

## SENATE BILL No. 358

By Committee on Judiciary

1-26

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AN ACT concerning administrative procedure; concerning presiding of-  
ficers; amending K.S.A. 2-1208a, 2-3311, 8-2426, 21-3110, 31-140, 36-  
509, 40-2,137, 44-322a, 44-1005, 49-606, 65-163, 65-163a, 65-525, 65-  
526, 65-673, 65-780, 65-786, 65-2305, 65-3483, 65-3488, 65-3490,  
66-1,117, 74-4904, 74-8804, 74-8816, 74-8817, 74-8837, 75-6207, 76-  
3110, 77-505, 77-549, 77-550, 77-551, 77-551 as amended by section  
42 of this act, 79-3313, 82a-1405, 82a-1501a, 82a-1502 and 82a-1504  
and K.S.A. 2003 Supp. 75-37,121, 77-514, 77-514 as amended by sec-  
tion 38 of this act and 82a-1503 and repealing the existing sections;  
also repealing K.S.A. 75-37,122 and 75-5611a.

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

New Section 1. There is hereby established the office of administra-  
tive hearings. The office shall be administered by the director of admin-  
istrative hearings. The director of administrative hearings shall be ap-  
pointed by the governor pursuant to K.S.A. 75-4315a, and amendments  
thereto, shall have special training and qualifications for such position.  
The director of administrative hearings shall employ, and fix compensa-  
tion of, such assistants or clerks as the director of administrative hearings  
may from time to time deem necessary.

New Sec. 2. On and after July 1, 2009: (a) Except as otherwise pro-  
vided by this act, all of the powers, duties and functions of the office of  
administrative hearings within the department of administration and the  
secretary of administration concerning adjudicative proceedings of the  
Kansas administrative procedure act are hereby transferred to and con-  
ferred and imposed upon the office of administrative hearings and the  
director established by this act.

(b) Except as otherwise provided by this act, the office of adminis-  
trative hearings and the director established by this act shall be the suc-  
cessor in every way to the powers, duties and functions of the office of  
administrative hearings within the department of administration and the  
secretary of administration concerning adjudicative proceedings of the  
Kansas administrative procedure act in which the same were vested prior  
to the effective date of this section. Every act performed in the exercise  
of such powers, duties and functions by or under the authority of the

1 office of administrative hearings and the director concerning adjudicative  
2 proceedings of the Kansas administrative procedure act established by  
3 this act shall be deemed to have the same force and effect as if performed  
4 by the office of administrative hearings within the department of admin-  
5 istration and the secretary of administration, respectively, in which such  
6 powers, duties and functions were vested prior to the effective date of  
7 this section.

8 (c) Except as otherwise provided by this act, whenever the office of  
9 administrative hearings within the department of administration and the  
10 secretary of administration, or words of like effect concerning adjudicative  
11 proceedings of the Kansas administrative procedure act, is referred to or  
12 designated by a statute, contract or other document, such reference or  
13 designation shall be deemed to apply to the office of administrative hear-  
14 ings established by this act.

15 (d) Except as otherwise provided by this act, whenever the secretary  
16 of administration, or words of like effect concerning adjudicative pro-  
17 ceedings of the Kansas administrative procedure act, is referred to or  
18 designated by a statute, contract or other document, such reference or  
19 designation shall be deemed to apply to the director established by this  
20 act.

21 (e) All rules and regulations of the office of administrative hearings  
22 within the department of administration and the secretary of administra-  
23 tion concerning adjudicative proceedings of the Kansas administrative  
24 procedure act in existence on the effective date of this section shall con-  
25 tinue to be effective and shall be deemed to be duly adopted rules and  
26 regulations of the director of the office of administrative hearings estab-  
27 lished by this act until revised, amended, revoked or nullified pursuant  
28 to law.

29 (f) All orders and directives of the office of administrative hearings  
30 within the department of administration and the secretary of administra-  
31 tion concerning adjudicative proceedings of the Kansas administrative  
32 procedure act in existence on the effective date of this section shall con-  
33 tinue to be effective and shall be deemed to be orders and directives of  
34 the director of the office of administrative hearings established by this  
35 act until revised, amended or nullified pursuant to law.

36 (g) On the effective date of this section, the director of the office of  
37 administrative hearings established by this act shall succeed to whatever  
38 right, title or interest the department of administration has acquired in  
39 any real property in this state concerning adjudicative proceedings of the  
40 Kansas administrative procedure act, and the director of the office of  
41 administrative hearings shall hold the same for and in the name of the  
42 state of Kansas. On and after the effective date of this section, whenever  
43 any statute, contract, deed or other document concerns the power or

1 authority of the office of administrative hearings within the department  
2 of administration and the secretary of administration concerning adjudica-  
3 tive proceedings of the Kansas administrative procedure act to acquire,  
4 hold or dispose of real property or any interest therein, the office of  
5 administrative hearings and the director as established by this act shall  
6 succeed to such power or authority.

7 (h) The office of administrative hearings and the director established  
8 by this act shall be continuations of the office of administrative hearings  
9 within the department of administration and the secretary of administra-  
10 tion concerning adjudicative proceedings of the Kansas administrative  
11 procedure act.

12 New Sec. 3. Except as otherwise provided in this act, on July 1, 2009,  
13 any presiding officer in the administrative hearings section of all agencies  
14 which conduct hearings pursuant to the Kansas administrative procedure  
15 act, except those exempted pursuant to K.S.A. 77-551, and amendments  
16 thereto, and support personnel for such presiding officers, shall be trans-  
17 ferred to and shall become employees of the office of administrative hear-  
18 ings established under this act. Such personnel shall retain all rights under  
19 the state personnel system and retirement benefits under the laws of this  
20 state which had accrued to or vested in such personnel prior to the ef-  
21 fective date of this section. Such person's services shall be deemed to  
22 have been continuous. All transfers of personnel positions in the classified  
23 service under the Kansas civil service act shall be in accordance with civil  
24 service laws and any rules and regulations adopted thereunder. This sec-  
25 tion shall not affect any matter pending before an administrative hearing  
26 officer at the time of the effective date of the transfer, and such matter  
27 shall proceed as though no transfer of employment had occurred.

28 New Sec. 4. On and after July 1, 2009:

29 (a) When any conflict arises as to the disposition of any power, func-  
30 tion or duty or the unexpended balance of any appropriation as a result  
31 of any abolition, transfer, attachment or change made by or under au-  
32 thority of this act, such conflict shall be resolved by the governor, whose  
33 decision shall be final.

34 (b) The office of administrative hearings shall succeed to all property  
35 and records which were used for or pertain to the performance of the  
36 powers, duties and functions transferred to the office of administrative  
37 hearings. Any conflict as to the proper disposition of property or records  
38 arising under this section, and resulting from the transfer or attachment  
39 of any state agency, or all or part of the powers, duties and functions  
40 thereof, shall be determined by the governor, whose decision shall be  
41 final.

42 New Sec. 5. On and after July 1, 2009:

43 (a) The office of administrative hearings shall have the legal custody

1 of all records, memoranda, writings, entries, prints, representations or  
2 combinations thereof of any act, transaction, occurrence or event of the  
3 office of administrative hearings within the department of administration  
4 concerning adjudicative proceedings of the Kansas administrative pro-  
5 cedure act and any agency or office transferred thereto under this act.

6 (b) No suit, action or other proceeding, judicial or administrative,  
7 lawfully commenced, or which could have been commenced, by or against  
8 any state agency mentioned in this act, or by or against any officer of the  
9 state in such officer's official capacity or in relation to the discharge of  
10 such officer's official duties, shall abate by reason of the governmental  
11 reorganization effected under the provisions of this act. The court may  
12 allow any such suit, action or other proceeding to be maintained by or  
13 against the successor of any such state agency or any officer affected.

14 (c) No criminal action commenced or which could have been com-  
15 menced by the state shall abate by the taking effect of this act.

16 New Sec. 6. (a) On and after July 1, 2009, the balance of all funds  
17 appropriated and reappropriated to the office of administrative hearings  
18 within the department of administration concerning adjudicative pro-  
19 ceedings of the Kansas administrative procedure act is hereby transferred  
20 to the office of administrative hearings and shall be used only for the  
21 purpose for which the appropriation was originally made.

22 (b) On and after July 1, 2009, the liability for all accrued compensa-  
23 tion or salaries of officers and employees who, immediately prior to such  
24 date, were engaged in the performance of powers, duties or functions of  
25 the office of administrative hearings within the department of adminis-  
26 tration concerning adjudicative proceedings of the Kansas administrative  
27 procedure act, or who become a part of the office of administrative hear-  
28 ings established by this act, or the powers, duties and functions of which  
29 are transferred to the office of administrative hearings provided for by  
30 this act, shall be assumed and paid by the office of administrative hearings  
31 established by this act.

32 Sec. 7. On and after July 1, 2005, K.S.A. 2-1208a is hereby amended  
33 to read as follows: 2-1208a. (a) If it shall appear to the secretary or an  
34 authorized representative of the secretary from examination or analysis  
35 of an official sample of a commercial fertilizer that the commercial fer-  
36 tilizer is falsely labeled or fails to comply with the provisions of this act,  
37 the secretary shall cause notice to be given to the person in possession of  
38 the commercial fertilizer and the registrant that a hearing in relation  
39 thereto will be held at a date and place named in such notice. Whereupon  
40 the secretary or ~~an authorized representative of the secretary~~ *a presiding*  
41 *officer from the office of administrative hearings* shall hold a hearing in  
42 accordance with the provisions of the Kansas administrative procedure  
43 act.

1 (b) If it is established at the hearing to the satisfaction of the secre-  
2 tary, or ~~an authorized representative of the secretary~~ *a presiding officer*  
3 *from the office of administrative hearings*, that any commercial fertilizer  
4 has been registered in error, or has been sold in violation of any of the  
5 provisions of this act, or that any provision of this act has been violated,  
6 the secretary shall have power to cancel the registration of such brand or  
7 brands of commercial fertilizer, and may report the facts to the proper  
8 prosecuting attorney and furnish that officer with an official report of the  
9 record of such hearing and a copy of the result of any analysis or other  
10 examination which may have a bearing on the case. Prosecution may be  
11 instituted under the provisions of this act in the district court of the county  
12 where the offense is alleged to have been committed, upon complaint of  
13 the secretary or an authorized representative of the secretary or any cit-  
14 izen of this state, or by any county attorney and shall be prosecuted by  
15 the county attorney in the name of the state of Kansas.

16 Sec. 8. On and after July 1, 2005, K.S.A. 2-3311 is hereby amended  
17 to read as follows: 2-3311. Before any chemigation user registration or  
18 chemigation user's permit shall be revoked, denied renewal or before it  
19 shall be suspended for any cause, the secretary shall conduct a hearing in  
20 accordance with the provisions of the Kansas administrative procedure  
21 act. The notice of hearing shall be sent to the registrant or permit holder  
22 at least 15 days prior to the hearing date and shall be served upon the  
23 registrant or permit holder by letter sent to such person's address as  
24 shown by the records of the secretary, setting out the time and place of  
25 the hearing and alleged grounds for revocation or suspension. The reg-  
26 istrant or permit holder shall have the right to appear in person and by  
27 counsel and to testify and introduce evidence. If such person fails to  
28 appear, the matter may be heard in such person's absence. Any such  
29 hearing may be conducted by the secretary or ~~by a hearing officer duly~~  
30 ~~appointed by the secretary~~ *a presiding officer from the office of admin-*  
31 *istrative hearings*.

32 Sec. 9. On and after July 1, 2008, K.S.A. 8-2426 is hereby amended  
33 to read as follows: 8-2426. Violation of K.S.A. 8-2406 and amendments  
34 thereto or K.S.A. 8-2425 and amendments thereto is unlawful, and any  
35 person violating any provision thereof shall be subject to civil penalty of  
36 not less than \$350 and not to exceed \$1,000, as determined by the director  
37 of vehicles or a ~~person appointed by the director~~ *presiding officer from*  
38 *the office of administrative hearings* after notice and hearing in accord-  
39 ance with the provisions of the Kansas administrative procedure act. The  
40 provisions of this section shall not affect the authority of the secretary of  
41 revenue or any officer of the department of revenue in enforcing any  
42 provision of the vehicle dealers and manufacturers licensing act, of which  
43 K.S.A. 8-2425 and amendments thereto and this section shall be a part.

1 Sec. 10. On and after July 1, 2005, K.S.A. 21-3110 is hereby  
2 amended to read as follows: 21-3110. The following definitions shall apply  
3 when the words and phrases defined are used in this code, except when  
4 a particular context clearly requires a different meaning.

5 (1) "Act" includes a failure or omission to take action.

6 (2) "Another" means a person or persons as defined in this code other  
7 than the person whose act is claimed to be criminal.

8 (3) "Conduct" means an act or a series of acts, and the accompanying  
9 mental state.

10 (4) "Conviction" includes a judgment of guilt entered upon a plea of  
11 guilty.

12 (5) "Deception" means knowingly and willfully making a false state-  
13 ment or representation, express or implied, pertaining to a present or past  
14 existing fact.

15 (6) To "deprive permanently" means to:

16 (a) Take from the owner the possession, use or benefit of his or her  
17 property, without an intent to restore the same; or

18 (b) Retain property without intent to restore the same or with intent  
19 to restore it to the owner only if the owner purchases or leases it back,  
20 or pays a reward or other compensation for its return; or

21 (c) Sell, give, pledge or otherwise dispose of any interest in property  
22 or subject it to the claim of a person other than the owner.

23 (7) "Dwelling" means a building or portion thereof, a tent, a vehicle  
24 or other enclosed space which is used or intended for use as a human  
25 habitation, home or residence.

26 (8) "Forcible felony" includes any treason, murder, voluntary man-  
27 slaughter, rape, robbery, burglary, arson, kidnapping, aggravated battery,  
28 aggravated sodomy and any other felony which involves the use or threat  
29 of physical force or violence against any person.

30 (9) "Intent to defraud" means an intention to deceive another person,  
31 and to induce such other person, in reliance upon such deception, to  
32 assume, create, transfer, alter or terminate a right, obligation or power  
33 with reference to property.

34 (10) "Law enforcement officer" means any person who by virtue of  
35 such person's office or public employment is vested by law with a duty  
36 to maintain public order or to make arrests for crimes, whether that duty  
37 extends to all crimes or is limited to specific crimes or any officer of the  
38 Kansas department of corrections or for the purposes of K.S.A. 21-3409,  
39 21-3411 and 21-3415 and subsection (a)(2) of K.S.A. 21-3413 and amend-  
40 ments thereto, any employee of the Kansas department of corrections.

41 (11) "Obtain" means to bring about a transfer of interest in or pos-  
42 session of property, whether to the offender or to another.

43 (12) "Obtains or exerts control" over property includes but is not

1 limited to, the taking, carrying away, or the sale, conveyance, or transfer  
2 of title to, interest in, or possession of property.

3 (13) “Owner” means a person who has any interest in property.

4 (14) “Person” means an individual, public or private corporation, gov-  
5 ernment, partnership, or unincorporated association.

6 (15) “Personal property” means goods, chattels, effects, evidences of  
7 rights in action and all written instruments by which any pecuniary obli-  
8 gation, or any right or title to property real or personal, shall be created,  
9 acknowledged, assigned, transferred, increased, defeated, discharged, or  
10 dismissed.

11 (16) “Property” means anything of value, tangible or intangible, real  
12 or personal.

13 (17) “Prosecution” means all legal proceedings by which a person’s  
14 liability for a crime is determined.

15 (18) “Public employee” is a person employed by or acting for the  
16 state or by or for a county, municipality or other subdivision or govern-  
17 mental instrumentality of the state for the purpose of exercising their  
18 respective powers and performing their respective duties, and who is not  
19 a “public officer.”

20 (19) “Public officer” includes the following, whether elected or  
21 appointed:

22 (a) An executive or administrative officer of the state, or a county,  
23 municipality or other subdivision or governmental instrumentality of or  
24 within the state.

