

HOUSE BILL No. 2347

AN ACT enacting the Kansas uniform securities act; amending K.S.A. 12-1675, 12-1677b, 12-4516, 16-214, 17-4632, 50-1009, 50-1016, 66-1508 and 75-6302 and K.S.A. 2003 Supp. 17-49a01, 21-4619 and 75-3170a and repealing the existing sections; also repealing K.S.A. 17-1260, 17-1266, 17-1267, 17-1269, 17-1273, 17-1274 and 17-1275 and K.S.A. 2003 Supp. 17-1252, 17-1253, 17-1254, 17-1255, 17-1257, 17-1258, 17-1259, 17-1261, 17-1262, 17-1262a, 17-1263, 17-1264, 17-1264a, 17-1265, 17-1265a, 17-1266a, 17-1268, 17-1270, 17-1270a, 17-1270b, 17-1271 and 17-1272.

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

New Section 1. Sections 1 through 52, and amendments thereto, may be cited as the Kansas uniform securities act.

New Sec. 2. In this act, unless the context otherwise requires:

(1) “Administrator” means the securities commissioner of Kansas, appointed as provided in K.S.A. 75-6301, and amendments thereto.

(2) “Agent” means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer’s securities, but a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this act.

(3) “Bank” means:

(A) A banking institution organized under the laws of the United States;

(B) a member bank of the federal reserve system;

(C) any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the comptroller of the currency pursuant to section 1 of Public Law 87-722 (12 U.S.C. section 92a), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this act; and

(D) a receiver, conservator, or other liquidating agent of any institution or firm included in subparagraph (A), (B), or (C).

(4) “Broker-dealer” means a person engaged in the business of effecting transactions in securities for the account of others or for the person’s own account. The term does not include:

(A) An agent;

(B) an issuer;

(C) a bank, savings institution, or trust company if:

(i) Its activities as a broker-dealer are limited to those specified in subsections 3(a)(4)(B)(i) through (vi) and (viii) through (x); 3(a)(4)(B)(xi) if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the securities exchange act of 1934 (15 U.S.C. sections 78c(a)(4) and (5)); or

(ii) it is a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the securities exchange act of 1934 (15 U.S.C. section 78c(a)(4));

(D) an international banking institution; or

(E) a person excluded by rule adopted or order issued under this act.

(5) “Depository institution” means:

(A) A bank; or

(B) a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a successor authorized by federal law. The term does not include:

(i) An insurance company or other organization primarily engaged in the business of insurance;

(ii) a morris plan bank; or

(iii) an industrial loan company.

(6) “Federal covered investment adviser” means a person registered under the investment advisers act of 1940.

(7) “Federal covered security” means a security that is, or upon com-

pletion of a transaction will be, a covered security under section 18(b) of the securities act of 1933 (15 U.S.C. section 77r(b)) or rules or regulations adopted pursuant to that provision.

(8) “Filing” means the receipt under this act of a record by the administrator or a designee of the administrator.

(9) “Fraud,” “deceit,” and “defraud” are not limited to common law deceit.

(10) “Guaranteed” means guaranteed as to payment of all principal and all interest.

(11) “Institutional investor” means any of the following, whether acting for itself or for others in a fiduciary capacity:

(A) A depository institution or international banking institution;

(B) an insurance company;

(C) a separate account of an insurance company;

(D) an investment company as defined in the investment company act of 1940;

(E) a broker-dealer registered under the securities exchange act of 1934;

(F) an employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a named fiduciary, as defined in the employee retirement income security act of 1974, that is a broker-dealer registered under the securities exchange act of 1934, an investment adviser registered or exempt from registration under the investment advisers act of 1940, an investment adviser registered under this act, a depository institution, or an insurance company;

(G) a plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the employee retirement income security act of 1974, that is a broker-dealer registered under the securities exchange act of 1934, an investment adviser registered or exempt from registration under the investment advisers act of 1940, an investment adviser registered under this act, a depository institution, or an insurance company;

(H) a trust, if it has total assets in excess of \$10,000,000, its trustee is a depository institution, and its participants are exclusively plans of the types identified in subparagraph (F) or (G), regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(I) an organization described in section 501(c)(3) of the internal revenue code (26 U.S.C. section 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$10,000,000;

(J) a small business investment company licensed by the small business administration under Section 301(c) of the small business investment act of 1958 (15 U.S.C. section 681(c)) with total assets in excess of \$10,000,000;

(K) a private business development company as defined in section 202(a)(22) of the investment advisers act of 1940 (15 U.S.C. section 80b-2(a)(22)) with total assets in excess of \$10,000,000;

(L) a federal covered investment adviser acting for its own account;

(M) a “qualified institutional buyer” as defined in rule 144A(a)(1), other than rule 144A(a)(1)(i)(H), adopted under the securities act of 1933 (17 C.F.R. 230.144A);

(N) a “major U.S. institutional investor” as defined in rule 15a-6(b)(4)(i) adopted under the securities exchange act of 1934 (17 C.F.R. 240.15a-6);

(O) any other person, other than an individual, of institutional character with total assets in excess of \$10,000,000 not organized for the specific purpose of evading this act; or

(P) any other person specified by rule adopted or order issued under this act.

(12) “Insurance company” means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to su-

pervision by the insurance commissioner or a similar official or agency of a state.

(13) “Insured” means insured as to payment of all principal and all interest.

(14) “International banking institution” means an international financial institution of which the United States is a member and whose securities are exempt from registration under the securities act of 1933.

(15) “Investment adviser” means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include:

(A) An investment adviser representative;

(B) a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person’s profession;

(C) a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;

(D) a publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;

(E) a federal covered investment adviser;

(F) a bank, savings institution or trust company;

(G) any other person that is excluded by the investment advisers act of 1940 from the definition of investment adviser; or

(H) any other person excluded by rule adopted or order issued under this act.

(16) “Investment adviser representative” means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:

(A) Performs only clerical or ministerial acts;

(B) is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;

(C) is employed by or associated with a federal covered investment adviser, unless the individual has a “place of business” in this state, as that term is defined by rule adopted under section 203A of the investment advisers act of 1940 (15 U.S.C. section 80b-3a), and is:

(i) An “investment adviser representative” as that term is defined by rule adopted under section 203A of the investment advisers act of 1940 (15 U.S.C. section 80b-3a); or

(ii) not a “supervised person” as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25)); or

(D) is excluded by rule adopted or order issued under this act.

(17) “Issuer” means a person that issues or proposes to issue a security, subject to the following:

(A) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.

(B) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or

conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.

(C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

(18) “Nonissuer transaction” or “nonissuer distribution” means a transaction or distribution not directly or indirectly for the benefit of the issuer.

(19) “Offer to purchase” includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to section 14(d) of the securities exchange act of 1934 (15 U.S.C. 78n(d)).

(20) “Person” means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(21) “Place of business” of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

(A) An office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or

(B) any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

(22) “Predecessor act” means the Kansas securities act repealed by section 67.

(23) “Price amendment” means the amendment to a registration statement filed under the securities act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the securities act of 1933 that 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.

(24) “Principal place of business” of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

(25) “Record,” except in the phrases “of record,” “official record,” and “public record,” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) “Sale” includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and “offer to sell” includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value.

(A) A security given or delivered with, or as a bonus on account of, a 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.

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

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

(27) “Securities and exchange commission” means the United States securities and exchange commission.

(28) “Security” means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle,

option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a “security”; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term:

(A) Includes both a certificated and an uncertificated security;

(B) does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or other specified period;

(C) does not include an interest in a contributory or noncontributory pension or welfare plan subject to the employee retirement income security act of 1974;

(D) includes as an “investment contract” an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor. A “common enterprise” means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party or other investors; and

(E) “investment contract” may include an interest in a limited partnership and a limited liability company and shall include a viatical investment as defined by rule adopted or order issued under this act.

(29) “Self-regulatory organization” means a national securities exchange registered under the securities exchange act of 1934, a national securities association of broker-dealers registered under the securities exchange act of 1934, a clearing agency registered under the securities exchange act of 1934, or the municipal securities rulemaking board established under the securities exchange act of 1934.

(30) “Sign” means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) to attach or logically associate with the record an electronic symbol, sound, or process.

(31) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(32) “Rules” when used in the context of the rules adopted by the administrator, means rules and regulations adopted by the administrator pursuant to this act.

New Sec. 3. “Securities act of 1933” (15 U.S.C. section 77a et seq.), “securities exchange act of 1934” (15 U.S.C. section 78a et seq.), “public utility holding company act of 1935” (15 U.S.C. section 79 et seq.), “investment company act of 1940” (15 U.S.C. section 80a-1 et seq.), “investment advisers act of 1940” (15 U.S.C. section 80b-1 et seq.), “employee retirement income security act of 1974” (29 U.S.C. section 1001 et seq.), “national housing act” (12 U.S.C. section 1701 et seq.), “commodity exchange act” (7 U.S.C. Section 1 et seq.), “internal revenue code” (26 U.S.C. section 1 et seq.), “securities investor protection act of 1970” (15 U.S.C. section 78aaa et seq.), “securities litigation uniform standards act of 1998” (112 Stat. 3227), “small business investment act of 1958” (15 U.S.C. section 661 et seq.), and “electronic signatures in global and national commerce act” (15 U.S.C. section 7001 et seq.) mean those statutes and the rules and regulations adopted under those statutes, as in effect on the date of the latest amendment to any provision of this act.

New Sec. 4. A reference in this act to an agency or department of the United States is also a reference to a successor agency or department.

New Sec. 5. This act modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. section 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. section 7003(b)). This act authorizes the filing of records and signatures, when specified by provisions of this act or by a rule adopted or order issued under this act, in a manner consistent with section 104(a) of that act (15 U.S.C. section 7004(a)).

New Sec. 6. The following securities are exempt from the requirements of sections 11 through 16 and section 33, and amendments thereto:

(1) A security, including a revenue obligation or a separate security as defined in Rule 131 (17 C.F.R. 230.131) adopted under the securities act of 1933, issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one or more states; by a political subdivision of one or more states; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the congress; or a certificate of deposit for any of the foregoing;

(2) a security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor;

(3) a security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by:

(A) An international banking institution;

(B) a banking institution organized under the laws of the United States; a member bank of the federal reserve system; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the comptroller of currency pursuant to section 1 of public law 87-722 (12 U.S.C. section 92a); or

(C) any other depository institution, unless by rule or order the administrator proceeds under section 9, and amendments thereto;

(4) a security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this state;

(5) a security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is:

(A) Regulated in respect to its rates and charges by the United States or a state;

(B) regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory; or

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

(6) (A) a federal covered security specified in section 18(b)(1) of the securities act of 1933 (15 U.S.C. section 77r(b)(1)) or by rule adopted under that provision;

(B) a security listed or approved for listing on another securities market specified by rule under this act;

(C) a put or a call option contract; a warrant; or a subscription right on or with respect to securities described in subsections (A) or (B);

(D) an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the securities exchange act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the securities exchange act of 1934;

(E) an offer or sale of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or

(F) an option or a derivative security designated by the securities and exchange commission under section 9(b) of the securities exchange act of 1934 (15 U.S.C. section 78i(b));

(7) a security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under Section 3(c)(10)(B) of the investment company act of 1940 (15 U.S.C. section

80a-3(c)(10)(B)). With respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by such a person, a rule may be adopted under this act limiting the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying with respect to paragraph (B) the scope of the exemption and the grounds for denial or suspension, and requiring an issuer:

(A) To file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the administrator does not disallow the exemption within the period established by the rule;

(B) to file a request for exemption authorization for which a rule under this act may specify the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process complying with section 50, and grounds for denial or suspension of the exemption; or

(C) to register under section 14;

(8) any stock or other security evidencing membership or ownership in, evidencing the right to patronize, issued in lieu of a cash patronage dividend by, or representing a debt of a cooperative organized under K.S.A. 17-1601 et seq., and amendments thereto, but the administrator, by rule or order, may require the filing of a notice and place conditions upon the exemption for sales of securities to persons who are not members within the meaning of K.S.A. 17-1606, and amendments thereto; and

(9) an equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under Section 18(b)(1) of the securities act of 1933 (15 U.S.C. section 77r(b)(1)).

