

## **Consolidation; Office of the Securities Commissioner; Insurance Department; Attorney General; Prosecutorial Functions; SB 23**

**SB 23** establishes the Office of the Securities Commissioner of Kansas as a division under the jurisdiction of the Commissioner of Insurance (Insurance Commissioner) and amends law by consolidating certain prosecutorial functions of the Attorney General. Descriptions of specific bill provisions follow.

### ***Office of the Securities Commissioner as a Division under the Jurisdiction of the Insurance Commissioner***

The bill amends the statute that establishes the Office of the Securities Commissioner of Kansas (KSC) as a separate agency, in which the Securities Commissioner serves at the pleasure of the Governor. The bill instead establishes the KSC under the jurisdiction of the Insurance Commissioner and the KSC will no longer be a stand-alone agency.

### ***Appointment and Compensation of the Securities Commissioner***

Under the bill, the Securities Commissioner is appointed by the Insurance Commissioner, subject to confirmation by the Senate. The Insurance Commissioner is authorized to fix the compensation of the Securities Commissioner. Further, the Insurance Commissioner is permitted to remove the Securities Commissioner for official misconduct.

### ***Term of Office***

The bill requires the Insurance Commissioner to appoint a person as Securities Commissioner no later than September 1, 2017, subject to Senate confirmation, to serve an initial term ending on January 14, 2019.

The bill requires, when this initial term expires and for each term expired thereafter, the Insurance Commissioner appoint a person as Securities Commissioner, subject to Senate confirmation, for a four-year term to run concurrently with the term of the Insurance Commissioner. [*Note: The Insurance Commissioner is an elected, not an appointed, position.*]

The bill specifies the Insurance Commissioner will appoint a successor when a vacancy for Securities Commissioner occurs. The bill provides that, if the vacancy occurs before the expiration of a term of office, the appointment will be for the unexpired term and subject to Senate confirmation.

Further, the bill requires the Securities Commissioner to devote full time to the performance of the duties of the KSC.

### ***Appointment of Directors and Employees within the KSC***

The bill permits the Securities Commissioner to appoint directors and other employees within the KSC. Directors appointed by the Securities Commissioner receive compensation fixed

by the Securities Commissioner, but the Insurance Commissioner is required to approve such compensation.

#### *Cooperation and Consolidation for Efficiency*

The KSC is required to cooperate with the Kansas Insurance Department (KID) to consolidate administrative functions and cross-appoint employees as necessary to provide efficiency.

#### *Agreements and Rules and Regulations*

The bill authorizes the Insurance Commissioner and the Securities Commissioner to enter into agreements and adopt rules and regulations, as needed, to administer the provisions of the bill related to the consolidation of administrative functions and cross-appointment of employees.

#### ***Attorney General—New Funding Source***

##### *Fraud and Abuse Criminal Prosecution Fund*

The bill establishes the Fraud and Abuse Criminal Prosecution Fund (Fund) in the State Treasury. The Fund will be administered by the Attorney General.

##### *Expending Moneys from the Fund*

The bill requires all moneys credited to the Fund to be expended for the prevention and detection of fraud and abuse and for support of criminal investigations and prosecutions within the jurisdiction of the Attorney General. The bill requires the Attorney General, in expending moneys from the Fund, to give priority to criminal cases referred to the Attorney General for investigation or prosecution by or pursuant to the KSC, the Criminal Anti-Fraud Division of KID, and the Abuse, Neglect and Exploitation of Persons Unit of the Office of the Attorney General (AG's Office).

##### *Transfer of Certain Fees to the Fund*

The bill requires the Director of Accounts and Reports of the Department of Administration to transfer to the Fund \$200,000 from the Securities Act Fee Fund and \$200,000 from the Insurance Department Service Regulation Fund on July 1 of each year, or thereafter as unencumbered funds are available. Upon making these transfers, the Director is required to give notice to the Attorney General, Insurance Commissioner, and Securities Commissioner. The Attorney General, Insurance Commissioner, and Securities Commissioner are then required to make proper entries on the records of their offices to show these transfers.

### ***Attorney General—Public Policy***

The bill declares, in order to promote efficiency in staffing and operations and consistency in the enforcement of criminal law, the public policy of Kansas is for prosecuting attorneys who bring criminal actions in the name of the State, other than county and district attorneys, and the funding therefor to be located in the AG's Office under the jurisdiction of the Attorney General.

Further, the bill authorizes any state agency to enter into agreements with the Attorney General to carry out the provisions relating to the Fund and public policy.

### ***Coordination of Efforts among the Attorney General, Insurance Commissioner, and Securities Commissioner and Their Offices***

The bill requires the Attorney General, Insurance Commissioner, and Securities Commissioner to coordinate and cooperate to prevent, detect, investigate, and criminally prosecute crimes related to insurance and securities.

The Criminal Anti-Fraud Unit of KID and the KSC are required, upon request of the Attorney General, to provide the Attorney General access to all records, reports, filings, investigation documents, and other records the Attorney General has reasonable suspicion to believe are relevant to any criminal investigation or prosecution of suspected insurance or securities fraud.

