

HOUSE BILL No. 2243

By Committee on Financial Institutions

1-31

AN ACT concerning securities; relating to the regulation thereof; concerning the powers of the securities commissioner; amending K.S.A. 17-1257, 17-1258, 17-1265, 17-1266a, 17-1271, 40-436 and 50-1009 and K.S.A. 2000 Supp. 17-1252, 17-1254, 17-1261, 17-1263 and 17-1270 and repealing the existing sections.

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

Section 1. K.S.A. 2000 Supp. 17-1252 is hereby amended to read as follows: 17-1252. When used in this act, unless the context otherwise requires:

(a) "Commissioner" means the securities commissioner of Kansas, appointed as provided in K.S.A. 75-6301, and amendments thereto.

(b) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer only in transactions in securities exempted by K.S.A. 17-1261, and amendments thereto, other than subsection ~~(h)~~ (e) of K.S.A. 17-1261, and amendments thereto, or who represents a broker-dealer in effecting transactions in this state limited to those transactions described in section 15(h)(2) of the securities and exchange act of 1934. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if such person otherwise comes within this definition.

(c) "Broker-dealer" means any person engaged in the business of purchasing, offering for sale or selling securities for the account of others or for such person's own account; but the term does not include an agent, issuer, bank, savings institution, insurance company, or a person who effects transactions in this state exclusively with the issuer of the securities involved in the transactions or with any person to whom a sale is exempt under subsection (f) of K.S.A. 17-1262, and amendments thereto.

(d) "Guaranteed" means guaranteed as to payment of principal, interest or dividends.

(e) "Issuer" means any person who issues or proposes to issue any security, ~~except that~~. With respect to certificates of deposit, voting-trust certificates ~~or~~, collateral-trust certificates, or ~~with respect to~~ certificates

1 of interest or shares in an unincorporated investment trust not having a
2 board of directors (or persons performing similar functions) or of the
3 fixed, restricted management or unit type; the term “issuer” also means
4 the person or persons performing the acts and assuming the duties of
5 depositor or manager pursuant to the provisions of the trust or other
6 agreement or instrument under which the security is issued. The issuer
7 of a certificate of interest in an oil and gas royalty, lease or mineral deed
8 is the owner of the interest in the oil and gas royalty, lease or mineral
9 deed who creates the certificate of interest for purpose of sale.

10 (f) “Nonissuer” means not directly or indirectly for the benefit of the
11 issuer.

12 (g) “Person” means an individual, a corporation, a partnership, a lim-
13 ited liability company, an association, a joint-stock company, a trust where
14 the interests of the beneficiaries are evidenced by a security, an unincor-
15 porated organization, a government or a political subdivision of a
16 government.

17 (h) (1) “Sale” or “sell” includes every contract of sale ~~of~~, contract to
18 sell, or disposition of, a security or interest in a security for value.

19 (2) “Offer” or “offer to sell” includes every attempt or offer to dispose
20 of, or solicitation of an offer to buy, a security or interest in a security for
21 value.

22 (3) Any security given or delivered with, or as a bonus on account of,
23 any purchase of securities or any other thing is considered to constitute
24 part of the subject of the purchase and to have been offered and sold for
25 value.

26 (4) Every sale or offer of a warrant or right to purchase or subscribe
27 to another security of the same or another issuer, and every sale or offer
28 of a security which gives the holder a present or future right or privilege
29 to convert into another security of the same or another issuer, is consid-
30 ered to include an offer of the other security.

31 (5) A purported gift of assessable stock is considered to involve an
32 offer and sale of such stock.

33 (i) “Securities act of 1933,” “securities exchange act of 1934,” “public
34 utility holding company act of 1935,” “*investment advisers act of 1940*”
35 and “investment company act of 1940” mean the federal statutes of those
36 names.

37 (j) “Security” means any note; stock; treasury stock; bond; debenture;
38 evidence of indebtedness; certificate of interest or participation in any
39 profit-sharing agreement; collateral-trust certificate; preorganization cer-
40 tificate or subscription; transferable share; investment contract; voting-
41 trust certificates; thrift certificates or investment certificates, or thrift
42 notes issued by investment companies; certificate of deposit for a security;
43 certificate of interest in oil and gas royalties, leases or mineral deeds; or,

1 in general, any interest or instrument commonly known as a “security,”
2 or any certificate of interest or participation in, temporary or interim
3 certificate for, guarantee of, or warrant or right to subscribe to or pur-
4 chase, any of the foregoing. “Security” does not include any *nonvariable*
5 insurance or endowment policy or annuity contract under which an in-
6 surance company promises to pay *a fixed sum of* money either in a lump
7 sum or periodically for life or some other specified period.

8 (k) “State” means any state, territory, or possession of the United
9 States, as well as the District of Columbia and Puerto Rico.

10 (l) “Investment adviser” means any person who, for compensation,
11 engages in the business of advising others, either directly or through
12 publications or writings, as to the value of securities or as to the advisa-
13 bility of investing in, purchasing, or selling securities, or who, for com-
14 pensation and as a part of a regular business, issues or promulgates anal-
15 yses or reports concerning securities. The term does not include:

16 (1) An investment adviser representative;

17 (2) a bank, savings institution, or trust company;

18 (3) a lawyer, accountant, engineer or teacher whose performance of
19 these services is solely incidental to the practice of the individual’s
20 profession;

21 (4) a broker-dealer or its agent whose performance of these services
22 is solely incidental to the conduct of its business as a broker-dealer and
23 who receives no special compensation for them;

24 (5) a publisher of any bona fide newspaper, news column, news mag-
25 azine, newsletter, or business or financial publication or service, whether
26 communicated in hard copy form or by electronic means, or otherwise
27 that does not consist of the rendering of advice on the basis of the specific
28 investment situation of each client;

29 (6) any person that is a federal covered adviser; or

30 (7) such other persons not within the intent of this definition as the
31 commissioner designates by order or by rules and regulations.

32 (m) (1) “Investment adviser representative” means any partner, of-
33 ficer, ~~or~~ director ~~of~~, or a person occupying a similar status or performing
34 similar functions or *any* other individual except clerical or ministerial
35 personnel, who is employed by or associated with:

36 (A) An investment adviser that is registered or required to be regis-
37 tered under this act and who does any of the following:

38 (i) Makes any recommendations or otherwise renders advice regard-
39 ing securities;

40 (ii) manages accounts or portfolios of clients;

41 (iii) determines which recommendation or advice regarding securities
42 should be given;

43 (iv) solicits, offers or negotiates for the sale of or sells investment

1 advisory services; or

2 (v) supervises employees who perform any of the foregoing; or

3 (B) a federal covered adviser, subject to the limitations of section
4 203A of the investment advisers act of 1940, as the commissioner may
5 designate by rule or order.

6 (2) "Investment adviser representative" does not include such other
7 persons employed by or associated with either an investment adviser or
8 federal covered adviser not within the intent of this subsection as the
9 commissioner may designate by rule or order.

10 (n) "Federal covered security" means any security that is a covered
11 security under section 18(b) of the securities act of 1933 or rules or reg-
12 ulations promulgated thereunder.

13 (o) "Federal covered adviser" means a person who is registered under
14 section 203 of the investment advisers act of 1940 or excluded from the
15 definition of "investment adviser" under section 202(a)(11) of the invest-
16 ment advisers act of 1940.

17 Sec. 2. K.S.A. 2000 Supp. 17-1254 is hereby amended to read as
18 follows: 17-1254. (a) It is unlawful for any person to transact business in
19 this state as a broker-dealer or agent unless that person is registered under
20 this act, except in transactions exempt under K.S.A. 17-1262, and amend-
21 ments thereto.

22 (b) It is unlawful for any broker-dealer registered under this act or
23 issuer to employ or associate with an agent transacting business in this
24 state unless the agent is registered under this act *or engages only in trans-*
25 *actions exempt under K.S.A. 17-1262, and amendments thereto.* The reg-
26 istration of an agent is not effective during any period when the agent is
27 not associated with a particular broker-dealer registered under this act or
28 a particular issuer. When an agent begins or terminates a connection with
29 a broker-dealer or issuer, or begins or terminates those activities which
30 make the person an agent, the agent as well as the broker-dealer or issuer
31 shall promptly notify the commissioner.

