**292.500 Administration of chapter.**

(1) The administration of the provisions of this chapter shall be under the Department of Financial Institutions.

(2) It is unlawful for the commissioner or any of his or her officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. Except as provided in subsection (19) of this section, no provision of this chapter authorizes the commissioner or any of the department's officers or employees to disclose any confidential information except among themselves or when necessary or appropriate in an administrative hearing or investigation under this chapter. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any of the department's officers or employees.

(3) The commissioner may promulgate, amend, and repeal administrative regulations, forms, and orders as are necessary to carry out the provisions of this chapter, including administrative regulations and forms governing registration statements, applications, notice filings, and reports and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter. For the purpose of administrative regulations and forms, the commissioner may classify securities, persons, and matters within his jurisdiction, and prescribe different requirements for different classes.

(4) No administrative regulation, form, or order may be promulgated, amended, or repealed unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provision of this chapter. In promulgating administrative regulations and forms, the commissioner may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statement, applications, notice filings, and reports whenever practicable.

(5) The commissioner may by administrative regulation or order prescribe the form and content of financial statements required under this chapter and the circumstances under which consolidated financial statements shall be certified by certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting standards.

(6) All administrative regulations and forms of the commissioner shall be published.

(7) No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any administrative regulation, form, or order of the commissioner, notwithstanding that the administrative regulation, form, or order may later be amended or repealed or be determined by judicial or other authority to be invalid for any reason.

(8) A document is filed when it is received by the commissioner or when the commissioner receives confirmation that a document has been filed. The

commissioner may accept electronic filings of any documents required to be filed under this chapter, either in conjunction with paper filings or in place of paper filings in whole or in part.

(9) Every administrative hearing shall be conducted in accordance with KRS Chapter 13B and the provisions of this chapter, and shall be public unless the commissioner in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.

(10) The commissioner shall keep a record of all applications for registration and registration statements and notice filings which are or have been effective under this chapter and a record of all denial, suspension, or revocation final orders which have been entered under this chapter.

(11) The information contained in or filed with any registration statement, application, or notice filing is a public record subject to the provisions of the Kentucky Open Records Act.

(12) Upon request and at reasonable charges as the commissioner prescribes, the commissioner shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any administrative hearing or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(13) The commissioner in his or her discretion may honor requests from interested persons for interpretative opinions.

(14) The commissioner may impose civil fines against any person who violates any provision of this chapter or any rule or order or voluntary agreement entered into under this chapter. The fine shall not exceed twenty thousand dollars ($20,000) per violation, except when the violation is directed at or results in monetary damage to one (1) or more individuals who are sixty (60) years of age or older, the commissioner may impose an additional fine not to exceed twenty thousand dollars ($20,000) per violation. Each act or transaction which violates this chapter or administrative regulation, or orders or agreements entered into under this chapter, shall constitute a separate violation. Any employer or principal shall be jointly and severally liable for fines imposed in connection with the conduct of employees or agents.

(15) The commissioner is authorized to designate that the fines imposed for violations of this chapter or administrative regulation, or any order or voluntary agreement entered into pursuant to this chapter, be deposited into the securities fraud prosecution and prevention fund established in KRS 292.322

(16) In addition to any fines imposed under subsection (14) of this section, the commissioner may also assess the costs of any investigation, including attorney's fees incurred as a result of bringing enforcement actions under the provisions of this chapter and costs of holding any hearing as a result of an enforcement action. Costs and attorney's fees may only be imposed if there has been a final determination that a violation has occurred, and in an amount reasonably related to the costs of investigation and enforcement for those violations only. Costs and attorney's fees may be included as part of an agreement in settlement of an enforcement action.

(17) If fines, fees, or costs imposed under this section are not paid, then the

commissioner may notify the Department of Revenue, which may institute an action in the name of the Commonwealth of Kentucky in the Franklin Circuit Court, or any other court of competent jurisdiction, for the recovery of the fines, fees, or costs.

(18) The remedies provided by this section are not exclusive and may be sought and employed in any combination to enforce the provisions of this chapter. The remedies set forth in this section shall not prohibit or restrict the commissioner from participating in any way whatsoever with respect to any joint examination, investigation, enforcement action, settlement, or other legal or regulatory action with securities administrators of other jurisdictions, the Securities and Exchange Commission, any self-regulatory organization, or any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, 15 U.S.C. secs. 78a et seq. Accordingly, the commissioner may, at any time and in his or her sole discretion, share or cause to be shared by any employee of the department any information gained pursuant to an examination, investigation, filing, or from any other source, with other governmental agencies, jurisdictions, or governmental or self-regulating organizations or entities, to the extent the commissioner, in his or her sole discretion, deems that the sharing of information is or will be reasonably necessary or useful to the department or other agency in carrying out its regulatory responsibilities.

(19) The following materials, documentation, and other information are deemed to have been confidentially disclosed to the department and to be confidential information under the Kentucky Open Records Act and, specifically, the provisions of KRS 61.878(1)(b), to the extent described in this subsection and except as provided further in administrative regulation:

(a) Any materials, documentation, or other information provided to or otherwise obtained by the department during the course of a routine compliance examination of any broker-dealer, agent, investment adviser, or investment adviser representative;

(b) Any materials, documentation, or other information that is part of an ongoing investigation; and

(c) Any materials, documentation, or other information provided to or otherwise obtained by the department from any other regulatory or governmental body, including but not limited to any other state securities regulator, the Securities and Exchange Commission, any self-regulatory organization, any state or federal criminal agency, and any criminal prosecutorial body, and which the other body expressly deems to be confidential.

(20) (a) The confidential information specified in subsection (19)(a) and (b) of this section may be released when required in a proper legal proceeding in which a subpoena and protective order ensuring confidentiality has been issued by the tribunal.

(b) The confidential information specified in subsection (19)(c) of this section must be obtained from the entity which provided the information.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 878, effective July 15, 2010; and

ch. 82, sec. 13, effective July 15, 2010. -- Amended 1998 Ky. Acts ch. 20, sec. 22, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 318, sec. 224, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 165, sec. 21, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 346, sec. 11, effective July 15, 1982. -- Amended 1972 Ky. Acts ch. 265, sec. 15. -- Created 1960 Ky. Acts ch. 110, sec. 20, effective January 1, 1961.

**Legislative Research Commission Note** (7/15/2010). This section was amended by 2010 Ky. Acts chs. 24 and 82. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 82, which was last enacted by the General Assembly, prevails under KRS 446.250.

**Legislative Research Commission Note** (7/15/2010). References to the "executive director" of financial institutions in subsections (8), (14), and (15) of this section, as amended by 2010 Ky. Acts ch. 82, sec. 13, have been changed to the "commissioner" of financial institutions to reflect the reorganization of certain parts of the Executive Branch, as set forth in Executive Orders 2009-535 and 2009-1086 and confirmed by the General Assembly in 2010 Ky. Acts ch. 24. A reference to the "Revenue Cabinet" in subsection (17) of this section, as amended by 2010 Ky. Acts ch. 82, sec. 13, has been changed in codification to the "Department of Revenue" to reflect the abolition of the Revenue Cabinet and creation of the Department of Revenue in Executive Order 2004-723, as confirmed by the General Assembly in 2005 Ky. Acts ch. 85, and the continuation of the department throughout subsequent Executive Orders and Acts relating to reorganization. These changes were made by the Reviser of Statutes pursuant to 2010 Ky. Acts ch. 24, sec. 1938, and 2005 Ky. Acts ch. 85, sec. 701, respectively.