

## HOUSE BILL No. 2558

By Committee on Insurance

2-4

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1 AN ACT concerning the Kansas uniform securities act; relating to victims  
2 of securities violations, powers of the administrator; establishing the  
3 securities act victim restitution program; securities act victim restitution  
4 fund; amending K.S.A. 75-3036 and K.S.A. 2019 Supp. 17-12a601 and  
5 17-12a609 and repealing the existing sections.  
6

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

8 Section 1. K.S.A. 2019 Supp. 17-12a601 is hereby amended to read  
9 as follows: 17-12a601. (a) *Administration.* (1) This act shall be  
10 administered by the securities commissioner of Kansas.

11 (2) All fees herein provided for shall be collected by the  
12 administrator. All salaries and expenses necessarily incurred in the  
13 administration of this act shall be paid from the securities act fee fund.

14 (3) The administrator shall remit all moneys received from all fees,  
15 charges, deposits or penalties which have been collected under this act or  
16 other laws of this state regulating the issuance, sale or disposal of  
17 securities or regulating dealers in this state to the state treasurer at least  
18 monthly. Upon receipt of any such remittance, the state treasurer shall  
19 deposit the entire amount thereof in the state treasury. In accordance with  
20 K.S.A. 75-3170a, and amendments thereto, 10% of each such deposit shall  
21 be credited to the state general fund and, except as provided in subsection  
22 (d), the balance shall be credited to the securities act fee fund.

23 (4) *Except as provided in subsection (e),* on the last day of each fiscal  
24 year, the director of accounts and reports shall transfer from the securities  
25 act fee fund to the state general fund any remaining unencumbered amount  
26 in the securities act fee fund exceeding \$50,000 so that the beginning  
27 unencumbered balance in the securities act fee fund on the first day of  
28 each fiscal year is \$50,000. All expenditures from the securities act fee  
29 fund shall be made in accordance with appropriation acts upon warrants of  
30 the director of accounts and reports issued pursuant to vouchers approved  
31 by the administrator or by a person or persons designated by the  
32 administrator.

33 (5) All amounts transferred from the securities act fee fund to the  
34 state general fund under paragraph (4) are to reimburse the state general  
35 fund for accounting, auditing, budgeting, legal, payroll, personnel and  
36 purchasing services and any other governmental services ~~which~~ that are

1 performed on behalf of the state agency involved by other state agencies  
2 ~~which~~ *that* receive appropriations from the state general fund to provide  
3 such services.

4 (b) *Prohibited conduct.* (1) It is unlawful for the administrator or an  
5 officer, employee, or designee of the administrator to use for personal  
6 benefit or the benefit of others records or other information obtained by or  
7 filed with the administrator that are not public under K.S.A. 17-12a607(b),  
8 and amendments thereto. This act does not authorize the administrator or  
9 an officer, employee, or designee of the administrator to disclose the  
10 record or information, except in accordance with K.S.A. 17-12a602, 17-  
11 12a607(c); or 17-12a608, and amendments thereto.

12 (2) Neither the administrator nor any employee of the administrator  
13 shall be interested as an officer, director, or stockholder in securing any  
14 authorization to sell securities under the provisions of this act.

15 (c) *No privilege or exemption created or diminished.* This act does  
16 not create or diminish a privilege or exemption that exists at common law,  
17 by statute or rule; or otherwise.

18 (d) *Investor education and protection.* (1) The administrator may  
19 develop and implement investor education and protection initiatives to  
20 inform the public about investing in securities and protect the public from  
21 violations of the Kansas uniform securities act, K.S.A. 17-12a101 et seq.,  
22 and amendments thereto. Such initiatives shall have a particular emphasis  
23 on the prevention, detection, enforcement and prosecution of securities  
24 fraud. In developing and implementing these initiatives, the administrator  
25 may collaborate with public and nonprofit organizations with an interest in  
26 investor education or protection. The administrator may accept a grant or  
27 donation from a person that is not affiliated with the securities industry or  
28 from a nonprofit organization, regardless of whether the organization is  
29 affiliated with the securities industry, to develop and implement investor  
30 education and protection initiatives. This subsection does not authorize the  
31 administrator to require participation or monetary contributions of a  
32 registrant in an investor education program.