32 (c) It is unlawful for any person to transact business in this state as
33 an investment adviser or as an investment adviser representative unless:

34 (1) The person is so registered under this act; or

35 (2) the person has no place of business in this state and:

36 (A) The person's only clients in this state are investment companies
37 as defined in the investment company act of 1940, other investment ad-
38 visers, federal covered advisers, broker-dealers, banks, trust companies,
39 savings institutions, insurance companies, employee benefit plans with
40 assets of not less than \$1,000,000 and governmental agencies or instru-
41 mentalities, whether acting for themselves or as trustees with investment
42 control, or other institutional investors as are designated by rules and
43 regulations or order of the commissioner; or (B) during the preceding

1 twelve-month period has had not more than five clients, other than those
2 specified in subparagraph (A), who are residents of this state.

3 (d) It is unlawful for:

4 (1) Any person required to be registered as an investment adviser
5 under this act to employ or associate with an investment adviser repre-
6 sentative unless the investment adviser representative is registered under
7 this act *or is exempt from registration*. The registration of an investment
8 adviser representative is not effective during any period when such person
9 is not associated with an investment adviser registered under this act; or

10 (2) any federal covered adviser to employ, or associate with an in-
11 vestment adviser representative having a place of business located in this
12 state, unless such investment adviser representative is registered under
13 this act, or is exempt from registration.

14 When an investment adviser representative described in paragraphs (1)
15 or (2) begins or terminates employment or association with an investment
16 adviser or federal covered adviser, the investment adviser or federal cov-
17 ered adviser shall promptly notify the commissioner.

18 (e) Except with respect to federal covered advisers whose only clients
19 are those described in paragraph (2) of subsection (c) of this section, it is
20 unlawful for any federal covered adviser to conduct advisory business in
21 this state unless such person files with the commissioner such documents
22 as have been filed with the securities and exchange commission together
23 with a consent to service of process, and pays an initial and renewal notice
24 filing fee, if the commissioner by rules and regulations or order requires.
25 Each notice filing under this section shall be effective from its original
26 filing date and expire on December 31 each year, unless renewed. ~~Not-~~
27 ~~withstanding the provisions of this subsection, until October 10, 1999, the~~
28 ~~commissioner may require the registration of any federal covered adviser~~
29 ~~for which fees required by this subsection have not been paid promptly~~
30 ~~following written notification from the commissioner of the nonpayment.~~
31 ~~A federal covered adviser shall be considered to have promptly paid such~~
32 ~~fees if they are remitted to the commissioner within 15 days following~~
33 ~~such person's receipt of written notification from the commissioner.~~

34 (f) A conviction for an intentional violation of subsection (a) through
35 (d) of this section is a severity level 7, nonperson felony. Any violation of
36 this section committed on or after July 1, 1993, resulting in a loss of
37 \$25,000 or more, regardless of its location on the sentencing grid block,
38 shall have a presumptive sentence of imprisonment. This subsection shall
39 not apply to a failure to notify the commissioner of termination of em-
40 ployment or association as an agent or investment adviser representative.

41 (g) A broker-dealer, agent, investment adviser or investment adviser
42 representative may be registered after filing with the commissioner, or
43 the commissioner's designee as permitted by subsection (p), a written

1 application containing such relevant information and in such form as the
2 commissioner may require. The applicant shall be registered if the com-
3 missioner finds that the applicant and, if applicable, the officers, directors
4 or partners are of good character and reputation, that the applicant's
5 knowledge of the securities business and the applicant's financial respon-
6 sibility are such that the applicant is suitable to engage in the business,
7 that the applicant has supplied all information required by the commis-
8 sioner and that the applicant has paid the necessary fee. The commis-
9 sioner may require as a condition of registration that the applicant and
10 any officers, directors or partners or, in the case of an investment adviser,
11 any persons who represent or will represent the investment adviser in
12 doing or performing any acts or functions which make such person an
13 investment adviser pass a written examination as evidence of knowledge
14 of the securities business. In determining the character and reputation of
15 the applicant, the commissioner ~~shall~~ *may* take into consideration any
16 ~~felony criminal conviction of such person, but such a conviction shall not~~
17 ~~automatically operate as a bar to registration.~~

18 (h) The commissioner may, by rules and regulations or order, require
19 a minimum capital for registered broker-dealers, subject to the limitations
20 of section 15 of the securities exchange act of 1934, and establish mini-
21 mum financial requirements for investment advisers, subject to the lim-
22 itations of section 222 of the investment advisers act of 1940, which may
23 include different requirements for those investment advisers who main-
24 tain custody of clients' funds or securities or who have discretionary au-
25 thority over the same and those investment advisers who do not.

26 (i) The commissioner may, by rules and regulations or order, require
27 registered broker-dealers, agents and investment advisers who have cus-
28 tody of or discretionary authority over client funds or securities, to post
29 bonds in amounts as the commissioner may prescribe, subject to the lim-
30 itations of section 15 of the securities and exchange act of 1934 for broker-
31 dealers and section 222 of the investment advisers act of 1940 for invest-
32 ment advisers, and may determine their conditions. Any appropriate
33 deposit of cash or securities shall be accepted in lieu of any bond so
34 required. No bond may be required of any registrant whose net capital,
35 or, in the case of an investment adviser, whose minimum financial
36 requirements, ~~which may be defined by rules and regulations,~~ exceeds
37 the amounts required by the commissioner. Every bond shall provide for
38 suit thereon by any person who has a cause of action under K.S.A. 17-
39 1268, and amendments thereto, and, if the commissioner by rules and
40 regulations or order requires, by any person who has a cause of action
41 not arising under this act. Every bond shall provide that no suit may be
42 maintained to enforce any liability on the bond unless brought within the
43 time limitations provided by law.

1 (j) (1) Every registered broker-dealer and investment adviser shall
2 make and keep such accounts, correspondence, memoranda, papers,
3 books and other records as the commissioner prescribes by rules and
4 regulations or order, subject to the limitations provided by section 15 of
5 the securities exchange act of 1934, in the case of a broker-dealer, and
6 section 222 of the investment advisers act of 1940, in the case of an
7 investment adviser. All records so required with respect to an investment
8 adviser, shall be preserved for such period as the commissioner prescribes
9 by rules and regulations or order.

10 (2) With respect to investment advisers, the commissioner may re-
11 quire that certain information be furnished or disseminated as necessary
12 or appropriate in the public interest or for the protection of investors and
13 advisory clients. To the extent determined by the commissioner, infor-
14 mation furnished to clients or prospective clients of an investment adviser
15 that would be in compliance with the investment advisers act of 1940 and
16 the rules thereunder may be used in whole or partial satisfaction of this
17 requirement.

18 (k) The commissioner shall maintain records of registration, notice
19 filings and orders pertaining to broker-dealers, agents, investment advi-
20 sers, federal covered advisers and investment adviser representatives. Un-
21 less the commissioner has designated alternative registration expiration
22 dates as permitted by subsection (p), every registration under this section
23 shall expire December 31 each year, but any registration for the suc-
24 ceeding year shall be renewed upon written application and payment of
25 the fee as herein provided without filing a further statement or furnishing
26 any further information unless specifically required by the commissioner.
27 Unless the commissioner has designated alternative registration renewal
28 dates as permitted by subsection (p), application for renewals must be
29 made not later than December 31 in each year; otherwise, they shall be
30 treated as original applications.

31 (l) The fee for original or renewal registration of each broker-dealer
32 and each investment adviser shall be not more than \$300. The fee for an
33 original or renewal notice filing of each federal covered adviser shall be
34 not more than \$300. The fee for original or renewal registration of each
35 agent and investment adviser representative shall be not more than \$50.
36 Each fee for original registration shall be payable with the application for
37 original registration and each fee for renewal of registration shall be pay-
38 able with the application for renewal and, in either case, the fee shall not
39 be returned if the application is withdrawn. The commissioner shall es-
40 tablish such fees by rules and regulations.