New Sec. 7. The following transactions are exempt from the requirements of sections 11 through 16 and section 33, and amendments thereto:

(1) An isolated nonissuer transaction, whether effected by or through a broker-dealer or not;

(2) a nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this act, and a resale transaction by a sponsor of a unit investment trust registered under the investment company act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 days, if, at the date of the transaction:

(A)(i) The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(ii) the security is sold at a price reasonably related to its current market price;

(iii) the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution; and

(iv) a nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this act or a record filed with the securities and exchange commission that is publicly available contains:

(a) A description of the business and operations of the issuer;

(b) the names of the issuer's executive officers and the names of the issuer's directors, if any;

(c) an audited balance sheet of the issuer as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and

(d) an audited income statement for each of the issuer's two immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when

each party to the reorganization or merger had audited income statements, a pro forma income statement; or

(B) (i) the issuer of the security has a class of equity securities listed on a national securities exchange registered under the securities exchange act of 1934 or designated for trading on the national association of securities dealers automated quotation system, unless the issuer of the security is a unit investment trust registered under the investment company act of 1940;

(ii) the issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; and

(iii) the issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had the audited balance sheet, a pro forma balance sheet for the combined organization;

(3) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the board of governors of the federal reserve system;

(4) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in an outstanding security if the guarantor of the security files reports with the securities and exchange commission under the reporting requirements of section 13 or 15(d) of the securities exchange act of 1934 (15 U.S.C. 78m or 78o(d));

(5) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in a security that:

(A) Is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories; or

(B) has a fixed maturity or a fixed interest or dividend, if:

(i) A default has not occurred during the current fiscal year or within the three previous fiscal years of the issuer and any predecessor in the payment of principal, interest, or dividends on the security; and

(ii) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous 12 months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(6) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act effecting an unsolicited order or offer to purchase;

(7) a nonissuer transaction executed by a bona fide pledgee without the purpose of evading this act;

(8) a nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others;

(9) a transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the administrator after a hearing or otherwise;

(10) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(11) a transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:

(A) The note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;

(B) a general solicitation or general advertisement of the transaction is not made; and

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this act as a broker-dealer or as an agent;

(12) a transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;



- (13) a sale or offer to sell to:
  - (A) An institutional investor;
  - (B) a federal covered investment adviser; or
  - (C) any other person exempted by rule adopted or order issued under this act;
- (14) a sale or an offer to sell securities by an issuer, if the transaction is part of a single issue in which:
  - (A) Not more than 25 purchasers are present in this state during any 12 consecutive months, other than those designated in paragraph (13);
  - (B) a general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;
  - (C) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this act or an agent registered under this act for soliciting a prospective purchaser in this state; and
  - (D) the issuer reasonably believes that all the purchasers in this state, other than those designated in paragraph (13), are purchasing for investment;
- (15) a transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state;
- (16) an offer to sell, but not a sale, of a security not exempt from registration under the securities act of 1933 if:
  - (A) A registration or offering statement or similar record as required under the securities act of 1933 has been filed, but is not effective, or the offer is made in compliance with rule 165 adopted under the securities act of 1933 (17 C.F.R. 230.165); and
  - (B) a stop order of which the offeror is aware has not been issued against the offeror by the administrator or the securities and exchange commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;
- (17) an offer to sell, but not a sale, of a security exempt from registration under the securities act of 1933 if:
  - (A) A registration statement has been filed under this act, but is not effective;
  - (B) a solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the administrator under this act; and
  - (C) a stop order of which the offeror is aware has not been issued by the administrator under this act and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending;
- (18) a transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties;
- (19) a rescission offer, sale, or purchase under section 39, and amendments thereto;
- (20) an offer or sale of a security through a broker-dealer registered under this act to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this act;
- (21) employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:
  - (A) Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors;
  - (B) family members who acquire such securities from those persons through gifts or domestic relations orders;
  - (C) former employees, directors, general partners, trustees, officers,

consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and

(D) insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than 50% of their annual income from those organizations;

(22) a transaction involving:

(A) A stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;

(B) an act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or

(C) the solicitation of tenders of securities by an offeror in a tender offer in compliance with rule 162 adopted under the securities act of 1933 (17 C.F.R. 230.162); or

(23) a nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this act, if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this act; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by rule adopted or order issued under this act, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and the Toronto stock exchange, inc., is a designated securities exchange. After an administrative hearing in compliance with the Kansas administrative procedure act, the administrator, by rule adopted or order issued under this act, may revoke the designation of a securities exchange under this paragraph, if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

New Sec. 8. A rule adopted or order issued under this act may exempt a security, transaction, or offer; a rule under this act may exempt a class of securities, transactions, or offers from any or all of the requirements of sections 11 through 16 and section 33, and amendments thereto; and an order under this act may waive, in whole or in part, any or all of the conditions for an exemption or offer under sections 6 and 7, and amendments thereto.

New Sec. 9. (a) Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this act may deny, suspend application of, condition, limit, or revoke an exemption created under section 6 (3)(C), (7) or (8) or section 7, and amendments thereto, or an exemption or waiver created under section 8, and amendments thereto, with respect to a specific security, transaction, or offer. An order under this section may be issued only pursuant to the procedures in section 16(d) or section 43, and amendments thereto, and only prospectively.

(b) Knowledge of order required. A person does not violate section 11, 13 through 16, 33 or 39, and amendments thereto, by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

New Sec. 10. The administrator may by rules and regulations set a fee not to exceed \$2,500 for an application or filing made in connection with any exemption from securities registration.

New Sec. 11. It is unlawful for a person to offer or sell a security in this state unless:

(1) The security is a federal covered security;

- (2) the security, transaction, or offer is exempted from registration under sections 6 through 8, and amendments thereto; or
- (3) the security is registered under this act.

New Sec. 12. (a) *Required filing of records.* With respect to a federal covered security, as defined in section 18(b)(2) of the securities act of 1933 (15 U.S.C. section 77r(b)(2)), that is not otherwise exempt under sections 6 through 8, and amendments thereto, a rule adopted or order issued under this act may require the filing of any or all of the following records:

- (1) Before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the securities and exchange commission under the securities act of 1933 and a consent to service of process complying with section 50, and amendments thereto, signed by the issuer and the payment of a fee not to exceed \$2,500;

- (2) after the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the securities and exchange commission under the securities act of 1933; and

- (3) to the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this state, if the sales data are not included in records filed with the securities and exchange commission and payment of a fee not to exceed \$2,500.

(b) *Notice filing effectiveness and renewal.* A notice filing under subsection (a) is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the securities and exchange commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the securities and exchange commission that are required by rule or order under this act to be filed and by paying a renewal fee not to exceed \$2,500. A previously filed consent to service of process complying with section 50, and amendments thereto, may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(c) *Notice filings for federal covered securities under Section 18(b)(4)(D).* With respect to a security that is a federal covered security under section 18(b)(4)(D) of the securities act of 1933 (15 U.S.C. section 77r(b)(4)(D)), a rule under this act may require: (1) A notice filing by or on behalf of an issuer to include a copy of form D, including the appendix, as promulgated by the securities and exchange commission, and a consent to service of process complying with section 50, and amendments thereto, signed by the issuer, not later than 15 days after the first sale of the federal covered security in this state; and (2) the payment of a fee not to exceed \$2,500 for a timely filing and the payment of a fee not to exceed \$5,000 for any late filing.

(d) *Stop orders.* Except with respect to a federal security under section 18(b)(1) of the securities act of 1933 (15 U.S.C. section 77r(b)(1)), if the administrator finds that there is a failure to comply with a notice or fee requirement of this section, the administrator may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the administrator other than a late filing fee.

New Sec. 13. (a) *Registration permitted.* A security for which a registration statement has been filed under the securities act of 1933 in connection with the same offering may be registered by coordination under this section.

(b) *Required records.* A registration statement and accompanying records under this section must contain or be accompanied by the following records in addition to the information specified in section 15, and amendments thereto, and a consent to service of process complying with section 50, and amendments thereto:

- (1) A copy of the latest form of prospectus filed under the securities act of 1933;

- (2) a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or

among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule adopted or order issued under this act;

(3) copies of any other information or any other records filed by the issuer under the securities act of 1933 requested by the administrator; and

(4) an undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the securities and exchange commission.

(c) *Conditions for effectiveness of registration statement.* A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

(1) A stop order under subsection (d) or section 16, and amendments thereto, or issued by the securities and exchange commission is not in effect, and a proceeding is not pending against the issuer under section 16, and amendments thereto, and the administrator has not given written notice of deficiencies that are unresolved and that would constitute grounds for a stop order under section 16, and amendments thereto; and

(2) the registration statement has been on file for at least 20 days or a shorter period provided by rule adopted or order issued under this act.

(d) *Notice of federal registration statement effectiveness.* The registrant shall promptly notify the administrator in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the administrator may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The administrator shall promptly notify the registrant of an order by telephone or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

(e) *Effectiveness of registration statement.* If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the administrator, the registration statement is automatically effective under this act when all the conditions are satisfied or waived. If the registrant notifies the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly notify the registrant by a record, indicating whether all the conditions are satisfied or waived and whether the administrator intends the institution of a proceeding under section 16, and amendments thereto. The notice by the administrator does not preclude the institution of such a proceeding.

New Sec. 14. (a) *Registration permitted.* A security may be registered by qualification under this section.

(b) *Required records.* A registration statement under this section must contain the information or records specified in section 15, and amendments thereto, a consent to service of process complying with section 50, and amendments thereto, and the following information or records unless waived by the administrator for good cause shown:

(1) With respect to the issuer and any significant subsidiary, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; 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;

(2) with respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five years; the amount of securities of the issuer held by the person as of the 30th day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a

significant subsidiary effected within the previous three years or proposed to be effected;

(3) with respect to persons covered by paragraph (2), the aggregate sum of the remuneration paid to those persons during the previous 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer and all predecessors, parents, subsidiaries, and affiliates of the issuer;

(4) with respect to a person owning of record or owning beneficially, if known, 10% or more of the outstanding shares of any class of equity security of the issuer, the information specified in paragraph (2) other than the person's occupation;

(5) with respect to a promoter, if the issuer was organized within the previous three years, the information or records specified in paragraph (2), any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment;

(6) with respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three years or proposed to be effected; and a statement of the reasons for making the offering;

(7) the capitalization and long term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two years or is obligated to issue its securities;

(8) 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 at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finder's fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders 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 each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under 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 that are to be offered otherwise than through an underwriter;

(9) the estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

(10) a description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in paragraph (2), (4), (5), (6), or (8) and by any person that holds or will hold 10% or more in the aggregate of those options;

(11) the dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in

part at or after the filing of the registration statement or that was made within the previous two years, and a copy of the contract;

(12) a description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities;

(13) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with section 7 (17)(B), and amendments thereto;

(14) a specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered;

(15) a signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;

(16) a signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record that is public, which is used in connection with the registration statement;

(17) a balance sheet of the issuer as of a date within four months before the filing of the registration statement; a statement of income and a statement of cash flows for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and

(18) any additional information or records required by rule adopted or order issued under this act.

(c) *Conditions for effectiveness of registration statement.* A registration statement under this section becomes effective 30 days, or any shorter period provided by rule adopted or order issued under this act, after the date the registration statement or the last amendment other than a price amendment is filed, if:

(1) A stop order is not in effect and a proceeding is not pending under section 16, and amendments thereto;

(2) the administrator has not issued an order under section 16, and amendments thereto, delaying effectiveness; and

(3) the applicant or registrant has not requested that effectiveness be delayed.

(d) *Delay of effectiveness of registration statement.* The administrator may delay effectiveness once for not more than 90 days if the administrator determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The administrator may also delay effectiveness for a further period of not more than 30 days if the administrator determines that the delay is necessary or appropriate.

(e) *Prospectus distribution may be required.* A rule adopted or order issued under this act may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection (b) be sent or given to each person to which an offer is made, before or concurrently, with the earliest of:

(1) The first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;

(2) the confirmation of a sale made by or for the account of the person;

(3) payment pursuant to such a sale; or

(4) delivery of the security pursuant to such a sale.

New Sec. 15. (a) *Who may file.* A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this act.

(b) *Filing fee.* A person filing a registration statement shall pay a fee established by the administrator by rule or order, but not more than \$2,500 for each year that the registration statement is effective. If a registration statement is withdrawn before the effective date or a preeffective stop order is issued under section 16, and amendments thereto, the administrator shall retain an amount of the fee established by the administrator by rule or order.

(c) *Status of offering.* A registration statement filed under section 13 or 14, and amendments thereto, must specify:

- (1) The amount of securities to be offered in this state;
- (2) the states in which a registration statement or similar record in connection with the offering has been or is to be filed; and
- (3) any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the securities and exchange commission, or a court.

(d) *Incorporation by reference.* A record filed under this act or the predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

(e) *Nonissuer distribution.* In the case of a nonissuer distribution, information or a record may not be required under subsection (i) or section 14, and amendments thereto, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

(f) *Escrow and impoundment.* A rule adopted or order issued under this act may require as a condition of registration that a security issued within the previous five years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this act, but the administrator may not reject a depository institution solely because of its location in another state.