25 (b) A member of the legislature or of a governing board of a county,  
26 municipality, or other subdivision of or within the state.

27 (c) A judicial officer, which shall include a judge of the district court,  
28 juror, master or any other person appointed by a judge or court to hear  
29 or determine a cause or controversy.

30 (d) A hearing officer *or presiding officer*, which shall include any per-  
31 son authorized by law or private agreement, to hear or determine a cause  
32 or controversy and who is not a judicial officer.

33 (e) A law enforcement officer.

34 (f) Any other person exercising the functions of a public officer under  
35 color of right.

36 (20) “Real property” or “real estate” means every estate, interest, and  
37 right in lands, tenements and hereditaments.

38 (21) “Solicit” or “solicitation” means to command, authorize, urge,  
39 incite, request, or advise another to commit a crime.

40 (22) “State” or “this state” means the state of Kansas and all land and  
41 water in respect to which the state of Kansas has either exclusive or con-  
42 current jurisdiction, and the air space above such land and water. “Other  
43 state” means any state or territory of the United States, the District of

1 Columbia and the Commonwealth of Puerto Rico.

2 (23) “Stolen property” means property over which control has been  
3 obtained by theft.

4 (24) “Threat” means a communicated intent to inflict physical or  
5 other harm on any person or on property.

6 (25) “Written instrument” means any paper, document or other in-  
7 strument containing written or printed matter or the equivalent thereof,  
8 used for purposes of reciting, embodying, conveying or recording infor-  
9 mation, and any money, token, stamp, seal, badge, trademark, or other  
10 evidence or symbol of value, right, privilege or identification, which is  
11 capable of being used to the advantage or disadvantage of some person.

12 Sec. 11. On and after July 1, 2009, K.S.A. 31-140 is hereby amended  
13 to read as follows: 31-140. Any person aggrieved by any order or ruling  
14 issued pursuant to the provisions of this act may appeal such order or  
15 ruling to the state fire marshal within 15 days from the date of the service  
16 of such order by filing a notice of such appeal in the office of the state  
17 fire marshal. The state fire marshal or ~~the state fire marshal’s authorized~~  
18 ~~representative~~ *a presiding officer from the office of administrative hear-*  
19 *ings* shall hear such person within 30 days after the receipt of such notice  
20 of appeal, and the hearing shall be held in accordance with the provisions  
21 of the Kansas administrative procedure act. The state fire marshal shall  
22 file a decision thereon and, unless by authority of the state fire marshal  
23 the order is revoked or modified, the order shall be complied with within  
24 the time fixed in such decision.

25 Sec. 12. On and after July 1, 2007, K.S.A. 36-509 is hereby amended  
26 to read as follows: 36-509. (a) Whenever a timely request for a hearing  
27 shall be filed with the secretary pursuant to the provisions of this act the  
28 secretary shall set a time and place for such hearing which shall be held  
29 within not to exceed 20 days of the request therefor. Upon such hearing,  
30 the secretary or a ~~person designated by the secretary as a hearing officer~~  
31 *presiding officer from the office of administrative hearings* may issue sub-  
32 poenas for the attendance of witnesses and the production of relevant  
33 books and papers. At the hearing, the applicant shall have the right to be  
34 represented by counsel, to present witnesses and evidence in own behalf  
35 and to cross-examine adverse witnesses.

36 (b) Upon completion of the hearing, the secretary may affirm, rescind  
37 or modify the order denying, suspending or revoking the applicant’s li-  
38 cense. Any person aggrieved by any such decision of the secretary may  
39 appeal to the district court in the manner provided by the act for judicial  
40 review and civil enforcement of agency actions.

41 Sec. 13. On and after July 1, 2005, K.S.A. 40-2,137 is hereby  
42 amended to read as follows: 40-2,137. (a) The costs incurred by the de-  
43 partment of insurance in conducting any administrative hearing author-



1 ized by article 33 of chapter 40 of the Kansas Statutes Annotated ~~and~~  
2 ~~subsection (c) of K.S.A. 40-920, subsection (a) of K.S.A. 40-930, K.S.A.~~  
3 ~~40-930, K.S.A. 40-940, subsections (g) and (h) of K.S.A. 40-1113, subsec-~~  
4 ~~tion (a) of K.S.A. 40-1114 and K.S.A. 40-1120;~~ and amendments thereto,  
5 shall be assessed against insurers or rating organizations that are parties  
6 to the hearing in such proportion as the commissioner of insurance may  
7 determine upon consideration of all relevant circumstances including: (1)  
8 The nature of the hearing; (2) whether the hearing was instigated by, or  
9 for the benefit of a particular party or parties; (3) whether there is a  
10 successful party on the merits of the proceeding; (4) the relative levels of  
11 participation by the parties; and (5) with the exception of hearings held  
12 under article 33 of chapter 40 of the Kansas Statutes Annotated, only  
13 when the disapproval of rates in question is upheld, a rating organization's  
14 license is suspended or revoked or a penalty is imposed as a result of the  
15 hearing.

16 (b) For purposes of this section costs incurred shall mean the ~~hearing~~  
17 *presiding* officer fees, cost of making a record and publishing notices, and  
18 travel expenses of department of insurance officers and employees, but  
19 costs incurred shall not include ~~hearing presiding~~ officer fees or cost of  
20 making a record unless the department has retained the services of ~~in-~~  
21 ~~dependent contractors~~ *the office of administrative hearings* or outside  
22 experts to perform such functions.

23 (c) Any costs assessed hereunder shall be made by the commissioner  
24 as part of the final order or decision arising out of the proceeding. Such  
25 order or decision shall include findings and conclusions in support of the  
26 assessment of costs. This section shall not be construed as permitting the  
27 payment of travel expenses unless calculated in accordance with the ap-  
28 plicable laws and rules and regulations of the state of Kansas. The com-  
29 missioner as part of such order or decision may require all assessments  
30 for ~~hearing presiding~~ officer fees and cost of making a record, if any, to  
31 be paid directly to the ~~hearing officer or court reporter~~ *office of admin-*  
32 *istrative hearings* by the party or parties assessed for such costs.

33 Sec. 14. On and after July 1, 2008, K.S.A. 44-322a is hereby amended  
34 to read as follows: 44-322a. (a) Whenever a claim for unpaid wages under  
35 K.S.A. 44-313 through 44-326, and amendments thereto, is filed with the  
36 secretary of human resources, the secretary or the secretary's authorized  
37 representative shall investigate the claim as provided in K.S.A. 44-322  
38 and amendments thereto to determine if a dispute exists between the  
39 parties to the claim. If the secretary or the secretary's authorized repre-  
40 sentative determines that a dispute does exist and that the parties are  
41 unable to resolve their differences, the secretary or ~~the secretary's au-~~  
42 ~~thorized representative~~ *a presiding officer from the office of administra-*  
43 *tive hearings* shall establish a time and place for a hearing on the matter.

1 The hearing shall be conducted in accordance with the provisions of the  
2 Kansas administrative procedure act.

3 (b) Upon the completion of the hearing, the presiding officer shall  
4 determine whether the claim for unpaid wages is a valid claim under  
5 K.S.A. 44-313 through 44-326, and amendments thereto. If the presiding  
6 officer determines the claim for unpaid wages is valid, the amount of  
7 unpaid wages owed together with any damages which may be assessed  
8 under K.S.A. 44-315 and amendments thereto, if applicable, also shall be  
9 determined by the presiding officer. If the presiding officer determines  
10 the claim for unpaid wages is valid, the presiding officer shall order that  
11 the unpaid wages and any applicable damages be paid by the party re-  
12 sponsible for their payment. Any initial order under this section shall be  
13 reviewed by the secretary ~~or the secretary's authorized representative~~ in  
14 accordance with K.S.A. 77-527 and amendments thereto. The decision of  
15 the secretary ~~or the secretary's authorized representative~~ shall be final  
16 and the amount of any unpaid wages and applicable damages determined  
17 by the secretary ~~or the secretary's authorized representative~~ to be valid  
18 shall be due and payable unless judicial review is sought within the time  
19 allowed by law.

20 (c) Any agency action under this section is subject to review in ac-  
21 cordance with the act for judicial review and civil enforcement of agency  
22 actions.

23 Sec. 15. On and after July 1, 2007, K.S.A. 44-1005 is hereby  
24 amended to read as follows: 44-1005. (a) Any person claiming to be ag-  
25 grieved by an alleged unlawful employment practice or by an alleged  
26 unlawful discriminatory practice, and who can articulate a prima facie  
27 case pursuant to a recognized legal theory of discrimination, may, per-  
28 sonally or by an attorney-at-law, make, sign and file with the commission  
29 a verified complaint in writing, articulating the prima facie case, which  
30 shall also state the name and address of the person, employer, labor or-  
31 ganization or employment agency alleged to have committed the unlawful  
32 employment practice complained of or the name and address of the per-  
33 son alleged to have committed the unlawful discriminatory practice com-  
34 plained of, and which shall set forth the particulars thereof and contain  
35 such other information as may be required by the commission.

36 (b) The commission upon its own initiative or the attorney general  
37 may, in like manner, make, sign and file such complaint. Whenever the  
38 attorney general has sufficient reason to believe that any person as herein  
39 defined is engaged in a practice of discrimination, segregation or sepa-  
40 ration in violation of this act, the attorney general may make, sign and  
41 file a complaint. Any employer whose employees or some of whom, refuse  
42 or threaten to refuse to cooperate with the provisions of this act, may file  
43 with the commission a verified complaint asking for assistance by concil-

1 iation or other remedial action.

2 (c) Whenever any problem of discrimination because of race, relig-  
3 ion, color, sex, disability, national origin or ancestry arises, or whenever  
4 the commission has, in its own judgment, reason to believe that any per-  
5 son has engaged in an unlawful employment practice or an unlawful dis-  
6 criminatory practice in violation of this act, or has engaged in a pattern  
7 or practice of discrimination, the commission may conduct an investiga-  
8 tion without filing a complaint and shall have the same powers during  
9 such investigation as provided for the investigation of complaints. The  
10 person to be investigated shall be advised of the nature and scope of such  
11 investigation prior to its commencement. The purpose of the investigation  
12 shall be to resolve any such problems promptly. In the event such prob-  
13 lems cannot be resolved within a reasonable time, the commission may  
14 issue a complaint whenever the investigation has revealed a violation of  
15 the Kansas act against discrimination has occurred. The information gath-  
16 ered in the course of the first investigation may be used in processing the  
17 complaint.

18 (d) After the filing of any complaint by an aggrieved individual, by  
19 the commission, or by the attorney general, the commission shall, within  
20 seven days after the filing of the complaint, serve a copy on each of the  
21 parties alleged to have violated this act, and shall designate one of the  
22 commissioners to make, with the assistance of the commission's staff,  
23 prompt investigation of the alleged act of discrimination. If the commis-  
24 sioner shall determine after such investigation that no probable cause  
25 exists for crediting the allegations of the complaint, such commissioner,  
26 within 10 business days from such determination, shall cause to be issued  
27 and served upon the complainant and respondent written notice of such  
28 determination.

29 (e) If such commissioner after such investigation, shall determine that  
30 probable cause exists for crediting the allegations for the complaint, the  
31 commissioner or such other commissioner as the commission may des-  
32 ignate, shall immediately endeavor to eliminate the unlawful employment  
33 practice or the unlawful discriminatory practice complained of by con-  
34 ference and conciliation. The complainant, respondent and commission  
35 shall have 45 days from the date respondent is notified in writing of a  
36 finding of probable cause to enter into a conciliation agreement signed  
37 by all parties in interest. The parties may amend a conciliation agreement  
38 at any time prior to the date of entering into such agreement. Upon  
39 agreement by the parties the time for entering into such agreement may  
40 be extended. The members of the commission and its staff shall not dis-  
41 close what has transpired in the course of such endeavors.

42 (f) In case of failure to eliminate such practices by conference and  
43 conciliation, or in advance thereof, if in the judgment of the commissioner

1 or the commission circumstances so warrant, the commissioner or the  
2 commission shall commence a hearing in accordance with the provisions  
3 of the Kansas administrative procedure act naming as parties the com-  
4 plainant and the person, employer, labor organization, employment  
5 agency, realtor or financial institution named in such complaint, hereinafter  
6 referred to as respondent. A copy of the complaint shall be served  
7 on the respondent. At least four commissioners, ~~a staff hearing examiner~~  
8 ~~or a contract hearing examiner~~ *or a presiding officer from the office of*  
9 *administrative hearings* shall be designated as the presiding officer. The  
10 place of such hearing shall be in the county where respondent is doing  
11 business and the acts complained of occurred.

12 (g) The complainant or respondent may apply to the presiding officer  
13 for the issuance of a subpoena for the attendance of any person or the  
14 production or examination of any books, records or documents pertinent  
15 to the proceeding at the hearing. Upon such application the presiding  
16 officer shall issue such subpoena.

17 (h) The case in support of the complaint shall be presented before  
18 the presiding officer by one of the commission's attorneys or agents, or  
19 by private counsel, if any, of the complainant, and the commissioner who  
20 shall have previously made the investigation shall not participate in the  
21 hearing except as a witness. Any endeavors at conciliation shall not be  
22 received in evidence.

23 (i) Any complaint filed pursuant to this act must be so filed within six  
24 months after the alleged act of discrimination, unless the act complained  
25 of constitutes a continuing pattern or practice of discrimination in which  
26 event it will be from the last act of discrimination. Complaints filed with  
27 the commission ~~on or after July 1, 1996,~~ may be dismissed by the com-  
28 mission on its own initiative, and shall be dismissed by the commission  
29 upon the written request of the complainant, if the commission has not  
30 issued a finding of probable cause or no probable cause or taken other  
31 administrative action dismissing the complaint within 300 days of the  
32 filing of the complaint. The commission shall mail written notice to all  
33 parties of dismissal of a complaint within five days of dismissal. ~~Com-~~  
34 ~~plaints filed with the commission before July 1, 1996, shall be dismissed~~  
35 ~~by the commission upon the written request of the complainant, if the~~  
36 ~~commission has not issued a finding of probable cause or no probable~~  
37 ~~cause or taken other administrative action dismissing the complaint within~~  
38 ~~300 days of the filing of the complaint.~~ Any such dismissal of a complaint  
39 in accordance with this section shall constitute final action by the com-  
40 mission which shall be deemed to exhaust all administrative remedies  
41 under the Kansas act against discrimination for the purpose of allowing  
42 subsequent filing of the matter in court by the complainant, without the  
43 requirement of filing a petition for reconsideration pursuant to K.S.A. 44-

1 1010 and amendments thereto. Dismissal of a complaint in accordance  
2 with this section shall not be subject to appeal or judicial review by any  
3 court under the provisions of K.S.A. 44-1011 and amendments thereto.  
4 The provisions of this section shall not apply to complaints alleging dis-  
5 criminatory housing practices filed with the commission pursuant to  
6 K.S.A. 44-1015 et seq. and amendments thereto.

7 (j) The respondent may file a written verified answer to the complaint  
8 and appear at such hearing in person or otherwise, with or without coun-  
9 sel, and submit testimony. The complainant shall appear at such hearing  
10 in person, with or without counsel, and submit testimony. The presiding  
11 officer or the complainant shall have the power reasonably and fairly to  
12 amend any complaint, and the respondent shall have like power to amend  
13 such respondent's answer. The presiding officer shall be bound by the  
14 rules of evidence prevailing in courts of law or equity, and only relevant  
15 evidence of reasonable probative value shall be received.

16 (k) If the presiding officer finds a respondent has engaged in or is  
17 engaging in any unlawful employment practice or unlawful discriminatory  
18 practice as defined in this act, the presiding officer shall render an order  
19 requiring such respondent to cease and desist from such unlawful em-  
20 ployment practice or such unlawful discriminatory practice and to take  
21 such affirmative action, including but not limited to the hiring, reinstatement,  
22 or upgrading of employees, with or without back pay, and the admission  
23 or restoration to membership in any respondent labor organizations; the  
24 admission to and full and equal enjoyment of the goods, services, facilities,  
25 and accommodations offered by any respondent place of public accommodation  
26 denied in violation of this act, as, in the judgment of the presiding officer,  
27 will effectuate the purposes of this act, and including a requirement for  
28 report of the manner of compliance. Such order may also include an award  
29 of damages for pain, suffering and humiliation which are incidental to the  
30 act of discrimination, except that an award for such pain, suffering and  
31 humiliation shall in no event exceed the sum of \$2,000.

