

HOUSE BILL No. 2562

By Committee on Financial Institutions and Pensions

Requested by Eric Turek on behalf of the Kansas Insurance Department

1-22

1 AN ACT concerning securities; enacting the protect vulnerable adults from
2 financial exploitation act; requiring reporting of instances of suspected
3 financial exploitation under certain circumstances; providing civil and
4 administrative immunity to individuals who report such instances;
5 amending K.S.A. 17-12a412 and repealing the existing section.
6

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

8 New Section 1. Sections 1 through 9, and amendments thereto, shall
9 be known and may be cited as the protect vulnerable adults from financial
10 exploitation act.

11 New Sec. 2. As used in the protect vulnerable adults from financial
12 exploitation act:

13 (a) "Act" means the protect vulnerable adults from financial
14 exploitation act.

15 (b) "Agent" means the same as defined in K.S.A. 17-12a102, and
16 amendments thereto.

17 (c) "Broker-dealer" means the same as defined in K.S.A. 17-12a102,
18 and amendments thereto.

19 (d) "Commissioner" means the securities commissioner of Kansas.

20 (e) "Eligible adult" means an elder person or dependent adult as
21 defined in K.S.A. 21-5417, and amendments thereto.

22 (f) "Financial exploitation" means the unlawful or improper use,
23 control or withholding of an eligible adult's property, income, resources or
24 trust funds by any other person or entity in a manner that is not for the
25 profit of or to the advantage of the eligible adult. "Financial exploitation"
26 includes, but is not limited to, the:

27 (1) Use of deception, intimidation, coercion, extortion or undue
28 influence by a person or entity to obtain or use an eligible adult's property,
29 income, resources or trust funds in a manner for the profit of or to the
30 advantage of such person or entity;

31 (2) breach of a fiduciary duty, including, but not limited to, the
32 misuse of a power of attorney, trust or a guardianship or conservatorship
33 appointment, as it relates to the property, income, resources or trust funds
34 of the eligible adult; or

35 (3) obtainment or use of an eligible adult's property, income,

1 resources or trust funds, without lawful authority, by a person or entity
2 who knows or clearly should know that the eligible adult lacks the
3 capacity to consent to the release or use of such eligible adult's property,
4 income, resources or trust funds.

5 (g) "Investment adviser" means the same as defined in K.S.A. 17-
6 12a102, and amendments thereto.

7 (h) "Investment adviser representative" means the same as defined in
8 K.S.A. 17-12a102, and amendments thereto.

9 (i) "Person reasonably associated with the eligible adult" means:

10 (1) A person authorized to transact business on the account of the
11 eligible adult;

12 (2) an eligible adult's spouse, child, parent or sibling;

13 (3) a person who was previously designated by the eligible adult to
14 receive information under a customer agreement;

15 (4) a legal guardian or conservator of the eligible adult;

16 (5) a trustee, co-trustee or successor trustee of the account of the
17 eligible adult;

18 (6) a person named as a beneficiary on an account of the eligible
19 adult;

20 (7) an agent under a power of attorney of the eligible adult; or

21 (8) any other person permitted to be notified under existing state or
22 federal law, regulation or the rules of a self-regulatory organization, as
23 defined in K.S.A. 17-12a102, and amendments thereto.

24 (j) "Protective agencies" means the commissioner and the Kansas
25 department for children and families.

26 (k) "Qualified person" means any agent, broker-dealer, investment
27 adviser, investment adviser representative or person who serves in a
28 supervisory, compliance or legal capacity for a broker-dealer or investment
29 adviser.

30 New Sec. 3. If a qualified person reasonably believes that financial
31 exploitation of an eligible adult may have occurred, may have been
32 attempted or is being attempted, the broker-dealer or investment adviser
33 shall promptly report the matter to the protective agencies, which may
34 further report the matter as permitted or required by law.

35 New Sec. 4. A qualified person who, in good faith and exercising
36 reasonable care, makes a disclosure of information pursuant to section 3,
37 and amendments thereto, shall be immune from administrative and civil
38 liability that might otherwise arise from such disclosure or for any failure
39 to notify the eligible adult of such disclosure.

