

SESSION OF 2024

SUPPLEMENTAL NOTE ON SENATE BILL NO. 405

As Recommended by Senate Committee on
Financial Institutions and Insurance

Brief*

SB 405 would amend the Kansas Uniform Securities Act (Act) to address violations of the Act by a control person and subject the control person, in certain circumstances, to administrative and civil enforcement action.

Under current law, registrants (e.g., broker-dealers, broker-dealer agents, investment advisers, investment adviser representatives) violating the Act are subject to disciplinary actions, which may include administrative and civil penalties. Current law also provides for disciplinary action for a person in control when the person is also a registrant.

The bill would expand control person liability to provide that a person that directly or indirectly controls a person who has engaged, is engaging, or is about to engage in an action constituting a violation of the Act, a rule and regulation promulgated under the Act, or an order issued under the Act may be subjected to the same discipline as the violating person, unless the controlling person did not know and could not have reasonably known of the violating person's actions or conduct.

[Note: "Person" is defined in KSA 17-12a102 to mean 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

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

commercial entity. "Control" is defined in KAR 81-1-1 to mean the possession of the power to direct or influence the direction of the management or policies of a person, directly or indirectly, through the ownership of voting securities, by contract or by other means.]

Background

The bill was introduced by the Senate Committee on Financial Institutions and Insurance at the request of a representative of the Kansas Insurance Department (Department).

Senate Committee on Financial Institutions and Insurance

In the Senate Committee hearing, a representative of the Department provided **proponent** testimony, stating the bill would extend administrative and civil "control person" liability to include control persons that are not registrants. The representative indicated that, under current law, if the control person is not a registrant, it lacks the means to pursue administrative or civil remedies, such as penalties and injunctions, and the bill would add these enforcement tools to ensure persons violating the Act are held accountable.

No other testimony was submitted.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, the Office of Judicial Administration states the bill could increase the number of cases filed in district courts because it allows for a civil suit to be filed. Any increase in cases would increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. Enactment of the bill could also increase the collection of docket fees that would be

deposited into the State General Fund. However, the Office could not determine a precise fiscal effect.

The Department states its enactment would not have a fiscal effect on agency operations.

Any fiscal effect associated with the bill is not reflected in *The FY 2025 Governor's Budget Report*.

Financial services; securities; Kansas Uniform Securities Act; Securities Commissioner; violations; liability; control person; enforcement