

SENATE BILL No. 398

AN ACT concerning securities; relating to the regulation thereof; concerning the powers of the securities commissioner; amending K.S.A. 17-1257, 17-1258 and 17-1266a and K.S.A. 2001 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. 2001 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) 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 of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management or unit type; the term “issuer” also means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued. The issuer of a certificate of interest in an oil and gas royalty, lease or mineral deed is the owner of the interest in the oil and gas royalty, lease or mineral deed who creates the certificate of interest for purpose of sale.

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

(g) “Person” means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government or a political subdivision of a government.

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

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

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

(4) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, and every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

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

(i) “Securities act of 1933,” “securities exchange act of 1934,” “public utility holding company act of 1935,” “*investment advisers act of 1940*”

and “investment company act of 1940” mean the federal statutes of those names.

(j) “Security” means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificates; thrift certificates or investment certificates, or thrift notes issued by investment companies; certificate of deposit for a security; certificate of interest in oil and gas royalties, leases or mineral deeds; or, in general, any interest or instrument commonly known as a “security,” or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. “Security” does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

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

(l) “Investment adviser” means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term does not include:

- (1) An investment adviser representative;
- (2) a bank, savings institution, or trust company;
- (3) a lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of the individual’s profession;
- (4) a broker-dealer or its agent whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for them;
- (5) a publisher of any bona fide newspaper, news column, news magazine, newsletter, or business or financial publication or service, whether communicated in hard copy form or by electronic means, or otherwise that does not consist of the rendering of advice on the basis of the specific investment situation of each client;
- (6) any person that is a federal covered adviser; or
- (7) such other persons not within the intent of this definition as the commissioner designates by order or by rules and regulations.

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

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

- (i) Makes any recommendations or otherwise renders advice regarding securities;
- (ii) manages accounts or portfolios of clients;
- (iii) determines which recommendation or advice regarding securities should be given;
- (iv) solicits, offers or negotiates for the sale of or sells investment advisory services; or
- (v) supervises employees who perform any of the foregoing; or

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

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

(n) “Federal covered security” means any security that is a covered security under section 18(b) of the securities act of 1933 or rules or regulations promulgated thereunder.

(o) “Federal covered adviser” means a person who is registered under section 203 of the investment advisers act of 1940 or excluded from the definition of “investment adviser” under section 202(a)(11) of the investment advisers act of 1940.

Sec. 2. K.S.A. 2001 Supp. 17-1254 is hereby amended to read as follows: 17-1254. (a) It is unlawful for any person to transact business in this state as a broker-dealer or agent unless that person is registered under this act, except in transactions exempt under K.S.A. 17-1262, and amendments thereto.

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

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

- (1) The person is so registered under this act; or
- (2) the person has no place of business in this state and:

(A) The person's only clients in this state are investment companies as defined in the investment company act of 1940, other investment advisers, federal covered advisers, broker-dealers, banks, trust companies, savings institutions, insurance companies, employee benefit plans with assets of not less than \$1,000,000 and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rules and regulations or order of the commissioner; or (B) during the preceding twelve-month period has had not more than five clients, other than those specified in subparagraph (A), who are residents of this state.

(d) It is unlawful for:

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

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

When an investment adviser representative described in paragraphs (1) or (2) begins or terminates employment or association with an investment adviser or federal covered adviser, the investment adviser or federal covered adviser shall promptly notify the commissioner.

