

SENATE BILL No. 62

By Committee on Financial Institutions and Insurance

1-19

1 AN ACT concerning securities; relating to financial exploitation and the
2 protection of vulnerable adults therefrom; enacting the protect
3 vulnerable adults from financial exploitation act; requiring reporting of
4 instances of suspected financial exploitation under certain
5 circumstances; providing civil and administrative immunity to
6 individuals who report such instances; amending K.S.A. 17-12a412 and
7 repealing the existing section.
8

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

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

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

15 (a) "Act" means the protect vulnerable adults from financial
16 exploitation act.

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

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

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

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

24 (f) "Financial exploitation," with respect to eligible adults, means the
25 same as defined in K.S.A. 39-1430, and amendments thereto.

26 (g) "Investment adviser" means the same as defined in K.S.A. 17-
27 12a102, and amendments thereto.

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

30 (i) "Qualified individual" means any agent, investment adviser
31 representative or person who serves in a supervisory, compliance or legal
32 capacity for a broker-dealer or investment adviser.

33 New Sec. 3. If a qualified individual reasonably believes that
34 financial exploitation of an eligible adult may have occurred, may have
35 been attempted or is being attempted, the qualified individual shall
36 promptly report the matter to the commissioner, whose office may further

1 report the matter as permitted or required by law.

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

7 New Sec. 5. If a qualified individual reasonably believes that
8 financial exploitation of an eligible adult may have occurred, may have
9 been attempted or is being attempted, a qualified individual may notify
10 any third party who was previously designated by such eligible adult to
11 receive such notice or whom the qualified individual is otherwise
12 permitted to notify under applicable state or federal law or a customer
13 agreement with such eligible adult, unless the qualified individual suspects
14 the third party has committed financial exploitation of the eligible adult.

15 New Sec. 6. A qualified individual who, in good faith and exercising
16 reasonable care, complies with section 5, and amendments thereto, shall be
17 immune from any administrative and civil liability that might otherwise
18 arise from such disclosure.

19 New Sec. 7. (a) A broker-dealer or investment adviser may delay a
20 disbursement from an account of an eligible adult or an account on which
21 an eligible adult is a beneficiary if:

22 (1) The broker-dealer, investment adviser or qualified individual
23 reasonably believes, after initiating an internal review of the requested
24 disbursement and the suspected financial exploitation, that the requested
25 disbursement may further financial exploitation of an eligible adult; and

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

27 (A) Not later than two business days following the requested
28 disbursement, provides written notification of the delay and the reason for
29 such delay to all parties authorized to transact business on the account,
30 unless such broker-dealer, investment adviser or qualified individual
31 reasonably believes that any such party engaged in suspected or attempted
32 financial exploitation of the eligible adult;

33 (B) not later than two business days following the requested
34 disbursement, notifies the commissioner; and

35 (C) continues its internal review of the suspected or attempted
36 financial exploitation of the eligible adult, as necessary and reports the
37 results of such investigation to the commissioner within seven business
38 days after the requested disbursement.

39 (b) Any delay of a disbursement authorized by this section shall
40 expire upon the soonest of:

41 (1) A determination by the broker-dealer or investment adviser that
42 the disbursement will not result in financial exploitation of the eligible
43 adult; or

1 (2) 15 business days following the date on which the broker-dealer or
2 investment adviser first delayed disbursement of the funds, unless the
3 commissioner requests that the broker-dealer or investment adviser extend
4 the delay, in which case the delay shall expire not more than 25 business
5 days after the date on which the broker-dealer or investment adviser first
6 delayed disbursement of the funds unless sooner terminated by the
7 commissioner or an order of a court of competent jurisdiction.

8 (c) A court of competent jurisdiction may enter an order extending
9 the delay of the disbursement of funds or may order other protective relief
10 based on the petition of the commissioner, the broker-dealer or investment
11 adviser that initiated the delay under this section or another interested
12 party.

13 New Sec. 8. A broker-dealer or investment adviser that, in good faith
14 and exercising reasonable care, complies with section 7, and amendments
15 thereto, shall be immune from any administrative and civil liability that
16 might otherwise arise from such delay in a disbursement in accordance
17 with this act.