33 (2) There is hereby established in the state treasury the investor  
34 education and protection fund. Such fund shall be administered by the  
35 administrator for the purposes described in ~~subsection (d)~~ *paragraph (1)*  
36 and for the education of registrants, including official hospitality. Moneys  
37 collected as civil penalties under this act shall be credited to the investor  
38 education and protection fund. The administrator may also receive  
39 payments designated to be credited to the investor education and  
40 protection fund as a condition in settlements of cases arising out of  
41 investigations or examinations. All expenditures from the investor  
42 education and protection fund shall be made in accordance with  
43 appropriation acts upon warrants of the director of accounts and reports

1 issued pursuant to vouchers approved by the administrator or ~~by a person~~  
2 ~~or persons designated by the administrator~~ the administrator's designee.  
3 The administrator shall remit all moneys received under this paragraph to  
4 the state treasurer in accordance with the provisions of K.S.A. 75-4215,  
5 and amendments thereto. Upon receipt of each such remittance, the state  
6 treasurer shall deposit the entire amount in the state treasury to the credit  
7 of the investor education and protection fund.

8 (e) (1) The administrator may develop and implement a securities act  
9 victims restitution program to provide restitution assistance to victims of  
10 securities violations who were awarded restitution as the result of a legal  
11 or administrative action for violations of this act but who have no  
12 reasonable likelihood of receiving the full amount of awarded restitution.

13 (2) There is hereby established in the state treasury the securities act  
14 victim restitution fund to be administered by the administrator. All  
15 expenditures of moneys from the securities act victim restitution fund shall  
16 be used to provide restitution assistance to victims of securities violations  
17 who were awarded restitution as the result of a legal or administrative  
18 action for violations of this act but who have no reasonable likelihood of  
19 receiving the full amount of awarded restitution. All such expenditures  
20 shall be made in accordance with appropriation acts upon warrants of the  
21 director of accounts and reports issued pursuant to vouchers approved by  
22 the administrator or by the administrator's designee. The administrator  
23 may accept all gifts, grants, donations and bequests to the fund. The  
24 administrator shall remit all moneys received under this paragraph to the  
25 state treasurer in accordance with the provisions of K.S.A. 75-4215, and  
26 amendments thereto. Upon receipt of each such remittance, the state  
27 treasurer shall deposit the entire amount in the state treasury to the credit  
28 of the securities act victim restitution fund.

29 (3) For purposes of administering the securities act victim restitution  
30 program:

31 (A) "Claimant" means a person who files an application for  
32 restitution assistance from the securities act victim restitution fund on  
33 behalf of a victim, including the person awarded restitution in a final  
34 order for a violation of this act, the executor of such person and the heirs  
35 and assigns of such person. The claimant and the victim may be, but need  
36 not be, the same person.

37 (B) "Final order" means an order issued by the administrator or an  
38 order issued in a legal action brought by the administrator or the attorney  
39 general pursuant to this act that is not subject to further judicial review or  
40 appeal.

41 (C) "Fund" means the securities act victim restitution fund created by  
42 this subsection.

43 (D) "Restitution assistance" means payment from the fund to an

1 eligible claimant.

2 (E) "Securities violation" means a violation of this act, or rules and  
3 regulations adopted or an order issued under this act.

4 (F) "Victim" means a person who was awarded restitution in a final  
5 order.

6 (G) "Vulnerable person" means a person who met the definition of  
7 elder person or dependent adult as defined in K.S.A. 2019 Supp. 21-5417,  
8 and amendments thereto, at the time of the securities violation that  
9 resulted in an award of restitution in a final order.

10 (4) Only natural persons who were residents of the state of Kansas at  
11 the time of the securities violation that resulted in an award of restitution  
12 in a final order are eligible to receive restitution assistance from the fund.  
13 The administrator shall not pay such restitution assistance from the fund:

14 (i) To more than one claimant per victim;

15 (ii) unless the person ordered to pay restitution has not paid the full  
16 amount of restitution owed to the victim before the application for  
17 restitution assistance from the fund is due;

18 (iii) on behalf of a person who is not a victim;

19 (iv) to or on behalf of a person who sustained monetary injury as a  
20 result of committing, attempting to commit, participating in or assisting in  
21 the securities violation that resulted in the restitution award for which a  
22 claimant seeks restitution assistance from the fund; or

23 (v) if there was no award of restitution in the final order.