41 (m) The commissioner may by order deny, suspend or revoke the
42 registration of any broker-dealer, agent, investment adviser or investment
43 adviser representative if the commissioner finds that such an order is in

1 the public interest and that the applicant or registrant, or, in the case of
2 a broker-dealer or investment adviser, any partner, officer or director or
3 any person occupying a similar status or performing similar functions:

4 (1) Has filed an application for registration which as of its effective
5 date (or as of any date after filing in the case of an order denying effect-
6 iveness) was incomplete in any material respect or contained any state-
7 ment which was, in the light of the circumstances under which it was
8 made, false or misleading with respect to any material fact;

9 (2) has willfully violated or willfully failed to comply with any provi-
10 sion of this act ~~or a predecessor act~~ or any rules and regulations or order
11 under this act ~~or a predecessor act~~;

12 (3) has been convicted, within the past 10 years, of any misdemeanor
13 involving a security or any aspect of the securities business or of any
14 felony, if the commissioner determines, after investigation, that such per-
15 son has not been sufficiently rehabilitated to warrant the public trust;

16 (4) is permanently or temporarily enjoined by any court of competent
17 jurisdiction from engaging in or continuing any conduct or practice as an
18 investment adviser, broker-dealer, or as an affiliated person or employee
19 of an investment company, depository institution, insurance company, or
20 involving any aspect of the securities business or commodities investment
21 business;

22 (5) is the subject of an order of the commissioner denying, suspend-
23 ing or revoking registration as a broker-dealer, agent, investment adviser
24 or investment adviser representative;

25 (6) is the subject of an order entered within the past five years by the
26 securities administrator of any other state or by the securities and
27 exchange commission denying, suspending or revoking registration as a
28 broker-dealer, agent, investment adviser or investment adviser represen-
29 tative (or the substantial equivalent of those terms as defined in this act),
30 or is the subject of an order of the securities and exchange commission
31 suspending or expelling the person from a national securities exchange
32 or national securities association registered under the federal securities
33 exchange act of 1934, or is the subject of an order by the commodities
34 futures trading commission denying, suspending or revoking registration
35 under the commodities exchange act, or is the subject of an order sus-
36 pending or expelling from membership in or association with a member
37 of a self-regulatory organization registered under the securities exchange
38 act of 1934 or the commodities exchange act, or is the subject of a United
39 States post office fraud order; but the commissioner may not enter any
40 order under this clause on the basis of an order under any other state act
41 unless that order was based on facts which would currently constitute a
42 ground for an order under this section;

43 (7) has engaged in dishonest or unethical practices in the securities

1 business;

2 (8) in the case of a broker-dealer or investment adviser, is insolvent,
3 either in the sense that such person's liabilities exceed such person's assets
4 or in the sense that such person cannot meet such person's obligations as
5 they mature;

6 (9) is not qualified on the basis of such factors as training, experience,
7 and knowledge of the securities business, but the commissioner may not
8 enter an order solely on the basis of lack of experience if the applicant or
9 registrant is qualified by training or knowledge or both;

10 (10) is failing to keep or maintain sufficient records to permit an audit
11 disclosing the condition of the registrant's business;

12 (11) has failed to pay the proper registration fee; but the commis-
13 sioner may not enter a revocation order under this clause, and the com-
14 missioner shall vacate any denial order entered under this clause when
15 the deficiency has been corrected;

16 (12) has failed reasonably to supervise ~~the sales of an agent,~~ invest-
17 ment adviser representative or ~~employees~~ *employee to ensure compliance*
18 *with this act;* or

19 (13) has willfully and without cause failed to comply with a request
20 for information by the commissioner or person designated by the com-
21 missioner in conducting investigations or examinations under this act.

22 (n) The commissioner may by emergency order suspend registration
23 pending final determination of any proceeding under this section. Upon
24 the entry of any order under this section, the commissioner shall promptly
25 notify the applicant or registrant (as well as the employer or prospective
26 employer if the applicant or registrant is an agent *or investment adviser*
27 *representative*) that it has been entered and of the reasons therefor and
28 that, upon written request, the matter will be set for a hearing which shall
29 be conducted in accordance with the provisions of the Kansas adminis-
30 trative procedure act.

31 (o) *The commissioner may cancel the registration or application in*
32 *accordance with the provisions of the Kansas administrative procedure*
33 *act, if the commissioner finds that any registrant or applicant for regis-*
34 *tration is: (1) no longer in existence or has ceased to do business as a*
35 *broker-dealer, agent ~~or,~~ investment adviser, ~~is or investment adviser rep-~~*
36 *resentative; (2) an adjudged incapacitated person, ~~or,~~ or (3) cannot be*
37 *located after reasonable search, ~~the commissioner may cancel the regis-~~*
38 *tration or application in accordance with the provisions of the Kansas*
39 *administrative procedure act.*

40 (p) (1) The commissioner may participate, in whole or in part, with
41 any national securities association or national securities exchange regis-
42 tered with the United States securities and exchange commission under
43 the federal securities exchange act of 1934 or with any association of state

1 securities administrators in ~~a central~~ any registration depository where
2 the broker-dealer, agent ~~and~~, investment adviser *or investment adviser*
3 *representative* registrations required by subsection (g) may be centrally
4 or simultaneously effected and the accompanying registration fees may
5 be ~~centrally~~ collected for all states that require the registration of such
6 persons and participate in ~~such a central~~ the registration depository.

7 (2) If the commissioner finds that participation in ~~such a central~~ the
8 registration depository is in the public interest, the commissioner may by
9 rules and regulations or by order require that:

10 (A) Applications for the registration or the renewal of the registration
11 of any broker-dealer, agent ~~or~~, investment adviser *or investment adviser*
12 *representative* as required by this section may be made ~~or effected~~
13 through ~~or in conjunction or coordination with such a central~~ the regis-
14 tration depository;

15 (B) alternative registration expiration and renewal dates for regis-
16 tered broker-dealers, agents ~~and~~, investment advisers *and investment ad-*
17 *viser representative* be utilized in lieu of the registration expiration and
18 renewal dates provided under subsection (k);

19 (C) all fees for the registration or the renewal of the registration of
20 any broker-dealer, agent ~~or~~, investment adviser *or investment adviser rep-*
21 *resentative* be collected by ~~such a central~~ the registration depository in
22 the dollar amounts required by subsection (l), provided that such fees are
23 subsequently submitted to the commissioner pursuant to K.S.A. 17-1270,
24 and amendments thereto, and remitted by the commissioner pursuant to
25 K.S.A. 17-1271, and amendments thereto.

26 (3) Subsequent to the effective date of any rules and regulations or
27 order of the commissioner that is adopted under subsection (p)(2):

28 (A) All applications for the registration or the renewal of the regis-
29 tration of any broker-dealer, agent ~~or~~, investment adviser *or investment*
30 *adviser representative*, and all documents supporting such applications,
31 which shall be filed with or received by ~~such a central~~ the registration
32 depository shall be deemed to be filed with or received by the commis-
33 sioner pursuant to subsection (g), when such applications or documents
34 are received by ~~such a central~~ the registration depository; and

35 (B) any statement which is contained in any application for the reg-
36 istration or the renewal of the registration of any broker-dealer, agent ~~or~~,
37 investment adviser *or investment adviser representative* or contained in
38 any document supporting such applications, which is filed with or re-
39 ceived by ~~such a central~~ the registration depository and which is, at the
40 time and in light of the circumstances under which it is made, false or
41 misleading in any material respect shall constitute a violation of K.S.A.
42 17-1264, and amendments thereto.

43 Sec. 3. K.S.A. 17-1257 is hereby amended to read as follows: 17-

1 1257. (a) Any security ~~for which may be registered by coordination under~~
2 ~~this act if a registration statement has been filed but has not been declared~~
3 ~~effective~~ under the securities act of 1933 in connection with the same
4 offering ~~may be registered by coordination.~~

5 (b) A registration statement under this section may be filed by the
6 issuer, any other person on whose behalf the securities will be offered or
7 by any registered broker-dealer; *The registration statement* shall be filed
8 in the office of the commissioner and shall contain the following infor-
9 mation and be accompanied by the following documents:

10 (1) One copy of the prospectus filed under the securities act of 1933
11 together with all amendments as of the date of filing;

12 (2) the amount of securities to be offered in this state;

13 (3) any adverse order, judgment or decree entered in connection with
14 the offering by the regulatory authorities in any state or by any court ~~of~~
15 ~~or by~~ the securities and exchange commission;

16 (4) a copy of the articles of incorporation and bylaws (or their sub-
17 stantial equivalents) currently in effect, a copy of any agreements with or
18 among underwriters, a copy of any indenture or other instrument gov-
19 erning the issuance of the security to be registered, and a specimen or
20 copy of the security;

21 (5) payment of the registration fee prescribed in K.S.A. 17-1259, and
22 amendments thereto;

23 (6) if required under K.S.A. 17-1263, and amendments thereto, a
24 consent to service of process meeting the requirements of that section;
25 and

26 (7) an undertaking to forward promptly all amendments to the federal
27 registration statement, other than an amendment which merely delays
28 the effective date.