(g) *Form of subscription.* A rule adopted or order issued under this act may require as a condition of registration that a security registered under this act be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this act or preserved for a period specified by the rule or order, which may not be longer than five years.

(h) *Effective period.* Except while a stop order is in effect under section 16, and amendments thereto, a registration statement is effective for one year after its effective date, or for any longer period designated by rule adopted or order issued under this act during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this act are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the administrator.

(i) *Periodic reports.* While a registration statement is effective, a rule adopted or order issued under this act may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

(j) *Posteffective amendments.* A registration statement shall be amended after its effective date if there are material changes in infor-

mation or documents in the registration statement or if there is an increase in the aggregate amount of securities offered or sold in this state. The posteffective amendment becomes effective when the administrator provides written notice that the amendment has been accepted. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee based upon the increase in such price calculated in accordance with the rate and fee specified in subsection (b). If a posteffective amendment for registration of additional securities and payment of additional fees is not filed in a timely manner, there shall be no penalty assessed if the amendment is filed and the additional registration fee is paid within one year after the date the additional securities are sold in this state.

New Sec. 16. (a) *Stop orders.* The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the administrator finds that the order is in the public interest and that:

(1) The registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under section 15 (j), and amendments thereto, as of its effective date, or a report under section 15 (i), and amendments thereto, is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) this act or a rule adopted or order issued under this act or a condition imposed under this act has been willfully violated, in connection with the offering, by:

(A) The person filing the registration statement, but only if such person is directly or indirectly controlled by or acting for the issuer;

(B) the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function;

(C) a promoter of the issuer;

(D) a person directly or indirectly controlling or controlled by the issuer; or

(E) an underwriter;

(3) the security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this act applicable to the offering, but the administrator may not institute a proceeding against an effective registration statement under this paragraph more than one year after the date of the order or injunction on which it is based, and the administrator may not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;

(4) the issuer's enterprise or method of business includes or would include activities that are unlawful where performed or in this state;

(5) with respect to a security sought to be registered under section 13, and amendments thereto, there has been a failure to comply with the undertaking required by section 13(b)(4), and amendments thereto;

(6) the applicant or registrant has not paid the filing fee, but the administrator shall void the order if the deficiency is corrected;

(7) the offering:

(A) Will work or tend to work a fraud upon purchasers or would so operate;

(B) has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options; or

(C) is being made on terms that are unfair, unjust, or inequitable;

(b) *Enforcement of subsection (a)(7).* To the extent practicable, the administrator by rule adopted or order issued under this act shall publish standards that provide notice of conduct that violates subsection (a)(7).

(c) *Institution of stop order.* The administrator may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the administrator when the



registration statement became effective unless the proceeding is instituted within 30 days after the registration statement became effective.

(d) *Summary process.* The administrator may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator shall promptly notify each person specified in subsection (e) that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator, within 30 days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

(e) *Procedural requirements for stop order.* (1) A stop order may not be issued under this section without:

- (A) Appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;
- (B) an opportunity for hearing; and
- (C) findings of fact and conclusions of law in a record.

(2) Any proceeding under this section shall be done in accordance with the Kansas administrative procedure act.

(f) *Modification or vacation of stop order.* The administrator may modify or vacate a stop order issued under this section if the administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

New Sec. 17. The administrator may waive or modify, in whole or in part, any or all of the requirements of sections 12, 13, and 14(b), and amendments thereto, or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to section 15(i), and amendments thereto.

New Sec. 18. (a) *Registration requirement.* It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this act as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d).

(b) *Exemptions from registration.* The following persons are exempt from the registration requirement of subsection (a):

(1) A broker-dealer without a place of business in this state if its only transactions effected in this state are with:

- (A) The issuer of the securities involved in the transactions;
- (B) a broker-dealer registered under this act or not required to be registered as a broker-dealer under this act;
- (C) an institutional investor;
- (D) a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;

(E) a bona fide preexisting customer whose principal place of residence is not in this state and the broker-dealer is registered as a broker-dealer under the securities exchange act of 1934 or not required to be registered under the securities exchange act of 1934 and is registered under the securities act of the state in which the customer maintains a principal place of residence;

(F) a bona fide preexisting customer whose principal place of residence is in this state but was not present in this state when the customer relationship was established, if:

(i) The broker-dealer is registered under the securities exchange act of 1934 or not required to be registered under the securities exchange act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and

(ii) within 45 days after the customer's first transaction in this state, the person files an application for registration as a broker-dealer in this state and a further transaction is not effected more than 75 days after the date on which the application is filed, or, if earlier, the date on which the administrator notifies the person that the administrator has denied the

application for registration or has stayed the pendency of the application for good cause;

(G) not more than three customers in this state during the previous 12 months, in addition to those customers specified in subparagraphs (A) through (F) and under subparagraph (H), if the broker-dealer is registered under the securities exchange act of 1934 or not required to be registered under the securities exchange act of 1934 and is registered under the securities act of the state in which the broker-dealer has its principal place of business; and

(H) any other person exempted by rule adopted or order issued under this act; and

(2) a person that deals solely in United States government securities and is supervised as a dealer in government securities by the board of governors of the federal reserve system, the comptroller of the currency, the federal deposit insurance corporation, or the office of thrift supervision.

(c) *Limits on employment or association.* It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this state, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the administrator under this act, the securities and exchange commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this act may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer.

(d) *Foreign transactions.* A rule adopted or order issued under this act may permit:

(1) A broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this state to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:

(A) An individual from Canada or other foreign jurisdiction who is temporarily present in this State and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States;

(B) an individual from Canada or other foreign jurisdiction who is present in this state and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction; or

(C) an individual who is present in this state, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction; and

(2) an agent who represents a broker-dealer that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of securities in this state as permitted for a broker-dealer described in paragraph (1).

New Sec. 19. (a) *Registration requirement.* It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this act as an agent or is exempt from registration as an agent under subsection (b).

(b) *Exemptions from registration.* The following individuals are exempt from the registration requirement of subsection (a):

(1) An individual who represents a broker-dealer in effecting transactions in this state limited to those described in section 15(h)(2) of the securities exchange act of 1934 (15 U.S.C. section 78(o)(2));

(2) an individual who represents a broker-dealer that is exempt under section 18 (b) or (d), and amendments thereto;

(3) an individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other

remuneration based, directly or indirectly, on transactions in those securities;

(4) an individual who represents an issuer and who effects transactions in the issuer's securities exempted by section 7, and amendments thereto, other than section 7 (11) and (14), and amendments thereto;

(5) an individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under section 18(b)(3) or 18(b)(4)(D) of the securities act of 1933 (15 U.S.C. section 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(6) an individual who represents a broker-dealer registered in this state under section 18 (a), and amendments thereto, or exempt from registration under section 18 (b), and amendments thereto, in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;

(7) an individual who represents an issuer in connection with the purchase of the issuer's own securities;

(8) an individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or

(9) any other individual exempted by rule adopted or order issued under this act.

(c) *Registration effective only while employed or associated.* The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this act or an issuer that is offering, selling, or purchasing its securities in this state.

(d) *Limit on employment or association.* It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) or exempt from registration under subsection (b).

(e) *Limit on affiliations.* An individual may not act as an agent for more than one broker-dealer or one issuer at a time, unless the broker-dealer or the issuer for which the agent acts are affiliated by direct or indirect common control or are authorized by rule or order under this act.

New Sec. 20. (a) *Registration requirement.* It is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this act as an investment adviser or is exempt from registration as an investment adviser under subsection (b).

(b) *Exemptions from registration.* The following persons are exempt from the registration requirement of subsection (a):

(1) A person without a place of business in this state that is registered under the securities act of the state in which the person has its principal place of business if its only clients in this state are:

(A) Federal covered investment advisers, investment advisers registered under this act, or broker-dealers registered under this act;

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered under the securities act of the state in which the clients maintain principal places of residence; or

(D) any other client exempted by rule adopted or order issued under this act;

(2) a person without a place of business in this state if the person has had, during the preceding 12 months, not more than five clients that are resident in this state in addition to those specified under paragraph (1); or

(3) any other person exempted by rule adopted or order issued under this act.

(c) *Limits on employment or association.* It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an indi-

vidual to engage in an activity related to investment advice in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this act, the securities and exchange commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the administrator, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

(d) *Investment adviser representative registration required.* It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this act as an investment adviser representative who transacts business in this state on behalf of the investment adviser unless the individual is registered under section 21 (a), and amendments thereto, or is exempt from registration under section 21 (b), and amendments thereto.

New Sec. 21. (a) *Registration requirement.* It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this act as an investment adviser representative or is exempt from registration as an investment adviser representative under subsection (b).

(b) *Exemptions from registration.* The following individuals are exempt from the registration requirement of subsection (a):

(1) An individual who is exclusively employed by or associated with an investment adviser that is exempt from registration under section 20 (b), and amendments thereto, or a federal covered investment adviser that is excluded from the notice filing requirements of section 22, and amendments thereto; and

(2) any other individual exempted by rule adopted or order issued under this act.

(c) *Registration effective only while employed or associated.* The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this act or a federal covered investment adviser that has made or is required to make a notice filing under section 22, and amendments thereto.

(d) *Limit on affiliations.* An individual may transact business as an investment adviser representative for more than one investment adviser or federal covered investment adviser unless a rule adopted or order issued under this act prohibits or limits an individual from acting as an investment adviser representative for more than one investment adviser or federal covered investment adviser.

(e) *Limits on employment or association.* It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this state on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this act, the securities and exchange commission, or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause, the administrator, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.

(f) *Referral fees.* An investment adviser registered under this act, a federal covered investment adviser that has filed a notice under section 22, and amendments thereto, or a broker-dealer registered under this act is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this act, a federal covered investment adviser who has filed a notice under section 22, and amendments thereto, or a broker-dealer registered under this act with which the individual is employed or associated as an investment adviser representative.

New Sec. 22. (a) *Notice filing requirement.* Except with respect to a federal covered investment adviser described in subsection (b), it is un-

lawful for a federal covered investment adviser to transact business in this state as a federal covered investment adviser unless the federal covered investment adviser complies with subsection (c).

(b) *Notice filing requirement not required.* The following federal covered investment advisers are not required to comply with subsection (c):

(1) A federal covered investment adviser without a place of business in this state if its only clients in this state are:

(A) Federal covered investment advisers, investment advisers registered under this act, and broker-dealers registered under this act;

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this state; or

(D) other clients specified by rule adopted or order issued under this act;

(2) a federal covered investment adviser without a place of business in this state if it has had, during the preceding 12 months, not more than five clients that are resident in this state in addition to those specified under paragraph (1); and

(3) any other person excluded by rule adopted or order issued under this act.

(c) *Notice filing procedure.* A person acting as a federal covered investment adviser, not excluded under subsection (b), shall file a notice, a consent to service of process complying with section 50, and amendments thereto, and such records as have been filed with the securities and exchange commission under the investment advisers act of 1940 required by rule adopted or order issued under this act and pay the fees specified in section 27 (e), and amendments thereto.

(d) *Effectiveness of filing.* The notice under subsection (c) becomes effective upon its filing, and shall expire on December 31 each year, unless renewed.

New Sec. 23. (a) *Application for initial registration.* A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with section 50, and amendments thereto, and paying the fee specified in section 27, and amendments thereto, and any reasonable fees charged by the designee of the administrator for processing the filing. The application must contain:

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

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

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

(c) *Effectiveness of registration.* If an order is not in effect and a proceeding is not pending under section 29, and amendments thereto, registration becomes effective at noon on the 45th day after a completed application is filed, unless the registration is denied or the administrator has given written notice of deficiencies that are unresolved and that would constitute grounds for denial under section 29, and amendments thereto. A rule adopted or order issued under this act may set an earlier effective date or may defer the effective date until noon on the 45th day after the filing of any amendment completing the application.

(d) *Registration renewal.* A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under section 29, and amendments thereto, a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued under this act, by paying the fee specified in section 27, and amendments thereto, and by paying costs charged by the designee of the administrator for processing the filings.

(e) *Additional conditions or waivers.* A rule adopted or order issued under this act may impose other conditions not inconsistent with the national securities markets improvement act of 1996. An order issued under this act may waive, in whole or in part, specific requirements in

connection with registration as are in the public interest and for the protection of investors.

New Sec. 24. (a) *Succession*. A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to section 18 or 20, and amendments thereto, or a notice pursuant to section 22, and amendments thereto, for the unexpired portion of the current registration or notice filing.