32 (l) Any state, county or municipal agency may pay a complainant back  
33 pay if it has entered into a conciliation agreement for such purposes with  
34 the commission, and may pay such back pay if it is ordered to do so by  
35 the commission.

36 (m) If the presiding officer finds that a respondent has not engaged  
37 in any such unlawful employment practice, or any such unlawful discrim-  
38 inatory practice, the presiding officer shall render an order dismissing the  
39 complaint as to such respondent.

40 (n) The commission shall review an initial order rendered under sub-  
41 section (k) or (m). In addition to the parties, a copy of any final order  
42 shall be served on the attorney general and such other public officers as  
43

1 the commission may deem proper.

2 (o) The commission shall, except as otherwise provided, establish  
3 rules of practice to govern, expedite and effectuate the foregoing proce-  
4 dure and its own actions thereunder. The rules of practice shall be avail-  
5 able, upon written request, within 30 days after the date of adoption.

6 Sec. 16. On and after July 1, 2008, K.S.A. 49-606 is hereby amended  
7 to read as follows: 49-606. (a) The director, with the approval of the  
8 commission, may deny issuance or renewal of a license for repeated or  
9 willful violation of the provisions of this act or for failure to comply with  
10 any provision of a reclamation plan.

11 (b) The director, with the approval of the commission, may suspend  
12 or revoke a license for repeated or willful violation of any of the provisions  
13 of this act or for failure to comply with any provision of a reclamation  
14 plan. Proceedings for the suspension or revocation of a license pursuant  
15 to this section shall be conducted in accordance with the Kansas admin-  
16 istrative procedure act by the director or a ~~hearing officer appointed by~~  
17 ~~the director~~ *presiding officer from the office of administrative hearings.*

18 Sec. 17. On and after July 1, 2007, K.S.A. 65-163 is hereby amended  
19 to read as follows: 65-163. (a) (1) No person shall operate a public water  
20 supply system within the state without a public water supply system per-  
21 mit from the secretary. An application for a public water supply system  
22 permit shall be submitted for review and approval prior to construction  
23 and shall include: (A) A copy of the plans and specifications for the con-  
24 struction of the public water supply system or the extension thereof; (B)  
25 a description of the source from which the water supply is to be derived;  
26 (C) the proposed manner of storage, purification or treatment for the  
27 supply; and (D) such other data and information as required by the sec-  
28 retary of health and environment. No source of water supply in substi-  
29 tution for or in addition to the source described in the application or in  
30 any subsequent application for which a public water supply system permit  
31 is issued shall be used by a public water supply system, nor shall any  
32 change be made in the manner of storage, purification or treatment of  
33 the water supply without an additional public water supply system permit  
34 obtained in a manner similar to that prescribed by this section from the  
35 secretary.

36 (2) Whenever application is made to the secretary for a public water  
37 supply system permit under the provisions of this section, it shall be the  
38 duty of the secretary to examine the application without delay and, as  
39 soon as possible thereafter, to grant or deny the public water supply sys-  
40 tem permit subject to any conditions which may be imposed by the sec-  
41 retary to protect the public health and welfare.

42 (3) The secretary may adopt rules and regulations establishing a pro-  
43 gram of annual certification by public water supply systems that have staff

1 qualified to approve the extension of distribution systems without the  
2 necessity of securing an additional permit for the extension provided the  
3 plans for the extension are prepared by a professional engineer as defined  
4 by K.S.A. 74-7003, and amendments thereto.

5 (b) (1) Whenever a complaint is made to the secretary by any city of  
6 the state, by a local health officer, or by a county or joint board of health  
7 concerning the sanitary quality of any water supplied to the public within  
8 the county in which the city, local health officer or county or joint board  
9 of health is located, the secretary shall investigate the public water supply  
10 system about which the complaint is made. Whenever the secretary has  
11 reason to believe that a public water supply system within the state is  
12 being operated in violation of an applicable state law or an applicable rule  
13 and regulation of the secretary, the secretary may investigate the public  
14 water supply system.

15 (2) Whenever an investigation of any public water supply system is  
16 undertaken by the secretary, it shall be the duty of the supplier of water  
17 under investigation to furnish to the secretary information to determine  
18 the sanitary quality of the water supplied to the public and to determine  
19 compliance with applicable state laws and rules and regulations. The sec-  
20 retary may issue an order requiring changes in the source or sources of  
21 the public water supply system or in the manner of storage, purification  
22 or treatment utilized by the public water supply system before delivery  
23 to consumers, or distribution facilities, collectively or individually, as may  
24 in the secretary's judgment be necessary to safeguard the sanitary quality  
25 of the water and bring about compliance with applicable state law and  
26 rules and regulations. The supplier of water shall comply with the order  
27 of the secretary.

28 (c) (1) As used in this subsection (c), "municipal water treatment  
29 residues" means any solid, semisolid or liquid residue generated during  
30 the treatment of water in a public water supply system treatment works.

31 (2) A public water supply system may place or store municipal water  
32 treatment residues resulting from sedimentation, coagulation or softening  
33 treatment processes in basins on land under the ownership and control  
34 of the public water supply system operator provided that such storage or  
35 placement is approved and permitted by the secretary under this section  
36 as part of the public water supply system.

37 (3) The secretary shall adopt uniform and comprehensive rules and  
38 regulations for the location, design and operation of such basins. Such  
39 rules and regulations shall require permit applications by the public water  
40 suppliers for such basins to include a copy of the plans and specifications  
41 for the location and construction of each basin, the means of conveyance  
42 of the treatment residues to such basins, the content of treatment resi-  
43 dues, the proposed method of basin operation and closure, the method

1 of any anticipated expansion and any other data and information required  
2 by the secretary.

3 (4) Whenever complaint is made to the secretary by the mayor of any  
4 city of the state, by a local health officer or by a county or joint board of  
5 health, or whenever an investigation is undertaken at the initiative of the  
6 secretary, relating to any alleged violation of the provisions of the permit  
7 for placement or storage of municipal water treatment residues in such  
8 basins, the public water supply system operator shall furnish all infor-  
9 mation the secretary requires. If the secretary finds that there is any  
10 violation of the terms of the permit, that the means of placement and  
11 storage exceed the terms of the permit or that any other condition exists  
12 by reason of the means of placement and storage that may be detrimental  
13 to the health of any inhabitants of the state or to the environment, the  
14 secretary shall have the authority to issue an order amending the permit  
15 or otherwise requiring the operator to perform remedial measures to  
16 curtail or prevent such detrimental conditions.

17 (d) *Orders of the secretary under this section, and hearings thereon,*  
18 *shall be subject to the provisions of the Kansas administrative procedure*  
19 *act.* Any action of the secretary pursuant to this section is subject to review  
20 in accordance with the act for judicial review and civil enforcement of  
21 agency actions. The court on review shall hear the case without delay.

22 (e) The secretary shall establish by rule and regulation a system of  
23 fees for the inspection and regulation of public water supplies. No such  
24 fee shall exceed \$.002 per 1,000 gallons of water sold at retail by a public  
25 water supply system. All such fees shall be paid quarterly in the manner  
26 provided for fees imposed on retail sales by public water supply systems  
27 pursuant to K.S.A. 82a-954 and amendments thereto. The secretary shall  
28 remit to the state treasurer all moneys collected for such fees. Upon  
29 receipt thereof, the state treasurer shall deposit the entire amount in the  
30 state treasury and credit it to the public water supply fee fund created by  
31 K.S.A. 65-163c and amendments thereto.

32 (f) There is hereby created an advisory committee to make recom-  
33 mendations regarding: (1) Fees to be adopted by the secretary under  
34 subsection (e); (2) means of strengthening on-site technical assistance to  
35 public water supply systems; (3) standards for on-site and classroom water  
36 treatment operator certification programs; (4) other matters concerning  
37 public water supplies; and (5) to advise the secretary regarding expendi-  
38 ture of moneys in the public water supply fee fund created by K.S.A. 65-  
39 163c and amendments thereto. Such advisory committee shall consist of  
40 one member appointed by the secretary to represent the department of  
41 health and environment, one member appointed by the director of the  
42 Kansas water office to represent such office and two members appointed  
43 by the secretary as follows: One from three nominations submitted by the



1 Kansas section of the American waterworks association, and one from  
2 three nominations submitted by the Kansas rural water association. Mem-  
3 bers of the advisory committee shall serve without compensation or re-  
4 imbursement of expenses. The advisory committee shall meet at least four  
5 times each year on call of the secretary or a majority of the members of  
6 the committee.

7 Sec. 18. On and after July 1, 2007, K.S.A. 65-163a is hereby amended  
8 to read as follows: 65-163a. (a) Any supplier of water may refuse to deliver  
9 water through pipes and mains to any premises where a condition exists  
10 which might lead to the contamination of the public water supply system  
11 and may continue to refuse the delivery of water to the premises until  
12 the condition is remedied.

13 (b) The secretary may order a supplier of water: (1) To cease the  
14 delivery of water through pipes and mains to a premise or premises where  
15 a condition exists which might lead to the contamination of the public  
16 water supply system; or (2) to cease an activity which would result in a  
17 violation of the state primary drinking water standards; or (3) to cease an  
18 activity which results in a continuing violation of the state primary drink-  
19 ing water standards; or (4) to comply with any combination of these or-  
20 ders. The supplier of water shall immediately comply with an order issued  
21 by the secretary under this section.

22 (c) *Orders of the secretary under this section, and hearings thereon,*  
23 *shall be subject to the provisions of the Kansas administrative procedure*  
24 *act.* Any action of the secretary pursuant to this section is subject to review  
25 in accordance with the act for judicial review and civil enforcement of  
26 agency actions. The court on review shall hear the appeal without delay.

27 Sec. 19. On and after July 1, 2007, K.S.A. 65-525 is hereby amended  
28 to read as follows: 65-525. (a) Records in the possession of the department  
29 of health and environment or its agents regarding child care facilities,  
30 maternity centers or family day care homes shall not be released publicly  
31 in a manner that would identify individuals, unless required by law.

32 (b) Records containing the name, address and telephone number of  
33 a child care facility, maternity center or family day care home in the  
34 possession of the department of health and environment or its agents  
35 shall not be released publicly unless required by law.

36 (c) Records that cannot be released by subsection (a) or (b) may be  
37 released to: (1) An agency or organization authorized to receive notice  
38 under K.S.A. 65-506, and amendments thereto; (2) a criminal justice  
39 agency; (3) any state or federal agency that provides child care services,  
40 funding for child care or child protective services; (4) any federal agency  
41 for the purposes of compliance with federal funding requirements; (5)  
42 any local fire department; (6) any child and adult care food program  
43 sponsoring agency; or (7) any local disaster agency.

1 (d) Any state or federal agency or any person receiving records under  
2 subsection (a) or (b) shall not disseminate the records without the consent  
3 of the person whose records will be disseminated unless required by law.  
4 Any state or federal agency or any person receiving records under sub-  
5 section (e) may disseminate the information contained in the records  
6 without the consent of the person whose records will be disseminated.

7 (e) The secretary of health and environment may release the name,  
8 address and telephone number of a maternity center, child care facility  
9 or family day care home when the secretary determines that the release  
10 of the information is necessary to protect the health, safety or welfare of  
11 the public or the patients or children enrolled in the maternity center,  
12 child care facility or family day care home.

13 (f) Any records under subsection (a) or (b) shall be available to any  
14 member of the standing committee on appropriations of the house of  
15 representatives or the standing committee on ways and means of the  
16 senate carrying out such member's or committee's official functions in  
17 accordance with K.S.A. 75-4319, and amendments thereto, in a closed or  
18 executive meeting. Except in limited conditions established by  $\frac{2}{3}$  of the  
19 members of such committee, records received by the committee shall not  
20 be further disclosed. Unauthorized disclosure may subject such member  
21 to discipline or censure from the house of representatives or senate. Such  
22 records shall not identify individuals but shall include data and contract  
23 information concerning specific facilities.

24 (g) In any hearings conducted under the licensing or regulation pro-  
25 visions of K.S.A. 65-501 *et seq.* and amendments thereto, the ~~hearing~~  
26 *presiding* officer may close the hearing to the public to prevent public  
27 disclosure of matters relating to persons restricted by other laws.

28 Sec. 20. On and after July 1, 2007, K.S.A. 65-526 is hereby amended  
29 to read as follows: 65-526. (a) The secretary of health and environment,  
30 in addition to any other penalty prescribed under article 5 of chapter 65  
31 of the Kansas Statutes Annotated, or acts amendatory of the provisions  
32 thereof or supplemental thereto, may assess a civil fine, after proper no-  
33 tice and an opportunity to be heard *in accordance with the Kansas ad-*  
34 *ministrative procedure act*, against a licensee or registrant for each vio-  
35 lation of such provisions or rules and regulations adopted pursuant  
36 thereto which affect significantly and adversely the health, safety or san-  
37 itation of children in a child care facility or family day care home. Each  
38 civil fine assessed under this section shall not exceed \$500. In the case of  
39 a continuing violation, every day such violation continues shall be deemed  
40 a separate violation.

41 (b) All fines assessed and collected under this section shall be remit-  
42 ted promptly to the state treasurer. Upon receipt thereof, the state trea-  
43 surer shall deposit the entire amount in the state treasury and credit it to

1 the state general fund.

2 Sec. 21. On and after July 1, 2007, K.S.A. 65-673 is hereby amended  
3 to read as follows: 65-673. (a) The authority to promulgate rules and  
4 regulations for the efficient enforcement of this act is hereby vested in  
5 the secretary. The secretary is hereby authorized to make the regulations  
6 promulgated under this act conform, insofar as practicable, with those  
7 promulgated under the federal act.

8 (b) Hearings authorized or required by this act shall be conducted by  
9 the secretary or by a ~~hearing officer designated by the secretary~~ *presiding*  
10 *officer from the office of administrative hearings* for this purpose. The  
11 secretary shall prescribe by rule and regulation the procedure for con-  
12 ducting hearings. The ~~hearing~~ *presiding* officer shall have the same pow-  
13 ers in conducting a hearing as the secretary. In conducting a hearing the  
14 secretary or the ~~hearing~~ *presiding* officer may issue subpoenas to compel  
15 the attendance of witnesses, administer oaths, take testimony, require the  
16 production of books, papers, records, correspondence or other docu-  
17 ments which the secretary or the ~~hearing~~ *presiding* officer deems relevant  
18 and render decisions. In case of the refusal of any person to comply with  
19 any subpoena issued under this section or to testify with respect to any  
20 matter which the person may be lawfully questioned, the district court of  
21 any county on application of the secretary may issue an order requiring  
22 such person to comply with the subpoena and to testify, and any failure  
23 to obey the order of the court may be punished by the court as a contempt  
24 thereof. Notwithstanding the foregoing provisions of this subsection,  
25 hearings on an order, as defined in subsection (d) of K.S.A. 77-502 and  
26 amendments thereto, shall be conducted in accordance with the provi-  
27 sions of the Kansas administrative procedure act.

28 (c) Before promulgating any rules and regulations contemplated by  
29 K.S.A. 65-663, 65-665, 65-666, 65-669, or 65-672, and amendments  
30 thereto, the secretary shall give appropriate notice of the proposal and of  
31 the time and place for a hearing as provided in this act. Such rules and  
32 regulations may be amended or revoked in the same manner as is pro-  
33 vided by law for adoption.