24 (5) A claimant's application for restitution assistance from the fund  
25 shall be received by the administrator no later than two years after the  
26 date upon which the order that awarded restitution meets the definition of  
27 a final order.

28 (6) The administrator may grant, in whole or in part, and in the  
29 administrator's sole discretion, a claimant's application and award  
30 payment of restitution assistance from the fund, if:

31 (i) A claimant demonstrates eligibility for restitution assistance from  
32 the fund;

33 (ii) the administrator receives a timely application for such  
34 assistance; and

35 (iii) the administrator concludes that there is no reasonable  
36 likelihood that the claimant will receive the full amount of restitution  
37 awarded by the final order.

38 (7) Restitution assistance may be awarded as follows:

39 (A) Except as otherwise provided in this paragraph, the maximum  
40 restitution assistance award per victim from the fund shall be the lesser of  
41 \$25,000 or 25% of the amount of restitution awarded in the final order,  
42 excluding any interest awarded, that remains unpaid at the time the  
43 administrator awards restitution assistance under this subsection; and

1       (B) if the victim is a vulnerable person, the maximum restitution  
2 assistance award per victim from the fund shall be the lesser of \$50,000 or  
3 50% of the amount of restitution awarded in the final order, excluding any  
4 interest awarded, that remains unpaid at the time the administrator  
5 awards restitution assistance under this subsection.

6       (8) On July 1, 2020, or as soon as moneys become available, the  
7 director of accounts and reports shall transfer \$250,000 from the  
8 securities act fee fund to the securities act victim restitution fund.  
9 Beginning with the fiscal year ending June 30, 2022, and in each fiscal  
10 year thereafter, in the administrator's discretion, the administrator may  
11 increase the balance in the securities act victim restitution fund by  
12 transferring amounts from the investor education and protection fund,  
13 however the remaining balance in the investor education and protection  
14 fund after any such transfer shall be at least \$50,000.

15       (9) The administrator may establish procedures for the application  
16 and determination of restitution assistance awards from the fund by rules  
17 and regulations adopted or an order issued under this act.

18       (10) Determinations made by the administrator with respect to the  
19 fund and applications for restitution assistance are subject to the sole  
20 discretion of the administrator and shall not be subject to judicial review  
21 in accordance with the provisions of the Kansas judicial review act.

22       Sec. 2. K.S.A. 2019 Supp. 17-12a609 is hereby amended to read as  
23 follows: 17-12a609. A final order issued by the administrator under this act  
24 is subject to judicial review in accordance with the provisions of the  
25 Kansas judicial review act, *except as provided in K.S.A. 17-12a601(e), and*  
26 *amendments thereto.*

27       Sec. 3. K.S.A. 75-3036 is hereby amended to read as follows: 75-  
28 3036. (a) The state general fund is exclusively defined as the fund into  
29 which shall be placed all public moneys and revenue coming into the state  
30 treasury not specifically authorized by the constitution or by statute to be  
31 placed in a separate fund, and not given or paid over to the state treasurer  
32 in trust for a particular purpose, which unallocated public moneys and  
33 revenue shall constitute the general fund of the state. Moneys received or  
34 to be used under constitutional or statutory provisions or under the terms  
35 of a gift or payment for a particular and specific purpose are to be kept as  
36 separate funds and shall not be placed in the general fund or ever become a  
37 part of it.