(b) *Organizational change*. A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this act. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this act shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within 45 days after filing its amendment to effect succession.

(c) *Name change*. A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.

(d) *Change of control*. A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued under this act.

New Sec. 25. (a) *Notice of termination*. If an agent registered under this act terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this act terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may do so.

(b) *Transfer of employment or association*. If an agent registered under this act terminates employment by or association with a broker-dealer registered under this act and begins employment by or association with another broker-dealer registered under this act; or if an investment adviser representative registered under this act terminates employment by or association with an investment adviser registered under this act or a federal covered investment adviser who has filed a notice under section 22, and amendments thereto, and begins employment by or association with another investment adviser registered under this act or a federal covered investment adviser who has filed a notice under section 22, and amendments thereto, then upon the filing by or on behalf of the registrant, within 30 days after the termination, of an application for registration that complies with the requirement of section 23 (a), and amendments thereto, and payment of the filing fee required under section 27, and amendments thereto, the registration of the agent or investment adviser representative is:

(1) Immediately effective as of the date of the completed filing, if the agent's central registration depository record or successor record or the investment adviser representative's investment adviser registration depository record or successor record does not contain a new or amended disciplinary disclosure within the previous 12 months; or

(2) temporarily effective as of the date of the completed filing, if the agent's central registration depository record or successor record or the investment adviser representative's investment adviser registration de-

pository record or successor record contains a new or amended disciplinary disclosure within the preceding 12 months.

(c) *Withdrawal of temporary registration.* The administrator may withdraw a temporary registration if there are or were grounds for discipline as specified in section 29, and amendments thereto, and the administrator does so within 30 days after the filing of the application. If the administrator does not withdraw the temporary registration within the 30 day period, registration becomes automatically effective on the 31st day after filing.

(d) *Power to prevent registration.* The administrator may prevent the effectiveness of a transfer of an agent or investment adviser representative under subsection (b)(1) or (2) based on the public interest and the protection of investors.

(e) *Termination of registration or application for registration.* The administrator may cancel a registration or deny an application for registration in accordance with the provisions of the Kansas administrative procedure act if the administrator finds that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located. The administrator may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

New Sec. 26. *Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective 60 days after the filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued under this act unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by rule adopted or order issued under this act. The administrator may institute a revocation or suspension proceeding under section 29, and amendments thereto, within one year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.*

New Sec. 27. (a) *Filing fees.* The administrator shall establish fees by rules and regulations, subject to the following limitations:

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

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

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

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

(5) *Federal covered investment advisers.* A federal covered investment adviser required to file a notice under section 22, and amendments thereto, shall pay an initial fee and an annual notice fee of not more than \$300.

(b) *Payment.* A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order provides under this act.

New Sec. 28. (a) *Financial requirements.* Subject to section 15(h) of the securities exchange act of 1934 (15 U.S.C. section 78o(h)) or Section 222 of the investment advisers act of 1940 (15 U.S.C. section 80b-22), a

rule adopted or order issued under this act may establish minimum financial requirements for broker-dealers registered or required to be registered under this act and investment advisers registered or required to be registered under this act.

(b) *Financial reports.* Subject to section 15(h) of the securities exchange act of 1934 (15 U.S.C. section 78o(h)) or section 222(b) of the investment advisers act of 1940 (15 U.S.C. section 80b-22), a broker-dealer registered or required to be registered under this act and an investment adviser registered or required to be registered under this act shall file such financial reports as are required by a rule adopted or order issued under this act. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) *Recordkeeping.* Subject to section 15(h) of the securities exchange act of 1934 (15 U.S.C. section 78o(h)) or section 222 of the investment advisers act of 1940 (15 U.S.C. section 80b-22):

(1) A broker-dealer registered or required to be registered under this act and an investment adviser registered or required to be registered under this act shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule adopted or order issued under this act;

(2) broker-dealer records required to be maintained under paragraph (1) may be maintained in any form of data storage acceptable under section 17(a) of the securities exchange act of 1934 (15 U.S.C. section 78q(a)) if they are readily accessible to the administrator; and

(3) investment adviser records required to be maintained under paragraph (1) may be maintained in any form of data storage required by rule adopted or order issued under this act.

(d) *Audits or inspections.* The 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 or required to be registered under this act are subject to such reasonable periodic, special, or other audits or inspections by a representative of the administrator, within or without this state, as the administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The administrator may copy, and remove for audit or inspection copies of, all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection. The administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.

(e) *Custody and discretionary authority bond or insurance.* Subject to section 15(h) of the securities exchange act of 1934 (15 U.S.C. section 78o(h)) or section 222 of the investment advisers act of 1940 (15 U.S.C. section 80b-22), a rule adopted or order issued under this act may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security. The administrator may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this act whose net capital exceeds, or of an investment adviser registered under this act whose minimum financial requirements exceed, the amounts required by rule or order under this act. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in section 38 (j)(2), and amendments thereto.

(f) *Requirements for custody.* Subject to section 15(h) of the securities exchange act of 1934 (15 U.S.C. section 78o(h)) or section 222 of the investment advisers act of 1940 (15 U.S.C. section 80b-22), an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this act may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or



securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

(g) *Investment adviser brochure rule.* With respect to an investment adviser registered or required to be registered under this act, a rule adopted or order issued under this act may require that information or other record be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

(h) *Continuing education.* A rule adopted or order issued under this act may require an individual registered under section 19 or 21, and amendments thereto, to participate in a continuing education program approved by the securities and exchange commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this act may require continuing education for an individual registered under section 21, and amendments thereto.

New Sec. 29. (a) *Disciplinary conditions-applicants.* An order issued under this act may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative if the administrator finds that the order is in the public interest and that there is a ground for discipline under subsection (d) against the applicant or, if the applicant is a broker-dealer or investment adviser, against any partner, officer, director, person having a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser.

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

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

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

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

(1) A censure;

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

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

(4) an order requiring the registrant to pay restitution for any loss or disgorge any profits arising from a violation, including, in the administrator's discretion, the assessment of interest from the date of the violation at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto;

(5) an order charging the registrant with the actual cost of an investigation or proceeding; or

(6) an order requiring the registrant to cease and desist from any action that constitutes a ground for discipline, or to take other action necessary or appropriate to comply with this act.

(d) *Grounds for discipline.* A person may be disciplined under subsections (a) through (c) if the person:

(1) Has filed an application for registration in this state under this act or the predecessor act within the previous 10 years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) willfully violated or willfully failed to comply with this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous 10 years;

(3) has been convicted of a felony or within the previous 10 years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(4) is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this act or the predecessor act, a state, the securities and exchange commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(5) is the subject of an order, issued after notice and opportunity for hearing by:

(A) The securities, depository institution, insurance, or other financial services regulator of a state or by the securities and exchange commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;

(B) the securities regulator of a state or by the securities and exchange commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;

(C) the securities and exchange commission or by a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;

(D) a court adjudicating a United States postal service fraud order;

(E) the insurance regulator of a state denying, suspending, or revoking the registration of an insurance agent; or

(F) a depository institution regulator suspending or barring a person from the depository institution business;

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

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

(8) refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under section 28 (d), and amendments thereto, refuses access to a registrant's office to conduct an audit or inspection under section 28 (d), and amendments thereto, fails to keep or maintain sufficient records to permit an audit disclosing the condition of the registrant's business, or fails willfully and without cause to comply with a request for information by the administrator or person designated by the administrator in conducting investigations or examinations under this act;

(9) has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser rep-

representative, or other individual was subject to the person's supervision and committed a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous 10 years;

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

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

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

(B) to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or

(C) to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;

(12) is the subject of a cease and desist order issued by the securities and exchange commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state;

(13) has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years; or

(14) is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this paragraph if the individual has successfully completed all examinations required by subsection (e). The administrator may require an applicant for registration under section 19 or 21, and amendments thereto, who has not been registered in a state within the two years preceding the filing of an application in this state to successfully complete an examination.

(e) *Examinations.* A rule adopted or order issued under this act may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this act may waive, in whole or in part, an examination as to an individual and a rule adopted under this act may waive, in whole or in part, an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(f) *Summary process.* In accordance with the Kansas administrative procedures act, the administrator may use summary or emergency proceedings to suspend or deny an application; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty or cease and desist order on a registrant before final determination of an administrative proceeding. If a hearing is not requested and none is ordered by the administrator within 30 days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

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

(A) Appropriate notice to the applicant or registrant;

(B) opportunity for hearing; and

(C) findings of fact and conclusions of law in a record.

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

(h) *Control person liability.* A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under subsections (a) through (c) to the same extent as the noncomplying person, unless the controlling person did not

know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

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

New Sec. 30. It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

- (1) To employ a device, scheme, or artifice to defraud;
- (2) to make an untrue statement of a material fact, or omit to state a material fact necessary in order to make a statement made, in the light of the circumstances under which it is made, not misleading; or
- (3) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

New Sec. 31. (a) *Fraud in providing investment advice.* It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities:

- (1) To employ a device, scheme, or artifice to defraud another person; or
- (2) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

(b) *Rules defining fraud.* A rule adopted under this act may define an act, practice, or course of business of an investment adviser or an investment adviser representative, other than a supervised person of a federal covered investment adviser, as fraudulent, deceptive, or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, other than supervised persons of a federal covered investment adviser, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.

(c) *Rules specifying contents of advisory contract.* A rule adopted under this act may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

New Sec. 32. (a) *Civil.* In a civil action or administrative proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.

(b) *Criminal.* In a criminal proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

New Sec. 33. (a) *Filing requirement.* Except as otherwise provided in subsection (b), a rule adopted or order issued under this act may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this act.

(b) *Excluded communications.* This section does not apply to sales and advertising literature specified in subsection (a) which relates to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by section 6, 7, or 8, and amendments thereto, except as required for a notice filing under section 6, 7, or 8, and amendments thereto.

New Sec. 34. (a) It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this act, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

(b) It is unlawful for any person to intentionally influence, coerce, manipulate or mislead any person in connection with financial statements or appraisals to be used in the offer, sale or purchase of securities for the

purpose of rendering such financial statements or appraisals materially misleading.

(c) It is unlawful for any person to:

(1) Alter, destroy, shred, mutilate, conceal, cover up or falsify any record with the intent to impede, obstruct or influence any investigation by the administrator or the administrator's designee;

(2) alter, destroy, shred, mutilate or conceal a record with the intent to impair the object's integrity or availability for use in a proceeding before the administrator or a proceeding brought by the administrator; or

(3) take action harmful to a person with the intent to retaliate, including, but not limited to, interference with lawful employment of such person, for providing truthful information relating to a violation of this act.

New Sec. 35. The filing of an application for registration, a registration statement, a notice filing under this act, the registration of a person, the notice filing by a person, or the registration of a security under this act does not constitute a finding by the administrator that a record filed under this act is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the administrator has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.

New Sec. 36. A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the administrator, or designee of the administrator, the securities and exchange commission, or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

New Sec. 37. (a) *Criminal penalties.* (1) Except as provided in subsections (a)(2) through (a)(4), a conviction for an intentional violation of this act, or a rule adopted or order issued under this act, except section 33, and amendments thereto, or the notice filing requirements of section 12 or 22, and amendments thereto, is a severity level 7, nonperson felony. An individual convicted of violating a rule or order under this act may be fined, but may not be imprisoned, if the individual did not have knowledge of the rule or order.

(2) A conviction for an intentional violation of section 30 or 31, and amendments thereto, is:

(A) A severity level 4, nonperson felony if the violation resulted in a loss of \$100,000 or more;

(B) a severity level 5, nonperson felony if the violation resulted in a loss of at least \$25,000 but less than \$100,000; or

(C) a severity level 7, nonperson felony if the violation resulted in a loss of less than \$25,000.

(3) A conviction for an intentional violation of section 11, 18 (a), 18 (c), 19 (a), 19 (d), 20 (a), 20 (c), 20 (d), 21 (a), or 21 (e), and amendments thereto, is:

(A) A severity level 5, nonperson felony if the violation resulted in a loss of \$100,000 or more;

(B) a severity level 6, nonperson felony if the violation resulted in a loss of at least \$25,000 but less than \$100,000; or

(C) a severity level 7, nonperson felony if the violation resulted in a loss of less than \$25,000.

(4) A conviction for an intentional violation of section 34 or 35, and amendments thereto, is a severity level 8, nonperson felony.

(5) Any violation of section 11, 18 (a), 18 (c), 19 (a), 19 (d), 20 (a), 20 (c), 20 (d), 21 (a), 21 (e), 30 or 31, and amendments thereto, resulting in a loss of \$25,000 or more shall have a presumptive sentence of imprisonment regardless of its location on the sentencing grid block.