40 New Sec. 5. A qualified person who, in good faith and exercising
41 reasonable care, makes a disclosure of information pursuant to section 3,
42 and amendments thereto, may notify any person reasonably associated
43 with the eligible adult of the disclosure, unless the qualified person

1 suspects that such person reasonably associated with the eligible adult has
2 committed or attempted financial exploitation of such eligible adult.

3 New Sec. 6. A qualified person who, in good faith and exercising
4 reasonable care, complies with the provisions of section 5, and
5 amendments thereto, shall be immune from any administrative and civil
6 liability that might otherwise arise from such disclosure.

7 New Sec. 7. (a) A broker-dealer or investment adviser may delay a
8 transaction associated with or disbursement from an account of an eligible
9 adult or an account on which an eligible adult is a beneficiary if:

10 (1) A qualified person reasonably believes, after initiating an internal
11 review of the requested transaction or disbursement and the suspected
12 financial exploitation, that the requested transaction or disbursement may
13 further financial exploitation of an eligible adult; and

14 (2) the broker-dealer or investment adviser:

15 (A) Immediately, and in no event more than two business days after
16 the date that a requested transaction or disbursement is delayed, provides
17 written notification of the delay and the reason for such delay to all parties
18 authorized to transact business on the account, unless such qualified
19 person reasonably believes that any such party is engaged in suspected or
20 attempted financial exploitation of the eligible adult;

21 (B) immediately, and in no event more than two business days after
22 the requested transaction or disbursement is delayed, notifies the
23 protective agencies; and

24 (C) continues such internal review of the suspected or attempted
25 financial exploitation of the eligible adult, as necessary and reports the
26 results of such investigation to the protective agencies upon request.

27 (b) Any delay of a transaction or disbursement authorized by this
28 section shall expire upon the soonest of:

29 (1) A determination by the broker-dealer or investment adviser that
30 the transaction or disbursement will not result in financial exploitation of
31 the eligible adult; or

32 (2) 15 business days following the date on which the broker-dealer or
33 investment adviser first delayed the transaction or disbursement, unless
34 either of the protective agencies requests that the broker-dealer or
35 investment adviser extend the delay, in which case the delay shall expire
36 not more than 25 business days after the date on which the broker-dealer
37 or investment adviser first delayed the transaction or disbursement if not
38 terminated sooner or further extended by either of the protective agencies
39 or an order of a court of competent jurisdiction.

40 (c) A court of competent jurisdiction may enter an order extending
41 the delay of the transaction or disbursement or may order other protective
42 relief based on the petition of either of the protective agencies, the broker-
43 dealer or investment adviser that initiated the delay under this section or

1 another interested party.

2 New Sec. 8. A broker-dealer or investment adviser that, in good faith
3 and exercising reasonable care, complies with the provisions of section 7,
4 and amendments thereto, shall be immune from any administrative and
5 civil liability that might otherwise arise from such delay of a transaction or
6 disbursement in accordance with this act.

7 New Sec. 9. (a) A broker-dealer or investment adviser shall provide
8 access to or copies of records that are relevant to the suspected or
9 attempted financial exploitation of an eligible adult to the protective
10 agencies and to law enforcement agencies, either as part of a referral to the
11 protective agencies or to law enforcement agencies or upon request of
12 either protective agency or law enforcement agency pursuant to an
13 investigation. The records may include historical records and records
14 relating to the most recent transaction or transactions that may constitute
15 financial exploitation of an eligible adult.

16 (b) No record made available to the commissioner or other agencies
17 under this act shall be considered a public record under the open records
18 act, K.S.A. 45-215 et seq., and amendments thereto. The provisions of this
19 subsection providing for the confidentiality of public records shall expire
20 on July 1, 2029, unless the legislature reviews and acts to continue such
21 provisions in accordance with K.S.A. 45-229, and amendments thereto,
22 prior to July 1, 2029.

23 (c) Notwithstanding any provision of law to the contrary, the
24 protective agencies shall respond to reasonable inquiries from the
25 notifying qualified person and may disclose to the notifying qualified
26 person the general status or final disposition of any investigation that arose
27 from a report made by such qualified person.

28 (d) Nothing in this act shall limit or otherwise impede the authority of
29 the commissioner to access or examine the books and records of broker-
30 dealers and investment advisers as otherwise provided by law.