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

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

(g) A broker-dealer, agent, investment adviser or investment adviser

representative may be registered after filing with the commissioner, or the commissioner's designee as permitted by subsection (p), a written application containing such relevant information and in such form as the commissioner may require. The applicant shall be registered if the commissioner finds that the applicant and, if applicable, the officers, directors or partners are of good character and reputation, that the applicant's knowledge of the securities business and the applicant's financial responsibility are such that the applicant is suitable to engage in the business, that the applicant has supplied all information required by the commissioner and that the applicant has paid the necessary fee. The commissioner may require as a condition of registration that the applicant and any officers, directors or partners or, in the case of an investment adviser, any persons who represent or will represent the investment adviser in doing or performing any acts or functions which make such person an investment adviser pass a written examination as evidence of knowledge of the securities business. In determining the character and reputation of the applicant, the commissioner ~~shall~~ *may* take into consideration any ~~felony criminal conviction of such person, but such a conviction shall not automatically operate as a bar to registration.~~

(h) The commissioner may, by rules and regulations or order, require a minimum capital for registered broker-dealers, subject to the limitations of section 15 of the securities exchange act of 1934, and establish minimum financial requirements for investment advisers, subject to the limitations of section 222 of the investment advisers act of 1940, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over the same and those investment advisers who do not.

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

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

(2) With respect to investment advisers, the commissioner may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the commissioner, information furnished to clients or prospective clients of an investment adviser that would be in compliance with the investment advisers act of 1940 and the rules thereunder may be used in whole or partial satisfaction of this requirement.

(k) The commissioner shall maintain records of registration, notice filings and orders pertaining to broker-dealers, agents, investment advisers, federal covered advisers and investment adviser representatives. Unless the commissioner has designated alternative registration expiration dates as permitted by subsection (p), every registration under this section shall expire December 31 each year, but any registration for the suc-

ceeding year shall be renewed upon written application and payment of the fee as herein provided without filing a further statement or furnishing any further information unless specifically required by the commissioner. Unless the commissioner has designated alternative registration renewal dates as permitted by subsection (p), application for renewals must be made not later than December 31 in each year; otherwise, they shall be treated as original applications.

(l) The fee for original or renewal registration of each broker-dealer and each investment adviser shall be not more than \$300. The fee for an original or renewal notice filing of each federal covered adviser shall be not more than \$300. The fee for original or renewal registration of each agent and investment adviser representative shall be not more than \$50. Each fee for original registration shall be payable with the application for original registration and each fee for renewal of registration shall be payable with the application for renewal and, in either case, the fee shall not be returned if the application is withdrawn. The commissioner shall establish such fees by rules and regulations.

(m) The commissioner may by order deny, suspend or revoke the registration of any broker-dealer, agent, investment adviser or investment adviser representative if the commissioner finds that such an order is in the public interest and that the applicant or registrant, or, in the case of a broker-dealer or investment adviser, any partner, officer or director or any person occupying a similar status or performing similar functions:

(1) Has filed an application for registration which as of its effective date (or as of any date after filing in the case of an order denying effectiveness) was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) has willfully violated or willfully failed to comply with any provision of this act ~~or a predecessor act~~ or any rules and regulations or order under this act ~~or a predecessor act~~;

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

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

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

(6) is the subject of an order entered within the past five years by the securities administrator of any other state or by the securities and exchange commission denying, suspending or revoking registration as a broker-dealer, agent, investment adviser or investment adviser representative (or the substantial equivalent of those terms as defined in this act), or is the subject of an order of the securities and exchange commission suspending or expelling the person from a national securities exchange or national securities association registered under the federal securities exchange act of 1934, or is the subject of an order by the commodities futures trading commission denying, suspending or revoking registration under the commodities exchange act, or is the subject of an order suspending or expelling from membership in or association with a member of a self-regulatory organization registered under the securities exchange act of 1934 or the commodities exchange act, or is the subject of a United States post office fraud order; but the commissioner may not enter any order under this clause on the basis of an order under any other state act unless that order was based on facts which would currently constitute a ground for an order under this section;

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

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

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

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

(11) has failed to pay the proper registration fee; but the commissioner may not enter a revocation order under this clause, and the commissioner shall vacate any denial order entered under this clause when the deficiency has been corrected;

(12) has failed reasonably to supervise ~~the sales or an agent,~~ investment adviser representative or ~~employees~~ *employee to ensure compliance with this act*; or

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

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

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

(p) (1) The commissioner may participate, in whole or in part, with any national securities association or national securities exchange registered with the United States securities and exchange commission under the federal securities exchange act of 1934 or with any association of state securities administrators in ~~a central~~ *any* registration depository where the broker-dealer, agent ~~and,~~ investment adviser *or investment adviser representative* registrations required by subsection (g) may be centrally or simultaneously effected and the accompanying registration fees may be ~~centrally~~ collected for all states that require the registration of such persons and participate in ~~such a central~~ *the* registration depository.

