

## HOUSE BILL No. 2562

By Committee on Financial Institutions and Pensions

Requested by Eric Turek on behalf of the Kansas Insurance Department

1-22

1 AN ACT concerning securities; enacting the protect vulnerable adults from  
2 financial exploitation act; requiring reporting of instances of suspected  
3 financial exploitation under certain circumstances; providing civil and  
4 administrative immunity to individuals who report such instances;  
5 amending K.S.A. 17-12a412 and repealing the existing section.  
6

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

8 New Section 1. Sections 1 through 9, and amendments thereto, shall  
9 be known and may be cited as the protect vulnerable adults from financial  
10 exploitation act.

11 New Sec. 2. As used in the protect vulnerable adults from financial  
12 exploitation act:

13 (a) "Act" means the protect vulnerable adults from financial  
14 exploitation act.

15 (b) "Agent" means the same as defined in K.S.A. 17-12a102, and  
16 amendments thereto.

17 (c) "Broker-dealer" means the same as defined in K.S.A. 17-12a102,  
18 and amendments thereto.

19 (d) "Commissioner" means the securities commissioner of Kansas.

20 (e) "Eligible adult" means an elder person or dependent adult as  
21 defined in K.S.A. 21-5417, and amendments thereto.

22 (f) "Financial exploitation" means the unlawful or improper use,  
23 control or withholding of an eligible adult's property, income, resources or  
24 trust funds by any other person or entity in a manner that is not for the  
25 profit of or to the advantage of the eligible adult. "Financial exploitation"  
26 includes, but is not limited to, the:

27 (1) Use of deception, intimidation, coercion, extortion or undue  
28 influence by a person or entity to obtain or use an eligible adult's property,  
29 income, resources or trust funds in a manner for the profit of or to the  
30 advantage of such person or entity;

31 (2) breach of a fiduciary duty, including, but not limited to, the  
32 misuse of a power of attorney, trust or a guardianship or conservatorship  
33 appointment, as it relates to the property, income, resources or trust funds  
34 of the eligible adult; or

35 (3) obtainment or use of an eligible adult's property, income,

1 resources or trust funds, without lawful authority, by a person or entity  
2 who knows or clearly should know that the eligible adult lacks the  
3 capacity to consent to the release or use of such eligible adult's property,  
4 income, resources or trust funds.

5 (g) "Investment adviser" means the same as defined in K.S.A. 17-  
6 12a102, and amendments thereto.

7 (h) "Investment adviser representative" means the same as defined in  
8 K.S.A. 17-12a102, and amendments thereto.

9 (i) "Person reasonably associated with the eligible adult" means:

10 (1) A person authorized to transact business on the account of the  
11 eligible adult;

12 (2) an eligible adult's spouse, child, parent or sibling;

13 (3) a person who was previously designated by the eligible adult to  
14 receive information under a customer agreement;

15 (4) a legal guardian or conservator of the eligible adult;

16 (5) a trustee, co-trustee or successor trustee of the account of the  
17 eligible adult;

18 (6) a person named as a beneficiary on an account of the eligible  
19 adult;

20 (7) an agent under a power of attorney of the eligible adult; or

21 (8) any other person permitted to be notified under existing state or  
22 federal law, regulation or the rules of a self-regulatory organization, as  
23 defined in K.S.A. 17-12a102, and amendments thereto.

24 (j) "Protective agencies" means the commissioner and the Kansas  
25 department for children and families.

26 (k) "Qualified person" means any agent, broker-dealer, investment  
27 adviser, investment adviser representative or person who serves in a  
28 supervisory, compliance or legal capacity for a broker-dealer or investment  
29 adviser.

30 New Sec. 3. If a qualified person reasonably believes that financial  
31 exploitation of an eligible adult may have occurred, may have been  
32 attempted or is being attempted, the broker-dealer or investment adviser  
33 shall promptly report the matter to the protective agencies, which may  
34 further report the matter as permitted or required by law.

35 New Sec. 4. A qualified person who, in good faith and exercising  
36 reasonable care, makes a disclosure of information pursuant to section 3,  
37 and amendments thereto, shall be immune from administrative and civil  
38 liability that might otherwise arise from such disclosure or for any failure  
39 to notify the eligible adult of such disclosure.

