

SENATE BILL No. 23

AN ACT concerning certain state officers and employees; relating to the attorney general, the state bank commissioner, the secretary of labor, the commissioner of insurance and the securities commissioner; criminal investigations and prosecutions by the attorney general; creating the fraud and abuse criminal prosecution fund; establishing the office of the securities commissioner as a division under the jurisdiction of the commissioner of insurance; the Kansas uniform securities act; updating references to the federal securities act of 1933; amending K.S.A. 50-1013 and K.S.A. 2016 Supp. 9-2209, 17-12a302, 17-12a402, 17-12a508, 40-113, 44-5,122, 44-5,124, 44-719 and 75-6301 and repealing the existing sections.

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

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

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

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

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

(b) On July 1 of each year, or as soon thereafter as unencumbered funds are available, the director of accounts and reports shall transfer to the fraud and abuse criminal prosecution fund an amount equal to: (1) \$200,000 from the securities act fee fund created by K.S.A. 17-12a601, and amendments thereto; and (2) \$200,000 from the insurance department service regulation fund created by K.S.A. 40-112, and amendments thereto. Upon making any such transfer, the director of accounts and reports shall give notice thereof to the attorney general, the commissioner of insurance and the securities commissioner who shall make the proper entries on the records of their respective offices to show such transfers.

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

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

(b) Any state agency may enter into agreements with the attorney general to carry out provisions of this section and section 1, and amendments thereto.

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

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

(c) The attorney general may, in the attorney general's discretion, assist in any criminal investigation conducted: (1) By the criminal anti-

fraud unit of the department of insurance of suspected insurance fraud; or (2) by the office of the securities commissioner of Kansas of suspected securities fraud.

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) require fingerprinting of any applicant, registrant, licensee, members thereof if a copartnership or association, or officers and directors thereof if a corporation, or any agent acting on their behalf, or other person as deemed appropriate by the commissioner. The commissioner or the commissioner's designee, may submit such fingerprints to the Kansas bureau of investigation, federal bureau of investigation or other law enforcement agency for the purposes of verifying the identity of such persons and obtaining records of their criminal arrests and convictions. For the purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have to maintain

with the individual states, the commissioner may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency;

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

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

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

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

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

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

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

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

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

(b) For the purpose of any examination, investigation or proceeding under this act, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses,

compel such witnesses' attendance, adduce evidence and require the production of any matter which is relevant to the examination or investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of relevant information or items.

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

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

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

Sec. 5. K.S.A. 2016 Supp. 17-12a508 is hereby amended to read as follows: 17-12a508. (a) *Criminal penalties.* (1) Except as provided in subsections (a)(2) through (a)(4), a conviction for an intentional violation of the Kansas uniform securities act, or a rule adopted or order issued under this act, except K.S.A. 17-12a504, and amendments thereto, or the notice filing requirements of K.S.A. 17-12a302 or 17-12a405, and amendments thereto, is a severity level 7, nonperson felony. An individual convicted of violating a rule or order under this act may be fined, but may not be imprisoned, if the individual did not have knowledge of the rule or order.

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

- (A) \$1,000,000 or more is a severity level 2, nonperson felony;
- (B) at least \$250,000 but less than \$1,000,000 is a severity level 3, nonperson felony;
- (C) at least \$100,000 but less than \$250,000 is a severity level 4, nonperson felony;
- (D) at least \$25,000 but less than \$100,000 is a severity level 5, nonperson felony; or
- (E) less than \$25,000 is a severity level 6, nonperson felony.

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

- (A) A severity level 5, nonperson felony if the violation resulted in a loss of \$100,000 or more;
- (B) a severity level 6, nonperson felony if the violation resulted in a loss of at least \$25,000 but less than \$100,000; or
- (C) a severity level 7, nonperson felony if the violation resulted in a loss of less than \$25,000.

(4) A conviction for an intentional violation of:

- (A) K.S.A. 17-12a404(e) or 17-12a505, and amendments thereto, or an order to cease and desist issued by the administrator pursuant to K.S.A.