29 (c) A registration statement under this section will automatically be-
30 come effective at the moment the federal registration statement becomes
31 effective if all the following conditions are satisfied:

32 (1) No stop order is in effect ~~under K.S.A. 17-1260, and amendments~~
33 ~~thereto~~; and no proceeding is pending under K.S.A. 17-1260, and amend-
34 ments thereto;

35 (2) the registration statement has been on file with the commissioner
36 for at least 10 days; *and*

37 (3) a statement of the maximum and minimum offering prices and
38 the maximum underwriting discounts and commissions has been on file
39 for two full business days or such shorter period as the commissioner may
40 permit by rules and regulations or otherwise and the offering is made
41 within those limitations.

42 (d) The registrant shall promptly notify the commissioner ~~by tele-~~
43 ~~phone or telegram~~ of the date and time when the federal registration

1 statement became effective and the content of the price amendment, if
2 any, and shall promptly file a post-effective amendment containing the
3 information and documents in the price amendment. "Price amendment"
4 means the final federal amendment which includes a statement of the
5 offering price, underwriting and selling discounts or commissions,
6 amount of proceeds, conversion rates, call prices, and other matters de-
7 pendent upon the offering price. Upon failure to receive the required
8 notification and post-effective amendment with respect to the price
9 amendment, the commissioner may enter a stop order, without notice or
10 hearing, retroactively denying effectiveness to the registration statement
11 or suspending its effectiveness until compliance with this subsection, if
12 the commissioner promptly notifies the registrant by telephone or tele-
13 ~~gram~~ *electronic means* and promptly confirms by letter or telegram when
14 ~~the commissioner notifies by telephone of~~ *in writing* the issuance of the
15 order. If the registrant proves compliance with the requirements of this
16 subsection as to notice and post-effective amendment, the stop order is
17 void as of the time of its entry.

18 (e) The commissioner may by rule and regulation or otherwise waive
19 either or both of the conditions specified in paragraphs (2) and (3) *of*
20 *subsection (c)*. If the federal registration becomes effective before all
21 these conditions are satisfied and they are not waived, the registration
22 statement automatically becomes effective as soon as all the conditions
23 are satisfied. If the registrant advises the commissioner of the date when
24 the federal registration statement is expected to become effective, the
25 commissioner shall promptly advise the registrant by telephone or tele-
26 ~~gram, at the registrant's expenses,~~ whether all the conditions are satisfied
27 and whether ~~he~~ *the commissioner* then contemplates the institution of a
28 proceeding under K.S.A. 17-1260, and amendments thereto; but this ad-
29 vice by the commissioner does not preclude the institution of such a
30 proceeding at any time.

31 Sec. 4. K.S.A. 17-1258 is hereby amended to read as follows: 17-
32 1258. (a) Any security may be registered by qualification. A registration
33 statement under this section may be filed by the issuer, any other person
34 on whose behalf the securities will be offered or by a registered broker-
35 dealer. *The registration statement* shall be filed in the office of the com-
36 missioner and shall contain the following information and be accompa-
37 nied by the following documents:

38 (1) *The* name and address of *the* issuer and *the* location of *its* principal
39 office, if any, in this state;

40 (2) the kind and amount of securities to be offered; the proposed
41 offering price or the method by which it is to be computed; any variation
42 therefrom at which any portion of the offering is to be made to any person
43 or class of persons other than the underwriters, with a specification of

1 any such person or class; the basis upon which the offering is to be made
2 if otherwise than for cash; the estimated aggregate underwriting and sell-
3 ing discounts or commissions and finders' fees (including separately cash,
4 securities, contracts, or anything else of value to accrue to the under-
5 writers in connection with the offering) or, if the selling discounts or
6 commissions are variable, the basis of determining them and their max-
7 imum and minimum amounts; the estimated amounts of other selling
8 expenses, including legal, engineering, and accounting charges; the name
9 and address of underwriters, a copy of any underwriting or selling-group
10 agreement pursuant to which the distribution is to be made, or the pro-
11 posed form of any such agreement whose terms have not yet been de-
12 termined; and a description of the plan of distribution of any securities
13 which are to be offered otherwise than through an underwriter;

14 (3) amount of securities to be offered in this state;

15 (4) the state (or foreign jurisdiction) and date of organization of the
16 issuer; the general character and location of its business; a description of
17 its physical properties and equipment; and a statement of the general
18 competitive conditions in the industry or business in which it is or will be
19 engaged;

20 (5) with respect to every director and officer of the issuer (or person
21 occupying a similar status or performing similar functions): ~~His~~ *The per-*
22 *son's* name, address, and principal occupation for the past five years; the
23 amount of securities of the issuer held by ~~him~~ *the person* as of a specified
24 date within ninety days of the filing of the registration statement; and a
25 description of any material interest in any material transaction with the
26 issuer or any significant subsidiary effected within the past three years or
27 proposed to be effected;

28 (6) with respect to persons covered by clause (5): The remuneration
29 paid during the past twelve months, directly or indirectly, by the issuer
30 (together with all predecessors, parents, subsidiaries, and affiliates) to all
31 those persons in the aggregate;

32 (7) with respect to any person owning of record, or beneficially if
33 known, ten percent or more of the outstanding shares of any class of
34 equity security of the issuer: The information specified in clause (5) other
35 than ~~his~~ *the person's* occupation;

36 (8) with respect to every promoter if the issuer was organized within
37 the past three years: The information specified in clause (5), any amount
38 paid to ~~him~~ *the promoter* within that period or intended to be paid to
39 him, and the consideration for any such payment;

40 (9) with respect to any person on whose behalf any part of the offering
41 is to be made in a non-issuer distribution: ~~His~~ *The person's* name and
42 address; the amount of securities of the issuer held by ~~him~~ *the person* as
43 of the date of the filing of the registration statement; a description of any

1 material interest in any material transaction with the issuer or any signif-
2 icant subsidiary effected within the past three years or proposed to be
3 effected; and a statement of ~~his~~ *the person's* reasons for making the
4 offering;

5 (10) the capitalization and long-term debt of the issuer, including (A)
6 a description of each security outstanding or being registered or otherwise
7 offered, and (B) a statement of the amount and kind of consideration
8 (whether in the form of cash, physical assets, services, patents, goodwill,
9 or anything else) for which the issuer has issued any of its securities within
10 the past five years or is obligated to issue any of its securities;

11 (11) the estimated cash proceeds to be received by the issuer from
12 the offering and the purposes for which the proceeds are to be used by
13 the issuer; and, if any part of the proceeds is to be used to acquire any
14 property (including goodwill) otherwise than in the ordinary course of
15 business, the names and addresses of the vendors and the purchase price;

16 (12) a description of any stock options (or other security options)
17 outstanding, or to be created in connection with the offering; together
18 with the amount of any such options held or to be held by every person
19 required to be named in clause (2), (5), (7), (8), or (9), and by any person
20 who holds or will hold ten percent or more in the aggregate of any such
21 options;

22 (13) a specimen or copy of the security being registered; a copy of
23 the issuer's articles of incorporation and bylaws (or their substantial equiv-
24 alents) as currently in effect; and a copy of any indenture or other instru-
25 ment covering the security to be registered;

26 (14) a balance sheet *or statement of financial condition* of the issuer
27 as of a date within four months prior to the filing of the registration
28 statement; ~~a profit and loss statement and analysis of surplus, and other~~
29 *financial statements required by and presented in conformity with gen-*
30 *erally accepted accounting principles* for each of the three fiscal years
31 preceding the date of the balance sheet *or statement of financial condition*
32 and for any period between the close of the last fiscal year and the date
33 of the balance sheet *or statement of financial condition*, or for the period
34 of the issuer's and any predecessors' existence if less than three years;
35 and

36 (15) such additional information as the commissioner may require by
37 rule or order.

38 (b) *The commissioner, by rule and regulation or order, may require*
39 *financial statements of an issuer to be reviewed or audited by independent*
40 *certified public accountants.*

41 ~~(b)~~ (c) A registration statement under this section will become effec-
42 tive when the commissioner so orders.