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

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

(B) alternative registration expiration and renewal dates for registered broker-dealers, agents ~~and,~~ investment advisers *and investment adviser representative* be utilized in lieu of the registration expiration and renewal dates provided under subsection (k);

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

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

(A) All applications for the registration or the renewal of the registration of any broker-dealer, agent ~~or,~~ investment adviser *or investment adviser representative*, and all documents supporting such applications,

which shall be filed with or received by ~~such a central~~ *the* registration depository shall be deemed to be filed with or received by the commissioner pursuant to subsection (g), when such applications or documents are received by ~~such a central~~ *the* registration depository; and

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

Sec. 3. K.S.A. 17-1257 is hereby amended to read as follows: 17-1257. (a) Any security ~~for which may be registered by coordination under this act if a registration statement has been filed but has not been declared effective under the securities act of 1933 in connection with the same offering may be registered by coordination.~~

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

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

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

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

(4) a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

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

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

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

(c) A registration statement under this section will automatically become effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied:

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

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

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

(d) The registrant shall promptly notify the commissioner ~~by telephone or telegram~~ of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if

the commissioner promptly notifies the registrant by telephone or ~~telegram~~ *electronic means* and promptly confirms ~~by letter or telegram when the commissioner notifies by telephone or~~ *in writing* the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment, the stop order is void as of the time of its entry.

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

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

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

(2) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any portion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, contracts, or anything else of value to accrue to the underwriters in connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of underwriters, a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

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

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

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

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

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



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

(9) with respect to any person on whose behalf any part of the offering is to be made in a non-issuer distribution: ~~His~~ *The person's* name and address; the amount of securities of the issuer held by ~~him~~ *the person* as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected; and a statement of ~~his~~ *the person's* reasons for making the offering;

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

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

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

(13) a specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws (or their substantial equivalents) as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;

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

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

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

~~(b)~~ (c) A registration statement under this section will become effective when the commissioner so orders.

Sec. 5. K.S.A. 2001 Supp. 17-1261 is hereby amended to read as follows: 17-1261. The following securities shall be exempt from the registration requirements of K.S.A. 17-1255 through 17-1260, and amendments thereto:

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

(b) Any security issued, *insured* or guaranteed by ~~Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government or governmental combination or entity~~ with which the United States *currently* maintains diplomatic relations, *or any of its political subdivisions*, if the security is recognized as a valid obligation by the issuer, insurer or guarantor.

(c) Any security issued by and representing an interest in or a debt

of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, credit union or trust company organized and supervised under the laws of this state except that the issuer of such security is subject to the supervision of the banking department or credit union administrator of this state.

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

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

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

(1) a registered holding company under the public utility holding company act of 1935 or a subsidiary of such a company within the meaning of that act; or

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

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

(h) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, fire protection, fire fighting or reformatory purposes, or as a chamber of commerce or trade or professional association if no part of the net earnings of such person inures to the benefit of any private stockholder. The commissioner, *by rule and regulation or order*, may require the filing of a notice and specify conditions for this exemption ~~pursuant to rules and regulations adopted by the commissioner.~~