34 Sec. 22. On and after July 1, 2005, K.S.A. 65-780 is hereby amended  
35 to read as follows: 65-780. The secretary may deny, suspend, revoke or  
36 modify or refuse to renew the provisions of any license or permit issued  
37 under this act if the secretary finds, after notice and hearing conducted  
38 in accordance with the provisions of the Kansas administrative procedure  
39 act that the applicant, licensee or permit holder or any agent or employee,  
40 thereof has:

41 (a) Been convicted of or pleaded guilty to a violation of this act or  
42 any rules and regulations promulgated thereunder;

43 (b) failed to comply with any provision or requirement of this act or

1 any rules and regulations promulgated thereunder;

2 (c) interfered with the secretary in the performance of any job duties  
3 regarding any inspection or the administration of the provisions of this  
4 act;

5 (d) denied access to premises required to be inspected under the  
6 provisions of this act;

7 (e) failed to pay or remit any required fee or fees, or any part thereof;  
8 or

9 (f) failed to submit a required report, or submitted a false report.

10 *Any such hearing shall be held by the secretary or a presiding officer*  
11 *from the office of administrative hearings.*

12 Sec. 23. On and after July 1, 2005, K.S.A. 65-786 is hereby amended  
13 to read as follows: 65-786. (a) If the secretary determines after notice and  
14 opportunity for a hearing that any person has engaged in or is engaging  
15 in any act or practice constituting a violation of any provision of this act  
16 or any rules and regulations or order issued thereunder, the secretary  
17 may require that such person cease and desist from the unlawful act or  
18 practice and take such affirmative action as in the judgment of the sec-  
19 retary will carry out the purposes of the violated or potentially violated  
20 provision of this act or rules and regulations or order issued thereunder.

21 *Any such hearing shall be held by the secretary or a presiding officer from*  
22 *the office of administrative hearings.*

23 (b) If the secretary makes written findings of fact that there is a sit-  
24 uation involving an immediate danger to the public health, safety or wel-  
25 fare or that the public interest will be irreparably harmed by delay in  
26 issuing an order under subsection (a), the secretary may issue an emer-  
27 gency temporary cease and desist order. Such order, even when not an  
28 order within the meaning of K.S.A. 77-502, and amendments thereto,  
29 shall be subject to the same procedures as an emergency order issued  
30 under K.S.A. 77-536, and amendments thereto. Upon the entry of such  
31 an order, the secretary shall promptly notify the person subject to the  
32 order that:

33 (1) It has been entered;

34 (2) the reasons therefor; and

35 (3) that upon written request from the person subject to the order  
36 within 15 days after service of the order the matter will be set for a hearing  
37 which shall be conducted in accordance with the provisions of the Kansas  
38 administrative procedure act. *Any such hearing shall be held by the sec-*  
39 *retary or presiding officer from the office of administrative hearings.* If  
40 no hearing is requested and none is ordered by the secretary, the order  
41 will remain in effect until it is modified or vacated by the secretary. If a  
42 hearing is requested or ordered the secretary, after giving notice of and  
43 opportunity for hearings to the person subject to the order, shall by writ-

1 ten findings of fact and conclusions of law vacate, modify or make per-  
2 manent the order.

3 Sec. 24. On and after July 1, 2007, K.S.A. 65-2305 is hereby  
4 amended to read as follows: 65-2305. (a) The secretary of health and  
5 environment shall have the power and authority and is hereby charged  
6 with the duty of enforcing the provisions of this act, and the secretary is  
7 hereby authorized and directed to make, amend or revoke rules and reg-  
8 ulations and orders for the efficient enforcement of this act.

9 (b) In the event of findings by the secretary that there is an existing  
10 or imminent shortage of any ingredient required to enrich flour, white  
11 bread or rolls in order to comply with this act, and that because of such  
12 shortage the sale and distribution of flour or white bread or rolls may be  
13 impeded by the enforcement of this act, the secretary shall issue an order,  
14 to be effective immediately upon issuance, permitting the omission of  
15 such ingredient from flour or white bread or rolls; and if the secretary  
16 finds it necessary or appropriate, excepting such foods from the labeling  
17 requirements of this act until the further order of the secretary. Any such  
18 findings may be made without hearing on the basis of an order or of  
19 factual information supplied by the appropriate agency or officer. In the  
20 absence of any such order of the appropriate agency or factual informa-  
21 tion supplied by it, the secretary on the secretary's own motion may, and  
22 upon receiving the sworn statement of 10 or more persons subject to this  
23 act that they believe such a shortage exists or is imminent shall hold a  
24 public hearing as provided in subsection (f) with respect thereto, at which  
25 any interested person may present evidence; and shall make findings  
26 based upon the evidence presented.

27 (c) Whenever the secretary has reason to believe that such shortage  
28 no longer exists, the secretary shall hold a public hearing as provided in  
29 subsection (f), after notice shall have been given as provided in K.S.A.  
30 77-421 prior to adoption of rules and regulations, at which any interested  
31 person may present evidence, and the secretary shall make findings based  
32 upon the evidence so presented. If the secretary's findings be that such  
33 shortage no longer exists, the secretary shall issue an order revoking such  
34 previous order. Undisposed floor stocks of flour on hand at the effective  
35 date of such revocation order, or flour manufactured prior to such effec-  
36 tive date, for sale in this state may thereafter be lawfully sold or disposed  
37 of.

38 (d) All orders and rules and regulations adopted by the secretary pur-  
39 suant to this act shall become effective as provided by law.

40 (e) For the purposes of this act, the secretary is authorized to take  
41 samples for analysis and to conduct examinations and investigations  
42 through any officers or employees under the secretary's supervision, and  
43 all such officers and employees shall have authority to enter, at reasonable

1 times, any factory, mill, warehouse, shop or establishment where flour,  
2 white bread or rolls are manufactured, processed, packed, sold, or held,  
3 or any vehicle being used for the transportation thereof, and to inspect  
4 any such place or vehicle and any flour, white bread or rolls therein, and  
5 all pertinent equipment, materials, containers and labeling.

6 ~~(f) The secretary shall prescribe by rule and regulation the procedure~~  
7 ~~for conducting a hearing under this section and may designate a hearing~~  
8 ~~officer to conduct the hearing. The hearing officer shall have the same~~  
9 ~~powers in conducting the hearing as the secretary. All administrative pro-~~  
10 ~~ceedings conducted pursuant to article 23 of chapter 65 of the Kansas~~  
11 ~~Statutes Annotated, and amendments thereto, shall be conducted in ac-~~  
12 ~~cordance with the provisions of the Kansas administrative procedures act~~  
13 ~~and the act for judicial review and civil enforcement of agency actions.~~  
14 In conducting the hearing the secretary or the ~~hearing~~ *presiding* officer  
15 may issue subpoenas to compel the attendance of witnesses, administer  
16 oaths, take testimony, require the production of books, papers, records,  
17 correspondence or other documents which the secretary or the ~~hearing~~  
18 *presiding* officer deems relevant and render decisions. In case of the  
19 refusal of any person to comply with any subpoena issued under this  
20 section or to testify with respect to any matter *about* which the person  
21 may be lawfully questioned, the district court of any county on application  
22 of the secretary may issue an order requiring such person to comply with  
23 the subpoena and to testify, and any failure to obey the order of the court  
24 may be punished by the court as a contempt thereof.

25 Sec. 25. On and after July 1, 2007, K.S.A. 65-3483 is hereby  
26 amended to read as follows: 65-3483. (a) If, within 150 days after receipt  
27 of an application, the secretary has not denied the application, the sec-  
28 retary shall notify the board of county commissioners and the governing  
29 bodies of all cities located within a ten-mile radius of the proposed facility.  
30 The secretary also shall notify the state corporation commission and the  
31 secretary of wildlife and parks of the proposed facility.

32 (b) If the secretary determines that such application should be ap-  
33 proved, the secretary shall immediately notify the county commissioners  
34 and the governing bodies of all cities located within a ten-mile radius of  
35 the proposed facility.

36 (c) Within 10 days after the secretary has determined that such ap-  
37 plication should be approved, the secretary shall:

38 (1) Set a date and arrange for publication of notice of a public hearing  
39 in a newspaper having major circulation in the vicinity of the proposed  
40 facility. Such hearing shall be in the county in which the proposed facility  
41 will be located. Additional hearings may be held at such other places as  
42 the secretary deems suitable. At such hearing or hearings, the applicant  
43 may present testimony in favor of the application. Any person may appear

1 or be represented by counsel to present testimony in support of or op-  
2 position to the application. The public notice shall:

3 (A) Contain a map indicating the location of the proposed facility, a  
4 description of the proposed action and the location where the application  
5 may be reviewed and where copies may be obtained.

6 (B) Identify the time, place and location for the public hearing held  
7 to receive public comment and input on the application.

8 (2) Publish the notice not less than 30 days before the date of the  
9 public hearing.

10 (d) Comment and input on the proposed facility may be presented  
11 orally or in writing at the public hearing, and shall continue to be accepted  
12 in writing by the secretary for 15 days after the public hearing date.

13 (e) The secretary shall consider the impact of the proposed facility  
14 on the surrounding area in which it is to be located and make a final  
15 determination on the application.

16 (f) The secretary shall consider, at a minimum:

17 (1) The risk and impact of accident during the transportation of PCB;

18 (2) the risk and impact of contamination of ground and surface water  
19 by leaching and runoff from the proposed facility;

20 (3) the risk of fires or explosions from improper storage and disposal  
21 methods;

22 (4) the impact on the surrounding area where the proposed facility  
23 is to be located in terms of the health, safety, cost and consistency with  
24 local planning and existing development. The secretary also shall consider  
25 local ordinances, permits or other requirements and their potential re-  
26 lationship to the proposed facility;

27 (5) an evaluation of measures to mitigate adverse effects;

28 (6) the nature of the probable environmental impact including the  
29 specification of the predictable adverse effects on the following:

30 (A) The natural environment and ecology;

31 (B) public health and safety;

32 (C) scenic, historic, cultural and recreational value; and

33 (D) water and air quality and wildlife.

34 (g) The secretary also shall consider the concerns and objections sub-  
35 mitted by the public. The secretary shall facilitate efforts to provide that  
36 the concerns and objections are mitigated by establishing additional stip-  
37 ulations specifically applicable to the proposed site and operation at that  
38 site. The secretary, to the fullest extent practicable, shall integrate by  
39 stipulation the provisions of the local ordinances, permits or  
40 requirements.

41 (h) The secretary may seek the advice, which shall be given in writing  
42 and entered into the public record of the public hearing, of any person  
43 in order to render a decision to approve or deny the application.

1 (i) *The public hearing required under subsection (c) shall be con-*  
2 *ducted in accordance with the provisions of the Kansas administrative*  
3 *procedure act.*

4 Sec. 26. On and after July 1, 2007, K.S.A. 65-3488 is hereby  
5 amended to read as follows: 65-3488. (a) Permits for PCB disposal facil-  
6 ities shall be issued for fixed terms not to exceed 10 years.

7 (b) Plans, designs and relevant data for the construction of PCB dis-  
8 posal facilities shall be prepared by a professional engineer licensed to  
9 practice in Kansas and shall be submitted to the department for approval  
10 prior to the construction, modification or operation of such a facility.

11 (c) Permits granted by the secretary, as provided in this act, shall be  
12 revocable or subject to suspension whenever the secretary determines  
13 that the PCB disposal facility is, or has been constructed in violation of  
14 this act or the rules and regulations or standards adopted pursuant to the  
15 act, or is creating a hazard to the public health or safety or to the envi-  
16 ronment, or for failure to make payment of any fee to any funds created  
17 under this act.

18 (d) In case any permit is denied, suspended or revoked any person  
19 aggrieved by such decision may request a hearing before the secretary in  
20 the same manner provided by K.S.A. 65-3440, and amendments thereto.  
21 *Such hearings shall be conducted in accordance with the Kansas admin-*  
22 *istrative procedure act.*

23 Sec. 27. On and after July 1, 2007, K.S.A. 65-3490 is hereby  
24 amended to read as follows: 65-3490. (a) The secretary or the director of  
25 the division of environment, if designated by the secretary, upon a finding  
26 that a person has violated any provision of this act or any rule and regu-  
27 lation adopted by the secretary pursuant to this act may impose a penalty  
28 not to exceed \$10,000 which shall constitute an actual and substantial  
29 economic deterrent to the violation for which it is assessed and, in the  
30 case of a continuing violation, every day such violation continues shall be  
31 deemed a separate violation.

32 (b) No penalty shall be imposed pursuant to this section except after  
33 notice of violation and opportunity for hearing upon the written order of  
34 the secretary or the director of the division of environment, if designated  
35 by the secretary, to the person who committed the violation. The order  
36 shall state the violation, the penalty to be imposed and, in the case of an  
37 order of the director of the division of environment, the right to appeal  
38 to the secretary for a hearing thereon. Any person may appeal an order  
39 of the director of the division of environment by making a written request  
40 to the secretary for a hearing within 15 days of ~~receipt~~ *service* of such  
41 order. The secretary shall hear the person within 30 days after receipt of  
42 such request, unless such time period is waived or extended by written  
43 consent of all parties or by a showing of good cause, ~~and shall give not~~



1 ~~less than 10 days' written notice of the time and place of the hearing.~~  
2 ~~Within 30 days after such hearing and receipt of briefs or oral arguments,~~  
3 ~~unless such time period is waived or extended by written consent of all~~  
4 ~~parties or by a showing of good cause, the secretary shall affirm, reverse~~  
5 ~~or modify the order of the director and shall specify the reasons therefor.~~  
6 ~~Nothing in this act shall require the observance of formal rules of evi-~~  
7 ~~dence or pleading at any hearing before the secretary or director. Hear-~~  
8 ~~ings under this subsection shall be conducted in accordance with the Kan-~~  
9 ~~sas administrative procedure act.~~

10 (c) ~~Any party aggrieved by an order under this section shall have the~~  
11 ~~right of appeal in the same manner provided by K.S.A. 65-3440, and~~  
12 ~~amendments thereto may obtain review of such order in accordance with~~  
13 ~~the act for judicial review and civil enforcement of agency actions.~~

14 Sec. 28. On and after July 1, 2008, K.S.A. 66-1,117 is hereby  
15 amended to read as follows: 66-1,117. The corporation commission shall  
16 prescribe forms of applications for certificates, permits and licenses for  
17 the use of prospective applicants and shall make regulations for the filing  
18 thereof. The commission may ~~designate one of its attorneys~~ *use a presid-*  
19 *ing officer from the office of administrative hearings* as a presiding officer  
20 for any hearing that may be required concerning any application for a  
21 certificate or license and the presiding officer shall make written findings  
22 and recommendations to the commission.

23 Sec. 29. On and after July 1, 2005, K.S.A. 74-4904 is hereby  
24 amended to read as follows: 74-4904. (1) The system may sue and be sued  
25 in its official name, but its trustees, officers, employees and agents shall  
26 not be personally liable for acts of the system unless such person acted  
27 with willful, wanton or fraudulent misconduct or intentionally tortious  
28 conduct. Any agreement in settlement of litigation involving the system  
29 and the investment of moneys of the fund is a public record as provided  
30 in K.S.A. 45-215 *et seq.* and amendments thereto and subject to the provi-  
31 sions of that act. The service of all legal process and of all notices which  
32 may be required to be in writing, whether legal proceedings or otherwise,  
33 shall be had on the executive director at such executive director's office.  
34 All actions or proceedings directly or indirectly against the system shall  
35 be brought in Shawnee county.

36 (2) Any person aggrieved by any order or decision of the board made  
37 without a hearing, may, within 30 days after notice of the order or decision  
38 of the board make written request to the board for a hearing thereon.  
39 The board shall hear such party or parties in accordance with the provi-  
40 sions of the Kansas administrative procedure act at its next regular meet-  
41 ing or at a special meeting within 60 days after receipt of such request.  
42 For the purpose of any hearing under this section, the board may ~~appoint~~  
43 ~~one or more presiding officers. Any such presiding officer shall be a mem-~~

1 ber of the board, an employee of the board or any other person designated  
2 by the board to serve as such presiding officer. Any such appointment  
3 shall apply to a particular hearing or to a set or class of hearings as spec-  
4 ified by the board in making such appointment *use a presiding officer*  
5 *from the office of administrative hearings*. The board shall review an initial  
6 order resulting from a hearing under this section. Any member of the  
7 board who serves as a presiding officer shall be reimbursed for actual and  
8 necessary expenses and shall receive compensation in an amount fixed by  
9 the board not to exceed the per diem compensation allowable for mem-  
10 bers of the board. The board is hereby authorized to enter into a contract  
11 with any other person designated by the board to serve as a presiding  
12 officer who is not a member or employee of the board *the office of ad-*  
13 *ministrative hearings* and to provide for reimbursement for actual and  
14 necessary expenses and compensation for such person serving as a pre-  
15 siding officer.