43 Sec. 5. K.S.A. 2000 Supp. 17-1261 is hereby amended to read as

1 follows: 17-1261. The following securities shall be exempt from the reg-
2 istration requirements of K.S.A. 17-1255 through 17-1260, and amend-
3 ments thereto:

4 (a) Any security issued or guaranteed by the United States or by any
5 state, territory or insular possession thereof, or by any political subdivision
6 of any such state, territory or insular possession, or by the District of
7 Columbia, or by any public agency or instrumentality of one or more of
8 any of the foregoing.

9 (b) Any security issued, *insured* or guaranteed by ~~Canada, any Ca-~~
10 ~~nadian province, any political subdivision of any such province, any agency~~
11 ~~or corporate or other instrumentality of one or more of the foregoing or~~
12 ~~any other foreign government or governmental combination or entity with~~
13 ~~which the United States currently maintains diplomatic relations, or any~~
14 ~~of its political subdivisions,~~ if the security is recognized as a valid obli-
15 gation by the issuer, insurer or guarantor.

16 (c) Any security issued by and representing an interest in or a debt
17 of, or guaranteed by, any bank organized under the laws of the United
18 States, or any bank, savings institution, credit union or trust company
19 organized and supervised under the laws of this state except that the
20 issuer of such security is subject to the supervision of the banking de-
21 partment or credit union administrator of this state.

22 (d) Any security issued by and representing an interest in or a debt
23 of, or guaranteed by, any federal savings and loan association, or any
24 savings and loan association organized under the laws of this state and
25 authorized to do business in this state.

26 (e) Any security issued by and representing an interest in or a debt
27 of, or guaranteed by, any insurance company organized under the laws
28 of any state and authorized to do business in this state ~~when such secu-~~
29 ~~rities are sold by the issuer.~~

30 (f) Any security issued or guaranteed by any railroad, or public utility
31 which is:

32 (1) a registered holding company under the public utility holding
33 company act of 1935 or a subsidiary of such a company within the mean-
34 ing of that act; or

35 (2) regulated by a governmental authority of the United States or any
36 state in respect to the issuance or guarantee of the security.

37 (g) Any security as to which the commissioner by rule and regulation
38 finds that registration is not necessary or appropriate for the protection
39 of investors.

40 (h) Any security issued by any person organized and operated not for
41 private profit but exclusively for religious, educational, benevolent, char-
42 itable, fraternal, social, athletic, fire protection, fire fighting or reforma-
43 tory purposes, or as a chamber of commerce or trade or professional

1 association if no part of the net earnings of such person inures to the
2 benefit of any private stockholder. The commissioner may require the
3 filing of a notice and specify conditions for this exemption pursuant to
4 rules and regulations adopted by the commissioner.

5 (i) Any commercial paper which arises out of a current transaction or
6 the proceeds of which have been or are to be used for current transac-
7 tions, and which evidences an obligation to pay cash within nine months
8 of the date of issuance, exclusive of days of grace, or any renewal of such
9 paper which is likewise limited, or any guarantee of such paper or of any
10 such renewal.

11 (j) Any securities issued in connection with an employee's stock pur-
12 chase, savings, pension, profit-sharing or similar benefit plan, or a self-
13 employed person's retirement plan.

14 (k) Any security evidencing membership in, or issued as a patronage
15 dividend by, a cooperative association organized under the laws of this
16 state exclusively for the purpose of conducting an agricultural, dairy, live-
17 stock or produce business, or selling, processing, storing, marketing or
18 otherwise handling any agricultural, dairy, livestock or produce, and any
19 activities incidental to these purposes.

20 (l) Any security issued by and representing an interest in or debt of,
21 or evidencing membership in, or issued as a patronage dividend to resi-
22 dents or landowners of not to exceed five contiguous counties in Kansas
23 by a cooperative association organized under the laws of this state exclu-
24 sively for the purpose of conducting an agricultural, dairy, livestock or
25 produce business, or selling, processing, storing, marketing, retailing, or
26 otherwise handling any agricultural, dairy, livestock or produce, or farm
27 supplies, and any activities incidental to these purposes.

28 (m) Securities constituting part of an issue, which, in whole or in part
29 has been lawfully sold and distributed to the public in this or any other
30 state, when offered for resale in good faith and not directly or indirectly
31 for the benefit of the issuer or for the direct or indirect purpose of pro-
32 moting any scheme or enterprise having the effect of violating or evading
33 any provisions of this act, except that this exemption shall not apply (1)
34 where the authority to sell such securities has been prohibited or denied
35 under the provisions of this act, or (2) where the sale of such securities
36 in this state has been enjoined as provided in this act or (3) until there
37 shall have been filed with the securities commissioner of Kansas by any
38 registered broker-dealer a prospectus in such form as may be prescribed
39 by the commissioner containing: (A) Latest available financial statement
40 of the issuer; (B) management personnel; and (C) such other available
41 information as the commissioner may require. The filing of the prospectus
42 and its approval by the commissioner shall constitute the exemption
43 herein provided. Any prospectus may be disapproved at any time, if after

1 a reasonable notice and a hearing, the commissioner shall find that the
2 further exemption of the securities would be fraudulent or tend to work
3 imposition or fraud upon the purchaser thereof.

4 ~~(n) Any annuity, gift annuity, charitable remainder unitrust, charita-~~
5 ~~ble remainder annuity trust, endowment contract, life income contract,~~
6 ~~or investment contract issued by the governing body of any four-year~~
7 ~~liberal arts college situated in the state of Kansas, and the provisions of~~
8 ~~K.S.A. 17-1254, and amendments thereto, shall not apply to any person~~
9 ~~in the issuance of such securities governed by this subsection.~~

10 ~~—(o) Any annuity, gift annuity, charitable remainder unitrust, charita-~~
11 ~~ble remainder annuity trust, endowment contract, life income contract or~~
12 ~~investment contract issued by the governing body of any nonprofit cor-~~
13 ~~poration or foundation organized under the laws of this state, for religious,~~
14 ~~charitable or educational purposes, or for the treatment and rehabilitation~~
15 ~~of children and adolescents, and which corporation or foundation is li-~~
16 ~~icensed by the secretary of social and rehabilitation services or secretary~~
17 ~~of health and environment, if such corporation or foundation has been in~~
18 ~~existence for more than five years and has fund balances in its endowment~~
19 ~~fund and unrestricted funds totaling together \$1,000,000 or more, and~~
20 ~~the provisions of K.S.A. 17-1254, and amendments thereto, shall not apply~~
21 ~~to any person in the issuance of securities governed by this subsection.~~

22 ~~—(p) (n) Any security issued by a bank holding company wholly or~~
23 ~~partially in exchange for the capital stock of a bank that is, or will become~~
24 ~~upon consummation of such exchange, a subsidiary of such bank holding~~
25 ~~company; or any security issued by a savings and loan holding company~~
26 ~~wholly or partially in exchange for the capital stock of an insured insti-~~
27 ~~tution that is, or will become upon consummation of such exchange, a~~
28 ~~subsidiary of such savings and loan holding company. As used in this~~
29 ~~subsection, “bank,” “bank holding company” and “subsidiary” shall have~~
30 ~~the same meanings as are set forth in the federal bank holding company~~
31 ~~act of 1956, as amended and “savings and loan holding company” and~~
32 ~~“insured institution” shall have the same meanings as are set forth in~~
33 ~~section 408 of the national housing act, as amended.~~

34 Sec. 6. K.S.A. 2000 Supp. 17-1263 is hereby amended to read as
35 follows: 17-1263. (a) Every nonresident applicant for registration under
36 this act and every nonresident issuer which proposes to offer its securities
37 in this state through an agent or broker-dealer on an agency basis, unless
38 its securities are exempt under ~~subsection (a), (b), (c), (e), (f), (g), (i), (j),~~
39 ~~(k), (l) or (p) of K.S.A. 17-1261, and amendments thereto, other than~~
40 ~~subsection (e),~~ or are offered in transactions exempt under K.S.A. 17-
41 1262, and amendments thereto, shall file with the commissioner, in such
42 form as the commissioner may by rules and regulations prescribe, an
43 irrevocable consent appointing the secretary of state of Kansas or the

1 secretary's successor in office to be such applicant's attorney to receive
2 service of any lawful process in any noncriminal suit, action, or proceeding
3 against such applicant or such applicant's successor, executor or admin-
4 istrator which arises under this act or any rule and regulation or order
5 hereunder after the consent has been filed, with the same force and va-
6 lidity as if served personally on the person filing the consent. Registration
7 of securities by a broker-dealer shall not subject the issuer of such se-
8 curities to the requirements of this section. A person who has filed such
9 a consent in connection with a previous registration need not file another.