31 Sec. 10. K.S.A. 17-12a412 is hereby amended to read as follows: 17-
32 12a412. (a) *Disciplinary conditions — applicants.* An order issued under
33 this act may deny an application, or may condition or limit registration of
34 an applicant to be a broker-dealer, agent, investment adviser, or investment
35 adviser representative if the administrator finds that the order is in the
36 public interest and that there is a ground for discipline under subsection (d)
37 against the applicant or, if the applicant is a broker-dealer or investment
38 adviser, against any partner, officer, director, person having a similar status
39 or performing similar functions, or person directly or indirectly controlling
40 the broker-dealer or investment adviser.

41 (b) *Disciplinary conditions — registrants.* An order issued under this
42 act may revoke, suspend, condition, or limit the registration of a registrant
43 if the administrator finds that the order is in the public interest and that

1 there is a ground for discipline under subsection (d) against the registrant
2 or, if the registrant is a broker-dealer or investment adviser, against any
3 partner, officer, or director, any person having a similar status or
4 performing similar functions, or any person directly or indirectly
5 controlling the broker-dealer or investment adviser. However, the
6 administrator:

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

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

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

24 (1) A censure;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (6) is the subject of an adjudication or determination, after notice and
41 opportunity for hearing, by the securities and exchange commission, the
42 commodity futures trading commission, the federal trade commission, a
43 federal depository institution regulator, or a depository institution,

1 insurance; or other financial services regulator of a state that the person
2 willfully violated the securities act of 1933, the securities exchange act of
3 1934, the investment advisers act of 1940, the investment company act of
4 1940, or the commodity exchange act, the securities or commodities law of
5 a state; or a federal or state law under which a business involving
6 investments, franchises, insurance, banking; or finance is regulated;

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

12 (8) refuses to allow or otherwise impedes the administrator from
13 conducting an audit or inspection under K.S.A. 17-12a411(d), and
14 amendments thereto, refuses access to a registrant's office to conduct an
15 audit or inspection under K.S.A. 17-12a411(d), and amendments thereto,
16 fails to keep or maintain sufficient records to permit an audit disclosing the
17 condition of the registrant's business; or fails willfully and without cause to
18 comply with a request for information by the administrator or person
19 designated by the administrator in conducting investigations or
20 examinations under this act;

21 (9) has failed to reasonably supervise an agent, investment adviser
22 representative; or other individual, if the agent, investment adviser
23 representative; or other individual was subject to the person's supervision
24 and committed a violation of this act or the predecessor act or a rule
25 adopted or order issued under this act or the predecessor act within the
26 previous 10 years;

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

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

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

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

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

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

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

7 (14) is not qualified on the basis of factors such as training,
8 experience; and knowledge of the securities business. However, in the case
9 of an application by an agent for a broker-dealer that is a member of a self-
10 regulatory organization or by an individual for registration as an
11 investment adviser representative, a denial order may not be based on this
12 paragraph if the individual has successfully completed all examinations
13 required by subsection (e). The administrator may require an applicant for
14 registration under K.S.A. 17-12a402 or 17-12a404, and amendments
15 thereto, who has not been registered in a state within the two years
16 preceding the filing of an application in this state to successfully complete
17 an examination; ~~or~~

18 (15) lacks sufficient character or reputation to warrant the public
19 trust; *or*

20 (16) *was required to report information under the protect vulnerable*
21 *adults from financial exploitation act and knowingly failed to make such a*
22 *report or knowingly caused such report not to be made within the previous*
23 *10 years.*

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

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

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

3 (A) Appropriate notice to the applicant or registrant;

4 (B) opportunity for hearing; and

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

6 (2) Proceedings under this subsection shall be conducted in
7 accordance with the Kansas administrative ~~procedures~~ *procedure* act.

8 (h) *Control person liability.* A person that controls, directly or
9 indirectly, a person not in compliance with this section may be disciplined
10 by order of the administrator under subsections (a) through (c) to the same
11 extent as the noncomplying person, unless the controlling person did not
12 know, and in the exercise of reasonable care could not have known, of the
13 existence of conduct that is a ground for discipline under this section.

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

19 Sec. 11. K.S.A. 17-12a412 is hereby repealed.

20 Sec. 12. This act shall take effect and be in force from and after its
21 publication in the ~~statute book~~ ***Kansas register***.