16 Sec. 30. On and after July 1, 2007, K.S.A. 74-8804 is hereby  
17 amended to read as follows: 74-8804. (a) During race meetings, the com-  
18 mission and its designated employees may observe and inspect all race-  
19 track facilities operated by licensees and all racetracks simulcasting races  
20 to racetrack facilities in Kansas, including but not limited to all machines,  
21 equipment and facilities used for parimutuel wagering.

22 (b) Commission members and ~~hearing presiding officers designated~~  
23 ~~by the commission~~ may administer oaths and take depositions to the same  
24 extent and subject to the same limitations as would apply if the deposition  
25 was in aid of a civil action in the district court.

26 (c) The commission may examine, or cause to be examined by any  
27 agent or representative designated by the commission, any books, papers,  
28 records or memoranda of any licensee, or of any racetrack or business  
29 involved in simulcasting races to racetrack facilities in Kansas, for the  
30 purpose of ascertaining compliance with any provision of this act or any  
31 rule and regulation adopted hereunder.

32 (d) The commission may issue subpoenas to compel access to or for  
33 the production of any books, papers, records or memoranda in the cus-  
34 tody or control of any licensee or officer, member, employee or agent of  
35 any licensee, or to compel the appearance of any licensee or officer, mem-  
36 ber, employee or agent of any licensee, or of any racetrack or business  
37 involved in simulcasting races to racetrack facilities in this state, for the  
38 purpose of ascertaining compliance with any of the provisions of this act  
39 or any rule and regulation adopted hereunder. Subpoenas issued pursuant  
40 to this subsection may be served upon individuals and corporations in the  
41 same manner provided in K.S.A. 60-304 and amendments thereto for the  
42 service of process by any officer authorized to serve subpoenas in civil  
43 actions or by the commission or an agent or representative designated by

1 the commission. In the case of the refusal of any person to comply with  
2 any such subpoena, the executive director may make application to the  
3 district court of any county where such books, papers, records, memo-  
4 randa or person is located for an order to comply.

5 (e) The commission shall allocate equitably race meeting dates, rac-  
6 ing days and hours to all organization licensees and assign such dates and  
7 hours so as to minimize conflicting dates and hours within the same ge-  
8 ographic market area.

9 (f) The commission shall have the authority, after notice and an op-  
10 portunity for hearing in accordance with rules and regulations adopted  
11 by the commission, to exclude, or cause to be expelled, from any race  
12 meeting or racetrack facility, or to prohibit a licensee from conducting  
13 business with any person:

14 (1) Who has violated the provisions of this act or any rule and regu-  
15 lation or order of the commission;

16 (2) who has been convicted of a violation of the racing or gambling  
17 laws of this or any other state or of the United States or has been adju-  
18 dicated of committing as a juvenile an act which, if committed by an adult,  
19 would constitute such a violation; or

20 (3) whose presence, in the opinion of the commission, reflects ad-  
21 versely on the honesty and integrity of horse or greyhound racing or  
22 interferes with the orderly conduct of a race meeting.

23 (g) The commission shall review and approve all proposed construc-  
24 tion and major renovations to racetrack facilities owned or leased by  
25 licensees.

26 (h) The commission shall review and approve all proposed contracts  
27 with racetracks or businesses involved in simulcasting races to racetrack  
28 facilities in Kansas.

29 (i) The commission may suspend a horse or greyhound from partic-  
30 ipation in races if such horse or greyhound has been involved in any  
31 violation of the provisions of this act or any rule and regulation or order  
32 of the commission.

33 (j) The commission, within 72 hours after any action taken by a stew-  
34 ard or racing judge and upon appeal by any interested party or upon its  
35 own initiative, may overrule any decision of a steward or racing judge,  
36 other than a decision regarding disqualifications for interference during  
37 the running of a race, if the preponderance of evidence indicates that:

38 (1) The steward or racing judge mistakenly interpreted the law;

39 (2) new evidence of a convincing nature is produced; or

40 (3) the best interests of racing and the state may be better served.

41 A decision of the commission to overrule any decision of a steward or  
42 racing judge shall not change the distribution of parimutuel pools to the  
43 holders of winning tickets. A decision of the commission which would

1 affect the distribution of purses in any race shall not result in a change  
2 in that distribution unless a written claim is submitted to the commission  
3 within 48 hours after completion of the contested race by one of the  
4 owners or trainers of a horse or greyhound which participated in such  
5 race and a preponderance of evidence clearly indicates to the commission  
6 that one or more of the grounds for protest, as provided for in rules and  
7 regulations of the commission, has been substantiated.

8 (k) The commission, after notice and a hearing in accordance with  
9 rules and regulations adopted by the commission, may impose a civil fine  
10 not exceeding \$5,000 for each violation of any provision of this act, or any  
11 rule and regulation of the commission, for which no other penalty is  
12 provided.

13 (l) The commission shall adopt rules and regulations specifying and  
14 regulating:

15 (1) Those drugs and medications which may be administered, and  
16 possessed for administration, to a horse or greyhound within the confines  
17 of a racetrack facility; and

18 (2) that equipment for administering drugs or medications to horses  
19 or greyhounds which may be possessed within the confines of a racetrack  
20 facility.

21 (m) The commission may adopt rules and regulations providing for  
22 the testing of any licensees of the commission, and any officers, directors  
23 and employees thereof, to determine whether they are users of any con-  
24 trolled substances.

25 (n) The commission shall require fingerprinting of all persons nec-  
26 essary to verify qualification for employment by the commission or to  
27 verify qualification for any license, including a simulcasting license, issued  
28 pursuant to this act. The commission shall submit such fingerprints to the  
29 Kansas bureau of investigation and to the federal bureau of investigation  
30 for the purposes of verifying the identity of such persons and obtaining  
31 records of criminal arrests and convictions.

32 (o) The commission may receive from commission security person-  
33 nel, the Kansas bureau of investigation or other criminal justice agencies,  
34 including but not limited to the federal bureau of investigation and the  
35 federal internal revenue service, such criminal history record information  
36 (including arrest and nonconviction data), criminal intelligence informa-  
37 tion and information relating to criminal and background investigations  
38 as necessary for the purpose of determining qualifications of licensees of  
39 the commission, employees of the commission, applicants for employ-  
40 ment by the commission, and applicants for licensure by the commission,  
41 including applicants for simulcasting licenses. Upon the written request  
42 of the chairperson of the commission, the commission may receive from  
43 the district courts such information relating to juvenile proceedings as

1 necessary for the purpose of determining qualifications of employees of  
2 and applicants for employment by the commission and determining qual-  
3 ifications of licensees of and applicants for licensure by the commission.  
4 Such information, other than conviction data, shall be confidential and  
5 shall not be disclosed except to members and employees of the commis-  
6 sion as necessary to determine qualifications of such licensees, employees  
7 and applicants. Any other disclosure of such confidential information is a  
8 class A misdemeanor and shall constitute grounds for removal from office,  
9 termination of employment or denial, revocation or suspension of any  
10 license issued under this act.

11 (p) The commission, in accordance with K.S.A. 75-4319 and amend-  
12 ments thereto, may recess for a closed or executive meeting to receive  
13 and discuss information received by the commission pursuant to subsec-  
14 tion (o) and to negotiate with licensees of or applicants for licensure by  
15 the commission regarding any such information.

16 (q) The commission may enter into agreements with the federal bu-  
17 reau of investigation, the federal internal revenue service, the Kansas  
18 attorney general or any state, federal or local agency as necessary to carry  
19 out the duties of the commission under this act.

20 (r) The commission shall adopt such rules and regulations as neces-  
21 sary to implement and enforce the provisions of this act.

22 Sec. 31. On and after July 1, 2007, K.S.A. 74-8816 is hereby  
23 amended to read as follows: 74-8816. (a) The commission shall require  
24 occupation licenses for:

25 (1) Any owner of a horse or greyhound participating in a race con-  
26 ducted by an organization licensee;

27 (2) any person whose work, in whole or in part, is conducted within  
28 a racetrack facility owned or leased by an organization licensee, including  
29 trainers, jockeys, agents, apprentices, grooms, exercise persons, veteri-  
30 narians, valets, blacksmiths, stewards, racing judges, starters, timers, su-  
31 pervisors of mutuels, parimutuel tellers and clerks, guards and such other  
32 personnel designated by the commission.

33 (b) An occupation license shall be obtained from the commission  
34 prior to the time a person engages in activities for which such license is  
35 required, regardless of whether a race meeting is being conducted.

36 (c) A person required to be licensed pursuant to subsection (a) shall  
37 apply for such license in a manner and upon forms prescribed and fur-  
38 nished by the commission. The commission may require the applicant to  
39 submit to fingerprinting. Occupation licenses shall be issued for a period  
40 established by the commission but not less than one year or more than  
41 three years. The commission shall establish the amount of application  
42 fees and license fees for different types of occupation licenses, but no  
43 such fee shall exceed \$200 a year. The application fee shall not be re-

1 fundable if the applicant fails to qualify for a license and shall include the  
2 cost of processing fingerprints if they are required by the commission.

3 (d) The commission may require an applicant for an occupation li-  
4 cense as a condition of licensure to consent to allow agents of the Kansas  
5 bureau of investigation or security personnel of the commission to search  
6 without warrant the licensee's person, personal property and work prem-  
7 ises while within the racetrack facility or adjacent facilities under the  
8 control of the organization licensee for the purpose of investigating pos-  
9 sible criminal violations of this act or violations of rules and regulations  
10 of the commission.

11 (e) Denial of an occupation license by the commission shall be in  
12 accordance with the Kansas administrative procedure act. The commis-  
13 sion may refuse to issue an occupation license to any person who:

14 (1) Has been convicted of a felony by a court of any state or of the  
15 United States or has been adjudicated in the last five years in any such  
16 court of committing as a juvenile an act which, if committed by an adult,  
17 would constitute a felony;

18 (2) has been convicted of a violation of any law of any state or of the  
19 United States involving gambling or controlled substances or has been  
20 adjudicated in the last five years in any such court of committing as a  
21 juvenile an act which, if committed by an adult, would constitute such a  
22 violation;

23 (3) is not qualified to perform the duties associated with the license  
24 being applied for;

25 (4) fails to disclose any material fact or provides information, knowing  
26 such information to be false, when applying for the license;

27 (5) has been found by the commission to have violated any provision  
28 of this act or any rule and regulation of the commission;

29 (6) has had an occupation license suspended, revoked or denied for  
30 just cause in any other jurisdiction;

31 (7) has committed two or more acts of violence within the past two  
32 years as established by a court of competent jurisdiction of any state or  
33 of the United States; or

34 (8) has failed to meet any monetary or tax obligation to the federal  
35 government or to any state or local government, whether or not relating  
36 to the conduct or operation of a race meet held in this state or any other  
37 jurisdiction.

38 (f) The commission may suspend or revoke an occupation license for  
39 any reason which would justify refusal to issue such a license and may  
40 impose a fine not exceeding \$5,000 for each violation upon any occupation  
41 licensee found to have violated any provision of this act or any rule and  
42 regulation of the commission. Such fine may be imposed in addition to  
43 or in lieu of suspending or revoking such person's occupation license.

1 Proceedings for the suspension or revocation of an occupation license or  
2 imposition of a fine pursuant to this subsection shall be conducted by the  
3 commission or ~~its appointed hearing officer~~ *a presiding officer from the*  
4 *office of administrative hearings* in accordance with the Kansas admin-  
5 istrative procedure act, except that, and notwithstanding the provision of  
6 K.S.A. 77-512, subsection (b) of K.S.A. 77-526 and subsection (b)(3) of  
7 K.S.A. 77-530~~(b)(3)~~, and amendments thereto, any order entered by a  
8 ~~hearing officer appointed by the commission~~ *presiding officer* imposing  
9 such a fine or suspension shall be a final order and effective when served.

10 (g) The commission may provide by rules and regulations for the  
11 temporary suspension of an occupation license by summary adjudicative  
12 proceedings in accordance with the Kansas administrative procedure act  
13 upon finding that there is probable cause to believe that grounds exist for  
14 a permanent suspension or revocation of such license. Such suspension  
15 shall be for a period not exceeding 30 days. Upon expiration of such  
16 suspension, the license shall be restored unless the license has been sus-  
17 pended or revoked pursuant to subsection (f).

18 (h) The stewards at any horse race meeting and the racing judges at  
19 any greyhound race meeting may impose on an occupation licensee a civil  
20 fine not exceeding \$500 or may suspend any occupation licensee's license  
21 for a period not exceeding 15 days upon a finding by at least two of the  
22 stewards or racing judges that there is probable cause to believe that the  
23 occupation licensee has violated the provisions of this act or any rule or  
24 regulation of the commission. No such fine or suspension shall be ordered  
25 except after notice and opportunity for hearing in accordance with pro-  
26 cedures established by rules and regulations of the commission. Any order  
27 imposing such a fine or suspension is effective when rendered. The order  
28 shall be subject to appeal to the commission, and may be stayed pending  
29 such appeal, as provided by rules and regulations of the commission.  
30 Proceedings on appeal shall be in accordance with the provisions of the  
31 Kansas administrative procedure act.

32 Sec. 32. On and after July 1, 2007, K.S.A. 74-8817 is hereby  
33 amended to read as follows: 74-8817. (a) No organization licensee or  
34 facility manager licensee shall permit any business not owned and oper-  
35 ated by the organization licensee to sell goods or services within a race-  
36 track facility where the organization licensee conducts race meetings un-  
37 less such business has been issued a concessionaire license by the  
38 commission.

39 (b) Businesses required to be licensed pursuant to this section shall  
40 apply for concessionaire licenses in a manner and upon forms prescribed  
41 and furnished by the commission. The commission shall require disclo-  
42 sure of information about the owners and officers of each applicant and  
43 may require such owners and officers to submit to fingerprinting. The

1 commission also may require disclosure of information about and finger-  
2 printing of such employees of each applicant as the commission considers  
3 necessary. Concessionaire licenses shall be issued for a period of time  
4 established by the commission but not to exceed 10 years. The commis-  
5 sion shall establish a schedule of application fees and license fees for  
6 concessionaire licenses based upon the type and size of business. The  
7 application fee shall not be refundable if the business fails to qualify for  
8 a license. If the application fee is insufficient to pay the reasonable ex-  
9 penses of processing the application and investigating the applicant's qual-  
10 ifications for licensure, the commission shall require the applicant to pay  
11 to the commission, at such times and in such form as required by the  
12 commission, any additional amounts necessary to pay such expenses. No  
13 license shall be issued to an applicant until the applicant has paid such  
14 additional amounts in full, and such amounts shall not be refundable  
15 except to the extent that they exceed the actual expenses of processing  
16 the application and investigating the applicant's qualifications for  
17 licensure.

18 (c) The commission may require applicants as a condition of licensure  
19 to consent to allow agents of the Kansas bureau of investigation or security  
20 personnel of the commission to search without warrant the licensee's  
21 premises and personal property and the persons of its owners, officers  
22 and employees while engaged in the licensee's business within the race-  
23 track facility or adjacent facilities under the control of the organization  
24 licensee for the purpose of investigating criminal violations of this act or  
25 violations of rules and regulations of the commission.