38       (b) The following funds shall be used for the purposes set forth in the  
39 statutes concerning such funds and for no other governmental purposes. It  
40 is the intent of the legislature that the following funds and the moneys  
41 deposited in such funds shall remain intact and inviolate for the purposes  
42 set forth in the statutes concerning such funds: Board of accountancy fee  
43 fund, K.S.A. 1-204 and 75-1119b, and amendments thereto, and special

1 litigation reserve fund of the board of accountancy; bank commissioner fee  
2 fund, K.S.A. 9-1703, 16a-2-302 and 75-1308, and amendments thereto,  
3 bank investigation fund, K.S.A. 9-1111b, and amendments thereto,  
4 consumer education settlement fund and litigation expense fund of the  
5 state bank commissioner; securities act fee fund~~and~~, investor education  
6 and protection fund *and securities act victim restitution fund*, K.S.A. 17-  
7 12a601, and amendments thereto, of the office of the securities  
8 commissioner of Kansas; credit union fee fund, K.S.A. 17-2236, and  
9 amendments thereto, of the state department of credit unions; court  
10 reporters fee fund, K.S.A. 20-1a02, and amendments thereto, and bar  
11 admission fee fund, K.S.A. 20-1a03, and amendments thereto, of the  
12 judicial branch; fire marshal fee fund, K.S.A. 31-133a and 31-134, and  
13 amendments thereto, and boiler inspection fee fund, K.S.A. 44-926, and  
14 amendments thereto, of the state fire marshal; food service inspection  
15 reimbursement fund, K.S.A. 36-512, and amendments thereto, of the  
16 Kansas department of agriculture; wage claims assignment fee fund,  
17 K.S.A. 44-324, and amendments thereto, and workmen's compensation fee  
18 fund, K.S.A. 74-715, and amendments thereto, of the department of labor;  
19 veterinary examiners fee fund, K.S.A. 47-820, and amendments thereto, of  
20 the state board of veterinary examiners; mined-land reclamation fund,  
21 K.S.A. 49-420, and amendments thereto, of the department of health and  
22 environment; conservation fee fund and well plugging assurance fund,  
23 K.S.A. 55-155, 55-176, 55-609, 55-711 and 55-901, and amendments  
24 thereto, gas pipeline inspection fee fund, K.S.A. 66-1,155, and  
25 amendments thereto, and public service regulation fund, K.S.A. 66-1503,  
26 and amendments thereto, of the state corporation commission; land survey  
27 fee fund, K.S.A. 58-2011, and amendments thereto, of the state historical  
28 society; real estate recovery revolving fund, K.S.A. 58-3074, and  
29 amendments thereto, of the Kansas real estate commission; appraiser fee  
30 fund, K.S.A. 58-4107, and amendments thereto, and appraisal  
31 management companies fee fund of the real estate appraisal board;  
32 amygdalin (laetrile) enforcement fee fund, K.S.A. 65-6b10, and  
33 amendments thereto; mortuary arts fee fund, K.S.A. 65-1718, and  
34 amendments thereto, of the state board of mortuary arts; board of  
35 barbering fee fund, K.S.A. 65-1817a, and amendments thereto, of the  
36 Kansas board of barbering; cosmetology fee fund, K.S.A. 65-1951 and 74-  
37 2704, and amendments thereto, of the Kansas state board of cosmetology;  
38 healing arts fee fund, K.S.A. 65-2011, 65-2855, 65-2911, 65-5413, 65-  
39 5513, 65-6910, 65-7210 and 65-7309, and amendments thereto, and  
40 medical records maintenance trust fund, of the state board of healing arts;  
41 other state fees fund, K.S.A. 65-4024b, and amendments thereto, of the  
42 Kansas department for aging and disability services; board of nursing fee  
43 fund, K.S.A. 74-1108, and amendments thereto, of the board of nursing;

