

HOUSE BILL No. 2294

AN ACT concerning the Kansas uniform securities act; amending K.S.A. 17-12a302, 17-12a402 and 17-12a411 and repealing the existing sections.

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

Section 1. K.S.A. 17-12a302 is hereby amended to read as follows: 17-12a302. (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 K.S.A. 17-12a201 through 17-12a203, 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 K.S.A. 17-12a611, 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 K.S.A. 17-12a611, 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~~)(E).* With respect to a security that is a federal covered security under section 18(b)(4)(~~D~~)(E) of the securities act of 1933 (15 U.S.C. ~~section~~ § 77r(b)(4)(~~D~~)(E)), 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 K.S.A. 17-12a611, 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.

Sec. 2. K.S.A. 17-12a402 is hereby amended to read as follows: 17-12a402. (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)(i)(3) of the securities exchange act of 1934 (15 U.S.C. ~~section~~ § 78(~~o~~)(2)(i)(3));

(2) an individual who represents a broker-dealer that is exempt under K.S.A. 17-12a401(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 K.S.A. 17-12a202, and amendments thereto, other than K.S.A. 17-12a202 (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~~)(E) of the securities act of 1933 (15 U.S.C. ~~section~~ § 77r(b)(3) or 77r(b)(4)(~~D~~)(E)) 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 K.S.A. 17-12a401(a), and amendments thereto, or exempt from registration under K.S.A. 17-12a401(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.

Sec. 3. K.S.A. 17-12a411 is hereby amended to read as follows: 17-12a411. (a) *Financial requirements.* Subject to section 15(~~h~~)(i) of the securities exchange act of 1934 (15 U.S.C. ~~section~~ § 78o(~~h~~)(i)) or section 222 of the investment advisers act of 1940 (15 U.S.C. ~~section~~ ~~80b-22~~ § 80b-18a), 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~~)(i) of the securities exchange act of 1934 (15 U.S.C. ~~section~~ § 78o(~~h~~)(i)) or section 222(b) of the investment advisers act of 1940 (15 U.S.C. ~~section~~ ~~80b-22~~ § 80b-18a), 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~~)(i) of the securities exchange act of 1934 (15 U.S.C. ~~section~~ § 78o(~~h~~)(i)) or section 222 of the investment advisers act of 1940 (15 U.S.C. ~~section~~ ~~80b-22~~ § 80b-18a):

(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)~~(i) of the securities exchange act of 1934 (15 U.S.C. ~~section~~ § 78o~~(h)~~(i)) or section 222 of the investment advisers act of 1940 (15 U.S.C. ~~section 80b-22~~ § 80b-18a), 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 K.S.A. 17-12a509(j)(2), and amendments thereto.

(f) *Requirements for custody.* Subject to section 15~~(h)~~(i) of the securities exchange act of 1934 (15 U.S.C. ~~section~~ § 78o~~(h)~~(i)) or section 222 of the investment advisers act of 1940 (15 U.S.C. ~~section 80b-22~~ § 80b-18a), 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 K.S.A. 17-12a402 or 17-12a404, 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 K.S.A. 17-12a404, and amendments thereto.

Sec. 4. K.S.A. 17-12a302, 17-12a402 and 17-12a411 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

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

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.