(b) *Statute of Limitations.* Except as provided by subsection (9) of K.S.A. 21-3106, and amendments thereto, no prosecution for any crime

under this act may be commenced more than 10 years after the alleged violation if the victim is the Kansas public employees retirement system and no prosecution for any other crime under this act may be commenced more than five years after the alleged violation. A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution, except that no prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.

(c) *Criminal reference.* The administrator may refer such evidence as may be available concerning violations of this act or of any rules and regulations or order hereunder to the attorney general or the proper county or district attorney, who may in the prosecutor's discretion, with or without such a reference, institute the appropriate criminal proceedings under this act. Upon receipt of such reference, the attorney general or the county attorney or district attorney may request that a duly employed attorney of the administrator prosecute or assist in the prosecution of such violation or violations on behalf of the state. Upon approval of the administrator, such employee shall be appointed a special prosecutor for the attorney general or the county attorney or district attorney to serve without compensation from the attorney general or the county attorney or district attorney. Such special prosecutor shall have all the powers and duties prescribed by law for assistant attorneys general or assistant county or district attorneys and such other powers and duties as are lawfully delegated to such special prosecutor by the attorney general or the county attorney or district attorney. If an attorney employed by the administrator acts as a special prosecutor, the administrator may pay extradition and witness expenses associated with the case.

(d) *No limitation on other criminal enforcement.* This act does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

New Sec. 38. (a) *Securities litigation uniform standards act.* Enforcement of civil liability under this section is subject to the securities litigation uniform standards act of 1998.

(b) *Liability of seller to purchaser.* A person is liable to the purchaser if the person sells a security in violation of section 11, and amendments thereto, or by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make a statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

(1) The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest from the date of the purchase at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto, costs, and reasonable attorneys' fees determined by the court, upon the tender of the security, or for actual damages as provided in paragraph (3).

(2) The tender referred to in paragraph (1) may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in paragraph (3).

(3) Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest from the date of the purchase at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto, costs, and reasonable attorneys' fees determined by the court.

(c) *Liability of purchaser to seller.* A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care, could not have known

of the untruth or omission. An action under this subsection is governed by the following:

(1) The seller may maintain an action to recover the security, and any income received on the security, costs, and reasonable attorneys' fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in paragraph (3).

(2) The tender referred to in paragraph (1) may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in paragraph (3).

(3) Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and interest from the date of the sale of the security at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto, costs, and reasonable attorneys' fees determined by the court.

(d) *Liability of unregistered broker-dealer and agent.* A person acting as a broker-dealer or agent that sells or buys a security in violation of section 18 (a), 19 (a), or 35, and amendments thereto, is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in subsections (b)(1) through (3), or, if a seller, for a remedy as specified in subsections (c)(1) through (3).

(e) *Liability of unregistered investment adviser and investment adviser representative.* A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of section 20 (a), 21 (a), or 35, and amendments thereto, is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest from the date of payment at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto, costs, and reasonable attorneys' fees determined by the court.

(f) *Liability for investment advice.* A person that receives directly or indirectly any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person, is liable to the other person. An action under this subsection is governed by the following:

(1) The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest from the date of the fraudulent conduct at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto, costs, and reasonable attorneys' fees determined by the court, less the amount of any income received as a result of the fraudulent conduct.

(2) This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

(g) *Joint and several liability.* The following persons are liable jointly and severally with and to the same extent as persons liable under subsections (b) through (f):

(1) A person that directly or indirectly controls a person liable under subsections (b) through (f), unless the controlling person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(2) an individual who is a managing partner, executive officer, or director of a person liable under subsections (b) through (f), including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(3) an individual who is an employee of or associated with a person liable under subsections (b) through (f) and who materially aids the con-

duct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist; and

(4) a person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (b) through (f), unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.

(h) *Right of contribution.* A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

(i) *Survival of cause of action.* A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

(j) *Statute of limitations.* A person may not obtain relief:

(1) Under subsection (b) for violation of section 11, and amendments thereto, or under subsection (d) or (e), unless the action is instituted within one year after the violation occurred; or

(2) under subsection (b), other than for violation of section 11, and amendments thereto, or under subsection (c) or (f), unless the action is instituted within the earlier of two years after discovery of the facts constituting the violation or five years after the violation.

(k) *No enforcement of violative contract.* A person that has made, or has engaged in the performance of, a contract in violation of this act or a rule adopted or order issued under this act, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this act, may not base an action on the contract.

(l) *No contractual waiver.* A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this act or a rule adopted or order issued under this act is void.

(m) *Survival of other rights or remedies.* The rights and remedies provided by this act are in addition to any other rights or remedies that may exist, but this act does not create a cause of action not specified in this section or section 28 (e), and amendments thereto.

New Sec. 39. A purchaser, seller, or recipient of investment advice may not maintain an action under section 38, and amendments thereto, if:

(1) The purchaser, seller, or recipient of investment advice receives in a record, before the action is instituted:

(A) An offer stating the respect in which liability under section 38, and amendments thereto, may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this act to be furnished to that person at the time of the purchase, sale, or investment advice;

(B) if the basis for relief under this section may have been a violation of section 38 (b), and amendments thereto, an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest from the date of the purchase at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest from the date of the purchase at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto, in cash equal to the damages computed in the manner provided in this subsection;

(C) if the basis for relief under this section may have been a violation of section 38 (c), and amendments thereto, an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest from



the date of the sale at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto; or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest from the date of the sale at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto;

(D) if the basis for relief under this section may have been a violation of section 38 (d), and amendments thereto; and if the customer is a purchaser, an offer to pay as specified in subparagraph (B); or, if the customer is a seller, an offer to tender or to pay as specified in subparagraph (C);

(E) if the basis for relief under this section may have been a violation of section 38 (e), and amendments thereto, an offer to reimburse in cash the consideration paid for the advice and interest from the date of payment at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto; or

(F) if the basis for relief under this section may have been a violation of section 38 (f), and amendments thereto, an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest from the date of the violation causing the loss at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto;

(2) the offer under paragraph (1) states that it must be accepted by the purchaser, seller, or recipient of investment advice within 30 days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period, of not less than three days, that the administrator, by order, specifies;

(3) the offer under paragraph (1) discloses whether the offeror has the present ability to pay the amount offered or to tender the security;

(4) the offer under paragraph (1) is delivered to the purchaser, seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and

(5) the purchaser, seller, or recipient of investment advice that accepts the offer under paragraph (1) in a record within the period specified under paragraph (2) is paid in accordance with the terms of the offer.

New Sec. 40. (a) *Administration.* (1) This act shall be administered by the securities commissioner of Kansas.

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

(3) The administrator shall remit all moneys received from all fees, charges, deposits or penalties which have been collected under this act or other laws of this state regulating the issuance, sale or disposal of securities or regulating dealers in this state or under the uniform land sales practices act, to the state treasurer at least monthly. Upon receipt of any such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury. In accordance with subsection (a) of K.S.A. 75-3170, and amendments thereto, 20% of each such deposit shall be credited to the state general fund and, except as provided in subsection (d), the balance shall be credited to the securities act fee fund.

(4) On the last day of each fiscal year, the director of accounts and reports shall transfer from the securities act fee fund to the state general fund any remaining unencumbered amount in the securities act fee fund exceeding \$50,000 so that the beginning unencumbered balance in the securities act fee fund on the first day of each fiscal year is \$50,000. All expenditures from the securities act fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the administrator or by a person or persons designated by the administrator.

(5) All amounts transferred from the securities act fee fund to the state general fund under paragraph (4) are to reimburse the state general fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services and any other governmental services which are performed on behalf of the state agency involved by other state agencies which receive appropriations from the state general fund to provide such

services. Such reimbursements are in addition to those authorized by K.S.A. 75-3170a and amendments thereto.

(b) *Prohibited conduct.* (1) It is unlawful for the administrator or an officer, employee, or designee of the administrator to use for personal benefit or the benefit of others records or other information obtained by or filed with the administrator that are not public under section 46 (b), and amendments thereto. This act does not authorize the administrator or an officer, employee, or designee of the administrator to disclose the record or information, except in accordance with section 41, 46 (c), or 47, and amendments thereto.

(2) Neither the administrator nor any employee of the administrator shall be interested as an officer, director, or stockholder in securing any authorization to sell securities under the provisions of this act.

(c) *No privilege or exemption created or diminished.* This act does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

(d) *Investor education.* (1) The administrator may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the administrator may collaborate with public and nonprofit organizations with an interest in investor education. The administrator may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the administrator to require participation or monetary contributions of a registrant in an investor education program.

(2) There is hereby established in the state treasury the investor education fund. Such fund shall be administered by the administrator for the purposes described in subsection (d)(1) and for the education of registrants, including official hospitality. Moneys collected as civil penalties under this act shall be credited to the investor education fund. The administrator may also receive payments designated to be credited to the investor education fund as a condition in settlements of cases arising out of investigations or examinations. All expenditures from the investor education fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the administrator or by a person or persons designated by the administrator. Two years after the effective date of this act, the administrator shall conduct a review and submit a report to the governor and the legislature concerning the expenditures from the investor education fund and the results achieved from the investor education program.

New Sec. 41. (a) *Authority to investigate.* The administrator may:

(1) Conduct public or private investigations within or outside of this state which the administrator considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this act or a rule adopted or order issued under this act, or to aid in the enforcement of this act or in the adoption of rules and forms under this act;

(2) require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted;

(3) publish a record concerning an action, proceeding, or an investigation under, or a violation of, this act or a rule adopted or order issued under this act if the administrator determines it is necessary or appropriate in the public interest and for the protection of investors; and

(4) appoint special investigators to aid in investigations conducted pursuant to this act. Such special investigators shall have authority to make arrests, serve subpoenas and all other process, conduct searches and seizures, store evidence, and carry firearms, concealed or otherwise while investigating violations of this act and to generally enforce all the criminal laws of the state as violations of those laws are encountered by such special investigators. The director of police training at the law enforcement training center is authorized to offer and carry out a special course of instruction for special investigators performing law enforcement duties under

authority of this subsection. Such special investigators shall not carry firearms without having first successfully completed such special law enforcement training course.

(b) *Administrator powers to investigate.* For the purpose of an investigation under this act, the administrator or its designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the administrator considers relevant or material to the investigation.

(c) *Procedure and remedies for noncompliance.* If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the administrator under this act, the administrator may apply to any court of competent jurisdiction or a court of another state to enforce compliance. The court may:

- (1) Hold the person in contempt;
- (2) order the person to appear before the administrator;
- (3) order the person to testify about the matter under investigation or in question;
- (4) order the production of records;
- (5) grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;
- (6) impose a civil penalty of not greater than \$25,000 for each violation; and
- (7) grant any other necessary or appropriate relief.

(d) *Application for relief.* This section does not preclude a person from applying to any court of competent jurisdiction or a court of another state for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

(e) *Use immunity procedure.* An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the administrator under this act or in an action or proceeding instituted by the administrator under this act on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the administrator may compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

(f) *Assistance to securities regulator of another jurisdiction.* At the request of the securities regulator of another state or a foreign jurisdiction, the administrator may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The administrator may provide the assistance by using the authority to investigate and the powers conferred by this section as the administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this act or other law of this state if occurring in this state. In deciding whether to provide the assistance, the administrator may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the administrator on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this state; and the availability of resources and employees of the administrator to carry out the request for assistance.

New Sec. 42. (a) *Civil action instituted by administrator.* If the administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or that a person has, is, or is about to engage in an act, practice, or course of business that

materially aids a violation of this act or a rule adopted or order issued under this act, the administrator may maintain an action in any court of competent jurisdiction to enjoin the act, practice, or course of business and to enforce compliance with this act or a rule adopted or order issued under this act.

(b) *Relief available.* In an action under this section and on a proper showing, the court may:

(1) Issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) order other appropriate or ancillary relief, which may include:

(A) An asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant's assets;

(B) ordering the administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;

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

(D) an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act; and

(E) ordering the payment of prejudgment and postjudgment interest; or

(3) order such other relief as the court considers appropriate.

(c) *No bond required.* The administrator may not be required to post a bond in an action or proceeding under this act.

New Sec. 43. (a) *Cease and desist order.* If the administrator finds that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act, the administrator may:

(1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this act;

(2) issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under section 18 (b)(1)(D) or (F), and amendments thereto, or an investment adviser under section 20 (b)(1)(C), and amendments thereto; or

(3) issue an order under section 9, and amendments thereto.