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

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

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

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

(m) Securities constituting part of an issue, which, in whole or in part has been lawfully sold and distributed to the public in this or any other state, when offered for resale in good faith and not directly or indirectly for the benefit of the issuer or for the direct or indirect purpose of promoting any scheme or enterprise having the effect of violating or evading any provisions of this act, except that this exemption shall not apply (1) where the authority to sell such securities has been prohibited or denied under the provisions of this act, or (2) where the sale of such securities in this state has been enjoined as provided in this act or (3) until there shall have been filed with the securities commissioner of Kansas by any registered broker-dealer a prospectus in such form as may be prescribed by the commissioner containing: (A) Latest available financial statement of the issuer; (B) management personnel; and (C) such other available

information as the commissioner may require. The filing of the prospectus and its approval by the commissioner shall constitute the exemption herein provided. Any prospectus may be disapproved at any time, if after a reasonable notice and a hearing, the commissioner shall find that the further exemption of the securities would be fraudulent or tend to work imposition or fraud upon the purchaser thereof.

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

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

~~(p)~~ (n) Any security issued by a bank holding company wholly or partially in exchange for the capital stock of a bank that is, or will become upon consummation of such exchange, a subsidiary of such bank holding company; or any security issued by a savings and loan holding company wholly or partially in exchange for the capital stock of an insured institution that is, or will become upon consummation of such exchange, a subsidiary of such savings and loan holding company. As used in this subsection, “bank,” “bank holding company” and “subsidiary” shall have the same meanings as are set forth in the federal bank holding company act of 1956, as amended and “savings and loan holding company” and “insured institution” shall have the same meanings as are set forth in section 408 of the national housing act, as amended.

Sec. 6. K.S.A. 2001 Supp. 17-1263 is hereby amended to read as follows: 17-1263. (a) Every nonresident applicant for registration under this act and every nonresident issuer which proposes to offer its securities in this state through an agent or broker-dealer on an agency basis, unless its securities are exempt under ~~subsection (a), (b), (c), (e), (f), (g), (i), (j), (k), (l) or (p)~~ of K.S.A. 17-1261, and amendments thereto, or are offered in transactions exempt under K.S.A. 17-1262, and amendments thereto, shall file with the commissioner, in such form as the commissioner may by rules and regulations prescribe, an irrevocable consent appointing the secretary of state of Kansas or the secretary’s successor in office to be such applicant’s attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against such applicant or such applicant’s successor, executor or administrator which arises under this act or any rule and regulation or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Registration of securities by a broker-dealer shall not subject the issuer of such securities to the requirements of this section. A person who has filed such a consent in connection with a previous registration need not file another.

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

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

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

(c) When process is served under ~~this section~~ subsection (b), the court, or the commissioner in a proceeding before the commissioner, shall

order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

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

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

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

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

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

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

(3) bar or suspend the person from association with a broker-dealer or investment adviser registered in this state; ~~or~~

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

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

Sec. 8. K.S.A. 2001 Supp. 17-1270 is hereby amended to read as follows: 17-1270. (a) This act shall be administered by the securities commissioner of Kansas.

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

(c) The commissioner, by rules and regulations or order may require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, unless the security ~~or transaction is exempt under K.S.A. 17-1261 or 17-1262, and amendments thereto,~~ or is a federal covered security for which no filing can be required by the commissioner under the securities act of 1933 and K.S.A. 2001 Supp. 17-1270a, and amendments thereto.

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

(e) The commissioner may from time to time adopt, amend, and revoke such rules and regulations, orders and forms as may be necessary to carry out the provisions of this act. In prescribing rules and regulations and forms, the commissioner may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable. All rules and regulations and forms of the commissioner shall be published. No provision of this act imposing any liability applies to any act done or omitted in good faith in conformity with any rules and regulations, form, or order of the commissioner, notwithstanding that the rules and regulations, form or order may later be amended, revoked or rescinded or be determined by judicial or other authority to be invalid for any reason. ~~Every hearing in an administrative proceeding shall be public unless the commissioner in the commissioner's discretion grants a request joined in by all the respondents that the hearing be conducted privately.~~

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

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

Sec. 9. K.S.A. 17-1257, 17-1258 and 17-1266a and K.S.A. 2001 Supp. 17-1252, 17-1254, 17-1261, 17-1263 and 17-1270 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

\_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

Passed the HOUSE \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*