

SESSION OF 2021

SUPPLEMENTAL NOTE ON SENATE BILL NO. 30

As Amended by Senate Committee on
Insurance

Brief*

SB 30, as amended, would amend the Kansas Uniform Securities Act (Act) and provisions in law applying to the purpose of certain funds to create a Securities Act Victims Restitution Program, which would provide restitution to certain victims of securities violations. The bill would establish the Securities Act Victim Restitution Fund (Fund) and require that on July 1, 2021, \$250,000 be transferred to this Fund. The bill would amend the statute of limitations for prosecutions under the Act. The bill would also amend the Kansas Administrative Procedure Act to add the definition of "Administrator." The bill would also make technical changes.

Statute of Limitations

The bill would make ten years the uniform statute of limitations for all prosecutions for any crime under the Act. Under current law, the ten-year statute of limitations applies only if the victim is the Kansas Public Employees Retirement System; all other prosecutions under the Act may not commence more than five years after the alleged violation.

Procedures and Determinations

The bill would amend the Kansas Administrative Procedure Act to specify for purposes of administrative proceedings of the Kansas Insurance Department, including

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

the Office of the Securities Commissioner, “Administrator” means the Securities Commissioner of Kansas or the Assistant Commissioner of Insurance when assigned to perform the hearing duties of the Securities Commissioner of Kansas.

Investor Education and Protection Initiatives

The bill would amend requirements associated with the Investor Education and Protection Fund to specify the Administrator shall remit moneys received from civil penalties or settlements arising from investigations or examinations to the State Treasurer in accordance with KSA 75-4215. Upon receipt of each remittance, the State Treasurer will be required to deposit the entire amount in the State Treasury to the credit of the Investor Education and Protection Fund.

Securities Act Victims Restitution Program

The bill would permit the Administrator to develop and implement a Securities Act Victims Restitution Program for the purpose of providing restitution assistance to victims of securities violations who were awarded restitution as a result of a legal or administrative action for violations of the Act but who have no reasonable likelihood of receiving the full amount of the awarded restitution.

Securities Act Victim Restitution Fund

The bill would create the Fund in the State Treasury; the Fund is to be administered by the Administrator. The bill would require all expenditures from the Fund to be used 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 Act but who have no reasonable likelihood of receiving the full amount of the awarded restitution. The bill would require expenditures to be made in accordance with appropriations acts upon

warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by the Administrator or the Administrator's designee. The Administrator would be permitted to accept all gifts, grants, donations, and bequests to the Fund. The bill would also require the Administrator to remit moneys received to the State Treasurer in accordance with KSA 75-4215 and, upon receipt of each remittance, the State Treasurer will be required to deposit the entire amount to the credit of the Fund.

Definitions

The bill would create definitions associated with the Securities Act Victims Restitution Program, including these:

- "Claimant" would mean a person who files an application for restitution assistance from the Fund on behalf of a victim, including the person awarded restitution in a final order for a violation of this act, the executor of such person, and the heirs and assigns of such person. The claimant and the victim may be, but not need be, the same person;
- "Final order" would mean an order issued by the Administrator or an order issued in a legal action brought by the Administrator or the Attorney General pursuant to this act that is not subject to judicial review or appeal;
- "Restitution assistance" would mean payment from the Fund to an eligible claimant;
- "Securities violation" would mean a violation of the Act, adopted rules and regulations, or an order under this act; and
- "Victim" would mean a person who was awarded restitution in a final order.

Eligibility

The bill would provide only natural persons who were residents of Kansas at the time of the securities violation that resulted in an award of restitution in a final order are eligible to receive restitution assistance from the Fund. The Administrator would be prohibited from paying restitution from the Fund:

- To more than one claimant per victim;
- Unless the person ordered to pay restitution has not paid the full amount of restitution owed to the victim before the application for restitution assistance from the Fund is due;
- On behalf of a person who is not a victim;
- To or on behalf of a person who sustained monetary injury as a result of committing, attempting to commit, participating in, or assisting in the securities violation that resulted in the restitution award for which the claimant seeks restitution from the Fund; or
- If there was no award of restitution in the final order.