40 New Sec. 5. A qualified person who, in good faith and exercising  
41 reasonable care, makes a disclosure of information pursuant to section 3,  
42 and amendments thereto, may notify any person reasonably associated  
43 with the eligible adult of the disclosure, unless the qualified person

1 suspects that such person reasonably associated with the eligible adult has  
2 committed or attempted financial exploitation of such eligible adult.

3 New Sec. 6. A qualified person who, in good faith and exercising  
4 reasonable care, complies with the provisions of section 5, and  
5 amendments thereto, shall be immune from any administrative and civil  
6 liability that might otherwise arise from such disclosure.

7 New Sec. 7. (a) A broker-dealer or investment adviser may delay a  
8 transaction associated with or disbursement from an account of an eligible  
9 adult or an account on which an eligible adult is a beneficiary if:

10 (1) A qualified person reasonably believes, after initiating an internal  
11 review of the requested transaction or disbursement and the suspected  
12 financial exploitation, that the requested transaction or disbursement may  
13 further financial exploitation of an eligible adult; and

14 (2) the broker-dealer or investment adviser:

15 (A) Immediately, and in no event more than two business days after  
16 the date that a requested transaction or disbursement is delayed, provides  
17 written notification of the delay and the reason for such delay to all parties  
18 authorized to transact business on the account, unless such qualified  
19 person reasonably believes that any such party is engaged in suspected or  
20 attempted financial exploitation of the eligible adult;

21 (B) immediately, and in no event more than two business days after  
22 the requested transaction or disbursement is delayed, notifies the  
23 protective agencies; and

24 (C) continues such internal review of the suspected or attempted  
25 financial exploitation of the eligible adult, as necessary and reports the  
26 results of such investigation to the protective agencies upon request.

27 (b) Any delay of a transaction or disbursement authorized by this  
28 section shall expire upon the soonest of:

29 (1) A determination by the broker-dealer or investment adviser that  
30 the transaction or disbursement will not result in financial exploitation of  
31 the eligible adult; or

32 (2) 15 business days following the date on which the broker-dealer or  
33 investment adviser first delayed the transaction or disbursement, unless  
34 either of the protective agencies requests that the broker-dealer or  
35 investment adviser extend the delay, in which case the delay shall expire  
36 not more than 25 business days after the date on which the broker-dealer  
37 or investment adviser first delayed the transaction or disbursement if not  
38 terminated sooner or further extended by either of the protective agencies  
39 or an order of a court of competent jurisdiction.

40 (c) A court of competent jurisdiction may enter an order extending  
41 the delay of the transaction or disbursement or may order other protective  
42 relief based on the petition of either of the protective agencies, the broker-  
43 dealer or investment adviser that initiated the delay under this section or

1 another interested party.

2 New Sec. 8. A broker-dealer or investment adviser that, in good faith  
3 and exercising reasonable care, complies with the provisions of section 7,  
4 and amendments thereto, shall be immune from any administrative and  
5 civil liability that might otherwise arise from such delay of a transaction or  
6 disbursement in accordance with this act.

7 New Sec. 9. (a) A broker-dealer or investment adviser shall provide  
8 access to or copies of records that are relevant to the suspected or  
9 attempted financial exploitation of an eligible adult to the protective  
10 agencies and to law enforcement agencies, either as part of a referral to the  
11 protective agencies or to law enforcement agencies or upon request of  
12 either protective agency or law enforcement agency pursuant to an  
13 investigation. The records may include historical records and records  
14 relating to the most recent transaction or transactions that may constitute  
15 financial exploitation of an eligible adult.

16 (b) No record made available to the commissioner or other agencies  
17 under this act shall be considered a public record under the open records  
18 act, K.S.A. 45-215 et seq., and amendments thereto. The provisions of this  
19 subsection providing for the confidentiality of public records shall expire  
20 on July 1, 2029, unless the legislature reviews and acts to continue such  
21 provisions in accordance with K.S.A. 45-229, and amendments thereto,  
22 prior to July 1, 2029.

