AN ACT concerning the Kansas uniform securities act; relating to adoption of federal statutes and rules by reference; registration; fees; securities act fee fund and investor education fund; amending K.S.A. 17-12a103, 17-12a406, 17-12a410, 17-12a412 and 17-12a601 and repealing the existing sections.

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

Section 1. K.S.A. 17-12a103 is hereby amended to read as follows:


Sec. 2. K.S.A. 17-12a406 is hereby amended to read as follows:

17-12a406. (a) Application for initial registration. A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with K.S.A. 17-12a611, and amendments thereto, and paying the fee specified in K.S.A. 17-12a410, and amendments thereto, and any reasonable fees charged by the designee of the administrator for processing the filing. The application must contain:

1. The information or record required for the filing of a uniform application; and

2. upon request by the administrator, any other financial or other
information or record that the administrator determines is appropriate.

(b) Amendment. If the information or record contained in an application filed under subsection (a) is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) Effectiveness of registration. If the administrator finds that the applicant and, if applicable, the officers, directors or partners of the applicant are of sufficient character and reputation to warrant the public trust, and an order is not in effect and a proceeding is not pending under K.S.A. 17-12a412, and amendments thereto, registration becomes effective at noon on the 45th day after a completed application is filed, unless the registration is denied or the administrator has given written notice of deficiencies that are unresolved and that would constitute grounds for denial under K.S.A. 17-12a412, and amendments thereto. A rule adopted or order issued under this act may set an earlier effective date or may defer the effective date until noon on the 45th day after the filing of any amendment completing the application.

(d) Registration renewal. A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under K.S.A. 17-12a412, and amendments thereto, a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued under this act, by paying the fee specified in K.S.A. 17-12a410, and amendments thereto, and by paying costs charged by the designee of the administrator for processing the filings.

(e) As part of an original application for or reinstatement of any registration or in connection with any investigation of any holder of a registration, the administrator may require a person to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the person and to determine whether the person has a record of criminal history in this state or other jurisdiction. The administrator is authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The administrator may use the information obtained from fingerprinting and the criminal history for purposes of verifying the identification of the person and in the official determination of the qualifications and fitness of the person to be issued or to maintain a registration.

(f) The administrator may fix and collect a fee as may be required by the administrator for the cost of fingerprinting and the criminal history record check. Any moneys collected under this subsection shall be deposited in the state treasury and credited to the securities act fee fund.

(g) Additional conditions or waivers. A rule adopted or order issued
under this act may impose other conditions not inconsistent with the
national securities markets improvement act of 1996. An order issued
under this act may waive, in whole or in part, specific requirements in
connection with registration as are in the public interest and for the
protection of investors.

Sec. 3. K.S.A. 17-12a410 is hereby amended to read as follows: 17-
12a410. (a) *Filing Registration fees. The administrator shall establish*
registration fees by rules and regulations, subject to the following
limitations:

1. *Broker-dealers. A person shall pay a fee of not more than $300*
when initially filing an application for registration as a broker-dealer and
filing a renewal of registration as a broker-dealer. If the filing results in a
denial or withdrawal, the administrator shall retain the fee.

2. *Agents. The fee for an individual is not more than $100 when*
filing an application for registration as an agent, when filing a renewal of
registration as an agent, and when filing for a change of registration as an
agent. If the filing results in a denial or withdrawal, the administrator
shall retain the fee.

3. *Investment advisers. A person shall pay a fee of not more than*
$300 when filing an application for registration as an investment
adviser and when filing a renewal of registration as an investment
adviser. If the filing results in a denial or withdrawal, the administrator
shall retain the fee.

4. *Investment adviser representatives. The fee for an individual is*
not more than $100 when filing an application for registration as an
investment adviser representative, when filing a renewal of registration as
an investment adviser representative, and when filing a change of
registration as an investment adviser representative. If the filing results in
a denial or withdrawal, the administrator shall retain the fee.

5. (b) *Notice filing fees. The administrator shall establish notice*
filings fees by rules and regulations, subject to the following limitations:

1. *Federal covered investment advisers. A federal covered*
investment adviser required to file a notice under K.S.A. 17-12a405, and
amendments thereto, shall pay an initial fee and an annual notice fee of
not more than $300 $1,000.

2. *Exemption filings. The administrator may require the filing of a*
notice as a condition of any exemption adopted under K.S.A. 17-
12a401(b)(1)(H), 17-12a402(b)(9), 17-12a403(b)(3), or 17-12a404(b)
(2), and amendments thereto, and the administrator may impose an
initial fee and annual notice fee of not more than $1,000.

3. *Graduated fees. Subject to the limits set forth in this section, the*
administrator may establish fees that are based upon the amount of
assets under management by the persons required to pay the fees.
(d) Payment. A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order provides under this act.

Sec. 4. 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, a 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, a state, the securities and exchange commission, or the United States
from engaging in or continuing an act, practice, or course of business
involving an aspect of a business involving securities, commodities,
investments, franchises, insurance, banking, or finance;
(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,
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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;

(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) has failed to pay a state or federal tax obligation that is due or comply with any administrative or court order directing payment of tax, or has failed to comply with any administrative or court order imposing a child support obligation; or

(16) lacks sufficient character or reputation to warrant the public trust.

(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 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. 5. K.S.A. 17-12a601 is hereby amended to read as follows: 17-
12a601. (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 subsection (a) of K.S.A.
75-3170 75-3170a, and amendments thereto, 20% 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 $250,000 so that the beginning unencumbered balance
in the securities act fee fund on the first day of each fiscal year is $50,000
$250,000. 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. Such reimbursements are in addition to those authorized by
K.S.A. 75-3170a, and amendments thereto.

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

(A) Education of registrants, including official hospitality;
(B) training of the administrator's staff;
(C) restitution for victims of securities crimes, to be dispersed in
accordance with criteria established by rules and regulations of the
administrator; or
(D) grants to the state board of regents or public universities in
Kansas for instruction in business finance, investments or business
ethics.

Sec. 6. K.S.A. 17-12a103, 17-12a406, 17-12a410, 17-12a412 and
17-12a601 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its
publication in the Kansas register.