10 (b) Service may be made by leaving a copy of the process in the office
11 of the secretary of state of Kansas, and it is not effective unless:

12 ~~(a)~~ (1) The plaintiff (who may be the commissioner in a suit, action,
13 or proceeding instituted by the commissioner) sends notice of the service
14 and a copy of the process by registered mail to the defendant or respon-
15 dent at such person's last address on file with the commissioner; and

16 ~~(b)~~ (2) the plaintiff's affidavit of compliance with this subsection is
17 filed in the case on or before the return day of the process, if any, or
18 within such further time as the court may allow.

19 (c) When process is served under ~~this section~~ subsection (b), the
20 court, or the commissioner in a proceeding before the commissioner, shall
21 order such continuance as may be necessary to afford the defendant or
22 respondent reasonable opportunity to defend.

23 (d) *In an administrative proceeding under this act, service of process*
24 *may be made in accordance with the Kansas administrative procedure*
25 *act.*

26 Sec. 7. K.S.A. 17-1265 is hereby amended to read as follows: 17-
27 1265. (a) The commissioner may:

28 (1) Make public or private investigations within or outside of this state
29 as necessary to determine whether any registration should be granted,
30 denied or revoked or whether any person has violated or is about to violate
31 any provision of this act or any rule or order hereunder, or to aid in the
32 enforcement of this act or in the prescribing of forms or adoption of rules
33 and regulations;

34 (2) require or permit any person to file a statement in writing, under
35 oath or otherwise as the commissioner determines, of all the facts and
36 circumstances concerning the matter to be investigated; and

37 (3) publish information concerning any violation of this act or any
38 rule or order hereunder.

39 (b) The commissioner may appoint special investigators to aid in in-
40 vestigations conducted pursuant to the Kansas securities act. Such special
41 investigators shall have authority to make arrests, serve subpoenas and all
42 other process, conduct searches and seizures, store evidence, and carry
43 firearms, concealed or otherwise. The director as defined in K.S.A. 74-

1 5602, and amendments thereto, is authorized to offer and carry out a
2 special course of instruction for special investigators performing law en-
3 forcement duties under authority of this subsection ~~(b)~~. Such special in-
4 vestigators shall not carry firearms without having first successfully com-
5 pleted such special law enforcement training course.

6 (c) For the purpose of any investigation or proceeding under this act,
7 the commissioner or any officer designated by the commissioner may
8 administer oaths and affirmations, subpoena witnesses, compel their at-
9 tendance, take evidence, and require the production of any books, papers,
10 correspondence, memoranda, agreements, or other documents or records
11 which the commissioner deems relevant or material to the inquiry.

12 *(d) The commissioner may issue and apply to enforce subpoenas in*
13 *this state at the request of a securities agency or administrator of another*
14 *state if the alleged activities for which the information is sought would be*
15 *a violation of the Kansas securities act if the activities had occurred in*
16 *this state.*

17 ~~(d)~~ (e) In case of contumacy by, or refusal to obey a subpoena issued
18 to any person, any court of competent jurisdiction, upon application by
19 the commissioner, may issue to that person an order requiring the person
20 to appear before the commissioner, or the officer designated by the com-
21 missioner, there to produce documentary evidence if so ordered or to
22 give evidence touching the matter under investigation or in question. Any
23 failure to obey the order of the court may be punished by the court as a
24 contempt of court.

25 ~~(e)~~ (f) No person is excused from attending and testifying or from
26 producing any document or record before the commissioner, or in obe-
27 dience to the subpoena of the commissioner or any officer designated by
28 the commissioner, or in any proceeding instituted by the commissioner,
29 on the ground that the testimony or evidence (documentary or otherwise)
30 required of the person may tend to incriminate the person or subject the
31 person to a penalty or forfeiture. ~~No individual may be prosecuted or~~
32 ~~subjected to any penalty or forfeiture for or on account of any transaction,~~
33 ~~matter or thing concerning which such person is compelled, after claiming~~
34 ~~privilege against self-incrimination, to testify or produce evidence (doc-~~
35 ~~umentary or otherwise), except that the individual so testifying shall not~~
36 ~~be exempt from prosecution and punishment for perjury committed in~~
37 ~~so testifying. If any person claims the privilege against self-incrimination,~~
38 *the commissioner or any officer designated by the commissioner may*
39 *grant in writing to the person transactional immunity or use and deriv-*
40 *ative use immunity as set forth in K.S.A. 22-3415, and amendments*
41 *thereto. Any person claiming the privilege against self-incrimination shall*
42 *do so personally and not by attorney or other person.*

43 ~~(f) The commissioner may issue and apply to enforce subpoenas in~~

1 ~~this state at the request of a securities agency or administrator of another~~
2 ~~state if the activities constituting an alleged violation for which the infor-~~
3 ~~mation is sought would be a violation of the Kansas securities act if the~~
4 ~~activities had occurred in this state.~~

5 Sec. 8. K.S.A. 17-1266a is hereby amended to read as follows: 17-
6 1266a. (a) If the commissioner determines after notice and opportunity
7 for a hearing that any person has engaged, is engaging or is about to
8 engage in any act or practice constituting a violation of any provision of
9 this act or any rule and regulation or order hereunder, the commissioner
10 by order may require that such person cease and desist from the unlawful
11 act or practice and take such affirmative action as in the judgment of the
12 commissioner will carry out the purposes of this act.

13 (b) If the commissioner makes written findings of fact that the public
14 interest will be irreparably harmed by delay in issuing an order under
15 subsection (a), the commissioner may issue an emergency temporary
16 cease and desist order. Such order, even when not an order within the
17 meaning of K.S.A. 77-502, and amendments thereto, shall be subject to
18 the same procedures as an emergency order issued under K.S.A. 77-536,
19 and amendments thereto. Upon the entry of such an order, the commis-
20 sioner shall promptly notify the person subject to the order that it has
21 been entered, of the reasons and that upon written request the matter
22 will be set for a hearing which shall be conducted in accordance with the
23 provisions of the Kansas administrative procedure act. If no hearing is
24 requested and none is ordered by the commissioner, the order will remain
25 in effect until it is modified or vacated by the commissioner. If a hearing
26 is requested or ordered, the commissioner, after notice of and opportu-
27 nity for hearing to the person subject to the order, shall by written find-
28 ings of fact and conclusions of law vacate, modify or make permanent the
29 order.

30 (c) If the commissioner reasonably believes that a person has violated
31 this act or a rule and regulation or order of the commissioner under this
32 act, the commissioner, in addition to any specific power granted under
33 this act, after notice and hearing in an administrative proceeding, unless
34 the right to notice and hearing is waived by the person against whom the
35 sanction is imposed, may:

36 (1) Censure the person if the person is a ~~licensed~~ *registered* broker-
37 dealer, ~~sales representative or agent~~, investment adviser *or investment*
38 *adviser representative*;

39 (2) issue an order against an applicant, ~~licensed~~ *registered* person or
40 other person who knowingly violates this act or a rule or order of the
41 commissioner under this act, imposing a civil penalty up to a maximum
42 of \$5,000 for each violation; ~~or~~

43 (3) bar or suspend the person from association with a broker-dealer

1 or investment adviser registered in this state; or

2 (4) *issue an order requiring the person to pay restitution for any loss*
3 *arising from the violation or requiring the person to disgorge any profits*
4 *arising from the violation. Such order may include the assessment of in-*
5 *terest not to exceed 15% per annum from the date of the violation.*

6 (d) *Every hearing in an administrative proceeding shall be public*
7 *unless the commissioner in the commissioner's discretion grants a request*
8 *joined in by all the respondents that the hearing be conducted privately.*

9 Sec. 9. K.S.A. 2000 Supp. 17-1270 is hereby amended to read as
10 follows: 17-1270. (a) This act shall be administered by the securities com-
11 missioner of Kansas.

12 (b) All fees herein provided for shall be collected by the commis-
13 sioner. All salaries and expenses necessarily incurred in the administration
14 of this act shall be paid from the securities act fee fund.

