

KANSAS OFFICE *of*
REVISOR *of* STATUTES

LEGISLATURE *of* THE STATE *of* KANSAS
Legislative Attorneys transforming ideas into legislation.

300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: House Committee on Insurance and Pensions
From: Office of the Revisor of Statutes
Date: February 1, 2021
Subject: Bill Brief for HB 2135: Establishing the securities act victim restitution program

HB 2135 amends K.S.A. 75-3036 and 77-547 and K.S.A. 2020 Supp. 17-12a508, 17-12a601 and 17-12a609, establishing the securities act victim restitution program and the securities act victim restitution fund.

Section 1 amends K.S.A. 2020 Supp. 17-12a508, pertaining to criminal penalties and the statute of limitations for intentional violations of the Kansas uniform securities act. Under current law, no prosecution for an intentional violation may commence more than 10 years after the alleged violation if the victim is the Kansas Public Employees Retirement System (KPERs); prosecution for any other intentional violation of the Kansas uniform securities act may not commence more than five years after the alleged violation. SB 30 would strike the five-year statute of limitations and make the statute of limitations ten years for all intentional violations of the Kansas uniform securities act.

Section 2 amends K.S.A. 77-547, pertaining to the identification of agency head or administrator for purposes of administrative proceedings under the Kansas administrative procedure act (KAPA). Under current law, for purposes of administrative hearings for the insurance department under (KAPA) the "agency head" is the commissioner of insurance or the assistant commissioner of insurance, when acting on the commissioner's behalf. The bill would identify the securities commissioner or the assistant commissioner of insurance as administrator for purposes of administrative hearings for the office of the securities commissioner under KAPA.

Section 3 amends K.S.A. 2020 Supp. 17-12a601 by creating a securities act victims restitution program, creating the fund from which restitution assistance is paid, and detailing the specifics of the program.

The securities act victim restitution program's purpose is to provide restitution assistance to victims of securities violations who were awarded restitution as the result of a legal or administrative action for violations of the Kansas Uniform Securities Act, but who have no reasonable likelihood of receiving the full amount of the awarded restitution. The bill states that a claimant must apply for

restitution assistance and that the administrator must receive the claimant's application no later than two years after the date of the final order.

The administrator would have sole discretion in granting any award of restitution assistance, in whole or in part, to a claimant. To receive restitution assistance, a claimant must demonstrate eligibility for such assistance, file a timely application with the administrator and the administrator must determine that there is no reasonable likelihood that the claimant will receive the full amount of restitution awarded by the final order. Restitution assistance is limited to the lesser of either \$25,000 or 25% of the amount of the restitution awarded in the final order, excluding any interest awarded, that remains unpaid at the time the administrator awards restitution assistance. If the victim is a vulnerable person, the maximum amount of restitution assistance doubles to the lesser of either \$50,000 or 50% of the amount of the restitution awarded in the final order, excluding any interest awarded, that remains unpaid at the time the administrator awards restitution assistance.

Section 4 amends K.S.A. 17-12a609 to state that a final order of the administrator is subject to judicial review, *except* those determinations pertaining to the Securities Act Victim Restitution Program Fund and applications for assistance.

Section 5 amends K.S.A. 75-3036 to add the Securities Act Victim Restitution Fund to the list of funds that are statutorily required to be used for the purpose set forth and for no other governmental purpose.