act to be filed and by paying a renewal fee
6 not to exceed \$2,500. A previously filed consent to service of process
7 complying with K.S.A. 17-12a611, and amendments thereto, may be
8 incorporated by reference in a renewal. A renewed notice filing
9 becomes effective upon the expiration of the filing being renewed.

10 (c) *Notice filings for federal covered securities under section 18(b)*
11 *(4)(E)(F)*. With respect to a security that is a federal covered security
12 under section 18(b)(4)(~~E~~)(F) of the securities act of 1933 (15 U.S.C. §
13 77r(b)(4)(~~E~~)(F)), a rule under this act may require: (1) A notice filing
14 by or on behalf of an issuer to include a copy of form D, including the
15 appendix, as promulgated by the securities and exchange commission,
16 and a consent to service of process complying with K.S.A. 17-12a611,
17 and amendments thereto, signed by the issuer, not later than 15 days
18 after the first sale of the federal covered security in this state; and (2)
19 the payment of a fee not to exceed \$2,500 for a timely filing and the
20 payment of a fee not to exceed \$5,000 for any late filing.

21 (d) *Stop orders*. Except with respect to a federal security under
22 section 18(b)(1) of the securities act of 1933 (15 U.S.C. § 77r(b)(1)), if
23 the administrator finds that there is a failure to comply with a notice
24 or fee requirement of this section, the administrator may issue a stop
25 order suspending the offer and sale of a federal covered security in
26 this state. If the deficiency is corrected, the stop order is void as of the
27 time of its issuance and no penalty may be imposed by the
28 administrator other than a late filing fee.

29 ~~Sec. 13.~~ {14.} K.S.A. 2016 Supp. 17-12a402 is hereby amended to
30 read as follows: 17-12a402. (a) *Registration requirement*. It is unlawful
31 for an individual to transact business in this state as an agent unless
32 the individual is registered under this act as an agent or is exempt
33 from registration as an agent under subsection (b).

34 (b) *Exemptions from registration*. The following individuals are
35 exempt from the registration requirement of subsection (a):

36 (1) An individual who represents a broker-dealer in effecting
37 transactions in this state limited to those described in section 15(i)(3)
38 of the securities exchange act of 1934 (15 U.S.C. § 78o(i)(3));

39 (2) an individual who represents a broker-dealer that is exempt
40 under K.S.A. 17-12a401(b) or (d), and amendments thereto;

41 (3) an individual who represents an issuer with respect to an offer
42 or sale of the issuer's own securities or those of the issuer's parent or
43 any of the issuer's subsidiaries, and who is not compensated in

1 connection with the individual's participation by the payment of
2 commissions or other remuneration based, directly or indirectly, on
3 transactions in those securities;

4 (4) an individual who represents an issuer and who effects
5 transactions in the issuer's securities exempted by K.S.A. 17-12a202,
6 and amendments thereto, other than K.S.A. 17-12a202 (11) and (14),
7 and amendments thereto;

8 (5) an individual who represents an issuer that effects
9 transactions solely in federal covered securities of the issuer, but an
10 individual who effects transactions in a federal covered security under
11 section 18(b)(3) or 18(b)(4)~~(E)~~(F) of the securities act of 1933 (15
12 U.S.C. § 77r(b)(3) or 77r(b)(4)~~(E)~~(F)) is not exempt if the individual is
13 compensated in connection with the agent's participation by the
14 payment of commissions or other remuneration based, directly or
15 indirectly, on transactions in those securities;

16 (6) an individual who represents a broker-dealer registered in this
17 state under K.S.A. 17-12a401(a), and amendments thereto, or exempt
18 from registration under K.S.A. 17-12a401(b), and amendments
19 thereto, in the offer and sale of securities for an account of a
20 nonaffiliated federal covered investment adviser with investments
21 under management in excess of \$100,000,000 acting for the account of
22 others pursuant to discretionary authority in a signed record;

23 (7) an individual who represents an issuer in connection with the
24 purchase of the issuer's own securities;

25 (8) an individual who represents an issuer and who restricts
26 participation to performing clerical or ministerial acts; or

27 (9) any other individual exempted by rule adopted or order
28 issued under this act.

29 (c) *Registration effective only while employed or associated.* The
30 registration of an agent is effective only while the agent is employed by
31 or associated with a broker-dealer registered under this act or an
32 issuer that is offering, selling, or purchasing its securities in this state.

33 (d) *Limit on employment or association.* It is unlawful for a
34 broker-dealer, or an issuer engaged in offering, selling, or purchasing
35 securities in this state, to employ or associate with an agent who
36 transacts business in this state on behalf of broker-dealers or issuers
37 unless the agent is registered under subsection (a) or exempt from
38 registration under subsection (b).

39 (e) *Limit on affiliations.* An individual may not act as an agent for
40 more than one broker-dealer or one issuer at a time, unless the broker-
41 dealer or the issuer for which the agent acts are affiliated by direct or
42 indirect common control or are authorized by rule or order under this
43 act.

1 Sec. ~~12.14.~~ {15.} K.S.A. 50-1013 and K.S.A. 2016 Supp. 9-2209, 17-
2 **12a302, 17-12a402**, 17-12a508, 40-113, 44-5,122, 44-5,124, 44-719 and
3 75-6301 are hereby repealed.

4 Sec. ~~13.15.~~ {16.} This act shall take effect and be in force from and
5 after its publication in the statute book.