

HOUSE BILL No. 2294

By Committee on Financial Institutions

2-12

Proposed Amendment  
2/25/13  
Prepared by M Sterling  
Revisor of Statutes Office

1 AN ACT concerning the Kansas uniform securities act, amending K.S.A.  
2 17-12a302, 17-12a402 and ~~17-12a611~~ and repealing the existing  
3 sections.

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

5 Section 1. K.S.A. 17-12a302 is hereby amended to read as follows:  
6 17-12a302. (a) *Required filing of records.* With respect to a federal covered  
7 security, as defined in section 18(b)(2) of the securities act of 1933 (15  
8 U.S.C. section 77r(b)(2)), that is not otherwise exempt under K.S.A. 17-  
9 12a201 through 17-12a203, and amendments thereto, a rule adopted or  
10 order issued under this act may require the filing of any or all of the  
11 following records:

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

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

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

27 (b) *Notice filing effectiveness and renewal.* A notice filing under  
28 subsection (a) is effective for one year commencing on the later of the  
29 notice filing or the effectiveness of the offering filed with the securities  
30 and exchange commission. On or before expiration, the issuer may renew  
31 a notice filing by filing a copy of those records filed by the issuer with the  
32 securities and exchange commission that are required by rule or order  
33 under this act to be filed and by paying a renewal fee not to exceed \$2,500.  
34 A previously filed consent to service of process complying with K.S.A.  
35 17-12a611, and amendments thereto, may be incorporated by reference in  
36

and 17-12a601

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1 obtain insurance or post a bond or other satisfactory form of security. The  
2 administrator may determine the requirements of the insurance, bond, or  
3 other satisfactory form of security. Insurance or a bond or other  
4 satisfactory form of security may not be required of a broker-dealer  
5 registered under this act whose net capital exceeds, or of an investment  
6 adviser registered under this act whose minimum financial requirements  
7 exceed, the amounts required by rule or order under this act. The  
8 insurance, bond, or other satisfactory form of security must permit an  
9 action by a person to enforce any liability on the insurance, bond, or other  
10 satisfactory form of security if instituted within the time limitations in  
11 K.S.A. 17-12a509(j)(2), and amendments thereto.

12 (f) *Requirements for custody.* Subject to section 15~~(h)~~(i) of the  
13 securities exchange act of 1934 (15 U.S.C. section 78o~~(h)~~(i)) or section  
14 222 of the investment advisers act of 1940 (15 U.S.C. section 80b-22~~§~~  
15 80b-18a), an agent may not have custody of funds or securities of a  
16 customer except under the supervision of a broker-dealer and an  
17 investment adviser representative may not have custody of funds or  
18 securities of a client except under the supervision of an investment adviser  
19 or a federal covered investment adviser. A rule adopted or order issued  
20 under this act may prohibit, limit, or impose conditions on a broker-dealer  
21 regarding custody of funds or securities of a customer and on an  
22 investment adviser regarding custody of securities or funds of a client.

23 (g) *Investment adviser brochure rule.* With respect to an investment  
24 adviser registered or required to be registered under this act, a rule adopted  
25 or order issued under this act may require that information or other record  
26 be furnished or disseminated to clients or prospective clients in this state  
27 as necessary or appropriate in the public interest and for the protection of  
28 investors and advisory clients.

29 (h) *Continuing education.* A rule adopted or order issued under this  
30 act may require an individual registered under K.S.A. 17-12a402 or 17-  
31 12a404, and amendments thereto, to participate in a continuing education  
32 program approved by the securities and exchange commission and  
33 administered by a self-regulatory organization or, in the absence of such a  
34 program, a rule adopted or order issued under this act may require  
35 continuing education for an individual registered under K.S.A. 17-12a404,  
36 and amendments thereto.

37 Sec. 4. K.S.A. 17-12a302, 17-12a402 and ~~17-12a411~~ are hereby  
38 repealed.

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

Sec. 4. Insert K.S.A.  
17-12a601 as amended  
by balloon attached  
And by redesignating  
the remaining sections  
accordingly

and 17-12a601

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17-12a601. Administration; investor education fund. (a) Administration. (1) This act shall be administered by the securities commissioner of Kansas.

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

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

(4) On the last day of each fiscal year, the director of accounts and reports shall transfer from the securities act fee fund to the state general fund any remaining unencumbered amount in the securities act fee fund exceeding \$50,000 so that the beginning unencumbered balance in the securities act fee fund on the first day of each fiscal year is \$50,000. All expenditures from the securities act fee 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 administrator or by a person or persons designated by the administrator.

(5) All amounts transferred from the securities act fee fund to the state general fund under paragraph (4) are to reimburse the state general fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services and any other governmental services which are performed on behalf of the state agency involved by other state agencies which receive appropriations from the state general fund to provide such services.

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

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

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

(d) Investor education. (1) The administrator may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the administrator may collaborate with public and nonprofit organizations with an interest in investor education. The administrator may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the administrator to require participation or monetary contributions of a registrant in an investor education program.

(2) There is hereby established in the state treasury the investor education fund. Such fund shall be administered by the administrator for the purposes described in subsection (d)(1) and for the education of registrants, including official hospitality. Moneys collected as civil penalties under this act shall be credited to the investor education fund. The administrator may also receive payments designated to the investor education fund as a condition in settlements of cases arising out of investigations or examinations. All expenditures from the investor education 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 administrator or by a person or persons designated by the administrator. Two years after the effective date of this act, the administrator shall conduct a review and submit a report to the governor and the legislature concerning the expenditures from the investor education fund and the results achieved from the investor education program.

History: L. 2004, ch. 154, § 40; L. 2011, ch. 53, § 6; July 1.

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and personal  
financial literacy

financial literacy and

See attachment

## ATTACHMENT

The investor education fund shall be administered by the administrator for the purposes described in subsection (d)(1) or for the following purposes at the discretion of the administrator:

(A) Education of applicants for registration under this act and registrants or their representatives, including official hospitality;

(B) training of the administrator's staff;

(C) grants to public or private schools or universities in Kansas for education in personal or business finance and related subjects; or

(D) transfers to the securities litigation fund as described in subsection (e).

(3) On the last day of each fiscal year, the director of accounts and reports shall transfer from the investor education fund to the state general fund any remaining unencumbered amount in the investor education fund exceeding \$500,000 so that the beginning unencumbered balance in the investor education fund on the first day of each fiscal year is \$500,000.

(4) All amounts transferred from the investor education fund to the state general fund under paragraph (3) are to reimburse the state general fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services and any other governmental services which are performed on behalf of the state agency involved by other state agencies which receive appropriations from the state general fund to provide such services.

(e) There is hereby established in the state treasury the securities litigation fund. Such fund shall be administered by the administrator for the purpose of enforcing provisions of this act through administrative hearings and legal actions in state and federal courts to resolve alleged violations of this act or rules and regulations adopted or order issued under this act. All expenditures from the securities litigation 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 administrator or by a person or persons designated by the administrator. The administrator may make or authorize transfers from the investor education fund to the securities litigation fund, when necessary, to replenish the securities litigation fund for operations as deemed appropriate by the administrator up to an aggregate maximum amount of \$200,000 in any fiscal year, provided that, immediately after any such transfer, the investor education fund has an unencumbered balance of at least \$250,000. The maximum aggregate amount of such transfers specified in this subsection may be exceeded by the administrator with the approval of the state finance council acting on this matter which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c, and amendments thereto, except that such approval also may be given while the legislature is in session.