1 dental board fee fund, K.S.A. 74-1405, and amendments thereto, and  
2 special litigation reserve fund, of the Kansas dental board; optometry fee  
3 fund, K.S.A. 74-1503, and amendments thereto, and optometry litigation  
4 fund, of the board of examiners in optometry; state board of pharmacy fee  
5 fund, K.S.A. 74-1609, and amendments thereto, and state board of  
6 pharmacy litigation fund, of the state board of pharmacy; abstracters' fee  
7 fund, K.S.A. 74-3903, and amendments thereto, of the abstracters' board of  
8 examiners; athletic fee fund, K.S.A. 74-50,188, and amendments thereto,  
9 of the department of commerce; hearing instrument board fee fund, K.S.A.  
10 74-5805, and amendments thereto, and hearing instrument litigation fund  
11 of the Kansas board of examiners in fitting and dispensing of hearing  
12 instruments; commission on disability concerns fee fund, K.S.A. 74-6708,  
13 and amendments thereto, of the governor's department; technical  
14 professions fee fund, K.S.A. 74-7009, and amendments thereto, and  
15 special litigation reserve fund of the state board of technical professions;  
16 behavioral sciences regulatory board fee fund, K.S.A. 74-7506, and  
17 amendments thereto, of the behavioral sciences regulatory board;  
18 governmental ethics commission fee fund, K.S.A. 25-4119e, and  
19 amendments thereto, of the governmental ethics commission; emergency  
20 medical services board operating fund, K.S.A. 75-1514, and amendments  
21 thereto, of the emergency medical services board; fire service training  
22 program fund, K.S.A. 75-1514, and amendments thereto, of the university  
23 of Kansas; uniform commercial code fee fund, K.S.A. 75-448, and  
24 amendments thereto, of the secretary of state; prairie spirit rails-to-trails  
25 fee fund of the Kansas department of wildlife, parks and tourism; water  
26 marketing fund, K.S.A. 82a-1315c, and amendments thereto, of the Kansas  
27 water office; insurance department service regulation fund, K.S.A. 40-112,  
28 and amendments thereto, of the insurance department; state fair special  
29 cash fund, K.S.A. 2-220, and amendments thereto, of the state fair board;  
30 scrap metal theft reduction fee fund, K.S.A. 2019 Supp. 50-6,109a, and  
31 amendments thereto; and any other fund in which fees are deposited for  
32 licensing, regulating or certifying a person, profession, commodity or  
33 product.

34 (c) If moneys received pursuant to statutory provisions for a specific  
35 purpose by a fee agency are proposed to be transferred to the state general  
36 fund or a special revenue fund to be expended for general government  
37 services and purposes in the governor's budget report submitted pursuant  
38 to K.S.A. 75-3721, and amendments thereto, or any introduced house or  
39 senate bill, the person or business entity who paid such moneys within the  
40 preceding 24-month period shall be notified by the fee agency within 30  
41 days of such submission or introduction:

42 (1) By electronic means, if the fee agency has an electronic address  
43 on record for such person or business entity. If no such electronic address

1 is available, the fee agency shall send written notice by first class mail; or

2 (2) any agency that receives fees from a tax, fee, charge or levy paid  
3 to the commissioner of insurance shall post the notification required by  
4 this subsection on such agency's website.

5 (d) Any such moneys ~~which~~ *that* are wrongfully or by mistake placed  
6 in the general fund shall constitute a proper charge against such general  
7 fund. All legislative appropriations which do not designate a specific fund  
8 from which they are to be paid shall be considered to be proper charges  
9 against the general fund of the state. All revenues received by the state of  
10 Kansas or any department, board, commission; or institution of the state of  
11 Kansas, and required to be paid into the state treasury shall be placed in  
12 and become a part of the state general fund, except as otherwise provided  
13 by law.

14 (e) The provisions of this section shall not apply to the 10% credited  
15 to the state general fund to reimburse the state general fund for accounting,  
16 auditing, budgeting, legal, payroll, personnel and purchasing services, and  
17 any and all other state governmental services, as provided in K.S.A. 75-  
18 3170a, and amendments thereto.

19 (f) Beginning on January 8, 2018, the director of the budget shall  
20 prepare a report listing the unencumbered balance of each fund in  
21 subsection (b) on June 30 of the previous fiscal year and January 1 of the  
22 current fiscal year. Such report shall be delivered to the secretary of the  
23 senate and the chief clerk of the house of representatives on or before the  
24 first day of the regular legislative session each year.

25 (g) As used in this section, "fee agency" ~~shall include~~ *includes* the  
26 state agencies specified in K.S.A. 75-3717(f), and amendments thereto,  
27 and any other state agency that collects fees for licensing, regulating or  
28 certifying a person, profession, commodity or product.

29 Sec. 4. K.S.A. 75-3036 and K.S.A. 2019 Supp. 17-12a601 and 17-  
30 12a609 are hereby repealed.

31 Sec. 5. This act shall take effect and be in force from and after its  
32 publication in the statute book.