17-12a412(c) or 17-12a604(a), and amendments thereto, is a severity level 5, nonperson felony.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 8. K.S.A. 2016 Supp. 44-5,124 is hereby amended to read as follows: 44-5,124. The attorney general shall appoint, with the approval of the secretary of labor, an assistant attorney general who shall be within the division of workers compensation of the department of labor and who shall receive an annual salary fixed by the attorney general with the approval of the secretary of labor and the governor. The operating expenditures for the assistant attorney general shall be financed by funds available for the administration of the workers compensation act. The duties of the assistant attorney general shall include directing or assisting in the investigation and administrative prosecution of alleged fraudulent or abusive acts or practices or other violations of K.S.A. 44-5,120 through 44-

5,122, and amendments thereto, or of any other provisions of the workers compensation act, and in the investigation and *referral to the attorney general* for criminal prosecution of any such acts, practices or violations which constitute crimes.

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

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

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

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

(2) Any benefit erroneously paid which is not repaid shall bear interest at the rate of 1.5% per month or fraction of a month. If the benefit was received as a result of fraud, misrepresentation or willful nondisclosure of required information, interest shall accrue from the date of the final determination of overpayment until repayment plus interest is received by the secretary. If the overpayment was without fraud, misrepresentation or willful nondisclosure of required information, interest shall accrue upon any balance which remains unpaid two years after the final determination of overpayment is made and shall continue until payment plus accrued interest is received by the secretary. Interest collected pursuant to this section shall be paid into the special employment security fund, except that interest collected on federal administrative programs shall be returned to the federal government. Upon written request and for good cause shown, the secretary may abate any interest or portion thereof provided for by this subsection (d)(2). Interest accrued may not

be paid by money deducted from any future benefits payable to such persons liable for any overpayment.

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

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

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

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

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

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

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

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

(4) (A) In addition to, or in lieu of, any civil penalty imposed by paragraph (1) if, the director of employment security or a special assistant attorney general assigned to the department of labor, has probable cause to believe that a violation of this subsection (f) should be prosecuted as a crime, a copy of any order, all investigative reports and any evidence in the possession of the division of employment security which relates to

such violation, may be forwarded to the prosecuting attorney in the county in which the act or any of the acts were performed which constitute a violation of this subsection (f). Any case which a county or district attorney fails to prosecute within 90 days shall be returned promptly to the director of employment security. The special assistant attorney general assigned to the Kansas department of labor shall then ~~prosecute the case; notify the attorney general and~~ if, in the opinion of the ~~special assistant~~ attorney general, the acts or practices involved ~~still~~ warrant prosecution, *the attorney general shall prosecute the case.*

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

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

(6) For purposes of subsection (f):

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

(B) “trade or business” shall include the employer’s workforce; and

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

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

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

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

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

Sec. 11. K.S.A. 2016 Supp. 75-6301 is hereby amended to read as follows: 75-6301. (a) There is hereby established *under the jurisdiction of the commissioner of insurance a division to be known as* the office of the securities commissioner of Kansas. The office shall be administered by the securities commissioner of Kansas who shall be in the unclassified service under the Kansas civil service act ~~and shall serve at the pleasure of the governor.~~ The securities commissioner shall be appointed by the ~~governor~~ *commissioner of insurance*, subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto, shall have special training and qualifications for such position and shall receive such compensation as may be fixed by the ~~governor~~ *commissioner of insurance.*

The commissioner of insurance may remove the securities commissioner for official misconduct. Except as provided by subsection (b) and K.S.A. 46-2601, and amendments thereto, no person appointed as securities commissioner shall exercise any power, duty or function as securities commissioner until confirmed by the senate.

(b) (1) *The insurance commissioner shall appoint a person as securities commissioner no later than September 1, 2017, subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto, to serve an initial term ending on January 14, 2019. Upon the expiration of the initial term under this section, and upon the expiration of each term thereafter, the commissioner of insurance shall appoint a person as securities commissioner, subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto, to serve a four-year term running concurrently with the term of such commissioner of insurance as provided by K.S.A. 40-106, and amendments thereto. Upon occurrence of a vacancy in the office of securities commissioner, the commissioner of insurance shall appoint a successor. If the vacancy occurs before the expiration of a term of office, the appointment shall be for the unexpired term and shall be subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto.*

(2) *The securities commissioner shall devote full time to the performance of the duties of the office of the securities commissioner.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) an individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

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

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

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

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

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

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

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

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

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

Sec. 14. K.S.A. 50-1013 and K.S.A. 2016 Supp. 9-2209, 17-12a302, 17-12a402, 17-12a508, 40-113, 44-5,122, 44-5,124, 44-719 and 75-6301 are hereby repealed.

Sec. 15. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.