Restitution Assistance

The bill would permit restitution assistance to be provided as follows:

- The maximum restitution assistance award per victim from the Fund would be the lesser of \$25,000 or 25.0 percent of the amount of restitution awarded in the final order, excluding any interest awarded, that remains unpaid at the time the Administrator awards restitution assistance; and

- If the victim is a vulnerable person, the maximum restitution assistance would be the lesser of \$50,000 or 50.0 percent of the amount of restitution awarded in the final order, excluding any interest awarded, that remains unpaid at the time the Administrator awards restitution assistance:
 - The bill would define a “vulnerable person” as a person who met the definition of elder person or dependent adult in KSA 2020 Supp. 21-5417 (mistreatment of a dependent or an elder adult), at the time of the securities violation that resulted in an award of restitution in a final order.

Transfers to the Fund

The bill would require, on July 1, 2021, or as soon as moneys become available, the Director of Accounts and Reports to transfer \$250,000 from the Securities Act Fee Fund to the Fund. Beginning in fiscal year (FY) 2023, and in each fiscal year thereafter, at the Administrator’s discretion, the bill would allow the Administrator to increase the balance in the Fund by transferring amounts from the Investor Education and Protection Fund. However, the bill would state the remaining balance in this fund after any such transfer shall be at least \$50,000.

Procedures and Determinations

The bill would also permit the Administrator to establish procedures for the application and determination of restitution assistance awards from the Fund by rules and regulations adopted or an order issued under this act.

The bill would provide that determinations made by the Administrator with respect to the Fund and applications for restitution assistance would be subject to the sole discretion of the Administrator and would not be subject to judicial

review in accordance with provisions of the Kansas Judicial Review Act.

Funds Used for Specific Purposes

The bill would amend law to add the Fund to the list of funds, including the Securities Act Fee Fund and the Investor Education and Protection Fund, with purposes set forth in statutes concerning such funds and for no other governmental purposes.

Background

The bill was introduced by the Senate Committee on Insurance at the request of the Kansas Insurance Department (Department).

[*Note:* 2021 SB 30 contains provisions similar to 2020 HB 2558, as recommended by the House Committee on Insurance.]

Senate Committee on Insurance

In the Senate hearing, a representative of the Department provided **proponent** testimony, stating the bill would help Kansas victims of securities fraud recover some of their losses when those who commit fraud cannot pay restitution.

No neutral or **opponent** testimony was provided.

The Senate Committee amended the bill to clarify only legal residents of Kansas at the time of the securities violation that resulted in an award of restitution would be eligible to receive restitution assistance from the Fund.

The Senate Committee also amended a section of the bill related to administrative procedures and review. The bill,

as introduced, stated determinations made by the Administrator with respect to the Fund and applications for restitution assistance would be subject to the sole discretion of the Administrator and shall not be subject to judicial review in accordance with the provisions of the Kansas Judicial Review Act.

As amended, the bill would allow:

- Any natural person adversely affected by an order or decision of the Administrator under the Act to make, within 15 days of service of the order or decision, a written request for a hearing; and
- Any natural person adversely affected by any final action of the Administrator pursuant to the Act to obtain a review of the action in accordance with the Kansas Judicial Review Act.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Department cannot estimate the amount of restitution enabled by the bill, because the amount of restitution uncollected by victims is unknown. However, Department estimates restitution payments would be less than \$200,000 in FY 2022. The Department states expenditures to operate the program would be negligible and could be absorbed within existing resources. Because the Department is required by statute to transfer any excess balances over \$50,000 of its Securities Act Fee Fund to the State General Fund (SGF), the SGF would see a decrease in revenues of \$250,000 in FY 2022. Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Insurance; Uniform Securities Act; Victims Restitution Program; Kansas Administrative Procedure Act