23 (c) Notwithstanding any provision of law to the contrary, the  
24 protective agencies shall respond to reasonable inquiries from the  
25 notifying qualified person and may disclose to the notifying qualified  
26 person the general status or final disposition of any investigation that arose  
27 from a report made by such qualified person.

28 (d) Nothing in this act shall limit or otherwise impede the authority of  
29 the commissioner to access or examine the books and records of broker-  
30 dealers and investment advisers as otherwise provided by law.

31 Sec. 10. K.S.A. 17-12a412 is hereby amended to read as follows: 17-  
32 12a412. (a) *Disciplinary conditions — applicants.* An order issued under  
33 this act may deny an application, or may condition or limit registration of  
34 an applicant to be a broker-dealer, agent, investment adviser, or investment  
35 adviser representative if the administrator finds that the order is in the  
36 public interest and that there is a ground for discipline under subsection (d)  
37 against the applicant or, if the applicant is a broker-dealer or investment  
38 adviser, against any partner, officer, director, person having a similar status  
39 or performing similar functions, or person directly or indirectly controlling  
40 the broker-dealer or investment adviser.

41 (b) *Disciplinary conditions — registrants.* An order issued under this  
42 act may revoke, suspend, condition, or limit the registration of a registrant  
43 if the administrator finds that the order is in the public interest and that

1 there is a ground for discipline under subsection (d) against the registrant  
2 or, if the registrant is a broker-dealer or investment adviser, against any  
3 partner, officer, or director, any person having a similar status or  
4 performing similar functions, or any person directly or indirectly  
5 controlling the broker-dealer or investment adviser. However, the  
6 administrator:

7 (1) May not institute a revocation or suspension proceeding under  
8 this subsection based on an order issued by another state that is reported to  
9 the administrator or designee later than one year after the date of the order  
10 on which it is based; and

11 (2) under subsection (d)(5)(A) and (B), may not issue an order on the  
12 basis of an order under the state securities act of another state unless the  
13 other order was based on conduct for which subsection (d) would  
14 authorize the action had the conduct occurred in this state.

15 (c) *Disciplinary penalties — registrants.* If the administrator finds  
16 that the order is in the public interest and that there is a ground for  
17 discipline under subsection (d)(1) through (6), (8), (9), (10), (12) or (13)  
18 against a registrant or, if the registrant is a broker-dealer or investment  
19 adviser, against any partner, officer, or director, any person having similar  
20 functions, or any person directly or indirectly controlling the broker-dealer  
21 or investment adviser, then the administrator may enter an order against  
22 the registrant containing one or more of the following sanctions or  
23 remedies:

24 (1) A censure;

25 (2) a bar or suspension from association with a broker-dealer or  
26 investment adviser registered in this state;

27 (3) a civil penalty up to \$25,000 for each violation. If any person is  
28 found to have violated any provision of this act, and such violation is  
29 committed against elder or disabled persons, as defined in K.S.A. 50-676,  
30 and amendments thereto, in addition to any civil penalty otherwise  
31 provided by law, the administrator may impose an additional penalty not to  
32 exceed \$15,000 for each such violation. The total penalty against a person  
33 shall not exceed \$1,000,000;

34 (4) an order requiring the registrant to pay restitution for any loss or  
35 disgorge any profits arising from a violation, including, in the  
36 administrator's discretion, the assessment of interest from the date of the  
37 violation at the rate provided for interest on judgments by K.S.A. 16-204,  
38 and amendments thereto;

39 (5) an order charging the registrant with the actual cost of an  
40 investigation or proceeding; or

41 (6) an order requiring the registrant to cease and desist from any  
42 action that constitutes a ground for discipline, or to take other action  
43 necessary or appropriate to comply with this act.