(b) *Additional administrative sanctions and remedies.* If the administrator finds, by written findings of fact and conclusions of law, that a person has violated this act or a rule adopted or order issued under this act, the administrator, in addition to any other power granted under this act, may enter an order against the person containing one or more of the following sanctions or remedies:

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

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

(3) an order requiring the person to pay restitution for any loss or disgorge any profits arising from the violation, including, in the administrator's discretion, the assessment of interest from the date of the vio-

lation at the rate provided for interest on judgments by K.S.A. 16-204, and amendments thereto; or

(4) an order charging the person with the actual cost of the investigation or proceeding.

(c) *Procedures for orders.* (1) An order under subsection (b) shall not be entered unless the administrator first provides notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedures act.

(2) An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the order with a copy of the order. The order must include a statement of the reasons for the order and notice that upon receipt of a written request the matter will be set for a hearing which shall be conducted in accordance with the provisions of the Kansas administrative procedures act. If a person subject to the order does not request a hearing and none is ordered by the administrator within 30 days after the date of service of the order, the order becomes final as to that person by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(3) An order under subsection (a) may contain a notice of the administrator's intent to seek administrative sanctions or remedies under subsection (b). If the person subject to the order does not request a hearing and none is ordered by the administrator within 30 days after service of the order, the administrator may modify the order to include sanctions or remedies under subsection (b). If a hearing is requested or ordered, the administrator, after notice and opportunity for hearing, shall by written findings of fact and conclusions of law vacate, modify, or make permanent the order, and the administrator may modify the order to include sanctions or remedies under subsection (b).

(d) *Filing of certified final order with court; effect of filing.* If a petition for judicial review of a final order is not filed in accordance with section 48, and amendments thereto, the administrator may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(e) *Enforcement by court; further civil penalty.* If a person does not comply with an order under this section, the administrator may petition a court of competent jurisdiction to enforce the order. The court may not require the administrator to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not greater than \$25,000 for each violation and may grant any other relief the court determines is just and proper in the circumstances.

New Sec. 44. (a) *Issuance and adoption of forms, orders, and rules.* The administrator may:

(1) Issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this act and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records;

(2) by rule, define terms, whether or not used in this act, but those definitions may not be inconsistent with this act; and

(3) by rule, classify securities, persons, and transactions and adopt different requirements for different classes.

(b) *Findings and cooperation.* Under this act, a rule or form may not be adopted or amended, or an order issued or amended, unless the administrator finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this act. In adopting, amending, and repealing rules and forms, section 47, and amendments thereto, applies in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, ap-

plications, reports, and other records, including the adoption of uniform rules, forms, and procedures.

(c) *Financial statements.* Subject to section 15(h) of the securities exchange act and section 222 of the investment advisers act of 1940, the administrator may require that a financial statement filed under this act be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this act. A rule adopted or order issued under this act may establish:

(1) Subject to section 15(h) of the securities exchange act and section 222 of the investment advisers act of 1940, the form and content of financial statements required under this act;

(2) whether unconsolidated financial statements must be filed; and

(3) whether required financial statements must be audited by an independent certified public accountant.

(d) *Interpretative opinions.* The administrator may provide interpretative opinions or issue determinations that the administrator will not institute a proceeding or an action under this act against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this act. A rule adopted or order issued under this act may establish a reasonable charge for interpretative opinions or determinations that the administrator will not institute an action or a proceeding under this act.

(e) *Effect of compliance.* 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.

(f) *Presumption for public hearings.* A hearing in an administrative proceeding under this act must be conducted in public unless the administrator for good cause consistent with this act determines that the hearing will not be so conducted.

New Sec. 45. (a) *Public register of filings.* The administrator shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this act or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this act or the predecessor act; and interpretative opinions or no action determinations issued under this act.

(b) *Public availability.* The administrator shall make all rules, forms, interpretative opinions, and orders available to the public.

(c) *Copies of public records.* The administrator shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests. A rule adopted under this act may establish a reasonable charge for furnishing the record or certification. A copy of the record certified or a certificate by the administrator of a record's nonexistence is prima facie evidence of a record or its nonexistence.

New Sec. 46. (a) *Presumption of public records.* Except as otherwise provided in subsection (b), records obtained by the administrator or filed under this act, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination in accordance with the open records act.

(b) *Nonpublic records.* The following records are not public records and are not available for public examination under subsection (a):

(1) a record obtained by the administrator in connection with an audit or inspection under section 28 (d), and amendments thereto, or an investigation under section 41, and amendments thereto;

(2) a part of a record filed in connection with a registration statement under sections 11 and 13 through 15, and amendments thereto, or a record under section 28 (d), and amendments thereto, that contains trade secrets or confidential information if the person filing the registration

statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

(3) a record that is not required to be provided to the administrator or filed under this act and is provided to the administrator only on the condition that the record will not be subject to public examination or disclosure;

(4) a nonpublic record received from a person specified in section 47 (a), and amendments thereto; and

(5) any social security number, residential address unless used as a business address, and residential telephone number contained in a record that is filed.

(c) *Administrator discretion to disclose.* If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in section 47(a), and amendments thereto, the administrator may disclose a record obtained in connection with an audit or inspection under section 28 (d), and amendments thereto, or a record obtained in connection with an investigation under section 41, and amendments thereto.

New Sec. 47. (a) *Objective of uniformity.* The administrator may cooperate, coordinate, consult, and, subject to section 46, and amendments thereto, share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the securities and exchange commission, the United States department of justice, the commodity futures trading commission, the federal trade commission, the securities investor protection corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking or insurance regulator, and a governmental law enforcement or regulatory agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, states, and foreign governments.

(b) *Policies to consider.* In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this act, the administrator, in the administrator's discretion, shall take into consideration in carrying out the public interest the following general policies:

(1) Maximizing effectiveness of regulation for the protection of investors;

(2) maximizing uniformity in federal and state regulatory standards; and

(3) minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

(c) *Subjects for cooperation.* The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes:

(1) Establishing or employing one or more designees as a central depository for registration and notice filings under this act and for records required or allowed to be maintained under this act;

(2) developing and maintaining uniform forms;

(3) conducting a joint examination or investigation;

(4) holding a joint administrative hearing;

(5) instituting and prosecuting a joint civil or administrative proceeding;

(6) sharing and exchanging personnel;

(7) coordinating registrations under sections 13, 14 and 18 through 21, and amendments thereto, and exemptions under section 8, and amendments thereto;

(8) sharing and exchanging records, subject to section 46, and amendments thereto;

(9) formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases;

(10) formulating common systems and procedures;

(11) notifying the public of proposed rules, forms, statements of policy, and guidelines;

(12) attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, deemed necessary or appropriate to promote or achieve uniformity; and

(13) developing and maintaining a uniform exemption from registration for small issuers, and taking other steps to reduce the burden of raising investment capital by small businesses.

New Sec. 48. A final order issued by the administrator under this act is subject to judicial review in accordance with the provisions of the act for judicial review and civil enforcement of agency actions.

New Sec. 49. (a) *Sales and offers to sell.* Sections 11, 12, 18 (a), 19 (a), 20 (a), 21 (a), 30, 35, 38, and 39, and amendments thereto, do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this state or the offer to purchase or the purchase is made and accepted in this state.

(b) *Purchases and offers to purchase.* Sections 18 (a), 19 (a), 20 (a), 21 (a), 30, 35, 38, and 39, and amendments thereto, do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in this state or the offer to sell or the sale is made and accepted in this state.

(c) *Offers in this State.* For the purpose of this section, an offer to sell or to purchase a security is made in this state, whether or not either party is then present in this state, if the offer:

- (1) Originates from within this state; or
- (2) is directed by the offeror to a place in this state and received at the place to which it is directed.

(d) *Acceptances in this State.* For the purpose of this section, an offer to purchase or to sell is accepted in this state, whether or not either party is then present in this state, if the acceptance:

- (1) Is communicated to the offeror in this state and the offeree reasonably believes the offeror to be present in this state and the acceptance is received at the place in this state to which it is directed; and
- (2) has not previously been communicated to the offeror, orally or in a record, outside this state.

(e) *Publications, radio, television or electronic communications.* An offer to sell or to purchase is not made in this state when a publisher circulates or there is circulated on the publisher's behalf in this state a bona fide newspaper or other publication of general, regular and paid circulation that is not published in this state, or that is published in this state but has had more than two-thirds of its circulation outside this state during the previous 12 months or when a radio or television program or other electronic communication originating outside this state is received in this state. A radio or television program, or other electronic communication is considered as having originated in this state if either the broadcast studio or the originating source of transmission is located in this state, unless:

- (1) The program or communication is syndicated and distributed from outside this state for redistribution to the general public in this state;
- (2) the program or communication is supplied by a radio, television or other electronic network with the electronic signal originating from outside this state for redistribution to the general public in this state;
- (3) the program or communication is an electronic communication that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable, radio, cable television or other electronic system; or
- (4) the program or communication consists of an electronic communication that originates in this state, but which is not intended for distribution to the general public in this state.

(f) *Investment advice and misrepresentations.* Sections 20 (a), 21 (a), 22 (a), 31, 34, and 35, and amendments thereto, apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this state, whether or not either party is then present in this state.

New Sec. 50. (a) *Signed consent to service of process.* A consent to service of process required by this act must be signed and filed in the form required by a rule or order under this act. A consent appointing the administrator the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor or personal representative under this act or a rule adopted or order issued under this act after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person



that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

(b) *Conduct constituting appointment of agent for service.* If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this act or a rule adopted or order issued under this act and the person has not filed a consent to service of process under subsection (a), the act, practice, or course of business constitutes the appointment of the administrator as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.

(c) *Procedure for service of process.* Service under subsection (a) or (b) may be made by providing a copy of the process to the office of the administrator, but it is not effective unless:

(1) The plaintiff, which may be the administrator, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice; and

(2) the plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the administrator in a proceeding before the administrator, allows.

(d) *Service in administrative proceedings or civil actions by administrator.* Service pursuant to subsection (c) may be used in a proceeding before the administrator or by the administrator in a civil action in which the administrator is the moving party. In an administrative proceeding under this act, service of process may also be made in accordance with the Kansas administrative procedure act.

(e) *Opportunity to defend.* If process is served under subsection (c), the court, or the administrator in a proceeding before the administrator, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

New Sec. 51. If any provision of this act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

New Sec. 52. The Kansas securities act, K.S.A. 17-1252 through 17-1275, is hereby repealed subject to the following limitations:

(a) *Applicability of predecessor act to pending proceedings and existing rights.* The predecessor act exclusively governs all actions or proceedings that are pending on the effective date of this act or may be instituted on the basis of conduct occurring before the effective date of this act, but a civil action may not be maintained to enforce any liability under the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within five years after the effective date of this act, whichever is earlier.

(b) *Continued effectiveness under predecessor act.* All effective registrations under the predecessor act, all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no action determinations, and conditions imposed on the registrations under the predecessor act remain in effect while they would have remained in effect if this act had not been enacted. They are considered to have been filed, issued, or imposed under this act, but are exclusively governed by the predecessor act.

(c) *Applicability of predecessor act to offers or sales.* The predecessor act exclusively applies to an offer or sale made within one year after the effective date of this act pursuant to an offering made in good faith before the effective date of this act on the basis of an exemption available under the predecessor act.

Sec. 53. K.S.A. 12-1675 is hereby amended to read as follows: 12-1675. (a) The governing body of any county, city, township, school district, area vocational-technical school, community college, firemen's relief association, community mental health center, community facility for the

mentally retarded or any other governmental entity, unit or subdivision in the state of Kansas having authority to receive, hold and expend public moneys or funds may invest any moneys which are not immediately required for the purposes for which the moneys were collected or received, and the investment of which is not subject to or regulated by any other statute.