15 (c) The commissioner, by rules and regulations or order may require
16 the filing of any prospectus, pamphlet, circular, form letter, advertise-
17 ment, or other sales literature addressed or intended for distribution to
18 prospective investors, including clients or prospective clients of an in-
19 vestment adviser, unless the security ~~or transaction is exempt under~~
20 ~~K.S.A. 17-1261 or 17-1262, and amendments thereto, or is a federal covered~~
21 ~~security for which no filing can be required by the commissioner~~
22 ~~under the securities act of 1933 and K.S.A. 2000 Supp. 17-1270a, and~~
23 ~~amendments thereto.~~

24 (d) The books and records of every person issuing or guaranteeing
25 any securities subject to the provisions of this act and of every broker-
26 dealer, agent, investment adviser or investment adviser representative
27 registered under this act shall, as the commissioner deems necessary or
28 appropriate in the public interest or for the protection of investors, be
29 subject at any time, or from time to time, to such periodic or special
30 examinations by the commissioner, or such accountant or examiner as the
31 commissioner may determine. ~~The commissioner, by rules and regula-~~
32 ~~tions, may set a fee to be paid by~~ *may require* the person, broker-dealer
33 or investment adviser subject to the examination ~~at cost~~ *to reimburse* the
34 agency *for all reasonable costs of the examination.* For the purpose of
35 avoiding unnecessary duplication of examinations, the commissioner may
36 cooperate with other proper authorities.

37 (e) The commissioner may from time to time adopt, amend, and re-
38 voke such rules and regulations, orders and forms as may be necessary to
39 carry out the provisions of this act. In prescribing rules and regulations
40 and forms, the commissioner may cooperate with the securities admin-
41 istrators of the other states and the securities and exchange commission
42 with a view to effectuating the policy of this statute to achieve maximum
43 uniformity in the form and content of registration statements, applica-

1 tions, and reports wherever practicable. All rules and regulations and
2 forms of the commissioner shall be published. No provision of this act
3 imposing any liability applies to any act done or omitted in good faith in
4 conformity with any rules and regulations, form, or order of the commis-
5 sioner, notwithstanding that the rules and regulations, form or order may
6 later be amended, revoked or rescinded or be determined by judicial or
7 other authority to be invalid for any reason. ~~Every hearing in an admin-
8 istrative proceeding shall be public unless the commissioner in the com-
9 missioner's discretion grants a request joined in by all the respondents
10 that the hearing be conducted privately.~~

11 (f) A document is filed when it is received by the commissioner. The
12 commissioner may receive a document filed by electronic format that is
13 submitted by direct digital transmission, magnetic tape or diskette, and
14 may maintain and provide the document in such an electronic format.
15 Records maintained by the commissioner, as required by this act, and
16 copies of such records shall be made available to the public in accordance
17 with the open records act. Copies shall be certified under the commis-
18 sioner's seal of office if requested. In any proceeding or prosecution under
19 this act, any copy so certified is prima facie evidence of the contents of
20 the entry or document certified.

21 (g) The commissioner in the commissioner's discretion may honor
22 requests from interested persons for interpretative opinions.

23 Sec. 10. K.S.A. 17-1271 is hereby amended to read as follows: 17-
24 1271. (a) The securities commissioner shall remit all moneys received
25 from all fees, charges, deposits or penalties which have been collected
26 under the Kansas securities act ~~or other laws of this state regulating the
27 issuance, sale or disposal of securities or regulating dealers in this state
28 or, under the provisions of K.S.A. 50-1001, et seq., and amendments
29 thereto~~, under the uniform land sales practices act, to the state treasurer
30 ~~at least monthly~~ in accordance with the provisions of K.S.A. 75-4215, and
31 amendments thereto. Upon receipt of ~~any~~ each such remittance, the state
32 treasurer shall deposit the entire amount thereof in the state treasury.
33 ~~Twenty percent~~ In accordance with subsection (a) of K.S.A. 75-3170, and
34 amendments thereto, 20% of each such deposit shall be credited to the
35 state general fund and the balance shall be credited to the securities act
36 fee fund, except as provided in subsection (b).

37 (b) *There is hereby established in the state treasury the investor ed-
38 ucation fund. Such fund shall be administered by the commissioner for
39 the purpose of providing for the education of consumers in matters con-
40 cerning securities regulation and investments. Moneys collected as civil
41 penalties under K.S.A. 17-1266a, and amendments thereto, shall be cred-
42 ited to the investor education fund. The commissioner may also receive
43 payments designated to be credited to the investor education fund as a*

1 *condition in settlements of cases arising out of investigations or exami-*
2 *nations. All expenditures from the investor education fund shall be made*
3 *in accordance with appropriation acts upon warrants of the director of*
4 *accounts and reports issued pursuant to vouchers approved by the secu-*
5 *rities commissioner or by a person or persons designated by the securities*
6 *commissioner.*

7 ~~(b)~~ (c) On the last day of each fiscal year, the director of accounts
8 and reports shall transfer from the securities act fee fund to the state
9 general fund any remaining unencumbered amount in the securities act
10 fee fund exceeding \$50,000 so that the beginning unencumbered balance
11 in the securities act fee fund on the first day of each fiscal year is \$50,000.
12 All expenditures from the securities act fee fund shall be made in ac-
13 cordance with appropriation acts upon warrants of the director of ac-
14 counts and reports issued pursuant to vouchers approved by the securities
15 commissioner or by a person or persons designated by the securities
16 commissioner.

17 ~~(c)~~ (d) All amounts transferred from the securities act fee fund to the
18 state general fund under subsection ~~(b)~~ (c) are to reimburse the state
19 general fund for accounting, auditing, budgeting, legal, payroll, personnel
20 and purchasing services and any other governmental services which are
21 performed on behalf of the state agency involved by other state agencies
22 which receive appropriations from the state general fund to provide such
23 services. Such reimbursements are in addition to those authorized by
24 K.S.A. 75-3170a, and amendments thereto.

25 Sec. 11. K.S.A. 40-436 is hereby amended to read as follows: 40-436.

26 (a) Any domestic life insurance company may after adoption of a reso-
27 lution by its board of directors, establish one or more separate accounts,
28 and may allocate to such separate account or accounts any amounts, in-
29 cluding without limitation proceeds applied under optional modes of set-
30 tlement or under dividend options, paid to the company which are to be
31 applied under the terms of an individual or group life or annuity contract
32 issued in connection therewith to provide benefits payable in fixed or in
33 variable amounts, or in both, and such contracts may provide other
34 benefits.

35 (b) The amounts allocated to each such account and accumulations
36 ~~thereon~~ may be invested and reinvested in any class of investments which
37 may be authorized in the contracts without regard to any requirements
38 or limitations prescribed by the laws of this state governing the invest-
39 ments of life insurance companies. ~~Provided, except~~ that to the extent
40 that the company's reserve liability with regard to: (1) Benefits guaranteed
41 as to amount and duration; ; and (2) funds guaranteed as to principal
42 amount or stated rate of interest is maintained in any separate account,
43 a portion of the assets of such separate account at least equal to such

1 reserve liability shall be invested in accordance with the laws of this state
2 governing the investments of life insurance companies. The investments
3 in such separate account or accounts shall not be taken into account in
4 applying the investment limitations applicable to other investments of the
5 company.

6 (c) The income, if any, and gains and losses, realized or unrealized,
7 on each account shall be credited to or charged against the amounts
8 allocated to the account in accordance with the contracts, without regard
9 to other income, gains or losses of the company.

10 (d) Assets allocated to a separate account shall be valued at their
11 market value on the date of valuation, or if there is no readily available
12 market, then in accordance with the terms of the contracts: ~~Provided,~~
13 ~~except~~ that the portion of the assets of such separate account at least equal
14 to the company's reserve liability with regard to the guaranteed benefits
15 and funds referred to in subsection (b) hereof, if any, shall be valued in
16 accordance with the rules otherwise applicable to the company's assets.

17 (e) Amounts allocated to a separate account in the exercise of the
18 power granted by this act shall be owned by the company, and the com-
19 pany shall not be, nor hold itself out to be, a trustee with respect to such
20 amounts. If and to the extent so provided under the applicable contracts,
21 that portion of the assets of any such separate account equal to the re-
22 serves and other contract liabilities with respect to such account shall not
23 be chargeable with liability arising out of any other business the company
24 may conduct.