18 New Sec. 9. (a) A broker-dealer or investment adviser shall provide
19 access to or copies of records that are relevant to the suspected or
20 attempted financial exploitation of an eligible adult to the commissioner
21 and to law enforcement, either as part of a referral to the securities
22 commissioner or to law enforcement or upon request of the securities
23 commissioner or law enforcement pursuant to an investigation. The
24 records may include historical records and records relating to the most
25 recent transaction or transactions that may constitute financial exploitation
26 of an eligible adult.

27 (b) No record made available to the commissioner or other agencies
28 under this act shall be considered a public record under the open records
29 act, K.S.A. 42-215 et seq., and amendments thereto. The provisions of this
30 subsection providing for the confidentiality of public records shall expire
31 on July 1, 2028, unless the legislature reviews and acts to continue such
32 provisions in accordance with K.S.A. 45-229, and amendments thereto,
33 prior to July 1, 2028.

34 (c) Nothing in this act shall limit or otherwise impede the authority of
35 the commissioner to access or examine the books and records of broker-
36 dealers and investment advisers as otherwise provided by law.

37 Sec. 10. K.S.A. 17-12a412 is hereby amended to read as follows: 17-
38 12a412. (a) *Disciplinary conditions-applicants*. An order issued under this
39 act may deny an application, or may condition or limit registration of an
40 applicant to be a broker-dealer, agent, investment adviser, or investment
41 adviser representative if the administrator finds that the order is in the
42 public interest and that there is a ground for discipline under subsection (d)
43 against the applicant or, if the applicant is a broker-dealer or investment

1 adviser, against any partner, officer, director, person having a similar status
2 or performing similar functions, or person directly or indirectly controlling
3 the broker-dealer or investment adviser.

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

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

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

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

30 (1) A censure;

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

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

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

1 and amendments thereto;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (6) is the subject of an adjudication or determination, after notice and
4 opportunity for hearing, by the securities and exchange commission, the
5 commodity futures trading commission, the federal trade commission, a
6 federal depository institution regulator, or a depository institution,
7 insurance; or other financial services regulator of a state that the person
8 willfully violated the securities act of 1933, the securities exchange act of
9 1934, the investment advisers act of 1940, the investment company act of
10 1940, or the commodity exchange act, the securities or commodities law of
11 a state; or a federal or state law under which a business involving
12 investments, franchises, insurance, banking; or finance is regulated;

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

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

27 (9) has failed to reasonably supervise an agent, investment adviser
28 representative; or other individual, if the agent, investment adviser
29 representative; or other individual was subject to the person's supervision
30 and committed a violation of this act or the predecessor act or a rule
31 adopted or order issued under this act or the predecessor act within the
32 previous 10 years;

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

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

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

43 (B) to have been the subject of an order of a securities regulator of a

1 foreign jurisdiction denying, revoking, or suspending the right to engage in
2 the business of securities as a broker-dealer, agent, investment adviser,
3 investment adviser representative, or similar person; or

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

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

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

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

24 (15) lacks sufficient character or reputation to warrant the public
25 trust; *or*

26 (16) *was required to report information under the protect vulnerable*
27 *adults from financial exploitation act and knowingly failed to make such a*
28 *report or knowingly caused such report not to be made within the previous*
29 *10 years.*

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

39 (f) *Summary process.* In accordance with the Kansas administrative
40 procedures act, the administrator may use summary or emergency
41 proceedings to suspend or deny an application; restrict, condition, limit, or
42 suspend a registration; or censure, bar, or impose a civil penalty or cease
43 and desist order on a registrant before final determination of an

1 administrative proceeding. If a hearing is not requested and none is
2 ordered by the administrator within 30 days after the date of service of the
3 order, the order becomes final by operation of law. If a hearing is requested
4 or ordered, the administrator, after notice of and opportunity for hearing to
5 each person subject to the order, may modify or vacate the order or extend
6 the order until final determination.

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

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

10 (B) opportunity for hearing; and

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

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

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

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

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

26 Sec. 12. This act shall take effect and be in force from and after its
27 publication in the statute book.