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

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

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

New Sec. 2. As used in the protect vulnerable adults from financial exploitation act:
(a) "Act" means the protect vulnerable adults from financial exploitation act.
(b) "Agent" means the same as defined in K.S.A. 17-12a102, and amendments thereto.
(c) "Broker-dealer" means the same as defined in K.S.A. 17-12a102, and amendments thereto.
(d) "Commissioner" means the securities commissioner of Kansas.
(e) "Eligible adult" means an elder person or dependent adult as defined in K.S.A. 21-5417, and amendments thereto.
(f) "Financial exploitation," with respect to eligible adults, means the same as defined in K.S.A. 39-1430, and amendments thereto.
(g) "Investment adviser" means the same as defined in K.S.A. 17-12a102, and amendments thereto.
(h) "Investment adviser representative" means the same as defined in K.S.A. 17-12a102, and amendments thereto.
(i) "Qualified individual" means any agent, investment adviser representative or person who serves in a supervisory, compliance or legal capacity for a broker-dealer or investment adviser.

New Sec. 3. If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted or is being attempted, the qualified individual shall promptly report the matter to the commissioner, whose office may further
report the matter as permitted or required by law.

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

New Sec. 5. If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted or is being attempted, a qualified individual may notify any third party who was previously designated by such eligible adult to receive such notice or whom the qualified individual is otherwise permitted to notify under applicable state or federal law or a customer agreement with such eligible adult, unless the qualified individual suspects the third party has committed financial exploitation of the eligible adult.

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

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

(1) The broker-dealer, investment adviser or qualified individual reasonably believes, after initiating an internal review of the requested disbursement and the suspected financial exploitation, that the requested disbursement may further financial exploitation of an eligible adult; and

(2) the broker-dealer or investment adviser:

(A) Not later than two business days following the requested disbursement, provides written notification of the delay and the reason for such delay to all parties authorized to transact business on the account, unless such broker-dealer, investment adviser or qualified individual reasonably believes that any such party engaged in suspected or attempted financial exploitation of the eligible adult;

(B) not later than two business days following the requested disbursement, notifies the commissioner; and

(C) continues its internal review of the suspected or attempted financial exploitation of the eligible adult, as necessary and reports the results of such investigation to the commissioner within seven business days after the requested disbursement.

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

(1) A determination by the broker-dealer or investment adviser that the disbursement will not result in financial exploitation of the eligible adult; or
(2) 15 business days following the date on which the broker-dealer or investment adviser first delayed disbursement of the funds, unless the commissioner requests that the broker-dealer or investment adviser extend the delay, in which case the delay shall expire not more than 25 business days after the date on which the broker-dealer or investment adviser first delayed disbursement of the funds unless sooner terminated by the commissioner or an order of a court of competent jurisdiction.

(c) A court of competent jurisdiction may enter an order extending the delay of the disbursement of funds or may order other protective relief based on the petition of the commissioner, the broker-dealer or investment adviser that initiated the delay under this section or another interested party.

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

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

(b) No record made available to the commissioner or other agencies under this act shall be considered a public record under the open records act, K.S.A. 42-215 et seq., and amendments thereto. The provisions of this subsection providing for the confidentiality of public records shall expire on July 1, 2028, unless the legislature reviews and acts to continue such provisions in accordance with K.S.A. 45-229, and amendments thereto, prior to July 1, 2028.

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

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

(b) Disciplinary conditions — registrants. An order issued under this act may revoke, suspend, condition, or limit the registration of a registrant if the administrator finds that the order is in the public interest and that there is a ground for discipline under subsection (d) against the registrant or, if the registrant is a broker-dealer or investment adviser, against any partner, officer, or director, any person having a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser. However, the administrator:

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

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

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

(1) A censure;