26 (d) Denial of a concessionaire license by the commission shall be in  
27 accordance with the Kansas administrative procedure act. The commis-  
28 sion may refuse to issue a concessionaire license to any business if any  
29 person having an ownership interest in such business, any person who is  
30 an officer of such business or any person employed by such business  
31 within the racetrack facility:

32 (1) Has been convicted of a felony in a court of any state or of the  
33 United States or has been adjudicated in the last five years in any such  
34 court of committing as a juvenile an act which, if committed by an adult,  
35 would constitute a felony;

36 (2) has been convicted of a violation of any law of any state or of the  
37 United States involving gambling or controlled substances or has been  
38 adjudicated in the last five years in any such court of committing as a  
39 juvenile an act which, if committed by an adult, would constitute such a  
40 violation;

41 (3) fails to disclose any material fact or provides information, knowing  
42 such information to be false, in connection with the application for the  
43 license;



1 (4) has been found by the commission to have violated any provision  
2 of this act or any rule and regulation of the commission; or

3 (5) has failed to meet any monetary or tax obligation to the federal  
4 government or to any state or local government, whether or not relating  
5 to the conduct or operation of a race meet held in this state or any other  
6 jurisdiction.

7 (e) The commission may suspend or revoke the concessionaire li-  
8 cense of any business for any reason which would justify refusal to issue  
9 such a license. Proceedings to suspend or revoke such license shall be  
10 conducted by the commission or ~~its appointed hearing officer~~ *a presiding*  
11 *officer from the office of administrative hearings* in accordance with the  
12 provisions of the Kansas administrative procedure act.

13 (f) The commission may provide by rules and regulations for the tem-  
14 porary suspension of a concessionaire license by summary adjudicative  
15 proceedings in accordance with the Kansas administrative procedure act  
16 upon finding that there is probable cause to believe that grounds exist for  
17 a permanent suspension or revocation of such license. Such suspension  
18 shall be for a period not exceeding 30 days. Upon expiration of such  
19 suspension, the license shall be restored unless the license has been sus-  
20 pended or revoked as a result of proceedings conducted pursuant to sub-  
21 section (e).

22 Sec. 33. On and after July 1, 2007, K.S.A. 74-8837 is hereby  
23 amended to read as follows: 74-8837. (a) No organization licensee or  
24 facility manager licensee shall permit any business not owned and oper-  
25 ated by the organization licensee to provide integral racing or wagering  
26 equipment or services, as designated by the commission, to an organi-  
27 zation licensee unless such business has been issued a racing or wagering  
28 equipment or services license by the commission. Such equipment and  
29 services include but are not limited to totalisator, photo finish, video re-  
30 play and video reception and transmission equipment or services.

31 (b) Businesses required to be licensed pursuant to this section shall  
32 apply for racing or wagering equipment or services licenses in a manner  
33 and upon forms prescribed and furnished by the commission. The com-  
34 mission shall require disclosure of information about the owners and of-  
35 ficers of each applicant and may require such owners and officers to  
36 submit to fingerprinting. The commission also may require disclosure of  
37 information about and fingerprinting of such employees of each applicant  
38 as the commission considers necessary. Racing or wagering equipment or  
39 services licenses shall be issued for a period of time established by the  
40 commission but not to exceed 10 years. The commission shall establish a  
41 schedule of application fees and license fees for racing or wagering equip-  
42 ment or services licenses based upon the type and size of business. The  
43 application fee shall not be refundable if the business fails to qualify for

1 a license. If the application fee is insufficient to pay the reasonable ex-  
2 penses of processing the application and investigating the applicant's qual-  
3 ifications for licensure, the commission shall require the applicant to pay  
4 to the commission, at such times and in such form as required by the  
5 commission, any additional amounts necessary to pay such expenses. No  
6 license shall be issued to an applicant until the applicant has paid such  
7 additional amounts in full, and such amounts shall not be refundable  
8 except to the extent that they exceed the actual expenses of processing  
9 the application and investigating the applicant's qualifications for  
10 licensure.

11 (c) The commission may require applicants as a condition of licensure  
12 to consent to allow agents of the Kansas bureau of investigation or security  
13 personnel of the commission to search without warrant the licensee's  
14 premises and personal property and the persons of its owners, officers  
15 and employees while engaged in the licensee's business within the race-  
16 track facility or adjacent facilities under the control of the organization  
17 licensee for the purpose of investigating criminal violations of this act or  
18 violations of rules and regulations of the commission.

19 (d) Denial of a racing or wagering equipment or services license by  
20 the commission shall be in accordance with the Kansas administrative  
21 procedure act. The commission may refuse to issue a racing or wagering  
22 equipment or services license to any business if any person having an  
23 ownership interest in such business, any person who is an officer of such  
24 business or any person employed by such business within the racetrack  
25 facility:

26 (1) Has been convicted of a felony in a court of any state or of the  
27 United States or has been adjudicated in the last five years, in any such  
28 court of committing as a juvenile an act which, if committed by an adult,  
29 would constitute a felony;

30 (2) has been convicted of a violation of any law of any state or of the  
31 United States involving gambling or controlled substances or has been  
32 adjudicated in the last five years in any such court of committing as a  
33 juvenile an act which, if committed by an adult, would constitute such a  
34 violation;

35 (3) fails to disclose any material fact or provides information, knowing  
36 such information to be false, in connection with the application for the  
37 license;

38 (4) has been found by the commission to have violated any provision  
39 of this act or any rule and regulation of the commission; or

40 (5) has failed to meet any monetary or tax obligation to the federal  
41 government or to any state or local government, whether or not relating  
42 to the conduct or operation of a race meet held in this state or any other  
43 jurisdiction.

1 (e) The commission may suspend or revoke the racing or wagering  
2 equipment or services license of any business for any reason which would  
3 justify refusal to issue such a license. Proceedings to suspend or revoke  
4 such license shall be conducted by the commission or ~~its appointed hearing~~  
5 ~~officer~~ *a presiding officer from the office of administrative hearings*  
6 in accordance with the provisions of the Kansas administrative procedure  
7 act.

8 (f) The commission may provide by rules and regulations for the tem-  
9 porary suspension of a racing or wagering equipment or services license  
10 by summary adjudicative proceedings in accordance with the Kansas ad-  
11 ministrative procedure act upon finding that there is probable cause to  
12 believe that grounds exist for a permanent suspension or revocation of  
13 such license. Such suspension shall be for a period not exceeding 30 days.  
14 Upon expiration of such suspension, the license shall be restored unless  
15 the license has been suspended or revoked as a result of proceedings  
16 conducted pursuant to subsection (e).

17 (g) This section shall be part of and supplemental to the Kansas par-  
18 imutuel racing act.

19 Sec. 34. On and after July 1, 2005, K.S.A. 2003 Supp. 75-37,121 is  
20 hereby amended to read as follows: 75-37,121. ~~On and after July 1, 1998:~~

21 (a) There is created the office of administrative hearings within the de-  
22 partment of administration, to be headed by a director appointed by the  
23 secretary of administration. *The director shall be in the unclassified serv-*  
24 *ice under the Kansas civil service act.*

25 (b) The office ~~shall~~ *may* employ ~~administrative law judges or contract~~  
26 ~~with presiding officers~~, court reporters and other support personnel as  
27 necessary to conduct proceedings required by the Kansas administrative  
28 procedure act for adjudicative proceedings of the ~~department of social~~  
29 ~~and rehabilitation services state agencies, boards and commissions speci-~~  
30 ~~fied in subsection (h).~~ The office shall conduct adjudicative proceedings  
31 of the ~~department of social and rehabilitation services which are not under~~  
32 ~~the Kansas administrative procedure act any state agency which is spec-~~  
33 ~~ified in subsection (h)~~ when requested by such agency. Only a person  
34 admitted to practice law in this state *or a person directly supervised by*  
35 *a person admitted to practice law in this state* may be employed as ~~an~~  
36 ~~administrative law judge~~ *a presiding officer*. The office may employ reg-  
37 ular part-time personnel. Persons employed by the office shall be under  
38 the classified civil service.

39 (c) If the office cannot furnish one of its ~~administrative law judges~~  
40 ~~presiding officers~~ in response to ~~the department of social and rehabilita-~~  
41 ~~tion services~~ *a requesting agency's* request, the director shall designate in  
42 writing a full-time employee of an agency other than the ~~department of~~  
43 ~~social and rehabilitation services~~ *requesting agency* to serve as adminis-

1 ~~trative law judge~~ *presiding officer* for the proceeding, but only with the  
2 consent of the employing agency. The designee must possess the same  
3 qualifications required of ~~administrative law judges~~ *presiding officers* em-  
4 ployed by the office.

5 (d) The director may furnish ~~administrative law judges~~ *presiding of-*  
6 *ficers* on a contract basis to any governmental entity to conduct any pro-  
7 ceeding other than a proceeding as provided in subsection ~~(b)~~ *(h)*.

8 (e) ~~On or before January 1, 1999,~~ The ~~department~~ *secretary* of ad-  
9 ministration ~~shall~~ *may* adopt rules and regulations:

10 (1) ~~To establish further qualifications for administrative law judges,~~  
11 ~~procedures by which candidates will be considered for employment, and~~  
12 ~~the manner in which public notice of vacancies in the staff of the office~~  
13 ~~will be given;~~

14 ~~—(2) to establish procedures for agencies to request and for the director~~  
15 ~~to assign administrative law judges. The department of social and reha-~~  
16 ~~ilitation services presiding officers. An agency may neither select nor~~  
17 ~~reject any individual administrative law judge presiding officer for any~~  
18 ~~proceeding except in accordance with the Kansas administrative proce-~~  
19 ~~dure act;~~

20 ~~(3) (2) to establish procedures and adopt forms, consistent with the~~  
21 ~~Kansas administrative procedure act, the model rules of procedure, and~~  
22 ~~other provisions of law, to govern administrative law judges, presiding~~  
23 ~~officers; and~~

24 ~~(4) to establish standards and procedures for the evaluation, training,~~  
25 ~~promotion and discipline of administrative law judges; and~~

26 ~~—(5) (3) to facilitate the performance of the responsibilities conferred~~  
27 ~~upon the office by the Kansas administrative procedure act.~~

28 (f) The director may:

29 ~~—(1) Maintain a staff of reporters and other personnel; and~~

30 ~~—(2) implement the provisions of this section and rules and regulations~~  
31 ~~adopted under its authority.~~

32 (g) The ~~department~~ *secretary* of administration may adopt rules and  
33 regulations to establish fees to charge a state agency for the cost of using  
34 ~~an administrative law judge a~~ *presiding officer*.

35 (h) *The following state agencies, boards and commissions shall utilize*  
36 *the office of administrative hearings for conducting adjudicative hearings*  
37 *under the Kansas administrative procedures act in which the presiding*  
38 *officer is not the agency head or one or more members of the agency head:*

39 (1) *On and after July 1, 2005: Department of social and rehabilitation*  
40 *services, juvenile justice authority, department on aging, department of*  
41 *health and environment, state board of pharmacy, Kansas dental board,*  
42 *state board of veterinary examiners, behavioral sciences regulatory board,*  
43 *state board of cosmetology, Kansas public employees retirement system,*

1 *the department of agriculture, Kansas water office, Kansas animal health*  
2 *department and Kansas insurance department.*

3 (2) *On and after July 1, 2006: Kansas real estate commission, real*  
4 *estate appraisal board, state board of mortuary arts, Kansas board of*  
5 *barbering, board of nursing, Kansas board of examiners in fitting and*  
6 *dispensing of hearing aids, board of examiners in optometry, emergency*  
7 *medical services board, emergency medical services council and Kansas*  
8 *human rights commission.*

9 (3) *On and after July 1, 2007: State board of healing arts, Kansas*  
10 *lottery, Kansas racing and gaming commission, Kansas state banking*  
11 *board, consumer credit commissioner, state department of credit unions,*  
12 *office of the securities commissioner of Kansas, state treasurer, pooled*  
13 *money investment board, Kansas department of wildlife and parks, state*  
14 *board of technical professions and state board of tax appeals.*

15 (4) *On and after July 1, 2008: Department of human resources, state*  
16 *corporation commission, state conservation commission, agricultural la-*  
17 *bor relations board, department of administration, department of reve-*  
18  *nue, board of adult care home administrators, board of accountancy, Kan-*  
19  *sas state grain inspection department and Kansas wheat commission.*

20 (5) *On and after July 1, 2009: All other Kansas administrative pro-*  
21 *cedure act hearings not mentioned in subsections (1), (2), (3), and (4).*

22 ~~—Effective July 1, 1998, personnel in the administrative hearings sec-~~  
23 ~~tion of the department of social and rehabilitation services and support~~  
24 ~~personnel for such administrative law judges, shall be transferred to the~~  
25 ~~office of administrative hearings. Such personnel shall retain all rights~~  
26 ~~under the state personnel system and retirement benefits under the laws~~  
27 ~~of this state, and such person's services shall be deemed to have been~~  
28 ~~continuous. This act shall not affect any matter pending before an ad-~~  
29 ~~ministrative hearing officer at the time of the effective date of the transfer,~~  
30 ~~and such matter shall proceed as though no transfer of employment had~~  
31 ~~occurred.~~

32 (i) (1) *Effective July 1, 2005, any presiding officer of all agencies*  
33 *specified in subsection (h)(1) which conduct hearings pursuant to the*  
34 *Kansas administrative procedure act, except those exempted pursuant to*  
35 *K.S.A. 77-551 and amendments thereto, and support personnel for such*  
36 *presiding officers, shall be transferred to and shall become employees of*  
37 *the office of administrative hearings. Such personnel shall retain all rights*  
38 *under the state personnel system and retirement benefits under the laws*  
39 *of this state which had accrued to or vested in such personnel prior to the*  
40 *effective date of this section. Such person's services shall be deemed to*  
41 *have been continuous. All transfers of personnel positions in the classified*  
42 *service under the Kansas civil service act shall be in accordance with civil*  
43 *service laws and any rules and regulations adopted thereunder. This sec-*

1 tion shall not affect any matter pending before an administrative hearing  
2 officer at the time of the effective date of the transfer, and such matter  
3 shall proceed as though no transfer of employment had occurred.

4 (2) Effective July 1, 2006, any presiding officer of all agencies speci-  
5 fied in subsection (h)(2) which conduct hearings pursuant to the Kansas  
6 administrative procedure act, except those exempted pursuant to K.S.A.  
7 77-551 and amendments thereto, and support personnel for such presid-  
8 ing officers, shall be transferred to and shall become employees of the  
9 office of administrative hearings. Such personnel shall retain all rights  
10 under the state personnel system and retirement benefits under the laws  
11 of this state which had accrued to or vested in such personnel prior to the  
12 effective date of this section. Such person's services shall be deemed to  
13 have been continuous. All transfers of personnel positions in the classified  
14 service under the Kansas civil service act shall be in accordance with civil  
15 service laws and any rules and regulations adopted thereunder. This sec-  
16 tion shall not affect any matter pending before an administrative hearing  
17 officer at the time of the effective date of the transfer, and such matter  
18 shall proceed as though no transfer of employment had occurred.

19 (3) Effective July 1, 2007, any presiding officer of all agencies speci-  
20 fied in subsection (h)(3) which conduct hearings pursuant to the Kansas  
21 administrative procedure act, except those exempted pursuant to K.S.A.  
22 77-551 and amendments thereto, and support personnel for such presid-  
23 ing officers, shall be transferred to and shall become employees of the  
24 office of administrative hearings. Such personnel shall retain all rights  
25 under the state personnel system and retirement benefits under the laws  
26 of this state which had accrued to or vested in such personnel prior to the  
27 effective date of this section. Such person's services shall be deemed to  
28 have been continuous. All transfers of personnel positions in the classified  
29 service under the Kansas civil service act shall be in accordance with civil  
30 service laws and any rules and regulations adopted thereunder. This sec-  
31 tion shall not affect any matter pending before an administrative hearing  
32 officer at the time of the effective date of the transfer, and such matter  
33 shall proceed as though no transfer of employment had occurred.