1 (d) *Grounds for discipline.* A person may be disciplined under  
2 subsections (a) through (c) if the person:

3 (1) Has filed an application for registration in this state under this act  
4 or the predecessor act within the previous 10 years, which, as of the  
5 effective date of registration or as of any date after filing in the case of an  
6 order denying effectiveness, was incomplete in any material respect or  
7 contained a statement that, in light of the circumstances under which it was  
8 made, was false or misleading with respect to a material fact;

9 (2) willfully violated or willfully failed to comply with this act or the  
10 predecessor act or a rule adopted or order issued under this act or the  
11 predecessor act within the previous 10 years;

12 (3) has been convicted of a felony or within the previous 10 years has  
13 been convicted of a misdemeanor involving a security, a commodity future  
14 or option contract, or an aspect of a business involving securities,  
15 commodities, investments, franchises, insurance, banking, or finance;

16 (4) is enjoined or restrained by a court of competent jurisdiction in an  
17 action instituted by the administrator under this act or the predecessor act,  
18 a state, the securities and exchange commission, or the United States from  
19 engaging in or continuing an act, practice, or course of business involving  
20 an aspect of a business involving securities, commodities, investments,  
21 franchises, insurance, banking, or finance;

22 (5) is the subject of an order, issued after notice and opportunity for  
23 hearing by:

24 (A) The securities, depository institution, insurance, or other financial  
25 services regulator of a state or by the securities and exchange commission  
26 or other federal agency denying, revoking, barring, or suspending  
27 registration as a broker-dealer, agent, investment adviser, federal covered  
28 investment adviser, or investment adviser representative;

29 (B) the securities regulator of a state or by the securities and  
30 exchange commission against a broker-dealer, agent, investment adviser,  
31 investment adviser representative, or federal covered investment adviser;

32 (C) the securities and exchange commission or by a self-regulatory  
33 organization suspending or expelling the registrant from membership in  
34 the self-regulatory organization;

35 (D) a court adjudicating a United States postal service fraud order;

36 (E) the insurance regulator of a state denying, suspending, or  
37 revoking the registration of an insurance agent; or

38 (F) a depository institution regulator suspending or barring a person  
39 from the depository institution business;

40 (6) is the subject of an adjudication or determination, after notice and  
41 opportunity for hearing, by the securities and exchange commission, the  
42 commodity futures trading commission, the federal trade commission, a  
43 federal depository institution regulator, or a depository institution,

1 insurance; or other financial services regulator of a state that the person  
2 willfully violated the securities act of 1933, the securities exchange act of  
3 1934, the investment advisers act of 1940, the investment company act of  
4 1940, or the commodity exchange act, the securities or commodities law of  
5 a state; or a federal or state law under which a business involving  
6 investments, franchises, insurance, banking; or finance is regulated;

7 (7) is insolvent, either because the person's liabilities exceed the  
8 person's assets or because the person cannot meet the person's obligations  
9 as they mature, but the administrator may not enter an order against an  
10 applicant or registrant under this paragraph without a finding of insolvency  
11 as to the applicant or registrant;

12 (8) refuses to allow or otherwise impedes the administrator from  
13 conducting an audit or inspection under K.S.A. 17-12a411(d), and  
14 amendments thereto, refuses access to a registrant's office to conduct an  
15 audit or inspection under K.S.A. 17-12a411(d), and amendments thereto,  
16 fails to keep or maintain sufficient records to permit an audit disclosing the  
17 condition of the registrant's business; or fails willfully and without cause to  
18 comply with a request for information by the administrator or person  
19 designated by the administrator in conducting investigations or  
20 examinations under this act;

21 (9) has failed to reasonably supervise an agent, investment adviser  
22 representative; or other individual, if the agent, investment adviser  
23 representative; or other individual was subject to the person's supervision  
24 and committed a violation of this act or the predecessor act or a rule  
25 adopted or order issued under this act or the predecessor act within the  
26 previous 10 years;

27 (10) has not paid the proper filing fee within 30 days after having  
28 been notified by the administrator of a deficiency, but the administrator  
29 shall vacate an order under this paragraph when the deficiency is  
30 corrected;

31 (11) after notice and opportunity for a hearing, has been found within  
32 the previous 10 years:

33 (A) By a court of competent jurisdiction to have willfully violated the  
34 laws of a foreign jurisdiction under which the business of securities,  
35 commodities, investment, franchises, insurance, banking; or finance is  
36 regulated;