25 (f) The company shall maintain in each such separate account assets
26 with a value at least equal to the reserves and other contract liabilities
27 with respect to such account, except as may otherwise be approved by
28 the commissioner of insurance. No sale, exchange or other transfer of
29 assets may be made by a company between any of its separate accounts
30 or between any other investment account and one or more of its separate
31 accounts unless, in case of a transfer into a separate account, such transfer
32 is made solely to establish the account or to support the operation of the
33 contracts with respect to the separate account to which the transfer is
34 made, and unless such transfer, whether into or from a separate account,
35 is made: (1) By a transfer of cash; or (2) by a transfer of securities having
36 a readily determinable market value, provided that such transfer of se-
37 curities is approved by the commissioner. The commissioner may approve
38 other transfers among such accounts if, in ~~his~~ *the commissioner's* opinion,
39 such transfers would not be inequitable.

40 (g) If any contract provides for payment of benefits in variable
41 amounts, it shall contain a statement of the essential features of the pro-
42 cedure to be followed by the company in determining the dollar amount
43 of such variable benefits. Any such contract, including a group contract,

1 and any certificate issued ~~thereunder~~ shall state that such dollar amount
2 may decrease or increase and shall contain on its first page a statement
3 that the benefits ~~thereunder~~ are on a variable basis.

4 (h) A foreign or alien life insurance company authorized to do busi-
5 ness in this state may be authorized to issue or deliver contracts in this
6 state providing for payments which vary directly according to investment
7 experience only if authorized to issue such contracts under the laws of its
8 domicile.

9 (i) No domestic life insurance company shall be authorized to issue
10 such contracts, and no foreign or alien life insurance company shall be
11 authorized to issue or deliver such contracts in this state, until such com-
12 pany has satisfied the commissioner that its condition and methods of
13 operation in connection with the issuance of such contracts will not be
14 such as to render its operation hazardous to the public or to its policy-
15 holders in this state. In determining the qualification of a company to
16 issue or deliver such contracts in this state, the commissioner shall con-
17 sider, among other things, the history and financial condition of the com-
18 pany; the character, responsibility, and general fitness of the officers and
19 directors of the company; and in the case of a foreign or alien company,
20 whether the regulation provided by the laws of its domicile provides a
21 degree of protection to policyholders and the public substantially equal
22 to that provided by this section and the rules and regulations issued by
23 the commissioner pursuant thereto. The state of entry of an alien com-
24 pany shall be deemed its place of domicile for this purpose.

25 (j) Every life insurance company which issues or delivers such con-
26 tracts in this state shall file with the commissioner, in addition to the
27 annual statement required by K.S.A. 40-225, *and amendments thereto*,
28 such other periodic or special reports as the commissioner may prescribe.

29 (k) Any domestic life insurance company which establishes one or
30 more separate accounts pursuant to this section, may amend its charter
31 or bylaws to provide for special voting rights and procedures for the own-
32 ers of contracts under such separate account relating to investment policy,
33 investment advisory services and selection of independent public account-
34 ants, in relation to the administration of the assets in any such separate
35 account and such other matters as the company deems necessary in the
36 management of the assets in any such separate account. This provision
37 shall not in any way affect existing laws pertaining to the voting rights of
38 the company's policyholders.

39 (l) The commissioner shall have the sole and exclusive jurisdiction
40 and authority to regulate the ~~issuance and sale of~~ *terms and provisions in*
41 *such contracts and the obligations of insurance companies under such*
42 *contracts* and to promulgate such reasonable rules and regulations as may
43 be necessary to carry out the purposes and provisions of this act, ~~and such~~

1 ~~contracts, the companies which issue them, and the agents or other per-~~
2 ~~sons who sell them, shall not be subject to the provisions of article 12 of~~
3 ~~chapter 17 of the Kansas Statutes Annotated nor to the jurisdiction of the~~
4 ~~securities commissioner of this state.~~

5 Sec. 12. K.S.A. 50-1009 is hereby amended to read as follows: 50-
6 1009. (a) The commissioner *or the commissioner's designee* may do the
7 following:

8 (1) Adopt rules and regulations to implement this act;

9 (2) make *public or private* investigations and examinations *within or*
10 *outside of this state*:

11 (A) In connection with any application for registration of any loan
12 broker or any registration already granted; or

13 (B) whenever it appears to the commissioner, upon the basis of a
14 complaint or information, that reasonable grounds exist for the belief that
15 an investigation or examination is necessary or advisable for the more
16 complete protection of the interests of the public;

17 (3) appoint special investigators to aid in investigations conducted
18 pursuant to this act. Such special investigators shall have the same au-
19 thority with respect to enforcement of this act as specified for special
20 investigators appointed under subsection (b) of K.S.A. 17-1265, and
21 amendments thereto, in enforcing the Kansas securities act;

22 (4) charge as costs of investigation or examination all reasonable ex-
23 penses, including a per diem prorated upon the salary of the commis-
24 sioner or employee and actual traveling and hotel expenses. All reasonable
25 expenses are to be paid by the party or parties under investigation or
26 examination;

27 (5) issue notices and orders, including cease and desist notices and
28 orders, after making an investigation or examination under paragraph (2).
29 The commissioner may also bring an action on behalf of the state to enjoin
30 a person from violating this act. The commissioner shall notify the person
31 that an order or notice has been issued, the reasons for it and that a
32 hearing will be set in accordance with the provisions of the Kansas ad-
33 ministrative procedures act after the commissioner receives a written re-
34 quest from the person requesting a hearing;

35 (6) sign all orders, official certifications, documents or papers issued
36 under this act or delegate the authority to sign any of those items ~~to a~~
37 ~~deputy~~;

38 (7) hold and conduct hearings;

39 (8) hear evidence;

40 (9) conduct inquiries with or without hearings;

41 (10) receive reports of investigators or other officers or employees of
42 the state of Kansas or of any municipal corporation or governmental sub-
43 division within the state;

- 1 (11) administer oaths or cause them to be administered;
2 (12) subpoena witnesses and compel them to attend and testify;
3 (13) compel the production of books, records and other documents;
4 and
5 (14) order depositions to be taken of any witness residing within or
6 without the state. The depositions shall be taken in the manner prescribed
7 by law for depositions in civil actions and made returnable to the
8 commissioner.

9 (b) If any person refuses to obey a subpoena issued under this act,
10 the commissioner may make application to any court of competent juris-
11 diction to order the person to appear before the commissioner and pro-
12 duce documentary evidence or give evidence as directed in the subpoena.
13 The failure to obey the order of the court shall be subject to punishment
14 by the court as contempt of court.

15 (c) No person shall be excused from complying with a subpoena on
16 the ground that the testimony or evidence required may tend to incrim-
17 inate the person or subject the person to a penalty or forfeiture. ~~No~~
18 ~~individual may be prosecuted or subject to any penalty or forfeiture for~~
19 ~~or on account of any transaction, matter or thing which the individual is~~
20 ~~compelled to testify or produce evidence, after claiming the privilege~~
21 ~~against self-incrimination. However, the individual so testifying shall not~~
22 ~~be exempt from prosecution and punishment for perjury committed in~~
23 ~~so testifying~~ *If any person claims the privilege against self-incrimination,*
24 *the commissioner or any officer designated by the commissioner may*
25 *grant in writing to the person transactional immunity or use and deriv-*
26 *ative use immunity as set forth in K.S.A. 22-3415, and amendments*
27 *thereto. Any person claiming the privilege against self-incrimination shall*
28 *do so personally and not by attorney or other person.*

29 (d) In any prosecution, action, suit or proceeding based upon or aris-
30 ing out of this act, the commissioner may sign a certificate showing com-
31 pliance or noncompliance with this act by any loan broker. This shall
32 constitute prima facie evidence of compliance or noncompliance with this
33 act and shall be admissible in evidence in any action at law or in equity
34 to enforce this act.

35 Sec. 13. K.S.A. 17-1257, 17-1258, 17-1265, 17-1266a, 17-1271, 40-
36 436 and 50-1009 and K.S.A. 2000 Supp. 17-1252, 17-1254, 17-1261, 17-
37 1263 and 17-1270 are hereby repealed.

38 Sec. 14. This act shall take effect and be in force from and after its
39 publication in the statute book.

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