(b) Such moneys shall be invested only:

(1) In temporary notes or no-fund warrants issued by such investing governmental unit;

(2) in time deposit, open accounts, certificates of deposit or time certificates of deposit with maturities of not more than two years: (A) In banks, savings and loan associations and savings banks, which have main or branch offices located in such investing governmental unit; or (B) if no main or branch office of a bank, savings and loan association or savings bank is located in such investing governmental unit, then in banks, savings and loan associations and savings banks, which have main or branch offices in the county or counties in which all or part of such investing governmental unit is located;

(3) in repurchase agreements with: (A) Banks, savings and loan associations and savings banks, which have main or branch offices located in such investing governmental unit, for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof; or (B) (i) if no main or branch office of a bank, savings and loan association or savings bank, is located in such investing governmental unit; or (ii) if no such bank, savings and loan association or savings bank having a main or branch office located in such investing governmental unit is willing to enter into such an agreement with the investing governmental unit at an interest rate equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, *and amendments thereto*, then such repurchase agreements may be entered into with banks, savings and loan associations or savings banks which have main or branch offices in the county or counties in which all or part of such investing governmental unit is located; or (C) if no bank, savings and loan association or savings bank, having a main or branch office in such county or counties is willing to enter into such an agreement with the investing governmental unit at an interest rate equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, then such repurchase agreements may be entered into with banks, savings and loan associations or savings banks;

(4) in United States treasury bills or notes with maturities as the governing body shall determine, but not exceeding two years. Such investment transactions shall only be conducted with banks, savings and loan associations and savings banks; the federal reserve bank of Kansas City, Missouri; or with primary government securities dealers which report to the market report division of the federal reserve bank of New York, or any broker-dealer engaged in the business of selling government securities which is registered in compliance with the requirements of section 15 or 15C of the securities exchange act of 1934 and registered pursuant to ~~K.S.A. 17-1254~~ *section 18*, and amendments thereto;

(5) in the municipal investment pool fund established in K.S.A. 12-1677a, and amendments thereto;

(6) in the investments authorized and in accordance with the conditions prescribed in K.S.A. 12-1677b, and amendments thereto; or

(7) in multiple municipal client investment pools managed by the trust departments of banks which have main or branch offices located in the county or counties where such investing governmental unit is located or with trust companies incorporated under the laws of this state which have contracted to provide trust services under the provisions of K.S.A. 9-2107, and amendments thereto, with banks which have main or branch offices located in the county or counties in which such investing governmental unit is located. Public moneys invested under this paragraph shall be secured in the same manner as provided for under K.S.A. 9-1402, and amendments thereto. Pooled investments of public moneys made by trust departments under this paragraph shall be subject to the same terms, conditions and limitations as are applicable to the municipal investment pool established by K.S.A. 12-1677a, and amendments thereto.

(c) The investments authorized in paragraphs (4), (5), (6) or (7) of subsection (b) shall be utilized only if the banks, savings and loan asso-

ciations and savings banks eligible for investments authorized in paragraph (2) of subsection (b), cannot or will not make the investments authorized in paragraph (2) of subsection (b) available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, *and amendments thereto*.

(d) In selecting a depository pursuant to paragraph (2) of subsection (b), if a bank, savings and loan association or savings bank eligible for an investment deposit thereunder has an office located in the investing governmental unit and such financial institution will make such deposits available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, *and amendments thereto*, and such financial institution otherwise qualifies for such deposit, the investing governmental unit shall select one or more of such eligible financial institutions for deposit of funds pursuant to this section. If no such financial institution qualifies for such deposits, the investing governmental unit shall select for such deposits one or more eligible banks, savings and loan associations or savings banks which have offices in the county or counties in which all or a part of such investing governmental unit is located which will make such deposits available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, *and amendments thereto*, and which otherwise qualify for such deposits.

(e) (1) All security purchases and repurchase agreements shall occur on a delivery versus payment basis.

(2) All securities, including those acquired by repurchase agreements, shall be perfected in the name of the investing governmental unit and shall be delivered to the purchaser or a third-party custodian which may be the state treasurer.

Sec. 54. K.S.A. 12-1677b is hereby amended to read as follows: 12-1677b. (a) The governing body of any city or county which has a written investment policy approved by the governing body of such city or county and approved by the pooled money investment board may invest and reinvest pursuant to the approved investment policy in the following investments, as authorized under paragraph (6) of subsection (b) of K.S.A. 12-1675, and amendments thereto:

(1) Direct obligations of, or obligations that are insured as to principal and interest by, the United States of America or any agency thereof and obligations and securities of United States sponsored enterprises which under federal law may be accepted as security for public funds, except that such investments shall not be in mortgage-backed securities;

(2) interest-bearing time deposits in any banks, savings and loan associations and savings banks; or

(3) repurchase agreements with banks, savings and loan associations and savings banks, or with a primary government securities dealer which reports to the market reports division of the federal reserve bank of New York for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof and obligations and securities of United States government sponsored enterprises which under federal law may be accepted as security for public funds.

(b) The investment policy of any city or county approved by the pooled money investment board under this section shall be reviewed and approved at least annually by such board or when such city or county makes changes in such investment policy.

(c) City and county investment policies shall address liquidity, diversification, safety of principal, yield, maturity and quality, and capability of investment management staff.

(d) (1) All security purchases shall occur on a delivery versus payment basis.

(2) All securities shall be perfected in the name of the city or county and shall be delivered to the purchaser or a third party custodian which may be the state treasurer.

(3) Investment transactions shall only be conducted with banks, savings and loan associations and savings banks; or with primary government securities dealers which report to the market report division of the federal reserve bank of New York; or any broker-dealer which is registered in

compliance with the requirements of section 15C of the securities exchange act of 1934 and registered pursuant to ~~K.S.A. 17-1254~~ *section 18*, and amendments thereto.

(4) The maximum maturity for investments under subsection (a) shall be four years.

(e) Investments in securities under paragraph (1) of subsection (a) shall be limited to securities which do not have any more interest rate risk than do direct United States government obligations of similar maturities. For purposes of this subsection, “interest rate risk” means market value changes due to changes in current interest rates.

(f) A city or county which violates subsection (c) or (d) of K.S.A. 12-1675 and amendments thereto or the rules and regulations of the pooled money investment board shall forfeit its rights under this section for a two year period and shall be reinstated only after a complete review of its investment policy as provided for in subsection (b). Such forfeiture shall be determined by the pooled money investment board after notice and opportunity to be heard in accordance with the Kansas administrative procedure act.

Sec. 55. K.S.A. 12-4516 is hereby amended to read as follows: 12-4516. (a) (1) Except as provided in subsection (b), any person who has been convicted of a violation of a city ordinance of this state may petition the convicting court for the expungement of such conviction and related arrest records if three or more years have elapsed since the person:

(A) Satisfied the sentence imposed; or

(B) was discharged from probation, parole or a suspended sentence.

(2) Except as provided in subsection (b), any person who has fulfilled the terms of a diversion agreement based on a violation of a city ordinance of this state may petition the court for the expungement of such diversion agreement and related arrest records if three or more years have elapsed since the terms of the diversion agreement were fulfilled.

(b) No person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of the violation of a city ordinance which would also constitute:

(1) Vehicular homicide, as defined by K.S.A. 21-3405, and amendments thereto;

(2) a violation of K.S.A. 8-1567, and amendments thereto;

(3) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto;

(4) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto;

(5) a violation of the provisions of the fifth clause of K.S.A. 8-142, and amendments thereto, relating to fraudulent applications;

(6) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(7) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto;

(8) a violation of the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or

(9) a violation of K.S.A. 21-3405b, and amendments thereto.

(c) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. The petition shall state: (1) The defendant's full name;

(2) the full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;

(3) the defendant's sex, race and date of birth;

(4) the crime for which the defendant was arrested, convicted or diverted;

(5) the date of the defendant's arrest, conviction or diversion; and

(6) the identity of the convicting court, arresting law enforcement agency or diverting authority. A municipal court may prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire

into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas parole board.

(d) At the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

(1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

(2) the circumstances and behavior of the petitioner warrant the expungement; and

(3) the expungement is consistent with the public welfare.

(e) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or diversion. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions or diversions:

(A) In any application for employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services;

(B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(E) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(F) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(G) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact; or

(H) in any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in ~~K.S.A. 17-1252~~ *section 2*, and amendments thereto;

(3) the court, in the order of expungement, may specify other circumstances under which the arrest, conviction or diversion is to be disclosed; and

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged.

(f) Whenever a person is convicted of an ordinance violation, pleads guilty and pays a fine for such a violation, is placed on parole or probation or is granted a suspended sentence for such a violation, the person shall be informed of the ability to expunge the arrest records or conviction. Whenever a person enters into a diversion agreement, the person shall be informed of the ability to expunge the diversion.

(g) Subject to the disclosures required pursuant to subsection (e), in any application for employment, license or other civil right or privilege,

or any appearance as a witness, a person whose arrest records, conviction or diversion of an offense has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such offense.

(h) Whenever the record of any arrest, conviction or diversion has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction, diversion and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

- (1) The person whose record was expunged;
- (2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;
- (3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;
- (4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;
- (5) a person entitled to such information pursuant to the terms of the expungement order;
- (6) a prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;
- (7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;
- (8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;
- (9) the governor or the Kansas racing commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;
- (10) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact; or
- (11) the Kansas securities commissioner, or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged.

Sec. 56. K.S.A. 16-214 is hereby amended to read as follows: 16-214. Whenever advances of money, repayable on demand, are made upon any securities, as defined in K.S.A. 84-8-102(1)(a), *and amendments thereto*, pledged as collateral for repayment of such advances and in which such advances are used by the borrower only for the purpose of the purchasing or the carrying of such securities, it shall be lawful for a broker-dealer, as defined by ~~K.S.A. 17-1252~~ *section 2, and amendments thereto*, to charge, receive or contract to receive and collect, as compensation for making such advances, a rate of interest not to exceed the higher of ~~ten percent (10%)~~ 10% per annum, or the rate of interest last obtained from

a commercial lender by the broker-dealer plus an annual percentage rate of not to exceed ~~one and one-half percent (1½%)~~ 1½%, which rate shall be established by written notification to the borrower. Any such advances shall not be subject to any of the provisions of articles 1 through 9, inclusive, of chapter 16a of the Kansas Statutes Annotated, *and amendments thereto*.

Sec. 57. K.S.A. 17-4632 is hereby amended to read as follows: 17-4632. The provisions of the Kansas *uniform* securities act shall not apply to any note, bond or other evidence of indebtedness issued by any cooperative doing business in this state pursuant to this act to *the* United States of America or any agency or instrumentality thereof, or to any mortgage, deed of trust or other instrument executed to secure the same. The provisions of ~~said~~ *such* securities act shall not apply to the issuance of membership certificates by any cooperative.

Sec. 58. K.S.A. 2003 Supp. 17-49a01 is hereby amended to read as follows: 17-49a01. As used in ~~this~~ *the uniform TOD security registration* act:

(a) “Beneficiary form” means a registration of a security which identifies the present owner of the security and the intention of the owner regarding the person or persons who will become the owner or owners of the security upon the death of the owner.

(b) “Person” means an individual, a corporation, a partnership, an association, trust or an organization.

(c) “Register” including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(d) “Registering entity” means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(e) “Security” means a certificated or uncertificated security as defined in K.S.A. 84-8-102 and amendments thereto or as defined in ~~K.S.A. 17-1252~~ *section 2*, and amendments thereto.

(f) “Security account” means (1) a reinvestment account associated with a security, a securities account with a broker, an agency account with a bank or trust company, a cash balance in a brokerage account, cash, interest, earnings or dividends earned or declared on a security in an account, a reinvestment account or a brokerage account, whether or not credited to the account before the owner’s death, or (2) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner’s death.

(g) “State” includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession subject to the legislative authority of the United States.

Sec. 59. K.S.A. 2003 Supp. 21-4619 is hereby amended to read as follows: 21-4619. (a) (1) Except as provided in subsections (b) and (c), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, nondrug crimes ranked in severity levels 6 through 10 or any felony ranked in severity level 4 of the drug grid, may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person: (A) Satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, post-release supervision, conditional release or a suspended sentence.

(2) Except as provided in subsections (b) and (c), any person who has fulfilled the terms of a diversion agreement may petition the district court for the expungement of such diversion agreement and related arrest records if three or more years have elapsed since the terms of the diversion agreement were fulfilled.

(b) Except as provided in subsection (c), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed, the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sen-

tence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any nondrug crime ranked in severity levels 1 through 5 or any felony ranked in severity levels 1 through 3 of the drug grid, or:

(1) Vehicular homicide, as defined by K.S.A. 21-3405 and amendments thereto or as prohibited by any law of another state which is in substantial conformity with that statute;

(2) a violation of K.S.A. 8-1567 and amendments thereto, or a violation of any law of another state, which declares to be unlawful the acts prohibited by that statute;

(3) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262 and amendments thereto or as prohibited by any law of another state which is in substantial conformity with that statute;

(4) perjury resulting from a violation of K.S.A. 8-261a and amendments thereto or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(5) violating the provisions of the fifth clause of K.S.A. 8-142 and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with that statute;

(6) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(7) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with those statutes;

(8) violating the provisions of K.S.A. 40-3104 and amendments thereto, relating to motor vehicle liability insurance coverage; or

(9) a violation of K.S.A. 21-3405b, prior to its repeal.