34 (4) Effective July 1, 2008, any presiding officer of all agencies speci-  
35 fied in subsection (h)(4) which conduct hearings pursuant to the Kansas  
36 administrative procedure act, except those exempted pursuant to K.S.A.  
37 77-551 and amendments thereto, and support personnel for such presid-  
38 ing officers, shall be transferred to and shall become employees of the  
39 office of administrative hearings. Such personnel shall retain all rights  
40 under the state personnel system and retirement benefits under the laws  
41 of this state which had accrued to or vested in such personnel prior to the  
42 effective date of this section. Such person's services shall be deemed to  
43 have been continuous. All transfers of personnel positions in the classified

1 *service under the Kansas civil service act shall be in accordance with civil*  
2 *service laws and any rules and regulations adopted thereunder. This sec-*  
3 *tion shall not affect any matter pending before an administrative hearing*  
4 *officer at the time of the effective date of the transfer, and such matter*  
5 *shall proceed as though no transfer of employment had occurred.*

6 Sec. 35. On and after July 1, 2008, K.S.A. 75-6207 is hereby  
7 amended to read as follows: 75-6207. (a) If the director receives a timely  
8 written request for a hearing under K.S.A. 75-6206 and amendments  
9 thereto, the director shall request ~~the secretary of administration to ap-~~  
10 ~~point~~ a presiding officer *from the office of administrative hearings* who  
11 shall hold a hearing in accordance with the provisions of the Kansas ad-  
12 ministrative procedure act to determine whether the debt claim is valid.  
13 Subject to the provisions of subsection (b), the presiding officer shall  
14 determine whether the claimed sum asserted as due and owing is correct,  
15 and if not, shall order an adjustment to the debt claim which shall be  
16 forwarded to the director and to the state agency, foreign state agency or  
17 municipality to which the debt is owed. No issue may be considered at  
18 the hearing which has been previously litigated and no collateral attack  
19 on any judgment shall be permitted at the hearing. The order of the  
20 presiding officer shall inform the debtor of the amount determined as  
21 due, if any, and that setoff procedures have been ordered to proceed in  
22 accordance with this act. If the setoff is to be made against earnings of  
23 the debtor, the order shall include a statement that the setoff may be  
24 postponed in accordance with K.S.A. 75-6208 and amendments thereto.  
25 Orders under this section shall not be subject to administrative review.

26 (b) In cases where there is only one known present or future payment  
27 due from the state to the alleged debtor, the presiding officer may limit  
28 the hearing issue to a determination of whether the debt owed the state  
29 agency, foreign state agency or municipality is at least equal to the amount  
30 of the payment owed to the debtor by the state.

31 (c) Pending final determination in the order of the presiding officer  
32 of the validity of the debt asserted by the state agency, foreign state  
33 agency or municipality, no action shall be taken in furtherance of collec-  
34 tion through the setoff procedure allowed under this act.

35 (d) Judicial review of an order under this section shall be in accord-  
36 ance with the provisions of the act for judicial review and civil enforce-  
37 ment of agency actions. In any such review, except as provided in sub-  
38 section (e), the department of administration and the secretary of  
39 administration shall not be named parties to the proceedings.

40 (e) Parties to an action for review of an order under this section shall  
41 be: (1) The debtor; (2) the state agency, foreign state agency or munici-  
42 pality which requested assistance in collecting the debt or which certified  
43 the debt; and (3) any party the district court permits to intervene in the

1 action. Applications for a stay or other temporary remedies shall be to  
2 the district court.

3 Sec. 36. On and after July 1, 2009, K.S.A. 76-3110 is hereby  
4 amended to read as follows: 76-3110. (a) The KPR board may initiate a  
5 proceeding to effect termination of a postsecondary institution's partici-  
6 pation in federal student aid programs by serving written notice upon the  
7 institution that the board has determined that the institution should not  
8 be eligible for participation in such programs. The notice shall include a  
9 statement of the reasons for the determination and a statement that the  
10 institution may contest the finding before a ~~hearing~~ *presiding* officer upon  
11 written request filed with the KPR board. The request to be heard must  
12 be filed within 15 days from the date of the notice of the board's deter-  
13 mination. Upon receipt of a request by an institution to be heard, the  
14 KPR board shall notify the secretary of human resources that the ap-  
15 pointment of a ~~hearing~~ *presiding* officer is required. Within 10 days after  
16 receipt of notification from the KPR board, the secretary of human re-  
17 sources shall ~~appoint~~ *request* a ~~hearing~~ *presiding* officer ~~from a list, which~~  
18 ~~shall be compiled and maintained by the secretary of human resources,~~  
19 ~~of impartial persons who are representative of the public and who are~~  
20 ~~qualified to serve as hearing officers.~~

21 (b) Any hearing requested by a postsecondary institution as provided  
22 in subsection (a) shall be commenced within 15 calendar days after the  
23 ~~hearing~~ *presiding* officer is ~~appointed~~ *requested* and shall be conducted  
24 in accordance with the provisions of the Kansas administrative procedure  
25 act. Within 30 days after close of the hearing, the ~~hearing~~ *presiding* officer  
26 shall render a written opinion setting forth the ~~hearing~~ *presiding* officer's  
27 findings of fact and recommendation as to the determination of the mat-  
28 ter. The opinion shall be submitted to the KPR board and to the postse-  
29 condary institution. If, after receipt of the ~~hearing~~ *presiding* officer's opin-  
30 ion, the KPR board concludes that the board's determination that the  
31 institution should not be eligible for participation in federal student aid  
32 programs was warranted, the board shall notify the institution and the  
33 secretary of education of the determination and the reasons therefor.

34 Sec. 37. On and after July 1, 2005, K.S.A. 77-505 is hereby amended  
35 to read as follows: 77-505. Nothing in ~~this~~ *the Kansas administrative pro-*  
36 *cedure* act shall preclude ~~informal settlement of matters that may make~~  
37 ~~unnecessary more elaborate proceedings under this act~~ *parties from set-*  
38 *tling a matter at any time. In addition, nothing in the Kansas adminis-*  
39 *trative procedure act shall preclude use of alternative dispute resolution,*  
40 *with consent of the agency and all parties.*

41 Sec. 38. On and after July 1, 2005, K.S.A. 2003 Supp. 77-514 is  
42 hereby amended to read as follows: 77-514. (a) *For agencies listed in*  
43 *subsection (h) of K.S.A. 75-37,121, and amendments thereto, the agency*



1 head, one or more members of the agency head, ~~an administrative law~~  
2 ~~judge or a presiding officer~~ assigned by the office of administrative hear-  
3 ings, or, unless prohibited by K.S.A. 77-551, and amendments thereto,  
4 ~~one or more other persons designated by the agency head~~ *may shall* be  
5 the presiding officer. *For all other agencies, the agency head, one or more*  
6 *members of the agency head, a presiding officer assigned by the office of*  
7 *administrative hearings, or, unless prohibited by K.S.A. 77-551, and*  
8 *amendments thereto, one or more other persons designated by the agency*  
9 *head shall be the presiding officer.*

10 (b) Any person serving or designated to serve alone or with others as  
11 presiding officer is subject to disqualification for administrative bias, prej-  
12 udice or interest.

13 (c) Any party may petition for the disqualification of a person  
14 promptly after receipt of notice indicating that the person will preside or  
15 promptly upon discovering facts establishing grounds for disqualification,  
16 whichever is later.

17 (d) A person whose disqualification is requested shall determine  
18 whether to grant the petition, stating facts and reasons for the  
19 determination.

20 (e) If a substitute is required for a person who is disqualified or be-  
21 comes unavailable for any other reason, any action taken by a duly ap-  
22 pointed substitute for a disqualified or unavailable person is as effective  
23 as if taken by the latter.

24 (f) If the office of administrative hearings cannot provide a presiding  
25 officer, a state agency may enter into agreements with another state  
26 agency to provide presiding officers to conduct proceedings under this  
27 act.

28 (g) Notwithstanding any quorum requirements, if the agency head of  
29 a professional or occupational licensing agency is a body of individuals,  
30 the agency head, unless prohibited by law, may designate one or more  
31 members of the agency head to serve as presiding officer and to render  
32 a final order in the proceeding.

33 Sec. 39. On and after July 1, 2008, K.S.A. 2003 Supp. 77-514, as  
34 amended by section 38 of this act, is hereby amended to read as follows:  
35 77-514. (a) ~~For agencies listed in subsection (h) of K.S.A. 75-37,121, and~~  
36 ~~amendments thereto,~~ The agency head, one or more members of the  
37 agency head or a presiding officer assigned by the office of administrative  
38 hearings shall be the presiding officer. ~~For all other agencies, the agency~~  
39 ~~head, one or more members of the agency head, a presiding officer as-~~  
40 ~~signed by the office of administrative hearings, or, unless prohibited by~~  
41 ~~K.S.A. 77-551, and amendments thereto, one or more other persons des-~~  
42 ~~ignated by the agency head shall be the presiding officer.~~

43 (b) Any person serving or designated to serve alone or with others as

1 presiding officer is subject to disqualification for administrative bias, prej-  
2 udice or interest.

3 (c) Any party may petition for the disqualification of a person  
4 promptly after receipt of notice indicating that the person will preside or  
5 promptly upon discovering facts establishing grounds for disqualification,  
6 whichever is later.

7 (d) A person whose disqualification is requested shall determine  
8 whether to grant the petition, stating facts and reasons for the  
9 determination.

10 (e) If a substitute is required for a person who is disqualified or be-  
11 comes unavailable for any other reason, any action taken by a duly ap-  
12 pointed substitute for a disqualified or unavailable person is as effective  
13 as if taken by the latter.

14 (f) If the office of administrative hearings cannot provide a presiding  
15 officer, a state agency may enter into agreements with another state  
16 agency to provide presiding officers to conduct proceedings under this  
17 act.

18 (g) Notwithstanding any quorum requirements, if the agency head of  
19 a professional or occupational licensing agency is a body of individuals,  
20 the agency head, unless prohibited by law, may designate one or more  
21 members of the agency head to serve as presiding officer and to render  
22 a final order in the proceeding.

23 Sec. 40. On and after July 1, 2007, K.S.A. 77-549 is hereby amended  
24 to read as follows: 77-549. (a) The filing of a return with the director of  
25 taxation under article 15, 32, 33, 34, 36, 37, 41, 42 or 47 of chapter 79 of  
26 the Kansas Statutes Annotated, and amendments thereto, shall not be  
27 deemed an application for an order under the Kansas administrative pro-  
28 cedure act.

29 (b) A determination by the division of taxation or the audit services  
30 bureau of the department of revenue concerning tax liability under article  
31 15, 32, 33, 34, 36, 37, 41, 42 or 47 of chapter 79 of the Kansas Statutes  
32 Annotated, and amendments thereto, which is made prior to the oppor-  
33 tunity for a hearing or prior to the opportunity for an informal conference  
34 before the secretary or the secretary's designee on such tax liability, shall  
35 not require an adjudicative proceeding under the Kansas administrative  
36 procedure act.

37 (c) For purposes of the Kansas administrative procedure act, the sec-  
38 retary of revenue may designate the director of the division of taxation  
39 or ~~other designee~~ *a presiding officer from the office of administrative*  
40 *hearings* as agency head.

41 (d) Final orders of the director of taxation pursuant to K.S.A. 77-526,  
42 and amendments thereto, shall be rendered in writing and served within  
43 120 days after conclusion of the hearing or after submission of proposed

1 findings in accordance with subsection (f) of K.S.A. 77-526, and amend-  
2 ments thereto, unless this period is waived or extended with the written  
3 consent of all parties or for good cause shown. If extended for good cause,  
4 such good cause shall be set forth in writing on or before the expiration  
5 of the 120 days.

6 Sec. 41. On and after July 1, 2008, K.S.A. 77-550 is hereby amended  
7 to read as follows: 77-550. For purposes of administrative proceedings of  
8 the division of property valuation under the Kansas administrative pro-  
9 cedure act, the secretary of revenue may designate the director of the  
10 division of property valuation or ~~other designee~~ *other designee a presiding officer from*  
11 *the office of administrative hearings* as agency head.

12 Sec. 42. On and after July 1, 2005, K.S.A. 77-551, is hereby amended  
13 to read as follows: 77-551. ~~On and after July 1, 1998:~~ (a) *Except as pro-*  
14 *vided in subsection (b), in all hearings of the department of social and*  
15 *rehabilitation services under K.S.A. 39-1807, 65-4015, 65-4606, 65-4927,*  
16 *75-3306 and 75-3340, and amendments thereto, any state agency speci-*  
17 *fied in subsection (h) of K.S.A. 75-37,121, and amendments thereto, that*  
18 *are required to be conducted in accordance with the provisions of the*  
19 *Kansas administrative procedure act, the presiding officer shall be the*  
20 *agency head, one or more members of the agency head or an adminis-*  
21 *trative law judge a presiding officer assigned by the office of administra-*  
22 *tive hearings.*

23 (b) *The provisions of this section shall not apply to the employment*  
24 *security law, pursuant to K.S.A. 44-701 et seq., and amendments thereto*  
25 *or article 5 of chapter 44 and amendments thereto, except K.S.A. 44-532*  
26 *and 44-5,120 and amendments thereto, concerning the workers compen-*  
27 *sation act.*

28 (c) *Notwithstanding subsection (a) the agency head or one or more*  
29 *members of the agency who will serve as a presiding officer may designate*  
30 *any other person to serve as a presiding officer to determine procedural*  
31 *matters that may arise prior to the hearing on the merits, including but*  
32 *not limited to conducting prehearing conferences pursuant to K.S.A. 77-*  
33 *516 and 77-517 and amendments thereto.*

34 (d) This section shall be part of and supplemental to the Kansas ad-  
35 ministrative procedure act.

36 Sec. 43. On and after July 1, 2009, K.S.A. 77-551, as amended by  
37 section 42 of this act, is hereby amended to read as follows: 77-551. (a)  
38 Except as provided in subsection (b), in all hearings of any state agency  
39 ~~specified in subsection (h) of K.S.A. 75-37,121, and amendments thereto,~~  
40 that are required to be conducted in accordance with the provisions of  
41 the Kansas administrative procedure act, the presiding officer shall be the  
42 agency head, one or more members of the agency head or a presiding  
43 officer assigned by the office of administrative hearings.

1 (b) The provisions of this section shall not apply to the employment  
2 security law, pursuant to K.S.A. 44-701 *et seq.*, and amendments thereto  
3 or article 5 of chapter 44 and amendments thereto, except K.S.A. 44-532  
4 and 44-5,120 and amendments thereto, concerning the workers compen-  
5 sation act.

6 (c) Notwithstanding subsection (a) the agency head or one or more  
7 members of the agency who will serve as a presiding officer may designate  
8 any other person to serve as a presiding officer to determine procedural  
9 matters that may arise prior to the hearing on the merits, including but  
10 not limited to conducting prehearing conferences pursuant to K.S.A. 77-  
11 516 and 77-517 and amendments thereto.

12 (d) This section shall be part of and supplemental to the Kansas ad-  
13 ministrative procedure act.

14 Sec. 44. On and after July 1, 2007, K.S.A. 79-3313 is hereby  
15 amended to read as follows: 79-3313. All cigarettes sold in this state shall  
16 be in packages, and each of the packages shall bear evidence of payment  
17 of the tax thereon except that any railroad or sleeping car company li-  
18 censed as a retailer is hereby authorized to sell cigarettes upon its cars  
19 without affixing stamps to the packages of cigarettes provided that  
20 monthly reports and payment of the tax due is made directly to the di-  
21 rector in the manner and under the terms provided for by the director.  
22 In addition, manufacturers are hereby authorized to distribute in the  
23 state, through their authorized representatives or wholesale dealers, free  
24 sample packages of cigarettes containing less than 20 cigarettes without  
25 affixing stamps to the packages provided that monthly reports and pay-  
26 ment of a tax at the rates prescribed by law are made directly to the  
27 director. No wholesale dealer or manufacturers' authorized representa-  
28 tives shall sell or distribute cigarettes, except free sample packages, to  
29 any person in the state of Kansas not holding a dealer's license as provided  
30 in this act. Such packages of sample cigarettes shall bear the word "sam-  
31 ple" or "not for sale" and "state tax paid" in letters easily read.