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

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

(4) an order requiring the registrant to pay restitution for any loss or disgorge any profits arising from a violation, including, in the administrator's discretion, the assessment of interest from the date of the violation at the rate provided for interest on judgments by K.S.A. 16-204,
and amendments thereto;
(5) an order charging the registrant with the actual cost of an investigation or proceeding; or
(6) an order requiring the registrant to cease and desist from any action that constitutes a ground for discipline, or to take other action necessary or appropriate to comply with this act.
(d) Grounds for discipline. A person may be disciplined under subsections (a) through (c) if the person:
(1) Has filed an application for registration in this state under this act or the predecessor act within the previous 10 years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;
(2) willfully violated or willfully failed to comply with this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous 10 years;
(3) has been convicted of a felony or within the previous 10 years has been convicted of a misdemeanor involving a security, commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;
(4) is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this act or the predecessor act, or any other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, registered investment adviser, or investment adviser representative;
(5) is the subject of an order, issued after notice and opportunity for hearing by:
(A) The securities, depository institution, insurance; or other financial services regulator of a state or by the securities and exchange commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;
(B) the securities regulator of a state or by the securities and exchange commission against a broker-dealer, agent, investment adviser, investment adviser representative; or federal covered investment adviser; or
(C) the securities and exchange commission or by a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;
(D) a court adjudicating a United States postal service fraud order;
(E) the insurance regulator of a state denying, suspending, or revoking the registration of an insurance agent; or
(F) a depository institution regulator suspending or barring a person from the depository institution business;

(6) is the subject of an adjudication or determination, after notice and opportunity for hearing, by the securities and exchange commission, the commodity futures trading commission, the federal trade commission, a federal depository institution regulator, or a depository institution, insurance; or other financial services regulator of a state that the person willfully violated the securities act of 1933, the securities exchange act of 1934, the investment advisers act of 1940, the investment company act of 1940, or the commodity exchange act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;

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

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

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

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

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

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

(B) to have been the subject of an order of a securities regulator of a
foreign jurisdiction denying, revoking, or suspending the right to engage in
the business of securities as a broker-dealer, agent, investment adviser,
investment adviser representative; or similar person; or
(C) to have been suspended or expelled from membership by or
participation in a securities exchange or securities association operating
under the securities laws of a foreign jurisdiction;
(12) is the subject of a cease and desist order issued by the securities
and exchange commission or issued under the securities, commodities,
investment, franchise, banking, finance, or insurance laws of a state;
(13) has engaged in dishonest or unethical practices in the securities,
commodities, investment, franchise, banking, finance, or insurance
business within the previous 10 years;
(14) is not qualified on the basis of factors such as training,
experience; and knowledge of the securities business. However, in the case
of an application by an agent for a broker-dealer that is a member of a self-
regulatory organization or by an individual for registration as an
investment adviser representative, a denial order may not be based on this
paragraph if the individual has successfully completed all examinations
required by subsection (e). The administrator may require an applicant for
registration under K.S.A. 17-12a402 or 17-12a404, and amendments
thereto, who has not been registered in a state within the two years
preceding the filing of an application in this state to successfully complete
an examination; or
(15) lacks sufficient character or reputation to warrant the public
trust; or
(16) was required to report information under the protect vulnerable
adults from financial exploitation act and knowingly failed to make such a
report or knowingly caused such report not to be made within the previous
10 years.
(e) Examinations. A rule adopted or order issued under this act may
require that an examination, including an examination developed or
approved by an organization of securities regulators, be successfully
completed by a class of individuals or all individuals. An order issued
under this act may waive, in whole or in part, an examination as to an
individual and a rule adopted under this act may waive, in whole or in part,
an examination as to a class of individuals if the administrator determines
that the examination is not necessary or appropriate in the public interest
and for the protection of investors.
(f) Summary process. In accordance with the Kansas administrative
procedures act, the administrator may use summary or emergency
proceedings to suspend or deny an application; restrict, condition, limit, or
suspend a registration; or censure, bar, or impose a civil penalty or cease
and desist order on a registrant before final determination of an
administrative proceeding. If a hearing is not requested and none is
ordered by the administrator within 30 days after the date of service of the
order, the order becomes final by operation of law. If a hearing is requested
or ordered, the administrator, after notice of and opportunity for hearing to
each person subject to the order, may modify or vacate the order or extend
the order until final determination.

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

(A) Appropriate notice to the applicant or registrant;
(B) opportunity for hearing; and
(C) findings of fact and conclusions of law in a record.

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

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

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

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

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