(c) There shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of the following offenses: (1) Rape as defined in subsection (a)(2) of K.S.A. 21-3502 and amendments thereto; (2) indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto; (3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto; (4) criminal sodomy as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505 and amendments thereto; (5) aggravated criminal sodomy as defined in K.S.A. 21-3506 and amendments thereto; (6) indecent solicitation of a child as defined in K.S.A. 21-3510 and amendments thereto; (7) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511 and amendments thereto; (8) sexual exploitation of a child as defined in K.S.A. 21-3516 and amendments thereto; (9) aggravated incest as defined in K.S.A. 21-3603 and amendments thereto; (10) endangering a child as defined in K.S.A. 21-3608 and amendments thereto; (11) abuse of a child as defined in K.S.A. 21-3609 and amendments thereto; (12) capital murder as defined in K.S.A. 21-3439 and amendments thereto; (13) murder in the first degree as defined in K.S.A. 21-3401 and amendments thereto; (14) murder in the second degree as defined in K.S.A. 21-3402 and amendments thereto; (15) voluntary manslaughter as defined in K.S.A. 21-3403 and amendments thereto; (16) involuntary manslaughter as defined in K.S.A. 21-3404 and amendments thereto; (17) involuntary manslaughter while driving under the influence of alcohol or drugs as defined in K.S.A. 2003 Supp. 21-3442 and amendments thereto; (18) sexual battery as defined in K.S.A. 21-3517 and amendments thereto; (19) aggravated sexual battery as defined in K.S.A. 21-3518 and amendments thereto; or (20) any conviction for any offense in effect at any time prior to the effective date of this act, that is comparable to any offense as provided in this subsection.

(d) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. The petition shall state: (1) The defendant's full name;

(2) the full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;

(3) the defendant's sex, race and date of birth;

(4) the crime for which the defendant was arrested, convicted or diverted;



(5) the date of the defendant's arrest, conviction or diversion; and

(6) the identity of the convicting court, arresting law enforcement authority or diverting authority. There shall be no docket fee for filing a petition pursuant to this section. All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas parole board.

(e) At the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

(1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

(2) the circumstances and behavior of the petitioner warrant the expungement; and

(3) the expungement is consistent with the public welfare.

(f) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or diversion. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions or diversions:

(A) In any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant to K.S.A. 2003 Supp. 75-7b21, and amendments thereto, or employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01 and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01 and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services;

(B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(E) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(F) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(G) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(H) in any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in ~~K.S.A. 17-1252~~ *section 2*, and amendments thereto; or

(I) in any application for a commercial guide permit or associate guide permit under K.S.A. 32-964, and amendments thereto;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

(4) the conviction may be disclosed in a subsequent prosecution for

an offense which requires as an element of such offense a prior conviction of the type expunged; and

(5) upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary of corrections may be reinstated and the expungement disregarded, and the record continued for the purpose of the new commitment.

(g) Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime, is placed on parole, postrelease supervision or probation, is assigned to a community correctional services program, is granted a suspended sentence or is released on conditional release, the person shall be informed of the ability to expunge the arrest records or conviction. Whenever a person enters into a diversion agreement, the person shall be informed of the ability to expunge the diversion.

(h) Subject to the disclosures required pursuant to subsection (f), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction or diversion of a crime has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such crime, but the expungement of a felony conviction does not relieve an individual of complying with any state or federal law relating to the use or possession of firearms by persons convicted of a felony.

(i) Whenever the record of any arrest, conviction or diversion has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction, diversion and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

- (1) The person whose record was expunged;
- (2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;
- (3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;
- (4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;
- (5) a person entitled to such information pursuant to the terms of the expungement order;
- (6) a prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;
- (7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;
- (8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;
- (9) the governor or the Kansas racing commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;
- (10) the Kansas sentencing commission;
- (11) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be

an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-gaming compact;

(12) the Kansas securities commissioner or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged; or

(13) the department of wildlife and parks and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a permit as a commercial guide or associate guide under K.S.A. 32-964, and amendments thereto.

Sec. 60. K.S.A. 50-1009 is hereby amended to read as follows: 50-1009. (a) The commissioner may do the following:

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

(2) make investigations and examinations:

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

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

(3) appoint special investigators to aid in investigations conducted pursuant to this act. Such special investigators shall have the same authority with respect to enforcement of this act as specified for special investigators appointed under subsection ~~(b)~~ of K.S.A. ~~17-1265~~ (a) of section 41, and amendments thereto, in enforcing the Kansas *uniform securities act*;

(4) charge as costs of investigation or examination all reasonable expenses, including a per diem prorated upon the salary of the commissioner or employee and actual traveling and hotel expenses. All reasonable expenses are to be paid by the party or parties under investigation or examination;

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

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

(7) hold and conduct hearings;

(8) hear evidence;

(9) conduct inquiries with or without hearings;

(10) receive reports of investigators or other officers or employees of the state of Kansas or of any municipal corporation or governmental subdivision within the state;

(11) administer oaths or cause them to be administered;

(12) subpoena witnesses and compel them to attend and testify;

(13) compel the production of books, records and other documents; and

(14) order depositions to be taken of any witness residing within or without the state. The depositions shall be taken in the manner prescribed by law for depositions in civil actions and made returnable to the commissioner.

(b) If any person refuses to obey a subpoena issued under this act, the commissioner may make application to any court of competent jurisdiction to order the person to appear before the commissioner and produce documentary evidence or give evidence as directed in the subpoena. The failure to obey the order of the court shall be subject to punishment by the court as contempt of court.

(c) No person shall be excused from complying with a subpoena on the ground that the testimony or evidence required may tend to incriminate the person or subject the person to a penalty or forfeiture. No

individual may be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing which the individual is compelled to testify or produce evidence, after claiming the privilege against self-incrimination. However, the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(d) In any prosecution, action, suit or proceeding based upon or arising out of this act, the commissioner may sign a certificate showing compliance or noncompliance with this act by any loan broker. This shall constitute prima facie evidence of compliance or noncompliance with this act and shall be admissible in evidence in any action at law or in equity to enforce this act.

Sec. 61. K.S.A. 50-1016 is hereby amended to read as follows: 50-1016. (a) The following persons are exempt from the requirements of K.S.A. 50-1002, 50-1003, 50-1004, 50-1006, 50-1007, 50-1008, 50-1014 and 50-1015, *and amendments thereto*:

- (1) Any attorney while engaging in the practice of law;
- (2) any certified public accountant with a permit to practice under K.S.A. 1-310, and amendments thereto, while engaged in practice as a certified public accountant or any independent public accountant engaged in the practice of public accounting whose service in relation to procurement of a loan is incidental to their practice;
- (3) any person licensed as a real estate broker or salesperson under K.S.A. 58-3039, and amendments thereto, while rendering services in the ordinary course of a transaction in which a license as a real estate broker or salesperson is required;
- (4) any broker-dealer, agent ~~or, investment adviser or investment advisor~~ *adviser representative* registered under ~~K.S.A. 17-1254 section 18, 19, 20 or 21,~~ and amendments thereto;
- (5) any person whose fee is wholly contingent on the successful procurement of a loan from a third party and to whom no fee, other than a bona fide third party fee, is paid before the procurement;
- (6) any person who is a creditor, or proposed to be a creditor, for any loan; and
- (7) any feedlot operator licensed under K.S.A. 47-1503, and amendments thereto.

(b) As used in this section, “bona fide third party fee” includes fees for:

- (1) Credit reports, appraisals and investigations; and
- (2) if the loan is to be secured by real property, title examinations, an abstract of title, title insurance, a property survey and similar purposes.

(c) As used in this section, “successful procurement of a loan” means that a binding commitment from a creditor to advance money has been received and accepted by the borrower.

(d) The burden of proof of any exemption or classification provided in this act shall be on the party claiming the exemption or classification.

Sec. 62. K.S.A. 66-1508 is hereby amended to read as follows: 66-1508. (a) Except as otherwise provided in subsection (b), the assessments provided for under the provisions of this act shall not apply to motor carriers, nor shall they apply to public utilities or common carriers which are under the jurisdiction of the commission solely in connection with the administration of ~~the Kansas securities act or the oil proration or oil and gas conservation acts,~~ the expenditures in connection with such regulations being otherwise provided for by fees and assessments levied under other acts against such public utilities or common carriers.

(b) Notwithstanding the provisions of subsection (a), motor carriers shall be subject to the assessment provided for in K.S.A. 66-1502, *and amendments thereto*.

Sec. 63. K.S.A. 2003 Supp. 75-3170a is hereby amended to read as follows: 75-3170a. (a) The 20% credit to the state general fund required by K.S.A. 1-204, 9-1703, 16-609, 16a-2-302, ~~17-1271 section 40,~~ 17-2236, 17-5609, 17-5610, 17-5612, 17-5701, 20-1a02, 20-1a03, 31-133a, 31-134, 44-324, 44-926, 47-820, 49-420, 55-155, 55-176, 55-609, 55-711, 55-901, 58-2011, 58-3074, 58-4107, 65-6b10, 65-1718, 65-1817a, 65-2011, 65-2855, 65-2911, 65-4610, 65-5413, 65-5513, 66-1,155, 66-1503, 74-715, 74-1108, 74-1405, 74-1503, 74-1609, 74-2704, 74-3903, 74-5805, 74-7009, 74-7506, 75-1119b, 75-1308 and 75-1514 and 2-3506, 84-9-411 and

84-9-413, and amendments thereto, is to reimburse the state general fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services, and any and all other state governmental services, which are performed on behalf of the state agency involved by other state agencies which receive appropriations from the state general fund to provide such services.

(b) Nothing in this act or in the sections amended by this act or referred to in subsection (a), shall be deemed to authorize remittances to be made less frequently than is authorized under K.S.A. 75-4215 and amendments thereto.

(c) Notwithstanding any provision of any statute referred to in or amended by this act or referred to in subsection (a), whenever in any fiscal year such 20% credit to the state general fund in relation to any particular fee fund is \$200,000, in that fiscal year the 20% credit no longer shall apply to moneys received from sources applicable to such fee fund and for the remainder of such year the full 100% so received shall be credited to such fee fund, except as otherwise provided in subsection (d) and except that during the fiscal year ending June 30, 1993, with respect to the fire marshal fee fund, when the 20% credit to the state general fund prescribed by K.S.A. 31-133a, 31-134 and 75-1514 and amendments thereto, in the aggregate, is \$400,000, then in that fiscal year such 20% credit no longer shall apply to moneys received from sources applicable to the fire marshal fee fund and for the remainder of such fiscal year the full 100% so received shall be credited to the fire marshal fee fund.

Sec. 64. K.S.A. 75-6302 is hereby amended to read as follows: 75-6302. (a) On July 1, 1982, the office of the securities commissioner of Kansas provided for by K.S.A. 17-1270, prior to its amendment ~~by this act in 1982, and prior to its repeal by this act~~, shall be and is hereby abolished and all of the powers, duties and functions of such securities commissioner shall be and are hereby transferred to and conferred and imposed upon the securities commissioner of Kansas provided for by this act.

(b) Except as otherwise provided in this act, the securities commissioner provided for by this act shall be the successor in every way to the powers, duties and functions of the securities commissioner, in which the same were vested prior to the effective date of this act.

(c) Whenever the securities commissioner of Kansas, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the securities commissioner provided for by this act.

(d) All rules and regulations and all orders and directives of the securities commissioner of Kansas in existence immediately prior to the effective date of this act shall continue to be effective and shall be deemed to be the rules and regulations and orders or directives of the securities commissioner of Kansas provided for by this act, until revised, amended, repealed or nullified pursuant to law.

Sec. 65. K.S.A. 12-1675, 12-1677b, 12-4516, 16-214, 17-1260, 17-1266, 17-1267, 17-1269, 17-1273, 17-1274, 17-1275, 17-4632, 50-1009, 50-1016, 66-1508 and 75-6302 and K.S.A. 2003 Supp. 17-1252, 17-1253, 17-1254, 17-1255, 17-1257, 17-1258, 17-1259, 17-1261, 17-1262, 17-1262a, 17-1263, 17-1264, 17-1264a, 17-1265, 17-1265a, 17-1266a, 17-1268, 17-1270, 17-1270a, 17-1270b, 17-1271, 17-1272, 17-49a01, 21-4619 and 75-3170a are hereby repealed.

Sec. 66. This act shall take effect and be in force from and after July 1, 2005, and its publication in the statute book.

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

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HOUSE adopted  
Conference Committee Report \_\_\_\_\_

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

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

Passed the SENATE  
as amended \_\_\_\_\_

SENATE adopted  
Conference Committee Report \_\_\_\_\_

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

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

APPROVED \_\_\_\_\_

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