32 Whenever the director shall have reason to believe that any manufac-  
33 turer has violated the provisions of this section or the conditions provided  
34 by the director, the director shall conduct a hearing thereon in accordance  
35 with the provisions of the Kansas administrative procedure act ~~in the~~  
36 ~~office of the director at Topeka.~~ If upon the basis of such hearing it  
37 appears to the satisfaction of the director that such manufacturer has  
38 violated any of the provisions of this section or the conditions provided  
39 by the director, the director is hereby authorized to suspend or revoke  
40 the authorization to the manufacturer for such period as the director  
41 determines is necessary but in no case for more than one year.

42 Sec. 45. On and after July 1, 2005, K.S.A. 82a-1405 is hereby  
43 amended to read as follows: 82a-1405. (a) At the direction of the authority,

1 the director may issue licenses for weather modification activities, as pro-  
2 vided for in this act, but any licensee shall be limited in the exercise of  
3 activities under the license to the specified method or methods of weather  
4 modification activity within the area of expertise of the licensee.

5 (b) At the direction of the authority, the director may issue a permit  
6 for each specific weather modification project or program, which may be  
7 comprised of one or more weather modification activities. Every such  
8 permit shall describe:

9 (1) The geographic area within which such activities are to be carried  
10 out;

11 (2) the geographic area to be affected; and

12 (3) the duration of the weather modification activities of the project  
13 or program, which period may be noncontinuous but which may not have  
14 a total duration exceeding one calendar year from the day of its issuance.

15 The director shall issue a permit only after it has been established that  
16 the project or program, as conceived, will provide substantial benefits or  
17 that it will advance scientific knowledge.

18 (c) The director shall make any studies or investigations, obtain any  
19 information and hold any hearings that the director considers necessary  
20 or proper to assist in exercising the powers or administering or enforcing  
21 the provisions of this act.

22 ~~The director may appoint a hearing officer to conduct any hearings~~  
23 ~~required by this act.~~ The hearings shall be conducted under the provisions  
24 and within any limitations of rules and regulations adopted by the  
25 authority.

26 (d) In order to assist in expanding the theoretical and practical knowl-  
27 edge of weather modification, the authority, to the extent that funds are  
28 available therefor, may cooperate with, support, participate in and pro-  
29 mote research, development and operational programs in:

30 (1) The theory and development of weather modification, including  
31 those aspects relating to procedures, materials, ecological effects and the  
32 attendant legal and social problems;

33 (2) the utilization of weather modification for domestic, municipal,  
34 agricultural, industrial, recreational and other beneficial purposes; and

35 (3) the protection of life, health, property and the general  
36 environment.

37 (e) Subject to any limitations imposed by law, to further the purposes  
38 of this act, the authority may utilize available funds from the state and  
39 may accept federal grants, private gifts and donations from any source.  
40 Except as otherwise provided by law, the authority may use any such  
41 moneys:

42 (1) For the administration of this act;

43 (2) to encourage research and development projects by public or pri-

1 vate agencies through grants, contracts or cooperative arrangements;

2 (3) to contract for and support local efforts in weather modification  
3 activities to seek relief from or to avoid droughts, hail, storms, fires, fog  
4 or other naturally undesirable conditions.

5 (f) Under the direction of the authority, the director shall represent  
6 the state in matters pertaining to plans, procedures, or negotiations for  
7 cooperative agreements, or intergovernmental arrangements relating to  
8 weather modification.

9 Sec. 46. On and after July 1, 2005, K.S.A. 82a-1501a is hereby  
10 amended to read as follows: 82a-1501a. (a) The water transfer hearing  
11 panel shall consist of the chief engineer, the director and the secretary.  
12 The chief engineer shall serve as chairperson of the panel. All actions of  
13 the panel shall be taken by a majority of the members. The panel shall  
14 have all powers necessary to implement the provisions of this act.

15 (b) The panel shall ~~select a hearing officer~~ *request a presiding officer*  
16 *from the office of administrative hearings* to conduct a hearing in accord-  
17 ance with this act when: (1) An application for a water transfer is com-  
18 plete; or (2) the chief engineer, or the panel by a majority vote which  
19 includes the vote of the chief engineer, determines it to be in the best  
20 interest of the state to conduct a water transfer hearing on an application  
21 for a permit to appropriate water or an application for a change to an  
22 existing water right pursuant to the Kansas water appropriation act or on  
23 a proposed contract for the sale of water from the state's conservation  
24 storage water supply capacity, even though the appropriation or sale  
25 would not be a water transfer as defined by K.S.A. 82a-1501 and amend-  
26 ments thereto.

27 ~~(c) The hearing officer shall be an independent person knowledg-  
28 eable in water law, water issues and hearing procedures. The hearing officer  
29 shall be a presiding officer for the purposes of the Kansas administrative  
30 procedure act. Subject to approval by the panel, the hearing officer, on  
31 behalf of the state, may employ such personnel and contract for such  
32 services and facilities as necessary to carry out the hearing officer's duties  
33 under this act.~~

34 Sec. 47. On and after July 1, 2005, K.S.A. 82a-1502 is hereby  
35 amended to read as follows: 82a-1502. (a) No person shall make a water  
36 transfer in this state unless and until the transfer is approved pursuant to  
37 the provisions of this act. No water transfer shall be approved which  
38 would reduce the amount of water required to meet the present or any  
39 reasonably foreseeable future beneficial use of water by present or future  
40 users in the area from which the water is to be taken for transfer unless:  
41 (1) The panel determines that the benefits to the state for approving the  
42 transfer outweigh the benefits to the state for not approving the transfer;  
43 (2) the chief engineer recommends to the panel and the panel concurs

1 that an emergency exists which affects the public health, safety or welfare;  
2 or (3) the governor has declared that an emergency exists which affects  
3 the public health, safety or welfare. Whenever an emergency exists, a  
4 water transfer may be approved by the panel on a temporary basis for a  
5 period of time not to exceed one year under rules and regulations adopted  
6 by the chief engineer. The emergency approval shall be subject to the  
7 terms, conditions and limitations specified by the panel.

8 (b) No water transfer shall be approved under the provisions of this  
9 act: (1) If such transfer would impair water reservation rights, vested  
10 rights, appropriation rights or prior applications for permits to appropriate  
11 water; and (2) unless the ~~hearing~~ *presiding* officer determines that the  
12 applicant has adopted and implemented conservation plans and practices  
13 that (A) are consistent with the guidelines developed and maintained by  
14 the Kansas water office pursuant to K.S.A. 74-2608 and amendments  
15 thereto, (B) have been in effect for not less than 12 consecutive months  
16 immediately prior to the filing of the application on which the hearing is  
17 being held and (C) if the transfer is for use by a public water supply  
18 system, include the implementation of a rate structure which encourages  
19 the efficient use of water that is determined by the ~~hearing~~ *presiding*  
20 officer to be effective and if designed, implemented and maintained prop-  
21 erly, will result in wise use and responsible conservation and management  
22 of water used by the system.

23 (c) To determine whether the benefits to the state for approving the  
24 transfer outweigh the benefits to the state for not approving the transfer,  
25 the ~~hearing~~ *presiding* officer shall consider all matters pertaining thereto,  
26 including specifically:

27 (1) Any current beneficial use being made of the water proposed to  
28 be diverted, including minimum desirable streamflow requirements;

29 (2) any reasonably foreseeable future beneficial use of the water;

30 (3) the economic, environmental, public health and welfare and other  
31 impacts of approving or denying the transfer of the water;

32 (4) alternative sources of water available to the applicant and present  
33 or future users for any beneficial use;

34 (5) whether the applicant has taken all appropriate measures to pre-  
35 serve the quality and remediate any contamination of water currently  
36 available for use by the applicant;

37 (6) the proposed plan of design, construction and operation of any  
38 works or facilities used in conjunction with carrying the water from the  
39 point of diversion, which plan shall be in sufficient detail to enable all  
40 parties to understand the impacts of the proposed water transfer;

41 (7) the effectiveness of conservation plans and practices adopted and  
42 implemented by the applicant and any other entities to be supplied water  
43 by the applicant;

1 (8) the conservation plans and practices adopted and implemented  
2 by any persons protesting or potentially affected by the proposed transfer,  
3 which plans and practices shall be consistent with the guidelines for con-  
4 servation plans and practices developed and maintained by the Kansas  
5 water office pursuant to K.S.A. 74-2608 and amendments thereto; and

6 (9) any applicable management program, standards, policies and  
7 rules and regulations of a groundwater management district.

8 Sec. 48. On and after July 1, 2005, K.S.A. 2003 Supp. 82a-1503 is  
9 hereby amended to read as follows: 82a-1503. (a) Any person desiring to  
10 make a water transfer shall file with the chief engineer an application in  
11 the form required by rules and regulations adopted by the chief engineer.  
12 If the chief engineer finds the application to be insufficient to enable the  
13 chief engineer to determine the source, nature and amount of the pro-  
14 posed transfer, or if the application is not complete, the application shall  
15 be returned for correction or completion or for any other necessary  
16 information.

17 (b) The ~~hearing~~ *presiding* officer shall commence the hearing process  
18 by giving notice of the prehearing conference not more than 14 days after  
19 the panel ~~employs the hearing~~ *is assigned an* officer. Such notice shall be  
20 given by mail to the applicant, any other parties who have intervened and  
21 the appropriate commenting agencies and shall be published in the Kan-  
22 sas register and in at least two newspapers having general circulation in  
23 the area where the proposed point of diversion is located. The ~~hearing~~  
24 *presiding* officer shall hold a prehearing conference which shall com-  
25 mence not less than 90 and not more than 120 days after the required  
26 notice has been given and shall conclude not later than 45 days after  
27 commencement. Not less than 90 and not more than 120 days after the  
28 conclusion of the prehearing conference, the ~~hearing~~ *presiding* officer  
29 shall commence a formal public hearing. The formal public hearing shall  
30 be held in the basin of origin and, if deemed necessary by the ~~hearing~~  
31 *presiding* officer, a public comment hearing shall be held in the basin of  
32 use. The formal public hearing shall conclude not later than 120 days  
33 after commencement and the initial order of the ~~hearing~~ *presiding* officer  
34 approving or disapproving the water transfer shall be issued not later than  
35 90 days after conclusion of the formal public hearing. The ~~hearing~~ *pre-*  
36 *siding* officer may extend a time limit provided by this subsection, but  
37 only with the written consent of all parties or for good cause shown.

38 (c) Intervention in the hearing shall be in accordance with the Kansas  
39 administrative procedure act, except that any petition for intervention  
40 must be submitted and copies mailed to all parties not later than 60 days  
41 before the formal hearing.

42 (d) Any person shall be permitted to appear and testify at any hearing  
43 under this act upon the terms and conditions determined by the ~~hearing~~



1 *presiding* officer.

2 (e) At intervals during or at the conclusion of the hearing, the ~~hearing~~  
3 *presiding* officer shall fairly and equitably assess the following costs of the  
4 hearing among the applicant and other parties: The hearing facility, the  
5 court reporter, the salary of a ~~hearing~~ *presiding* officer who is not paid  
6 for services as a hearing officer by state funds, the travel expenses of the  
7 ~~hearing~~ *presiding* officer and other reasonable costs associated with the  
8 hearing. The ~~hearing~~ *presiding* officer may assess any or all anticipated  
9 costs to the applicant before the hearing and subsequently may assess  
10 other parties for the parties' fair and equitable portion of the anticipated  
11 costs assessed the applicant. Amounts assessed pursuant to this subsection  
12 shall be paid to the chief engineer. Upon receipt thereof, the chief en-  
13 gineer shall remit the entire amount to the state treasurer in accordance  
14 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon  
15 receipt of each such remittance, the state treasurer shall deposit the entire  
16 amount in the state treasury to the credit of the water transfer hearing  
17 fund established by subsection (f).

18 (f) (1) There is hereby established in the state treasury the water  
19 transfer hearing fund.

20 (2) Moneys credited to the water transfer hearing fund shall be used  
21 only to pay: (A) Costs of hearings conducted pursuant to the water trans-  
22 fer act; (B) reimbursement of the applicant for anticipated costs assessed  
23 the applicant and subsequently assessed other parties; and (C) refunds of  
24 unused moneys assessed as anticipated costs before the hearing. Expend-  
25 itures from such fund shall be made in accordance with appropriation  
26 acts upon warrants of the director of accounts and reports, or a person  
27 designated by the director of accounts and reports pursuant to K.S.A. 75-  
28 3732, and amendments thereto, issued pursuant to vouchers approved by  
29 the chief engineer, or a person designated by the chief engineer.

30 (3) On or before the 10th of each month, the director of accounts  
31 and reports shall transfer from the state general fund to the water transfer  
32 hearing fund interest earnings based on:

33 (A) The average daily balance of moneys in the water transfer hearing  
34 fund for the preceding month; and

35 (B) the net earnings rate for the pooled money investment portfolio  
36 for the preceding month.

37 Sec. 49. On and after July 1, 2005, K.S.A. 82a-1504 is hereby  
38 amended to read as follows: 82a-1504. (a) The ~~hearing~~ *presiding* officer  
39 shall render an order either approving or disapproving the proposed water  
40 transfer. The ~~hearing~~ *presiding* officer's order shall include findings of  
41 fact relating to each of the factors set forth in subsection (c) of K.S.A.  
42 82a-1502 and amendments thereto. The ~~hearing~~ *presiding* officer may  
43 order approval of a transfer of a smaller amount of water than requested

1 upon such terms, conditions and limitations as the ~~hearing~~ *presiding* of-  
2 ficer deems necessary for the protection of the public interest of the state  
3 as a whole.

4 (b) An order of the ~~hearing~~ *presiding* officer disapproving or approv-  
5 ing a water transfer, in whole or in part, shall be deemed an initial order.  
6 The panel shall be deemed the agency head for the purpose of the Kansas  
7 administrative procedure act and shall review all initial orders of the ~~hear-~~  
8 ~~ing~~ *presiding* officer in accordance with the Kansas administrative proce-  
9 dure act. Review by the panel shall be in accordance with the standards  
10 provided by this act for the ~~hearing~~ *presiding* officer's initial order and  
11 shall be based on the record of the hearing. The final order of the panel  
12 shall be entered not later than 90 days after entry of the ~~hearing~~ *presiding*  
13 officer's initial order, except that the panel may extend the 90-day limit,  
14 but only with the written consent of all parties or for good cause shown.

15 (c) Any proceedings pursuant to this act and notice of such proceed-  
16 ings shall be in accordance with the provisions of the Kansas administra-  
17 tive procedure act except as specifically provided by this act.

18 (d) The record of any hearing or other proceeding held pursuant to  
19 this act shall be maintained and made available for public examination in  
20 the office of the chief engineer.

21 Sec. 50. On and after July 1, 2005, K.S.A. 2-1208a, 2-3311, 21-3110,  
22 40-2,137, 65-780, 65-786, 74-4904, 75-37,122, 75-5611a, 77-505, 77-551,  
23 82a-1405, 82a-1501a, 82a-1502 and 82a-1504 and K.S.A. 2003 Supp. 75-  
24 37,121, 77-514 and 82a-1503 are hereby repealed.

25 Sec. 51. On and after July 1, 2007, K.S.A. 36-509, 44-1005, 65-163,  
26 65-163a, 65-525, 65-526, 65-673, 65-2305, 65-3483, 65-3488, 65-3490,  
27 74-8804, 74-8816, 74-8817, 74-8837, 77-549, 79-3313 and K.S.A. 2003  
28 Supp. 77-514 as amended by section 38 of this act are hereby repealed.

29 Sec. 52. On and after July 1, 2008, K.S.A. 8-2426, 44-322a, 49-606,  
30 66-1,117, 75-6207 and 77-550 are hereby repealed.

31 Sec. 53. On and after July 1, 2009, K.S.A. 31-140, 76-3110 and 77-  
32 551 as amended by section 42 of this act are hereby repealed.

33 Sec. 54. This act shall take effect and be in force from and after its  
34 publication in the statute book.

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