At the Attorney General's discretion, the bill permits the Attorney General to assist in any criminal investigation conducted by the Criminal Anti-Fraud Unit of KID of suspected fraud or by the KSC of suspected securities fraud.

The bill authorizes the Attorney General to enter into agreements with the Insurance Commissioner, the Securities Commissioner, or both as necessary to carry out the provisions of the bill.

### ***Attorney General—Rules and Regulations***

The Attorney General is permitted to adopt rules and regulations, as deemed appropriate, for the administration of provisions of the bill related to the coordination of efforts among the Attorney General, Insurance Commissioner, and Securities Commissioner.

### ***Consolidation of Prosecutorial Authority in the Attorney General***

The bill amends provisions of the Kansas Mortgage Business Act (KMBA), the Kansas Uniform Securities Act, the Insurance Code, the Workers Compensation Act, Employment Security Law, and law generally referred to as the Loan Brokers Act to transfer certain functions to the Attorney General. Details of amendments to these acts are described below.

### *Kansas Mortgage Business Act*

The bill amends the KMBA to empower the State Bank Commissioner to refer violations of the KMBA or any rule and regulation related to the KMBA to the Attorney General or, in consultation with the Attorney General, to the appropriate county or district attorney, who could initiate criminal proceedings. The bill deletes references to the powers and duties of a duly employed attorney of the State Bank Commissioner as a special prosecutor.

### *Kansas Uniform Securities Act*

The bill amends the Kansas Uniform Securities Act to require the Securities Commissioner to prepare and refer evidence of criminal violations of the Kansas Uniform Securities Act to the Attorney General or, in consultation with the Attorney General, to the appropriate county or district attorney who could institute criminal proceedings. The bill requires the Securities Commissioner and employees to assist in the prosecution of criminal cases, as requested by the Attorney General or county or district attorney.

Additionally, the Securities Commissioner is authorized to pay extradition and witness expenses and other costs associated with the case. The bill deletes references to the powers and duties of a duly employed attorney of the Securities Commissioner as a special prosecutor.

### *Insurance Code*

The bill amends a provision of the Insurance Code relating to the Criminal Anti-Fraud Division of KID to require the Division to prepare and refer criminal cases to the Attorney General or, in consultation with the Attorney General, to the proper county or district attorney, who is permitted to institute appropriate criminal proceedings. The Insurance Commissioner is permitted to pay extradition and witness expenses and other costs associated with the case.

The Division is required to assist in the preparation and presentation of criminal cases, as requested by the Attorney General or county or district attorney. The Division is required to perform other such duties in the prevention, detection, investigation, and prosecution of insurance fraud, as necessary. The preparation is permitted, but not required, to include affidavits, interviews, preservation of evidence, and securing the attendance of individuals involved in the case. Members of the Division are permitted to testify as to the facts of the case.

### *Workers Compensation Act*

The bill amends provisions of the Workers Compensation Act. The bill specifies that, if a district attorney fails to prosecute a fraudulent or abusive act or practice or any other violation of the Workers Compensation Act within 90 days, the Assistant Attorney General assigned to the Division of Workers Compensation is required to notify the Attorney General. [Note: The law applies the 90-day deadline only to cases not prosecuted by a county attorney within that time frame.] The bill then requires the Attorney General to prosecute the case, if it is the Attorney General's opinion the acts and practices involved warrant prosecution.

Additionally, the bill further amends the duties of the Assistant Attorney General assigned to the Division of Workers Compensation by requiring the Assistant Attorney General to

investigate and refer to the Attorney General for criminal prosecution acts, practices, or violations constituting crimes. [Note: The law requires the Assistant Attorney General to investigate and criminally prosecute these acts, practices, or violations constituting crimes without referral for prosecution to the Attorney General.]

### *Employment Security Law*

The bill amends the Employment Security Law to require the Special Assistant Attorney General assigned to the Kansas Department of Labor to notify the Attorney General if a county or district attorney fails to prosecute a case related to Employment Security Law violations within 90 days. The bill then requires the Attorney General to prosecute the case, if it is the Attorney General's opinion the acts and practices involved warrant prosecution. [Note: The law requires the Special Assistant Attorney General to prosecute the case without referral for prosecution to the Attorney General.]

### *Loan Brokers Act*

The bill amends law generally referred to as the Loan Brokers Act. The bill requires the Securities Commissioner to prepare and refer evidence concerning criminal violations relating to loan brokers to the Attorney General or, in consultation with the Attorney General, to the proper county or district attorney. The county or district attorney is permitted to institute appropriate criminal proceedings in the attorney's discretion.

The Securities Commissioner is permitted to pay extradition and witness expenses and other costs associated with the case. The Securities Commissioners and employees are required to assist in the prosecution of criminal cases, as requested by the Attorney General or county or district attorney.

### ***Updates to References to the Federal Securities Act***

The bill updates references to section 18(b)(4)(E) of the Federal Securities Act of 1933 to section 18(b)(4)(F).