37 (B) to have been the subject of an order of a securities regulator of a  
38 foreign jurisdiction denying, revoking; or suspending the right to engage in  
39 the business of securities as a broker-dealer, agent, investment adviser,  
40 investment adviser representative; or similar person; or

41 (C) to have been suspended or expelled from membership by or  
42 participation in a securities exchange or securities association operating  
43 under the securities laws of a foreign jurisdiction;

1 (12) is the subject of a cease and desist order issued by the securities  
2 and exchange commission or issued under the securities, commodities,  
3 investment, franchise, banking, finance, or insurance laws of a state;

4 (13) has engaged in dishonest or unethical practices in the securities,  
5 commodities, investment, franchise, banking, finance, or insurance  
6 business within the previous 10 years;

7 (14) is not qualified on the basis of factors such as training,  
8 experience; and knowledge of the securities business. However, in the case  
9 of an application by an agent for a broker-dealer that is a member of a self-  
10 regulatory organization or by an individual for registration as an  
11 investment adviser representative, a denial order may not be based on this  
12 paragraph if the individual has successfully completed all examinations  
13 required by subsection (e). The administrator may require an applicant for  
14 registration under K.S.A. 17-12a402 or 17-12a404, and amendments  
15 thereto, who has not been registered in a state within the two years  
16 preceding the filing of an application in this state to successfully complete  
17 an examination; ~~or~~

18 (15) lacks sufficient character or reputation to warrant the public  
19 trust; *or*

20 (16) *was required to report information under the protect vulnerable*  
21 *adults from financial exploitation act and knowingly failed to make such a*  
22 *report or knowingly caused such report not to be made within the previous*  
23 *10 years.*

24 (e) *Examinations.* A rule adopted or order issued under this act may  
25 require that an examination, including an examination developed or  
26 approved by an organization of securities regulators, be successfully  
27 completed by a class of individuals or all individuals. An order issued  
28 under this act may waive, in whole or in part, an examination as to an  
29 individual and a rule adopted under this act may waive, in whole or in part,  
30 an examination as to a class of individuals if the administrator determines  
31 that the examination is not necessary or appropriate in the public interest  
32 and for the protection of investors.

33 (f) *Summary process.* In accordance with the Kansas administrative  
34 ~~procedures~~ *procedure* act, the administrator may use summary or  
35 emergency proceedings to suspend or deny an application; restrict,  
36 condition, limit, or suspend a registration; or censure, bar, or impose a civil  
37 penalty or cease and desist order on a registrant before final determination  
38 of an administrative proceeding. If a hearing is not requested and none is  
39 ordered by the administrator within 30 days after the date of service of the  
40 order, the order becomes final by operation of law. If a hearing is requested  
41 or ordered, the administrator, after notice of and opportunity for hearing to  
42 each person subject to the order, may modify or vacate the order or extend  
43 the order until final determination.



1 (g) *Procedural requirements.* (1) An order issued may not be issued  
2 under this section, except under subsection (f), without:

3 (A) Appropriate notice to the applicant or registrant;

4 (B) opportunity for hearing; and

5 (C) findings of fact and conclusions of law in a record.

6 (2) Proceedings under this subsection shall be conducted in  
7 accordance with the Kansas administrative ~~procedures~~ *procedure* act.

8 (h) *Control person liability.* A person that controls, directly or  
9 indirectly, a person not in compliance with this section may be disciplined  
10 by order of the administrator under subsections (a) through (c) to the same  
11 extent as the noncomplying person, unless the controlling person did not  
12 know, and in the exercise of reasonable care could not have known, of the  
13 existence of conduct that is a ground for discipline under this section.

14 (i) *Limit on investigation or proceeding.* The administrator may not  
15 institute a proceeding under subsection (a), (b), or (c) based solely on  
16 material facts actually known by the administrator unless an investigation  
17 or the proceeding is instituted within one year after the administrator  
18 actually acquires knowledge of the material facts.

19 Sec. 11. K.S.A. 17-12a412 is hereby repealed.

20 Sec. 12. This act shall take effect and be in force from and after its  
21 publication in the statute book.