

2023 Kansas Statutes

17-12a602. Investigations and subpoenas. (a) Authority to investigate. The administrator may:

(1) Conduct public or private investigations within or outside of this state which the administrator considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this act or a rule adopted or order issued under this act, or to aid in the enforcement of this act or in the adoption of rules and forms under this act;

(2) require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted;

(3) publish a record concerning an action, proceeding, or an investigation under, or a violation of, this act or a rule adopted or order issued under this act if the administrator determines it is necessary or appropriate in the public interest and for the protection of investors; and

(4) appoint special investigators to aid in investigations conducted pursuant to this act. Such special investigators shall have authority to make arrests, serve subpoenas and all other process, conduct searches and seizures, store evidence, and carry firearms, concealed or otherwise while investigating violations of this act and to generally enforce all the criminal laws of the state as violations of those laws are encountered by such special investigators. The director of police training at the law enforcement training center is authorized to offer and carry out a special course of instruction for special investigators performing law enforcement duties under authority of this subsection. Such special investigators shall not carry firearms without having first successfully completed such special law enforcement training course.

(b) Administrator powers to investigate. For the purpose of an investigation under this act, the administrator or its designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the administrator considers relevant or material to the investigation.

(c) Procedure and remedies for noncompliance. If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the administrator under this act, the administrator may apply to any court of competent jurisdiction or a court of another state to enforce compliance. The court may:

(1) Hold the person in contempt;

(2) order the person to appear before the administrator;

(3) order the person to testify about the matter under investigation or in question;

(4) order the production of records;

(5) grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;

(6) impose a civil penalty of not greater than \$25,000 for each violation; and

(7) grant any other necessary or appropriate relief.

(d) Application for relief. This section does not preclude a person from applying to any court of competent jurisdiction or a court of another state for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

(e) Use immunity procedure. An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the administrator under this act or in an action or proceeding instituted by the administrator under this act on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the administrator may compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under

such an order may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

(f) Assistance to securities regulator of another jurisdiction. At the request of the securities regulator of another state or a foreign jurisdiction, the administrator may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The administrator may provide the assistance by using the authority to investigate and the powers conferred by this section as the administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this act or other law of this state if occurring in this state. In deciding whether to provide the assistance, the administrator may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the administrator on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this state; and the availability of resources and employees of the administrator to carry out the request for assistance.

History: L. 2004, ch. 154, § 41; July 1, 2005.